

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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.

II. BACKGROUND¹

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. ¶ 35.² Plaintiffs point to the “Alexa and Alexa Device FAQs” (the “Alexa FAQs”) and the Amazon Device Terms of Use (the “Amazon

¹ 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.

² 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).

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

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

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

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

12 *Id.* ¶ 38.

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

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

⁴ 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
ORDER - 3

1 **3. Amazon’s Public Statements Concerning its Use of Voice Recordings**
2 **and Plaintiffs’ Allegations as to Subsequent Revelations**

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

14 Plaintiffs claim that, contrary to Amazon’s repeated denials, Amazon has been employing
15 Alexa-captured voice data in its Demand Side Platform (“DSP”), which Plaintiffs allege is a
16 service Amazon offers to third-party advertisers that “leverage[s] all of the data Amazon collects
17 about its customers in order to sell targeted advertising ... based on that data.” Compl. ¶¶ 45-50.⁵
18 Plaintiffs allege that the truth was revealed by a research paper entitled, *Your Echoes are Heard:*
19 *Tracking, Profiling, and Ad Targeting in the Amazon Smart Speaker Ecosystem* (the “Research
20 Paper”), that was published in April 2022 by a group of university researchers. *See* Umar Iqbal,
21 *et al.*, *Your Echos are Heard: Tracking, Profiling, and Ad Targeting in the Amazon Smart Speaker*

23 _____
24 to the document or the document forms the basis of the plaintiff’s claim.”). Plaintiffs do object, on the other hand, to
25 the Court’s consideration of an exhibit reflecting a separate Amazon webpage, entitled “Interest-Based Ads,” that
26 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.

⁵ 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.

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.”)).

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.