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

## ONLINE INTEREST-BASED ADVERTISING ACCOUNTABILITY PROGRAM

**FORMAL REVIEW** Case Number: 19-2012

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<u>COMPANY:</u>	)
Facebook, Inc.	)
	)
	)
<u>CHALLENGER:</u>	)
Online Interest-Based	)
Advertising Accountability Program	)
	)

# **DECISION**

DATE: February 4, 2013

## **SYNOPSIS**

The Transparency Principle requires that covered entities provide consumers with enhanced notice when an interest-based ad is served.

### **COMPANY STATUS**

Facebook, Inc. (Facebook or the company) is a social utility with a billion monthly users worldwide. Like other providers of free online content and services, Facebook is funded primarily by advertising revenue. Recently, Facebook introduced a new advertising platform, Facebook Exchange (FBX). FBX was created so that an advertiser with its own consumer insight data (for example, data collected through cookies deployed on its own e-commerce website) could reach users when they later navigate to Facebook. FBX allows advertisers and agencies to use approved Demand-Side Platforms (DSPs or FBX partners) to reach their desired audiences on Facebook, without Facebook providing to advertisers or DSPs for future targeting private information that a user shares with Facebook. Facebook itself does not collect or use data for online behavioral advertising (OBA) purposes as defined in the cross-industry Self-Regulatory

Principles for Online Behavioral Advertising (OBA Principles). Rather, Facebook provides the technology used by other entities to serve advertisements and is engaged in Ad Delivery on its website, where Facebook, like other web publishers, allows advertisers to serve ads, including interest-based ads, to users of the site. Some of the agencies or advertisers using FBX to facilitate the placement of advertisements may use OBA techniques; however, they neither share their profile data with Facebook nor receive Facebook's private profile information.

#### **OBA PRACTICE AT ISSUE**

The Transparency Principle is designed to give consumers greater knowledge about data collection and use for OBA, also known as interest-based advertising, that occurs invisibly behind the scenes. One of the innovations provided by the Transparency Principle is the requirement for third parties, such as advertising networks, to provide real-time notice, called "enhanced notice," whenever the third party is collecting data for OBA or serving an interestbased ad.

Enhanced notice is provided through a "clear, meaningful and prominent link" (i.e., the "enhanced notice link") from the Web page on which the third party is collecting data for OBA purposes or serving an advertisement based on user interests inferred from a user's Web browsing activities.<sup>2</sup> The enhanced notice link signals to the consumer that data collection for OBA and/or the delivery of behaviorally targeted ads is occurring on the Web page the consumer is visiting. This link also directs the consumer to information about a third party's or multiple third parties' OBA data collection and use practices. Finally, the enhanced notice link directs the consumer to the opt-out mechanism provided by the third party or parties engaged in OBA on the website.<sup>3</sup>

The third party has flexibility in how the enhanced notice link is provided and whether it is provided by the third party (either itself or using a provider) or on behalf of the third party by a first party (also called the website operator or publisher). This flexibility is provided to ensure that the Transparency Principle can be adapted as new technologies and business models emerge in this innovative and rapidly evolving online space. Irrespective of how or by whom the notice is delivered, it should provide consumers with an easy-to-recognize, just-in-time signal that OBA data collection and use are occurring on the Web page they are visiting and with a link directly to a place where they can learn more about OBA and exercise choice.

If the third party provides the enhanced notice link, it generally uses the Digital Advertising Alliance's (DAA) Advertising Option Icon (AdChoices Icon) as the link to direct the consumer to its OBA disclosure and opt-out mechanism. The third party may place the link: 1) in or around

<sup>&</sup>lt;sup>1</sup> "Online Behavioral Advertising means the collection of data 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." (OBA Principles at 9-10, Definition G.).

<sup>&</sup>lt;sup>2</sup> OBA Principles at 13, Principle II.A.(2)(a).

<sup>&</sup>lt;sup>3</sup> An industry developed opt-out page, such as the DAA's Consumer Choice Page (www.aboutads.info/choices) which covers over 90 percent of all ad networks in the US, gives the consumer the ability to opt-out of targeted advertising from a number of companies.

the advertisement it delivers on the publisher's website; or, 2) in coordination with the website operator, elsewhere on the website operator's Web page. Clicking on the link takes the consumer directly to that part of the third party's own website where the third party discloses its OBA practices and provides an opt out.

If the first party website operator is providing the enhanced notice link on behalf of the third party, it generally places this link in the footer of the website or homepage using either the AdChoices Icon or one of these phrases: "Ad Choices," "Why did I get this ad?" or "Interest-Based Ads." This footer link must be distinct from the website operator's own privacy policy link. When the consumer clicks on the link, it should take the consumer directly to the website operator's disclosure of third-party OBA activity, which should then either: 1) link to an industry-developed choice page such as the DAA Consumer Choice Page where the third party's opt-out mechanism is available; or 2) individually list all third parties collecting or using data on the operator's website and provide a link to each third party's website OBA disclosure and opt-out mechanism.

The Accountability Program sought to determine whether interest-based ads served through FBX provide consumers sufficient enhanced notice and choice consistent with the OBA Principles, given the unique characteristics of FBX and Facebook.

