

Who Brought Cookies?


OCR, DOJ, AND ATTORNEY GENERAL INVESTIGATIONS INTO HEALTHCARE'S USE OF WEBSITE TRACKERS




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Introductions


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What Are Cookies and Pixels?

Two main web technologies play a role in website tracking:

- **Cookies** – small pieces of text sent to a website visitor's browser from the websites they visit. They help that website remember information about the visit to improve web browsing experience. Depending on the user and browser settings, the browser will store cookies locally on the user's device.
- **Pixels** – a Javascript or HTML code snippet embedded on a website that can be used to track visitor activity on that website. By default, pixels will collect information about URLs visited, buttons clicked, and other actions taken by website visitors. Many interact with cookies to track user's activity and preferences to better target advertising. Also known as beacons, trackers, and adtech.

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Pixels: What can be Transmitted?

Always....

Header Information:

- Metadata that instructs an internet browser how to communicate with a website
- Examples of information included in typical HTTP(S) headers:
 - IP address
 - URL of the referring website (where the user came from)
 - Operating system (Windows, MacOS, Linux, etc.)
 - Browser type (Chrome, Safari, Firefox, etc.)
 - Device type (mobile vs. non-mobile)

Device-Browser Information

- Information stored by the device-browser pairing, including first- and third-party cookies
- Pixel code will generally look for the pixel provider's cookie values (Third Party Cookies)
- Most identify a unique device-browser pairing; some can identify account information

Sometimes....User-Driven Information

- Information dictated by a user's interaction with a website
- Examples: pages viewed, buttons clicked, forms completed, accounts logged into or out of, content of forms



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The Markup

Pixel Hunt

Facebook Is Receiving Sensitive Medical Information from Hospital Websites

Experts say some hospitals' use of an ad tracking tool may violate a federal law protecting health information
 By Todd Frazee, Simon Frenkel-Taitel, Angie Waller, and Surya Mattu
 June 16, 2022 08:00 ET

A tracking tool installed on many hospitals' websites has been collecting patients' sensitive health information—including details about their medical conditions, prescriptions, and doctor's appointments—and sending it to Facebook.

The Markup tested the websites of Newsweek's top 100 hospitals in America. On 33 of them we found the tracker, called the Meta Pixel, sending Facebook a packet of data whenever a person clicked a button to schedule a doctor's appointment. The data is connected to an IP address— an identifier that's like a computer's mailing address and can generally be linked to a specific individual or household—creating an intimate receipt of the appointment request for Facebook.

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The Markup Aftermath:

1) Class Actions Pop Up

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA JANE DOE, individually and on behalf of all others similarly situated, Plaintiff, v. META PLATFORMS, INC. F/K/A FACEBOOK, INC., UCSF MEDICENTER, AND DIGNITY HEALTH MEDICAL FOUNDATION, Defendants. Case No.: JURY TRIAL DEMANDED		IN THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION MICHAEL KRACKENBERGER, individually and on behalf of all others similarly situated, Plaintiff, vs. NORTHWESTERN MEMORIAL HOSPITAL, META PLATFORMS, INC., FACEBOOK HOLDINGS, LLC, FACEBOOK OPERATIONS, INSTAGRAM, LLC, Defendants. Case No.: DEMAND FOR JURY TRIAL		UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF NORTH CAROLINA LISA MAUGEL and AFRICA WILLIAMS, on behalf of themselves and all others similarly situated, Plaintiff, v. META PLATFORMS, INC., Defendant. Case No.: COMPLAINT - CLASS ACTION DEMAND FOR JURY TRIAL	
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The Markup Aftermath:

2) State Regulators start investigating entities named in The Markup article

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General

ATTORNEY GENERAL
KARE A. RAGINE
Public Advocacy Division

State of California
DEPARTMENT OF JUSTICE

The California Office of the Attorney General (OAG) has become aware that [Healthcare Provider]'s website may be sending sensitive patient healthcare information to Facebook. As you are aware, on June 16, 2022 the Markup in combination with STAT published an article stating that the Facebook Meta Pixel was installed on numerous hospitals' websites and that the Meta Pixel was collecting and sending sensitive patient information to Facebook. With respect to [Healthcare Provider]'s website, the Markup/Stat article stated: . . .

We are writing to raise concerns the District of Columbia Office of the Attorney General ("OAG") has regarding [Healthcare Provider]'s integration of code into its website(s) which may collect and transmit to technology companies personally identifiable information from [Healthcare Provider]'s patients and potential patients, without providing notice, and in violation of [Healthcare Provider]'s privacy policies.¹

¹ See <https://themarkup.org/privet-hunt/2022/06/16/facebook-is-receiving-sensitive-medical-information-from-hospitals-websites>

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The Markup Aftermath:

3) Healthcare Providers begin notifying patients regarding use of tracking technologies

- August 12, 2022 → **Novant Health Notifies 1.3M Patients of Unauthorized PHI Disclosure Caused By Meta Pixel**
Novant Health informed patients that the use of Meta pixel code, which was used in its patient portal, potentially resulted in an unauthorized disclosure of PHI.
- October 11, 2022 → **WakeMed Announces Meta Pixel-Related Breach Affecting 495,000 Patients**
- October 14, 2022 → **Advocate Aurora Health says 'pixel' data breach may affect 3 million patients**
Giles Bruce - Wednesday, October 19th, 2022

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The Markup Aftermath:

4) OCR Investigates (unrelated to notification, litigation or Markup article)

This Compliance Review has been initiated to determine whether PHI held or maintained by [Healthcare Provider] was or is being impermissibly disclosed to third-party tracking technology vendor(s), such as Google and Meta/Facebook.


2. Please provide:

- The name of any and all third-party data tracking technology vendor(s) or suppliers of web tracking services used by [ENTITY].
- The applications or platforms that third-party data tracking technology is employed on (e.g., EHR, telehealth platform, web-based patient portal, informational websites (e.g., "symptoms of COVID-19") or mobile app, etc.).
- The details of the third-party data tracking technology service provided by vendor(s), including what data is tracked or monitored and for what purpose.
- What data is transmitted to the third-party data tracking technology vendor(s) or suppliers of web tracking services.
- The date a third-party data tracking technology vendor or supplier of web tracking services was first engaged.
- Whether data tracking technology is still being used or the date it ended, and
- A copy of the service agreement(s) and business associate agreement(s) in place with third-party data tracking technology vendor(s) or supplier(s) of web tracking services.

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Office for Civil Rights

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What Have We Learned?


Disconnect between Marketing and Privacy/Compliance teams:

- Privacy/Compliance not involved in analyzing new AdTech and the information transmitted to third parties
- Marketing teams lack governance process, leading to AdTech being used on more pages than is necessary, and staying in place longer than needed
- Website Privacy Policies need work

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Considerations:

- 1) What is being shared **automatically** by the website visitor? Are cookies tied an account with the AdTech provider?
- 2) What is AdTech collecting from our website? Do URLs, Click Events, or Form Inputs indicate sensitive areas of care or health history?
- 3) What is the rationale for sharing visitor information? How do we measure marketing performance?
- 4) Is there a connection between what is being transmitted and the rationale?
- 5) Does the sharing match your website TOU and Privacy Policy?
- 6) What do AdTech provider's terms say about how the information will be used?
- 7) BAA?



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