

Competition and Markets Authority (CMA) 'Call for Information' on the Commercial Use of Consumer Data

Submission by the Internet Advertising Bureau UK – March 2015

1. Introduction

1.1 The Internet Advertising Bureau (IAB UK) is the industry body for digital advertising in the UK. It represents over 900 businesses engaged in all forms of online and mobile advertising, including media owners and advertising technology businesses.

1.2 The IAB's five key objectives are to:

- Prove the value of digital media by delivering 'best in class' industry research and breaking down barriers to advertising spend;
- Enable a trustworthy and responsible medium through cross-industry standards and self-regulation;
- Educate and inspire marketers through intensive learning programmes and thought-leading events;
- Improve ad trading efficiency through measurement guidelines and creative standards; and
- Advocate for an optimum policy and regulatory environment for the market to continue to thrive.

Further information is available at www.iabuk.net.

1.3 The IAB provided significant input into the Office of Fair Trading's (OFT) Online Targeting of Advertising and Prices market study in 2010, as well as its work on Personalised Pricing in 2013. Copies of the IAB's submissions to both studies can be found at:

- www.iabuk.net/policy/responses/oft-market-study-into-online-targeting-of-advertising-and-prices.
- www.iabuk.net/policy/responses/oft-call-for-information-on-online-personalised-pricing-practices-response

1.4 We understand that the primary objective of the CMA's 'call for information' is *"to understand fully how businesses collect and use consumer data - including how it affects consumers, businesses, competition and the wider economy."*¹ To this extent, the IAB's submission will provide an overview of the UK digital advertising market and its role in the digital economy, how it works including the various business models, the different types of approaches or techniques that a marketer may use to advertise a good, product or service, and how data is used to make some of these approaches more relevant to consumers.

¹ CMA News Release, 27 January 2015 - www.gov.uk/government/news/cma-seeks-information-on-commercial-use-of-consumer-data.

- 1.5 The IAB welcomes the CMA's acknowledgement that the collection and use of consumer data creates "scope for significant benefits" including "better targeting of advertising of products and services likely to be of interest to particular consumers", and that these "benefits may also lead to innovative new products and markets"².
- 1.6 Despite the CMA 'call for information' stating that privacy and data protection issues are not within scope, we will also outline how industry seeks to address any consumer concerns relating to the collection and use of consumer data for advertising purposes, as well as the challenge in framing new European data protection laws in a proportionate manner so as not to throttle the benefits of advertising data for the internet economy, businesses and consumers themselves.
- 1.7 The IAB believes that:
- **As it continues its work on this issue, the CMA should particularly look at any barriers to the commercial use of advertising data and suggest ways that these are minimised in order to realise the benefits to consumers, businesses and the broader digital economy.**
 - **The CMA should support industry's efforts to educate consumers, as well as initiatives to provide them with greater transparency and control, such as the EU digital advertising industry's programme to do this with customised advertising data.**
 - **The CMA should also recognise the importance of striking a balance in the framing of revised EU data protection law between widely available digital content and services – funded primarily by advertising – and enabling users to safeguard their privacy.**

2. The UK Digital Advertising Market

- 2.1 Advertising – underpinned by consumer data - plays a significant role in the internet and its development. It is the lifeblood of the digital economy in the UK, EU and globally. As in traditional media, it is the business model for making (non-publicly funded) content widely available to UK citizens for little or no cost. It pays for much of the content and many of the services online: from search, webmail, social networking websites and price comparison sites, to productivity suites, blogs, video/photo sharing and the majority of news, information and video / entertainment sites. The bill that advertisers pick up has a per annum value of £269 per UK internet household³.
- 2.2 According to a 2012 report for the Boston Consulting Group, the UK is the world's leading internet economy with those businesses that engage in online marketing, sales and interactions standing to gain the most⁴. Digital advertising - driven by consumer demand (see 2.3) for content and services and faster internet speeds - is the fastest growing marketing medium in the UK outstripping all other advertising sectors (see chart below). The

