



Online Interest-Based Advertising Accountability Program



COMPLIANCE WARNING

SUBJECT: Compliance with Enhanced Notice Provision of Digital Advertising Alliance Self-Regulatory Principles will Begin on April 1, 2018, for Online Interest-Based Video Ads

December 11, 2017

Summary:

The Online Interest-Based Advertising Accountability Program hereby announces that on April 1, 2018, it will begin enforcement of the enhanced notice requirements of Digital Advertising Alliance (DAA) Self-Regulatory Principles for Online Interest-Based Advertising¹ in interest-based video ads (video IBA) in the mobile and desktop environments. Companies will have through the first quarter of 2018 to resolve any technical issues that they may encounter when a video ad is targeted to a consumer on the basis of his or her perceived interests.²

Recognizing that some companies may face particular technical difficulties in providing enhanced notice in or around an interest-based video ad, we emphasize that we require no particular technical standard or method for complying with the DAA Principles and are willing to work with companies on a compliance solution that is commercially reasonable given their business model and technology.³ Moreover, if a company has a specific problem that makes it infeasible to meet the compliance deadline, it should promptly notify the Accountability Program with a factually detailed request for an extension and specify the date by which it can come into compliance. We will review all requests and grant reasonable extensions if factually warranted.

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). The DAA Principles are available at <http://www.aboutads.info/principles>.

² We note that the Accountability Program is already enforcing the other transparency and consumer control requirements of the DAA Principles with respect to video ads. *See generally In re: LKQD Technologies, Inc.* (77-2017), Dec. 11, 2017.

³ This is consistent with the prior approach of the DAA with regard to new technical methods of IBA. *See Mobile Guidance* at 2 (“Due to the technical features of different types of devices and systems, the DAA recognizes that it may not be feasible to comply with the Self-Regulatory Principles on the mobile Web in the same manner as in a desktop computer environment. From time to time, the DAA may provide guidance on implementation practices.”).

The Importance of Enhanced Notice to Consumers:

One of the major innovations of the DAA Principles was the provision of just-in-time notice—termed enhanced notice—of the collection and use of a consumer’s data for interest-based advertising (IBA). The DAA developed standards for deploying enhanced notice in ads, including the creation of a universal symbol (AdChoices Icon ) to signal enhanced notice. Enhanced notice takes information formerly buried in a privacy policy, if provided at all, and gives consumers transparency and choice at the moment that they need it most—when data is being collected and used for IBA.

When the DAA published its first set of Principles, it also promulgated technical guidance explaining where, when, and how to display enhanced notice in interest-based ads.⁴ The implementation of enhanced notice was adapted to the mobile environment in the implementation guidance provided when the DAA Mobile Guidance was issued.⁵

Enforcement of the DAA Principles on Video IBA is Timely:

As is generally true of any technically complex industry, early on there was a lack of well-developed, strong industry standards for displaying online video ads. Today, there is a well-documented and broad set of technical guidelines, including the Interactive Advertising Bureau’s Video Ad Serving Template (VAST) for video players, which sets out “protocols guiding actions when an ad is received and after the ad is played.”⁶ In 2012, IAB’s VAST version 3.0, included for the first time support for an enhanced notice marker like the AdChoices Icon.⁷ IAB retained enhanced notice support and provided additional functionality in version 4.0, released in 2016.⁸ Those companies that are following the VAST 4.0 standard have a clear roadmap for compliance, and many video ads already display the AdChoices Icon.

The DAA released its implementation guidance for video ad markers in 2015.⁹ Because many companies in the video ecosystem had not yet moved to versions of VAST which provide support for an enhanced notice marker such as the AdChoices Icon, the Accountability Program exercised its discretion to forbear from enforcement of enhanced notice in video ads.

Because the digital video market has enjoyed a steep and dramatic growth rate and is now mature, the Accountability Program believes that consumers should have the benefit of enhanced

⁴ Digital Advertising Alliance, *DAA Icon Ad Marker Creative Guidelines* (revised version Oct. 30, 2013) http://www.aboutads.info/resource/download/DAA_Icon_Ad_Creative_Guidelines.pdf.

⁵ Digital Advertising Alliance, *DAA Ad Marker Implementation Guidelines for Mobile* (Apr. 2014), http://digitaladvertisingalliance.org/sites/aboutads/files/DAA_files/DAA_Ad_Marker_Guidelines_Mobile.pdf.

⁶ Peter Minnium, *Geeking Out On Digital Ads: A Definitive History Of IAB Standards*, Marketing Land (Sept. 3, 2014), <https://marketingland.com/geeking-digital-ads-definitive-history-iab-standards-97204>.

⁷ Interactive Advertising Bureau, *Digital Video Ad Serving Template (VAST) 3.0* (July 20, 2012), <https://www.iab.com/guidelines/digital-video-ad-serving-template-vast-3-0/>.

⁸ Interactive Advertising Bureau, *Digital Video Ad Serving Template (VAST) 4.0* (Jan. 21, 2016, updated Apr. 27, 2016), <https://www.iab.com/guidelines/digital-video-ad-serving-template-vast-4-0/>.

