



Advanced Media and Technology Law

Advertising and Promotions Law



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Accountability Program Releases Compliance Warning on Enhanced Notice for Online Native Advertising

The Online Interest-Based Advertising Accountability Program is serious about compliance with the transparency and consumer control provisions of the Digital Advertising Association's Self-Regulatory Principles for Online Behavioral Advertising. This week, the Program issued a new [compliance warning](#) clarifying that websites will be held to those "enhanced notice" requirements for "native" advertising that is created or targeted through the use of online behavioral advertising. The announcement warned that enforcement will begin January 1, 2015, and all companies that incorporate interest-based native ads into their sites should ensure that they satisfy the enhanced notice requirements before that date. High-traffic sites in particular should expect compliance reviews beginning in the new year. This compliance warning follows the Program's release of several decisions in late October 2014 (see press release [here](#)) against prominent companies whose websites were found to have fallen short of full compliance with the self-regulatory program's enhanced notice requirements.

As background, the DAA's Principles focus on transparency and consumer control, and the October decisions focused on enhanced notice requirements that alert website users about the site's third-party (nonaffiliate) data collection in real time - that is, at the time when that information is being collected and the user receives an interest-based ad. According to the enhanced notice requirements, site operators cannot

simply provide information in a privacy policy, which a user may be unlikely to see while navigating or considering purchases on the site. They must provide a direct link through the display of the Advertising Choices Icon or other form of enhanced notification to a page containing information about the site's use of interest-based advertising and an opt-out tool.

The new compliance warning clarifies that these requirements apply with equal force to native ads personalized for users and published by the site operator. Native advertising refers generally to a spectrum of paid ads, such as sponsored and "recommended" pages and links, that resemble content on the site rather than a traditional third-party ad. Although the compliance warning does not alter or extend the DAA's Principles, it makes clear that transparency and control standards must be incorporated into native advertising. Specifically, a site operator that engages in customized native advertising must provide a direct link on every ad, or every webpage, to a page informing users about the site's use of interest-based advertising and providing users with an easy-to-use opt-out mechanism. As previous decisions have emphasized, it is not sufficient to rely on a privacy policy, and the enhanced notice must appear on every webpage that employs behavioral advertising. Companies that do not place a notice (such as the Ad Choices Icon) on every individual ad must also be very careful to ensure that the notice isn't

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obscure or absent on back pages of a site. In addition, the warning notes, third parties engaged in interest-based advertising across the site must also include a “clear, meaningful, and prominent” disclosure on their own website describing their data collection and use practices (including an opt-out mechanism).

Whether a company’s site is established, revamped or new, the recent decisions serve as a reminder to check the website in its entirety to ensure that

privacy features, and specifically the enhanced notice requirements, are compliant.

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