

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

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

**FORMAL REVIEW**  
Case Number: 58-2016

COMPANY: )  
The Hollywood Reporter, Inc. )  
)  
)  
CHALLENGER: )  
Online Interest-Based )  
Advertising Accountability Program )  
)  
)

**DECISION**

DATE: January 14, 2016

**SYNOPSIS**

Owners or operators of websites who allow third parties to collect or use visitors' web browsing data for interest-based advertising (IBA) must comply with the Digital Advertising Alliance's (DAA) Self-Regulatory Principles (DAA Principles).<sup>1</sup>

**COMPANY STATUS**

The Hollywood Reporter is a print and digital magazine that is focused on entertainment news, reviews, videos and analysis.<sup>2</sup> The Hollywood Reporter is part of the Prometheus Global Media Company, LLC.<sup>3</sup>

---

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

<sup>2</sup> Prometheus Global Media, [The Hollywood Reporter](http://www.the-hollywood-reporter.com), (last visited Dec. 8, 2015), <http://www.prometheusgm.com/the-hollywood-reporter>.

## INQUIRY

This case arises from the Online Interest-Based Advertising Accountability Program's (Accountability Program) review of interest-based native advertising compliance.<sup>4</sup> In order to evaluate the compliance of companies engaged in interest-based native advertising, the Accountability Program visited websites which featured interest-based native ad content. The Hollywood Reporter was one of those websites<sup>5</sup> where interest-based native advertising appeared. However, when viewing an interest-based native ad on the Hollywood Reporter website, the Accountability Program could not locate an enhanced notice link in or around the advertisement or anywhere on the webpage where the ad appeared. Because both third and first parties have independent obligations to provide enhanced notice when data is being collected or used for IBA, we initiated inquiries into the IBA practices of both the first and third parties responsible for the ad.<sup>6</sup>

Under the Self-Regulatory Principles for Online Behavioral Advertising (OBA Principles),<sup>7</sup> first parties must provide an enhanced notice link on every page of their websites where third parties are collecting or using data for IBA if the third party does not provide such notice. In evaluating Hollywood Reporter's compliance, however, we could not locate an enhanced notice link on any of the pages on the Hollywood Reporter website where data was being collected by third parties.

Although the Accountability Program could not find the requisite enhanced notice link, the Accountability Program was able to locate a link to the Hollywood Reporter's privacy policy in the footer on the website's homepage. Navigating to this privacy policy, the Accountability Program found within it a disclosure of third-party IBA activity that included a link to the Network Advertising Initiative's (NAI) consumer opt-out webpage.<sup>8</sup> However, the Accountability Program did not see a statement of adherence to the DAA Principles anywhere in the Hollywood Reporter privacy policy.

---

<sup>3</sup> *Id.*

<sup>4</sup> Online Interest-Based Accountability Program, Interest-Based Native Advertising Compliance Warning (Dec. 4, 2014), *available at* <http://www.asrcreviews.org/wp-content/uploads/2014/12/Compliance-Warning-CW-03-2014-Native-Advertising.pdf> (Compliance Warning). Native advertising generally fits the form and function of the page on which it appears and provides sponsored content that a reader might like. *See also*, Interactive Advertising Bureau, The Native Advertising Playbook (Dec. 4, 2013), *available at* <http://www.iab.net/media/file/IAB-Native-Advertising-Playbook2.pdf> (Native Advertising Playbook). ("...most advertisers and publishers aspire to deliver paid ads that are so cohesive with the page content, assimilated into the design, and consistent with the platform behavior that the viewer simply feels that they belong.") *See also* Native Advertising, Wikipedia (last visited Dec. 6, 2015), [https://en.wikipedia.org/wiki/Native\\_advertising](https://en.wikipedia.org/wiki/Native_advertising).

