1 ONLINE TARGETING OF ADVERTISING AND PRICES ROUNDTABLE

Event Background

1.1 On the 22 June 2010, the OFT hosted a roundtable discussion following the publication of our market study Online Targeting of Advertising and Prices in May 2010. Heather Clayton chaired a panel of speakers who provided their views on the market study and answered questions on online behavioural advertising and targeted prices.

1.2 The purpose of the roundtable was to discuss the recommendations made in the OFT market study with industry, trade bodies, regulators and consumer groups. The discussion was kicked off by the OFT outlining the reasons for the market study and the main findings and recommendations.

1.3 This document is a partial transcript. The main presentations are summarised but wherever possible questions and answers are reproduced integrally.

1.4 The key points from the OFT’s introduction were:

- The OFT considered that it was important to have a considered opinion and clarify its position on a key area of debate in the digital economy.

- Targeted advertising and pricing not a new phenomena but concerns intensified on the internet.

- OFT’s interest is to preserve people’s trust in e-commerce.

- We outlined benefits and concerns and summarised main recommendations from the report.

1.5 Following questions from the participants, the OFT clarified that the study focused on online behavioural advertising only and targeted prices and not on different systems that use cookies or cookies per se.
The comments and opinions represent the views of the participants and are not necessarily the views of the OFT.

Summary of Presentations – The Business Perspective

Justin B. Weiss, Director International Privacy Policy from Yahoo! Inc. delivered a presentation on delivering transparency and choice for end users and related the experience in the United States. Key points from his talk included:

- Current discussions in the industry revolve around how to achieve transparency and provide appropriate controls in a way which is more meaningful, that is, both contextual and outside privacy policies.

- Some of the larger companies now give people the opportunity to see the information that is observed about web-surfing and how it is used for ad customization and related services.

- Permanent opt-out - there are two ways in which companies have approached remembering user preference, either by using a cookie or by making choices persistent, for example through preferences set by a user (this requires to be logged in) as in the case of Yahoo! or through the use of plug-ins for anonymous users as in the case of Google or the Network Advertising Initiative’s industry plug-in, in which Yahoo! participates.

- An update on the so-called ‘icon project’ in the US was provided. This seeks to deliver a more streamlined mechanism for achieving transparency and control. Three main ways they are trying to achieve this: 1) making disclosure more ubiquitous by placing a label in and around every advert; 2) creating a consistent user experience across the internet with a universal symbol that can be used on all websites. Once a user clicks on the symbol/label, information will be provided on who is the advertiser, who is the ad server, who provided the customisation, and a link to opt-out options; and (3) creating a single opt-out page.
• This project involves unprecedented collaboration between all players in the ad ecosystem – advertisers, agencies, ad networks and publishers. No one party can execute this approach alone. It requires all to work together to eventually add metadata to each ad so that the user’s browser can read it and display a dynamic notice which accurate information for each and every ad.

• The ambition is for the project to be rolled out internationally. However, for this to happen, all players in the online advertising sector need to come together and develop a common industry approach to icon selection, methodology and technical protocol.

• This project is at the user testing stage in the US. Technical standards have also been published about how metadata can be conveyed during the ad serving process to enable this enhanced user experience www.iab.net/clear.

1.8 Andrew McClelland, Director of Business Development at IMRG provided his reactions to the study in terms of online targeting of prices. Main points included:

• Differential pricing is technically possible but IMRG does not believe it is currently in practice in the way in which it was described in the OFT report.

• Some aspects of personalisation are welcomed by consumers, especially in terms of being displayed relevant products, prices and promotions.

• Commercial benefits to retailers from price discrimination are limited because of adverse effects on brand reputation. The plethora of online consumers reviews, forums and price comparison sites mean that it would not be in the interest of retailers to engage in online price discrimination.

• Profiling based on credit card data considered unlawful under legislation for data security and protection and PCI DSS rules. Retailers do not have access to credit card details post transaction and are only allowed to keep data in their system
for up to 15 seconds – only long enough for the transaction to be processed.

- Postcode targeting considered only useful post-transaction to combat fraud. Retailers may not want to lose customers because they happen to live in a fraud-prone area according to data on their postcode.

- In summary, IMRG viewed the techniques to price discriminate online possible but very little appetite at the moment from the commercial sector.

Q&A session – partially edited transcript

1.9 Jeremy Olivier (Ofcom): I would be very interested to know where you have got to in the cross-industry discussions in the US in particular, whether you have engaged in relation to the proposed Icon and meta-data standard, and any of the other major actors, whether it is on Google or any of the other people who are involved in a dialogue about this? Because they sound like great ideas.

1.10 It is fairly advanced, certainly in terms of the negotiation and the commitment level. I will give you a real-time update – essentially what happened was once certain specific industry leaders proposed this, several of the trade groups came together and formed a technical committee to discuss whether this could be implemented. I believe it was one month ago, a joint coalition of trade groups representing their members who had done this technical working group, issued a standards document which basically said 'Okay, here is the protocol'. Here is how it works. It does not specify which icon to use, but it does establish the protocol for the metadata backend that I was describing to you. So the method was multi-stakeholder but relied on technical representatives from various leading companies to sit together and hammer it out. It has to work for all systems, so there were definitely some details they had to discuss, about pixel sizes and the protocol and all those details. It often was not the public policy leader who needed to have that discussion.
1.11 The standard has been published and agreed by the major competitors including Yahoo! that were part of that working group and who are now starting to implement it on their websites to demonstrate that it is workable and possible. I would say now the protocol has been established working primarily with advertisers and various third parties that would be contributing those identification tags, to start to get them to ask the questions that are required in order to understand whether they can execute this in the common vision. I would say it is at that stage, where you see some live tests on websites where we are also the publisher and we are able to work with a specific advertiser to do this.

1.12 In the early stages all the metadata is not there, it is predicated on the entire marketplace, accurately communicating that. I do not want to call it the 'dumb version' but Step One is really to establish the icon, and when you click it let it take you to an appropriate disclosure and an opt-out page. Essentially it is like a landing page. The ambition however is to get to what I showed you today. We are at the ‘Work with the icon and a commonly agreed methodology’, and when you click it right now the test that you will find on Yahoo!.com (and other websites, it is not just Yahoo!) should be very clear. You should look at Google, look at Microsoft if you are interested. You will find that they come to a landing page, which essentially has an agreed template for now, which is really a place-holder until the development of the infrastructure goes forward.

