



**2021**

**EASA BEST PRACTICE  
RECOMMENDATION  
ON ONLINE BEHAVIOURAL  
ADVERTISING**



## **EASA**

EASA – the European Advertising Standards Alliance is the single authoritative voice on advertising self-regulation. EASA promotes high ethical standards in commercial communications by means of effective self-regulation, for the benefit of consumers and business in Europe and beyond.

Effective advertising self-regulation helps ensure responsible advertising, meeting consumers' demand for honesty and transparency, regulators' demand for responsibility and engagement and businesses' demand for freedom to operate responsibly. EASA and its members have developed a robust and coherent system of advertising self-regulation that can respond effectively to new challenges.

EASA is not a Self-Regulatory Organisation (SRO) in itself, but acts as a coordination point for best practice in the implementation of self-regulation, as well as operational standards for its national SRO members. Part of EASA's role involves coordinating the cross-border complaint mechanism. EASA also collects and analyses top line statistical data on received and resolved complaints, as well as on copy advice requests and pre-clearance from its SRO members each year.

EASA was set up in 1992 to represent national self-regulatory organisations in Europe. In 2004, it developed into a partnership between national advertising SROs and organisations representing the advertising industry. Today, EASA is a network of 42 organisations committed to making sure advertising is legal, decent, honest and truthful. EASA's membership is made up of 28 European self-regulatory organisations (SROs), 13 advertising industry associations, including advertisers, agencies, the media and 1 digital pure-play company. EASA is a not-for-profit organisation with a Brussels-based Secretariat. For further information, please visit [www.easa-alliance.org](http://www.easa-alliance.org).

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# 1. What is an EASA Best Practice Recommendation?

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EASA's Best Practice Recommendations (BPRs) are designed to provide support and advice to EASA's Self-Regulatory Organisations (SROs) and industry members on the practice of advertising self-regulation. They are based on EASA's Common Principles and Operating Standards of Best Practice and Best Practice Self-Regulatory Model.

EASA BPRs can be divided into two main categories: operational and blueprint BPRs. Operational BPRs give guidance on the operation, structure and procedures of SROs, while blueprint BPRs provide guidance on the remit and codes of SROs. The content of blueprint BPRs, such as the present publication on Online Behavioural Advertising, needs to be agreed upon by the whole advertising ecosystem and all SROs at European level.

EASA BPRs provide guidance and aim to achieve a coherence referring to remit and application throughout Europe for the benefit of European consumers and businesses, whilst recognising that the way to achieve this at national level may differ as a result of the national regulatory, cultural and societal context.

Best Practice Recommendations do not constitute a European code and are not formally binding. The implementation of a BPR at national level is the result of a negotiation process taking into account the existing (self) regulatory framework and the legal background to find an approach best suited to the national circumstances and needs. A national SRO may choose to adopt provisions in its advertising code that go beyond those recommended by EASA; some, indeed, have already done so.

BPRs are designed to stimulate and assist national discussions on the development of effective self-regulation. They are intended as a means for taking clear actions at both European and national level.

## 2. Best Practice Recommendation on Online Behavioural Advertising

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### 2.1 Introduction

The European Advertising Standards Alliance (EASA) is the single authoritative voice on advertising self-regulation issues and promotes high ethical standards in commercial communications by means of effective self-regulation, while being mindful of national differences of culture, legal and commercial practice. These standards are promoted, for example, via **EASA's Advertising Self-Regulatory Charter and EASA's Best Practice Recommendations**.

As a non-profit organisation based in Brussels, EASA brings together national advertising self-regulatory organisations (SROs) and organisations representing the advertising industry (advertisers, agencies, the various forms of traditional and digital interactive media ) in Europe and beyond. For a complete list of EASA's members, please see [www.easa-alliance.org](http://www.easa-alliance.org).

The EASA Best Practice Recommendation (BPR), for a European industry-wide self-regulatory standard and compliance controls in Online Behavioural Advertising (OBA), is intended to contribute to providing a host of consumer privacy protections for OBA through self-regulation across Europe.

It provides a comprehensive self-regulatory solution for Online Behavioural Advertising and thereby establishes an industry-wide standard. The EASA BPR on European Industry Self-Regulatory Framework on Data-Driven Advertising (including Mobile Addendum), Technical Specifications and Self-Certification Criteria constitute what is referred to in the European Interactive Digital Advertising Alliance (EDAA)'s licence and certification processes as the European Principles.

The features of this industry-wide response are:

- A complete and integrated self-regulatory solution for OBA;
- A coherent, harmonised approach to be implemented across European markets (EU, EEA, Switzerland and Turkey)<sup>1</sup>;
- A pan-European industry-wide approach and standard;
- OBA Consumer Choice Platform for consumer feedback and complaints;
- Robust and effective independent self-regulatory compliance and enforcement mechanisms;
- An independent certification process.

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<sup>1</sup> At the time of writing, the European Self-Regulatory Programme on OBA covers all markets within the European Union and European Economic Area, as well Turkey, the United Kingdom and Switzerland. For the latest information regarding the geographic scope of the Programme, please visit [www.edaa.eu](http://www.edaa.eu). Similar self-regulatory initiatives are also implemented in the US and Canada and may develop in other regions.

The EASA BPR has been the subject of consultation with broad industry and non-industry stakeholders and discussion in multiple EU Multi-Stakeholder Round Tables led by DG CONNECT (formerly DG InfSo) of the European Commission on self-regulatory solutions in the area of Online Behavioural Advertising.

The first edition of EASA's BPR on OBA was adopted by EASA's Board on 7 April 2011 and was communicated to national SROs in Europe and EASA industry members for national implementation. EASA is committed to ensuring that its members implement the BPR in a coherent and consistent manner, including subsequent amendments, where required. This second edition is based primarily on updating the BPR to reflect the extension of the European Industry Self-Regulatory Framework on Data-Driven Advertising to the mobile environment (see Chapter 6), and has been adopted by EASA's Board on 03 October 2016.

## 2.2 Summary

### ***Overview of the Best Practice Recommendation for EASA Industry and SRO members on Online Behavioural Advertising***

This Best Practice Recommendation states that:

#### **EASA industry members should:**

- Clearly request their members to support the adoption at national level of rules on Online Behavioural Advertising based on this best practice;
- Clearly request their members to support the adoption at national level of the new remit and rules for the handling of complaints on Online Behavioural Advertising by self-regulatory organisations (SROs);
- Establish a clear agreement with relevant businesses regarding the handling of complaints of a non-technical nature by the advertising self-regulatory organisations;
- Ensure adequate industry awareness of the above amongst their members;
- Ensure adequate and comprehensible consumer awareness of the above;
- Ensure the necessary linkup with the OBA Consumer Choice Platform to create a one-stop shop for consumer feedback and complaints;
- Ensure the necessary linkages between compliance monitoring and the complaint handling processes;
- Establish robust measures for sanctions related to repeat offenders or rogue traders.

#### **EASA member self-regulatory organisations (SROs) should agree with their local advertising industry and relevant businesses to:**

- Extend their remit beyond marketing communications content to include the handling of complaints regarding Online Behavioural Advertising;
- Include relevant provisions in the applicable codes covering Online Behavioural Advertising based on this best practice;

- Put in place the necessary procedures to handle complaints on Online Behavioural Advertising including the consultation of experts, relevant organisations and linkup with independent compliance monitoring and certification providers on OBA;
- Ensure adequate industry awareness of the above;
- Ensure adequate and comprehensible consumer awareness of the above;
- Provide a clear and comprehensible means via the OBA Consumer Choice Platform for consumers to feedback on technical issues (e.g. pertaining that the opt-out link or button has not worked, but not that a company has refused to fix a technical fault) and make complaints to SROs where necessary;
- Ensure a clear referral system and assistance for consumer feedback on technical issues to the OBA Consumer Choice Platform.

**The EASA BPR** has contributed to the revision process for the International Chamber of Commerce's Consolidated (ICC) Code on Marketing Communication and Advertising, for which Section D covers digital interactive media, including addressing Online Behavioural Advertising.

## 3. BPR Scope and Approach

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### 3.1 What is an EASA Best Practice Recommendation?

EASA's Best Practice Recommendations (BPRs) are designed to provide support and advice to EASA's Self-Regulatory Organisations (SROs) and industry members on the practice of advertising self-regulation. They are based on EASA's Common Principles and Operating Standards of Best Practice and Best Practice Self-Regulatory Model.

EASA BPRs can be divided into two main categories: operational and blueprint BPRs. Operational BPRs give guidance on the operation, structure and procedures of SROs, while blueprint BPRs provide guidance on the remit and codes of SROs. The content of blueprint BPRs, such as the present publication on Online Behavioural Advertising, needs to be agreed upon by the whole advertising ecosystem and all SROs at European level.

EASA BPRs provide guidance and aim to achieve a consistency of remit and application throughout Europe for the benefit of European consumers and businesses, whilst recognising that the way to achieve this at national level may differ as a result of the national regulatory, cultural and societal context.

Best Practice Recommendations do not constitute a European code and are not formally binding. The implementation of a BPR at national level is the result of a negotiation process taking into account the existing (self) regulatory framework and the legal background to find an approach best suited to the national circumstances and needs. A national SRO may choose to adopt provisions in its advertising code that go beyond those recommended by EASA; some, indeed, have already done so.

BPRs are designed to stimulate and assist national discussions on the development of effective self-regulation. They are intended as a means for taking clear actions at both European and national level.

### 3.2 What does this blueprint BPR do?

This EASA Best Practice Recommendation builds on the Best Practice for Digital Marketing Communications adopted by EASA in 2008. The BPR intends to provide a host of consumer privacy protections for Online Behavioural Advertising (OBA) through self-regulation across Europe. It specifically addresses the establishment and compliance for an industry-wide standard for transparency and consumer control mechanisms related to OBA by the advertising and marketing communications industry and SROs in Europe.

