

Office of Fair Trading (OFT) Online Targeting of Advertising and Prices Market Study Response by the Internet Advertising Bureau

1. Introduction

- The Internet Advertising Bureau (IAB) is the UK industry body for digital advertising, representing over 500 businesses engaged in digital marketing, including media owners, agencies and advertisers.
- The internet is the largest advertising medium in the UK. Advertising spend for the first half of 2009 grew by 4.6% (compared to H1 2008), now making up 23.5% of the total UK advertising sector (worth £17.5bn in 2008).¹ Advertisers in the UK today spend nearly £1 in every £4 online and 40% of the EU's total online advertising spend comes to the UK. Although still a nascent market, expenditure on mobile advertising in the UK was £28.6m in 2008.²
- Digital advertising is the lifeblood of the UK, EU and global digital economy: it helps support many of the services, content and applications on the internet (eg search engines, webmail, social networking websites, price comparison sites, productivity suites, blogs and video/photo sharing).
- The evolution of the internet has enhanced the competition for goods and services, reduced prices and boosted consumer choice within the market place. Advertising has facilitated this and helps drive 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.³ Online commerce itself is worth over £46bn to the UK economy and continues to grow by 9% each year, even in the current downturn.⁴
- The IAB welcomes the opportunity to contribute to the OFT market study, in particular to help clarify and update its understanding of targeted advertising and pricing on the internet. We acknowledge that the online space has introduced unique pricing and advertising practices and we are happy to support the OFT in its work by sharing expertise and knowledge of how advertisers use this type of online marketing to reach their target consumer groups and the benefits it provides to them.

¹ IAB/PwC/WARC

² IAB/PwC

³ IMRG CapGemini – July 2008

⁴ IMRG

2. Key Points

- Targeted advertising online mainly involves three different methods: contextual, demographic and behavioural advertising. The IAB makes a clear distinction between both contextual and demographic and behavioural advertising, which is based upon the collection and use of web browsing activity and – in most cases - does not identify the individual.
- Behavioural advertising seeks to customise advertising (and pricing) to a group of internet users rather than individualise advertising (and pricing) to a particular user.
- Behavioural advertising offers significant benefits to consumers/internet users, web publishers and advertisers. It is offering consumers more relevant advertising; helping web publishers to fund the online content and services they offer consumers and to reinvest in new and richer content; and advertisers to communicate more effectively with consumers that are actually interested in their products/services.
- Behavioural advertising is regulated in the UK by the Data Protection Act 1998 and the Privacy and Electronic Regulations 2003, protecting consumer data and privacy, under the jurisdiction of the Information Commissioner's Office (ICO). As with other types of advertising, the Consumer Protection from Unfair Trading Regulations 2008 ensures that behavioural advertising does not exert unfair influence on consumers.
- Whilst we acknowledge the privacy issues relating to behavioural advertising, the IAB believes that the OFT should focus primarily on issues relating to consumer protection law rather than specifically examining issues relating to privacy that fall within the remit of the ICO. It would be unhelpful for the evolving self-regulation framework (see below) for the OFT to consider issues that are already under discussion with the ICO.
- The IAB and its members have invested considerable time and resource in a self-regulatory framework – the Good Practice Principles – to provide internet users with greater transparency, choice and education about the practice. We would welcome the OFT's support for this commitment and the developing self-regulatory framework, as well as similar efforts taking place at an EU level. The UK Government, ICO, Ofcom and wider industry has expressed strong support for this framework. We believe this will build consumer trust in the practice as the market grows.
- The Good Practice Principles have been developed by the IAB's Behavioural Advertising Working Group and the majority of market players are now committed to them. The Good Practice Principles will be independently audited and the Working Group will ensure that they remain under review and maintain pace with changing commercial practices and innovative technology.
- To support the Good Practice Principles, the IAB and its members have developed a website – www.youronlinechoices.co.uk - dedicated to informing consumers about behavioural advertising and how privacy is protected. The website includes an opt out page linking to existing company solutions and a mechanism for consumers to complain about behavioural advertising practices by those businesses complying with the Principles.
- The IAB is building a more user-friendly, secure and persistent opt out tool and this will be available on the website shortly.

