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 must

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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, assets.bbbprograms.org/docs/default-source/daap/program-guidance/accountability-program-first-party-enhanced-notice-compliance-warning-cw-01-2013.pdf?sfvrsn=25e3af96_4. In the context of mobile applications, the 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
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

LexisNexis, a division of RELX Inc., (“LexisNexis”) is a global publisher of print and electronic resources related to law and legal services. As the publisher of the lexisnexis.com website and various other web domains that allow third-party advertisers to collect user browsing information for IBA purposes, LexisNexis is a first party under the DAA Principles.

III. Inquiry

This case arises from the Accountability Program’s ongoing monitoring of websites and mobile apps to assess compliance under the DAA Principles.

In this case, the Accountability Program visited the website www.lexisnexis.com to review LexisNexis’s compliance with the Principles. The Accountability Program was unable to test for IBA across all LexisNexis webpages as many LexisNexis products require a user to log-in. This limited the DAAP review process to consumer-facing pages that do not require a user log-in. During its visit, the Accountability Program observed data collection by third-party companies known to engage in IBA. When the Accountability Program examined LexisNexis’s website, it located a link in the site footer labeled “Privacy Policy.” Under the Transparency Principle, web publishers like LexisNexis must provide a link—distinct from the privacy policy link—on each webpage where third-party data collection for IBA occurs on browsers. An enhanced notice link must, unlike other privacy-related disclosure links, take users directly to its IBA disclosure and a method to opt-out of third-party IBA.

While LexisNexis’s privacy policy did mention that the website would share information with advertisers, these descriptions did not constitute a full disclosure under the DAA Principles as they lacked a link to an industry-developed opt-out method. After further examination of the website and privacy disclosures, a fuller description of third-party collection for IBA was found on a separate web page in LexisNexis’s Cookie Policy. The Cookie Policy provided a description of third-party IBA practices occurring on LexisNexis web products as well as a hyperlink to the DAA-developed third-party IBA opt-out tool. However, the Cookie Policy and Privacy

context, the term “third party” refers to entities that collect data for IBA 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.”).
Policy both lacked a statement of adherence to the DAA Principles, and no LexisNexis webpage provided enhanced notice by linking to this policy.

Based on the above review, the Accountability Program sent an inquiry letter to LexisNexis explaining the compliance issues it had found on its website.

IV. Issues Raised

A. Website data collection

1. Enhanced notice of website data collection for IBA

First-party duties under the OBA Principles are set out in section II.B. According to this section, if first parties allow third parties to collect visitors’ browsing data for use in IBA on their websites, or if they transfer such data to third parties for tailoring ads on non-affiliate websites, they must provide consumers with appropriate transparency and an opportunity to exercise control over IBA.\(^4\) A first party must include a disclosure somewhere on its website that describes the IBA activity occurring there.\(^4\) This disclosure must contain either a link to an industry-developed consumer choice page (such as http://aboutads.info/choices) or a list of every third party conducting IBA activity on the first-party website.\(^5\) Additionally, a first party must state its adherence to the DAA Principles on its website.\(^7\)

Most significantly, the OBA Principles require first parties to provide consumers with real-time “enhanced notice” when third parties are collecting or using data for IBA on a first party’s website. This real-time indicator must be in the form of a “clear, meaningful, and prominent” link that directs consumers to the first party’s IBA disclosure, not just to the top of a privacy policy.\(^7\) In addition, this link must be distinct from the company’s privacy policy link and must appear on every page where

\(^{4}\) *OBA Principles* § II.B. at 13–14.

\(^{5}\) Id.

\(^{6}\) Id. We note that when first parties choose to list third parties individually, the Commentary to the Consumer Control Principle instructs companies that “choice should be available from the Third Party(s) disclosure linked from the page where the Third Party is individually listed.” *OBA Principles* Commentary at 35.


\(^{8}\) *OBA Principles* Commentary at 32 (“The Principles also state that the Web sites at which Third Parties are collecting data for Online Behavioral Advertising purposes should include a new clear, meaningful, and prominent link on their Web sites when Third Parties do not provide the notice described in II.A.(2)(a). This would link from the Web page where data is collected to specific language in a disclosure. If the disclosure language is in the privacy notice, the link should go directly to the relevant section of the privacy policy where the disclosure is located and not just generally to the privacy policy.”).
data collection or use for IBA occurs on the first party’s website.” The link may be provided directly by the first party or by one of the third parties active on its website.

Enhanced notice provides consumers with two benefits. First, it informs consumers of the fact that third parties are engaged in IBA on a website. Second, by linking directly to a disclosure that describes the IBA activities occurring on that website and providing a method by which consumers can exercise choice, enhanced notice serves as a bridge to relevant information consumers need at precisely the time they need it. By drawing attention to this otherwise invisible background activity in real time, explaining it in plain language, and providing one or more choice mechanisms, enhanced notice helps consumers understand IBA and make choices about the use of their data for IBA.

V. Company response and analysis

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

Because LexisNexis offers a wide and diverse range of website products across various brands, varied and divergent web designs are used across LexisNexis-operated websites. To ensure all customers would have enhanced notice of IBA collection, LexisNexis added an “Ad Choices” link to each web domain, including many secondary and tertiary footer designs. Upon clicking this Ad Choices link, users are redirected to section 3 of the retitled “Cookies and Interest-Based Advertising Policy.” This section describes how to manage third-party IBA and links to the DAA-developed IBA opt-out tool. These changes made the previously titled LexisNexis Cookie Policy more accessible to users, as prior to this matter the policy was only accessible from certain domains after two clicks, either via navigating the privacy policy page or the consent management pop-up. LexisNexis also added a statement of adherence to the DAA Self-Regulatory Principles at the end of the Cookies and Interest-Based Advertising Policy section. By taking these actions, LexisNexis ensured that users of any LexisNexis web product can easily access real-time enhanced notice of third-party IBA collection practices.

\footnote{9} Id. at 31.

\footnote{10} First Party Enhanced Notice Compliance Warning at 3.
VI. Company statement

At LexisNexis, we are committed to ensuring transparency in our privacy practices. We are pleased with the DAA Accountability Program’s recognition that LexisNexis is compliant with its self-regulatory principles.

VII. Disposition of decision

Practices voluntarily corrected.