The set of best practices described in this BPR on OBA is the result of intensive discussions EASA has held with ad tech businesses, advertisers, agencies, media and SRO members, starting in 2009 through the EASA OBA Steering Group, as well as dedicated workshop sessions with EASA members.

It provides recommendations for changes to both the rules (in Section 2 on the standards) and remit of national self-regulatory systems, as well as how the systems of advertising self-regulation should interact with the consumer control mechanisms of the ad tech industry (Section 4). The approach used is intended to be technology-neutral and applies to all devices that can traverse the internet.

To ensure that these changes are made at national level, this BPR provides clear direction to both EASA industry and SRO members on the scope of the rules and the necessary process changes to be made. Local industry, including ad tech businesses, and the broader advertising industry (advertisers, agencies and media associations), will need to agree with these changes to be in accordance with the best practice.

The BPR is not and does not pretend to be a European code of conduct. It is a blueprint of guidance for a European implementation strategy. EASA produces the BPR; EASA industry and SRO members are then instructed to use the BPR. The implementation approach in this BPR is based on that used for the EASA BPR on Digital Marketing Communications issued at the end of 2008.

All EASA European member SROs should implement this BPR, particularly those with an existing operational code for OBA, by October 2017.

## 4. European Industry-wide Self-Regulatory Standard and Compliance Mechanism for Consumer Controls for Online Behavioural Advertising

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### 4.1 Introduction

The principles detailed below provide the basis for a European-wide industry self-regulatory standard for increased consumer transparency and choice regarding Online Behavioural Advertising (OBA). They are drawn from the Principles and Definitions contained within the European Industry Self-Regulatory Framework on Data-Driven Advertising (see Chapter 5).

The BPR identifies the following five principles from the European Industry Self-Regulatory Framework on Data-Driven Advertising (the relevant Principle number of the European Industry Self-Regulatory Framework on Data-Driven advertising Advertising is cited for reference purposes in brackets), which should be applied as an industry-wide standard across the entire EASA community:

Principle I (I): Notice

Principle II (II): User choice

Principle III (IV): Sensitive segmentation

Principle IV (VI): Compliance and enforcement

Principle V (VII): Review

### 4.2 Application of the Standard and its Principles

This Standard is self-regulatory in nature and is intended to apply to all Third Parties involved in OBA. It creates obligations for all Third-Parties, Website Operators and App Providers involved in the delivery of Online Behavioural Advertising (OBA), also commonly referred to as interest-based advertising.

OBA is a way of making ads more relevant to internet users according to their potential interests. Based upon previous online activity across multiple web domains or mobile apps not under Common Control (see p.12, internet users are served advertising that matches their potential interests. In this way, advertising can be made more relevant and useful. OBA is one of a variety of options that ad tech companies have in order to select the most suitable ads to show internet users. Other options include “contextual” advertising, “run of network” advertising, or other types of advertising. As a result of OBA’s ability to generate more added value for internet users, it is more valuable to advertisers and is regarded as an essential part of the industry toolkit.

This Standard is intended to enhance internet users' trust by providing clear and easily recognisable information about OBA activities, in particular by standardising consumer notices within online advertisements (including video) or on websites or mobile apps. The Standard encourages the creation of easy-to-use mechanisms providing internet users with enhanced transparency and choice regarding OBA. These mechanisms will also enable internet users to easily provide feedback and file complaints about suspected non-compliance with the Standard.

The BPR Standard is intended to be technology-neutral and applies to all devices that can traverse the internet.

This BPR covers the majority of retargeting. The definition of OBA below excludes the activities of Website Operators or App Providers that are limited to their own sites/mobile apps or sites/mobile apps controlled by them, Ad Delivery or Ad Reporting, or contextual advertising (e.g. advertising based on the content of the web page being visited or mobile app being used, a consumer's current visit to a web page or current use of a mobile app, or a search query).

The Standard does not seek to address the content of online advertisements, which is already described in the EASA Best Practice on Digital Marketing Communications. Neither does it address Ad Reporting data where such data is not used for OBA purposes, nor its use for Ad Delivery. For further details, please see the definitions of "Ad Reporting" and "Ad Delivery" on pp.11-12.

The BPR underlines that all companies should ensure they are compliant with the relevant laws in place. This Standard is made in addition to the applicable laws and does not replace the legal obligations that companies need to comply with when processing data for OBA purposes. In particular, it underlines that:

- the practice of using technologies in order to circumvent the user's express choices (for example, by deliberately "re-spawning" deleted cookies), is not regarded as compliant with data protection law and should not be used.

### **4.3 Definitions:**

The following definitions, in italics, are based on those contained in the European Industry Self-Regulatory Framework on Data-Driven Advertising and Annex for the Application of the European Industry Self-Regulatory Framework on Data-Driven Advertising in the Mobile Environment (see Chapters 5 and 6 of this BPR). Below each definition is an explanation of how EASA and its members interpret these definitions.

#### ***Ad Delivery***

*Ad Delivery is the delivery of online advertisements or advertising-related services using Ad Reporting data.*

*Ad Delivery does not include the collection and use of Ad Reporting data when such data is used to deliver advertisements to a computer or device based on user preferences or interests*

*inferred from information collected over time and across sites or mobile apps not under Common Control.*

This definition clarifies that companies, which optimise the delivery of their online advertising on a website or mobile apps using Ad Reporting data, are not generally considered to be engaging in OBA. Where the delivery of online ads is optimised using Ad Reporting data only, this is not covered under this BPR. Such Ad Delivery is exempt because the collection of Ad Reporting data does not occur over time and does not occur across multiple websites or mobile apps that are not under Common Control.

The use of Ad Reporting data is not covered by this exception when it is used in a way that matches the definition of OBA. In other words, where a company collects Ad Reporting data across multiple web domains or mobile apps it does not own or operate and uses such data to create interest segments and to deliver ads that are targeted according to these interest segments, it does serve OBA as defined by the BPR. It is therefore expected to comply with the obligations accordingly.

### **Ad Reporting**

*Ad Reporting is the logging of page views on a website or the collection or use of other information about a browser, mobile app, operating system, domain name, date and time of the viewing of the web page, mobile app or advertisement, and related information for purposes including, but not limited to:*

- *Statistical reporting in connection with the activity on a website(s) or mobile app(s);*
- *Web/mobile app analytics and analysis; and*
- *Logging the number and type of ads served on a particular website(s) or mobile app(s).*

Ad Reporting describes the logging of information that is used to measure statistical details about online advertisements, such as ad impressions, clicks, and user interaction on a website or mobile app. Such information typically includes information about the browser, mobile app and operating system an internet user is using, or the time and date when a particular ad was viewed. Ad Reporting data forms an important part of all online advertising activities (not just OBA). It allows advertisers to properly display ads (e.g. according to the technical specifications of a website or mobile app visitor's equipment/device) and to measure the performance of an ad campaign. For example, advertisers may choose to identify the most effective location for an advertisement on their website or mobile app using Ad Reporting data.

### **App Provider**

*An App Provider is the owner, controller or operator of the mobile application.*

This definition refers to companies that own, control or operate a mobile app, such as travel companies, real estate agencies, newspaper or magazine publishers or brand owners. It also refers to companies that operate a mobile app on behalf of the owner.

### **Common Control**

*Entities or websites, or mobile apps under Common Control include ones which Control, for example, parent companies, are Controlled by, such as subsidiaries, or are under Common Control, such as group companies. They also include entities that are under a written agreement to process data for the controlling entity or entities, and do such processing only for and on behalf of that entity or entities and not for their own purposes or on their own behalf.*

The first part of the definition refers to entities or websites or mobile apps under the control of one company, such as parent companies, subsidiaries or group companies. These are not considered to be a Third Party. The second part of the definition refers to a company that processes data on behalf of and upon instruction by another company. This “data processor” is considered to be acting under “Common Control” because it does not operate for its own purposes.

### **Online Behavioural Advertising (OBA)**

*Online Behavioural Advertising means the collection of data from a particular computer or device regarding web-viewing behaviours or mobile app use over time and across multiple web domains and/or mobile apps not under Common Control for the purpose of using such data to predict web user preferences or interests to deliver online advertising to that particular computer, mobile app or device based on the preferences or interests inferred from such web viewing or mobile app use behaviours. Online Behavioural Advertising does not include the activities of Web Site Operators or App Providers (First Party), Ad Delivery or Ad Reporting, or contextual advertising (e.g. advertising based on the content of the web page being visited, a consumer’s current visit to a web page, or a search query).*

OBA describes a technique to serve online advertisements that are targeted to the users’ potential interests. In order to be able to target ads, ad tech companies try to predict a user’s interests and preferences based on the user’s past websites viewing record or mobile app use, for example, in the form of data about page views or user clicks. This information about viewing behaviour is collected over time and across multiple web domains or mobile apps, rather than from a single website or single mobile app. Typically, the ad tech company collects information on viewing and usage behaviour from websites or mobile apps that it does not own or operate.

### **Third Party**

*An entity is a Third-Party to the extent that it engages in Online Behavioural Advertising on a website(s) or mobile app(s) other than a website(s) or mobile app(s) it or an entity under Common Control owns or operates.*

### **Web Site Operator**

*A Web Site Operator is the owner, controller or operator of the website with which the web user interacts.*

This definition refers to companies that own, control or operate a website, such as travel companies, real estate agencies, newspaper or magazine publishers or brand owners. It also refers to companies that operate a website on behalf of the owner.

