

December 14, 2015

Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20530

**Re: Public Comment Initiative #603
Tapad, Inc.'s Comments to the Federal Trade Commission regarding its Cross-Device Tracking Workshop**

Tapad, Inc. ("Tapad") thanks the Federal Trade Commission ("FTC" or "Commission") for the opportunity to submit comments regarding the Commission's Cross-Device Tracking Workshop held on November 16, 2015. Tapad supports the self-regulation of cross-device technologies based on traditional Fair Information Practice Principles ("FIPPs") such as transparency, control, data minimization, security, and limited data retention. Self-regulation has proven to be effective in similar contexts, and members of the online advertising industry are already working together to develop innovative solutions to address emerging privacy issues related to cross-device technologies. In particular, Tapad encourages the FTC to consider that:

1. Cross-device technologies provide important benefits to consumers;
2. The Network Advertising Initiative ("NAI") and Digital Advertising Alliance ("DAA") self-regulatory programs are successful, FIPPs-based models for providing transparency, control, and other privacy protections to consumers;
3. Self-regulation is an effective and appropriate tool for emerging technologies such as cross-device linking; and
4. Prescriptive best practices or expectations from the Commission or Commission Staff in a post-workshop report would have difficulty keeping pace with innovation.

Tapad is a marketing technology firm renowned for its breakthrough cross-device solutions. It was founded in 2010 and now offers an accurate, unified approach to connecting with consumers across screens. Its technology is deployed by advertising agencies, publishers (such as websites, mobile apps, and other content providers), marketing technology companies, and numerous Fortune 500 brands. Tapad is a committed member or participant of the NAI, DAA, Interactive Advertising Bureau ("IAB"), and Mobile Marketing Association ("MMA"), as well as partner organizations in Canada and Europe.

I. Cross-Device Technologies Provide Important Benefits to Consumers

Cross-device technologies provide benefits to consumers in numerous ways. Most importantly, they enable publishers, marketers, and brands to provide consumers with a unified experience across screens. Although these technologies are relatively new for consumers, they serve the same commercial objectives that interest-based advertising and web analytics did ten years ago. In the early 2000s, the core challenge was to understand and measure online audiences on a

single browser or device. Today, as a result of massive changes in how consumers use technology, the core challenge is to understand audiences across *multiple* browsers or devices. Cross-device technologies allow publishers and advertisers to personalize content and ads for their users across devices, and they help maintain the cohesive online experience that consumers have come to expect from brands and publishers.

Cross-device technologies also benefit consumers by helping to maintain ad-supported content on the Internet. The online advertising economy—which enables consumers to visit ad-supported websites and apps for free or at reduced cost—relies on measurement, analytics, and attribution. As the number of consumer devices increases, it becomes harder for advertisers to understand whether their campaigns are effective. Cross-device capabilities solve this problem and therefore improve the efficiency of advertising spending and defend the value of advertising to content providers even as consumer behavior spreads across multiple devices.

The potential applications of cross-device technologies extend beyond advertising. They are used to improve security for online services and prevent fraud. Publishers also can provide customized experiences to consumers, such as by highlighting more relevant articles or making new product suggestions. There undoubtedly will be new and innovative ways that such technologies benefit consumers, and these benefits will improve and expand as consumers adopt new devices in the future. Tapad encourages the FTC to allow the DAA, the NAI, and other FIPPS-based self-regulatory bodies with strong accountability mechanisms to develop self-regulatory frameworks that protect consumer privacy while also preserving these important benefits for consumers.

II. The NAI and DAA Self-Regulatory Programs Are Successful, FIPPS-Based Models for Providing Transparency, Control, and Other Privacy Protections to Consumers

Existing self-regulatory programs for interest-based advertising demonstrate that the industry is capable of coalescing around successful, FIPPS-based models for protecting consumer privacy. Both the Network Advertising Initiative (“NAI”) and the Digital Advertising Alliance (“DAA”) have published self-regulatory principles that are built upon Fair Information Practice Principles such as transparency, control, data minimization, security, and limited data retention.¹ Each set of self-regulatory principles draws from the recommendations proposed by the FTC in its 2009 Staff Report titled *Self-Regulatory Principles for Online Behavioral Advertising* and its 2012 Report titled *Protecting Consumer Privacy in an Era of Rapid Change*² and incorporates subsequent, prompt guidance that helps members apply the principles as new data uses emerge.

