

From: Fiona s 47F
To: Melanie s 47F; Timothy Pilgrim
Cc: Este s 47F
Subject: Google's advertising cookies [SEC=UNCLASSIFIED]
Date: Friday, 17 February 2012 3:31:57 PM

Hello,

Just to update you, I've just had a call from s 47F at Google to inform the office of an issue that has arisen in relation to the operation of their advertising cookies on Safari browsers. By default, Safari blocks all third party cookies. However, Safari allows functions that require a cookie to work, such as Facebook's 'Like' button. Google serves ads to logged-in users with a '+1' button on them (the Google equivalent of 'Like') but this function depends on a cookie (referred to as a 'social' cookie). This cookie creates a layer between Google and the ad publisher so that the identified information from the Google account is never shared with the ad publisher. The fact that Safari allows cookies for particular functions means that these cookies have been set for Safari users, despite the block on third party cookies.

Additionally, Safari allows cookies if there is already a cookie from a particular provider set. This means that users with the 'social' cookie may also have received Google Doubleclick cookie, which is used to personalise ads while browsing (these cookies are associated with a browser, not an identified account). If a user has opted out of interest-based ads via Google's Ads Preferences Manager, they should not have received the Doubleclick cookie.

This issue only affects users of Safari – Internet Explorer, Firefox and Chrome are not affected at all. s 47F advised that they're working on a fix for this bug and will update us as more information becomes available. She has said that they would also like to meet with us in the next few weeks to discuss the new privacy policy and ToS further and answer any questions we may have.

Thanks,
Fiona

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Protecting information rights – advancing information policy

Our reference: P12/62

Centre for Internet Safety
Faculty of Law
Building 6, Level C
University of Canberra ACT 2601

Dear s 47F and s 47F

Research topic suggestion: technical research on the privacy implication of cookies

I refer to the meeting between s 47F of the Centre for Internet Safety (CIS) and Tim s 47F and Holly s 47F of the Office of the Australian Information Commissioner (OAIC) on 30 April 2012. At that meeting, s 47F asked whether the OAIC would be interested in suggesting privacy research topics that could be explored by the CIS. Thank you for seeking the OAIC's input.

The OAIC has noted a growing concern in the community regarding how organisations operating online, including major social media and advertising organisations, are using cookies and similar technologies, and the privacy ramifications of those technologies.

The OAIC would be interested in the results of any research carried out by the CIS on the use and operation of cookies, and whether the use of cookies may constitute an unreasonable privacy intrusion which could result in a breach of the *Privacy Act 1988* (Cth). The OAIC's particular areas of interest include:

- how online entities assign unique device/browser identifiers
- how unique device/browser identifiers operate
- whether online entities (including social media services such as Facebook, Google, or LinkedIn) could combine account information with unique device/browser identifiers, to identify users that are not logged into the service
- any other privacy impacts resulting from the current and increasing use of cookies by online entities, and
- the privacy enhancing options available to internet users, and the trade-offs inherent in establishing different levels of online privacy (for example, whether using privacy enhancing tools to establish a high level of online privacy may degrade the quality of the user's online experience).

Commented [TdS1]: I suggest that we give them the direction re the Google PREF cookie – i.e., whether Google is capable of linking the PREF cookie or other unique identifiers to Google accounts to identify logged out Google users, verbally, to avoid the perception in this letter that we are specifically targeting Google.

If the CIS is minded to conduct this type of research, the OAIC would be happy to discuss options for the use, publication and distribution of the relevant report, subject to reviewing the completed report.

If you have any questions, or would like to discuss this matter in further detail, please contact Tim **S 47F** Deputy Director – Policy, on (02) 8234 9728, or at [Tim **S 47F** @oaic.gov.au](mailto:TimS 47F@oaic.gov.au).

Yours sincerely

Timothy Pilgrim
Australian Privacy Commissioner

7 June 2012

Commented [TdS2]: Again, I think we should discuss co-branding and endorsement issues in conversation, rather than in this letter.

Our reference: P12/62

Centre for Internet Safety
Faculty of Law
—Building 6, Level C
University of Canberra ACT 2601

Dear s 47F and s 47F

Research topic suggestion: ~~Technical-technical~~ research on the privacy implication of cookies

I refer to the meeting between I am advised that on 30 April 2012 Mr s 47F of the Centre for Internet Safety (CIS) and ~~met with~~ staff of the Office of the Australian Information Commissioner (OAIC) on 30 April 2012. At that meeting, s 47F asked whether the OAIC would be interested in suggesting privacy research topics that could be explored by ~~seeking suggestions about what research the CIS-Centre for Internet Safety could carry out that would be useful to the OAIC.~~ Thank you for seeking the OAIC's input.

