

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

ONLINE INTEREST-BASED ADVERTISING ACCOUNTABILITY PROGRAM

FORMAL REVIEW

Case Number: 45-2015

COMPANY:

Imgur, Inc.

CHALLENGER:

Online Interest-Based
Advertising Accountability Program

DECISION

DATE: May 14, 2015

SYNOPSIS

When a website publisher allows third parties to collect visitor data on its website for use in interest-based advertising (IBA), it must comply with the applicable requirements of the Digital Advertising Alliance’s (DAA) Self-Regulatory Principles for Online Behavioral Advertising (Principles), including providing an enhanced notice link that takes visitors to an explanation of the website’s IBA practices, an easy-to-use opt-out mechanism, and a statement of adherence to the Principles.

COMPANY STATUS

Imgur, Inc. (Imgur) is a company whose website provides image hosting and sharing capabilities. Imgur allows third-party data collection for IBA, as defined in the cross-industry Principles, on its website (www.imgur.com).¹

¹ Principles at 9-10, Definition G (“Online Behavioral Advertising means the collection of data from a particular computer or device regarding Web viewing behaviors over time and across non-Affiliate Web sites for the purpose

BACKGROUND

In 2013, in its First Party Enhanced Notice Compliance Warning (Compliance Warning), the Online Interest-Based Advertising Accountability Program (Accountability Program)² issued formal guidance aimed at resolving confusion among website publishers, otherwise known as first parties, regarding their obligations under the Principles. The Compliance Warning explains the key role of real-time (enhanced) notice under the Transparency Principle, describes the circumstances in which it is required, and clarifies what triggers first parties' responsibilities for providing it.

In addition to providing detailed information to help first parties understand the enhanced notice requirement, the Compliance Warning instituted a period of relaxed enforcement for companies who were otherwise in full compliance with the Principles, allowing them time to bring their websites into compliance. Full enforcement of first-party compliance with the enhanced notice requirement of the Principles resumed on January 1, 2014, in the form of a systematic and ongoing review of first-party websites.

As part of its review, the Accountability Program visited the Imgur website. It noted that, in accord with the Principles, the Imgur privacy policy contained an IBA disclosure in a section headed "Information we collect; how we use it." The Imgur privacy policy also provided two opt-out links, one to the Network Advertising Initiative's (NAI) homepage and another to Privacy Choice's Tracker Block page.

However, during its review, the Accountability Program observed data collection by third-party companies known to engage in IBA but did not find the required enhanced notice link on all pages where this data collection took place. Additionally, the Accountability Program did not find a statement of adherence to the DAA Principles on Imgur's website, as required under the Principles.

COMPANY'S POSITION

Imgur responded to the Accountability Program's inquiry by immediately pledging to take action to ensure it provided its users with transparency and control that met industry best-practice standards. Imgur drafted a compliance plan and presented it to the Accountability Program with its initial response. Imgur worked with the Accountability Program during a phased implementation process that resulted in three changes to the Imgur website. One, Imgur modified its privacy policy to include a statement of adherence to the Principles and a link to the DAA industry-developed website where consumers can learn about IBA and exercise choice about participating in it. Two, Imgur added an enhanced notice link, "ad choices," to its right-hand

of using such data to predict user preferences or interests to deliver advertising to that computer or device based on the preferences or interests inferred from such Web viewing behaviors.").

² One of two accountability agents charged with enforcing the DAA Principles, the Accountability Program works closely with its sister agent, the Direct Marketing Association (DMA), which resolves consumer and business complaints about compliance through its Corporate Responsibility Team, in conjunction with the DMA Committee on Ethical Business Practice.

navigation menu, which appears on most of the pages on Imgur’s website. Third, on those pages where it was technically impossible to provide the “ad choices” enhanced notice link because there was no navigation menu, Imgur added an “ad choices” enhanced notice link next to its “privacy” and “terms” links inside its “hamburger” navigation menu (☰), thus ensuring that enhanced notice was provided on those pages that consisted only of images, with no navigation menus or footers. Both “ad choices” links take users directly to the place in Imgur’s privacy policy that contains its IBA disclosure, statement of adherence, and opt-out links.

DECISION

In this case, first-party duties under the Principles were at issue. First-party duties are set out in § II.B. of the Principles. According to this section, when first parties allow third-party IBA data collection or use on their websites, or when they transfer first-party data to third parties for tailoring ads on non-affiliated websites, they must provide consumers with appropriate notice and an opportunity to exercise choice whether to participate in IBA. A first party must include an IBA disclosure on its website that describes the IBA activity occurring there. 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.³ Additionally, a first party must indicate its adherence to the Principles on its website.

Most significantly, the Principles require first parties to provide consumers with real-time notice when third parties are collecting or using their data for IBA on a first party’s website. Termed enhanced notice, this real-time indicator must be in the form of a “clear, meaningful, and prominent” link—distinct from the company’s privacy policy link—that directs consumers to the first party’s IBA disclosure, described above.⁴ This link must appear on every page where data collection or use for IBA occurs on the first party’s website, and it must take users directly to the first party’s IBA disclosure, not just generally to a privacy policy or help center landing page.

Under the Principles, this enhanced notice link can be provided by either the first or the third party. In fact, both parties are responsible for ensuring that enhanced notice is provided. Therefore, companies should communicate to make sure that this requirement is met. Where third parties are unable to place enhanced notice directly, the first party must take whatever steps are necessary either to provide the notice itself or to empower third parties to do so. Further, first parties are cautioned that

unless 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

³ 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. Principles Commentary, Page 35.

