

DON'T LOOK NOW, YOU'RE BEING GOOGLED

Google Search Data Compilation and User Privacy

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Through its stated mission “to organize the world’s information and make it universally accessible and useful,” Google amasses an extraordinary amount of data. When an individual conducts a search, Google records the query, the time of search, and the computer’s IP address and cookie. While this information does not specifically identify an individual by name or address, it is inherently personal because it records interest patterns. Concerns have arisen that Google holds these mass quantities of information for indefinite lengths of time, without clear limitations on its subsequent use or disclosure to third party companies, marketers, or governments.

This case considers the use of data compilation in light of conflicting missions within the organization. While the overarching goal of a company is the generation of profits and returns for shareholders, Google also has a mission of trust and accountability embodied in its motto “Don’t Be Evil.” On a broader level, the case also illustrates the challenges arising from emerging internet technologies and an increasingly global information flow that have outpaced the development of privacy standards and regulation.

The case text and teaching notes for this case were completed under the direction of Dr. Rebecca Dunning, the Kenan Institute for Ethics.

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Introduction

“The Internet,” explained Hal Varian, chief economist at Google, “makes information available. Google makes information accessible.”¹ Yet, at the same time that Google is providing informational access to its users, it is simultaneously gleaning insights from them in return. Every time a user types a query into the search box, Google records the query, the time and date of search, and the computer’s IP address and cookie. Most controversial is the cookie, a software file residing on the user’s browser which keeps track of online activities such as searches, browsing patterns, and purchases made.² While this information does not specifically identify an individual by name or address, it is inherently personal because it records interest patterns. Kevin Bankston, attorney at the Electronic Frontier Foundation, explained: “Your search history shows your associations, beliefs, perhaps your medical problems. The things you Google for define you.”³ With over 70% market share worldwide, the search engine giant amasses an extraordinary amount of such data from billions of queries.⁴ This data is a huge part of Google’s success, allowing it to better know and understand its users and their preferences and generate returns for its shareholders.

However, complaints have arisen over the past few years that Google holds these mass quantities of information for indefinite lengths of time, without clear limitations on its subsequent use, including its disclosure to third party companies, marketers, or governments. In fact, a Privacy International report in 2007 listed Google at the very bottom of its privacy rankings, claiming Google had an “entrenched hostility to privacy.”⁵ Within the organization, a number of reports and internal documents reveal that executives have held many debates over the risk to user privacy.⁶

While Google has an overarching goal to develop efficient and innovative technologies to generate profits, the organization also has a user focus embodied in its somewhat un-corporate motto “Don’t Be Evil.” One focus of this case study is to highlight and examine this tension. On a broader level, this case illustrates the societal challenges arising from rapidly emerging internet technologies and an increasing global information flow that has substantially outpaced the development of privacy standards and regulation. Furthermore, the privacy rules of any individual country are limited in their effectiveness now that online information can circle the globe in a matter of seconds, suggesting that international cooperation is needed to develop a cohesive policy.

Background and Context

The Concept of Privacy and Justifications for Protection

Despite the fact that the term “privacy” is frequently used in common discourse as well as legal, philosophical, and political discussion, there is no single accepted definition or meaning of the term. “Few values so fundamental to society as privacy have been left so undefined in social theory or have been the subject of such vague and confused writing,” claims pioneering privacy scholar Alan Westin.⁷ Decades later, his sentiment was echoed by a 2008 study admitting that the concept of privacy “is in disarray” and that “nobody can articulate what it means.”⁸

1 Auletta, Ken. *Googled: The End of the World as We Know It*. New York: Penguin, 2010. xi.

2 Auletta, 7.

3 Mills, Elinor. “Google balances privacy, reach.” Cnet news. 14 Jul 2005. http://news.cnet.com/Google-balances-privacy,-reach/2100-1032_3-5787483.html

4 Auletta, xi.

5 “A Race to the Bottom: Privacy Ranking of Internet Service Companies.” Privacy International. 6 Sep 2007. [http://www.privacyinternational.org/article.shtml?cmd\[347\]=x-347-553961](http://www.privacyinternational.org/article.shtml?cmd[347]=x-347-553961)

6 Vascellaro, Jessica E. “Google Agonizes on Privacy as AdWords Vaults Ahead.” *The Wall Street Journal*. 10 Aug 2010.

7 Westin, Alan F., *Privacy and Freedom*, New York: Atheneum, 1967.

8 Solove, Daniel J., *Understanding Privacy*, Cambridge: Harvard University Press, 2008.

There are a number of types of privacy, encompassing physical, informational, organizational, spiritual and intellectual, and characterizations of privacy are manifold.⁹

On the whole, the concept of privacy is intimately related to that of autonomy, and can be broadly described as the ability of an individual to select which of their physical and informational aspects to reveal to others and which to withhold. The protection of privacy allows for this sense of restricted access to self, serving a number of functions including “the promotion of liberty, autonomy, selfhood, human relations, and furthering the existence of a free society.”¹⁰ Perceptions about the boundaries, context, and scope of privacy differ amongst individuals, across geographies, and throughout time, yet reflect common themes; namely, that it is a meaningful and valuable concept worthy of some form of protection.¹¹

