

# EASA Best Practice Recommendation on Online Behavioural Advertising

Setting out a European advertising industry-wide self-regulatory standard and compliance mechanism for consumer controls in Online Behavioural Advertising

in partnership with



# **EASA Best Practice Recommendation for a European Industry-wide Self-Regulatory Standard and Compliance Mechanism for Consumer Controls in Online Behavioural Advertising**

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## **Best Practice Recommendation – Online Behavioural Advertising (OBA)**

### **Structure**

This Best Practice Recommendation includes the following sections:

#### **Introduction**

#### **Summary**

- Section 1:** The scope and approach of the Best Practice Recommendation
- Section 2:** Guidance on the principles of the BPR industry-wide Standard on OBA which are to form the basis of the approach made at local level across Europe with reference to the OBA Framework of IAB Europe
- Section 3:** IAB Europe Framework on OBA
- Section 4:** Guidance in relation to the process for compliance with the standards and the monitoring thereof (including flowchart)
- Section 5:** Clarification regarding the use of consumer controls page
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## Introduction

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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, it brings together 34 (of which 26 in Europe) national advertising self-regulatory organisations (SROs) and 16 organisations representing the advertising industry (advertisers, agencies, the various forms of traditional and digital interactive media (including IAB Europe)) in Europe and beyond. For a listing of EASA's members please see section 10.

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, which complements IAB (Interactive Advertising Bureau) Europe's Online Behavioural Advertising Framework and establishes an industry-wide standard. The features of this response are:

- A complete and integrated self-regulatory solution for OBA;
- A coherent minimum harmonised approach to be implemented across the EU / EEA;
- A pan-European industry-wide approach and standard;
- OBA User Choice Site for consumer feedback and complaints;
- Robust and effective self-regulatory enforcement mechanisms.

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

It was adopted by EASA's Board on April 7 2011 and sent to national SROs in Europe and EASA industry members for national implementation. EASA has committed to ensure at least 70% of its EU SROs have implemented the BPR within a year (i.e. by the end of April 2012).

## Summary

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

This Best Practice Recommendation recommends that:

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

- Clearly request their members to support the adoption at local level of rules on Online Behavioural Advertising based on this best practice;
- Clearly request their members to support the adoption at local 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 the ad networks regarding the handling of complaints of a non-technical nature by the advertising self-regulatory bodies;
- 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 consumer controls page to create a one stop shop for consumer feedback and complaints;
- Ensure the necessary linkages between industry compliance monitoring reports 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 Online Behavioural Advertising partners to:**

- Extend their remit beyond marketing communications content to include the handling of complaints regarding Online Behavioural Advertising;
- Include a new section in the applicable codes covering provisions for 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 industry monitoring compliance reports 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 User Choice Site 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 User Choice Site.

**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 a new section will deal with digital interactive media including addressing Online Behavioural Advertising. The new Consolidated ICC Code is expected to be launched in September 2011.

## Section 1 | BPR scope and approach

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### What is an EASA Best Practice Recommendation?

EASA's Best Practice Recommendations (BPRs) offer support and advice to EASA Self-Regulatory Organisations (SROs) and industry members on the practice of advertising self-regulation and other related areas. 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.

EASA's BPRs are designed to stimulate and assist national discussions on the development of self-regulation according to the Best Practice Model (see section 7), and are intended as a means for taking clear actions at both European and national level.

BPRs are not formally binding. The implementation of the subject matter of a BPR is the result of a process of negotiation between SRO members and their industry partners at national level within the context of the existing (self-) regulatory framework, as there are different ways for each SRO to achieve the optimal solution for its country.

The text of a BPR is commonly agreed upon by the advertising industry and SROs at European level. This enables each country to adopt the approach best suited to local circumstances, based on the principles outlined in the BPR (see section 2), thus helping to ensure consistency of remit and application throughout Europe. The principles in the Standards of the BPR are drawn from those in the IAB Europe Framework on OBA. A national SRO may choose to adopt provisions in its advertising code and adapt its system beyond the recommendations of EASA.

All EASA BPRs to date are based on EASA's "Common Principles and Operating Standards of Best Practice" and "Best Practice Self-Regulatory Model". In June 2004 the advertising industry committed itself to achieving these by signing EASA's "Advertising Self-Regulation Charter" for a stronger self-regulatory network in the enlarged European Union, while recognising that advertising self-regulation encompasses a wide variety of systems for business responsibility, complementing the law.

### What does this BPR do?

This EASA Best Practice Recommendation builds on the Best Practice for Digital Marketing Communications adopted by EASA in 2008. The BPR is intended to contribute to providing 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 the ad networks, advertisers, agencies, media and SRO members, starting in 2009 through the EASA Steering Group and working group on OBA self-regulation, as well as dedicated workshop sessions with the EASA SROs.

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 network industry (section 4). The approach used is intended to be technology neutral and applies to all devices that can browse on 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 networks, national IABs and the advertising industry (advertisers, agencies and media associations), will need to agree 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. One year later, 73% of EU SROs had implemented the BPR and in 2011 it has been implemented by all operational EASA EU SROs.

