

**Written Testimony of Jeff Chester  
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Washington, DC**

**Judiciary Committee Review  
of P.L. 2009, c. 230**

**15 October 2009**

I appreciate this opportunity to comment on Maine’s Public Law 2009, Chapter 230, “An Act To Prevent Predatory Marketing Practices against Minors” (hereafter “Chapter 230”). I am Jeff Chester, executive director of the Center for Digital Democracy (CDD). CDD is a nonpartisan, nonprofit organization based in Washington, D.C. Our mission is to help educate the public about the privacy, consumer protection, public health, and competition issues related to the new digital media marketplace. Along with our partner U.S. PIRG (the federation of state Public Interest Research Groups), CDD has played a major role at the Federal Trade Commission on data privacy and online marketing/consumer protection issues. In a series of complaints filed at the FTC in 2006, 2007 and earlier this year, CDD and U.S. PIRG pushed the commission to address the growing threats to consumer privacy and welfare that have emerged as a consequence of many online marketing practices, especially behavioral targeting.<sup>1</sup>

I have worked on interactive marketing and consumer protection issues for more than a decade. As executive director of the Center for Media Education during the 1990’s, I played a key role—along with Professor Kathryn C. Montgomery of American University—promoting privacy safeguards for children. That work eventually led to the passage, on a bi-partisan basis, of the Children’s Online Privacy Protection Act of 1998 (COPPA).<sup>2</sup>

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<sup>1</sup> Center for Digital Democracy and U.S. PIRG. Complaint and Request for Inquiry and Injunctive Relief Concerning Unfair and Deceptive Online Marketing Practices. Federal Trade Commission Filing. November 1, 2006, <http://www.democraticmedia.org/files/pdf/FTCadprivacy.pdf>. Center for Digital Democracy and U.S. PIRG, "Supplemental Statement In Support of Complaint and Request for Inquiry and Injunctive Relief Concerning Unfair and Deceptive Online Marketing Practices," Federal Trade Commission Filing, 1 Nov. 2007, [http://www.democraticmedia.org/files/FTCSupplemental\\_statement1107.pdf](http://www.democraticmedia.org/files/FTCSupplemental_statement1107.pdf). Center for Digital Democracy and U.S. PIRG. Complaint and Request for Inquiry and Injunctive Relief Concerning Unfair and Deceptive Mobile Marketing Practices. Federal Trade Commission Filing. January 13, 2009, [http://www.democraticmedia.org/current\\_projects/privacy/analysis/mobile\\_marketing](http://www.democraticmedia.org/current_projects/privacy/analysis/mobile_marketing) (all viewed 12 Oct. 2009).

<sup>2</sup> For a detailed case study of the campaign to pass COPPA, see Chapter 4, “Web of Deception,” in Kathryn C. Montgomery, *Generation Digital: Politics, Commerce, and Childhood in the Age of the Internet* (Cambridge, MA: MIT Press, 2007). I have continued to follow online marketing developments closely, including for my book, *Digital Destiny: New Media and the Future of Democracy* (New York: The New Press, 2007).

Maine is to be commended for its groundbreaking effort, in the form of Chapter 230, to extend the protection of COPPA to youth between the ages of 13 and 18, in the area of health-related marketing. As you know, the COPPA legislation gave the Federal Trade Commission the authority to develop and implement rules restricting commercial website operators' ability to collect "personally identifiable information" (e.g., name, physical or email address) from children under the age of 13.<sup>3</sup> Over the past decade,

[t]he FTC has brought a number of actions against website operators for failure to comply with COPPA requirements, including actions against Girl's Life, Inc., American Pop Corn Company, Lisa Frank, Inc., and Mrs. Field's Cookies and Hershey Foods. In September 2006, the FTC levied substantial fines on several enterprises for COPPA violations. The website Xanga was fined USD \$1 million for COPPA violations, for repeatedly allowing children under 13 to sign up for the service without getting their parent's consent. Similarly, UMG Recordings, Inc. was fined USD \$400,000 for COPPA violations in connection with a Web site that promoted the then 13-year-old pop star "Lil' Romeo," and hosted child-oriented games and activities, and Bonzi Software, which offered downloads of an animated figure "BonziBuddy" that provided shopping advice, jokes, and trivia was fined USD \$75,000 for COPPA violations.<sup>4</sup>

Unfortunately, while COPPA provides a measure of protection for children under 13, the law has been outpaced by recent developments that allow targeting of specific users even *without* personally identifiable information, as well as mobile implementations that can determine the location of particular users *within three feet*.<sup>5</sup> Accordingly, the FTC recently announced that it would review the COPPA rules in 2010.<sup>6</sup>

In the meantime, Maine's Chapter 230 is notable for its effort to create a safe haven for youth under the age of 18 in the area of health-related marketing, by restricting the use of personal information for the purpose of targeted advertising. While

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<sup>3</sup> Federal Trade Commission, "How to Comply with The Children's Online Privacy Protection Rule," <http://www.ftc.gov/bcp/online/pubs/buspubs/coppa.shtm>. "Children's Online Privacy Protection Act of 1998," <http://www.ftc.gov/ogc/coppa1.htm> (both viewed 28 Mar. 2008).