The justification of privacy protection was perhaps first investigated by Aristotle in his writings on the distinction between the public sphere of political activity and the private, domestic sphere of the family.¹² Contemporary philosophical defenses of privacy build upon this idea, but are as varied and broad as the situations to which they are applied. One common defense of privacy focuses on autonomy and an individual’s ability to control personal information.¹³ Other authors defend privacy on the grounds that it is broadly essential for the preservation of human dignity.¹⁴ Still other commentators maintain that the protection of privacy is necessary for the achievement of intimacy¹⁵ and the development of diverse and meaningful relationships.¹⁶ Privacy is deemed necessary by some scholars not simply for control of personal information, but as a facilitation of freedom, self-expression, and personal choice. In his book *Privacy and Social Freedom*, Ferdinand Schoeman argues that “. . .privacy in the context of our social relations protects us from social overreaching – [it] limits the control of others over our lives.”¹⁷

The Foundation of U.S. Privacy Regulation

Legal scholars have traced the American conception of privacy back to Supreme Court records in 1834, where the famous phrasing of privacy as “the right to be left alone” was first noted: “a defendant asks nothing – wants nothing, but to be let alone until it can be shown that he has violated the rights of another.”¹⁸ The first systematic legal discussion of privacy came in 1890 with the famed essay by Samuel Warren and Louis Brandeis for the *Harvard Law Review* entitled “The Right to Privacy.” The authors explain how privacy protection evolves from common law, declaring: “Political, social, and economic changes entail the recognition of new rights, and the common law, in its eternal youth, grows to meet the demands of society.” In their discussion, the lawyers assess the nature and extent of the possible protection of individual privacy under the law, citing the “right to be let alone” as well as the basis of “inviolable personality” or the “right to one’s personality.”¹⁹

9 Busch, Andreas, “The Regulation of Privacy.” Jerusalem Papers in Regulation & Governance, Working Paper No. 26. September 2010, 3.

10 Gavison, Ruth, “Privacy and the Limits of Law,” *Yale Law Journal*, 1980. 89: 421-71

11 DeCew, Judith, “Privacy,” *Stanford Encyclopedia of Philosophy*, 2006.

12 DeCew, J.

13 Parent, W. A., “Privacy, Morality and the Law”, *Philosophy and Public Affairs*, 1983. 12: 269-88

14 Bloustein, Edward, “Privacy as an Aspect of Human Dignity: An Answer to Dean Prosser”, *New York University Law Review*, 1964. 39:962-1007

15 Inness, J., *Privacy, Intimacy and Isolation*, Oxford: Oxford University Press, 1992.

16 Moore, Adam D., “Privacy: Its Meaning and Value” *American Philosophical Quarterly*, 2003. 215-227.

17 Schoeman, Ferdinand, *Privacy and Social Freedom*, Cambridge: Cambridge University Press, 1992.

18 *Wheaton v. Peters*, 33 U.S. 591, 634 (1834),

19 Brandeis, Louis and Samuel Warren, “The Right to Privacy.” 4 *Harvard Law Review*; Cambridge, 1890. 193-200, 215.

In 1960, legal scholar William Prosser sought to more fully systematize privacy law, outlining a general framework consisting of four defined torts, or civil wrongdoings. The four torts described by Prosser are broadly connected by the single unifying element of “the right to be left alone” and now serve as the basis of modern tort law:

- (1) Intrusion upon a person’s seclusion or solitude, or into his private affairs
- (2) Public disclosure of embarrassing private facts about an individual
- (3) Publicity placing one in a false light in the public eye
- (4) Appropriation of one’s likeness for the advantage of another.²⁰

While the Constitution of the United States never specifically contains the word “privacy,” its amendments broadly provide for the protection of privacy from government intervention. Most directly, the fourth amendment guarantees “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” Additionally, what is commonly called the “constitutional right to privacy” was established in 1965 when the Supreme Court invoked the fourteenth amendment in *Griswold v. Connecticut*, protecting a married couple’s right to contraception by determining that a “zone of privacy” covered the social institution of marriage and the sexual relations of married people. The ruling was subsequently cited to overturn a ban on interracial marriage, to allow for the possession of obscene matter within the home, and to protect the distribution of contraceptives to both married and single individuals. The constitutional right to privacy was also invoked in the defense of abortion rights in *Roe v. Wade* in 1973.²¹

The Implications of Accelerating Technological Change

Technological advances such as those in mass printing, for example, have prompted concern over potential threats to privacy many times in the past. The 19th century interest in privacy arose largely because of the rapid proliferation of newspapers and sensationalist tabloid journalism. A second technologically-derived threat came in the form of Eastman Kodak’s 1884 introduction of the Kodak Brownie, which became cheaply available to the general public by the turn of the century. Its widespread availability permitted photographic documentation at any time, in any place, and by any person.²² Warren and Brandeis’ aforementioned foundational paper “The Right to Privacy” was largely focused on these emerging technologies, stating: “Now that modern devices afford abundant opportunities for the perpetration of such wrongs without any participation by the injured party, the protection granted by the law must be placed upon a broader foundation.”²³

The concern over encroaching technologies has heightened in recent decades with the spread of computers, telecommunications, databanks, and finally, the Internet. Such technologies threaten individual privacy because of the ease with which they store and transmit person-related information.²⁴ With each new development, legal professionals have been forced to rethink the scope of privacy protection within the context of the new capabilities. “One of the comical attributes of privacy regulation,” explained William McGeveran, a privacy scholar at the University of Minnesota Law School, “is a lot of it is responsive to fire alarms.”²⁵ Most regulatory developments have taken the form of narrow responses to privacy concerns within specific industries.