1.13 **Louisa Wong (BSkyB)**: I just have two comments to make. My first is speaking from a consumer perspective. If I came to a page as such and I rolled over and saw that, first and foremost – let’s just say it is a DHL ad delivered by media.com – (a) as a consumer I do not know who media.com is, (b) I don’t know why they are even customising the ad for me, and (c) I will start questioning it, 'Oh right, so DHL is an advertiser so is capturing information, whatever it might be, in order to deliver me this advertising’. That is slightly scare-mongering from a consumer’s perspective. We work in the industry, we know what that means, but to a lot of consumers they do not.
1.14  To the point earlier, about the fact that the reason why this report came about was purely noises that were being made by consumer groups, how many actual physical complaints have we had from consumers saying 'I think this is behaviourally targeted to me and therefore it is causing me to have worst pricing from Amazon?' etc. That is my first point.

1.15  My second point is what is the willingness of advertisers and agencies being associated with notification like this? Have they been open to it in the US?

1.16  **Justin Weiss:** I can take the second point certainly. I think that the lens through which this should be viewed is actually the self-regulatory code structure that has been emerging, and it probably is worth describing the three pillars of the code structure that has been agreed by the major advertising associations in the United States, in collaboration with the major ad network associations and publisher associations. As you know similar ambitious projects are ongoing at the Brussels level, and also going forward at the domestic level here as well.

1.17  The structure describes the following high-level commitment by all of those sectors, including the advertisers and the agencies and the publishers, and that is to deliver an enhanced notice of third party activity. That is the commitment. That is what the signatories agreed to work towards. The specific language in that code contemplates a notice in and around an advertisement, it goes to that level of specificity, so something in and around an advertisement that is disclosing third party behavioural activity. That is my response to what level of commitment has been demonstrated, and that has been quite public, and that has been quite Federal Trade Commission-facing I would say. This was the substance of the recommendation by the Federal Trade Commission in this space, and so that heavily influenced the focus on 'What does enhanced notice of third party activity mean? If that is the gap what does it mean, and how could one accomplish that?' in a succinct way that will reinforce users' trust and comfort, but at the same time not be a barrier to the advertising itself – to be minimally intrusive to the advertising experience itself. That is the level of the commitment – and it is challenging
as we know. It is very challenging to provide transparency into third party activity as the fundamental objective, avoid intrusiveness, cultivate user’s comfort level with what it is and the fact that they can control it.

1.18 One response I would have to the concern you expressed, which I think is a very appropriate concern, is that by hopefully pairing these disclosures with the control feature, when users click the control feature and as I was describing they have an opportunity to see what it is, for that percentage of users that care about this.

1.19 You are quite right, and the study did not surprise me. It may well be a minority that are expressing strong concerns, but for that minority who want to know who are the third parties doing this activity and what controls do they have, and to exercise that control, this seems to be a viable way to achieve all of those objectives, so the level of commitment is at the commitment phase, indeed contemplated in a code that was adopted by these associations, and compatible and parallel ambition to bind publishers, advertisers and ad networks as a collective is certainly afoot in Europe as well, and similar structure enhanced notice commitments.

1.20 Heather Clayton: Thank you very much, Justin. On your second question, is the sentiment behind your question that you do not think consumers are concerned and do not want the information, or that consumers do not know enough to appreciate the information if it was given? It was not clear.

1.21 Louisa Wong: The problem is that ... with our consumers, what I am saying is that you can actually go down the route whereby you start scaremongering them because they start thinking 'Jesus Christ, if I looked at that what does that mean to me as a consumer?', so therefore am I going to get better or worse pricing? I am saying that we provide ... as media owners, from my perspective which is how I am speaking, that we have a responsibility to our users that we are doing X, Y and Z targeting. However I do not think that the level of granularity, and certainly buy-in from UK partners, whether it is advertisers or agencies, I do not think they are as willing. Working with Nick Stringer and the
IAB on the GPP there is no willingness by advertisers or by agencies saying 'We want to be part of that, we actually do want to notify consumers what we are doing across your sites', because all we are doing is to have a slot on a page, and we are saying 'We are selling it to an agency' who thereby delivers the ad. What they do in the background we have no clarity in some instances, we do not know what kind of targeting or re-marketing they are doing in the background. That is my concerns about how granular we want to get.

**Summary of Presentations – The Self-regulatory Perspective**

1.22 **Nick Stringer, Director of Regulatory Affairs at the Internet Advertising Bureau (IAB)** – Key points:

- IAB welcomed the OFT study and stated they will continue to work with the OFT. Especially welcomed OFT’s support for evolving industry self-regulation to address consumer concerns.

- UK Good Practice Principles (GPPs) are a stepping stone in achieving enhanced transparency and user control in interest-based behavioural advertising.

- Progress has been made during the course of the study, including independent review by ABCe of initial business compliance with the GPPs; additional businesses committing to the UK principles (blinkx, Nugg.Ad, Jemm Media and Tribal Fusion), policy update on flash cookies and on-going revisions and updates to youronlinechoices.co.uk website.

- IAB continuing to develop a single easy to use industry opt-out tool. The goal is to do this on a European-wide basis, and eventually make it available in 16 different languages. This has been piloted in the UK with the aim of getting the tool live and then rolling it out across Europe, so there will be one website with one opt-out page for users in different languages of their choice.

- IAB has also established some work-streams around research, consumer research and technology which they hope will help
to inform not only the industry but also future self-regulation and market standards, improving transparency in the buying of interest-based advertising.

- Nick Stringer also provided an update on the development of EU wide good practice principles and stated the EU process has evolved in many ways like the US process with all the relevant players in the advertising ecosystem, so advertisers, publishers, agencies, ad networks and technology companies. This is a significant step-change from the UK situation, and the aim is to evolve the UK good practice principles, join them up with the seven principles in the US good practice, to enhance transparency and consumer control across the European Union, and work towards industry-wide global guidelines for this practice.

