

ONLINE INTEREST-BASED ADVERTISING ACCOUNTABILITY PROGRAM

PROCEDURES

Policy Oversight By:

The National Advertising Review Council (NARC)

Administered By:

The Council of Better Business Bureaus, Inc. (CBBB)

Effective August 2011

NARC Partners:

The American Advertising Federation (AAF)

The American Association of Advertising Agencies (4As)

Association of National Advertisers (ANA)

The Council of Better Business Bureaus, Inc. (CBBB)

The Direct Marketing Association (DMA)

The Interactive Advertising Bureau (IAB)

Electronic Retailing Association (ERA)



1.0 MISSION

The mission of the Online Interest-Based Advertising Accountability Program (hereinafter "Accountability Program") is to build consumer trust in online behavioral advertising ("OBA") by ensuring that persons and entities engaged in OBA comply with the Self-Regulatory Principles for Online Behavioral Advertising ("Principles"). The Accountability Program will monitor covered entities' compliance; institute inquiries into cases of potential non-compliance; work with covered entities to expeditiously resolve instances of non-compliance; and publish cases of non-participation or uncorrected non-compliance and refer such cases to the appropriate government agency.

2.0 DEFINITION OF TERMS

2.1 Substantive Terms Defined by the Principles

Definitions of substantive terms relating to the Principles are found in the Principles, and the accompanying Commentary, as these may from time to time be amended. These documents are available at aboutads.info. The Accountability Program will rely on and follow these definitions in its decisions, providing clarification in instances of ambiguity.

2.2 Procedural Terms

A. Case

A completed review of an inquiry resulting in a decision.

B. Challenger

A person or entity that has initiated an inquiry and chooses to participate in the review.

C. Covered Entity

A person or entity (and its affiliates, if applicable) engaged in OBA whose activities are covered by the Principles. Generally, covered entities include third party ad networks, ad agencies, service providers, or web publishers, but may also include advertisers or others that are part of the OBA ecosystem.

D. Decision

The official document issued by the Accountability Program at the end of the review detailing the nature of the review and the conclusions thereto.

E. Inquiry

A question or complaint regarding a covered entity's compliance with the Principles.

F. Notice of Review

The documents sent to the covered entity stating that the Accountability Program has determined to open a review. The receipt of the notice of review triggers the start of the time period for the review.

G. OBA Practices

The Principles require that covered entities take certain steps and follow certain procedures to comply with the requirements of the Principles. These will be referred to as OBA practices.

H. Participants

Challengers and covered entities that are participating in a review and have signed the participation agreement required herein.

I. Review

The process the Accountability Program undertakes to reach a decision.

3.0. OVERVIEW

A. Organization and Management

The Accountability Program is managed under NARC auspices and policy oversight, and is administered by the CBBB.

B. Scope and Exercise of Discretion

Determinations as to whether the Accountability Program will initiate an inquiry and/or open a review will be made at the sole discretion of the Accountability Program. It is anticipated that inquiries and reviews will focus primarily on

OBA issues directly related to the Transparency and Control Principles, but inquiries and reviews will not be limited to such issues.

C. Confidentiality of Proceedings

With the exception of the Accountability Program press release and the Accountability Program decision, all deliberations, meetings, proceedings and records of the Accountability Program process shall be confidential except when disclosure is specifically authorized by these rules or required by law. The Accountability Program's decision and press release are the only permanent records required to be kept for each case.

D. Decisions

Upon completion of a review, the Accountability Program will publish a decision as provided by Section 6.0.B.

E. Press Releases

Upon completion of a review and the issuance of a decision, the Accountability Program will issue a press release that will be disseminated to the press and interested members of the online behavioral advertising industry. The press release will include a brief summary of the decision.

F. Use of Decision and Press Release

It is the policy of the Accountability Program not to endorse any covered entity, product or service, and a favorable decision regarding the OBA practices of a covered entity should in no way be construed as an endorsement. Similarly, a covered entity's modification of its OBA practices, in cooperation with the Accountability Program's self-regulatory processes, should not be construed as an admission of any impropriety. The decision and/or press release may not be used by any participant or any agent of the participant as a form of promotion for any entity or any particular product or service.