<sup>4</sup> Children's Online Privacy Protection Act, *Wikipedia*, [http://en.wikipedia.org/wiki/Children's\\_Online\\_Privacy\\_Protection\\_Act#Violations](http://en.wikipedia.org/wiki/Children's_Online_Privacy_Protection_Act#Violations) (viewed 12 Oct. 2009).

<sup>5</sup> "Acuity Mobile Partners with AlphaTrek to Provide Advanced Location Targeting for Mobile Marketing Clients; Expands Patent Portfolio," 22 Apr. 2008, <http://www.acuitymobile.com/docs/Press04222008.php> (viewed 8 Dec. 2008).

<sup>6</sup> Federal Trade Commission Staff Report, "Beyond Voice, Mapping the Mobile Marketplace," Apr. 2009, 3 <http://www.ftc.gov/reports/mobilemarketplace/mobilemktgfinal.pdf> (viewed 12 Oct. 2009).

others have commented on the *language* of Chapter 230, we should not lose sight of the fact that the legislation's *intent* is narrowly focused on the collection of "health-related information" for "marketing purposes," with the latter defined as "predatory" when the personal data for such marketing is collected without "verifiable parental consent" (i.e., "any reasonable effort, taking into consideration available technology, including a request for authorization for future collection, use and disclosure...").

As one of the bill's co-sponsors, Rep. Sharon Treat, has testified,

Chapter 230 was duly enacted with the unanimous support of the Business Research & Economic Development Committee and of this Legislature, on the basis of information presented to the Legislature establishing a compelling state interest – protection of the health and welfare of minors. A strong case was made at the April 2009 hearing, and subsequent committee work sessions, that the unfettered collection of personal information from minors—personal information which is not generally public—for use in marketing health products including drugs, is not in the best interest of this vulnerable population.... It should be clear that the intent of the sponsors, myself included, was to address the collection from minors of personal data through online interactions and mobile applications, where that information was collected for use in health-related marketing.<sup>7</sup>

I also agree with Rep. Treat that the goal of the present hearing "...should be to fix any drafting errors, not throw out the law." Indeed, there should be no doubt concerning the need to protect young people from invasive, often manipulative advertising, especially in the area of health-related products. On three broad fronts—technological, social, and psychological—the need to protect minors from data-collection activities associated with the marketing of pharmaceutical and other health-related products is compelling.

### **The Marketing Ecosystem**

Americans, unfortunately, know very little about what the industry calls the new "media and marketing ecosystem." The forms of advertising, marketing and selling that are emerging as part of the new media depart in significant ways from the more familiar commercial advertising and promotion we have seen in print and on television in the past. In today's digital marketing system, advertising, editorial content, data collection, measurement, and content delivery are increasingly intertwined. As a major advertising industry report on the future of marketing in the digital era explained, "The influx of data into marketing has been one of the biggest changes to players across the landscape.... Advertising strategies, campaigns, and distribution are increasingly based on predictive algorithms, spreadsheets, and

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<sup>7</sup> "Written Testimony of Representative Sharon Treat, Judiciary Committee Review of P.L. 2009, c. 230," 8 Oct. 2009, Joint Standing Committee on Judiciary, p. 1.

math.... Every Web page's individual views, every word typed in a search query box (also known as the 'database of consumer intentions'), every video download, and even every word in an e-mail may create one more data point that a marketer can leverage and use to more precisely target the audience...."<sup>8</sup>

Specifically, few U.S. consumers understand the power and intent of behavioral targeting, which, notes *eMarketer*,

segments the audience based on observed and measured data—the pages or sites users visit, the content they view, the search queries they enter, the ads they click on, the information they share on social internet sites and the products they put in online shopping carts. This data is combined with the time, length and frequency of visits.... Behavioral targets people, not pages. That is, behavioral uses the actions of a person to define its target, unlike contextual targeting, which serves ads based on a page's contents.... Behavioral information can also be merged with visitor demographic data—such as age, gender, and ZIP code.... Whether tracked by cookies or ISPs, the sort of user data that builds behavioral profiles takes in search queries, Web site visits, specific content consumed (such as clicks or playing a video), product shopping comparisons, product purchases and items placed in shopping carts but not bought.<sup>9</sup>

U.S. spending for BT online advertising is predicted to grow dramatically to \$4.4 billion by 2012 (up from “only \$775 million in 2008”).<sup>10</sup>

Today, we are witnessing a dramatic growth in the capabilities of marketers to track and assess our activities and communication habits on the Internet.<sup>11</sup> Advertisers and marketers have developed an array of sophisticated and ever-evolving data collection and profiling applications, honed from the latest developments in such fields as semantics, artificial intelligence, auction theory, social network analysis, data-mining, and statistical modeling. Behavioral targeting is just one tool in the interactive advertisers' arsenal. Social media monitoring, so-called “rich-media” immersive marketing, new forms of viral and virtual advertising and product placement, and a renewed interest (and growing investment) in neuromarketing, all contribute to the panoply of approaches that also includes BT. Behavioral targeting

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<sup>8</sup> Edward Landry, Carolyn Ude, and Christopher Vollmer, "HD Marketing 2010: Sharpening the Conversation," Booz/Allen/Hamilton, ANA, IAB, AAAA, 2008, [http://www.boozallen.com/media/file/HD\\_Marketing\\_2010.pdf](http://www.boozallen.com/media/file/HD_Marketing_2010.pdf) (viewed 12 Oct. 2009).