- To this extent, many of the OFT’s recommendations (specifically addressed to the IAB) would be addressed at an EU level and by a wider set of industry stakeholders involved in the self-regulatory process.

- Still at the commitment phase of this project in Europe with a lot of work still to be done to agree the principles and get political support for self-regulation from the European Commission and others.

**Q&A session – complete transcript**

1.23 **Pula Houghton (Which?):** Just a quick question, which was about trying to put the UK principles in line with the American ones. My question is what are the things that the Americans are doing that we are not doing so well? What would be the shifts that are needed to achieve that?

1.24 **Nick Stringer:** Correct me if I am wrong Justin, I know you will, but I think the US are a little bit ahead of us, which is why the meeting last week in America was very, very useful in what we can learn from the experience. They have of course published a set of principles and they are building upon that, and building the Icon project, so we are not quite there yet – but that is the plan.
1.25  **Heather Clayton:** You talk about your agreement with the European Commission and the ambitions you have to make this a European initiative, I wonder whether you could just say how those discussions are going? Since we have somebody from the Commission is there an update that we could have on the status of that?

1.26  **Nick Stringer:** Not really, because as I mentioned at the presentation we are at the commitment phase, so as an industry we are coming together to commit and agree; so we are not at the stage of reaching political support, but I hope they will be supportive of it.

1.27  **Giorgos Rossides (European Commission):** I would also add that we have extensive contacts with IAB Europe. We have been discussing the development of the pan-European code, and this also comes at a very opportune time because we are now revising the Data Protection Directive, which already foresees an industry Code of Contact. These two processes are happening in parallel, and I think they are quite mutually reinforcing, so we are looking forward to ... discussions.

1.28  **Angela Mills Wade (European Advertising Standards Alliance):** The part that I have been chairing is the Phase 2, so anticipating already that there will be an industry-wide agreement on the work that is being done at IAB Europe level that the Commission is aware of, but recognising that that is a signatory-based code, so not universally applicable to the whole industry. What we have been doing is looking at linking what they have done for companies, which by the way will cover 95 per cent of the activity, but you still have to have industry-wide coverage eventually for effective self-regulation, and how you link what they have done into codes of practice at national level, and also how you link that to the consumer complaints side.

1.29  All of the work that the IAB has been doing is to ensure that companies do what they say they will do, that they are not just committed but they carry it out, and there is an independent auditing process of that which you have heard about. So we have to fill in all the gaps, which is to make sure that just supposing a
consumer makes a complaint about an area of targeted advertising which is not covered by one of the signatories, so that is the extreme end; or that a consumer has had difficulty in managing the opt-out process, so part of the work of the national advertising self-regulatory organisation might be to help the consumer navigate that and to understand what is being offered to them.

1.30 So this part of the work I think is very important to the European Commission because they will obviously want to know how it will be applied industry-wide and how consumers can seek redress, because that so far has not really been cut in any detail, although obviously you have anticipated it in all the work that you have done.

Summary of Presentations – The Regulatory Body’s Perspective

1.31 Iain Bourne, Group Manager, Policy Delivery at the Information Commissioner’s Office (ICO) completed the presentations. Key points included:

- Relationship between the ICO and the OFT against the backdrop of behavioural advertising revolves primarily around the fair treatment of individuals, which presents an overlap between the two organisations.

- Need to move on from rather technical debate about whether information collected on the internet is personal data or not and accept that the intention of behavioural advertising is to deliver different content to different people. People see this as a 'personalised' information process and we should too. Until there’s consensus about that within industry and regulators it will be difficult to move forward in terms of developing privacy standards and consumer protection.

- New Data Protection Directive in the next few years will be critical in how web browsing data will be dealt with.

- ICO keen to understand whether consumers have problems with the collection and use of information per se or the consequences of it – for example, some people paying more
for the same goods. This is the key distinction in their view and the way to view the relationship between the ICO and the OFT (with the ICO dealing with the former and the OFT with the latter).

- ICO currently going through a period of internal reform and discussion about the kind of issues they want to get involved in and those issues which are for other bodies.

- Clear issues which fall under the ICO’s remit include explaining to the public how or whether their information will be used to perform targeted pricing or behavioural advertising, excessive information, inaccurate information and data quality issues.

- People increasingly more conscious of information rights and personal information issues and systems need to be developed which provide this information to consumers even if some will never read it. We need to encourage more accessible, engaging ways of explaining really quite complex information systems to the general public.

- Supportive of the concept of transparency and control – perhaps easier to apply in practice than the relatively abstract concept of privacy.

- ICO very supportive of developing a Memorandum of Understanding with the OFT but calls for it to be flexible and intuitive, not generating additional bureaucracy or making it more difficult or lengthy to deal with consumers complaints. For the MoU to work it needs to be a ‘live’ arrangement with commitment from both parties, which is reviewed periodically and which can be changed if needed.

- ICO will look at how best to provide clearer information to businesses and people on the type of information collection which requires explicit consent as opposed to cases where transparency is enough.
Roundtable Q&A – Partially Edited Transcript

1.32 **Heather Clayton from OFT** started off the general roundtable Q&A session by setting out three higher levels questions for discussion:

1. Prospects for successful self-regulation in Europe and how far is UK and Europe from the US experience.

2. Prospects for targeted pricing.

3. Demands for the regulatory framework, what business and industry players really think of some of the issues between the different regulators involved and what the wish list is for regulators operating in this space.

1.33 **Heather Clayton:** To start us off on the first of those, what really is the prospect of success for self-regulation in Europe? I wonder whether we could come back to Louisa, who was expressing a view around the practicalities of buy-in, or whether the picture that we have from the US will receive widespread support in the UK and Europe? Could you start us off with your view on that?

1.34 **Louisa Wong:** Yes; the first point to make is that I am not against giving clear notification or being open with users by saying what type of things are being conducted in the first place. My concern was around the buy-in from various stakeholders, and that is right through to advertisers and agencies. I am sorry to use your example again of the notification process of who is delivering the ad, who is modifying it, and the opt-out process right at the bottom. It is not explicit or clear to a potential consumer, so am I opting out of DHL who is the advertiser, or am I opting out of MediaCom who is the agency, or am I opting out of the publisher Yahoo! who ultimately I have the relationship with?