3. What is Targeted Online Advertising?

- In its scope for the market study, the OFT highlights that the majority of advertising (both online and offline) is targeted to consumers. In the online space, targeted advertising primarily has three main forms:
 - i. **Contextual advertising:** This is where advertisements are served within a chosen 'context' by the selection of a website or search engine query on a particular topic. This is the most common type of internet advertising. An example: a user is shown an advertisement for lawnmowers because he or she is visiting a gardening-related website. No information, personally identifiable or otherwise, is collected from the consumer or used in order to deliver this type of advertising. The relevant information is taken from keywords identified in the context by the context creator (ie user).
 - ii. **Demographic advertising:** This is where advertisements are served based upon specific information provided by the user (ie gender, age, location). An example: a teacher living in London who has registered on a jobs website is shown advertisements for teaching opportunities in London on the website but not necessarily in the teaching section. It is worth noting that some information provided by the user may be segregated and anonymised, such that it is retained and used without being identified (and associated with) an individual.
 - iii. **Behavioural advertising (also known as audience or interest-based advertising):** This is where advertisements are served based upon previous web browsing activity in order to provide more relevant advertisements to groups of users. In most cases this type of advertising operates without a user being identified as an individual. An example: a user's device is served with advertisements about golf equipment because the user has – over a period of time – visited different golf websites.
- **The IAB makes a clear distinction between both 'contextual' and 'demographic' advertising, and online advertising based upon a user's previous web browsing activity over a period of time.** 'Contextual' advertising does not involve the collection of and involves no retention of user information, personally identifiable or otherwise, as the OFT acknowledges. 'Demographic' advertising may involve the processing of personally identifiable information and sometimes this may be segregated and anonymised without identifying the user.

4. Online Behavioural Advertising: What is it and how does it work?

- Behavioural advertising is a way of targeting advertising based upon information about previous 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. The IAB estimates that, in the UK, behavioural advertising makes up between 10-15% of all online display advertising revenues. Display advertising was worth £637m in terms of ad revenue in 2008.
- 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. No personal 'profiles' are created of users. It is the 'segment score' that is used to segment users and cookies are used to identify devices in different segments.

- Where information specifically about an individual user (such as a name, street address or telephone number) is used, the internet user will have been told about it in the website's privacy policy when they registered for a particular service. Data protection law (see below) strictly controls the use of this information.
- There is a range of different business models for online behavioural advertising, varying in the scope of what information is used, how it is collected and the related consumer expectation. For example:
 - i. A web publisher (eg Guardian) may collect and use information on a user's browsing activities from its own website(s). This is often known as 'first party' or 'intra site' advertising. The web publisher may use a sub-contractor or 'agent' to do this on its behalf (eg Audience Science).
 - ii. A web publisher may partner with an advertising network (eg AOL Advertising) which collects and uses browsing information (or information about searches that a user had made) about an internet user's visits to websites participating in that particular network. This is often referred to as 'third party' advertising.
 - iii. Other providers may make use of internet traffic passing through Internet Service Providers (ISPs) (eg Phorm). There is currently no live commercial operation in the UK using this type of business model.
- The IAB has provided the OFT with a copy of its industry guide to behavioural advertising and this can also be found at: www.iabuk.net/en/1/aguidetoonlinebehaviouraladvertising.html. Further information can be found at www.youronlinechoices.co.uk.
- Neither the advertiser nor the advertising network/technology company collecting and using the information is able (or wishes) to know the identity of the internet user. **Behavioural advertising therefore seeks to customise advertising (and pricing) to a group of internet users rather than individualise advertising (and pricing) to a particular user (and is therefore different to price or product recommendations by a retailer).**
- As the OFT acknowledges in its scope for the market study, this type of audience segmentation is not a new phenomenon: it has been a longstanding practice in the offline world, such as direct mail marketing. Using certain attributes to segment and reach audiences is a common and legitimate practice in many forms of marketing communications. An example is Valentine's Day gift offers to specific groups of men.

