



## INQUIRY

The Online Interest-Based Advertising Accountability Program (Accountability Program) opened an inquiry into Scottrade's OBA practices after observing data collection on the Scottrade website by third-party companies known to engage in OBA without the requisite transparency and choice required by the OBA Principles.<sup>2</sup> The Accountability Program conducted a thorough review of the Scottrade website. None of the Web pages where this third-party data collection occurred appeared to contain the required link taking the consumer to a place on the site that explained that Scottrade allows third parties to collect data for OBA on its website and provided consumers with choice about participation in interest-based advertising. In fact, there was no notice of this specific practice anywhere on the Scottrade website, although Scottrade did discuss its own use of cookies in its privacy policy. Moreover, the Accountability Program did not find a statement of adherence to the OBA Principles on Scottrade's website, as required under the Transparency Principle.<sup>3</sup>

## COMPANY'S POSITION

In its response to the Accountability Program's letter of inquiry, Scottrade made changes to conform its privacy policy to the requirements of the OBA Principles and provided several exhibits to the Accountability Program demonstrating these changes. The amended privacy policy explains that third-party data collection may be occurring on the Scottrade website for use in OBA and provides a link to the Digital Advertising Alliance's (DAA) Consumer Choice Page.<sup>4</sup> Scottrade also added enhanced notice using the DAA-approved phrase "Interest Based Ads" to the footer of every page of its website where data collection for OBA occurs. This notice also serves as its statement of adherence to the OBA Principles as it uses a DAA-approved wording.<sup>5</sup>

## DECISION

First parties who allow data collection or use for OBA on their websites, or who transfer information to third parties for OBA, must meet the following obligations under the OBA Principles.<sup>6</sup> First, a first party must place on its website a disclosure that explains the OBA activity that may be occurring on its site. This disclosure may be a part of a larger privacy policy or may be a stand-alone part of the website. Second, this disclosure must either link to an

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<sup>2</sup>See OBA Transparency Principle II.B. ("When data is collected from or used on a Web site for Online Behavioral Advertising purposes by Third Parties, the operator of the Web site should include a clear, meaningful, and prominent link on the Web page where data is collected or used for such purposes that links to a disclosure that either points to the industry-developed Web site(s) or individually lists such Third Parties.").

<sup>3</sup>*Id.* ("A Web site should also indicate adherence to these Principles in its notice.").

<sup>4</sup>The DAA Consumer Choice Page is located at [www.aboutads.info/choices](http://www.aboutads.info/choices). Scottrade also provided a link to the Network Advertising Initiative's (NAI) opt-out page, where consumers can opt out of interest-based ads from members of NAI.

<sup>5</sup>The DAA-approved phrases that may be used to indicate adherence to the OBA Principles are "Ad Choices," "Interest Based Ads," and "Why did I get this ad?" (<http://www.aboutads.info/participants/icon/>).

<sup>6</sup>See OBA Transparency Principle II.B.

industry-developed consumer choice page or individually list all of the third parties conducting OBA activity on the first-party website. When first parties choose to list third parties individually, the Commentary to the Consumer Control Principle instructs companies that “choice should be available from the Third Party(s) disclosure linked from the page where the Third Party is individually listed.”<sup>7</sup> Third, a first party must ensure that an enhanced notice link is present on every page of its website where data collection or use for OBA occurs.<sup>8</sup> In addition to alerting consumers to the presence of OBA activity, this link should further direct visitors to the website’s OBA disclosure. Fourth, a first-party that permits data collection for OBA on its website must state its adherence to the OBA Principles on the website either by an enhanced notice link that uses either the AdChoices Icon or DAA-approved wording, or by directly stating so in its OBA disclosure.

In the instant case, Scottrade did not meet its obligations as a first party under the OBA Principles. Scottrade’s website did not include an OBA disclosure or provide either 1) a link to an industry-developed consumer choice page or 2) a list of all third parties engaged in OBA on the website. Scottrade did not place enhanced notice that links to this OBA disclosure on pages where third-party OBA data collection was occurring. Nor did Scottrade state that it adhered to the OBA Principles. To its credit, Scottrade’s privacy policy did include a section entitled “How We Use Cookies,” which mentioned third-party cookies, but the section did not indicate that these third-party cookies being used on the Scottrade website might be OBA-related or that consumers could opt out of the data collection such OBA cookies may enable.

We commend Scottrade for moving quickly to remedy the compliance issues raised by the Accountability Program by promptly coming into compliance with those requirements that could be implemented easily and also by both setting and meeting reasonable deadlines for implementing changes that required more complex technical work. Scottrade’s website now features an enhanced notice link on every page where third parties are collecting data for OBA that both satisfies its statement of adherence obligation and leads to an explanation of the third-party OBA data collection practices occurring on its site. Scottrade now ensures that consumers know what data is being collected and, thanks to the inclusion of links to industry-developed consumer choice pages in its OBA disclosure, how to exercise control over whether to participate interest-based advertising.

## CONCLUSION

First parties’ compliance with the Transparency and Consumer Control Principles is essential to the overall functioning of the self-regulatory program envisioned by the OBA Principles. Consumers should be afforded notice and opportunity for choice on all first-party sites that allow

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<sup>7</sup> OBA Principles Commentary, Page 35.

<sup>8</sup> The Accountability Program recently issued a Compliance Warning to the industry clarifying that first parties share with third parties the responsibility to provide enhanced notice to the consumer when third parties are collecting data for OBA on their website. Those first parties which are otherwise in complete compliance with the Principles have been given until January 1, 2014 to implement this single aspect of the OBA Principles. See “*First Party Enhanced Notice Compliance Warning*” available at <http://www.bbb.org/us/Storage/113/Documents/First-Party-Compliance-Warning-20131008.pdf>. The instant case is distinguishable, given that Scottrade had not implemented any of the first-party requirements for notice and choice.

third-party data collection for OBA or that transfer first-party data for use in interest-based ads on non-affiliated websites. Allowing third-party data collection or use for OBA provides independent grounds for triggering a first party's obligations to provide notice and choice. This ensures that consumers have insight about the OBA practices they cannot readily observe on the websites they visit.

## **COMPANY'S STATEMENT**

Scottrade, Inc. is a strong proponent of the principles of transparency and serves as an advocate for its millions of clients. Scottrade works continuously to ensure that its communications with customers and transparency concerning data sharing leads the financial services industry. In this instance, Scottrade was in the process of updating its disclosures concerning privacy and online behavioral advertising policies when it was contacted by the Advertising Self-Regulatory Council ("Council") and was able to update these disclosures while engaging with the Council. Scottrade is pleased to have been able to work collaboratively with the Council during its review and is proud to support the OBA Principles.

## **DISPOSITION OF DECISION**

Practices voluntarily corrected.



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