1.35 The level of buy-in in the US, you talked about the fact that there are conversations going on, and my concern is how we will get all those different stakeholders around the table and say 'Right, I am Honda, I am buying this piece of real estate potentially from Sky, what does that mean to me? ', with a notification popping up saying that over my piece of real estate that I have bought or rented or whatever it may be over my ad. Until we get some
clarity and some buy-in from those perspectives, it is a conversation which needs to be had.

1.36 I am not saying that there is not a way of establishing a universal dashboard, as you have suggested. There are ways around it, but what level of notification? Are you trying to say that we have now to standardise behavioural targeting, so therefore what is the commercial advantage versus buying a targeted ad on Yahoo! versus on Sky or Google or MSN or anyone else? That proves to me a bit of an issue.

1.37 **Heather Clayton**: I wonder, Justin, it is absolutely tempting to ask you 'Can you please tell us how all those barriers were overcome in the US, and the journey that went on?', but I wonder whether just before we ask Justin to do that there are other people who share a similar sentiment, or who have comment on the differences between the UK and Europe and the US, and perhaps how far away we are?

1.38 **Mike Hall (University of Southampton)**: I would just be interested to hear how self-regulation is going to work with data exchanges.

1.39 **Angela Mills Wade**: One of the key issues is not to have some kind of regulatory sledge-hammer to crack the nut. We do not want to scare consumers by giving them too much information, but at the moment the call from the regulatory front is to be more transparent, to give all the information, etc. However I do agree that we have to strike a balance, and also there is a huge amount of work to be done about the nature of the data that is being collected for the purposes of targeted advertising, and not to treat it as if it is personal data, personally identifiable data. The consumers have a big learning curve about what is actually happening, and how innocuous a lot of that data collection is, how fleeting it is, and how beneficial it is, and the whole value exchange.

1.40 Consumers will always go into categories of the very highly concerned, and you identified this in your report, and there are maybe consumers that will be spooked by the notion of any kind of tracking, and that they will be the ones who will go deep and
will want to find out, will want to opt out, and opt out, and opt out.

1.41 But the 40 per cent, that is a really great starting point, that they recognise that it is beneficial. I feel great sympathy for what you are saying. We do not want to put them off, that this is somehow more harmful than it is or more unfair than it is, and that is difficult. Lindsay can speak for the ASA here, but I would say one of the jobs of the self-regulatory organisations all over Europe will be to help consumers understand. It will not necessarily be to deal with the complaint, escalate it up, having a hearing, have a jury, deal with it that way. It will just be genuine interaction with the consumers to help them understand what is going on, and understand that there is not harm from it – but it is challenging.

1.42 **Nigel Gwilliam (IPA):** Just in answer to the point about how do you get buy-in from different constituencies within the ad industry, certainly in the case of the UK the way to do it is to have meetings with their representative bodies on a level footing. That means ISBA and the perspective of clients and the IPA and the perspective of agencies. The good practice principles created by the IAB was a great initial initiative, but it was pretty much a reaction to an issue that existed at the time, an issue of one of the members of the IAB at the time doing something that a small vocal group took issue with, and that required a response.

1.43 So, a great job until now; we are moving forward, there is a European framework to improve self-regulation, but this is not the first time self-regulation has been looked at in the advertising industry. There is quite a good track record in the UK of that taking place, there are quite a few bodies that are pretty good at that, agencies and advertisers pretty much run alongside all of the different constituencies from the media-owner land, if you like, so actually we have the ASA, we have the Advertising Association that speaks on our behalf, we have JICWEBS, which is the Joint Industry Committee for web standards. There is a whole series of bodies, and we very much want to work with the IAB and with ISBA, and indeed with the online Association of Online Publishers if required, and any others, to address and to deliver robust and inclusive self-regulation moving forward.
Stuart Coleman (AudienceScience): Angela, to your point about engaging with teams, I think education has to be at the heart of it, and not just education and what is going on but also the context in terms of their broader experience with data, what happens in an offline world. Juliet, you said right at the start today, can the harm be enhanced online, because the profile will be more specific?

I would challenge whether that is the case. Data, for example Mosaic data that is used very extensively in the offline world, goes down to individual household level, so one or two individuals, but there is an element of how does this sit in relation to data that is used and accessed and understood in a much, much broader environment. It is not just an online issue, so part of that education process has to be 'This is what happens and this is how it looks against everything else that you are used to'. The scaremongering thing I think is the fear of the big bad bogeyman on the internet, which is something we need to take out of this equation and look at it in terms of where it sits in the rest of the world.

Heather Clayton: We had a comment from George, and then what might be interesting would be just to hear from Which. I know their report came out recently, and on the question of scaring consumers versus not giving them information in case you do, it is a very fine line to tread and I thought Which might have an interesting perspective on it; but please George, go ahead.

George Pappachen (Kantar/WPP): (interruption...) what treatment would appropriately convey the messages and not confuse consumers. Although Justin displayed one way to go about following through after the Icon, at least in the US we are continuing to test various treatments, various words, and collect data during that process, and then present it before bodies to better convey the associations that we want and stay away from the associations we don’t.

Number Two is on the question about ’What about the other parties that are collecting data?’ From a WPP perspective we were encouraged to become involved because we have so many
different business models that collect data, and though the focus was on behavioural advertising we thought this was an opportunity for all of our business models to converge around a data collection transparent platform, if you will. So we have been working with the behind the scenes people to have differentiated transparency line items for the data uses, so the ad networks within our company would have their visibility, so would the researchers who collected data, and so would some of the other business models.

1.49 What I mean to say is that I do not think this will be perfect coming out, but it does provide an opportunity for us to streamline for this digital platform from the consumer perspective.

1.50 **Heather Clayton**: Perhaps we can just go to Which on the issue of scare-mongering and consumers, and your view on the way it is going, and then I think it would be very useful to return to Justin.

1.51 **Pula Houghton (Which?)**: We did do some research earlier this year. We published a couple of articles, one in Which? magazine and one in Which Computing. If I just draw out two particularly interesting statistics from it, one is that only 50 per cent of people actually know what a cookie is, let alone what online behavioural advertising is. They do not even know what a cookie is, so you are working from a very, very low base in terms of understanding. That probably is part of some of the feelings that people have.

