

Annual Report



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INTRODUCTION

Since 2000, the Network Advertising Initiative (NAI) has been the leading self-regulatory body for “third parties” in digital advertising.

The NAI Code of Conduct (Code)¹ governs member engagement in Tailored Advertising² and Ad Delivery and Reporting (ADR)³ in the United States. With regular updates to keep up with advancements in advertising technology, the Code covers: Retargeting⁴; Interest-Based Advertising (IBA)⁵ with information collected on websites; Cross-App Advertising (CAA)⁶ with information from mobile applications; Viewed-Content Advertising (VCA)⁷ with information collected from connected televisions; and the use of offline data for digital advertising, known as Audience-Matched Advertising (AMA)⁸.

Retargeting



Interest-Based Advertising



Cross-App Advertising



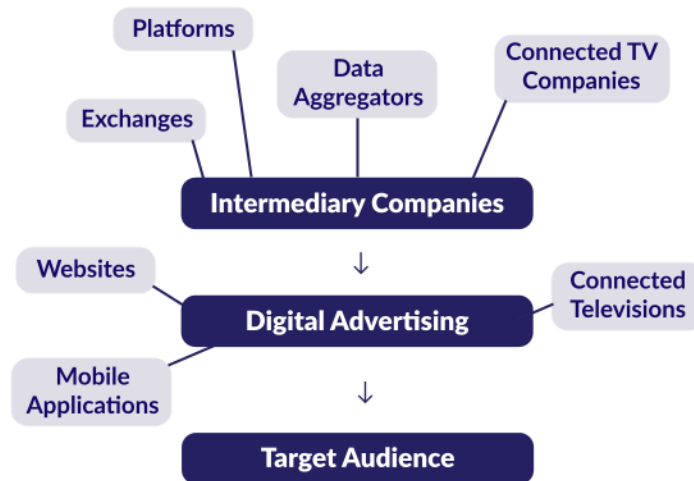
Viewed-Content Advertising



Audience-Matched Advertising



At the time of this publication, the NAI has 89 member companies. NAI members are traditionally intermediary companies, such as ad networks, exchanges, platforms, data aggregators, and connected television companies, that form the backbone of the digital advertising ecosystem on websites, mobile applications, and connected televisions.



This enables consumers to receive relevant ads related to their interests and facilitates advertisers reaching their target audiences.

This relevant advertising continues to power free content and services in the digital ecosystem and is a crucial factor in the success of many small and medium enterprises that can flourish by finding the consumers who are most interested in their products.⁹

Member companies work together with NAI staff to help craft stringent yet practical guidelines for data collection and use in connection with Tailored Advertising and ADR. The NAI's annual compliance reviews also result in regular updates to the NAI Code and Guidance documents to keep pace with evolving technologies and digital advertising products that emerge each year. Ultimately, the goal of the NAI is to maintain consumer trust by protecting consumer privacy in an evolving digital media landscape. The NAI helps its members foster this trust through a comprehensive self-regulatory program that includes the Code and NAI Guidance, backed by a robust compliance program that focuses on spotting potential problems and issues in order to address and resolve them as expeditiously as possible. This process also serves an educational function for companies, which are incentivized to build lessons learned from compliance reviews into their advertising programs.

During the 2021 compliance period, NAI staff reviewed eligible members' compliance with the Code. This report provides a summary of the NAI's public policy and advocacy work in 2021 as well as staff's findings from the 2021 compliance review. This Annual Report is intended to provide consumers, regulators, and others with visibility into the NAI's compliance program and self-regulatory process and to illustrate how the findings of the compliance program shape the evolution of the NAI's policies and procedures. The first part of this report provides a review of the NAI's stated goals for 2021 and the work NAI staff and members accomplished in those areas, as well as a public policy overview

of the legislative landscape and the NAI's efforts to support a comprehensive federal privacy law. The second part of the report gives insight into the NAI's membership application and compliance processes, as well as the NAI's monitoring of consumer questions. The third part of the report details the Code requirements assessed by NAI staff in the 2021 annual compliance review, the procedures undertaken by NAI staff and members to evaluate compliance with those requirements, and high-level findings from the evaluations.



2021: THE YEAR IN REVIEW

The NAI's self-regulatory program regularly adapts to changes in digital advertising technology and considers the evolution of privacy expectations and norms domestically and globally. Each year the NAI sets forth its goals and intentions for the following year, and for 2021 the NAI planned to focus on: (1) cross-industry and cross-trade dialogues to help develop a new privacy framework and technical standards for digital advertising that are consistent with emerging state laws and changes in browsers and operating systems; (2) launching the NAI's email-based Audience-Matched Advertising Opt-Out Mechanism; (3) commencing enforcement of additional notice requirements for the collection of Precise Location Information; and (4) further expansion of public policy efforts, advocacy, and outreach on a state and federal level.



In 2021, the NAI was involved in several cross-industry and cross-trade groups in the planning stages of a new self-regulatory framework to complement existing and emerging state laws, as well as the evolution of addressability. In the policy space, the NAI was a leader in the PRAM initiative which has now been folded into the Digital Advertising Alliance (DAA) where the NAI sits on the Board of Directors. The NAI is an active participant in technology-focused cross-industry efforts such as the IAB Tech Lab Privacy and Rearc Commit Group, TCF Steering Group, W3C, and Google Sandbox, keeping NAI members apprised of developments in these groups while speaking on behalf of the many small and medium sized companies that represent NAI membership.

To further bolster collaboration, the NAI opened participation in its own working groups to publishers, advertisers, law firms, and other stakeholders in the digital advertising ecosystem.

The NAI launched its centralized, email address-based Opt-Out Mechanism for Audience-Matched Advertising on July 1, 2021, and successfully processed over eighty thousand email opt-out requests in 2021. In a culmination of more than a year of work by NAI staff and member companies, this new technology allows consumers to exercise choice with respect to Audience-Matched Advertising based on data associated with their email addresses. As the use of hashed email addresses is being explored in novel addressability tools and technologies, the NAI also announced that it expects its members will extend such an opt-out to all Tailored Advertising using hashed email addresses in the near future.

The NAI began including the requirement for additional notice regarding the sharing and use of Precise Location Information in its 2021 NAI

IN 2021, FIVE NEW MEMBER COMPANIES WERE APPROVED BY THE NAI BOARD OF DIRECTORS

compliance review process and noted that momentum seemed to be building across the industry for providing this additional notice. NAI members must include requirements for additional notice in partner contracts, it is ultimately up to those partners to provide the required notice. Many NAI members reported less pushback from publishers and other partners with respect to contractual provisions calling for such notice.

The NAI Code includes principles related to transparency, choice, data minimization, purpose and use restriction, data security, and others. Although many of the NAI's resources go to ensuring that the advertising ecosystem operates in a transparent manner, and that choices provided to consumers work as expected, transparency and choice alone are by no means sufficient to protect consumers, and the NAI is actively working to introduce new guidance and requirements regarding data minimization as well as use restrictions for various data types.

Five new members joined the NAI in 2021, which ranges from startups, small to medium-sized actors, to some of the most important companies in third-party digital advertising ecosystem. This demonstrates interest in NAI membership persisted even after the public health crisis introduced significant economic uncertainty and cost-cutting. The NAI is also working more closely with advertisers and publishers as they embrace a larger role in the digital advertising ecosystem, leveraging their own data to help deliver better advertising in privacy-promoting ways. Effective self-regulation of advertising

technology continues to be a vital component in building trust not only between participating NAI members and consumers, but also between member companies and service providers, publishers, and advertisers.

Public Policy

Throughout the rapidly evolving public policy landscape, the NAI's efforts in 2021 were focused in three major areas: (1) promoting a uniform national consumer privacy law to provide consistent protections for consumers and to streamline compliance for companies; (2) engaging with state policymakers to steer the development of independent state laws; and (3) helping shape the CCPA and CPRA implementing regulations, while working with member companies and other stakeholders to guide the industry's implementation of new policies and practices in response to the new state legal requirements.

The common thread in all of the NAI's public policy efforts remains the conviction that strong consumer privacy protections can and should exist hand-in-hand with robust digital content that is supported by innovative digital advertising solutions, and that self-regulatory programs like those of the NAI play a complementary role to new regulations as a means of supplementing and enhancing state and federal legislation. NAI's strong privacy self-regulation programs provide a method for participating companies to demonstrate their compliance with robust requirements that often go above and beyond existing laws, helping good actors distinguish themselves, which in turn allows regulators to focus more of their efforts on companies that do not prioritize data privacy.

