

## New Self-Regulatory Compliance Decisions Focus on Roles of Agency and Demand Side Platform Engaged in Online Behavioral Advertising

The Better Business Bureau's [Online Interest-Based Advertising Accountability Program](#) issued three compliance decisions involving an advertiser, its agency and the provider of a self-service demand side platform in relation to the advertiser's targeted advertising practices. The [compliance decisions](#) emphasize that all entities that play a role in the delivery of targeted advertising should understand the [Digital Advertising Alliance's](#) (DAA) self-regulatory guidelines for targeted advertising and should work together to make sure every targeted advertising campaign is compliant.

The [Self-Regulatory Principles for Online Behavioral Advertising](#) (OBA Principles) are comprised of seven principles. The Transparency Principle requires the deployment of [multiple mechanisms](#) for clearly disclosing and informing consumers about data collection and use practices associated with online behavioral advertising. This Principle applies to third parties that collect and use data for online behavioral advertising and to the web sites from which such data is being collected.

- Transparency Principle II.A.2(a) ("Third Party Advertising Notice") requires a "clear, meaningful and prominent link" *in or around the interest-based ad* which takes the consumer to an explanation of OBA and an easy-to-use mechanism to exercise choice.
- Transparency Principle II.B ("Web Site Notice of Third Party Online Behavioral Advertising") requires a "clear, meaningful and prominent link" *on every web page where third-party collection for OBA occurs* which takes the consumer to a disclosure about this collection and an opportunity to opt out of OBA.

The advertiser, 23andMe, provides genetic testing services. It engaged an advertising agency, 3Q Digital, to manage an online behavioral advertising campaign. 3Q Digital used MediaMath's demand side platform to manage its clients' digital advertising campaigns.

The BBB's Accountability Program conducted its own tests and determined that consumers who had visited the web site of 23andMe were subsequently shown ads for 23andMe on nonaffiliated web sites, suggesting that 23andMe was engaging in retargeting. However, enhanced notice was not provided on 23andMe's web site as required by Transparency Principle II.B, and enhanced notice was not provided in or around the ad displayed on nonaffiliated web sites, as required by Transparency Principle II.A.2(a).

The Accountability Program contacted 23andMe and 3Q Digital. Both companies quickly took steps to comply with the DAA Principles.

The Accountability Program also contacted MediaMath. MediaMath provides a self-serve (or "white label") demand side platform and a managed demand side platform for buying ad inventory through real-time auctions across a number of ad networks, exchanges and supply side platforms. Advertisers and ad agencies use these services to manage digital advertising campaigns, including online behavioral advertising. MediaMath stated that unlike its managed service, in which MediaMath employees manage the whole campaign on behalf of its clients, MediaMath's white label service requires clients to manage all aspects of digital advertising campaigns themselves. However, MediaMath explained that its white label service provides clients with

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the ability to automatically include the AdChoices Icon on all targeted ads if the client manually enables that function.

After being notified by the Accountability Program, MediaMath instructed 3Q Digital how to enable the option on its MediaMath account to automatically include the AdChoices Icon on all targeted ads delivered through the platform.

### **Key Take-Aways**

These decisions recognize the complexity of the digital advertising ecosystem and provide some guidance for companies that are providing or using new technologies to manage digital advertising campaigns.

According to the Accountability Program:

“Generally speaking, enhanced notice of interest-based ads is provided by the ad network or a similar entity. However, increasingly, self-serve platforms are providing advertisers or their agencies with the opportunity to manage the ad campaign on a ‘do-it-yourself’ basis.... While the company that is employing the self-serve platform has the knowledge of the nature of the campaign (e.g., is it an interest-based ad campaign) and is therefore ultimately responsible for providing the notice through the self-serve platform or otherwise, the provider of the self-service platform, such as MediaMath, is often in the best position to understand the compliance obligations of the OBA Principles and how to enable the use of the AdChoices Icon on its platform. As such, the providers of these sophisticated technologies that collect and use OBA data cannot be merely passive suppliers in these times of heightened privacy concerns.”

MediaMath now provides its clients using its self-serve platform with clear instructions on how to access and enable the functionality that will automatically serve the AdChoices

Icon with the client’s targeted ads. MediaMath also made changes to its master services agreement and onboarding process to further explain the OBA Principles and how to implement them.

The Accountability Program summed up by saying, “[T]he ultimate compliance responsibility for notice and choice rests with the [demand side platform] client and any advertising agency or other party acting on its behalf that uses the MediaMath self-serve platform. To be sure, when MediaMath is providing a full-service platform, it must shoulder the responsibility for delivering the AdChoices Icon on behalf of any of its clients engaging in an interest-based advertising campaign. In the final analysis, however, all parties in the advertising ecosystem must work together to ensure that consumers receive the benefits of Transparency and Consumer Control.”

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