

devices for IBA must provide notice and an easy-to-use opt-out mechanism to meet the requirements of the guidance provided in the DAA’s Application of Self-Regulatory Principles to the Mobile Environment (Mobile Guidance). With respect to precise location data, companies that collect precise location data through mobile apps for IBA must comply with the third-party provisions of the Mobile Guidance, including taking steps to obtain reasonable assurances of compliance from first-party partners when third parties are technologically limited from obtaining users’ consent directly. With respect to compliance on the mobile web, companies that engage in IBA across websites accessed through mobile devices must provide notice and choice to users when collecting and using data for IBA. The Application of the Self-Regulatory Principles of Transparency and Control to Data Used Across Devices (Cross-Device Guidance) requires companies that collect data across multiple devices and associate those data with a particular user to provide notice of this practice and explain the scope of the choice provided on each device.

COMPANY STATUS

LKQD Technologies, Inc. (LKQD) is a video advertising infrastructure company based in Foothill Ranch, California. The company reaches 109 million online video viewers.⁵

INQUIRY

In the course of its regular monitoring activities, the Accountability Program selected a number of popular applications on the iOS and Android operating systems to review for first- and third-party compliance with the DAA Principles. One of these Android applications was a women’s health application called Once,⁶ published by Malang Studios. The Accountability Program saw that LKQD was being passed data by one of its customers for use in IBA from this app.

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.”).

³ The term “third party” can refer to entities that collect data for IBA both through non-affiliate mobile apps, *Mobile Guidance* Definition N at 12 (“An entity is a Third 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.”), or from non-affiliate websites or entities, *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 *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.”).

⁵ BusinessWire, *LKQD Technologies Announces 180% Annual Growth; Now Second Largest US Video Advertising Platform*, BusinessWire (July 18, 2016), <http://www.businesswire.com/news/home/20170718005524/en/LKQD-Technologies-Announces-180-Annual-Growth-Largest>.

⁶ Google Play Store, *Once-A special period tracker*, <https://play.google.com/store/apps/details?id=net.android.wzdworks.magicday> (last visited Nov. 13, 2017). The Android version of Once has been downloaded between one and five million times. *Id.*

I. Cross-App Data

While running Once, the Accountability Program noticed advertisements displayed within the application. Through analysis of the application’s network traffic, we observed LKQD⁷ collecting cross-app data, likely for IBA.⁸ Specifically, the Accountability Program noted the collection of Android’s Advertising ID (AAID or IFA)—a unique alphanumeric string used to identify a particular device for advertising purposes.⁹ AAIDs are the Android equivalent of Apple’s Identifiers for Advertisers (IDFA).¹⁰

A. *Third-Party Notice*

The Accountability Program examined LKQD’s website to assess its compliance with the notice obligations under the Mobile Guidance. We first examined the company’s privacy policy, which we accessed through a link on the company’s website footer labelled “Privacy.” Scrolling through this privacy policy, we located a description of LKQD’s IBA practices on mobile devices. However, we did not locate a statement of adherence to the DAA Principles. Looking further, we did not find a compliant notice of LKQD’s IBA accessible through the Once application.

B. *Third-Party Enhanced Notice*

The Accountability Program went on to assess whether LKQD had provided enhanced notice of its third-party IBA practices. When downloading, installing, and using the Once application, we checked for the presence of compliant enhanced notice. However, we could find no such notice being provided by LKQD or the first-party application publisher during our tests.

C. *Third-Party Consumer Control*

The Accountability Program then located a means to opt out of LKQD’s services under a section of its privacy policy labelled “Opting Out.” However, this section merely provided a mailing address for users to write to LKQD to request the change or deletion of information the company stored. Following identity verification, LKQD would then delete or update the data it maintained about the user. The Accountability Program questioned whether requiring a user to draft and

⁷ See generally, LKQD, <http://lkqd.com/> (last visited Dec. 4, 2017).

⁸ See *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.”).

