

ICC RESOURCE GUIDE FOR SELF-REGULATION OF ONLINE BEHAVIOURAL ADVERTISING (OBA)



Highlights

- Explanation of global framework available for OBA self-regulation
- Checklist from existing OBA self-regulatory mechanisms on how to implement the global principles
- Links to further resources



International Chamber of Commerce
The world business organization

Prepared by the ICC Commission
on Marketing and Advertising

ICC Resource Guide for Self-Regulation of Online Behavioural Advertising

I. Introduction

The International Chamber of Commerce (ICC) is uniquely positioned to provide guidance on marketing and advertising around the globe. As the world's foremost business organization, whose membership is composed of thousands of enterprises from all sectors and regions, ICC has been a major rule-setter in marketing and advertising since 1937 when it issued the first ICC Code on Advertising Practice.

Over the years, the ICC Code has served as the foundation and building block for self-regulatory structures around the world. These self-regulatory systems have helped industry build trust with consumers by promoting advertising that is honest, legal, decent and truthful, while offering quick and easy redress when transgressions occur.

The Code also has served business and society by providing ethical guidelines that build on fundamental pillars, create a level playing field and harmonize approaches across markets while minimizing the need for legislative or regulatory restrictions that add inefficiency and cost. As new practices and technologies have evolved, ICC has revised and extended the scope of the Code to assure its usefulness and relevance. In this way, the Code also demonstrates that when effectively implemented, self-regulation has an ability to be more rapidly adaptable and responsive to market needs than most legislative alternatives.

In 2011, the ninth revision was completed and the Consolidated ICC Code of Advertising and Marketing Communication Practice (the Code) was published and launched around the world, including the first global guidance for online behavioural advertising. In addition to the printed Code an online, searchable version of the Code is available at www.CodesCentre.com along with a wealth of information on self-regulation for marketers, agencies, academics and regulators. The site also contains downloadable translations, companion codes, training materials and links to national and sector-specific codes around the world.

II. Background: The ICC Code and application to Online Behavioural Advertising (OBA)

For the first time, the most recently revised Code addresses responsibility in the use of online behavioural targeting in the delivery of advertising.

The term OBA refers to the practice of collecting information about a user's online activity over time, on a particular device and across different, unrelated websites, in order to deliver advertisements tailored to that user's interests and preferences.

The detailed chapter presenting the OBA framework is available online (www.codescentre.com) so it is not reproduced in this resource guide. Rather this document offers a tool for businesses, self-regulators and regulatory authorities to provide suggestions from current experience on how these principles could be effectively implemented through self-regulation.

III. Checklist for implementing the rules into national or regional self-regulatory efforts

ICC Code guidance on OBA offers the fundamental principles that any market in the world can use when setting up OBA self-regulation. The ICC Code mirrors the essential elements of self-regulatory programmes developed in the US and EU that provide consumers with transparency and control of OBA. Implementation of similar programmes in other countries and regions would provide a predictable and effective self-regulatory regime and facilitate cross-border trade for the range of interdependent businesses serving or relying on advertising (hereafter the advertising ecosystem), while keeping the flexibility to accommodate regional, national and local differences.

Experience from existing OBA programmes

In the years preceding the development of the ICC OBA framework, a coalition of US-based industry stakeholders involved in online behavioural advertising, including the major advertising-related associations, joined together for the purpose of developing consensus on standards for the advertising ecosystem regarding OBA. The Digital Advertising Alliance (DAA)¹ was formed as an umbrella organization to implement a set of self-regulatory best practices (by which the ICC OBA framework was later inspired). The DAA also manages operational details such as the licensing of an icon by which consumers would be notified of collection of data for OBA and the delivery of OBA advertising to them. Two organizations, the Direct Marketing Association (DMA) and the Council of Better Business Bureaus (CBBB) were tasked by the DAA to provide accountability to ensure that companies would comply with the principles.²

In Europe, a steering group was formed across the advertising industry associations and the self-regulatory bodies. It has agreed to a similar set of standards and a process of implementation and enforcement of the European self-regulatory programme across the different EU member states.³ It also agreed the setting up of the European Digital Advertising Alliance (EDAA) to administer the licensing of the icon (as in the US) and the approval of the self-certification and auditing providers. A self-regulatory programme has also been established in Canada through the Digital Advertising Alliance of Canada.