<sup>5</sup> <http://www.hollywoodreporter.com>

<sup>6</sup> *See In re: Gravity, Inc.* (56-2015), Nov. 4, 2015 (resolving the third-party compliance issues), *available at* <http://www.bbb.org/globalassets/local-bbbs/council-113/media/asrc-documents/gravity-decision.pdf>.

<sup>7</sup> Digital Advertising Alliance, Self-Regulatory Principles for Online Behavioral Advertising (July 2009), *available at* <http://www.aboutads.info/resource/download/seven-principles-07-01-09.pdf>.

<sup>8</sup> *See Network Advertising Initiative* (last visited Dec. 7, 2015), <https://www.networkadvertising.org/>. The Accountability Program accepts the link to this industry-developed opt-out mechanism as satisfying the choice mechanism requirement but notes that the DAA Consumer Choice page lists additional companies from which consumers can opt out.

## COMPANY'S POSITION

The Hollywood Reporter responded to the Accountability Program's inquiry letter by acknowledging that its website needed revisions in order to reach full compliance with the OBA Principles. The Hollywood Reporter explained that it cares about the privacy of its website's visitors, which it demonstrated by providing an IBA disclosure in its privacy policy that linked to an industry-developed opt-out website.

The Hollywood Reporter immediately set out a compliance plan to bring its website into full compliance with the DAA Principles. The Hollywood Reporter committed to placing an enhanced notice link in the footer of every page of its website where IBA collection occurs. The Hollywood Reporter further committed to creating a new page on its website dedicated to a more consumer-friendly IBA disclosure than its existing disclosure in its privacy policy. The Hollywood Reporter's enhanced notice link will take users directly to this new disclosure, which will contain all of the required elements of § II.B. of the OBA Principles. The Hollywood Reporter committed to implementing these changes as soon as practicable.

## DECISION

This case concerns the first-party duties set out in § II.B. of the OBA Principles and fits squarely within the guidance provided by the Accountability Program's previous first-party cases.<sup>9</sup> Under § II.B., when first parties allow non-affiliate companies to collect data about the first party's web visitors for use in IBA, the first parties must provide consumers with both notice and enhanced notice of collection as well as an opportunity to opt out of IBA.<sup>10</sup> A first party must provide a disclosure somewhere on its website that describes the IBA activity occurring there. This IBA disclosure must either link consumers to an industry-developed consumer choice page (such as <http://aboutads.info/choices>) or provide a list of every third party engaged in IBA activity on the first-party website.<sup>11</sup> Additionally, a first party must indicate its adherence to the DAA Principles on its website.<sup>12</sup>

The OBA Principles also require a first party to provide consumers with a virtual signpost—an “enhanced” or real-time notice—that points consumers to its IBA disclosure.<sup>13</sup> When third parties are collecting or using data for IBA on a first party's website, the first party must place a “clear, meaningful, and prominent” link—distinct from the company's privacy policy link—on its website that takes consumers directly to the first party's IBA disclosure, not just to the top of the privacy policy page where it is contained.<sup>14</sup> The enhanced notice link must appear on every page of the first party's website where third-party data collection or use for IBA occurs.

---

<sup>9</sup> See, e.g., In re: BMW of North America, LLC (27-2013), Nov. 18, 2013; In re: Answers Corporation (38-2014), Oct. 28, 2014; In re: TWiT, LLC (46-2015), May 14, 2015.

<sup>10</sup> OBA Principles at 13-14.

<sup>11</sup> 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.

<sup>12</sup> OBA Principles at 14.

<sup>13</sup> *Id.* at 5.

<sup>14</sup> *Id.* at 32.

First parties sometimes believe—mistakenly—that the requirement for providing enhanced notice lies solely in the domain of third-party advertising companies. Third parties sometimes believe—equally mistakenly—that the responsibility for enhanced notice of third-party collection for IBA rests solely with the first party.<sup>15</sup> However, as the commentary to the Principles makes clear, while either first or third parties *may* satisfy the requirement to provide enhanced notice on a given webpage, *both parties bear independent responsibility* for ensuring that each page where IBA occurs contains a compliant enhanced notice link.<sup>16</sup> As a result, companies must communicate with one another to ensure that the provision of an enhanced notice link is not lost amid unspoken assumptions or vague commitments.

