



Via Electronic Mail

Mr. Donald S. Clark
Secretary
Federal Trade Commission
Room H-135 (Annex N)
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: # 228 Project No. P859900: eBay Inc.'s Comments to the Federal Trade Commission's Bureau of Consumer Protection Proposing Governing Principles For Online Behavioral Advertising and Requesting Comment

Dear Secretary Clark:

eBay Inc. is pleased to submit these comments regarding the Federal Trade Commission staff statement proposing governing principles for online behavioral advertising. We strongly support the Commission's continued efforts to protect consumer privacy while promoting innovative industry approaches that maximize the benefits of online activity. It is in this spirit that eBay submits these comments.

eBay Inc. is one of the largest consumer-focused companies in the world, with customers in virtually every country and territory around the world. The eBay Inc. family of companies provides global consumer services in the areas of:

- e-commerce (buying and selling goods and services on platforms like eBay, Kijiji and World of Good),
- payments and financial services (with PayPal and our newly introduced MicroPlace microfinance site), and
- communications (with our Skype VOIP platform).

We'll focus for the most part in these comments on our US e-commerce platform, eBay.com.

eBay provides online marketplaces and commerce platforms for the sale of goods and services to a diverse community of individuals and businesses. Our platforms enable a global community of buyers and sellers to interact and trade with one another. eBay's goal is to create, maintain and expand the functionality, safety, ease-of-use and reliability of its online commerce platforms while, at the same time, supporting the growth and success of its community of users.

Much of the conversation so far among regulators and industry has been focused on companies like ad networks or search engines. While eBay is not a search engine, we do offer product search. And we are not an ad network, but we manage a wide spectrum of promotional content—our own and on behalf of our sellers and partners. We see these different types of companies and business models evolving quickly, diverging as well as consolidating at a dizzying rate, and would therefore urge caution when trying to place standards on one discrete silo or business model for fear of unintended, potentially harmful economic and innovative ramifications.

Given the magnitude of our consumer customer base and the variety of our business models, we have done a lot of thinking about where we fit in the regulatory and self-regulatory model



for behavioral targeting and other advertising issues online, not just in the United States, but around the world. At eBay, we take a global focus on privacy: Our practices must be tailored to the some of the strictest criteria for consumer protection because we operate as consistently as possible around the world. With all this in mind, we can provide a unique and useful perspective to share on the proposed principles.

We stand behind the quality of the privacy protections we provide to our users. The success of our community is based on trust, which is strengthened by our ability to provide our users with a level of transparency and control around the collection and use of information about them and their activities. Because of our strong privacy protections, Privacy International recently rated eBay the best company for privacy on the internet, the Ponemon Institute has rated us one of the most trusted companies on the internet, and we consistently rank in the top ten most trusted brands. As we roll out new features and programs, we work hard to ensure that we do so in a way that meets our high internal standards for privacy protection and the promises we've made to our users.

Recently, we introduced a new privacy preference that may be particularly relevant to the discussion the Commission has begun in this proceeding. On eBay.com, we recently began improving our users' experience online with customized advertising on and off eBay. We realize that such programs should be introduced in a way that is transparent to our users and gives them control over the use of information about them. And so we put great effort into building and publicizing AdChoice, a prominently noticed privacy preference for targeted advertising based on eBay's ecommerce-related customer data. As described in more detail below, the AdChoice preference provides eBay users with more information and greater control over their online experience.

You may have heard about the AdChoice preference before. We introduced it at the eBehavioral Advertising Town Hall, and most recently we discussed it on a panel before the ABA with Commissioner Harbour.

Our experiences rolling out AdChoice and our behavioral targeting programs—and with e-commerce and consumer privacy issues in general—may illuminate the issues the Commission is currently considering. eBay Inc. urges the Commission to consider our comments as it evaluates its draft principles, as well as considering the impact that the issues we raise here may have on e-commerce and internet activities generally.

