



Online Interest-Based Advertising Accountability Program



May 27, 2016

Hon. Marlene H. Dortch
Federal Communications Commission
445 12th St. SW.
Room TW-A325
Washington, DC 20554

**Re: Protecting the Privacy of Customers of Broadband and
Other Telecommunications Services
WC Docket No. 16-106**

Dear Mrs. Dortch:

The Online Interest-Based Advertising Accountability Program (Accountability Program) submits these comments in response to the Federal Communication Commission's (Commission or FCC) notice of proposed rulemaking regarding consumer privacy online.¹

The Commission asked whether there were other, effective means to accomplish its goals of providing effective notice and choice to consumers when ISPs collect or transfer data about consumers' interests for advertising. We write to provide information about the Accountability Program's successful enforcement of the consumer privacy protections laid out in the Digital Advertising Alliance's Self-Regulatory Principles.²

After more than five years and sixty-six public actions,³ we have demonstrated that enforceable, and enforced, industry-wide self-regulation

¹ Protecting the Privacy of Customers of Broadband and Other Telecommunications Services, 81 Fed. Reg. 23,359 (Apr. 20, 2016), to be codified at 47 C.F.R. part 64 (hereinafter "NPRM").

² See Digital Advertising Alliance (DAA), Self-Regulatory Principles | www.aboutads.info, <http://www.aboutads.info/principles> (last accessed May 26, 2016).

³ To read the Accountability Program's decisions, dispositions, and closures, please visit <http://www.asrcreviews.org/accountability-program-decisions/>. To read the Accountability Program's press releases, please visit <http://www.asrcreviews.org/category/ap/ap-press-releases/>. We note that the Direct Marketing Association also serves as an accountability agent through its Corporate Responsibility Team, in conjunction with the DMA Committee on Ethical Business Practice.

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is an effective way to protect consumers with the flexibility to respond quickly to changing technological and business practices in a technologically neutral way.

Under the Principles, when companies collect or use data for interest-based advertising (IBA) on the Web or through mobile apps, both they and the unaffiliated publishers through which they reach consumers are required to provide timely “enhanced” notice that takes consumers to a written disclosure of the company’s IBA practices with instructions and relevant links for opting out of IBA.⁴ This brings transparency and choice to consumers at the time most critical to their decision whether to participate in data collection and use for interest-based advertising.

A survey of our work demonstrates that vigorous self-regulatory enforcement, backstopped by referral of non-compliant actors to the government agencies with jurisdiction, is effective. We offer these comments to inform the Commission on the important role that self-regulation has played across the advertising industry and can continue to play to address the issues the Commission has asked about in the NPRM. To that end, we attach an overview of the Accountability Program and its actions for the record.⁵

Sincerely,



Genie Barton
Vice President, Online Interest-Based Advertising Accountability Program
and Mobile Marketing Initiatives

⁴ DAA, Self-Regulatory Principles for Online Behavioral Advertising (OBA Principles), Sections II and III.

⁵ We would also like ask the Commission to take into account the thoughtful discussion of self-regulation by then Federal Trade Commission Chairwoman Deborah Platt Majoras, “Self Regulatory Organizations and the FTC, (April 11, 2005) (Available at https://www.ftc.gov/sites/default/files/documents/public_statements/self-regulatory-organizations-and-ftc/050411selfregorgs.pdf).



Online Interest-Based Advertising Accountability Program



**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
Protecting the Privacy of Customers of Broadband) WC Docket No. 16-106
and Other Telecommunications Services)
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Comments of the Online Interest-Based Advertising Accountability Program

Accountability Program Essentials

- The Accountability Program was developed at the request of the Digital Advertising Alliance (DAA), an alliance of the major advertising trade associations, as one of the two independent accountability agents for the Self-Regulatory Principles for Online Behavioral Advertising, the Self-Regulatory Principles for Multi-Site Data, the Application of Self-Regulatory Principles to the Mobile Environment, and the Application of the Self-Regulatory Principles of Transparency and Control to Data Used Across Devices (collectively, the Principles).⁶
 - Accountability is one of the 7 core OBA Principles
 - Accountability Program’s mission is to build consumer trust in the Internet by enforcing the industry best practices set forth in the Principles on all platforms
 - The Accountability Program is administered by the Council of Better Business Bureaus (CBBB), under the policy guidance of the Advertising Self-Regulatory Council (ASRC), the leading experts in advertising self-regulation

⁶ See DAA, Self-Regulatory Principles | www.aboutads.info, <http://www.aboutads.info/principles>. The Direct Marketing Association also serves as an accountability agent for the DAA.

