

European Industry Self-Regulatory Framework for Online Behavioural Advertising

April 2011

Introduction

The undersigned companies (the “Companies”) have developed this European self-regulatory Framework (the “Framework”) for Online Behavioural Advertising (“OBA”). The Framework lays down a structure for codifying industry good practices and establishes certain Principles to increase transparency and choice for web users within the EU/EEA which are binding upon the Companies and Associations. The associations listed at the end of this document (the “Associations”) have been working jointly on this Framework and support its promotion across the advertising ecosystem. The Principles contained herein are intended to apply consumer friendly standards to Online Behavioural Advertising and the collection of online data in order to facilitate the delivery of advertising based on the preferences or interests of web users. It does not seek to regulate the content of online advertisements nor does it regulate Ad Delivery (as defined below).

Application of the Framework and the Principles

There are a number of differing laws which may apply to OBA, particularly in cases where the data collected or processed relates to an identified or identifiable natural person and thereby comprises personal data. The Principles assist and encourage Companies to design into their systems and contracts a framework for compliance with applicable law as well as establishing protections for areas that are un-regulated. Given that the applicable law varies from country to country, compliance with these Principles does not guarantee compliance with any applicable law and is not a substitute for such compliance. These Principles provide direct benefits to web users, in particular by standardising consumer notices on web sites or within advertisements, and by creating simple mechanisms for accepting or declining OBA, even though personal data is not implicated. Web users may make complaints about incidents of suspected non-compliance with the Principles against the Companies by following the procedures set out in the Principles.

The Framework applies to OBA focusing on web viewing behaviour over time and across multiple web domains not under Common Control in order to create interest segments or to allocate such viewing behaviour against interest segments for the purposes of delivering advertisements to and by that web user’s interests and preferences.

The Framework does not apply to web viewing behaviour for a particular web site or related web sites under Common Control. The Framework applies across the Internet “ecosystem”. The Framework has separate provisions for Web Site Operators, Third Parties and providers of desktop application software that engage in OBA. The Framework recognises that a Company may conduct a number of different activities, and therefore the Framework recognises that different Principles and types of notice and consent may therefore be applicable to each different activity.

Definitions

Ad Delivery

Ad Delivery is the delivery of online advertisements or advertising-related services using Ad Reporting data. Ad Delivery does not include the collection and use of Ad Reporting data when such data is used to deliver advertisements to a computer or device based on user preferences or interests inferred from information collected over time and across sites not under Common Control.

Ad Reporting

Ad Reporting is the logging of page views on a web site or the collection or use of other information about a browser, operating system, domain name, date and time of the viewing of the web page or advertisement, and related information for purposes including, but not limited to:

- Statistical reporting in connection with the activity on a web site(s);
- Web analytics and analysis; and
- Logging the number and type of ads served on a particular web site(s).

Control

Control of an entity means that another entity (1) holds a majority of the voting rights in it, or (2) is a member of it and has the right to appoint or remove a majority of its board of directors, or (3) is a member of it and controls alone, pursuant to an agreement with other members, a majority of the voting rights in it, or (4) has placed obligations upon or otherwise controls the policies or activities of it by way of a legally binding contract, or (5) otherwise has the power to exercise a controlling influence over the management, policies or activities of it, and "Controlled" shall be construed accordingly.

Common Control

Entities or web sites under Common Control include ones which Control, for example parent companies, are Controlled by, such as subsidiaries, or are under common Control, such as group companies. They also include entities that are under a written agreement to process data for the controlling entity or entities, and do such processing only for and on behalf of that entity or entities and not for their own purposes or on their own behalf.

Icon

An Icon is a visible web based object that contains a hyperlink to the OBA User Choice Site or to the Third Party Notice described in I.A.1.

Explicit Consent

Explicit Consent means an individual's freely given specific and informed explicit action in response to a clear and comprehensible notice regarding the collection and use of data for Online Behavioural Advertising purposes.