In 2021, over two-thirds of states considered broad consumer privacy legislation, many modeled significantly after the California Consumer Privacy Act (CCPA) and California Privacy Rights Act (CPRA), and others taking significantly different approaches. Among those states, two were able to reach consensus and enact new state-wide laws, both of which were modeled substantially after the CCPA and CPRA but diverged significantly in many areas. At the close of 2021, there were four states having adopted consumer privacy legislation establishing rights for citizens pertaining to their personal information. These disparate laws and their differing requirements, when they come into force in 2023, will create a patchwork of consumer protections and a more difficult legal and regulatory environment for companies. Additionally on the state legal front, 2021 was the first full year of state enforcement for California's CCPA, which came into force midway through 2020. Attorney General Xavier Becerra finalized CCPA regulations in early 2021, and provided additional guidance for companies, laying the groundwork for enforcement throughout the rest of the year.

Federal policymakers also maintained a significant focus on consumer privacy in 2021, with continued deliberations in Congress, and a focus on the intersection of consumer privacy and civil rights by the Biden Administration. Unfortunately, consensus around a comprehensive national consumer privacy framework remained elusive. As a result of stalled legislative discussions and judicial proceedings limiting the Federal Trade Commission's (FTC) ability to seek restitution for many privacy actions, many Democratic Members of Congress urged the FTC to engage in broad consumer privacy rulemaking, while also seeking to quickly advance legislation to increase the FTC's resources and ability to issue civil penalties for first-time violations of Section 5 of the FTC Act. In December 2021, the FTC publicly announced its intent to begin a privacy rulemaking.

Promotion of a National Consumer Privacy Framework and Strong, Consistent Federal Regulations

The NAI continued to serve as the leading voice of the advertising technology industry in 2021, promoting federal legislation to create a strong federal consumer privacy framework that would provide for combined federal and state enforcement. The NAI's engagement in Washington in 2021 included participation in a set of stakeholder roundtable discussions on federal privacy legislation hosted by the House Energy and Commerce Committee and selection to speak at a stakeholder discussion held by the U.S. Department of Commerce National Telecommunications and Information Administration focused on privacy, equity, and civil rights. The NAI also engaged directly with leaders in Congress and the FTC to inform them about the NAI's continually expanding self-regulatory efforts and policy objectives. The NAI continued as an executive committee member of Privacy for America,¹⁰ a diverse industry coalition promoting a federal legislative model to clearly define and prohibit unreasonable data practices that make personal data vulnerable to breach or misuse, while preserving the benefits that come from responsible use of data.

Engagement on CCPA and CPRA Rulemaking and Implementation

Final supplemental CCPA regulations were adopted in early 2021, and the preliminary rulemaking process for the CPRA began in the second half of the year. The NAI submitted detailed comments¹¹ to the Office of the Attorney General regarding the final proposed CCPA regulations, as well as the call request for preliminary comments prior to the start of the official CPRA rulemaking process. The NAI's comments consistently maintain the goal of balancing enhanced consumer privacy protections with the need to maintain a competitive marketplace for digital advertising as a driver of the economy. To help NAI member companies operationalize new state legal and regulatory requirements established by the four major state laws, the NAI launched a new working group to help guide member discussion around potential industry approaches. The NAI also provided industry-specific analyses to enhance members' understanding of how new requirements may affect the digital advertising ecosystem. Key areas of focus in 2021 were the development of a draft model privacy risk assessment for members to use as a starting point for assessing risks consistent with the state legal requirements, and streamlining the process for replying to data subject access requests.

Engagement with State Legislators Considering Adoption of New Localized Consumer Privacy Laws

The NAI remains concerned about the development of a patchwork approach of disparate state laws as the American approach to enhance consumer privacy for U.S. consumers. To that end, the NAI engaged heavily throughout 2021 with legislators across approximately half of the U.S. states, submitting comments and legislative recommendations on dozens of proposals. The NAI's engagement with policymakers remains pragmatic, seeking to inform state legislators about the implications of key legislative provisions on consumers, industry and the digital marketplace, ultimately seeking to maximize consistency and consensus around workable protections.



THE NAI COMPLIANCE PROGRAM

A. Joining the NAI – Compliance Begins Before Membership

Companies interested in NAI membership cannot simply join the NAI; they must commit to compliance with the Code and to oversight by the NAI of those compliance efforts. Compliance efforts begin even before a company becomes a member. At least two members of NAI staff with relevant and appropriate expertise evaluate each applicant's products and related privacy practices. These reviews focus on the applicant's responses to an NAI application questionnaire, the company's privacy disclosures, and information regarding the company's data collection, use, retention, and sharing practices, to ensure those practices are consistent with the Code. Additionally, an NAI technologist tests the applicant's Opt-Out Mechanisms.¹² NAI staff then conducts interviews with high-level employees at the company, asking further detailed questions, including those aimed at resolving potential discrepancies identified based on the application materials, or assessing business practices that may be inconsistent with the Code.

An applicant that wishes to become a member must work with NAI staff to help bring its services and products into a position where it can comply with the Code prior to admission.¹³ During this process NAI staff evaluates each applicant's practices and disclosures, highlighting those that need to be addressed before the company can become a member of the NAI. Though some companies attain membership within a few weeks, for others, the initial qualification assessment can be a months-long process, with the NAI providing guidance and suggestions about compliance along the way. As a result of the NAI application review process, many applicants make numerous revisions to their public privacy disclosures, partner contracts, and data collection and use practices. Typically, NAI staff provides technical guidance to help an applicant develop an Opt-Out Mechanism that is capable of meeting the Code's requirements and NAI technical specification to ensure compatibility with the NAI opt-out page. At times, applicants have abandoned or revised entire lines of business that did not, or could not, meet the requirements of the Code. Once this pre-membership review is completed, NAI staff submits a recommendation for membership to the Membership Subcommittee of the NAI Board of Directors. The NAI Board of Directors is comprised of seasoned privacy attorneys and executives from up to fourteen leading member companies. The Membership Subcommittee of the Board reviews each application, often requesting additional information from an applicant, before

recommending acceptance of a new member to the full Board. Therefore, each potential member is reviewed first by NAI staff, second by the Membership Subcommittee, and finally by the full NAI Board. This review process helps establish that an applicant has administrative, operational, and technical capabilities that can comply with the requirements of the Code before the company is admitted to the NAI.

In 2021, five companies¹⁴ completed the application process and were approved for membership by the Board.

At the closing of the 2021 NAI compliance review period the NAI Board consisted of:

- **Douglas Miller**, *Vice President and Global Privacy Leader*, Verizon Media; *Chairman*, NAI Board of Directors
- **Alan Chapell**, *President*, Chapell & Associates, on behalf of Eyeota; *Vice-Chairman*, NAI Board of Directors
- **Dana Edwards**, *SVP*, Engine Group; *Secretary*, NAI Board of Directors
- **Ken Dreifach**, *Shareholder*, ZwillGen, representing NextRoll; *Treasurer*, NAI Board of Directors
- **Fiona Campbell-Webster**, *Chief Privacy Officer*, MediaMath
- **Ileana Falticeni**, *General Counsel*, Quantcast
- **Ghita Harris-Newton**, *Director of Government Affairs and Public Policy*, Google
- **Paul Harrison**, *CTO and Co-Founder*, Simpli.fi
- **Duncan McCall**, *CEO and Co-Founder*, PlacelQ
- **Matthew Pinder**, *VP, Head Global Privacy and Policy Attorney*, Xandr
- **Tamera Reynolds**, *Associate General Counsel N.A., Senior Partner*, Xaxis

B. Monitoring of Members

1. Opt-Out Testing

When integrating with the NAI opt-out page for the first time, each member company has its own configuration tested and verified by NAI staff in a sandbox environment, which prevents many issues before live deployment. Once a member's opt-out is listed on the NAI site, it is monitored through routine manual checks of the NAI's opt-out page as well as the more in-depth reviews of each evaluated member company's cookies, including their values and expiration dates, performed during compliance reviews. An NAI staff member routinely verifies that the NAI opt-out page continues to function as expected, and follows up with an analysis to help members fix potential problems. Although such problems were rare, the majority of cookie-based opt-out issues were the result of changing browser interaction with third-party cookies, which prevented opt-out cookies from being set for the intended duration.