1.52 The second interesting statistics is that if asked the question 'Would you rather have a relevant ad than any old ad?', 64 per cent of people agree that they would rather have a relevant ad, so if you can get it right there is probably a bit of a fair wind, that people are not inherently opposed to what is going on at the top level. Ignore the technology, what they are actually getting in terms of a better user experience online, people will probably buy into that. The problem is this really low level of understanding, really low level of awareness. You have to differentiate between harm and fear of harm. There are probably some harms, or some threats particularly around vulnerable categories of people, perhaps around the pricing utilisation, but for the most part people probably feel that it is this fear part.
1.53 We did ask people ‘What are the things that you are worried about?’, and it was the sense of being spied on, don’t know who has the data, a loss of control, all these sorts of things, so whether there is a harm or not that is a real issue that needs to be dealt with, because otherwise people lose confidence in a technology, that there is a bit of a fair wind to use, so it has to be addressed.

1.54 There probably is a question about the appropriate information and about information overload, but that does not let you off the hook from trying to do it as well as you can. I am very, very supportive of things like the Icon, because it makes what is something that as the back end, as you talked of it, which is quite complicated can be made quite simple. If there is a universal symbol you are making that symbol. If that universal symbol then takes you through to a page where you can one click opt out, one click go and find out more, you are starting to simplify things, and you might be able to start to overcome some of the fear aspect.

1.55 There is a separate set of debates around categories which do need to be dealt with, but quite a lot can be done with the watchwords of transparency and control.

1.56 **Heather Clayton:** Thank you very much. Justin, I wonder whether you could comment on that in terms of the experiences that you very helpfully bring to this.

1.57 **Justin Weiss:** My first reaction, Louisa, to your comment is that you are right, and that everyone should take this very, very seriously. Your reaction to even just the mock-up is the right set of questions, and reflects an understanding of the implications of this project. The reality is that we want users to have the transparency that will not ultimately scare them, that actually works, that requires an education campaign clearly.

1.58 There needs to be an education campaign to create a baseline, an understanding of what the Icon itself would mean, and that is an opportunity to create a first dialogue with users through that type of education, and then the mock that you saw as a sample has many, many implications both legally and substantively, both for users but also for companies. As George very helpfully clarified,
there are different ways to experiment with communicating those baseline objectives, but the baseline objective that we are trying to embody, I think, which I do believe gives cause for optimism that advertisers and agencies and everyone within this ecosystem wants people to feel trust on these websites with the brands, not get in the way of the brands, be as unobtrusive as possible which is another really big component of this, and to design that experience in a way that conveys the minimal information, that gets to simplification but also provides a control, paired with the brand for which the control is appropriate.

1.59 So all of those questions, all of those criticisms, everyone should internalise. Those are the right questions, those are the right conversations that should happen around a multi-stakeholder table, so that when there is an agreement everyone is comfortable that both legally and then substantively from a consumer perspective the best possible thing is out there. Whenever you are introducing something new you have to overcome that which is unexpected. The first time anyone sees anything it is new, it is unexpected, and you have to be able to shape that experience, you have to be open to testing and changing and responding to those things, but if the fundamental principal objective is the basis for multi-stakeholder buy-in those details over time, through testing and experimenting and feedback with regulators I think can emerge to address the nips and tucks that need to happen to get it right. The message should not be that 'This is fully baked', but this is a vision for addressing something which in the past legislation has not been able to articulate in a succinct way, 'Thou shalt provide transparency online in third party data collection'.

1.60 I guess that would be my response – that you are right, and there is nothing threatening about being right. It reflects an understanding of the complexity of the system which is required for all the stakeholders that want to sit and hammer out how to achieve the implementation that works best, to the extent that there may be market-specific language that is appropriate. Particularly in Europe we know that there needs to be a multi-lingual approach. There needs probably to be some research in the markets, so what words work best in France, and in Germany, and that is true in the UK as well. It is still under way in the
United States, so I want to be very clear that there is no fully baked, on a platter, adopt the US approach, and figure out how to 'widget-ise' it.

1.61 It is not as simple as that. It has to happen in parallel, and it has to be an open dialogue. That would be my response to your points.

1.62 As far as the question about exchanges, the exchange model is one that is probably the best example of the complexity of the data flows and the multiple actors that can be involved - the difficulty in putting a burden, self-regulatory or regulatory, on only one actor to know the totality of the journey. That is the challenge with the exchange model, and you can ask the advertiser to predict where all of their ads will appear but they will not be able to tell you. You can ask the individual websites which of thousands of advertisers may at any time appear on your website, they will not be able to tell you. You can ask the ad network in advance, 'Design a disclosure as to who you are going to pair where', that requirement reflects a fundamental misunderstanding of the business model and the technology.

1.63 When an industry like that is challenged to step up to transparency and control in a meaningful way for users, the philosophy of this idea is like a little DNA, that if we can attach little identities to data as they flow which is within the control of each individual actor, if we can agree on a standard way to show that in a market that can be meaningful to users, then we have facilitated each entity’s good faith desire to get a disclosure accurate and correct, but also reflect the reality of the technology.

1.64 And so, even through an exchange model, one can imagine an advertiser or a 'customiser' tag still flowing through that exchange model right with the creative, and spitting out accurately at the other end after their journey. That is the ambition. There have to be lots of tests, and we are certainly working with exchanges to make sure nothing is muddled in the process, and we obviously operate in an exchange so it is great that Yahoo! has really invested in this, and there are several others.
1.65 The other thing I wanted really to succinctly respond to was the issue about competition and privacy, and how an agency or an advertiser would differentiate among various options in this process. First of all it was very helpful in the report that there was this recognition that competition can drive innovation, and that giving space to self-regulation to really have different models and to experiment with the fundamental principle of transparency is a great observation and a very progressive observation, I think.

