

# Marketing in a Multi-Device World

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## Update on Cross Device Tracking

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### Presenters

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# Overview

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- Background on Cross-Device Tracking
- FTC Enforcement
- DAA Self-Regulatory Framework
- **\*NEW\*** FTC Staff Report on Cross-Device Tracking
- Best Practices

# Background on Cross-Device Tracking



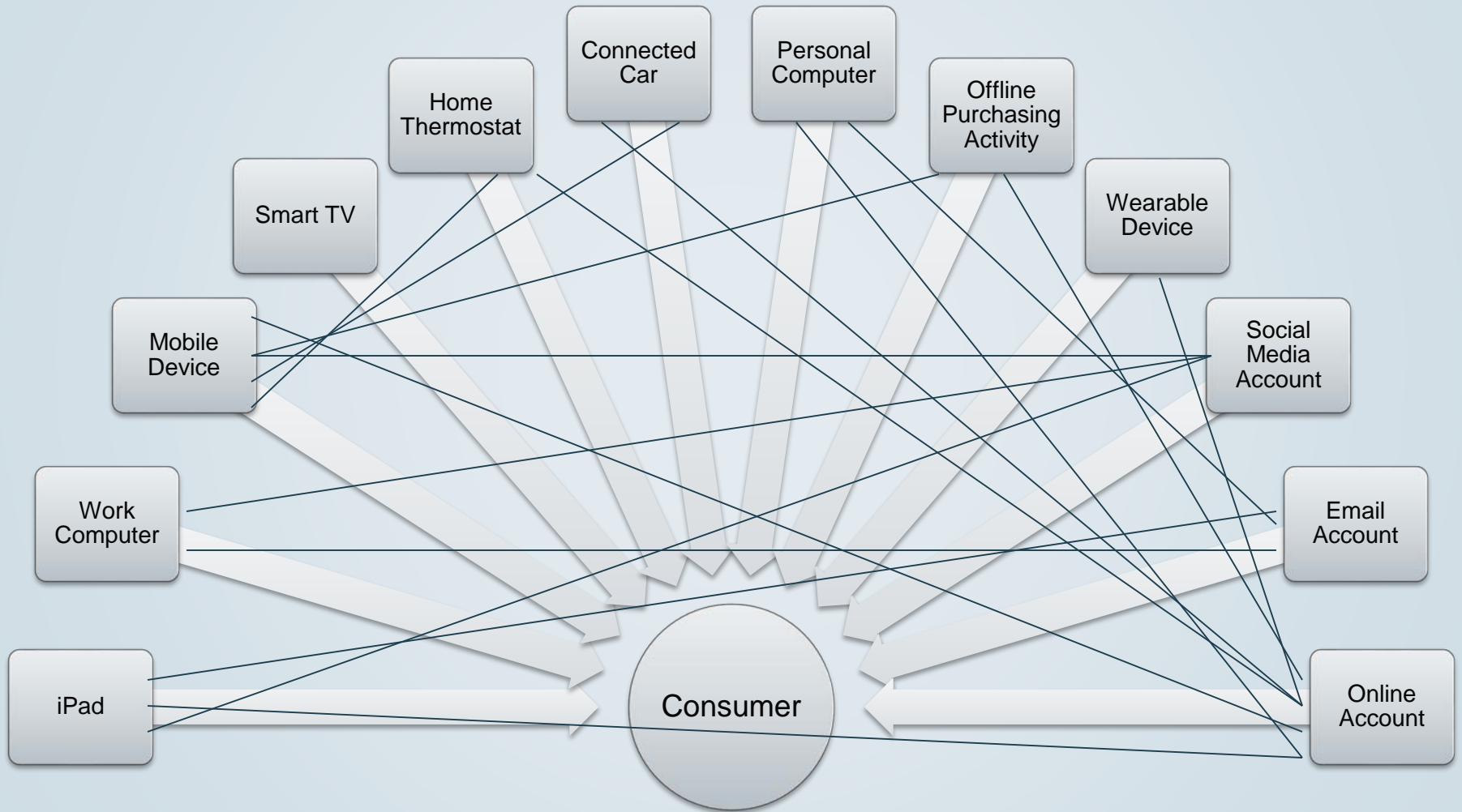
# Single Device vs. Cross-Device Tracking

- Single Device OBA
  - Browsing for shoes on a desktop computer, and then later targeted for an ad on same computer for shoes
- Cross-Device Tracking
  - Browsing for shoes on a desktop computer, and then later targeted for an ad on a tablet which has been “linked” to the same user

# What is Cross-Device Tracking?

- Tracking a consumer's online activity among various devices, apps, and browsers to create a more-detailed user profile than what is available through cookies alone
- **Deterministic Linking (DL)**
  - Persistent identifier -- user logs in to app, platform, etc. on devices
  - Accurate but limited reach
- **Probabilistic Linking (PL)**
  - Build a graph based on statistical/predictive models
  - IP address, WiFi networks, location, websites browsed, ads displayed, device type, operating system, cookies, mobile device IDs, time of day, etc.

