

Statement of Principles with respect to spyware

Introduction

The Web Analytics Association (WAA) members are made up of web analytics practitioners, consultants, educators and vendors. Vendors develop and make use of internet-based tools that measure and track online behavior. Certain components of these tools have been confused by some within the online community as constituting spyware. In order to clearly delineate between analytics organizations that promote responsible and ethical practices, from spyware purveyors who engage in deceptive and dishonest practices, the WAA has developed and adopted the following statement of principles with respect to spyware.

1) Members of the WAA will not engage in the deceptive practices that characterize spyware and those who purvey spyware.

Our goal is to be recognized as a credible, responsible and innovative industry. We will strive to be at the forefront of rules and regulations governing online privacy in respect of the consumers' right-to-know. As such, transparency, accountability and consent will be the hallmarks of the practices used by members of the WAA in their software and services. In contrast, purveyors of spyware will be easily recognized by their range of deceptive practices, which may include lack of consent, lack of transparency, the limiting of user control and outright criminal acts (e.g. keystroke logging, password theft, identity theft).

2) The policies and practices of WAA members are open to third party, independent review.

Our members understand that transparency and accountability are the foundations of credibility. This is why they adhere to published company privacy policies, follow long-standing industry best practices to protect the online user, and provide recourse for users to raise issues with senior management. Further, our members were early adopters of technology approaches that support user privacy (such as P3P), as well they are among the first to implement self-imposed regulating guidelines published by the Network Advertising Initiative (NAI). We stand behind and invite scrutiny of our policies and track records, and invite such scrutiny as a means to readily distinguish between organizations with ethical practices against those spyware purveyors with deceptive practices.

3) We believe defining and targeting deceptive practices, as opposed to focusing on the technology, will ultimately lead to better protection of the online user.

Various US state and federal legislative proposals to curb spyware have focused largely on the technology dimension of the issue. In so doing, they have been required to develop technology-based definitions of spyware. The members of the WAA believe that such definitions are problematic given the rapid rate of technological advance and the ability of spyware purveyors to write code "around" the law such that it circumvents the spirit, but not the letter, of the law. The members of the WAA believe that defining spyware as a deceptive practice is more encompassing and poses the greatest opportunity to protect the online user. Accordingly, we adhere to the following definition for spyware:

Spyware is software installed without consumer notice, choice and/or recourse. It is often used for the purpose of engaging in practices that are deceptive and/or of criminal intent.

4) We are committed to educating the public about the benefits of cookies and web beacons, and dispelling the myth that these are spyware.

Cookies and web beacons are not software and therefore cannot execute malicious programs on a users machine. As such, they pose no threat whatsoever to online users. Nevertheless, members of the WAA realize that an aggressive education campaign to raise awareness and understanding of these benign and widespread technologies is needed. We will do so in conjunction with other organizations that recognize the fundamental importance of these technologies to the accurate measurement and quantification of e-commerce and related online activities.

5) The WAA encourages US Federal legislation to establish an anti-deceptive practices (spyware) regulatory framework that is stringent, comprehensive and uniform.

A number of state legislatures have begun to take action to curb the deceptive practices of spyware purveyors. We commend these initiatives and their early response to an emerging problem. However, it is now clear that the scope of the deceptive practices issues is beyond that of any one state to effectively regulate and enforce. There is also the danger of creating a patchwork quilt of regulation across the country and internationally that is at odds with the stateless or transborder nature of the Internet. In addition, legislation to regulate spyware may be written in such a way as to inadvertently extend to cookies, which would place severe restrictions on legitimate businesses.

The WAA therefore adheres to the principle that the online community would be best served by a US federal law that can serve as a model for global enforcement. Such a law should be vigorously enforced and exact heavy penalties on spyware purveyors whose deceptive practices cause harm to, and erode the trust of, online users. We support:

- Providing additional resources to the FTC as per the existing FTC Act, which can further assist enforcement against deceptive spyware practices.
- Bolstering the provisions of the Computer Fraud and Abuse Act to further empower states and other parties the rights to enforce.
- Focusing on the deceptive practices of spyware purveyors and drafting legislation in such a way that legitimate, well-meaning businesses are held harmless against inadequately written laws.

Who we are

The Web Analytics Association (WAA) is an industry trade association that unites and fosters the interests of web analytics practitioners, vendors, consultants and educators and is instrumental in the development of standards, new technologies and practices surrounding the measurement of online business. The WAA also promotes the use of technologies that measure the effectiveness of online business around the world. Founding members include Coremetrics, Google, IBM, Nedstat, Omniture, Visual Sciences, WebTrends, WebSideStory, Yahoo and Walt Disney Internet Group. These companies service tens of thousands of businesses around the world through their software or services in the Web Analytics space.