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

#### ONLINE INTEREST-BASED ADVERTISING ACCOUNTABILITY PROGRAM

#### FORMAL REVIEW

Case Number: 85-2018

COMPANY: Vdopia, Inc. DBA Chocolate	) ) )
-	)
CHALLENGER:	)
Online Interest-Based	)
Advertising Accountability Program	)
	)
	)

# **DECISION**

DATE: August 20, 2018

#### **SYNOPSIS**

The Digital Advertising Alliance's (DAA) Self-Regulatory Principles (DAA Principles)<sup>1</sup> cover entities engaged in interest-based advertising (IBA) across websites and mobile applications (apps). Depending on its function in a particular set of circumstances, a company can be a first party<sup>2</sup> or a third party.<sup>3</sup> Third-party companies that collect cross-app data<sup>4</sup> through mobile

<sup>&</sup>lt;sup>1</sup> The DAA's interest-based advertising 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 also maintains a set of self-regulatory principles dedicated to political advertising which is not at issue in this case. The full text of the Principles can be found at http://www.aboutads.info/principles.

<sup>&</sup>lt;sup>2</sup> The term "first party" can refer to both the publisher of a mobile application, *Mobile Guidance* Definition G at 7 ("A First Party is the entity that is the owner of an application, or has Control over the application, with which the consumer interacts, and its Affiliates."), and the owner and operator of a website and its affiliates, *OBA Principles* 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.").

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). 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. Companies that engage in IBA across unaffiliated websites must ensure that their opt outs persist for the industry-standard length of five years. Finally, companies that own and operate websites on which they allow non-affiliate third parties to collect data for IBA must provide enhance notice of this fact, in compliance with the Self-Regulatory Principles for Online Behavioral Advertising (OBA Principles).

#### **COMPANY STATUS**

Vdopia, Inc. DBA Chocolate (Chocolate) is a mobile video advertising company based in San Francisco, California.<sup>5</sup>

# **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 compliance with the DAA Principles. One of these Android applications was a popular dating application called Skout.<sup>6</sup> The Accountability Program observed that Chocolate was collecting data for IBA through this app, which prompted us to review the company's practices for compliance with the DAA Principles. Below, we describe our review in detail.

# I. Mobile data collection review

i. Cross-app data review

While running Skout, the Accountability Program noticed advertisements displayed within the application. Through analysis of the application's network traffic, we observed Chocolate collecting cross-app data, likely for IBA.<sup>7</sup> Specifically, the Accountability Program noted the

<sup>&</sup>lt;sup>3</sup> 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.").

<sup>&</sup>lt;sup>4</sup> *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.").

<sup>&</sup>lt;sup>5</sup> Chocolate, *About Us*, https://chocolateplatform.com/about-us/ (last visited May 9, 2018).

<sup>&</sup>lt;sup>6</sup> Google Play Store, SKOUT-Meet, Chat, Friend,

https://play.google.com/store/apps/details?id=com.skout.android&hl=en (last visited May 9, 2019). *See also* Apple App Store, *Skout-Meet*, *Chat*, *Go Live*, https://itunes.apple.com/us/app/skout-meet-chat-go-live/id302324249?mt=8 (last visited May 9, 2018).

<sup>&</sup>lt;sup>7</sup> 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.").

collection of Android's Advertising ID (AAID or IFA)—a unique alphanumeric string used to identify a particular device for advertising purposes.<sup>8</sup> AAIDs are the Android equivalent of Apple's Identifiers for Advertisers (IDFA).<sup>9</sup>

#### A. Third-party notice

The Accountability Program examined Chocolate'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 Policy." Scrolling through this privacy policy, we located a description of Chocolate's IBA practices on mobile devices. However, we did not locate a statement of adherence to the DAA Principles. We also could not locate a description of a mechanism for users to opt out of IBA taking place through mobile apps. Looking further, we did not find a compliant notice of Chocolate's IBA practices accessible through the Skout application.