# Potential Cross-Device Profile Sources



# Benefits of Cross-Device Tracking

- **Marketing benefits**

- More ways to reach a consumer
- Better targeted ads/offers (content, format, location, timing, frequency)
- Cap the number of times a consumer sees the same ad
- Better attribution

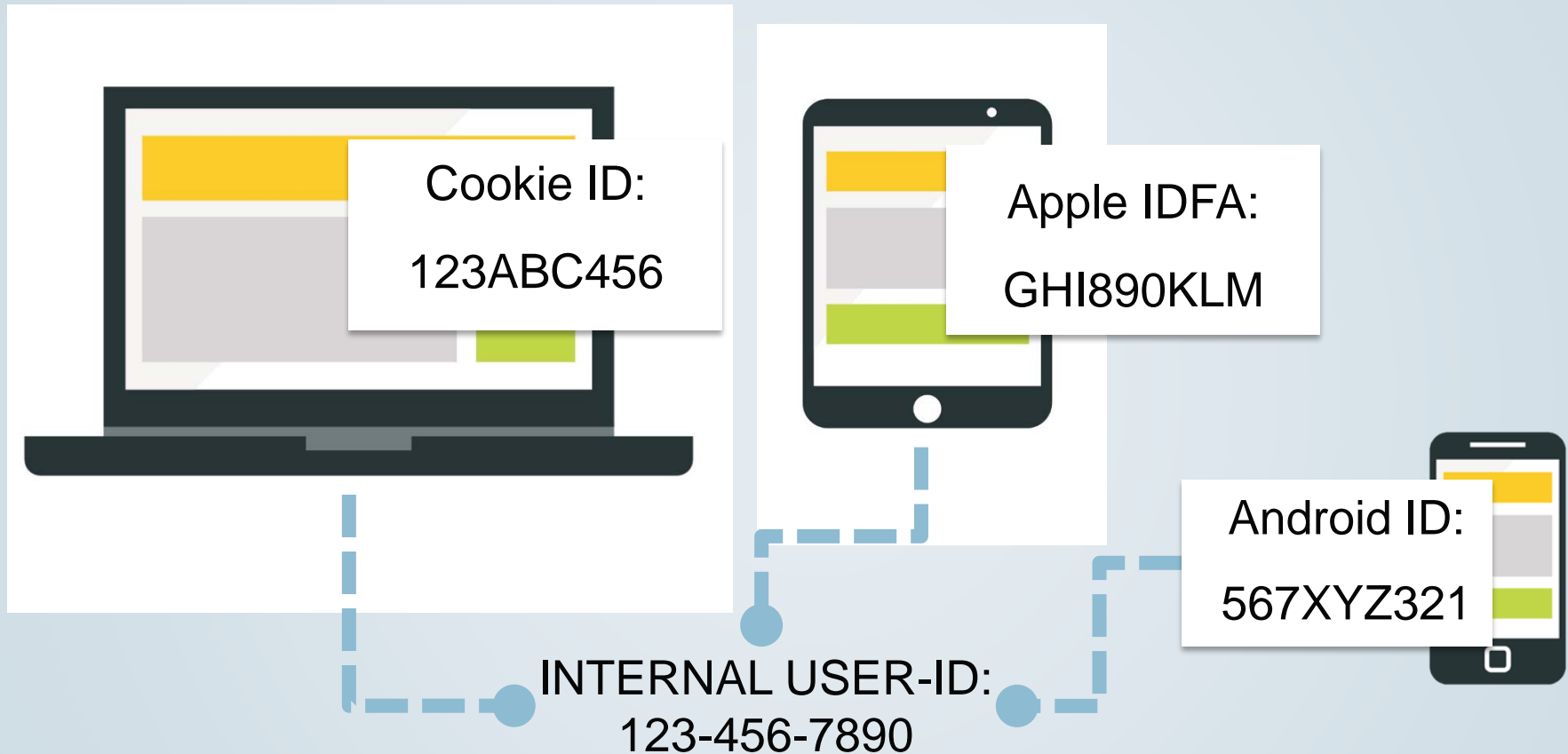
- **Interoperability benefits**

- Users can seamlessly pick up where left off on one device, or have the same bookmarks in the browser