⁹ See Greg Sterling, *Google Replacing “Android ID” with “Advertising ID” Similar to Apple’s IDFA*, Marketing Land (Oct. 31, 2013), <http://marketingland.com/google-replacing-android-id-with-advertising-idsimilar-to-apples-idfa-63636>. See also Grace Fletcher, *The Impact of iOS 7 on Mobile Attribution*, Tune.com blog (Aug. 27, 2013), <http://www.tune.com/blog/impact-ios-7-mobile-attribution/>; DoubleClick, *Target mobile apps with IDFA or AAID*, DoubleClick Ad Exchange Buyer Help, <https://support.google.com/adxbuyer/answer/3221407?hl=en> (last visited Dec. 4, 2017).

¹⁰ *Id.*

mail a physical letter to the company’s corporate headquarters in order to exercise choice with respect to IBA was overly burdensome to consumers and too protracted a process.

II. Precise Location Data

During its review of the Once application, the Accountability Program also observed LKQD was being passed latitude and longitude coordinates through the Once application. We observed the value assigned to the key “loc” contained latitude and longitude coordinates to the fifth decimal place. These coordinates indicated a point just outside the building from which we conducted our testing. The closeness of this point in space to our actual physical location raised concerns under the Precise Location Data provisions of the Mobile Guidance.¹¹

A. Third-Party Notice

We examined LKQD’s privacy policy to assess its compliance with the Mobile Guidance’s precise location data obligations. The privacy policy indicated that LKQD may collect a device’s location from non-affiliate companies to assist it in delivering and improving its platform. The Accountability Program questioned whether this language would be sufficient to serve as a compliant notice under the Mobile Guidance, as this language only described the collection of location data from other companies for analytics and the delivery of LKQD’s platform, not the collection of precise location data for IBA. Moreover, we could not locate an easy-to-use mechanism by which consumers can withdraw consent for the collection and use of precise location data for IBA. As discussed in the preceding section, we also could not find a statement of adherence to the DAA Principles.

B. Third-Party Consent

During testing, we also examined the Once application to determine if LKQD—either directly or through the first-party application publisher—requested consent for the third-party collection and use of precise location data for IBA. While we noted during testing that Once requested permission through the operating system’s permissions tool to use the device’s location prior to installation of the application, the permissions tool did not mention the collection of precise location data by LKQD or explain the potential use of this data for IBA.

¹¹ A set of location-based advertising guidelines adopted by more than 100 firms describe the fact that “four decimal points *may* enable accuracy to within approximately ten meters.” Media Rating Council, Interactive Advertising Bureau, & Mobile Marketing Association, *MRC Location-Based Advertising Measurement Guidelines* at 22 (Mar. 2017) (emphasis added) (requiring that the method used to provide location be described clearly in order to determine its degree of precision). *See also* Kate Kaye, *The Industry Just Got New Mobile Location Data Guidelines*, AdAge (Mar. 29, 2017), <http://adage.com/article/datadriven-marketing/industry-mobile-location-data-guidelines/308473/>. The Accountability Program has previously looked at the collection of precise location data in the form of geolocation coordinates. *See, e.g., In re: Spinrilla (61-2016)*, May 4, 2016 at 2, <https://www.bbb.org/globalassets/local-bbbs/council-113/media/behaviorial-advertising/spinrilla-decision.pdf> (noting that we observed a third party collecting longitude and latitude coordinates to the 14th decimal place through the mobile app in question).

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

III. Mobile Web

During the pendency of our inquiry, LKQD implemented a cookie-based opt out. The section of LKQD's privacy policy describing the location of the opt out provided a text URL that consumers would need to copy and paste, as it was not an active link. This link took us to a dedicated opt-out page that contained a functional cookie-based opt out. However, our testing showed that this opt-out lasted for only three years, which did not appear to meet the requirements of the OBA Principles as incorporated by the Mobile Guidance. The Accountability Program incorporated this issue into its review.

IV. Cross-Device IBA

During the pendency of our inquiry, the Accountability Program learned that LKQD was engaged in cross-device data collection for IBA. As the Accountability Program had begun enforcing the DAA's Cross-Device Guidance shortly after contacting LKQD, it took additional steps to inform LKQD of the company's compliance obligations under the Cross-Device Guidance and added this issue to the matters to be addressed in LKQD's response.