¹ NAI, *2015 Update to the NAI Code of Conduct* (2015) and associated guidance, available at <http://www.networkadvertising.org/code-enforcement/code>; DAA, *Self-Regulatory Principles for Online Behavioral Advertising and Self-Regulatory Principles for Multi-Site Data* and associated guidance, available at <http://www.aboutads.info/principles>.

² FTC Staff Report, *Self-Regulatory Principles for Online Behavioral Advertising* (Feb. 2009), available at <https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-staff-report-self-regulatory-principles-online-behavioral-advertising/p085400behavadreport.pdf>; FTC Report, *Protecting Consumer Privacy in an Era of Rapid Change* (Mar. 2012), available at <https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-report-protecting-consumer-privacy-era-rapid-change-recommendations/120326privacyreport.pdf> (“2012 FTC Privacy Report”).

In many ways, the emergence of cross-device technologies is analogous to the rise of interest-based advertising ten years ago. In its early stages, interest-based advertising prompted a reconsideration of how data from unaffiliated websites was used and shared by various parties across the online advertising ecosystem. Now, the industry operates under the NAI and DAA self-regulatory programs, which have been instrumental in providing consumers with privacy protections in a dynamic and fast-moving industry.

Notice and Transparency. Notice and transparency are central principles of the DAA and NAI self-regulatory programs. They allow consumers to understand how their data is collected and used across websites and apps for advertising purposes. The DAA and NAI require both first- and third-parties to disclose interest-based advertising practices in their privacy policies, as well as to provide “enhanced notice” to consumers. This collaboration has resulted in a greater public understanding of interest-based advertising practices.

In particular, the DAA’s Advertising Options icon has been instrumental in providing enhanced notice to consumers. The Advertising Options icon is an easily recognizable signal that appears within advertisements and on webpages or apps where data is collected or used. For example, as shown in the attached Appendix, Tapad displays the Advertising Options icon in the advertisements that it is involved in serving on behalf of its customers. If a user clicks on the icon, information about Tapad is displayed, together with links to opt-out options, Tapad’s privacy policy, and other relevant information such as that “Tapad is the leader in cross-device content delivery. Our groundbreaking, proprietary technology assimilates billions of data points to find the human relationship between smartphones, desktops, laptops, tablets, connected TVs and game consoles. With Tapad, publishers and advertisers can deepen consumer engagement with a more fluid experience while increasing campaign cost-effectiveness.”

Notice and transparency are especially important for new technologies that are less familiar to consumers. That is why Tapad was among the first companies to provide notice and choice for interest-based advertising in mobile web browsers and mobile applications. To accomplish this, Tapad partnered with Ghostery (formerly Evidon) and other industry leaders to build the necessary technology to provide notice on mobile devices.³ These technological breakthroughs have allowed Tapad and other members of the industry to deliver targeted, cross-platform advertising while doing so in a manner that is respectful of consumer privacy.

Control. The DAA and NAI also emphasize the principle of consumer control, which gives consumers meaningful choices over how their data is collected, used, or shared. Choices must be simple to understand and meaningful for consumers. For example, if a user is displayed an advertisement based on cross-device data, then the consumer should be provided with relevant information about how he or she can opt-out, and the company should respect that choice.

