

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

***ONLINE INTEREST-BASED ADVERTISING ACCOUNTABILITY PROGRAM***

**FORMAL REVIEW**  
Case Number: 63-2016

COMPANY: )  
Top Free Games )  
)  
)  
CHALLENGER: )  
Online Interest-Based )  
Advertising Accountability Program )  
)  
)

**DECISION**

DATE: May 4, 2016

**SYNOPSIS**

The Digital Advertising Alliance’s (DAA) Self-Regulatory Principles (DAA Principles)<sup>1</sup> cover entities engaged in interest-based advertising (IBA) across websites or mobile applications (apps). Mobile app publishers<sup>2</sup> that authorize third parties to collect data through their apps must comply with DAA Principles. In particular, as explained in the Application of Self-Regulatory Principles to the Mobile Environment (Mobile Guidance), when allowing the third-party

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<sup>1</sup> The DAA Principles consist of a suite 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>.

<sup>2</sup> The DAA Principles assign responsibilities to entities based on the role these entities are playing 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. Our references to “publishers” or “app publishers” in this case denote first parties under the Mobile Guidance. *See Mobile Guidance*, Definition G at 7.

collection and use of data for cross-app<sup>3</sup> IBA, the application must provide notice and enhanced notice of this fact. Further, when an app is directed to children under the age of 13, it must also meet the more stringent requirements of the Sensitive Data Principle, section VI.A. of the OBA Principles, which requires that covered companies that collect and use “personal information” (PI) as defined in the Children’s Online Privacy Protection Act of 1998 (COPPA) for IBA do so only in compliance with COPPA.<sup>4</sup>

## COMPANY STATUS

Top Free Games is a company that publishes mobile gaming applications on the Android and iOS operating systems.<sup>5</sup> It is the publisher of the mobile gaming application Mouse Maze.

## INQUIRY

This case arises from the Accountability Program’s enforcement of the Mobile Guidance. When mobile enforcement began in September 2015, the Accountability Program undertook a review of popular applications on the Android and iOS operating systems. A number of these popular apps were gaming applications that appeared to be directed to children. While testing the gaming application Mouse Maze, the Accountability Program found that its publisher, Top Free Games, allowed third parties<sup>6</sup> to collect user data for IBA without providing the required notice and enhanced notice. This data included our test phone’s IDFA,<sup>7</sup> a unique, persistent identifier

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<sup>3</sup> *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.”)

<sup>4</sup> *OBA Principles* § VI.A. at 16-17. (“Entities should not collect ‘personal information,’ as defined in the Children’s Online Privacy Protection Act (“COPPA”), from children they have actual knowledge are under the age of 13 or from sites directed to children under the age of 13 for Online Behavioral Advertising, or engage in Online Behavioral Advertising directed to children they have actual knowledge are under the age of 13 except as compliant with the COPPA.”)

<sup>5</sup> Top Free Games, *Top Free Games, Creators of Bike Race and Penguin Racing*, <http://www.topfreegames.com> (last visited Mar. 16, 2016).

<sup>6</sup> *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.”)

<sup>7</sup> Using the Accountability Program’s testing equipment, we captured and inspected Internet Protocol (IP) packets being transmitted from the application. Through analysis of the application’s network traffic, we observed third parties collecting cross-app data, likely for IBA. Among those third parties, the Accountability Program noted the collection of IDFA, Apple’s identifier for advertising, a unique alphanumeric string used to identify a particular device for advertising purposes. Android’s Identifier for Advertising (AAIDs or IFA) is the Android equivalent of Apple’s Identifiers for Advertisers (IDFA). See Greg Sterling, *Google Replacing “Android ID” with “Advertising ID” Similar to Apple’s IDFA*, Marketing Land (October 31, 2013) <http://marketingland.com/google-replacing-android-id-with-advertising-id-similar-to-apples-idfa-63636>; see also Grace Fletcher, *The Impact of iOS 7 on Mobile Attribution*, Tune.com blog (August 27, 2013), <http://www.tune.com/blog/impact-ios-7-mobile-attribution/>. See also DoubleClick, *Target Mobile Apps With IDFA or AAID*, DoubleClick Ad Exchange Buyer Help, <https://support.google.com/adxbuyer/answer/3221407?hl=en> (last visited Apr. 20, 2016). See also *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.”)

