

Common Position

on

Infomediaries – a privacy-friendly business model ?

adopted at the 27th meeting on 4-5 May 2000 in Rethymnon / Crete

The Working Group has since 1996 stressed the need to develop technical means to improve the user's privacy on the Internet, especially giving the opportunity to access the Internet without revealing their identity where personal data are not needed to provide a certain service¹. The Group has also recommended measures for a privacy-friendly design of intelligent software agents². In the meantime a business model has been developed and put into practice which claims to give users the option to "mask" their identity while surfing the Web.

John Hagel and Marc Singer have defined infomediaries as "brokers or intermediaries that help customers to maximise the value of their data"³. Infomediaries in their view are better equipped than software agents to serve the user/customer's interests. "Many consumers are hesitant to divulge...intimate details about their lives to anybody let alone an electronic entity that might expose their information inappropriately as it crawls across the Web."⁴ Vendors who were dissatisfied with software agents that only compared prices found ways to block them from their Web sites. An infomediary on the other hand would act as an agent or custodian on behalf of their clients aggressively representing their interests and helping them to optimize the value they receive from vendors. By aggregating information and using combined market power of numerous customers in a "virtual shopping club" infomediaries would create a "reverse market".

At the same time infomediaries will collect detailed information from their customers about their preferences in order to be able to find the Web sites which suit them best. An infomediary – according to Hagel/Singer – can only hope to get an extraordinarily deep and broad informational profile of the individual customer if it pledges to protect this information against abuse and to disclose personal data only with the customer's specific permission ("permission marketing"). To this end the infomediary will offer both a "privacy tool kit" and a "profiling tool kit". The privacy tool kit will include anonymous e-mail addresses linked with filtering software in order to block spam; it could also provide for cookie suppression techniques such as "cookie cutters" or use cookies for customers to keep track

¹ Cf. Report and Guidance on Data Protection and Privacy on the Internet ("Budapest-Berlin Memorandum"); http://www.datenschutz-berlin.de/attachments/138/bbmem_en.pdf

² Cf. Common Position on Intelligent Software Agents (April 1999)
http://www.datenschutz-berlin.de/attachments/182/agent_en.pdf

³ Hagel/Singer: Net Worth – Shaping Markets When Customers Make the Rules, Harvard Business School Press, Boston 1999

⁴ Hagel/Singer, *ibid.*, p. 27

of their own online behaviour or purchases ("reverse cookies"). The infomediary should offer a technology tool kit in order to protect its client's privacy and to "cloak customers in anonymity"⁵.

The profiling tool kit on the other hand would allow the build-up of a much more complete and integrated view of customer transactions and preferences. Infomediaries will even be able to link information about online activities with information concerning conventional offline transactions (e.g. by using a credit card). These profiles may be dynamic, i.e. they develop through the activities of customers with similar profiles and preferences. Similarly profiles about vendors may be made available to the clients giving them information about the number of transactions through infomediary services (e.g. computer of a certain type sold) and the number of complaints or products returned to the vendor.

The customer of an infomediary has the choice either to remain anonymous or to allow his profile and his personal data to be given to vendors or direct marketers. In the latter case the customer will receive either small cash payments, a discount in the product price, cheaper or free Internet access or other benefits. Customers who choose to remain entirely anonymous will forgo these payments or benefits in return for the assurance of their privacy.

A number of infomediaries are already operating on the Web following this business model with certain modifications. They offer services ranging from child protection on the web (PrivaSeek) to online matchmaking (yenta.com; flirtmaschine.de). Some offer electronic wallets which allow the user to fill in personal information in forms and to control the release this information.

Recommendations:

1. It is to be welcomed in principle that privacy is gaining ground in the market and is taken up by some Internet startups as a business case. However, the consumer needs effective legal recourse in case his data are not used as promised by the infomediary. A business model cannot replace legal rights for data subjects but it is a positive example for implementing an existing legal framework through market forces.
2. It must remain the free decision of the data subjects whether they wish to sell the right to use their personal information. Some infomediaries (e.g. matchmakers) handle extremely sensitive information. In addition, data subjects are not always consumers; they may participate e.g. in political activities on the web and have to consider carefully whether to engage an agent in doing so.
3. The profiling capability of infomediaries points to the importance of trust in the relationship with the client. This resembles the client-attorney relationship or the trusted relationship between doctors and their patients and legislators should consider to protect it against search and seizure accordingly.
4. Finally, infomediaries when building up personal profiles must respect the principles adopted by the Working Group in their Common Position regarding Online Profiles on the Internet on 5 May 2000⁶.

⁵ Hagel/Singer, *ibid.*, p.30 and Appendix (p. 261)

⁶ http://www.datenschutz-berlin.de/attachments/188/pr_en.pdf