The scope and functionality of opt-out choices for cross-device technologies likely will differ across the industry as technologies evolve. The best means of providing user control will depend on technological advances and changes to consumer expectations and preferences over time. Likewise, companies may choose to use existing tools to effectuate choices for cross-device data

³ See Online Media Daily, *Tapad Taps Evidon For Mobile Opt-Outs* (Nov. 15, 2011), available at <http://www.mediapost.com/publications/article/162362/tapad-taps-evidon-for-mobile-opt-outs.html?edition=>

(for example, through the DAA’s AppChoices tool), or they may develop new technical means to effectuate the choice. Companies also may choose to offer granular opt-out choices that allow information to be used for certain purposes (for example, to allow cross-device linking but not interest-based advertising), or they may choose to provide a single, universal opt-out that simplifies the choice for consumers. At this early stage, the FTC should allow self-regulatory bodies to explore different options for providing simple, meaningful choice to consumers.

Other Principles. Self-regulatory guidance also incorporates other important principles from the traditional FIPPs, such as data minimization, data security, and limited data retention. The online advertising ecosystem strives to provide relevant advertising to individual users without collecting or relying on personally identifiable information (“PII”), such as name, email address, user name, or phone number, unless a company has obtained prior consent. This protects the privacy of users while also reducing the risk that personal information is shared or misused by unauthorized third parties. Many industry members use advanced hashing algorithms to obscure PII, and these methods protect the security and privacy of consumer information while still allowing marketers and publishers to recognize a particular browser or device over time. The FTC should exercise restraint as companies continue to improve these measures and find new ways to protect consumer privacy through data minimization, security, and limited data retention.

III. Self-Regulation Is an Effective and Appropriate Tool for Emerging Technologies Such As Cross-Device Linking

Self-regulation is particularly effective and appropriate for emerging technologies such as cross-device linking. Self-regulation is technology-neutral, adaptable to new contexts, conducive to allowing industry to develop innovative solutions, and enforceable by self-regulatory bodies and the FTC.

Technology Neutral. First, the DAA and NAI self-regulatory principles are technology-neutral and can be easily applied to new technologies as they emerge. For example, in May 2015, the NAI released its *Guidance for NAI Members: Use of Non-Cookie Technologies for Interest-Based Advertising Consistent with the NAI Code of Conduct*.⁴ The guidance explained how the NAI’s Code of Conduct applies to non-cookie technologies (such as statistical identifiers) and specifically addressed the unique transparency and control issues that such technologies raise. The guidance instructed NAI members to disclose the use of non-cookie technologies, describe opt-out choices, direct consumers to a transparency tool that provides information on how data is being collected about them, and update any prior representations that are no longer accurate. This example demonstrates how self-regulatory organizations are capable of addressing unique transparency and control issues that arise from new technologies, as the new technologies emerge.

⁴ NAI, *Guidance for NAI Members: Use of Non-Cookie Technologies for Interest-Based Advertising Consistent with the NAI Code of Conduct* (May 2015), available at https://www.networkadvertising.org/sites/default/files/NAI_BeyondCookies_NL.pdf; see also DAA, *Online Interest-Based Advertising Accountability Program Compliance Warning* (Aug. 20, 2014), available at <http://www.bbb.org/globalassets/local-bbbs/council-113/media/behaviorial-advertising/alternative-identifiers-compliance-warning-20140820.pdf>, which clarified that the DAA Principles are enforceable irrespective of the identification technology used.

Some commenters have called for treating deterministic technologies differently than probabilistic technologies. However, Tapad believes that the overarching principles of transparency and control should apply to all cross-device solutions equally, without regard to the specific technology used. If necessary, companies can develop new tools and technologies to provide consumers with notice and choice. As an example of how this is already happening, the NAI is currently collaborating with member companies to develop a new consumer choice tool that applies to non-cookie technologies.⁵ Tapad encourages the FTC to take a technology-neutral approach that allows companies to develop the tools and technologies necessary to provide the appropriate level of transparency and control to consumers.