# B. Third-party enhanced notice

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

## C. Third-party consumer control

As discussed above, the Accountability Program could not locate a means for users to exercise choice about IBA taking place through mobile apps, raising an issue under this provision of the Mobile Guidance.

#### ii. Precise location data review

During its review of the Skout application, the Accountability Program also observed that Chocolate was being passed latitude and longitude coordinates. We observed the value assigned to the key target\_params contained latitude and longitude coordinates to the seventh decimal place.<sup>10</sup>

2, https://www.bbb.org/globalassets/local-bbbs/council-113/media/behavioral-advertising/spinrilla-decision.pdf

<sup>&</sup>lt;sup>8</sup> 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).

<sup>&</sup>lt;sup>10</sup> 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). (These guidelines require that the method used to provide location be described clearly in order to determine its degree of precision. *Id.*) The Accountability Program has previously examined the collection of precise location data in the form of geolocation coordinates. *See, e.g., In re: Spinrilla (61-2016)*, May 4, 2016 at

## A. Third-party notice

During our review of Chocolate's privacy disclosures, we found language indicating that Chocolate may collect precise location data through mobile apps for IBA. However, we did not locate instructions for users to withdraw consent from the collection of precise location data or a statement of adherence to the DAA Principles.

## B. Third-party consent

During testing, we also examined the Skout application to determine if Chocolate—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 Skout 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 Chocolate or explain the potential use of this data for IBA through mobile apps.

## II. Multi-site data review

The Accountability Program went on to assess Chocolate's compliance with the desktop-based OBA Principles.<sup>11</sup>

i. Third-party requirements

#### A. Notice

The Accountability Program located a description of Chocolate's IBA practices taking place in the desktop environment on non-affiliate websites. Though we could not locate a statement of adherence to the DAA Principles, we located a cookie-based opt-out mechanism, discussed below.

#### B. Consumer control

When the Accountability Program tested Chocolate's cookie-based opt-out mechanism, we found that the company placed an opt-out cookie named VDOUNIQ in our test browser, which had a lifespan of one year. Under well-established industry standards, an opt-out must persist for at least five years. During our review, we found no other opt-out cookie that lasted five or more

(noting that we observed a third party collecting longitude and latitude coordinates to the fourteenth decimal place through the mobile app in question).

<sup>&</sup>lt;sup>11</sup> OBA Principles Summary at 2 ("The Principles apply to online behavioral advertising, defined as the collection of data online from a particular computer or device regarding Web viewing behaviors over time and across non-affiliate Web sites for the purpose of using such data to predict user preferences or interests to deliver advertising to that computer or device based on the preferences or interests inferred from such Web viewing behaviors.").

<sup>12</sup> See In re: Reedge, Inc. (03-2011), Nov. 8, 2011, http://www.asrcreviews.org/online-interest-based-advertising-accountability-program-03-2011 ("The Principles are built on consensus standards: 'The cross-industry Self-Regulatory Program for Online Behavioral Advertising was developed by leading industry associations to apply

years. The absence of an opt-out mechanism for desktop IBA with a lifespan of five years or longer raised a compliance issue under the third-party consumer control provisions of the OBA Principles.

# ii. First-party requirements

In the course of its investigation, the Accountability Program found evidence suggesting that at least one third-party advertising entity was collecting data on the Chocolate website for IBA. We went on to review the company's compliance with the first-party provisions of the OBA Principles.

# A. Notice: disclosure of IBA activity on website

During our examination of Chocolate's privacy policy page, we could not locate a clear description of the third-party data collection for IBA that appeared to be taking place on the Chocolate website. We did not locate a mechanism for users to opt out of third-party IBA taking place on the Chocolate website or a statement of adherence to the DAA Principles.

