

Digital Content Next

Legal and Legislative Committee
May 10, 2016

Dial-in: 866.740.1260
Code: 4731000

Agenda

- VPPA Ruling: Yershov v. Gannett
- 2016 DCN Legal and Legislative Day
- Review of FCC Privacy Proceeding
- Review of FCC Set Top Box Proceeding
- Update on NTIA UAS (Drone) Process

Gannett shared with Adobe

- Video title
- Device ID
- Geolocation

Lower court ruling

- Device ID + Geolocation = PII
- But Yershov not considered a “renter, purchaser or subscriber”

Appeals Court reversed the ruling – 4/29

- 3 judge panel unanimously agreed
- Device IDs + Geolocation data = PII
- Yershov is a subscriber
 - Court cited PII as “payment”

Opposite ruling in Perry v CNN

Tuesday, June 14

12 Noon to 5 PM

@

Comcast/NBCUniversal

300 New Jersey Ave, NW, Suite 700

Washington, DC

Topics under consideration:

Ad Blocking

- Technical presentation, publishers' response

Native Advertising

- How are publishers adapting to the FTC Native Advertising Guidelines?

EU Privacy Landscape

- GDPR, Privacy Shield, Cookie Directive: What Do All These Moving Pieces Mean To US Publishers?

Topics under consideration (cont'd):

Update/Discussion on VPPA court rulings

- Yershov v Gannett
- Legislative options

FCC Set Top Box Rule

- Impact on publishers
- DCN position

Website Compliance with the ADA

- How Are Publishers Responding to ADA Class Action Threats?

FCC Privacy Proceeding

Key definitions

■ Customer Proprietary Network Information (CPNI)

- “Information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship”
- Proposal presumes the following are CPNI: service plan information, geo-location information, MAC addresses and other device identifiers, source and destination IP addresses, traffic statistics
- It seeks comment on including: port information, application header, application usage, CPE information

Key definitions

■ Personally Identifiable Information

- any information that is linked or “linkable” to an individual if it can be used on its own, in context, or in combination to identify an individual or to logically associate with other information about a specific individual. (§§60-63)
- Long list includes: name, SSN, date and place of birth, mother’s maiden name, unique government identification numbers (driver’s license, passport), physical address, email address or other online contact information, persistent online identifiers, named or unnamed online identities, account numbers and information (login information), browsing history, financial, shopping records, medical and health, disability, biometric, education, employment, information related to family members, race, religion, sexual identity or orientation, other demographic information and information identifying personally-owned property (license plates, serial numbers)

Key definitions

- Customer Personal Information – CPNI +PII
- Affiliate – a person that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control. Own is an equity interest of more than 10%. (§30)

Transparency

■ Require disclosure

- Type of information collected; uses;
- Sharing with third parties (categories)

■ Outline customers rights with respect to personal information (PI)

- Opt-in; opt-out rights explained
- “Simple, easy” access method
- Allow revisions to consent through a persistent method
- Denial of consent is not a bar to providing service

Transparency

■ Clear notice

- Comprehensible, legible, readily apparent

■ Timing of consent

- At point of sale (POS) and prior to purchase

Choice

- Opt-out consent required for marketing other communications-related services.

- All other uses require opt-in
 - Seeks comment on competitive consequences with edge providers potentially being subject to different requirements and how FTC can mitigate those effects

Choice

■ Soliciting consent

- Proposal would require consent after the POS and in conjunction with the first instance in which BIAS provider intends to use, disclose or allow access
- Proposes a “dashboard” for obtaining consent and modifying their choice
- Ensure consent selection is persistent

Pros

- Explicitly does not apply to edge providers
- Limits ISPs from mining your audience

Cons

- Precedent: broad PII definition, opt-in for advertising
 - Includes IP addresses, browsing history and device IDs
- Does not extend to Google/Facebook
- Data Breach Notification required 10 days after event

FCC Set-Top Box Proceeding

Background Information

- 1996 Act directs FCC to ensure a commercial market for devices that can access multi-video programming
- 2003 - cable companies (MVPD), working with consumer electronic industry, previously developed standards (CableCard) that worked in a one-way data stream environment
- Over the years, MVPDs have moved to become a two-way services, which has raised concerns around content protection and security

Background Information

- 2010 - FCC sought comment on an “All-Vid” device concept that would have provided a single adapter/gateway that would work with any navigation device and attach to any multi-video programming service
 - Content and security concerns dominated this proceeding as it was a hardware solution w/o adequate safeguards
- 2016 - FCC cites the increased deployment of IP-based service and reliance on a narrow set of standards for delivery of content as changes that may have eased some of the past concerns related to content protection and security
 - Control channel data contains: channel information and customer access and usage rights

Components of the Proposal

- Consumers access to content in every form and resolution that the MVPD makes available to its own devices and applications by making available three information flows:
 - Service Discovery Data – information about an MVPDs available video programming, including: channel, title, ratings, program start and stop times, and Entertainment Identifier Register ID
 - Entitlement Data – What services the particular subscriber is allowed to access based on subscription
 - Content Delivery Data – information necessary to make navigable services accessible
 - All three to be provided using published, transparent formats

Components of the Proposal

- MVPD user interface need not be made available as that is an element of competition
- Unaffiliated vendors able to develop without MVPD approval
- Unaffiliated vendors must implement copyright and copy control protections
- Hardware/software solutions permitted (Technology-neutral)

Components of the Proposal

- One device for use across the country (Device portability)
 - Industry responsible for developing the standard - standards-body must be: open membership to industry stakeholders; fair balance of such industry representatives; published procedures for due process and appeals; strives to set consensus standards
- FCC would like have changes implemented and devices available within two years

Questions?

Concerns

- Broadcasters would have little/no leverage with STB manufacturers
- STB manufacturers would have no obligation to abide by licensing terms
 - ads next to content, placement, access
- Only option for protecting copyright would be lawsuit
 - Onus on content companies, wack-a-mole
- STB manufacturers would have no restrictions on collection/use of consumer data
 - contrary to FCC intent in privacy proceeding

Draft Code of Conduct circulated for 5/18 meeting

- News Media Coalition and Others proposing changes to:
 - More clearly state First Amendment protection
 - Note that Code does not apply to newsgatherers
 - Include: “Newsgatherers and news reporting organizations may use UAS in the same manner as other technology to capture, store, retain and use data or images in public spaces”

FAA Reauthorization Act (as passed by Senate) includes Drone Privacy section:

- Directs NTIA to complete process by 7/31
- Company violation of privacy policy in operation of UAS would be “unfair and deceptive practice”
- Strong federal preemption language (not likely to survive conference)

FAA authorization expires 7/15

- Unclear if House can/will move bill
- May be an issue for appropriations process