- **Fraud prevention**

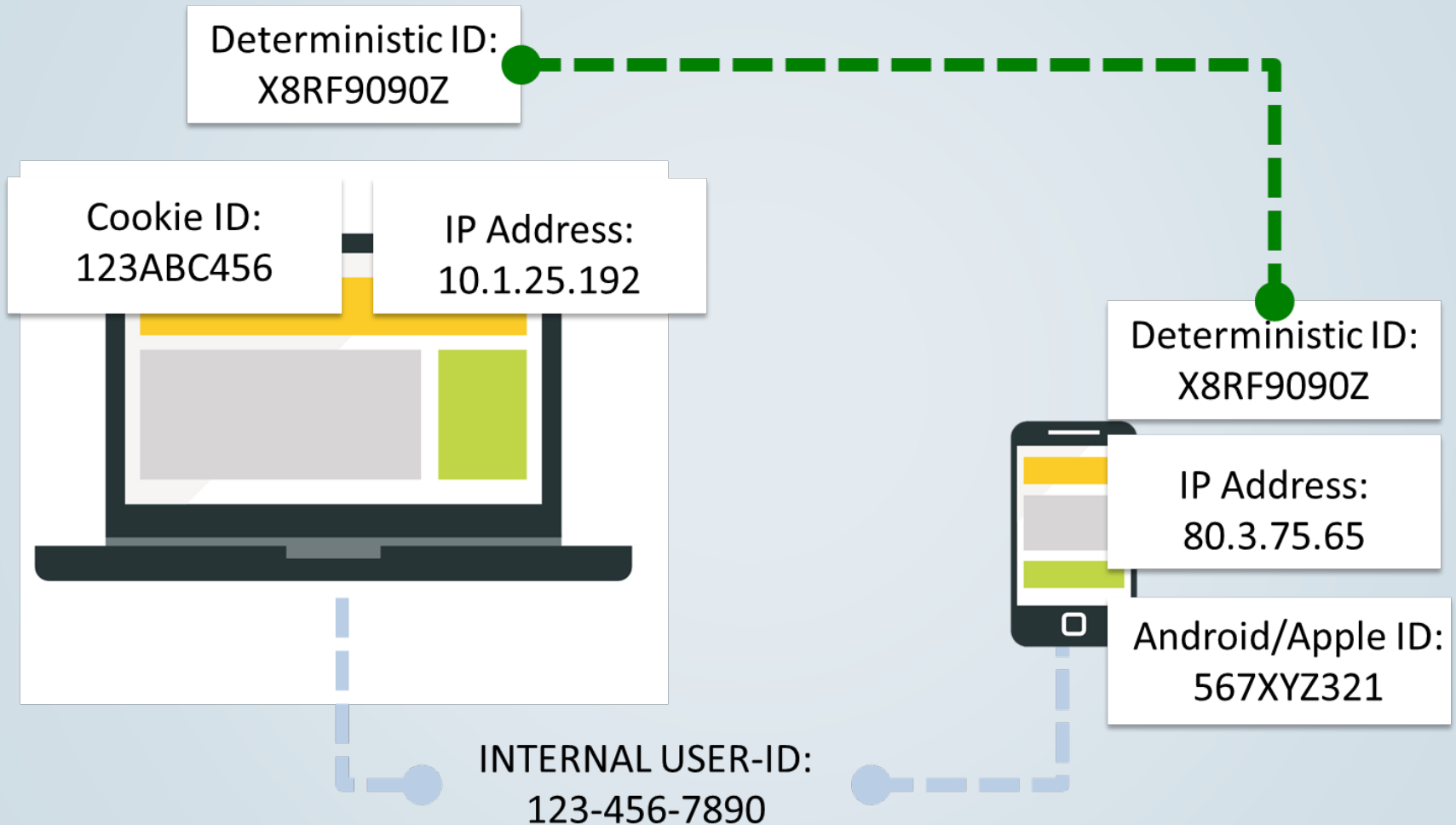
- Learn which devices typically access consumer accounts, or send alerts when new devices are used to access accounts

