

(apps). Mobile app publishers (first parties)² that authorize unaffiliated³ entities (third parties)⁴ to collect data through their apps for use in cross-app⁵ IBA must provide users with notice and enhanced notice, as described in the Mobile Guidance. Additionally, any operator of a website that allows third parties to collect visitors' web browsing data for IBA must provide visitors with notice and enhanced notice as prescribed in the OBA Principles.

COMPANY STATUS

Ipnos Software Inc. (Ipnos) is an app publisher that specializes in meditation and relaxation apps available on the Android and iOS operating systems.⁶ The company is headquartered Montreal, Canada.

INQUIRY

i. Mobile app review

This case arises from the Accountability Program's regular monitoring of mobile applications. As part of the Accountability Program's continuing monitoring and enforcement efforts in the mobile app space, the Accountability Program examined Ipnos's mobile application entitled Relax Melodies: Sleep Sounds (Relax Melodies) available on the Android and iOS operating system.⁷

As part of our investigation, the Accountability Program downloaded and installed Relax Melodies on our test devices. Using our testing equipment, we were able to capture and inspect

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. 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. In the contexts of websites, 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* 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>.

³ *OBA Principles* Definition C at 9 ("An Affiliate is an entity that Controls, is Controlled by, or is under common Control with, another entity.").

⁴ The term "third party" refers to entities that collect data for IBA either 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."), or from non-affiliate websites or entities, *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.").

⁵ *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.").

⁶ *See generally* Ipnos, Ipnos.com (last visited Sep. 17, 2019).

⁷ Google Play Store, *Relax Melodies: Sleep Sounds*, <https://play.google.com/store/apps/details?id=ipnossoft.rma.free&hl=en> (last visited Sep. 18, 2019). Apple App Store, *Relax Melodies: Sleep Sounds*, <https://itunes.apple.com/us/app/relax-melodies-sleep-sounds/id314498713?mt=8> (last visited Sep. 18, 2019).

data packets being transmitted from the application. Through analysis of network traffic generated from the app, we observed third parties⁸ collecting cross-app⁹ data likely for IBA. Specifically, we noted the collection of Android’s Advertising ID (AAID or IFA) and Apple’s Identifier for Advertising.¹⁰

While testing Relax Melodies, the Accountability Program was unable to find an enhanced notice link in any of the times or locations required by the Mobile Guidance. While Relax Melodies provided a link to the top of a privacy policy document¹¹ within its listings on the Apple App and Google Play stores, this type of link did not function as an enhanced notice link. This is because it did not take users directly to a disclosure that describes the third-party IBA activity Ipnos allows through its app.¹² We could find no other link that would serve as enhanced notice under the Mobile Guidance.

The Accountability Program looked further to determine if Ipnos had provided any disclosure of third-party data collection for IBA taking place through its mobile apps. To this end, we examined Ipnos’s privacy policy for a disclosure of third-party IBA activity. While we located a general discussion of third-party advertising that takes place through Ipnos products and services,¹³ we noted that this language appeared to focus on advertising facilitated by cookies, which are technologies commonly used to deliver IBA in desktop environments and the mobile web.¹⁴ The Accountability Program found that this language might not be sufficiently clear to explain to consumers that third-party companies may collect consumer data through Ipnos’s mobile apps for the purpose of serving targeted ads. We could find no other language that could constitute a compliant disclosure of third-party IBA occurring through Ipnos’s mobile apps. Looking further, the Accountability Program was unable to locate a mechanism for users to opt

⁸ *Id.* 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.”).

⁹ *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.”).

¹⁰ IAB Mobile Marketing Center of Excellence, *Mobile Identity Guide for Marketers*, June 2017, at 4, <https://www.iab.com/wp-content/uploads/2017/06/Mobile-Identity-Guide-for-Marketers-Report.pdf> (“The most prevalent Advertising Identifiers today offering the scale needed for marketing purposes are the ... IDFA [and] AAID.”).

