

**ADVERTISING SELF-REGULATORY COUNCIL/COUNCIL OF BETTER
BUSINESS BUREAUS**

ONLINE INTEREST-BASED ADVERTISING ACCOUNTABILITY PROGRAM

FORMAL REVIEW
Case Number: 34-2014

COMPANY:)
AOL Advertising, Inc.)
)
)
CHALLENGER:)
Online Interest-Based)
Advertising Accountability Program)
)
)

DECISION

DATE: June 5, 2014

SYNOPSIS

All parties in the ad serving chain must work together to ensure that all OBA ads comply with the Self-Regulatory Principles for Online Behavioral Advertising (OBA Principles).

COMPANY STATUS

AOL Advertising, Inc. (AOL Advertising or the company) is a media company that offers advertisers, agencies and website publishers access to AOL’s online advertising tools. Among other things, AOL Advertising engages in the collection and use of data for OBA as defined in the OBA Principles and assists other companies engaged in interest-based advertising campaigns.¹

¹ “Online Behavioral Advertising means the collection of data from a particular computer or device regarding Web viewing behaviors over time and across non-Affiliate Web sites for the purpose of using such data to predict user preferences or interests to deliver advertising to that computer or device based on the preferences or interests inferred from such Web viewing behaviors.” (OBA Principles at 9-10, Definition G.).

INQUIRY

In the course of its investigation into an interest-based advertising campaign for LifeLock, Inc. (LifeLock), the Accountability Program learned that AOL had been involved in two roles in that campaign: 1) it had been engaged to ensure that the Advertising Option Icon (AdChoices Icon) would be served on all interest-based ads; and 2) it was serving interest-based text ads as part of the LifeLock campaign. This decision focuses only on AOL's role in the delivery of display ads as part of LifeLock's OBA campaign.²

COMPANY'S POSITION

AOL Advertising confirmed that it provides OBA services for LifeLock ad campaigns. Beginning in October 2012, at LifeLock's request, AOL Advertising stated that it began including the AdChoices Icon on LifeLock OBA through its third-party AdChoices Icon providers, Evidon and TRUSTe. AOL Advertising explained that when its clients use a third-party ad server to deliver ads on its advertising network, the company will provide the AdChoices Icon *upon the client's request*, but will not do so without such a request in order to avoid the serving of multiple icons by different parties, a potentially confusing situation for the consumer.

AOL Advertising stated that in February 2013 it learned that LifeLock had switched ad servers to MediaMind Technologies, Inc. (MediaMind) after receiving new LifeLock creative tags from MediaMind. These creative tags were not accompanied by a request for AOL Advertising to include the AdChoices Icon through its third-party AdChoices Icon providers. Therefore, AOL Advertising stated that it assumed MediaMind would be providing the required enhanced notice. Upon learning from LifeLock that MediaMind was not providing the AdChoices Icon on LifeLock OBA, AOL Advertising stated that it quickly engaged its third-party AdChoices Icon providers to include enhanced notice in the new LifeLock creative tags. In conversations with the Accountability Program about this issue, AOL Advertising stated that it would "consider reevaluating" the process by which it handles future ad server migrations by its clients in order to avoid a similar miscommunication.

AOL Advertising argued that it was following an established internal procedure, clearly articulated to its clients, in which clients must request that AOL Advertising provide the AdChoices Icon on interest-based ads when using a third party ad server. The Accountability Program understands that this procedure is designed to prevent "icon collision," a situation in which multiple AdChoices Icons are served on or around an ad.

² While the Accountability Program normally prefers to dispose of all issues involving a company in one decision, AOL Advertising's involvement in the serving of the AdChoices Icon is intertwined with other cases involving the same issue of communication among parties in the ad chain and is therefore being released with those decisions. The issue of interest-based text ads warrants separate treatment. For related cases, see: In re: LifeLock (June 5, 2014), In re: MediaMind (June 5, 2014) and In re: Initiative (June 5, 2014).

DECISION

The Accountability Program agrees with AOL Advertising that redundant AdChoices Icons can confuse consumers, clutter an ad creative or raise the costs of an ad campaign for clients. The Accountability Program also notes AOL's strong and early support for this self-regulatory initiative. However, the Accountability Program believes that it is more important that all companies that touch an OBA campaign erect compliance control measures at the points in a campaign where a company's action, or inaction, may adversely affect *compliance*.

Miscommunications are far more likely to occur without a protocol in place to determine who is responsible for compliance with the OBA Principles, when such transfers take place during the course of an OBA campaign.

AOL Advertising stated that it would "consider reevaluating" the process by which it handles future ad server migrations by its clients in order to avoid a similar miscommunication. While we understand that AOL does not bear primary responsibility for ensuring that the AdChoices Icon is served when the party that engages AOL moves to a different ad server, our decisions have consistently stated that all parties in the ad serving chain must work together to ensure that compliance is achieved. Communication among the parties is the key way to achieve this. A party should not simply "assume" that it is no longer responsible when it has been engaged to provide notice and choice, but should verify that responsibility has been transferred. We therefore recommend to AOL and all other companies that may find themselves in a similar situation that, going forward, they put in place protocols to handle such possible misunderstandings.

CONCLUSION

The advertising ecosystem is to be commended for committing to developing and complying with a cross-industry self-regulatory program in the online environment, with its technical complexities, lightning-fast transactions, rapidly shifting scenarios and constant innovation. Indeed, regulation is generally far less successful in such an environment. But for any accountability system to function effectively in this tightly interwoven world, all parties must commit to communication and shared responsibility. While the Accountability Program is pleased to see the OBA Principles implemented so widely, it is our job to spur industry to do even better when something goes wrong.

COMPANY'S STATEMENT

As a founding member of the Network Advertising Initiative and a leading participant in the Self-Regulatory Program for Online Behavioral Advertising, AOL Advertising appreciates the efforts of the Accountability Program to ensure compliance with the Self-Regulatory Principles for Online Behavioral Advertising. AOL Advertising shares the Accountability Program's goal of ensuring strong privacy protections through effective self-regulation.

AOL Advertising commends the Accountability Program's decision that "AOL does not bear primary responsibility for ensuring that the AdChoices Icon is served when the party that engages AOL moves to a different ad server." AOL Advertising's compliance control measures include the AdChoices Icon on ads served by AOL Advertising, as well as enhanced notice provided by AOL's enhanced notice icon partners, Evidon and TRUSTe, upon an advertiser's request, where ads are served by third parties. When an advertiser switches ad servers, the advertiser must submit new creative tags to AOL Advertising. If there is no request for the AdChoices Icon when the advertiser submits the new creative tags, AOL Advertising's protocols do not automatically include the Icon, as doing so could result in a situation where multiple AdChoices Icons are served in or around an ad.

AOL Advertising has a longstanding commitment to implementing and maintaining responsible online advertising practices consistent with legal and self-regulatory requirements, and we agree that all parties in the online advertising ecosystem must work together to protect users' privacy. We are working to improve our protocols to ensure that when advertisers switch ad servers, they also inform AOL Advertising whether enhanced notice should be provided by AOL Advertising's enhanced notice icon partners.

DISPOSITION OF DECISION

Recommendations implemented.



Genie Barton
Vice President and Director
Online Interest-Based Advertising Accountability Program and Mobile Marketing Initiatives