

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

ONLINE INTEREST-BASED ADVERTISING ACCOUNTABILITY PROGRAM

FORMAL REVIEW
Case Number: 10-2012

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

DECISION

DATE: May 30, 2012

SYNOPSIS

The Consumer Control Principle requires that companies provide the consumer with an easy-to-use mechanism to exercise choice regarding the collection and use of data for OBA purposes and ensure that its technology is able to honor that choice once made.

COMPANY STATUS

DataXu, Inc. (DataXu or the company) is a demand-side platform that provides clients with the ability to buy ad inventory across multiple ad networks, exchanges and supply-side platforms. DataXu engages in the collection and use of data for online behavioral advertising (OBA)

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

OBA PRACTICE AT ISSUE

The Consumer Control Principle requires that a third party provide consumers with choice regarding data collection and use for OBA purposes. To satisfy this requirement, the third party must offer an easy-to-use choice mechanism that allows the consumer to opt out of such data collection and use. Once a consumer has exercised choice, the third party may not continue to collect and use data for OBA purposes. The practice at issue is whether the company correctly implemented its opt-out mechanism to honor a consumer's choice.

BASIS OF INQUIRY

The Accountability Program performed tests on the DataXu opt-out mechanism available on its Web site. Testing was done with five Internet browsers: Chrome (17.0.963), Firefox (10.0.2), Internet Explorer (9), Opera (11.61) and Safari (5.1.2). Each test followed the same process. First, the Accountability Program navigated to the DataXu Web site homepage at <http://www.dataxu.com> where a cookie called "wfivefivec," was set to the browser. This cookie was set with a specified Domain attribute of ".w55c.net" and an expiration date of two years out. The cookie contained a random string that could be used to uniquely identify a consumer across the Web.

The Accountability Program then navigated to the DataXu privacy policy located at <http://www.dataxu.com/privcay/platform>, where DataXu's opt-out mechanism is available. Upon clicking the link "[Click here to opt-out](#)," a cookie called "optout" was set to the browser by a DataXu server located at <http://w55c.net>. This cookie was set with an expiration date of 10 years out; however, the Domain attribute of the cookie was not specified.

The Accountability Program then navigated to Web sites where DataXu was engaged in data collection. When using the Chrome, Firefox, Opera or Safari browsers, the Accountability Program observed that the DataXu "optout" cookie was not included in the Cookie header of HTTP requests to subdomains of .w55c.net. However, the "wfivefivec" cookie was consistently included in these requests. The only HTTP request for which the "optout" cookie was included was for the domain that originally set the cookie, <http://w55c.net>. By comparison, when using the Internet Explorer browser, every HTTP request made to a subdomain of .w55c.net included both the "optout" and "wfivefivec" cookies in the Cookie header.

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).

The Accountability Program thought it likely that data collection and use for OBA purposes was enabled by HTTP requests to DataXu servers at subdomains of `.w55c.net`. The Accountability Program was concerned that the absence of the “optout” cookie in these HTTP requests would result in a consumer’s choice not being honored. The Accountability Program suspected that the problem was due to the lack of a specified Domain attribute when the “optout” cookie was set from the DataXu Web site.²

It should be noted that the Accountability Program also tested the DataXu opt-out mechanism offered on the “Consumer Choice” Web page of the Digital Advertising Alliance (DAA) Web site.³ This mechanism set an opt-out cookie with a Domain attribute of `.w55c.net`. This cookie was consistently included in the Cookie header of HTTP requests to subdomains of `.w55c.net` when using all five browsers.

COMPANY’S POSITION

In response to the Accountability Program’s inquiry, DataXu confirmed that subdomains of `.w55c.net` enable the collection and use of data for OBA purposes. DataXu also acknowledged that the consumer choice mechanism available on its Web site failed to set the Domain attribute of the “optout” cookie it delivered to the consumer’s browser which caused the “optout” cookie not to be included in HTTP requests to these subdomains. The company immediately corrected the problem. DataXu tested its fix with five Internet browsers (i.e., Chrome, Firefox, Internet Explorer, Opera and Safari). Further, DataXu explained that it has put in place new testing procedures to ensure its opt-out mechanisms will remain fully functional.

DECISION

Empowering consumers to decide how their data will be collected and used by companies in the OBA ecosystem is key to building the trust that is central to the success of the industry. In grounding the OBA Principles in consumer control, the industry decided that respecting a consumer’s choice about their data was non-negotiable. Companies engaged in OBA must fulfill their obligation to provide consumers with consistently functioning and compliant choice mechanisms. The Accountability Program finds that DataXu was not fully compliant with the Consumer Control Principle as the opt-out mechanism available through the DataXu Web site was rendered non-functional by the absence of a Domain attribute. As a result, consumers who exercised choice through the DataXu Web site when using the Chrome, Firefox, Opera or Safari browsers, were not opted out of data collection and use for OBA purposes.

At the time of this decision, DataXu had already voluntarily corrected the problem with the opt-out cookie set through its company Web site. The Accountability Program has since tested the

² Barth, A., “HTTP State Management Mechanism,” IETF, RFC 6265, April 2011. [Online]. Available: <http://tools.ietf.org/rfc/rfc6265.txt> (“The Domain attribute specifies those hosts to which the cookie will be sent... If the server omits the Domain attribute, the user agent will return the cookie only to the origin server.”) (RFC 6265 at page 10).

³ The DAA Consumer Choice Page is located at: <http://aboutads.info/choices>.

corrected opt-out mechanism with the same five Internet browsers and found the “optout” cookie included a Domain attribute of “.w55c.net” and is included in HTTP requests to subdomains of .w55c.net. The Accountability Program is pleased with both the prompt attention DataXu gave this issue and the extra steps it has taken to ensure a lapse in its choice mechanisms’ functionality or compliance will not recur. The Accountability Program also notes that DataXu participates fully in all aspects of the Self-Regulatory Program for Online Behavioral Advertising and takes its compliance responsibilities very seriously.

CONCLUSION

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. The Accountability Program’s monitoring and complaint processes are designed to identify areas of possible non-compliance, to make companies aware of potential non-compliance and to work with companies to expeditiously rectify non-compliance. DataXu has remedied the issue relating to its consumer control mechanism and the practice at issue has been resolved.

COMPANY’S STATEMENT

DataXu takes privacy very seriously. The company makes a concerted effort to safeguard consumer notice and choice regarding anonymous data collected for ad measurement and targeting purposes.

DataXu is an active member of the Network Advertising Initiative (NAI) and the company complies with the NAI’s Self-Regulatory Principles. The company also fully supports the Online Behavioral Advertising (OBA) program, and the review process of the Better Business Bureau.

The issue that the OBA Accountability Program identified was isolated strictly to DataXu’s corporate website. The “opt-out” link improperly set a cookie that was only readable by certain sub-domains, resulting in a few consumers receiving DataXu ads after they left the company’s corporate website. The issue was not related in any way to DataXu’s DX3 platform that manages advertising for clients.

Upon notification, DataXu immediately corrected the problem to ensure full OBA compliance. Further, DataXu expanded its quality assurance procedures to ensure that the opt-out mechanisms will remain fully functional and in compliance moving forward.

DataXu believes self-regulation is essential to the long-term growth of an industry as dynamic as online advertising. We are pleased that the OBA Program is working and that the Better Business Bureau has openly recognized and praised our prompt response to this issue.

DISPOSITION OF DECISION

Practice voluntarily corrected.

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

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