The BPR has been at the basis of European-level discussions at the end of 2010 / early 2011 with the EU Commission and other stakeholders about the self-regulatory approach in this area. It was adopted on April 7 by EASA's Board and will be sent to both EASA industry and SRO members at the national level with a deadline of 12 months for adoption and transposition at local level (i.e. by April 2012). EASA has committed to achieving implementation by at least 70% of the operational SROs across the EU within a year.



## **Section 2 | European Industry-wide Self-Regulatory Standard and Compliance Mechanism for Consumer Controls for Online Behavioural Advertising**

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### **2.1 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 OBA Framework of IAB Europe (see Section 3).

The BPR identifies the following five principles from the IAB Europe OBA Framework (the relevant Principle number of the IAB OBA Framework 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

### **2.2 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 and Website Operators involved in the delivery of interest-based advertising.

OBA is a way of making ads more relevant to users according to their potential interests. Based upon previous web browsing activity across multiple web domains not under Common Control (see p.10), web users are served advertising which 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 serving companies have in order to select the best ads to show 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 clicks and therefore more purchases from users, it is more valuable to advertisers and is regarded as an essential part of the industry toolkit.

This Standard is intended to enhance web users’ trust by providing clear and easily recognisable information about OBA activities, in particular by standardising consumer notices within advertisements or on websites. The Standard encourages the creation of easy-to-use mechanisms providing web users with enhanced transparency and choice

regarding OBA. These mechanisms will also enable web 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 browse on the internet.

The majority of retargeting is covered by this BPR. The definition of OBA below excludes the activities of Website Operators that are limited to their own sites or sites controlled by them, 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).

The Standard does not seek to regulate the content of online advertisements which is already described in the EASA Best Practice on Digital Marketing Communications. Neither does it regulate Ad Reporting data where it is not used for OBA purposes and its use for Ad Delivery. For further details, please see the definition of "Ad Reporting" and "Ad Delivery" on p.11.

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 (personal) data for OBA purposes. In particular it underlines that:

- whenever anonymous data are matched or combined with personal data, all legal obligations that apply to the processing of personal data need to be fulfilled.
- 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.

## **2.3 Definitions:**

The following definitions, in italics, are taken word for word from IAB Europe's OBA Framework. Below each definition is an explanation of how EASA and its members interpret these definitions.

### ***Third Party***

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

This definition refers to any company that delivers ads on a website / several websites that it does not own or operate. Typically major multinational ad networks such as Google Affiliate Network, Yahoo! Network Plus, or Microsoft Media Network, as well as local players, would be covered here.

### **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.

### **Common Control**

*Entities or web sites 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 which are 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 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 (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, OBA companies try to predict a user’s interests and preferences based on the user’s past websites viewing record, for example in the form of data about page views or user clicks. This information about web viewing behaviour is collected over time and across multiple web domains, rather than from a single website. By definition, the OBA company, which is often a so-called ad network, collects information on viewing behaviour from websites that it does not own or operate.

## **Ad Reporting**

*Ad Reporting is the logging of page views on a web site 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 web site(s);*
- *Web analytics and analysis; and*
- *Logging the number and type of ads served on a particular web site(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. Such information typically includes information about the browser and operating system a website visitor 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), because it allows advertisers to properly display ads (e.g. according to the technical specifications of a website 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 using Ad Reporting data.

## **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.*

This definition clarifies that companies, which optimise the delivery of their online advertising on a website 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 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 it does not own or operate and uses such data to create interest segments and to deliver ads which are targeted according to these interest segments, it does serve OBA as defined by the BPR and is therefore expected to comply with the obligations accordingly.

## **2.4 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 User Choice Site.

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

In addition to the privacy notice on their own websites, Third Parties are required to provide an “enhanced notice” to consumers whenever they are collecting or using data for OBA purposes on a website that is not operated by them. The purpose of the enhanced notice is to provide the web 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.

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 through the OBA User Choice Site. 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 User Choice Site.

Principle I - A.2. requires an enhanced notice on the website 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 web based object that contains a hyperlink to the OBA User Choice Site 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 within a reasonable timeframe for the icon to appear only in or around OBA ads, EASA and IAB Europe will work towards an aligned solution that ensures adequate information to consumers.

#### ***B. Website Operator Notice***

In instances where the Third Party does not provide the enhanced notice in or around the ad or on the website, Principle I.B. requires a notice by the Website Operator that the Website Operator permits data collection and its use for OBA purposes on its website by Third

Parties. This notice should either link to the industry developed website or list individually the Third Parties engaged in OBA on its website.

The particular Third Party engaged in OBA on a Website Operator's website has the primary responsibility to ensure oversight and control. For this reason a Third Party and not the Website Operator 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 the delivery of OBA should make available a **user-friendly mechanism**, in the form of an icon linking to the OBA User Choice Site, for web 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 a web 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.

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

**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 that are visited on a particular computer or device and that use such data for delivering OBA. Where Explicit Consent has been obtained by a Third Party, it 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.

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 User Choice Site.

**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 which 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 a web 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 which have been established under IAB Europe's OBA Framework; these are binding for all signatories of that Framework and will be complemented by a comprehensive industry-wide compliance and enforcement programme comprising of two elements.