¹¹ Ipnos, *Privacy Policy* (May 25, 2018), <https://www.ipnos.com/privacy-policy/> [perma: <https://perma.cc/7T7L-3Y4G>].

¹² *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).

¹³ Ipnos, *Privacy Policy* (May 25, 2018), <https://www.ipnos.com/privacy-policy/> [perma: <https://perma.cc/7T7L-3Y4G>] (“IPNOS may permit, solicit or contract certain other companies to conduct advertising campaigns on the Service. The advertisements that you see when accessing the Service are redirected from the servers of those advertising companies and may be geographically or contextually targeted. Some advertisers may use cookies on your computer. The cookies enable them to collect information about sections and features that you have accessed, advertisements posted on those sites and the advertisements that you have viewed. In this manner advertisers try to customize advertisements to your preferences and for their own business purposes. The advertisers’ use of cookies is subject to their own privacy policies and not to this Policy. You are encouraged to read carefully the advertisers’ policies.”).

¹⁴ The Accountability Program notes that the Mobile Web refers to the World Wide Web users can access through their smartphones and tablets using mobile web browsers. *See generally* WebWise Team, *What is the mobile web?* BBC: WebWise (Oct. 10, 2012), <http://www.bbc.co.uk/webwise/guides/mobile-web>.

out of IBA occurring on mobile devices, finding only language that referred to the process of deleting cookies from a device.¹⁵ Finally, we could not locate a statement of adherence to the DAA Principles.

Following our review of the Relax Melodies app, the Accountability Program went on to test Ipnos's other mobile app offerings on both the Google Play Store and the Apple App Store for similar compliance issues.¹⁶ During our examination, we found that third parties appeared to be collecting data for IBA through a number of Ipnos's mobile apps. In these apps, we observed the same compliance issues as the Relax Melodies app.

Following our review, the Accountability Program reached out to Ipnos with an inquiry letter explaining the requirements of the DAA Principles.

ii. Website review

After the Accountability Program made contact with Ipnos, the company quickly committed to achieving full compliance with the DAA Principles. It provided detailed descriptions of its data collection practices, and informed the Accountability Program that on its website property for Relax Melodies third parties were collecting data for IBA purposes.¹⁷ Noting that there did not appear to be enhanced notice on the Relax Melodies website, the Accountability Program incorporated this issue into its compliance review.

ISSUES RAISED

i. First-party cross-app enhanced notice link requirement

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 data through their apps for use in IBA, they must provide enhanced notice and choice about such third-party data collection for IBA.¹⁸

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

¹⁵ Ipnos, *Privacy Policy* (May 25, 2018), <https://www.ipnos.com/privacy-policy/> [perma: <https://perma.cc/7T7L-3Y4G>]. The Accountability Program noted that Ipnos stated in its privacy policy that "Most Internet browsers allow you to erase cookies from your computer's hard drive, to block them or to receive a warning before they are downloaded. Please refer to your browser's instructions to find out more about these functions." We note that this language is not sufficient for providing an opt-out mechanism for IBA occurring through mobile apps as mobile app IBA is not conducted through the use of HTTP cookies.

¹⁶ See generally Apple App Store, *Ipnos Software Inc.*, <https://apps.apple.com/us/developer/ipnos-software-inc/id314498716> (last visited Sep. 18, 2019). See also Google Play Store, *Ipnos Software*, https://play.google.com/store/apps/dev?id=8256206686213875429&hl=en_US (last visited Sep. 18, 2019).

¹⁷ Ipnos, *Relax Melodies*, <https://www.relaxmelodies.com/> (last visited Oct. 11, 2019).

