Ontario Private Sector Privacy Reform – Submission
Improving Private Sector Privacy for Ontarians in a Digital Age
September 2020

Introduction

The Digital Advertising Alliance of Canada (DAAC) wishes to thank the Ministry of Government and Consumer Services for allowing submissions regarding the concept of a private sector privacy law in Ontario.

The discussion paper published by the Ministry was well-balanced; it was particularly reassuring to see that future innovation was considered, as well as contemplation of the user experience online. The DAAC is pleased to provide this submission in response.

Our trade association’s position is a reinforcement of self-regulation in the area of online advertising. Self-regulation is good for consumers, good for organizations and good for policy makers, as it can be adept and fluid to the needs of all parties.¹

In summary, our recommendations are:

- Wait for, and duly influence, PIPEDA reform to avoid a patchwork of provincial laws.
- Any private sector privacy law introduced by Ontario’s should be flexible for businesses, large to small, and must be technologically neutral.

About the DAAC’s Political Ads Program

The Digital Advertising Alliance of Canada (DAAC) is a consortium of the leading national advertising and marketing trade associations in Canada, whose members share a commitment to delivering robust, credible, and enforceable programs for responsible online behavioural advertising (or “interest-based advertising”) and transparent political advertising.

The DAAC invites representatives from the Government of Ontario to explore our AdChoices and Political Ads self-regulatory programs at greater length so that we may make improvements or adjustments to meet regulator expectations. You can find out more at YourAdChoices.ca and PoliticalAds.ca.

Ontario Private Sector Privacy Reform

The DAAC’s position in the digital advertising ecosystem provides us with a broad vantage point, which is beneficial to assess the impact of a private sector privacy law in Ontario, as proposed by the Ministry of Government and Consumer Services in the discussion paper.

Addressing the gaps in Ontario’s legislative privacy framework and establishing comprehensive rules that will protect privacy rights and increase confidence in digital services is a worthy effort to explore.

One of the opening statements made in the discussion paper highlights the Ministry’s desire for Ontarians to have “more access to and control over their own data when interacting with private businesses and organizations; to be better informed about how their personal information is used they are agreeing to when providing it; to be able to withdraw consent and retrieve their data more easily; to be certain that Ontario’s businesses will uphold their privacy even in the use of new technologies and digital business models.” We share these desires generally, and would recommend the Ministry reference the Appendix of this submission, where we describe our sector-specific, and independently-enforced, self-regulatory program for online behavioural advertising, called AdChoices.

Importantly, we echo the Ministry’s call that any new privacy protections should not pose unnecessary burden to businesses, or inhibit the growth and prosperity of Ontario’s innovation ecosystem. This final sentence is refreshing to see in this type of privacy discussion paper, as often is the case that data collection, use and disclosure for commercial purposes is unreasonably criticized. Ontario is home to many start-ups and innovation labs that could bring incredible products and services to market in the future; we shouldn’t impede that possibility.

Data in a Digital Age: The Need for Privacy

To build upon the research quoted in the discussion paper, the DAAC’s own independent research, conducted by market research firm Synqrinus in May 2020, saw that familiarity with how data is collected and used consistently remains high in Canada. Year-over-year we see 70%+ in familiarity by Canadians that data is collected when online, that specific ads are served to them based on their browsing history, and that data that is collected about them is used to guess their interests.

Important to know, particularly for the DAAC’s purposes, 57% from our survey are familiar with the fact that online advertising supports the free services they use on the internet.
This is not to say that there isn’t a need for greater understanding and appreciation of how the internet works and how services are fueled by data and advertising.

It is important to recognize that consumers, all of us, have varying levels of interest and concern about privacy; it is not a one-size-fits-all approach. At any given time in Ontario there are residents that are dialing up or down their privacy settings on social media platforms, accepting or declining to give a phone number or postal code to a local retail store, turning location data on to use a food delivery app or ride sharing, donating online to a charity, or signing up to receive email updates from their preferred political party.

Any private sector privacy law introduced by Ontario’s should be flexible for all of these businesses, large to small, and it must be technologically neutral.