1.66 However, this is an area where competition in methodology will likely hurt the outcome for users, because diversity of end-experience, if an agency wants essentially to send an ad out through Double-Click or Yahoo! or some other entity which accurately will then be disclosed at the end, if there is a privacy tax on doing business with one company but none on the others, or one is more cumbersome than another, then the level playing field from a technology standpoint is obfuscated, and that is not desirable. Frankly in our company our internal teams’ own buy-in for this type of approach is predicated on cross-industry acceptance, so we cannot be the only ones to do this, nor are we the only ones committed to these principles. There is a lot of diversity, but we recognise consistency of approach, particularly on the technical side. It is absolutely required for all competitors in these spaces, and not just these bright shiny beacons of role modelling, but from an economic standpoint that is critical, and that then preserves the differential playing field that the agencies and advertisers have as the basis of their selection.

1.67 So, my answer to your question about why would you go with Yahoo versus Double Click, the answer is the same basis upon which you make that decision now. You go based on scale and reach and all of those considerations that advertisers and agencies make (interruption)…, where we are just addressing as an industry a way of aspiring to the privacy piece, and have that be as level as possible. That would be my response to that point.

1.68 Angela Mills Wade: The other thing is the European Advertising Standards Alliance (of which I am Vice-Chairman), but in my day job I run the European Publishers’ Council, which is a lobby group of media companies. The media companies are broadcasters, the
publishers, the agencies, the advertisers, all part of this discussion. One of the things on which I have been quite keen is to make sure that the outcome is business-driven and not technology-driven, and there is a great temptation because the technology is there to let that completely lead the process, when actually what we are looking for is something that will secure the economic viability of this activity for the benefit of all the advertising and media ecosystem.

1.69 I would just like to reassure you that there is kind of business case too, because quite frankly if we end up with very, very severe regulatory intervention that requires any kind of explicit prior opt-in consent the business model dies – not just the third party ad network but media companies who are doing the more direct deals with advertisers and so on. It just goes, and the money that will fund the content, etc. disappears. So there is that huge imperative in the discussions.

1.70 George Pappachen: I would like to add two things. The profiles, for example Yahoo!, would provide in their profile setting, it should be market-facing information, so there should not be these profiles that are hidden, etc. That is part of the transparency, so scale, etc. should be the differentiators but not necessarily the consumer data-driven profiles, kind of shady targeting.

1.71 The second thing is that I do think, though, that over time from a competition perspective you will maybe reduce the number of players. I reticently admit that, but over time as transparency becomes more the norm and there is a way in which consumers can figure out what is going on, there will be an inclination for media owners not to want to show a list of 60 ... or something like that. There is a possibility of that – but not at this stage.

1.72 Heather Clayton: Thank you George. Iain, would you like to respond?

1.73 Iain Bourne: Yes, I would like to say something very briefly in terms of how we explain all this to the public. Partly referring to the gentleman from Which and something you said about people not understanding the technology, I am sure a lot of people don’t but increasingly they will; but what I am sure they do understand
is that their online behaviour leads to the delivery of different content to them. Leaving aside definitional issues about personal data, we need to accept, all of us, that the delivery of content in behavioural ads is often based on the analysis of a person's online behaviour. That is how consumers see it, and I think leaving aside talk about IP addresses and devices and all this regulatory paraphernalia, we need to cut to the chase and say 'Actually that is what happens'.

1.74 To take your point Angela, we also need to be a lot more realistic in terms of explaining what kind of information this is, and debunking some of the myths that there are files of information about us. There are not. It is code, it is run against other code and it generates content, and that is all.

1.75 The kind of stuff that you have done at Yahoo! in terms of showing people what there is, is the obvious way to do that; but there are two prongs of accepting that it is the delivery of content, which is based on the analysis of personal information even though it is slightly more complicated than in the offline context. Being realistic about what is actually being collected is the underlying principal you need to get to here.

1.76 **Heather Clayton**: I wonder whether this would be a good point to ask Jillian from Consumer Focus to make a comment?

1.77 **Jillian Pitt (Consumer Focus)**: Thank you. We welcome the OFT report here, and it has drawn up some interesting points; but one thing I would like to make clear from a consumer’s point of view, and picking up on what Which said earlier, is that the use of opt-out is always the default position for collecting and making full use of personal data. I know it is not popular from an industry perspective, to look at the opt-in as an option, however I would like to stress that a recent report by the All-Party Parliamentary Communications Group stated that they do not believe opt-out, however commercially convenient, is the way that these systems should be run. I would like to put that on the table, also given the fact that there is a plethora of different standards and rules in marketing in the online and offline world. You have opt-in in telephone marketing, you have opt-in in written marketing, and
you have opt-out as well. I think there needs to be some consistency where the consumer is fully protected, and understands what it means – that the content is being delivered to them – but I do not necessarily think that it should put them in the default position that there information is collected.

1.78 **Heather Clayton:** That is an excellent issue to put on the table, so the arguments for and against, opt-in and opt-out – Stuart, please speak.

1.79 **Stuart Coleman:** Just to clarify, I thought the telephone preference service and mail preference services were opt-out processes rather than opt-in? I thought you told them that you did not want to be included within the mail shot or telephone call? [Discussion]

1.80 **David Ellison (ISBA):** You have to actively opt-out of receiving the phone calls, or receiving these e-mails through the TPS.

1.81 **Stuart Coleman:** Sorry, the reason for raising that is that it goes back to my point earlier, which is that in context of other industries we need to assess what happens in the online world against what happens in direct mail, in telephone marketing, etc. and not take the concerns and the issues of a negative view of the internet and look at the processes and the practices, rather than the technology. I think everyone is coming to that point, and saying 'How does this sit against direct marketing? How does this sit against telephone marketing?', etc. and then judge it in that context, because that is how consumers will judge it. They will not judge it in the context of the bogey-man, the internet, from 10 or 15 years ago.

1.82 **Jeremy Olivier (Ofcom):** This is a brief comment on opt-in and opt-out, which is obviously been really central to the debate about behavioural advertising for some time. This is more a personal view; in the discourse around how the approach should be framed for this, I am not clear that opt-in/opt-out is necessarily the most helpful formulation, as opposed to ideas around informed consent. The fact is if you think specifically about the users' experience, opt-in/opt-out may be the difference between an incredibly dense block of text setting out a whole range of things that will happen to you, with a little click box saying 'Click here if you want to go
to the next page’, or if it is an opt-in the click box is empty, and if it is an opt-out the click box is full. I do not think that will transform in any way the transparency or the control that consumers have, as opposed to some idea which is around informed consent.