A decision that does not recommend changes or modifications to the OBA practices of the covered entity shall not be construed as approval of the OBA practices, and covered entities may not use the decision in any way that states or implies that their OBA practices have been approved.

The Accountability Program may issue a public statement, for clarification purposes, if any person or entity mischaracterizes any decision or uses and/or disseminates any decision or press release for any advertising or promotional purposes.

G. Agreement of Participants

1. To ensure the integrity and cooperative nature of the Accountability Program review process, participants agree:

(i) to keep the proceedings confidential throughout the Accountability Program review process;

(ii) not to subpoena any witnesses or documents from the Accountability Program, its monitoring service, CBBB and/or NARC regarding the Accountability Program review in any future court or other proceeding (except for the purpose of authentication of a final, published case decision by a staff member) and to pay attorneys fees and costs if such a subpoena is attempted and successfully resisted; and,

(iii) not to mischaracterize any Accountability Program case decision that is issued, not to issue a press release or to disseminate or otherwise use any Accountability Program case decision or press release for any advertising or promotional purpose; and,

(iv) to restrict circulation of any materials provided during the review process to persons directly involved in the review and to return all copies of such materials at the end of the review; and,

(vi) not to hold the Accountability Program, its staff and monitoring service, the CBBB and/or NARC liable for any act or omission in connection with this proceeding,

2. CBBB's monitoring service is an intended third party beneficiary of this Agreement.

3. If any participant or prospective participant violates any of the requirements set forth in these *Procedures*, the Accountability Program will have the discretion to close a review, refer the matter to the appropriate government agency, and/or issue a press release setting forth the details of the violation.

H. Non-Participation Referrals to Government Agencies

If the subject of the inquiry elects not to participate in an Accountability Program review after receiving notice of the review pursuant to Section 5.0, the Accountability Program may compile a record of the facts obtained and the allegations made regarding the asserted non-compliance with the Principles, review and evaluate the record, and forward the record and the Accountability Program's conclusions to the appropriate government agency. The

Accountability Program shall publish reports of such referrals and may issue a press release with respect to the referral.

4.0. THE INQUIRY

A. Who may Initiate an Inquiry

Any person or entity (including the Accountability Program in the exercise of its monitoring and accountability responsibilities) may initiate an inquiry regarding whether a covered entity's OBA practices are in compliance with the Principles.

B. Content and Format of an Inquiry

All inquiries (except those submitted by consumers or initiated by the Accountability Program), should be submitted in both hard copy and in electronic format and should be no longer than eight (8) double-spaced typewritten pages. The Accountability Program encourages all persons or entities filing inquiries to include data supporting their inquiry including the following when applicable: representative screen shots documenting the alleged non-compliance at issue, evidence of communications between the web site and the computer or device, evidence of the data collected or used during the alleged non-compliant activity or practice at issue, the entities engaged in the alleged non-compliant activity or OBA practices at issue and their roles, and other data demonstrating potential non-compliance with the Principles. The Accountability Program encourages those persons or entities filing inquiries to limit their arguments to the primary compliance issues involved. Arguments and documents that are not germane to an alleged instance of non-compliance with the Principles will be determined to be out of scope and such arguments or documents will not be considered.

C. Accountability Program Discretion to Select Inquiries for Review

1. The Accountability Program shall have sole and exclusive authority and discretion to select, accept or reject matters with respect to which it will conduct reviews based upon criteria that include, but are not limited to, the following: the number of consumers potentially affected by the alleged violation of the Principles, the significance of the issues being raised, the availability of evidence, staff resources of the Accountability Program, and the need to resolve pending matters expeditiously.
2. Upon receipt of any inquiry, the Accountability Program will promptly acknowledge receipt and take such of the following actions as may be appropriate:

(a) forward the inquiry, along with a notice of review and a participation agreement, to the appropriate covered entity responsible for the practice at issue (see Section 5.0);

(b) advise the person or entity filing the inquiry that the matter is not appropriate for review by the Accountability Program if, at the time of the inquiry or during the course of a review, the Accountability Program determines that:

(i) the acts or omissions complained of are not directly related to compliance with the Principles by a covered entity;

(ii) the OBA practices at issue are the subject of pending litigation or an order by a court;

(iii) the OBA practices at issue are the subject of a federal government agency consent decree or order;

(iv) the OBA practices at issue have been permanently discontinued or corrected and the Accountability Program receives the covered entity's assurance, in writing, that the practices at issue will not be used by the covered entity in the future. The Accountability Program reserves the right in such instances to conduct a further review as set forth in Section 10.0.C; or

(v) Review is not appropriate due to limitations of time, staff resources, and/or the nature of the inquiry.

3. The Accountability Program will advise the person or entity filing the inquiry as to the action it has taken under Section. 4.0(C)(2).

4. The Accountability Program reserves the right to refuse to open or to continue to handle a review when a person or entity filing an inquiry publicizes the fact that an inquiry has been submitted and/or that a review has been commenced.

D. Any and all determinations that are rendered pursuant to these *Procedures* shall be at the sole discretion of the Accountability Program.

5.0 THE REVIEW

A. Notice of Review

When the Accountability Program initiates a review, it will notify the covered entity of the OBA practices at issue and ask for the covered entity's agreement to participate in the Accountability Program review and for its response to the

issues raised in the review. The covered entity and any challenger will have the opportunity to submit materials to the Accountability Program during the review process as set out in these *Procedures*.

B. Calculation of Time

Time periods specified in the *Procedures* shall commence on and include the first business day following the date of the triggering event.

C. Participation in the Review

The person or entity that files the inquiry will have the option of participating in the review as a challenger on the terms and conditions set forth below.

1. A person or entity that files an inquiry and wishes to participate in the Accountability Program review as a challenger shall so notify the Accountability Program in writing when filing the inquiry and shall sign the participation agreement provided by the Accountability Program. Subject to the receipt of this written notification and the signed participation agreement, the Accountability Program shall grant the filer challenger status and provide access to the covered entity's non-confidential submission(s) under these *Procedures*. The challenger may submit comments to the record pursuant to Section 5.3.
2. A person or entity that files an inquiry and does not wish to participate in the Accountability Program review as a challenger will so advise the Accountability Program in writing when filing the inquiry and will not receive any information provided by the covered entity during the review.

D. Confidentiality and Disclosure during the Review

1. The identity of the participants. The identity of a challenger will be disclosed to the covered entity in the notice of review and will be disclosed in the decision. The identity of a person or entity that elects not to participate in the review as a challenger will not be disclosed.
2. Disclosure of materials submitted by the challenger. All written materials submitted to the Accountability Program by a challenger will be made available by the Accountability Program to the covered entity; provided, however, that any materials submitted by a challenger on condition that these materials not be shown to the covered entity shall instead be returned to the challenger by the Accountability Program, and in such event the Accountability Program shall not consider any such materials in connection with its review.

3. Covered entity requests for confidentiality. Except as otherwise provided herein with respect to documents submitted as confidential and accepted as such by the Accountability Program, all written materials submitted to the Accountability Program by a covered entity will be made available to the challenger. A covered entity may submit trade secrets and/or proprietary information or data to the Accountability Program with the request that such confidential data not be made available to the challenger, provided it shall:

(a) clearly identify those portions of the submission that it is requesting be kept confidential in the copy submitted for the Accountability Program's review;

(b) redact any confidential portions from the duplicate copy submitted to the Accountability Program that will be forwarded to the challenger and label the redacted version accordingly;

(c) provide a written statement setting forth the basis for the request for confidentiality;

(d) affirm that the information for which confidentiality is claimed is not publicly available and consists of trade secrets and/or proprietary information or data; and

(e) attach, as an exhibit to its response, a comprehensive summary of the proprietary information and data (including as much non-confidential information as possible about the methodology employed and the results obtained).