## **4.4 The Principles of the BPR Standard**

### **Principle I - Notice**

This principle describes the obligations with regard to transparency to the user that OBA is taking place.

#### **A.1. Third Party Privacy Notice**

Principle I - A.1. requires that all Third Parties engaged in OBA should provide clear and comprehensible information on their websites about data collection and use practices as well as providing a link to the OBA Consumer Choice Platform.

#### **A.2. Third Party Enhanced Notice to Consumers**

In addition to the privacy notice on their own website(s), where Third Parties are required to provide an “enhanced notice” to consumers whenever they are collecting or using data for OBA purposes on a website or mobile app that is not operated by them. The purpose of the enhanced notice is to provide the internet user with information about the identity of the company that is delivering the ad and about the fact that the ad is targeted based on previous web viewing behaviour or mobile app use.

The enhanced notice can be delivered in two ways: either in the form of a notice controlled and branded by the Third Party directly with the information required above, or by linking through to the OBA Consumer Choice Platform. Furthermore, in the first case, the enhanced notice should inform the web user about the possibility to exercise a choice with regard to receiving OBA, and should contain a link to the OBA Consumer Choice Platform.

Principle I - A.2. requires an enhanced notice on the website or mobile app where OBA is delivered by the Third Party or where data are collected for OBA purposes by the Third Party. Such an enhanced notice should be provided in or around OBA advertisements through the icon. The icon is a visible object that contains a hyperlink to the OBA Consumer Choice Platform and additionally may also contain a hyperlink to the Third Party Notice described in I.A.1.

The commitment is to serve an icon in or around all OBA ads. If for technical reasons, it is not feasible for the icon to appear only in or around OBA ads, consumers should still be informed through the transparency mechanisms of the programme – thus, the use of an icon on all ads (not only OBA ads) is permitted.

### ***B. Website Operator / App Provider Notice***

In instances where the Third Party does not provide the enhanced notice in or around the ad or on the website or mobile app, Principle I.B. requires a notice by the Website Operator or App Providers that the Website Operator or App Provider permits data collection and its use for OBA purposes on its website or mobile app by Third-Parties. This notice should either link to the industry-developed website / mobile app (as appropriate), or list individually the Third-Parties engaged in OBA on its website or mobile app.

The particular Third Party engaged in OBA on a Website Operator or App Provider's website has the primary responsibility to ensure oversight and control. For this reason, a Third Party and not the Website Operator / App Provider would be in non-compliance with the principles if the Third Party fails to comply with the enhanced notice obligations.

## **Principle II - User Choice over Online Behavioural Advertising**

**A.** Each Third Party that participates in OBA should make available a **user-friendly mechanism**, in the form of an icon linking to the OBA Consumer Choice Platform, for internet users to exercise their choice with respect to the collection and use of data for OBA purposes. This mechanism should be linked to the enhanced notice detailed in Principle I. Where an internet user exercises his/her choice and objects to OBA data collection, OBA processes should no longer be used by that entity to facilitate the delivery of targeted online advertising to that user's browser or mobile apps.

This principle provides that all internet users who receive OBA, either via a computer, or other device, should enjoy choice over OBA activity through the OBA Consumer Choice Platform.

**B. Explicit Consent** means an individual's freely given, specific, and informed explicit action, in response to a clear and comprehensible notice regarding the collection and use of data for Online Behavioural Advertising purposes.

Explicit Consent should be obtained on a prior basis by companies that use specific technologies or practices, such as browser toolbars, to collect data about all or substantially

all websites visited on a particular computer or device and that use such data for delivering OBA. Where a Third-Party has obtained Explicit Consent, it should provide an easy-to-use mechanism for internet users to withdraw their Explicit Consent to the collection and use of such data for OBA.

Where such data are to be used to deliver OBA, the BPR requires the Third Party which collects the data to obtain the user's Explicit Consent. These technologies/practices should also provide access to the OBA Consumer Choice Platform.

**C.** Companies should not engage in techniques that bypass users' expressed choices with regard to the collection and use of data for OBA purposes. Companies should take measures to address these practices when they learn of their use, including referrals to the appropriate authorities.

EASA realises that there are business practices that are designed to go against the choice expressed by the user. Principle II.C clarifies that the advertising and marketing industry is opposed to these illegal practices and condemns their use. It is clear from this principle that the BPR in no way tries to enable or facilitate the use of such practices.

### **Principle III - Sensitive Segmentation**

Categories of interest may be created that could be considered to be sensitive.

#### ***A. Children's Segmentation***

The Standard expresses that Third Parties should not create segments that are specifically designed to target children using Online Behavioural Advertising. The BPR does not restrict the collection of OBA data for the purpose of marketing children's products to parents and other adults.

#### ***B. Segments using Sensitive Personal Data***

The Standard clarifies that any company seeking to create or use OBA segments relying on the use of sensitive personal data must obtain an internet user's Prior Explicit Consent, in accordance with applicable law.

### **Principle IV - Compliance and Enforcement Programmes**

Effective mechanisms to ensure compliance and complaint handling for this Standard are to be put in place.

The BPR incorporates the requirements established under European Industry Self-Regulatory Framework on Data-Driven Advertising; these are binding for all participating companies in

the EU Self-Regulatory Programme on OBA, and are complemented by a comprehensive industry-wide compliance and enforcement programme comprising of two elements.

Firstly, through innovation in self-regulation, the European Industry Self-Regulatory Framework on Data-Driven Advertising introduces a new procedure to measure compliance with the commitments of participating companies and establishes a system of enforcement and dispute resolution. Compliant companies receive an annually renewable industry 'Trust Seal'. Should a company fall behind and not remedy a significant breach of its obligations within a limited timeframe, the seal shall be removed. As a consequence, this failure will be communicated to the market and the public.

Secondly, in the event that breaches are not resolved via the compliance programme<sup>2</sup> to which the participating company adheres, or that consumers' complaints relate to OBA activity by companies not signed up to the European Self-Regulatory Programme on OBA, these may be handled through EASA's Best Practice Recommendation in order to provide cover for the entire advertising ecosystem. This 'double-enforcement' mechanism ('EASA PLUS') ensures that complaints of consumers are addressed in an adequate manner and that non-compliant companies are brought into compliance by proven sanction mechanisms.

For the BPR, the criteria for an effective self-regulatory system are detailed in the EASA Charter and were subsequently confirmed in the EU Advertising Round Table. This BPR encapsulates both the industry processes for feedback from consumers regarding their OBA choice and preferences, as well as the consumer complaint handling processes.

These should involve:

Easily accessible mechanisms for complaints to be filed directly to the relevant bodies in the local languages with the following characteristics:

1. A sorting of complaints for those to be forwarded to other self-regulatory bodies or processes (e.g. those related to content advertising). This refers to the sorting 'triage' of consumer feedback and complaints and the forwarding to the relevant process and bodies (see Section 4 explaining the compliance flowchart).
2. Transparent, easily recognisable and accessible mechanisms for handling complaints through independent, alternative dispute resolution mechanisms such as advertising self-regulatory organisations (SROs) in the EASA network. The BPR recommends that the appropriate arrangements are made to connect the existing advertising self-regulatory system to the new industry feedback process to enable a one-stop shop for consumers on OBA issues.

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<sup>2</sup> All participating companies are required to obtain an independent verification of compliance for their OBA practices through an approved Certification Provider. Companies able to provide this service must demonstrate independence and competence to do so, and are approved by the European Interactive Digital Advertising Alliance. A list of all approved companies can be found at: <http://www.edaa.eu/certification-process/trust-seal/>.

3. Consumers filing complaints to a complaints handling body, including advertising self-regulatory organisations, shall have access to an easy-to-use complaint handling mechanism in their local language.
4. Processes for identifying and resolving areas of non-compliance. Section 4 details the industry processes and interaction with SROs necessary to resolve areas of non-compliance.
5. Coordination to ensure that companies engaged in OBA are not unreasonably subject to multiple enforcement mechanisms regarding compliance with the obligations of the Standard. As with consumers, a single one-stop shop has been developed for compliance and enforcement. The BPR will apply across the industry through its application by SROs and the constituent industry partners at the national level.
6. Publication of decisions in case of non-compliance with the principles under the Framework, including in the language of the country where the complaint was first made.
7. Regular statistics and reporting on compliance (e.g. complaint handling and the outcome of decisions) be made publicly available to ensure transparency.

The classic sanction in advertising self-regulation is the 'name and shame' principle, which concerns the publication of the decision by the self-regulatory organisations (SROs). At a minimum, the Standard recommends that appropriate action be taken with regard to persistent and deliberate repeat offenders as well as rogue traders, including the ultimate sanction of referral to the appropriate legal authorities - 'the legal backstop'.

This BPR recommends that all parties are encouraged to include in their contracts and other agreements pertaining to advertising and marketing communication, a statement committing participating companies to adhere to the applicable self-regulatory rules and to respect the decisions and rulings made by the appropriate self-regulatory organisation as set out in Article 26 of the Consolidated ICC Code of Advertising and Marketing Communication Practice.

Compliance and enforcement will necessitate coordination between SROs and other industry mechanisms to deal with consumer complaints and feedback. This is detailed in Chapter 7.

### ***Relationship between Compliance Programmes:***

Coordination between the administrators of relevant compliance programmes should ensure transparency, consistency and coherence of the implementation and enforcement across the EU and the EEA Member States, and where relevant across other jurisdictions.

The BPR recommends that mechanisms such as EASA's cross-border complaints system should facilitate the appropriate exchange of complaints from consumers. The current cross-border complaints system facilitates the exchange of complaints from the SRO in the country where the ad appears to the competent SRO in the country of origin of the ad publisher. EASA tracks the movement and handling of these and publishes regular reports on the outcome of

cross-border cases on its website, in addition to national reporting. The BPR recommends that a similar process be applied to the handling of complaints about OBA and that there is a transfer to the competent SRO in the country of origin.

