

Party Compliance Warning), its first formal industry advisory on compliance with the Self-Regulatory Principles for Online Behavioral Advertising (OBA Principles).² The First Party Compliance Warning focused on resolving confusion among first parties (e.g. website publishers or operators) about their compliance responsibilities for the provision of real-time (“enhanced”) notice when they allow third parties to collect data for interest-based advertising. While it appeared that the majority of website publishers understood their obligations to clearly explain their interest-based advertising practices on their website, to state their adherence to the OBA Principles, and to provide a way for consumers to opt-out of third-party collection and use of their data for OBA, a significant minority of website publishers, including those who were otherwise compliant with the OBA Principles, did not appear to understand their obligation to provide enhanced notice on each page where they allow third parties to collect data for online behavioral advertising (OBA) and to link that real-time notice to their explanation of their third-party OBA practices where they also provide a link to a compliant opt out.

In light of the apparent misunderstanding among some otherwise compliant website publishers about their responsibility to provide enhanced notice of third-party data collection, the First Party Compliance Warning declared a period of relaxed enforcement of the enhanced notice requirement for website publishers that were otherwise in compliance with the OBA Principles. This grace period was designed to allow website publishers to learn about their obligations, review their websites and, as necessary, make modifications to come into compliance with the enhanced notice requirement of the OBA Principles. This period ran from October 14, 2013 to January 1, 2014.

The First Party Compliance Warning was followed on November 20, 2013, by three cases concerning websites which were not in compliance with any of the OBA Principles’ first-party transparency and control requirements.³ The Accountability Program set out the compliance issues it had found on each website and provided compliance recommendations which each website publisher implemented to bring its website into full compliance. Taken together, the First Party Compliance Warning and the three first-party cases provided detailed explanations of first parties’ obligations under the OBA Principles; parsed the guidance to the relevant OBA Principles contained in the corresponding sections of the authoritative Commentary; and explained the technical and policy rationales for requiring website publishers to share responsibility with third parties for providing consumers with enhanced notice of third-party OBA data collection on the website publishers’ sites.

In early January 2014, the Accountability Program began a systematic review of websites for first-party compliance. Starting with high-traffic publishers, the Accountability Program looked for enhanced notice links on first-party sites. While many websites either were compliant with the OBA Principles or lacked third-party tracking for OBA, some popular sites had not come into compliance during the grace period afforded them despite the presence of third-party data

² The First Party Compliance Warning can be found at <http://www.asrcreviews.org/wp-content/uploads/2013/10/Accountability-Program-First-Party-Enhanced-Notice-Compliance-Warning-CW-01-2013.pdf>.

³ [In re: BMW of North America, LLC](#) (Nov. 2013), [In re: Scottrade, Inc.](#) (Nov. 2013), and [In re: Volkswagen of America, Inc.](#) (Nov. 2013). We note that because Volkswagen had already taken steps to come into compliance before the Accountability Program’s inquiry letter, the case was closed via an administrative disposition.

collectors on their sites. BuzzFeed's website was one of the sites discovered during this review. Keeping its promise of vigorous enforcement after the expiry of the grace period, the Accountability Program initiated the review that resulted in this decision.

During its review, the Accountability Program visited the BuzzFeed website (www.buzzfeed.com). It noted that, in accord with the OBA Principles, the BuzzFeed privacy policy contained an online behavioral advertising (OBA) disclosure in a section headed "Information Related to Advertising and the Use of Web Beacons."

However, during its review, the Accountability Program observed data collection by third-party companies known to engage in OBA but did not find the required enhanced notice link on all pages where this data collection took place. Additionally, the Accountability Program did not find either a list of third parties engaged in OBA data collection and links to their opt outs or a link to an industry-developed consumer choice mechanism, as required under the OBA Principles. Finally, the Accountability Program did not find a statement of adherence to the Digital Advertising Alliance's (DAA) Principles on the BuzzFeed website.

COMPANY'S POSITION

BuzzFeed responded to the Accountability Program's inquiry by conducting an internal audit of its OBA practices. During the course of defining and implementing the specific changes it would make to its website to come into compliance, BuzzFeed repeatedly consulted with the Accountability Program to ensure that its chosen remedies were sufficient to render it compliant with the OBA Principles. After finalizing its proposed changes, BuzzFeed quickly reached full compliance by adding an enhanced notice link, "AdChoices," in its footer block that takes users directly to its OBA disclosure within its privacy policy.⁴ BuzzFeed also added a link to a DAA-approved compliance provider's opt-out mechanism in its OBA disclosure.

DECISION

The OBA Principles cover three types of entities: first parties, third parties, and service providers, but these labels are fluid and depend on the function that a particular company may be engaged in at a specific time. For example, whenever a company operates a website, it is a first party, irrespective of whether it normally functions as a third party collecting data for OBA and/or serving ads on behalf of companies on various websites.

In the instant case, the transparency and control requirements for first parties (website publishers or operators) are at issue. First-party duties are described in Transparency Principle II.B. A first party must provide a disclosure of third-party OBA activity occurring on its website, either in its Privacy Policy or in some other location on its website, and this disclosure must either link to an

⁴ If the first party's enhanced notice link uses the Digital Advertising Alliance's Advertising Option Icon and one of the three DAA-approved wordings ("Interest Based Ads," "Why did I get this ad?" or "Ad Choices"), then the link may serve independently as a site's statement of adherence to the OBA Principles. *See*: OBA Principles Commentary at 34.

industry-developed consumer choice page or list every third party conducting OBA activity on the website. If the first party chooses to provide a list of third parties instead of linking to an industry-developed consumer choice page, the Commentary to the OBA Principles explains that “choice should be available from the Third Party(s) disclosure linked from the page where the Third Party is individually listed.”⁵ Additionally, the disclosure should include language affirmatively stating the website's adherence to the OBA Principles (“statement of adherence”).