4. Treatment of confidential material by the Accountability Program. If the Accountability Program accepts the claim of confidentiality, it will consider the submitted documents as part of the review and will provide the challenger with the redacted version of the data and the summary thereof provided by the covered entity. Upon request, confidential materials submitted to the Accountability Program during the pendency of a case shall be returned to the submitting party when the case is closed.

5.1 Written Response By The Covered Entity

A. Response to Notice of Review

The covered entity shall, within fifteen (15) business days after receipt of notice of the review, submit to the Accountability Program either:

1. A written statement that it will not participate in the review, or

2. A signed participation agreement and a response in accordance with Section 5.1.B.

B. Content of Response

The covered entity's response shall include the following:

1. A description of the OBA practices at issue and its position as to whether those practices comply with the Principles, and
2. Evidence demonstrating the covered entity's compliance with the Principles which shall include the following when applicable: copies of representative screen shots of the OBA practices at issue; a description of the methodology and technology used to conduct the OBA practices; a description and log of the data collected and/or used during the conduct of the OBA practices; a listing of all the entities engaged in the conduct of the OBA practices with a description of their role; and a copy of all applicable notices, enhanced notices and choice mechanisms along with a description and screen shot of their location on the web site(s).

C. Form of Response

The covered entity's response shall be submitted in hard copy and in electronic format (including exhibits when possible). Submissions by the covered entity should include only supporting evidence that is directly relevant to the OBA practices at issue in the review. To help ensure a timely review, covered entities should limit the length of their submissions to no more than eight (8) double-spaced typewritten pages (excluding evidentiary exhibits which should be submitted at the same time as the response). However, the Accountability Program will entertain a request, upon good cause shown, to grant an exception to this page limit.

D. Jurisdictional Issues

A covered entity's response that raises the issue of the Accountability Program's jurisdiction should be submitted as soon as possible after receipt of the notice of review, but in any event, must be submitted no later than fifteen (15) business days after the covered entity receives the notice of review. A response addressing jurisdiction does not waive the deadline for receipt of a substantive response as set forth herein.

5.2 Referrals Upon Failure To Respond Or Inability To Locate Covered Entity

A. Covered Entity's Failure to Participate in Review

The Accountability Program may refer the file to the appropriate government agency, and release information regarding the referral to the press and the public, if, within fifteen (15) business days after the covered entity's receipt of notice of review, either:

1. The covered entity submits a written statement indicating it will not participate in the review, or
2. The covered entity fails to submit a signed participation agreement and/or a response as required by Section 5.1.

B. Inability to Locate the Covered Entity

If, after exercising reasonable due diligence, the Accountability Program is unable to locate an email or mailing address for a covered entity whose OBA practices are under review, the Accountability Program may refer the file to the appropriate government agency and release information regarding the referral to the press and the public, and may report the referral on its web site. Accountability Program referrals pursuant to this section may be made either individually or collectively.

5.3 Reply of the Challenger

A. Submission of Covered Entity's Response to the Challenger

The Accountability Program shall promptly forward to the challenger a copy of the covered entity's written response, with the exception of confidential information, which shall be sent to the challenger in redacted form, along with the summary required in Section 5.0.D.3(e).

B. Challenger's Reply

Within fifteen (15) business days after receipt of the covered entity's written response, the challenger shall submit in duplicate hard copy and an electronic format (including exhibits when possible) its reply, if any, to the Accountability Program. To help ensure a timely review, challengers should limit the length of their reply to eight (8) double-spaced typewritten pages (excluding evidentiary exhibits). In exceptional circumstances, the challenger may file for leave to file a longer response.

C. Waiver of Right to Reply

1. After the challenger has reviewed the covered entity's first substantive written response, it may notify the Accountability Program in writing that it elects to waive its right to add to the record, thereby expediting the review.
2. In the event that a challenger waives its right to reply, additional information from either party may be submitted only upon request from the Accountability Program pursuant to Section 5.5.A or during a meeting pursuant to Section 5.5.B.
3. If the challenger does not submit a reply, the Accountability Program shall proceed to decide the review upon the expiration of the challenger's time to reply, subject to Section 5.5.