# **BASES OF INQUIRY**

In early September of 2012, as Facebook announced that FBX was out of beta, the Accountability Program began its inquiry of the provision of enhanced notice and choice on ads served through FBX. A formal letter of inquiry was sent to Facebook and all participants in FBX to inquire about the provision of transparency and consumer control on OBA ads delivered through FBX and the mechanism used to provide enhanced notice and choice. The purpose of this inquiry was to evaluate how the OBA Principles applied to FBX, given the unique aspects of that platform. The Accountability Program understood that FBX allows companies to leverage their user data to tailor ads according to what they know about a consumer's online activity on the companies' sites or across the Web. The Accountability Program also understood that while FBX shares many characteristics with other ad exchanges, just as Facebook shares many characteristics with other Web publishers, there are significant differences. Although FBX enables advertisers to place OBA ads on Facebook's service, it does not permit them to collect additional data for future profiling or targeting purposes. FBX also is designed to display advertisements that conform to Facebook's advertising style and other guidelines. Because of these differences, the Accountability Program's inquiry was designed to evaluate how the OBA Principles could best be implemented.

As part of this inquiry, the Accountability Program reviewed the layout of ads on Facebook to understand how transparency and consumer control were provided for behaviorally targeted FBX

<sup>&</sup>lt;sup>4</sup> See <a href="http://www.aboutads.info/participants/icon/">http://www.aboutads.info/participants/icon/</a>

<sup>&</sup>lt;sup>5</sup> The DAA Consumer Choice Page is located at www.aboutads.info/choices.

<sup>&</sup>lt;sup>6</sup> OBA Principles at 13, Principle II.A.(2).

<sup>&</sup>lt;sup>7</sup> http://www.facebook-studio.com/news/item/introducing-facebook-exchange

ads. It appeared to us that all standard ads on Facebook, whether behaviorally targeted or not, have a similar design. After surveying multiple ads, the Accountability Program observed that when our cursor hovered over any ad, a small, grey "x" appeared in the top right-hand corner of the ad creative. When we then hovered the cursor directly over the grey "x," text was displayed that read, "Report this ad." If we then clicked on the grey "x," it brought up a menu box with various options, "Hide this ad; Hide all from [retailer/website]; About this ad."

It appeared to the Accountability Program that the distinction between "traditional" Facebook ads and those served as a result of a real-time bidding (RTB) auction through FBX was the click-through URL for the option "About this ad." For traditional ads the click-through URL directed us to a Facebook page that provides a general description of advertising on Facebook. However, for those ads delivered through FBX, the click-through URL directed us to that place on the website of the FBX partner that won the RTB auction where we had the opportunity to learn more about its OBA data collection and use practices and to opt out of further targeting by this third party.

## **COMPANY'S POSITION**

In its response to the Accountability Program, Facebook explained that FBX was created to allow advertisers to reach their intended audience without disclosing private user profile information to advertisers or DSPs. No data is shared between companies participating in FBX and Facebook. Facebook designed FBX to ensure that its FBX partners have no access to Facebook's user profile data and so that Facebook cannot access behavioral data collected by companies participating in FBX. Facebook explained that the DSP acts as an intermediary service provider between Facebook and the advertiser. For example, if a user visits an advertiser's website and the advertiser wants to send the user an ad on Facebook later, the DSP will place a cookie on the user's browser and send Facebook a nickname (e.g., "1234") that Facebook associates with one of its own cookies. When the user later visits Facebook, Facebook can determine that "1234" meets the criteria set by the DSP, tell the DSP that "1234" is on the site, and ask the DSP if it would like to show "1234" an ad. If the DSP wants to show an ad to "1234," the DSP enters the RTB auction to have its ad shown. The only information that Facebook receives about the user from the DSP is the "1234" nickname; Facebook cannot read the cookies placed by advertisers or DSPs, it is not involved with the targeting decisions that advertisers or DSPs make through FBX, and it does not know what information advertisers or DSPs are using to make those targeting decisions. Similarly, advertisers and DSPs cannot read the cookies that Facebook places, and Facebook does not disclose private information that a user shares with Facebook to advertisers or DSPs without the user's consent.

With respect to transparency and choice, Facebook explained, and its FBX partners confirmed, that Facebook hosts the final ad creative and serves it to Facebook users through its servers. Although third parties such as ad networks generally take responsibility for providing enhanced notice and choice, Facebook chose to host the creative and designed its method of notice and

<sup>&</sup>lt;sup>8</sup> FBX advertising is limited to standard ad formats only and does not include Facebook's "sponsored stories" product.

http://www.facebook.com/about/ads/

choice to follow the same series of user-initiated events (i.e., clicks) for providing advertising feedback and reporting. Facebook explained that its users were already accustomed to Facebook's ad format and understood that the grey "x" in the corner of their ads provided a way for users to influence the ads they see on Facebook. Facebook further stated that by serving the ads to Facebook users through its servers, Facebook was also able to ensure that Facebook's user profiles are not accessible to its participating companies.

