

Privacy and Modes of Regulation

How do you feel about online privacy?

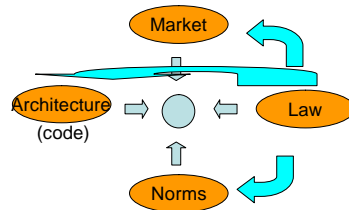
- "You have zero privacy anyway," Scott McNealy, Sun Microsystems CEO
- Do you take active steps to protect your privacy online?
- Do you feel others should have choices even where you don't exercise them?

Clickstreams

- Sample [Access log](#)
- [Junkbuster](#)
- [Anonymizer](#)

Recall

Lessig's sources of regulation:



How does this taxonomy apply to privacy?

- Norms
- Markets
 - Including industry self-regulation, consumer self-help
- Code
- Law

- Fair Information Practices principles:
 - Notice
 - Choice
 - Access
 - Security
- Enforcement

Privacy Regulation

- Law
 - Substantive regulation: “You must offer these privacy protections.”
 - EU Data Protection Directive: “Member States shall protect the fundamental rights and freedoms of natural persons, and in particular their right to privacy with respect to the processing of personal data,” where “personal data” is “any information relating to an identified or identifiable natural person.”
 - COPPA (Children’s Online Privacy Protection Act)
 - Procedural regulation: “You must accurately describe your privacy policy.”

COPPA, 15 U.S.C. 6501-6505

- Section 6502(b)(1) of the Act sets forth a series of general privacy protections to prevent unfair or deceptive online information collection from or about children, and directs the Commission to adopt regulations to implement those protections. The Act requires operators of websites directed to children and operators who knowingly collect personal information from children under age 13 to:
 1. Provide parents notice of their information practices;
 2. obtain prior verifiable parental consent for the collection, use, and/or disclosure of personal information from children (with certain limited exceptions for the collection of “online contact information,” e.g., an e-mail address);
 3. provide a parent, upon request, with the means to review the personal information collected from his/her child;
 4. provide a parent with the opportunity to prevent the further use of personal information that has already been collected, or the future collection of personal information from that child;
 5. limit collection of personal information for a child’s online participation in a game, prize offer, or other activity to information that is reasonably necessary for the activity; and
 6. establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of the personal information collected.

Law

- In re: Geocities
 - FTC enforcement action
- In re: Doubleclick Privacy Litigation
 - Consumer class action

FTC Act, 15 U.S.C. § 45

- (1) Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.

- “[Amazon.com](https://www.amazon.com) knows that you care how information about you is used and shared, and we appreciate your trust that we will do so carefully and sensibly. This notice describes our privacy policy. **By visiting Amazon.com, you are accepting the practices described in this Privacy Notice.**”

- In re GeoCities (1999)
 - What’s the “unfair or deceptive” act?
 - What’s the remedy?
 - Is it enough?



- In re: Doubleclick Privacy Litigation
 - Consumer class action for data-collection by cookies, used to target advertisements
 - claiming common law invasion of privacy, violation of electronic privacy laws
- FTC concluded its investigation “with no finding that DoubleClick had engaged in unfair or deceptive trade practices.”