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- Overview of the OBA Principles⁷
 - The Principles are based on the basic FIPs principles of transparency and choice and require, among other things, that consumers receive just-in time notice and have a clear choice about the collection and use of their web surfing data or cross app data in order to serve them ads based on their interests as inferred from these data
 - Service Providers, such as ISPs and toolbars, that have access to all or substantially all of consumers' data, must get prior affirmative consent before collecting or using that data for interest-based advertising
 - The MSD Principles,⁸ among other things, forbid the use of data gathered across websites or apps over time to make eligibility determinations about important benefits such as employment, insurance, credit, or health care
 - These prohibitions help to address concerns about the potential uses of "Big Data" in ways that may discriminate against protected classes' access to important commercial benefits
 - The Mobile Guidance⁹ applies these principles to the mobile environment
 - Certain types of mobile data such as personal directory data such as contacts, calendar, photos, or video, all parties in the mobile space require get prior affirmative consent before collection or transfer to third parties
 - Prior affirmative consent must also be provided prior to third party collection of precise geolocation or transfer of such data to a third party
 - The Cross-Device Guidance¹⁰ ensures that transparency and choice are provided when companies try to reach consumers across two or more of their associated devices
 - The most important component of the Cross-Device Guidance is its treatment of a consumer's opt-out decision, which requires companies to respect that choice both for serving tailored ads on it *and* collecting new information from it to tailor ads on other devices

⁷ Available at <http://www.aboutads.info/resource/download/seven-principles-07-01-09.pdf>.

⁸ Available at <http://www.aboutads.info/resource/download/Multi-Site-Data-Principles.pdf>.

⁹ Available at http://www.aboutads.info/DAA_Mobile_Guidance.pdf.

¹⁰ Available at http://www.aboutads.info/DAA_Cross-Device_Guidance-Final.pdf.

Our Administrator: The Council of Better Business Bureaus

- The CBBB is the national arm of the 112-member Better Business Bureau System (BBBs), which celebrated its 100th anniversary in 2012
 - The BBB system handles 1 million consumer complaints annually; rates businesses based on factors including responsiveness to consumer complaints and government actions; provides consumer alerts; and accredits businesses based on uniform standards
 - BBB complaints comprised 12% of data in the Consumer Sentinel database in 2015, making it the second largest single contributor
- The CBBB is home to a number of national programs, including programs focused on consumer protection and financial literacy
 - Military Line provides free resources to our military communities on financial literacy and consumer protection and works informally with OSA, referring consumer complaints that it believes merit further action and consulting with Holly Petraeus (formerly director of Military Line) on areas of mutual concern
 - Smart Investing partners with FINRA's Investor Education Foundation to give consumers tools and information to help better protect and manage their money
- The Council provides administration for ASRC to ensure its independence

Our Policy Guidance: The Advertising Self-Regulatory Council

- **In 1971**, the Association of National Advertisers (ANA), the American Association of Advertising Agencies (AAAA), and the American Advertising Federation (AAF) formed an alliance with the CBBB to create an independent self-regulatory body – the National Advertising Review Council (NARC), now known as the Advertising Self-Regulatory Council (ASRC).¹¹
- **ASRC** establishes the policies and procedures for advertising industry self-regulation, with programs tailored to provide industry best practices including:

¹¹ See generally ASRC, Advertising Industry Self-Regulation at <http://asrcreviews.org>.

