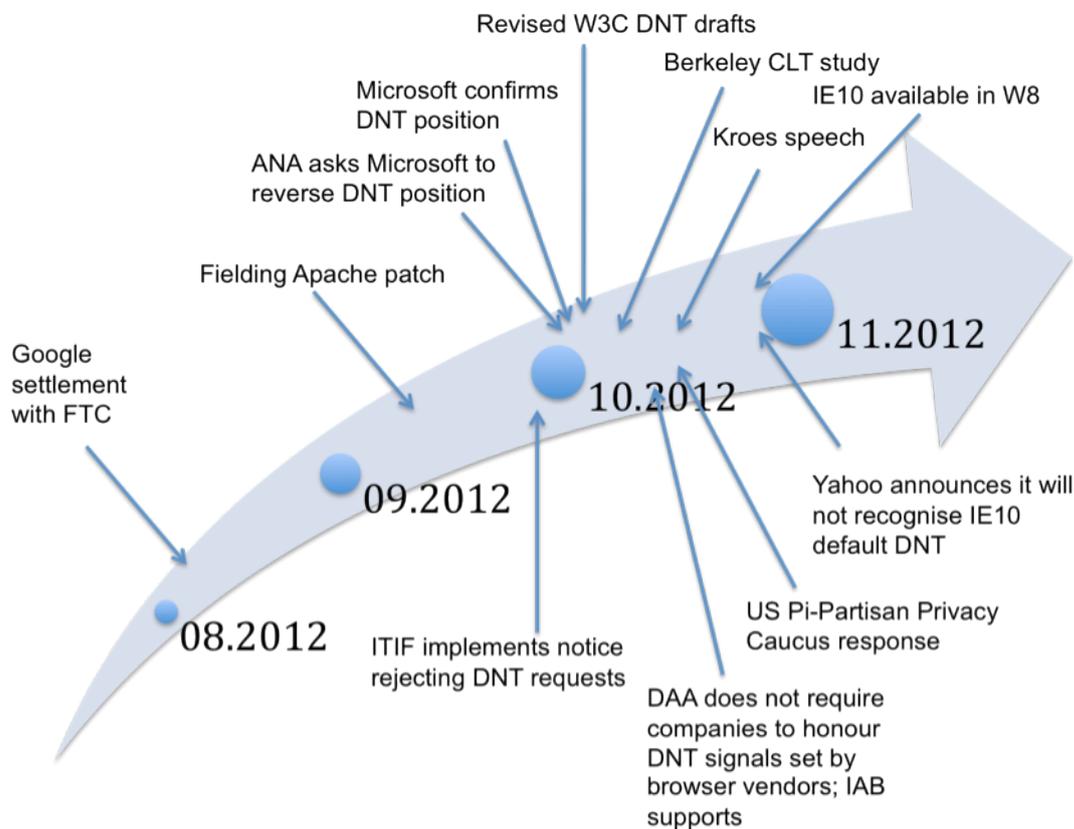


## Who is following me? Tracking the trackers (Background Paper – Part 2)

An update to the background paper for a workshop co-organised by the Council of Europe and the Internet Society at the Internet Governance Forum in Baku, Azerbaijan in November 2012.

### Some developments regarding “Do Not Track” and (post June 2012)

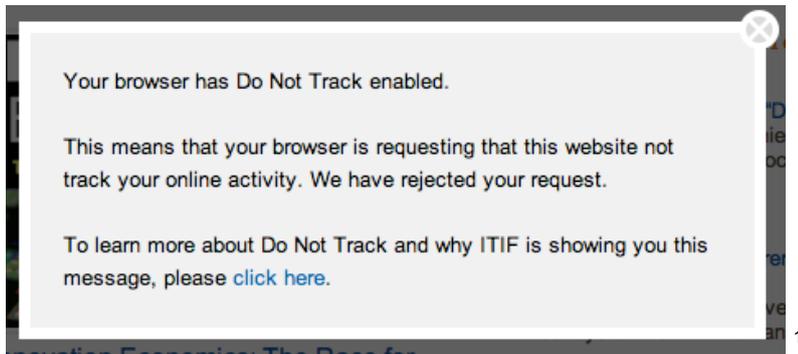


On 9 August 2012, the US Federal Trade Commission announced that “Google Inc. has agreed to pay a record \$22.5 million civil penalty to settle Federal Trade Commission charges that it misrepresented to users of Apple Inc.’s Safari Internet browser that it would not place tracking “cookies” or serve targeted ads to those users, violating an earlier privacy settlement between the company and the FTC”.<sup>i</sup>

Microsoft is reported<sup>ii</sup> to have followed this announcement with – <http://www.bing.com/privacy-protection>.