¹⁸ *Mobile Guidance* at 17.

statement of adherence to the DAA Principles.¹⁹ 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.²⁰

These enhanced notice requirements make information about privacy more accessible to users so they can make an informed decision about whether to participate in data collection and use for IBA. The enhanced notice link must go **directly** to the place where the app explains its IBA practices. Moreover, the link must be provided **at or before** the moment a user’s engagement with the app results in third-party data collection for IBA. This process provides a conspicuous, accessible and meaningful disclosure to the consumer at the time it is most useful to them. As such it is a dramatic improvement on the past practice of simply placing the information in an often dense privacy policy. It also requires that the company’s disclosure explain to consumers how they can opt out of IBA, including providing links to easy-to-use opt-out mechanisms like the DAA’s AppChoices tool.

ii. First-party website enhanced notice requirement

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.²¹ A first party must include a disclosure somewhere on its website that describes the IBA activity occurring there.²² 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.²³ Additionally, a first party must state its adherence to the DAA Principles on its website.²⁴

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”

¹⁹ *Id.*

²⁰ *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. *Compare* Accountability Program, *Compliance Warning*, <http://www.asrcreviews.org/wp-content/uploads/2013/10/Accountability-Program-First-Party-Enhanced-Notice-Compliance-Warning-CW-01-2013.pdf> at 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.”).

²¹ *OBA Principles* § II.B. at 13–14.

²² *Id.*

²³ *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.

²⁴ *OBA Principles* § II.B. at 13–14. *See, e.g., In re: Best Buy Co., Inc. (39-2014)*, Oct. 28, 2014, at 4. All prior cases cited herein can be found at <http://www.asrcreviews.org/accountability-program-decisions/>.

link that directs consumers to the first party’s IBA disclosure, not just to the top of a privacy policy.²⁵ 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.²⁶ The link may be provided directly by the first party or by one of the third parties active on its website.²⁷

Enhanced notice provides consumers with two benefits. One, it informs consumers of the fact that third parties are engaged in IBA on a website. Two, 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.

COMPANY RESPONSE AND ANALYSIS

In response to the Accountability Program’s inquiry letter, Ipnos immediately conducted a comprehensive review of its compliance with the DAA Principles in order to identify any areas in its compliance protocols that needed strengthening. The company worked diligently to find comprehensive solutions to each issue, and consulted with the Accountability Program on its plan to come into compliance with the DAA Principles, as explained below.

i. Compliance with cross-app enhanced notice requirement

Ipnos’s authorization of third-party collection of unique identifiers for IBA in its mobile apps triggered compliance responsibilities under the first-party cross-app provisions of the Mobile Guidance.

The cross-app provisions of the Mobile Guidance prescribe particular times and locations where consumers can receive enhanced notice that directs them to a compliant IBA disclosure.²⁸ The link should appear either before or concurrent with the initial collection of data for IBA.²⁹ One means for providing enhanced notice before collection occurs is to do so through a link on the app’s listing in an app store. Where possible, this can be done through a dedicated enhanced notice link, but this is not always the case. The Mobile Guidance recognizes that app stores may

²⁵ *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.”).

²⁶ *Id.* at 31.

²⁷ *First Party Enhanced Notice Compliance Warning* at 3.

²⁸ *Mobile Guidance* § III.A.(3) at 17. *See also In re: Sega (65-2016)*, July 14, 2016; *In re: Spinrilla (61-2016)*, May 4, 2016; *In re: Bearbit Studios (62-2016)*, May 4, 2016; *In re: Top Free Games (63-2016)*, May 4, 2016.

²⁹ *Id.* § III.A.(3) at 17.

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.³⁰ To do so, app publishers must place an IBA disclosure or a link to a disclosure at the top of the privacy policy linked from the app store.³¹ 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.

Furthermore, when describing IBA taking place through mobile apps or engineering a mobile opt-out mechanism, companies must recognize the technical differences between IBA occurring on desktop devices versus IBA occurring through mobile apps. Opting out of cross-app IBA involves a different set of technical challenges than opting out in the web browser space. For instance, cookies are ineffective at opting consumers out of cross-app IBA because apps are walled off from one another by mobile operating systems. Mobile apps are unable to access cookie resources that have been saved to the device by a mobile web browser. The DAA Principles recognize this distinction by design, requiring that first parties provide in their disclosures descriptions of third-party cross-app IBA activity and a cross-app opt-out mechanism.