- National Advertising Division (NAD) and National Advertising Review Board – 1971: Responded to consumers’ concerns about truth and accuracy in advertising
- Children’s Advertising Review Unit – 1974: Chartered to assure that advertisers would take special care in addressing advertising messages to a vulnerable audience; first Safe Harbor Program approved under COPPA
- Electronic Retailing Self-Regulation Program – 2004: Developed at the request of ERA to meet special needs of fast-paced direct-response industry
- NAD & Council for Responsible Nutrition – 2007: Created in cooperation with CRN to expand NAD’s review of dietary-supplement advertising and rein in outrageous claims
- The Online Interest-Based Advertising Accountability Program – 2011: Created at the request of the Digital Advertising Alliance as its independent accountability agent as required by the Accountability Principle of the OBA Principles

Requirements of Effective Self-Regulation

The Federal Trade Commission has described the key components of effective self-regulation. In the words of then-FTC Chairwoman Deborah Platt Majoras:

Experience suggests that self-regulatory organizations that work best often have the following elements: clear requirements; widespread industry participation; active monitoring; effective enforcement mechanisms; procedures to resolve conflicts; a transparent process; responsiveness to a changing market and to consumers; sufficient independence from direct control by industry; and a procompetitive approach.¹²

Why This Self-Regulatory Program is Successful

- **Substantive Principles:** The Principles directly and meaningfully address online privacy by providing consumers with real-time notice about interest-based advertising and enabling them to choose whether to participate

¹² Deborah Platt Majoras, “Self Regulatory Organizations and the FTC, (April 11, 2005) (Available at https://www.ftc.gov/sites/default/files/documents/public_statements/self-regulatory-organizations-and-ftc/050411selfregorgs.pdf).

- **Applicable Across All Segments of Industry and All Companies:** Unlike most self-regulatory programs which focus only on segment of an industry or are administered by a membership organization and applicable only to its members, the Principles are applicable to all industry players who are involved in any aspect of interest-based advertising covered by the Principles
- **Independently Enforced:** The Accountability Program's enforcement operates completely independently of the DAA, which has no advance knowledge or input into its monitoring or compliance processes
- **Companies Held Publicly Accountable:** The outcomes of all formal inquiries are made public, giving policy-makers and the public confidence that industry is being held accountable for compliance with the Principles
- **Industry-Supported:** The Principles reflect consensus by the advertising industry as to appropriate conduct and practices and therefore are broadly supported
- **Backed by Referrals to Government Agencies:** Like all ASRC programs, the Accountability Program's procedures give it the discretion to refer a company that refuses to participate or accept the Accountability Program's recommendations to the appropriate federal or state agency.

Effectiveness of Self-Regulation for Digital Advertising

- Self-regulation can adapt and apply core principles to new business models
 - As interest-based advertising moved to mobile devices, the DAA issued the Mobile Guidance, expanding the scope of the original OBA Principles to mobile apps
 - The Accountability Program began monitoring for mobile app violations in September 2015 and released its first three cases¹³ in May 2016
 - The first three mobile cases tackled not just cross-app IBA but also the collection of special sensitive data types like precise location for IBA purposes
 - When industry began using non-cookie identifiers such as canvas fingerprinting, the Accountability Program warned companies¹⁴

¹³ Accountability Program, New Cop on the Mobile Privacy Beat, <http://www.asrcreviews.org/new-cop-on-the-mobile-privacy-beat/>.

that the Principles require the same notice and choice, irrespective of the technology used for data collection for IBA

- Accountability Program decision required company using probabilistic IDs for “household” identification to explain this to consumers and tell them explicitly what device(s) the opt-out covered¹⁵
- Accountability Program is actively monitoring websites for violations of this issue, has surveyed over 130,000 sites
- When companies began serving native advertisements that were personalized for users based on interests inferred from cross-site or cross-app data, Accountability Program warned companies¹⁶ that this was no different from other types of IBA
 - Accountability Program has issued public decisions bringing companies that failed to heed its warnings into compliance with this disclosure and choice requirement¹⁷
 - Companies have confidentially come into compliance with the help of the Accountability Program

A Look at Accountability Program Enforcement

- The Accountability Program monitors the IBA and MSD practices of all entities collecting or using multi-site data or cross app data to ensure industry compliance with the Principles
- The Accountability Program uses its in-house tech lab to test websites and mobile apps, employing everything from network monitors to specially designed automated web crawlers to independently uncover potential issues of non-compliance
- The Accountability Program is assisted by two third-party contractors, Ghostery, which uses a technology monitoring platform to generate reports on companies whose business models include IBA or MSD in

¹⁴ Accountability Program, Alternative Identifiers Compliance Warning, <http://www.ascreviews.org/wp-content/uploads/2014/08/Alternative-Identifiers-Compliance-Warning.pdf>.

