Privacy plundered as we go deeper into the data mines

BY Phil Rosenthal
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Have you noticed your smartphone is getting smarter? Your computer and tablet seem to know more of your interests, purchases and activities too.

Privacy isn't what it used to be, but you probably know that already. Your devices certainly do.

Everybody thinks of the wired world as connecting us to everything else that's out there, but by now we should be accustomed to how it connects them to us as well, letting them track nearly our every move.

And if that were all it was, we'd hit refresh and move on. But that's not how the cookies crumble.

"I'm more concerned with what happens when some of this information is used for people who are applying for jobs or applying for credit," Julie Brill, a commissioner on the Federal Trade Commission, said by phone. "One phrase that's come up is 'Web-lined.' They get placed in certain categories because they're presumed to have diseases or illnesses based on whatever. Those are the kinds of uses we need to come to terms with and what, as a society, we think ought to be the rules. It is a delicate balance."

One day last week, Google unveiled plans that will enable it to mine a person's Gmail accounts to aid in that person's searches. The next day Google finalized a $22.5 million settlement with the FTC for allegedly bypassing privacy restrictions on Apple's Safari browser (Google did not admit wrongdoing).

The enhanced search will be embraced by some. The settlement — large by FTC standards, but an amount of money that Google needed less than 5 1/2 hours to bring in based on last year's revenue figures — gives pause to others.

"We're trading information for services," said Spencer Weber Waller, a law professor at Loyola University Chicago and director of the Institute for Consumer Antitrust Studies. "We're trading our information to use Google to search. The question is whether we're paying too much or too little. Google knows a lot about us that's very, very valuable."

Not just Google or Facebook or Apple or the other big boys of the digital landscape know a lot. It's your apps and everything else. Information about users is what powers the search engines, pays for free content, and many of the other advantages and services of the digital world.

"Privacy is very important. Privacy needs protection. Companies need to act responsibly and sensibly. They need to give us respect and power. All that is true," said Jeff Jarvis, author of "What Would Google Do" and "Public Parts: How Sharing in the Digital Age Improves the Way We Work and Live." "But if we carry this moral panic about privacy too far, it could greatly affect the freedom of the Net, which is changing the world, and its power as a tool of disruption. That frightens me even more."
This isn't the first time we've confronted the notion of technology delivering a more finely rendered picture of us, and the concerns that accompany it.

"The first serious discussion of the legal right to privacy in the United States did not occur until the year 1890, and the reason for this was the invention of the Kodak camera because that, too, freaked people out," Jarvis said in an interview. People were going "'Oh, my God! You can take my picture anywhere and it can appear in the press and be seen by anyone?'

"There were stories in The New York Times at the time about 'fiendish kodakers' — small 'k' — lying in wait. A Vanderbilt heir horsewhipped a kodaker for daring to take his picture in public. President Teddy Roosevelt banned kodaking in Washington parks for a time. But obviously we figured it out. We got used to it. We said when it's OK to take a picture, when it's not OK to take a picture. Now people want to have their picture taken, and everybody owns a camera and it's OK."

We're going through a similar adjustment now with the far more disruptive technology.

The FTC has some jurisdiction through existing consumer protections, such as the Fair Credit Reporting Act. Google and Facebook are among those agreeing to FTC audits of how well they're handling privacy concerns, which Brill said they're taking seriously.

"But outside the FCRA rubric, meaning uses for employment, insurance, credit, housing, we don't have good rules in place," Brill said. "The health context, for example, we need to come to better terms with. ... We want to have the wonders of Google search. But also targeted advertising, which is based on your interests across the Web, fuels much of the free content you get to see ... like newspapers. ... But it's also these other uses, where it's going to be used for substantial decisions about consumers' lives. That's where we need to decide as a society whether this is OK or whether we think that more rules need to be put into place."

The European Union has been fairly strict. Some of its restrictions raise civil liberty objections in the United States, despite worries about what companies will do with the information gleaned.

It might be great if your supermarket sends you a sale price when you're nearby. But what if the same market never gives you a discount because it knows you absolutely need a certain item?

"It allows price discrimination," Waller said in an interview. "Price discrimination can mean the kindly country doctor charging a poor farmer less. But it can also mean they know what you need, when you need it and can charge you more when you don't have a choice. That's serious."

History nonetheless tells us two things: The data-mining technology and applications of it will only get better, and we're going to get used to it. We always do.

As Casey Stengel used to say, "You could look it up." But if you do, Google might get the idea you're an old-time New York baseball fan and flood you with ads for pinstriped flannel jerseys.