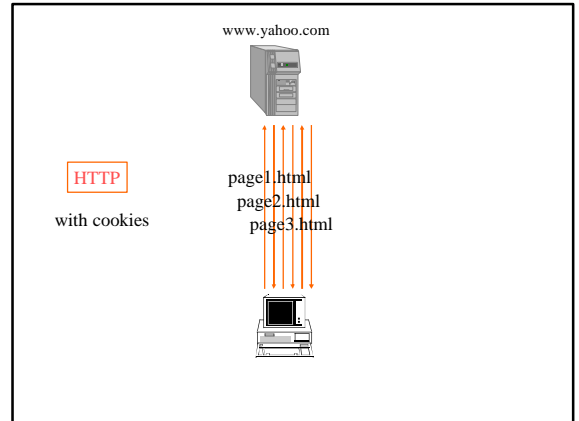
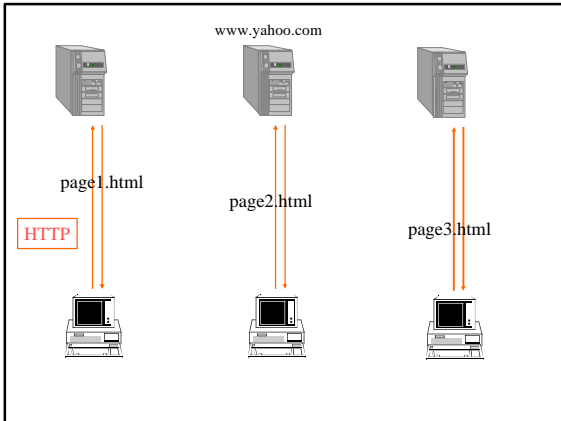
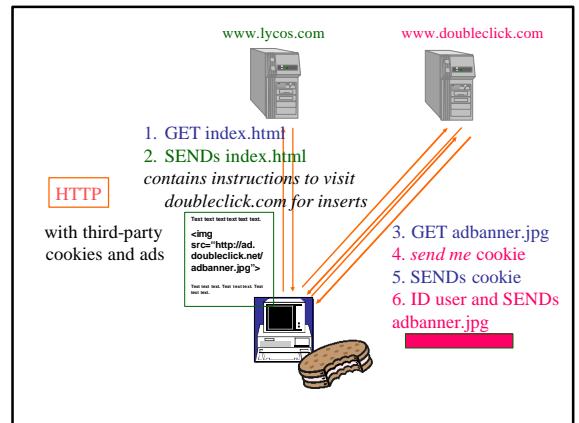


Image from pix.paip.net



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- Fair Information Practices principles:
 - Notice
 - Choice
 - Access
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- Enforcement

- Company A:
 - “We collect no personally identifying information.”
 - If they collect no PII
 - If they collect and store PII
 - If their website has third-party tracker cookies

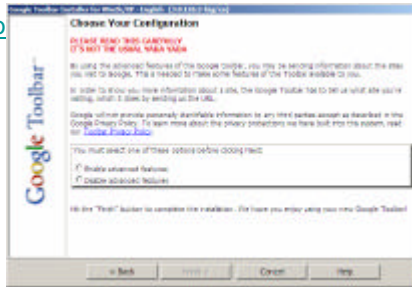
- Company B:
 - “We collect personally identifying information.”
 - If they collect no PII
 - If they collect and store PII
 - If their website has third-party tracker cookies

- Company C:
 - “We collect personally identifying information. We use information for the following general purposes: to customize the advertising and content you see, fulfill your requests for products and services, improve our services, contact you, conduct research, and provide anonymous reporting for internal and external clients.”
 - If they use the PII to target ads
 - If they sell the PII to third parties

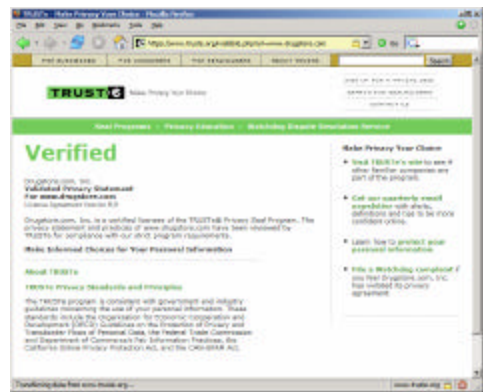
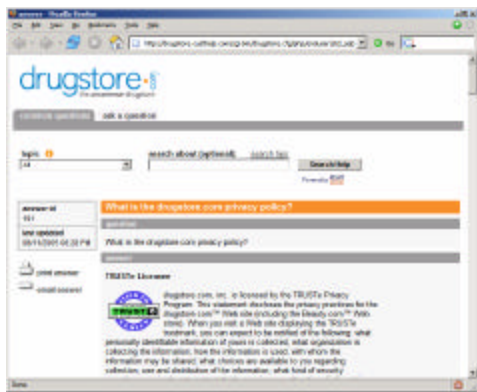
- Company D:
 - “We may update this policy at any time by changing the policy on our website.”
 - Do they have to notify customers whose data they already have?