In September, Roy Fielding released a patch for Apache Web servers to actively ignore “Do Not Track” preferences expressed by the coming IE10. If this patch were implemented on all Apache servers, about 60% of websites could be set to ignore the preference unless Web masters chose to disable it.<sup>iii</sup>

On 29 September 2012, the Information Technology and Innovation Foundation implemented a feature on its website [www.itif.org](http://www.itif.org) informing visitors with “Do Not Track” enabled in their browser that the organisation will not honour their request.<sup>iv</sup>



On 1 October 2012, members of the board of the Association of National Advertisers (ANA) sent a letter to Microsoft renewing ANA’s request “... that Microsoft reverse its position regarding the so-called “do-not-track” default setting for the forthcoming Internet Explorer 10 browser”. They explain:

“We believe that if Microsoft moves forward with this default setting, it will undercut the effectiveness of our members’ advertising and, as a result, drastically damage the online experience by reducing the Internet content and offerings that such advertising supports. This result will harm consumers, hurt competition, and undermine American innovation and leadership in the Internet economy. ... Microsoft’s Internet Explorer Browser currently has a 43 percent market share in the United States. By setting the Internet Explorer browser to block data collection, Microsoft’s action could potentially eliminate the ability to collect web viewing data of up to 43 percent of the browsers used by Americans. ...”<sup>v</sup>

Microsoft responded on 2 October 2012 with a statement:

“Our approach to DNT in Internet Explorer 10 is part of our commitment to privacy by design and putting people first. We believe consumers should have a consistent experience and more control over how data about their online behavior is tracked, shared and used. We also believe that targeted advertising can be beneficial to both consumers and businesses. As such, we will continue to work towards an industry-wide definition of tracking protection.”<sup>vi</sup>

On 2 October 2012, the W3C Tracking Protection Working Group released:

- *Tracking Preference Expression (DNT) W3C Working Draft 02 October 2012*<sup>vii</sup>
- *Tracking Compliance and Scope W3C Working Draft 02 October 2012*<sup>viii</sup>

Chris Jay Hoofnagle, Jennifer M. Urban & Su Li at the Berkeley Center for Law and Technology, conducted a survey to gauge US attitudes towards tracking. In their report, *Privacy and Modern Advertising: Most US Internet Users Want “Do Not Track” to Stop Collection of Data About their Online Activities*<sup>x</sup>, they conclude:

“... We found that most consumers want Do Not Track to mean exactly that: do not collect information that allows companies to track them across the Internet. This may seem obvious, but even the definition articulated by the FTC may fall short of these consumer expectations. Further, advertising industry groups presently are lobbying for a different interpretation that would allow pervasive tracking and use of information derived from online experiences, even if the consumer opts out.

This disconnect appears pervasive and strong. In addition to the fact that a strong majority of respondents prefer that Do Not Track allow them to opt out of collection, there is a lack of understanding about what trackers can do. We found that only about 1 in 3 internet users

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<sup>1</sup> The picture is a screenshot of the message displayed at [www.itif.org](http://www.itif.org) when DNT is enabled in Safari version 5.1.7.

understands that advertisers can track them on medical sites. Here too, despite broad consensus that medical information is especially sensitive and despite widespread consumer ignorance of the rules governing the collection and use of behavioral tracking on medical websites, advertising lobbying groups have stuck to a “notice and no choice” approach. Their self-imposed rules appear to allow tracking of individuals as they engage with some of the most sensitive topics in their lives, even if those individuals attempt to opt out of the tracking....”

On 9 October 2012, the Digital Advertising Alliance (DAA) issued a statement:

“... The DAA does not require companies to honor DNT signals fixed by the browser manufacturers and set by them in browsers. Specifically, it is not a DAA Principle or in any way a requirement under the DAA Program to honor a DNT signal that is automatically set in IE10 or any other browser. The Council of Better Business Bureaus and the Direct Marketing Association will not sanction or penalize companies or otherwise enforce with respect to DNT signals set on IE10 or other browsers.