ISSUES RAISED

Requirements under the Mobile Guidance

The Mobile Guidance adapts the desktop-oriented rules of the Self-Regulatory Principles for Online Behavioral Advertising (OBA Principles) to the mobile world, including the core requirements for third parties to provide transparency and consumer control for IBA. A party may be both a first and a third party depending on its function in a particular set of circumstances.¹² As a collector and user of data for IBA across non-affiliate applications, LKQD is a third party under the Mobile Guidance.

I. Mobile Cross-App Data

¹² Compare "First Party," *OBA Principles Commentary* at 23 with "Third Party," *id.* at 27. See *In re: Varick Media Management, LLC (59-2016)*, Jan. 14, 2016, <https://www.bbb.org/globalassets/local-bbbs/council-113/media/behaviorial-advertising/varick-decision.pdf> ("The DAA Principles apply to all actors engaged in IBA online as defined by the DAA Principles, from the third parties whose ad tech helps target ads to the first parties with whose websites consumers interact and which work with third parties to target relevant advertising to consumers. Typically, however, companies do not occupy a single, discrete role when conducting business online. For example, a digital marketing company is generally considered a third party when it conducts IBA on non-affiliate websites. However, that company may maintain a website of its own, in which case it is also a first party. The DAA Principles anticipate the fluidity of the digital marketplace and apply responsibilities to companies based on the actual functions a company is performing."). See also *In re: BuzzFeed, Inc. (42-2014)*, Oct. 28, 2014, <http://www.ascreviews.org/wp-content/uploads/2014/10/Online-Interest-Based-Advertising-Accountability-Program-Formal-Review-42.20141.pdf>; *In re: Yelp, Inc. (40-2014)*, Oct. 28, 2014, <http://www.ascreviews.org/wp-content/uploads/2014/10/Online-Interest-Based-Advertising-Accountability-Program-Formal-Review-40.20141.pdf>.

A. *Third-Party Notice Requirement*

Under section III.A.(1) of the Mobile Guidance, third parties who engage in the collection or use of cross-app data for IBA must provide a clear, meaningful, and prominent notice on their websites or accessible from the applications that host them.¹³ This notice must include (1) the types of data collected, (2) the uses of such data, (3) an easy-to-use mechanism for exercising choice with respect to the collection and use of such data or the transfer of such data to a non-affiliate for IBA, and (4) the fact the third party adheres to the DAA Principles.¹⁴

B. *Third-Party Enhanced Notice Requirement*

In addition to the notice requirement of section III.A.(1) of the Mobile Guidance, section III.A.(2) of that document requires that third parties provide enhanced notice to users of cross-app data collection by providing a clear, meaningful, and prominent link to the disclosure described in section III.A.(1).¹⁵ This disclosure must be presented in or around an advertisement delivered using cross-app data.¹⁶ Alternatively, the disclosure may be presented (1) before the application is installed, as part of the process for downloading the application, at the time the application is opened for the first time, or at the time cross-app data is first collected, *and* (2) in the application's settings or any privacy policy.¹⁷

As explicated in the Accountability Program's body of previous cases,¹⁸ under the DAA Principles, first and third parties share responsibility for providing enhanced notice, and each is independently responsible for ensuring that enhanced notice is provided to the consumer.¹⁹ If it is not possible for a third party to place an enhanced notice link that is accessible to consumers in a mobile app where it collects data for IBA—when, for example, it is collecting data through a non-affiliate app but not placing an ad while the app is being used—the third party must ensure

¹³ *Mobile Guidance* at 14.

¹⁴ *Id.*

¹⁵ *Id.* at 14-15.

¹⁶ *Id.* at 15.

