

**ADVERTISING SELF-REGULATORY COUNCIL/COUNCIL OF BETTER
BUSINESS BUREAUS**

ONLINE INTEREST-BASED ADVERTISING ACCOUNTABILITY PROGRAM

FORMAL REVIEW
Case Number: 66-2016

COMPANY:)
Dropbox, Inc.)
)
)
CHALLENGER:)
Online Interest-Based)
Advertising Accountability Program)
)
)

DECISION

DATE: September 22, 2016

SYNOPSIS

All companies engaged in interest-based advertising (IBA) must comply with the Digital Advertising Alliance’s (DAA) Self-Regulatory Principles (DAA Principles).¹ Specifically, first parties who allow third parties to collect and use visitors’ web browsing data for IBA must comply with section II.B. of the Self-Regulatory Principles for Online Behavioral Advertising (OBA Principles).

COMPANY STATUS

Dropbox, Inc. (Dropbox) is a company that provides file storage, synchronization, and sharing services.² The company maintains a website located at <https://www.dropbox.com/>.

¹ The DAA Principles consist of four documents: the Self-Regulatory Principles for Online Behavioral Advertising (OBA Principles), the Self-Regulatory Principles for Multi-Site Data (MSD Principles), the Application of Self-Regulatory Principles to the Mobile Environment (Mobile Guidance), and the Application of the Self-Regulatory Principles of Transparency and Control to Data Used Across Devices (Cross-Device Guidance) (collectively, the Principles). Available at <http://www.aboutads.info/principles>.

² Dropbox, <https://www.dropbox.com/about> (last visited May 24, 2016).

INQUIRY

As part of its routine monitoring and enforcement efforts, the Accountability Program opens investigations based on consumer complaints regarding alleged noncompliance. This particular case arises from a consumer complaint about Dropbox's website which alleged that Dropbox was not in compliance with the Transparency Principle of the OBA Principles.

In response to the consumer complaint, the Accountability Program visited the Dropbox website (www.dropbox.com) to review the company's IBA practices. During its visit, the Accountability Program observed data collection by third-party companies known to engage in IBA. This finding appeared to confirm the concerns expressed in the consumer complaint. We then examined the Dropbox website for the presence of an enhanced notice link required under the OBA Principles.

When the Accountability Program examined Dropbox's home page, we located a link in the footer labeled "Privacy & terms" (<https://www.dropbox.com/privacy>). When clicked, this link directed us to the top of a webpage containing the company's privacy policy. However, we were not able to locate a compliant description of third-party data collection for IBA occurring on the Dropbox website. In addition, the Dropbox privacy policy did not provide either i) a complete list of all third parties collecting on its websites, and links to choice mechanisms for each third party or ii) a link to an industry-developed opt-out web page (e.g., the DAA's consumer choice page, <http://aboutads.info/choices>). Finally, the Accountability Program did not find a statement of the company's adherence to the DAA Principles.

Based on the above review, the Accountability Program sent an inquiry letter to Dropbox explaining the compliance issues we had found on the Dropbox website.

COMPANY'S POSITION

Upon receiving the Accountability Program's inquiry letter, Dropbox immediately committed to coming into compliance with the DAA Principles. Dropbox worked zealously with the Accountability Program to form and execute a plan to modify its website to fulfill the requirements of the OBA Principles. Specifically, to achieve compliance with the OBA Principles, Dropbox added a clear, meaningful and prominent link to the footer of its webpages that allow third-party IBA activity. This link, labelled "Cookies," is distinct from the "Privacy & terms" link on the Dropbox website.³ The link directs users to a page that includes an IBA disclosure describing third-party data collection on the website. The disclosure also includes a link to the DAA's www.aboutads.info/choices page and a statement of adherence to the DAA principles.

³ Dropbox, *Cookies*, <https://www.dropbox.com/help/4213> (last visited July 25, 2016).

DECISION

In this case, because Dropbox authorizes third parties to collect data on its website for IBA, the company has duties as a first party⁴ under the OBA Principles.

When the Accountability Program first focused on this area of compliance, it found that many first parties did not understand that they had responsibility to provide enhanced notice regarding data collection and use for IBA when they allowed third parties to collect data for IBA on their site. To respond to confusion among first parties with respect to their enhanced notice obligations under the OBA Principles, on October 14, 2013, the Accountability Program released a Compliance Warning which provided detailed guidance about enhanced notice and established a January 1, 2014 deadline for websites to come into compliance or risk being subject to an Accountability Program action.⁵ Since then, the Accountability Program has released more than a dozen cases that address the responsibilities of first parties under the DAA Principles, providing website owners and operators ample notice of their responsibilities under the OBA Principles.⁶ The Accountability Program here restates these responsibilities.

First-party duties are set out in section II.B. of the OBA Principles. According to this section, when first parties allow third-party IBA data collection or use on their websites, or when they transfer first-party data to third parties for tailoring ads on non-affiliate websites, they must provide consumers with appropriate notice and an opportunity to exercise choice about whether to participate in IBA.⁷ A first party must include a disclosure somewhere on its website that describes the IBA activity occurring there.⁸ This disclosure must contain either a link to an industry-developed consumer choice page (such as <http://aboutads.info/choices>) or a list of every third party conducting IBA activity on the first-party website.⁹ Additionally, a first party must state its adherence to the DAA Principles on its website.¹⁰

The OBA Principles require first parties to provide consumers with real-time notice when third parties are collecting or using their data for IBA on a first party's website. Termed "enhanced notice," this real-time indicator must be in the form of a "clear, meaningful, and prominent" link—distinct from the company's privacy policy link—that directs consumers to the first party's IBA disclosure, described above.¹¹ This link must appear on every page where data collection or

⁴ *OBA Principles* Definition F at 10. See also Online Interest-Based Advertising Accountability Program, *Compliance Warning*, available at <http://www.asrcreviews.org/wp-content/uploads/2013/10/Accountability-Program-First-Party-Enhanced-Notice-Compliance-Warning-CW-01-2013.pdf>.