Privacy Laws and Trends: Ontario, Canada and International Jurisdictions

Presumably it would be a requirement of a private-sector privacy law in Ontario that it is substantially similar to PIPEDA in order that it, not PIPEDA, apply within Ontario, as do the Quebec, Alberta and British Columbia private sector privacy laws within those provinces.

However, there would be areas of potentially overlapping jurisdiction over organizations that conduct operations nationally, or internationally. Inconsistencies in the application of the various laws would cause friction to many of the businesses the law would apply to.

Exploring Areas of Improvement for Ontario

Within this section of the discussion paper, the concept of scope and application of the law is expanded to include not-for-finals, charities, trade unions and political parties.

As the DAAC is an Ontario-based not-for-profit, we would be assigned responsibilities under this proposed law, but we would not be required to conduct such privacy practices federally. This inconsistency would mean that we would implement practices for Ontario but extend them federally to ease operational costs. One would expect that most Ontario businesses would do the same. This is not ideal, and has the potential to be an expensive undertaking, particularly if Quebec’s privacy law reform (as introduced by Bill 64) also continues to be non-compatible with PIPEDA.
Please view the Appendix of this submission to understand the framework used by our self-regulatory program for online behavioural advertising. It touches upon many of the 8 points laid out by the Ministry.

Key Areas for Reform

Increased Consent and Clear Transparency
Requiring organizations to offer clear and plain language information about the use of personal information, how it is collected, used and disclosed, is a key feature of the DAAC’s AdChoices self-regulatory program. The use of the AdChoices icon on nearly every ad displayed on the open web is a simple touchpoint for consumers to better understand who is delivering ads to them, as well as where to go to control the sharing of data for advertising purposes.

As consent and clear transparency goes well beyond marketing practices in Ontario, and even Canada federally, the DAAC is actively part of a coalition of other DAAs that operate in the United States and across Europe, all of us using the same blue triangular icon within ads.

Ad-based transparency is just one feature of the AdChoices self-regulatory program. Our program participants are also required to be transparent about their data practices on their owned and controlled websites and apps.

Relevant to the interest-based advertising sector is the fact that full, knowledgeable consent may not be practicable with the way our ecosystem operates2. And it is not an insignificant ecosystem, either; spending on digital ad formats in Canada was last measured at $8.80 billion, or 53.5% of total ad spending3.

The DAAC supports the idea that in these circumstances where consent is not practicable, to look for de-identification practices.

Data Rights: Erasure and Portability
As data erasure and portability would be quite broad for the province of Ontario to mandate, it is recommended that these “rights”, or abilities, be not contemplated unless there is an equivalent federal law in place. Even so, the GDPR has not yet demonstrated the real value that

2 Under PIPEDA, express consent is required for the collection, use, and disclosure of sensitive personal information, such as certain financial or health information. Under the DAAC’s principles, entities should not collect and use sensitive personal information for interest-based advertising without consent, as required and otherwise in accordance with applicable Canadian privacy legislation.

this type of ability brings, how often it is used, and most importantly, the burden on IT infrastructures to facilitate these services.

If there are specific use cases in mind, the DAAC recommends the government of Ontario release guidance documents as opposed to focusing on provincial legislation.

Oversight, Enforcement, and Fines
Having the IPC provide advice and guidance to small organizations would be welcomed and supported by the DAAC. Relevant guidance would be gladly shared amongst our participants.

The concepts mentioned in this section, ranging from education, research, guidance, advisory services and regulatory sandboxes are all excellent ideas.

A particularly vivid area from this section of the discussion paper highlights that an effective privacy regime doesn’t take a “one size fits all” approach but strategizes for small, medium and large organizations, incentivising compliance by setting positive examples, offering best practices and encouraging innovative solutions. The DAAC supports this. More support for small businesses, in particular, would be very appropriate for Ontario.

When it comes to fines, referencing the GDPR is not generally appropriate as that is a comprehensive multi-country regulation that applies to over 400 million people in the European Union, with even then, overreaching fines.

Fines should be carefully approached and measured before ever being imposed, particularly when the private sector law that Ontario would be overseeing would apply to predominantly small and medium businesses.

Application to Non-commercial Organizations
Applying a private sector privacy law in Ontario to organizations that collect, use or disclose personal information to include not-for-profits, charities, professional associations, trade unions and political parties is a rational consideration.

