

BBB NATIONAL PROGRAMS, INC.

DIGITAL ADVERTISING ACCOUNTABILITY PROGRAM

COMPANY:

PicsArt, Inc.

CHALLENGER:

Digital Advertising Accountability Program

FORMAL REVIEW

Case Number: 117-2020

DECISION

DATE: August 11, 2020

SYNOPSIS

The Digital Advertising Alliance’s (DAA) Self-Regulatory Principles (DAA Principles)¹ cover entities engaged in interest-based advertising (IBA) across mobile applications (apps) or websites. Mobile app publishers² (first parties) that authorize unaffiliated entities³ (third parties)⁴

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.ascreviews.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 *OBA Principles* at 9 (Defining an affiliate as “an entity that Controls, is Controlled by, or is under common Control with, another entity”).

⁴ 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

to collect cross-app⁵ 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). Similarly, 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 *Self-Regulatory Principles for Online Behavioral Advertising* (OBA Principles). DAA codes of conduct are independently enforced by the Digital Advertising Accountability Program (Accountability Program), a division of BBB National Programs, Inc.⁶

COMPANY STATUS

PicsArt, Inc. (PicsArt) is a California-based app publisher known for producing image editing and social media apps available on the Android and iOS operating systems. The company's eponymous PicsArt app has approximately 500,000,000 downloads in the Google Play Store.⁷

INQUIRY

This case arises from the Accountability Program's regular monitoring activities of mobile apps for compliance with the Mobile Guidance code of conduct. Below, we describe our examination in detail.

I. Mobile app data collection compliance review

The Accountability Program identified the PicsArt app and downloaded it to our test devices. Using our testing equipment, we were able to capture and inspect data packets transmitted to and from the app. 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 (IDFA).¹⁰

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.”).

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, BBB National Programs, Inc., *Digital Advertising Accountability Program*, <https://www.bbbprograms.org/programs/daap/iba-contact-us> (last visited May 26, 2020).

⁷ Google Play Store, *PicsArt Photo Studio: Collage Maker & Pic Editor*, <https://play.google.com/store/apps/details?id=com.picsart.studio&hl=en> (last visited Apr. 17, 2020); Apple App Store, *PicsArt Photo & Video Editors*, <https://apps.apple.com/us/app/picsart-photo-video-editor/id587366035> (last visited April. 17, 2020).

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.”).

Looking further, the Accountability Program tested PicsArt’s other mobile app offerings and identified additional instances of this type of collection.¹¹

The collection of this data prompted us to review the PicsArt app for compliance with the Mobile Guidance’s first-party provisions. During our review the Accountability Program was unable to find an enhanced notice link at any of the times or locations required by the Mobile Guidance. While the PicsArt app provided a link to the top of a privacy policy document¹² within its listings on the Apple App and the 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 PicsArt allows through its app.¹³ We could find no other link that would serve as enhanced notice under the Mobile Guidance.

The Accountability Program looked further to determine if PicsArt had provided any disclosure of third-party data collection for IBA taking place through its mobile apps. We examined PicsArt’s privacy policy for such a disclosure and located a description of third-party advertising taking place through PicsArt products.¹⁴ However, the Accountability Program was unable to locate a mechanism for users to opt out of IBA occurring on mobile devices, a core requirement of the Mobile Guidance.¹⁵ Finally, we could not locate a statement of adherence to the DAA Principles.

II. Desktop data collection compliance review

¹¹ Google Play Store, *PicsArt Color Paint*, <https://play.google.com/store/apps/details?id=com.picsart.draw&hl=en> (last visited June 24, 2020); Google Play Store, *PicsArt Animator: GIF & Video*, <https://play.google.com/store/apps/details?id=com.picsart.animate&hl=en> (last visited June 24, 2020); Google Play Store, *PixelArt: Color by Number, Sandbox Coloring*, <https://play.google.com/store/apps/details?id=com.picsart.coloring&hl=en> (last visited June 24, 2020); Google Play Store, *PicsArt Gifs & Stickers*, <https://play.google.com/store/apps/details?id=com.picsart.gifsart&hl=en> (last visited Apr. 17, 2020); Apple App Store, *PicsArt Color Paint*, <https://apps.apple.com/us/app/picsart-color-paint/id1183817887> (last visited June 24, 2020); Apple App Store, *PicsArt Video & Movie Maker*, <https://apps.apple.com/us/app/picsart-video-movie-maker/id1155605927> (last visited June 24, 2020); PicsArt *Animator – GIF & Video*, <https://apps.apple.com/us/app/picsart-animator-gif-video/id1181847209> (last visited June 24, 2020); Apple App Store, *PixelArt by PicsArt*, <https://apps.apple.com/us/app/pixelart-by-picsart/id1346604050> (last visited June 24, 2020).

