Law & Disorder

Congressmen blast "supercookies" as privacy menace

By Timothy B. Lee |

In a Monday letter to the Federal Trade Commission, two prominent members of the House of Representatives raised alarm about the use of "supercookies" by popular websites such as msn.com and hulu.com. Citing an August *Wall Street Journal* article, they urged the FTC to investigate the growing use of supercookies as a potential "unfair and deceptive act or practice."

Rep. Joe Barton (R-TX) and Rep. Edward Markey (D-MA) are co-chairs of the Bipartisan Privacy Caucus. In their letter to FTC chairman Jon Leibowitz, they wrote that "we believe the usage of supercookies takes away consumer control over their own personal information, presents a greater opportunity for misuse of personal information, and provides another way for consumers to be tracked online."

So what's a supercookie? Ars asked Ashkan Soltani, an independent privacy researcher who has assisted the *Wall Street Journal* with its privacy reporting. He told us that the term doesn't have a precise definition. Rather, it's "more of a marketing term" for cookie-like strategies for tracking users across browser sessions. Supercookies are typically difficult for users to delete, and Soltani said that's precisely why some less-scrupulous advertisers use them.

In July Soltani was part of a team that uncovered a tracking method using ETags that worked even when the user was in private browsing mode. One of the sites using the technology, Hulu, quickly dropped it and severed ties with KISSmetrics, the company that provided it. KISSmetrics, along with clients such as Spotify and AOL, are now embroiled in a lawsuit arguing that the technology violates privacy laws.

Soltani pointed to Evercookie, a research prototype that demonstrates just how powerful supercookies can be. It stores information about itself in up to a dozen places in the user's browser. And any time information stored in one place disappears (for example, when a user clears his cookies), it is "respawned" using information stored elsewhere. Such "zombie cookies" are extraordinarily difficult for ordinary users to delete.

Browser vendors have tried to keep up with these increasingly aggressive tracking schemes by adding additional user controls. Earlier this year, Google added the capability to delete flash cookies using the same interface as traditional cookies. And an add-on called BetterPrivacy helps users manage Flash cookies on Firefox.

But Soltani thinks this is a losing battle. "It's this constant game of whac-a-mole," he said. "If there's anywhere to store persistent data, companies are incentivized to do so."

He said that as soon as browsers started creating user preferences to control Flash cookies, ad networks started moving to other mechanisms that were harder for users to control. Indeed, he said that some vendors explicitly advertise the fact that their user-tracking technologies are impervious to user cookie deletions.

"I think supercookies should be outlawed because their existence eats away at consumer choice and privacy," Barton said in a statement. "How can you protect yourself from unwanted online tracking or your browsing history when you don’t even know your information is at risk?"

Markey agreed. "Companies should not be behaving like supercookie monsters, gobbling up personal, sensitive information without users’ knowledge," he said.

But Jim Harper, a privacy scholar at the Cato Institute (where I am an unpaid adjunct scholar), isn't convinced action by the FTC is warranted. He expressed skepticism that "a few experts in Washington" were qualified to "figure out the appropriate uses" for Web technology. That game of whac-a-mole, he said, is "part of an ongoing, inarticulate conversation about how these things are going to work." He said policymakers should trust market competition to produce the best outcome.

Harper also noted that few ordinary consumers seem concerned about the issue. "There just isn't a problem here, unless consumers show there is by acting as if there is," he said. And if they do start to care, they can demonstrate their displeasure by refusing to use sites caught using the technique. So far, he said, that hasn't happened.