

**BEFORE THE
SENATE COMMITTEE ON COMMERCE, SCIENCE
&TRANSPORTATION**

**HEARING: CONSUMER ONLINE PRIVACY
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**TESTIMONY OF
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I thank Chairman Rockefeller, ranking member Kay Bailey Hutchinson and the other committee members for providing me the opportunity to contribute to this discussion. As a professor at the University of Pennsylvania's Annenberg School for Communication, I have been conducting research and writing about new media and marketing for over two decades. In addition to many articles, I have written two books directly on the topic and co-edited two others. I am currently finishing a book about digital marketing for Yale University Press.

I come to this hearing as a media sociologist who cares deeply about Americans' ability to trust the companies we deal with, to get along with each other, and to believe that the government will protect us when we cannot protect ourselves. Each of these values is being threatened by the data policies of companies throughout our media system. Let me explain in four points.

Point 1: We have a whole new world here. Prior to the digital revolution, marketers used media such as newspapers, magazines, radio, outdoor boards, and television to reach out to segments of the population. Marketers typically learned about these audience segments by using data from survey companies that polled representative portions of the population via a variety of methods, including panel research. Less commonly, they sent questionnaires to people they knew were readers or listeners.[i]

The emerging new world is dramatically different.[ii] Instead of large populations and population segments as audiences, advertisers now expect media firms to deliver to them very particular types of individuals—and increasingly particular individuals—with a detailed level of knowledge about them and their behaviors that was unheard of even a few years ago. Special online advertising exchanges, owned by Google, Yahoo, Microsoft, Interpublic and other major players, allow for the auction of individuals with particular characteristics often in real time. That is, it is now possible to buy the right to deliver an ad to a person with specific characteristics at the precise moment that the person loads a web page. In fact, through cookie matching activities, an advertiser can actually buy the right to reach someone on an exchange whom the advertiser knows from

previous contacts and is now tracking around the web.

Point 2: Industry claims of *anonymity* undermine the traditional meaning of the word. With the activities just described has come a new vocabulary that reflects potentially grave social divisions and privacy issues. Marketers talk about people as *targets* and *waste*. Increasingly, they offer individuals different products and discounts based on ideas marketers have gleaned about them without their knowledge. These social differentiations are spreading from advertising to information, entertainment and news, as media firms try hard to please their sponsors. Marketers also use words like *anonymous* and *personal* in ways that have lost their traditional meaning. If a company can follow your behavior in the digital environment—and that potentially includes the mobile phone and your television set—its claim that you are anonymous is meaningless. That is particularly true when firms intermittently add offline information to the online data and then simply strip the name and address to make it “anonymous.”

The business arrangements that use this new language are transforming the advertising and media landscapes. Companies track people on websites and across websites with the aim of learning what they do, what they care about, and whom they talk to. Firms that exchange the information often do keep the individuals’ names and postal addresses anonymous, but not before they add specific demographic data and lifestyle information. Here are just three examples:

- eXelate is a leading targeting exchange with the motto “data anywhere. audience everywhere.”[iii] It determines a consumer’s age, sex, ethnicity, marital status, and profession by partnering with websites to scour website registration data. It also tracks consumer activities online to note, for example, which consumers are in the market to buy a car or are fitness buffs, based on their Internet searches and the sites they frequent. It sells these packages of information about individuals as cookie data so advertisers can target them.[iv]
- Rappleaf is a firm that says it helps marketers “customize your customers’ experience.”[v] To do that, it gleans data from individual users of blogs, internet forums, and social networks. It uses ad exchanges to sell the ability to reach those individual cookies. The company says it has “data on 900+ million records, 400+ million consumers, [and] 52+ billion friend connections.”[vi]
- A company called Medicx Media Solutions links “HIPAA certified medical and pharmacy insurance claims data”[vii] for tens of millions of Americans to information about them from information suppliers such as Experian as well as from health surveys people fill out. Even though Medicx cannot tie the data to particular individuals, it does retain an ability to connect the medical, pharmacy, and survey findings to ZIP+4 postal clusters of 3-8 homes where, it says, “the incidence of any specific disease is three (3) to twenty (20) times what it is in the general population.”[viii] To reach these patients for advertisers, Medicx licenses millions of cookies with ZIP+4 data and then serves its clients’ display ads

to cookie individuals in the targeted ZIP+4 areas. The people receiving the ads about specific medical concerns would have no clue how they got them.

Point 3: People care a lot about data collection but don't know what is going on:

What I have just described is the tip of an iceberg of what goes on behind Americans' screens. National surveys that I have conducted since 1999 consistently show that in large proportions American adults know their activities are being followed online and are deeply uncomfortable and concerned about it.[ix] It is also quite clear from our surveys and other research that Americans do not understand how the processes that surround them work. Few people read privacy policies, and they are in any event uniformly turgid and ambiguous. Some firms provide cookie deletions as a solution to targeting (though not tracking), but marketers and media firms are increasingly finding ways to get around the deletion of cookies. In addition tools sometimes called dashboards that firms such as Google provide for consumers to learn what the companies know about them are counterproductive. That is because they provide visitors with the incorrect impression that the tools fully reveal the information advertisers can use to address them on those sites. I'd like to suggest to the senators that they ask the Google representative whether the data available about us in the Google Display Network are really limited by what shows up about us on Google's dashboard.

Point 4: The emerging digital world raises serious consumer protection issues.