#### B. Enhanced notice: link to website IBA disclosure

Moreover, in reviewing the Chocolate website, the Accountability Program could not locate any link that took users directly to a discussion of the third-party data collection for IBA that appeared to be taking place on Chocolate's website. <sup>13</sup>

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

#### **ISSUES RAISED**

## I. Requirements under the Mobile Guidance

The Mobile Guidance adapts the desktop-oriented rules of the OBA Principles to the mobile world, including the core requirements for third parties to provide transparency and consumer

consumer-friendly standards to online behavioral advertising across the Internet.' (Principles at 1). The industry standard for the duration of an opt-out cookie is five years from the date of the request. ... The Accountability Program finds that Reedge was not compliant with the Consumer Control Principle because it failed to ensure that its consumer choice mechanism contained an expiration date consistent with the industry standard minimum of five years. Upon notification by the Accountability Program, the company changed the opt-out cookie's expiration date to five years from the date of the request."). See also In re: LKQD Technologies, Inc. (77-2017) at 11-12, Dec. 11, 2017, https://www.bbb.org/globalassets/local-bbbs/council-113/media/behaviorial-advertising/lkqd-decision.pdf; In re: Martini Media (05-2011), Nov. 8, 2011, http://www.asrcreviews.org/online-interest-based-advertising-accountability-program-formal-review-05-2011/; In re: PredictAd (04-2011), Nov. 8, 2011, http://www.asrcreviews.org/online-interest-based-advertising-accountability-program-04-2011/.

13 See In re: Gravity (56-2015), Nov. 4, 2015, at 5 ("The enhanced notice link, which commonly is represented by the Advertising Option Icon (AdChoices Icon or Icon) and often also uses the phrase 'AdChoices,' should take consumers directly to the place on the third party's own website where the third party explains its IBA activities, including the types of data collected, how it uses that data, whether it transfers the data to other, unaffiliated companies, and how the consumer can opt out of IBA from the disclosing company's IBA practices.").

control for IBA. As a collector and user of data for IBA across non-affiliate applications, Chocolate is a third party under the Mobile Guidance. Third parties may be subject to multiple requirements depending on the types of data they collect.

# i. Cross-app data

## 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.<sup>14</sup> 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.<sup>15</sup>

# 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) requires third parties to provide enhanced notice to users of cross-app data collection by providing a clear, meaningful and prominent link to the III.A.(1) disclosure.<sup>16</sup> This link must be presented in or around an advertisement delivered using cross-app data.<sup>17</sup> Alternatively, a third party may work with a first party to ensure the link is provided at other compliant times and locations as specified in the Mobile Guidance.<sup>18</sup>

As explicated in the Accountability Program's body of previous cases, 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. <sup>19</sup> 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 that the app publisher provides an enhanced notice link instead. <sup>20</sup> But whatever the circumstances, it remains the third party's independent responsibility to ensure that this notice is provided. <sup>21</sup>

<sup>16</sup> *Id*. at 14-15.

<sup>&</sup>lt;sup>14</sup> *Mobile Guidance* at 14.

<sup>&</sup>lt;sup>15</sup> *Id*.

<sup>&</sup>lt;sup>17</sup> *Id.* at 15-16.

<sup>&</sup>lt;sup>18</sup> *Id*.

<sup>&</sup>lt;sup>19</sup> 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.").

<sup>&</sup>lt;sup>20</sup> *Mobile Guidance* at 17-18.

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

## 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.<sup>22</sup>

#### ii. 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.<sup>23</sup> 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.<sup>24</sup> 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.<sup>25</sup>

## B. Third-party consent requirement

Under section IV.B.(2) of the Mobile Guidance, a third party should obtain consent<sup>26</sup> 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.<sup>27</sup>

#### II. Requirements under the OBA Principles

The OBA Principles govern the collection of multi-site data across websites for IBA. Under the OBA Principles, a party may be both a first and a third party depending on its function in a particular set of circumstances.<sup>28</sup>

<sup>&</sup>lt;sup>22</sup> *Mobile Guidance* at 18-19.

<sup>&</sup>lt;sup>23</sup> *Mobile Guidance* at 22.