Sincerely,

Scott R. Shipman
Senior Counsel – Global Privacy Leader

Kasey Chappelle
Counsel & Privacy Director – Marketplaces



**EBAY’S COMMENTS ON THE PROPOSED
GOVERNING PRINCIPLES FOR ONLINE BEHAVIORAL ADVERTISING**

Contents

A. New developments online may spotlight some areas where application of the FTC’s proposed principles would be unclear or counterproductive. 1

 1. Tailored content vs. advertising is difficult to distinguish in e-commerce. 1

 2. A truly distributed internet blurs current concepts of “first party,” “third party,” and “website” online. 2

B. eBay provides users with transparency and control in the AdChoice program. 3

C. Affirmative opt-in for changes to privacy policies is an unworkable standard. 5

D. Conclusion 6

EBAY'S COMMENTS ON THE PROPOSED GOVERNING PRINCIPLES FOR ONLINE BEHAVIORAL ADVERTISING

A. New developments online may spotlight some areas where application of the FTC's proposed principles would be unclear or counterproductive.

In our review of the proposed principles and their impact on eBay's programs and models, we noticed that trends in ecommerce and internet technologies may demonstrate the difficulty in applying the Commission's principles to the online world. The Commission should consider these developments—and any inadvertent impact on e-commerce—in any statement it makes about behavioral advertising. I'd like to outline a few below.

1. Tailored content vs. advertising is difficult to distinguish in e-commerce.

E-commerce platforms must collect a wide range of information to provide their services to users. At eBay, we collect and maintain information about our users for a variety of legitimate purposes (like fulfilling the transaction, accounting and reporting for tax purposes, and prevention of fraud and abuse of the platform), and therefore this collection of information cannot be restricted by a consumer opt out. E-commerce providers would find it difficult, if not impossible, to comply with any proposal that restricts the collection of user data, rather than regulate how it is used to provide advertising.

But even regulation that is narrowly designed to address the use of information for behavioral advertising runs into pitfalls in the e-commerce arena. For companies like eBay, content and advertising are interrelated. For example, a user visiting eBay.com would see several different types of information on our pages. First, there is the user-generated content (our listings) that eBay users post, browse, bid on and buy. While these listings are the main reason our users come to eBay.com, keep in mind that the listings are also commercial in nature, connecting buyers with items our sellers have listed for sale.

Second, we provide "merchandising"—modules of informative eBay content about other listings or categories, sales, promotions and services related to the eBay platform. Again, this content—essentially e-commerce—is also promotional in nature but is also part of the reason our users visit eBay.com. Finally, we provide true advertising, in standard banner ad formats, for products and services from other eBay brands or from unrelated third parties. These ads provide revenue to our business and may range from generic to targeted, based on many factors, including the user and the action he or she has taken, the web page the ad appears on, and whether we have relevant listings to display in response to a particular product search, among others.

eBay is a better service for our users when we can show them what they're interested in when they browse our sites and use our services. In an e-commerce ecosystem, commercial content in all its forms could be classified as advertising. But on e-commerce platforms like eBay, targeting listings, merchandising and even advertising based on consumer activities and interests provides great benefit to consumers. A set of FTC principles that fails to take this into account can make it difficult to provide relevant services to users on e-commerce platforms.

Relevant content and ad delivery based on, and served during, a consumer's single or repeated interactions with a company he or she has a *direct and primary relationship* with has been proven to provide a direct consumer benefit and presents little privacy risk and no consumer harm. Consumers expect content and ad delivery to be relevant to their immediate online behavior. For example, if a consumer searches on eBay for a specific product, that consumer would not be surprised to receive advertisements for other similarly categorized merchandise. Indeed, this is a unique value proposition offered by online commerce that is

largely absent from today's brick and mortar commerce. It could be considered, perhaps, the equivalent of a small shop owner remembering your name, your clothing sizes, last purchase, or favorite color. Customers in fact relish those experiences and pay a premium for that kind of upscale service. Principles that would restrict this widely accepted practice when it happens online could unnecessarily burden online commerce with little consumer benefit.