# How Cross-Device Tracking Works

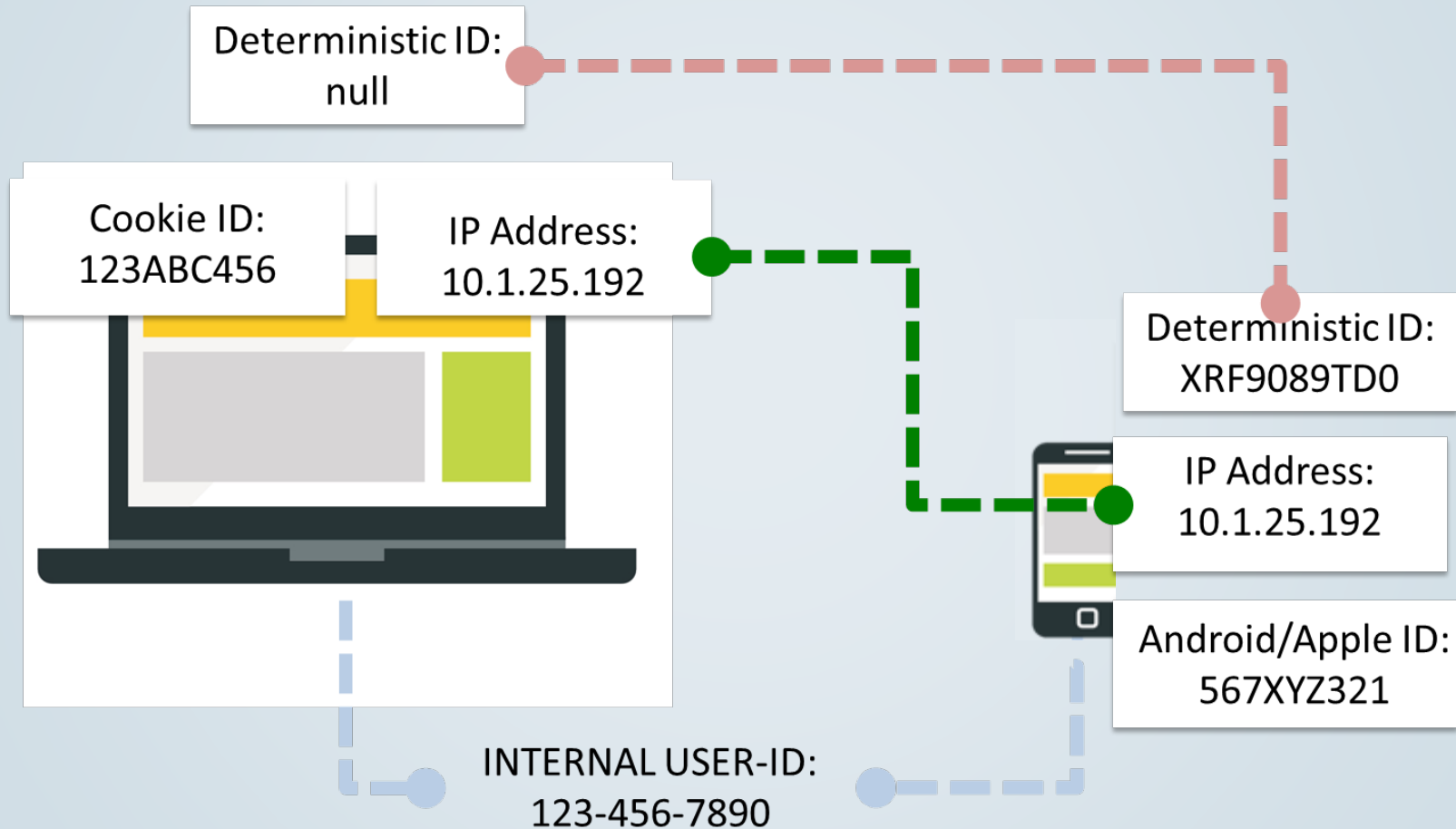




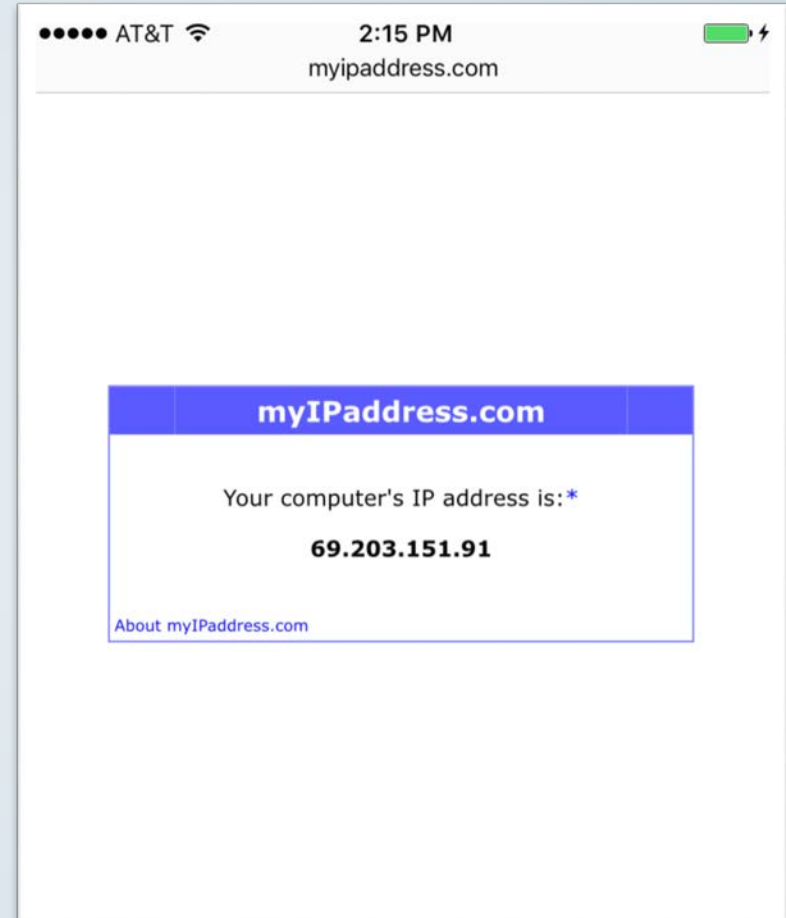
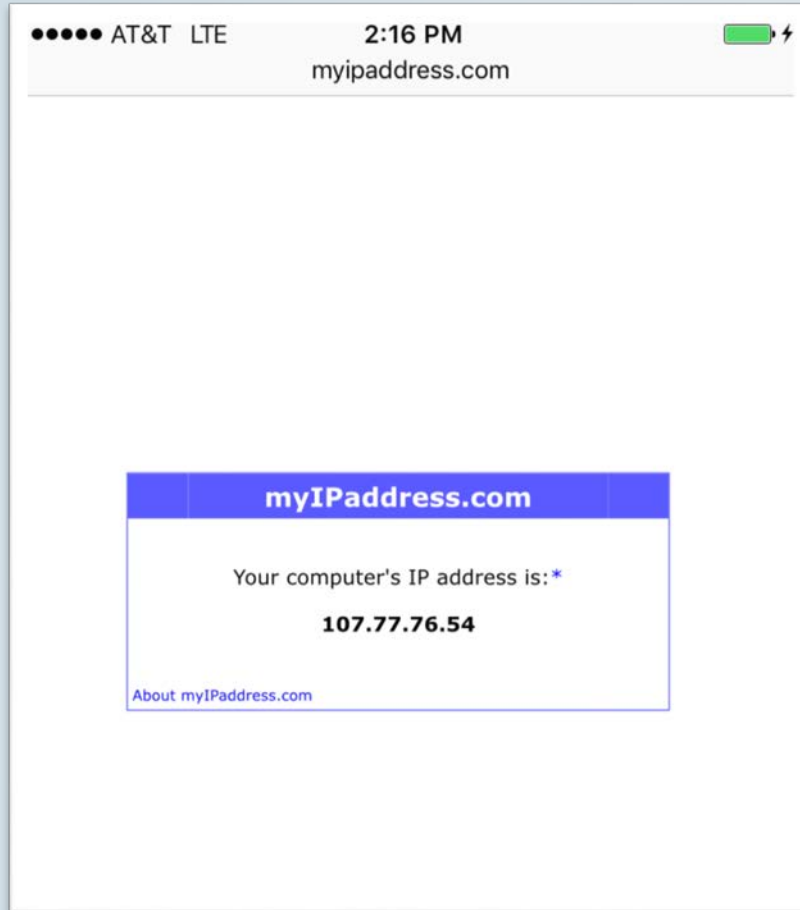
# How Cross-Device Tracking Works



# How Cross-Device Tracking Works



# How Cross-Device Tracking Works



# FTC Role and Enforcement



FEDERAL TRADE COMMISSION  
PROTECTING AMERICA'S CONSUMERS



CROSS-DEVICE  
TRACKING



# FTC Action Related to Cross-Device Tracking

- FTC Workshops
  - Cross-Device Tracking (Nov. 2015)
  - Smart TV (Dec. 2016)
- Enforcement
  - Nomi Technologies
  - COPPA Cases (LAI Systems, Retro Dreamer)
  - Silverpush Warning Letters
  - Turn, Inc.