designed for use in targeted mobile advertising. This prompted a review of Top Free Games' compliance with the DAA Principles, focusing on Mouse Maze.<sup>8</sup>

We examined the Mouse Maze app pages in both Apple's and Google's mobile application stores for the presence of enhanced notice links, which first parties must provide when third-party companies collect cross-app data. While we could not find an enhanced notice link separate from the privacy policy link, we did find a link to the privacy policy in both app stores. However, these links directed users to the top of Top Free Games' privacy policy where it describes all its services, rather than providing a link to the section in the privacy policy that described IBA.<sup>9</sup> Moreover, the policy did not provide a link to a choice mechanism that met DAA specifications or a list of each third party collecting data for IBA with links to their respective opt-out mechanisms. The privacy policy also lacked a statement of adherence to the DAA Principles.

During our review, we took note of certain characteristics of Mouse Maze that appeared geared towards a child audience, including the depiction of its main character as a cartoon mouse with exaggerated features, the simplicity of its gameplay, and the game's colorful, cartoon environment.<sup>10</sup> Based on these observations, we concluded that the application was likely directed to children, triggering certain obligations under the Sensitive Data Principle, in particular section VI.A. of the OBA Principles, which incorporates the requirements of COPPA. This provision requires that all companies covered by the DAA Principles collect persistent identifiers for use in IBA from children they know to be under 13 or from child-directed sites only in compliance with COPPA.<sup>11</sup> We noted that the collection of unique identifiers through the application took place without obtaining verifiable parental consent (or age gating), as required under COPPA.

Based on the above review, the Accountability Program sent an inquiry letter to Top Free Games informing the company of these issues in order to bring the company into compliance with the DAA Principles.

## COMPANY'S POSITION

Top Free Games argued that the game was targeted to a general audience. The company further argued that its privacy policy specifically stated that none of its apps were intended for use by children under 13 which, it stated, supported its position that the app was not intended to be targeted to children.

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<sup>8</sup> As explained below, we are continuing to review Top Free Games' apps for compliance with the DAA Principles.

<sup>9</sup> Because the app stores sometimes limit the number and type of live links that can be provided in their stores, it is permissible to use a link to the privacy policy, rather than create a distinct link as is required elsewhere. However, the link to the privacy policy must either go directly to the pertinent discussion of IBA or direct the user to that place through a clear link at the top of the privacy policy. *See Mobile Guidance* § III.A(3) Commentary at 18.

<sup>10</sup> The Accountability Program observed that Top Free Games' privacy policy indicated that the company does not use its application to solicit or market from children under the age of 13. This disclaimer, as discussed below in this decision, is not sufficient to shield a company from liability under COPPA.

<sup>11</sup> Children's Online Privacy Protection Act of 1998 (COPPA), 15 U.S.C. §§ 6501-6505.

After discussion with the Accountability Program, Top Free Games agreed to age gate the app and committed to coming into substantial compliance with the OBA Principles and the Mobile Guidance on Mouse Maze.

However, the company declined to make an ongoing commitment to following the DAA Principles on all of its offerings to US consumers. Top Free Games argued that it is a foreign entity whose apps are geared to users of many countries. Therefore, Top Free Games was “not yet prepared to determine if the US DAA principles are the most appropriate self-regulatory regime for it to follow.” The Accountability Program explained to Top Free Games that a host of global companies offer their products and services in multiple jurisdictions and avoid conflict simply by stating explicitly which self-regulatory program they have adopted in the respective countries in which they operate. Although Top Free Games did not explain why that common practice was not a viable solution, the company remained adamant in its refusal to commit to providing US users with an ongoing commitment to the DAA Principles.