### **Principle V - Review**

The BPR Standard will need to be regularly reviewed in response to changes in the European Industry Self-Regulatory Framework on Data-Driven Advertising and other related codes, as well as the development of OBA and business practices. It should be modified as appropriate.

## 5. European Industry Self-Regulatory Framework for Data-Driven Advertising

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### 5.1 Introduction

The undersigned companies (the “Companies”) have developed this European self-regulatory Framework (the “Framework”) for on Data-Driven Advertising. The Framework lays down a structure for codifying industry good practices and establishes certain Principles to increase transparency and choice for web users within the EU/EEA, which are binding upon the Companies and Associations. The associations listed at the end of this document (the “Associations”) have been working jointly on this Framework and support its promotion across the advertising ecosystem. The Principles contained herein are intended to apply consumer-friendly standards to Online Behavioural Advertising and the collection of online data in order to facilitate the delivery of advertising based on the preferences or interests of web users. It does not seek to regulate the content of online advertisements, nor does it regulate Ad Delivery (as defined below).

#### Application of the Framework and the Principles

There are a number of different laws which may apply to OBA, particularly in cases where the data collected or processed relates to an identified or identifiable natural person and thereby comprises personal data. The Principles assist and encourage Companies to design into their systems and contracts a framework for compliance with applicable law as well as establishing protections for areas that are unregulated. Given that the applicable law varies from country to country, compliance with these Principles does not guarantee compliance with any applicable law and is not a substitute for such compliance. These Principles provide direct benefits to web users, in particular by standardising consumer notices on websites or within advertisements, and by creating simple mechanisms for accepting or declining OBA, even though personal data is not implicated. Web users may make complaints about incidents of suspected non-compliance with the Principles against the Companies by following the procedures set out in the Principles.

The Framework applies to on data-driven advertising, focusing on web viewing behaviour over time and across multiple web domains not under Common Control in order to create interest segments or to allocate such viewing behaviour against interest segments for the purposes of delivering advertisements to and by that web user’s interests and preferences.

The Framework does not apply to web viewing behaviour for a particular website or related websites under Common Control. The Framework applies across the Internet “ecosystem”. The Framework has separate provisions for Web Site Operators, Third Parties and providers of desktop application software that engage in OBA. The Framework recognises that a Company may conduct a number of different activities, and therefore the Framework recognises that different Principles and types of notice and consent may therefore be applicable to each different activity.

## 5.2 Definitions:

### ***Ad Delivery***

Ad Delivery is the delivery of online advertisements or advertising-related services using Ad Reporting data. Ad Delivery does not include the collection and use of Ad Reporting data when such data is used to deliver advertisements to a computer or device based on user preferences or interests inferred from information collected over time and across sites, not under Common Control.

### ***Ad Reporting***

Ad Reporting is the logging of page views on a website or the collection or use of other information about a browser, operating system, domain name, date and time of the viewing of the web page or advertisement, and related information for purposes including, but not limited to:

- Statistical reporting in connection with the activity on a website(s);
- Web analytics and analysis; and
- Logging the number and type of ads served on a particular website(s).

### ***Control***

Control of an entity means that another entity (1) holds a majority of the voting rights in it, or (2) is a member of it and has the right to appoint or remove a majority of its board of directors, or (3) is a member of it and controls alone, pursuant to an agreement with other members, a majority of the voting rights in it, or (4) has placed obligations upon or otherwise controls the policies or activities of it by way of a legally binding contract, or (5) otherwise has the power to exercise a controlling influence over the management, policies or activities of it, and “Controlled” shall be construed accordingly.

### ***Common Control***

Entities or websites under Common Control include ones which Control, for example, parent companies, are Controlled by, such as subsidiaries, or are under common Control, such as group companies. They also include entities under a written agreement to process data for the controlling entity or entities, and do such processing only for and on behalf of that entity or entities and not for their own purposes or on their own behalf.

### ***Icon***

An Icon is a visible web-based object that contains a hyperlink to the OBA User Choice Site or to the Third Party Notice described in I.A.1.

### ***Explicit Consent***

Explicit Consent means an individual's freely given specific and informed explicit action in response to a clear and comprehensible notice regarding the collection and use of data for Online Behavioural Advertising purposes.

### ***Online Behavioural Advertising (OBA)***

Online Behavioural Advertising means the collection of data from a particular computer or device regarding web viewing behaviours over time and across multiple web domains not under Common Control for the purpose of using such data to predict web user preferences or interests to deliver online advertising to that particular computer or device based on the preferences or interests inferred from such web viewing behaviours. Online Behavioural Advertising does not include the activities of Web Site Operators, Ad Delivery or Ad Reporting, or contextual advertising (e.g. advertising based on the content of the web page being visited, a consumer's current visit to a web page, or a search query).

### ***OBA User Choice Site***

A consumer-focused website and education portal ([www.youronlinechoices.eu](http://www.youronlinechoices.eu)), available in all official EU and the additional EEA languages, that provides a mechanism for web users to exercise their choice with respect to the collection and use of data for Online Behavioural Advertising purposes by one or more Third-Parties or links to a mechanism permitting user choice over Online Behavioural Advertising.

### ***Third Party***

An entity is a Third Party to the extent that it engages in Online Behavioural Advertising on a website or websites other than a website or websites it or an entity under Common Control owns or operates.

### ***Web Site Operator***

A Web Site Operator is the owner, controller or operator of the website with which the web user interacts.

## 5.2 The Framework

### Principle I. Notice

#### A. *Third Party Notice*

1. *Third Party Privacy Notice* – Third Parties should give clear and comprehensible notice on their websites describing their Online Behavioural Advertising data collection and use practices. Such notice should include clear descriptions of the following:

- (a) Their identity and contact details;
- (b) The types of data collected and used for the purpose of providing OBA, including an indication or whether any data is “*personal data*” or “*sensitive personal data*” as defined by the national implementation of Directive 95/46/EC;
- (c) The purpose or purposes for which OBA data is processed and the recipients or categories of the recipient not under Common Control and to whom such data might be disclosed;
- (d) An easy to use mechanism for exercising choice with regard to the collection and use of the data for OBA purposes and to the transfer of such data to Third-Parties for OBA;
- (e) The fact that the Company adheres to these Principles; and
- (f) A link to the OBA User Choice Site.

#### 2. *Third Party Enhanced Notice to Consumers*

- (a) In addition to providing notice as described in A.1, Third Parties should provide enhanced notice of the collection of data for OBA purposes via the Icon in or around the advertisement; and
- (b) Third Parties may provide notice via the Icon on the web page where the data for OBA purposes is collected if there is an arrangement with the Web Site Operator for the provision of such notice.

#### B. *Web Site Operator Notice*

In addition to complying with applicable existing legal obligations, when a Web Site Operator permits data to be collected from and used on a website for OBA purposes by Third Parties, the Web Site Operator should provide adequate disclosure of this arrangement. The Web Site Operator does not need to include such disclosure when the Third Party provides notice as described in I.A.2.

## **Principle II. User choice over Online Behavioural Advertising**

A. Each Third Party should make available a mechanism for web users to exercise their choice with respect to the collection and use of data for OBA purposes and the transfer of such data to Third Parties for OBA. Such choice should be available from the notice described in I.A.1 and via the OBA User Choice Site.

B. To the extent that Companies collect and use data via specific technologies or practices intended to harvest data from all or substantially all URLs traversed by a particular computer or device across multiple web domains and use such data for OBA, they should first obtain Explicit Consent.

C. Companies that have obtained Explicit Consent pursuant to II.B should provide an easy to use mechanism for web users to withdraw their Explicit Consent to the collection and use of such data for OBA.

## **Principle III. Data Security**

### ***A. Safeguards***

Companies should maintain appropriate physical, electronic, and administrative safeguards to protect the data collected and used for Online Behavioural Advertising purposes.

### ***B. Data Storage***

Companies should retain data that is collected and used for Online Behavioural Advertising only for as long as necessary to fulfil a legitimate business need or as required by law.

## **Principle IV. Sensitive Segmentation**

### ***A. Children's segmentation***

Companies agree not to create segments for OBA purposes that are specifically designed to target children. For the purposes of this provision, 'children' refers to people age 12 and under.

### ***B. Other Sensitive Segments***

Any Company seeking to create or use such OBA segments relying on the use of sensitive personal data as defined under Article 8.1 of Directive 95/46/EC will obtain a web user's Explicit Consent, in accordance with applicable law, prior to engaging in OBA using that information.

## **Principle V. Education**

Companies that engage in OBA should provide information to inform individuals and businesses about OBA, including easily accessible information about how data for OBA purposes is obtained, how it is used and how web user choice may be exercised. This may include information in easy-to-understand language and user-friendly format (such as online video). Companies and Associations are encouraged to use a consistent or common resource for such educational information.

## **Principle VI. Compliance and Enforcement Programmes**

### **A. Applicability and Eligibility**

This Framework is self-regulatory in nature and creates obligations for any signatory Company that self-certifies compliance with the Principles and obligations contained herein. Following the adoption of this Framework and the Icon each Company should comply, and self certify by 30 June 2012. Companies adopting the Framework later than 1 January 2012 should comply and self certify within 6 months of adopting the Framework and the Icon.

### **B. Compliance and Self-certification**

Self-certification of compliance shall be limited to those requirements applicable to each Company's business model. In the event that a single Company may be subject to multiple obligations, self-certification must cover all such applicable provisions. Self-certification of compliance with this Framework does not exempt Companies from fulfilling their obligations under applicable national laws.