For political parties, the DAAC recently participated in a submission process with Canada’s Chief Electoral Officer and Elections Canada, in which we advocated for our self-regulatory programs to act as a bridge between the Canada Elections Act and PIPEDA. Our goal is to help organizations get into compliance with our Principles, which are modelled after Canadian privacy and election laws.
Our submission also states that political advertisers (political parties and registered third parties) should be subject to PIPEDA in the future.

Deidentified Personal Information, Data Derived from Personal Information

Under the DAAC’s principles for our AdChoices self-regulatory program, the deidentification of personal information is contemplated under our Data Security principle.

Participants should maintain appropriate physical, electronic, and administrative safeguards to protect the data collected and used for interest-based advertising purposes. And they should retain data that is collected and used for interest-based advertising only as long as necessary to fulfill a legitimate business need, or as required by law.

The DAAC principles also identify the following four additional steps that should be taken regarding data collection and use when an entity is engaged as a service provider for interest-based advertising:

- Alter, randomize, or make anonymous (e.g. through “hashing” or appropriate redaction) any personal information or unique identifiers in order to prevent the data from being reconstructed into its original form;
- Disclose the circumstances in which data that is collected and used for interest-based advertising is subject to the above process;
- Take reasonable steps to protect the non-identifiable nature of data if it is disclosed to another entity, including not disclosing the algorithm or other mechanisms used for anonymizing or randomizing the data, and obtaining satisfactory written assurance that such entities will not attempt to re-construct the data and will use or disclose the de-identified data only for purposes of interest-based advertising or other uses as specified to users. This assurance is considered met if the recipient entity does not have any independent right to use the data for its own purposes under a written contract.
- Take reasonable steps to ensure that any company that receives anonymized data will itself ensure that any further companies to which such data is disclosed agree to restrictions and conditions set forth. This obligation is also considered met if the recipient entity does not have any independent right to use the data for its own purposes under a written contract.

4 An entity is a service provider under the DAAC’s Canadian Self-Regulatory Principles for Online Behavioural Advertising to the extent that it collects and uses data from all or substantially all URLs traversed by a browser across websites for online behavioural advertising in the course of the entity’s activities as a provider of Internet access service, a toolbar, an Internet browser, or comparable desktop application or client software and not for its other applications and activities. [https://assets.youradchoices.ca/pdf/DAAC-ThePrinciples.pdf](https://assets.youradchoices.ca/pdf/DAAC-ThePrinciples.pdf)
The DAAC is committed to continuing to improve our self-regulatory program for interest-based advertising, and would appreciate any support provided by the IPC to encourage greater participation in our independently-enforced code of practice. New technical standards are also a possibility for us to either create or support.

Enabling Data-sharing for Innovation, while Protecting Privacy

Data brought together for the public interest is always a good idea. Residential data and the Waterfront TO project comes to mind; the amount of useful data that would come out of a Privacy by Design-considered data project in cities and towns across our province is a huge opportunity for Ontario. Ontario could even be a world leader in this area.

Guidance or policy positions around data trusts and/or differential privacy practices would be helpful, particularly for medium and large-sized businesses in Ontario. But the DAAC would recommend keeping any legislation that may be developed free of specific technical practices.

Final Thoughts

The basis of the discussion paper, to create a private sector privacy law in Ontario, is well-intentioned. The desire to protect Ontarians from the negative affects of poor data handling, and the requirement that businesses get to know how to handle data better, makes sense. However, overreach comes to mind under several of the topics proposed.

For Ontario businesses and consumers, privacy, and the handling of personal information by private sector organizations is governed by the federal Personal Information Protection and Electronic Documents Act (PIPEDA). Some of the topics discussed in the paper should only be considered on a federal level.

Given that 97% of businesses in Ontario are small businesses\(^5\), many of the requirements introduced in the paper would require strong educational efforts by the government on what the expectations are – even then, it may be impractical at the level proposed in the discussion paper.

In addition to this, if Ontario (and Quebec) strays too far away from our federal data privacy law, the cross-border transfer of data within Canada may see conflict between various provincial laws and PIPEDA.

