

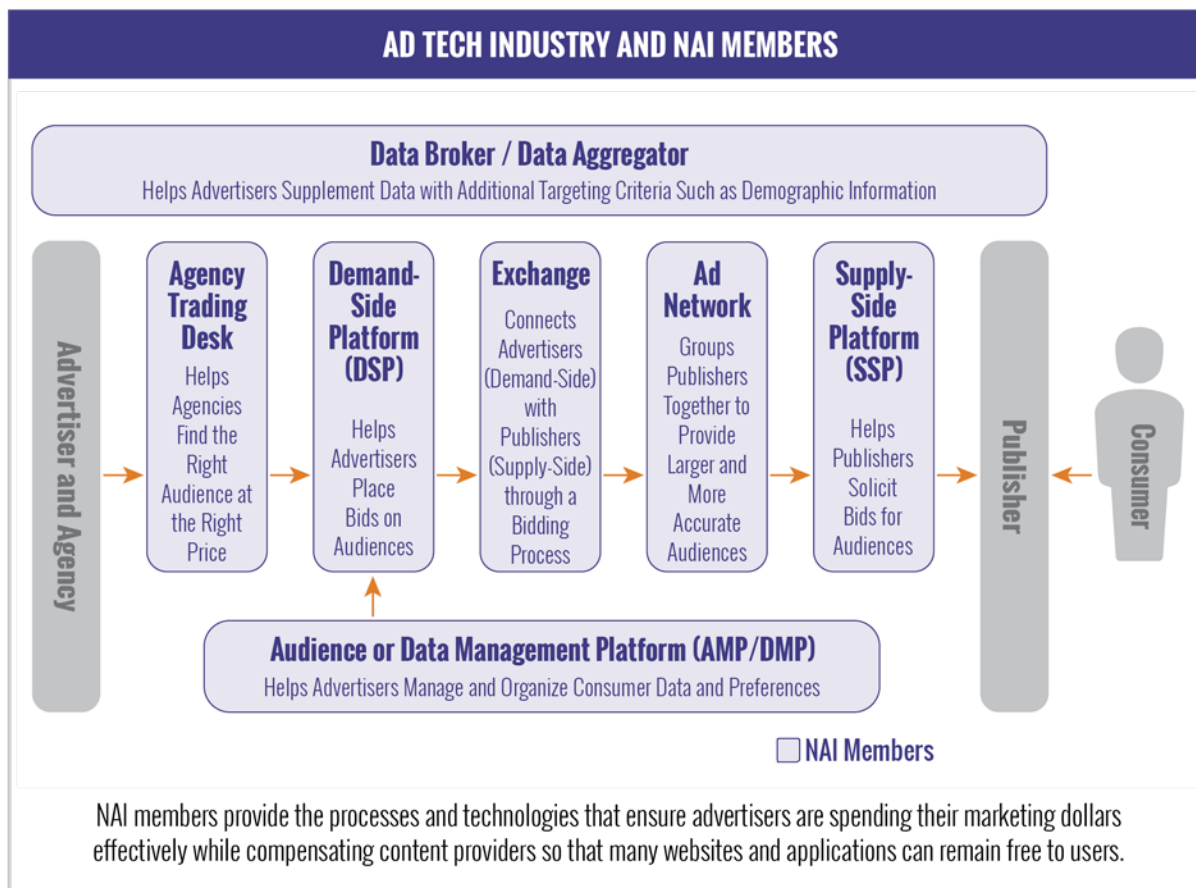
2019 ANNUAL REPORT

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INTRODUCTION

Since 2000, the Network Advertising Initiative (NAI) has been a leading self-regulatory body governing “third parties” engaged in Interest-Based Advertising (IBA)¹ and Ad Delivery and Reporting (ADR)² in the United States, based on its Code of Conduct.³ In 2016 the NAI also began regulating Cross-App Advertising (CAA)⁴ by enforcing its Mobile Application Code. The Mobile Application Code was incorporated into the 2018 NAI Code of Conduct (Code) which covers both web-based and mobile application-based data collection and use for digital advertising purposes. This edition of the Code also created a new term, Personalized Advertising, to collectively encompass IBA, CAA, and Retargeting.⁵ At the time of this publication, the NAI has 100 member companies. These NAI members include a wide range of businesses such as ad networks, exchanges, platforms,⁶ data aggregators, and other technology providers. Across websites, mobile applications, and connected television screens, these intermediaries form the backbone of the digital advertising ecosystem – helping advertisers reach audiences most likely to be interested in their products and services while allowing consumers to receive ads that are relevant to their interests. **This relevant advertising, in turn, continues to power free or discounted content and services in the digital ecosystem, including websites, mobile applications, and connected televisions.**⁷



