

Response to ACCC's Digital Advertising Services Inquiry

Centre for AI and Digital Ethics, University of Melbourne

26 February 2021

General comments

Thank you for the opportunity to comment on the Digital Advertising Services Inquiry Interim Report. WE certainly agree that it is important for advertisers to have clarity about the effectiveness of their ad spend. Overall however we suggest the report does not adequately acknowledge the interests of consumers in regard to targeted and personalised digital advertising. Specifically, we suggest the report:

Overestimates the value to consumers of personalised advertising

The report states there are benefits in digital advertising.¹ There may be such benefits. However, we would be interested to see verified or empirical data on the value to consumers of targeted or personalised advertising, as opposed to say contextual advertising.

The report recognises the risk of harm through targeted or personalised advertising in terms of discrimination and to vulnerable consumers.² However, scholars have catalogued a variety of harms arising from personalised advertising: exploitation, advantage taking, undue influence, manipulation, loss of autonomy, homogeneity/loss of variety, loss of the capacity to exercise choice or make decisions. This catalogue of risks is significant, and not fully addressed by improved consent processes or even an unfair trading prohibition referred to in the report.

Overly focused on risks arising from reidentification

The report acknowledges the risk of harms to consumers from personal data being reidentified. This is an important issue. However, we note that the risks of harms to consumers from personalised digital advertising do not arise merely from reidentification.³ They arise from personalised advertising itself as based on derived data profiles. The predictive analytics driving personalised advertising does not depend on identifying information, such as about a person's name, gender or age. The process is based on correlations between collected data and the outcome of interest, in this case, attention paid to online advertising.

Insufficiently accounts for possible changes to privacy law

The report recognises that harm may be occasioned to consumers from who don't understand and don't consent to uses of their data for targeted advertising purposes.⁴ In many scenarios, consumers are not required under existing law to give consent to the collection, processing and use of their data for targeted and personalised advertising. The issue is not merely poor consent practices. If the Privacy Act is amended to introduce stronger protections to consumers, along the lines of that provided by the GDPR, as has been proposed, then this may well dry up the flow of data currently collected for personalised advertising. In this context it seems somewhat premature to proceed with proposals for data sharing for advertising purposes.

¹ Interim Report 78.

² Interim Report 78.

³ Interim Report 49.

⁴ Interim Report 78.

Places too much reliance on a possible prohibition on unfair trading to protect consumers

We are in favour of a prohibition on unfair trading as raised in the Digital Platforms Inquiry.⁵ However, we consider that this proposed prohibition should not be assumed to provide a complete response to the risks of harms to consumers from personalised advertising. The prohibition has not yet been introduced and may never be introduced if not accepted by the Cth. The prohibition may not address all manifestations of harm from personalised digital advertising. The prohibition, moreover, acts as a safety net response, catching advantage-taking or otherwise morally reprehensible conduct not addressed by specific rules. To the extent there are concerns about personalised advertising, it may be better to adopt a cautious approach to its use, rather than facilitating greater opportunities for such processes.

Overly optimistic that privacy can be protected in the face of greater AdTech transparency

The report acknowledges the need to protect privacy in the face of greater ad tech transparency. However, it really is not clear how this may realistically be done. In this context, the supposed trade-off between greater transparency and privacy may be a false dichotomy.⁶

For example, the proposed common user ID would allow as users to be tracked more effectively across ad tech platforms—for example, between Google and a competitor’s services. Here again, it’s unclear whether a user could be identified as a particular person rather than an amorphous online entity, but at the very least it will be possible to build a far stronger behavioural profile of each user as data is pooled⁷, considering all their interactions with various ads will suddenly be linked.

The possibility of data silos is interesting.⁸ However, it needs much more investigation. For example, it suggests that highly sensitive personal information might be siloed. But part of the ‘black box’ effect of predictive analytics through machine learning is that consumer behaviour and circumstances can be predicted on the basis of information that on its face is apparently innocuous.⁹

Encouraging greater data collection through measures to improve data portability and interoperability¹⁰

This kind of response appears to encourage the greater collection of personal data than ever, provided it is shared. By assuming massed data collection is essential to competition, and through this consumers’ well-being, little is done to consider the concerns raised by surveillance of consumers’ online behaviour in order to influence their purchasing decisions. The suggestion that consumers should be asked to consent to data portability as a way of protecting their interests assumes consumers will be interested and capable of providing nuanced indicators of their preferences as to how their data may be used so as to facilitate data sharing. Given the sheer volume of data currently collected about consumers online behaviour, this may seem a logistical impossibility.

⁵ See JM Paterson and Elise Bant ‘Should Australia Adopt a Prohibition on Unfair Trading: Responding to Exploitative Business Systems in Person and Online’ (2020) *Journal of Consumer Policy*.

⁶ Interim Report 18.

⁷ Interim Report 185.

⁸ Interim Report 81.

⁹ <https://www.forbes.com/sites/kashmirhill/2012/02/16/how-target-figured-out-a-teen-girl-was-pregnant-before-her-father-did/?sh=43c6e6866668>.

¹⁰ Interim Report 80.

Focus on large advertisers

Section 7.2.2 reflects a focus on the interests of large advertisers or agencies. While these organisations may have developed the capacity and expertise to benefit from masses of ‘raw data,’¹¹ small and medium sized organisations would likely have not, instead likely preferring access to aggregate data. Digital advertising is already complex and broadening the scope of data available may actually make it more challenging for small and medium advertisers (for example, one in-house ‘digital marketer’ for a small business) to compare advertising services. Consequently, this may push ad tech services further out of reach of smaller providers if the solution to opacity is just ‘more data.’

Jeannie Paterson and Chris Giraldi

¹¹ Interim Report 18, 177.