⁹ Digital Advertising Alliance, *DAA Ad Marker Implementation Guidelines for Video Ads* (Oct. 2015), http://digitaladvertisingalliance.org/sites/aboutads/files/DAA_files/DAA_Video_Ad_Marker_Guidelines.pdf.

notice.¹⁰ There has been an exponential growth in video advertising. Online video ads were a 1.03 billion dollar market in 2009,¹¹ and since then, the industry has grown enormously in value, representing an estimated 13.2 billion dollar market in 2017.¹² We therefore believe that it is commercially reasonable to expect the digital advertising ecosystem to be able to implement the DAA Principles in video IBA.

Guidance on Providing Enhanced Notice on Interest-Based Video Ads

Interest-based video ads must be accompanied by enhanced notice, either in or around the ad itself, or provided by the first party on the third party's behalf. This enhanced notice must alert consumers to the fact that a video ad is interest based and provide easy access to the company's disclosures of its IBA practices as well as its IBA opt out. We do not mandate a specific means for supplying the enhanced notice. Companies may choose to use the widely adopted AdChoices Icon. Companies may follow the video ad marker guidelines published by the DAA. Companies may do so while conforming to the VAST 4.0 framework. Or companies may find their own, bespoke means of ensuring enhanced notice is provided. So long as a company's solution is clear, meaningful, and prominent, and so long as it leads consumers to the requisite information on IBA and to an easy-to-use choice mechanism, the enhanced notice link will be compliant. The Accountability Program is glad to review any proposal for compliance and will not institute a compliance action against any company that proactively consults it in good faith.

For companies engaged in IBA through video ads that have not already made their preparations for compliance, we provide here some recommendations:

- I. Review existing technical and compliance guidance documentation: For example:
 - a. DAA Ad Marker Implementation Guidelines for Video Ads¹³
 - b. IAB Video Ad Standards Overview and Documentation¹⁴
 - c. DAA Principles¹⁵

¹⁰ See, e.g., Interactive Advertising Bureau, *IAB Video Ad Spend Study* (Apr. 2017), <https://www.iab.com/wp-content/uploads/2017/05/2017-IAB-NewFronts-Video-Ad-Spend-Report.pdf>.

¹¹ Jim O'Neill, *eMarketer: Online video ad spend soars in 2009*, FierceCable, (Dec. 14, 2009), <https://www.fiercecable.com/online-video/emarketer-online-video-ad-spend-soars-2009> ("The company said online video spending would be up more than \$295 million for 2009 to \$1.03 billion, an increase of just over 40 percent."). See also eMarketer, *US Online Ad Spend Turns the Corner* (Dec. 11, 2009), <https://www.emarketer.com/Article/US-Online-Ad-Spend-Turns-Corner/1007415>.

¹² eMarketer, *US Ad Spending: eMarketer's Updated Estimates and Forecast for 2017* (Sept. 19, 2017), <https://www.emarketer.com/Report/US-Ad-Spending-eMarketers-Updated-Estimates-Forecast-2017/2002134> ("Video will have the second fastest growth rate of all display formats this year, at 23.7%, bringing spending to \$13.23 billion, or 15.9% of total digital ad spending. YouTube will be the primary driver of this growth, capturing over one-quarter of video ad dollars. Measurement standards for digital video ads have been refined, and the format has earned the confidence of advertisers. As such, video will continue to outpace rich media advertising for the entirety of the forecast period.").

¹³ Digital Advertising Alliance, *DAA Ad Marker Implementation Guidelines for Video Ads* (Oct. 2015), http://digitaladvertisingalliance.org/sites/aboutads/files/DAA_files/DAA_Video_Ad_Marker_Guidelines.pdf.

¹⁴ Interactive Advertising Bureau, *Video Ad Tech: Overview*, <https://video-guide.iab.com/video-ad-tech-overview> (last visited Dec. 6, 2017).

¹⁵ Digital Advertising Alliance, *The DAA Self-Regulatory Principles*, <http://aboutads.info/principles> (last visited Dec. 6, 2017).

- d. Accountability Program Cases and Compliance Warnings¹⁶
- II. Determine what best fits your company's actual operations: Determine which standards your company should follow, ensuring that whatever solution you pick includes the ability to provide enhanced notice of IBA. Remember, companies may develop their own in-house means to implement enhanced notice through video ads.
- III. Consult with the Accountability Program: Industry is welcome to reach out to the Accountability Program at any time for advice on enhanced notice in video ads. Questions from companies are taken in strict confidence and will never result in a compliance action.

Conclusion

We note that when the OBA Principles were first promulgated, companies showed their commitment to self-regulation by opening their pocketbooks and devoting considerable resources to develop technical solutions and train staff to comply with these industry standards for consumer privacy. As companies entered the mobile space to reach consumers on their smartphones, the DAA issued its Mobile Guidance, and companies took action to comply with standards for notice, enhanced notice, and choice that made sense on mobile devices. As industry migrates from static advertising to a greater and greater reliance on video advertising in both the desktop and mobile realm, we underscore that companies are expected to undertake the effort necessary to provide consumers with transparency and consumer control as articulated by the DAA Principles. Today's announcement asks companies simply to take a now familiar set of self-regulatory principles and apply them to an innovative advertising ecosystem so that consumers will enjoy the benefits of transparency and control with each ad roll.

For the forgoing reasons, enforcement of this compliance warning will commence on April 1, 2018.

¹⁶ ASRC, *Accountability Program Decisions, Dispositions, Closures, and Guidance*, <http://www.asrcreviews.org/accountability-program-decisions/> (last visited Dec. 6, 2017).