

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JAMES GRAY and SCOTT HORTON,  
individually and on behalf of others similarly  
situated,

Plaintiffs,

v.

AMAZON.COM, INC., a Delaware  
corporation, and AMAZON.COM SERVICES  
LLC, a Washington limited liability company

Defendants.

No. 2:22-cv-800-BJR

ORDER GRANTING DEFENDANTS'  
MOTION TO DISMISS

**I. INTRODUCTION**

Plaintiffs James Gray and Scott Horton (“Plaintiffs”) brought this putative class action against Defendants Amazon.com, Inc. and Amazon.com Services LLC (together, “Amazon” or “Defendants”), asserting various claims arising from Amazon’s alleged use of voice data collected through its Alexa digital assistant software for purposes of targeted advertising. Presently before the Court is Defendants’ motion to dismiss Plaintiffs’ Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Dkt. 37. Having reviewed the pleadings, the record of the case, and the relevant legal authorities, the Court GRANTS the motion. The Court’s reasoning is set forth below.

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## II. BACKGROUND<sup>1</sup>

### A. Factual Background

#### 1. Alexa

Amazon's Alexa is a voice-activated digital assistant software that runs on various devices sold by Amazon – including the family of “Echo” smart speakers – and other companies with which Amazon partners. Compl. ¶¶ 15-17. Alexa-enabled devices, all of which contain a microphone, perform a wide range of functions that are prompted by users' voiced commands and questions, such as turning on a television program, obtaining the day's weather forecast, and making purchases from Amazon.com. *Id.* ¶¶ 18-19. To interact with Alexa, a user must first say the “wake word” – which is “Alexa” – before speaking aloud their inquiry or command (*e.g.*, “what is the weather in Seattle tomorrow?”). *Id.* ¶ 18. Alexa will then respond with an audible answer or by performing the user's command. *Id.* For example, to place an order for orange juice on Amazon.com, a user may say, “Alexa, order more orange juice.” *Id.* ¶ 19. Today, there are more than 40 million Alexa-enabled devices operating within the United States. *Id.* ¶¶ 16, 20.

#### 2. Terms Governing Alexa's Use

In addition to the Alexa Terms of Use (the “Alexa Terms”), which contain the primary terms and conditions governing Alexa's use (Declaration of Brian Buckley (Buckley Decl., Dkt. 38), Ex. A), Amazon relies on numerous other policies to set forth terms addressing specific aspects of Alexa and Alexa-enabled devices. Compl. ¶ 35.<sup>2</sup> Plaintiffs point to the “Alexa and Alexa Device FAQs” (the “Alexa FAQs”) and the Amazon Device Terms of Use (the “Amazon

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<sup>1</sup> The facts recited below are taken from Plaintiffs' Complaint (“Compl.,” Dkt. 1). For the purposes of the present motion, the Court takes the factual allegations in the Complaint as true.

<sup>2</sup> While Plaintiffs do not identify them all, the Complaint alleges that “Amazon purports to bind Alexa users to terms and conditions in at least 13 separate documents.” Compl. ¶ 35 (emphasis removed).

Device Terms”) as explaining, in part, the features and functionality of Alexa and Alexa-enabled devices. The Alexa FAQs state, in relevant part:

Alexa uses your voice recordings and other information, including from third-party services, to answer your questions, fulfill your requests, and improve your experience and our services. We associate your requests with your Amazon account to allow you to review your voice recordings, access other Amazon services (e.g. so you can ask Alexa to read your Kindle books and play audiobooks from Audible), and to provide you with a more personalized experience.

*Id.* ¶ 36. Similarly, the Amazon Device Terms explain:

Your Amazon Device may have features that allow you to access Alexa voice services or otherwise use your voice to perform certain tasks, such as check the weather, add a calendar entry, perform a search, or operate other connected products. When you use voice services, we may process your voice input and other information (such as location) in the cloud to respond to your requests and to improve your experience and our products and services.

*Id.* ¶ 38.

The Alexa Terms expressly incorporate the Amazon.com Privacy Notice (the “Privacy Notice”),<sup>3</sup> which describes Amazon’s practices of collecting and using personal information across its services and products. Buckley Decl., Ex. B. That notice, which is discussed in greater detail below, states in its preamble: “We know that you care how information about you is used and shared, and we appreciate your trust that we will do so carefully and sensibly.” Compl. ¶ 113; Buckley Decl., Ex. B at 1. The Privacy Notice also states that Amazon “*use[s] your personal information to display interest-based ads for features, products, and services that might be of interest to you.*” Buckley Decl., Ex. B. at 2 (emphasis added).<sup>4</sup>

<sup>3</sup> The Alexa Terms’ preamble states that the Alexa Terms and the Privacy Notice, among other policies, comprise the “Agreement” to which users must agree as a condition to using Alexa. Buckley Decl., Ex. A at 1. That preamble further directs users to review the Privacy Notice before using Alexa. *Id.* (“Before using Alexa, please read ... the [] Privacy Notice ...”).