¹² PicsArt, *Privacy Policy* (May 20, 2018), <https://picsart.com/privacy-policy> [permalink: <https://perma.cc/Z8NA-V58G>].

¹³ *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).

¹⁴ PicsArt, *Privacy Policy* (May 20, 2018), <https://picsart.com/privacy-policy> [permalink: <https://perma.cc/Z8NA-V58G>].

¹⁵ *Id.* The Accountability Program noted that PicsArt stated in its privacy policy that “We respect your right to control and make choices about your information. You may request PicsArt to:

- provide you with information we collect about you
- transfer your information to another controller of your choice, when technically feasible
- delete (please see below for more details on deletion)
- update, edit or modify your information or
- change your privacy preferences at any time

Your request can be made by emailing us at privacy@picsart.com or, in some instances you may also do it yourself via the PicsArt Service.” *Id.* We note that this language is not sufficient for providing an opt-out mechanism for IBA occurring through mobile apps.

The Accountability Program went on to examine PicsArt’s website, located at www.picsart.com. There, we detected signs that third parties were engaged in data collection for IBA, raising possible issues under the first-party requirements of the OBA Principles. The Accountability Program went on to assess PicsArt’s compliance with these provisions.

We were unable to find an enhanced notice link to an IBA disclosure on each page of the PicsArt website where IBA-related data collection appeared to occur. Specifically, we could not locate any link, separate and distinct from the privacy policy link, that directs users to a compliant disclosure about IBA occurring on the site. While PicsArt provided a privacy policy link on the sidebar menu of its website, this link did not constitute enhanced notice because it was not distinct from a general privacy policy link and did not take users directly to a compliant disclosure about IBA.

The Accountability Program then examined the privacy policy for PicsArt to determine if the company had provided a compliant IBA disclosure. As discussed in the section of this letter covering our mobile app investigation of PicsArt, we identified language indicating that the company may share information with third parties for IBA purposes. However, we were unable to locate a link to an industry-developed opt-out tool or a list of every third party engaged in IBA on PicsArt website with accompanying links to consumer choice mechanisms. Moreover, as previously discussed, we could not locate a statement of adherence to the DAA Principles.

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

ISSUES RAISED

I. Enhanced notice of mobile 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 data through their apps for use in IBA, they must provide “enhanced notice” and choice about such third-party data collection for IBA.¹⁶

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.¹⁷ 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

¹⁶ *Mobile Guidance* at 17.

¹⁷ *Id.* See generally *In re FitNow, Inc.* (101-2019), Sep. 5, 2020; *In re: Publishers Clearing House, Inc.* (92-2019), Jan. 28, 2019); *In re: Finish Line*, (86-2018), Sep. 26, 2018). All prior cases cited herein can be found at <https://bbbprograms.org/programs/daap/accountability-program-decisions-and-guidance>.

of the app, **or** at the time cross-app data is first collected, **and** in the application’s settings or any privacy policy.¹⁸

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.¹⁹

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.²⁰ A first party must include a disclosure somewhere on its website that describes the IBA activity occurring there.²¹ 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.²² Additionally, a first party must state its adherence to the DAA Principles on its website.²³

Like the Mobile Guidance, 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

¹⁸ *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, First Party Enhanced Notice Compliance Warning CW-01-2013*, <https://bbbnp-bbbp-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=25e3af96at2> (“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.”).

¹⁹ DAA, *AppChoices*, <https://youradchoices.com/appchoices> (last visited Apr. 17, 2019).