¹⁵ Accountability Program, In re: Blue Cava, Inc., <http://www.ascreviews.org/wp-content/uploads/2012/05/BlueCava-Decision-Final9.pdf>.

¹⁶ Accountability Program, Interest-Based Native Advertising Compliance Warning, <http://www.ascreviews.org/wp-content/uploads/2014/12/Compliance-Warning-CW-03-2014-Native-Advertising.pdf>.

¹⁷ Accountability Program, Advertisers Must Tell Consumers When Sponsored-Content is Tailored to their Specific Interests, <http://www.ascreviews.org/advertisers-must-tell-consumers-when-sponsored-content-is-tailored-to-their-specific-interests/>.

the desktop environment and Kryptowire, which monitors the data collected and transferred by apps

- The Accountability Program reviews these reports and, where the reports suggest a likely compliance infraction, conducts targeted staff research to determine whether a violation has in fact occurred
- The Accountability Program reviews consumer complaints regarding violations of the Principles
- Based on monitoring, research, or consumer complaints, the Accountability Program brings informal and formal inquiries to resolve issues of suspected non-compliance
- The Accountability Programs works confidentially and constructively with companies that have received its inquiries to resolve their compliance issues
- At the end of a formal inquiry, the Accountability Program issues a public decision and an accompanying press release to ensure the transparency of its adjudications and inform industry and the public of the outcome of its inquiry
- The company that was the subject of the inquiry includes a statement in the decision that publicly states its agreement to follow the Accountability Program's recommendations
- If a subject of an inquiry declines to participate in the process or refuses to implement the Accountability Program's recommendations, the Accountability Program will refer the company to the appropriate federal or state government agency
- Only one company has declined to participate in the Accountability Program's inquiry process

Milestones

- Celebrating 5th anniversary
- A total of 66 public actions
 - Decisions, administrative dispositions, compliance warnings, and recorded closures
- Answered approximately 15,000 complaints
- Confidential compliance advice provided to companies and attorneys (averaging about 1 per week)

Regulators Respect and Trust BBB Self-Regulation and the Accountability Program

- **FTC Bureau of Consumer Protection Director Jessica Rich:**

“We have long supported BBB’s self-regulatory initiatives as an important complement to the FTC’s law enforcement, policy, and educational initiatives. Over the years, the FTC has emphasized that when implemented in tandem, self-regulation and government oversight provide valuable efficiencies and benefits.

In fact, well-constructed industry programs with certain hallmarks – (1) clear requirements, (2) widespread industry participation, (3) active monitoring, (4) effective enforcement, (5) procedures to resolve conflicts, (6) transparent and independent processes, and (7) responsiveness to changing markets and consumers – offer some clear advantages over government regulation alone.

They can be more prompt, flexible, and responsive than when we only enforce through statutes and regulations. They also can be better tailored to reach to particular categories of marketing or particular categories of businesses.

In a nutshell, strong self-regulatory programs provide important guidance to industry, alleviate some of the FTC’s burden in monitoring for law violations, and develop workable standards that we all can draw on in future policy and enforcement efforts. And, of course, the FTC is here to serve as a regulatory back-stop when self-regulation fails to bring about compliance.”

- **Former FTC Chairman Leibowitz:**

“The online advertising industry has been working to develop an icon that consumers could click to opt out of receiving targeted ads. Today, although it is still a work in progress, the ad industry has obtained buy-in from companies that deliver 90 percent of online behavioral advertisements; and, with the Better Business Bureau, it has established a mechanism with teeth to address non-compliance, backed up with FTC enforcement.”