For example, the 1970 Fair Credit Reporting Act (FCRA) was enacted in response to concern over increased credit reporting which is accomplished through the compilation of consumers’ financial information. The new law allowed consumers to have access to and to correct erroneous information from which the credit statistics are derived. A second example is the 1996 Health Insurance Portability and Accountability Act (HIPAA) which erected federal

20 Prosser, William, “Privacy,” 48 California Law Review, 1960. 383.

21 DeCew, 3.

22 Singer, Natasha, “Technology Outpaces Privacy (Yet Again),” *The New York Times*, 11 Dec 2010.

23 Brandeis and Warren.

24 Busch, 1-2.

25 Singer, 2.

protections over the health information of individuals. A third example is the 1999 Gramm-Leach-Bliley Act which forced financial service firms to communicate their information policies to consumers and allowed consumers to opt out of having their data disseminated to third parties.²⁶

Writer Ken Auletta argues that what is different about the internet with regard to privacy is not that it is a more onerous threat to privacy than prior technological developments, but that it developed at a much more rapid place.²⁷ He notes that seven decades passed before the invention of the telephone reached half of American households. Five decades passed in the case of electricity, and three for television. The proliferation of internet access has been unprecedented, taking just one decade to reach 50 percent of American homes.²⁸

Internet Privacy and the Digital Revolution

“Internet privacy” is considered a subset of computer and informational privacy. It touches upon a variety of subjects including user profiling, data compilation and the widespread use of social networks, blogs and other sites to publish user-generated content, photos, and videos.

The concept of user profiling is intimately related to that of anonymity, or the wish to be unidentified within the public sphere. Full internet anonymity is broadly defined as the use of the Internet without any links between Internet activities and personally-identifiable information. This is rarely the case, as user activities are frequently tracked through the use of an instrument called a “cookie” – a software file that resides in a user’s browser, tracking search patterns, browsing history, and shopping decisions. Cookies provide companies with valuable insights, allowing them to improve services as well as deliver targeted content.²⁹ Additionally, cookies permit a number of functional benefits to the user, enabling websites to remember things like language preferences or items placed in an online shopping cart. While some users adamantly demand full internet anonymity, others argue that these forms of convenience and efficiency are acceptable trade-offs for some level of profiling.³⁰ However, added concern arises due to companies’ tendency to compile data from a wide variety of sources and keep it for extended periods of time, often storing cookies for months beyond what is commonly deemed necessary for user benefit.³¹

Another subset of internet privacy involves pieces of content willingly posted by individuals about themselves or those around them. Warren and Brandeis expressed their concern in the context of the Kodak camera and the tabloid industry, noting that these two developments changed the face of privacy such that “gossip is no longer the resource of the idle and of the vicious but has become a trade.”³² The gossip of Brandeis’ age pales in comparison to the wealth of information and content available on today’s websites and social networks. Furthermore, in an era of social networks and blogs, the issue of published content and sensationalism is no longer confined to celebrities and public figures; rather, it now extends to everyone. Facebook now has nearly 500 million users, each of whom posts an average of 70 pieces of content per month. Additionally, the Library of Congress recently announced its plans to acquire and archive all public posts by Twitter’s 100 million plus users.³³ In a 2010 article for the *New York Times*, law Professor Jeffrey Rosen writes “...the fact that the Internet never seems to forget is threatening, at an almost existential level, our ability to control our identities...”³⁴

26 Singer, 2.

27 Auletta, .

28 Auletta, 356.

29 Auletta, 7.

30 “Privacy FAQ,” Google Privacy Center. Accessed 11 Dec. 2010. <http://www.google.com/privacy/faq.html>

31 “A Race to the Bottom: Privacy Ranking of Internet Service Companies,” A Consultation report, *Privacy International*, 6 Sept. 2007, 8.

32 Brandeis and Warren.

33 Rosen, Jeffrey. “The Web Means the End of Forgetting,” *New York Times*, 21 July 2010.

34 Rosen, 1.

The Federal Trade Commission (FTC) has studied the issues surrounding online privacy since 1995, enumerating a set of broad guidelines called the Fair Information Practice Principles (FIP) in 1998:

- 1) Notice/Awareness – Consumers should be notified of information practices.
- 2) Choice/Consent – Consumers should have control over how their data is used.
- 3) Access/Participation – Consumers must be able to view and verify data collected.
- 4) Integrity/Security – Collectors must ensure that the data is accurate and secure.
- 5) Enforcement/Redress – Enforcement measures, in the form of self-regulation, civil suit, or government penalties, must be provided to ensure compliance.³⁵

The FIP principles are only recommendations for appropriate user-oriented data collection, and leave individual companies to develop and enforce policies regarding consumer privacy. This has been called a “free market approach” to privacy protection, one which permits commercial entities to self-regulate and relies on consumers to consider the privacy policies of each company from which they make purchases. In their criticisms of this approach, consumer protection advocates claim that consumers do not have the time nor capability to make informed choices.

