Digital Advertising Accountability Program, Challenger, Sharethrough, Corporation.

Case No. 129-2023
Filed July 31, 2023

FINAL DECISION

I. Synopsis

The Digital Advertising Alliance’s (DAA) Self-Regulatory Principles (DAA Principles) cover entities engaged in interest-based advertising (IBA) across websites or mobile applications (apps). Any operator of a website (a first party) that allows unaffiliated entities (third parties) to collect visitors’ web browsing data for IBA

1 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 full text of the Principles can be found at http://www.aboutads.info/principles.

2 The DAA Principles assign responsibilities to an entity based on its role in a particular situation. Thus, an entity can be a first party, third party, or service provider depending on the function it is performing. Website operators are first parties. 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.”). See also Accountability Program, First Party Enhanced Notice Compliance Warning, CW-01-2013, https://assets.bbbprograms.org/docs/default-source/daap/program-guidance/accountability-program-first-party-enhanced-notice-compliance-warning-cw-01-2013.pdf. In the context of mobile applications, first party is defined as the entity that owns or exercises control over the app or its affiliates. Mobile app publishers are first parties under the Mobile Guidance. See Mobile Guidance Definition G at 7.

3 In the desktop context, third parties are entities that collect data for IBA from non-affiliate websites. See 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.”). In the mobile app context, the term “third party” refers to entities that collect data for IBA through non-affiliate
must provide visitors with notice and enhanced notice as prescribed in the Self-Regulatory Principles for Online Behavioral Advertising (OBA Principles). Mobile app publishers that authorize third parties to collect data through their apps for use in cross-app IBA must provide users with notice and enhanced notice, as described in the Application of Self-Regulatory Principles to the Mobile Environment (Mobile Guidance).

II. Company Status

Sharethrough is a Montreal-based advertising exchange that connects marketing campaigns, journalists, and content creators with supply side advertising platforms in a variety of formats including display, video, and native advertising. As an advertising exchange that engages in IBA across non-affiliate websites, Sharethrough meets the definition of a third party under the DAA Principles.4

III. Inquiry

This case arises from the Accountability Program's ongoing monitoring of websites and mobile apps. When looking at a non-affiliate website that Sharethrough does not operate, the Accountability Program identified a third-party targeted advertisement served to the Accountability Program staff by Sharethrough. This advertisement displayed the DAA-developed Ad Choices icon link as required in the DAA Principles. However, when users interacted with the icon link, the link redirected users to the top of Sharethrough's privacy policy with no clear, meaningful, or prominent indication (such as a descriptive section title in the table of contents) of where users could access IBA-specific disclosures. After significant scrolling, the Accountability Program discovered scattered references to Sharethrough's IBA practices but failed to identify (1) a link to an easy-to-use IBA opt-out mechanism,5 and (2) a statement of adherence to the DAA Principles. As such, Sharethrough failed to provide adequate third-party notice under the DAA Principles.

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.”).

4 See OBA Principles Definitions § J at 11.

5 While Sharethrough's privacy policy did provide a short description of browser cookie settings and browser opt-out mechanisms, the original policy linked to http://www.allaboutcookies.org and http://youronlinechoices.eu, web pages that merely describe cookies in greater detail. Neither site provides a clear path to the consumer to view an industry-developed browser-opt out tool. Users on the Sharethrough site could access a link to an industry-developed opt-out mechanism, but users would first have to navigate to a separate webpage on the Sharethrough domain. See https://privacy-center.sharethrough.com/en/do-not-sell-my-personal-information/.
IV. Issues Raised

A. Website data collection

1. Third-party duties under the OBA Principles

The OBA Principles govern the collection of multi-site data across websites for IBA. Third parties that engage in IBA 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.6

   a) Third-Party Notice of IBA practices

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.7

   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 the collection and use of their data for IBA.8 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.9

   c) Enhanced Notice of Website Data Collection for IBA

Under section II.A.(2) of the OBA Principles, a third party must, in addition to providing notice as described supra, provide enhanced notice of IBA collection.10 Specifically, a third party must choose to provide enhanced notice in one of two ways, by (1) providing a clear, meaningful, and prominent link to DAA-required disclosures in or around an advertisement or (2) agreeing to be individually listed on an industry-developed opt-out website.

V. Company response and analysis

In response to the Accountability Program’s inquiry letter, Sharethrough conducted a comprehensive review of its compliance with the DAA Principles in order to identify

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7 Id. § II.A.(1) at 12.
8 Id. § III.A at 14.
9 Id.
10 OBA Principles § II.A.(2)
any areas in its compliance protocols that needed strengthening. The company worked diligently to find comprehensive solutions to each issue and consulted with the Accountability Program on its plan to come into compliance with the DAA Principles.

To meet its third-party notice obligations, Sharethrough made substantial changes to its privacy policy. To help users better navigate the policy and identify IBA-relevant disclosures, Sharethrough has added section 10 titled “Industry Self-Regulation & Ad Choices” and indexed this section in the table of contents. Sharethough also changed the Ad Choices icon link that appears with Sharethrough advertisements so that the link now takes users directly to section 4 of its policy (“Why We Collect your Information”). This section already provided IBA-related disclosures, but it now contains a brief description of opt-out choices and a jump link that takes users directly to section 10. Section 10 includes new disclosures related to the DAA, including a statement of adherence to the DAA Principles, a description of the DAA-developed IBA opt-out tool, and a link for users to access the tool.

By taking this approach and making these changes, Sharethrough ensured that consumers wishing to learn more about how their data was being collected and used by third parties would be directed to relevant information about their choices. These changes bring Sharethrough’s third-party notice into compliance with the DAA Principles.

VI. Company statement

Sharethrough is strongly committed to establishing trust and accountability within the adtech ecosystem, among our partners, and to users. We value the BBB National Programs and the DAA for fostering marketplace trust within the ecosystem and acting as a reliable benchmark to assess our practices against. It was a pleasure working with BBB National Programs and we appreciate their confidence in our efforts to align with the DAA’s interest-based advertising principles; which greatly reflect those of Sharethrough.

VII. Disposition of decision

Practices voluntarily corrected.