Online Behavioural Advertising (OBA)

Online Behavioural Advertising means the collection of data from a particular computer or device regarding web viewing behaviours over time and across multiple web domains not under Common Control for the purpose of using such data to predict web user preferences or interests to deliver online advertising to that particular computer or device based on the preferences or interests inferred from such web viewing behaviours. Online Behavioural Advertising does not include the activities of Web Site Operators, Ad Delivery or Ad Reporting, or contextual advertising (e.g. advertising based on the content of the web page being visited, a consumer's current visit to a web page, or a search query).

OBA User Choice Site

A consumer focussed web site and education portal (www.youonlinechoices.eu), available in all official EU and the additional EEA languages, that provides a mechanism for web users to exercise their choice with respect to the collection and use of data for Online Behavioural Advertising purposes by one or more Third Parties or links to a mechanism permitting user choice over Online Behavioural Advertising.

Third Party

An entity is a Third Party to the extent that it engages in Online Behavioural Advertising on a web site or web sites other than a web site or web sites it or an entity under Common Control owns or operates.

Web Site Operator

A Web Site Operator is the owner, controller or operator of the web site with which the web user interacts.

The Framework

Principle I.

Notice

A. Third Party Notice

1. Third Party Privacy Notice—Third Parties should give clear and comprehensible notice on their web sites describing their Online Behavioural Advertising data collection and use practices. Such notice should include clear descriptions of the following:

- (a) Their identity and contact details;
- (b) The types of data collected and used for the purpose of providing OBA, including an indication or whether any data is “personal data” or “sensitive personal data” as defined by the national implementation of Directive 95/46/EC;
- (c) The purpose or purposes for which OBA data is processed and the recipients or categories of recipient not under Common Control and to whom such data might be disclosed;
- (d) An easy to use mechanism for exercising choice with regard to the collection and use of the data for OBA purposes and to the transfer of such data to Third Parties for OBA;
- (e) The fact that the Company adheres to these Principles; and
- (f) A link to the OBA User Choice Site.

2. Third Party Enhanced Notice to Consumers

- (a) In addition to providing notice as described in A.1, Third Parties should provide enhanced notice of the collection of data for OBA purposes via the Icon in or around the advertisement; and
- (b) Third Parties may provide notice via the Icon on the web page where the data for OBA purposes is collected if there is an arrangement with the Web Site Operator for the provision of such notice.

B. Web Site Operator Notice

In addition to complying with applicable existing legal obligations, when a Web Site Operator permits data to be collected from and used on a web site for OBA purposes by Third Parties, the Web Site Operator should provide adequate disclosure of this arrangement. The Web Site Operator does not need to include such disclosure in instances where the Third Party provides notice as described in I.A.2.

Principle II.

User choice over Online Behavioural Advertising

- A. Each Third Party should make available a mechanism for web users to exercise their choice with respect to the collection and use of data for OBA purposes and the transfer of such data to Third Parties for OBA. Such choice should be available from the notice described in I.A.1 and via the OBA User Choice Site.
- B. To the extent that Companies collect and use data via specific technologies or practices that are intended to harvest data from all or substantially all URLs traversed by a particular computer or device across multiple web domains and use such data for OBA, they should first obtain Explicit Consent.
- C. Companies that have obtained Explicit Consent pursuant to II.B should provide an easy to use mechanism for web users to withdraw their Explicit Consent to the collection and use of such data for OBA.

Principle III.

Data Security

A. Safeguards

Companies should maintain appropriate physical, electronic, and administrative safeguards to protect the data collected and used for Online Behavioural Advertising purposes.

B. Data Storage

Companies should retain data that is collected and used for Online Behavioural Advertising only for as long as necessary to fulfil a legitimate business need, or as required by law.

Principle IV.

Sensitive Segmentation

A. Children’s segmentation

Companies agree not to create segments for OBA purposes that are specifically designed to target children. For the purposes of this provision, ‘children’ refers to people age 12 and under.

