

Behavioral Advertising Developments: A Compliance Warning and an Enforcement Action

The Bottom Line

- *Companies engaged in IBA should pay particular attention to two recent compliance developments regarding the enhanced notice in video ads and the new cross-device guidance.*
- *As advertising retargeting methods and media continue to evolve, companies must always consider at the outset of any campaign the DAA Principles to ensure compliance.*

Two significant interest-based advertising (IBA) developments have recently come out of the Online Interest-Based Advertising Accountability Program (Accountability Program), which enforces the principles set forth by the Digital Advertising Alliance (DAA). The first was a compliance warning from the Accountability Program to advertisers serving interest-based video ads online and on mobile devices — currently, a \$13.2 billion market. The second was the Accountability Program's inaugural decision requiring IBA in the cross-device world to be transparent to consumers and give them the opportunity to control this advertising.

The Warning

The Accountability Program announced in a self-described “compliance warning” that, on April 1, 2018, it will begin enforcing the enhanced notice requirements of the DAA Self-Regulatory Principles for Online Behavioral Advertising (DAA Principles) in interest-based video ads in the mobile and desktop environments. Accordingly, video advertisers must provide consumers with transparency and control with every interest-based video ad roll.

The enhanced notice, which must be provided whenever data is collected or used for IBA in browsers or mobile apps, can be provided by displaying the DAA's AdChoices icon or another “clear, meaningful, and prominent” signal in or around an interest-based ad. The notice must explain that the video ad is interest-based and lead to a place where consumers can learn about the advertiser's IBA practices and how to opt out of IBA.

The Enforcement Action

The DAA Principles were first created with the desktop world in mind. As consumers moved to a mobile world, the DAA followed with its [mobile guidance](#). Then came the DAA's cross-device guidance, requiring that companies that collect and use data for IBA across multiple devices provide notice to consumers of this practice and give them the opportunity to control this advertising on each device they use.

Now, in a case involving a video advertising technology company, the Accountability Program has issued its inaugural decision on IBA in the cross-device world. The Accountability Program, while testing a women's

health application, observed the technology company collecting cross-app data, likely for use in IBA. The Accountability Program said that it examined the technology company's website and determined that it did not meet the requirements for transparency and control under the DAA's mobile guidance or the DAA's cross-device guidance. For example, the Accountability Program could not find a statement of adherence to DAA principles or enhanced notice of the technology company's IBA practices, and it questioned the technology company's "opt out" procedures.

The technology company worked with the Accountability Program to update its privacy policy to describe the scope of its cross-app data collection practices for IBA through mobile apps. It also added a statement of adherence to the DAA principles to its privacy policy and confirmed that the IBA ads that it served would contain the AdChoices icon.

Among other things, the technology 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.

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