

Australian Best Practice Guideline for Online Behavioural Advertising

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Introduction

Today's Internet offers consumers across the globe quick, convenient and easy access to an unparalleled range of communication and information resources.

Advertising and marketing plays a fundamental economic role in the Internet by funding much of the information, community and communication services that are available to Web Users, very often not requiring payment. The advertising model has made Internet content and services available to billions of people around the world – for free. The business model of relying on advertising revenue to fund Websites has meant that vast amounts of information on the Internet has been fully accessible to people of all ages and income levels. The trend has been to tear down economic barriers to content, which is possible only because the primary source of revenue for most content providers' online operations is an advertising, rather than a subscription, model.

One element of online advertising is Online Behavioural Advertising (OBA) which is sometimes also known as Interest Based Advertising.

OBA delivers advertisements to the users of an Internet-enabled device based on Web browsing activity or 'behaviour' of that device. An OBA cookie on the device may note the subject matter of searches or visited Web pages and allows the device to be assigned to one or more pre-defined interest categories using a unique number. Relevant advertising is then delivered to that device according to the interest category associated to that device.

No Personal Information is collected or used for OBA.

The use of cookies to record user preferences for individual Websites is well established and generally accepted by Web Users. This Best Practice Guideline for Online Behavioural Advertising (the Guideline) therefore applies only to Third Party OBA, which occurs when browsing behaviour is used to deliver behavioural advertisements across unrelated Websites.

Because this type of advertising is relatively new, leading industry players and industry associations have developed the Guideline to help participants deploy Third Party OBA in a way that promotes and maintains consumer confidence. This Guideline lays down seven self-regulatory principles for industry when engaged in Third Party OBA.

Benefits to Users

The principles have been developed to better foster transparency, knowledge, and choice for consumers and apply consumer-friendly standards to Third Party OBA. These principles directly benefit Web Users by encouraging industry to provide additional notice of Third Party OBA to consumers, give consumers the ability to opt out of receiving Third Party OBA based advertising, ensure OBA Data is securely kept, carefully and appropriately handle the creation and use of Sensitive Market Segments in relation to OBA, and establish effective accountability and complaint handling mechanisms.

This Guideline covers browsing in its broadest sense and therefore provides consumer protection across a range of different activities that a consumer may undertake on the Internet.

Application to Industry

The Internet Advertising 'eco-system' comprises a diverse set of participants that work interdependently to provide seamless delivery of advertising.

This eco-system includes Advertisers, Advertising Agencies, Advertising Networks, Search Engines, Website Operators, Website Publishers, Web Browsers, Internet access service providers, and providers of desktop application software (such as Web toolbars and Web Browsers).

The principles specified in this Guideline only apply to those participants that are engaged in Third Party OBA including those parties that have Third Party OBA appearing on their Websites. As a result these principles apply to an extensive range of entities and practices, some of which are covered by a self-regulatory framework for the first time in this area.

The principles specified in this Guideline do not seek to regulate the content of online advertisements¹, other forms of online advertising or First Party OBA.

This Guideline has separate provisions for Website Operators and Third Parties that engage in OBA.

The Guideline also recognises that an Entity may conduct a number of different activities, and therefore this Guideline recognises that different principles and types of notice may therefore be applicable to each different activity. Accordingly the principles take into consideration the different roles that Entities may play in different contexts within the ecosystem, and address their respective data practices accordingly.

Search offerings and Search Engines also fall within the scope of these principles if search data is used for Third Party OBA. Third Parties that use search offerings and Search Engines to collect and use data for Third Party OBA also fall within the scope of these principles.

¹ The content of advertisements is regulated by the [AANA Codes of Conduct](#)

Next Steps

The industry participants who developed this Guideline have formed an industry forum to monitor the operation and implementation of this Guideline once launched. A review of the Guideline will be conducted before the end of 2011 and then on a regular basis following this initial review.

Consistent with Principle VI (Educating Users), Industry will also put in place a number of initiatives to educate individuals and businesses about OBA.

Definitions

Advertisers

The legal entity responsible for placing or on whose behalf an advertisement is placed.

Advertising Agencies

Entities that undertake the planning, buying and creative elements of advertising on behalf of the advertiser.

Advertising Networks

Entities that connect advertisers to Websites that want to host advertisements.