Firstly, through an innovation in self-regulation, IAB Europe's OBA Framework introduces a new procedure to measure compliance with the commitments of signatory companies and establishes a system of enforcement and dispute resolution. Compliant companies will receive a periodically renewable B2B 'seal'. Should a company fall behind and not remedy a significant breach of its obligations within a limited timeframe, the seal would 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 of the signatory company, or that consumers' complaints relate to OBA activity by non-signatory companies of the OBA Framework, 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 bodies 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.
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 local level. The BPR does not replace the obligations of signatory companies to the OBA Framework.
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 the signatories to adhere to the applicable self-regulatory rules and to respect the decisions and rulings made by the appropriate self-regulatory body 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 compliance feedback. This is detailed in section 4.

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

Coordination between the administrators of relevant compliance programmes should ensure transparency, consistency and coherence of the implementation and enforcement across EU and 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 IAB Europe OBA Framework and other related codes, as well as the development of OBA and business practices. It should be modified as appropriate.

# IAB Europe EU Framework for Online Behavioural Advertising

## Introduction

## Definitions

## The Framework

### Introduction

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The undersigned companies (the “Companies”) have developed this European self-regulatory Framework (the “Framework”) for Online Behavioural Advertising (“OBA”). 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 differing 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 un-regulated. 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 web sites 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 OBA 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 web site or related web sites 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.

## **Definitions:**

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### ***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 web site 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 web site(s);
- Web analytics and analysis; and
- Logging the number and type of ads served on a particular web site(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 web sites 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.

### ***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 focussed web site and education portal ([www.youronlinechoices.eu](http://www.youronlinechoices.eu) and any successor site), 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 web site or web sites other than a web site or web sites it or a an entity under Common Control owns or operates.

***Web Site Operator***

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

# The Framework

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## Principle I. Notice

### A. *Third Party Notice*

1. *Third Party Privacy Notice*—Third Parties should give clear and comprehensible notice on their web sites 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 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 web site 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 in instances where 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 that are 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 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 EEA Member States. Such independent audits must demonstrate, at a minimum, the following attributes:

- a) Processes for individual and independent review of Company web sites 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 web sites 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.

## Section 4 | Compliance and Enforcement Guidance

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### 4.1 Introduction

The joint-industry 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 across European Union Member States;
- 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.29. 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 4.2.a) and the current systems for advertising self-regulation (explained in 4.2.b).

A consumer could be making his feedback/complaint either directly to a company, to a Third Party or Website Operator, a regulatory authority, a self-regulatory body 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 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 web-based interface. The procedure for this is described below in 4.2.a.

The majority of consumer feedback and complaints about OBA are expected to be occurring via this process.

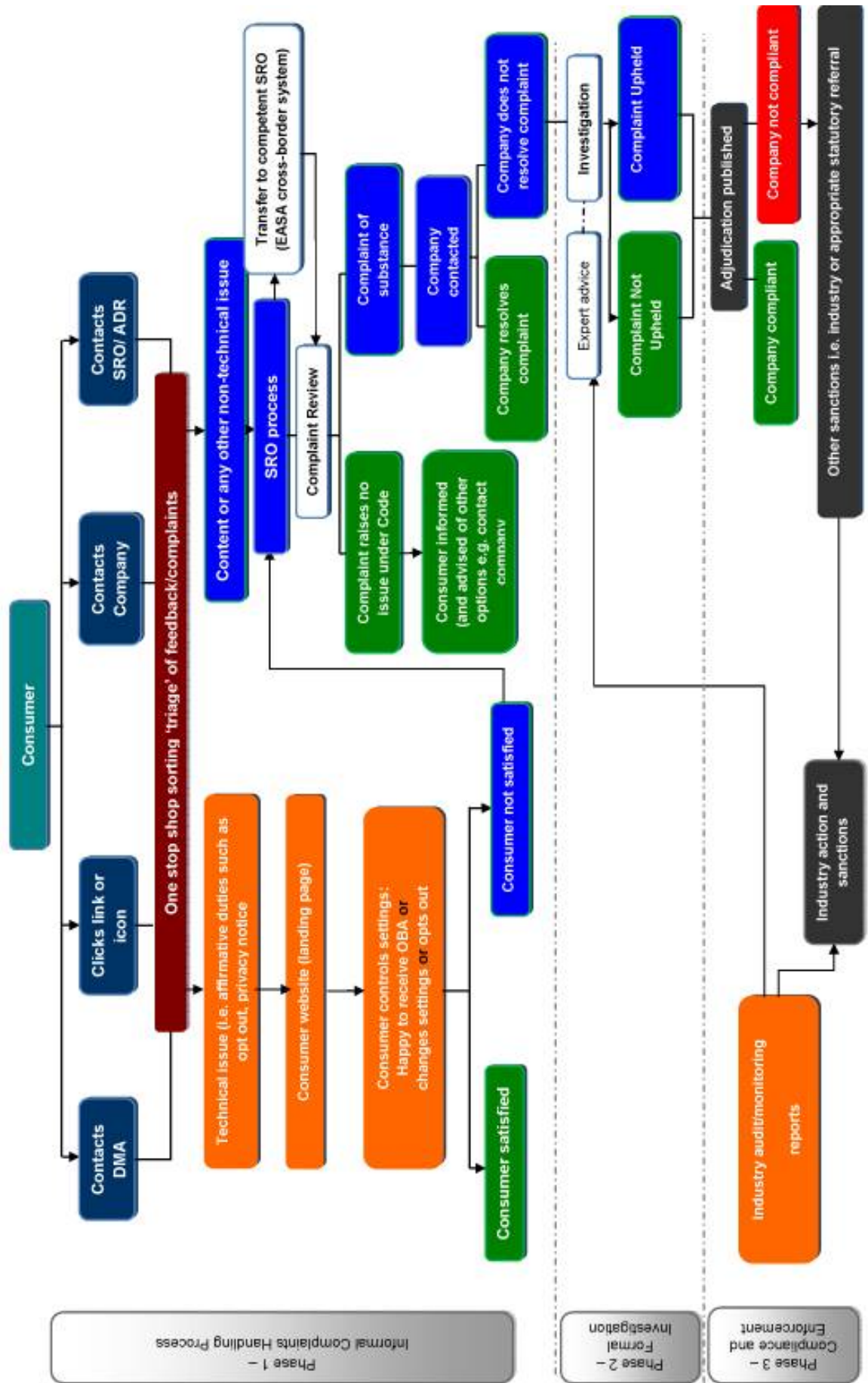
It is the expectation that EASA industry members will provide appropriate training to recipients of consumer complaints to ensure they can provide assistance to consumers about the functionality of the web-based interface.