² CMA 'Call for Information' – January 2015

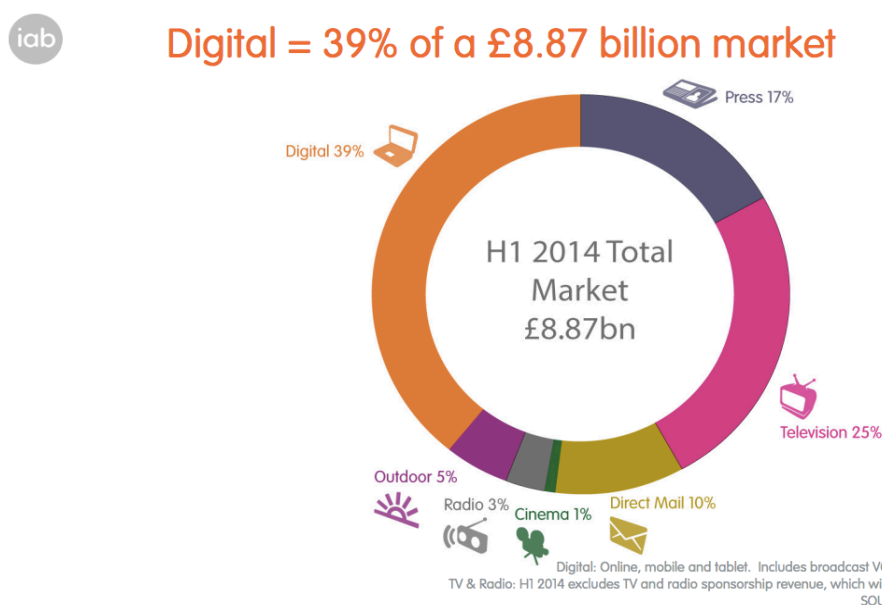
www.gov.uk/government/uploads/system/uploads/attachment_data/file/398283/Consumer_Data_-_CFI.pdf

³ 'The Data Deal – How Data Driven Advertising Benefits UK Citizens' – IAB UK, October 2014 www.iabuk.net/about/press/archive/iab-launches-data-deal-report-for-uk-policy-makers

⁴ <http://www.bcg.com/media/PressReleaseDetails.aspx?id=tcm:12-100468>

UK leads Europe in digital advertising and no other country in the world has a higher share of its advertising market (35% of a total £17.9bn (39% of total £8.87bn in H1 2014 – see chart)) than online and mobile does in the UK⁵. In 2013, £6.3bn was spent on online and mobile advertising in the UK, an increase of 15.2% on 2012⁶. By 2016, Enders Analysis forecast that the UK digital advertising market will represent £9.3 billion of UK advertising spend – 40% of which will be mobile and tablet advertising. *Full Year IAB / PwC 2014 Ad Spend figures will be available on 7 April 2015.*

- 2.3 The UK ecommerce market – driven by advertising - contributed £104bn in 2014 to the UK economy⁷. Digital advertising helps power and drive many small businesses, helping them scale up and challenge more established market players.



- 2.4 Research from Ofcom continually illustrates that the UK consumer benefits from world-leading communications. According to Ofcom, UK consumers are the most advanced ‘digital citizens’ in the world⁸. Over half of all adults now claim to own a smartphone (61%) and take-up of tablet computers has more than doubled from 2012, rising from 12% in 2012 to 29% in 2013⁹.
- 2.5 The IAB believes education is central to consumers better understanding innovative and evolving advertising techniques (and broader online business models) that aim to provide discounted products, services and applications, and which also underpin high quality content and services. The IAB has spearheaded education initiatives aiming to achieve this. This includes or behavioural or interest-based advertising (www.youronlinechoices.eu/uk) as well as a 2013 campaign to make people aware of a small symbol or ‘AdChoices’ icon in ads to

⁵ http://www.iabuk.net/sites/default/files/research-docs/IAB_PWC_AdspendOnePager_2013.pdf

⁶ http://www.iabuk.net/sites/default/files/research-docs/IAB_PWC_AdspendOnePager_2013.pdf

⁷ www.imrg.org

⁸ <http://stakeholders.ofcom.org.uk/market-data-research/market-data/communications-market-reports/icmr08/>

⁹ <http://stakeholders.ofcom.org.uk/market-data-research/market-data/communications-market-reports/cmr14/uk/>

provide greater transparency and control over online advertising preferences (see 5)¹⁰. 26% of Britons are now aware of this privacy icon, doubling over the last two years¹¹.

