EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

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M-10-22

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Peter R. Orszag
Director

SUBJECT: Guidance for Online Use of Web Measurement and Customization Technologies

On January 21, 2009, the President issued a memorandum calling for the establishment of "a system of transparency, public participation, and collaboration."[1] The memorandum required an *Open Government Directive* to be issued by the Director of the Office of Management and Budget (OMB), instructing "executive departments and agencies to take specific actions implementing the principles set forth in this memorandum." Implementing the President's memorandum, OMB's *Open Government Directive* requires a series of measures to promote the commitments to transparency, participation, and collaboration.[2]

As the Internet continues to evolve, the Federal Government has new opportunities to promote these commitments by engaging with citizens, explaining what Federal agencies are doing, seeking public comments, and improving the delivery of services. In the private sector, it has become standard for commercial websites to use web measurement and customization technologies to engage with members of the public.

For government agencies, the potential benefits of web measurement and customization technologies are clear. With the help of such technologies, agencies will be able to allow users to customize their settings, avoid filling out duplicative information, and navigate websites more quickly and in a way that serves their interests and needs. These technologies will also allow agencies to see what is useful to the public and respond accordingly. Services to customers and users can be significantly improved as a result.

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[1] President Barack Obama, Memorandum on Transparency and Open Government (Jan. 21, 2009), *available at* http://www.gpoaccess.gov/presdocs/2009/DCPD200900010.pdf

[2] OMB Memorandum M-10-06, *Open Government Directive* (Dec. 8, 2009), *available at* http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-06.pdf

At the same time, OMB is acutely aware of, and sensitive to, the unique privacy questions raised by government uses of such technologies. Any such uses must not compromise or invade personal privacy. It is important to provide clear, firm, and unambiguous protection against any uses that would compromise or invade personal privacy.

This Memorandum establishes new procedures and provides updated guidance and requirements for agency use of web measurement and customization technologies. The central goal is to respect and safeguard the privacy of the American public while also increasing the Federal Government's ability to serve the public by improving and modernizing its activities online. Any use of such technologies must be respectful of privacy, open, and transparent, and solely for the purposes of improving the Federal Government's services and activities online.

For agency questions about this Memorandum, agencies should contact OMB at infopolicy-oira@omb.eop.gov.

Thank you for your cooperation.

Attachments

Attachment 1

Principles for Federal Agency Use of Web Measurement and Customization Technologies

1. General.

Scope and applicability. This guidance applies to any Federal agency use of web measurement and customization technologies. This guidance is not limited to any specific technology or application (such as persistent cookies), and it includes Federal agency use of third-party web measurement and customization technologies. Whenever an agency uses third-party websites or applications to engage with the public, it should refer to OMB's memorandum providing *Guidance for Agency Use of Third-Party Websites and Applications*.[3] In some cases, the third-party websites or applications use web measurement and customization technologies solely for the third party's own purposes. This guidance does not apply as long as (1) third parties do not use web measurement and customization technologies on behalf of a Federal agency, and (2) Personally Identifiable Information (PII), or any information that could be used to determine an individual's online activity derived from such uses, is not shared with the agency. However, agencies must consider the risk posed by such arrangements as part of the Privacy Impact Assessment required in OMB's memorandum providing *Guidance for Agency Use of Third-Party Websites and Applications*.

This guidance does not apply to internal agency activities (such as on intranets, applications, or interactions that do not involve the public) or to activities that are part of authorized law enforcement, national security, or intelligence activities.

Modifications to current guidance. This Memorandum rescinds OMB Memorandum M-00-13, *Privacy Policies and Data Collection on Federal Web Sites*, and the specified sections in the following memorandum:

- OMB Memorandum M-03-22, *OMB Guidance for Implementing the Privacy Provisions of the E-Government Act of 2002*: Section III(D)(2)(v) concerning tracking and customization activities, and Section VII(B) regarding the reporting of tracking technologies.

2. Definitions.

Web measurement and customization technologies. These technologies are used to remember a user's online interactions with a website or online application in order to conduct measurement and analysis of usage or to customize the user's experience.

[3] OMB Memorandum M-10-23, *Guidance for Agency Use of Third-Party Websites and Applications* (June 25, 2010), *available at* http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-23.pdf

Single-session technologies. These technologies remember a user's online interactions within a single session or visit. Any identifier correlated to a particular user is used only within that session, is not later reused, and is deleted immediately after the session ends.

Multi-session technologies. These technologies remember a user's online interactions through multiple sessions. This approach requires the use of a persistent identifier for each user, which lasts across multiple sessions or visits.

