Companies engaged in interest-based advertising (IBA) must comply with the Digital Advertising Alliance’s (DAA) Self-Regulatory Principles (DAA Principles). Companies that use non-cookie technologies to identify and collect data about users for IBA across non-affiliate websites must comply with the third-party provisions of the OBA Principles. Additionally, any operator of a website that allows third parties to collect visitors’ web browsing data for IBA

1 The DAA Principles are embodied in 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). These documents may be found online at http://www.aboutads.info/principles.

2 Third parties are entities that collect data for IBA from non-affiliate websites or entities that collect data for IBA through non-affiliate mobile apps. See OBA Principles Definition J 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.”).

3 See 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, First Party Enhanced Notice Compliance Warning (CW-01-2013),
must comply with the first-party provisions of the DAA Principles. Specifically, under section II.B. of the OBA Principles, first parties must post a clear, meaningful, and prominent link to a disclosure on any web page where IBA data is collected. This disclosure should explain the IBA activity occurring on the first-party website, provide consumers with a means to opt out of IBA, and state the company’s adherence to the DAA Principles.

COMPANY STATUS

x19 Limited is a company based in the United Kingdom that offers a URL shortening service entitled Adf.ly. Since the company is commonly associated with its Adf.ly service, for purposes of this decision the Accountability Program will refer to the company x19 by the name of its service, Adf.ly, unless stated otherwise.

INQUIRY

This case arises from the Accountability Program’s routine monitoring of websites for compliance with the OBA Principles.

Inquiry into Adf.ly’s practices under the third-party provisions of the OBA Principles

On August 21, 2014, the Accountability Program released a compliance warning regarding non-cookie identification technologies (alternative IDs). These technologies, such as statistical identification techniques, canvas fingerprinting, or font enumeration can be used alongside or instead of traditional HTTP cookies to identify users as they browse the Internet. Because these methods allow for unique identification of devices, they can facilitate the collection and use of consumers’ browsing data for IBA in much the same way as HTTP cookies. The Accountability Program’s compliance warning reminded companies that the DAA Principles are not restricted solely to cookie-powered IBA, and also underscored to industry that the Principles are technology neutral and apply equally to whatever methods are used to facilitate IBA.

After releasing its compliance warning, the Accountability Program began a systematic review of the use of alternative IDs on the Internet. During one survey of websites, the Accountability Program encountered the entity Adf.ly using what appeared to be canvas fingerprinting on non-affiliate websites. For example, we found an Adf.ly JavaScript file titled “fp.rev2.js” active on http://www.breakingbad.altervista.org and http://andik4adfly.blogspot.com/. This file appeared to contain the code that facilitates Adf.ly’s canvas fingerprinting capability.

Adf.ly’s ad serving mechanism appeared to be operated by a webpage owner embedding links to Adf.ly-hosted files within its webpage. These Adf.ly files permitted Adf.ly to display a banner ad


at the top of the owner’s webpage. However, these files also appeared to facilitate canvas fingerprinting.

We noted that in its own words, Adf.ly collects users’ “weblogs, traffic data, and any other communication information” in the regular course of business in order “to improve and offer services you need” and “send information on products or services you may be interested in.” Based on this language, the Accountability Program inferred that Adf.ly may have been utilizing canvas fingerprinting for third-party IBA purposes.

We then visited Adf.ly’s website (http://adf.ly) in an effort to locate Adf.ly’s IBA disclosure as required under § II.A.(1) of the Principles. We located some of the elements of a compliant disclosure, including descriptions of the data Adf.ly collects and some of the uses of these data. However, this language appeared primarily to cover the Adf.ly website, and we could not determine which terms, if any, governed Adf.ly’s collection and use of consumers’ browsing data for IBA as a third party.

Additionally, we could not locate a link to an easy-to-use opt-out method to opt out of IBA, instead finding information about declining cookies using browser settings and instructions for writing to Adf.ly to discuss its privacy policy. Looking further through the Adf.ly website, we still could not find a compliant opt-out mechanism from any IBA activity conducted by Adf.ly. Finally, we could not locate a statement of adherence to the DAA Principles.