- 2.6 The evolution of the internet has enhanced the competition for goods and services, reduced prices and boosted consumer choice within the market place. Advertising has facilitated this, helping drive commerce. The RaceOnline 2012 'Manifesto for a Networked Nation' found that offline households are missing out on an average of £560 savings per year and that everyone should seek to inspire people to get online to reap the significant economic benefits¹². IAB UK research discovered that six in 10 people online believe they can live more cheaply because of the internet¹³.

3. How does it work?

- 3.1 The internet and digital platforms (including mobile and other connected devices) offer advertisers a wide range of different approaches to market their products and services. In terms of advertising spend the three main approaches are: 'search' (eg via a search engine such as Google or Bing); 'display' (eg ads that you see on a website) and 'classified' (ie similar to the listings in a newspaper).

- 3.2 Advertising on digital platforms today is targeted to reach the right audience and to maximise the return on the marketer's investment. Primarily this has five main forms:

a. Contextual advertising: This is where advertisements are served within a chosen 'context' by the selection of a website (eg a banner ad) or search engine query on a particular topic and therefore assumed interest. An example: a user is shown an advertisement for lawnmowers because he or she is visiting a gardening-related website. No user data, personally identifiable or otherwise, is collected from the consumer or used in order to deliver this type of advertising. The relevant information is taken from keywords identified in the context by the context creator (ie user).

b. Demographic advertising: This is where advertisements are served based upon specific information provided by the user (ie gender, age, location). An example: a teacher living in London who has registered on a jobs website is shown advertisements for teaching opportunities in London on the website but not necessarily in the teaching section. It is worth noting that some information provided by the user may be segregated, retained and used without being able to identify (and associate with) an individual.

c. Content marketing: Often called 'native' advertising, this can take many different forms. In essence, this is advertising that fits neatly within the surrounding look and feel of the site or app. This is often content-based and is therefore more relevant to the user. However, this type of marketing needs to be clear and transparent and the IAB has recently published market guidance to help businesses assist consumers in spotting this to comply with the law and the Committee for Advertising Practice (CAP Code)¹⁴. Native and content advertising spend – including paid for sponsorships, advertisement features

¹⁰ www.iabuk.net/about/press/archive/consumers-gain-greater-control-over-targeted-online-ads

¹¹ www.iabuk.net/about/press/archive/new-research-shows-growth-of-eu-industry-initiative-to-give-consumers

¹² Manifesto for a Networked Nation July 2010 – RaceOnline2012

¹³ www.iabuk.net/about/press/archive/consumers-say-the-internet-would-disappear-without-ads

¹⁴ www.iabuk.net/about/press/archive/iab-launches-guidelines-to-provide-greater-transparency-in-native-digital

and 'in-feed' distribution – was £216 million in the first half of 2014, accounting for 21% of digital display ad spend¹⁵.

- d. **Behavioural advertising (also known as interest-based advertising):** This identifies large groups of users with similar interests based upon shared attributes, such as previous web browsing activity over multiple sites in order to provide more relevant advertisements. This type of advertising operates without data being collected that directly identifies a user, rather by using device identifiers such as cookies. An example: a user's device is served with advertisements about golf equipment because the user has – over a period of time – visited different golf websites. An example of how this works is shown at www.youonlinechoices.com/uk/about-behavioural-advertising. The underlying business model and technology for this type of advertising can vary but they are most commonly browser-based and infer a user's interests from ads clicked on, content viewed and searches made.
- e. **Retargeting:** This is where a specific user interest is derived from their interaction with a single site and adverts relating to the content viewed are served to the same device when a user visits other websites on that device. Thus the user is 'retargeted' on other websites and this allows the creative to be dynamic and more personalised. Like behavioural advertising, the adverts are served in real-time using intermediaries operating under contract to the advertiser / agency. For example: a user is offered a discount deal on a pair of shoes on a separate site following their visit to the site displaying the viewed shoes.
- 3.3 Dynamic advertising creative combined with automated trading of inventory (known as 'programmatic trading') now enables customised advertising to be selected and delivered in real-time. In 2013, 28% of all digital display advertising was traded programmatically¹⁶.
- 3.4 The digital display advertising value chain is a complex one with many different players. Very simply it can be separated into a 'buy' (ie the advertiser) and 'sell' (ie the web publisher / app provider) side. Advertising intermediaries broker or facilitate the selling of media and operate under contract to the advertiser / agency.
- 3.5 In terms of the legal framework and regulatory oversight, the activities of behavioural advertising and retargeting involve the collection and use of data – some of which may include personal data - and as such may be subject to the UK Data Protection Act 1998 (as well as the recently revised Privacy and Electronic Communications Regulations 2011) and are regulated by the Information Commissioner's Office (ICO). In addition, the industry has developed EU-wide good practice to provide greater transparency and user choice and control (see 5).
- 3.6 The following business models make up the display advertising value chain:
- **Advertiser** – a company or brand that sells a product or service and runs advertising campaigns to promote that product or service. The advertiser is ultimately responsible for the creative messaging and deciding which creative is served to which user / group of