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Finally, there should be much more consultation before a law is introduced. Small businesses and other stakeholders need to understand the practical impact. Encouraging good behaviour is a wonderful thing to do, but the threat of penalisation needs to be carefully weighed and measured to the outcome that can be realistically achieved. Undue burden on organizations must be considered. Policy positions, guidance documents and further consultations would be helpful.

The DAAC encourages Ontario to wait until PIPEDA reform begins and to mirror, or influence, those conversations as Ontario’s position presented in the discussion paper is well-balanced.

The Digital Advertising Alliance of Canada is committed to supporting the Ministry of Government and Consumer Services in their efforts. Please consider our strengths and position in the digital advertising ecosystem as a positive ally, supporter and partner.

Thank you for reading.
Appendix

Canadian Self-Regulatory Principles for Online Behavioural Advertising

The Canadian self-regulatory principles for online behavioural advertising (also known as the AdChoices program principles) were developed by the DAAC, in conjunction with other global programs, and were specifically tailored to be fully consistent with PIPEDA, and the Office of the Privacy Commissioner of Canada’s Guidelines on Privacy and Online Behavioural Advertising. Companies that participate in the Canadian AdChoices program pledge to adhere to the following six principles:

Education

The Education principle calls for entities to participate in efforts to educate individuals and businesses about online behavioural advertising.

Notice & Transparency

The Transparency principle calls for clear, meaningful and prominent notice to consumers about data collection and use practices associated with online behavioural advertising.

Consumer Control

The Consumer Control principle provides consumers with an ability to choose whether data is collected and used for online behavioural advertising purposes. This choice will be available through various means, including a link from the notice provided on the webpages where data is collected.

Data Security

The Data Security principle calls for entities to provide appropriate security for, and limited retention of, data collected and used for online behavioural advertising purposes. Additional requirements are in place to address the treatment of behavioural advertising data by Service Providers.

Sensitive Data

The Sensitive Data principle prohibits entities from collecting personal information for behavioural advertising purposes from children they have actual knowledge are under the age of 13 or from sites directed to children under the age of 13 for behavioural advertising, or otherwise engaging in behavioural advertising directed to children they
have actual knowledge are under the age of 13, unless such collection and other treatment of personal information is in accordance with Canadian privacy legislation.

Entities are also prohibited from collecting or using sensitive personal information for interest-based advertising purposes without consent, as required and otherwise in accordance with Canadian privacy legislation.

**Accountability**

Under the Accountability principle, Advertising Standards Canada (Ad Standards), an independent advertising self-regulatory body, monitors companies participating for compliance with the principles, and works with them to effect compliance. Ad Standards also accepts and responds to complaints about practices that may not comply with the principles.

The AdChoices program is designed to provide consumers with enhanced transparency and control over interest-based ads, and is used by participating organizations in Canada to help them comply with PIPEDA’s consent and other requirements. The program is specifically intended to provide companies with an operationally seamless means to give consumers a simple, one-button mechanism to obtain more information about online behavioural advertising practices and to exercise their choice about whether to continue to receive interest-based advertisements.

**AdChoices – Program Features**

The AdChoices program has been specifically designed to build upon PIPEDA’s principles for fair information practices, in particular PIPEDA’s accountability, transparency, and consent principles.

The AdChoices program provides consumers with enhanced transparency and control over interest-based ads, and is used by participating organizations in Canada to help them comply with PIPEDA’s consent and other requirements. The program is specifically intended to provide companies with an operationally seamless means to give consumers a simple mechanism to obtain more information about interest-based advertising practices and to exercise their choice about whether to continue to receive interest-based advertisements.

The Canadian AdChoices program was developed by the DAAC in conjunction with the Digital Advertising Alliance in the U.S. The program continues to be affiliated with the Digital Advertising Alliance of Canada.
Advertising Alliance in the U.S. and the European Digital Advertising Alliance across 28 countries in Europe, with each organization using the same AdChoices icon. The Canadian program requires participating organizations to adhere to the Canadian Self-Regulatory Principles of Online Behavioural Advertising (the “Principles”).

The Principles are based on a global standard set of interest-based advertising principles created by the Digital Advertising Alliance in the U.S., and have been specifically tailored to be fully consistent with PIPEDA, and your Office’s Guidelines on Privacy and Online Behavioural Advertising (“OBA Guidelines”). The OBA Guidelines provide that organizations would be permitted under PIPEDA to process personal information for interest-based advertising purposes with the implied consent of individuals, subject to certain conditions.