<sup>9</sup> David Hallerman, “Behavioral Targeting: Marketing Trends,” *eMarketer*, June 2008, pp. 2, 11. Personal copy.

<sup>10</sup> Hallerman, “Behavioral Targeting: Marketing Trends,” p. 1.

<sup>11</sup> For a useful online illustration on the data collection and targeting capabilities of online ad networks, see *Advertising Age's* “Ad Networks+ Exchanges Guide. 2009. <http://brandedcontent.adage.com/adnetworkguide09/lobby.php?id=2> (viewed 14 June 2009).

itself has also grown more complex. That modest little “cookie” data file on our browsers, which created the potential for behavioral ads, now permits a more diverse set of approaches for delivering targeted advertising. We are being intensively tracked on many individual websites and across the Internet. Behavioral targeting and related technologies may provide “marketing nirvana,” as one company explained, but it leaves consumers unaware and vulnerable to an array of marketing communications that are increasingly tied to our financial and health activities.<sup>12</sup>

Health-related marketing may be only a small part of the overall advertising landscape, but it is vitally important. As Rep. Treat has noted, “Direct-to-consumer advertising for prescription drugs has been permitted by the FDA since 1997, and ***there are still no specific rules for marketing to kids and teens....*** According to a 2006 article in the *Journal of Health Economics*, drug companies spend 20-30% of their total budgets on marketing, often double what they spend on research and development. Since 1997, when the FDA relaxed its restrictions on direct-to-consumer (DTC) advertising, DTC has skyrocketed.”<sup>13</sup>

Consumers increasingly rely on the Internet and other online media for health advice and services. The Web, we recognize, is an important source for such information. But consumers seeking health information must be assured of the highest level of privacy protection. Pharmaceutical companies are now using digital marketing services—including what’s called “unbranded” social networks.<sup>14</sup> There are also a growing number of health-related websites offering interactive advertising opportunities for marketers, including “condition-targeted” placement (facilitated by “widgets and viral elements”).<sup>15</sup> Online ad giants, such as Time Warner’s Platform A, have made presentations on “Behavioral Targeting for Pharmaceutical Marketers.”<sup>16</sup> Nor should there be any doubt that youth are active participants in this marketing revolution.

As Leslie, Levine, Loughlin, and Pechman point out, “Adolescents spend substantial time on the internet and they are especially interested in social networking sites and

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<sup>12</sup> “The Rise of On-site Behavioral Targeting,” <http://www.omniture.com/offer/281> (viewed 14 June 2009).

<sup>13</sup> “Written Testimony of Representative Sharon Treat,” p. 2, emphasis in the original.

<sup>14</sup> For example, Digitas Health works with AstraZeneca, Pfizer, Lilly, Merck and others. Digitas Health, “Clients,” <http://www.digitashealth.com/#/work/clients/>. Ogilvy Healthworld provides a range of direct to consumer marketing services, including online. Ogilvy Healthworld, “Direct to Consumer, Direct to Client,” [http://www.ogilvyhealthworld.com/2-5\\_healthworld\\_services\\_dtc.html](http://www.ogilvyhealthworld.com/2-5_healthworld_services_dtc.html) (both viewed 15 June 2009).

<sup>15</sup> See, for example, Waterfront Media, “Advertise with Us,” <http://www.waterfrontmedia.com/advertise-with-wfm.aspx>; Healthline, “2009 Media Kit,” [www.healthline.com/corporate/media/healthline\\_media\\_kit\\_2009.pdf](http://www.healthline.com/corporate/media/healthline_media_kit_2009.pdf) (both viewed 15 June 2009).

