

DG SANCO: Data Collection, Targeting and Profiling of Consumers for Commercial Purposes in Online Environments.

A response from the UK Internet Advertising Bureau (IAB UK).

1. Introduction

IAB UK is the trade body for digital marketing in the United Kingdom (UK). It represents nearly 500 companies, including media owners, agencies and advertisers.

The internet is the fastest growing advertising medium in the UK. In fact, it is currently the only growing advertising medium in the UK. Online adspend for the full year 2008 was just over £3.3bn, making up 19.2% of the total £17.5bn UK advertising sector.¹ Advertisers in the UK today spend £1 in every £5 online, the largest of any nation.²

As DG SANCO acknowledges (page 12), digital advertising is the lifeblood of the UK, EU and global digital economy: it is fundamental to the accessibility, affordability and dynamism of the internet.

- Advertising supports many of the services, content and applications on the internet, making them available to UK and EU citizens free of charge (eg search engines, webmail, social networking websites, price comparison sites, productivity suites, blogs and video/photo sharing).
- Digital advertising also supports many new online services (and businesses) which are being driven by consumer demand. UK citizens are among the most digitally advanced consumers in the world. They spend 14 hours per week on the internet, an increase of nearly 6.5 hours per week (between 2004 and 2008), the highest increase among the countries surveyed by UK communications regulator, Ofcom.³
- Digital advertising drives online commerce, particularly at a time of economic slowdown and recession. 17 pence in every £1 is spent online in the UK – larger than all high street retail sales for clothing and footwear and equivalent to roughly half of all supermarket sales.⁴ Online commerce itself is worth over £46bn to the UK economy and continues to grow by 9% each month, even in the current downturn.⁵
- Digital advertising helps fund content, innovation and entrepreneurialism. Search engine marketing and display advertising, for example, generate millions of pounds for publishing partners via advertising on their websites, driving traffic to these sites and helping to fund the content and services they provide.

Many of IAB UK's members operate in European (and global) markets. This response is written from a UK context, in particular our experience in developing self-regulation for behavioural advertising, and complements the response also submitted by IAB Europe and its partners.

¹ IAB/PwC/WARC

² Ofcom International Communications Report – November 2008

³ Ofcom International Communications Report – November 2008

⁴ IMRG CapGemini – July 2008

⁵ IMRG

2. Summary

- We acknowledge the importance of protecting consumer privacy online but believe the right starting point is the significant benefits that advertising per se delivers to consumers online.
- We believe the paper's analysis of the economic and consumer benefits of online advertising and the policy issues relating to techniques such as behavioural advertising need to be informed by consumer research which shows that users welcome more targeted advertising but are demanding transparency on how their data is used and the right to opt out.
- It is misleading to refer to the 'profiling' of internet users in relation to behavioural advertising. Data is typically collected to build so-called 'interest segments' for the purpose of delivering more relevant advertising. These 'interest segments' are then used to identify (via cookies) and target groups of consumers.
- Consumers are segmented into interests groups for a variety of legitimate reasons, on and offline. This is not a new technique and this is reflected in the body of consumer rights legislation which exists to protect consumers from abuses. We do not believe that the EU regulatory framework needs to treat behavioural advertising differently from other forms of targeting.
- We welcome DG SANCO's emphasis on the role of industry self-regulation in protecting consumer privacy where necessary and appropriate. The advertising industry has a track-record in delivering robust self regulation and good practice in this area. The EU policy discussion must allow time and space for this to develop.
- IAB UK's Good Practice Principles for behavioural advertising are built upon generating greater consumer trust and focus upon three core commitments: notice, user choice and education. These reflect the fact that this form of targeting advertising relies on global platforms and consistent standards.
- The UK Principles are supplemented by a new website – www.youronlinechoices.co.uk – specifically aimed at internet users and offering more information, advice and 'top tips'.

3. Online Data Collection

As with the 'offline' world, the collection of data online plays an essential role in delivering valued and more relevant content, services, advertising and opportunities (such as employment) to citizens and consumers. It is also a platform to deliver these services in a way which reflects the wishes and interests of consumers more so than any other medium. Importantly, as we mention in the introduction to our response, advertising plays a fundamental role in Europe's information society providing consumers with such services and regardless of socio-economic factors, such as income. Behavioural advertising is increasingly making an important contribution to this (see benefits below).