<sup>&</sup>lt;sup>24</sup> *Id.* at 22-23.

<sup>&</sup>lt;sup>25</sup> *Id*.

<sup>&</sup>lt;sup>26</sup> *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.").

<sup>&</sup>lt;sup>27</sup> *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 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…")

<sup>&</sup>lt;sup>28</sup> 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/behavioral-advertising/varick-decision.pdf ("The DAA Principles apply to all actors engaged in IBA

## i. Third-party requirements

Third parties must provide transparency (notice and enhanced notice) and consumer control (an easy-to-use opt out from IBA) when collecting or using consumers' browsing data for IBA on non-affiliate websites.<sup>29</sup>

#### A. Notice

Under section II.A.(1) of the OBA Principles, a third party must provide a clear, meaningful and prominent notice of its IBA data collection and use practices, a statement of adherence to the DAA Principles and a description of an easy-to-use mechanism for consumers to exercise choice regarding data collection for IBA.<sup>30</sup>

#### B. Consumer control

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

# ii. First-party requirements

Under the OBA Principles, website owners and operators are first parties.

## A. Notice: disclosure of IBA activity on website

As stated in the OBA Principles and Commentary and explicated in the Accountability Program's cases, first parties are required to provide a disclosure of the IBA activities by unaffiliated companies that occur on their websites.<sup>33</sup> This disclosure must include a description

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.asrcreviews.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.asrcreviews.org/wp-content/uploads/2014/10/Online-Interest-Based-Advertising-Accountability-Program-Formal-Review-40.20141.pdf. See generally OBA Principles §§ II.A. to III.A. at 12-14.

<sup>33</sup> *OBA Principles* § II.B. at 13-14, Commentary at 32. *See also In re: Answers Corporation (38-2014)*, Oct. 28, 2014, http://www.asrcreviews.org/wp-content/uploads/2014/10/Online-Interest-Based-Advertising-Accountability-Program-Formal-Review-38.20141.pdf; *In re: Best Buy Co. (39-2014)*, Oct. 28, 2014, http://www.asrcreviews.org/wp-content/uploads/2014/10/Online-Interest-Based-Advertising-Accountability-Program-Formal-Review-39.20141.pdf; *In re: Yelp (40-2014)*, Oct. 28, 2014, http://www.asrcreviews.org/wp-

<sup>&</sup>lt;sup>30</sup> OBA Principles § II.A.(1) at 12.

<sup>&</sup>lt;sup>31</sup> OBA Principles § III.A. at 14.

<sup>&</sup>lt;sup>32</sup> Id.

of any third-party IBA activity the first party permits on its website, a statement of adherence to the DAA Principles,<sup>34</sup> and either (1) a link to an industry-developed opt-out web page such as the DAA's Consumer Choice Page (<a href="www.aboutads.info/choices">www.aboutads.info/choices</a>) or (2) a list of every third party engaged in IBA on the first party's website with links to each of their respective choice mechanisms.<sup>35</sup>

#### B. Enhanced notice: link to website IBA disclosure

In addition to the general notice requirements discussed above, first parties must ensure that an enhanced notice link is present on each webpage where a third party is collecting data for IBA purposes or serving an interest-based ad.<sup>36</sup> The enhanced notice link must take users to a page which explains the third-party IBA practices occurring on the site and provide consumers with a link to an easy-to-use opt-out mechanism. This enhanced notice link can be provided by either the website operator or a third party. However, it is the responsibility of both parties to ensure that this enhanced notice link is provided to users.

We note that the first party's enhanced notice link, typically provided in the footer or a sidebar on the webpage where data is being collected by any third party for IBA, must be **separate** from the link to the website's privacy policy. If the disclosure of third-party IBA activity is located in the website's privacy policy, the enhanced notice link should go **directly** to the place in the privacy policy where the disclosure is located, not just generally to the privacy policy.