### **C. Auditing of Self-certification**

Companies that are subject to Principle II shall submit to independent audits of their self-certification. Audits should be of sufficient scope to review compliance of Companies engaging in OBA in the EU and the EEA Member States. Such independent audits must demonstrate, at a minimum, the following attributes:

- a) Processes for the individual and independent review of Company websites for the purpose of validating compliance with obligations under this Framework;
- b) Processes for automated or individualised periodic monitoring of a statistically significant number of websites where objective evidence of compliance with Principles I and II in this Framework can be verified;
- c) Processes for resolving identified areas of non-compliance directly with the signatory Company in a transparent manner and within a reasonable period of time;
- d) Publication of decisions in case of un-rectified non-compliance with any commitments made under this Framework, as well as the findings of general good compliance, for one or multiple Companies that have self-certified under this Framework.

## **D. Consumer Complaints Handling**

Programmes under this Framework for complaints handling shall include the following elements:

- a) Easily accessible mechanisms for complaints to be filed directly to Companies
- b) Transparent, easily recognisable and accessible mechanisms for handling complaints through independent, alternative dispute resolution mechanisms such as advertising self-regulatory bodies.
- c) Coordination between Companies and alternative dispute resolution mechanisms, including advertising self-regulatory bodies, to ensure that Companies engaged in OBA are not unreasonably subject to multiple enforcement mechanisms regarding compliance with the obligations of the Framework;
- d) Consumers filing complaints to a complaints handling body, including advertising self-regulatory organisations shall have access to a simple complaint handling mechanisms in their local language
- e) Publication of decisions in case of non-compliance with the commitments under this Framework, including in the language of the country where the complaint was first launched.

In addition, Companies that are subject to this Principle shall collaborate to make available the OBA User Choice Site.

## **E. Relationship between Compliance Programmes:**

Administrators of relevant auditing and compliance programmes, including existing advertising self-regulatory systems in the context of processing consumer complaints, should ensure effective coordination, including promoting a common audit form within the EU and EEA Member States and with other regions or countries such as the USA.

Administrators of relevant compliance programmes should also coordinate to ensure transparency, consistency and coherence of the implementation and enforcement across EU and EEA Member States.

## **Principle VII. Review**

The undersigning Companies and Associations shall regularly review this Framework at least every 3 years in response to the development of OBA and business practices and modify or add to the Framework as appropriate.

## 6. Application of the European Industry Self-Regulatory Framework for on Data-Driven Advertising in the Mobile Environment

### 6.1 Introduction

#### 6.1.2 Preamble

Smartphones and tablet devices have penetrated all parts of European society. Mobile broadband subscriptions in Europe have reached unprecedented levels in recent years, making the near ubiquitous ability to access internet-enabled content, applications and services a reality for the vast majority of European citizens. Individuals can now enjoy the latest films, TV shows or music, play games or simply communicate with their friends whenever they choose, from almost anywhere in the world.

Equally, this development has opened new doors for current and emerging players in the advertising industry to interact with consumers in exciting new ways and provide them with increasingly customised and on the spot messages. Mobile devices have turned into truly essential marketing tools; this, in turn, has enabled the creation of a rich and vibrant mobile advertising ecosystem, which is progressively global in nature.

Data sits at the heart of this system, fuelling the continuous innovation that has been made available by the constant evolution of consumer technology. Harnessing the power of data allows the advertising industry to continue to make digital content, services and applications available to consumers at little or no cost on an enormous scale and offer them a more relevant and reciprocal brand experience.

The European advertising industry recognises that with this value proposition comes responsibility. Handling data for the purpose of serving more relevant advertisements based on the consumer's interests necessitates respect from users, and the industry knows that transparency and user control are the tools with which this can be achieved. The consumer trend to move away from the desktop environment to the mobile space has amplified this need in more than one way and raised some distinctive issues that are unique to mobile devices. These include:

- Mobile devices are often the most personal devices users own and are normally "always on"
- A mobile device is portable by default with access to GPS and can typically connect to the internet via an operator's data network and a wireless local area network (WLAN)
- The screens on mobile devices are characteristically smaller than the ones usually used with desktop computers and are normally controlled through simple or multi-touch gestures
- Both these features – the screen size and the touchscreen functionality – also imply different expectations from a usability point of view

- The technology to serve advertising on mobile devices in some instances differs from the desktop world

Despite this development, industry's early commitments to give consumers greater control and transparency over behavioural advertising has preceded this changing landscape.

The European Industry Self-Regulatory Framework for on Data-Driven Advertising is based upon seven key principles: notice, user choice, data security, sensitive segmentation, education, compliance and enforcement, and review. The European Advertising Standards Alliance (EASA) Best Practice Recommendation on OBA builds on the Framework, allowing self-regulatory organisations (SROs) in Europe to incorporate the key principles into their existing national advertising codes in a consistent manner reflecting the pan-European nature of the initiative. Combined, these documents build the foundation of the EU self-regulatory programme on behavioural advertising, which has the principles of transparency and control at its core. The European Interactive Digital Advertising Alliance (EDAA) administers this programme.

The Framework was drafted with the desktop environment in mind. In light of the technological evolution described above, a set of recommendations on how the principles should be applied to the mobile space has been created to ensure the rights of users are protected across the devices they use. It recognises the enhanced need for flexibility presented by the varying constraints of mobile devices themselves, and offers principles-based recommendations without seeking to be overly prescriptive on design or User-Interface (UI) decisions that companies may implement over time.

This effort also recognises that providing recommendations on how to adapt the EU Framework to the mobile environment presents the next logical step in the implementation of European digital advertising self-regulation.

### **6.1.3 Scope**

The recommendations set out in this document provide an addendum to the Framework (hereafter "the Addendum") and should be read in conjunction with it. The Addendum seeks to show businesses how to apply the Framework's principles – notably notice and choice – in the mobile environment.

The Addendum's obligations are primarily aimed at Third Party intermediary businesses operating in the mobile advertising ecosystem, such as ad networks, ad tech companies, data aggregators, Demand Side Platforms (DSPs) and Supply Side Platforms (SSPs), as well as App Providers. Due to the nature of the mobile landscape, the Addendum will have relevance for a number of mobile stakeholders that have previously been outside the scope of the Framework, in particular the app ecosystem.

Different players in the digital advertising ecosystem may have different roles and responsibilities under the Framework. Businesses wishing to join the Framework on the basis of the recommendations set out in this Addendum are expected to follow already-established

procedures as determined by the EDAA and available at <http://www.edaa.eu/certification-process/join-the-programme/>. Depending on the business model employed, these can include:

- a. § Obtaining a licence for using the OBA Icon
- b. § Participating on the User Choice Platform ([www.youronlinechoices.eu](http://www.youronlinechoices.eu))
- c. § Self-certification
- d. § Third party verification of the self-certification process by an independent Certification Provider, at the end of which successful companies are awarded the EDAA Trust Seal.

Licensing agreements already in place under the Framework remain valid, and licensees do not have to incur additional costs for using their licence in the mobile environment. Also, businesses that have been awarded the Trust Seal do not need to submit to another auditing process. However, mobile operations are subject to the audit once this is up for renewal.

## **6.2 The principles in the mobile environment**

The Framework operates on the basis of a definition of on Data-Driven Advertising, also known as Online Behavioural Advertising (OBA), which we will modify as follows for the mobile environment:

“Online Behavioural Advertising means the collection of data from a particular computer or device regarding web viewing behaviours or mobile app use over time and across multiple web domains and/or mobile apps not under Common Control for the purpose of using such data to predict web user preferences or interests to deliver online advertising to that particular computer, mobile app or device based on the preferences or interests inferred from such web viewing or mobile app use behaviours. Online Behavioural Advertising does not include the activities of Web Site Operators, App Providers, Ad Delivery or Ad Reporting, or contextual advertising (e.g. advertising based on the content of the web page being visited, a consumer’s current visit to a web page, use of a mobile app or a search query).”

There are a number of differing laws which may apply to data practices covered in the Framework and this Addendum, particularly in cases where the data collected or processed relates to an identified or identifiable natural person and thereby comprises personal data or relates to a mobile device that is personal to the user. Given that the applicable law may vary from country to country, compliance with the Framework and this Addendum does not guarantee compliance with any applicable law and is not a substitute for such compliance. Responsibility for the lawfulness of processing data for the purpose of the Framework and this Addendum, therefore, lies with the appropriate entity. Nevertheless, in all instances, these recommendations should be construed so as to be compatible with applicable law. This is particularly the case for instances where national laws require the user’s consent for data collection and use practices covered in this Addendum (see below for definitions).

It becomes clear from the above definition that behavioural advertising delivered via mobile web browsers shall be fully covered by the Framework, as browser data is agnostic of the device used. Third-Parties are therefore advised to follow the Framework to the same extent as in the desktop environment (where practicable). However, this BPR recognises that

behavioural advertising on mobile devices involves the use of technologies other than cookies for the purpose of engaging in online or mobile advertising based on user preferences or interests. Therefore, this BPR recommends how the Framework should apply in instances of different data practices in the mobile environment.

## **6.2.1 Definitions**

The definitions included in the Framework remain fully valid. Nevertheless, differences between the desktop and mobile environments make it necessary to introduce new definitions as well as to clarify existing ones where they relate to Web Site Operator (App Provider) and the OBA User Choice Site (User Choice Mechanism). These are set out below.

### **App Provider**

An App Provider is the owner, controller or operator of the mobile application.

### **Cross-App Data**

Cross-App Data is data collected from a particular [computer or] device regarding web viewing behaviours or mobile app use over time and across mobile apps [not under Common Control] for the purpose of using such data to deliver advertising based on user preferences or interests to that particular device.