Adaptable. Second, the DAA and NAI self-regulatory principles are adaptable to new contexts. For example, both the NAI and DAA have released guidance that applies their existing principles in the mobile environment.⁶ The mobile guidance introduced the concept of “cross-app data,” which the DAA defines as “data collected from a particular device regarding application use over time and across non-Affiliate applications.” In doing so, the DAA clarified that its principles apply to the practice of tracking across mobile applications. The DAA and NAI also addressed certain privacy issues that are specific to the mobile context, such as requiring companies to make privacy notices available in app stores, during the installation process, or in app settings, and requiring consent for the collection and use of precise location data and personal directory data.

More recently, the DAA published its guidance for the *Application of the DAA Principles of Transparency and Control to Data Used Across Devices*.⁷ This guidance clarifies that the DAA’s principles apply to cross-device linking practices and sets a baseline set of rules for members of the industry. The NAI also plans to release guidance applicable to cross-device technologies. Tapad encourages the Commission and Commission Staff to allow these nascent self-regulatory frameworks to take hold rather than issuing prescriptive best practices or expectations for cross-device technologies in any post-workshop report.

Collaborative and Innovative. Third, self-regulation is successful in creating best practices because companies work directly with the self-regulatory bodies to innovate on privacy. For instance, Tapad helped drive adoption of the first notices in the mobile web and collaborated with Ghostery to develop a prototype mobile application that enables consumers to opt-out of the use of data collected through mobile apps. At the time, Ghostery’s mobile opt-out tool was groundbreaking and was the first of its kind. Eventually, this concept became the DAA’s standard when the DAA announced its AppChoices tool in February 2015.

Similarly, the NAI is currently working with its members to design an opt-out tool that works for non-cookie technologies, and some companies are working to develop cross-device transparency tools that will allow consumers to view the various connections among their related devices.

⁵ NAI, *Moving Beyond Cookies: A Collective Effort of NAI Members* (May 18, 2015), available at <https://www.networkadvertising.org/blog/moving-beyond-cookies-collective-effort-of-nai-members>.

⁶ See NAI, *2015 Update to the NAI Mobile Application Code* (2015), available at https://www.networkadvertising.org/mobile/NAI_Mobile_Application_Code.pdf and Digital Advertising Alliance, *Application of Self-Regulatory Principles to the Mobile Environment* (July 2013), available at http://www.aboutads.info/DAA_Mobile_Guidance.pdf.

⁷ DAA, *Application of the DAA Principles of Transparency and Control to Data Used Across Devices* (November 2015), available at http://www.aboutads.info/sites/default/files/DAA_Cross-Device_Guidance-Final.pdf.

Thus, self-regulation allows all members of the industry to move faster and collaborate better on advances to privacy best practices.

Enforceable. Fourth, the DAA and NAI self-regulatory programs contain accountability mechanisms that ensure that members adhere to the self-regulatory principles. Notably, the DAA’s Online Interest-Based Advertising Accountability Program already has addressed the application of its principles to cross-device technologies. In a 2012 review of one company’s practices, the Accountability Program found that the relevant privacy policy did not adequately explain the company’s cross-device practices or opt-out choices available to consumers.⁸ The company worked with the Accountability Program to revise its privacy policy and ensure that it complied with the principles. In its decision, the Accountability Program stated that “[a]s technologies continue to evolve and raise new compliance issues, the Accountability Program will respond to ensure that the OBA Principles are preserved and can extend to meet these novel situations.”⁹ This early example demonstrates that the DAA and NAI self-regulatory programs are capable of ensuring adherence to their self-regulatory principles and responding quickly to address new issues as they arise.

The principles also are enforceable by the FTC by virtue of the DAA’s and NAI’s requirements that members state their adherence to the principles in their privacy policies. If a company violates these promises, the FTC can bring an enforcement action against it for a deceptive representation. The FTC previously recognized this authority when it stated in its 2012 Privacy Report that it would “continue to enforce the FTC Act to take action against companies that engage in unfair or deceptive practices, *including the failure to abide by self-regulatory programs they join.*”¹⁰ Thus, the FTC may still bring enforcement actions against members if they do not live up to their promises.

