BBB NATIONAL PROGRAMS, INC.

DIGITAL ADVERTISING ACCOUNTABILITY PROGRAM

COMPANY:
GoodRx, Inc.

CHALLENGER:
Digital Advertising Accountability Program

FORMAL REVIEW
Case Number: 115-2020

DECISION

DATE: July 8, 2020

SYNOPSIS

The Digital Advertising Alliance’s (DAA) Self-Regulatory Principles (DAA Principles)¹ cover entities engaged in interest-based advertising (IBA) across websites or mobile applications (apps). Any operator of a website (a first party)² that allows unaffiliated entities (third parties)³ to collect visitors’ web browsing data for IBA must provide visitors with notice and enhanced notice as prescribed in the Self-Regulatory Principles for Online Behavioral Advertising (OBA

¹ The DAA Principles include a suite of four documents related to interest-based advertising which may be read in full at http://www.aboutads.info/principles. The relevant documents are titled: Self-Regulatory Principles for Online Behavioral Advertising (OBA Principles), Self-Regulatory Principles for Multi-Site Data (MSD Principles), Application of Self-Regulatory Principles to the Mobile Environment (Mobile Guidance), and Application of the Self-Regulatory Principles of Transparency and Control to Data Used Across Devices (Cross-Device Guidance). The DAA also maintains a set of self-regulatory principles dedicated to political advertising, the Application of the Self-Regulatory Principles of Transparency & Accountability to Political Advertising, which are unrelated to this decision.
² The DAA Principles assign responsibilities to an entity based on its role in a particular situation. Thus, an entity can be a first party, third party, or service provider depending on the function it is performing. Website operators are first parties. OBA Principles Definition F at 10 (“A First Party is the entity that is the owner of the Web site or has Control over the Web site with which the consumer interacts and its Affiliates.”). See also Online Interest-Based Advertising Accountability Program, First Party Enhanced Notice Compliance Warning CW-01-2013, http://www.asrcreviews.org/wp-content/uploads/2013/10/Accountability-Program-First-Party-Enhanced-Notice-Compliance-Warning-CW-01-2013.pdf. In the context of mobile applications, the first party is defined as the entity that owns or exercises control over the app, or its affiliates. Mobile app publishers are first parties under the Mobile Guidance. See Mobile Guidance Definition G at 7.
³ In the desktop context, third parties are entities that collect data for IBA from non-affiliate websites. See OBA Principles Definition J at 11 (“An entity is a Third Party to the extent that it engages in Online Behavioral Advertising on a non-Affiliate’s Web site.”). In the mobile app context, the term “third party” refers to entities that collect data for IBA through non-affiliate mobile apps, Mobile Guidance Definition N at 12 (“An entity is a Third Party to the extent that it collects Cross-App or Precise Location Data from or through a non-Affiliate’s application, or collects Personal Directory Data from a device.”).
Principles). Mobile app publishers that authorize third parties to collect cross-app data through their apps for use in cross-app IBA must provide users with notice and enhanced notice, as described in the Application of Self-Regulatory Principles to the Mobile Environment (Mobile Guidance). DAA codes of conduct are independently enforced by the Digital Advertising Accountability Program (Accountability Program), a division of BBB National Programs, Inc.5

COMPANY STATUS

GoodRx, Inc. (GoodRx), is a California-based startup specializing in tracking prescription drug prices. The company’s website, www.GoodRx.com, and the GoodRx app, which is available in both Android and iOS versions, enable users to compare prescription drug prices across a number of pharmacies and locations.6 The GoodRx app has approximately 5,000,000 downloads in the Google Play Store.

INQUIRY

This case arises from the Accountability Program’s regular monitoring activities. The Accountability Program visited the website of GoodRx where we observed a number of third-party entities known to engage in interest-based advertising (IBA) collecting data about our visit. This prompted a full examination of GoodRx’s compliance with the DAA Principles as a first party website owner and app publisher.

Below, we describe our examination in detail.

