

Online Behavioural Advertising

Introduction

The last few weeks have seen the climax of work across Europe and with the UK government regarding the use of cookies in online behavioural advertising (OBA), also referred to as behavioural targeting. This briefing provides publishers with a short introduction to the issues they need to be aware of in relation to the EU's revised ePrivacy directive – which covers the use of all cookies – and the [EU framework](#) on the use of online behavioural advertising (Framework).

State of play

The UK Government supports the work of advertisers and publishers regarding the use of third party cookies in OBA. This self-regulatory approach has come about through cross-industry action at EU level, culminating in the Framework and the European Advertising Standards Alliance (EASA) best practice recommendation. Such solution will ensure the provision of more information on the use of cookies accessed through an easily recognisable internet icon, a privacy policy notice, a single consumer control page, with a self-regulatory compliance and enforcement mechanism.

Through clicking on the [Icon](#), the consumer will be informed about:

- each specific internet advert;
- the advertiser;
- the server;
- who the advert has been customised by; and
- an option to refuse those and other cookies (including an option to refuse all cookies from that server).

Consumers will also be provided with a link to further information on privacy and OBA. The UK Government has said it is pleased to support the industry-led work on the use of third party cookies in OBA and has stated that it is satisfied that this meets the requirements of the revised Article 5(3) of the revised ePrivacy Directive. The European Commission has also endorsed this work.

Flexible approach

The Government recognises that there are other uses of cookies that could be of concern but advocates a flexible approach: "Flexibility will be important to help ensure that new business models and innovations not currently envisioned are not constrained nor presumed to have to behave in the same way or implement privacy controls in exactly the same form as existing business models.

"The UK approach is therefore not to be prescriptive about potential measures intended to meet the requirements of the Directive but rather to enable a more flexible and responsive UK ecology of solutions built around the three measures elaborated here."



What happens next?

The Government does not expect the cross industry work on OBA to have been completed before the implementation deadline of May 25, 2011. It fully recognises that it will take time for these and for other meaningful solutions to be developed, evaluated and rolled out.

Therefore, the Government is proposing that implementation of the technical solutions be phased and tied to "the development and availability of appropriate technical solutions". A similar approach was taken with regards to the original implementation of the e-privacy directive in 2003.

The UK's Information Commissioner's Office (ICO) will be providing advice on compliance with Article 5(3) of the revised ePrivacy directive ahead of the formal deadline for implementation of the Framework on 25th May 2011. Formal guidance will be produced in a manner which reflects the phased approach to implementation.

The Government does not expect that the ICO will take enforcement action against businesses and organisations that are working to address their use of cookies or are engaged in development work on browsers and/ or other solutions. However, what is clear is that the UK will implement the technical requirements of the revisions to Article 5(3). Government will set up a second working group to explore other options with industry to complement the guidance that will be issued by the ICO.

What do publishers need to do?

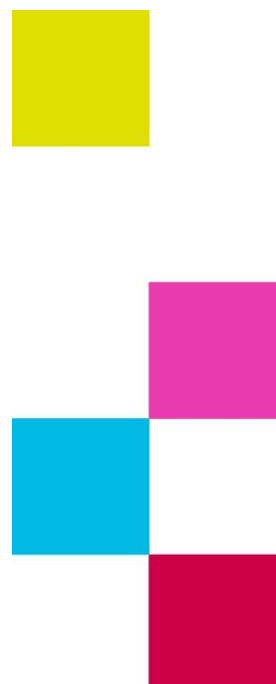
The [European Advertising Standards Alliance \(EASA\)](#) has released its best practice recommendations (BPR) on OBA. These recommendations provide for an industry-wide self-regulatory standard for OBA, which will ensure consumer privacy protection across Europe.

In practical terms, the recommendations promote the identification of OBA ads via a uniform European-wide icon, which clicks through to a simple mechanism that provides consumers with full transparency, allowing them to exercise their online choices (including opting out of OBA).

The icon will be included in or around all online behavioural advertisements and will signal to consumers that OBA is being used. The icon will be interactive, allowing consumers to find out more about which companies are involved in serving the ad and also to click through to a European-wide website (www.youronlinechoices.eu). The website will provide information about OBA and a simple means for consumers, in their national language, to exercise their choice about whether they want to receive OBA ads.

Consumers that want to complain about an OBA ad will be able to do so, once the Framework and BPR are fully implemented, via a self-regulatory organisation in their home country. The UK has not yet decided on whom complaints should be made to, but the Advertising Standards Association is the industry's favoured body.

PPA and AOP have worked with advertisers to ensure that third party advertisers are responsible for the icon and that it should be placed in or around the advertisement.





Third party advertisers may also provide notice via the icon on the web page where the data for OBA purposes is collected, if there is an arrangement with the publisher for the provision of such notice.

It is recommended that publisher's look at their own use of cookies, including for OBA and web analytics, and take steps to ensure that they meet with the requirements of the Directive ahead of the roll out of appropriate technical solutions. Increased transparency is required, so publishers should look to facilitate this through, for example, more prominent cookie policies (in easy to understand language) and easy mechanisms to opt out of the placing or reading of cookies.

Contact

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