There are many great things about the new media environment. But when companies track people without their knowledge, sell their data without their knowledge or permission, and then decide whether they are, in the words of the industry, targets or waste, we have a social problem. A recent national survey I co-conducted showed emphatically that Americans don't want this type of situation.[x] If it's allowed to fester, and when they begin to realize how it pits them against others in the ads they get, the discounts they receive, the TV-guide suggestions and news stories they confront, and even the offers they receive in the supermarket, they will get even more disconcerted and angry than they are now. They will further distrust the companies that have put them in this situation, and they will be incensed at the government that has not helped to prevent it. A comparison to the financial industry is apt. Here was an industry engaged in a whole spectrum of arcane practices not transparent to consumers or regulators that had serious negative impact on our lives. It would be deeply unfortunate if the advertising system followed the same trajectory.

We must move from the current marketing regime that uses information with abandon—where people's data are being sliced and diced to create reputations for them that they don't know about and might not agree with—to a regime that acts toward information with respect. That is where marketers recognize that people own their data, have rights to know where all their data are collected and used, and should not have to worry when they travel through the media world that their actions and backgrounds will cause them unwanted social discrimination regarding what they later see and hear.

Until recently, I believed that educating publics about data collection and giving them options would be sufficient to deal with privacy issues related to advertising. I have

come to realize, though, that Americans don't have and will not acquire the complex knowledge needed to understand the increasing challenges of this marketplace. Opt-out and opt-in privacy regimes, while necessary, are far from sufficient. The reason is that people will often have neither the time nor ability to make proper cost-benefit evaluations of how sites and marketers use their data under various opt-in or opt-out choices.

To help the public, Congress should recognize that certain aspects of this new world raise serious consumer protection issues and act with that in mind. One path is to limit the extensiveness of data or clusters of data that a digital advertiser can keep about an individual or household. Some industry organizations resist such suggestions, depicting scenarios of internet doom if Congress moves forward with privacy regulations regarding digital platforms. But in the face of Americans' widespread concern about the exploitation of their data, a level regulatory playing field in the interest of privacy will actually have the opposite impact. It will increase public trust in online actors and set the stage for new forms of commercial competition from which industries and citizens will benefit.

I want to thank the Committee for inviting me today.

References

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- [iii] <http://exelate.com/new/index.html> , accessed July 23, 2010.
- [iv] See the exelate web site: <http://exelate.com/new/index.html> , accessed July 23, 2010.
- [v] <http://www.rapleaf.com/>, accessed July 23, 2010.
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- [ix] See, for example, "The Internet and the Family: The View from Parents, the View from the Press." A Report from the Annenberg Public Policy Center of the University of Pennsylvania under the direction of Joseph Turow, May 1999, 42 pp; Joseph Turow and Lilach Nir, "The Internet and the Family 2000: The View From Parents, the View from Kids." A Report from the Annenberg Public Policy

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<http://www.annenbergpublicpolicycenter.org/AreaDetails.aspx?myId=2> . See also Joseph Turow, Jennifer King, Chris Jay Hoofnagle, Amy Bleakley, and Michael Hennessy, “Americans Reject Tailored Advertising and Three Activities That Enable It,” Annenberg School for Communication (U of Pennsylvania) and Berkeley School of Law (U California, Berkeley), November 2009

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[x] Americans Reject Tailored Advertising and Three Activities That Enable It,” Annenberg School for Communication (U of Pennsylvania) and Berkeley School of Law (U California, Berkeley), November 2009.

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Joseph Turow – Bio

Joseph Turow is Robert Lewis Shayon Professor of Communication at the University of Pennsylvania's Annenberg School For Communication.

He has authored 8 books, edited 5, and written more than 100 articles on mass media industries. He is a Fellow of the International Communication and was named a Distinguished Scholar by the National Communication Association. For 2010, he was awarded an Astor Visiting Lectureship by Oxford University. A 2005 *New York Times Magazine* article referred to Professor Turow as “probably the reigning academic expert on media fragmentation.”

A few his titles are *Niche Envy: Marketing Discrimination in the Digital Age* (MIT Press, 2006); *Breaking Up America: Advertisers and the New Media World* (University of Chicago Press, 1997; paperback, 1999; Chinese edition 2004), *The Wired Homestead* (edited with Andrea Kavanaugh, MIT Press, 2003, and *The Hyperlinked Society: Questioning Connections in the Digital Age* (edited with Lokman Tsui, 2008).

Professor Turow's continuing national surveys of the American public on issues relating to marketing, new media, and society have received a great deal of attention in the popular press as well as in the research community. He has written about media and advertising for the popular press, including *American Demographics* magazine, *The Washington Post*, *Boston Globe* and *The Los Angeles Times*. His research has received financial support from the John D. and Catherine T. MacArthur Foundation, the Kaiser Family Foundation, the Robert Wood Johnson Foundation, the Federal Communications Commission and the National Endowment for the Humanities, among others.

Another area of Professor Turow's work involves depictions of health care in the media, particularly television. As one example, he and Annenberg graduate students received funding from the Robert Wood Johnson Foundation to produce a video presentation about the implications of television's prime time medical images for patients' understanding of doctors and hospitals. Titled “Prime Time Doctors: Why Should You Care?” the DVD was distributed for several years by the Robert Wood Johnson Foundation to most first year medical students in the United States. His book *Playing Doctor*, about the history and social impact of the prime time doctor show, has been described by the journal *Critical Studies in Television* as a “classic study” on popular culture and medicine. It was first published in 1989 by Oxford University Press. In August 2010 the University of Michigan Press will publish *Playing Doctor* in a revised and expanded edition.

The recipient of a number of conference-paper and book awards, Professor Turow has spoken widely on media industries and been invited to give the Pockrass Distinguished Lecture at Penn State University and be a Chancellor's Distinguished Lecturer at LSU. He has served as the elected chair of the Mass Communication Division of the International Communication Association. Professor Turow currently serves on the editorial boards of the *Journal of Broadcasting and Electronic Media*, *Poetics*, and *New*

Media & Society. He also edits the "New Media World" book series at the University of Michigan Press.