

Congress of the United States
Washington, DC 20515

February 17, 2012

The Honorable Jon Leibowitz, Chairman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20001

Dear Chairman Leibowitz:

According to a report today in The Wall Street Journal (“Google’s iPhone Tracking”, February 17, 2012), a number of online-ad companies, including Google, have been bypassing the privacy settings of users of Apple’s Safari Web-browser to track their online activities. In light of the consent agreement Google reached with the Federal Trade Commission (FTC), we call on the FTC to investigate whether these practices violate that agreement.

Today’s article explains that Safari is designed to block, by default, tracking conducted by online-ad companies. As a result, online-ad companies, including Google, cannot use a common technique to track user activity: installing a cookie on users’ browsers. The article explains, “To get around Safari’s default blocking, Google exploited a loophole in the browser’s privacy settings. While Safari does block most tracking, it makes an exception for websites with which a person interacts in some way—for instance, by filling out a form.”

In this case, “Google added coding to some of its ads that made Safari think that a person was submitting an invisible form to Google.” In effect, Google would “trick” Safari into permitting the tracking of its users by allowing Google to install a cookie on a user’s phone or computer without their consent or knowledge. As the article points out, “Until recently, one Google site told Safari users they could rely on Safari’s privacy settings to prevent tracking by Google. Google removed that language from the site Tuesday night.”

Google’s practices could have a wide sweeping impact because Safari is a major web browser used by millions of Americans. Safari, which is used on both iOS and OS X platforms, is installed on all iPhones, iPads, MacBooks, and Macs. Apple’s iOS software is used for all mobile devices and according to Asymco, the “iOS platform as a whole reached 316 million cumulative units at the end of last year. The iOS platform overtook the OS X platform in under four years and more iOS devices were sold in 2011 (156 million) than all the Macs ever sold (122 million).”¹

This article comes as a major concern especially just two weeks after Google announced that the company plans to make changes to its privacy policies and terms of service that will allow

¹ Apple sold more iOS devices in 2011 than all Macs it sold in 28 years. (2012, February 16). Retrieved February 17, 2012, from <http://www.asymco.com/2012/02/16/ios-devices-in-2011-vs-macs-sold-it-in-28-years/>.

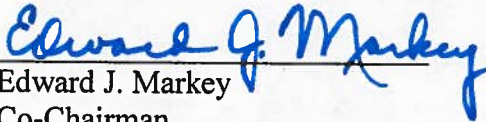
sharing of users' personal information across its many products.² This new policy and the omission of a consumer opt-out on a product-by-product basis already raised a number of privacy concerns.


This report also comes less than a year after the company reached a settlement agreement with the FTC.³ The Commission had alleged that the company used deceptive tactics and violated its own privacy promises to consumers when Google Buzz was launched in 2010. Google and the FTC agreed on a settlement that bars the company from future privacy misrepresentations; requires Google to implement a comprehensive privacy policy; and initiates regular, independent privacy audits of the company for the next two decades.

As members of the Congressional Bi-Partisan Privacy Caucus, we are interested in any actions the FTC has taken or plans to take to investigate whether Google has violated the terms of its consent agreement.

Thank you for your attention to this important matter. Please provide a response to us no later than March 9, 2012. If you have any questions, please have a member of your staff contact Joseph Wender in Congressman Markey's office (202-225-2836) or Emmanuel Guillory in Congressman Barton's office (202-225-2002).

Sincerely,


Edward J. Markey
Co-Chairman
Congressional Bi-Partisan Privacy Caucus


Joe Barton
Co-Chairman
Congressional Bi-Partisan Privacy Caucus


Cliff Stearns
Chairman
Subcommittee on Oversight & Investigations

² Preview:Privacy Policy. (n.d.). Retrieved February 17, 2012, from <http://www.google.com/intl/en/policies/privacy/preview/>.

³ FTC Gives Final Approval to Settlement with Google over Buzz Rollout. (2011, October 24). Retrieved February 17, 2012, from <http://www.ftc.gov/opa/2011/10/buzz.shtm>.