IV. Prescriptive Best Practices or Expectations from the Commission or Commission Staff in a Post-Workshop Report Would Have Difficulty Keeping Up with Innovation

Prescriptive best practices or expectations from the Commission or Commission Staff in a post-workshop report would become out of date quickly and would strip self-regulatory authorities of their ability to keep up with innovation. Self-regulation has already taken shape in the form of the DAA’s cross-device guidance, but choice and transparency will continue to require research and development as cross-device technologies become more common and develop over time. That research can then be used to move best practices forward and update self-regulatory principles promptly. For example, some of the key challenges that the industry will face as it moves forward and develops new means of cross device tracking will include:

- Ensuring that notices remain clear, concise, and relevant, and that they do not overwhelm or confuse consumers and that they tell a complicated story succinctly;

⁸ *In re BlueCava Inc.*, Case Number 09-2012, Advertising Self-Regulatory Council/Council of Better Business Bureaus Online Interest-Based Advertising Accountability Program (May 30, 2012), available at <http://www.ascreviews.org/wp-content/uploads/2012/05/BlueCava-Decision-Final9.pdf>.

⁹ *Id.* at 6.

¹⁰ See 2012 FTC Privacy Report at p. 73 (emphasis added).

- Ensuring simple, easy-to-use, and meaningful choices to consumers without overpromising, based on the state of technology as it progresses; and
- Continuing to align consumer choices made at the operating system or browser level with standards adopted by industry participants, taking into account the tradeoffs between approaches.

As just one example, self-regulation is the proper means to address concerns about notices becoming too burdensome for consumers. Self-regulatory bodies must balance the goals of providing clear and conspicuous notice of new practices with concerns about an ever-growing layer of notices. To meet this challenge, the DAA's Advertising Options icon or other single, proactive self-regulatory mechanism could serve as a launching point for enhanced notice. Additional "layered" notices and other transparency tools can then provide more granular detail for interested consumers.

In addition, cross-device technologies are developing rapidly and will cover a growing list of technologies and devices in the future, such as Internet-connected televisions, cars, smart watches, and other "Internet of Things" devices. Self-regulatory bodies will need to carefully consider how these changes will affect companies' notice and choice practices. Self-regulation by the DAA and NAI has proven to be an effective method to quickly and efficiently deal with new issues as they arise, and Tapad encourages the FTC to let industry and self-regulatory bodies continue their important work and innovate on privacy best practices in the future.

If the Commission or Commission Staff, in any report following the Workshop, suggests any prescriptive best practices or expectations, the industry in general would, of course, force their technologies (to the extent possible) and user experiences to meet those best practices or expectations. Based on the foregoing, we urge the Commission not to settle on firm best practices or expectations because, in a rapidly changing market such as the one for cross-device technologies, those best practices or expectations may not meet consumers' expectations as they develop over time. In other words, general guidance, which self-regulation can develop into actual requirements, subject to quick changes as the industry and consumers' expectations develop, is preferable to the Commission or Commission Staff issuing a set of prescriptive best practices or expectations.

For example, opportunities to present notice will change as more and more devices become connected and part of a cross-device regime. If the Commission or the Commission Staff were to recommend prescriptive notice best practices or expectations, they may become obsolete quickly. General guidance, on the other hand, will enable self-regulation to fill in the particular requirements and alter them as the market evolves and matures. The same is true for determining the appropriate scope of a cross-device opt-out across the industry. If the Commission or Commission Staff were to issue prescriptive best practices or expectations, it would risk technology-forcing where not all players in the industry are positioned equally in terms of information they have or technology they can deploy. More general guidance on providing consumers with opt-out choices, such as suggesting that any limitations to an opt-out choice be clearly and conspicuously disclosed, and that they be followed as they are written, will

allow self-regulation to apply the principle so that all participants in the industry can comply based on technology and data available to them.