Top Free Games did, however, work diligently to implement the recommendations of the Accountability Program with respect to Mouse Maze by making the following changes:

#### I. Cross-app enhanced notice

To come into compliance with the cross-app enhanced notice provisions of the Mobile Guidance, Top Free Games revised its privacy policy (<http://www.topfreegames.com/privacy>). It updated its privacy policy link on its page in the Apple App Store so that it now directs users to a section of the policy entitled “Third Party Advertising and Analytics.” This section describes IBA taking place on all of Top Free Games’ services, which include its products, content, and websites. It contains a link entitled “How to Access, Update, and Manage Your Information – Opting out of Third Party Tailored Advertising,” which now takes users to a section in the privacy policy entitled “Opting out of Third Party Tailored Advertising.” This section contains links to the Network Advertising Initiative website, the DAA Consumer Choice page ([www.aboutads.info/choices](http://www.aboutads.info/choices)), and the UK’s Your Online Choices page. This section also contains instructions on how to download the DAA’s AppChoices app and how to reset a mobile device’s advertising ID. Additionally, Top Free Games added to Mouse Maze’s settings a privacy policy link under the “options” tab that takes the user to its IBA disclosure.

#### II. Sensitive Data Principle

While Top Free Games continued to insist that it was not directed to children under 13, it added an age gate to its application to come into compliance with the Sensitive Data Principle.<sup>12</sup> This age screen now requires users to enter their year of birth prior to beginning play. Users who enter an age under 13 are flagged as children under 13, and data collection for advertising purposes is

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<sup>12</sup> We note that Top Free Games continues to maintain in its Privacy Policy that it is not directed to children under 13. Top Free Games, *Privacy Policy*, <http://www.topfreegames.com/privacy> (last visited Apr. 8, 2016). (“Our websites and games are not for children under the age of 13 and we do not knowingly collect any personal information from children under 13. Children under 13 should not use our websites or games at any time. If we learn that we have inadvertently gathered personal information from a child under 13, we will take reasonable measures to promptly remove that information from our records.”)

disabled for these users. An Accountability Program test using a year of birth of 2012 confirmed that Top Free Games no longer authorizes third parties to engage in IBA when the user is under the age of 13.

## DECISION

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.<sup>13</sup>

### I. First party enhanced notice and consumer control for cross-app data collection

Since Top Free Games authorizes third parties to engage in cross-app IBA through the Mouse Maze app, it has first party obligations under the cross-app provisions of the Mobile Guidance.

According to section III.A.(3) of the Mobile Guidance, first parties who 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.<sup>14</sup> 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.<sup>15</sup>

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 replaces the old-fashioned practice of burying information about IBA—if it was provided at all—somewhere in the privacy policy for the consumer to unearth. 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.

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<sup>13</sup> *Mobile Guidance* at 17.

<sup>14</sup> *Id.*

<sup>15</sup> *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 *Mobile Guidance* § III.B.(1) at 18-19. Compare Online Interest-Based Advertising Accountability Program, *Compliance Warning*, available at <http://www.ascreviews.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.”)

Since the Mobile Guidance is new, we provide an example of enhanced notice below, by way of illustration of one of the many compliant ways of providing enhanced notice in the mobile world. As discussed, application publishers may use a privacy policy link in the application store as enhanced notice so long as it leads to the **relevant section** of the privacy policy.



Top Free Games addressed these compliance issues by updating its privacy policy, the Mouse Maze App, and the Mouse Maze page on the Apple App Store. The privacy policy link on Mouse Maze's page on the Apple App Store now directs to the relevant section of the privacy policy that contains the IBA disclosure. This IBA disclosure contains a link that directs users to instructions for opting out of cross-app IBA, including changing system settings and downloading the DAA's AppChoices tool. The Accountability Program's review of the updated Mouse Maze app also confirmed that the link in the application's settings directed us to the IBA disclosure of the updated privacy policy. As discussed, Top Free Games refused to commit to ongoing compliance on all apps directed to users in the United States, rendering it out of compliance in that regard.