2. A truly distributed internet blurs current concepts of “first party,” “third party,” and “website” online.

One of the inherent qualities of Web 2.0 is the ability of users to see and interact with content from their favorite websites outside the boundaries of that website. It's what we call “distributed eBay”—the ability to use eBay's services on other websites, or even off the web entirely via a mobile phone, television, or any other networked device. Some examples are:

- the eBay-to-go widget, which bloggers, social networkers and other website publishers can embed in their sites to show the things they like on eBay,
- our Facebook applications, where our users can choose (on an opt-in basis) to display eBay information to their friends, like items they've added to their watch list or just listed for sale,
- eBay Mobile, which users can download to their mobile phones to browse and buy on eBay from anywhere, and
- eBay Countdown, an html module that users can keep on their desktop to interact with eBay.



When we provide interactive distributed content to our users, we make sure our users know they are dealing with eBay and are subject to the terms they agreed to on the eBay site, including the eBay privacy policy. Our policies convey, in concise, user-friendly language, that they apply to our users' interaction with eBay content anywhere they find it, and we notify consumers about eBay's policies at the point of use or collection. Of course, we try to do so in a way that takes into account the limitations of some very compact media.

Thus, when our users interact with eBay content in other settings, they are still aware that their relationship is with eBay and governed by eBay's privacy policy and preferences. When we use behavioral data about our users for third party or off-platform advertising, we go one step further with an on-ad link to the



information and preferences we are able to convey *directly to our users* because of this relationship.

When content is served by a company that has a direct relationship with the user, on other places on (and off) the web, it can be hard to classify within the traditional advertising frameworks of “first party” and “third party.” Is the targeted content eBay provides this way third-party content? Or by nature of its branding and disclosures is it first-party content provided remotely? And could the information we get about behaviors and transactions via these widgets be considered information collected from a third-party site? Or again, because of our directly conveyed policies and disclosures, does it become a first-party interaction? Ultimately, a set of principles that relies on these distinctions within the traditional definitions of “websites” and their “publishers” and “advertisers” is already dated in today’s online world, and will only become more so while the internet moves steadily toward new models.

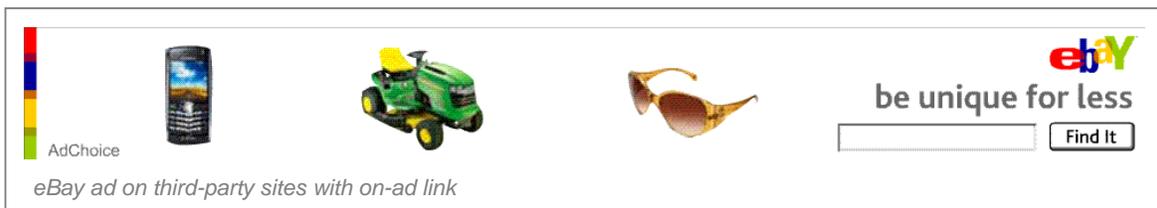
B. eBay provides users with transparency and control in the AdChoice program.

eBay has taken an additional step in attempting to raise consumer awareness about online behavioral targeting and to facilitate consumer choice. We’ve generally customized our own sites and content in the past, but last year, we began to explore ways in which we could customize and improve our user experiences by using the information we collect to target some of our eBay and third-party advertising. In May 2007, we rolled out an update to our privacy policy with language covering these new advertising programs. We sent an email notification of the policy update to more than 100 million users, and in that email we called out specifically the AdChoice program, a new preference for targeted advertising.



AdChoice has two major components: (1) a preference within My eBay (our control panel for user preferences) that provides users with information about our behavioral targeting programs and allows users to make choices about their participation, and (2) a prominent link on the targeted ads we serve allowing users to access information about AdChoice (and any partners that might be involved) and to set their preference. In this way, eBay has maintained its traditional and recognized best practice of offering consumers notice and choice about the use of their information and their online experience, while further educating its users about eBay’s participation in behavioral advertising and the ways we use information about them. We’ve heard other industry players talk about an on-ad link, but ours is live on the site now.