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 bodies. The procedure for this is described below in 4.2.b.

## **4.2 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 Mechanisms



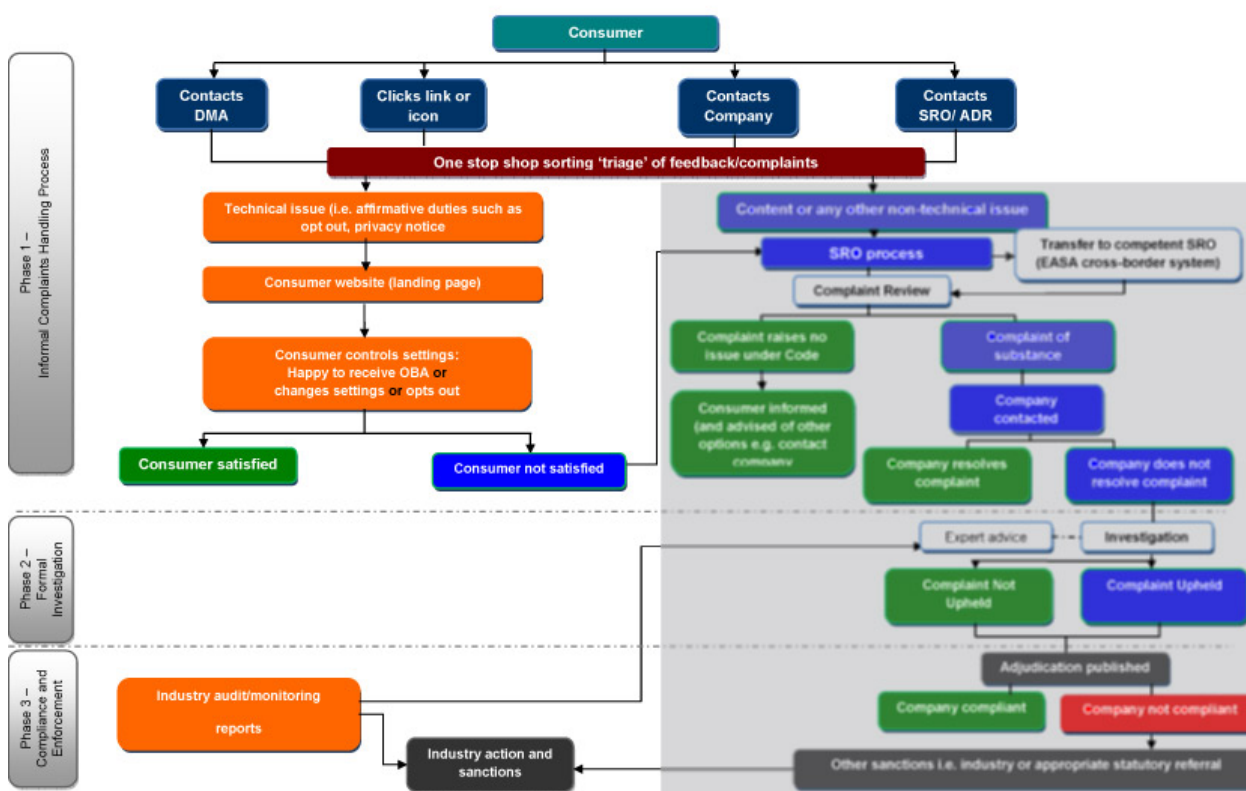
## 4.2.a Options for consumer controls and enquiry/complaint mechanism

The majority of the implementation and enforcement activities in relation to the IAB Framework Code will take place by consumers directly through information about OBA and consumer controls tools offered via the web-based interface. These will be provided via an OBA icon within OBA advertising itself, delivered via Third Parties or via links from Website Operators' privacy policies or directly from their web pages, to the industry web-based interface (landing page), referred to as the one stop shop sorting 'triage' in the flowchart.