Third-Parties can collect data across mobile apps that are not under their Common Control, on the same mobile device. This practice shall fall under the Framework's remit, where such data is used to engage in online or mobile advertising based on user preferences or interests.

Cross-App Data includes unique values assigned or attributed to a user, device, sim card or other enabling component, mobile app or a unique combination of characteristics associated with a device when combined with Cross-App Data. The definition also covers the case where previously collected data is associated or combined to create Cross-App Data.

### **Location Data**

Location Data is data obtained from a device about the physical location of an individual device that is sufficiently precise to locate a specific individual or device.

Mobile devices are unique in their ability to allow for their localisation. This is significant insofar as this permits companies to communicate with both a group of devices as well as with an individual device only. Notice of, and choice over, this practice shall also fall under the Framework where this data is used for engaging in [online or] mobile advertising based on user preferences or interests.

Location Data includes unique values assigned or attributed to a device or a unique combination of characteristics associated with a device when combined with Location Data. For example, Location Data may include data obtained from cell tower or Wi-Fi triangulation techniques, latitude-longitude coordinates obtained through GPS technology, or beacons using Bluetooth technology. This is relevant for both behavioural advertising based on marketing communications delivered to a group of devices as well as an individual device only.

Location data does not include registration details, including postcodes, city name or billing address, or general geographic information derived from an IP address.

### **Personal Device Data**

Personal Device Data is calendar, address book, phone/text log, or photo/video data or any other data that is not created by or through the App Provider or Third Party and that is stored on, or accessed, through a particular device or mobile app.

Companies may seek to access data created by a consumer that is stored on or accessed through a particular device or mobile app, such as the calendar, address book, phone/text log, or photo/video data for the purpose of engaging in online or mobile advertising based on user preferences or interests. Notice of and choice over this practice shall also fall under the Framework.

### **User Choice Mechanism**

User Choice Mechanism means a mechanism for users to exercise their choice with respect to the collection and use of data covered by the Framework and this Addendum by one or more Third-Parties.

This refers to the mobile-optimised OBA User Choice Site ([www.youronlinechoices.eu](http://www.youronlinechoices.eu)), as well as any industry-wide future companion choice mechanism or setting for the data categories covered in this Addendum. It may also include instructions for device-specific controls.

## 6.3 Principle I – NOTICE

### 6.3.1 Third Party Notice to Consumers

Third Parties should give clear and comprehensible notice on their websites or mobile-optimised site(s) when accessed by the user via a mobile device. This notice shall describe their Cross-App, Location Data and Personal Device data collection and use practices (or a combination thereof) for the purpose of delivering online or mobile advertising based on user preferences or interests. Such notice should include clear descriptions of the following:

- a. Their identity and contact details;
- b. The fact that this data is collected and used for the purpose of providing online advertising based on user preferences or interests, including an indication of whether any data is “personal data” or “sensitive personal data” as defined by Directive 95/46/EC or any successive legislation;
- c. The purpose or purposes for which this data is processed and the recipients or categories of recipient not under Common Control and to whom such data might be disclosed;
- d. An easy to use mechanism for exercising choice with regard to the collection and use of the data for the purpose of delivering [online or] mobile advertising based on user preferences or interests and to the transfer of such data to Third-Parties for such purposes;
- e. The fact that the Company adheres to the Principles of the Framework; and
- f. A link to a User Choice Mechanism.

### 6.3.2 Third Party Enhanced Notice to Consumers

In addition, Third-Parties should provide enhanced notice of the collection of Cross-App, Location Data and Personal Device data (or a combination thereof) for purposes of online or mobile advertising based on user preferences or interests as follows:

- (a) in or around the advertisement (via the Icon)<sup>3</sup>; and
- (b) if there is an arrangement with the App Provider for such notice:
  - I. before the Mobile App is installed, as part of the Mobile App being downloaded or opened for the first time, or at the time the relevant data is collected; and
  - II. in the Mobile App settings or relevant Privacy Policy.

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<sup>3</sup>This provision shall not preclude the use of other industry-wide means of providing enhanced notice in the future.

Third-Parties may (at the discretion of the Third Party) provide additional information to users concerning the Third Party's collection, receipt and use of other types of data (i.e. not Cross-App Data, Location Data or Personal Device Data) which are used for purposes of online or mobile advertising based on user preferences or interests in combination with or in addition to Cross-App Data, Location Data or Personal Device Data.

### **6.3.3 App Provider Notice**

When an App Provider permits a Third Party to collect and use Cross-App, Location Data and Personal Device data (or a combination thereof) for the purposes of online or mobile advertising based on user preferences or interests, the App Provider should provide adequate disclosure of this arrangement.

The App Provider does not need to provide such notice when the Third Party provides enhanced notice as set out in 6.3.2.

## **6.4 Principle II – CHOICE**

Following on from the Framework, each Third Party should make available a mechanism for mobile users to exercise their choice with respect to the collection and use of data covered in this Addendum for purposes of online or mobile advertising based on user preferences or interests and the transfer of such data to Third Parties for such purposes. Such choice should be accessible via the notice described above and via a User Choice Mechanism. Please refer to the Framework for the full set of requirements under Principle II.

## **6.5 Principles III – VII**

Principles III – VII fully extend to the types of data covered in this Addendum. However, where the Addendum relates to Principle VI (Compliance and Enforcement Programmes), it should be recognised that a fully operational User Choice Platform for all recommendations included in the Addendum is not yet available. Failure to comply with these recommendations shall therefore not trigger any enforcement programmes during the implementation phase. Please refer to the Framework for the full set of requirements under Principles III – VII.

## 7. Compliance and Enforcement Guidance

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### 7.1 Introduction

The joint-industry OBA Steering Group has led intensive discussions about the procedures for consumers to seek redress in the event that they might wish to complain about aspects relating to OBA. The following issues have been addressed:

- Mechanisms for handling consumer feedback and complaints;
- Independent and transparent adjudication about potential cases of non-compliance;
- Remedies and sanctions in case of non-compliance;
- Consistency in implementation and enforcement in the European Union, European Economic Area, Switzerland, and Turkey;
- Role of various industry partners and existing advertising self-regulatory organisations;
- Rules for complaint handling, including a threshold point (e.g. repeat offenders and rogue traders where a complaint is forwarded to the relevant authorities);
- The role of the existing self-regulation infrastructure for enforcement.

The enclosed guidance describes in detail the process for dealing with consumer feedback and complaints summarised in the flowchart on p. 37. The process used will be appropriate and proportionate to the feedback/complaint raised. It will assure an integrated approach between the industry automated processes (explained in 7.2.1) and the current systems for advertising self-regulation (explained in 7.2.2).

Consumers could be making their feedback/complaint either directly to a company (e.g. a Third Party or Website Operator or App Provider) a regulatory authority, a self-regulatory organisation or a similar local alternative dispute resolution (ADR) body (e.g. a consumers association). These would form different routes, which could all transit a one-stop shop for compliance. This would consist of a web page, or other user-friendly mechanism (such as a browser plug-in, or mobile app), where the transfer of feedback/complaints would be passed to the relevant process and organisations.

This would happen in the following way: consumer feedback regarding technical issues on OBA (e.g. *Why am I receiving OBA? Who is serving me OBA? How can I change my OBA options? Where do I go to get further information or make informed choices regarding OBA?*) would be handled by an industry internet-based interface. The procedure for this is described below in 7.2.1. The majority of consumer feedback and complaints about OBA are expected to be occurring via this process.

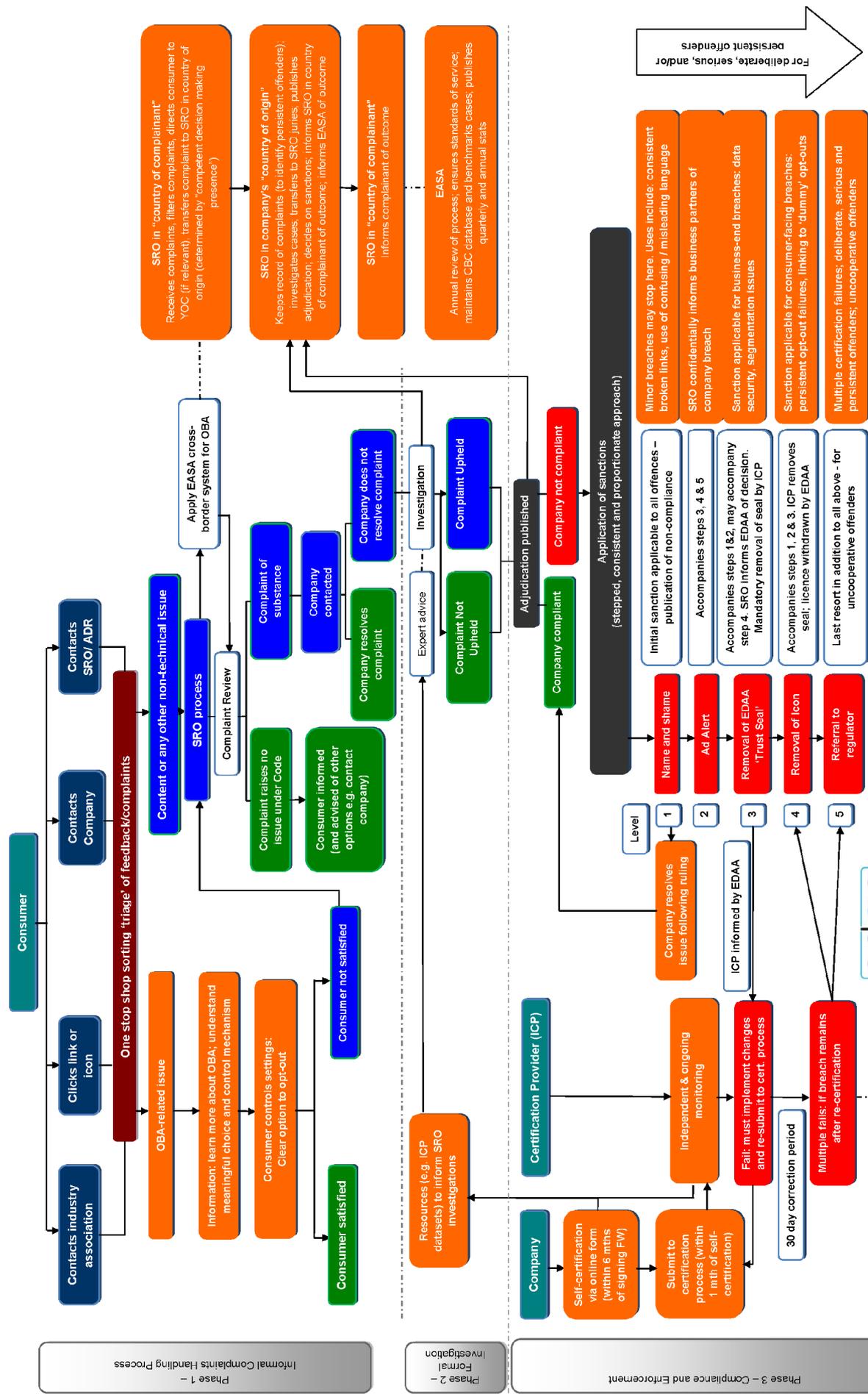
It is the expectation that EASA industry members will provide appropriate training to recipients of consumer complaints to ensure they can provide assistance to consumers about the functionality of the internet-based interface.