<sup>4</sup> Plaintiffs do not object to the Court’s consideration, pursuant to the “incorporation by reference” doctrine, of exhibits submitted by Defendants reflecting Amazon webpages containing full versions of the Alexa Terms and the Privacy Notice. Buckley Decl., Exs. A-B; *see United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003) (“Even if a document is not attached to a complaint, it may be incorporated by reference into a complaint if the plaintiff refers extensively

### 3. Amazon's Public Statements Concerning its Use of Voice Recordings and Plaintiffs' Allegations as to Subsequent Revelations

Plaintiffs allege that Amazon, over the course of several years, has consistently denied that it collects and uses Alexa users' voice data in order to serve targeted advertisements to them. Plaintiffs point, specifically, to three separate statements, made by Amazon spokespersons between 2017 and 2019 in response to media reports about Alexa, that Amazon does "not use customers' voice recordings for targeted advertising." Compl. ¶ 26 (2017 statement to local news station); *id.* ¶ 27 (2018 statement responding to New York Times article); *id.* ¶ 28 (2019 statement responding to NBC report). Plaintiffs also point to a 2020 on-air CNBC interview, during which Amazon's Senior Vice President of Devices and Services stated, in response to a question about whether Amazon was using Alexa-generated data for advertising purposes, that Amazon was "not experimenting with [targeted advertising] yet." *Id.* ¶ 29.

Plaintiffs claim that, contrary to Amazon's repeated denials, Amazon has been employing Alexa-captured voice data in its Demand Side Platform ("DSP"), which Plaintiffs allege is a service Amazon offers to third-party advertisers that "leverage[s] all of the data Amazon collects about its customers in order to sell targeted advertising ... based on that data." Compl. ¶¶ 45-50.<sup>5</sup> Plaintiffs allege that the truth was revealed by a research paper entitled, *Your Echoes are Heard: Tracking, Profiling, and Ad Targeting in the Amazon Smart Speaker Ecosystem* (the "Research Paper"), that was published in April 2022 by a group of university researchers. *See* Umar Iqbal, et al., *Your Echos are Heard: Tracking, Profiling, and Ad Targeting in the Amazon Smart Speaker*

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to the document or the document forms the basis of the plaintiff's claim."'). Plaintiffs do object, on the other hand, to the Court's consideration of an exhibit reflecting a separate Amazon webpage, entitled "Interest-Based Ads," that describes Amazon's practices as to interest-based advertising. *See* Buckley Decl., Ex. C. The Court need not determine whether that exhibit may properly be considered given that it is not necessary to grant Defendants' motion.

<sup>5</sup> According to Plaintiffs, Amazon, through its DSP, auctions off advertising space – both on Amazon's platforms and on third-party websites – to advertisers through an assortment of ad exchanges. Compl. ¶¶ 50-68.

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1 *Ecosystem*, ALEXAECHOS.COM, <https://arxiv.org/pdf/2204.10920.pdf> (rev. May 11, 2022). The  
2 researchers conducted a series of experiments in which they exposed different “interest personas”  
3 (*i.e.*, simulated persons having unique interests, such as fashion) to Alexa through separate Echo  
4 devices, and then observed, among other things, the advertisements displayed to each of them  
5 relative to those displayed to simulated “control personas.” *Id.* While the Research Paper does  
6 not find any evidence that Amazon is sharing voice recordings or transcripts thereof with  
7 advertisers, it concludes that “Amazon processes voice data to infer user interests and uses it to  
8 serve targeted ads on-platform (Echo devices) as well as off-platform (web).” *Id.* at 1, 11-12, 16.

10 Following the Research Paper’s publication, Amazon issued a press statement outlining its  
11 use of transaction data generated through Alexa for purposes of targeted advertising. Compl. ¶ 32.  
12 The statement explained, by way of example:

13 [S]imilar to what you’d experience if you made a purchase on Amazon.com or  
14 requested a song through Amazon Music, if you ask Alexa to order paper towels or  
15 to play a song on Amazon Music, the record of that purchase or song play may  
16 inform relevant ads shown on Amazon or other sites where Amazon places ads.

17 *Id.* Thus, Defendants’ position is that Amazon uses the records of Alexa users’ transactions to  
18 inform advertisements displayed to them, but does not use recordings of Alexa users’ questions or  
19 commands – *i.e.*, their “voice recordings” – for that purpose.

## 20 **B. Procedural Background**

21 Plaintiffs, both of whom own and use Alexa-enabled devices, filed this lawsuit on June 8,  
22 2022 as a class action on behalf of “[a]ll persons residing in the United States who are registered  
23 users of an Alexa-Enabled Device and have been served targeted advertisements by Amazon  
24 through its DSP.” Compl. ¶ 94. On August 12, 2022, Defendants moved to dismiss the Complaint  
25 pursuant to Rule 12(b)(6) of the Rules of Federal Procedure. Plaintiffs opposed the motion  
26 (Dkt. 41 (Opp.”)), and Defendants replied (Dkt. 43 (“Rep.”)).

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