¹⁷ *Id.*

¹⁸ See *In re: Exponential Interactive Inc.*, (73-2017), Aug. 1, 2017, <https://www.bbb.org/globalassets/local-bbbs/council-113/media/behaviorial-advertising/exponential-decision.pdf>; *In re: Wayfair Inc.* (71-2017), Jan. 25, 2017, <https://www.bbb.org/globalassets/local-bbbs/council-113/media/behaviorial-advertising/Wayfair-Decision-71-2017.pdf> (“In practice, this first party enhanced notice link can be provided by either the first or the third party. However, both parties are independently responsible for ensuring that enhanced notice is provided. To achieve compliance, companies should work with one another to make sure that this requirement is met.”). See also *In re: Anheuser-Busch Companies, Inc.* (70-2017), Jan. 25, 2017, <https://www.bbb.org/globalassets/local-bbbs/council-113/media/behaviorial-advertising/Anheuser-Busch-Decision-70-2017.pdf>; *In re: AAA of Northern California, Nevada & Utah* (69-2017), Jan. 25, 2017, <https://www.bbb.org/globalassets/local-bbbs/council-113/media/behaviorial-advertising/AAA-NCNU-Decision-69-2017.pdf>.

¹⁹ See *In re: Gravity* (56-2015), Nov. 4, 2015, at 6, <https://www.bbb.org/globalassets/local-bbbs/council-113/media/asrc-documents/gravity-decision.pdf> (“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.”).

that the app publisher provides an enhanced notice link as described in section III.A.(3) of the Mobile Guidance.²⁰ But whatever the circumstances, it remains the third party's independent responsibility to ensure that this notice is provided.²¹

C. Third-Party Consumer Control Requirement

Under section III.B.(1) of the Mobile Guidance, third parties must provide users with the ability to exercise choice with respect to their collection and use of cross-app data for IBA. Such choice should be described in the notices required under section III.A. of the Mobile Guidance, described above.²²

II. Mobile Precise Location Data

A. Third-Party Notice Requirement

Under section IV.A.(2) of the Mobile Guidance, a third party must give clear, meaningful, and prominent notice of the collection and use of precise location data for IBA or the transfer of precise location data to it for its use in IBA.²³ Such notice should include (1) the fact precise location data is collected, (2) the uses of such data, (3) instructions for providing or withdrawing consent for the collection and use of precise location data, **and** (4) the fact the company adheres to the DAA Principles.²⁴ A third party should provide such notice on its own website or through the first-party application through which it is collecting precise location data.²⁵

B. Third-Party Consent Requirement

Under section IV.B.(2) of the Mobile Guidance, a third party should obtain consent²⁶ from a user prior to collecting or using precise location data for IBA purposes or get reasonable assurances that the first party has obtained consent for the third party's collection and use of precise location data for IBA.²⁷

²⁰ *Mobile Guidance* at 17-18 (“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.”).

²¹ *In re: MediaMath (32-2013)*, Nov. 20, 2013, <http://www.ascreviews.org/wp-content/uploads/2013/11/Online-Interest-Based-Advertising-Accountability-Program-Formal-Review-32.2013.pdf>.

²² *Mobile Guidance* at 18-19.

²³ *Mobile Guidance* at 22.

²⁴ *Id.* at 22-23.

²⁵ *Id.*

²⁶ *Mobile Guidance* Definition B at 4 (“Consent means an individual’s action in response to a clear, meaningful, and prominent notice regarding the collection and use of data for a specific purpose. Where an entity has a relationship with a consumer through an additional or different medium than the device to which Consent applies, Consent may be obtained through any such medium.”).

²⁷ *Id.* § IV.B.(2) at 29 (“A Third Party obtains reasonable assurances...if the Third party takes measures such as: (1) entering into a contract with the First party under which the First Party agrees to obtain Consent to the Third Party’s data collection and use; (2) obtaining other written assurances from the First Party to the same effect; (3) conducting

III. Mobile Web Requirements

Section II. of the Mobile Guidance incorporates the requirements of the Self-Regulatory Principles for Multi-Site Data (MSD Principles) and applies them to the mobile web.²⁸ The MSD Principles make clear that companies engaged in IBA must follow the OBA Principles.²⁹ Consequently, third parties that engage in IBA across websites accessible through mobile devices must provide notice and choice to users when doing so.

A. *Third-Party Notice Requirement*

Under section II.A.(1) of the OBA Principles, a third party is required to provide a clear, meaningful, and prominent notice of its IBA data collection and use practices, including a statement of adherence to the DAA Principles and an explanation of its IBA opt-out mechanism.³⁰ The description of the third party's opt out should make clear to consumers the scope of the opt out provided and how it operates.