Facebook explained, and its FBX partners confirmed, that once a Facebook user clicked on "About this ad," s/he would be taken to the page of the third party FBX partner responsible for the ad. That company would provide a landing page that gave the user an explanation of its OBA practices and an opportunity to opt out from further participation in that company's ad targeting. Those FBX partners that delivered targeted ads on online platforms other than Facebook acknowledged that in those other contexts they themselves provided real-time notice through the AdChoices Icon. By clicking on the AdChoices Icon, users were taken to a choice mechanism through which they could opt out. In accordance with the OBA Principles, the DSP could link to the DAA Consumer Choice Page, which would give a user the ability to opt out of ads for over 100 companies, or simply provide its own opt-out mechanism. A number of FBX partners conceded that they were unable to provide the same real-time notice about targeted ads through FBX as on other platforms, but stated that they believed that were providing a comparable opt out on FBX.

In its discussions with the Accountability Program, Facebook emphasized the importance of user privacy to the company. This commitment was underscored by Facebook's willingness to work with the Accountability Program to develop new ways to provide transparency and control on FBX that were closer to the methods used by third parties when not on the Facebook platform. Facebook stated that FBX is a relatively new product and that it was committed to working with both internal teams and external parties to identify, evaluate and implement effective solutions for providing consumer notice and control. Facebook recognizes that use of the AdChoices Icon by DSPs would provide more robust notice and choice to consumers and improve their understanding of OBA and how FBX works. Therefore, it has agreed to implement the Accountability Program's recommendations to serve at the request of a DSP the AdChoices Icon as the enhanced notice link (in conjunction with the text "About this ad"), which appears in the drop down menu once a user has clicked on the grey "x" in the corner of the ad creative. In addition, Facebook will change the current hover text for the grey "x" from "Report this ad" to a more descriptive phase, such as "Learn about Facebook Ads."

Facebook has agreed to implement these changes, which build on the existing Facebook Exchange architecture, by the end of first quarter. As technology continues to evolve, Facebook also has agreed to continue to explore ways to optimize the transparency and choice that it provides to its users about interest-based advertising.

# **DECISION**

The Accountability Program understands that Facebook's original implementation of the Transparency and Consumer Control Principles was designed to balance the requirements of the

OBA Principles and the traditional user experience on the Facebook platform. The Accountability Program also understands that different technologies and business models may need to implement that OBA Principles in a slightly different manner. Whatever the context, technology or business case, the Accountability Program remains steadfast in its mission to ensure that transparency and choice are provided in optimal ways. After cooperative and fruitful discussions with Facebook leadership, the Accountability Program is pleased that the company has recognized the importance of providing users a consistent notice and choice experience across the Internet by integrating the AdChoices Icon into its transparency and choice mechanism. The Accountability Program commends Facebook for working so diligently and creatively to implement the Accountability Program's recommendations on the Facebook platform. Facebook's efforts demonstrate Facebook's commitment to self-regulation and to helping its users make informed choices about privacy.

The Accountability Program also believes that Facebook's decision to enable its FBX partners to provide transparency and consumer control through the AdChoices Icon will ensure compliance by those partners with the OBA Principles' enhanced notice requirement when those partners engage in interest-based advertising on the Facebook platform. The Accountability Program is pleased that DSPs will be able to provide enhanced notice and choice on Facebook in the same way that they provide it on other platforms and therefore is closing the inquiries into their compliance with the OBA Principles on FBX. It is our expectation that now that DSPs have a means to do so, all DSPs will, going forward, comply with the OBA Principles when they use FBX, just as they are required to do on any other online platform.

The Accountability Program has made clear in its previous decisions and reaffirms today, that all parties in the advertising ecosystem need to work together to ensure that the OBA Principles are implemented, no matter what technology, business model or division of responsibility for compliance is at issue. The Accountability Program will exercise its mandate flexibly and in a way that promotes innovation and new business models. Consumers benefit from free content and from relevant advertising. But the Accountability Program is also mindful that industry must provide consumers with transparency and choice to ensure that all parties enjoy the benefit of this bargain.

# **CONCLUSION**

The Accountability Program's monitoring and inquiry processes are designed to improve the advertising ecosystem for both companies and consumers by ensuring that industry self-regulation is universally implemented. The credibility and effectiveness of self-regulation depends on compliance with the industry standards contained in the OBA Principles by all companies in the industry that engage in OBA or take responsibility for implementing these standards.

A central part of the Accountability Program's mission is education to ensure that all companies in the advertising industry understand and comply with the OBA Principles. By publishing our decisions we ensure that the compliance process is transparent and public. This can help to educate companies about the OBA Principles and each company's role in their implementation.

The mission of the Accountability Program is to promote trust between companies and consumers regarding interest-based advertising by ensuring that consumers have a transparent understanding of ad targeting and can exercise control over their participation in this form of advertising. Self-regulatory enforcement can promote industry compliance quickly and nimbly and can adapt to different business and technology models.

## **COMPANY'S STATEMENT**

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) and through FBX, is proud to partner with many companies that adhere to the 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.

## **DISPOSITION OF DECISION**

Accountability Program recommendations are being implemented.

**Genie Barton** 

**Vice President and Director** 

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Online Interest-Based Advertising Accountability Program