DG SANCO's paper bases its case beginning at the point that data collection and the services that it supports is a negative function of the internet, infringing an individual's rights and denying their right to services. ***We acknowledge the importance of protecting consumer privacy online but believe that the benefits that advertising per se, and targeted advertising specifically, delivers to consumers online is a more appropriate starting point.***

5. Behavioural Advertising

Online data collection is an integral part of the process in delivering more relevant advertising to consumers. Behavioural advertising is a way of targeting advertising based upon anonymous web browsing activity which is collected and grouped into interest 'segments' (such as cars, finance and travel) to provide more relevant and useful marketing messages. It works using a 'cookie' – a small file of random letters and numbers – which is placed on a computer's web browser to ensure the relevant advertising reaches the right 'segment' of users.

There is a range of different business models for online behavioural advertising, varying in the scope of what information is used and how it is collected. For example:

- An online publisher may collect and use information on a user's activities from its own website(s) to provide behavioural advertising. This is known as 'first party' or 'intra-site' advertising.
- A publisher partners with advertising networks collect and use information when an internet user visits one of a number of websites participating in that particular network or information about searches that user has made. This is known as 'third party' advertising.
- Other providers make use of internet traffic data passing through Internet Service Providers (ISPs).

Behavioural advertising currently makes up around 10-15% of the UK online display advertising market (in 2008, online display advertising spend was £637m in the UK) and is set to grow. Enders Analysis estimates that it will grow to 20% by 2013. IAB UK believes it may be greater than this.

IAB UK believes the term 'profiling' used by DG SANCO (and others) to describe the online data collection and use for behavioural advertising is misleading. It misunderstands how data collection works for the purpose of behavioural advertising. It also implies that providers are collecting data to build an online 'profile' of a particular user to serve them advertising. No 'profiles' are created of users. It is the 'segment score' which is used to segment users and cookies are used to identify users in different segments. A cookie does not in itself contain any information about a user. ***The policy discussion should not refer to the 'profiling' of internet users in relation to behavioural advertising. Instead, we recommend that it refers to the collection of online user***

data to build more vanilla 'interest segments' for the purpose of delivering more relevant advertising.

6. What are the benefits of behavioural advertising to consumers and internet users?

Behavioural advertising provides significant benefits to consumers and internet users. For example:

- It is providing users with more relevant advertising related to their interests (and less advertising that they are not interested in). For example, if a consumer is interested in golf and is therefore categorised as a 'golf enthusiast', he or she is more likely to be interested in advertisements for golf equipment. Our research (see below) suggests that consumers value this, particularly when it supports the provision of content, services and applications for little or no cost.
- It helps provide content producers with enhanced revenues to help them reinvest in richer online content, services and applications which consumers will enjoy and benefit from. Sometimes the higher returns on ad inventory allow them to reduce the number of placements on a page thereby enhancing the user experience.
- It helps advertisers to better communicate with consumers who have already expressed an interest in their products and services, thereby helping everyday choices and purchase decisions.

In its recently published final Digital Britain report, the UK Government specifically welcomed behavioural/targeted advertising as a business model to help monetise content on the internet – “converting creativity into value”. It concluded that “if handled properly, [new business models such as] targeted advertising could be important revenue earners.”⁶

The DG SANCO paper acknowledges the benefits of behavioural advertising to consumers (page 13). However, we believe the analysis needs to consider available evidence before reaching such clear conclusions about potential downsides of this form of targeting. The industry is very aware that behavioural advertising relies on user trust and it is for this reason that the industry has invested significant effort in educating consumers and raising awareness of their choices. This an ongoing effort where we expect more progress to be made as more sectors of the advertising ecosystem work collaboratively to support consumers.

In the majority of cases, advertising and advertising-funded services, such as online forums and price comparison websites, help consumers to make decisions between the products or services they have already selected to purchase, rather than influence their purchase behaviour at the outset. We believe this 'democratisation' of information, supported by behavioural advertising is therefore – directly and indirectly – of significant benefit to consumers and their overall online experience. Our research supports (see below) this. We would also question the analysis behind DG SANCO's potential problem of 'price discrimination', in particular the practice described as 'weblining'. Behavioural advertising is not a practice that seeks to persuade a particular group of users to pay more for a particular product or service.

We believe that behavioural advertising is a competitive business model which enhances information and choice by making the consumer more aware of what he or she is interested in, rather than unfairly influencing or misleading their decision. Consumers should of course be protected from abuses and EU consumer law provides for protections already. We would welcome a discussion about where

⁶ Digital Britain: Final Report - UK Department for Business, Innovation & Skills/UK Department for Culture, Media & Sport (June 2009) (pages 120 & 201).

the Commission believes there may be risks to consumers and/or gaps in the legal framework.