<sup>16</sup> Platform A/AOL, “Behavioral Targeting for Pharmaceutical Marketers,” 2006, personal copy.

text messaging. According to Pew, 95% of 12-17 year olds use the internet, 66% use a mobile phone, and 64% use both. Further, 65% of adolescent internet users visit social networking sites such as MySpace and Facebook, and 57% visit video sharing sites. About 65% of youths aged 18 to 29 send text messages. Therefore, adolescents are extensively exposed to digital marketing, by which we mean advertisements, promotions, placements and research that employ the internet or other digital media.”<sup>17</sup> And “...even when children recognize that they are the target of marketing influence,” add Louis J. Moses, “they may nonetheless have difficulty defending against what may be quite powerful marketing tactics. Unlike much of traditional advertising, digital marketing environments tend to be interactive, immersive, alluring, engaging, and motivationally and emotionally rewarding. They also offer the opportunity for individuals to ‘play’ with products for extended periods of time.”<sup>18</sup>

### **Social Media Marketing**

Over the last few years, the growth of social networks has been accompanied by the development of the social media-marketing field. Social networks have now taken behavioral targeting to another level, allowing marketers to commercially target users based both on their online activities as well as on self-disclosed profile information. Few social media users understand the wide range of data tracking and targeting that operates on and via these networks. Our communications on blogs, social networks and other Web 2.0 media are now being analyzed, including for the purpose of targeting what are called key or “Alpha” influencers (people whose opinion sways their network of relationships). As the authors of one recent book on the social media marketing industry explained, “The digitally networked visitor to these social media forms leaves behind footprints, shadows and trails of his or her individual collective endeavours in the form of data; data that enables new type of marketing and communication between and within consumer communications.... Over time, this process will lead to an understanding of the participant’s digital footprint.”<sup>19</sup> Products such as Nielsen’s Buzzmetrics, BuzzLogic (“conversation ad targeting”), Ripple6 and Radian6 are part of this new digital data collection apparatus.<sup>20</sup>

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<sup>17</sup> F. M. Leslie, L. J. Levine, S. E. Loughlin, and C. Pechman, “Adolescents’ Psychological & Neurobiological Development: Implications for Digital Marketing,” Memo prepared for the Second NPLAN/BMSG Meeting on Digital Media and Marketing to Children for the NPLAN Marketing to Children Learning Community, Berkeley, CA, June 29-30, 2009, p. 1.

<sup>18</sup> L. Moses, “Research on Child Development: Implications for How Children Understand and Cope with Digital Marketing,” Memo prepared for the Second NPLAN/BMSG Meeting on Digital Media and Marketing to Children for the NPLAN Marketing to Children Learning Community, Berkeley, CA, June 29-30, 2009, p. 5.

<sup>19</sup> Ajut Jaokar, Brian Jacobs, Alan Moore, and Jouko Ahvenainen, *Social Media Marketing: How Data Analytics Helps to Monetize the User Base in Telecoms, Social Networks, Media and Advertising in a Converged Ecosystem* (London: Futuretext, 2009), pp. 2, 19.

<sup>20</sup> See, for example, Radian6, “Social Media Monitoring and Engagement for Agencies and the Enterprise,” <http://www.radian6.com/cms/solution>; BuzzLogic, “Get Your Ads in Front of Passionate Consumers,” <http://www.buzzlogic.com/advertisers/conversation-targeting.html>; Nielsen Online,

So-called third-party applications, including small pieces of software known as widgets, report information about their users, contributing to industry's data collection practices. For example, RockYou, which has created popular applications available on Facebook and other sites, recently launched its "Social Video Ads and Cross Platform Video Distribution" service. The data it collects with video, it says, "go far beyond impressions. Audience interactions (views, stops, rewinds, sharing) are gauged by the millisecond and response can be measured, in real numbers. Advertisers who can combine that data with behavioral or demographic profiling, to reach exact targets, get amazing results."<sup>21</sup> Another company, Clearspring (which makes many popular widgets), explains that it provides "detailed real-time analytics... to understand where visitors are viewing your widget, where it is spreading from and how people are interacting with it."<sup>22</sup> Kontagent is a "Facebook-funded Partner" that can deliver an "accurate understanding of the demographics of a site's users, how the users are socially linked, and what social interactions occur among the site's users."<sup>23</sup> It can "track" such data points as age, gender, location, number of friends, page views, and unique visits. Kontagent also tracks and measures what it calls the "virality" factor of a social networking application (such as a game), including "invite sent per user" and "invite and notification conversion rates" (meaning how a person responded to the invitation to download an application).<sup>24</sup>

Behavioral targeting is also being used within social networks. For example, Lotame's "behavioral targeting technology... analyzes behavior from consumers who chat-up brands on social media and community platforms...."<sup>25</sup> Its "Crowd

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"Millions of Consumer are Talking—Are You Listening," [http://www.nielsen-online.com/products.jsp?section=pro\\_buzz](http://www.nielsen-online.com/products.jsp?section=pro_buzz); Ripple6, "Revolutionizing Research Through Online Conversations," <http://www.ripple6.com/platform/socialInsights.aspx>; Suresh Vittal, "The Forrester Wave: Listening Platforms, Q1 2009," 23 Jan. 2009, [http://www.nielsen-online.com/emc/0901\\_forrester/The%20Forrester%20Wave%20Listening%20Platforms%20Q1.pdf](http://www.nielsen-online.com/emc/0901_forrester/The%20Forrester%20Wave%20Listening%20Platforms%20Q1.pdf). The Interactive Advertising Bureau recently published "Social Advertising Best Practices," <http://www.iab.net/media/file/Social-Advertising-Best-Practices-0509.pdf>, which discusses some of data capture that occurs within social media, and ways of informing users. (All viewed 14 June 2009).