Consistent with PIPEDA, the concepts of (i) Transparency, (ii) Choice, and (iii) Accountability are core features of the AdChoices program.

(i) Enhanced Transparency

The AdChoices program is designed to provide enhanced transparency to consumers about interest-based advertising, and the Transparency Principle sets out specific notice obligations for participating companies.

In essence, the notice requirements under the Transparency Principle are effected by the use of the AdChoices Icon, which appears to consumers in digital advertisements or on webpages/apps. The display of the Icon signifies that an ad has been delivered using interest-based advertising data. The Icon may also signify that data is being collected and used on that page for interest-based advertising purposes.

By clicking on the AdChoices Icon, consumers can receive more information about interest-based advertising, and can exercise their choice about whether to continue receiving interest-based advertising advertisements (as described below).

The Transparency Principle also sets out additional requirements for language that needs to be included in notices, namely clear descriptions of the following:

- the types of data collected online for interest-based advertising purposes, including any personal information;
- the uses and disclosures of such data;
- a link or other means for a consumer to access an easy to use mechanism for exercising choice with respect to the collection, use, or disclosure of data for interest-based advertising purposes; and
the fact that the company adheres to the Principles.

(ii) Consumer Control

Under the Consumer Control Principle, consumers must be provided with the ability to exercise choice about the collection, use, or disclosure of data for interest-based advertising purposes. Consistent with this Principle, the AdChoices program enables consumers to simply click on the Icon to exercise their choice about whether to continue to receive interest-based advertisements.

Through an industry-developed Consumer Choice Page, consumers can easily opt-out of receiving interest-based ads from a list of participating ad networks and other companies involved in the serving of interest-based ads. This cross-industry opt-out mechanism is unique, and a tremendously valuable tool that helps companies in the Canadian digital advertising ecosystem comply with their obligations under PIPEDA and the OBA Guidelines by providing a simple mechanism for individuals to opt-out of the collection and use of their personal information for interest-based advertising purposes.

(iii) Accountability for Self-Regulation

Accountability is a critical component of our self-regulatory program for interest-based advertising. The AdChoices accountability framework is implemented by Advertising Standards Canada (Ad Standards) who:

- Monitors companies participating in the program for compliance with the Principles;
- Maintains a process for handling complaints concerning possible non-compliance with the Principles;
- Initiates investigations into potential incidences of non-compliance identified through monitoring or its complaint procedures and works in cooperation with those involved in an investigation to achieve compliance; and
- Issues online reports regarding findings of non-compliance.

The accountability framework for the AdChoices program administered by Ad Standards helps maintain the integrity of our self-regulatory program, and it enhances participating companies’ compliance with their respective obligations under PIPEDA’s accountability principle.
About the DAAC

The Digital Advertising Alliance of Canada (DAAC) is a consortium of the leading national advertising and marketing trade associations in Canada, whose members share a commitment to delivering robust and credible self-regulatory programs for responsible online behavioural advertising and transparent political advertising.

It’s main program, YourAdChoices.ca, provides a blue triangular in the corner of ads that can be clicked or tapped to see who delivered the ad and allows individuals to opt out of receiving online behavioural advertising. It also features a strong accountability arm that participating companies are required to respond to.

The Political Ads self-regulatory program, PoliticalAds.ca, was created to aid political advertisers in operationalizing their political ad transparency online. The purple icon used in the program is a symbol that can be easily recognizable to online users, allowing them to find out more information about who delivered the political ad to them.

The DAAC’s expertise and focus is with regulatory compliance that provides information, but is not disruptive, to an advertiser’s message.

The DAAC has a vested stake in ensuring there is transparency in online political advertising. The recent 2019 federal election coincided with our launch of a political advertising tool customized for this category to ensure a healthy adherence to the basic principle of consumer transparency.

The DAAC is composed of the following associations:

- Association of Canadian Advertisers
- Association of Creative Communications Agencies
- Canadian Marketing Association
- Canadian Media Directors' Council
- Institute of Communication Agencies
- Interactive Advertising Bureau of Canada
- Quebec Media Directors’ Council