

data for online behavioral advertising (OBA) purposes as defined in the cross-industry Self-Regulatory Principles for Online Behavioral Advertising (OBA Principles).¹

OBA PRACTICES AT ISSUE

Two key pillars of the OBA Principles are Transparency and Consumer Control.

Transparency

The Transparency Principle requires that companies ensure that consumers have clear and meaningful notice of OBA data collection and use practices.² The Transparency practice at issue is whether the company was fully and clearly disclosing all the ways in which it uses a consumer's data for OBA.

Consumer Control

Under the Consumer Control Principle, a third party must provide the consumer with an easy-to-use mechanism that allows the consumer to exercise choice regarding the collection and use of data from his or her device for OBA purposes.³ The Consumer Control practice at issue is whether the company was providing consumers with choice as required under the OBA Principles.

BASES OF INQUIRY

Transparency

The Online Interest-Based Advertising Accountability Program (the Accountability Program) sent BlueCava a formal letter of inquiry with questions regarding the company's practice of identifying and tracking users online across multiple devices, a practice BlueCava refers to as "householding."⁴ The BlueCava Web site states, "Using BlueCava's device identification, multiple devices can be associated to a user or household, or even a business."⁵ At the time of the inquiry, the Accountability Program found no language in the BlueCava privacy policy clearly explaining to consumers that their online activity can be tracked across devices. The Accountability Program believed that if BlueCava was using its device identification technology to extend its OBA

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.)

² OBA Principles at 12, Principle II.

³ OBA Principles at 14, Principle III.

⁴ <http://www.bluecava.com/who-we-serve/advertising/mobile/>

⁵ <http://www.bluecava.com/what-we-do/identify/>

capabilities to multiple devices, BlueCava should clearly and fully explain these practices to consumers in order to achieve full transparency.

Further, BlueCava's opt-out Web page stated, "BlueCava allows you to opt out of being tracked as your device moves from one website to another."⁶ BlueCava was not clear as to whether the opt out would be honored across devices. While the quoted statement appeared to imply that BlueCava would honor a consumer's opt-out request only on the device that was used to exercise choice, the BlueCava Web site stated that BlueCava is able to attribute multiple devices to a consumer. This created a potential ambiguity regarding the scope of the opt out that BlueCava provided.

Consumer Control

The Accountability Program's inquiry also sought an explanation from BlueCava for the behavior of its two opt-out mechanisms which are available respectively through the BlueCava Web site and the Digital Advertising Alliance (DAA) Web site.⁷ The Accountability Program tested each opt-out mechanism using five Internet browsers (i.e., Chrome, Firefox, Internet Explorer, Opera and Safari). In each test, both BlueCava opt-out mechanisms appeared to be functioning as expected. The opt-out mechanism offered on the BlueCava opt-out Web page did not return an opt-out cookie to the browser, but the Accountability Program observed the following data being passed through an HTTP POST request to a BlueCava server: "trackingoptout=true." Once the opt-out request was processed, the Accountability Program also observed a JSON (JavaScript Object Notation) object returned to the browser that included the following name/value pair: "TrackingOptOut":true. These transfers of data between BlueCava servers and the browser gave the appearance that the opt-out request had been successfully processed on the "back-end" (i.e., server-side) using a method that employs its device identification technology.⁸ Our tests of the BlueCava opt-out mechanism on the Consumer Choice Page of the DAA Web site also appeared to be functioning properly. This opt-out process delivered to the browser an opt-out cookie called "daa-opt-out," with an expiration date of five years out.

However, when the Accountability Program investigated whether the cookie-based opt out on the DAA Web site could be recognized and effectuated by the server-side mechanism on the BlueCava Web site, it appeared that this was not the case. In multiple tests using five Internet browsers (i.e., Chrome, Firefox, Internet Explorer, Opera and

⁶ <http://www.bluecava.com/preferences/>

⁷ The opt-out mechanism on the BlueCava Web site is located at www.bluecava.com/preferences. The mechanism on the DAA Web site is available at www.aboutads.info/choices/.