1.83 There the opt-in or opt-out becomes less significant, but what is important is that consumers are informed that a transparent and simple way as to what their choices are, so that whether or not they are in or out they know what will happen as a consequence of the decision that they are making. It moves the whole discussion. You may still say that there is a preference for boxes filled or unfilled, but what is important is simple messages and comprehensible decisions.

1.84 **Heather Clayton**: Is there an update from the European Commission’s thinking on the point?

1.85 **Gorgios Rossides (European Commission)**: It is more of a question from me at the moment. I am wondering whether, as welcome as the industry initiatives are in terms of providing better transparency and control, the fact that the privacy regulations are changing and we are moving to a more – in inverted commas – 'explicit consent model' of informed consent, I wonder whether this initiative to provide better notice will soon be rendered obsolete by the fact that regulations will require that consent is more explicit by the user?

1.86 **Heather Clayton**: Just as a point of clarity, to you regard that debate as closed, or still ongoing?

1.87 **Gorgios Rossides (European Commission)**: The Privacy Directive has been written so it is just a question of how Member States will implement it, but there are clear guidelines as to what has to be there in terms of provisions. It is a different question as to what delivers valid consent, if browser settings are an adequate form of consent, or if there is a need for a different mechanism, but provision is there that every time information is stored or accessed by an operator there needs to be the informed consent of the user.
Angela Mills Wade: So it is 'informed' and not 'explicit'...

Gorgios Rossides: Informed, yes.

Angela Mills Wade: It is a pity Iain has left, because what is really the biggest challenge every for the 27 countries that are going to have to implement this legislation is that it is very ambiguous in the way it is written. It does leave it to interpretation, and if like in the UK the implication is that they will continue in a similar way with the legislation that we have currently, which allows for informed consent through a number of different ways but not specific opt-in, there may be other countries that choose a different route and then we have an unequal internal market. That would be a pity, and I think it would be important for the Commission to try and avoid that, and bearing in mind that this is a burgeoning area of business, that you do not want to cut off a source of income for media companies and advertisers and all the rest of the chain just at the moment.

It is a pity Iain is not here, because there is a network obviously of national regulators, and they must have discussed this even if they have not come to an ultimate conclusion. I would not like to be in the Regulators' shoes because it is really, really hard.

Heather Clayton: It is what makes the job interesting! I think just to end on this point because we do not have much time left and I did want to move on to the question of targeted prices – did you want to intervene?

Gorgios Rossides: Just very quickly, to say that there is an opinion coming up on behalf of the regulators, the Article 29 Working Party, which is the advisory body to the Commission, and we are expecting the opinion to be adopted in the coming two weeks, I would say.

Heather Clayton: A fascinating debate, and extraordinarily timely, and some difficult discussions I suspect yet to come. I wonder whether I could just ask George to put forward some interesting points that I picked up over coffee? It is just responding to Andrew's description about the commercial drivers for targeted pricing, which were spot-on in many respects, but I thought what
also might be useful was just to hear perhaps some other ways in which it can manifest itself, and then to ask people whether they think this is harmless or harmful, or we will not have any issue with targeted pricing at all in the future?

1.95 **George Pappachen:** This is just one thing that I happened to run into last week, and it happened to involve one of our companies – I will not say which one. We worked with one of our research companies, worked with a large technology enterprise, to segment where the websites and consumer 'audience' based on what is called public information (this is in the US) which is credit scores. Those credit scores were used to segment traffic to sites that displayed good credit audience versus not versus so on and so forth, and the end objective was to deliver relevant ads, but also to a differentiated treatment if you will from a commercial benefit perspective. I do not know how that would be seen by the regulatory bodies here, but that is one treatment that I thought was kind of interesting.

1.96 (interruption)... the segmentation was not based on actual audience, it was a panel-based study that was then extrapolated. The panel was large enough to represent the universe and then segmentation of websites.

1.97 **Heather Clayton:** It is an issue that of course has arisen in the offline world in terms of misplaced pricing for financial services products, and that has raised a significant debate in that context. We did explore in our report some rather theoretical ways that we might see it, and I would be very interested in people’s views about 'No, don’t worry, this will never happen in a widespread way’, or whether perhaps we are seeing some indications, perhaps not things that we have immediately thought of yet, that will see very bespoke pricing online.

1.98 **Juliet Young (OFT):** Just picking up on one of the points that Andrew made earlier, I think we recognise if you show different prices to different consumers, consumer reactions against that would be so strong that it probably would not happen in any time soon, but there are softer forms of price discrimination. For example if you log on to a website or use it and come back to it
and they recognise you as a returning customer, it is possible that maybe they alter the display a bit, they take away special offers. In essence that is the same idea, they are tracking your behaviour and using that either to offer you discounts (which I do not think consumers would find objectionable) or to take away special offers (which they may well find objectionable).

1.99 There is a spectrum not just the paranoid theory that you log on to this website, they say 'Ah ha, this person has money, quick, let's jack up the price', to slightly more realistic scenarios where they just recognise you as a returning customer and perhaps slightly alter certain features of the website. There might be things at that end of the spectrum that it would be interesting to discuss.

1.100 Jeremy Olivier: Just a very quick comment on that; the example of financial services products is very important. Generally we know that the internet is characterised by an extraordinary proliferation of price information, for products whose cost does not vary across different segments, like consumer goods of various different kinds. It would be very, very surprising if a sustainable model of price differentiation based on profile or authenticated relationship with the website were possible. When you are talking about products whose underlying cost is a function of relevant characteristics of a subscriber, their health history, their credit history and so on, there is a much, much greater risk that the economic opportunity created by differentiation will be seen by people to exploit. However that is a general play out of the concerns which exist in the offline world as well about price differentiation between different segments, on the basis of different aspects of a consumer's history, which is in the insurance market and so on. In a sense it is a play-out of exactly the same phenomenon that we see in the offline world as a result of different cost of these products in the different segments.