Privacy policies tend to be both vague and lengthy. Facebook’s privacy policy, for example, once totaled more than 5,000 words.³⁶ A 2004 study evaluating the content, notification, accessibility, and readability of 64 online privacy policies concluded: “Even if one assumes that companies sincerely follow practices that comply with their posted policies, the form, location and legal context of policies make them essentially unusable as decision-making aids for a user concerned about privacy.”³⁷

The Call for a Global Standard in Online Privacy

The need for an international standard designed for online privacy stems from the inherently global nature of the Internet. Despite the fact that it is grounded in physical electronic devices, the Internet itself exists independently of any geographic location, representing a legal paradigm shift as digital data move with ease across national borders.³⁸ International agreements present numerous challenges, not the least of which is the fact that the concept of privacy is culturally relative, differing substantially across geographies.

There have been numerous attempts by international bodies to establish common frameworks and overarching guidelines in regards to privacy. Article 12 of the United Nations General Assembly’s 1948 “Universal Declaration of Human Rights” declares “No one shall be subjected to arbitrary interference with his privacy, family, home, or correspondence, nor to attacks upon his honour or reputation.” Similarly, the Council of Europe (CoE) guarantees individuals “the right to respect for his private and family life, his home and his correspondence” in Article 8 of the 1950 European Convention on Human Rights (ECHR), out of which evolved the 1980 “Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.” Also in 1980, the Organisation for Economic Cooperation and Development (OECD) established the “Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data,” which closely paralleled the principles enumerated in the CoE Convention. However, these declarations typically lack supranational legal structures and are only enforced if

³⁵ “Fair Information Practice Principles,” *The Federal Trade Commission*, modified 2007. <http://www.ftc.gov/reports/privacy3/fairinfo.shtml>
³⁶ Rosen, 6.

³⁷ Jensen, Carlos and Colin Potts, “Privacy Policies as Decision-Making Tools: An Evaluation of Online Privacy Notices,” GVU Center, College of Computing, *Georgia Institute of Technology*, 2004. 7.

³⁸ Johnson, David R. and David G. Post, “Law and Borders – the Rise of Law in Cyberspace,” *Stanford Law Review*, 48: 1367, 1996.

individual nations commit the agreements to legislation or incorporate them in their constitutions. Furthermore, their wording leaves much room for interpretation, which was likely necessary to achieve international agreement in the first place.³⁹

In 1995 the European Union passed the “Directive on the Protection of Personal Data with Regard to the Processing of Personal Data and on the Free Movement of Such Data,” which created a unified data protection policy between the 15 member states. Unlike the aforementioned resolutions, the directive was both legally binding and enforceable. Reverberations of the policy extended beyond Europe due to its restriction on the transfer of personal data to outside countries with insufficient levels of protection. Motivated largely by economic interests, the Asia-Pacific Economic Cooperation (APEC) began work on a “Privacy Framework” in 1998 which was adopted by 2004.⁴⁰ However, both frameworks represent minimum thresholds, considered by most to be insufficiently strict to serve as anything other than a starting point for the construction of global standards.⁴¹

Google, Inc.

The Beginning

When asked in 1998 what challenge he most feared, Bill Gates responded, “I fear someone in a garage who is devising something completely new.”⁴² At that very time, Larry Page and Sergey Brin were just getting started with Google, having secured their first investor and set up shop in a Silicon Valley garage. The pair met at an orientation for Stanford graduate students, both pursuing doctoral degrees in computer science. The breakthrough search algorithm devised by Page and Brin incorporated a “wisdom of crowds” approach to measuring link relevance, rather than relying only on keywords like their early competitors. The algorithm was designed to deliver better answers to search queries by evaluating URLs based on the number of links into each site, as well as the number of links into the linking sites, and rapidly calculating a quality ranking called a “PageRank.”⁴³

The design of the search engine, initially called “BackRub” was heavily inspired by Donald A. Norman’s book *The Design of Everyday Things*, which argued that most product designers ignore the vantage point of consumers and overcomplicate their offerings. The book formed the foundation of the founders’ user-oriented focus and emphasis on simplicity.⁴⁴ Page and Brin believed that search engines had become commercialized and corrupted by advertising and bias, mitigating their ability to provide quality search results. In order to build the trust of their users, Google launched with a simple homepage devoid of advertising or superfluous content. The pair was on a quest to build the best search engine for users, driven by their initial mission statement “to organize the world’s information and make it universally accessible.”⁴⁵

During its initial years, Google had few sources of income, focusing on scaling its operation rather than monetizing its existing traffic. In order to build the business, the founders secured \$25 million in funding from prominent venture capital firms Sequoia Capital and Kleiner Perkins. Under pressure from their investors to find a CEO and generate profits, Page and Brin hired Eric Schmidt in 2001. With both a Ph.D. in computer science and significant experience as a professional manager, Schmidt was said to be a rare candidate who could work amicably with the founders and speak the language of engineering.⁴⁶