B. Other Sensitive Segments

Any Company seeking to create or use such OBA segments relying on use of sensitive personal data as defined under Article 8.1 of Directive 95/46/EC will obtain a web user’s Explicit Consent, in accordance with applicable law, prior to engaging in OBA using that information.

The Framework

Principle V.

Education

Companies that engage in OBA should provide information to inform individuals and businesses about OBA, including easily accessible information about how data for OBA purposes is obtained, how it is used and how web user choice may be exercised. This may include information in easy-to-understand language and user-friendly format (such as online video). Companies and Associations are encouraged to use a consistent or common resource for such educational information.

Principle VI.

Compliance and Enforcement Programmes

A. Applicability and Eligibility

This Framework is self-regulatory in nature and creates obligations for any signatory Company that self-certifies compliance with the Principles and obligations contained herein. Following the adoption of this Framework and the Icon each Company should comply and self certify by 30 June 2012. Companies adopting the Framework later than 1 January 2012 should comply and self certify within 6 months of adopting the Framework and the Icon.

B. Compliance and Self-certification

Self-certification of compliance shall be limited to those requirements applicable to each Company's business model. In the event that a single Company may be subject to multiple obligations, self-certification must cover all such applicable provisions. Self-certification of compliance with this Framework does not exempt Companies from fulfilling their obligations under applicable national laws.

C. Auditing of Self-certification

Companies that are subject to Principle II shall submit to independent audits of their self-certification. Audits should be of sufficient scope to review compliance of Companies engaging in OBA in the EU and EEA Member States. Such independent audits must demonstrate, at a minimum, the following attributes:

- a) Processes for individual and independent review of Company web sites for the purpose of validating compliance with obligations under this Framework;
- b) Processes for automated or individualised periodic monitoring of a statistically significant number of web sites where objective evidence of compliance with Principles I and II in this Framework can be verified;
- c) Processes for resolving identified areas of non-

compliance directly with the signatory Company in a transparent manner and within a reasonable period of time;

- d) Publication of decisions in case of un-rectified non-compliance with any commitments made under this Framework, as well as the findings of general good compliance, for one or multiple Companies that have self-certified under this Framework.

D. Consumer Complaints Handling

Programmes under this Framework for complaints handling shall include the following elements:

- a) Easily accessible mechanisms for complaints to be filed directly to Companies;
- b) Transparent, easily recognisable and accessible mechanisms for handling complaints through independent, alternative dispute resolution mechanisms such as advertising self-regulatory bodies;
- c) Coordination between Companies and alternative dispute resolution mechanisms, including advertising self-regulatory bodies, to ensure that Companies engaged in OBA are not unreasonably subject to multiple enforcement mechanisms regarding compliance with the obligations of the Framework;
- d) Consumers filing complaints to a complaints handling body, including advertising self-regulatory organisations shall have access to a simple complaint handling mechanisms in their local language;
- e) Publication of decisions in case of non-compliance with the commitments under this Framework, including in the language of the country where the complaint was first launched.

In addition, Companies that are subject to this Principle shall collaborate to make available the OBA User Choice Site.

E. Relationship between Compliance Programmes:

Administrators of relevant auditing and compliance programmes, including existing advertising self-regulatory systems in the context of processing consumer complaints, should ensure effective coordination, including promoting a common audit form within the EU and EEA Member States and with other regions or countries such as the USA.

Administrators of relevant compliance programmes should also coordinate to ensure transparency, consistency and coherence of the implementation and enforcement across EU and EEA Member States.

The Framework

Principle VII.

Review

The undersigning Companies and Associations shall regularly review this Framework at least every 3 years in response to the development of OBA and business practices, and modify or add to the Framework as appropriate.

Participating companies

A list of all companies participating in the EU Self-Regulatory Programme on OBA, and thus adhering to the principles laid out in this Framework, can be found at:

<http://www.edaa.eu/participating-companies/>

or

<http://www.youronlinechoices.eu/goodpractice.html>

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