## II. Requirements under the Sensitive Data Principle

The Mobile Guidance triggers additional responsibilities when companies authorize the collection of certain types of data, including the persistent identifiers that underpin IBA, through applications that are directed to children. This is because the Mobile Guidance incorporates all of the self-regulatory principles and definitions of the OBA Principles, including section VI.A., the Sensitive Data Principle.<sup>16</sup> Compliance with the Sensitive Data Principle requires, among other things, compliance with the pertinent provisions of COPPA.<sup>17</sup> COPPA, in part, requires companies to obtain verifiable parental consent<sup>18</sup> when they 1) allow the collection of PI<sup>19</sup> from

<sup>16</sup> *Mobile Guidance* at 1.

<sup>17</sup> *OBA Principles* at 16-17. *See also* Children's Online Privacy Protection Act of 1998 (COPPA), 15 U.S.C. §§ 6501-6505.

<sup>18</sup> 15 U.S.C. § 6501(9).

children they have actual knowledge are under the age of 13, or 2) allow the collection of PI on applications that are directed to children.<sup>20</sup> Since our testing revealed third-party collection of persistent identifiers (a type of PI under COPPA) through Mouse Maze, which appears likely to attract a significant audience under 13, we determined that Top Free Games also has heightened responsibilities under the Mobile Guidance.<sup>21</sup> In analyzing these responsibilities, we examined the FTC’s body of COPPA cases.

Under section 312.2 of the FTC’s COPPA regulations, the determination of whether an application is targeted to children is based on a multi-factor test which considers factors such as subject matter, visual content, language, use of animated characters, and use of child-oriented activities or incentives.<sup>22</sup> The FTC recently addressed this issue in its *TinyCo* settlement.<sup>23</sup> In that case, the FTC alleged that the company’s mobile apps were child-directed because they “appeal[ed] to children by containing brightly-colored, animated characters... and by involving subject matters such as a zoo, tree house, or resort inspired by a fairy tale.”<sup>24</sup>

In its official FAQs for COPPA, the FTC strongly encourages a company to investigate whether its app falls within the FTC definitions of child-directed (that is, whether it has either a primary or secondary audience of children under 13).<sup>25</sup> Further, COPPA imposes strict liability on the owners and operators of child-directed websites and online services where third parties collect PI from children for IBA.<sup>26</sup> This precludes first parties from disclaiming data collection practices in

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<sup>19</sup> Federal Trade Commission, *Complying with COPPA: Frequently Asked Questions*, § A.3., <https://www.ftc.gov/tips-advice/business-center/guidance/complying-coppa-frequently-asked-questions> (last visited Apr. 6, 2016). (“The amended Rule defines personal information to include... A persistent identifier that can be used to recognize a user over time and across different websites or online services.”) See also 15 U.S.C § 6501(8).

<sup>20</sup> *Id.*, see also *supra* note 17.

<sup>21</sup> Top Free Games did not dispute that it had authorized this third party data collection.

<sup>22</sup> See *supra* note 19 at § D.1. (“The amended Rule sets out a number of factors for determining whether a website or online service is directed to children. These include subject matter of the site or service, its visual content, the use of animated characters or child-oriented activities and incentives, music or other audio content, age of models, presence of child celebrities or celebrities who appeal to children, language or other characteristics of the website or online service, or whether advertising promoting or appearing on the website or online service is directed to children.”)

<sup>23</sup> *FTC v. TinyCo*, FTC Matter 132 3209 (Sept. 2014).