39 Busch, 5-7.

40 Busch, 7-8.

41 Kee, Tameka, “Google’s Press for Global Privacy Fans Flames,” *Media Post News*, 17 Sept. 2007.

<http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=67478>

42 Auletta, 28.

43 Auletta, 35-38.

44 Auletta, 37.

45 Auletta, 41-53.

46 Auletta, 67.

The Emergence of a Giant

Within a few short years, Google had grown into a juggernaut and by 2008 it was conducting nearly 70 percent of worldwide searches with two-thirds of those within the United States. Simultaneously, the company was increasing its wingspan, offering a wide range of services including Gmail, Google News, Google Earth, Google maps, Google Video, Picasa (digital photograph sharing), Google Books, Orkut (a social networking site), and cloud computing

applications such as Google Desktop and Google Docs (see Appendix A for chronological development). In disclosure documents filed with the SEC in 2008, Google proudly declared, “We began as a technology company, and have evolved into a software, technology, internet, advertising, and media company all rolled into one.”⁴⁷

Google’s 2004 IPO forced it to reveal its financial statements to the public for the first time, displaying annual revenues of \$3.2 billion. Revenues quickly climbed to \$21.8 billion in 2008, despite a worldwide recession. Ninety-seven percent of these revenues came from advertising, matching the 2008 combined ad revenues of the five biggest broadcast networks (CBS, NBC, ABC, Fox, and the CW). At the same time that traditional media competitors were laying off employees, by 2008 Google employed nearly 20,000 workers, receiving over 1 million applications yearly and taking on 150 additional employees per week.⁴⁸

The Unique Google Culture

“I sometimes feel like I live on another planet and speak a different language from traditional media companies,” Eric Schmidt once said.⁴⁹ Google prides itself in its stark contrast to the “typical” corporate environment, and is said to have retained much of the laid-back style of its initial garage office despite rapid expansion. The current Googleplex in Mountain View features multiple buildings surrounded by outdoor tables, park benches, and shade trees, with bicycles available to travel throughout. Employees are privy to massage rooms, gyms staffed with trainers, free meals and snacks, dry cleaners, dentists, and physicians. It was deemed the best U.S. company to work for by *Fortune* magazine in both 2007 and 2008. “Google is a cross between a start-up and graduate school,” commented Peter Norvig, director of research. “Formal rules don’t matter. There’s still a loose feel. The disadvantage of being a start-up is the fear that you will run out of money. There is stress. Google is more like graduate school in that you don’t have that stress. You expect one day that the guys in suits will take over. That hasn’t happened.”⁵⁰

While the company is led by Brin, Page, and Schmidt, the organization reportedly aims to be nonhierarchical, striving for a “flat” organizational structure where employees share offices and constantly collaborate in their work. While the hiring practices are undoubtedly elitist, the culture is also described as egalitarian, providing only modest salaries to top officials. Brin, Page, and Schmidt afford themselves only \$1 a year in salary, declined bonuses in 2008, and have declined stock options since 2004.⁵¹

Unlike many top executives, “Google’s leaders are not cold businessmen; they are cold engineers” explains media journalist Ken Auletta, “They are scientists, always seeking new answers... They naïvely believe that most mysteries, including mysteries of human behavior, are unlocked with data.”⁵² “We’re going to make all the mistakes computer scientists running a company would make,” CEO Schmidt reasoned, “But one of the mistakes we’re not going to make is the mistake that nonscientists make. We’re going to make mistakes based on facts and data and analysis.” The founders place little emphasis or value on marketing, public relations, design, and other non-

47 Auletta, 16.

48 Auletta, 15-16.

49 Auletta, 17.

50 Auletta, 17-18.

51 Auletta, 19.

52 Auletta, xii.

engineering disciplines, leading to occasional frustration amongst more artistic employees. Douglas Bowman, Google's first visual designer, complained after leaving the company that "the data eventually becomes a crutch for every decision, paralyzing the company and preventing it from making any daring design decisions."⁵³

The Accumulation and Threat of User Data

Data Compilation Practices

When a user visits Google's website, it sends one or more cookies to the user's computer. Google's Privacy Policy explains that "Google uses cookies to improve your experience and to provide services and advertising," adding that, while disabling cookies is possible, "some Google features and services may not function properly if your cookies are disabled." Each time a user conducts a search, Google records a log, which typically includes the request, Internet Protocol (IP) address, browser type, browser language, the date and time of the search, and one or more cookies that uniquely identify the browser. "Most importantly," reads Google's Privacy FAQ, "we store data to improve our search results and to maintain the security of our systems. Analyzing logs data helps our engineers both improve your search quality and build helpful innovative services."⁵⁴

Google stores this information for an extended period of time without providing users with an option for expungement. However, after nine months it anonymizes the IP addresses by replacing certain characters with X's, and anonymizes cookies after 18 months. In its Privacy FAQ, Google states "We strike a reasonable balance between the competing pressures we face, such as the privacy of our users, the security of our systems and the need for innovation. We believe anonymizing IP addresses after 9 months and cookies in our search engine logs after 18 months strikes the right balance."⁵⁵ Indeed, this is a significant improvement from earlier versions under which user information did not expire for decades. However, non-governmental organization Privacy International, states, "there is a prevailing view amongst privacy experts that 18 to 24 months is unacceptable."⁵⁶

