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## Advertising Self-Regulatory Program Announces Enforcement Warning for Video Ads and Its First Compliance Decision Involving Cross-Device Tracking

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The [Online Interest-Based Advertising Accountability Program](#) (Accountability Program) is part of the advertising industry's self-regulatory program for online and mobile interest-based advertising (i.e., targeted advertising). The Accountability Program enforces the Digital Advertising Alliance's (DAA) [guidelines](#) for online and mobile interest-based advertising, multi-site data, and cross-device tracking. The Accountability Program monitors interest-based advertising (IBA) and publishes compliance decisions resulting from its enforcement actions.

In December, the Accountability Program issued its first compliance decision relating to cross-device tracking and issued a compliance warning concerning enhanced notice for video ads.

### Compliance Warning Concerning Enhanced Notice for Video Ads

The Accountability Program announced that on April 1, 2018, it [will begin enforcement](#) of the enhanced notice requirements in the DAA's Self-Regulatory Principles for Online Interest-Based Advertising for interest-based video ads (video IBA) in the mobile and desktop environments. (According to the Accountability Program, it is already enforcing the other notice and opt-out requirements of the DAA Principles with respect to video ads.)

The compliance warning states that interest-based video ads must be accompanied by enhanced notice, either in or around the ad itself, or provided by the first party on the third party's behalf. This enhanced notice must (1) alert consumers to the fact that a video ad is interest-based, and (2) provide easy access to the company's disclosures of its IBA practices as well as its IBA opt-out mechanism.

The Accountability Program does not mandate a specific method for providing enhanced notice. Companies may choose to use the AdChoices Icon or they may develop their own means of ensuring enhanced notice is provided.

The compliance warning suggests that companies:

1. Review existing technical and compliance guidance documentation (such as the [DAA Ad Marker Implementation Guidelines for Video Ads](#), [IAB Video Ad Standards Overview and Documentation](#), the [DAA Principles](#), and [Accountability Program Cases and Compliance Warnings](#)).
2. Determine which standards your company should follow.
3. Consult with the Accountability Program and notify the program if compliance by April 1 is unlikely. The

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compliance warning states that questions from companies are taken in strict confidence and will not result in a compliance action.

**Cross-Device Tracking: [LKQD Technologies, Inc.](#) (Case Number: 77-2017)**

The Accountability Program selected several popular Android and iOS apps to review first- and third-party compliance with the DAA Principles. One of the Android apps was a women's health application called Once, published by Malang Studios. The Accountability Program determined that LKQD, a company that provides video ad technology infrastructure, was engaging in cross-device data collection, precise location data collection and cross-app data collection.

Under the Transparency provision of the Cross-Device Guidance, a company that associates or links data collected from multiple devices for IBA must provide a notice either (1) on its website or (2) accessible from apps where it collects data for IBA that explains these practices.

Under the Consumer Control provision of the Cross-Device Guidance, companies must also provide consumers with an opt-out mechanism. The compliance decision explains that "if a consumer opts-out, companies should not collect browsing or app usage data from the opted-out device for use in IBA on that device or on a linked device; this includes transferring the data to another third party for its use in IBA. Companies also should not use data collected on a consumer's other linked devices to serve IBA on the opted-out device."

The compliance decision noted that companies are free to expand the scope of their opt-outs to cover all devices linked to the device from which a consumer opts out. "However, the Cross-Device Guidance does not require this expansive opt-out scope. Companies may continue to treat opt outs as applying only to a particular browser or device. Whichever method a company chooses, it must be sure to explain clearly the scope of the opt out in its disclosure described under

the Transparency section of the Cross-Device Guidance so that consumers are apprised of the effect their opt-out decision will have."

A consumer's decision to opt out affects data collection and use going forward. Data collected from a device prior to opting out is not affected by the opt-out decision.

Companies engaged in IBA should take note of these developments and reassess their compliance program to ensure that their data handling and advertising practices are in line with the expansive self-regulatory framework that governs this space.

For more information on interest-based advertising, privacy or related data optimization solutions, please contact [leuan Jolly](mailto:leuan.jolly@loeb.com) at [ijolly@loeb.com](mailto:ijolly@loeb.com).

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