The OAIC has noted ~~As you would be aware there is a~~ growing concern in the community ~~regarding as to how~~ organisations operating online, including major social media operators and advertising organisations, such as Google, Facebook, LinkedIn and advertisers are using cookies and similar technologies, and the privacy ramifications of those technologies.

~~This has been the result of independent investigations and regulatory probing which have given some insight into the broad circumstances and depth of information which is being collected.~~ The OAIC would be interested in reviewing the results of any research carried out by the Centre for Internet Safety into the use and operation of cookies, and whether the use of cookies may constitute an unreasonable privacy intrusion or breach of the *Privacy Act 1988* (Cth). The OAIC's particular areas of interest include:

- ~~how online entities assign~~ unique device/browser identifiers ~~are assigned~~
- ~~how unique device/browser identifiers operate, and the the~~ privacy implications ~~of those technologies (if any)~~
- ~~whether online entities (including accounts with social media services such as services like Facebook and Google, or LinkedIn) could combine account information could be combined with unique device/browser identifiers, to identify users that are not logged into the service~~

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- any other privacy impacts resulting from the current and increasing use of cookies by online entities, and including the operation of Google PREF cookies and specifically whether Google is capable of linking the PREF cookie identifier to an individual without a Google account, and
- the privacy enhancing options available to internet users, and the trade-offs inherent in establishing different levels of online privacy (e.g., whether using privacy enhancing tools to establish a high level of online privacy may degrade the quality of the user's online experience).

If the CIS is minded to conduct this type of research, we would be happy to discuss options for the use, publication and distribution of the research, subject to reviewing the completed report. Upon completion of the research the OAIC would be interested in reviewing the results and discussing whether or not there are potential opportunities for the OAIC to adopt, endorse or co-brand the finalised research product.

If you have any questions, or would like to discuss this matter in further detail, please contact Tim S 47F Deputy Director – Policy, on (02) 8234 9728, or at Tim S 47F @oaic.gov.au.

Yours sincerely

Timothy Pilgrim
Australian Privacy Commissioner
June 2012

Commented [TdS1]: I would prefer that we give them the direction re the Google PREF cookie verbally, to avoid the perception in this letter that we are specifically targeting google.

Commented [TdS2]: TCS to advise CIS in conversation that we are particularly interested in the Google PREF cookie., and whether Google is

Commented [TdS3]: Not sure whether we can actually say this.



Executive brief

Responsible Asst Commissioner:	Rachael Spalding
Prepared by:	Holly s 47F
Through:	Tim s 47F Melanie s 47F Rachael s 47F
To:	Timothy Pilgrim
Copies:	John McMillan, James Popple
File ref:	P12/62
Date:	28/05/2012
Subject:	Proposed request to the Centre for Internet Safety for research on the privacy impacts of cookies

Purpose and timing

- To advise the Privacy Commissioner and the Executive of an offer made by the Centre for Internet Safety (CIS) on 30 April 2012 to conduct technical research that would be useful to the OAIC.

Recommendations

- That the OAIC asks the CIS to conduct technical research on the operation and use of cookies.

Background

On 30 April 2012, Tim s 47F and Holly s 47F of the OAIC met with s 47F from the CIS.

At the meeting, s 47F stated that the CIS was seeking suggestions from the OAIC about what research they could carry out that would be useful to the office.

Issues

Recommendation 10–3 of the ALRC's Report 108¹ is as follows:

The Office of the Privacy Commissioner should develop and publish guidance in relation to technologies that impact on privacy. This guidance should incorporate relevant local and international standards. Matters that such guidance should address include:

¹ www.alrc.gov.au/publications/report-108

(a) developing technologies such as radio frequency identification (RFID) or data-collecting software such as 'cookies';

(b) when the use of a certain technology to collect personal information is not done by 'fair means' and is done 'in an unreasonably intrusive way';

(c) when the use of a certain technology will require agencies and organisations to notify individuals at or before the time of collection of personal information;

(d) when agencies and organisations should notify individuals of certain features of a technology used to collect information (for example, how to remove an RFID tag contained in clothing; or error rates of biometric systems);

(e) the type of information that an agency or organisation should make available to an individual when it is not practicable to provide access to information in an intelligible form (for example, the type of biometric information that is held as a biometric template); and

... [emphasis added].