Personally Identifiable Information (PII). This term, as defined in OMB Memorandum M-07-16,[4] refers to information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. The definition of PII is not anchored to any single category of information or technology. Rather, it demands a case-by-case assessment of the specific risk that an individual can be identified. In performing this assessment, it is important for an agency to recognize that non-PII can become PII whenever additional information is made publicly available — in any medium and from any source — that, when combined with other available information, could be used to identify an individual.

3. **Appropriate Use and Prohibitions.** Subject to the limitations described below, agencies may use web measurement and customization technologies for the purpose of improving Federal services online through conducting measurement and analysis of usage or through customization of the user's experience.

   Under no circumstances may agencies use such technologies:

   a. to track user individual-level activity on the Internet outside of the website or application from which the technology originates;

   b. to share the data obtained through such technologies, without the user's explicit consent, with other departments or agencies;

   c. to cross-reference, without the user's explicit consent, any data gathered from web measurement and customization technologies against PII to determine individual-level online activity;

   d. to collect PII without the user's explicit consent in any fashion; or

   e. for any like usages so designated by OMB.

4. **Usage Tiers.** Below are the defined tiers for authorized use of web measurement and customization technologies.

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[4] OMB Memorandum M-07-16, *Safeguarding Against and Responding to the Breach of Personally Identifiable Information* (May 22, 2007), *available at* http://www.whitehouse.gov/OMB/memoranda/fy2007/m07-16.pdf

a. **Tier 1 – single session.** This tier encompasses any use of single session web measurement and customization technologies.

b. **Tier 2 – multi-session without PII.** This tier encompasses any use of multi-session web measurement and customization technologies when no PII is collected (including when the agency is unable to identify an individual as a result of its use of such technologies).

c. **Tier 3 – multi-session with PII.** This tier encompasses any use of multi-session web measurement and customization technologies when PII is collected (including when the agency is able to identify an individual as a result of its use of such technologies).

5. **Clear Notice and Personal Choice.** Agencies must not use web measurement and customization technologies from which it is not easy for the public to opt-out. Agencies should explain in their Privacy Policy the decision to enable web measurement and customization technologies by default or not, thus requiring users to make an opt-out or opt-in decision. Agencies must provide users who decline to opt-in or decide to opt-out with access to information that is comparable to the information available to users who opt-in or decline to opt-out.

   a. **Agency side opt-out.** Agencies are encouraged and authorized, where appropriate, to use web tracking and measurement technologies in order to remember that a user has opted out of all other uses of such technologies on the relevant domain or application. Such uses are considered Tier 2.

   b. **Client side opt-out.** If agency side opt-out mechanisms are not appropriate or available, instructions on how to enable client side opt-out mechanisms may be used. Client side opt-out mechanisms allow the user to opt out of web measurement and customization technologies by changing the settings of a specific application or program on the user's local computer. For example, users may be able to disable persistent cookies by changing the settings on commonly used web browsers. Agencies should refer to http://www.usa.gov/optout_instructions.shtml, which contains general instructions on how the public can opt out of some of the most commonly used web measurement and customization technologies.

   c. **Tier 3 restrictions.** Agencies employing Tier 3 uses must use opt-in functionality.

6. **Data Safeguarding and Privacy.** All uses of web measurement and customization technologies must comply with existing policies with respect to privacy and data safeguarding standards. If applicable, agencies must cite the appropriate Privacy Impact Assessment (PIA) and/or System of Records Notice (SORN) in their online Privacy Policy.

a. **Comparable information and services.** If agencies are using a website or application hosted on a third-party site using web measurement and customization technologies to which Federal privacy and data safeguarding standards do not apply, they should provide the public with alternatives for acquiring comparable information and services. For example, members of the public should be able to learn about the agency's activities or to communicate with the agency without having to join a third-party social media website. If the third-party service is used to solicit feedback, agencies should provide an alternative government email address where users can also send feedback.

7. **Data Retention Limits and Access Limits.** Agencies may retain data collected from web measurement and customization technologies for only as long as necessary to achieve the specific objective for which it was collected. Moreover, only employees who need to have access to the data should be allowed to do so.

   a. **Retention time.** The time frame for retention of data must be both limited and correlated to a specific objective. If not required by law, policy, or a specific need for the web measurement or customization objective, agencies should limit the retention of such data to one year or less.

   b. **Records disposition schedule.** Information collected from web measurement and customization technologies that is determined to be a Federal Record must comply with Federal Records Act regulations. General Records Schedule 20 (GRS 20) pertains to Electronic Records; specifically, the disposition authority cited in General Record Schedule 20 Item 1C, "Electronic Records" ("*Files/Records Relating to the Creation, Use, and Maintenance of Computer Systems, Applications, or Electronic Records - Electronic files … created to monitor system usage…*") is applicable to information collected from web measurement and customization technologies.[5] Use of GRS 20 is mandatory for those categories of electronic records described in the schedule unless the agencies have requested an alternative disposition authority from the National Archives and Records Administration.