Here, the Hollywood Reporter provided consumers with a disclosure explaining the third-party IBA activity it allowed on its website and directing consumers to an industry-developed website where they could, if they wished, opt out of IBA from the companies listed there. However, the Hollywood Reporter’s website lacked an enhanced notice link and a statement of adherence to the DAA Principles. Acting on its stated commitment to its online readers’ digital privacy, the Hollywood Reporter immediately drafted a comprehensive compliance plan and submitted it to the Accountability Program for review and recommendations. After receiving the Accountability Program’s feedback, the Hollywood Reporter committed to fully implementing its plan within a commercially reasonable time. The Accountability Program commends the Hollywood Reporter for its sincere interest in bringing its website into compliance quickly and completely. The Accountability Program will retain jurisdiction over this case until the Hollywood Reporter completes its modifications. As soon as its proposed changes are implemented, the Hollywood Reporter will be fully compliant with the OBA Principles. As provided under § 10 of its procedures, the Accountability Program has granted Hollywood Reporter a commercially reasonable time to implement its recommendations.<sup>17</sup>

## COMPANY’S STATEMENT

The Hollywood Reporter is committed to maintaining responsible online advertising practices consistent with legal and self-regulatory requirements, including transparency and consumer choice. The Hollywood Reporter appreciates the Accountability Program’s efforts to ensure compliance with the DAA Principles.

---

<sup>15</sup> See In re: Gravity (56-2015), Nov. 4, 2015, at 6. (“*Both* first and third parties have the obligation to provide enhanced notice, and they should work together to ensure that consumers receive enhanced notice of collection or use of consumers’ data for IBA. While Gravity may, as it asserts, rely on first parties’ provision of enhanced notice as sufficient to fulfil its own enhanced notice obligation under the Transparency Principle, the first party’s failure to fulfill its shared responsibility to ensure that notice is provided does not excuse the third party from fulfilling its independent obligation to do so.” (Emphasis in original)).

<sup>16</sup> See OBA Principles, Commentary at 32-33 (“[U]nless an ad bearing in-ad notice is served on every Web page of a publisher’s site where third parties are collecting data for [... IBA] and that notice directs a consumer to the choice mechanisms of all third parties collecting on that Web page or to an industry-developed choice mechanism, the Transparency Principle’s enhanced notice requirement for collection is not satisfied, and the website operator cannot rely on the third party’s in-ad enhanced notice as provided under Section § II.A.(2) of the OBA Principles (Third Party Enhanced Notice)”).

<sup>17</sup> Online Interest-Based Advertising Accountability Program, Procedures (April 3, 2012), <http://www.ascreviews.org/wp-content/uploads/2012/04/OBA-Procedures2.pdf>.

## **CONCLUSION**

One of the strengths of the DAA Principles is that they apply across all companies in the advertising chain. They are neither focused only on first parties nor on third parties. Moreover, they are not membership based, but apply to all companies engaged in conduct that is covered by the DAA's self-regulatory industry consensus standards.

The Accountability Program has long emphasized that all parties share responsibility for compliance with the Principles and therefore must work together. We continue to bring cases to provide guidance to industry about the need to communicate with all related parties in the advertising chain to ensure compliance with the Principles. As a general guide, the party with the greatest technical ability to provide notice is encouraged to take the lead in doing so. Where the required notice has slipped through the cracks, all parties generally share responsibility.

The willingness of all subjects of our inquiries to swiftly implement our recommendations continues to validate the commitment of the industry to adherence with self-regulation. We appreciate industry's support for the Accountability Program's compliance work.

## **DISPOSITION OF DECISION**

Jurisdiction retained while company implements the Accountability Program recommendations.



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