7. What are consumer and user expectations?

Research by IAB UK and others suggest that UK consumers and users value and would welcome more relevant advertising on the internet.

- Research conducted by the IAB UK by Toluna in February 2009⁷ found that over 50% of internet users would prefer to receive internet advertisements that were more relevant to the things they're interested in, whereas only 9% would not. 85% of internet users would prefer to browse the internet for free with advertising on websites, whereas only 14% would prefer to pay a small premium and not have advertising. 78% of internet users were aware that there are laws/rules in place to protect their personal information online.
- Research conducted by IAB UK and Lightspeed Research in December 2008⁸ found that 51% of people are most likely to pay attention to an advertisement if it is relevant to them. 43% of people are most likely to pay attention to ad advertisement if it is useful to them.
- Research conducted on behalf of Coremetrics in November 2008⁹ revealed that 45% of the British public are open to the use of behavioural advertising provided they have the ability to opt-out if they choose to. 45% felt behavioural advertising brought offers and promotions to their attention. 34% said it could help them save time and 29% believe it makes online shopping easier.

This research formed the evidence base for the development of the IAB UK's Good Practice Principles. The starting point was to consider how to meet users' expectations of transparency and choice.

8. The role of self-regulation

DG SANCO acknowledges the "already widespread self-regulatory coverage of advertising and marketing communications in Europe" (page 22), including IAB UK's work "in preparing self-regulatory principles for its members". We welcome this and the statement that "industry self-regulation should be considered as a useful complement to the existing regulatory framework on privacy and marketing" (page 28). The paper also acknowledges that "technology has a key role to play in ensuring trust and security in online environments." We agree and **believe that industry must be given the opportunity to deliver self-regulation where necessary and appropriate.**

The digital media sector has a track-record in delivering self-regulatory initiatives to protect consumers and generate greater trust in the online environment. IAB UK is spearheading these initiatives in the UK advertising market. For example:

- IAB UK has worked with other industry bodies to make specific recommendations to extend the UK self-regulatory remit for advertising content – enforced and administered by the well-respected Advertising Standards Authority (ASA). The recommendations have not yet been published but are expected to be along the same lines as the European Advertising Standards Alliance (EASA) recommendations, and will address some of the issues DG SANCO outlines on page 9, such as 'advergaming' and promotional content on websites.

⁷ Toluna Research: February 2009 – a global panel of 2000 internet users.

⁸ IAB UK/Lightspeed Research: 28 November – 8 December 2008 – online panel of 5,022.

⁹ Eyes & Ears of Digital Marketing Survey' conducted by Dynamic Markets, on behalf of Coremetrics – November 2008 – consumer survey of 1,000 adult consumers.

- Under the banner of IAB UK, the Internet Advertising Sales Houses (IASH) – those companies that connect websites offering online inventory with advertisers who want to run an online display campaign – have developed a self-regulatory Code of Conduct to vet their media to ensure that inventory is not sold on pages containing barred or inappropriate content. This helps reduce the availability of advertising revenue to undesirable online content and protects advertiser brands. IASH currently covers over 40% of UK display advertising revenue and was supported by leading psychologist Dr Tanya Byron in her report to the UK Government on the impact of the Internet and Video Games upon children. This scheme is further supported by the UK body representing advertising agencies – the Institute of Practitioners in Advertisers (IPA) – which recommends that all its members only buy inventory from sales houses that are members of IASH. This has strengthened the standing of IASH in the self-regulatory landscape. Further details can be found at www.iash.org.uk

9. IAB UK Good Practice Principles for Behavioural Advertising

In early March 2009, IAB UK published its self-regulatory Good Practice Principles for UK behavioural advertising¹⁰. These Principles have been developed by leading providers of behavioural advertising, such as major advertising networks (eg Google, Yahoo! and Platform A), technology companies (eg Audience Science and Wunderloop) and also providers of ISP-targeting technology (eg Phorm). These providers collect and use online information – in some cases both personal as well as anonymous – to deliver behavioural advertising. The underlying philosophy behind the development of the Principles is building greater trust, providing transparency and offering consumers more choice and control over their online experience. The scope of the UK Principles goes further than any other good practice elsewhere, in that it covers all the types of behavioural advertising previously mentioned: on a publisher's own website(s), across multiple websites by an advertising network or technology company, and via ISPs.

The Principles complement and, in some cases, supplement the UK legal framework. They address a broader scope than required under existing law, by covering the use of all information used for behavioural advertising – both anonymous information and personal data (in the UK this is primarily addressed by the Data Protection Act 1998 and the Privacy and Electronic Communications Regulations 2003).