- **FTC Commissioner Maureen Ohlhausen:**

“Self-regulation works best when it is backed up by serious compliance efforts and tough enforcement. Through the Better Business Bureau and the Direct Marketing Association’s efforts, the DAA is making enforceability a reality. I am especially pleased that DAA has not only adopted broadly applicable Principles that apply across sectors and to a wide variety of companies but also, building on the success of the advertising industry’s approach to self-regulation, has provided for strong, objective oversight by the Council of Better Business Bureaus (CBBB) and the Direct Marketing Association. These programs provide for prompt follow up on complaints and, in the case of the CBBB, active monitoring of all members of the digital advertising system. Indeed anyone who has met with the CBBB Accountability Program’s Director, Genie Barton, understands the seriousness with which she approaches this process. Already the CBBB’s Accountability program has publicly reported on nineteen cases and, in all of these cases, the companies have agreed to voluntarily implement the program’s recommendations.

This approach can build public confidence in self-regulation by providing a public, transparent record of real efforts to ensure compliance more quickly and with less burden than is sometimes the case with government enforcement. Though time consuming and arduous, regular compliance work improves the overall health of the online advertising industry by ensuring that companies live up to the promises they make. It also helps nip minor issues in the bud, correcting them before they become serious problems for consumers. This frees up Commission resources to focus on truly bad actors. In a time of limited government resources, this approach is both efficient and sensible.”

Companies Respect the OBA Principles and Trust Accountability Program Enforcement

Companies’ statements in Accountability Program decisions demonstrate industry support of self-regulation and the Accountability Program’s enforcement work:

- **“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."

- **"Facebook** is a strong proponent of the principles of transparency, consumer control, and accountability that are central to the Self-Regulatory Program for Online Behavioral Advertising (OBA Program) [...] We appreciate the collaborative discussions that we have had with the Accountability Program about how to enhance transparency in FBX. We are pleased to confirm that in a further effort to promote transparency we will soon enable partners to use the AdChoices logo to indicate when FBX advertisements are interest-based."
- **"Specific Media** takes privacy and self-regulation very seriously, and makes a concerted effort to safeguard consumer notice and choice regarding anonymous data collected for ad measurement and targeting purposes. Specific Media [...] fully supports the Online Behavioral Advertising (OBA) Program, and the review process of the Better Business Bureau (BBB)."

Accountability Program Decisions and Administrative Dispositions

- The Accountability Program has published the results of 63 inquiries to date and 3 compliance warnings. So far, only one company has declined to participate in the Accountability Program's process.¹⁸ Additionally, there have been numerous informal resolutions of compliance issues
- We enforce the Principles with respect to all members of the advertising ecosystem, including major brands, advertising agencies, web publishers, ad networks, ISPs and toolbars to ensure consumers have transparency (notice and enhanced notice) and consumer control (consumer choice about whether to participate in interest-based advertising)

¹⁸ Accountability Program, SunTrust Bank Referred to the CFPB for Refusal to Participate in Self-Regulation, <http://www.asrcreviews.org/suntrust-bank-referred-to-the-cfpb-for-refusal-to-participate-in-self-regulation/>.

Case Highlights

Bearbit Studios, Spinrilla, and Top Free Games: Mobile Enforcement

- The Accountability Program's first mobile enforcement actions¹⁹
- Enforcement actions covered the core of the Mobile Guidance: requirements for companies allowing cross-app IBA
- Accountability Program also tackled sensitive data issues with each case:
 - Bearbit and Top Free Games allowed third-party collection of persistent IDs from users despite being "mixed audience" and thus subject to COPPA; both companies implemented age gates to comply with the Sensitive Data Principle's requirement that companies engage in IBA only in compliance with COPPA
 - Spinrilla allowed collection of users' precise location by third parties engaged in IBA without obtaining consent or providing the required notice or enhanced notice; to reach compliance, Spinrilla revoked the permission for third parties to obtain precise location data through the Spinrilla app

"As mobile devices become the most popular conduit through which consumers access the Internet, providing consumers with transparency and control about IBA on those devices becomes imperative. The advertising industry is already delivering notice and choice to consumers as they surf the web on their desktops. In addition, the DAA has provided guidance to companies on how to give consumers real-time notice and choice on their apps. Moreover, if consumers do not wish to receive interest-based ads, there is an app for that—AppChoices, downloadable from the major app stores. With the availability of AppChoices, enforcement of the DAA Principles on mobile devices went into effect. The Accountability Program is now actively monitoring and enforcing compliance with the Mobile Guidance, educating companies and working with them to ensure that consumers are informed and their choices are respected." (Spinrilla Decision)

¹⁹ Accountability Program, New Cop on the Mobile Privacy Beat, <http://www.asrcreviews.org/new-cop-on-the-mobile-privacy-beat/>.

