

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

OBA PRACTICES AT ISSUE

The Transparency Principle is designed to give consumers knowledge about OBA data collection and use practices that take place invisibly behind the scenes. Transparency requires clear and easy-to-understand notice of two types. 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 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

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).

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

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

The transparency practices at issue are whether Turn was providing appropriate Web site notice and whether it was taking appropriate responsibility for enhanced notice of third-party data collection practices on interest-based advertisements that it was serving.

The Consumer Control Principle requires that a third party provide consumers with the opportunity to opt out of the company's data collection and use for OBA purposes.¹¹ The practice at issue is whether Turn was honoring the consumer's opt out despite continuing to use a unique ID cookie and sharing that unique ID with third parties through cookie syncing.

BASES OF INQUIRY

Transparency

The Accountability Program was concerned that although Turn was listed on the DAA Consumer Choice Page, the Turn Web site did not contain the requisite statement of adherence to the OBA Principles.

Also, at the time of the Accountability Program inquiry, Turn's Web site privacy policy stated:

Turn does not have access to, or control of, the cookies and/or other data collection tools that may be placed on any advertisement by a third-party, including those of our Business Partners, and this Privacy Policy does not cover the use of cookies and/or other data collection tools by any third party.¹²

The Accountability Program asked Turn to explain the rationale for this statement and its inclusion of Turn's business partners in the disclaimer.

Consumer Control

The Accountability Program tested Turn's opt-out mechanism with five Internet browsers: Internet Explorer, Firefox, Chrome, Safari and Opera. In each case, the opt-out mechanism returned a cookie called "optOut," with an expiration date over 68 years out.

Following receipt of the Turn opt-out cookie, the Accountability Program visited Web sites where Turn appeared to engage in data collection for OBA purposes. In multiple tests, a Turn browser cookie called "uid," with an expiration date of slightly less than six months out, was set to the browser. This cookie, which contained a unique string that could be used to track a user across the Web, was delivered to the browser despite the presence of the Turn opt-out cookie.

The Accountability Program also observed Turn passing the contents of the "uid" cookie to third party companies known to engage in OBA to facilitate a practice commonly referred to as cookie syncing. The Accountability Program had no evidence that Turn continued to collect data for OBA and serve interest-based ads to a consumer that completed Turn's opt-out process. Indeed,

¹¹ OBA Principles at 14, Principle III.A.

¹² www.turn.com/privacy

there are other business reasons for unique ID cookies and cookie syncing,¹³ but it can be difficult to determine what functions these may serve in a particular context. Because unique ID cookies and cookie syncing are used extensively for OBA, the Accountability Program sought evidence from Turn demonstrating that Turn was honoring a consumer's opt-out choice while continuing to identify that user through a unique ID cookie and syncing this cookie with other entities in the OBA ecosystem.

COMPANY'S POSITION

Transparency

Turn acknowledged that it had omitted its statement of adherence and links to the DAA Consumer Choice Page. Turn immediately updated its privacy policy to include a statement of adherence to the OBA Principles and to provide a link to the DAA Consumer Choice Page in each section of its Web site in which consumers are provided with an opt-out mechanism.

In response to the Accountability Program's concerns regarding Turn's Web site privacy policy disclaimer regarding third party data collection tools, Turn explained that the disclaimer addressed the possibility that "third parties in the chain... may have been serving tracking pixels unbeknownst to Turn. While the practice of inserting tracking pixels to collect OBA has been curbed within the industry for the most part, ...[Turn] can't rule out that it may be going on to this day." Turn also explained that it does in fact contractually require its business partners to adhere to the OBA Principles, which includes the provision of enhanced notice and consumer choice. Turn agreed that its privacy policy did not convey this fact. Turn revised the language of its disclaimer.

Consumer Control

Regarding the "uid" browser cookie, Turn confirmed that this cookie was used to uniquely identify consumers for both OBA and non-OBA purposes and was synced with corresponding cookies of other entities such as ad exchanges. Turn stated that while the "uid" cookie and the cookie-syncing process in which it engages enable Turn to continue to identify consumers even after they have opted out—useful, they explain, for analytics and ad reporting purposes—Turn does not continue to collect their data through web beacons or serve them interest-based ads.

DECISION

We are pleased that Turn has worked with the Accountability Program diligently and thoughtfully to implement our recommendations. Turn showed that it was committed to understanding and fully implementing the requirements of the OBA Principles. Turn was willing to take all recommended steps to make sure that its own practices and those of parties with whom it does business follow these standards.