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

### OBA consumer controls and enquiry mechanism (relevant process shown on the left)

Flow Chart: Feedback/Complaint Handling Mechanisms



The OBA User Choice Site will also provide the consumer with the possibility to exercise choice about the use of this data, most notably the informed choice to not 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's privacy policy or web page, which directs the consumer to a web-based OBA User Choice Site, 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.

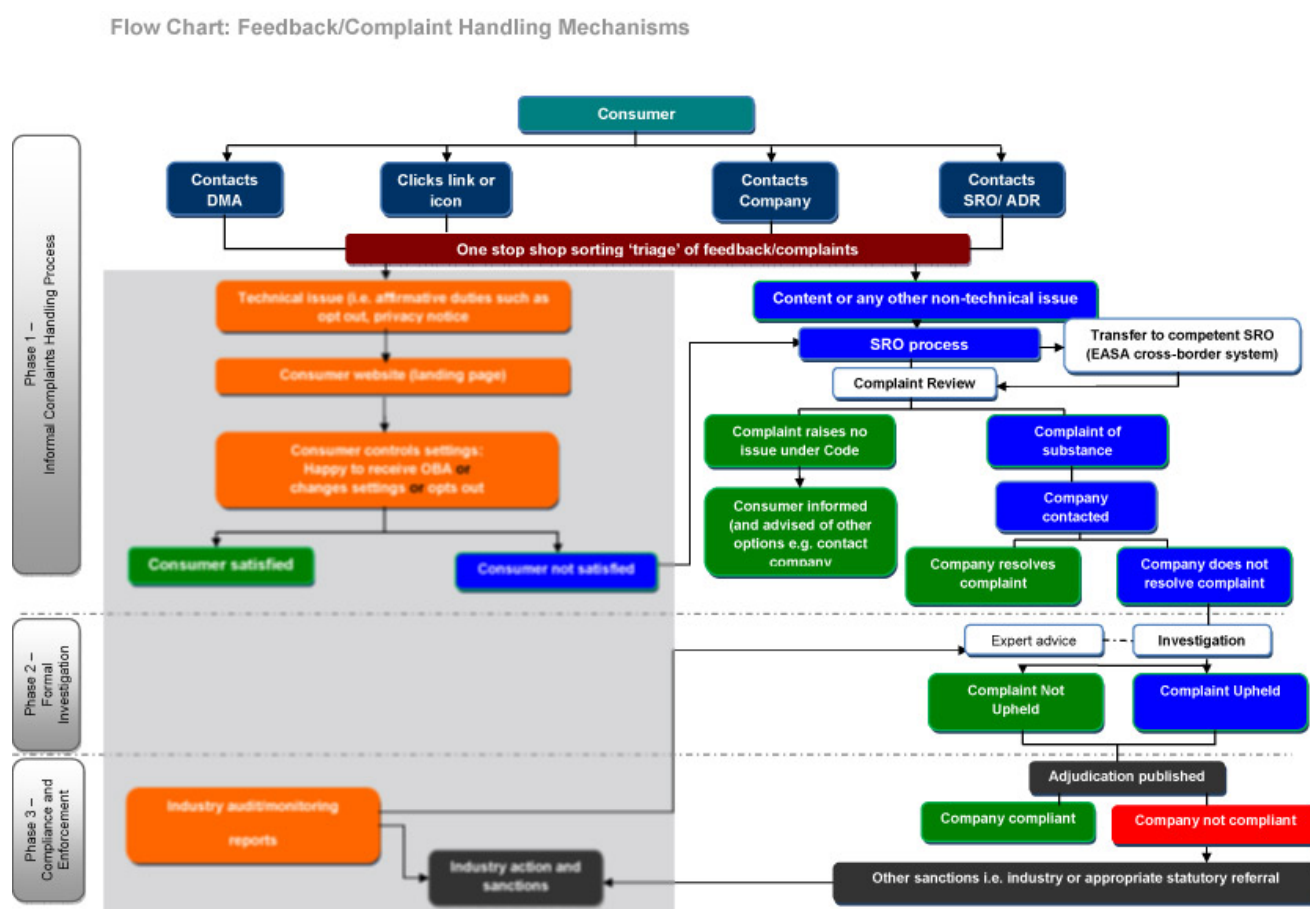
2. The consumer might also wish to contact the company which delivered the OBA directly (e.g. by clicking on a [privacy] link) or he might contact the local direct marketing association (DMA), the national self-regulatory organisation (SRO) or a similar local alternative dispute resolution (ADR) body (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 in the first instance with enquiries (or complaints). The function of the company, ADR or the SRO in the first instance would be to refer the consumer to the OBA User Choice Site, helping him/her 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, the status of the industry rules in place, the authority might transfer the enquiry or complaint to the SRO or will also refer the consumer to the OBA User Choice Site.
4. It is expected that the online tools developed in conjunction with the OBA Framework will satisfy most consumers, obviating the need for additional complaints resolution other than that described below.