⁵ *First Party Enhanced Notice Compliance Warning* (CW-01-2013), available at <http://www.asrcreviews.org/wp-content/uploads/2013/10/Accountability-Program-First-Party-Enhanced-Notice-Compliance-Warning-CW-01-2013.pdf>.

⁶ See, e.g., *In re: Answers Corporation* (38-2014, Oct. 28, 2014), *In re: Best Buy Co.* (39-2014, Oct. 28, 2014), *In re: Yelp* (40-2014, Oct. 28, 2014), *In re: TWiT, LLC* (46-2015, May 14, 2015), and *In re: The Hollywood Reporter, Inc.* (58-2015, Jan. 14, 2016).

⁷ *OBA Principles* § II.B. at 13-14.

⁸ *Id.*

⁹ 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.

¹⁰ *OBA Principles* § II.B. at 13-14.

¹¹ *Id.*

use for IBA occurs on the first party's website, and it must take users directly to the first party's IBA disclosure, not just to the top of a privacy policy or help center landing page.¹²

In practice, this first-party enhanced notice link can be provided by either the first or the third party. However, both parties are responsible for ensuring that enhanced notice is provided. Therefore, companies should communicate to make sure that this requirement is met. Where third parties are unable to place enhanced notice, the first party must take whatever steps are necessary either to provide the notice itself or to empower third parties on its site to do so. Further, first parties are cautioned that

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 [... IBA] 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).¹³

Enhanced notice provides two important benefits to consumers. One, the enhanced notice link informs consumers that third parties are engaged in IBA on a particular website. Two, by linking to a disclosure that describes the IBA activities occurring on that website and providing a choice mechanism, the enhanced notice link brings relevant information to a consumer's attention at the time of collection and use. Absent enhanced notice, consumers would have to read through a privacy policy page to unearth language about IBA. Enhanced notice empowers consumers to exercise choice about use of their data for IBA by informing consumers that the activity is taking place, describing IBA in plain language, and providing consumers with one or more choice mechanisms.

Following consultation with the Accountability Program, Dropbox added an enhanced notice link to its website. This enhanced notice link directs users to a new IBA disclosure page that includes a link to an industry-developed opt-out page and a statement of adherence to the DAA Principles.

CONCLUSION

This case reiterates the importance of first-party enhanced notice and its benefit to consumers. Enhanced notice informs consumers of third-party IBA occurring on a website and directs them to the relevant information and control mechanisms that they need to exercise choice about companies' use of their data for IBA. As discussed in this case and the Accountability Program's

¹² *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.")

¹³ *First Party Enhanced Notice Compliance Warning* at 3.

prior cases involving first parties,¹⁴ website publishers and operators must fulfill this obligation under the DAA Principles.

As the Accountability Program investigates and releases new cases arising out of its mobile enforcement efforts, be assured that we will continue vigilant monitoring of the digital advertising ecosystem for companies that are out of compliance with the desktop-oriented OBA Principles. Consumers may contact the Accountability Program to inform us of any potential compliance issues, and companies may reach out to us in order to ensure they are compliant rather than risking an Accountability Program formal action and public decision.

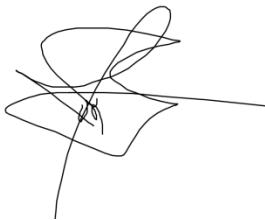
The Accountability Program would also like to recognize that Dropbox demonstrated a sincere commitment to its users' privacy. Throughout the pendency of its investigation Dropbox cooperated fully and worked to achieve compliance with the DAA Principles. Self-regulation depends on industry support and companies' willingness to work with the Accountability Program. We appreciate Dropbox's dedication to industry self-regulation and compliance which demonstrate its commitment to its users' privacy.

COMPANY'S STATEMENT

Dropbox is committed to providing services that are worthy of our users' trust. We believe that user trust requires focus on providing transparency and employing best privacy practices. We appreciate the Accountability Program's thoughtful engagement to help us implement industry best practices under the Self-Regulatory Principles for Online Behavior Advertising.

DISPOSITION OF DECISION

Practices voluntarily corrected.

A handwritten signature in black ink, appearing to read "Jon M. Brescia". The signature is stylized with loops and a long horizontal stroke extending to the right.

Jon M. Brescia
Director, Adjudications and Technology
Online Interest-Based Advertising Accountability Program

¹⁴ See *In re: Hollywood Reporter* (58-2016), Jan. 14, 2016, available at <http://www.bbb.org/globalassets/local-bbbs/council-113/media/behaviorial-advertising/hollywood-reporter-decision.pdf>. See also *In re: Gravity* (56-2015), Nov. 4, 2015, available at <http://www.bbb.org/globalassets/local-bbbs/council-113/media/asrc-documents/gravity-decision.pdf>. See also *In re: Imgur* (45-2015), May 15, 2015, available at <http://www.bbb.org/globalassets/local-bbbs/council-113/media/asrc-documents/imgur-decision.pdf>.