I. Desktop data collection compliance review

As a result of the third-party data collection we identified on the GoodRx website, the Accountability Program first examined the GoodRx website for an enhanced notice link, which is required by the first-party provisions of the OBA Principles.7 We located a link labelled “Privacy Policy” in the website’s footer. When clicked, this link directed us to the top of GoodRx’s privacy policy document. However, this footer link did not comply with the enhanced notice link requirements because it did not take users directly to a compliant disclosure about IBA activity occurring on the GoodRx site. We could find no other link that could constitute enhanced notice under the OBA Principles.

The Accountability Program then examined the GoodRx website for any notice that described IBA activity occurring on the website. We first clicked on a link in the GoodRx website footer

4 Mobile Guidance Definition D at 5 (“Cross-App Data is data collected from a particular device regarding application use over time and across non-Affiliate applications. Cross-App Data does not include Precise Location Data or Personal Directory Data.”).
7 The Self-Regulatory Principles for Online Behavioral Advertising (OBA Principles) were the first set of industry-wide principles adopted by the DAA. For more information, please see http://www.aboutads.info/obaprinicples.
labelled “Privacy Policy.” This link directed us to a page containing a document entitled “Privacy Policy” and a menu that contained a series of links describing GoodRx’s data collection practices. In the privacy policy document, we found a description of third-party IBA activity taking place on the GoodRx site and a link to the industry-developed Network Advertising Initiative’s (NAI) landing page. However, we were unable to locate a statement of adherence to the DAA Principles.

While we observed that the privacy policy for GoodRx contained a description of third-party IBA occurring on the website and a link to an industry-developed page, we could not find an enhanced notice link that directed users to this disclosure, raising an issue under the OBA Principles.

II. Mobile app data collection compliance review

The Accountability Program moved on to examine GoodRx’s eponymous mobile app for compliance with the DAA Principles. The Accountability Program downloaded and installed the GoodRx app on our test devices. Using our testing equipment, we were able to capture and inspect data packets being transmitted from the application. Through analysis of network traffic generated from the app, we observed at least one third party9 collecting cross-app10 data in the form of unique identifiers, likely for IBA.11

The collection of this data prompted us to review the app for compliance with the Mobile Guidance’s first party provisions. The Accountability Program was unable to find an enhanced notice link in any of the times or locations required by the Mobile Guidance. While the GoodRx app provided a link to the top of a privacy policy document12 within its listings on the Apple App and Google Play stores, this type of link does not function as an enhanced notice link. This is because it does not take users directly13 to a disclosure that describes the third-party IBA activity

---

9 Mobile Guidance Definition N at 12 (“An entity is a Third Party to the extent that it collects Cross-App Data or Precise Location Data from or through a non-Affiliate’s application or collects Personal Directory Data from a device.”).
10 Mobile Guidance Definition D at 5 (“Cross-App Data is data collected from a particular device regarding application use over time and across non-Affiliate applications.”).
13 Under certain circumstances, the Mobile Guidance allows companies to link to a privacy policy in an app store listing and then provide a jump link to the IBA section further down the privacy policy page. This option exists in recognition of the tightly controlled nature of links in mobile app repositories. Mobile Guidance Commentary to § III.A.(3) at 18 (allowing a jump link near the top of a privacy policy to direct consumers to an IBA disclosure where app stores do not allow active enhanced notice links).
GoodRx allows through its app.\textsuperscript{14} We could find no other link that would serve as enhanced notice under the Mobile Guidance.\textsuperscript{15}

Following our review, the Accountability Program sent an inquiry letter to GoodRx detailing these issues and explaining the requirements of the DAA Principles.

**ISSUES RAISED**

I. Enhanced notice of website data collection for IBA

First-party duties under the OBA Principles are set out in section II.B. According to this section, if first parties allow third parties to collect visitors’ browsing data for use in IBA on their websites, or if they transfer such data to third parties for tailoring ads on non-affiliate websites, they must provide consumers with appropriate transparency and an opportunity to exercise control over IBA.\textsuperscript{16} A first party must include a disclosure somewhere on its website that describes the IBA activity occurring there.\textsuperscript{17} This disclosure must contain either a link to an industry-developed consumer choice page (such as \url{http://aboutads.info/choices}) or a list of every third party conducting IBA activity on the first-party website.\textsuperscript{18} Additionally, a first party must state its adherence to the DAA Principles on its website.\textsuperscript{19}

Most significantly, the OBA Principles require first parties to provide consumers with real-time “enhanced notice” when third parties are collecting or using data for IBA on a first party’s website. This real-time indicator must be in the form of a “clear, meaningful, and prominent” link that directs consumers to the first party’s IBA disclosure, not merely to the top of a privacy policy.\textsuperscript{20} In addition, this link must be distinct from the company’s privacy policy link and must appear on every page where data collection or use for IBA occurs on the first party’s website.\textsuperscript{21}

\textsuperscript{14} *Mobile Guidance* § III.A.(3) at 17.