²⁰ *OBA Principles* § II.B. at 13–14.

²¹ *Id.*

²² *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.

²³ *OBA Principles* § II.B. at 13–14. *See, e.g., In re: PVH Corp. (106-2019)*, Oct. 28, 2019; *In re: Johnson & Johnson Consumer Inc. (105-2019)*, Oct. 28, 2019; *In re: Dine Brands Global, Inc. (100-2019)*, Sep. 5, 2019.

policy.²⁴ 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.²⁵ The link may be provided directly by the first party or by one of the third parties active on its website.²⁶

COMPANY RESPONSE AND ANALYSIS

In response to the Accountability Program’s inquiry letter, PicsArt 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 provided detailed descriptions of its data collection practices, 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. Mobile data collection issues for IBA

PicsArt’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. Consequently, PicsArt should have provided an enhanced notice link to a compliant cross-app IBA disclosure for its mobile apps. However, at the time of our inquiry PicsArt provided no enhanced notice link and a partially compliant disclosure.

To resolve its issues under the enhanced notice provisions of the Mobile Guidance, PicsArt took a number of steps. To start, the company elected to employ the “jump link” method of providing cross-app enhanced notice under the Mobile Guidance.

As detailed above, 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.²⁷ 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.²⁸ To do so, app publishers must place an IBA

²⁴ *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.”).

²⁵ *Id.* at 31.

²⁶ *First Party Enhanced Notice Compliance Warning* at 3.

²⁷ *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.

²⁸ *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.”).

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.²⁹ 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.

To achieve compliance in this way, PicsArt updated its privacy policy, accessible from its website and mobile apps, to include a jump link at the top of the document.³⁰ This jump link, accompanied by language stating that users can click the link to learn more about IBA and their choices surrounding it, takes users to an updated section of the PicsArt privacy policy, entitled “Digital Advertising & Analytics.” This section includes a mobile IBA disclosure, points to the DAA’s AppChoices app, and includes a statement of adherence to the DAA Principles. The Accountability Program reviewed this implementation across PicsArt’s mobile app offerings and found that it resolved the company’s issues under the Mobile Guidance.

II. Enhanced notice of website data collection for IBA

To resolve its compliance issues under section II.B. of the OBA Principles, PicsArt added a link entitled “Interest-Based Advertising” to its website footer.³¹ This link directs users to the aforementioned Digital Advertising and Analytics section, which contains a description of IBA occurring on the PicsArt website, a link to the Network Advertising Initiative’s (NAI) opt-out page (<http://optout.networkadvertising.org/?c=1>), and a statement of adherence to the DAA Principles. The Accountability Program found that these actions resolved PicsArt’s issues under section II.B. of the OBA Principles.

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 in mobile apps or the traditional web environment. This year, the Accountability Program will enter its 6th year of enforcement of the Mobile Guidance, and we now fully expect mobile app publishers to provide cross-app enhanced notice to users with the same level of diligence as website publishers. Where app publishers have an extremely large user base, this responsibility is amplified.

We thank PicsArt for bringing enhanced notice to millions of its current and potential users across its multiple app products.

COMPANY’S STATEMENT

PicsArt respects the self-regulatory process and the purpose the DAA serves U.S. industry and consumers. We are pleased to comply with the DAA Principles and appreciate the opportunity to work with the Accountability Program to ensure consumer transparency and choice.

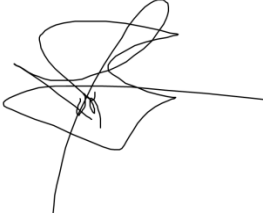
²⁹ *Id.* (allowing a jump link near the top of a privacy policy to direct consumers to an IBA disclosure where app stores do not allow active enhanced notice links).

³⁰ PicsArt, *Privacy Policy* (Jan. 31, 2020), <https://picsart.com/privacy-policy>.

³¹ PicsArt, *Privacy Policy* (Jan. 31, 2020), <https://picsart.com/privacy-policy#interest-based>.

DISPOSITION OF DECISION

Practices voluntarily corrected.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Jon M. Brescia
Vice President
Digital Advertising Accountability Program