8. **Enforcement.** To the extent feasible, technical enforcement mechanisms should be put in place to implement stated retention times and to limit access to authorized personnel. Where technical enforcement mechanisms are not feasible, policy or contractual enforcement mechanisms must be present.

9. **Verification.** Agencies using web measurement and customization technology must annually review their systems and procedures to demonstrate that they are in compliance with this policy. The results of this review shall be posted on the agency's "/open" page

[5] National Archives and Records Administration, *Electronic Records, General Record Schedule 20* (2010), *available at* http://www.archives.gov/records-mgmt/grs/grs20.html

located at www.[agency].gov/open,[6] with a mechanism for the public to provide feedback on the results.

Attachment 2

Process for Agency Use of Web Measurement and Customization Technologies

1. **Privacy Policy.** Federal agencies using web measurement and customization technologies in a manner subject to Tier 1 or Tier 2 are authorized to use such technologies so long as the agencies (1) are in compliance with this Memorandum and all other relevant policies; (2) provide clear and conspicuous notice in their online Privacy Policy citing the use of such technologies, as specified in Attachment 3; and (3) comply with their internal policies governing the use of such technologies.

2. **Privacy Office Review.** Any proposals by the agency to engage in Tier 3 uses must be reviewed by the Senior Agency Official for Privacy (SAOP).[7]

3. **Notice and Comment.** Following SAOP review, for new proposals of Tier 3 uses or substantive changes to existing uses of such technologies, agencies must:

    a. Solicit comment through their Open Government Webpage at www.[agency].gov/open for a minimum of 30 days. This notice and comment must include the agency's proposal to use such technologies and a description of how they will be used, which should at a minimum address the items in the Privacy Policy as described in Attachment 3; and

    b. Review and consider substantive comments and make changes to their intended use of web measurement and customization technologies where appropriate.

    With written approval from a Chief Information Officer (CIO), agencies are exempt from this requirement if the notice-and-comment process is reasonably likely to result in serious public harm.

4. **Tier 3 Review.** Agencies using web measurement and customization technologies in a manner subject to Tier 3 must have explicit written approval from their CIO. This approval must be cited in the agency's online Privacy Policy. After this approval has been obtained and after notice and comment, as specified in (3) above, has been completed, agencies are authorized to use Tier 3 web measurement and customization technologies.

5. **Previous Authorization for Use of Web Measurement and Customization Technologies.** Agencies that have received approval from their agency head under

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[6] *See* OMB Memorandum, M-10-06, *Open Government Directive* (Dec. 8, 2009) (requiring each agency to create a "/open" webpage), *available at* http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-06.pdf

[7] OMB Memorandum M-05-08, *Designation of Senior Agency Officials for Privacy* (Feb. 11, 2005), *available at* http://www.whitehouse.gov/omb/memoranda/fy2008/m08-05.pdf

previous guidance to use web measurement and customization technologies, or similar technologies, must bring their previous use of such technologies into compliance with this Memorandum within four months of the date of its publication.

6. **Unauthorized Use.** If any agency is found to be using web measurement and customization technologies outside of the process or parameters specified in this Memorandum, the agency must immediately cease use of such technologies and inform OMB of the extent of such unauthorized use. OMB will respond as necessary and appropriate.

Attachment 3

Required Additions to the Agency Privacy Policy when Web Measurement and Customization Technologies are Used

The following items must be added as part of the agency's online Privacy Policy, if they are not present, in any instance when web measurement and customization technologies are used:

i. the purpose of the web measurement and/or customization technology;

ii. the usage Tier, session type, and technology used;

iii. the nature of the information collected;

iv. the purpose and use of the information;

v. whether and to whom the information will be disclosed;

vi. the privacy safeguards applied to the information;

vii. the data retention policy for the information;

viii. whether the technology is enabled by default or not and why;

ix. how to opt-out of the web measurement and/or customization technology;

x. statement that opting-out still permits users to access comparable information or services; and

xi. the identities of all third-party vendors involved in the measurement and customization process.