

# ADVERTISING, MARKETING & PROMOTIONS

>> ALERT

## PRINCIPLES FOR ONLINE BEHAVIORAL ADVERTISING RELEASED BY TOP TRADE GROUPS

In July, four key advertising trade associations announced new self-regulatory guidelines which are intended to address consumer privacy concerns and increase transparency in connection with online behavioral advertising.

While the Federal Trade Commission (FTC) has previously released and updated its online behavioral advertising principles, the FTC and members of Congress have continued to call upon the advertising industry to better regulate themselves when it comes to protecting consumer privacy through online behavioral advertising. The failure to do so could result in Congress stepping forward with new legislation to address the issue. In response, a consortium of advertising trade associations, including the American Association of Advertising Agencies (4A's), the Association of National Advertisers (ANA), the Direct Marketing Association (DMA) and the Interactive Advertising Bureau (IAB), collaborated with the Council of Better Business Bureaus (BBB) to generate seven self-regulatory principles for online behavioral advertising (the Industry Principles). The aim of the Industry Principles is to foster consumer education and transparency while preserving flexibility for interest-based advertising.

The Industry Principles are modeled on the FTC principles, but differ in terms of **Education**, **Accountability** and

**Transparency**, including through the concept of providing notice to the consumer in or around the advertisement itself.

The Industry Principles define online behavioral advertising as “the collection of data from a particular computer or device regarding Web viewing behaviors over time and across non-affiliate Web sites for the purpose of using such data to predict user preferences or interests to deliver advertising to that computer or device based on the preferences or interests inferred from such Web viewing behaviors.” Excluded from this definition, and from compliance with the Industry Principles, are first party advertising where the Web site collecting the data and the party delivering the advertisements are one and the same, and contextual advertising where the advertising is delivered based upon the content of the Web site being viewed as opposed to the particular actions of an individual user.

The seven Industry Principles are:

**I. Education.** Consumers require education to explain the practice and privacy implications of online behavioral advertising. To that end, the trade

### THE BOTTOM LINE

Whether or not you are a member of the sponsoring trade associations, any party engaged in online behavioral advertising should comply with the Industry Principles when they are implemented and should ensure that any party with whom they do business with similarly complies.

associations have committed to conduct consumer education activities themselves.

**II. Transparency.** The Industry Principles go further than the FTC principles to ensure that consumers are aware of a party's online behavioral advertising practices. A third party who engages in online behavioral advertising on a non-affiliate Web site must provide notice of its practices either:

- >> In or around the advertisement itself through a clear, meaningful, and prominent link
- >> On the Web site where the data is actually collected
- >> On an industry-developed Web site.

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Therefore, it is probable that advertisements may eventually be tagged with a link that leads to a disclosure of a party's online behavioral advertising practices and that the industry may develop a centralized Web site that consumers can visit to obtain such information.

**III. Consumer Control.** All notices should contain a clear description of the online behavioral advertising practices and provide the consumer with the ability to opt-out of such practices. In the case of "Service Providers" (such as ISPs and toolbar applications that track substantially all Web sites viewed), the Industry Principles set forth a heightened "opt-in" standard, whereby such parties should not collect data for online behavioral advertising unless the consumer has specifically consented to the practice. Other participants in online behavioral advertising can rely upon the lower "opt-out" standard.

**IV. Data Security.** All parties engaged in online behavioral advertising should implement appropriate physical, electronic and administrative security practices to safeguard the data, and should only retain the data for as long as necessary to fulfill a legitimate business need. Service Providers should take a further step and anonymize the data.

**V. Material Changes.** A party engaged in online behavioral advertising should obtain a consumer's consent before making a material change to its previously disclosed online behavioral advertising practices if such change will result in a more expansive collection or use of data than previously disclosed.

**VI. Sensitive Data.** The Industry Principles prohibit the use of data for online behavioral advertising consisting of personal information from consumers under age 13, financial account numbers, social security numbers, pharmaceutical prescriptions or medical records.

**VII. Accountability.** The Industry Principles call upon the industry itself to establish accountability programs to monitor the online behavioral advertising activities of its members and to take steps to ensure compliance with these principles. The BBB and DMA are currently working cooperatively to develop a new accountability program under the Industry Principles.

The Industry Principles are slated to go into effect in early 2010, affecting the more than 5,000 companies that belong to the sponsoring organizations.

It remains to be seen if these new principles will forestall any further actions by the FTC and Congress towards new rule making and/or

legislation. David Vladeck, the new head of the Bureau of Consumer Protection at the FTC has said of the Industry Principles "I think it's helpful but it's not sufficient." In addition, it is always possible that individual states could enact legislation which would conflict with these Industry Principles and require companies to modify their practices.

*The full text of the "Self-Regulatory Principles for Online Behavioral Advertising" is available at <http://www.iab.net/media/file/ven-principles-07-01-09.pdf>*

## FOR MORE INFORMATION

Ronald R. Urbach  
Partner/Co-Chair  
212.468.4824  
[rurbach@dglaw.com](mailto:rurbach@dglaw.com)

Richard S. Eisert, Partner  
212.468.4863  
[reisert@dglaw.com](mailto:reisert@dglaw.com)

Gary A. Kibel, Partner  
212.468.4918  
[gakibel@dglaw.com](mailto:gakibel@dglaw.com)

*This Alert was written with the assistance of Leo Rakitin, Davis & Gilbert Summer Associate 2009*

## DAVIS & GILBERT LLP

T: 212.468.4800  
1740 Broadway, New York, NY 10019  
[www.dglaw.com](http://www.dglaw.com)

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