# **COMPANY RESPONSE AND ANALYSIS**

Following receipt of the Accountability Program's inquiry letter, Chocolate demonstrated its commitment to achieving full compliance with the DAA Principles and immediately conducted a thorough review of its IBA 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.

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

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content/uploads/2014/10/Online-Interest-Based-Advertising-Accountability-Program-Formal-Review-40.20141.pdf; *In re: TWiT, LLC (46-2015)*, May 14, 2015, https://www.bbb.org/globalassets/local-bbbs/council-113/media/asrc-documents/twit-decision.pdf; *In re: The Hollywood Reporter, Inc. (58-2015)*, Jan. 14, 2016, http://www.bbb.org/globalassets/local-bbbs/council-113/media/behavioral-advertising/hollywood-reporter-decision.pdf.

<sup>&</sup>lt;sup>34</sup> If the first party's enhanced notice link, discussed below, uses the DAA's Advertising Option Icon and DAA-approved wording, then it may serve independently as a site's statement of adherence to the OBA Principles.

<sup>35</sup> See OBA Principles §§ II.A.-B. at 13-14.

<sup>&</sup>lt;sup>36</sup> OBA Principles § II.B. at 13-14.

# I. Compliance with the Mobile Guidance

# i. Cross-app data

#### A. Third-party notice requirement

To resolve its compliance issues under the third-party cross-app data provisions of the Mobile Guidance, Chocolate updated its privacy disclosures to include a statement of adherence to the DAA Principles. The updated disclosures also explain to users how they can opt out of IBA taking place through mobile apps by utilizing device-level settings on the Android and iOS operating systems and indicate that Chocolate will honor those settings.

#### B. Third-party enhanced notice requirement

During discussions with the Accountability Program, Chocolate described some of the technical challenges third parties encounter in providing enhanced notice to users in the video advertising space and the complexity of the video ad serving chain. Following consultation with the Accountability Program, Chocolate agreed to update its contractual documents to bind its partners in the digital ad serving chain to provide enhanced notice to users. Given Chocolate's position in the ad chain, this resolved the company's compliance issue under the third-party cross-app enhanced notice provisions of the Mobile Guidance absent knowledge that a partner is not complying with its commitments.

#### C. Third-party consumer control requirement

As explained above, Chocolate provided users with instructions for opting out of its IBA by accessing device-level opt-out settings, resolving this issue under the Mobile Guidance.

#### ii. Precise location data

#### A. Third-party notice requirement

To comply with the notice requirement of the precise location data provisions of the Mobile Guidance, Chocolate added language to its privacy disclosures explaining how users can withdraw consent from the collection of precise location data by utilizing device-level settings on their smartphones. Chocolate also added a statement of adherence to its disclosures.

### B. Third-party consent requirement

As a pathway to compliance, the Mobile Guidance allows third parties to obtain reasonable assurances from first parties that consent is obtained prior to authorizing the collection of precise location data for IBA. To obtain reasonable assurances and comply with the third-party consent requirements of the Mobile Guidance, Chocolate agreed to update its contractual terms to ensure that its first-party partners obtain users' consent to the third-party collection of precise location data for IBA. Following review of Chocolate's proposed contractual language, the Accountability Program found that Chocolate's terms were sufficient to serve as a compliant

means of obtaining reasonable assurances from a first party, resolving this issue under the Mobile Guidance.

# II. Compliance with the OBA Principles

# i. Third-party requirements

## A. Notice

As indicated above, Chocolate added a statement of adherence to the DAA Principles to its privacy policy, resolving this issue under the third-party notice requirements of the OBA Principles.

#### B. Consumer control

Following consultation with the Accountability Program, Chocolate updated its opt-out mechanism to ensure that the opt-out cookie the company set persists for five years. These actions resolved the compliance issue under this provision of the OBA Principles.

