ADVERTISING SELF-REGULATORY COUNCIL/COUNCIL OF BETTER BUSINESS BUREAUS

ONLINE INTEREST-BASED ADVERTISING ACCOUNTABILITY PROGRAM

FORMAL REVIEW
Case Number: 69-2017

COMPANY: 
American Automobile Association of Northern California, Nevada & Utah

CHALLENGER: 
Online Interest-Based Advertising Accountability Program

DECISION
DATE: January 25, 2017

SYNOPSIS

All companies engaged in interest-based advertising (IBA) must comply with the Digital Advertising Alliance’s (DAA) Self-Regulatory Principles (DAA Principles).¹ Owners or operators of websites who allow third parties to collect or use visitors’ web browsing data for IBA must comply with the first party requirements of section II.B. of the Self-Regulatory Principles for Online Behavioral Advertising (OBA Principles).²

¹ The DAA Principles consist of four documents: the Self-Regulatory Principles for Online Behavioral Advertising (OBA Principles), the Self-Regulatory Principles for Multi-Site Data (MSD Principles), the Application of Self-Regulatory Principles to the Mobile Environment (Mobile Guidance), and the Application of the Self-Regulatory Principles of Transparency and Control to Data Used Across Devices (Cross-Device Guidance) (collectively, the Principles). Available at http://www.aboutads.info/principles.
² OBA Principles Definition F at 10. (“A First Party is the entity that is the owner of the Web site or has Control over the Web site with which the consumer interacts and its Affiliates.”) See also Online Interest-Based Advertising Accountability Program, Compliance Warning, available at http://www.asrcreviews.org/wp-
COMPANY STATUS

The American Automobile Association of Northern California, Nevada & Utah (AAA NCNU) is a non-profit company which provides roadside assistance to consumers in the western part of the United States. It is a member of a federation of organizations commonly known as “AAA” or “Triple A.” The company operates a website located at https://calstate.aaa.com.

INQUIRY

As part of its routine enforcement efforts, the Accountability Program opens investigations based on consumer complaints regarding alleged noncompliance with the DAA Principles. This particular case arises from a consumer complaint claiming that AAA NCNU’s website was not in compliance with the requirements of the Transparency Principle of the OBA Principles.

In response to the consumer complaint, the Accountability Program visited the website (https://calstate.aaa.com/) to review AAA NCNU’s compliance with the Principles. During its visit, the Accountability Program observed data collection by third-party companies known to engage in IBA. When the Accountability Program examined AAA NCNU’s website, we located a link in the footer labeled “Privacy Policy.” When clicked, this link directed us to the top of the webpage containing the company’s privacy policy. In reviewing this policy, we were able to locate a compliant description of third-party data collection for IBA. We also found an opt-out link under the section entitled “Your Choices,” which provided a link to Adobe’s opt-out webpage located at http://www.adobe.com/privacy/analytics.html#optout. However, this website only allowed users to opt out from Adobe’s data collection, so it appeared to the Accountability Program that AAA NCNU did not provide an opt-out mechanism for IBA covering the other third parties we observed collecting on the company’s website. Moreover, the Accountability Program did not locate a statement of adherence to the DAA Principles.

Based on the above review, the Accountability Program sent an inquiry letter to AAA NCNU explaining the compliance issues it had found on the website.

COMPANY’S POSITION

Upon receiving the Accountability Program’s inquiry letter, AAA NCNU immediately committed to coming into compliance with the DAA Principles. After some initial difficulty establishing a timeline for coming into compliance, AAA NCNU worked with the Accountability Program and developed a plan to modify its website to fulfill the requirements of the OBA Principles. Specifically, AAA NCNU added an enhanced notice link labelled “Ad...
Preferences” to its website footer, separate from its privacy policy link and featured on each page of its website where third-party companies collect information for IBA. This link takes users directly to the section of the AAA NCNU website privacy policy that addresses third-party IBA on the website and includes a link to www.aboutads.info/choices. AAA NCNU also added a statement of adherence to the DAA Principles to this section of the privacy policy.

**DECISION**

Because AAA NCNU authorizes third parties to collect data on its website for IBA, the company has duties as a first party under the OBA Principles. This case continues our line of cases dealing with first parties’ responsibilities under the OBA Principles to provide enhanced notice when third parties collect data on their websites or mobile applications.

First party duties are set out in section II.B. of the OBA Principles. According to this section, when first parties allow third parties to collect visitors’ browsing data for use in IBA on their websites, or when they transfer such data to third parties for tailoring ads on non-affiliate websites, they must provide consumers with appropriate notice and an opportunity to exercise choice about whether to participate in IBA. A first party must include a disclosure somewhere on its website that describes the IBA activity occurring there. This disclosure must contain either a link to an industry-developed consumer choice page (such as http://aboutads.info/choices) or a list of every third party conducting IBA activity on the first-party website. Additionally, a first party must state its adherence to the DAA Principles on its website.