<sup>21</sup> "RockYou Adds Video to its Ad Network," 3 Feb. 2009, <http://blog.rockyouads.com/?cat=20> (viewed 15 June 2009).

<sup>22</sup> Clearspring, "Documentation: Reporting," <http://www.clearspring.com/docs/reporting> (viewed 15 June 2009).

<sup>23</sup> Kontagent, "Social Network Developers Demand New Class of Viral Analytic Tools," press release, 23 July 2008, <http://www.kontagent.com/about/press/social-network-developers-demand-new-class-of-viral-analytic-tools/> (viewed 15 June 2009).

<sup>24</sup> Kontagent, "The Kontagent Fact Sheet," <http://www.kontagent.com/about/> (viewed 15 June 2009).

<sup>25</sup> Laurie Sullivan, "Lotame's Three-Way BT Deal Measures Attitude, Buzz," *Online Media Daily*, 2 Feb. 2009, [http://www.mediapost.com/publications/?fa=Articles.showArticle&art\\_aid=99440](http://www.mediapost.com/publications/?fa=Articles.showArticle&art_aid=99440) (viewed 15 June 2009).

Control” product “optimizes behavioral targeting by capturing previously unavailable data based on engagement, which is inherent to social media.”<sup>26</sup>

As MySpace explained in 2008 to advertisers, its “HyperTargeting” system allows it to meld registration data (“personal demographic information provided by MySpace users when they become members”) with MySpace Profile Data (“freely expressed information by consumers about their passions and interests”). The result, claims MySpace, is “Next-Generation Targeting.”<sup>27</sup> Nor are MySpace users aware that their data are sent off to a data warehouse each day to be analyzed for “deep insights,” including “real-time analysis to drive [Fox Interactive Media’s] advanced targeted advertising systems.”<sup>28</sup> Such data mining is increasingly part of the structure of the online ad-targeting universe.

Facebook has had several well-publicized incidents involving its collection and use of data. After one recent flare-up, Facebook developed a set of “principles” and a “Statement of Rights and Responsibilities” that involved a discussion and a vote by its users.<sup>29</sup> But we believe that Facebook (and many other social networks and related sites), fail to adequately tell its users about how their data are collected and used. For example, Facebook tells brand advertisers that they can take advantage of a user’s profile: “A profile is any individual’s online representation of self. Through their profiles, people share details about their interests, activities and even contact information.... Reach the exact audience you want with Facebook targeting. The Facebook targeting spectrum ranges from broad reach demographic and geographic preferences like networks and colleges to more granular and specific profile interests.” An examination of Facebook’s media kit—or any similar description by competitors—will reveal a system based on a digitally driven “viral” marketing approach.<sup>30</sup>

The advertising industry is using a broad range of digital marketing practices for reaching and engaging young people, including behavioral targeting, in-game

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<sup>26</sup> “Lotame Receives Multi-Million Dollar Series a Financing in a Round Led by Battery Ventures,” press release, 11 Feb. 2008, <http://www.reuters.com/article/pressRelease/idUS107393+11-Feb-2008+PRN20080211> (viewed 15 June 2009).

<sup>27</sup> MySpace Media Kit, 2008, personal copy.

<sup>28</sup> Aster, “MySpace.com Scales Analytics for All of Their Friends,” 2009, [www.asterdata.com/resources/downloads/casestudies/myspace\\_aster.pdf](http://www.asterdata.com/resources/downloads/casestudies/myspace_aster.pdf); “Data Warehouse Appliance from Sun and Greenplum Powers Hypertargeting for Fox/MySpace,” Greenplum, 24 Sept. 2008, <http://www.greenplum.com/news/106/231/Data-Warehouse-Appliance-from-Sun-and-Greenplum-Powers-Hypertargeting-for-Fox-MySpace/d,blog/> (both viewed 14 June 2009).

<sup>29</sup> Facebook, “Facebook Principles,” 15 April 2009, [http://www.facebook.com/note.php?note\\_id=183540865300](http://www.facebook.com/note.php?note_id=183540865300); Rochelle Garner, “Facebook Creates Site Principles After Users Complain,” *Bloomberg.com*, 26 Feb. 2009, <http://www.bloomberg.com/apps/news?pid=20601103&sid=azLmshQcmBJw&refer=us> (both viewed 15 June 2009).