Google broadly claims that information can be used to "provide, maintain, protect, and improve our services (including advertising services) and develop new services" as well as to "protect the rights or property of Google or our users." Additionally, the Privacy Policy reveals that Google can share information with outside parties, either with user consent or in cases where the affiliate is processing information on Google's behalf. Google also claims that it can share information when necessary to satisfy laws, regulations, or enforceable government requests, to investigate violations of Terms of Service, and to detect, prevent, and address fraud or safety issues.⁵⁷

"Don't be Evil"

"Our goal is to change the world," Google CEO Eric Schmidt once claimed in an interview, explaining that making money merely serves as "the technology to pay for it."⁵⁸ From day one, Google differentiated itself from its competitors by refusing to run troublesome ads that would clutter its homepage and never allowing companies the opportunity to pay Google to boost their position in organic search results. Both of these choices, like many others Google made at the time, eliminated possible revenue streams, sometimes to the frustration of early investors who yearned to see the search engine monetize its mounting traffic. Google was committed first and foremost to providing the best product for users, and in doing so, succeeded in gaining user trust. Google's less-than-corporate slogan, "Don't be Evil," embodies this philosophy, setting Google apart from its competitors.⁵⁹

53 Auletta, 20.

54 "Privacy Policy", Last updated 3 Oct. 2010, <http://www.google.com/privacy/privacy-policy.html>, "Privacy FAQ"

55 "Privacy FAQ"

56 "A Race to the Bottom: Privacy Ranking of Internet Service Companies," 8.

57 "Privacy Policy"

58 Auletta, xii.

59 Auletta, xii.

Regardless, Google is and always was in the business of making money, and the core of its business rests upon the vast trove of knowledge its search engine produces. For Google’s engineers, a tension exists between the desire to create efficiency and innovation and the need to maintain the trust of consumers. Despite its proclaimed user focus,

Google executives seem to believe that they should be trusted to act in the public’s best interest, and that they have the knowledge and wisdom to do so. “You don’t want to do the wrong things in a way that is causing real damage to the world or to people,” explained Page, “but you also need to make progress, and that’s not always going to make everybody happy.”⁶⁰ This sense of Google as a wise and benevolent dictatorship has been criticized. Media journalist Ken Auletta writes: “That Larry Page and Sergey Brin—and many Google employees—are brilliant is a conclusion cemented by the tale of Google’s rise. Whether they are also wise is not as clear-cut... Google take seriously its motto, ‘Don’t be evil.’ But because we’re dealing with humans, not algorithms, intent sometimes matters less than effect.”⁶¹

The Struggle Within

As the search engine grew, its enormous search traffic generated a vast mine of data about users, leading to better searches, even greater traffic, and eventually to revenues through advertising.⁶² A confidential, seven-page Google “vision statement” from 2008 discusses the potential uses of the search engine’s vast database, claiming it to be “the BEST source of user interests found on the Internet” and declaring “No other player could compete.”⁶³ The memo reveals Google’s internal debates and “soul-searching” over possible new methods of exploiting its comparative advantage: “How far should it go in profiting from its crown jewels—the vast trove of data it possesses about people’s activities?”⁶⁴

While Google continues to lead its competitors overall in revenues, pulling in \$23.7 billion in 2009, the overwhelming majority of this has been derived from small text advertisements sold on search engine terms, called “AdWords.” In recent years the trend in advertising has moved away from this type of generalized advertising towards targeting users with display ads based on their specific interests and demographics. The power in such a market resides with the possessor of the richest dataset, presenting tantalizing prospects for Google. But for a number of years, Google refrained from taking advantage of its vast quantity of data, fearing a loss of user trust that would far outweigh the potential business reward. At the insistence of Page in particular, Google resisted the new pioneering methods to track consumers online without their knowledge.

“Get in the Game”

Because of the founders’ resistance to using cookies for the purpose of placing and tracking advertisements, Google’s display ad sales suffered as competitors utilized “behavioral” targeting, which follows individuals and their interests. In comparison, Google used “contextual” targeting, for instance, placing an advertisement for a car dealership on a website about cars. As internal disputes over the issue raged, an opportunity presented itself in mid-2007: display ad giant DoubleClick, Inc. placed itself up for sale, and Google pounced, parting with \$3.1 billion in exchange for an instant dose of display-advertising infrastructure, expertise and clients.⁶⁵ Bidding competition from both Microsoft and Yahoo vastly inflated the price of the company, as well as potentially pressuring Google into the purchase altogether: “There’s no way Google would have acquired DoubleClick if not for their fear of Microsoft,” claimed one DoubleClick executive.⁶⁶

60 Auletta, 10.

61 Auletta, 24.

62 Auletta, 62.

63 Vascellaro, 1.

64 Vascellaro, 1.

65 Vascellaro, 4-5.

66 Auletta, 174.

Shortly after the acquisition, every page bearing a Google display ad began installing a DoubleClick cookie onto the users' computer. For months Google did not yet use the cookies for placing ads due to lingering concerns among executives. However, the pressure from successful competitors began to mount – one internal presentation slide discussing the lucrative opportunity was bluntly titled: “Get in the Game.”⁶⁷ (See Appendix B for 2008 internal documentation concerning the use of cookies). Google finally launched “interest-based ads” in March 2009, using the DoubleClick cookies to track its users' visits to over one million sites featuring Google display ads. Furthermore, in September of 2009, Google launched a new ad program, allowing advertisers to buy real-time access to individual people as they surf the web.⁶⁸