# Nomi Technologies



- FTC's first case against a retail tracking company
- Technology allowed retailers to track consumers' movements through their stores
- Allegations: Promised opt-out mechanism and implied consumers would be informed when stores were using technology
- April 2015 settlement

# LAI Systems and Retro Dreamer



- Two app developers with games directed at children
- FTC alleged violations of COPPA
  - allowed third-party advertisers to collect personal information from children (e.g., persistent identifiers)
  - failed to inform the ad networks that the apps were directed to children
  - did not provide notice or get consent from children's parents for collecting and using the information
- December 2015 settlement; \$360,000 civil penalties

# Silverpush Warning Letters



- Sent to app developers using Silverpush technology
- Software designed to monitor consumers' television use through the use of "audio beacons" emitted by TVs, which consumers can't hear but can be detected by the software
- Letters warned that if statements or user interface state or imply that the apps in question are not collecting and transmitting television viewing data when in fact they do, that the app developers could be in violation of Section 5 of the FTC Act
- March 2016



# Turn, Inc.



- Company that enables sellers to target digital advertisements to consumers allegedly tracked millions of consumers online and through mobile apps even if they had taken steps to block or limit tracking
- December 2016 settlement; proposed consent order
  - Bars Turn from misrepresenting the extent of its online tracking or the ability of users to limit or control use of their data
  - Requires effective opt-out for consumers who do not want their information used for targeted advertising
  - Requires a prominent hyperlink on home page that takes consumers to a disclosure explaining what information the company collects and uses for targeted advertising

# DAA Self-Regulatory Framework



# DAA, NAI, and Self-Regulation

- About DAA and NAI
- Two key principles: transparency and consumer control
- November 2015 guidance: Application of the Self-Regulatory Principles of Transparency and Control to Data Used Across Devices
  - Enforcement begins February 1, 2017
- NAI considering best practice recommendations
  - Application of Choice
  - Transparency

# FTC Staff Report (Released January 23)

## AN FTC STAFF REPORT

Federal Trade Commission  
January 2017



# FTC Staff Report

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- Describes the FTC's November 2015 Cross-Device Tracking Workshop
  - How cross-device tracking works
  - The benefits and challenges of cross-device tracking
  - Industry efforts to address the privacy and security implications of this practice
- Recommendations to businesses on how to apply the FTC's longstanding privacy principles to cross-device tracking

# Best Practices



**FEDERAL TRADE COMMISSION**  
PROTECTING AMERICA'S CONSUMERS



DIGITAL  
ADVERTISING  
ALLIANCE



**NAI**  
Network Advertising Initiative

# Best Practices for Cross-Device Tracking

- Transparency/Disclosure
  - Provide truthful disclosures to consumers and to the first-party companies on whose websites and apps they appear, so that these first parties can in turn make truthful disclosures to consumers
  - Disclose data collected, data transferred to third parties, collection of precise location data
  - NAI has current guidance on Beyond Cookies which requires real-time notice of use of non-cookie technology; exploring extension of this to cover cross-device graph linking for browsers

# Best Practices for Cross-Device Tracking

- Control/Choice
  - Opt-out to cover all linked browsers/devices as a best practice vs. per-device
  - Some have advocated for a single opt-out that would apply across consumers' browsers, smartphones, tablets, and smart devices, but technical challenges and other concerns
  - Be clear about scope and limits of opt-out
    - Method of tracking (any remain after opt-out?)
    - All devices vs. per-device
  - Respect opt-out choices



# Best Practices for Cross-Device Tracking

- Sensitive Data
  - FTC staff recommends that companies refrain from engaging in cross-device tracking on sensitive topics, including health, financial, and children's information, without consumers' affirmative express consent
  - NAI Code requires members to obtain consumers' opt-in consent before using sensitive data or precise location information for interest-based advertising
    - NAI Code defines sensitive health information broadly as “information, including inferences, about sensitive health or medical conditions, or treatments.”

# Best Practices for Cross-Device Tracking

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- Security
  - FTC Act requires companies to maintain reasonable security
  - Keep only the data necessary for business purposes
  - Properly secure collected and maintained data

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# Questions?



# Happy Data Privacy Day!

January 28, 2017

An international effort to create awareness about the importance of privacy and protecting personal information.

**KELLEY**

**DRYE**