<sup>30</sup> Facebook, “Media Kit for Brand Advertisers,” personal copy.

advertising, mobile marketing, user-generated ads, viral videos, and immersive, "brand-saturated" environments.<sup>31</sup> While marketers have long studied children and teens, over the last several years they have expanded their research efforts. The major brands and advertising agencies have been concerned that unless they fully understand the interests and motivations of today's digital-savvy global youth, they risk losing their ability to influence and sell. Consequently, many of the leading online companies have conducted research efforts that analyze how young people use technology, communicate online, and view adverts. For example, Microsoft's Digital Advertising division joined forces with MTV in 2007 to produce "Circuits of Cool/Digital Playground," billed as "the largest study of its kind" to explore how young people (8-24 year olds) were interacting with technology around the world. Based on more than 300 hours of interviews and ethnographic studies with 240 10-20 year olds, the report analyzed how 13-17 year olds were "deepening" their "engagement" with the social dimensions of digital technology.<sup>32</sup> The popular social networking site Habbo, similarly, took advantage of its "virtual world and social networking environment" to investigate its 12-18 year old users, including their "personality and attitudes." The resulting 255-page "Global Habbo Youth Survey 2008" analyzed its users' preferences for fast food, beverages, mobile services, and other products. Breaking down its young audience into five "global youth segments" (traditionals, rebels, loners, creatives, and achievers), Habbo reported that such brands as Taco Bell, Coca-Cola, Wendy's, McDonald's, and Subway were among the most popular products within the different groups.<sup>33</sup>

Such research focused on digital youth is designed to provide a marketing map, so brands can both target youth today and better prepare for emerging new trends. Studies are continually being produced that finely detail how many minutes young people "multi-task" and spend on social networks, play videogames, view online programming, chat with friends, listen to music, and text via their mobile devices. Among some of the other leading digital advertising firms involved with youth research are Google, Yahoo, and Nickelodeon.<sup>34</sup> Analyzing the youth market is only a

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<sup>31</sup> Jeff Chester and Kathryn C. Montgomery, "Interactive Food & Beverage Marketing: Targeting Children and Youth in the Digital Age," Berkeley Media Studies Group, May 2007, <http://www.digitalads.org/documents/digiMarketingFull.pdf> (viewed 13 Oct. 2008).

<sup>32</sup> Although three-quarters of the respondents said there was "too much advertising" today, nearly the same number agreed that they "like ads which tell me about new products of interest to me." "New Global Study From MTV, Nickelodeon and Microsoft Challenges Assumptions About Relationship Between Kids, Youth & Digital Technology," press release, 24 July 2007, <http://sev.prnewswire.com/multimedia-online-internet/20070724/NYTU10924072007-1.html>. See also research presented to the Advertising Research Foundation's Youth Council, <http://www.thearf.org/assets/youth-council> (both viewed 10 Oct. 2008).

<sup>33</sup> "Habbo's Second Global Youth Survey Reveals the Digital Profiles of Teens Online," press release, 3 Apr. 2008, [http://www.sulake.com/press/releases/2008-04-03-Global\\_Habbo\\_Youth\\_Survey.html](http://www.sulake.com/press/releases/2008-04-03-Global_Habbo_Youth_Survey.html) (viewed 9 Oct. 2008).

<sup>34</sup> See, for example, "Navigating the Teen Media Experience." Online testing Service, 2008. Available via <http://www.scribemediaweb.com/2008/09/10/teen-media-habits/>. Google's DoubleClick explored the online behaviors of "tweens." See Stuart Larkins, "New Data Shows the Tween Scene is Online,"

part of a more elaborate global online advertising research apparatus. Microsoft, for example, has created "adCenter Labs"—with one based in Beijing—to "incubate" new digital marketing technologies. Yahoo's Bangalore-based lab working on online advertising is exploring "Machine Learning techniques to learn the associations between pages, advertisements and users." Leading ad agencies have also established their own research and development facilities, such as Interpublic's "Emerging Media Lab," which works to "evaluate new media trends and consumer behavior patterns."<sup>35</sup>

## Neuromarketing

Perhaps most alarmingly, marketers are now drawing freely on the latest developments in neuroscience to drive their advertising campaigns, zeroing in on our most intimate needs and vulnerabilities. The Nielsen Company, for example, already well established in the field of traditional audience measurement in more than 100 countries, has extended its reach into the Internet through its "online intelligence" properties—NetRatings and BuzzMetrics.<sup>36</sup> More recently, the company made a "strategic investment" in NeuroFocus, a firm that specializes in the application of brainwave research to advertising, programming, and messaging:

NeuroFocus uses established electroencephalography (EEG) technology to directly measure the brain's reaction to a variety of stimuli. Consumers wear a specially designed baseball cap embedded with sensors that passively track brain responses about 2000 times a second as they interact with advertising or marketing materials. NeuroFocus can precisely and instantaneously determine what parts of the messages they pay attention to; how they emotionally engage with them; and what is actually moved to memory. In addition, NeuroFocus blends eye tracking, galvanic skin response and other physiological parameters to provide a comprehensive solution that augments the brain wave analysis.<sup>37</sup>

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*Chief Marketer*. 29 July 2008,

[http://chiefmarketer.com/Channels/online/tween\\_shopping\\_habits\\_0729](http://chiefmarketer.com/Channels/online/tween_shopping_habits_0729). See also Yahoo's "Truly, Madly, Deeply Engaged: Global Youth, Media and Technology," n.d., [http://www.iabaustralia.com.au/Truly\\_Madly\\_Final\\_booklet.pdf](http://www.iabaustralia.com.au/Truly_Madly_Final_booklet.pdf) (all viewed 14 Oct. 2008).