In addition to an OBA disclosure on the website, the Transparency Principle requires first parties to ensure that real-time notice, including a “clear, meaningful and prominent link” (i.e., the “enhanced notice link”), is present on each web page on which a third party is collecting data for OBA purposes or serving an advertisement based on a user’s interests as inferred from a user’s web browsing activities.⁶ This enhanced notice link can be provided by either the website operator or a third party. Generally, primary responsibility for enhanced notice rests with the entity in the best position to provide it. With respect to enhanced notice on interest-based ads, the third party has greater ability to provide enhanced notice than the first party because it has greater control over the frame in which the ad is inserted and which loads separately from the publisher-controlled portions of the website. With respect to third-party collection on a particular website, the opposite is true because the website publisher has control over the content on its website outside the space reserved for insertion of the ad.

Enhanced notice is the most innovative of the Transparency Principle’s requirements. Beyond merely alerting users that *some* third-party data collection is occurring—a significant benefit in its own right—the enhanced notice link puts consumers one click from communication about OBA precisely when they may be curious about why they received the ad they are looking at or what information is being collected on the web page they are visiting. As beneficial as disclosures and choice mechanisms may be, their value is diminished when they are tucked in an obscure corner of a website’s privacy policy, where they need to be hunted down by website visitors. Enhanced notice, in contrast, gives the consumer a searchlight that points directly to this information. By providing enhanced notice, websites empower their users to learn and make informed decisions about their online privacy, amplifying the benefits of privacy policy disclosures and opt-out mechanisms.

If the first party is providing the enhanced notice link, that link should take the consumer to its own website disclosure of third-party OBA activity. The enhanced notice link, typically provided in the footer or a sidebar of a web page, must be separate from the link to the website’s privacy policy. The enhanced notice link should go directly to the place in the privacy policy where the disclosure is located (not just generally to the privacy policy) or to another location on the website where that explanation is provided.

When a third party provides the enhanced notice link, generally through use of the DAA’s Advertising Option Icon (AdChoices Icon), it may place the link either in or around the advertisement it delivers on the operator’s website or, in coordination with the website operator, elsewhere on the operator’s web page. However, as noted in our Compliance Warning:

⁵ OBA Principles Commentary at 35.

⁶ Transparency Principle II.B.

unless an ad bearing in-ad notice is served on **every** Web page of a publisher's site where third parties are collecting data for OBA and that notice directs a consumer to the choice mechanisms of all third parties collecting on that Web page or to an industry-developed choice mechanism, the Transparency Principle's **enhanced notice** requirement for **collection** is not satisfied, and the website operator cannot rely on the third party's in-ad enhanced notice as provided under Section II.A.2. of the OBA Principles (*Third Party Advertisement Notice*). (Emphasis in original.)⁷

This excerpt clearly states that the requirement for first parties to provide enhanced notice on *every* page where a third party is collecting information for use in OBA is a separate obligation from the requirement to provide enhanced notice in or around all interest-based ads. While the presence of an interest-based ad with enhanced notice that links to an industry-developed consumer choice page satisfies the enhanced notice obligation for third-party data collection *on the particular page where it appears*, it does not excuse the absence of enhanced notice on any other page where third parties are collecting data.

Here, BuzzFeed failed to provide enhance notice despite allowing third-party data collection for OBA on its website. While BuzzFeed did disclose that third-party OBA activity may be occurring on its website, it did not place an enhanced notice link on every page where third-party data collection for OBA occurred, nor did it fulfil the balance of the Transparency Principle's requirements, discussed above.

Once notified of its duties under the OBA Principles, BuzzFeed undertook a thorough review, identified how it would come into compliance, proposed its solutions to the Accountability Program, and implemented them. By moving quickly to remedy the issues raised by the Accountability Program's inquiry, BuzzFeed demonstrated respect for the privacy of users of its website and underscored the effectiveness of self-regulation as a means for protecting consumers' interests online.

CONCLUSION

The Accountability Program has turned the spotlight on first-party enhanced notice because of its benefits to consumers. The enhanced notice link is a powerful tool that simultaneously calls consumers' attention to otherwise invisible third-party OBA activity and directs them precisely to the relevant information and control mechanisms they need to exercise choice about the use of their data for interest-based advertising. Therefore, website publishers and operators, as the parties most directly able to effectuate this enhanced notice link when third parties are collecting data on their websites, must fulfil their compliance obligations to provide notice and choice as required under the cross-industry OBA Principles.

This case stands with previous first-party cases and the First Party Compliance Warning as a clear instruction to owners and operators of websites who allow third-party OBA activity on those sites to ensure that consumers are provided with the level of transparency and control

⁷ First Party Compliance Warning at 3.

required by the OBA Principles. There should be no mistake about the Accountability Program's resolve to continue its enforcement efforts to ensure that first parties are complying with their obligations under the OBA Principles. With that in mind, the Accountability Program urges website publishers and operators to undertake a review of their websites to ensure that they comply fully with the OBA Principles.

COMPANY'S STATEMENT

BuzzFeed is a strong supporter of the OBA principles, and is committed to transparency in the company's privacy practices. We appreciate the opportunity to work collaboratively with the Advertising Self-Regulatory Council to continue to update BuzzFeed's privacy disclosures to meet current industry standards.

DISPOSITION OF DECISION

Practices voluntarily corrected.



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