Associated

Entities will be "Associated" in this Guideline if they are Associated Entities within the meaning of s50AAA of the Corporations Act (Cth) 2001

Associated Website

A Website that is owned by a Company or Associated Entity.

Complaint Handling Body

A body that has nominated itself to handle OBA complaints.

Contextual Advertising

Is advertising that is targeted based on the content of the webpage being viewed, but does not include advertising targeted through the use of Third Party OBA. For example if a Web User goes to a travel webpage they are served an advertisement for luggage or travel insurance. Contextual advertising can also occur for searches through Search Engines. For example if a Web User searches on travel on a Search Engine and the results displayed include a travel advertisement.

Entity

An entity that handles, collects or uses OBA Data.

Explicit Consent

Explicit Consent means that a Web User takes an active step demonstrating consent in response to a specific query.

First Party OBA

Is OBA served to an Internet-enabled device on a Website based on the browsing history of the device on that Website and Associated Website or Related Website.

Geo-targeting

Means the serving of content or advertising specific to the geographic location of the server through which the IP address is served.

Guideline

Means the Best Practice Guideline for Online Behavioural Advertising.

Online Behavioural Advertising (OBA)

Means the collection and use of OBA Data to serve advertising based on pre-defined interest categories. No Personal Information is collected or used for OBA. OBA does not include Contextual Advertising (based on the subject-matter of the web page on which the advertisement is served), customer profile advertising (based on the personal information of an individual user) or Geo-targeting.

OBA Data

Means data on web browsing activity of an internet-enabled device which allows the device to be added to one or more pre-defined interest categories.

Personal Information

Has the same meaning as the *Privacy Act 1988* as amended from time to time.

Related Entities

Entities that a Web User would be reasonably likely to regard as closely related by product, branding or some other apparent way.

Related Websites

A Website that is owned by a Related Entity.

Search Engine

Is a software program that searches and retrieves data from the Internet based on a query by the Web User of the device.

Sensitive Market Segment

Is a market segment that is based on:

- a) racial or ethnic origin; or
- b) political opinions; or
- c) membership of a political association; or
- d) religious beliefs or affiliations; or
- e) philosophical beliefs; or
- f) membership of a professional or trade association; or
- g) membership of a trade union; or
- h) sexual preferences or practices; or
- i) criminal record;
- j) health information; or
- k) genetic information that is not otherwise health information.

Service Provider

An Entity is a Service Provider to the extent that it provides any of the following services:

- a) Internet access service
- b) Toolbar
- c) Internet browser
- d) desktop application
- e) client software

And in providing such a service the Entity collects and uses data from all or substantially all of the Internet activity engaged in through the service by any user of the service for the purpose of OBA.

Third Party

An Entity that engages in Third Party OBA. A subcontractor, such as a technical service provider, providing services in relation to a Website for an Entity that is responsible for a Website is not a Third Party unless they are a Service Provider collecting and using OBA Data as described above.

Third Party OBA

OBA served to an Internet-enabled device on a Website based on the browsing history of the device on Websites that are not Associated Websites or Related Websites.

URL

Uniform Resource Locator.

Web Browser

Means software that retrieves and collects information resources and arranges and displays the results in a standardised form on a device. Examples include Internet Explorer, Mozilla, Firefox, Google Chrome, Apple Safari and Opera.

Web Domain

A single URL.

Website

A collection of related web pages, images, videos or other digital assets that are addressed relative to a common Uniform Resource Locator (URL), often consisting of only the domain name (or, in rare cases, the IP address) and the root path ('/') in an Internet Protocol-based network. A Website is hosted on at least one web server, accessible via a network such as the Internet or a private local area network.²

Website Operator or Website Publisher

Is the owner, controller or operator of the Website with which the Web User interacts.

Web User

A person using the Internet.

² Wikipedia

Unless otherwise specified, all references to OBA should be read as a reference to Third Party OBA.

All references in the singular include the plural and vice versa.

The Principles

Principle I. Personal Information and Third Party OBA

Third parties shall not combine OBA data with Personal Information unless they treat the OBA data as Personal Information in accordance with the Privacy Act 1988.

