

Canada's Privacy Commissioner Issues Guidelines for Online Behavioural Advertising


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On December 6, 2011, the Privacy Commissioner of Canada issued privacy compliance guidelines for online behavioural advertising (the Guidelines). Behavioural advertisers track online activities through a variety of tools to deliver targeted advertisements that appeal to Internet users' inferred interests.

The Guidelines confirm that online behavioural advertising may be considered a "reasonable purpose" to collect, use and disclose personal information under the *Personal Information Protection and Electronic Documents Act* (PIPEDA), provided that this type of advertising is carried out under certain parameters, is done on a fair and reasonable basis and is not made a condition of service. The Guidelines were developed to assist online advertisers ensure that their practices are transparent and comply with PIPEDA.

Significant components of the Guidelines are as follows:

- The Privacy Commissioner will consider information collected and used for online behavioural advertising to be "personal information" (information about an identifiable individual) under PIPEDA since there is a "serious possibility" that the information could be linked to and used to identify an individual, alone or in combination with other available information.
- Behavioural advertisers' use of opt-out consent to collect, use and disclose non-sensitive personal information is recognized as consistent with the Privacy Commissioner's earlier marketing guidance, as long as online advertisers make available an easy and immediately effective opt-out mechanism, adhere to the limitations on data use and follow the guidelines on transparent disclosure of purposes for collection before information is harvested.
- Tracking tools that prevent a person from declining, withdrawing consent or making consent a condition of service are prohibited, thereby making certain tracking tools (super cookies, web beacons, pixel hacks, device fingerprinting and covert tracking technique) presumptively a violation of PIPEDA.
- Purposefully tracking children and websites aimed at children should be avoided because, according to the Privacy Commissioner, it is difficult to ensure meaningful consent from children to online behavioural advertising practices.

Organizations will need to assess whether their online advertising and tracking practices are consistent with the Guidelines. For further information, please see the [Guidelines](#) and the Privacy Commissioner's corresponding [speaking notes](#). 

To discuss these issues, please contact the authors.

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