B. *Third-Party Consumer Control Requirement*

Section III.A. of the OBA Principles establishes third parties' responsibilities for providing consumers with an easy-to-use method of exercising choice with respect to IBA.³¹ This choice mechanism should be available from a link in or around an advertisement, from an industry-developed consumer choice page, or through a first party's enhanced notice link.³²

Requirements under the Cross-Device Guidance

As consumers now move readily among their laptops, desktops, cellular phones, and tablets, companies have developed ways to create a more unified experience across these devices. The Cross-Device Guidance clarifies how companies who reach consumers across their various devices should provide them with notice and choice about IBA.³³

periodic checks or audits of the First Party's consent practices (4) verifying that the First Party publicly represents that it obtains Consent to the transfer of Precise Location Data to a Third Party....")

²⁸ The Accountability Program notes that the Mobile Web refers to the World Wide Web users can access through their smartphones and tablets. See generally WebWise Team, *What is the mobile web?* BBC: WebWise (Oct. 10, 2012), <http://www.bbc.co.uk/webwise/guides/mobile-web>.

²⁹ *Mobile Guidance* at 13 ("The collection and use of Multi-Site Data from any type of computer or device is covered by the Self-Regulatory Principles for Multi-Site Data."); *MSD Principles* at 1 ("Any entity engaged in the collection of Multi-Site Data will be subject to the DAA accountability mechanisms for engaging in practices that do not adhere to these additional principles. ...and the commentary for such Principles where relevant will apply to Multi-Site Data."); *MSD Principles* § I. at 2 ("The collection of data for Online Behavioral Advertising is covered by the OBA Principles.")

³⁰ *OBA Principles* § II.A.(1) at 12.

³¹ *OBA Principles* § III.A. at 14.

³² *Id.*

³³ See *February 1, 2017, Enforcement of Cross-Device Guidance (CW-04-2017)*, Feb. 1, 2017, <https://www.bbb.org/globalassets/local-bbbs/council-113/media/behaviorial-advertising/compliance-warning-cw-04-2017-cross-device-enforcement.pdf> ("In recent years, consumers have increasingly begun to use multiple devices

A. Transparency

Under the Transparency provision of the Cross-Device Guidance, a company that associates or links data collected from multiple devices for IBA must provide a notice either (1) on its website or (2) accessible from applications where it collects data for IBA that explains these practices.³⁴ This notice must include a description of a choice mechanism for users to opt out of IBA and accurately explain the scope of the company's opt out.³⁵

B. Consumer Control

Whether on desktop or mobile devices, companies must provide consumers with a means to opt out from IBA. The Consumer Control provision of the Cross-Device Guidance explains how opting out functions in the context of cross-device IBA. According to this guidance, companies should not collect browsing or app usage data from the opted-out device for use in IBA on that device or on a linked device; this includes transferring the data to another third party for its use in IBA.³⁶ Companies also should not use data collected on a consumer's other linked devices to serve IBA on the opted-out device. Companies are free to expand the scope of their opt outs to cover all devices linked to the device from which a consumer opts out.³⁷ However, the Cross-Device Guidance does not require this expansive opt-out scope.³⁸ Rather, companies may continue to treat opt outs as applying only to a particular browser or device. Whichever method a company chooses, it must be sure to explain clearly the scope of the opt out in its disclosure described under the Transparency section of the Cross-Device Guidance so that consumers are apprised of the effect their opt-out decision will have. Finally, we note that a consumer's decision to opt out affects data collection and use going forward. Data collected from a device prior to opting out is not affected by the opt-out decision.³⁹

in their daily lives. As consumers move seamlessly across smartphone, tablet, laptop, and desktop, the IBA ecosystem has developed new ways of collecting and using data to serve IBA across these multiple devices. Cross-device IBA allows companies to learn about a consumer's interests on one device and show them ads relevant to those interests on other devices. Depending on the technology available to the company, the identity of the consumer or device is either 'probabilistic,' that is, based on a number of factors that link a user or related users who share devices, or 'deterministic,' that is, based on a user's sign-in or other method of self-identification across devices.'").