The trade associations that lead the DAA do not believe that Microsoft’s IE10 browser settings are an appropriate standard for providing consumer choice. Machine-driven do not track does not represent user choice; it represents browser-manufacturer choice. Allowing browser manufacturers to determine the kinds of information users receive could negatively impact the vast consumer benefits and Internet experiences delivered by DAA participants and millions of other Web sites that consumers value. In addition, standards that are different than the consensus-based DAA Principles could confuse consumers and be difficult to implement. A “default on” do-not-track mechanism offers consumers and businesses inconsistencies and confusion instead of comfort and security....”<sup>x</sup>

The Interactive Advertising Bureau (IAB) also issued a press release<sup>xi</sup> on 9 October 2012 expressing its full support for the DAA’s position.

On 10 October 2012, Bi-Partisan Privacy Caucus co-Chairs Joe Barton and Edward J. Markey issued a statement<sup>xii</sup> in response:

“Privacy is an issue that affects everyone, and the Digital Advertising Alliance’s announcement made clear that it puts profits over privacy. If consumers want to be tracked online, they should have to opt-in to be tracked, instead of the other way around. This is why we are disappointed to hear the Digital Advertising Alliance insist that it will not honor Microsoft’s “Do Not Track” default and will not penalize companies that ignore it.

“While we appreciate the efforts industry has taken to develop a ‘Do Not Track’ signal, we have long endorsed a standard that allows consumers to affirmatively choose whether to permit collection of their personal information and targeting of advertisements. Until we have stronger privacy laws in place that mandate a company adhere to a consumer’s preference, especially for children and teens, consumers and their personal information will remain at risk.”

On 11 October 2012, Neelie Kroes Vice-President of the European Commission responsible for the Digital Agenda delivered a speech at The Centre for European Policy Studies (CEPS) in Brussels – *Online privacy and online business: An update on Do Not Track*.<sup>xiii</sup> In that speech, VP Kroes said:

“The fact is, we need, as far as possible, a simple and uniform way of addressing e-privacy – across different providers and different types of tracking. You shouldn’t have every provider reinventing the wheel on this one.”

and spelt out some specific concerns”

“First, how users are informed about default settings in their software and devices. That’s a crucial aspect: is the default option to allow tracking, or to decline consent? The Commission services were very clear on this point in their letter to the W3C: at installation or first use, users must be informed about the importance of their DNT choice. They must be told about any default setting; and prompted to keep or to change it. Because without that, most users aren’t making an informed choice.

Second, the DNT standard should not let websites "second-guess" or disregard user choices. Recently, there were reports about a popular web server introducing a feature that amounted to overriding the DNT signal; in effect, ignoring users' wishes. I find that troubling, and undesirable.

And third, what can be done without consent should be limited; and justifiable, in the light of the standard's overall aim. But the exceptions now on the table seem extremely broad. Jon Leibowitz, the FTC's Chairman, called them "a loophole you could drive a virtual truck through". And you can see why. Take the exception discussed for "market research". We need to be clearer, much clearer, about what that means, and how far it goes. Of course anonymisation, or privacy safeguards like retention limits, could mitigate here. But this cannot be an open-ended "get-out clause".

In mid October 2012<sup>xiv</sup>, the Direct Marketing Association (DMA) created the Data-Driven Marketing Institute ([www.the-dma.org](http://www.the-dma.org)) to "redouble DMA's efforts to explain the benefits of the consumer data industry to the to the public and policymakers, with the goal of preventing needless regulation or enforcement that could severely hamper consumer marketing and stifle innovation, tamping down unfavorable media attention, and reminding and educating consumers about the many and varied ways that their needs are met and they are thrilled and delighted".

The IAB Advertising Technology Council and IAB's Mobile Marketing Center of Excellence created an initiative known as "The Future of the Cookie" "... to discuss and propose responsible solutions to the problems that exist today—and then execute a plan that leads us into the future of online user tracking, transparency, and control."<sup>xv</sup>

On 26 October 2012, IE10 became available on Windows 8.<sup>xvi</sup> IE10 is expected to be available for Windows 7 from mid November.<sup>xvii</sup>

Also on 26 October 2012<sup>xviii</sup>, Yahoo announced:

"... although Yahoo! will continue to offer Ad Interest Manager and other tools, we will not recognize IE10's default DNT signal on Yahoo! properties at this time ...".

