



Mr. Jacob Kohnstamm
Chairman of the Article 29 Working Party
Chairman of the College bescherming persoonsgegevens
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Mr. David C. Vladeck
Director, Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Ave., NW
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September 8, 2011

Dear Mr. Kohnstamm and Mr. Vladeck,

On behalf of the Transatlantic Consumer Dialogue (TACD), I am writing to present you with the resolution on behavioral advertising recently adopted by the TACD¹ and share with you our concerns about the efficacy of the Online Behavioral Advertising (OBA) self-regulatory systems now being implemented. Consumers in both the [US](#) and [EU](#) are offered limited options based on principles crafted by the digital marketing industry and “enforced” by [groups](#) that do not represent consumers or governments and that are completely lacking in any independence from the industry they are intended to monitor.

We read with interest the 3 August 2011 letter from Mr. Kohnstamm to IAB Europe and the European Advertising Standards Alliance (EASA), as well as the accompanying 1 June 2011 letter from Mr. Vladeck. We share a number of the concerns articulated by the Article 29 Working Party letter and urge the Working Party, the European Commission, the Obama Administration and the FTC to ensure that any self-regulatory approach effectively protects consumer privacy. As Mr. Kohnstamm’s letter notes, and as the proposed FTC principles discussed by Mr. Vladeck illustrate, the current iteration of the OBA self-regulation is inadequate. The OBA self-regulatory approach also fails to effectively address contemporary digital data collection practices used to profile an online user.

¹ See TACD Resolution on Behavioral Advertising at http://tacd.org/index2.php?option=com_docman&task=doc_view&gid=298&Itemid=40

Both self-regulatory systems primarily rely on the use of a graphical icon to provide notice of some data collection practices. First, the icon is an insufficient means of notice to a user about the wide range of data collection that they routinely face. Industry [research conducted](#) on the icon-based program already demonstrates that very few users ever click on it, let alone decide to opt-out. Yet the icon is the foundation of what's supposed to be a robust program of "best" practices that can effectively empower users to make critical choices about their online privacy. In addition, the EASA's code would allow for publishers that are also advertising networks to place targeted adverts on their own sites without need of the icon. It is wholly unreasonable to expect consumers to know the convoluted links between online entities.

We concur with Mr. Kohnstamm that the EU self-regulatory system uses an inadequate, and in our view misleading, definition of OBA as "non-personal" data (as does the US program). As the industry and its trade associations know, OBA provides for profiling and tracking of individuals across the digital media environment, hence the information is deeply personal. Consumers who may click on the icon are initially dissuaded from taking appropriate measures to safeguard their privacy, as they confront an array of information that online profiling is primarily about providing them with "appropriate" advertising, is non-personal, and supports their access to a "free" Internet. Consumers are also not told they will continue to be tracked and profiled, even if they decide to opt-out under a product or data collection service provider category. Under both the EU and US self-regulatory regimes, sensitive data, such as involving consumers' [health](#) or finances, can be collected without ensuring that they have real opportunities to proactively protect how such information is used. The IAB's opt-out tool is based on cookies. As such it is a non-permanent register of consumers' interests and as such easily forgotten should the same consumer choose to delete the cookies from their browser, something they are quite likely to do given they are privacy aware and that the current self-regulatory scheme does not cover the entire market.

Both the Working Party and the FTC are also well aware of current and complex OBA related [practices](#) on both sides of the Atlantic, involving ad [exchanges](#), demand-side [platforms](#), [agency](#) data [buying desks](#), that incorporate behavioral information, [mobile](#), and online [video](#) and [social](#) network data used for real-time profile- based targeting. Ad networks and exchanges, as well as many First Party sites, now routinely [integrate](#) a wide [range](#) of [data](#) on [individual users](#), often in real-time. Such increasingly standard industry practices are not addressed by the self-regulatory systems (nor are the use of various tactics designed to facilitate personalized data collection, such as user [optimization](#) techniques and [rich media](#) applications designed to foster "engagement"). Unfortunately, the self-regulatory approach embraced by industry fails to implement measures that would provide consumers with information about these practices, and enable them to make reasonable decisions to protect their privacy.

The Digital Advertising Alliance in the US and IAB Europe/EASA, we believe, have created systems principally designed to enable the expansion of OBA- related data practices. As both the Article 29 Working Party and the FTC know, consumer and privacy NGOs are not opposed to digital marketing. Our concern is the same as yours; to ensure that consumers can effectively protect their privacy in today's digital media environment.

That is why, among the 18 specific recommendations in the recent TACD Resolution on Behavioral advertising, are the following:

TACD resolves that EU and U.S. governments should:

- Investigate and take regulatory action as needed to address new threats to consumer privacy from the growth of real-time tracking and sales of information about individuals' online activities on ad exchanges and other similar platforms.
- Commit to developing a global common standard for protecting privacy and consumer welfare in the digital marketplace that reflects the highest possible standards for human rights.
- Ensure a coherent implementation and proper enforcement of existing personal data protection and privacy legislation rules, including the principles of data minimisation, necessity, purpose limitation, limitation of storage period, and data security.
- Address the constantly evolving techniques used by advertisers for the profiling of online users and adopt measures that go beyond the standard third-party cookies that have been the focus of regulators to date.

We respectfully urge you to reject the current OBA self-regulatory regime as inadequate, and work with industry and consumer and privacy groups to ensure that significant revisions are made to protect consumer privacy.

We look forward to discussing this matter in the months to come.

Yours sincerely,



Julian Knott
TACD Head of Secretariat

Cc:

Robert Madelin, Director General, DG Information Society and Media
Anthony Whelan, Head of Cabinet of Commissioner Kroes
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