ICC's OBA framework was developed to be wholly consistent with pre-existing frameworks. The following checklist was developed to assist industry and policymakers in other countries identify key steps for setting up a self-regulatory process to apply the ICC OBA framework in a consistent way across markets.

¹ Information about the DAA and the Self-Regulatory Principles for Online Behavioural Advertising can be found at www.aboutads.info.

² For further information about how these organizations provide accountability, see <http://www.bbb.org/us/interest-based-advertising/>; <http://www.dmaresponsibility.org/privacy/oba.shtml>

³ EASA Best Practice Recommendation on Online Behavioural Advertising (<http://www.easa-alliance.org>)

Checklist

Any scheme for applying the ICC OBA framework in an effective manner for self-regulation should involve:

1. Researching the regulatory and business environment to determine feasibility and opportunity for effective self-regulation programmes to be established.
 - a. If there is an established legal basis for self-regulation, identify the regulatory or legislative authorities with which the alliance of industry stakeholders initiating the effort can coordinate and advocate for such a self-regulatory programme
 - b. Where there is no established legal basis for self-regulation, determine if there is a willingness among opinion leaders, governmental authorities, consumer advocates and/or the media to support and encourage self-regulatory efforts

2. Where a legislative or regulatory framework exists, identify ways it can refer broadly to self-regulation and leave adequate space for self-regulatory programmes to be put in place.

3. Identification of and outreach to stakeholders.
 - a. Identify and conduct outreach to relevant companies, industry organizations, associations, and Self-Regulatory Organizations (SROs) as key stakeholders interested in developing a self-regulation programme
 - b. Allow enough time to reach out to stakeholders and new actors that may not be part of your existing marketing communications community and may not be acquainted with the existing self-regulatory programmes for marketing communications content

4. From that outreach effort, develop a core group of industry stakeholders including as broad a segment of the ecosystem as possible (Web publishers, advertising networks, advertising exchanges, advertisers) committed to developing a programme, including at least one stakeholder willing to commit the time and resources necessary to convene an industry group and lead it.
 - a. Form an umbrella organization from that core group of stakeholders to manage the process of consensus building and implementation
 - i. Determine how to fund the self-regulatory effort
 - ii. Create an organizational structure
 - b. Obtain information and presentations about the operation of existing self-regulatory schemes in other regions to enhance understanding and design. Create a core document with technical definitions and explanation of OBA early in the process.

- i. Agree on baseline principles for the self-regulatory programme (ICC OBA framework, with regional adjustments as necessary). Ensure that all involved stakeholders have been represented at discussions of these principles and are willing to take appropriate responsibility for implementing them
 - ii. Find solutions to any problems among particular industry subgroups so that strong consensus emerges
 - iii. Ensure adequate coverage of both multinational and local players
 - c. Complete a draft of the principles as agreed upon and write any necessary clarifying commentary.
 - d. Develop programme architecture and operational structure.
 - i. Determine programme elements (point of service notification, opt-in/out mechanisms, enforcement instruments, etc. – ensuring coordination with other regional self-regulatory programmes)
 - ii. Form a technical subgroup from among participants to create technical implementation standards and publish guidelines
 - e. Establish and obtain the appropriate licensing arrangements for use of icon.
 - f. Identify and select coordinating organization(s) to provide accountability for the self-regulatory programme.
 - i. A strong enforcement mechanism is important for a credible self-regulatory programme, and should follow self-regulation models acceptable in the region and capable of addressing the technical complexities of the programme. Examples include:
 - Complaint model
 - Monitoring model
 - Audit model
 - Combination of any of the above
 - ii. Link into existing self-regulatory programmes for marketing communications for increased credibility regarding compliance and enforcement for example with regard to complaint handling
 - iii. There should be a clear and transparent set of sanctions in place such as publication of decisions, removal of B2B seal, exclusion from membership or referral to the legal backstop
 - iv. The implications for license holders of sanctions should be clearly set out in the license agreements for the icon and certification
 - v. Where appropriate, self-regulatory enforcement can be coordinated with referrals to regulatory authorities in cases of non-compliance
 - g. Implement programme (factor in appropriate lead-in times). Timeline will need to include such factors as:
 - i. Getting the appropriate legal agreement to use and sublicense the icon