Inquiry into Adf.ly’s practices under the first-party provisions of the OBA Principles

In the course of our investigation, the Accountability Program visited the Adf.ly website, where we observed data collection by third parties known to engage in IBA. However, the Accountability Program could not find the required enhanced notice link on any page where this collection occurred. Further, the Accountability Program found only the following disclosure of third-party IBA activity on the Adf.ly website: “Our advertisers may download cookies to which we have no control. If used, these cookies are downloaded by clicking on an advertisement found on our website.” Moreover, there was neither a disclosure of each party collecting data with a link to those parties’ opt outs nor, alternatively, a link to an industry-developed opt out. Finally, as stated above, the Accountability Program did not see a statement of adherence to the Principles on the Adf.ly website.

Following our review, the Accountability Program sent an inquiry letter to Adf.ly detailing these compliance issues and explaining the requirements of the DAA Principles.

ISSUES RAISED

Third-party duties under the OBA Principles

Under section II.A. of the OBA Principles, a third party must provide a clear, meaningful and prominent notice of its IBA data collection and use practices, a statement of adherence to the

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DAA Principles and an easy-to-use mechanism for consumers to exercise choice regarding data collection for IBA.9

**First-party duties under the OBA Principles**

First-party duties under the OBA Principles are set out in section II.B. According to this section, if first parties allow third parties to collect visitors’ browsing data for use in IBA on their websites, or if they transfer such data to third parties for tailoring ads on non-affiliate websites, they must provide consumers with appropriate transparency and an opportunity to exercise control over IBA.10 A first party must include a disclosure somewhere on its website that describes the IBA activity occurring there.11 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.12 Additionally, a first party must state its adherence to the DAA Principles on its website.13

Most significantly, the OBA Principles require first parties to provide consumers with real-time “enhanced notice” when third parties are collecting or using 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, not just to the top of a privacy policy.14 In addition, this link must be distinct from the company’s privacy policy link and must appear on every page where data collection or use for IBA occurs on the first party’s website. The link may be provided directly by the first party or by one of the third parties active on its website.15

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 directly 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 for IBA.

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9 OBA Principles § II.A.(1) at 12.
10 OBA Principles § II.B. at 13–14.
11 Id.
12 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.
14 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.”).
15 First Party Enhanced Notice Compliance Warning at 3.
COMPANY RESPONSE AND ANALYSIS

Following receipt of the Accountability Program’s inquiry letter, Adf.ly responded by immediately conducting a thorough review of its compliance with the DAA Principles.

Adf.ly’s third-party duties under the OBA Principles

Adf.ly first informed the Accountability Program that it did not engage in canvas fingerprinting for IBA purposes and that the company uses this technology for fraud prevention. The company also clarified its business model and informed the Accountability Program that it did not engage in the collection of data for IBA as a third party. The Accountability Program weighed this response against its own monitoring results and all other available information and found no reason to question this assertion. Consequently, Adf.ly’s compliance issue under the third-party provisions of the OBA Principles was resolved.

Adf.ly’s first-party duties under the OBA Principles

Adf.ly worked with the Accountability Program to improve its privacy disclosures to meet the requirements of section II.B. of the OBA Principles. Specifically, Adf.ly added an enhanced notice link entitled “AdChoices,” separate from its privacy policy link, on the footer of each page of its website where third parties collect data for IBA. This link takes users directly to a new section of the Adf.ly website privacy policy that addresses third-party IBA taking place on the company’s website. This disclosure includes a link to the DAA’s WebChoices page and a statement of adherence to the DAA Principles. These changes brought Adf.ly into full compliance with section II.B. of the OBA Principles.

CONCLUSION

We commend Adf.ly for its cooperation with the Accountability Program. The company was responsive to our inquiry and moved quickly to resolve its compliance issues. Self-regulation depends on the type of collaboration and commitment that Adf.ly demonstrated here.

COMPANY’S STATEMENT

Adf.ly did not wish to provide a statement but agreed to comply with the Accountability Program’s decision.

DISPOSITION OF DECISION

Practices voluntarily corrected.

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