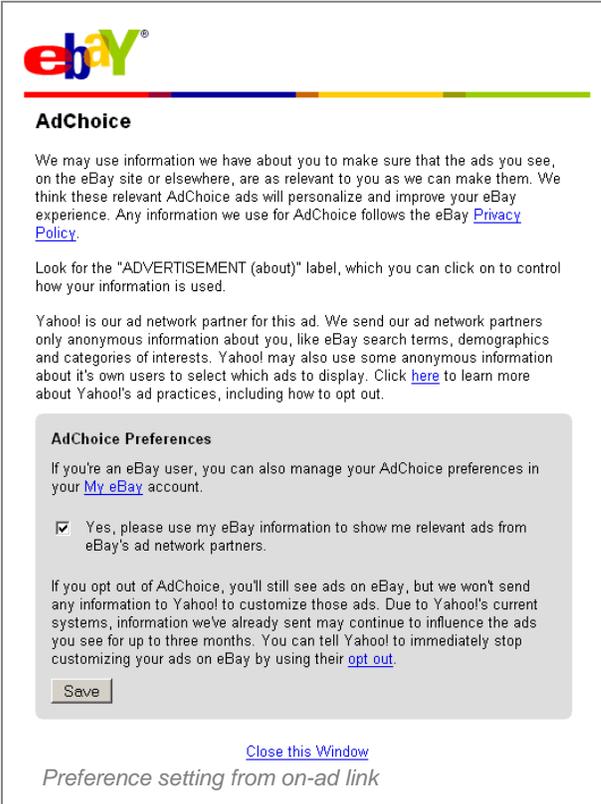
Here’s how AdChoice works: On ads served on eBay, there’s a link next to the ad that connects the user to the AdChoice pop-up. On off-eBay ads promoting eBay, there’s a link embedded in the ad itself. We’re able to show these links because in either case we own the “real estate,” that is, the ad space on our own ads or the frame around the ad on our sites.



When a user clicks on the link, AdChoice delivers a clear and simple description of eBay's ad customization policy (using language that best describes the salient features for our users) and provides a method for users to opt out of future targeted ads. Depending on

the type of ads users receive, they are informed that they can prohibit eBay from using their eBay-collected information for (1) targeted ad delivery on the eBay website from eBay's partners; and (2) targeted advertisements on third party-sites from eBay. (Note that the choices we provide are not about the collection of the data, which we of course must process for our primary purpose of providing the eBay sites and services, but for the use of the data in this way).

When eBay works with an ad network partner, AdChoice identifies the partner that served the customized advertisement, informs the user that his or her non-PII was shared with that eBay partner, and provides a link to that partner's privacy practices. This allows users to be more fully informed as to the potential uses and sharing of information about them. Users can also see and exercise their targeted ad delivery preferences at any time by making a change directly in My eBay.



AdChoice

We may use information we have about you to make sure that the ads you see, on the eBay site or elsewhere, are as relevant to you as we can make them. We think these relevant AdChoice ads will personalize and improve your eBay experience. Any information we use for AdChoice follows the eBay [Privacy Policy](#).

Look for the "ADVERTISEMENT (about)" label, which you can click on to control how your information is used.

Yahoo! is our ad network partner for this ad. We send our ad network partners only anonymous information about you, like eBay search terms, demographics and categories of interests. Yahoo! may also use some anonymous information about it's own users to select which ads to display. Click [here](#) to learn more about Yahoo!'s ad practices, including how to opt out.

AdChoice Preferences

If you're an eBay user, you can also manage your AdChoice preferences in your [My eBay](#) account.

Yes, please use my eBay information to show me relevant ads from eBay's ad network partners.