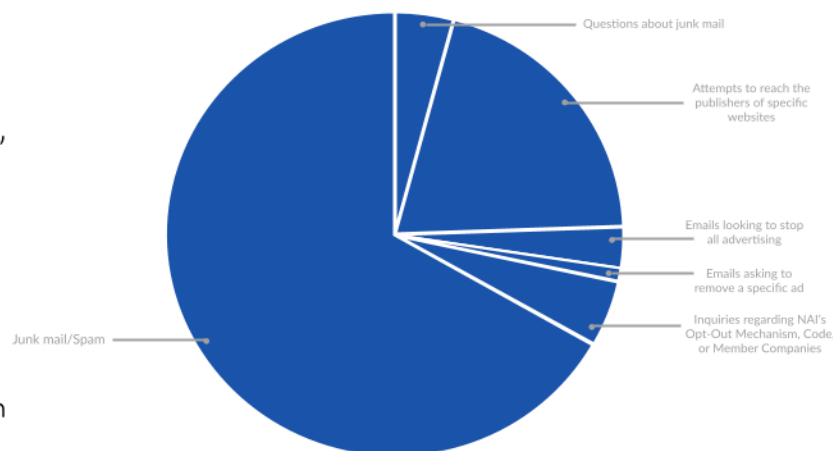
2. Investigating Consumer Communications

The NAI website provides a centralized mechanism for consumers to ask questions and raise concerns about member compliance with the Code (§ III.C.1).

IN 2021, THE NAI RECEIVED MORE THAN 4,600 CONSUMER QUERIES THROUGH ITS WEBSITE OR VIA EMAIL.

In 2021, the NAI received and reviewed 4,439 email queries through its website, and 167 contacts via telephone. NAI staff determined that, as in the past, a vast majority of the inquiries received did not pertain to issues within the scope of the NAI's mission. For example, 191 communications were questions from users about

junk email, 933 were attempts to reach the publishers of specific websites, 140 were emails looking to stop all advertising, and 43 were emails asking to remove a specific advertisement. In those instances,



the NAI provides an automated response informing users about the scope of the NAI program and the types of requests with which the NAI can assist. 225 emails, or approximately five percent of consumer inquiries were related to the NAI Opt-Out Mechanism, the NAI Code, or NAI member companies. The majority of these inquiries were requests for assistance in troubleshooting technical issues with IBA opt-outs, particularly in cases where browser controls blocked third-party cookies, ISP/workplace Internet filters or anti-virus software prevented opt-out cookies from being set on the consumer's browser, or temporary connectivity issues such as latency and connection speed led to malfunctions. Questions or concerns about NAI member companies are reviewed by NAI staff and, when appropriate, resolved by the member company and NAI staff.

All consumer communications received by the NAI in 2021 that could be resolved by the NAI as part of its compliance reviews were promptly resolved by NAI staff. **There were no consumer allegations of member non-compliance with the Code that NAI staff determined to be material in nature.**

3. Investigating Other Allegations and Complaints

In addition to the NAI's own monitoring and research, **NAI staff also scrutinizes a variety of other sources for potential instances of member non-compliance, including published articles, public allegations by privacy advocates, complaints to the NAI by third parties or other NAI members, and investigations by other self-regulatory bodies.**

C. 2021 Annual Review of Evaluated Member Companies

**IN 2021 THE NAI REVIEWED
86 MEMBER COMPANIES.**

As part of their membership obligations, NAI members are required to annually undergo reviews of their compliance with the Code by NAI compliance staff.

During the 2021 annual compliance review period, NAI staff reviewed the 86 companies that were members from January 1 through December 31, 2021.¹⁵ These members are referred to as "evaluated member companies" throughout this report. Those members that joined the NAI after January 1, 2021¹⁶ were already subject to an extensive review during the calendar year as part of the on-boarding process, and therefore were not part of the 2021 annual compliance review. Those members will be assessed again during the 2022 annual review process.¹⁷

2021 EVALUATED MEMBER COMPANIES

- 33Across
- AcuityAds
- AddThis
- AdForm
- Adobe
- AdRoll
- AlikeAudience
- Amobee
- Apollo Program (Formerly Anomaly)
- AppNexus
- Appreciate (formerly Triapodi)
- Artsai
- Audiencerate
- AuDigent
- Beeswax
- BlueKai/Oracle
- Branch
- Catalina
- Choozle
- Choreograph
- Clickagy
- Clicksco
- Criteo
- Cross Pixel Media
- Crossix
- Cuebiq
- Datonics
- Engine Media
- Entravision
- Exelate
- Eyeota
- Factual
- Flashtalking
- Google
- Gravy Analytics
- GumGum
- Hivestack
- IHS Markit Digital
- Index Exchange
- inMarket Media
- Innovid
- Inuvo
- Kargo
- Lotame
- Media.net
- MediaMath
- Microsoft
- MiQ
- Magnite
- MNTN
- Nativo
- Neustar
- Numberly
- Outbrain
- OwnerIQ
- Place Exchange
- PlacelQ
- Pubmatic
- Quantcast
- Rakuten Advertising
- Retargetly
- RhythmOne
- Salesforce
- SambaTV
- Semasio
- ShareThis
- Simpli.fi
- Sonobi
- Swoop
- Taboola
- TapAd
- Throttle
- Ti Health
- The Trade Desk
- TrueData
- Ubimo
- Undertone
- VDX/Tribal Fusion
- Viant
- Vibrant
- Weborama
- Wunderkind
- X-Mode
- Xaxis
- Yahoo
- Yieldmo

1. Training

In 2021, the NAI provided multiple training and educational sessions for its members. NAI compliance staff hosted an online meeting for new members, and new representatives at existing member companies, to help prepare them for the 2021 compliance review process and to highlight key provisions of the Code. In lieu of the traditional NAI Summit, which had been postponed again in 2021 due to continuing public health concerns, the NAI hosted smaller events for member companies in New York City and San Francisco, as well as a fireside chat with FTC Commissioner Noah Phillips, in Washington, D.C. The NAI also organized a series of webinars on timely topics, including a webinar on Global Privacy Controls, and a discussion about avoiding discriminatory outcomes in digital advertising, a key area of concern for the NAI.

These events, together with the growth of the NAI's widely attended and regularly scheduled Public Policy Working Group calls, further cement the NAI's role as an important source for educational events featuring legal experts, regulators, journalists, privacy advocates, as well as other trade associations and self-regulatory bodies. NAI staff also typically visit member company offices to provide in-person education regarding Code requirements and ongoing developments in the industry, although that practice was curtailed in 2021 on account of health concerns.

2. Written Questionnaire and Supporting Documentation

Evaluated member companies submitted written responses to the 2021 compliance questionnaire, which was updated the previous year to include the new requirements of and references of the 2020 Code. The questionnaire required evaluated member companies to describe their business practices and policies in relation to the requirements of the Code and NAI Guidance documents. To further establish compliance, the questionnaire also requested that evaluated member companies provide supporting documentation such as sample contract language, links to specific disclosures, and lists of cookies or other identifiers. Building on information obtained from prior reviews, this questionnaire also covered contractual requirements imposed on business partners concerning notice and choice around Tailored Advertising activities;¹⁸ other protections for data collected and used for Tailored Advertising purposes, such as data retention schedules; and processes for oversight and enforcement of contractual requirements.

A minimum of two NAI staff members reviewed each evaluated member company's questionnaire responses and related materials to assess compliance with the Code, together with representations about business practices available from the evaluated member company's public and non-public materials. These materials generally included news articles, the member company's website, privacy policies, terms of service, and sample advertising contracts.

3. Interviews

Following the review of questionnaire submissions and other supporting materials, at least two members of NAI staff interviewed representatives from every evaluated member company. NAI staff explored the business practices of evaluated member companies, and wherever necessary clarified questionnaire responses that appeared to be incomplete, vague, unclear, or raised questions based on the NAI's own review of a company's business model. The NAI compliance team also queried member company representatives about additional issues, such as data flows, opt-out functionality, data retention policies and procedures, and technologies used for Tailored Advertising.

Conducting interviews with all evaluated member companies provides the compliance team with additional in-depth insight into each company's products, especially as new business models and technologies continue to emerge. This integrated view of the industry, resulting from direct engagement and regular contact with 89 companies, greatly increases NAI staff's ability to flag potential privacy issues for members and shapes NAI staff recommendations regarding future guidance and policies. The candor reflected in compliance questionnaire and interview responses is only possible due to the mutual trust between NAI members and the organization.

These interviews also offer an opportunity for the compliance team to provide best practice suggestions for evaluated member companies. During these calls staff reminded evaluated member companies to perform frequent checks of their Opt-Out Mechanisms to ensure they function correctly. NAI staff also suggested steps evaluated member companies should take when working with third-party data providers to help ensure that data comes from responsible sources. The NAI often provided recommendations on clarifying language for privacy disclosures, based on NAI staff's collective experience reading hundreds of member and website publisher privacy policies.