⁸ As BlueCava explains: "BlueCava has developed device identification technology that enables us to identify devices on the Internet. In order to do this, we collect non-personal information about your computer and Web browser when you visit one of our partner Websites. The type of information we collect includes the IP address, browser version, time zone, the fonts installed on your computer, browser plug-ins and various other properties of your computer/browser. We do not collect browsing history (aka history sniffing) as part of this process. The collected information is put into a 'snapshot' and is sent to our servers. The servers use the information to create a unique Device ID for every device."

<http://www.bluecava.com/privacy-policy/>

Safari), the Accountability Program successfully completed the opt-out process on the DAA’s Consumer Choice page and then navigated to the BlueCava opt-out Web page. Upon arriving at the BlueCava opt-out Web page, BlueCava “scanned” our device to determine if an opt-out request had already been successfully implemented. In each test, the Accountability Program observed that BlueCava’s “daa-opt-out” cookie—previously set by the opt-out mechanism on the DAA Web site—was included in the cookie header of HTTP requests to BlueCava servers on its opt-out Web page. However, the BlueCava Web site did not recognize the Accountability Program’s device as having completed an opt-out process. We also observed a JSON object returned to the browser once our opt-out status was returned with the name/value pair, “TrackingOptOut”: false.

The results of these tests caused the Accountability Program to question whether the problem was more than just one of communication between the opt-out mechanisms—a technical incapacity for the different technologies to communicate. Given BlueCava’s reliance on its device identification technology for engaging in data collection and use for OBA purposes, we were concerned that the cookie-based opt out available on the DAA Web site was not being honored.

COMPANY’S POSITION

Transparency

BlueCava agreed with the Accountability Program on the need to more clearly disclose its ability to attribute multiple devices to a consumer. The company agreed to revise the language in its privacy policy to this effect. BlueCava also explained that the company’s opt-out mechanisms currently opt a consumer out of data collection and use for OBA purposes only for the device with which choice was exercised. The company explained, “Because this method is the standard method used by other opt-out methods, such as cookie-based approaches, BlueCava elected to use the same method.” However, after considering the Accountability Program’s rationale for suggesting that BlueCava provide, if technologically feasible, a multi-device opt out, BlueCava stated that it would work to provide this option as part of its product development efforts.

Consumer Control

In response to the Accountability Program’s questions regarding its two opt-out mechanisms, the company explained that implementation of the cookie-based opt-out mechanism on the DAA’s Web site was completed in two phases. BlueCava stated that in the first phase, rolled out in January 2012, BlueCava supported the two types of opt outs (i.e., cookie-based and server-side) as separate mechanisms. BlueCava explained that during this phase, “if a consumer exercised choice in one mechanism it was not recognized or effectuated in the other.” BlueCava further explained that during this phase both the presence of the opt-out cookie or completion of the server-side opt out prevented BlueCava from sending a consumer’s data to their marketing partners. The BlueCava

platform recognized and honored both opt outs, so whichever opt-out mechanism a consumer used, it would be fully effectuated.

The second phase, rolled out on February 27, 2012, remedied the disconnect between the two opt-out mechanisms. BlueCava stated that it had added new functionality to its opt-out mechanisms that allows these mechanisms now to be synchronized instantaneously. The Accountability Program subsequently tested and confirmed that the opt-out mechanisms are indeed now synchronized.

DECISION

The credibility of self-regulation depends on compliance with the industry standards contained in the OBA Principles by all companies in the industry that engage in OBA. Companies must be vigilant in their efforts to ensure that their OBA disclosures and choice mechanisms are clear, complete and easily understood by consumers.

Transparency

The Transparency Principle requires a third party to provide a clear description of the types of data it collects for OBA, including PII, and the uses of those data for OBA purposes, including the transfer of data to non-affiliates.⁹ The Accountability Program finds that the OBA Principles require BlueCava to be more forthcoming about their ability to track a user's online activity across devices. The Accountability Program believes that the dominant consumer understanding of OBA today is the collection and use of Web viewing behaviors *across Web sites for a particular browser or device* for the purpose of delivering personalized advertising. The additional layer of tracking offered by device identification technologies, like that employed by BlueCava, warrants clear and meaningful disclosure to consumers in much the same way that the use of Local Shared Objects ("Flash Cookies") does. Therefore, the Accountability Program recommended that the language in the privacy policy be amended to make this clear to consumers. The Accountability Program recommended to BlueCava that the company also make clear to consumers that choice must be exercised on each device separately, as completing the opt-out process on one device will not opt the consumer out of OBA collection and use on other devices attributed to that user or household.