¹⁵ www.iabuk.net/research/library/h1-2014-digital-adspend-factsheet.

¹⁶ www.iabuk.net/about/press/archive/programmatic-accounts-for-28-of-uk-display-advertising.

users. The advertiser also contracts (sometimes via an agency) with intermediaries to buy inventory.

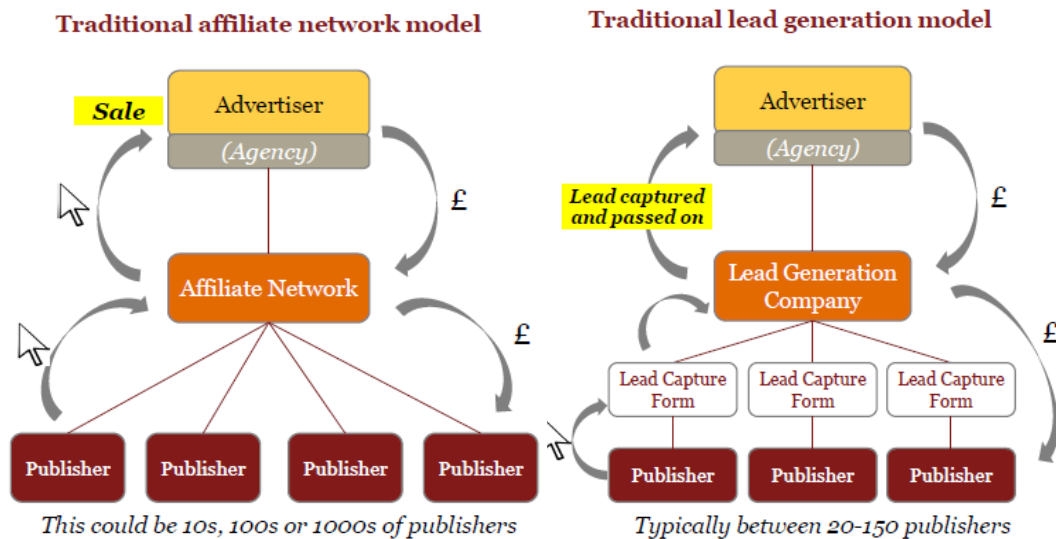
- **Advertising Agency** – a company that works with advertisers to create campaigns to promote that advertiser's product or service. This includes a creative agency that develops the creative messaging, campaign concept, branding, and look and feel of the campaign.
- **Advertising Agency Trading Desk** – a team within an advertising agency that works with a Demand Side Platform (see below) technology to buy inventory for campaigns. Independent Trading Desks also exist.
- **Demand Side Platform** – a technology company that provides a centralised platform for advertisers to buy inventory from multiple advertising exchanges (see below). This technology may be integrated within the Trading Desk itself.
- **Advertising Network** – a technology company that aggregates the supply of, and sells, ad inventory to advertisers / agencies on multiple websites.
- **Advertising Exchange** – a technology company that acts as an open market place for the selling of advertising inventory. Sometimes these will be private (also known as a 'private advertising marketplace') with a group of select advertisers and agencies.
- **Data Aggregator or Data Management Platform (DMP)** – a company that pulls together information from multiple sources and builds user 'segments' based on interests (eg car buyers). This information is sold to other businesses in the digital advertising ecosystem.
- **Sell Side Platform** – a technology company that works with publishers / app providers to help maximise the money received from selling advertising on the publisher's site.
- **Web Publisher / App Provider** – a company that owns and operates its own digital property (website, app) and, in this context, sells advertising on the property as a revenue stream.