This was the second compliance review under the all new 2020 NAI Code of Conduct, which introduced a multitude of material changes in member requirements and obligations. NAI staff worked with all members to ensure they were in a good position to comply with all of the Code's new and modified requirements, including those going into effect in 2021, such as the email-based consumer Opt-Out Mechanism for Audience Matched Advertising, and contractual requirements regarding Opt-In Consent for Precise Location Information.

4. Attestations

After completion of the questionnaire and interview process, and as a final step in the annual compliance review, evaluated member companies were required to attest in writing to their ongoing compliance with the Code. Evaluated member companies were also required to attest to the veracity of the information provided during the review process.



2021 ANNUAL REVIEW FINDINGS

The Code requires the NAI to publish the results of its annual compliance review, providing an opportunity for the NAI to summarize members' compliance with the Code and NAI policies (Code § III.B.4.). The following section presents the findings of NAI staff with respect to the 2021 annual review. This section also more fully summarizes the obligations imposed by the Code but does not restate all principles and requirements set forth in the Code, and as such it should not be relied upon for that purpose. The full Code, including definitions of relevant terms, can be found through the links provided in this report.

Education

Key Requirements:

- Members shall use reasonable efforts to individually educate users about Tailored Advertising and are required to collectively maintain the NAI website for this same purpose.
(Code § II.A.)

Review Method:

- NAI staff reviewed evaluated member company websites to identify educational components in privacy policies and elsewhere on the sites.
- NAI staff interviewed members to assess other educational and public service efforts.

Findings:

- All members met the requirement to collectively provide the NAI website, which serves as a centralized portal for explanations of Tailored Advertising and its associated practices to educate consumers.
- NAI staff found that all evaluated member companies provided disclosures and other information regarding the technologies used for Tailored Advertising, as well as links to the NAI website, which contains extensive educational content. In addition, NAI staff found that multiple evaluated member companies provided separate consumer education content outside their privacy disclosures or opt-out pages. These pages were dedicated to explaining the evaluated member's Tailored Advertising activities and provided consumers with an easy-to-locate choice mechanism.

- **Through their collective participation in the NAI, and maintenance of the NAI website to educate consumers about Tailored Advertising, as well as through their individual efforts to provide educational content for consumers, all NAI members met the education requirements of the Code.**
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Transparency and Notice

Key Requirements:

- Each member is required to provide clear, meaningful, and prominent notice on its website that describes the member's data collection, transfer, retention, and use practices for Tailored Advertising and Ad Delivery and Reporting, including any PII, Sensitive Information, Viewed Content Information, Precise Location Information, Sensor Information, and Personal Directory Information, if applicable. Members must also provide links to or instructions for Opt-Out Mechanisms, including disclosures of any Cross-Device Linking and its effect on opt-outs, as well as attestations of NAI membership and compliance with the Code.
(Code § II.B.1.)
- Members that use audience segments for Tailored Advertising that are based on health-related information or interests are required to disclose a full list of all such standard segments and a representative sample of custom segments.
(Code § II.B.2.)
- Members that use audience segments for Tailored Advertising that are based on political information or interests are required to disclose a full list of all such standard segments and a representative sample of custom segments.
(Code § II.B.3.)
- Members that have direct contracts with website, mobile app, or connected television publishers with which they engage in Tailored Advertising are required to take steps to contractually require those publishers to provide users with notice of third-party data collection and use for these purposes, the types of data collected, and a conspicuous link to or a description of how to access an Opt-Out Mechanism.
(Code § II.B.4-6.)
- Members are required to provide, or support the provision or implementation of, notice of Tailored Advertising data collection and use practices and the NAI-supported choices available to users, in or around advertisements that informed by such data.
(Code § II.B.8.)

Review Method:

- NAI staff assessed the privacy policies and other privacy-related disclosures of evaluated member companies based on the Tailored Advertising and Ad Delivery and Reporting practices described in each company's annual interview, its corporate site, responses to the annual compliance review questionnaire, business model changes, and news articles.
- NAI staff verified whether evaluated member companies' websites provided links to Opt-Out Mechanisms for the companies' Tailored Advertising across websites and mobile applications, as well as on television screens, as applicable.
- NAI staff reviewed the websites of evaluated member companies to determine if they met the obligation to provide "prominent" notice.
- NAI staff reviewed representative contractual language provided by evaluated member companies to confirm that these contracts included appropriate requirements for website and mobile app publishers to provide users with "pass-on" notice of Tailored Advertising data collection and use.
- NAI staff questioned evaluated member companies to ensure that they provide or support the provision or implementation of notice in or around ads informed by Tailored Advertising.
- NAI staff questioned evaluated member companies to determine if those companies used segments based on health-related information, and then reviewed those companies' websites to help ensure that such segments were disclosed.
- NAI staff questioned evaluated member companies to determine if those companies used segments based on political information, and then reviewed those companies' websites to help ensure that such segments were disclosed.

Findings:

- NAI staff found that all evaluated member companies provided privacy policies that described their respective Tailored Advertising and ADR practices. Evaluated member companies continued to provide thorough disclosures regarding data collection and use in mobile apps as well as clear explanations of Cross-Device Linking practices, as applicable. In twenty-six cases, NAI staff offered suggestions to make privacy disclosures clearer and easier to understand.
- NAI staff worked with member companies to provide feedback and suggestions when disclosures were not clear in given areas. Depending on their practices, evaluated member companies could each be responsible for

over thirty different disclosures, or over two thousand five hundred disclosures collectively. In one hundred and two instances where a required disclosure was missing or inadequate, NAI staff provided explanations and feedback on how to meet specific NAI requirements.

- NAI staff found that all evaluated member companies provided opt-out links for web-based Tailored Advertising, and/or instructions for opting out on mobile devices, in their privacy policies or consumer choice pages.
- NAI staff continued to observe improvements from prior years in evaluated member companies' disclosures of data collection and use on televisions, as well as in the provision of instructions for opting out on television sets and on connected devices.
- NAI staff found that nearly all evaluated member companies provided easy-to-find links to their privacy disclosures in the footer or header of the homepage of their websites, and that nearly all evaluated member companies provided separate and distinct links, directly on the home pages of their sites, pointing to opt-out instructions for users. In three cases where such links were more difficult to find, it was typically the result of website redesigns, and other privacy-related links were often available.
- NAI staff found that most evaluated member companies complied with the requirement to provide disclosures of any standard health-related audience segments in a variety of formats. Some member companies provided disclosures of all standard audience segments, regardless of topic, while some instead provided preference managers or other tools that not only allowed users to view available segments but also enabled granular control for those consumers who wished (or did not wish) to receive targeted ads on specific topics. Many other companies provided these disclosures through links from the privacy or marketing sections of their sites. In some cases, NAI staff asked evaluated member companies to add or update health disclosures.
- NAI staff found that nearly all evaluated member companies using political segments complied with Transparency and Notice

Key Requirements:

- Each member is required to provide clear, meaningful, and prominent notice on its website that describes the member's data collection, transfer, retention, and use practices for Tailored Advertising and Ad Delivery and Reporting, including any PII, Sensitive Information, Viewed Content Information, Precise Location Information, Sensor Information, and Personal Directory Information, if applicable. Members must also provide links to or instructions for Opt-Out Mechanisms, including disclosures of any Cross-Device Linking and its effect on opt-outs, as well as attestations of NAI membership and compliance with the Code.
(Code § II.B.1.)

- Members that use audience segments for Tailored Advertising that are based on health-related information or interests are required to disclose a full list of all such standard segments and a representative sample of custom segments. (Code § II.B.2.)
- Members that use audience segments for Tailored Advertising that are based on political information or interests are required to disclose a full list of all such standard segments and a representative sample of custom segments. (Code § II.B.3.)
- Members that have direct contracts with website, mobile app, or connected television publishers with which they engage in Tailored Advertising are required to take steps to contractually require those publishers to provide users with notice of third-party data collection and use for these purposes, the types of data collected, and a conspicuous link to or a description of how to access an Opt-Out Mechanism. (Code § II.B.4-6.)
- Members are required to provide, or support the provision or implementation of, notice of Tailored Advertising data collection and use practices and the NAI-supported choices available to users, in or around advertisements that informed by such data. (Code § II.B.8.)

Review Method:

- NAI staff assessed the privacy policies and other privacy-related disclosures of evaluated member companies based on the Tailored Advertising and Ad Delivery and Reporting practices described in each company's annual interview, its corporate site, responses to the annual compliance review questionnaire, business model changes, and news articles.
- NAI staff verified whether evaluated member companies' websites provided links to Opt-Out Mechanisms for the companies' Tailored Advertising across websites and mobile applications, as well as on television screens, as applicable.
- NAI staff reviewed the websites of evaluated member companies to determine if they met the obligation to provide "prominent" notice.
- NAI staff reviewed representative contractual language provided by evaluated member companies to confirm that these contracts included appropriate requirements for website and mobile app publishers to provide users with "pass-on" notice of Tailored Advertising data collection and use.
- NAI staff questioned evaluated member companies to ensure that they provide or support the provision or implementation of notice in or around ads informed by Tailored Advertising.
- NAI staff questioned evaluated member companies to determine if those

companies used segments based on health-related information, and then reviewed those companies' websites to help ensure that such segments were disclosed.