Their reasoning is:

"In principle, we support "Do Not Track" (DNT). Unfortunately, because discussions have not yet resulted in a final standard for how to implement DNT, the current DNT signal can easily be abused. Recently, Microsoft unilaterally decided to turn on DNT in Internet Explorer 10 by default, rather than at users' direction. In our view, this degrades the experience for the majority of users and makes it hard to deliver on our value proposition to them. It basically means that the DNT signal from IE10 doesn't express user intent.

Ultimately, we believe that DNT must map to user intent — not to the intent of one browser creator, plug-in writer, or third-party software service."

## **Revenue from online advertising**

The IAB has reported in the IAB Internet Advertising Report<sup>xix</sup>:

- Internet advertising revenues for 2011 increased 22% over 2010 (from \$26 billion to \$31.7 billion)
- Internet advertising continues to remain concentrated with the 10 leading ad-selling companies (accounting for 71% of total revenues in Q4 2011)
- In 2011, 47% of revenue came from search; 22% from banner ads; 8% from classifieds; 5% from mobile advertising
- Mobile advertising revenues for 2011 increased 149% over 2010 (from \$641 million to \$1.6 billion)
- "Internet advertising revenue growth outpaces other media outlets over the past seven years"

	<i>Definitions from the IAB report</i>
Search	<p>"Fees advertisers pay internet companies to list and/or link their company site domain name to a specific search word or phrase (includes paid search revenues).</p> <p>Search categories include:</p> <ul style="list-style-type: none"> <li>• Paid listings—text links appear at the top or side of search results for specific keywords. The more a marketer pays, the higher the position it gets. Marketers only pay when a user clicks on the text link.</li> <li>• Contextual search—text links appear in an article based on the context of the content, instead of a user-submitted keyword. Payment only occurs when the link is clicked.</li> <li>• Paid inclusion—guarantees that a marketer's URL is indexed by a search engine. The listing is determined by the engine's search algorithms.</li> <li>• Site optimization—modifies a site to make it easier for search engines to automatically index the site and hopefully result in better placement in results." </li></ul>
Display	"Advertiser pays an internet company for space to display a static or hyper-linked banner or logo on one or more of the internet company's pages."
Classifieds	"Fees advertisers pay internet companies to list specific products or services (e.g., online job boards and employment listings, real estate listings, automotive listings, auction-based listings, yellow pages)."
Mobile	"Advertising tailored to and delivered through wireless mobile devices such as smartphones (e.g. Blackberry, iPhone, Android), feature phones (e.g. lower-end mobile phones capable of accessing mobile content), and media tablets (e.g. iPad, Samsung Galaxy Tab). Typically taking the form of static or rich media display ads, text messaging ads, search ads, or audio/video spots, such advertising generally appears within mobile websites (e.g. websites optimized for viewing on mobile devices), mobile applications (e.g. applications for smartphones running iOS, Android, or other operating systems, or Java or BREW applications), text messaging services (i.e. SMS, MMS) or within mobile search results (i.e., 411 listings, directories, mobile-optimized search engines). Mobile advertising revenues are currently reported within the above pre-existing advertising formats, but have been estimated and identified individually within this report."

According to Business Insider, "Real-time bidding on ad exchanges that target people via cookies is currently a \$2 billion business, according to Bloomberg. Facebook, via FBX, is expected to eventually capture a \$1 billion slice of the market".<sup>xx</sup>

### **Some additional resources**

From the US Federal Trade Commission:

- *Protecting User Privacy in an Era of Rapid Change: Recommendations for Businesses and Policymakers (March 2012)*  
<http://www.ftc.gov/os/2012/03/120326privacyreport.pdf>
- *Prepared Statement of the Federal Trade Commission on the Need for Privacy Protections: Perspectives from the Administration and the Federal Trade Commission before the Committee on Commerce, Science, and Transportation United States Senate (9 May 2012)*  
<http://www.ftc.gov/os/testimony/120509privacyprotections.pdf>
- *FTC Press Release: FTC to Host Workshop to Explore Practices and Privacy Implications of Comprehensive Collection of Internet Users' Data (15 October 2012)*  
<http://www.ftc.gov/opa/2012/10/collection.shtm>

- FTC Press Release: FTC Recommends Best Practices for Companies That Use Facial Recognition Technologies (22 October 2012)  
<http://www.ftc.gov/opa/2012/10/facialrecognition.shtm>

Microsoft has “Do Not Track Test Page” which “... detects whether or not [the user’s] browser has a Do Not Track preference set – <https://ie.microsoft.com/testdrive/browser/donottrack/default.html>.