- ii. Tenders for accountability agents, technical support and other organizational issues
 - iii. Setting up of a website for users to exercise choice (eg: www.aboutads.info)
 - iv. Addressing the various language requirements within a region and the necessary translation of documentation and websites
 - v. Organizing appropriate training and workshops about the operation of the programme
 - vi. Getting the feedback of non-industry stakeholders for example in the language used to explain OBA and privacy on industry websites or in educational materials. Coordination with various industry stakeholders on elements such as press relations
 - vii. Discussions with regulators
 - viii. Press and consumer stakeholder meetings
- h. Continual dialogue to ensure regulatory alignment and support. Ensure adequate alignment with new industry self-regulatory initiatives that may in some way impact on the self-regulatory programme being developed such as do not track browser options.
- i. Ensure adequate review to take account of evolving concerns, technical innovations and application to, for example, mobile and other handheld devices or tablets.
- j. Education and outreach to industry, regulators, consumers and media.
 - i. Consumers will need guidance on the programme and ability to recognize and use its features
 - ii. Businesses will need an outreach campaign to ensure that they understand and are prepared to implement the programme

IV. Links and additional resources

Digital Advertising Alliance (US programme)

www.aboutads.info

Better Business Bureau (US self-regulatory organization)

www.bbb.org/us/interest-based-advertising

Direct Marketing Association (for more information on their US accountability programme)

www.dmaresponsibility.org/privacy/oba.shtml

European Digital Advertising Alliance (EU programme)

<http://status.youronlinechoices.eu>

European Advertising Standards Alliance (EASA – alliance of EU self-regulatory bodies)

www.easa-alliance.org

The International Chamber of Commerce (ICC)

ICC is the world business organization, a representative body that speaks with authority on behalf of enterprises from all sectors in every part of the world.

The fundamental mission of ICC is to promote open international trade and investment and help business meet the challenges and opportunities of globalization. Its conviction that trade is a powerful force for peace and prosperity dates from the organization's origins early in the 20th century. The small group of far-sighted business leaders who founded ICC called themselves "the merchants of peace".

ICC has three main activities: rule setting, dispute resolution, and policy advocacy. Because its member companies and associations are themselves engaged in international business, ICC has unrivalled authority in making rules that govern the conduct of business across borders. Although these rules are voluntary, they are observed in countless thousands of transactions every day and have become part of the fabric of international trade.

ICC also provides essential services, foremost among them the ICC International Court of Arbitration, the world's leading arbitral institution. Another service is the World Chambers Federation, ICC's worldwide network of chambers of commerce, fostering interaction and exchange of chamber best practice. ICC also offers specialized training and seminars and is an industry-leading publisher of practical and educational reference tools for international business, banking and arbitration.

Business leaders and experts drawn from the ICC membership establish the business stance on broad issues of trade and investment policy as well as on relevant technical subjects. These include anti-corruption, banking, the digital economy, marketing ethics, environment and energy, competition policy and intellectual property, among others.

ICC works closely with the United Nations, the World Trade Organization and intergovernmental forums including the G20.

ICC was founded in 1919. Today it groups hundreds of thousands of member companies and associations from over 120 countries. National committees work with ICC members in their countries to address their concerns and convey to their governments the business views formulated by ICC.



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