Gravity & Outbrain: Interest-Based Native Advertising Cases

- Gravity and Outbrain are the first two cases to follow up on the Accountability Program's Native Ads Compliance Warning.²⁰
- Both Gravity—a digital native ad division of AOL—and Outbrain—a native ad company—operate content recommendation engines that are accessible via widgets placed on publishers' websites.
- The companies collected and used data to serve interest-based native ads, but neither provided the required enhanced notice links where they were conducting IBA.
- Gravity and Outbrain both modified their widgets to include compliant enhanced notice.
- Outbrain had begun a compliance plan prior to receiving the Accountability Program's inquiry, so its case was concluded as a disposition.

"As we made clear in our Native Ads Compliance Warning, third parties engaged in interest-based native advertising have the same duties under the Principles as companies engaged in IBA using traditional (e.g., banner or skyscraper) ad formats." (Gravity Decision)

Answers, Best Buy, BuzzFeed, Etsy, Go.com, Imgur, TWiT, Yelp, and 247 Sports: First Party Enhanced Notice Cases

- After releasing its 2013 First Party Enhanced Notice Compliance Warning, the Accountability Program promised to begin vigorous enforcement of the first party enhanced notice requirement.
- These nine cases all resulted from the Accountability Program's first party compliance sweep, which began in January 2014.²¹
- Each case differed in the degree to which the publisher's disclosures satisfied the notice requirement of the OBA Principles.
- But in every case, the publisher's website allowed third-party IBA activity on its website but did not provide the required enhanced notice.

²⁰ Accountability Program, Advertisers Must Tell Consumers When Sponsored-Content is Tailored to their Specific Interests, <http://www.asrcreviews.org/advertisers-must-tell-consumers-when-sponsored-content-is-tailored-to-their-specific-interests/>.

²¹ Accountability Program, Accountability Program Continues Compliance Sweep: Websites Take Responsibility for Informing Consumers about Data Collection, <http://www.asrcreviews.org/accountability-program-continues-compliance-sweep-websites-take-responsibility-for-informing-consumers-about-data-collection/>.

- All nine companies came into prompt compliance with the Principles.

"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." (TWiT Decision)

LifeLock Decision: Members of the Advertising Ecosystem Share the Responsibility for Compliance with the DAA OBA Principles²²

- *"This is the third set of cases in which the Accountability Program has examined the interlocking responsibilities of parties in an OBA campaign, including the advertiser, media agency, ad network or other third party, in which the AdChoices Icon failed to be served on interest-based ads. All these cases share a common theme: the need for all parties in the advertising ecosystem to work together to ensure that the OBA Principles are implemented in the OBA campaign. These cases also share a common problem: the reliance of each party involved on another company in the ad chain to shoulder the responsibility for compliance."*
- *"Industry-wide compliance is essential to build consumer trust. This decision once again emphasizes how critical it is that all parties involved in the life cycle of an OBA campaign understand the OBA Principles and the part they play in ensuring that consumers receive enhanced notice and consumer control on interest-based ads and when third parties collect their information. The fact that compliance with the OBA Principles slipped through the cracks here is certainly reason for extra vigilance by all involved in brand advertising in the future."*

²² Accountability Program, In re: LifeLock, Inc., <http://www.asrcreviews.org/wp-content/uploads/2012/04/Online-Interest-Based-Advertising-Accountability-Program-Formal-Review-36.2014-1.pdf>.