3.7 The IAB has produced a short video to help explain how the display advertising market operates, including how information is traded and exchanged. This is available at: www.iabuk.net/video/the-evolution-of-online-display-advertising.

4. How does it all work? Performance Marketing

4.1 A form of digital marketing that differs from traditional 'display' advertising is **performance marketing**. This is because it is paid for by outcomes (eg a consumer initiated outcome such as a purchase). There are two principal forms of performance marketing:

- a. **Affiliate Marketing** (see below): This is where a consumer who, when clicking on an advertisement, is redirected to the advertiser's website to complete the transaction, following which a fee is paid to the content owners once the transaction is completed.
- b. **Lead Generation** (see below): Having entered various details into a form, a consumer's details are then passed onto the advertiser following which a fee is paid to the content owners (payment is on a per enquiry basis).



4.2 There are varying types of affiliate business models. Each of these will be run in a slightly different way but they all have one thing in common in that they are paid small commissions by advertisers for referring customers to them. The most common type of 'affiliate publishers' are: **cashback, loyalty and reward sites; voucher code or offer sites, blogger or editorial sites, and price comparison sites.**

a. Cashback, loyalty and reward websites:

Loyalty shopping schemes have existed in the 'offline' world for decades and now exist on digital platforms. Many publisher sites offering loyalty schemes use performance marketing techniques and particularly affiliate programmes to feature retailers, or advertisers, who pass on a cash or points reward to consumers in return for shopping with them. Examples include Nectar and Avios.

b. Voucher code and offer sites:

As in the offline world (such as with restaurant voucher codes), many consumers will use voucher or discount codes to save money when online shopping. Websites will work with retailers to feature offers and some may be exclusive deals only available on that site. Some (though probably not all) of the links will result in the publisher website earning a small commission for the sales that result from the listed offers. Voucher code and offer sites include www.quido.com, www.savoo.co.uk, www.vouchercodes.com and www.hotukdeals.com.

c. Blogger and editorial sites:

Many people today create their own websites or apps so they can share their interests, passions and views with a wider audience. These might be run by one person who updates the content in their spare time. Alternatively the websites might be run as professional businesses with full time employees – they may even be well-known news brands. Either way many of the links might earn the sites commissions when products they feature are bought from the listed retailers.

d. Price and product comparison sites:

Often people want to compare products they're interested in buying to find the full range of retailers selling those items and the prices they're charging. Some of these comparison sites will use affiliate links to monitor the sales they generate and will then be rewarded by the retailer with a commission for these sales. Examples of well-known sites are www.Uswitch.com and www.moneysupermarket.com.

4.3 The IAB has produced a new site to help explain how this all works. This can be found at www.iab-performance-marketing-explained.net.

4.4 Recent research by the IAB and PwC found that businesses spent £14bn on performance marketing (both affiliate marketing and lead generation) in 2014. This generated sales of £14bn, the equivalent of £14 for every £1 spent¹⁷.

5. Addressing Consumer Concerns: Greater Transparency and Control

5.1 The IAB acknowledges that the collection and use of consumer data (such as web browsing and other information) could potentially raise issues relating to consumer privacy. In April 2011, building on an US initiative and the development of good practice in the UK, EU advertising and media trade bodies published good practice for all EU and EEA markets to enhance transparency and user control for online behavioural advertising.

5.2 The initiative is based upon seven key principles:

- i. **Notice:** Transparency about data collection and use practices associated with behavioural advertising, providing consumers with clear, prominent and contextual notice through multiple mechanisms, including an icon in or around advertisements linked to further information and control mechanisms.
- ii. **User choice:** Greater consumer control over behavioural advertising. For example, via www.youronlinechoices.eu.
- iii. **Data security:** Appropriate data security and retention of data collected and used for behavioural advertising purposes.
- iv. **Sensitive segmentation:** Limitations on the creation of 'interest segments' to specifically target children and on the collection of sensitive personal data collected and used for behavioural advertising.
- v. **Education:** For consumers and businesses about behavioural advertising and the self-regulatory Framework.
- vi. **Compliance and enforcement:** Mechanisms to ensure the effectiveness of the Framework, including a trading seal to be granted to compliant businesses once independently audited and which demonstrates to other businesses that the holder adheres to the obligations under the Framework.