³⁴ *Cross-Device Guidance* at 3-4. The requirements of this notice are described more fully in footnote 4 (explaining that "this notice should be provided on a Third Party's own Web site(s) or accessible from application(s) from or through which they collect Cross-App Data (see OBA Principles at p. 12; Mobile Guidance at p. 14). This notice should also indicate the Third Party's collection and use of Precise Location Data for use across devices. Consent for the collection and use of Precise Location Data should encompass the collection of Precise Location Data from a device for use on another computer or device that is linked to the device where Consent is obtained.'").

³⁵ *Id.* For more information about the scope of opt outs in a cross-device context, see the next section on the Consumer Control provision of the Cross-Device Guidance.

³⁶ *Id.* at 4.

³⁷ *Id.* at 4, n.8.

³⁸ Not all companies are technically capable of providing opt outs across all linked devices. Particularly with regard to probabilistic methodologies, a cross-device opt out could be either under- or over-inclusive. Moreover, some consumers may wish to opt out of IBA on a particular device, such as their office laptop, but want to receive ads based on their preferences on other devices.

³⁹ *Id.*

COMPANY RESPONSE AND ANALYSIS

Following receipt of the Accountability Program's inquiry letter, LKQD initially expressed some reservations about participating in the program's review process and skepticism about the program's inquiry into the company's practices. In response, the Accountability Program furnished a portion of its technical evidence, including screen captures of network traffic analyses that demonstrated the bases of its inquiry. Once LKQD reviewed the Accountability Program's evidence, the company demonstrated its commitment to achieving full compliance with the DAA Principles and immediately conducted a thorough review of its data collection practices. The company swiftly provided the Accountability Program with detailed descriptions of its practices and consulted with the Accountability Program on its plan to come into compliance with the Mobile Guidance.

As indicated in the section of this document detailing our inquiry, during the pendency of the Accountability Program's review of LKQD's practices, we learned that LKQD was engaged in cross-device IBA. After we informed LKQD of its obligations under the Cross-Device Guidance, the company readily pledged to modify its privacy disclosures to achieve compliance with these requirements.

LKQD took clear and decisive action to come into compliance, as explained below.

Compliance with the Mobile Guidance

I. Cross-App Data Collection Provisions

A. Third-Party Notice Requirement

To resolve its compliance issues under the third-party cross-app data provisions of the Mobile Guidance, LKQD took several steps. It updated its privacy policy to describe the scope of its cross-app data collection practices for IBA through mobile apps. The company also added a statement of adherence to the DAA Principles to its privacy policy and explained its new mobile opt-out mechanism, discussed below.

B. Third-Party Enhanced Notice Requirement

During consultation with the Accountability Program, LKQD assured the Accountability Program that all IBA ads that it served would thereafter contain the DAA's Advertising Option Icon (AdChoices Icon ). The company also indicated to the Accountability Program that it now requires in its contractual terms that its first-party partners comply with the DAA Principles. The Accountability Program found that these actions resolved the compliance issue under the third-party enhanced notice provisions of the Mobile Guidance.

C. Third-Party Consumer Control Requirement

LKQD worked with the DAA to integrate a cross-app mobile opt-out solution into the DAA's AppChoices app. LKQD added a link to its privacy policy directing users to instructions for

downloading the DAA’s AppChoices app and developed in-house technology to respond to “Opt out of interest-based ads” and “Limit Ad Tracking” signals provided by the Android and iOS operating systems.

II. Precise Location Data Provisions

During discussions with the Accountability Program, LKQD indicated that while its software development kit (SDK) is able to be passed location data to the fifth decimal place from first-party apps through a query string,⁴⁰ its software immediately truncates the location data collected to render it imprecise before it is used. For that reason, LKQD’s collection of location data does not fall within the definition of “precise location data.”⁴¹ LKQD stated that if the company decided to collect and use precise location data in the future, it would work with its first-party partners to obtain reasonable assurances that they provide users with the notice and choice required by the Mobile Guidance. As indicated above, LKQD also indicated that in its contractual documents with first parties the company now requires compliance with the DAA Principles. This resolved this issue under the precise location data provisions of the Mobile Guidance, and we therefore need not reach the question whether the latitude and longitude coordinates generated during our testing of Once in fact located a particular device in a sufficiently precise manner to require notice and consent.