There are three core Principles: notice, user choice and education.

Notice:

A company collecting and using online information for behavioural advertising must give clear and unambiguous notice to users that information is being collected for this purpose. This notice will need to include details on what types of information is collected and how the information is used. The Principles offer the option of providing this notice via a privacy policy or signposted to a separate website from a link alongside the advertisement itself.

User choice:

A company collecting and using online information for behavioural advertising must provide a mechanism for users to decline or opt-out of behavioural advertising. In the information on behavioural advertising contained in a privacy policy or signposted to a site from the link alongside the advertisements themselves, there will need to be a way for users to decline or

¹⁰ www.iabuk.net/en/1/behaviouraladvertisinggoodpractice.html

opt-out of behavioural advertising. These will be linked to the IAB's new information website¹¹ so that users can visit a central point to choose to decline or opt-out of behavioural advertising.

Where personally identifiable information (ie information that can actually identify a person, such as a name, street address, email address or telephone number) is obtained, the Principles clearly state that informed consent will be obtained from the internet user, as is required by data protection law. Explicit consent, again as required by data protection law, will be required for the use of sensitive personal data. In addition to this, there may be occasions – as required by law or regulatory guidance - where businesses will need to obtain specific consent and provide a clear and unavoidable statement to the internet user about the product and ask the user to exercise a choice whether or not to be involved.

Education:

A company collecting and using online information for behavioural advertising must provide users with clear and simple information (such as online video) about their use of information for this purpose and how users can decline or opt-out. This will help to educate internet users on behavioural advertising and how it works. Many businesses already provide this type of information (for example, <http://uk.info.yahoo.com/>, <http://www.privacygourmet.co.uk/> and http://www.youtube.com/watch?v=aUkm_gKgdQc) and the Principles state that this information will need to be linked to the IAB's new information website.

Sensitive Information:

IAB UK acknowledges concerns relating to the collection and use of sensitive information in relation to targeted advertising (page 9). Our Principles acknowledge that creating an interest 'segment' for behavioural advertising could, in some cases, be considered sensitive. This issue cannot be addressed by ad networks alone and requires a collaborative approach with others in the advertising ecosystem. The Principles commit signatories to keep this under review and maintain a wider dialogue, such as with advertisers and the Information Commissioner's Office (ICO), to ensure user trust is upheld.

The Principles specify that no company engaged in behavioural advertising (that has agreed to abide by the Principles) shall create or sell a segment intended for the sole purpose of behaviourally targeting children they know to be under the age of 13 years of age. There may also be scope for responsible advertisers and publishers to consider additional good practice in this area.

Consumer Awareness:

IAB UK believes greater awareness amongst consumers and users of behavioural advertising is essential, to supplement good practice in this area. Supporting the publication of the UK Good Practice Principles is a new website dedicated to internet users, providing clear and simple information about behavioural advertising, how it works, the benefits and how privacy is protected. It also provides users with some top tips for protecting online privacy, such as how to get familiar with web browser privacy settings. In its next phase, it will feature a 'one stop shop' mechanism for users to decline or opt-out of behavioural advertising by those companies that

¹¹ www.youronlinechoices.co.uk

have signed up to the Good Practice Principles.

The Information Commissioner's Office (the UK data protection regulator), the UK Government and Ofcom have all welcomed and support the Good Practice Principles. In its recently published final Digital Britain report, the UK Government specifically supported IAB UK's Principles and welcomed the consumer information portal.¹² IAB UK has also engaged with other key stakeholders within industry and with privacy and consumer groups in developing this initiative. We are also engaged with other industry stakeholders in ensuring that the Principles evolve as technology and business models change. IAB UK is also working with IAB Europe in developing good practice at an EU level.

Compliance and enforcement:

IAB UK is developing a robust enforcement process to ensure the initial nine signatories to the Good Practice Principles comply. This will include a suitable independent element and we will provide DG SANCO with further details on this process in due course.

We believe that this good practice is just a starting point on which to engage with other parts of the advertising ecosystem, including advertisers, agencies, ISPs and publishers. A number of concerns raised in the discussion paper would rely on collaborative efforts between different players. It will also rely on collaboration with global standards bodies including the NAI and other members of the 'IAB family' around the world. It is important that EU initiatives are developed within this framework to both support the EU advertising and publishing industry and to ensure that EU consumers have a consistent experience wherever they are online.

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¹² Digital Britain: Final Report - UK Department for Business, Innovation & Skills/UK Department for Culture, Media & Sport (June 2009) (page 201).