⁴ Principles § II.B.

operator cannot rely on the third party's in-ad enhanced notice as provided under Section II.A.2. of the [...] Principles (*Third Party Advertisement Notice*) (emphasis in original).⁵

Enhanced notice provides consumers with a twofold benefit. One, simply by its presence on the page, the enhanced notice link alerts consumers to the fact that third parties are engaged in IBA on a website. Two, by linking to an additional disclosure that both describes the IBA activities occurring on that website and provides one or more means by which consumers can exercise choice, the enhanced notice link serves as a conduit to precisely the information consumers need at the time of collection or use. By highlighting in real time this complex background activity that may otherwise go unnoticed by consumers, explaining it in plain language, and pointing to one or more choice mechanisms, enhanced notice and IBA disclosures work together to demystify a form of advertising that might otherwise be viewed as creepy or covert.

At the time of the Accountability Program's investigation, the Imgur website lacked an enhanced notice link and did not contain a statement of adherence to the Principles. However, to its credit, Imgur did disclose the existence of third-party data collection and use for IBA on its website and provided links for users to several opt-out websites.

Once contacted by the Accountability Program, Imgur moved quickly to assess the changes it needed to make to its website and presented its compliance plan to the Accountability Program for review. Imgur showed great diligence by following the Accountability Program's guidance on modifications to its proposed changes to ensure they met the standards set by the Principles. Where Imgur webpages consisted entirely of images, the Accountability Program worked with Imgur to permit the enhanced notice link to appear in the drop down list of options on the "hamburger" menu, rather than in its usual placement in a footer or sidebar on each page. Consequently, the Imgur website now contains two types of enhanced notice link, one which appears on every page in the hamburger menu, and the other which appears wherever there is a right navigation menu visible on a page where third-party data is being collected. This assures that Imgur provides enhanced notice across its various page types. Imgur also added a statement of adherence to the Principles and an additional opt-out link that takes consumers to the DAA industry-developed website. The Accountability Program commends Imgur for its commitment to providing transparency and choice regarding IBA to the more than one hundred million people who use its services each month.

CONCLUSION

The first-party requirements in the Principles help to correct the information deficit that naturally exists because the inner workings of data-driven marketing and high-speed networking typically go unseen by individuals browsing the Internet. Among these requirements, enhanced notice is uniquely important, owing to its role as the signpost by which consumers are directed to information and options about their privacy on the Internet that they might otherwise might overlook and which had previously been buried in lengthy privacy policies.

⁵ First Party Enhanced Notice Compliance Warning at 3.

Probably the most familiar example of this transparency in action is the Advertising Option Icon (AdChoices Icon) which is woven into the fabric of the interest-based ad itself, either within the ad or around its border. Until the development of this now-familiar icon, consumers did not understand why they saw ads that appeared to “know” something about their prior web surfing. Now, by clicking on the AdChoices Icon, consumers can learn about IBA and exercise their choice about whether to opt out of this kind of advertising, all from links conveniently served alongside the ad itself. Third parties have stepped up to the plate to provide enhanced notice and choice, and with over a trillion AdChoices Icons served each month worldwide, enhanced notice of ads based on consumers’ interests is widespread.

Enhanced notice of third-party data collection is a less understood but equally important requirement. Before enhanced notice, consumers had no obvious indication that third parties were collecting information for IBA about their visits to particular websites. The addition of real-time notice to websites makes easily missed data collection far more transparent to consumers, and links them directly to the information and tools they need to make meaningful choices about participating in IBA while browsing the sites they enjoy.

The provision of enhanced notice to consumers when third parties are collecting data for IBA is only possible because of the broadened scope of the DAA program, which now goes beyond third parties such as ad networks that are members of a specific self-regulatory program to apply to all companies across the entire advertising ecosystem. This gives consumers an umbrella of protection that covers the entire complex digital advertising ecosystem under one self-regulatory program with independent and public enforcement.

Specifically, under the DAA Principles, both first and third parties bear an independent responsibility for serving enhanced notice. While third parties are generally best able to provide enhanced notice in or around an ad because they load that content onto the webpage, in some situations they do not have that access. For instance, where third parties’ tags are added to a website by the publisher and the third parties lack any space on the website over which they can exert sufficient control to serve enhanced notice, only the first party is in a position to do so. In this situation, the first party must either provide the notice itself or work with one or more third parties to ensure they are able to provide the notice directly on the first-party site.

The Accountability Program has taken pains to emphasize the power of enhanced notice and to describe clearly and repeatedly the ways in which first parties may satisfy the requirement to provide it when third-party collection or use for IBA occurs on their websites. This case joins our past efforts to raise first parties’ awareness of their responsibility for enhanced notice of third-party data collection. Companies should expect that the Accountability Program will continue to apply heightened scrutiny to this element of the Principles. The Accountability Program once again urges first parties to review their own websites to see which third parties, if any, are collecting data for IBA there and to reevaluate their compliance responsibilities in light of their findings.

COMPANY'S STATEMENT

Imgur is committed to honoring the Self-Regulatory Principles for Online Behavior Advertising. Imgur is an advocate of authenticity, transparency and consumer choice in online advertising, and we appreciate the opportunity to work with the Advertising Self-Regulatory Council to ensure Imgur's privacy notices are easily accessible for consumers.

DISPOSITION OF DECISION

Practices voluntarily corrected.

A handwritten signature in black ink, appearing to read "Genie Barton". The signature is fluid and cursive, with a long horizontal stroke at the end.

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