\textsuperscript{15} The Accountability Program noted that during its review of GoodRx’s privacy policy we located a description of third-party IBA taking place through GoodRx’s mobile app and a link to the industry-developed NAI page, which includes a link to the NAI’s Consumer Opt-Out Page. GoodRx, *Privacy Policy* (Apr. 25, 2018), https://support.goodrx.com/hc/en-us/articles/115005228506-Privacy-Policy [perma: https://perma.cc/NN2G-PTDZ].

\textsuperscript{16} *OBA Principles* § II.B. at 13–14.

\textsuperscript{17} Id.

\textsuperscript{18} Id. We note that 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.” *OBA Principles* Commentary at 35.


\textsuperscript{20} *OBA Principles* Commentary at 32 (“The Principles also state that the Web sites at which Third Parties are collecting data for Online Behavioral Advertising purposes should include a new clear, meaningful, and prominent link on their Web sites when Third Parties do not provide the notice described in II.A.(2)(a). This would link from the Web page where data is collected to specific language in a disclosure. If the disclosure language is in the privacy notice, the link should go directly to the relevant section of the privacy policy where the disclosure is located and not just generally to the privacy policy.”).

\textsuperscript{21} Id. at 31.
The link may be provided directly by the first party or by one of the third parties active on its website.22

Enhanced notice provides consumers with two benefits. First, it informs consumers of the fact that third parties are engaged in IBA on a website. Second, by linking directly to a disclosure that describes the IBA activities occurring on that website and providing a method by which consumers can exercise choice, enhanced notice serves as a bridge to relevant information consumers need at precisely the time they need it. By drawing attention to this otherwise invisible background activity in real time, explaining it in plain language, and providing one or more choice mechanisms, enhanced notice helps consumers understand IBA and make choices about the use of their data for IBA.

II. Enhanced notice of mobile app data collection for IBA

The Mobile Guidance adapts the desktop-oriented rules of the OBA Principles to the mobile world, including the core requirements to provide transparency and consumer control of IBA. In particular, when first parties permit third parties to collect cross-app data through their apps for use in IBA, they must provide enhanced notice and choice about such third-party data collection for IBA.23

According to section III.A.(3) of the Mobile Guidance, first parties that affirmatively authorize a third party to collect or use cross-app data for IBA must provide a clear, meaningful, and prominent link to a disclosure that (1) describes the third-party collection, (2) points to a choice mechanism/setting or lists all third parties with links to their opt outs, and (3) contains a statement of adherence to the DAA Principles.24 The enhanced notice link must be provided prior to download (e.g., in the app store on the application’s page), during download, on first opening of the app, or at the time cross-app data is first collected, and in the application’s settings or any privacy policy.25

COMPANY RESPONSE AND ANALYSIS

After some initial difficulty establishing a line of communication between GoodRx and the Accountability Program, the company quickly committed to compliance with the DAA

---

22 First Party Enhanced Notice Compliance Warning at 3.
23 Mobile Guidance at 17.
25 Id. We note that where the third party is unable to provide enhanced notice and choice in an app, the first party should work with the third party to ensure that such notice and choice are provided. See Id. § III.B.(1) at 18-19. See also Accountability Program, Compliance Warning, https://bbbnp-bbhp-stf-use1-01.s3.amazonaws.com/docs/default-source/accountability-program/v.-accountability-program-guidance/accountability-program-first-party-enhanced-notice-compliance-warning-cw-01-2013.pdf?sfvrsn=25e3af96_2at 2 (“Both the third party and the first party share responsibility for provision of enhanced notice. Because the third party which is collecting the data generally has no direct means to provide notice and choice on the website where its data collection is occurring, providing just-in-time notice of collection and an opt out requires cooperation between the third party engaged in the collection and the first party on whose website such collection is permitted.”).
Principles. The company worked with the Accountability Program to take several actions to ensure that its website and app met the requirements of the DAA Principles, described below.

