

[Pandora Gets Subpoena About Mobile App - Privacy, the Next Big Issue for Digital Media Companies](#)

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As broadcasters pursue their digital future, new legal issues arise to greet their entry into the on-line world and to add to the challenges posed by the new media. Over the last few years, we've have [written extensively about music rights and their impact](#) on webcasters, broadcasters, and other digital media companies. We've talked about [patent law issues](#) that have faced digital media companies. And we've discussed other content issues, like [FTC online sponsorship disclosure requirements](#), that have arisen from time to time. But the one issue that now seems poised to dominate the legal conversation in coming months (or years) is that of privacy. This past week, we saw Pandora announce that it has received a subpoena from a Federal grand jury in connection with an investigation into the use of information collected from various mobile apps, and whether users of these apps were aware of the use of their private information. Other companies apparently received this same request. This investigation is but the tip of the iceberg on privacy issues facing media companies operating in the digital world - challenges coming from the courts and from legislative and administrative initiatives in Washington.

Everyone knows that one of the great benefits of the Internet and the many services available on-line and through mobile apps, is the ability to personalize so as to provide a unique listening or viewing experience for every user. Instead of being limited to the linear programming that a broadcast service provides to all users at the same time, users can tailor their digital media experience to give them what they want and, as wireless broadband penetration increases through smart phones and other devices, almost whenever they want it. In some cases, the costs of providing an individualized service, because of bandwidth needs, royalties and license fees and for other reasons, the cost per each additional listener is often higher than that incurred by the traditional media. And online users thus far have been unwilling to tolerate the commercial advertising load that a traditional media experience might provide. To meet these higher marginal costs, and the lower spot loads, many digital media companies have looked to personalization of advertising to allow for higher advertising rates on the theory that advertising will be more efficient if you can guarantee that it will be targeted to reach its intended audience – geographical, demographic or based on expressed interests. As digital media companies have sought to refine the targeting available through their advertising, privacy issues have arisen.

Many people fear that the information collected by digital media companies will invade their privacy in some way or another. While the current uses of this information is to provide advertisers with the ability to target their advertising at individuals more likely to act on that advertising, and otherwise serve the interests of the user, some have speculated that the information, based on personally surrendered information or from information based on an Internet browsing history, could somehow be compiled and made available for some nefarious purposes (identity theft, personal or professional embarrassment, etc). Others simply don't like the idea that information about them is being gathered for someone else's financial gain (even though that gain is being used to pay for the service that the user is enjoying). Based on these concerns, there have been several reports issued by government agencies, including ones by the Federal Trade Commission and the Department of Commerce (summarized on our firm's *[Broadband Law Advisor Blog here](#)* and *[here](#)*), suggesting more disclosure about information collection and that people be able to opt out of the collection of personally identifiable information. Various legislative efforts to address these issues have arisen, including a *[Bill recently introduced in the House of Representatives by Congressman Bobby Rush](#)*, which would place limits and more open disclosure requirements on the collection and use of personally identifiable information used for behavioral advertising and other purposes. Much discussion has already centered on these questions and no doubt more will be forthcoming if Congress can distract itself from budget issues in the coming months.

At the same time, private attorneys and private parties have entered the fray, as there are already various data security and privacy statutes on the books under both Federal and state laws, filing lawsuits in various jurisdictions challenging companies, including many media companies, of misusing personally identifiable information that they have collected. Often, these suits are based on claims that the information was used in a manner not clearly disclosed in a company's privacy policy. Thus, media companies who collect information need to be very sure that any information that is collected is used in a manner totally consistent with their policies and with any laws limiting the use of private information.

The FTC has also been involved in policing some of these very issues, and we'll soon write about some of the recent consent decrees entered into between media companies and the FTC. As digital media becomes a more and more important portion of the revenues of every media company, and as the ability to gather personal information about individuals who use a site increases, the potential for conflicts between commercial practices and the privacy laws and policies will no doubt increase. So watch this space, and our firm's *[Privacy and Security Blog](#)*, for more information about these topics, and be prepared.

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