Principle II. Providing Clear Information to Web Users

A. Third Party Notice

1. *OBA Policy Notice*—Third Parties should give clear and comprehensible notice on their Websites describing their practices in relation to the collection and use of OBA Data for Third Party OBA. 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 Third Party OBA;
- (c) The purpose or purposes for which Third Party OBA Data is processed and the recipients or categories of recipient to whom such data might be disclosed; and
- (d) An easy to use mechanism for exercising choice with regard to the collection and use of OBA Data for Third Party OBA purposes and to the transfer of such data to Third Parties for Third Party OBA.
- (e) The fact that the Third Party adheres to these principles.

2. *Enhanced Notice to Web Users*— In addition to providing notice as described in A1, Third Parties who have not obtained Explicit Consent from Web Users in relation to the collection and use of Third Party OBA should provide enhanced notice as set out below in a) or b):

(a) *In-Ad Notice*—Third Parties should provide notice of the collection of data for Third Party OBA purposes through a web link to a disclosure described in A.1.:

- (i) In or around all advertisements deployed using Third Party OBA ;

or

- (ii) On the Web page where Third Party OBA advertisements are present, if there is an arrangement with the Website Operator for the provision of such notice;

or

(b) *Notice on Industry-Developed Website(s)*—Third Parties should be individually listed on an industry-developed Website(s) linked from the disclosure described in II.B.;

B. Website Operator Notice

In addition to complying with applicable existing legal obligations, when a Website Operator permits data to be collected from that Website and used for Third Party OBA purposes by Third Parties, the Website Operator should provide adequate disclosure of this arrangement.

Principle III. User choice over OBA

- 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 Third Party OBA purposes. Such a mechanism should be accessible via the notice described in Principle II.
- B. Service Providers should obtain Explicit Consent prior to engaging in Third Party OBA.
- C. Service Providers should provide an easy to use mechanism for Web Users to withdraw their Explicit Consent to the collection and use of OBA Data for Third Party OBA.

Principle IV. Keeping Data Secure

A. Safeguards

Entities should maintain appropriate physical, electronic, and administrative safeguards to protect OBA Data.

B. Data Storage

Entities should retain OBA Data only for as long as necessary to fulfil a legitimate business need, or as required by law.

Principle V. Careful Handling of Sensitive Segmentation

A. Children

Entities agree to comply with applicable law and self regulatory codes in relation to marketing and advertising to children (for example the [AANA Code for Marketing and Advertising to Children](#) and the [ADMA Direct Marketing Code of Practice](#)).

OBA categories uniquely designed to target children under 13 will not be created.

This principle does not restrict the collection of OBA Data for the purpose of marketing children's products to parents and other adults.

B. Other Sensitive Segments

Any Entity seeking to deploy Third Party OBA relying on use of Sensitive Market Segments should obtain a Web User's Explicit Consent, in accordance with applicable law, prior to engaging in Third Party OBA using that information.

Principle VI. Educating Users

Entities 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). Entities and Associations are encouraged to use a consistent or common resource for such educational information.

Principle VII. Being Accountable

A. Applicability and Eligibility

This Guideline is self-regulatory in nature and creates obligations for any signatory.

Signatories will have six months to comply with the obligations specified in this Guideline commencing from the public launch of this document.

B. Compliance

Signatories to this Guideline are responsible for self-certifying that they comply with this Guideline. Self-certification of compliance shall be limited to those requirements of this Guideline that are applicable to each signatory's business model. In the event that a single signatory may be subject to multiple obligations, self-certification must cover all such applicable provisions.

C. Validation

Entities engaging in Third Party OBA in Australia should undertake:

- a) review of its Websites and Websites of Third Party OBA business partners for the purpose of validating compliance with obligations under this Guideline;
- b) To resolve any identified areas of non-compliance in a transparent manner and within a reasonable period of time.

D. Handling Consumer Complaints

Programmes under this Guideline include:

- a) Easily accessible mechanisms for consumers to lodge complaints directly to Entities;
- b) Transparent, easily recognisable and accessible mechanisms for handling complaints through independent, alternative dispute resolution mechanisms such as Complaint Handling Bodies; and
- c) Reporting on complaints made under this Guideline.

Programmes under this Guideline will continue to be developed after the launch of the Guideline.

Review

The industry participants who developed this Guideline welcome any comments and have formed an industry forum to monitor the operation of this Guideline once launched.

A review of the Guideline will be conducted by the end of 2011 and then on a regular basis following this initial review.

Founding members



Signatories