Additional information regarding the work being undertaken by the W3C Tracking Protection WG

- <http://www.w3.org/2011/tracking-protection/>
- 21 September 2012: W3C Blog – Do Not Track in the Short, Medium and Long Term<sup>xxi</sup>
- 2 October 2012: W3C Blog – DNT is Good For the Whole Web<sup>xxii</sup>

Apple iOS and Privacy – CDT <https://www.cdt.org/blogs/0110apple-ios-6-and-privacy-0>

Note: Please feel free to send us pointers to other relevant work, initiatives, articles and opinions concerning online tracking at [info-online-tracking@isoc.org](mailto:info-online-tracking@isoc.org).

Date: 30 October 2012

#### Endnotes:

<sup>i</sup> <http://www.ftc.gov/opa/2012/08/google.shtm>

<sup>ii</sup> <http://memeburn.com/2012/09/microsoft-tries-to-convert-safari-users-to-the-bing-side/> and <http://www.zdnet.com/microsoft-google-breached-your-privacy-use-bing-7000004571/>

<sup>iii</sup> <http://www.readwriteweb.com/archives/do-not-track-irony-apache-developer-blocks-it-to-save-it.php>

<sup>iv</sup> <https://www.pcworld.com/article/2010842/website-for-think-tank-rejects-browser-do-not-track-requests.html>

<sup>v</sup> <http://www.ana.net/content/show/id/analetter-microsoft>

<sup>vi</sup>

[http://seattletimes.com/html/microsoftpri0/2019323694\\_big\\_companies\\_criticize\\_microsofts\\_internet\\_explor.html](http://seattletimes.com/html/microsoftpri0/2019323694_big_companies_criticize_microsofts_internet_explor.html)

<sup>vii</sup> <http://www.w3.org/TR/tracking-dnt/>

<sup>viii</sup> <http://www.w3.org/TR/tracking-compliance/>

<sup>ix</sup> [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2152135](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2152135)

<sup>x</sup> <http://www.businesswire.com/news/home/20121009005980/en/DAA-Statement-DNT-Browser-Settings>

<sup>xi</sup> [https://www.iab.net/about\\_the\\_iab/recent\\_press\\_releases/press\\_release\\_archive/press\\_release/pr-100912](https://www.iab.net/about_the_iab/recent_press_releases/press_release_archive/press_release/pr-100912)

<sup>xii</sup> <http://markey.house.gov/press-release/barton-markey-disappointed-industry-group-ignoring-%E2%80%9Cdo-not-track%E2%80%9D-putting-%E2%80%9Cprofits>

<sup>xiii</sup> [http://europa.eu/rapid/press-release\\_SPEECH-12-716\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-12-716_en.htm)

<sup>xiv</sup> <http://www.webpronews.com/online-advertisers-create-anti-do-not-track-advocacy-group-2012-10>

<sup>xv</sup> <https://www.iab.net/iablog/2012/10/the-future-of-the-cookie.html>

<sup>xvi</sup> <http://blogs.windows.com/ie/b/ie/archive/2012/10/26/internet-explorer-10-now-available-with-windows-8.aspx>

<sup>xvii</sup> <http://techcrunch.com/2012/10/17/microsoft-will-finally-release-a-preview-of-ie10-for-windows-7-in-november/>

<sup>xviii</sup> <http://www.ypolicyblog.com/policyblog/2012/10/26/dnt/>

<sup>xix</sup> [http://www.iab.net/media/file/IAB\\_Internet\\_Advertising\\_Revenue\\_Report\\_FY\\_2011.pptx.zip](http://www.iab.net/media/file/IAB_Internet_Advertising_Revenue_Report_FY_2011.pptx.zip)

<sup>xx</sup> <http://www.businessinsider.com/microsofts-dnt-threatens-facebook-2012-9>

<sup>xxi</sup> [http://www.w3.org/QA/2012/09/do\\_not\\_track\\_in\\_the\\_short\\_medi.html](http://www.w3.org/QA/2012/09/do_not_track_in_the_short_medi.html)

<sup>xxii</sup> [http://www.w3.org/QA/2012/10/dnt\\_is\\_good\\_for\\_the\\_whole\\_web.html](http://www.w3.org/QA/2012/10/dnt_is_good_for_the_whole_web.html)