## 4.2.b 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 and the web page hosting the ad do not disclose any information about the targeting method and do not link to the OBA User Choice Site. Perhaps they may have had an unsatisfactory response from a company or its compliance programme. Consumers might also have issues with the content of the ad or any other non-technical or privacy related issue.

### OBA complaint handling mechanism chart (relevant process shown on the right)



### Phase 1- Informal Complaints Handling Process

In the above cases the consumer might (re)turn to the SRO to help resolve his complaint. Firstly, the SRO will need to assess whether it is competent in the matter or it needs to transfer the complaint to the competent SRO (see EASA Cross Border Complaint rules described on p.43).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 issue 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 has signed the OBA Framework and has its own internal compliance programme, 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 satisfaction of the consumer 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 industry general compliance monitoring reports with regard to the functioning of consumer controls links, the OBA User Choice Site and clarity of privacy statements etc. Subsequently the SRO's jury would adjudicate the complaint. It is EASA best practice that the composition of SRO Jury's includes an independent element (see section 8, p.41, for a description of EASA Best Practice Recommendations and p.41 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 industry general compliance monitoring reports before undertaking this action.

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

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 B2B 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 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.

## Section 5 | Clarification regarding the use of the consumer controls page and icon

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The Framework recognises that when a consumer visits a website she/he is likely to expect that the website will use data of its visitors to customise their experience. However, a user will not necessarily expect that another company (defined as 'Third Party' under the OBA Framework), other than the website itself, provides advertising and collects web viewing data from the consumers' Personal Computer (PC) (or any other device) over time. Such collection aims at improving the relevance of adverts for consumers. The proposed OBA Framework will be implemented in a manner that would introduce a visible enhanced notice for such adverts. The IAB Europe OBA Framework 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 will include a uniform pictogram ('icon') that would be the same 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) 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 adverts but not ones that have taken into account their potential interests based on previous web surfing behaviour.

In instances where the Third Party does not provide the enhanced notice in or around the ad or on the website, this notification mechanism will be mirrored by the websites (defined as 'Web Site Operators' in IAB Europe's OBA Framework): websites that have OBA companies on their sites have to provide a clear notice in their privacy notice about OBA and include a link to the Consumer Control Tool (OBA User Choice Site) to facilitate user interaction.

## Section 6 | Clarification regarding company compliance programmes

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The OBA Framework is binding for all signatories and will be 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 new compliance and enforcement mechanism for 'Third Parties' ensures that companies comply with the commitments under the OBA Framework. Compliant companies will receive a periodically renewable B2B 'seal'. Should a company fall behind and not remedy a significant breach of its obligations within a limited timeframe, the seal would be removed. As a consequence, this failure will be communicated to the market and the public. In the UK, the IASH programme<sup>1</sup> has proven that the removal of such a seal has significant effects on the market and is therefore an effective sanction, strong enough to enforce compliance.

Third Parties will choose a compliance programme provider that can demonstrate expertise in online measurement and/or auditing. This will be subject to a competitive tender carried out by IAB Europe.

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<sup>1</sup> IASH was created in the UK to encourage best practice among the online advertising ecosystem through an effective code of conduct. The Code ensures that display ads placed via their networks do not appear on websites which could jeopardize advertisers' brands. See:

[http://www.iash.org.uk/AboutIASH/204359/the\\_role\\_of\\_iash.html](http://www.iash.org.uk/AboutIASH/204359/the_role_of_iash.html)

## Section 7 | 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 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>2</sup> and EASA's Best Practice Self-Regulatory model<sup>3</sup>, we confirm our commitment to achieving in the practical operation of self-regulatory bodies<sup>4</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:
  - 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.

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<sup>2</sup> Adopted at EASA's AGM on 31 May 2002 in Brussels, Belgium

<sup>3</sup> Adopted at EASA's AGM on 1 April 2004 in Istanbul, Turkey

<sup>4</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



## Section 8 | Overview of EASA Best Practice Recommendations

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In 2004, with the help of its members, EASA began drafting a series of Best Practice Recommendations, based on the Common Standards and Best Practice Model. As well as providing detailed guidance on the practical aspects of advertising self-regulation to both self-regulatory organisations and advertising industry associations in EASA membership, the recommendations are intended to stimulate and inform national discussions on the development of advertising self-regulation, in line with the Best Practice Model. They provide a consistent standard for self-regulatory systems, while recognising that the means of achieving it may legitimately differ from country to country. This is a practical example of 'unity through diversity'.

The following Best Practice Recommendations have so far been issued:

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

The full texts of these Best Practice Recommendations (BPRs) are available only to EASA members, but their contents are summarised below;

The **BPR on Advertising Monitoring** deals with an important activity which, unlike reactive complaints handling, enables an SRO to play a proactive role in ensuring advertising code compliance and the implementation of its complaints adjudications. The BPR suggests ways of obtaining systematic access to advertising and explains how to target monitoring on specific sectors, media or issues which have attracted high levels of complaint or raised concern with legislators, NGOs or the general public. It also provides guidance on monitoring procedure, follow-up action and reporting results.