# ii. First-party requirements

Chocolate informed the Accountability Program that, prior to the compliance inquiry, Chocolate had no knowledge that the third party that was found collecting data on its website was engaged in this activity for IBA purposes. Previously, Chocolate had understood that this third party was only collecting data for Chocolate's website analytics. Once Chocolate learned that this third-party website analytics service provider also collected data for IBA purposes, the company swiftly revised its disclosures to meet the first-party requirements of the OBA Principles.

## A. Notice: disclosure of IBA activity on website

To come into compliance with section II.B. of the OBA Principles, Chocolate updated its privacy disclosures to include a description of third-party IBA activity taking place on its own website. It also added a link to the DAA's WebChoices page (<a href="www.aboutads.info/choices">www.aboutads.info/choices</a>). As discussed, Chocolate also added a statement of adherence to the DAA Principles to its privacy policy.

#### B. Enhanced notice: link to website IBA disclosure

To achieve full compliance with section II.B. of the OBA Principles, Chocolate added a link to its website footer, separate and apart from its privacy policy link, entitled "Ad Choices." This link leads users directly to the part of Chocolate's privacy policy page that contains a compliant IBA disclosure. These implementations brought Chocolate into compliance with the first-party enhanced notice provisions of the OBA Principles.

#### **CONCLUSION**

Today's case demonstrates two important features that distinguish self-regulation from traditional regulatory actions: flexibility and agility. First, this case shows how self-regulatory rules can be applied flexibly while still furthering the underlying values that led to their creation. The DAA Principles anticipate the decentralized, evolving nature of the online advertising marketplace. Rather than articulating an inflexible set of rules, the Principles set out standards that apply to actors on the basis of their relationship to consumers at specific moments in time. This respect for context allows companies like Chocolate, who are sandwiched in the middle of the ad serving chain and thus have little ability to interact directly with consumers, the option of promoting transparency and choice by binding their partners to compliance with the DAA Principles.

Second, this case is further proof of the capacity of self-regulation to adapt swiftly to shifting factual circumstances, whether driven by markets, technological development, or both. Over the preceding several years, video advertising on the internet has progressed from a rarity to a staple thanks to double-digit growth in spending on this format.<sup>37</sup> With growth has come maturity. As we highlighted in our compliance warning last December, companies engaged in video IBA on the internet have now demonstrated their capacity to hew to the DAA Principles in the same way that they would when serving traditional display IBA. Chocolate has eagerly undertaken this task, doing its part to ensure that consumers receive the transparency and choice they are owed. We appreciate their efforts, and we urge all companies engaged in video IBA to integrate the particulars of the DAA Principles into their operations wherever it is commercially reasonable to do so.

## **COMPANY'S STATEMENT**

Following Chocolate's receipt the Accountability Program's inquiry letter, Chocolate began a thorough process of reviewing its consumer data practices. Chocolate made the determination that it was in the company's best interests to adhere to the DAA Principles. In collaboration with the Accountability Program, Chocolate updated its consumer data practices to become compliant with the DAA Principles.

Chocolate appreciates the Accountability Program's due diligence in its careful assessment of Chocolate's consumer data practices and, in particular, its recognition of Chocolate's prompt and effective action to come into full compliance with the requirements of the DAA Principles. We are pleased to comply with the DAA Principles and we appreciate the opportunity to work with the Accountability Program to ensure Chocolate's privacy notices are easily accessible for consumers. Chocolate strongly supports the DAA Principles and is committed to providing transparency and choice to its customers. Chocolate shares the Accountability Program's goal of ensuring that consumer data is used in a responsible manner.

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<sup>&</sup>lt;sup>37</sup> Interactive Advertising Bureau, *IAB 2018 Video Ad Spend Study* (April 2018), https://www.iab.com/wp-content/uploads/2018/04/2018\_IAB\_NewFronts\_Video\_Ad\_Spend\_Report.pdf.

# DISPOSITION OF DECISION

Practices voluntarily corrected.

Jon M. Brescia

Director, Adjudications and Technology
Online Interest-Based Advertising Accountability Program