- NAI staff questioned evaluated member companies to determine if those companies used segments based on political information, and then reviewed those companies' websites to help ensure that such segments were disclosed.

Findings:

- NAI staff found that all evaluated member companies provided privacy policies that described their respective Tailored Advertising and ADR practices. Evaluated member companies continued to provide thorough disclosures regarding data collection and use in mobile apps as well as clear explanations of Cross-Device Linking practices, as applicable. In twenty-six cases, NAI staff offered suggestions to make privacy disclosures clearer and easier to understand.
- NAI staff worked with member companies to provide feedback and suggestions when disclosures were not clear in given areas. Depending on their practices, evaluated member companies could each be responsible for over thirty different disclosures, or over two thousand five hundred disclosures collectively. In one hundred and two instances where a required disclosure was missing or inadequate, NAI staff provided explanations and feedback on how to meet specific NAI requirements.
- NAI staff found that all evaluated member companies provided opt-out links for web-based Tailored Advertising, and/or instructions for opting out on mobile devices, in their privacy policies or consumer choice pages.
- NAI staff continued to observe improvements from prior years in evaluated member companies' disclosures of data collection and use on televisions, as well as in the provision of instructions for opting out on television sets and on connected devices.
- NAI staff found that nearly all evaluated member companies provided easy-to-find links to their privacy disclosures in the footer or header of the homepage of their websites, and that nearly all evaluated member companies provided separate and distinct links, directly on the home pages of their sites, pointing to opt-out instructions for users. In three cases where such links were more difficult to find, it was typically the result of website redesigns, and other privacy-related links were often available.
- NAI staff found that most evaluated member companies complied with the requirement to provide disclosures of any standard health-related audience

segments in a variety of formats. Some member companies provided disclosures of all standard audience segments, regardless of topic, while some instead provided preference managers or other tools that not only allowed users to view available segments but also enabled granular control for those consumers who wished (or did not wish) to receive targeted ads on specific topics. Many other companies provided these disclosures through links from the privacy or marketing sections of their sites. In some cases, NAI staff asked evaluated member companies to add or update health disclosures.

- NAI staff found that nearly all evaluated member companies using political segments complied with the requirement to provide disclosures of any standard political segments in a variety of formats. One evaluated member company worked with NAI staff to add such disclosures.
- A review of evaluated member companies' representative partner contracts indicates that these companies included appropriate contractual requirements regarding user notice and choice, when possible, while working directly with website and application publishers. In some cases, NAI staff asked evaluated member companies to add additional requirements to partner contracts.
- NAI staff found that many evaluated member companies conduct due diligence on websites and applications where they sought to conduct Tailored Advertising activities, when initiating a relationship with those partners. Some evaluated member companies trained their sales teams to evaluate notice when onboarding new partners, and some member companies did not do business with partners unwilling to include the requested notice. Many evaluated member companies also perform random follow-up checks of their partners. In rare instances NAI staff asked an evaluated member company to engage in additional due diligence when vetting partners.
- All evaluated member companies provided real-time notice and choice to consumers in and around the ads delivered to them by serving a form of enhanced notice, such as the YourAdChoices icon. Those evaluated member companies that offer technology platforms, and only facilitate the collection and use of data by their clients for Tailored Advertising, provided their clients with the ability to include this notice on their advertisements through their own platform settings.

User Control

Key Requirements:

- The level of choice that members must provide is commensurate with the sensitivity and intended use of the data. This includes: (a) provision of an Opt-Out Mechanism for the use of Device Identifying Information (DII) for Tailored Advertising (b); robust notice for the merger of PII with DII to be collected on a going forward basis for Tailored Advertising (c); obtaining a user's Opt-In Consent for the merger of PII with previously collected DII for Tailored Advertising (d); obtaining a user's Opt-In Consent for the use of Precise Location Information, Sensitive Information, Sensor Information, or Personal Directory Information for Tailored Advertising and Ad Delivery and Reporting; and (e); obtaining a user's Opt-In Consent for the collection of all or substantially all Viewed Content Information from a television for Viewed Content Advertising. The Code commentary clarifies that when relying on platform controls for consent, such as when a user consents to location data sharing on their mobile device, NAI members must take steps to ensure the user is prominently notified about the sharing of the data and its use for advertising, before or during the consent process.
(Code § II.C.1.)
- An Opt-Out Mechanism for a member's web-based Tailored Advertising shall be made available on both the member's website and on the NAI website.
(Code § II.C.2.)
- Members engaging in Audience-Matched Advertising must provide an Opt-Out Mechanism linked to the PII or hashed PII used for such matching. The enforcement of this provision began on July 1, 2021, following a delay to allow for additional time for technical development.
(Code § II.C.3.) (New for 2021)
- While a browser or device is opted out of Tailored Advertising by a member, that member shall cease data collection on the opted-out device for Tailored Advertising use on any other browser or device associated through Cross-Device Linking, and shall cease Tailored Advertising on the opted-out device using data collected on any other browser or device associated through Cross-Device Linking.
(Code § II.C.4.)
- The technologies that members use for Tailored Advertising purposes shall provide users with an appropriate degree of transparency and control.
(Code § II.C.6.)

Review Method:

- Throughout the year, NAI staff monitored evaluated member company Opt-Out Mechanisms present on the NAI website to help ensure that these mechanisms functioned correctly.
- NAI staff performed in-depth manual reviews of evaluated member company Opt-Out Mechanisms present on the NAI website and the member company's own website to help ensure that these mechanisms functioned correctly, including a review of the expiration dates of opt-out cookies, cookie values and names, and any discrepancies between functionality on the NAI website and the evaluated member companies' websites.
- NAI staff reviewed the instructions provided by members for opting out of Cross-App Advertising, including through platform-provided choice mechanisms.
- NAI staff reviewed the instructions provided by members for opting out of Viewed-Content Advertising, including through platform-provided choice mechanisms.
- In those instances where evaluated member companies engaged in Cross-Device Linking, NAI staff confirmed with the member companies that opt-outs met NAI Code requirements and the effect of opt-outs on Cross-Device Linking was explained to users.
- NAI staff reviewed detailed questionnaires, required of all evaluated member companies, regarding the functionality of their Opt-Out Mechanisms, the technologies used for Tailored Advertising, and the purposes for any unique identifiers existing after an opt out.
- In those instances where an evaluated member company engaged in activities that required the provision of robust notice or obtaining a user's Opt-In Consent, NAI staff reviewed such notice and consent mechanisms to help ensure their adequacy under the Code.
- In instances where evaluated member companies collected Precise Location Information, NAI staff reviewed the just-in-time notice procedures required to obtain consent for the collection of Precise Location Information.
- NAI staff worked with evaluated member companies engaged in Audience-Matched Advertising to ensure they understood the NAI's requirements for user choice, and finalized the functionality and specifications of the NAI's Audience-Matched Advertising Opt-Out Mechanism. For member companies reviewed after the compliance deadline of July 1, 2021, NAI staff worked to ensure member companies engaged in Audience-Matched Advertising were integrated with the Opt-Out Mechanism.

Findings:

- All members engaged in web-based Tailored Advertising provided access to Opt-Out Mechanisms on both their own websites and the NAI industry opt-out tool. NAI testing indicated that these opt-outs functioned correctly. In the rare instances where NAI staff discovered glitches or malfunctioning links, these were addressed by affected member companies within a reasonable timeframe, typically in less than a week. In all such cases, NAI staff determined that the malfunction was unintentional, appeared in limited locations and/or for a limited time period, and did not affect a significant number of users. As detailed further in this report, in one instance an NAI investigation uncovered an extended opt-out failure by one evaluated member company, which has since been remedied. See discussion below in Investigations and Sanctions.
- NAI staff found that any cookies used by NAI members after an opt out were used only to maintain the user's opt-out status or for Ad Delivery and Reporting, as permitted by the Code. Staff also found that all opt-out cookies were set to expire at least five years in the future, and often many years beyond that.
- NAI staff confirmed with all evaluated member companies engaged in Cross-Device Linking that they provided opt-outs that met NAI requirements for disassociating the opted-out device from other devices for Tailored Advertising purposes, and that these member companies provided disclosures explaining the opt-out's effect on Cross-Device Linking.
- NAI staff found that all evaluated member companies engaged in Cross-App Advertising provided an easy-to-use consumer choice mechanism based on device platform controls. Staff found that the majority of evaluated member companies provided clear disclosures around such mechanisms, often pointing to the NAI's own detailed instructions for users who wish to enable privacy controls on their mobile devices. In six instances where evaluated member companies' disclosures could have provided additional clarity in this area, staff provided guidance on industry best practices, for example by including more detailed instructions on where in their device's settings users can find the relevant privacy controls, or links to more detailed or pictographic descriptions.
- NAI staff found that all evaluated member companies collecting all, or substantially all, Viewed Content Information for Viewed-Content Advertising, obtained Opt-In Consent from consumers.
- In 2019 the NAI issued a warning to members regarding inconsistency in disclosures about the Consumer Choice Mechanisms available on connected televisions and streaming devices, and NAI staff observed significant improvement in those member companies' instructions for choice mechanisms on televisions and connected devices, often pointing to the NAI's own

instructions for users who wish to enable privacy controls on their televisions and other devices.