V. Conclusion

The online experience today is about engagement, personalization, and empowerment, but it is also about responsibility. Tapad believes that protecting consumers' privacy is paramount, and it takes that responsibility very seriously. Consumers deserve true transparency and should be given the tools to take control of how their data is used. Given these principles, Tapad is playing a central role in the development and implementation of industry-wide standards and protocols, and it will continue to do so as technology evolves. Tapad respectfully asks that the FTC allow self-regulation to prove itself capable of meeting the goal of protecting consumer privacy in connection with cross-device technologies, as the NAI and DAA have done many times before in similar contexts.

Appendix

Tapad Ad Notice Experience

Step 1: Ad icon



Icon expands on hover

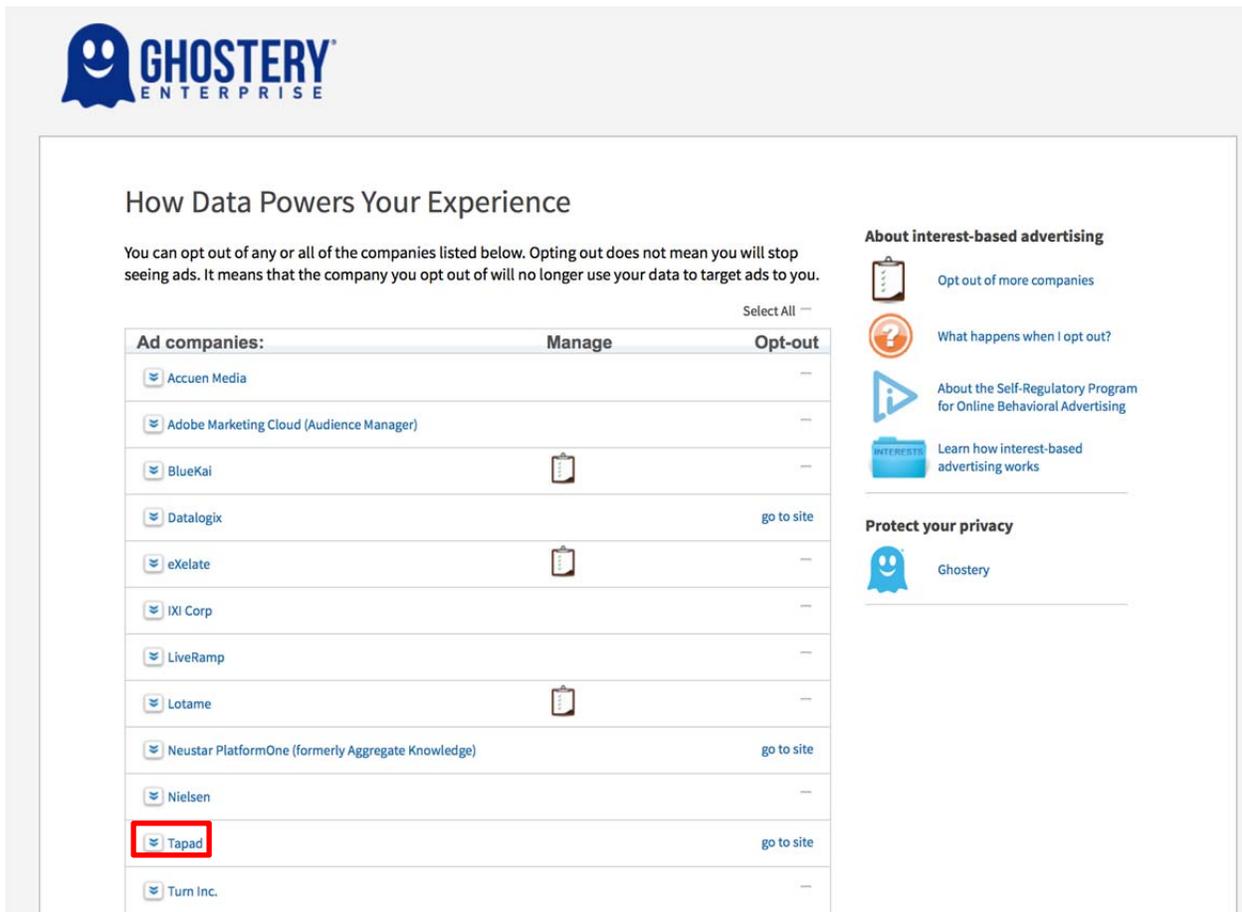


Step 2: Initial notice on icon click, still within the ad

More information & opt-out options »	<p>This ad may have been matched to your interests based on your historical activity. Tapad and its partners helped this advertiser determine that you might be interested in an ad like this.</p> 
What is interest based advertising »	
Tapad's privacy policy »	
Privacy Controls by Ghostery, Inc.	

[X]

Step 3: Company level disclosures and opt-out through ‘More information & opt-out options’



GHOSTERY
ENTERPRISE

How Data Powers Your Experience

You can opt out of any or all of the companies listed below. Opting out does not mean you will stop seeing ads. It means that the company you opt out of will no longer use your data to target ads to you.

Select All —

Ad companies:	Manage	Opt-out
<input type="checkbox"/> Accuen Media		—
<input type="checkbox"/> Adobe Marketing Cloud (Audience Manager)		—
<input type="checkbox"/> BlueKai		—
<input type="checkbox"/> Datalogix		go to site
<input type="checkbox"/> eXelate		—
<input type="checkbox"/> IXI Corp		—
<input type="checkbox"/> LiveRamp		—
<input type="checkbox"/> Lotame		—
<input type="checkbox"/> Neustar PlatformOne (formerly Aggregate Knowledge)		go to site
<input type="checkbox"/> Nielsen		—
<input type="checkbox"/> Tapad		go to site
<input type="checkbox"/> Turn Inc.		—

About interest-based advertising

- [Opt out of more companies](#)
- [What happens when I opt out?](#)