<sup>35</sup> "adCenter Labs—Innovations in Digital Advertising," Microsoft adCenter Labs, <http://adlab.msn.com/>; Yahoo! Labs, Bangalore, <http://bangalore.yahoo.com/labs/projects.html>; "Lab Services," IPG, <http://www.ipglab.com/tabid/80/Default.aspx> (all viewed 14 Oct. 2008).

<sup>36</sup> Nielsen//NetRatings, <http://www.netratings.com/>; Nielsen BuzzMetrics, <http://www.nielsenbuzzmetrics.com/> (both viewed 25 Sept. 2008).

<sup>37</sup> "Nielsen Makes Strategic Investment in NeuroFocus, An Innovative Leader in Neuromarketing Research," press release, 7 Feb. 2008, [http://www.nielsen.com/media/2008/pr\\_080207.html](http://www.nielsen.com/media/2008/pr_080207.html) (viewed 24 Sept. 2008). David Penn, managing director of UK-based Conquest Research, one of the largest agencies specializing in brand and communications research, offers a more measured assessment of the potential of "neuromarketing": "In fact, most of the exponents of neurological/biological measures are now quick to admit that their techniques are not alternatives, but complements to conventional research—either quantitative or qualitative." David Penn, "Beyond

Other companies have turned to such techniques as eye-tracking studies, galvanic skin response, functional magnetic resonance imaging (fMRI), and electroencephalography (EEG) in an effort to assess the effectiveness of various advertising campaigns. Marketers are particularly interested in research that addresses how "specific patterns of brain activation predict purchasing," the potential "shopping centers in the brain," and the neurological basis of purchasing.<sup>38</sup>

Neurological factors, moreover, appear to play a role in the susceptibility of *older* youth to advertising. As Agnes Nairn observes, "It has commonly been assumed that older children are less vulnerable to advertising because their cognitive capacities have developed sufficiently to equip them with 'coping skills.' However, a growing body of evidence from both the brain sciences and marketing suggests that vulnerability may actually increase during teenage years."<sup>39</sup> Leslie et al. concur: "What does the research on adolescent psychological and neurobiological development suggest about adolescents' response to digital marketing? It indicates that adolescents are more prone to making poor decisions when emotionally aroused. Since digital marketing purposefully evokes high emotional arousal and urges adolescents to make consumption decisions under high arousal, it exacerbates this problem."<sup>40</sup>

Should anyone doubt that youth are squarely in the crosshairs of the interactive advertising arsenal, finally, the examples below should eliminate any questions.

**Betawave**, purveyor of "attention based media, ... helps brands capitalize on activities that have already attracted the audience's time and attention, then transforms that attention into brand engagement by speaking to the audience in a familiar and valued format...."<sup>41</sup>

If it feels like it's impossible to capture the attention of today's short-attention-span teenager, we'd beg to differ. On average, teenagers spent 15 mins per session on our publisher sites and 73.7 mins per month. More

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Neuroscience—Whatever Happened to Neuromarketing?" *Admap*, Jan. 2008, [www.warc.com/LandingPages/Generic/Results.asp?Ref=898](http://www.warc.com/LandingPages/Generic/Results.asp?Ref=898) (purchase required).

<sup>38</sup> Brian Knutson, Scott Rick, G. Eliot Wimmer, Drazen Prelec, and George Loewenstein, "Neural Predictors of Purchases," *Neuron* 53: 147-156; Alain Dagher, "Shopping Centers in the Brain," *Neuron* 53: 7-8.

<sup>39</sup> Nairn, A. (2009). Changing the Rules of the Game: Implicit Persuasion and Interactive Children's Marketing. Memo prepared for the Second NPLAN/BMSG Meeting on Digital Media and Marketing to Children for the NPLAN Marketing to Children Learning Community, Berkeley, CA, June 29-30, 2009, p. 1.

<sup>40</sup> Leslie, et al., "Adolescents' Psychological & Neurobiological Development: Implications for Digital Marketing."

<sup>41</sup> Betawave, "Ad Solutions," <http://betawave.com/audiences/teens.html> (viewed 12 Oct. 2009).

importantly, their mindstate is highly receptive to advertising with stats 118% higher than industry average and 158% more likely to agree that advertisements influence their purchase decisions.

What's our secret? Our selection of casual games, virtual worlds, and social play sites that are in touch with their Teen and Tween audiences. We know how to create content to hold the attention of the American Teenager, but to also keep them coming back for more. Simply put, our sites are much more entertaining than high school economics. Anyone disagree?... Anyone?... Anyone?

