

collect visitors' web browsing data for IBA must provide visitors with notice and enhanced notice as prescribed in the OBA Principles.

COMPANY STATUS

MyHeritage Ltd. (MyHeritage) is a company that provides online genealogy and genetic testing services. The company is headquartered in Or Yehuda, Israel.⁴

INQUIRY

This case arises from the Accountability Program's regular monitoring activities. During our review of websites for compliance with the DAA Principles, we observed that MyHeritage's website (<https://www.myheritage.com/>) allowed third parties to collect users' data for use in IBA without providing enhanced notice to these users as required under the OBA Principles. This prompted a full examination of MyHeritage's compliance with all applicable requirements of the DAA Principles.

The Accountability Program first looked for an enhanced notice link on the MyHeritage website. We noted that each page of the site appeared to include a "Privacy Policy" link in the footer. When clicked, this link launched a pop-up window containing the company's privacy policy. We then looked for a link, separate from this "Privacy Policy" link, that would direct us to a disclosure of the third-party IBA activity occurring on the MyHeritage website. However, we could find no such link.

We then manually searched MyHeritage's privacy policy document for a description of the third-party data collection occurring on its website that would satisfy the notice requirement. Though the privacy policy included a section on "Cookies and Non-Personal Information," it did not mention IBA or third-party cookies.⁵ Instead, it only mentioned that cookies are used "to enhance the experience of visiting the Website...". Neither this language nor any other language we could find on the MyHeritage website constituted a compliant disclosure of third-party IBA under the DAA Principles.

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

ISSUES RAISED

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.").

⁴ MyHeritage, *MyHeritage*, <https://www.myheritage.com/> (last visited Dec. 5, 2018). The Accountability Program notes that the scope of this decision covers the IBA practices on the website for MyHeritage and does not address the company's genetic testing services.

⁵ MyHeritage, *MyHeritage Privacy Policy* (May 24, 2018), https://www.myheritage.com/FP/Company/popup.php?p=privacy_policy. [https://web.archive.org/web/20180528042420/https://www.myheritage.com/FP/Company/popup.php?p=privacy_policy]

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.⁶ A first party must include a disclosure somewhere on its website that describes the IBA activity occurring there.⁷ 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.⁸ Additionally, a first party must state its adherence to the DAA Principles on its website.⁹

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 just to the top of a privacy policy.¹⁰ 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.¹¹ The link may be provided directly by the first party or by one of the third parties active on its website.¹²

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

I. Enhanced notice of website data collection for IBA

⁶ *OBA Principles* § II.B. at 13–14.

⁷ *Id.*

⁸ *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.

⁹ *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.ascreviews.org/accountability-program-decisions/>.

¹⁰ *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.").

¹¹ *Id.* at 31.

¹² *First Party Enhanced Notice Compliance Warning* at 3.

MyHeritage responded to the Accountability Program inquiry by conducting a thorough review of its compliance with the DAA Principles. The company worked with the Accountability Program to revise its privacy disclosures, embracing the requirements of the DAA Principles. To reach full compliance, MyHeritage added an enhanced notice link labeled “Cookie Info,” separate from its “Privacy Policy” link, on each page of its website through which third parties collect information for IBA. When clicked, this link prompts a OneTrust pop-up notification to appear, which displays a menu for users to explore that allows them to learn more about third-party IBA activity occurring on the MyHeritage site. This notification includes a one-click opt-out tool that allows users to disable third-party data collection for IBA on the MyHeritage site and provides a link to MyHeritage’s new “Cookie Policy” document, which contains a link to the Network Advertising Initiative’s (NAI) consumer opt-out page (<http://optout.networkadvertising.org/?c=1>) and a statement of adherence to the DAA Principles.¹³ The Accountability Program found that these actions resolved the compliance issues under section II.B. of the OBA Principles.

CONCLUSION

Today’s case continues our enforcement of the first-party provisions of the OBA Principles, again underscoring that website publishers must provide enhanced notice of third-party tracking when advertising entities are unable to provide it themselves. As we have stated in prior cases, all companies in the online advertising ecosystem share the responsibility to provide consumers with this type of notice.

As a result of today’s case, MyHeritage modified its website to provide consumers with an enhanced notice link that leads them directly to information about IBA and an opt-out tool. Here, while MyHeritage chose to employ a OneTrust opt-out tool as its compliance solution, we note that companies may select any method of providing a consumer opt-out tool so long as the implementation meets the standards set by the DAA Principles.

The Accountability Program urges other website publishers to follow the example set by MyHeritage. We applaud the company for its efforts to achieve compliance with the DAA Principles and its commitment to consumer privacy.

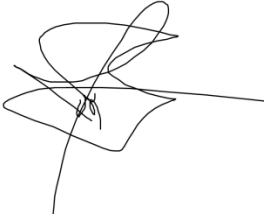
COMPANY’S STATEMENT

MyHeritage welcomes the opportunity to adopt the Self-Regulatory Principles for Online Behavioral Advertising, which are aligned with our commitment to transparency and consumer control. MyHeritage appreciates the Accountability Program’s thoughtful engagement to help us implement industry best practices. MyHeritage is delighted that the Accountability Program has recognized our commitment to consumer privacy and our full compliance with the Digital Advertising Alliance’s Self-Regulatory Principles.

DISPOSITION OF DECISION

¹³ MyHeritage, *Cookie Policy*, <https://www.myheritage.com/cookie-policy> (last visited Dec. 5, 2018).

Practices voluntarily corrected.

A handwritten signature in black ink, appearing to read 'Jon M. Brescia', with a long horizontal line extending to the right.

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