<sup>24</sup> *Id.*

<sup>25</sup> See *supra* note 19 at § D.3. (“As the operator, you should carefully analyze who your intended audience is, the actual audience, and in many instances, the likely audience for your site or service.”) See also *supra* note 19 at § G.2. (“Although you may intend to operate a “teen service,” in reality, your site may attract a substantial number of children under 13, and thus may be considered to be a “Web site or online service directed to children” under the Rule. Just as the Commission considers several factors in determining whether a site or service is directed to children, you too should consider your service’s subject matter, visual content, character choices, music, and language, among other things. If your service targets children as one of its audiences – even if children are not the primary audience – then your service is “directed to children.” In circumstances where children are not the primary audience of your child-directed service, the amended Rule allows you to employ an age screen in order to provide COPPA’s protections to only those visitors who indicate they are under age 13. Note that sites or services directed to children cannot use the age screen to block children under age 13.”)

<sup>26</sup> Children’s Online Privacy Protection Act Rule; Final Rule, Vol. 38 No. 12, 16 C.F.R. Part 312 (2013), <http://www.gpo.gov/fdsys/pkg/FR-2013-01-17/pdf/2012-31341.pdf>. (“For the reasons discussed below, the Commission, with some modifications to the proposed Rule language, will retain the strict liability standard for child-directed content providers that allow other online services to collect personal information through their sites.”) See also, 15 U.S.C. § 6501(2). (“The term “operator”— (A) means any person who operates a website located on the Internet or an online service and who collects or maintains personal information from or about the users of or

their privacy policies with respect to children under the age of 13 if the FTC deems the app to be child-directed based on the multi-factor test the agency has developed or from disclaiming responsibility for the actions of third parties on its app or website.

COPPA allows the designation of some child-directed apps as “mixed-audience” when the app does not target children as its primary audience but nonetheless “attract[s] a substantial number of children under 13.”<sup>27</sup> COPPA allows publishers to employ an age screen in these circumstances to flag users under the age of 13 so first parties can prevent third parties from collecting their data, obtain verifiable parental consent prior to collection, or direct the children to content that does not involve the collection or use of PI.<sup>28</sup>

The Accountability Program concluded that the app appeared to be directed to children based on the following characteristics that we observed. Mouse Maze focuses on the exploits of a cartoon mouse with exaggerated features which inhabits a colorful, cartoon environment. The player directs the cartoon mouse through a maze to win the game. The initial mazes are quite simple and can be navigated by a young child. As the player continues the game, the level of difficulty increases, suggesting that the app may have multiple audiences at different skill levels. In the Apple App Store, the game is given a 4+ rating.<sup>29</sup> Assuming, arguendo, that Mouse Maze is a child-directed app, then it failed to comply with COPPA, because the Accountability Program observed third parties collecting IDFA's during testing of Mouse Maze. The app did not obtain verifiable parental consent prior to collection, nor did it employ an age gate to screen users under the age of 13, as required under COPPA.

As noted above, Top Free Games took the position that the application is not child-directed and is designed for “general audiences.”<sup>30</sup> It pointed out that the game is designed to have broad appeal. The company referred to a section of their privacy policy that stated their services are not directed to children under the age of 13. The company emphasized how the mazes featured in the game become more challenging throughout play. Top Free Games also pointed to data about its user base it obtained from Facebook which suggested that the majority of the application’s users were above the age of 13.

The Accountability Program rejected Top Free Games’ position, citing the FTC’s multi-factor test for child-directed content. In discussions with Top Free Games, the Accountability Program pointed to the game’s characteristics, including its cartoon animal characters. Accountability Program research on reviews of the game also showed that young children are often users of the

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visitors to such website or online service, or on whose behalf such information is collected or maintained, where such website or online service is operated for commercial purposes, including any person offering products or services for sale through that website or online service, involving commerce....”)

<sup>27</sup> See *supra* note 25.

<sup>28</sup> *Id.*

<sup>29</sup> Apple App Store, *Mouse Maze Free Game by Top Free Games*, <https://itunes.apple.com/us/app/mouse-maze-free-game-by-top/id464837515?mt=8> (last visited Nov. 25, 2015). The Accountability Program noted the application was unrated in the Google Play store. During the pendency of this decision, Top Free Games removed the application from the Google Play store.

