Sensitive Data Collection & Use in the Ad Tech Ecosystem

Description: Online publishers of all kinds regularly collect personal information about consumers engaging with their content and share that information with advertising partners to help monetize their properties. There are real benefits to this data collection: publishers are able to keep their content free or low cost by subsidizing their work with ads; brands are able to engage with consumers in a meaningful way and leverage advertising effectively to compete with one another; and consumers are able to enjoy higher quality ads that are relevant to their lives as they engage in their online communities. But there are also real risks, particularly when publishers or their ad tech partners use sensitive data about consumers – such as data that may reveal their sexuality – to engage in targeted advertising. This workshop will explore the use of sensitive data in the ad tech ecosystem, with a focus on the benefits and risks for publishers, brands, and consumers in the LGBTQ+ community.

Notes on Scope: This workshop will discuss different legal frameworks that have been implemented to balance risks and benefits described above, how they have been enforced to date, and the relative pros and cons of each framework on the LGBTQ+ community. It will pay particular attention to U.S. laws and frameworks, because they vary significantly from state to state and provide a good overview of global debates and approaches; however, some global laws (such as the EU's General Data Protection Regulation) will also be discussed and analyzed.

Outline:

- Panelists will introduce themselves and provide background on their careers and areas of expertise.

- Panelists will provide an overview of online advertising, including how personal information may be collected from individuals engaging online, and how such information may be used and shared. In particular, panelists will provide an overview of how sensitive personal information - particularly data that may reveal an individual's sexuality or gender identity - may be collected from individuals engaging online, and how such information may be used and shared.
  - Reference materials:
    - Policy Department for Economic, Scientific and Quality of Life Policies, <u>Online Advertising: the Impact of Targeted Advertising on Advertisers, Market Access and Consumer Choice</u> (2021).

- Panelists will discuss the risks of the collection, use, and sharing of sensitive personal information, particularly data that may reveal an individual's sexuality or gender identity.
  - Reference materials:
    - Wood, et al., <u>The Role of Data Protection in Safeguarding Sexual Orientation and Gender Identity Information</u> (2022).

- - ■ FTC Advance Notice of Proposed Rulemaking; Request for Public Comment, 16 C.F.R. § 1 (2022).

- Panelists will discuss the benefits of the same.
    - Reference materials:
        - ■ Yuxi Jin and Bernd Skiera, <u>How Do Privacy Laws Impact the Value for Advertisers, Publishers and Users in the Online Advertising Market? A Comparison of the EU, US and China</u>, 8(2) J. of Creating Value 306-27 (2022).
        - ■ Gillian K. Oakenfull, *Targeting Consumer Segments Based on Sexual Orientation: Can Advertisers Swing Both Ways?* in <u>Diversity in Advertising Broadening the Scope of Research Directions</u>, 369-82 (Jerome D. Williams et al., eds., 2004).

- Panelists will provide an overview of relevant privacy laws, with a focus on U.S. federal and state privacy laws, including how such laws regulate the collection, use, and sharing of personal information and sensitive personal information from individuals engaging online. In particular, panelists will compare different approaches to such regulation, how the different approaches attempt to balance the relative risks and benefits discussed above, and the relative positives and negatives of such approaches (e.g., no distinction between personal information and sensitive personal information; opt out approach for sensitive personal information collection and use; opt in approach for sensitive personal information collection and use).
    - Reference materials:
        - ■ Yuxi Jin and Bernd Skiera, <u>How Do Privacy Laws Impact the Value for Advertisers, Publishers and Users in the Online Advertising Market? A Comparison of the EU, US and China</u>, 8(2) J. of Creating Value 306-27 (2022) (comparing European, Canadian, and U.S. laws).
        - ■ International Association of Privacy Professionals, <u>US State Privacy Legislation Tracker</u> (updated 2023) (comparing U.S. laws).
        - ■ Complaint, *In re BetterHelp*, case no. 2023169 (2023) (discussing the enforcement of U.S. federal laws).
        - ■ Datatilsynet, <u>The NO DPA Imposes Fine Against Grindr LLC</u> (2021) (discussing the enforcement of European laws), https://www.datatilsynet.no/en/regulations-and-tools/regulations/avgjo relser-fra-datatilsynet/2021/gebyr-til-grindr/.

- Panelists will provide an overview of self-regulatory approaches to regulating the same, and other industry trends regarding the safeguarding of sensitive personal information.
    - Reference materials:
        - ■ Network Advertising Initiative, <u>Guidance for NAI Members: Opt-In Consent</u> (2019).

- Imdad Ullah, Roksana Boreli & Salil S. Kanhere, Privacy in Targeted Advertising: A Survey, IEEE COMMUNICATIONS SURVEYS & TUTORIALS (2021).
- Mark Yep-Kui Chua, George O. M. Yee, Yuan Xiang Gu, and Chung-Horng Lung, Threats to Online Advertising and Countermeasures: A Technical Survey, 1 Digit. Threat.: Res. Pract. 2 (2020)

● Panelists will discuss other potential industry and regulatory approaches to balancing the risks and benefits described above, as well as industry alternatives to sensitive personal information processing (such as contextual advertising). Panelists will discuss the possibilities and limitations of such approaches, as well as the enforcement implications of such approaches from a legal lens.

● Panelists will discuss their own views on how the collection of sensitive personal information regarding individuals' gender identity and sexuality should be controlled and regulated.

● Panelists will provide practical takeaways for practitioners grappling with the many different regulatory approaches to governing the processing of sensitive personal information. In particular, they will discuss how to balance the respective risks and benefits of sensitive personal information processing, including best practices for being transparent with individuals about such processing and implementing mechanisms to allow individuals to control such processing.

● Panelists will provide practical takeaways for individuals engaging online who want to control the collection, use, and sharing of their personal information and sensitive personal information.