

Online Behavioural Advertising Regulatory Statement

20 November 2012



Executive Summary

From 4 February 2013, the Advertising Standards Authority (ASA) will require advertising networks and other 'third parties' to notify web users of ads delivered using Online Behavioural Advertising (OBA) and to give web users the choice to opt out of receiving such ads. This follows new rules introduced by the Committee of Advertising Practice (CAP) after thorough consideration by bodies representing the online advertising industry.

OBA is a developed form of targeted advertising. Third parties partner with websites from whom they collect data on users' web viewing behaviour in order to target them with advertising that is likely to be of more interest to them.

CAP is committed to ensuring through its Code that consumers are protected and that responsible advertising can flourish. It has decided to introduce rules to address OBA because it considers the available evidence shows that, as long as consumers are given a clear explanation and choice over the use of their web viewing behaviour for OBA purposes, these marketing techniques can flourish to the benefit of consumers and industry alike. While Ofcom research in March 2012 found that nearly half of internet users were not very, or not at all, comfortable with OBA¹, research by the IAB UK and ValueClick has shown that once OBA is explained to consumers they are more likely to want to receive targeted advertising, and 45% expressed a wish to have greater control of the type of advertising they see online². CAP therefore considers it is proportionate and necessary to introduce rules, which require third parties to provide notice about OBA, and give consumers the tools to exercise their choice to opt out of receiving such ads.

The new rules, contained within a new Appendix 3 of the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (the CAP Code), aim to secure transparency and control for web users in the use of OBA by requiring third parties to provide notice to web users, in or around online display advertisements, that they are undertaking OBA. Most third parties are likely to choose to do this through an icon in the corner of the display advertisement. The rules require that third parties must not only provide notice in the advertisement but ensure that it links to a mechanism whereby the user can opt out of the collection and use of their web viewing behaviour for OBA purposes.

CAP has committed to review the rules and their effect after twelve months to ensure they remain necessary and proportionate.

Background

The rules are integral to a pan-European, industry-wide self-regulatory standard– the European Advertising Standards Alliance (EASA) Best Practice Recommendation³ and an EU Industry Framework⁴. Many third parties are signed up to the EU Industry Framework and have agreed to abide by its principles and, subsequently for UK operating third parties,

¹ <http://stakeholders.ofcom.org.uk/binaries/research/media-literacy/media-use-attitudes/adults-media-use-2012.pdf>

² <http://www.iabuk.net/research/library/consumers-and-online-privacy-2012>

³ <http://www.easa-alliance.org/Issues/OBA/page.aspx/386>

⁴ <http://www.iabeurope.eu/media/51127/iab%20europe%20self%20regulation%20for%20oba%20140411.pdf>

the CAP's new rules. Those signatories pay a licence fee to a pan-EU body, the European Interactive Digital Advertising Alliance (EDAA) – www.edaa.eu, to use a single icon in or around display advertisements in order to provide notice to users, and link to a website called youronlinechoices.eu, whereby users have the choice to opt out of a range of third parties' collection and use of data for OBA purposes. Furthermore, signatories' business practices are monitored by an independent, certified provider, to ensure they adhere to the EU Industry Framework principles and receive a trading seal if they are complying⁵. Based on the country of origin principle and, where necessary, through well-established complaint referral systems overseen by EASA, each third party will be subject to regulation by one and only one advertising self-regulatory body.

CAP considers that there is a tangible benefit in offering consumers and the industry recourse to an independent complaint handling body in the form of the ASA, which can enforce rules against relevant third parties (see below). The ASA's regulation of OBA is intended to help bolster consumers' on-going trust in the use of their web viewing behaviour data for OBA and ensure that all third parties are required to give them notice and choice over their activities.

The pan-European initiative has been supported by DG CONNECT, responsible for communications networks, content and technology and, latterly, by the Vice-President of the EU, Neelie Kroes, because both recognise that the system offers consumers tangible benefit through providing transparency, choice and control. In a speech in October 2012 Neelie Kroes said:

"We need a corporate culture that respects its customers and their privacy. Being transparent: making all citizens aware what's at stake, and which tools they can use. [...] I want to say to those involved in Online Behavioural Advertising self-regulation here in Europe: well done for reaching another milestone and launching the legal entity governing your programme this week [the EDAA]. The signatories deserve praise and encouragement for going in the right direction. You have worked hard, and have done well."⁶

The ASA's new remit will enhance the protection it offers consumers and the industry in the digital space and help ensure that all advertising is legal, decent, honest and truthful, however it might be experienced by, or targeted at, consumers.

The new rules

The new rules contained within Appendix 3 require that third parties must ensure their use of OBA is clear and transparent by containing a notice in or around the display advertisement. This notice must link to a mechanism whereby users can opt out of receiving OBA from that third party or that third party and other third parties. Third parties must provide a notice on their own website making clear they collect and use data for OBA purposes and provide a mechanism whereby a user can opt out. Most third parties will choose to link to an industry-wide website where a user can exercise their choice and control over a range of third parties, such as www.youronlinechoices.eu, not just limited to the third party that served them the ad.

⁵ <http://edaa.eu/>

⁶ http://europa.eu/rapid/press-release_SPEECH-12-716_en.htm

In addition to requiring third parties to provide transparency and choice over OBA, the new rules will require third parties to gain explicit consent before using forms of OBA, often referred to as 'deep packet inspection', that collect all or substantially all data on web viewing behaviour in order to target advertising. The rules also prevent third parties from creating interest segments that specifically target children aged 12 or under. In the unlikely event that the ASA is unable to identify which party has served a particular OBA advertisement, a new rule in the Compliance section of the Code requires advertisers to co-operate with the ASA in good faith to help them identify the third party responsible. CAP has issued an accompanying Help Note⁷ to aid third parties as they seek to ensure compliance with the new rules before **4 February 2013**.

Sanctions

The ASA and the CAP Compliance teams strive to resolve breaches of the Code quickly and proportionately. It is anticipated that in most cases co-operation between the parties will result in immediate action to prevent further non-compliance on the part of the third party. In other cases, however, it may be necessary to determine if a breach has occurred through formal ASA investigation leading to an adjudication, which is published on the ASA website. In the anticipated rare cases where the third party continues to breach the rules on OBA, the CAP Compliance teams may pursue measures to encourage the third party to fall in line with the Code. This could involve bringing to the attention of the third parties' potential clients and partners, the non-compliance of the third party.

In addition, for third party signatories of the EU Industry Framework, which comprise the vast majority of UK operating third parties, the CAP Compliance teams will have two additional sanctions at their disposal: the ability to remove the trading seal of approval that signifies their compliance with the Framework, and the removal of the licence to use the single European icon to provide notice. Both additional sanctions are likely to have a significant impact if invoked and CAP would take a progressive approach when using these sanctions with the intent that third parties will agree to comply before such action is necessary.

When the new rules will take effect

The rules will take effect on **4th February 2013**.

The ASA's new remit to cover OBA presents a significant opportunity for the UK self-regulatory system to play a key role in delivering to consumers transparency, choice and the tools to exercise control over the use of web behaviour data. It is also another example of the high standards the industry is prepared to impose on itself to ensure the integrity of marketing communications.

CAP and the ASA are committed to reviewing the new rules after twelve months in line with the development of the EU-wide system. CAP encourages feedback from stakeholders during that period and will act, where appropriate, on any significant comments it receives. Any feedback should be sent to:

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Email: codepolicy@cap.org.uk

Address: Committee of Advertising Practice

Mid City Place

71 High Holborn

London

WC1V 6QT