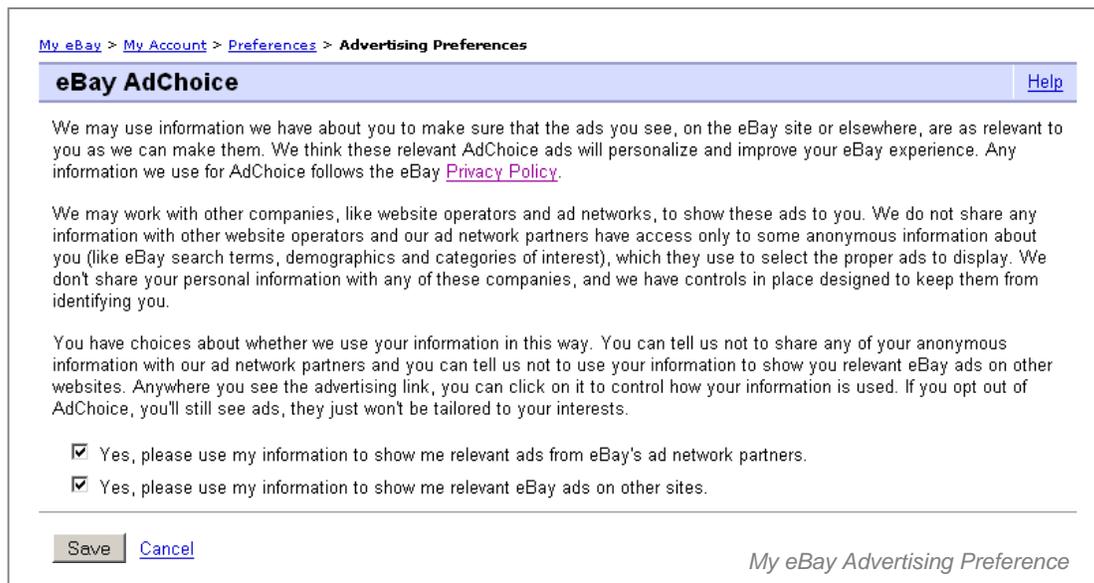
If you opt out of AdChoice, you'll still see ads on eBay, but we won't send any information to Yahoo! to customize those ads. Due to Yahoo!'s current systems, information we've already sent may continue to influence the ads you see for up to three months. You can tell Yahoo! to immediately stop customizing your ads on eBay by using their [opt out](#).

[Close this Window](#)

Preference setting from on-ad link

This new approach is designed to

educate consumers about our customized advertising, preserving the value of such customization for the many consumers who want to receive relevant information based on their online surfing behavior while giving the other consumers the opportunity to decline the customization. At the same time, it responds to the concerns raised by FTC staff with



[My eBay](#) > [My Account](#) > [Preferences](#) > **Advertising Preferences**

eBay AdChoice [Help](#)

We may use information we have about you to make sure that the ads you see, on the eBay site or elsewhere, are as relevant to you as we can make them. We think these relevant AdChoice ads will personalize and improve your eBay experience. Any information we use for AdChoice follows the eBay [Privacy Policy](#).

We may work with other companies, like website operators and ad networks, to show these ads to you. We do not share any information with other website operators and our ad network partners have access only to some anonymous information about you (like eBay search terms, demographics and categories of interest), which they use to select the proper ads to display. We don't share your personal information with any of these companies, and we have controls in place designed to keep them from identifying you.

You have choices about whether we use your information in this way. You can tell us not to share any of your anonymous information with our ad network partners and you can tell us not to use your information to show you relevant eBay ads on other websites. Anywhere you see the advertising link, you can click on it to control how your information is used. If you opt out of AdChoice, you'll still see ads, they just won't be tailored to your interests.

Yes, please use my information to show me relevant ads from eBay's ad network partners.

Yes, please use my information to show me relevant eBay ads on other sites.

[Cancel](#)

My eBay Advertising Preference



respect to consumer unawareness about behavioral advertising practices.