Member companies work together with NAI staff to help craft stringent yet practical guidelines for data collection and use in connection with Personalized Advertising and ADR. This process also results in regular updates to NAI Code and Guidance documents to keep pace with evolving technologies and digital advertising business models. **Ultimately, the goal of the NAI is to maintain consumer trust by protecting consumer privacy while enabling member companies to provide a relevant digital advertising experience.** The NAI helps its members foster this trust through a comprehensive self-regulatory program that includes the Code and NAI Guidance, backed by robust compliance, enforcement, and sanctions.

During the 2019 compliance period, NAI staff reviewed eligible members’ compliance with the Code. This report provides a summary of the NAI’s work in 2019 as well as staff’s findings from the 2019 compliance review. This report is intended to provide consumers, regulators and others with visibility into the NAI’s compliance program and self-regulatory process. In addition, this report helps illustrate how the compliance process shapes the evolution and goals of the NAI’s policies and procedures. Ensuring that the NAI continues to offer a vibrant self-regulatory program that responds to new issues and technologies in a practical way that continues to be highly relevant amidst marketplace changes.

2019: 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 for the following year, and for 2019 the NAI pledged to: (1) publish a thoroughly revised 2020 Code of Conduct; (2) educate members about the many new requirements in the 2020 NAI Code of Conduct; (3) publish new Guidance relating to significantly more robust user notice for the collection of Precise Location Information and all other data requiring Opt-In Consent; (4) commence enforcement of the NAI's Connected TV Guidance;⁸ and (5) further expand public policy efforts and outreach on a state and federal level.

In 2019, 10 new member companies were approved by the NAI Board of Directors.

The NAI published the 2020 NAI Code of Conduct⁹ in May 2019, and began enforcing its new requirements on January 1, 2020. While the 2018 Code was the basis for the 2019 Compliance Review, and for this compliance report, the 2020 Code encompasses new business models and marketing strategies, including the use of “offline” data by advertisers, which had not been directly addressed by the NAI’s self-regulatory efforts in the past. The 2020 NAI Code of Conduct also reexamines much of the terminology used by the NAI and introduces numerous new concepts. The NAI published its “Guidance for NAI Members: Opt-In Consent,” in December of 2019, clarifying that the collection of Precise Location Information for digital advertising purposes must be accompanied with clear, just-in-time messaging to users at the time of consent, going above and beyond the consent mechanisms provided by smartphone OS manufacturers.¹⁰

NAI compliance staff began enforcement of its Guidance for NAI Members: Viewed Content Advertising in 2019, bringing its compliance efforts to connected televisions, with considerable impact on digital advertising companies, as well as the technologies employed to direct ads to specific television screens.

The NAI hosted its seventh annual Summit in 2019, bringing this one-of-a-kind industry event to Chicago for the first time. This annual event provides member companies with an opportunity to join robust discussion about the latest technologies, regulatory and legislative trends, and emerging business models. The 2019 Summit included timely discussions about data privacy, the use of health-related data, advertising on connected televisions, and other relevant topics which inform NAI members’ behavior in the marketplace.



Ten new members joined the NAI in 2019. This strong interest in NAI membership demonstrates that effective self-regulation continues to be a vital component in building trust not only between the advertising technology industry and consumers, but also between member companies and service providers, publishers, and advertisers.

PUBLIC POLICY

The regulatory environment pertaining to consumer data privacy continued to evolve significantly in 2019, in the U.S. and around the world. Substantial new regulatory guidance and a series of enforcement actions under the General Data Protection Regulation (GDPR)¹¹ continued to

influence how NAI members and other digital advertising businesses operate across Europe. Also throughout 2019, California Attorney General Xavier Becerra engaged industry and other stakeholders in the process to develop implementing regulations for the California Consumer Privacy Act (CCPA), the first comprehensive U.S. state consumer privacy legislation.¹² At the same time, myriad U.S. states and the Federal Government progressed with deliberations around new state laws and a national privacy framework, respectively.

