Online Interest-Based Advertising Accountability Program

COMPLIANCE WARNING

SUBJECT: Interest-Based Native Advertising Must Comply with the Digital Advertising Alliance’s Self-Regulatory Principles

December 9, 2014

The Online Interest-Based Advertising (IBA) Accountability Program (Accountability Program) today issues a compliance warning regarding the use of IBA in native advertising. Native advertisements personalized for consumers based on their prior browsing across websites must comply with the Digital Advertising Alliance’s (DAA) Self-Regulatory Principles for Online Behavioral Advertising (OBA Principles).¹ Companies involved in interest-based native ads are responsible for meeting all the requirements of the OBA Principles, just as they would be with respect to any other IBA. In particular, companies must deliver transparency and control, the cornerstones of the OBA Principles, to consumers.

This compliance warning is part of the Accountability Program’s ongoing mission to build consumer trust by ensuring that companies engaged in IBA comply with the cross-industry self-regulatory standards established by the OBA Principles. The Accountability Program is administered by the Council of Better Business Bureaus under the policy direction of the Advertising Self-Regulatory Council, the leading experts in advertising self-regulation.

With respect to transparency, third parties² must ensure that real-time “enhanced notice” is provided in connection with every interest-based ad, including native ads.³ Enhanced notice delivers transparency about IBA when consumers are actually viewing the ad, rather than requiring them to search through a privacy policy. Third parties should ensure that an enhanced notice link is served either in or around the native ad in question or, with the cooperation of the website operator, elsewhere on the webpage where the ad appears. The link should take the consumer to a place where he or she

¹ OBA Principles, Definition G. “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.” The OBA Principles are available at http://www.aboutads.info/obaprinciples
² OBA Principles, Definition J. “An entity is a Third Party to the extent that it engages in Online Behavioral Advertising on a non-Affiliate’s Web site.”
³ OBA Principles §§ II.A.(2).(a) or ((b) in conjunction with first-party compliance with II.B.).
can learn more about IBA and exercise choice through an easy-to-use opt-out mechanism.⁴ We note that companies often use the familiar Advertising Option Icon (AdChoices Icon) ▶️ to alert consumers to the presence of an interest-based native ad and the location of an IBA opt out. A phrase that is clear to a consumer may also be used to provide an enhanced notice link on a native ad.

In addition, third parties engaged in interest-based native advertising across the web must also ensure that they place on their own websites a “clear, meaningful, and prominent” disclosure that describes their data collection and use practices (including the transfer of data to other entities) for IBA.⁵ The notice must also clearly describe their opt-out mechanism and state that the company adheres to the DAA’s Principles.⁶

We also remind website publishers who allow third parties to collect data for IBA on their websites that they must provide notice of that collection if it is to be used for native advertising on other non-affiliate websites, in the same way as required by any other third-party collection for IBA.⁷

With respect to consumer control, all companies must ensure that consumers have a functional, easy-to-use way of opting out of the collection, use, or transfer of their data for IBA purposes.⁸ Any opt-out cookies set by a company’s choice mechanism must be set to expire no sooner than five years after the date they are set.⁹ Companies must honor consumers’ choices not to participate in IBA.

Enforcement of this compliance warning will begin January 1, 2015. Enforcement will be coextensive with the DAA Principles which the Accountability Program enforces at that time. We note that enforcement of the DAA’s Mobile Guidance¹⁰ is slated to begin by mid-2015. At that time,

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⁴ OBA Principles § III.A.
⁵ OBA Principles § II.A.(1)(a)-(b).
⁶ OBA Principles § II.A.(1)(c)-(d).
⁸ OBA Principles § III.A. Note that “[s]uch choice should be available from the notice described in II.A.(2)(a); from the industry-developed Web page(s) as set forth in II.A.2.(b)(i); or from the Third Party’s disclosure linked to from the page where the Third Party is individually listed as set forth in II.A.2.(b)(ii).”
⁹ See e.g., In re: Reedge (No. 03-2011, Nov. 8 2011) at 3.
any interest-based native advertising in the mobile environment will be covered on the same terms as any other mobile IBA.

We suggest that companies refer to the Interactive Advertising Bureau’s (IAB) white paper on native advertising for definitions of native advertising. We refer companies to the Federal Trade Commission’s updated .com Disclosures for general guidance about online disclosures. Finally, we note that our sister self-regulatory program, the National Advertising Division (NAD), has published several cases\(^\text{11}\) providing guidance specifically on native advertising notices.