- NAI staff observed a large increase in the availability of ad impressions on televisions and connected devices that do not leverage Viewed Content Information but may include other types of information such as IP address. The rapid adoption of these products led to many evaluated member companies entering the connected television space for the first time, and for member companies previously working in this space to develop new products. NAI staff found that among many evaluated member companies disclosures of these practices were inconsistent or incomplete, particularly with respect to the availability of Opt-Out Mechanisms. The NAI clarified for all member companies what their obligations are under the Code as new addressability methods are explored together with new content delivery technologies. The NAI informed all members that disclosures and consumer choice mechanisms in the connected television space will be a key focus during compliance reviews in 2022.
- NAI staff found that all evaluated member companies engaged in the collection and use of Precise Location Information for Tailored Advertising obtained Opt-In Consent through device platform consent mechanisms. NAI staff also found that all evaluated member companies were aware of the changes to the NAI Code regarding the need for just-in-time notice of third-party data collection and use for advertising when obtaining consent through platform controls, and were taking steps to help ensure that additional notice is provided at the time of consent. In thirteen cases, NAI staff worked with evaluated member companies to help bolster these efforts with partners through contractual language and other means.
- NAI staff found that very few evaluated member companies collected PII for Tailored Advertising or merged such data with DII collected for Tailored Advertising. Where members did engage in these practices, NAI staff confirmed that all those evaluated member companies provided robust notice and obtained Opt-In Consent.
- NAI staff found that no evaluated member companies engaged in the use of Sensitive Information for Tailored Advertising, and thus did not evaluate any Opt-In Consent mechanisms used for such data collection.
- NAI staff found that no NAI members engaged in the collection of Personal Directory Information for Tailored Advertising purposes, and thus did not evaluate any Opt-In Consent mechanisms used for such data collection.
- NAI staff found that no NAI members engaged in the collection of Sensor Information for Tailored Advertising purposes, and thus did not evaluate any Opt-In Consent mechanisms used for such data collection.

- NAI staff found that evaluated member companies reporting the use of Non-Cookie Technologies for web-based Tailored Advertising provided adequate disclosures around this topic and were integrated with the NAI's Opt-Out Mechanism for the use of Non-Cookie Technologies.
- NAI staff found that all evaluated member companies engaged in Audience-Matched Advertising and processing hashed email addresses were successfully integrated with the NAI's email-based Audience-Matched Advertising Opt-Out Mechanism.

Use Limitations

Key Requirements:

- Members shall obtain verifiable parental consent for the creation of Tailored Advertising segments specifically targeting children under sixteen years of age.
(Code § II.D.1.)
- Members shall not use, or allow the use of, data collected through Tailored Advertising or ADR for the purpose of determining or making any non-marketing eligibility decisions, including those regarding employment, credit, health care, insurance, tenancy, and education.
(Code § II.D.2.)

Review Method:

- NAI staff reviewed detailed questionnaires, required of all evaluated member companies, and interviewed members, regarding Tailored Advertising segments specifically targeting children under sixteen years of age, ensuring to highlight that the NAI age threshold for children had increased from thirteen to sixteen years.
- NAI staff reviewed detailed questionnaires, required of all evaluated member companies, and interviewed members regarding the use of data for eligibility decisions.

Findings:

- All evaluated member companies indicated awareness of the sensitivity of data related to children for Tailored Advertising, and all confirmed that they do not target children under sixteen.
- All evaluated member companies indicated awareness of the sensitivity of the use of data for eligibility decisions, and all confirmed that they do not use, or allow the use of, data for such purposes.

Transfer Restrictions

Key Requirements:

- Members shall require any unaffiliated parties to which they provide PII for Tailored Advertising and ADR purposes, adhere to the provisions of the Code concerning PII.
(Code § II.E.1.)
- Members shall require all parties to which they provide DII collected through Tailored Advertising and ADR, not attempt to merge such DII with PII held by the receiving party or to otherwise re-identify the individual for Tailored Advertising purposes without obtaining the individual's Opt-In Consent.
(Code § II.E.2.)

Review Method:

- NAI staff reviewed detailed questionnaires required of all evaluated member companies, and interviewed members regarding the transfer restrictions in place when members share data with third parties.

Findings:

- All evaluated member companies indicated awareness of the restrictions that must be placed on data transferred to third parties, and all attested that they place such restrictions on data transfers either explicitly or implicitly.

Data Access, Quality, Security, and Retention

Key Requirements:

- Members retaining PII for Tailored Advertising shall provide users with reasonable access to that PII and other information that is associated with the PII, retained by the member for Tailored Advertising purposes.
(Code § II.F.1.)
- Members shall conduct appropriate due diligence to help ensure they obtain data used for Tailored Advertising from responsible sources that provide users with appropriate levels of notice and choice.
(Code § II.F.2.)
- Members that collect, transfer, or store data for use in Tailored Advertising and ADR purposes shall provide reasonable security for that data.
(Code § II.F.3.)

- Members shall retain DII and PII collected for use in Tailored Advertising and ADR only as long as necessary to fulfill a legitimate business need, or as required by law.
(Code § II.F.4.)

Review Method:

- NAI staff reviewed detailed questionnaires, required of all evaluated member companies, and interviewed members, to determine which companies may collect PII for Tailored Advertising purposes, and then reviewed those companies' websites to confirm that these companies provided users with reasonable access to that PII and other information associated with the PII.
- NAI staff reviewed detailed questionnaires, required of all evaluated member companies, and interviewed members to help confirm that all evaluated member companies understand the importance of choosing responsible sources of data, and that NAI members take this responsibility seriously.
- NAI staff reviewed detailed questionnaires, required of all evaluated member companies, to help confirm that all evaluated member companies provide reasonable security for data collected for Tailored Advertising and ADR purposes.
- NAI staff reviewed detailed questionnaires, required of all evaluated member companies, and interviewed members to help confirm that all evaluated member companies retain data only so long as a legitimate business need exists, and that each evaluated member company's disclosures reflect such finite retention periods accurately. In the case of cookie-based data collection, NAI staff manually examined the expiration dates of evaluated member companies' cookies and posed additional questions when those cookies' lifespans exceeded the stated retention periods. NAI staff also used this opportunity to encourage members to reduce their data retention periods where possible.

Findings:

- NAI staff found that the vast majority of evaluated member companies did not engage in the collection or use of PII for Tailored Advertising purposes, but in those instances where it was applicable, evaluated member companies to make sure they provided the required consumer choice for such data and user access to this data through consumer-facing portals.
- Most evaluated member companies reported conducting due diligence on data sources to help ensure their responsible practices, particularly when those partners were not members of the NAI and thus could not be counted on to have undergone the same compliance review. In those instances where evaluated member companies could improve their due diligence programs,

NAI staff explained the Code requirement and provided best practices for ensuring that data comes only from responsible sources.

- All evaluated member companies attested that they complied with the obligation to reasonably secure data. There were no publicly reported data breaches regarding Tailored Advertising data by evaluated member companies during the 2021 compliance review period.
- All evaluated member companies confirmed their data retention policies, and explained the legitimate business uses for their respective retention periods, which were typically also stated in the members' privacy disclosures. In those instances where evaluated member companies utilized rolling retention periods that update each time a browser is encountered, NAI staff provided guidance to help clarify relevant disclosures. In several instances, NAI staff asked evaluated member companies to improve, clarify, or expand retention disclosures.