<sup>30</sup> Children’s Online Privacy Protection Rule, Vol. 71 No. 50, 16 CFR Part 312 (2006). (“The Rule’s requirements apply to operators of Web sites other than those directed to children (sometimes referred to as “general audience Web sites”) if such operators have “actual knowledge” that they are collecting or maintaining personal information from children.”)



application.<sup>31</sup> To be sure, a statement that a company does not intend its app to be directed to children is evidence of the company's *intent*. But COPPA does not allow a company to rely on a simple disclaimer that its service is not directed to children.<sup>32</sup> Nonetheless, in light of the audience evidence provided by Top Free Games, the Accountability Program agreed that the app may be considered a mixed-audience app. Top Free Games added an age gate to its app, despite the company's view that the evidence demonstrates that the app is targeted to a general audience.

The Accountability Program appreciates that Top Free Games added an age-screening mechanism to achieve compliance with the DAA Principles as they reflect the pertinent provisions of COPPA relating to IBA. Because the application no longer allows the third-party collection of IBA data from users under the age of 13 nor itself collects such data, the compliance problem under section VI.A. of the DAA's OBA Principles is now resolved.

## CONCLUSION

The Accountability Program is celebrating its fifth year successfully working with companies in the advertising ecosystem to help them comply with the DAA Principles. In all that time, we have had only one company that refused to participate in the Accountability Program's voluntary compliance process. Of all the companies that have participated in the Accountability Program's compliance process, including those headquartered abroad, none until Top Free Games has refused to commit to following the DAA Principles with respect to its US offerings until this writing.

Self-regulation is an ongoing commitment, not simply an agreement to make changes when a company is caught with one of its products out of compliance. Because Top Free Games has

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<sup>31</sup> See Balefire Labs, *Mouse Maze Free Game –By Top Free Games*, <http://www.balefirelabs.com/apps/mouse-maze-free-game-by-top-free-games> (last visited Mar. 28, 2016). We note that this site indicated the game was for 8, 9, 10, 11, and 12 years old; see also Appcrawlr.com, *Mouse Maze Best Christmas FREE*, <http://appcrawlr.com/ios/mouse-maze-best-christmas-free-> (last visited Mar. 28, 2016). ("My three year old loves this game...The game is pac man with a twist for all ages...My kids love this game.") We note here that this was the "Christmas" version of the game; see also Download.cnet.com, *Mouse Maze Free Game – By Top Free Games*, [http://download.cnet.com/Mouse-Maze-Free-Game-by-Top-Free-Games/3000-20416\\_4-75582180.html](http://download.cnet.com/Mouse-Maze-Free-Game-by-Top-Free-Games/3000-20416_4-75582180.html) (last visited Mar. 28, 2016). ("Been playing Mouse Maze for months now. Addicting puzzles and cute pets. Get it now!" "Couldn't believe this game is FREE! Definitely recommend it as a addicting puzzle game for all ages." "My kids don't let me use my phone anymore. Blame on you, Mouse Maze! Such an awesome puzzle game!" "My 6-years old boy loves playing with the Magic Mouse! I find him cute too!" "How cute is this? My girls and myself love the game....")

<sup>32</sup> See *supra* note 19 at § G. 2 ("Although you may intend to operate a "teen service," in reality, your site may attract a substantial number of children under 13, and thus may be considered to be a "Web site or online service directed to children" under the Rule.") See also *supra* note 19, § D.6. ("The amended Rule does not require you to inform third parties of the child-directed nature of your site or service, and doing so, without more, will not relieve you of your obligations under COPPA. Remember, you are responsible for the collection of personal information from your users, no matter who is doing the collection; therefore, you will need to do more than simply identify yourself to third parties. As a child-directed property, absent an exception under the amended Rule (*see* FAQ H.2 below), you must: (1) not collect or allow any other entity to collect personal information from your visitors; or (2) provide notice and obtain prior parental consent before collecting or allowing any entity to collect personal information from your visitors, as well as provide all of the other COPPA protections. In addition, Commission staff recommends that operators of child-directed websites or services signal their status to third parties and you may arrange with the third party collecting the personal information to provide adequate COPPA protections.")

provided no assurance that it will be compliant with the DAA Principles going forward, the Accountability Program will monitor Top Free Games' other applications for compliance with the DAA Principles on a regular basis.