Public Concern and Erosion of User Trust

The past decade has witnessed a growing concern over Google's infringement on user privacy. Larry Page dismissed such worries as “hypothetical,” claiming, “It is always easy to be fearful of what could happen, right?”⁶⁹ In a 2007 Consultation Report categorizing Google as “hostile to privacy,” Privacy International⁷⁰ claimed that its reason for awarding Google the lowest score was “in part due to Google's market dominance and the sheer size of its user base” in addition to its “potentially invasive technologies and techniques.”⁷¹ Competitors joined in the criticism: said one Time Warner executive, “You always have to worry when someone gets so much more powerful than all the competition out there.”⁷²

Additionally, some users are alarmed by the feeling of being constantly followed in their online activities. “In 1984, Winston Smith knew where the telescreen was,” commented Lawrence Lessig, founder of the Stanford Law School Center for Internet and Society. “In the Internet, you have no idea who is being watched by whom.”⁷³ Susan Grant, director of Consumer Protection at the Consumer Federation of America writes, “if someone were following you around in the physical world — tailing you and making note of everywhere you go, what you read, what you eat, who you see, what music you listen to, what you buy, what you watch — you might find this disturbing. On the Internet,” she added, “even if the tracker doesn't know your name, you are not anonymous.”⁷⁴ This sense of personal invasion was echoed in a highly publicized 2010 video campaign by Consumer Watchdog⁷⁵ featuring a satirical representation of CEO Schmidt driving an ice cream truck and spying on children.⁷⁶

Furthermore, consumers have expressed apprehension over Google's disclosure of user data to governments. In its Privacy FAQ, Google explains: “Like other technology and communications companies, we receive requests from government agencies around the world to provide information about users of our services and products.” Google openly admits that it honors a portion of the removal requests and data requests. In the case of information requests, Google claims, “we review it carefully and only provide information within the scope and authority of the request. We may refuse to produce information or try to narrow the scope.”⁷⁷ Additionally, Schmidt has made public

67 Vascellaro, 3.

68 Vascellaro, 6.

69 Vascellaro, 2.

70 “Privacy International (PI) was established in 1990 as a human rights research and campaign organization. It was the first privacy NGO to operate in the global environment and since then has been instrumental in the evolution of the modern international privacy movement.” <http://www.privacyinternational.org>

71 “A Race to the Bottom: Privacy Ranking of Internet Service Companies,” A Consultation report, *Privacy International*, 6 Sept. 2007.

72 Auletta, 183.

73 Auletta, 190.

74 Wyatt, Edward, “Legislators Support Internet Privacy, but Question How to Achieve It,” *The New York Times*, 2 Dec. 2010.

75 Consumer Watchdog is a nonprofit consumer advocacy organization <http://www.consumerwatchdog.org>

76 “News Release: Consumer Watchdog Takes ‘Do Not TrackMe’ Campaign to Times Square with Animated Video Targeting Google CEO's Lack of Respect for Privacy,” *Consumer Watchdog*, 2 Sept. 2010.

77 “Google Transparency Report: FAQ,” “Privacy FAQ”

statements referencing the Patriot Act: “The reality is that search engines including Google do retain this information for some time... we are all subject in the United States to the Patriot Act. It is possible that that information could be made available to the authorities.”⁷⁸

User privacy concerns are exacerbated by the fact that the Google leadership often dismisses them. Frequently referenced is Schmidt’s 2009 statement: “If you have something that you don’t want anyone to know, maybe you shouldn’t be doing it in the first place.”⁷⁹ Executive responses to privacy qualms reveals that, once again, the founders “displayed an inability to imagine why anyone would question their motives and a deafness to fears that can’t easily be quantified.”⁸⁰ In a press conference discussing online privacy, Brin claimed that worries over cookies are “more of the Big Brother type,” and that, assuming people trust Google, cookies are “not so much a privacy issue.”

Postscript

Google has made a significant number of changes to its privacy policy and the tools it offers for user control. In the fall of 2010, Google announced its plan to simplify and update its privacy policies, seeking to make them as transparent and understandable as possible. The new policy consolidated twelve product-specific policies, eliminating repetition and unnecessary confusion. Additionally, a new privacy tools page was added (displayed in full in Appendix C), listing twelve popular tools designed to give users meaningful control over their privacy. Links are presented to tools such as Google Dashboard, which displays user information stored in their Google account, and the Ads Preferences Manager, which reveals the interest categories associated with a user’s cookie and allows users to edit them (see the Teaching Notes for this case for an example).⁸¹ Furthermore, Google posted a number of short, user-friendly videos explaining its data collection process and privacy policies.