I. Enhanced notice of website data collection for IBA

To resolve its compliance issues under section II.B. of the OBA Principles, GoodRx added to its website footer a link entitled “Advertising Notice.” This link takes users to a page entitled “Advertising on GoodRx” which provides a description of third-party IBA activity occurring on GoodRx’s website, and also provides a link to GoodRx’s privacy policy so that users can learn more about data collection occurring on the company’s website and mobile app. This page also includes a statement of adherence to the DAA Principles, and points to the Network Advertising Initiative’s (NAI) website (https://www.networkadvertising.org/) so that users can obtain “more information about this practice and … know [their] choices about not having this information used by these companies.” Notably, the NAI website contains a prominent button entitled “Consumer Opt-Out” which takes users to the NAI “Opt out of Interest-Based Advertising” page that includes a browser-based opt-out tool (https://optout.networkadvertising.org/?c=1). The Accountability Program found that these actions resolved GoodRx’s issues under section II.B. of the OBA Principles.27

II. Enhanced notice of mobile app data collection for IBA

As detailed above, the cross-app provisions of the Mobile Guidance prescribe specific times and locations where consumers can receive enhanced notice that directs them to a compliant IBA disclosure. In practice, a common means for providing enhanced notice before collection occurs is by placing a link on the app’s listing in an app store. However, app stores may allow only a finite set of links dedicated to specific resources, such as company websites and privacy policies. The flexibility of the Mobile Guidance allows app publishers to use the dedicated privacy policy link as its enhanced notice link where necessary. To do so, app publishers must place an IBA disclosure or a link (usually a “jump link” to a later portion of the same document) to a disclosure at the top of the privacy policy linked from the app store. This ensures that when a user taps on a privacy policy link in an app store listing, they are directed immediately to relevant information about IBA and an opt-out mechanism.

27 The Accountability Program notes that GoodRx added a “Cookie Preferences” link to its website footer, which launches a notification that describes third-party advertising taking place on the GoodRx site and provides a one-click opt-out mechanism. The Accountability Program notes that it has previously found that such implementations may also help companies meet their obligations under section II.B. of the OBA Principles. See In re: My Heritage Ltd. (95-2019), Apr. 2, 2019 at 4.
29 Id. Commentary at § III.A.(3) at 18 (“Where a Third Party elects to satisfy Section III.A.2.ii.1 or a First Party elects to satisfy Section III.A.3.a by providing a link prior to installation through an application market that does not permit active links, the entity satisfies this Principle if it provides an active link to a privacy policy that contains the disclosure described in Section III.A.1 and directs consumers to the relevant section of the privacy policy where the disclosure is located.”).
30 Id. (allowing a jump link near the top of a privacy policy to direct consumers to an IBA disclosure where app stores do not allow active enhanced notice links). See also In re: Mammoth Media, Inc. (112-2020), Apr. 3 2020 at 7.
To resolve its issues under the Mobile Guidance, GoodRx added a jump link to the top of its privacy policy entitled “Information about advertising on GoodRx.” When clicked or tapped, this jump link takes users to the “Advertising on GoodRx” page described above. On the same page, GoodRx also included language indicating that third parties might collect data for IBA through GoodRx’s mobile app, as well as links to the DAA AppChoices app and resources on accessing OS-level opt-out tools with accompanying instructions. The Accountability Program found that these changes brought GoodRx into full compliance with the first-party cross-app enhanced notice provisions of the Mobile Guidance.

CONCLUSION

Today’s case again highlights the responsibilities of publishers to provide consumers with enhanced notice of background data collection for IBA, whether this collection occurs through mobile apps or the traditional web environment. We applaud GoodRx for taking action to reach full compliance with the DAA Principles and emphasize that robust compliance is best achieved when all stakeholders work together openly.

COMPANY’S STATEMENT

GoodRx takes privacy seriously we applaud the Accountability Program’s commitment to compliance with self-regulatory requirements.

DISPOSITION OF DECISION

Practices voluntarily corrected.

Jon M. Brescia
Vice President
Digital Advertising Accountability Program