Accountability

Key Requirements:

- Members should designate at least one individual with responsibility for the managing of the member's compliance with the Code and to provide training to relevant individuals within the company.
(Code § III.A.2.)
- Members shall publicly and explicitly disclose their membership in the NAI and their adherence to the NAI Code.
(Code § III.A.3.)
- Members shall provide a mechanism through which users can submit questions or concerns about the company's collection and use of data for Tailored Advertising and shall make reasonable efforts, in a timely manner, to respond to and resolve questions and concerns that implicate the company's compliance with the Code.
(Code § III.C.1.)

Review Method:

- NAI staff spoke with at least one individual at each evaluated member company to ensure that such an individual was designated by the company with responsibility for the managing of the member's compliance with the Code and providing training to relevant individuals within the company.
- NAI staff reviewed each evaluated member company's disclosures to ensure that every member company publicly and explicitly disclosed its membership in the NAI and its adherence to the Code.

- NAI staff verified that all evaluated member companies provided a mechanism through which users could submit questions or concerns by sending consumer queries to gauge the member's responsiveness and timeliness of such responses.

Findings:

- At least one individual at each evaluated member company, who filled out the annual compliance questionnaire and spoke with NAI staff during the company's compliance interview, confirmed they were designated by the company with responsibility for the managing of the member's compliance with the Code and providing training to relevant individuals within the company.
- Most evaluated member companies met the requirement to publicly disclose their membership in the NAI and compliance with the Code. In six instances evaluated member company disclosures were unclear about NAI membership and adherence to the NAI Code, for example referencing an older version of the Code or omitting a reference to such adherence. Those members worked with NAI staff to improve their disclosures.
- NAI staff noted that 73% of members responded to pseudonymous consumer queries in a timely and informative manner after the first round, and 92% of members did so after a second attempt. In instances where member companies did not respond to the NAI's consumer queries, typically due to junk mail filtering, the NAI worked with affected member companies to address internal procedures related to the consumer contact mechanism.

Investigations and Sanctions

Overview:

A thorough initial qualification process, coupled with the annual compliance assessment process to flag and address issues quickly and the availability of strong sanctions¹⁹ should members fail to comply, combine to form the keystone of the NAI self-regulatory program. The NAI also firmly believes that identifying problems early and giving member companies an opportunity to resolve minor issues related to the Code allows members to be more candid during compliance reviews and enables them to address these potential issues before they can affect the broader population. This approach fosters an environment of mutual trust between the NAI and its members, and ultimately results in enhanced privacy protection for consumers as members become more open about potential shortcomings and more willing to participate in self-regulatory efforts.

That said, NAI staff investigates private and public allegations of noncompliance. In the event that NAI staff find, during any of the compliance processes, that a member company may have materially violated the Code, the matter may be referred to the Compliance Committee of the Board of Directors with a recommendation for sanctions. Should the Committee determine that a member has materially violated the Code, the full NAI Board of Directors may impose sanctions, including suspension or revocation of membership. The NAI may ultimately refer the matter to the FTC if a member company refuses to comply. The NAI may also publicly name a company in this compliance report, and or elsewhere as needed, when the NAI determines that the member materially violated the Code or engaged in willful noncompliance.

Investigations:

NAI staff conducted two investigations of potential material violations of the Code during the 2021 compliance review period.

Investigation 1

The first NAI investigation resulted from NAI staff testing the functionality of various Opt-Out Mechanisms provided by member companies on their own websites and on the NAI website. NAI staff found that an evaluated member company that engaged in web-based Tailored Advertising experienced problems in setting persistent, generic, opt-out cookies. These cookies were being set as session cookies, expiring when the browser is closed. This potentially affected the member's ability to comply with the Code's requirement of an Opt-Out Mechanism for Tailored Advertising.²⁰

Further investigation revealed that the issues were caused by a change to a major web browser and the way it handled cookies from external domains. This meant that the evaluated member company was attempting to set persistent and generic opt-out cookies that expired at least five years in the future, but that the browser was deleting the cookies or changing their status to expire at the end of the session.

As the evaluated member company was undergoing restructuring and multiple staffing changes, the company was unable to remedy the situation for an extended period. This resulted in the company's removal from the NAI Opt-Out Mechanism for a period of seven months.

NAI staff determined that the problem was inadvertent, affected only users of specific versions of the browser in question, and appeared to equally affect the company's Tailored Advertising technologies, preventing the company from setting persistent tracking cookies and limiting its impact until it was resolved.

Investigation 2

The second NAI compliance investigation stemmed from an article in an online publication, alleging that an NAI member company engaged in methods of sharing Precise Location Information with third parties that permitted the re-identification of consumers. Such allegations brought into question multiple NAI Code provisions with respect to transfer restrictions, re-identification, and the merger of DII and PII.

The NAI's investigation indicated that the article contained a number of inaccuracies and was factually incorrect in the basic allegation that any user-level Precise Location Information was shared by the member company with third parties. The member company's representatives attested that the company did not share or otherwise disclose any user-level Precise Location Information, and that when sharing aggregate information based on data from multiple devices, the company did not permit or facilitate the re-identification of individuals. These responses were consistent with NAI's staff's understanding of the company's products and industry practices.

Based on these attestations, NAI staff determined that no violation of the Code took place, and that sanctions would not have been appropriate.

Summary:

The NAI's approach to compliance helps give NAI staff the access to be able to spot potential Code violations, and for member companies to remedy those issues while reserving sanctions primarily for instances in which member companies are unwilling to make requested changes or fail to cooperate with NAI staff. This accountability and oversight are a foundation on which the digital advertising ecosystem can build for the future.

Based on its historical approach to noncompliance, typically caused by misunderstandings, staffing changes at member companies, or technical glitches, NAI staff worked with members to identify and resolve issues before they could become material violations of the Code.

Summary of Findings

2021 brought change to the digital advertising industry, from the continuing disruptions to daily life and work caused by the global COVID-19 pandemic, to the shift in addressability methods precipitated by changes to browsers and mobile operating systems, and the development of new consumer choice mechanisms to address upcoming state legislative requirements. NAI staff were reassured to find that evaluated member companies continued their

strong record of compliance with the Code, in spite of the financial and staffing challenges many companies faced.

Overall, NAI staff observed compliance from nearly all evaluated member companies, including the presence of new disclosures required as of 2020, the launch of the NAI Opt-Out Mechanism for Audience-Matched Advertising, and further proliferation of just-in-time notice for the collection of Precise Location Information. Evaluated member companies demonstrated that they remain vigorously committed to the NAI's self-regulatory framework. Representatives from evaluated member companies welcomed feedback and best-practice suggestions from NAI staff, signaling their commitment to providing and building a top-notch privacy protection program in the midst of economic, regulatory, and technological uncertainty.



CONCLUSION

This report readily demonstrates the key role of the NAI's Code and self-regulatory process in promoting consumer privacy in the digital advertising industry, particularly as the digital media ecosystem faces change through technology and legislation. Through the years, the NAI continues to update its Code and guidance to keep pace with technological developments and changing norms, culminating most recently in the publication of the 2020 NAI Code of Conduct. That Code greatly expanded the scope of the NAI's compliance program and provided many new privacy protections for users in the realm of device sensors, location data, sensitive data, and offline data use for digital advertising. As this year's compliance review demonstrated, member companies are working hard to ensure compliance with existing and new requirements, but already new technologies, products, and addressability methods have been introduced which require analysis and self-regulatory guidance, and the NAI is deeply involved in these efforts.

In 2021 the NAI evaluated 86 member companies, while separately reviewing five additional companies who were accepted as new members during the year. Through this review, NAI staff closely monitored the digital advertising ecosystem, staying current with the latest developments and challenges, which translated directly into review priorities for 2022. The feedback loop of drafting policies to preserve and enhance consumer privacy in the digital advertising ecosystem, while conducting annual reviews of the companies that compose a significant portion of this market, allows the NAI to not only identify the most pressing and timely issues and challenges, but also to address them in a swift and effective manner.

