

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

ONLINE INTEREST-BASED ADVERTISING ACCOUNTABILITY PROGRAM

FORMAL REVIEW

Case Number: 08-2012

COMPANY:)
OxaMedia Corporation)
)
)
CHALLENGER:)
Online Interest-Based)
Advertising Accountability Program)
)
)

DECISION

DATE: May 30, 2012

SYNOPSIS

Under the Transparency Principle, a company is required to give clear, meaningful and prominent notice of its collection and use of data for OBA purposes. This includes delivery of enhanced notice (e.g., Advertising Option Icon) on all interest-based advertising and posting a statement of adherence to the OBA Principles on the company Web site.

Under the Consumer Control Principle, a company is required to provide an opt-out mechanism with a minimum expiration date of five years from the date on which a consumer exercises choice.

COMPANY STATUS

OxaMedia Corporation (OxaMedia or the company) is an advertising network and ad server. OxaMedia 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 PRACTICES AT ISSUE

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

Transparency

Under the Transparency Principle, a third party that engages in OBA should provide two kinds of notice for consumers. First, the third party should give “clear, meaningful, and prominent” notice of its OBA practices in a disclosure on its own Web site.² This Web site disclosure of its OBA practices should describe the types of data the company collects and how it uses and shares these data.³ This notice should also include an easy-to-use mechanism through which consumers may exercise control over their data.⁴ Finally, this notice must clearly state that the third party’s OBA practices adhere to the OBA Principles.⁵ The statement of adherence can take the form of “wording or the logo/icon” of the Digital Advertising Alliance (DAA) program.⁶ As such, this statement is often provided as a Web page footer on the company’s Web site using either the DAA’s Advertising Option Icon or one of the three approved wordings: “Ad Choices,” “Interest Based Ads,” or “Why did I get this ad?”⁷

The second kind of notice required by the Transparency Principle is enhanced notice, or real-time notice, that is reached by means of a “clear, meaningful and prominent link” (i.e., the “enhanced notice link”) *from the Web page on which the third party is collecting and/or using data for OBA purposes*.⁸ This enhanced notice link, which can be provided by either the third party or Web site operator, directs the consumer to the third party’s Web site OBA disclosure described above. If the third party provides the enhanced notice link, it may place the link: 1) in or around the advertisement it delivers on the operator’s Web site; or, 2) in coordination with the Web site operator, elsewhere on the operator’s Web page. If the Web site operator is providing the enhanced notice link, that link should take the consumer to its own Web site disclosure of third-party OBA activity, which should then either: 1) link to the DAA Consumer Choice Page where the third

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.A.(1).

³ OBA Principles at 12, Principle II.A.(1)(a)-(b).

⁴ OBA Principles at 12, Principle II.A.(1)(c).

⁵ OBA Principles at 12, Principle II.A.(1)(d).

⁶ OBA Principles Commentary at 30.

⁷ Information regarding the DAA Advertising Option Icon or approved wording can be found at <http://www.aboutads.info/participants/icon/>.

⁸ OBA Principles at 13, Principle II.A.(2)(a).

party's opt-out mechanism is available;⁹ or 2) individually list all third parties collecting or using data on the operator's Web site and provide a link to each third party's Web site OBA disclosure and opt-out mechanism.¹⁰

Consumer Control

Under the Consumer Control Principle, it is the obligation of the third party to enable a consumer to exercise choice "with respect to the collection and use of data for Online Behavioral Advertising purposes or the transfer of such data to a non-Affiliate for such purpose."¹¹ The consumer choice mechanism must be available through a link that is "clear, prominent and conveniently located."¹² The mechanism must also be "easy to use."¹³

BASES OF INQUIRY

With respect to Transparency, the Online Interest-Based Advertising Accountability Program (Accountability Program) visited the OxaMedia Web site and did not find a statement of adherence to the OBA Principles, as required under OBA Principle II.A.(1)(d).