The **BPR on Code Drafting and Consultation** offers advice on the procedure for reviewing and revising a national advertising code. The aspects covered include ownership of the code, its scope, coverage and content, the frequency of updates and the processes of drafting, consultation and adoption, implementation and creating awareness of the code. The BPR examines in detail key procedural issues, notably consultation with interested parties outside the advertising industry, which are regarded as essential features of a self-regulatory model able to command acceptance.

The **BPR on Complaints Handling** emphasises the importance of dealing with complaints quickly and efficiently, one of the key advantages of self-regulation over the judicial process being its speed. The BPR provides guidance on ways of complaining, the acknowledgement and tracking of complaints and appropriate time periods for the handling process. It also offers advice on the assessment of complaints, notification of the outcome to complainants and advertisers, and the appeals process, together with guidelines on how SROs should manage complaints handling against defined standards of service, including specific performance targets.

The **BPR on Confidentiality of Identity of the Complainant** describes the differing national attitudes to this issue. SROs usually disclose the identity of a commercial complainant, but practice regarding the confidentiality of consumer complainants varies, depending on established national traditions. This may raise an issue in the context of a cross-border complaint, as differences in national procedures may mean that a consumer complainant is guaranteed anonymity in one country but not in another. The BPR suggests resolving this problem by explaining to the complainant that different rules apply and seeking prior consent to proceed on these terms.

The **BPR on Copy Advice** describes one of the key elements of a self-regulatory system – the provision of non-binding, pre-publication advice to advertisers, agencies or media. By seeking the advice of the national SRO before a campaign is launched, the advertising industry demonstrates its commitment to high standards and reduces the risk of mistakes. The BPR defines copy advice and the difference between it and pre-clearance; it explains who can ask for copy advice, how it can be funded and in what form it should be provided. The BPR also offers guidance on how much information should be included and how long the process should take.

The **Digital Marketing Communications Best Practice** is the result of intensive discussions with associations representing media, agencies and advertisers, and national self-regulatory organisations. It defines what constitutes a digital marketing communication and what does not. It also provides best practice guidance on how SROs can extend their remit to include digital marketing communications with the support of national advertising industry bodies.

The **BPR on Jury Composition** addresses the principle that the self-regulatory system must be, and be seen to be, independent of the industry which funds it. Decisions must be reached in an impartial manner and this should be reflected in the complaints handling process and the composition of the jury. This recommendation provides guidance on the composition and size of the jury, the selection process and conditions of service, as well as the composition of the appeals body.

The **BPR on Publication of Decisions** offers guidance to SROs on making public the adjudications of their Complaints Committee/Jury. Transparency in decision making is essential to establishing and maintaining the credibility of the system and to building consumer confidence in it. This recommendation explains the purpose of publishing decisions, both as a deterrent and as an information source for advertisers, to help prevent future code breaches. It also lists the important features of an effective system, including the information to be included in the report, and suggests media for publishing and publicising decisions.

The **BPR on SRO Communications** emphasises that to achieve effectiveness at national level, SROs must work to create awareness of the system among key stakeholders, i.e. consumers, regulators and the advertising industry, so that all concerned understand and can participate in it. It points out the importance of transparency in self-regulatory procedures and provides guidelines on communications strategies, tools, measurement and resources.

The **BPR on SRO Funding** explains why adequate and properly resourced long-term funding is essential to enable self-regulatory systems and SROs to comply with EASA's Best Practice Model. It examines the strengths and weaknesses of the membership and levy-based systems and assesses four different funding methods for national SROs against the criteria of the EASA Best Practice Model and Charter Principles.

The **BPR on SRO Standards of Service** establishes recommended standards of service for SROs in their daily operations. It highlights the importance of accessibility, awareness and transparency, and gives practical best practice guidance on dealing with complaints, as well as copy advice requests, with courtesy and efficiency.

The **BPR on Substantiation of Claims** addresses a central principle of advertising self-regulation, the reversal of the burden of proof: i.e. the advertiser has to prove that an advertising claim is truthful, rather than the complainant having to demonstrate that it is not. This means that advertisers should be able to provide documentary substantiation for their claims. The BPR describes how the principle works in practice, what types of claim need to be substantiated, the criteria for assessing claims, the role of experts in this process and the appropriate length of time to be allowed for providing evidence.

## Section 9 | EASA cross-border complaint mechanism explained

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### What is a cross-border complaint?

A cross-border complaint (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 decisive factor in identifying a cross-border complaint is that the media carrying the advertisement must have crossed a border. If, for example, our hypothetical Belgian consumer wished to complain about an advertisement created in France, but appearing in a Belgian magazine, the complaint would not be a cross-border one. The only exceptions are in cases involving direct mail and the internet, i.e. digital marketing communications; in both these cases, the country of origin is the one in which the advertiser is based.