Consumer complaints arising from dissatisfaction with the way their initial feedback/complaints have been handled via the industry interface, or complaints about more general privacy issues or issues related to the content of advertising, would be handled by a process involving the advertising self-regulatory organisations. The procedure for this is described below in 7.2.2.

## **7.2 The OBA Complaint Mechanism**

The two parts of the process are summarised in the flowchart overleaf and explained in detail in the following pages.

Flow Chart: Feedback/Complaint Handling/Certification/Sanctions Mechanisms



## **7.2.1 Options for Consumer Controls and Enquiry/Complaint Mechanism**

The majority of the implementation and enforcement activities in relation to the European Industry Self-Regulatory Framework for on Data-Driven Advertising will take place by consumers directly through information about OBA and consumer controls tools offered via the online interface. These will be provided via an OBA icon within OBA advertising itself delivered via Third-Parties or via links from Website Operators' or App Providers' privacy policies, or directly from their web pages or mobile apps, to the industry online interface (landing page), referred to as the one-stop shop sorting 'trriage' in the flowchart above.

These automated tools will provide clear information about the identity of the advertiser, the Third Party, the integration partner if applicable (e.g. in a pop-up window when clicking the icon) and about the types of data being collected and used for online behavioural advertising purposes.

### **OBA Consumer Controls and Enquiry Mechanism**

The OBA Consumer Choice Platform will also provide the consumer with the possibility to exercise choice about the use of this data, most notably the informed choice not to receive Online Behavioural Advertising.

1. Therefore, the expectation is that the majority of consumer enquiries and complaints will be resolved by automated processes. (See Flow Chart – Informal Complaint Handling Process). A consumer who has an enquiry about OBA in general or a technical issue with a specific behaviourally targeted ad will most likely click directly from the OBA icon, or on a link from the Website Operator or App Provider's privacy policy, or from a web page or mobile app interface, which directs the consumer to an internet-based OBA Consumer Choice Platform, where the consumer will receive all necessary information about OBA, and where he/she can exercise choice about the use of his/her data or even opt out of OBA altogether.
2. Consumers might also wish to contact the company which delivered the OBA directly or they might contact the local direct marketing association (DMA), the national advertising self-regulatory organisation (SRO) or a similar local alternative dispute resolution (ADR) body (e.g. an ombudsman or consumers association). Particularly in countries where the SROs are widely known and trusted for dealing with advertising issues, consumers might by habit turn to SROs with enquiries (or complaints). In the first instance, the function of the company, ADR or the SRO, would be to refer consumers to the OBA Consumer Choice Platform, helping them to navigate it, if necessary.
3. Some consumers, however, might first contact a regulatory authority. Depending on the strength of the relationship between the authority and the SRO and the status of the industry rules in place, the authority might transfer the enquiry or complaint to the SRO or might also refer the consumer to the OBA Consumer Choice Platform.

4. It is expected that the online tools developed in conjunction with the European Industry Self-Regulatory Framework for on Data-Driven Advertising will satisfy most consumers, obviating the need for additional complaints resolution other than that described below.

## **7.2.2 OBA Complaint Handling Mechanism**

Some consumers might not be satisfied. Maybe they chose not to receive Online Behavioural Advertising, but are still receiving OBA. Perhaps they believe they are the subject of behavioural targeting, but the ad delivered on the website or mobile app, and the web page or mobile app hosting the ad, do not disclose any information about the targeting method and do not link to the OBA Consumer Choice Platform. Perhaps they may have had an unsatisfactory response from a company or from the provider of the independent certification services for that company. Consumers might also have issues with the content of the ad or any other non-technical or privacy-related issue.

### **OBA Complaint Handling Mechanism**

#### ***Phase 1 – Informal Complaints Handling Process***

In the above cases, the consumer might (re)turn to the SRO to help resolve their complaint. Firstly, the SRO will need to assess whether it is competent in the matter, or whether it needs to transfer the complaint to the competent SRO in the 'country of origin' of the company based on the competent decision-making presence where relevant policy decisions are taken, as declared in formal licensing agreements (see EASA Cross-Border Complaint rules described on p.47). The main job of the competent SRO would be to decide if the complaint is of substance and whether or not it should be pursued. In a second step, the competent SRO reviews the complaint in order to decide if the complaint raises any issues under the BPR Standard. If it does not, the SRO would inform the consumer that his complaint cannot be handled. He might be advised of other options (e.g. to contact the company directly).

However, if the complaint is of substance (e.g. using consumer controls was unsuccessful), the main task of the SRO would be to contact the company concerned and/or refer the complainant to the company. The company would be given the opportunity to resolve the issue informally with the consumer, with or without mediation by the SRO, but would be asked to inform the SRO of the outcome. In the event that a company is participating in the EU Self-Regulatory Programme on OBA and has internal processes for complaint handling, it would be expected that these processes should help facilitate the resolution of the complaint to the satisfaction of the complainant.

In the majority of the cases, the aim is that the intervention and mediation of the SRO will lead to a resolution of the complaint without the need for adjudication through an SRO's jury.

#### ***Phase 2 – Formal Investigation***

Should the company refuse to resolve the complaint, not resolve it to the consumer's satisfaction, or not react to the enquiries of the relevant complaint handling body, the SRO would launch a formal investigation. This would involve consulting experts, if necessary, in order to decide if the company breaches the rules. It may also involve some consultation of the compliance monitoring reports with regard to the functioning of consumer controls links, the OBA Consumer Choice Platform and clarity of privacy statements etc. Subsequently, the SRO's jury would adjudicate the complaint. EASA best practice is that the composition of SRO juries includes an independent element (see Annex II, p. 47, for an overview of EASA Best Practice Recommendations and p. 48 for a description of the SRO complaint handling process).

An SRO may also ask a jury to adjudicate in a situation where several individual complaints are being made about the same company and the inadequacy of its response. As above, this may involve consulting experts and the relevant compliance monitoring reports before undertaking this action.

### ***Phase 3 – Compliance and Enforcement***

All Third-Parties participating in the European Self-Regulatory Programme on OBA are required to go through a two-stage certification process:

1. Self-certification - a company's own 'declaration' of compliance to the European Interactive Digital Advertising Alliance (EDAA), once the company is satisfied that they are fully adhering to the European Principles<sup>4</sup>; to be carried out within six months from the date of signing up to the Programme through the license agreements.
2. Independent verification of compliance - an assessment carried out by an EDAA-approved 'Certification Provider', which shall apply the certification services in an independent manner and award compliance businesses with the industry 'Trust Seal'.

With regard to complaint handling, in either case (complaint upheld or not upheld), the SRO would publish the adjudication online and in its report on adjudications. These reports would be regularly communicated to the industry trade associations concerned. Should a company continue to breach the rules on a persistent and deliberate basis, the SRO will apply other sanctions such as industry or relevant statutory referral (e.g. as envisaged under the Unfair Commercial Practices Directive). Industry referral would lead to other sanctions such as loss of the right to use the EDAA Trust Seal being invoked.

SROs are experienced at judging when occasional breaches of their codes turn into persistent or repeat offences. SROs consider factors like: the nature of the breaches (have they caused major upset or are they more technical breaches?); the similarity of the breaches (are they on the same or different subjects?); the size of the company (is it a very large advertiser or a

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<sup>4</sup> As noted on p.5 of this BPR, the European Principles consist of the EASA BPR on OBA European Industry Self-Regulatory Framework for Online Behavioural Advertising, Technical Specifications, and Self-Certification Criteria. The latest versions of the European Principles are made available at: <http://www.edaa.eu/european-principles/>.

small one?); how prolific the company is in its marketing activity; the companies cooperation, or otherwise, with previous cases, etc. Some SROs regularly interrogate their case-handling databases for, say, all companies who have been subject to X complaints, or Y 'upheld' complaints, in the previous Z months. They then examine each advertiser to determine whether there is a pattern of offences that warrants further action, for example, a formal investigation followed by a published adjudication (to name and shame) and the subsequent applications of sanctions.