Further, the Accountability Program questioned whether OxaMedia was providing enhanced notice when it served interest-based ads to consumers. OxaMedia was not listed on the industry-developed Web site at www.aboutads.info, nor was it a licensee of the DAA Advertising Option Icon.

With respect to Consumer Control, the Accountability Program tested the OxaMedia consumer opt-out mechanism across five browsers (i.e., Chrome, Firefox, Internet Explorer, Opera and Safari). In each case, the opt-out mechanism returned a cookie called "OxaMedia_OPT_OUT," which was set to expire in one year.

The OBA Principles are built on consensus standards: "The cross-industry Self-Regulatory Program for Online Behavioral Advertising was developed by leading industry associations to apply consumer-friendly standards to online behavioral advertising across the Internet."¹⁴ The industry standard for the duration of an opt-out cookie is five years from the date of the opt-out request.¹⁵

⁹ The DAA Consumer Choice Page is located at www.aboutads.info/choices.

¹⁰ OBA Principles at 13, Principle II.A.(2).

¹¹ OBA Principles at 14, Principle III.A.

¹² OBA Principles at 5.

¹³ OBA Principles at 12.

¹⁴ OBA Principles at 1.

¹⁵ As the Aboutads.info Web site explains to consumers who wish to exercise choice, "Opt out cookies storing such preferences that are placed by companies participating in the Program have a minimum five-year lifespan, and remain in effect for the user's browser unless these opt out cookies are deleted (as can happen if users deletes all of their cookies using browser tools)." *See also* Accountability Program case decisions at <http://www.bbb.org/us/article/accountability-program-achieves-voluntary-compliance-with->

COMPANY'S POSITION

Upon receipt of the Accountability Program's inquiry, the company stated that it was unaware of the requirements of the OBA Principles but expressed its willingness to come into compliance. The company immediately modified its Web site to carry the required notice of adherence to the OBA Principles and changed the duration of its opt-out cookie to five years. The company also took prompt steps to license the use of the DAA Advertising Option Icon and agreed to provide enhanced notice on all interest-based ads as required by the OBA Principles.

DECISION

All companies have the obligation to understand and comply with the OBA Principles. Unlike several other self-regulatory programs which cover members of an association or those who pledge to honor a set of self-regulatory rules, the OBA Principles are designed to apply throughout the online advertising ecosystem. The Accountability Program therefore monitors and seeks compliance from all companies engaged in OBA.

Upon notification by the Accountability Program, the company took immediate steps to achieve compliance. It modified its opt-out mechanism so that its opt-out cookie remains active for five years. Subsequent testing by the Accountability Program confirmed the company made the required change to the opt-out cookie's expiration date. Further, the company modified its Web site to carry the required notice of adherence to the OBA Principles. Finally, the company licensed the DAA Advertising Option Icon.

The Accountability Program finds that OxaMedia has implemented the necessary changes to come into compliance with the OBA Principles.

CONCLUSION

The Accountability Program's goal is to ensure that companies engaged in OBA comply with the OBA Principles. The Accountability Program's monitoring and complaint processes are designed to identify areas of possible non-compliance and to work with companies to come into compliance. OxaMedia has responded responsibly and with admirable speed to the Accountability Program's recommendations.

[online-behavioral-advertising-self-regulation-30529](#) (FMX, Martini Media, PredictAd, Reedge and Veruta/MyBuys). See also [Chitika, Inc.](#), FTC Docket No. C-4324 (June 7, 2011) (requiring Chitika to provide a five-year opt out).

COMPANY'S STATEMENT

Oxamedia has adopted [the Accountability Program's] observations regarding the deficiencies within our web sites. [Oxamedia] has corrected the one year opt out period and extended it to five (5) years. Also, [Oxamedia] has licensed the Digital Advertising Alliance's icon, which will appear on all our websites and agreed to be bound by the DAA's "Self-Regulatory Principals [sic] for Online Behavioral Advertising."

DISPOSITION OF DECISION

The company has complied with all recommendations and has taken the necessary steps to achieve full compliance.

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 and Mobile Marketing
Initiatives