We commend LKQD for following the best practice of minimizing the use of precise location data where it is not needed. Because there is a higher bar for notice and consent when a company collects precise location data, it is prudent to think carefully about the degree of precision required for the specific purpose for which the data is collected.⁴²

III. Mobile Web Provisions

Following receipt of the Accountability Program’s inquiry letter, LKQD added to its privacy policy a cookie-based opt-out mechanism for the collection of multisite data across websites. The Accountability Program reviewed this mechanism and found that it did not meet the industry

⁴⁰ See *Query string*, Wikipedia, https://en.wikipedia.org/w/index.php?title=Query_string (last visited Sept. 28, 2017); T. Berners-Lee et al., RFC 3986: URI Generic Syntax, IETF § 3 (“Syntax Components”) (Jan. 2005), <https://tools.ietf.org/html/rfc3986#section-3>.

⁴¹ *Mobile Guidance* Definition K Commentary at 9-10 (“Precise Location Data does not include location data that is not precise, including location data that has been or will be rendered not precise within a reasonable period of time from collection and during that period of time is not used for purposes other than those set forth in Section VI. Precise Location Data may include, for example, data obtained from cell tower or WiFi triangulation techniques, or latitude-longitude coordinates obtained through GPS technology, if such data is sufficiently precise to locate a specific individual or device. Precise Location Data does not include five-digit ZIP code, city name, general geographic information whether derived from an IP address or other sources, or information that does not necessarily reflect the actual location of a device such as information entered by a user or a billing address associated with an account.”).

⁴² See *In re: Spinrilla (61-2016)*, May 4, 2016 at 4, <https://www.bbb.org/globalassets/local-bbbs/council-113/media/behaviorial-advertising/spinrilla-decision.pdf> (“After Spinrilla consulted with the Accountability Program about its precise location data obligations under the Mobile Guidance, Spinrilla decided to remove the code that enables the third-party collection of precise location data through its application.”). See also *id.* at 7, n.28 (“Spinrilla did not itself use precise location data for any purpose.”).

standard, consistent with the Federal Trade Commission’s *Chitika* case, that opt-out cookies must have a lifespan of five years to serve as a reasonable choice mechanism.⁴³ Therefore, the Accountability Program found that this mechanism was not sufficient to provide users with real choice about LKQD’s data collection across websites for IBA. After we informed LKQD of this compliance issue, LKQD worked quickly to modify its web-based opt-out mechanism to provide an opt-out cookie with a five-year lifespan. LKQD also worked with the DAA to have its opt-out mechanism integrated into the DAA’s WebChoices page (www.aboutads.info/choices).

LKQD updated its privacy disclosures to include descriptions of its new web- and app-based opt-out mechanisms so that users would have clear instructions on how to exercise choice with respect to the company’s third-party data collection practices. As discussed in the previous sections of this decision, the company also added a statement of adherence to the DAA Principles to its privacy policy. The Accountability Program found that these implementations resolved the compliance issues under section II. of the Mobile Guidance.⁴⁴

Compliance with the Cross-Device Guidance

To comply with the requirements under the Cross-Device Guidance, LKQD updated its privacy disclosures to indicate that the company may associate multiple devices with a particular user for IBA. The company also added language to the section of its privacy policy describing its opt-out mechanisms that indicated that opt-out choices for web browsers do not apply to mobile apps and that these choices must be expressed on each browser or device where a consumer wishes to opt out.