In the midst of these legislative and regulatory developments, the NAI continued to expand its public policy engagement and advocacy efforts. In 2019 the NAI engaged with legislators and regulators on a far more frequent basis,

to more effectively inform them about the intricacies of digital advertising, the most pressing privacy concerns in this area, practical considerations for NAI members in operationalizing privacy requirements, and how self-regulation can work hand-in-hand with new regulatory frameworks at both the state and federal levels.

To help position NAI member companies for compliance with CCPA, the NAI led a number of member-driven working groups and meetings to facilitate member interaction and communication around key CCPA compliance issues, and to develop analyses to enhance NAI members' understanding of the CCPA's requirements as they apply to the digital advertising ecosystem. These working groups also prepared multiple sets of detailed comments to the California Attorney General to represent the viewpoint of digital advertising companies with the aim of identifying ways to modify rule language to better balance the law's new consumer privacy protections with the need to maintain a competitive marketplace for digital advertising as a key driver of rich internet content.

The NAI continued to serve as the leading voice of the digital advertising industry and third-party advertisers in promoting a new federal privacy framework. As part of its efforts in this space, the NAI was a leader in forming a diverse industry coalition, Privacy for America,¹³ to promote enactment of federal legislation to clearly define prohibited data practices that make personal data vulnerable to breach or misuse, while preserving the benefits that come from responsible use of data. The NAI in 2019 also continued to represent the industry before the Federal Trade

Commission (FTC) during its extensive series of hearings to inform and shape the national privacy debate. In April, NAI VP of Public Policy, David LeDuc, participated in a hearing in support of a strong federal framework and the value of continued industry co-regulation.¹⁴

On the state level, the NAI increased its advocacy efforts across a range of states considering new legislation to educate policymakers about the potential adverse effects on consumers and businesses alike that would result from a patchwork of inconsistent state laws and regulations.

In Europe, the NAI continued to participate in dialogues with European policymakers on behalf of its members and maintained a leadership role in promoting the Transparency and Consent Framework (TCF) as an effective tool to enable GDPR and ePrivacy compliance across the digital advertising ecosystem.¹⁵

The common thread in all of the NAI's public policy efforts is the conviction that strong consumer privacy protections can and should exist hand-in-hand with varied, thriving, and vibrant digital content that is supported by innovative digital advertising solutions. Further, the NAI continues to educate policymakers and key stakeholders about the value of self-regulation. Self-regulatory programs like those of the NAI play a complimentary role to new regulations as a means of supplementing and enhancing state and federal legislation. Strong privacy self-regulation programs provide a method for participating companies to demonstrate their compliance with legislative and regulatory requirements and in turn allows regulators to focus more of their efforts on companies that do not.

THE NAI COMPLIANCE PROGRAM

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 legal and technological expertise evaluate each applicant's business model and privacy practices. These reviews focus on the applicant's responses to the 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 evaluates the applicant's consumer choice mechanisms and data collection practices. 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 at assessing business practices that may be inconsistent with the Code.

An applicant that wishes to complete the application process must work with NAI staff to help bring its relevant services and products into a position to comply with the Code.¹⁶ 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 substantial revisions to their public privacy disclosures to provide the full level of notice required by the Code. Typically, NAI staff provides technical guidance to help an applicant develop an Opt-Out Mechanism¹⁷ that is capable of meeting the Code's requirements and to ensure compatibility with the NAI opt-out page. At times, applicants have abandoned or dramatically 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, followed by the full Board. The NAI Board of Directors comprises seasoned attorneys and compliance 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 2019, ten companies¹⁸ completed the application process and were approved for membership by the Board.

