

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

ONLINE INTEREST-BASED ADVERTISING ACCOUNTABILITY PROGRAM

FORMAL REVIEW
Case Number: 65-2016

COMPANY:)
SEGA)
)
)
CHALLENGER:)
Online Interest-Based)
Advertising Accountability Program)
)
)

DECISION

DATE: July 14, 2016

SYNOPSIS

The Digital Advertising Alliance’s (DAA) Self-Regulatory Principles (DAA Principles)¹ cover entities engaged in interest-based advertising (IBA) across websites and mobile applications (applications or apps). Mobile app publishers² 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

¹ 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>.

² The Digital Advertising Self-Regulatory Principles (DAA) 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.

third-party collection and use of data for cross-app³ IBA, the app must provide notice and enhanced notice of this fact. Further, when a company has actual knowledge that certain users are under the age of 13, it must also meet the more stringent requirements of the Sensitive Data Principle, which requires covered companies that collect “personal information,”⁴ (PI) as defined in the Children’s Online Privacy Protection Act of 1998 (COPPA), do so only in compliance with COPPA.⁵ Finally, companies must provide notice and enhanced notice as well as obtain user content prior to allowing third parties to collect precise location data for IBA.

COMPANY STATUS

SEGA is a mobile application development company that publishes the mobile game Sonic Runners. The application is available on the Android and iOS operating systems.⁶ As of May 11, 2016 this application has been installed more than 5,000,000 times.⁷

INQUIRY

This case continues 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. While testing the gaming application Sonic Runners, the Accountability Program found that its publisher, SEGA, allowed third parties⁸ to collect user data for IBA without providing the required notice and enhanced notice. This data included our test phone’s IDFA.⁹ Along with the IDFA, we also noted that third

³ *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.”)

⁴ Federal Trade Commission, *Complying with COPPA: Frequently Asked Questions* (FAQ), note 17 at Section A.3. <https://www.ftc.gov/tips-advice/business-center/guidance/complying-coppa-frequently-asked-questions> (last viewed April 6th, 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.”)

⁵ *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.”)

⁶ SEGA, *Mobile Application Privacy Policy – Last Updated on April 1, 2015*, <http://www.sega.com/mprivacy> (last visited Mar. 21, 2016).

⁷ Google, *Sonic Runners*, <https://play.google.com/store/apps/details?id=com.sega.sonicrunners&hl=en> (showing the Sonic Runners application being installed between 5,000,000 – 10,000,000 times on the Android platform) (last visited May 11, 2016).

⁸ *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.”)

⁹ An IDFA is a unique and persistent identifier used for targeted mobile advertising. 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->

parties were collecting precise location data from our testing device.¹⁰ In some instances, the Accountability Program found that Sonic Runners allowed this collection to occur when the game’s user appeared to be under the age of 13. This prompted a further review of SEGA’s compliance with the DAA Principles.

We examined the Sonic Runners application pages in both Apple’s and Google’s mobile application stores for the presence of the enhanced notice links required when companies allow third parties to collect cross-app data. Publishers may place this link in the application store, often pointing the link labeled “Privacy Policy” **directly** to the IBA disclosure on their privacy policy webpage.¹¹ SEGA did provide links labeled “Privacy Policy” on its application’s pages in the two stores. However, both of these privacy policy links directed users to the top of SEGA’s privacy policy page (<http://www.sega.com/mprivacy>) instead of going directly to the section describing IBA, as required under the Mobile Guidance. We also found no evidence of enhanced notice links at the other locations and times at which enhanced notice may be provided under the Mobile Guidance.

We then examined SEGA’s privacy policy for a compliant disclosure of IBA. We found that certain information required by the Principles was missing from this privacy policy page. First, the privacy policy did not contain a link to a choice mechanism that met DAA specifications or, in the alternative, a list of each third party collecting data for IBA with their respective opt-out mechanisms. Second, the privacy policy did not include a statement of adherence to the DAA Principles. Third, there was no link to this privacy policy page within the settings of the Sonic Runners application.

In regard to the third-party collection of precise location data, we also examined the Sonic Runners application and its pages in the app stores for a compliant notice, enhanced notice and consent mechanism informing users of this collection practice and obtaining their affirmative consent to this collection. We could not find any of these elements during download, prior to using, or during use of the application, as required under the Mobile Guidance.

