

Online Advertising: New rules around the use of online behavioural advertising by third parties

Introduction

This article deals with the new rules governing the practice of online behavioural advertising ('OBA') by companies targeting consumers.

We have seen a trend in OBA in the last few years. The research conducted into this practice has indicated that internet users are not comfortable with OBA and would like greater control over the types of advertising they receive. The Committee of Advertising

Practice ('CAP') has therefore sought to regularise this area by publishing rules for third parties providing OBA.

The new rules came into effect on 4 February 2013, and are contained within a new [Appendix 3](#) of the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (the 'CAP Code').

What is OBA?

OBA is a form of targeted advertising, whereby data relating to a user's web viewing behaviour is gathered and used by third parties. This

enables third parties to target the user with advertising that is likely to be of more interest to the user.

The New Rules

- **To whom do the new rules apply?**

The new rules apply to **third parties**. Under the rules, a 'third party' is defined as follows:

'...an organisation that engages in OBA (i.e. collects and uses web viewing behaviour data for the purposes of OBA) via websites other than those that it or an entity with which it is under common control owns or operates...'

- **What are the requirements under the new rules?**

There are **four** main requirements that can be gleaned from the new rules, which are:

1. **Notification**
2. **Opt-out**
3. **Explicit consent**
4. **Duties in relation to under 12's**

Notification

Third parties must provide 'a clear and comprehensive notice':

- i. **With regard to their own websites** that explains the 'collection and use of web viewing behaviour data for the purposes of OBA' (**General Notification**).

Comment: It is envisaged that most third parties will link to an industry-wide website where users can exercise their choice and control over a range of third parties not just limited to the third party that served them the advertisement. For example, the website www.youronlinechoices.eu.

- ii. **With regard to display advertisements that are delivered using OBA** that *'they are collecting and using web viewing behaviour data for the purposes of OBA'* (**Specific Notification**). The notice should appear **either in or around** the display advertisement itself.

Comment: It is envisaged that most third parties will choose to give this notification via an icon in the corner of the display advertisement

Opt-out

Consumers have the right to opt-out from receiving OBA. Therefore, third parties must ensure that both form of notifications i.e. the **General Notification** and the **Specific Notification**, allow for consumers to opt-out.

In relation to General Notifications, third parties must **explain** how a user would be able to opt-out of having web viewing behaviour data collected and used for this purpose. Third

parties must also **provide a link** to the *'relevant mechanism'* through which users may exercise their right to opt-out.

In relation to Specific Notifications, third parties must also **provide a link** either in or around the display advertisement to the "relevant mechanism" through which users may exercise their right to opt-out.

Explicit Consent

If third parties use *'technology to collect and use information about all or substantially all websites that are visited by web users on a*

particular computer in order to deliver OBA to that computer' they must obtain users' **explicit consent before doing so**.

Duties in relation to under 12's

Third parties are prohibited from creating *'interest segments specifically designed for the purpose of targeting OBA to children aged 12 or under.'*

● Are there any exemptions?

The new rules do not apply to:-

- ☒ contextual advertising;
- ☒ web analytics;
- ☒ ad reporting;
- ☒ ad delivery;
- ☒ the collection and use of information for behavioural advertising by web site operators on their own website(s); or
- ☒ the use of OBA in rich media, in-stream videos online or on mobile devices

Compliance and Monitoring

The Advertising Standards Authority ('ASA') will be responsible for monitoring compliance of third parties under the new rules. The new rules require that third parties **co-operate in**

good faith with the ASA in the event that the ASA is unable to identify which party has served a particular OBA advertisement.

Comment

It is believed that the new rules will complement existing EU-wide good practice.

There is a pre-existing EU Industry Framework developed by the Internet Advertising Bureau

Europe, whereby third parties can sign up to use a single icon in or around their display advertisements in order to provide notice to users as well as link to a website where users

CAP and ASA are due to review the new rules after **12 months**. It is thought that the rules will

can opt-out from the collection and use of data for OBA. Signatories that are compliant receive a trading seal.

be updated in due course to take into account the use of OBA in relation to mobile devices.

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