AOL Advertising Decision: Members of the Advertising Ecosystem Share the Responsibility for Compliance with the DAA OBA Principles²³

- *"The advertising ecosystem is to be commended for committing to developing and complying with a cross-industry self-regulatory program in the online environment, with its technical complexities, lightning-fast transactions, rapidly shifting scenarios and constant innovation. Indeed, regulation is generally far less successful in such an environment. But for any accountability system to function effectively in this tightly interwoven world, all parties must commit to communication and shared responsibility. While the Accountability Program is pleased to see the OBA Principles implemented so widely, it is our job to spur industry to do even better when something goes wrong."*

Kia Motors America Decision: How Compliance with Self-Regulation Builds Consumer Trust²⁴

- *"The OBA Principles were developed to address consumers' concerns about the practices of companies collecting and using data for OBA. Consumers are not the only beneficiaries of the OBA Principles. The entire advertising ecosystem—including advertisers and ad agencies—benefit from vigilant, industry-wide compliance. By instructing their advertising agencies and ad network partners to adopt practices that comply with the OBA Principles, advertisers signal to their customers that they are committed to strong privacy practices."*

"The Accountability Program's mission is to build trust between consumers and businesses by ensuring that all in the advertising industry comply with the OBA Principles. When an advertiser embraces self-regulation as Kia has done in this instance, it initiates a virtuous cycle with all members of the advertising ecosystem that support its ad campaigns."

²³ Accountability Program, In re: AOL Advertising, Inc., <http://www.asrcreviews.org/wp-content/uploads/2012/04/Online-Interest-Based-Advertising-Accountability-Program-Formal-Review-34.2014.pdf>.

²⁴ Accountability Program, In re: Kia Motors America, <http://www.asrcreviews.org/wp-content/uploads/2012/04/Kia-Decision-9-24-12.pdf>.

BlueCava Decision: Self-Regulation Adapts to Innovation²⁵

- *"As technologies continue to evolve and raise new compliance issues, the Accountability Program will respond to ensure that the OBA Principles are preserved and can extend to meet these novel situations. Companies' commitment to applying the OBA Principles to their new technologies will ensure that the OBA Principles continue to evolve along with technological advances. Technological innovation provides new challenges, but also can lead to innovative solutions that benefit consumers"*

Compliance Guidance: How the Accountability Program Educates Industry²⁶

- While trillions of the Ad Choices option icon are delivered on interest-based ads every month, the Accountability Program's monitoring of website compliance revealed that a few of the other requirements of the OBA Principles are less widely understood and implemented by some businesses
- The Accountability Program found that a significant number of otherwise compliant businesses were not meeting their obligation to give consumers a notice on every webpage where third parties collect information for interest-based ads. When clicked, this notice must take consumers to the exact place on the website where they can learn about the website's data collection practices and find an easy-to-use way to opt out from interest-based ads
- To remedy this systemic compliance problem, the Accountability Program issued an industry-wide Compliance Warning, clarifying the website enhanced notice requirement and notifying businesses that strict enforcement would begin on January 1, 2014. Compliance with this aspect of the OBA Principles is particularly important given the current sensitivities about undisclosed collection of online consumer data
- The Accountability Program has issued two other Compliance Warnings since 2013:

²⁵ Accountability Program, In re: BlueCava, Inc., <http://www.asrcreviews.org/wp-content/uploads/2012/05/BlueCava-Decision-Final9.pdf>.

²⁶ Accountability Program, First Party Enhanced Notice Compliance Warning, <http://www.asrcreviews.org/wp-content/uploads/2013/10/Accountability-Program-First-Party-Enhanced-Notice-Compliance-Warning-CW-01-2013.pdf>.

Alternative Identifiers Compliance Warning²⁷

- On August 21, 2014, the Accountability Program issued its second Compliance Warning, which focused on alternative identifiers—new technological tools that allow companies to conduct IBA without the use of traditional HTTP cookies.
- The Compliance Warning cited the Accountability Program’s earlier BlueCava case, reminding companies that the Principles are technology neutral, requiring the provision of enhanced notice, notice, and choice regardless of the technological means by which IBA is facilitated.

"When companies develop new advertising technologies, they must be cognizant of the fact that the existing self-regulatory framework will follow them into these new frontiers. Development and testing processes should operate not only to produce innovative products, but also to incorporate "privacy by design," including adherence to the requirements of the Principles."

Interest-Based Native Advertising Compliance Warning²⁸

- On December 9, 2014, the Accountability Program issued its third Compliance Warning, in which it clarified that the Principles apply to interest-based ads regardless of their format.
- In particular, the Principles extend to the popular "native" ad format when native ad companies collect or use consumers' browsing data to target native ads to their perceived interests.