5.4 Final Response of the Covered Entity

If the challenger submits a reply pursuant to Section 5.3, the Accountability Program shall promptly forward a copy of that reply to the covered entity. Within fifteen (15) business days after receipt of this reply, the covered entity shall submit a response, if any, in duplicate hard copy and an electronic format (including exhibits when possible). To help ensure a timely review, the length of the response should be limited to 8 double-spaced typewritten pages (excluding evidentiary exhibits) unless a page limit extension has been granted for good cause shown. The Accountability Program shall forward a copy of the covered entity's response to the challenger's reply.

5.5 Additional Information and Meetings with the Participants

A. Accountability Program Request for Further Information

1. In the event that the Accountability Program deems it necessary, it may request further comments or data from the covered entity or the challenger.
2. If such comments or data are requested, the written response must be submitted within six (6) business days of the Accountability Program's request. The Accountability Program will immediately forward the additional response to the covered entity or challenger, who will be afforded six (6) business days to submit its own response to the submission.

B. Meetings

1. Meeting requests. The Accountability Program may, on its own initiative or at the request of one of the participants, request a teleconference or in-person meeting with either the challenger or the covered entity to discuss issues relating to the OBA practices at issue.

2. Timing and Summary of Meetings. The Accountability Program shall notify the other participant when a meeting is scheduled pursuant to Section 5.5.B.1 and, after the meeting, shall require the attending participant to draft a summary of the information exchanged. The Accountability Program will review and edit the summary as it deems appropriate and forward it to the other participant.

3. Meetings are not a substitute for a written submission. A meeting between the Accountability Program and a participant will not be conducted in lieu of any submission required under the *Procedures*. A meeting under this section does not increase the time in which a filing under the *Procedures* must be submitted.

5.6 Unsolicited Submissions

Submissions made in accordance with these *Procedures* will be accepted as part of the record. Any other submissions received by the Accountability Program will not be considered by the Accountability Program, and will be returned to the person or entity that submitted them.

5.7 Time Extensions

In order to facilitate an expeditious review and decision, extensions to the time requirements in these *Procedures* will only be granted for good cause shown. Requests for time extensions will not result in a tolling of the time for submissions unless the extension is granted. The request for a time extension shall be in duplicate hard copy and in electronic format and shall include a full explanation of the extraordinary circumstances for the requested time extension. The length of the request should be limited to four (4) double-spaced typewritten pages.

6.0 DECISION

A. Issuance of the Accountability Program Decision

1. After its receipt of the last document authorized by these *Procedures*, the Accountability Program will formulate its decision, provide a copy of the decision to the covered entity, and invite the covered entity to add a statement within five (5) business days after its receipt of the decision.

B. Content of the Decision

1. The decision will identify the covered entity; identify the OBA practices and Principles at issue; briefly summarize the position of the covered entity; state whether the OBA practices that were reviewed have been sufficiently demonstrated to be compliant with the Principles; and, when appropriate,

recommend that the covered entity discontinue or modify OBA practices that are not compliant with the Principles.

2. Where the Accountability Program review results in recommendations for discontinuance or modification of the covered entity's OBA practices, the Accountability Program retains oversight of the case and may request a status report from the covered entity, pursuant to Section 10.0, to determine whether the recommendations have been satisfactorily implemented.

C. Covered Entity's Statement

1. When Statement Is Required. In the event that the Accountability Program makes a recommendation to discontinue or modify OBA practices that are not compliant with the Principles, the covered entity shall, within five (5) business days of its receipt of the decision, submit a statement as to whether the covered entity agrees to comply with the recommendations. The covered entity's statement is not the venue to reargue the merits of the review, bring in new facts, or restate or summarize the Accountability Program's conclusions.