1.101 Nigel Gwilliam: Just a quick point which has only just occurred to me, because it crosses on an offline. What would be the issue from an OFT perspective in terms of, for example a retailer that operates bricks and mortar and online offering online only products, and/or online price discounts versus their bricks and mortar? Is that an issue?
1.102 **Juliet Young:** In the context of the consumer regulations that is not particularly an issue, so it is not something that we have touched upon in this study. There are wider European regulations about vertical agreements that relate to that area, but that is not something that we have directly looked at; so you are not allowed to discriminate against online channels.

1.103 One area to touch upon with Jeremy’s point was that we did wonder whether people might use differentiated price according to cost; so for example if you are looking at some websites to do with – I don’t know, cancer, and then you go on and buy some health insurance which then recognises ‘Oh gosh, this person has been looking at a lot of websites based around illness’, they will probably be quite expensive to insure. Could they use that information?. Again it seems a bit hysterical, but it seems conceivable, and one wonders whether that would ever become a reality. That seems like quite a concerning area.

1.104 **Andrew McClelland:** Again we are coming down to 'What can technology do?' There is an argument to say that yes, the technology is there to enable us to do all sorts of these things, but coming back to whether there is a will to do it, whether there is a benefit to the business and the cost of implementing the technology to enable you to do that, the risks far outweigh potential consumer benefit. Taking the example around credit scoring and people coming on to your website, I don’t know about the US but certainly in the UK there is a raft of legislation around what credit scoring can be used for, and getting people’s permission before a credit score is issued.

1.105 There is a significant cost to getting that information, and I am not sure of many retail environments where there would be any benefit in doing that at all anyway. I can understand to a degree where looking from the outside there might be some concern about retailers wanting to segment their customers on the basis of who paid most and how you can charge the most, but the marketplace is so open online that the consumer is very price-sensitive. They have a huge range of information available to them, and they soon get to know that Retailer A is charging more than Retailer B. That is why you see the likes of the price
comparison engines doing very well, having lots of visits and providing a consumer service, but it is also why you have seen the industry moving away from everyone continually trying to undercut each other, because that is not good practice and that is not to the benefit of the consumer.

1.106 Actually I cannot see where the business benefit from some of this activity is coming from, and there will always be – I will refrain from calling them 'innovators' but organisations trying to push some of the boundaries, but probably in a test situation to see if it is feasible. However I cannot understand where the more widespread commercial benefit will come from with this sort of segmentation.

1.107 **Heather Clayton:** We have very little time left and I have to wrap up with a few closing remarks, but I would have hoped to say to you at this point to say to you that you have the OFT, the European Commission and indeed Ofcom and the Information Commissioners in the room, and we will pass on any comments to Iain.

1.108 The final question was what do you demand of the regulatory framework, and is there anybody who wants to sum that up for the Regulators that are here?

1.109 **Nick Stringer:** What are the next steps from your point of view, the OFT point of view? Obviously we have the market study, we have the Roundtable, where are we going next?

1.110 **Heather Clayton:** This is a slightly unusual end to a market study, in that a lot of the conclusions in the report are left rather open, and I think that is appropriate. We will think about what has been said here today, we will keep in close contact with our Regulatory partners and the industry, we will keep talking to people, and then we will come back in probably six months; but that will not necessarily be another piece of work from us. We will look back at the issue at that point and say 'Is there any reason to look at it again?' So our interest will be continuing, mainly in terms of discussions with people that are interested and keeping in close contact with all of the developments, but we do not have a formal
The next step mapped out at this point. It will depend whether anything prompts us.

1.111 The other thing of course that we are doing is closely to monitor any complaints and any issues that come in, and we are closely continuing to work with Ofcom and the Information Commissioner’s Office in terms of what happens if an issue does arise. Apart from that sort of informed and readiness that is it from the OFT.

1.112 Angela Mills Wade: I cannot let your question pass about what we want from the Regulators!

1.113 Heather Clayton: Please do, I am very happy for you to answer it.

1.114 Angela Mills Wade: I think we would ask you to work with us and wait, and not impose statutory rules until you have given us a fair chance to get some self-regulation in place and to test it, and remember that self-regulation is dynamic, it can change. If you don’t like it then talk to us about it, tell us why you don’t like it, where you think it can be improved, and also you have the amazing ability on the education front. You can really be our partners in helping people to understand and to differentiate between harm and fear of harm, because that is also something where people will trust you. If you say it is not harmful they are more likely to trust you than us.

1.115 Nick Stringer: The starting point for that is the kind of dialogue that we will have with the European Commission and what we have developed at a European level. That is a useful starting point to discuss what we have talked about today and what we are developing.

1.116 Emma Ascroft (Yahoo!): Just one comment to follow on from that; one of the key things for us from the report was the idea of a Memorandum of Understanding between the ICO and the OFT. One thing we asked for specifically out of this was that this is a really sexy area of policy and lots and lots of people are really interested, but it is absolutely vital for businesses that are operating in this space to have regulatory clarity, and to understand who their regulator is. That is one thing that we
certainly experienced in the IAB when we were discussing our principles, because it was right in the middle of all the furore over Phorm and what the ISPs might do in the UK. There was the ICO interest, Ofcom interested, the European Commission interested, there was a plethora of people and the whole landscape was very, very messy and very, very confusing. If we are to give space for self-regulation to develop it is very important that we do not have people fighting over that space while we are trying to deal with these issues, and that is our appeal: to give as much clarity as you can for business to get on with business, but also to develop these very complex multi-stakeholder self-regulatory frameworks, which are totally unprecedented and will take some time and effort to achieve.

1.117 **Heather Clayton:** Okay, thank you very much for those thoughts. I have already set out what is the next step for the OFT so I will skip that bit of the wrap-up. It just remains for me to say thank you very much to everybody who has contributed today. It has been a fascinating discussion, and I hope that the team at the OFT has made some useful contacts and will stay in touch.

**Contact details for feedback questions**

1.118 If you have any comments, feedback or questions regarding the Online targeting of advertising and prices market study or the roundtable event, please contact Cristina Luna-Esteban (cristina.luna-esteban@oft.gsi.gov.uk or 0207 211 8208).

**Roundtable Participants**

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