¹³ See <http://techatftc.wordpress.com/2012/05/08/syncing-and-the-ftcs-myspace-settlement/> ("It's important to recognize that syncing of pseudonyms is not always a privacy problem nor a violation of the law.")

Transparency

Regarding Transparency, Turn has updated its privacy policy to include a statement of adherence to the OBA Principles. Turn has also provided links to the DAA Consumer Choice Page as required under the Transparency Principle.

The Accountability Program understands the rationale behind Turn's third-party disclaimer. To be sure, Turn is acting reasonably in explaining to the consumer that it cannot provide the enhanced notice and choice required under the Principles with respect to a cookie or other tracking technology which a third party has placed in an advertisement without Turn's knowledge or consent. It is, of course, the responsibility of the party placing data collection tools in the advertisements to see that enhanced notice and choice are provided. Any party that is engaged in OBA must provide consumers notice of their OBA practices and choice regarding their OBA collection and use, either themselves or through an arrangement with a party in a position to provide that notice and choice. If third parties are engaging in practices whereby they are inserting data collection tools into an ad served by Turn, then these third parties have the responsibility to ensure that notice and consumer control are provided either themselves or through Turn.

However, the disclaimer as drafted begged the question of whether Turn can reasonably be expected to provide transparency with respect to its business partners' placement of data collection tools on ads delivered by Turn. Turn is in best position to facilitate transparency and choice for third parties that include data collection tools in advertisements served by Turn. In order for Turn to be completely transparent about the interest-based ads that it serves to consumers, the Accountability Program believes that Turn should, where possible, ensure that the consumer receives enhanced notice about these third party data collection tools and the opportunity to opt out of this collection. The Accountability Program understands that Turn may not be aware or have control of data collection tools employed by third parties at various points in the ad serving chain. Where it has no knowledge or relationship with a third party, Turn may not reasonably be able to ensure that such parties are following the OBA Principles. However, we believe Turn has the ability to work with its business partners so that appropriate enhanced notice and consumer choice are provided on interest-based advertisements served by Turn.

We are pleased that Turn is requiring its business partners to comply with the OBA Principles. This practice not only protects the responsible party but also sets a high bar and helps to ensure that all members of the advertising ecosystem follow the OBA Principles.

Consumer Control

The Accountability Program understands that unique ID cookies and the cookie synching process have a number of "operational uses" that are widely known.¹⁴ However, when the company enforces the opt out on the back-end and out of view, it is often very difficult to confirm directly that no data are being collected and shared with third parties for OBA purposes after opt out. A violation of this type after opt out can be revealed by an examination of enough ads to establish a pattern of suspicious behavior, or by asking the company directly to demonstrate its compliance

¹⁴ For a list of these operational uses see <http://www.w3.org/TR/tracking-compliance/>.

with the OBA Principles. As such, the Accountability Program may continue to ask about a company's use of unique ID cookies and cookie syncing as part of its formal inquiries.

Turn sufficiently demonstrated to the Accountability Program that unique identifiers that persist after opt out are not used for OBA. Turn has also explained how it continues to honor a consumer's opt-out choice when engaging in cookie syncing with third parties.

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 and to work with companies to expeditiously rectify non-compliance. We are pleased that Turn has diligently undertaken to fully comply with the OBA Principles and that it has made arrangements with its business partners to do so as well.

COMPANY'S STATEMENT

Turn would like to thank the Online Interest-Based Advertising Accountability Program for their diligence in helping to ensure that the Digital Advertising Alliance Code is ubiquitous throughout the business ecosystem. Turn appreciates the opportunity to explain our practices to the Accountability Program, and to obtain their insight into how best to communicate our practices to consumers and other interested parties on a going forward basis.

Regarding the Transparency issue raised by the Accountability Program: For several years, Turn has taken steps to list our affiliations with trade associations and privacy standards bodies on our privacy policy. And in fact, we have referenced our affiliation with the DAA on our website (<http://www.turn.com/service-partners>) for some time now. However, as we mentioned, due to human error during a recent update to our policy and our website, we inadvertently listed the "NAI" twice in our written Privacy Policy when it should have read "NAI and DAA". When the Accountability Program brought the error to our attention, we fixed it promptly. So, again... we thank you.

Moreover, Turn appreciates the feedback regarding privacy policy language pursuant to our relationships with business partners and third parties. And we hope that the changes we made to those sections of our privacy policy help clarify our practices going forward.

We look forward to continuing to work with the Accountability Program to help strengthen industry self-regulation on matters of privacy and interest-based advertising.

DISPOSITION OF DECISION

Practices 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