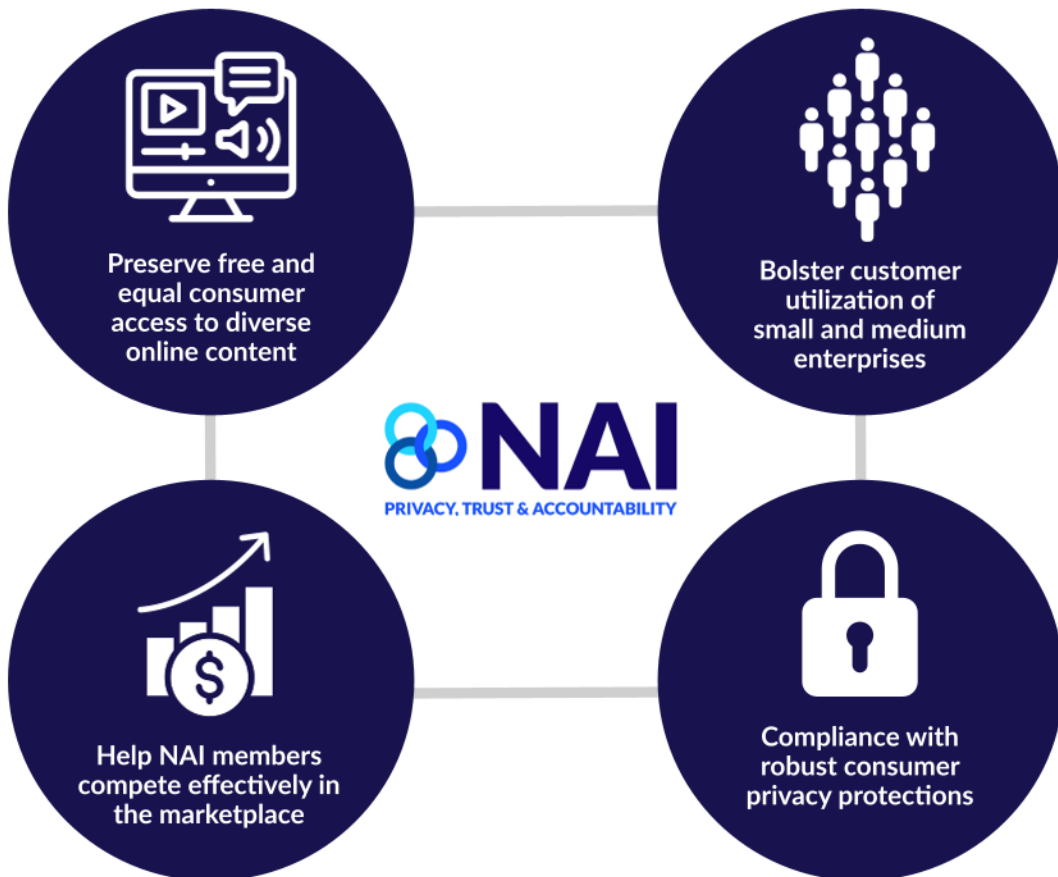
Recognizing this seminal moment in which legislative, regulatory, and technological developments are reshaping the digital economy, the NAI has devoted its resources to provide the same thought leadership and industry consensus that it has become known for. To that end, the NAI has increased its public policy efforts, and is hosting numerous working groups to help develop new and enhanced self-regulatory standards.

One of these challenges includes the rapidly developing ecosystem of digital advertising on connected televisions and over-the-top (CTV/OTT) streaming devices such as streaming sticks, gaming consoles, and smart speakers, where the NAI is evaluating how to bring consistency and clarity to disparate platforms and identifiers, and how members may in Tailored Advertising on these devices in a privacy-first manner.

Another area of focus for the NAI is to provide improved consumer choice and transparency for shared addressability solutions, which have arisen in response to changes in browsers and operating systems. The NAI's efforts would allow publishers and advertisers to pseudonymously distinguish the same consumers in a privacy-protective and transparent way, subject to consumer choice.

The NAI is participating in a number of industry initiatives with fellow trade associations and self-regulatory bodies with the goal of coalescing the digital advertising industry around technical standards and privacy-protective regulatory measures that meet or surpass emerging legal requirements, while allowing for Tailored Advertising to adapt to new addressability standards in web browsers, on mobile operating systems, and the multitude of connected television platforms.

At a time when the existence of targeted marketing and digital advertising is being questioned and reconsidered globally, it is even more important for self-regulatory efforts to clearly demonstrate that a thoughtful, nimble, and flexible self-regulatory approach can provide robust consumer privacy protection by rapidly adapting to changes in digital advertising technology, and the Internet economy more broadly. Perhaps most importantly, the NAI’s approach aims to preserve free and equal consumer access to a bounty of diverse content online; to bolster the US economy by making it possible for small and medium enterprises to find customers for their products and services; and to help its own members, many of whom are small and medium enterprises themselves, to compete effectively in the marketplace.





ENDNOTES

- ¹ Unless noted otherwise, all references to the NAI Code refer to the 2020 NAI Code of Conduct, which can be found at: <https://www.networkadvertising.org/sites/default/files/naicode2020.pdf>.
- ² The Code defines Tailored Advertising as “the use of previously collected data about an individual, browser, or device to tailor advertising across unaffiliated web domains or applications, or on devices, based on attributes, preferences, interests, or intent linked to or inferred about that user, browser, or device” (Code § I.Q.).
- ³ The Code imposes requirements with respect to Ad Delivery & Reporting, (ADR). ADR is defined in the Code as “the collection or use of data about a browser or device for the purpose of delivering ads or providing advertising-related services, including, but not limited to: providing a specific advertisement based on a particular type of browser, device, or time of day; statistical reporting, traffic analysis, analytics, optimization of ad placement; ad performance, reach, and frequency metrics (e.g., frequency capping); security and fraud prevention; billing; and logging the number and type of ads served on a particular day to a particular website, application, or device” (Code § I.A.).
- ⁴ Since 2015 the NAI has formally applied the Code’s IBA requirements to the practice of Retargeting, defined as “the practice of collecting data about a browser’s or device’s activity in one unaffiliated web domain or application, or the use of such data, for the purpose of customizing an advertisement based on that data in a different, unaffiliated web domain or application, or a separate covered device” (Code § I.M.).
- ⁵ IBA is defined in the Code as “the collection of data across web domains owned or operated by different entities, or the use of such data, for the purpose of tailoring advertising based on preferences or interests known or inferred from the data collected” (Code § I.G.).
- ⁶ The Code defines CAA as “the collection of data across applications owned or operated by different entities on a particular device, or the use of such data, for the purpose of tailoring advertising based on preferences or interests known or inferred from the data collected” (Code § I.C.).
- ⁷ The Code defines Viewed Content Advertising as “the collection of Viewed Content Information, or the use of such data for the purpose of tailoring advertising based on preferences or interests known or inferred from the data collected” (Code § I.R.). Viewed Content Information is “data about the video content viewed on a television” (Code § I.S.).
- ⁸ The Code defines Audience-Matched Advertising (AMA) as “the practice of using data linked, or previously linked, to Personally-Identified Information (PII) for the purpose of tailoring advertising on one or more unaffiliated web domains or applications, or on devices, based on preferences or interests known or inferred from such data” (Code § I.B.).
- ⁹ Johnson, Garrett and Shriver, Scott and Du, Shaoyin, Consumer Privacy Choice in Online Advertising: Who Optes Out and at What Cost to Industry? (June 19, 2019). Simon Business School Working Paper No. FR 17-19, Available at <http://dx.doi.org/10.2139/ssrn.3020503>.
- ¹⁰ More information on the Privacy for America Coalition can be found at: www.privacyforamerica.com.
- ¹¹ Preliminary Comments on Proposed Rulemaking Under the California Privacy Rights Act, Network Advertising Initiative (Nov. 9, 2021), <https://thenai.org/preliminary-comments-on-proposed-rulemaking-under-the-california-privacy-rights-act>.
- ¹² Opt-Out Mechanism is defined under the Code as “an easy-to-use mechanism by which users may exercise choice to disallow Tailored Advertising with respect to a particular identifier, browser, or device” (Code § I.I.).
- ¹³ The NAI urges applicants and member companies to consult with their own technology and legal experts when reviewing the privacy implications of products and business plans.
- ¹⁴ The following five companies completed the new member application process and became NAI members in 2021: Arity, Emodo, Inmobi, PulsePoint, and UNTU.

¹⁵ The following companies were NAI members on January 1, 2021 but were not among evaluated member companies in 2021:

- a. SafeGraph and Skyhook were no longer engaged in Tailored Advertising activities in the United States. These companies terminated their NAI memberships in 2021.
- b. Fysical ceased operations in 2021.
- c. Conversant, Parrable, Reveal Mobile, and Signal terminated their NAI memberships in 2021.

¹⁶ See *supra*, note 14.

¹⁷ NAI staff makes an effort to review its newest member companies early during the subsequent annual review, in order to minimize the time between a member's initial membership application review and its first annual compliance review.

¹⁸ If a member has an agreement with a partner to collect data on the partner's site or app for Tailored Advertising purposes, the member is obligated to require through its contractual provisions that the partner provide notice to the user and a link to an Opt-Out Mechanism (Code §§ II.B.4-5.). This requirement is discussed more fully below.

¹⁹ More information about the NAI's Sanctions and Enforcement Procedures can be found at: <https://thenai.org/accountability/compliance/>.