5. The Benefits of Online Behavioural Advertising

- **Behavioural advertising offers significant benefits to consumers/internet users, web publishers and advertisers.** It is important to remember that advertising itself is currently the primary business model to fund much of the content, services and applications online. Given that there will be advertising online for this reason, the IAB believes that it is better for consumers/internet users that the advertising they see is relevant, helpful and complements their online experience. **Behavioural advertising enhances the relevancy of advertisements online and – importantly - provides consumers with fewer advertisements that are of little or no interest.**

- The OFT acknowledges this in the scope of the market study and consumer research conducted by the IAB in February 2009 found that consumers value this, particularly when it supports the provision of content, services and applications online that they enjoy and value. 50% of internet users would prefer to receive advertisements that are more relevant to the things they are interested in, whilst only 9% would not.⁵
- Behavioural advertising therefore aims to enhance consumer experience and customisation rather than attempt to restrict, mislead or unfairly influence consumer behaviour. Data collection – both online and offline – is an integral part of the process in delivering more relevant advertising to consumers. Advertising and advertising-funded services, such as online forums and price comparison sites, help consumers make decisions about products and services that they are already interested in rather than seeking to influence their purchase behaviour at the outset. In addition, the online environment increases transparency for consumers, who have a much greater choice for comparing prices for goods and services than in the offline world. Consumers are quick to publicise price discrepancies and are always only one click away from purchasing a rival product or service. We believe this ‘democratisation’ of information is therefore, both directly and indirectly, of significant benefit to consumers.
- Differential pricing based on targeted advertising is an efficient way to supply services and goods with beneficial effects for consumers. Consumers may receive advertisements for discounted products based on a segment to which they have been added through anonymised navigation data. This is akin to valued customer discounts in the physical world. In addition, economic literature recognises the benefits of price differentiation, if it leads to increase in output in relation to the output level that would have pertained if there was no price discrimination.
- **Behavioural advertising is an important business model for web publishers. It is helping them to fund the online content and services they offer consumers and to reinvest in new and richer content. This was acknowledged in the UK Government’s final Digital Britain report (June 2009): it welcomed targeted/behavioural advertising as an important business model to help publishers “convert creativity into value”.⁶**
- **It is also helping advertisers themselves by allowing them to better communicate with consumers who have already expressed an interest in their products/services. Behavioural advertising is delivering a better return on investment for businesses.**

6. The Regulation of Behavioural Advertising

- Behavioural advertising is regulated by the Data Protection Act 1998 and Privacy and Electronic Communications Regulations 2003, protecting consumer data and privacy. In addition to this, the Consumer Protection from Unfair Trading Regulations 2008 aim to protect consumers from false claims or misrepresentation. This applies to all advertising in all media and behavioural advertising does not raise new issues in this regard. Whether an advertisement exerts undue influence on a consumer or not does not vary from the offline world.

⁵ IAB/Toluna Research (February 2009): 85% of internet users would prefer to browse the internet free of charge with advertising on websites, whereas only 14% would prefer to pay a small premium and not have advertising.

⁶ Digital Britain (June 2009) – Department for Business, Innovation and Skills/Department for Culture, Media and Sport (pp 120-121).