2. When Statement Is Optional. In the event that the Accountability Program decides that all of the OBA practices at issue have been compliant with the Principles, a covered entity may elect not to submit a statement to the Accountability Program.

3. Content and Length of Statement. The covered entity's statement should be concise and may not exceed one (1) double spaced page in length. The Accountability Program reserves the right to edit for length or inappropriate material.

D. Referral for Failure to File Statement When Required

In the event that the covered entity fails to submit a statement as required by Section 6.0.C.1 stating that it agrees to discontinue or modify the OBA practices as recommended, the Accountability Program may refer the matter to an appropriate government agency for review and possible enforcement action.

7.0 PUBLICATION OF THE DECISION

The Accountability Program shall include, as part of the published decision, a covered entity's statement submitted in accordance with Section 6.0.C, and shall (A) provide the decision to all parties, (B) make the decision available through press announcements in various industry and trade publications, and (C) post the decision on its web site.

8.0 CLOSING A REVIEW

When a review has been concluded with the publication of an Accountability Program decision, the review will be closed and, absent extraordinary circumstances, no further materially similar inquiries on the covered entity's OBA practices in question shall be accepted by the Accountability Program, except as provided for in Section 10.0 or if the covered entity resumes the OBA practices that were subject to review.

9.0 PRECEDENTIAL VALUE

1. Any changes to OBA practices that are recommended by the Accountability Program will serve as guidance to all other covered entities.
2. An Accountability Program decision is not binding on a court or regulatory agency.

10.0 COMPLIANCE PROCEEDINGS

A. Request for a Status Report from Covered Entity

1. If the covered entity indicates it will comply with a decision recommending that OBA practices be discontinued or modified, the Accountability Program may request from the covered entity a report on the status of the covered entity's progress in implementing the recommendations ("status report").
2. Time Period for Status Report. The covered entity shall provide a requested status report within fifteen (15) business days after it receives the request.
3. Contents of the status report. The status report shall include an explanation of the steps the covered entity has taken to bring its OBA practices into compliance with the Accountability Program's decision and whether it is now in compliance. If the covered entity has not yet fully complied with the Accountability Program's recommendations, it should detail the reasons for the delay and the steps and timeline to achieve full compliance. The status report should be no more than five (5) double spaced pages, excluding exhibits.
4. Failure to file a status report. Failure to file a status report within the time limit specified above may result in the issuance of a determination of non-compliance and referral to the appropriate government agency.

B. Accountability Program Determination Based on Status Report

After receipt of the covered entity's status report, the Accountability Program will take any of the following actions deemed appropriate by the Accountability Program:

1. Finding of compliance. If the Accountability Program concludes that the covered entity has complied with the Accountability Program's recommendations, the Accountability Program will notify the covered entity and close the case.
2. Finding of commercially reasonable effort to comply but further time or modifications needed. If the Accountability Program finds that despite the covered entity's commercially reasonable effort to comply, the covered entity has yet to fully implement the recommendations, or that further modifications are necessary to achieve compliance, the Accountability Program will set a deadline to achieve compliance, reserving the right to make subsequent compliance inquiries of the covered entity.
3. Finding of non-compliance. If the Accountability Program finds that the covered entity has not made a commercially reasonable effort to come into compliance, the Accountability Program may issue a finding of non-compliance, refer the case to the appropriate government agency, release information regarding the referral to the press and the public and report the referral on its web site.

C. Compliance Actions against Subsequent Owners

If a decision recommends discontinuance or modification to a covered entity's OBA practices, the Accountability Program may pursue compliance actions pursuant to Section 10.0 of these *Procedures* against any person or entity that subsequently acquires the ownership rights of the covered entity if that person/entity continues or resumes the same OBA practices that the Accountability Program had recommended be discontinued or modified to comply with the Principles.

11.0 CHANGES TO THE PROCEDURES

- A.** The Accountability Program may adjust the times provided for by these *Procedures* to address the volume of cases or complexity of individual filings.
- B.** These *Procedures* are subject to change at NARC's discretion.