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FTC's Top Consumer Cop Likes Personalization of Web

David Vladeck Sits Down With Ad Age to Talk About State of Online Advertising, Deception and Facebook

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Issue at hand:

NEW YORK(AdAge.com) -- David Vladeck, the man who in many ways is in charge of policing the internet for the Federal Trade Commission, is not on Facebook. He demurs when asked why, but he makes it clear that it has nothing to do with any personal concerns he may have over potential discretion or dishonesty on the part of the social network.

"My kids are on Facebook," he said in a recent interview. "I do go online, of course. I do some online shopping, and actually I don't enable the do-not-track browsers. I sort of like the personalization. I like that I don't have to go back and reset things."

Mr. Vladeck is nothing if not careful and considered in his statements. But as the director of FTC's Bureau of

Consumer Protection, the former Georgetown Law professor's pronouncements show he has a much more complex and graded view of digital media, despite concerns from some quarters of the ad industry that he and FTC may be overly censorious when it comes to online advertising.

"My view is if you tell people you're collecting information for the singular purpose of delivering targeted ads to make the internet more personal, I don't think most consumers would have a problem with that at all," he said. "But one of our principal concerns here at the FTC is that consumers generally don't realize they're being tracked."

Mr. Vladeck goes on to point out a range of emerging issues in this area, from a lack of sufficient awareness around how marketing (online and offline) may be affecting children to what could be considered sensitive information. "There's no broad consensus on any of those once you start drilling down," he said.

But in clear cases of fraud or deception, Mr. Vladeck has acted swiftly and aggressively. When he was appointed to the FTC's bureau in April 2009, he pushed forward an already planned investigation of a market-research program in which Sears paid consumers \$10 to download a piece of tracking software onto their computers that would monitor how they shopped online. The FTC charged the company's failure to "disclose the scope of the tracking software's data collection was deceptive and violates the FTC Act." Among other things, Mr. Vladeck's office found the software tracked a consumer's bank accounts and drug-prescription records. The retailer settled with the commission last year by destroying all collected data and making any further attempts to track data more prominent and clear.

"Sears, in some ways, was an absolutely classic deception case," Mr. Vladeck said. "Sears enticed people into participating in this program by offering a few dollars but not really telling them what they were doing with the data." While Mr. Vladeck called it a "classic deception case" that hinged on full disclosure and notice, he said it was as much about a consumer's dignity as well.

"David is very compassionate," said Pamela Gilberts, a close friend and former colleague. Ms. Gilberts, who is now a partner at the D.C. law firm Cuneo Gilbert & LaDuca, worked with Mr. Vladeck at the Ralph Nader-run advocacy group Public Citizen in the 1980s and early 1990s. "David's very concerned about the under-represented or the unrepresented and how to make sure that the law treats everybody fairly," she said. "He comes from a family who stood up for the little guy, and that's really part of David's anatomy."

Mr. Vladeck grew up in a family of lawyers in New York, where his father, Stephen, founded a firm specializing in labor law. The family patriarch, Baruch Vladeck, was a noted Jewish labor leader, but it is David Vladeck's mother, Judith, who is perhaps the family's most well-known member. A prominent labor lawyer who worked at her husband's firm, Mrs. Vladeck was noted for her courtroom showmanship and her staunch advocacy of women in the workplace. She brought cases against major Wall Street firms such as Chase Manhattan Bank and corporations such as Union Carbide.

"I think apples don't fall all that far from trees," Mr. Vladeck said, crediting his parents for having seeded his passion for representing the underclasses. "My job at the bureau is to protect those people who might not adequately protect themselves in the marketplace," he said.

While the online marketplace is still a fraction of all commerce, it is arguably the least formed, making it a closely watched area of policy and regulation. There are any number of debates (and lawsuits) centered on consumer privacy vs. digital growth, but the presiding issue is about regulation. The ad industry has a self-regulation policy

where consumers are given information and control over how their online data are being tracked and used and the ability to opt out of being tracked.

In Mr. Vladeck's view, these moves have been commendable, but "the problem is there's no uniform device," meaning not every corner of the internet has enabled the same "opt-out" program. Furthermore, he doesn't think seeing the debate in "opt-out" vs. "opt-in" terms is helpful. "Opt-out" suggests consumers would be defaulted into a tracking ecosystem (which is the current reality), whereas "opt-in" is the opposite.

"I'm sure you've seen opt-ins that are very difficult to use," he explained. "And there are opt-outs that are easy to use and vice versa -- it's a false dichotomy. These terms have no real definition. The question is how do you give consumers real choice?"

Another much-discussed policy fault line is the proposed Do Not Track list, akin to a Do Not Call list, prohibiting marketers from tracking people online. While the idea was recently broached by FTC Chairman Jon Leibowitz in a Senate panel hearing, Mr. Vladeck said it's not a technically viable option for the moment.

In other areas, however, he sees technology that has advanced to potentially harmful levels. For example, he worries the increasingly granularity of online data mining has made it possible to define personally identifiable information, such as name, address or Social Security Number. "The ability to analyze data has grown by leaps and bounds," he said. "And the more granular the data, the more valuable it is.

"The drive now is to push companies and consumers in the direction of aggregating as much data as possible," he said. "What are they going to do with that data? And did they let consumers know what they plan on doing with it?"

Mr. Vladeck has had to quickly learn the often very technical issues around internet advertising, and in doing so has endeared himself to both sides of the debate.

"I briefed David a month prior to him taking over at the bureau," said Jeffrey Chester, executive director of the Center for Digital Democracy and a longtime privacy advocate. "David had only been vaguely aware of issues related to online advertising, but he picked it all up very quickly."

Industry trade group Interactive Advertising Bureau has also met regularly with Mr. Vladeck's office. "I think in many ways David Vladeck is probably the most important decision maker in D.C., because he has real impact on business practices," IAB VP-public policy Mike Zaneis said. "He doesn't have to wait for Congress to move or wait for a majority of FTC commissioners to agree. I think this is his dream job and he's taking it very seriously."

Is this his dream job?

"Dream job?" Mr. Vladeck repeated, when asked. "Well, let's say I'm having a great time. In some ways, this job is now allowing me to do what I've prepared my whole life to do."