- The IAB understands that the scope of the market study does not include examining specific privacy issues relating to the collection and use of data for behavioural advertising (which falls within the remit of the data protection regulator, the Information Commissioner’s Office (ICO)). The IAB is working closely with the ICO with its developing code of practice on personal information online – published in December 2009 - which covers behavioural advertising. **The IAB believes that the OFT should focus primarily on issues relating to consumer protection law rather than specifically examining issues relating to privacy that fall within the remit of the ICO. It would be unhelpful for the evolving self-regulation framework (see below) for the OFT to consider issues that are already under discussion with the ICO.**
- However, we acknowledge the OFT’s reference to privacy and transparency issues in the scope and that the collection and use of web browsing information may raise issues relating to privacy which may affect pricing. We also acknowledge the OFT’s need to understand these issues, what industry is doing to address these and how we are working with the ICO (eg the code of practice on personal information online).
- In order to assist the OFT in its understanding of the issues, we refer to the set of Good Practice Principles developed and published by the IAB specifically to provide consumers/internet users with increased transparency and disclosure regarding data collection and use, greater choice and control over this practice and education to help users understand how behavioural advertising work and how it may benefit them.
- The IAB’s Good Practice Principles complement UK data protection and privacy laws and, in places, supplement them by providing rules to govern the collection and use of all data – in some cases both personal and non-identifiable – to deliver behavioural advertising. They have been developed by the IAB’s behavioural advertising working group, including today’s leading providers of behavioural advertising, such as major advertising networks (eg Google, Yahoo! and AOL Advertising) and technology companies (eg Audience Science). Providers of targeting using ISP technology (eg Phorm) – although not active in the UK market – were also involved. A full list of signatory businesses can be found at www.youronlinechoices.co.uk/good-practice-principles and the IAB continues to work in ensuring that all businesses providing behavioural advertising services sign up and comply with the Principles. The existing signatory list makes up the vast majority of the UK behavioural advertising market.
- There are three core Principles that businesses are committed to:

a. Clear and unambiguous 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 type of information is collected and how the information is used.

This means that a web publisher will need to provide this notice prominently on its site(s). The Principles offer the option of doing this in a privacy policy or signposted to the privacy policy from a link alongside the advertisement. For web publishers using a third party (eg an advertising network) to collect and use information for behavioural advertising, the third party will, via its contract, require the web publisher to provide this notice. The Principles provide some sample language for illustrative purposes. The provider of behavioural advertising itself will also need to meet this commitment.

b. 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. 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, informed consent must be obtained, as is required by data protection law. In addition to this, there may be occasions – as required by law or regulatory guidance - where businesses will need to obtain specific consent (eg information collected by a provider at an ISP level) 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.

The IAB has a dedicated opt out page at www.youronlinechoices.co.uk/opt-out. This is currently an amalgamation of existing opt out links by those businesses that are currently complying with the Good Practice Principles. We are currently building a dedicated opt out 'tool' for the site which will offer a more user-friendly 'red button' option. It will also ensure that a user's choice is persistent and not affected by other tools to delete cookies, such as web browser settings. This solution will be in place by Q1 2010 and will be used across European markets as an 'EU opt out' for behavioural advertising. The IAB will provide further information to the OFT on this initiative when it is completed.

c. Education:

A company collecting and using online information for behavioural advertising must provide users with clear and simple information (such as an educational online video) about their use of information for this purpose and how users can opt-out. Many businesses already provide this type of information and examples can be found at www.youronlinechoices.co.uk/further-info. It includes videos from AOL, Audience Science and Google. The IAB has also built a dedicated website for consumers – www.youronlinechoices.co.uk. Further details on this are below.

- In addition to these, the Good Practice Principles include a specific commitment relating to children: no business that collects and uses information for behavioural advertising will create an 'interest segment' intended for the sole purpose of targeting children under the age of 13 years of age. The IAB recognises that there are other areas that people may consider to be sensitive and this is an area that we are committed to discuss this with wider stakeholders and keep it under review.