Google Toolbar

- To



- [Yahoo!](#)
- [Facebook](#)
- [MySpace](#)



TRUSTe

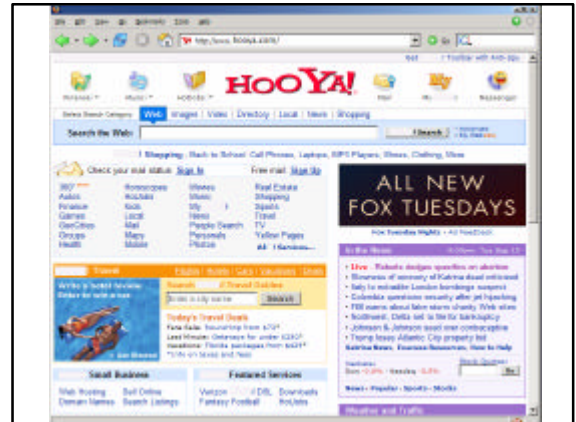


- General Web Privacy Program Requirement.
 - ALL TRUSTe®-licensed sites must provide:
- User controls**, including:
- An email unsubscribe function
 - An opt-out function limiting the sharing of personally identifiable information (PII) with outside parties
 - Access management permitting users to update stored PII or have it changed by the Licensee
- Security measures**, ensuring:
- Secured Socket Layers (SSLs), or other comparable technology, that encrypts pages collecting sensitive information such as credit card numbers
- A complaint resolution process**, providing:
- Comprehensive contact information for appropriate Web site employees
 - A link to the TRUSTe Watchdog site for third-party dispute resolution
- A privacy statement**, including the following disclosures:
- What PII is collected and how it will be used
 - Identity of the party collecting PII
 - Whether PII is shared with third parties
 - The use of any tracking technology
 - Whether PII is supplemented with information from other sources
 - Choice options available to consumers
 - How consumers can access PII they have provided
 - That there are security measures in place
 - Procedures for filing and addressing consumer complaints
- In addition, the privacy statement must:
- Be linked from the home page and from every page where PII is collected
 - Bear the TRUSTe "Click to Verify" link so consumers know whether the company is a TRUSTe

TRUSTe Web Privacy Seal Process:

- Complete a Privacy Assessment
Sign the Licensing Agreement, and complete the comprehensive site self-assessment form (See [First Step](#)).
- Participate in a Web Site Audit and Review
An experienced TRUSTe account representative will review your site with you and suggest needed revisions before a seal is issued.
- Agree to Ongoing Monitoring and Dispute Resolution
TRUSTe continues to monitor your site for compliance with our standards. If consumer complaints are filed, we facilitate alternative dispute resolution to resolve issues out of court.

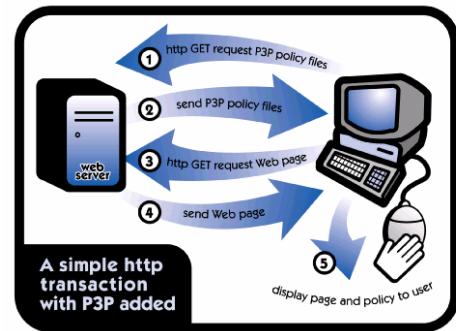
- You are the Chief Privacy Officer at HooYah%, an Internet news portal, webmail provider, and e-commerce site. You have been asked to write the company's privacy policy, and are being torn in two directions. The CFO is salivating over the prospect of offering advertisers detailed information on visitors, for which they will pay higher ad rates. Can he sell zTrade a list of people to whom HooYah% sends daily stock reports? Meanwhile, the PR director thinks the TRUSTe privacy seal (see http://www.truste.org/programs/pub_principles.html) is an important reassurance to visitors and insists the site should qualify to display one.
- Can you meet both of their demands? Consider options such as full disclosure in an obscurely written privacy policy, well hidden opt-out checkboxes, or co-branded email ads. If not, which one would you try to convince to back down? Would your answer differ if you were asked to put this policy into a P3P proposal a majority of web browsers would accept?



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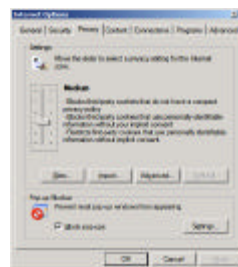
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P3P

- Code-based negotiation between user and website about the privacy terms that are acceptable to each
 - e.g., movie site provides generic information to unidentified user
 - city-specific information to user who gives zip code
 - discounts to user who registers by name
- Browser stops or offers user choice when it encounters an unacceptable term

IE 6 implements P3P



- Accepts or rejects cookies based on presence of P3P policy

So, how do we do?

- Which mode of regulation is most effective at protecting consumer privacy?
- Should we do more?