### Digital marketing communications and direct mailings

The absence of conventional media for direct mail, together with the fact that mailings are often sent from a country other than the one where the advertiser is established, means that CBCs which concern direct mail can be more effectively handled by the SRO in the country where the advertiser is based.

Similarly, because of the global nature of the internet, the country of origin of the media (i.e. the location of the website carrying the advertisement) is usually not relevant. Many advertisements seen by consumers on websites are placed there by Third Parties, so the location of the advertiser may have nothing to do with the location of the website hosting the advertisement. For these reasons, in the case of advertisements using electronic media such as internet and SMS, CBCs are dealt with by the SRO in the country where the advertiser is based, irrespective of where the advertisement originates or the location of the website.

### Basic principles of a cross-border complaint

The principle of the 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. In some cases these are different from those in the complainant's country: for example, ideas of taste and decency vary widely between European countries. EASA member SROs endeavour, where their national law allows, to apply a second principle known as 'mutual recognition'. This means accepting the rulings of their counterparts in the country of origin and, wherever possible, accepting advertisements which comply with the self-regulatory rules in the country of origin, even if those rules are not exactly the same as their own.

## Section 10 | EASA SRO and industry membership list

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### EASA members – 10/04/2011

#### Self-regulatory organisations in Europe

<b>Austria</b>	Österreichischer Werberat (ÖWR)
<b>Belgium</b>	Jury d’Ethique Publicitaire / Jury voor Ethische Praktijken Inzake Reclame (JEP)
<b>Bulgaria</b>	National Council for Self-Regulation (NCSR)
<b>Czech Republic</b>	Rada Pro Reklamu (RPR)
<b>Finland</b>	Liiketalautakunta (LTL); Mainonnan eettinen neuvosto (MEN)
<b>France</b>	Autorité de régulation professionnelle de la publicité (ARPP)
<b>Germany</b>	Deutscher Werberat (DW): social responsibility, taste and decency; Zentrale zur Bekämpfung unlauteren Wettbewerbs e.V. (Wettbewerbszentrale): misleading advertising and unfair competition
<b>Greece</b>	Advertising Self-Regulation Council (SEE)
<b>Hungary</b>	Önszabályozó Reklám Testület (ÖRT)
<b>Ireland</b>	Advertising Standards Authority for Ireland (ASAI)
<b>Italy</b>	Istituto dell’Autodisciplina Pubblicitaria (IAP)
<b>Lithuania</b>	Lithuanian Advertising Bureau (LRB)
<b>Luxembourg</b>	Commission Luxembourgoise pour l’Ethique en Publicité
<b>Netherlands</b>	Stichting Reclame Code (SRC)
<b>Poland</b>	Związek Stowarzyszeń (Rada Reklamy)
<b>Portugal</b>	Instituto Civil da Autodisciplina da Publicidade (ICAP)
<b>Romania</b>	Consiliul Roman Pentru Publicitate / The Romanian Advertising Council Union (RAC)
<b>Slovakia</b>	Rada Pre Reklamu (RPR)
<b>Slovenia</b>	Slovenska Oglaševalska Zbornica (SOZ)
<b>Spain</b>	Asociación para la Autorregulación de la Comunicación Comercial (Autocontrol)
<b>Sweden</b>	Reklamombudsmannen (RO)
<b>Switzerland</b>	Schweizerische Lauterkeitskommission (SLK) / Commission Suisse pour la Loyauté (CSL)

**Turkey** Reklam Özdenetim Kurulu (RÖK)

**United Kingdom** Advertising Standards Authority (ASA);  
Clearcast (television advertising pre-clearance)

### **Self-regulatory organisations outside Europe**

**Australia** Advertising Standards Bureau (ASB)

**Brazil** CONAR Brazil - Conselho Nacional de Auto-Regulamentação Publicitária

**Canada** Advertising Standards Canada (ASC)

**Chile** CONAR Chile - Consejo de Autorregulación y Etica Publicitaria

**India** Advertising Standards Council of India (ASCI)

**New Zealand** Advertising Standards Authority (ASA NZ)

**Peru** CONAR Peru - Consejo de Autorregulación y Etica Publicitaria

**South Africa** Advertising Standards Authority of South Africa (ASA SA)

### **Industry associations**

Advertising Information Group (AIG)

Association of Commercial Television (ACT)

Association of European Radios (AER)

Association of Television and Radio Sales Houses (egta)

European Association of Communications Agencies (EACA)

European Association of Directory and Database Publishers (EADP)

European Federation of Magazine Publishers (FAEP)

European Newspaper Publishers' Association (ENPA)

European Publishers' Council (EPC)

European Sponsorship Association (ESA)

Federation of European Direct and Interactive Marketing (FEDMA)

Interactive Advertising Bureau Europe (IAB-Europe)

International Advertising Association (IAA)

JCDecaux (for urban outdoor)

World Federation of Advertisers (WFA)

## Notes

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**in partnership with**

Advertising Information Group (AIG)

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World Federation of Advertisers (WFA)

and

Online Publishers Association (OPA)

as well as self-regulatory organisations in Austria, Belgium, Bulgaria, Czech Republic, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey and United Kingdom.

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