7. Good Practice Principles Compliance and Enforcement

- Companies that sign up to the Principles have six months to comply. Each will self-certify their compliance to the IAB and this is to be independently audited by a third party organisation, ABCe, to provide additional assurance that businesses are adhering to the Principles. We expect the audit of the businesses that have initially signed up (and have live commercial operations in the UK) to be completed in Q1 2010. Each business will be issued with a certificate of compliance once it has passed the audit.
- The Good Practice Principles document states that user complaints – in the first instance - should be addressed by complying businesses themselves. In some cases a user may not know which business to complain about and we have therefore sought to make this process easier by having a dedicated page at www.youronlinechoices.co.uk/how-do-i-make-a-complaint. This page sets out the steps that can be taken when making a complaint. Valid (ie relating to behavioural advertising and the Good Practice Principles)

user complaints have to be dealt with by the relevant business within 20 working days (from the date the complaint is received by the business). If the user's complaint is not dealt with in this timeframe or is not addressed to the user's satisfaction, he or she may escalate the complaint to a Board (made up of the businesses complying with the Good Practice Principles). This board – minus the business that the complaint refers to – decides whether to uphold the complaint or not. If the board does uphold the complaint the business in question must submit a proposal as to how it will resolve the issue. If the issue remains unresolved, the board will deem the business to be in breach of the Good Practice Principles and the appropriate sanctions applied (including the publication of the complaint and withdrawal of the certificate of compliance). To date, only one valid user complaint has been made via the website and none have been escalated to the board for further consideration. The IAB will keep this user complaints process under review.

- Developing good practice in this area is the first step in our work and we are committed (in the Principles document itself) to keeping this under review as commercial practices evolve and as technology changes. The IAB has a dedicated behavioural advertising working group – made up of advertising networks, technology companies, agencies, publishers and advertisers – and this group will be reviewing the Good Practice Principles in the first half of 2010 to ensure that they are aligned with other initiatives, such as those in the USA, and – in particular – the development of a self-regulatory framework for all EU markets.
- The IAB and – in particular – its members are investing a considerable amount of time and resource in this self-regulatory framework, which has the support of the Government and regulators. **The IAB believes the OFT should welcome this commitment by industry and we would welcome the OFT's support for this developing self-regulatory good practice and for the development of self-regulatory efforts at EU level.**
- A copy of the Good Practice Principles can be found at www.youronlinechoices.co.uk/good-practice-principles. The IAB consulted with key stakeholders, including privacy and consumer advocacy groups prior to publication. Once published in March 2008, the ICO, Ofcom, the Government (Digital Britain report) and additional industry groups welcomed the Principles. The Principles were also welcomed and supported by the Department for Children, Schools and Families (DCSF) response in December 2009 to the Buckingham Review on the Impact of the Commercial World Upon Children.⁷

8. Consumer Education

- Consumer research by the IAB and legal firm Olswang in November 2009 highlighted the importance of greater consumer education on behavioural advertising. The research also found that consumers' level of comfort significantly increased when greater information is provided, such as what information is actually collected and used and how it can be switched off. A copy of the research can be found at: www.iabuk.net/en/1/sessionlogin.mxs?requested=/en/1/iabresearchonlinebehaviouraladvertising.mxs

⁷ www.publications.parliament.uk/pa/cm200910/cmhansrd/cm091214/wmstext/91214m0001.htm#0912149000003

- To address this need and to support the launch of the Good Practice Principles, the IAB and its members have developed the website – www.youronlinechoices.co.uk – specifically aimed at consumers. The website aims to help them understand how behavioural advertising works (eg how cookies work) and how it may benefit them. The website also includes a wide range of helpful information, FAQs and top tips – such as how to get more familiar with web browser settings. As previously mentioned, the website also includes a ‘one stop shop’ opt out page, a dedicated complaints section as well as other helpful information.
- The IAB has ‘optimised’ the website and is marketing the site to help internet users find the the relevant information. Links to the site can also be found on the website of the Advertising Standards Authority (ASA) – see www.asa.org.uk/asa/links - and Consumer Direct – see [www.consumerdirect.gov.uk/about/organisations we work with/UsefulOrganisations](http://www.consumerdirect.gov.uk/about/organisations_we_work_with/UsefulOrganisations). We will continue to improve the website in 2010 to ensure it remains visible and relevant to internet users.

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