CONCLUSION

This case marks the Accountability Program’s first action enforcing the Cross-Device Guidance, but it is not our first encounter with cross-device IBA. In 2012, when probabilistic device graphing was a developing technique, we reviewed the practices of a company that had begun conducting “householding”⁴⁵ (a type of cross-device linking) as part of its overall IBA

⁴³ HOW THE DAA SELF-REGULATORY PROGRAM WORKS, Digital Advertising Alliance (Feb. 24, 2015), <http://www.aboutads.info/how-interest-based-ads-work#cookies-and-optout> (“Opt out cookies storing such preferences that are placed by companies participating in the DAA Program have a minimum five-year lifespan, and remain in effect for the user’s browser unless these opt out cookies are deleted (as can happen if users deletes all of their cookies using browser tools).”). See also *Chitika, Inc.*, Fed. Trade Comm’n Docket No. C-4324 (June 7, 2011), <https://www.ftc.gov/sites/default/files/documents/cases/2011/06/110617chitikado.pdf> (requiring Chitika to provide a five-year opt out). See also Fed. Trade Comm’n, *FTC Approves Final Order Settling Charges That Company Deceptively Tracked Consumers Online Activities* (June 17, 2011), <https://www.ftc.gov/news-events/press-releases/2011/06/ftc-approves-final-order-settling-charges-company-deceptively>.

⁴⁴ We note that, since the Mobile Web provision in the Mobile Guidance incorporates the OBA Principles, LKQD’s actions to come into compliance with the Mobile Guidance in this case also bring it into compliance with the OBA Principles.

⁴⁵ See Ronan Shields, *Householding – The First Step Towards Cross-Device Identification*, ExchangeWire (Apr. 23, 2015), <https://www.exchangewire.com/blog/2015/04/23/householding-the-first-step-towards-cross-device-identification/>.

activities.⁴⁶ While the company had provided users with an excellent explanation of what householding was, it had not adequately explained the scope of its opt out, leaving consumers in the dark as to whether the opt out they exercised on a particular device opted them out of IBA across all the devices that were known to be part of the same household. Our action resolved this ambiguity in the company's disclosures by requiring the company to clarify that the opt out offered on a particular device opted the user out of IBA collection and use only on that device. Indeed, at that time, the company did not have the technological capability to provide an opt out across all devices linked to the same household.

As device linking grew in sophistication and became more widely deployed across the online ad industry, the need for more explicit self-regulatory guidance became clear. Consequently, the Cross-Device Guidance was developed. The Cross-Device Guidance clearly articulates how companies should describe their cross-device IBA practices to consumers and, significantly, provides guidance on what IBA data collection and use practices are prohibited after a consumer opts out of IBA on a particular device. The Cross-Device Guidance thus seamlessly applies the transparency and control standards we have long enforced to this growing domain of IBA activity, proving yet again that self-regulation evolves alongside the market, growing and changing to maintain clarity and consistency in response to technical innovation.

In light of the foregoing, we urge companies engaged in cross-device IBA to ensure that their notices adequately explain this fact in clear, meaningful language. Companies should review their opt-out mechanisms and make certain that they adequately describe what a consumer needs to do to opt out of IBA from particular devices or to opt out of IBA on all devices. If a consumer needs to opt out on each browser or device, companies should say this clearly. If companies instead offer, for example, account-level cross-device opt outs, they should explain this to consumers. Consumers should be able to know from the face of companies' disclosures what effects their choices will have. And finally, companies who have questions or concerns about whether or how the Cross-Device Guidance applies to their activities should contact the Accountability Program for confidential compliance advice. As we have consistently noted, no confidential question will ever result in a compliance action. Come to us before we come to you.

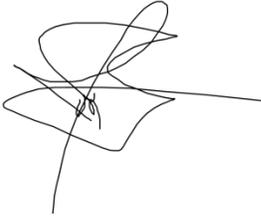
COMPANY'S STATEMENT

LKQD Technologies, Inc. is proud to be a member of the Digital Advertising Alliance. We share the Accountability Program's goal of ensuring that consumer data is collected and used in a responsible manner. We appreciate the Accountability Program's contributions to our ongoing efforts to ensure compliance and to inform consumers about how their data is used for advertising purposes.

DISPOSITION OF DECISION

Practices voluntarily corrected.

⁴⁶ *In re: BlueCava, Inc. (09-2012)*, May 20, 2012, <http://www.ascreviews.org/wp-content/uploads/2012/05/BlueCava-Decision-Final9.pdf/>.



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