Most significantly, the OBA Principles require first parties to provide consumers with real-time “enhanced notice” when third parties are collecting or using their data for IBA on a first party’s website. This real-time indicator must be in the form of a “clear, meaningful, and prominent” link that directs consumers to the first party’s IBA disclosure, described above, and not just to the top of a privacy policy. In addition, this link must be distinct from the company’s privacy

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7 OBA Principles Definition 1 at 11. (“An entity is a Third Party to the extent that it engages in Online Behavioral Advertising on a non-Affiliate’s Web site.”)
8 OBA Principles § II.B. at 13-14.
9 Id.
10 Id. We note that when first parties choose to list third parties individually, the Commentary to the Consumer Control Principle instructs companies that “choice should be available from the Third Party(s) disclosure linked from the page where the Third Party is individually listed.” OBA Principles Commentary at 35.
11 OBA Principles § II.B. at 13-14.
12 Id.
13 OBA Principles Commentary at 32 (“The Principles also state that the Web sites at which Third Parties are collecting data for Online Behavioral Advertising purposes should include a new clear, meaningful, and prominent link on their Web sites when Third Parties do not provide the notice described in II.A.(2)(a). This would link from the Web page where data is collected to specific language in a disclosure. If the disclosure language is in the privacy notice, the link should go directly to the relevant section of the privacy policy where the disclosure is located and not just generally to the privacy policy.”).
policy link and appear on every page where data collection or use for IBA occurs on the first party’s website.

In practice, this first party enhanced notice link can be provided by either the first or the third party. However, both parties are independently responsible for ensuring that enhanced notice is provided. To achieve compliance, companies should work with one another to make sure that this requirement is met. Where third parties are unable to place enhanced notice, the first party must take whatever steps are necessary either to provide the notice itself or to empower third parties to do so. Further, first parties are cautioned that

unless an ad bearing in-ad notice is served on every Web page of a publisher’s site where third parties are collecting data for [… IBA] and that notice directs a consumer to the choice mechanisms of all third parties collecting on that Web page or to an industry-developed choice mechanism, the Transparency Principle’s enhanced notice requirement for collection is not satisfied, and the website operator cannot rely on the third party’s in-ad enhanced notice as provided under Section II.A.2. of the OBA Principles (Third Party Advertisement Notice) (Emphasis in original.).

Enhanced notice provides consumers with two benefits. One, the enhanced notice informs consumers of the fact that third parties are engaged in IBA on a website. Two, by linking to a disclosure that describes the IBA activities occurring on that website and providing a method by which consumers can exercise choice, enhanced notice serves as a bridge to relevant information consumers need at the time of collection or use. By drawing attention to this otherwise invisible background activity in real time, explaining it in plain language, and providing one or more choice mechanisms, enhanced notice helps consumers understand IBA and empowers them to make choices about the use of their data.

Following consultation with the Accountability Program, AAA NCNU added a separate and distinct enhanced notice link on the footer of each page of its website where third parties collect data for IBA. The link, labelled “Ad Preferences” directs users to an IBA disclosure that includes a link to www.aboutads.info/choices and a statement of adherence to the DAA Principles.

CONCLUSION

This decision continues the Accountability Program’s line of cases which explains that first and third parties share the responsibility to provide consumers with enhanced notice. All first parties authorizing third parties to engage in IBA on their websites must provide consumers with meaningful notice and choice in the form of enhanced notice, which replaces the practice of burying information about a company’s data collection practices in lengthy privacy policy pages.

The Accountability Program appreciates consumers’ assistance in identifying companies with potential compliance issues under the DAA Principles. Consumer complaints are an integral part of our compliance monitoring activities. The Accountability Program, will, as part of the exercise of its discretion to determine what inquiries to pursue, determine whether to open an

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14 First Party Enhanced Notice Compliance Warning at 3.
investigation to resolve germane issues raised in a complaint, as well as any other compliance issues we discover during the course of such an inquiry.

Our goal is to bring companies into compliance. The Accountability Program believes that a formal and transparent public decision process is an integral component of successful self-regulation, and we encourage companies to use this process to learn what their responsibilities are. We further encourage companies to contact us confidentially if they have compliance questions or if they need help resolving any outstanding compliance issues, rather than find themselves in receipt of a formal compliance inquiry.

The Accountability Program appreciates AAA NCNU’s cooperation during our inquiry process, and we commend AAA NCNU’s commitment to consumer privacy and industry self-regulation.

COMPANY’S STATEMENT

Throughout this past year, AAA Northern California, Nevada and Utah worked collaboratively with the Online Interest-Based Advertising Accountability Program to improve our website consumer privacy and data collection practices. Our practices are now in alignment with Digital Advertising Alliance’s (DAA) guidelines, and we appreciate the Accountability Program’s guidance during the inquiry process.

DISPOSITION OF DECISION

Practices voluntarily corrected.

Jon M. Brescia  
Director, Adjudications and Technology  
Online Interest-Based Advertising Accountability Program