Nonetheless, Top Free Games has demonstrated that, at least with respect to Mouse Maze, it was willing to change its practices to meet the industry standards represented by the DAA Principles. This illustrates the strengths of the DAA Principles—they are not limited to “members” or “participants,” but cover all companies engaged in IBA that target users in the United States. The Accountability Program appreciates the willingness of Top Free Games, which is based in Brazil but has a user base in the United States, to participate in its formal review process and become substantially compliant with the DAA Principles.

These self-regulatory principles have become international. Thirty-five countries have now implemented self-regulatory principles that are substantially the same as those in force across the advertising ecosystem in the US with modifications that reflect the unique requirements of each jurisdiction. They have been adopted as the European Digital Advertising Alliance in the European Union and the European Economic Area, where they are enforced by self-regulatory agencies under the umbrella of the European Advertising Self-Regulatory Alliance. The Digital Advertising Alliance of Canada has adopted similar principles, which are enforced by Advertising Standards Canada. They have been translated into 26 languages.<sup>33</sup> The Accountability Program works hand-in-hand with its sister compliance organizations in these countries. Strong self-regulation can help foster a truly global marketplace that supports technological innovation without sacrificing consumer choice.

## **COMPANY'S STATEMENT**

Top Free Games takes its privacy practices seriously and is committed to legal compliance and the principles of transparency, notice, and choice. Top Free Games appreciates the Accountability Program's recognition of the company's prompt implementation of changes to its privacy disclosures to meet current industry standards. Top Free Games also welcomed the opportunity to provide empirical and other evidence demonstrating that its app is not directed to children under COPPA. Notwithstanding this supporting evidence, Top Free Games, of its own accord, incorporated an age gate into its general audience app to ensure that third parties will not collect IBA data from users who identify as under 13.

Top Free Games understands that legal compliance requires an ongoing commitment and effort. However, at this time, Top Free Games has decided not to commit to a voluntary U.S. self-regulatory program because Top Free Games is not a U.S. entity, there are non-U.S. self-regulatory programs that it wishes to consider, and Top Free Games could face potential liability

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<sup>33</sup> In light of the international “family” of DAA Principles which operate in many of the regions where Top Free Games offers its products, the Accountability Program is perplexed by Top Free Games' arguments. Global companies commit to following the DAA Principles in the US and other self-regulatory programs in other jurisdictions. By providing notice to users regarding their practices, their intentions and practices are clear. Had Top Free Games chosen to state in its privacy policy that it followed the DAA Principles with respect to those apps directed to users in the US, it would avoid any taint of “deception.” Moreover, should a conflict ever develop between self-regulatory programs in different countries, Top Free Games would obviously be free to withdraw from the US-based program.

for making a deceptive representation if it does not comply with the DAA Principles, including future changes that may conflict with other foreign self-regulatory regimes. Top Free Games' decision to not incorporate a statement of adherence to the voluntary DAA Principles in no way undermines the company's strong commitment to legal compliance and to the principles of transparency, notice, and choice. Top Free Games' actions in this matter and in its ongoing business practices demonstrate this commitment.

**DISPOSITION OF DECISION**

Practices voluntarily substantially corrected, but the company refused to promise to comply with the DAA Principles going forward. The Accountability Program will actively monitor on a regular basis to determine Top Free Games' compliance on offerings directed to US consumers.



**Genie Barton**  
**Vice President and Director**  
**Online Interest-Based Advertising Accountability Program**