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 *Target Mobile Apps With IDFA or AAID*, DoubleClick Ad Exchange Buyer Help, <https://support.google.com/adxbuyer/answer/3221407?hl=en>; 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.”)

¹⁰ *Mobile Guidance* Definition K at 9. (“Precise Location Data is data obtained from a device about the physical location of the device that is sufficiently precise to locate a specific individual or device.”) During testing, the Accountability Program observed MoPub, a third party entity known to engage in IBA, collecting latitude and longitude coordinates during our use of the Sonic Runners App. Specifically, we observed the value assigned to the key “ll” contained latitude and longitude coordinates to the 14th decimal place. When translated to a physical address, we confirmed that the coordinates indicated with precision where our test device was operating.

¹¹ Because application stores may limit the text and links that an application can put on its page, the Mobile Guidance allows the application to use the privacy policy link, rather than requiring a separate link. However, the link from the application store to the privacy policy must point directly to the place in the privacy policy where the consumer can learn about the application’s IBA practices and to an easy-to-use choice mechanism.

On first opening of the Sonic Runners application, we were prompted to enter a date of birth to proceed. To determine whether this application complied with the Sensitive Data Principle,¹² which requires that persistent identifiers be collected and used only in compliance with the COPPA,¹³ we tested the application as both a user over the age of 13 and as a user under the age of 13. In both instances, the results of our testing were exactly the same. Specifically, the collection by third parties of our testing device's IDFA and precise location did not change. In fact, this collection occurred before the user was required to enter her date of birth. Throughout this process, we did not observe a mechanism for obtaining verifiable parental consent from the user prior to the collection of PI, as required by the Sensitive Data Principle of the OBA Principles.

Based on the above analysis, the Accountability Program sent an inquiry letter to SEGA informing the company of these issues, explaining its review process, and requesting the company's responses to our compliance questions.

COMPANY'S POSITION

Upon learning of its compliance issues, SEGA promptly removed the Sonic Runners application from both Google and Apple's application stores, making it unavailable for user download while the compliance issues were remedied. SEGA also agreed to notify the users who had already downloaded the application of its compliance issues once a patch was available to address them. We applaud SEGA for taking this proactive approach.

SEGA resolved its compliance issues by preventing third-party collection for IBA through the Sonic Runners app. It accomplished this both with respect to the version of the app that users had already downloaded and with respect to the new version of the app. When SEGA replaced the non-compliant version of the app with its updated version in the app stores, SEGA flagged the update as mandatory, automatically pushing the update to users who had already installed the app. As promised, SEGA's update included a disclosure stating that the new version of the application prevents the collection of persistent identifiers from children under the age of 13. SEGA's new version of the application omitted third-party advertising software development kits (SDKs), preventing third parties from accessing data for IBA.

After SEGA's republication of the Sonic Runners application in the Apple and Google application stores, the Accountability Program was able to independently verify that Sonic Runners no longer allows third-party collection of user information for use in IBA.

In addition, SEGA expressed its commitment to protecting the privacy of its users who are under the age of 13 in not just the Sonic Runners application, but from all of its applications. Going forward, SEGA has pledged to work directly with its COPPA safe harbor provider to identify any historical COPPA violation(s) and take the appropriate steps needed to remedy any issues that are found.

¹² *OBA Principles* at 16-17.

¹³ *See* COPPA, 15 U.S.C. §§ 6501-6505.

DECISION

The Mobile Guidance incorporates by reference the OBA and MSD Principles and adapts these desktop-oriented rules to the mobile world, including the core requirements to provide transparency and consumer control of IBA. Under the Mobile Guidance, when first parties permit third parties to collect data through their apps for use in IBA, they must provide notice, enhanced notice and choice about such third-party data collection for IBA.¹⁴ The Mobile Guidance also incorporates the DAA's prohibition on the collection of PI from children under the age of 13 except in compliance with COPPA. The Mobile Guidance also adds heightened responsibility for transparency and choice when first parties allow third parties to collect precise location data for IBA.