In 2010, Google launched “Google Transparency Report,” which displays data on government removal requests and data requests by country. In an interview with Privacy International, Google claimed: “We hope this tool will give citizens greater visibility into their governments’ actions... and that other companies will make similar disclosures.”⁸²

Lastly, Google has emerged as a leader in the call for a global standard in internet privacy. In 2007 Schmidt declared, “The task we now face is twofold: to build consumer trust by preventing abuse and to create consistent, predictable rules that encourage future innovation.” Schmidt noted that about 75 percent of countries had no enforceable privacy standards, and those that did followed distinctly different models.⁸³

However, despite this heightened awareness of user privacy concerns, Google continues to explore innovative uses of the data it collects from internet searches. “We’re trying to figure out what the future of search is,” Schmidt acknowledged in a 2010 interview with a group of *Wall Street Journal* editors. “I actually think most people don’t want Google to answer their questions,” he explains, “They want Google to tell them what they should be doing next... As you go from the search box [to the next phase of Google], you really want to go from syntax to semantics, from what you typed to what you meant.”⁸⁴ If Google doesn’t seem to be letting up, neither are its

78 Dvorak, John C., “Eric Schmidt, Google, and Privacy,” Market Watch, *The Wall Street Journal*, 11 Dec., 2009. <http://www.marketwatch.com/story/eric-schmidt-google-and-privacy-2009-12-11>

79 Dvorak, 1.

80 Auletta, 185.

81 “Google Privacy Center,” accessed 12 Dec. 2010.

82 “An Interview with Google on Government Access to Personal Information.” *Privacy International*, 27 Apr. 2010.

83 Eric Schmidt, “Global Privacy Standards Needed,” *The Financial Times*, 18 Sept. 2007.

84 Jenkins, Holman W. “The Weekend Interview with Eric Schmidt: Google and the Search for the Future,” *The Wall Street Journal*, 14 Aug. 2010.

competitors – the internet technology industry continues to innovate, leaving privacy regulation far behind. For example, a few small companies have already begun to move beyond cookies, instead utilizing a new technology called “device fingerprinting” to track signals specific to individual computers. With such a technology, traditional “opt-out” features would be impossible.⁸⁵

⁸⁵ Singer, 5-6.

Appendix A

Chronology of Events: The following chronology of events reveals Google’s rapid growth and expansion into a number of products and services, as well as the privacy-related issues that have arisen throughout

1995	Summer: Larry Page and Sergey Brin meet before starting at Stanford
1996	January: Page and Brin begin work on a search engine called “Backrub”
1997	September: Google.com registered as domain name (after changing name)
1998	August: Andy Bechtolsheim is secured as first investor for \$100K
	September: Google sets up shop in a Menlo Park garage
1999	December: Google named “Top Search Engine” by <i>PC Magazine</i>
	February: Google moves to Palo Alto office with 8 employees
1999	June: Google receives \$25M from Sequoia Capital and Kleiner Perkins
	August: Google moves to first Mountain View office
2000	June: Google announced as first company to index 1 billion webpages
	October: AdWords launches
2001	July: Google Image Search launches
	August: Eric Schmidt named CEO
2002	Non-profit group Public Information Research launched <i>Google Watch</i> website, which advertised itself as “a look at Google’s monopoly, algorithms, and privacy issues”
	May: Google partners with AOL
	September: Google News Launches
	December: Froogle launches (later called Google Product Search)
2003	February: Blogger.com acquired
2004	January: Orkut (social networking site) launches
	March: Google moves to Googleplex in Mountain View with 800+ employees
	March: Google Local launches (eventually combined with Google Maps)
	April: Gmail launches
	August: IPO of 19,605,052 shares open at \$85 per share
	September: Google has 100 national domains (now over 150)
	October: Google Desktop Search launches
	October: Google Scholar launches
2005	December: Google Book Search partners with the libraries of Harvard, Stanford, University of Michigan, Oxford, and the NY Public Library
	February: Google Maps launches
	April: My Search History launches, allowing users to view all the web pages they’ve visited and searches they have conducted
	April: AdWords Site Targeting launches, allowing advertisers to target their ads to specific content sites
	May: iGoogle launches, allowing users to personalize their homepage
	June: Google Earth launches
	June: Personalized Search launches, allowing users to opt-in to allow their search history to personalize future searches based on interests
	August: Google Talk launches
	October: Google Reader launches
	November: Google Analytics launches

2006	January: Google in China (Google.cn) launches
	February: Gchat launched within Gmail
	April: Google Calendar launches
	May: Google Trends launches, allowing users to visualize search trends
	June: Google Checkout launches
	October: YouTube acquired
2007	October: Google Docs and Spreadsheets launches
	May: Universal Search allows for video, news, books, images, and local search results to be integrated together
	April: EPIC, CDD, and US PIRG filed a complaint with the FTC requesting an investigation of Google's proposed acquisition of DoubleClick
	May: Street View launches in Google Maps
	August: Google Privacy Channel launches, incorporating a series of YouTube videos on how users can protect their online privacy <i>Privacy International</i> releases its Consultation Report, claiming Google has an "entrenched hostility to privacy" and placing it at the very bottom of its rankings
2008	March: DoubleClick acquired
	September: Google Chrome browser launches
2009	March: Google launches "interest-based ads"
2010	December: FTC Chairman Jon Leibowitz advocates the development of a "Do Not Track" mechanism