¹⁷ www.iabuk.net/research/library/uk-online-performance-marketing-consumer-study-2014.

- vii. **Review:** Regular review of the Framework to ensure it evolves with developing technology and business practices. For example, EU advertising and media bodies are currently working on adapting the existing principles to the mobile environment.

A copy of the EU industry Framework can be found at: <http://edaa.eu/european-principles/>.

- 5.3 At the heart of this work is a symbol or icon (see below – known as the ‘AdChoices’ icon) that appears in or around the advertisements on sites, as well as on site pages themselves. When a user clicks on the icon he or she will be able to find out more about the information collected and used for this purpose. In 2014, 160bn icons were delivered by approved providers across Europe. One trillion icons were delivered globally in 2014, giving consumers significantly opportunities to manage or control their online advertising preferences.



- 5.4 The icon also links to ways for internet users to manage their interests, such as via privacy dashboards or ad preference managers. It will also link to a pan-European website now available in 33 different EU languages – www.youronlinechoices.eu – with helpful advice, tips to help protect privacy and a control page where you can turn off behavioural advertising. The UK version of the website is at www.youronlinechoices.eu/uk. Further information on the initiative is available at www.iabuk.net/policy/briefings/updated-iab-factsheet-may-2014-online-behavioural-advertising.
- 5.5 Several campaigns – including in the UK, Ireland, Germany, France, Greece, Portugal and Sweden - have sought to raise awareness of the icon. Recent research by the EDAA and privacy solutions provider, TRUSTe, suggests that awareness of privacy tools in on the increase. For example, one in 25 European citizens have visited www.youronlinechoices.eu to find out more about how online ads are targeted to interests¹⁸.
- 5.6 The EU industry initiative is administered by the European Interactive Digital Advertising Alliance (EDAA) www.edaa.eu.
- 5.7 The performance marketing sector has also developed good practice to help comply with the revised ePrivacy Directive. This is available at: www.iabuk.net/resources/standards-and-guidelines/eu-epriacy-directive-the-consumer-transparency-framework-for.

¹⁸ www.edaa.eu/edaa-news/new-research-shows-foundations-for-growth-of-european-industry-initiative-that-gives-consumers-transparency-control-over-advertising-choices.

6. Agreeing Proportionate New European Data Protection Law

- 6.1 The IAB supports the need to update data protection law in light of the technological changes since 1995 to provide European citizens with a strong level of protection and accountability, and welcomes streamlining the rules to make them more efficient for businesses operating across multiple territories.
- 6.2 However, there are two key aspects of the draft EU Data Protection Regulation – still unresolved in ongoing discussions - that pose a genuine threat to the future of digital advertising businesses:
- i. **The extended scope of personal data.** This would, in effect, cover almost every piece of data that is collected and processed in a digital environment. This binary approach applies regardless of whether the data collected is personally sensitive, identifies you as a person or is aggregated to help improve or tailor content or services to the consumer.
 - ii. **The proposed requirement to obtain explicit consent for the processing of personal data.** Were this to be the only legal basis available to digital businesses it would require consumers to navigate through numerous ‘hoops’ to reach the service or content that they wish to access or view.
- 6.3 A combination of these two requirements would have significant effects on the digital advertising industry. It is generally accepted that data that singles out but does not identify a user (as is used in digital advertising) enhances privacy. Data controllers have to invest in order to collect and process data in this way and create additional privacy safeguards (for example, minimising the amount of data processed). By having a single definition of personal data the draft Regulation treats all data the same way and does not create incentives to invest in privacy enhancing measures.
- 6.4 Where digital advertising players act as third parties and have no relationship with the end user (and so cannot practically obtain consent), explicit consent would not be a workable legal basis to ensure the long- term scalability and viability of their business models in Europe. For those with a more direct relationship with the end-user, this requirement would most likely result in a more ‘logged-in’ online environment. This would cause a fundamental shift away from how the digital ecosystem operates today.
- 6.5 The proposed reforms therefore take a blanket approach to regulating data that would create significant legal uncertainty for many internet business models. They would pose a significant barrier to any business that relies on the analysis of sets of data, rendering them unworkable and, at worst, illegal. Today’s advertising models would be severely impacted, depriving many web publishers and small businesses with much needed revenue, as well as compromising the development of future business models.

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