If it would be useful, we're happy to provide a live demonstration of the AdChoice preference and how it works to provide robust notice and choice to our users. That said, you could also review it at any time by visiting www.ebay.com and clicking on the links next to the ads.

C. Affirmative opt-in for changes to privacy policies is an unworkable standard.

We agree with the Commission that an accessible privacy policy is a valuable tool to inform consumers about a company's data collection and use practices. One concern we do have about the principles the Commission has outlined lies in the proposal to require opt-in consent for all material (an undefined term) privacy policy changes. Under the proposed principles, "before a company can use data in a manner materially different from promises the company made when it collected the data, it should obtain affirmative express consent from affected consumers." However, as the FTC staff acknowledged, "[i]t is widely recognized . . . that businesses may have a legitimate need to change their privacy policies from time to time." In light of this business reality, the proposed restrictive approach creates a potentially unworkable and consumer *unfriendly* standard.

eBay's experiences with opt-in policy change requirements have been less than successful. Infrequent users do not always appreciate the additional steps required for an opt in when they visit the site after an absence, perhaps missing a last-minute bid in the process. When users must provide express consent to a new policy, there will always be a category of users who have not yet taken the necessary steps to opt in. After the first change, a company is left with two separate categories of users. After the next change, a company may have four categories of users, and so on exponentially. Even two such categories lead to unworkable and costly database management, and ultimately to unnecessary mistakes in classification. The fact that some consumers may not opt in to policy changes creates an enormous and costly burden on companies, who will be forced to maintain separate databases for numerous categories of consumers so as to preserve the status quo with respect to the use of consumers' information.

Instead, eBay follows a robust notice and opt-out process, where we send notices of policy updates to individual users, post an announcement on our boards before the new policy goes into effect, and discuss the changes in our various company blogs. eBay provides no less than 30 days' notice before the new privacy policy's effective date (and given the size of our user base, we often begin rolling out our notification plan much earlier). Once we start the notification process, our vocal community participates in a lively discussion about the changes, and we generally see press coverage of them as well. Ultimately, it's hard to argue that any of our users would be caught unaware of new policies or programs.

eBay's privacy policy is part of our terms of service (or as we call it, the User Agreement), and amendments to our privacy policy follow the amendments provision of that contract. Providing notice of changes with an opt out follows common contractual procedures practiced by almost all businesses, online or offline. Modification of contractual terms, membership obligations and benefits all take place by informing the customer and providing an opportunity to stop using the service after the effective date.

Facilitating easy modification to online policies over time encourages companies to post descriptive policies that clearly convey current information practices. A burdensome opt-in consent requirement, and the resulting database mess, would lead companies to make every effort to avoid policy updates. As a result, companies would choose between vaguely



worded policies designed to avoid risks of inadvertently violating the material change notice requirement, or unwillingness to update to accommodate new programs. Ultimately, the opt-in requirement could lead to worse-educated consumers, not better.

D. Conclusion

eBay has consistently supported—and in some cases created—industry best practices to protect consumers' reasonable expectation of privacy with respect to their online behavior. However, we are concerned that the breadth and detail of the principles the Commission has proposed will inhibit industry innovation on the internet at the expense of illusory consumer value. As FTC staff recognized, "behavioral advertising provides benefits to consumers in the form of free web content and personalized ads that many consumers value." To maintain these benefits, the Commission should carefully consider existing and new online developments and carefully tailor any principles it adopts to those instances where extra precautions are appropriate, for example, the use of sensitive data.

Ultimately, what will benefit consumers most is a general, comprehensive federal privacy law that requires companies to post complete and accurate privacy policies and also provide protections to users based on the actual harms that may result from misuse of information. To work toward such a goal, eBay is a founding member and president of the board of the Consumer Privacy Law Forum, composed now of 15 major companies. As you may be aware, the CPLF will brief the Commission on our progress later this month.

eBay appreciates this opportunity to comment on the proposed principles and thanks the Commission for its continued support and encouragement of strong privacy practices to guide industry and advocates in emerging technologies and their associated legal issues.