"Companies involved in interest-based native ads are responsible for meeting all the requirements of the OBA Principles, just as they would be with respect to any other IBA. In particular, companies must deliver transparency and control, the cornerstones of the OBA Principles, to consumers."

²⁷ Accountability Program, Alternative Identifiers Compliance Warning, <http://www.asrcreviews.org/wp-content/uploads/2014/08/Alternative-Identifiers-Compliance-Warning.pdf>.

²⁸ Accountability Program, Interest-Based Native Advertising Compliance Warning, <http://www.asrcreviews.org/wp-content/uploads/2014/12/Compliance-Warning-CW-03-2014-Native-Advertising.pdf>.

Press Releases, decisions, administrative dispositions/closures, and compliance guidance are available at:

- <http://www.ascreviews.org/category/ap/ap-press-releases/>
- <http://www.ascreviews.org/accountability-program-decisions>
- <http://www.ascreviews.org/2013/10/accountability-program-administrative-dispositions/>
- <http://www.ascreviews.org/2013/10/compliance-warnings-and-guidance/>

A Look at Accountability Program Education, Outreach and Training

Overview

DAA: The Accountability Program continues to serve as the independent advisor to the DAA in the creation of additional DAA Principles and Programs which respond to new consumer issues.

Outreach and Education: The Accountability Program conducts vigorous and widespread outreach through webinars, keynotes, and participation in conferences, as well as educating the CBBB's over 150 National Partners, the 112-member BBB system and its accredited businesses.

Training: The Accountability Program trains and advises ASRC's Children's Advertising Review Unit as it applies recent FTC revisions to its regulations governing the Children's Online Privacy Protection Act, which now forbids the use of persistent identifiers to track children under 13 without prior, verifiable parental consent.

Global Education, Consultation, and Training

The Accountability Program advised in the creation of the European Advertising Alliance's (EDAA) Principles and the Digital Advertising Alliance of Canada's (DAAC) Principles and helped to write the self-regulatory guidance on IBA for the International Chamber of Commerce (ICC). The Accountability Program is advising the EU and Canadian SROs on the creation of interoperable enforcement standards in the EU, Canada, and the US.

Canada

The Accountability Program is providing consultation services to Advertising Standards Canada (ASC), which is the Accountability mechanism for the DAAC. ASC is the national, not-for-profit advertising self-regulatory body founded by the advertising industry in 1957 and has since then served a role comparable to that of ASRC in the United States. ASC also reviews and pre-clears advertising for alcoholic and non-alcoholic beverages, consumer drugs, cosmetics, food, and ads related to children to ensure their compliance with Canadian law and regulation.

The DAAC's OBA Principles are modeled on the DAA OBA Principles, but are adapted to be compatible with the requirements of Canadian privacy law and self-regulatory practices. The Accountability Program is

- Advising ASC on interpreting the requirements of the Principles
- Training ASC staff on technical monitoring techniques to ensure companies' compliance
- Partnering with ASC and DAAC on webinars to educate businesses and consumers about the DAAC and its OBA Principles and Program
- And will advise ASC on investigations as requested

European Union

The Accountability Program is working closely with the European Self-Regulatory Alliance (EASA), which is the umbrella organization for the national advertising SROs in the EU (which play a role comparable to ASRC's and ASC's in their jurisdictions). In addition, the Accountability Program:

- Provides seminars, presentations, and training for SROs, businesses, and certification agents regarding the implementation, requirements, and enforcement of the Principles, as well as the development of mobile guidelines by the DAA in the US
- Works with EASA to brief EU regulators and to educate businesses and consumers to ensure broad adoption and compliance with the EDAA Principles

International Chamber of Commerce

- Educates ICC members on the Principles, the Mobile Guidance, and enforcement

- Helps to write ICC guidance for countries seeking to develop comparable co-regulatory or self-regulatory Programs

How the Accountability Program is Funded

The Accountability Program is administered by the Council of Better Business Bureaus. Accountability Program Employees are CBBB employees. The CBBB is reimbursed for the costs of administering the Accountability Program by the DAA.

Sincerely,

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Online Interest-Based Advertising Accountability Program

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