The Government response to the ALRC report² accepted that recommendation in principle, noting that the decision to provide guidance is a matter for the Commissioner.

Cookies are widely used across the internet to facilitate fast and easy browsing by remembering a user's settings and other functions. They are also commonly used to collect and provide data to advertisers about user preferences and interests.

Cookies also have the capacity to be used to track an individual's internet activity. For example, in September 2011 researchers discovered that Facebook was using cookies that retained their value even after a user logged out of Facebook.³ This meant that after logging out of Facebook, subsequent web requests to third-party sites that integrated Facebook widgets could be identified and linked back to real accounts. This could allow Facebook to track user activity on sites with Facebook social plugins or like buttons, after users had logged out of Facebook.

There is an argument that a cookie is capable of being *personal information* within the meaning of the *Privacy Act 1988* (Cth), for example, when a device/browser combination is used exclusively by a single user, as in a personal laptop.

This is particularly concerning in the context of organisations like Google and Facebook that are collecting an increasing amount of data about their users, use cookies extensively, and

² www.dpmc.gov.au/privacy/alrc_docs/stage1_aus_govt_response.pdf

³ Nik Cubrilovic, *Facebook Fixes Logout Issue, Explains Cookies* (2011) New Web Order <http://nikcub.appspot.com/facebook-fixes-logout-issue-explains-cookies> at 21 May 2012.

See also: [Talking Points - Sony and Facebook Tracking Cookies - September 2011](#)

may be able to match information gathered by cookies (e.g., websites visited) to specific users.

Google 'PREF' cookie

The recent update of Google's Privacy Policy, and their responses to [correspondence from APPA](#) and the [CNIL Questionnaire](#) has raised questions about how cookies are being used, what information they are collecting and how that information is being used (see preliminary [email brief](#)).

In particular, Google's responses to the CNIL questions on 'PREF' cookies suggest that Google may be able to track the use of any browser/device combination, where that browser/device has previously been used to access a Google service.

OAIC Policy understands that the PREF cookie:

- is attached to the device/browser combination, and not to a specific Google account
- includes a unique device/browser identifier, and
- is active whether or not a user is signed into Google or not.

It is clear that Google is technically capable of tracking the internet activity of a user identified by a PREF cookie by viewing logs of PREF requests. Google would be technically capable of linking a PREF identifier to a Google account, but have specifically stated that they do not do this.

However, it is not clear as to whether Google is capable of linking the PREF cookie identifier to an individual without a Google account. This would impact any individual without a Google account that uses Google Search, Maps, YouTube or News.

Need for external technical expertise

OAIC Policy staff do not have sufficient technical expertise to understand how cookies operate, or to investigate or verify the claims of tech companies like Google and Facebook with respect to cookies. As such, it is difficult to develop guidance on that subject.

However, the Centre for Internet Safety has sufficient technical expertise, and has asked for our suggestions for research.

OAIC Policy recommends that we utilise this offer of assistance and suggest technical research into the operation and capabilities of cookie which would facilitate our monitoring of the online industry.

Specifically, OAIC Policy recommends that we ask CIS to conduct research on the use of cookies by major social media operators such as Google, Facebook, and LinkedIn, and whether the use of cookies may constitute a unreasonable privacy intrusion or breach of the Privacy Act. In particular, we suggest that we ask CIS to:

- explain how unique device/browser identifiers are assigned
- explain how unique device/browser identifiers operate, and the privacy implications (if any)
- advise whether accounts with services like Facebook and Google could be combined with unique device/browser identifiers

- any other privacy impacts resulting from the current and increasing use of cookies by online entities
- by way of practical example:
 - confirm whether our understanding of the Google PREF cookie is correct, and
 - advise whether Google is capable of linking the PREF cookie identifier to an individual without a Google account, and
- consider and advise generally on the privacy enhancing options available to internet users, and the tradeoffs inherent in establishing different levels of online privacy (e.g., whether using privacy enhancing tools to establish a high level of online privacy may degrade the quality of the user's online experience).

The Information Policy Team (which is responsible for online privacy/communication issues) will manage the relationship with the CIS.

Conclusion

- The Centre for Internet Safety has made an offer to conduct technical research that would be useful to the OAIC.
- The OAIC does not have the technical expertise to understand how cookies operate or to verify claims made by tech companies.
- The OAIC should ask the CIS to conduct technical research on the operation and use of cookies in terms set out above.