- [About the Self-Regulatory Program for Online Behavioral Advertising](#)
- [Learn how interest-based advertising works](#)

Protect your privacy

- [Ghostery](#)

Tapad breakdown on click with link with link to more detail

 Nielsen □
 Tapad go to site
<p>Who are they?</p> <p>Analytics provider: Provider of platform technology enabling data aggregation, analysis and report creation to assess marketing effectiveness and/or business performance.</p> <p>Demand side platform: Technology provider that enables advertisers to buy ad inventory from multiple ad exchanges utilizing multiple data suppliers and auction-based bidding.</p> <p>Marketing solutions: Provider of a suite of solutions concerning marketing integration and targeted campaign analytics or discrete methods to segment and expand consumer bases.</p> <p>Mobile: Provider of advertising services to wireless devices (phones, tablets, etc.), typically through mobile web browsers or mobile applications.</p> <p>What data does this company collect?</p> <p>Anonymous, Pseudonymous</p> <p>How do they use it?</p> <p>Ad Serving, Ad Targeting, Analytics /Measurement</p> <p>More detail about Tapad</p>

Step 4: Tapad described in detail



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TAPAD

Website: <http://www.tapad.com/>
About Us: <http://www.tapad.com/about-us/who-we-are/>

In Their Own Words

"Tapad is the leader in cross-device content delivery. Our groundbreaking, proprietary technology assimilates billions of data points to find the human relationship between smartphones, desktops, laptops, tablets, connected TVs and game consoles. With Tapad, publishers and advertisers can deepen consumer engagement with a more fluid experience while increasing campaign cost-effectiveness."

Industry affiliations



What does this company do?

Analytics Provider

Your choices

We believe this company facilitates or engages in 3rd party interest-based targeting.

[Click here to opt out of Tapad »](#)

[Learn about the Ghostery browser extension that can help protect your privacy settings.](#)

Privacy contact

Tapad, Inc.
60 Madison Avenue
3rd Floor
New York, NY, 10010

Phone: (646) 561-6500
Email: privacy@tapad.com

Privacy policy

Privacy policy: <http://www.tapad.com/privacy-policy/>

Opt-out cookies

When you opt out of being tracked and/or targeted by this company,