At the time of the Accountability Program's review, SEGA had duties as a first-party mobile app publisher because SEGA was allowing third parties to collect data for IBA through Sonic Runners. Under section III.A.(3) of the Mobile Guidance SEGA was required to provide an enhanced notice link to a compliant IBA disclosure. Moreover, since SEGA allowed third parties to collect users' precise location data through Sonic Runners, the Mobile Guidance required SEGA to provide notice and a consent mechanism prior to transferring or allowing third parties to collect precise location data. Finally, under section VI.A. of the OBA Principles, SEGA was required to ensure that there was no data collection or use for IBA from children under 13 except in compliance with COPPA.

During the pendency of this case, SEGA addressed the Accountability Program's concerns about Sonic Runners' compliance with the Mobile Guidance by removing all third-party advertising SDKs from the game, thereby precluding any data collection or use for IBA that would trigger responsibilities under the DAA Principles. We appreciate SEGA's swift and effective response, especially in view of the sensitive nature of third-party data collection both from children under 13 and about users' precise locations.

We now turn to an in-depth discussion of SEGA's responsibilities as a first party who allows third parties to collect cross-app data through its apps.

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,¹⁵ **and** (3) contains a statement of adherence to the DAA Principles.¹⁶ The enhanced notice link must be provided either 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.¹⁷

¹⁴ *OBA Principles* at 16-17.

¹⁵ *Mobile Guidance* at 18-19.

¹⁶ *Id.* at 17.

¹⁷ *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->

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, enhanced notice must be provided **before** the user engages with the app—either through a link in the app store, a notice upon download, or a notice upon first opening the app. 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.

To come into compliance with cross-app enhanced notice provisions of the Mobile Guidance, SEGA added a link at the top of its privacy policy page labeled “Interest Based Ad Disclosure” that links directly to the section of the privacy policy that discusses IBA. SEGA also provides a link to this privacy policy page from its apps’ pages in the major application stores. This way, when mobile users click the privacy policy links in the Apple App and Google Play stores, instead of going to a page where they must search for the information relating to IBA, they are given a clear link pointing to this relevant information.

SEGA now also provides a statement indicating its adherence to the DAA Principles in its IBA disclosure and provides several choice options, which include a list of all the third-party entities that engage in IBA and links to their individual privacy policies, as well as an explanation of how the user can use the “Limit Ad Tracking” and “Opt-out of interest based ads” through settings on iOS and Android. SEGA has also provided a link to its improved privacy policy page in the application settings of its Sonic Runners mobile game.

In addition, SEGA committed to protecting the privacy of its users who are under the age of 13 from all of its applications. Going forward, SEGA has pledged to work directly with its COPPA safe harbor provider to identify any historical COPPA violation(s) and take the appropriate steps needed to remedy any issues that are found. SEGA also committed to working with the Accountability Program to ensure its other apps operate in compliance with the DAA Principles.

CONCLUSION

This case is another step in the ongoing work of the Accountability Program to enforce the Mobile Guidance. Mobile usage continues to soar, making it important to bring transparency and control to individuals on their mobile devices. In contrast to a desktop or laptop which may be shared among family members or colleagues at work, individuals most often have their own mobile phone and consider it both indispensable and personal. For these reasons, the Mobile Guidance requires prior affirmative consent before third parties can collect and use precise location data or personal directory data for IBA.

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.”)

Moreover, under the FTC’s revised COPPA rules, persistent identifiers, including the IDFAs unique to each mobile device are considered PI, requiring verifiable parental consent before collected and used for IBA, among other things. Compliance with the COPPA requirements are “baked into” the DAA Principles. Companies who publish apps that are child-directed, or who have actual knowledge that they are collecting data from children under the age of 13, must be aware of their legal and self-regulatory compliance obligations.

The willingness of mobile app developers like SEGA to make all necessary modifications to come into compliance demonstrates industry’s commitment to consumer privacy as embodied in the DAA Principles. The Accountability Program appreciates the support of successful app developers such as SEGA for their support of self-regulation.

COMPANY’S STATEMENT

SEGA is committed to responsible online advertising practices within its mobile applications, consistent with applicable legal and self-regulatory requirements. SEGA appreciates the Accountability Program’s efforts to work with us to achieve compliance with the DAA Principles.

DISPOSITION OF DECISION

Practices voluntarily corrected.



Genie Barton
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