To resolve its issues under the enhanced notice provision of the Mobile Guidance, Ipnos took a number of steps. The company first updated its privacy disclosures to add a jump link to the top of its privacy policy.³² This jump link directs users to a section of the Ipnos privacy policy that describes third-party IBA occurring through its mobile apps that is facilitated by the collection of mobile device identifiers. This new disclosure also includes an additional jump link to another section of the privacy policy that includes instructions about how to opt out of mobile IBA utilizing device-level settings or the DAA's AppChoices app. Further, Ipnos updated its privacy policy to include a link to the Digital Advertising Alliance of Canada's consumer choice page (<https://youradchoices.ca/en/tools>), which features a prominent link to the US DAA's WebChoices tool (www.aboutads.info/choices). The company also updated its privacy policy to include a statement of adherence to the DAA Principles. The Accountability Program found that these actions resolved Ipnos's compliance issues under the first-party cross-app enhanced notice provisions of the Mobile Guidance.

ii. Compliance with website enhanced notice provisions

To resolve its issues under the enhanced notice provision of the OBA Principles, Ipnos added to the Relax Melodies website an enhanced notice link labelled "About our ads." When clicked, this link directs users to Ipnos's IBA disclosure, which includes a description of third-party IBA occurring on Ipnos's web properties and the aforementioned link to the Digital Advertising

³⁰ *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.").

³¹ *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).

³² Ipnos, *Privacy Policy* (Aug. 28, 2019), <https://www.ipnos.com/privacy-policy/>.

Alliance of Canada’s consumer choice page. These actions resolved Ipnos’s first-party issues under the OBA Principles.

CONCLUSION

Today’s case follows a long line of cases outlining the requirements for app and website publishers to provide users with enhanced notice about third-party data collection occurring on their properties. First parties must provide a timely, up-front notice to users about this background data collection. When first parties authorize third parties to collection data through their mobile app, they must accurately disclosure this collection. Additionally, when mobile app publishers also provide a website to users where third parties collect visitor data for IBA, they must provide enhanced notice of this fact.

Ipnos demonstrated its commitment to serving its customers by modifying its privacy disclosures to provide enhanced notice describing mobile data collection for IBA and a mobile-specific opt-out tool. It also recognized its parallel roles in the mobile app and desktop spaces as both an app publisher and a website operator, and provided consumers with the benefits of transparency and choice when they engage with these separate and distinct mediums.

Ipnos’s case also illustrates the global interoperability of the DAA Principles. Here, a Canadian company—subject to Canadian privacy laws—adopted the best practices embodied in the DAA Principles, demonstrating that the core concepts of transparency and choice can be applied across national barriers, adapting to the new regulatory terrains presented by each jurisdiction.

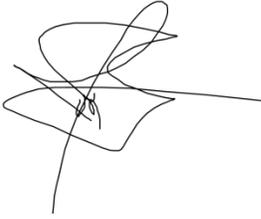
The Accountability Program recognizes the efforts that Ipnos took to achieve compliance with the Mobile Guidance and applauds the company for its commitment to industry self-regulation and user privacy. Ipnos serves as an example to other first parties.

COMPANY’S STATEMENT

Ipnos takes the privacy of its users very seriously. We are in full support of the DAA Principles, and recognize that this exercise, which we completed in collaboration with the Accountability Program, contributed to increase transparency for our users, including to provide them with meaningful explanations on how they can opt-out from interest-best advertising. We are always looking for ways to improve, and we are committed to continue working with regulators and agencies worldwide on our privacy program.

DISPOSITION OF DECISION

Practices voluntarily corrected,.



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