

Morrison & Foerster Client Alert

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MoFo Privacy Minute

Digital Advertising Alliance Focuses on Mobile Ads

By Julie O'Neill and Adam Fleisher

As more users spend more time on their mobile devices, advertising dollars are following. And the compliance regime that governs interest-based advertising (IBA) (formerly referred to as online behavioral advertising or OBA) is expanding as well.¹ The regime arose from a February 2009 Federal Trade Commission (FTC) report entitled *Self-Regulatory Principles for Online Behavioral Advertising*, which the Digital Advertising Alliance (DAA), a consortium of media and marketing associations, translated into a self-regulatory program (DAA Principles) in an effort to avoid legislation.

The DAA Principles focus on providing consumers with notice of and control over how information collected from their use of online services is used for IBA purposes. To facilitate such notice and choice, the DAA provides an advertising option icon to be placed in or near an interest-based ad. The icon, when clicked, delivers consumers to a landing page that describes the data collection practices associated with the ad and provides an opt-out mechanism. The Council of Better Business Bureaus, which, along with the Direct Marketing Association, enforces the DAA Principles, has construed the principles to also require notice on any site where information is collected for IBA purposes. Such notice typically takes the form of an "Our Ads" or similarly named link in the site footer, separate from the privacy policy link, that clicks through to the same landing page as the advertising option icon, or to similar notice and choice. A dedicated industry website, www.aboutads.info, also provides consumers with the ability to exercise choice with regard to IBA.

The DAA has always held that the DAA Principles apply universally; in July 2013, it issued guidance regarding their application to the mobile environment (Mobile Guidance). The DAA has also acknowledged the challenge that screen-size, among other things, may pose to complying with the principles' notice and choice

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¹ IBA is the collection of information about users' online activities across different websites or mobile applications, over time, for the purpose of delivering online advertising to those users based on those activities.

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requirements in the same fashion as in the desktop experience. In February 2015, however, the DAA announced two new measures to facilitate compliance with the requirements on mobile devices: (1) a new consumer choice page optimized for mobile (which is otherwise the same as www.aboutads.info), and (2) a downloadable app, “AppChoices,” that enables consumers to manage ad preferences for certain third party in-app ad delivery services. The Mobile Guidance explains how a company engaged in IBA should provide notice and choice—via the consumer web page and/or AppChoices app, as applicable—to its users. The DAA recently announced that the DAA Principles will be enforced in the mobile space, effective September 1, 2015. This enforcement will include not only the notice-and-choice regime but also other mobile-specific issues addressed by the DAA’s Mobile Guidance, such as the use of precise geolocation. As a result, companies should work diligently to figure out their compliance strategies for their mobile websites and applications.

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