#### The Teen's Teen

Our Teen and Tween audience consumes all types of different media, but is addicted to the Internet. The content of our sites appeal to the "Influencers" — the kids who assert their preferences with parents and peers and impact the behavior of others, especially when it comes to fashion and the latest trends.<sup>42</sup>

**Alloy Media + Marketing**, "one of the country's largest providers of targeted media programs," offers a multifaceted Youth Network with separate campaigns for teens, college students, and "young independents."<sup>43</sup>

Ignoring the teen market? LOL. Today's teenager is a force in consumer spending, part of a highly influential \$175B consumer market.

One in three high school seniors carry a credit card. As a group they earn 63% of their income independently from parents and spend it on brands they know and trust.

But teens are exceptionally hard to target, requiring unconventional tools and expertise. Consider that today's teens are:

- Bombarded by choices,
- Demanding of speed and response,
- Savvy in the face of marketing messages,
- "Wired" throughout the day via multiple forms of interpersonal communication like e-mail, IM, cell phones and text messaging.

What's a teen-focused brand to do? Enter Alloy Media's Youth Network.

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<sup>42</sup> Betawave, "Teens 12-17—Audiences," <http://betawave.com/audiences/teens.html> (viewed 12 Oct. 2009).

<sup>43</sup> Alloy Media + Marketing, "About Us," <http://www.alloymarketing.com/aboutus.html> (viewed 12 Oct. 2009).

Our comprehensive services and unparalleled experience continue to make us the obvious teen marketing partner for outstanding companies, large and small. With the industry's widest array of tools and deepest breadth of teen-centric insight, the Youth Network targets teens in their places, on their terms, 24/7.<sup>44</sup>

**Kiwibox**, “the first social networking destination and online magazine where teens produce, discover, and share content,” signed a deal last year with Burst Media to launch the Kiwibox Teen Network,

a premier online advertising network for marketers looking to reach teens. The network is comprised of a select group of teen focused web sites—and is anchored by Kiwibox. Publishers within the Kiwibox Teen Network have the opportunity to share ideas, content, tools, partnerships and marketing opportunities across both the web and mobile.... The Kiwibox Teen Network gives brand advertisers an easy solution for reaching the valuable yet elusive teen audience in a single online media buy that provides comprehensive campaign management and consolidated reporting, while integrating a variety of interactive and engaging campaign elements. The partnership further cements Kiwibox's position as a premier provider of teen content, and places the Kiwibox brand in front of more advertisers looking to reach this audience.<sup>45</sup>

**Tribal Fusion's Teen Channel**, which includes such sites as Student.com, myYearbook.com, and eBuddy.com, tells prospective advertisers that visitors to its sites are

- 2 times more likely than the average Internet user to have spent \$100 to \$199 on female teen clothing/shoes in last 6 months.
- 1.5 times more likely than the average Internet user to have spent \$200 to \$499 on male teen clothing/shoes in last 6 months.
- 1.7 times more likely than the average Internet user to have spent \$100 to \$199 online on consumer electronics in last 6 months.
- 1.7 times more likely than the average Internet user to be a student.<sup>46</sup>

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<sup>44</sup> Alloy Media + Marketing, “The Youth Network: Teens,” <http://www.alloymarketing.com/media/teens/index.html> (viewed 12 Oct. 2009).

<sup>45</sup> “Kiwibox Partners with Burst Media to Create Kiwibox Teen Network,” 28 Oct. 2008, [http://www.burstmedia.com/about/press\\_releases/press\\_10\\_28\\_2008.asp](http://www.burstmedia.com/about/press_releases/press_10_28_2008.asp) (viewed 12 Oct. 2009).

<sup>46</sup> Tribal Fusion, “Teen Channel: The Best Way to Reach Active Online Teens,” <http://tribalfusion.com/channels/teen/print.html> (viewed 12 Oct. 2009).

**AOL's Platform A** advertising unit, which helps its clients target teens, for whom “the web is a playground. It’s a place to socialize, play games, and check out the latest music, videos and blog postings. And you should join them online, because teens hold some heavy purse strings—spending \$200 million of their own money and directly influencing \$300 billion in spending annually.”<sup>47</sup> AOL’s **MediaGlow** brand, meanwhile, “reaches 50% of teens online—that’s 2.1 million teens per day across a wide range of premium sites focused on teen interests. And with AOL Mail, AIM, and diverse blogs and social sites, you can bet they’ll spread the word about stuff they like.”<sup>48</sup>

These are but a handful of the dozens of advertising companies that include teens among their prime demographic targets, unleashing all manner of marketing techniques in their quest to build lifelong brand loyalty. In the face of such an assault, Maine’s effort to protect children and teens from health marketing campaigns that rely on data collection in the absence of parental consent is not only understandable, it is entirely warranted. The *details* of the measure may need to be adjusted in light of the First Amendment concerns that have been raised, but the essence of Chapter 230 remains sound.

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<sup>47</sup> AOL Platform A, “Zack Age 18,” <http://advertising.aol.com/sites/default/files/webfm/consumer-profiles/ZackOneSheet.pdf> (viewed 12 Oct. 2009).

<sup>48</sup> AOL Platform A, “Zack Age 18.”