



26 May, 2008

Gail Gauvreau
Senior Privacy Investigator
Office of the Privacy Commissioner of Canada
112 Kent Street
Ottawa, ON K1A 1H3

Dear Ms. Gauvreau,

This letter is a supplement to our complaint #6100-02744 filed on May 9, 2008. Our attention has been drawn by recent media reports to the possible use of deep packet inspection (DPI) technology by Bell Canada and Bell Sympatico ("Bell") for purposes beyond traffic shaping. We are writing to request that your investigation include other uses of DPI, such as behavioural targeting, in addition to traffic shaping.

As noted in the complaint, DPI is often used by internet service providers (ISP) as a means to develop novel revenue sources. A press release by Ellacoya Networks, with whom Bell works, states that tracking customer usage "is an excellent way to optimize marketing programs and service creation initiatives based on actual traffic patterns."¹

Among revenue-enhancing uses of DPI, behavioural targeting is an increasingly common practice. It combines tracking user online behaviour with targeting advertising at individuals based on collected data. Web sites already engage in the practice with their visitors, but some ISPs such as BT² and Charter Communications,³ are or soon will be participating in a much more comprehensive approach to data collection through the use of DPI. Typically, an ISP will partner with other companies such as NebuAd or Phorm that specialize in behavioural targeting. The behavioural targeting companies install their DPI hardware on the ISP network, gaining access to network users' web usage information. Unlike website-level behavioural tracking, where if a user navigates away from the page the company no longer can collect information, ISP-level data collection continues across all websites visited and covers all uses of the web.

Behavioural targeting companies such as NebuAd and Phorm collect, store and analyze the information in user profiles. By entering into partnerships with advertising firms and web

¹ Ellacoya Networks, "Ellacoya Brings Unmatched Scale and intelligence to Broadband Service Organization" News Release (25 January 2007) online: Ellacoya Networks
<http://www.ellacoya.com/news/pdf/2007/Ellacoya_e100PressRelease.pdf>.

² Eric Pfanner, "3 Internet Providers in Deal for Tailored Ads" *New York Times* (February 18, 2008),
<<http://www.nytimes.com/2008/02/18/technology/18target.html>>.

³ Saul Hansell, "Charter Will Monitor Customers' Web Surfing to Target Ads" *New York Times* (May 14, 2008), <<http://bits.blogs.nytimes.com/2008/05/14/charter-will-monitor-customers-web-surfing-to-target-ads/>>.

publishers, the companies broker the sale of advertising that is aimed at individual visitors based on their assembled profiles.⁴

There is reason to believe that this practice is coming to Canada, if it is not already here. According to a Financial Post article published April 14, 2008 and entitled “New hardware raises bar on surveillance on Internet”, NebuAd, a company that behavioural targets approximately 10% of United States’ broadband users, is looking to move into the Canadian market. The article states that NebuAd CEO Robert Dykes confirmed that “his company is testing its hardware with a number of undisclosed Canadian Internet service providers and has launched a sales team in Canada to locate more business.” (see attached).

Behavioural targeting has been controversial in both the United Kingdom and the U.S. In the U.K., the Office of the Information Commission recently reviewed the practices of behavioural targeting firm Phorm and found that merely providing users with an opt-out was not adequate consent to the practices undertaken by the company.⁵ In the U.S., the New York State Legislature is contemplating instituting fines for collecting data and using it for advertising purposes without consent.⁶ Recently, Representative Edward Markey, Chairman of the House of Representatives Subcommittee for Telecommunications and the Internet, wrote a letter to Charter Communications asking them to halt their trials with NebuAd until the committee can meet with Charter to discuss the issues raised by behavioural targeting.⁷

We request that in your investigations into Bell’s use of DPI for traffic shaping, you also examine any behavioural targeting (and other privacy-invasive) practices that Bell might engage in through the use of DPI.

Should you have any questions, please do not hesitate to contact the undersigned.

Original signed
Rishi Hargovan
Summer Intern
Canadian Internet Policy and Public Interest Clinic

Original signed
Philippa Lawson
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⁴ NebuAd, “Advertisers” online: NebuAd <<http://www.nebuad.com/advertisers/advertisers.php>>; NebuAd, “Publishers” online: NebuAd <<http://www.nebuad.com/publishers/publishers.php>>; Phorm, “Open Internet Exchange” online: Phorm <<http://www.phorm.com/oix/>>.

⁵ Information Commissioner’s Office, “Phorm – Webwise and Open Internet Exchange” online: Information Commissioner’s Office <http://www.ico.gov.uk/Home/about_us/news_and_views/current_topics/phorm_webwise_and_oie.aspx>.

⁶ Louise Story, “A Push to Limit Tracking Web Surfers’ Clicks” *New York Times* (March 20, 2008), <<http://www.nytimes.com/2008/03/20/business/media/20adco.html>>.

⁷ Congressman Edward Markey, “Markey, Barton Raise Privacy Concerns about Charter Comm.’s Plans” Press Release (May 16, 2008) online: Congressman Edward Markey <http://markey.house.gov/docs/telecomm/letter_charter_comm_privacy.pdf>.