



EASA - IAB BEST PRACTICE RECOMMENDATIONS

Text of the letter sent to Mr. Jacob Kohnstamm,
Chairman of the Article 29 Working Party
Chairman of the College bescherming persoonsgegevens (NL)

Contact: Guillermo Beltra – digital@beuc.eu
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Dear Mr. Kohnstamm,

In light of the upcoming adoption of the Opinion on the self-regulatory Framework for Online Behavioural Advertising prepared by the Interactive Advertising Bureau Europe and the European Advertising Standards Alliance, I would like to submit our views on behalf of BEUC, the European Consumer Organization.

Limited scope

BEUC considers that this self-regulatory initiative is an incomplete patch-work solution which does not necessarily include all scenarios where Online Behavioural Advertising (OBA) takes place¹ and does not offer consumers the opportunity to express their consent to be tracked. Further, not all advertising networks are signatories of these guidelines, which creates the risks of consumers getting the impression that their Internet experience is completely covered by it, when it is not the case.

An icon is insufficient and potentially counterproductive

To a great extent, the guidelines are based on the placing of a graphical icon which once clicked on, should provide information to individuals about the data that is being collected and how this data is used. BEUC considers the use of a graphical icon to be an insufficient means of notice for consumers. In fact, research suggests that very few consumers click on the icon, and even fewer decide to act upon the information they receive through that means. A recent TRUSTe study in the US with a comparable logo, showed that out of approximately 20 million consumers (7 million unique visitors), it was accessed 56,000 times with 44,000 unique views. If calculations are just made on the unique visitors and unique views, this means that only 0.6% of consumers, clicked through to the ad info page.

Further, the guidelines seem to allow for certain flexibility about where the icon could be placed, only stating it should be placed "on websites, in/or around the advertisement". This flexibility could be interpreted so as to mean that the icon can be placed in a less visited page of the website, or at the bottom of a page. This considerably hinders the chances that consumers will see and recognize the icon as the point to obtain information on the tracking and profiling that is taking place using their very own data.

Lack of transparency

The information that is displayed once the icon is clicked upon is of utmost importance. Currently, the information displayed misleadingly highlights the benefits of behavioural advertising, using arguments such as that the advertisement is tailored to consumer's preferences, that the information collected is not personal, and that this kind of commercial activity supports the access to a "free" Internet. What consumers are not told are the associated risks to their privacy that targeting and profiling entail, what other companies have access to the collected information, how it is processed and shared, and so on.

¹ The weak wording in the definitions section of the guidelines could be interpreted to exclude companies that deliver adverts on their own sites or on sites owned by any company within its group, or in the context of a written agreement with the website owner.

The advertising industry's initiative includes the creation of an information portal **www.youronlinechoices.eu** which we consider to be unacceptably misleading. Firstly, the information portal works on the basis of a geographical separation according to the country from which the consumer is using the Internet, and not all EU countries are currently available. Should a consumer decide to use this information portal's tools to disable tracking cookies from the signatory advertising networks, what will happen if the consumer uses the same device in another EU country remains unclear.

The information provided in the portal is insufficient, and misguides consumers to believe that by using the opt-out tools the portal offers they will stop being tracked. Many clear examples of incomplete information can be found on the Frequently Asked Questions section of their portal, some examples include²:

- *What data are used? - Behavioural advertising can vary in terms of what information is used and how. Traditional advertising networks, for example, collect and use information when you visit one or a number of websites participating in that particular network. **The answer is not complete enough and the consumer does not get information about the data collected and processed.***
- *Isn't this a threat to my privacy? - All providers of this sort of service have to comply with applicable laws. In most cases, the information used for targeting adverts is not personal, in that you – the user – cannot be identified.(...). You always have a choice as to whether to benefit from more relevant advertising or not. **"In most cases" is misleading as consumers will not know in which cases the information is personal or not, and when he or she can be identified.***
- *What can I do if I don't want this type of advertising? - You can opt out here [link]. (...). It just means that the advertising you see displayed on websites will not be customized to you and your interests and may be less relevant to you. **This does not clarify if the consumer's data continues to be collected despite the advertising no longer being based on the behavioural data collected.***

Further, the opt-out tool that is offered through this portal is also misleading for consumers, as it is not a real opt-out. By switching off all the signatory advertising networks, the portal sets a cookie on the user's browser that will tell advertising networks not to further install tracking cookies. Firstly, the problem is that this *disabling cookie* will only be valid on the specific browser that has been used and on the specific device.

As soon as the consumer switches devices or browser, the desired action to opt-out from OBA from those networks will no longer be recognized. Secondly, the *disabling cookie* could easily have an expiry date, which would mean that the consumer's voluntary action to disable tracking would be illegitimately reversed after a certain period of time, and tracking from all the networks in the portal would be in place without the consumer knowing or having accepted it.

² <http://www.youronlinechoices.com/uk/faqs>

An additional problem could rise if consumers follow other advice (also suggested on the information portal) to opt-out from advertising networks by deleting or disabling all cookies from their browser, therefore also deleting the *disabling cookie*. This would in effect reactivate tracking from all the networks, precisely the opposite of what the consumer would be intending to do in this case.

Compliance with and enforcement of self-regulation far from optimal

Self-regulation also raises concerns as regards its effective enforcement and the sanctions in case of non-compliance. The specific guidelines only refer to a 'request' towards industry members to support their adoption. It remains unclear what the consequences of not adopting them are. Enforcement of the guidelines for those who do subscribe to them also remains unclear, as it is up to the industry itself to enforce it, therefore posing a clear conflict of interest.

Using technology to the benefit of consumers

BEUC strongly agrees with WP29 that each advertising provider displaying targeted ads on any given website needs to separately comply with legal provisions regarding consumers' consent. Further, we agree that users need to be able to manifest meaningful consent in accordance to article 5(3) of the ePrivacy Directive. We agree with WP29 that it should be technologically feasible for website operators and ad network providers to set up other means of information display and consent manifestation mechanisms, in a centralized manner, without significantly affecting the user's web experience.

Beyond browsers and personal computers

BEUC is concerned that working with browser settings as a possible solution to the issue of consent would put a disproportionate burden on users to protect themselves, as the vast majority of browsers are set to accept third party cookies as default. In any case, using browser settings to opt-out from behavioural advertising does not necessarily protect users from 'flash cookies'³.

In a world where consumers increasingly use the Internet through mobile and portable devices, the issue of OBA goes well beyond browser settings and cookies. As new technologies evolve, cookies are no longer the only way to track online behaviour.

We sincerely hope that the concerns that we have expressed in this letter on this industry initiative match your analysis and remain at your disposal for any further discussion on this or any other topic related to the protection of personal data of consumers.

Yours sincerely,

Monique Goyens
Director General

³ UC Berkeley research study on flash cookies – http://www.law.berkeley.edu/institutes/bclt/about/about_news_08-17-09_3.htm