The Accountability Program commends BlueCava for implementing the Accountability Program's recommendations to clarify that its device fingerprinting technology has the capability to track a user/household across multiple devices and that the opt out it provides covers only the device that the consumer is currently using.

The Accountability Program believes BlueCava should strive to honor an opt out across all devices attributed to a particular user or household. To be sure, the OBA Principles as written do not contemplate a scenario in which user data may be collected and linked together across devices. However, the Transparency and Consumer Control Principles

⁹ OBA Principles at 12, Principles II.A.(1)(a)-(b).

developed by industry strive to create parity between the OBA data collection and use practices of a company and the scope of the consumer choice mechanism provided. Therefore, the Accountability Program encourages companies, as a best practice, to ensure that the opt-out choice provided is coextensive with the data collected and used for OBA purposes by means of a new technological capability. Furthering the spirit of the OBA Principles, as well as the letter, builds the trust that the OBA Principles seek to cultivate between consumers and businesses. The Accountability Program is pleased that BlueCava agrees and will begin exploring ways to effectuate a consumer's opt out across all devices attributed to that consumer.

BlueCava's pledge to provide consumers with this multi-device opt out using its proprietary approach to the collection of data for OBA is further evidence of industry's commitment to providing consumers with an easy-to-use opt-out mechanism. The DAA Consumer Choice Page already gives consumers a way to opt out of OBA collection and use from all the major advertising networks. The DAA is working on developing a browser-based solution that will recognize and honor a consumer's choice, consistent with the DAA OBA Principles. We commend BlueCava's decision to follow the spirit of the OBA Principles and voluntarily pioneer a multi-device opt out using its technological capabilities.

Consumer Control

The Accountability Program finds that BlueCava was in compliance with the Consumer Control Principle at all times during the implementation of its opt-out mechanism on the DAA Web site. While it is true that the two available opt-out mechanisms used different underlying technologies and were not synchronized, BlueCava has sufficiently assured the Accountability Program that its technology platform supported and honored opt outs completed using either mechanism.

CONCLUSION

The mission of the Accountability Program is to build consumer trust online by ensuring that companies engaged in OBA provide transparency and give consumers control of how their data are used for interest-based advertising. The Accountability Program's monitoring and complaint processes are designed to identify areas of possible non-compliance and to work with companies to rectify non-compliance. BlueCava has implemented the Accountability Program's recommendations to modify the language in its privacy policy to better explain the scope of its OBA practices and opt out. BlueCava's dual opt-out mechanisms were consistently functional during BlueCava's initial stage of implementation and these opt-out mechanisms are now fully synchronized.

As technologies continue to evolve and raise new compliance issues, the Accountability Program will respond to ensure that the OBA Principles are preserved and can extend to meet these novel situations. Companies' commitment to applying the OBA Principles to their new technologies will ensure that the OBA Principles continue to evolve along with

technological advances. Technological innovation provides new challenges, but also can lead to innovative solutions that benefit consumers.

COMPANY'S STATEMENT

BlueCava applauds the efforts of BBB and the Online Interest-Based Advertising Accountability Program and we are happy to say that we have already implemented the BBB's recommended changes to our privacy policy and opt-out pages. We agree with the BBB's thoughts about using our "householding" feature to allow consumers to Opt-Out across all of their devices, and we are reviewing ways that this can be implemented as part of our product roadmap.

DISPOSITION OF DECISION

The company has accepted and implemented the Accountability Program's recommendations.

A handwritten signature in black ink, appearing to read "Genie Barton". The signature is fluid and cursive, with a long horizontal stroke at the end.

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