## 8. Clarification regarding the Use of the Consumer Choice Platform and Icon

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The European Industry Self-Regulatory Framework for on Data-Driven Advertising recognises that when a consumer visits a website or uses a mobile app, she/he is likely to expect that the website or mobile app will use data of its users to customise their experience. However, a consumer will not necessarily expect that another company (defined as 'Third-Party' under the European Industry Self-Regulatory Framework for on Data-Driven Advertising ), other than the website or mobile app itself, provides advertising and collects web viewing or usage data from the consumers' devices over time. Such a collection aims at improving the relevance of advertisements for consumers. The European Industry Self-Regulatory Framework for on Data-Driven Advertising is implemented in a manner that introduces a visible enhanced notice for such advertisements. The European Industry Self-Regulatory Framework for Online Behavioural Advertising provides flexibility on how the enhanced notice will be implemented to allow for the best possible solution for each company and potentially accommodate regional customs. For Third-Parties, the notice includes a uniform pictogram ('icon') across European countries.

Once clicked on, the icon would show more information about the companies involved in providing this advert in simple layman's language. In addition, consumers will be given easy access to a Consumer Control Tool (the OBA User Choice Site or Mobile App) that provides information about OBA and the possibility for users to decline OBA if they desire to do so. In this case, consumers will still receive advertisements but not ones that have taken into account their potential interests based on previous web surfing behaviour or mobile app use.

In instances where the Third Party does not provide the enhanced notice in or around the ad or on the website or mobile app, this notification mechanism may be implemented on the websites and mobile apps (by the Website Operators and App Providers, respectively). Website Operators and App Providers that permit Third-Parties to perform OBA activity on their sites or apps, may provide a clear notice in their privacy notice about OBA and include a link to the OBA Consumer Choice Platform to facilitate user interaction.

## 9. Clarification regarding Compliance and Certification

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The European Industry Self-Regulatory Framework for on Data-Driven Advertising (including the Mobile Addendum) is binding for all participating companies in the European Self-Regulatory Programme on OBA, and is complemented by a comprehensive compliance and enforcement programme to ensure the commitments are met in practice and processes put in place that would process consumers' complaints.

A compliance and enforcement mechanism for 'Third-Parties' ensures that companies comply with the commitments under the European Industry Self-Regulatory Framework for on Data-Driven Advertising. Compliant companies receive an annually renewable industry 'Trust Seal'. Should a company fall behind and not remedy a significant breach of its obligations within a limited timeframe, the seal shall be removed. As a consequence, this failure will be communicated to the market and the public.

Third Parties must choose an independent certification provider that can demonstrate expertise in online measurement and/or auditing. Businesses wishing to provide such certification services must ensure full independence of the process and must be approved by the European Interactive Digital Advertising Alliance (EDAA).

## 10. Annex I | EASA's Advertising Self-Regulation Charter

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### **Preamble**

Advertising self-regulation is recognised as the prime example of business self-regulation and corporate social responsibility. It is found, in varying forms, in most European countries.

Advertising self-regulation, like advertising itself, is a grassroots activity that operates most effectively at national level. Two vital factors, therefore, determine the form that advertising self-regulation takes in any country. The first is tradition: each country's self-regulatory system must take account of its cultural, commercial and legal traditions. The second factor is opportunity: self-regulation's relationship with the law is a complementary one, and self-regulation can flourish only insofar as the legislative landscape allows it sufficient scope.

However, these variations in structure and procedure are not reflected in the rules applied by national self-regulatory systems, where a remarkable degree of consistency is apparent. This is not surprising since all these national rules are based on the International Chamber of Commerce's Codes of Marketing and Advertising Practice. They all set out to achieve the same result: a high standard of consumer protection based on the premise that advertising should be legal, decent, honest and truthful.

The European Advertising Standards Alliance and its members firmly support the creation of a Single Market for consumers and businesses and are committed to working together to deliver it. A coherent self-regulatory framework across the EU is the foundation for ensuring the appropriate balance between an effective Single Market, providing a level playing field for advertisers to operate in, and the equally important objective of maintaining a high level of consumer protection.

Advertising self-regulation thus reflects a rich and varied tapestry of systems for business responsibility, complementing the law. This Charter of Best Practice offers a goal for self-regulatory systems throughout the Single Market, while recognising that the means of achieving it may differ. It is a practical example of 'unity through diversity'.

## Charter

We, the undersigned, representatives of the advertising industry of Europe i.e. advertisers, agencies and media, and the European Advertising Standards Alliance (EASA), re-commit to effective self-regulation across the enlarged European Union as the best way to maximise confidence in responsible advertising – for consumers, competitors and society.

We recognise that effective advertising self-regulation demonstrates the industry's ability and obligation to regulate itself responsibly by actively promoting the highest ethical standards in all commercial communications and safeguarding the public and consumer interest. We further recognise that contractual relationships between advertisers, agencies and the media should recognise the need for responsible marketing communications.

We declare

- That effective self-regulation provides compelling evidence of business' commitment to Corporate Social Responsibility
- That effective self-regulation together with the statutory enforcement authorities can provide appropriate redress for consumers, a level playing field for advertisers, and a significant step towards completing the Single Market
- That legislation cannot achieve these aims on its own, but it can provide the essential legal backstop to make self-regulation effective and tackle rogue traders
- That the continued acceptance of self-regulation by European consumers, governments and society can best be assured by the application of common principles and standards of best practice in all self-regulatory systems across Europe.

To this end, recognising EASA's statement of Common Principles and Operating Standards of Best Practice<sup>5</sup> and EASA's Best Practice Self-Regulatory model<sup>6</sup>, we confirm our commitment to achieving in the practical operation of self-regulatory bodies<sup>7</sup> and systems the following principles:

1. Comprehensive coverage by self-regulatory systems of all forms of advertising and all practitioners.
2. Adequate and sustained funding by the advertising industry proportionate to advertising expenditure in each country.
3. Comprehensive and effective codes of advertising practice:

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<sup>5</sup> Adopted at EASA's AGM on 31 May 2002 in Brussels, Belgium

<sup>6</sup> Adopted at EASA's AGM on 1 April 2004 in Istanbul, Turkey

<sup>7</sup> Self-Regulatory Organisations (SROs) are independent, national bodies, actively supported by the constituent parts of the local advertising industry. SROs are responsible for administering their respective self-regulatory systems and applying national codes of advertising practice

- based on the globally accepted codes of marketing and advertising practice of the International Chamber of Commerce (ICC);
  - applicable to all forms of advertising.
4. Broad consultation with interested parties during code development.
  5. Due consideration of the involvement of independent, non-governmental lay persons in the complaint adjudication process.
  6. Efficient and resourced administration of codes and handling of complaints thereon in an independent and impartial manner by a self-regulatory body set up for the purpose.
  7. Prompt and efficient complaint handling at no cost to the consumer.
  8. Provision of advice and training to industry practitioners in order to raise standards.
  9. Effective sanctions and enforcement, including the publication of decisions, combined with efficient compliance work and monitoring of codes.
  10. Effective awareness of the self-regulatory system by industry and consumers.

## 11. Annex II | Overview of EASA Best Practice Recommendations

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The following EASA Best Practice Recommendations<sup>8</sup> have been issued to-date:

- Advertising Monitoring
- Claims Substantiation
- Code Drafting and Consultation
- Complaints Handling
- Confidentiality of Identity of the Complainant
- Copy Advice
- Digital Marketing Communications
- Influencer Marketing
- Jury Composition
- Online Behavioural Advertising
- Publication of Decisions
- SRO Communications
- SRO Funding
- Standards of Services

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<sup>8</sup> For more information, please visit EASA website [www.easa-alliance.org](http://www.easa-alliance.org).

## 12. Annex III | EASA Cross-Border Complaint System Explained

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### **EASA Cross-Border Complaints System**

EASA Cross-Border Complaints (CBC) system began operating in 1992 to help facilitate advertising self-regulation in the Single Market by addressing problems arising from advertising circulating in one EU Member State but carried in media originating in another.

### **What is a Cross-Border Complaint?**

A CBC is a complaint made by an individual or an organisation in one country about an advertisement carried in media circulating in that country, but published in another country. For example, a consumer in Belgium may wish to complain about an advertisement appearing in a magazine published in France, but also available in Belgium.

### **The Basic Principles of EASA Cross-Border Complaints System**

The main objective of the EASA CBC system is to extend to consumers in other countries the same redress available to consumers in the country of origin, so the EASA member SRO in the country of origin deals with a CBC according to its own rules and procedures.

The first principle is the 'country of origin'; a concept enshrined in EU law to facilitate the growth of the Single Market. In terms of the Cross-Border Complaints system, the country of origin is generally regarded as the country where the media in which the advertisement appears is published.

In the case of Digital Marketing Communications and direct mail, the relevant country of origin is the one where the advertiser is based, and the editorial decisions for the advertisements are taken.

In relation to online behavioural advertising (OBA), the relevant country of origin is the country where the relevant business policy decisions are made (not necessarily where those decisions are implemented or where OBA campaigns are booked). In summary:

- 'Country of origin' of the media: Cinema advertising, Outdoor, Print, Radio, TV
- 'Country of origin' of the advertiser: Digital Marketing Communications, Direct marketing
- 'Country of origin' of the OBA company: based on the competent decision-making presence, as declared in formal licensing agreements, where relevant policy decisions are taken: Online Behavioural Advertising

The second principle is 'mutual recognition'. In following this principle, EASA members agree to accept advertisements that comply with the self-regulatory rules in the country of origin of the media or advertiser, or OBA company, even if those rules are not identical to their own.



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