At the close of the 2019 compliance review period, the NAI Board consisted of:

Douglas Miller, Chairman, NAI Board of Directors; *Vice President and Global Privacy Leader*, Verizon Media

Ted Lazarus, Vice-Chairman, NAI Board of Directors; *Director, Legal*, Google

Ari Levenfeld, Secretary, NAI Board of Directors; *Chief Privacy Officer*, Quantcast

Julia Shullman, Treasurer, NAI Board of Directors; *Vice President, Chief Privacy Counsel*, Xandr

Alan Chapell, *President*, Chapell & Associates, representing Eyeota

Ken Dreifach, *Shareholder*, ZwillGen, representing NextRoll

Paul Harrison, *CTO and Co-Founder*, Simplifi

Alice Lincoln, *Vice President of Data Policy & Governance*, MediaMath

Duncan McCall, *CEO and Co-Founder*, PlacelQ

Tia Raskin, *Senior Legal Counsel*, Xaxis

Daniel Shore, *Director, Privacy Counsel*, Conversant

MONITORING OF MEMBERS

NAI Technical Monitoring

Once companies demonstrate their ability to comply with the Code, and become members of the NAI, they must remain in compliance so long as they maintain their membership. One way the NAI helps facilitate this process, even in between the annual NAI compliance reviews, is through its automated monitoring suite which includes a Privacy Disclosures Scanner that allows staff to flag potential issues for review or investigation.

One of the main benefits of these automated monitoring tools is its ability to help NAI staff spot and remedy potential problems quickly, thus enabling the NAI to address potential concerns with members before they become widespread and affect large numbers of consumers. One of the issues the monitoring tools flags relates to revisions of privacy policies. Once an issue is flagged through the monitoring tools, NAI staff is able to review the changes to verify if there are any compliance concerns.

As in prior years, on a number of occasions the NAI's monitoring tools flagged actionable issues that might have resulted in violations of the Code if left unaddressed. Such issues were generally spotted by NAI staff very rapidly and resolved by member companies shortly after notification. None of these instances were considered to rise to the level of material non-compliance with the Code because the underlying issues were resolved quickly, were found to be unintentional, and affected a limited number of consumers. Additionally, when applicable, NAI staff suggested methods through which members could prevent such issues from recurring in the future.

Web-Based Opt-Out Testing

The NAI administers ongoing reviews of member opt outs through routine manual checks of the NAI's opt-out page followed by more in-depth analysis relying on technical tools. An NAI staff member routinely verifies that the NAI opt-out page continues to function as expected, and follows up with an in-depth network analysis. Although problems were rare, the majority of issues investigated in 2019 were the result of latency and other temporary network disruptions. Each member company, when integrating for the first time with the NAI opt-out page, has its own configuration checked and tested by NAI staff, which prevents many issues prior to live deployment.

Additionally, the NAI monitors and reads consumer emails received regarding specific functionality issues that may be difficult to identify with in-house testing, such as temporary malfunctions on load-balancing servers that affect only certain regions of the United States.

This multi-faceted approach aims to promptly identify and address most potential problems with member Opt-Out Mechanisms. The combination of monitoring, regular manual testing, and review of consumer communications helps the NAI and its members limit opt-out downtime and to resolve opt-out issues before they result in non-compliance with the Code.

Privacy Disclosures Scanner

The NAI Privacy Disclosures Scanner scans member companies' web pages for privacy policy and other disclosure modifications, as well as errors in accessing those pages. These scans help NAI staff identify a variety of potential compliance issues, including incomplete or missing disclosures and broken links. NAI staff works with members to promptly address such inconsistencies.

Many of the changes to members' privacy disclosures in 2019 were the result of members responding to action items and feedback provided by NAI staff, or members proactively disclosing a new product or technology.

In 2019, the NAI Privacy Disclosures Scanner captured over four thousand snapshots of privacy policies, monitoring several hundred pages.

NAI staff continues to acknowledge that members face the difficult task of explaining to consumers in a concise, yet clear and meaningful manner what data they are collecting and using for digital advertising. The NAI also recognizes that members must balance the need to be concise with the need to provide thorough disclosures. NAI staff applies its extensive knowledge of the industry, understanding of the Code, and expert judgment in determining the relative adequacy of the disclosures in a member's privacy policy from an NAI compliance perspective.

MONITORING TOOL PERFORMING A SAMPLE ANALYSIS OF A PRIVACY POLICY

Disclosure Categories

Active

- Available for Annotation Categorization
- Used in Predicting Expected Disclosures Per Company
- You can toggle these on/off anytime without losing data

Archived

- No longer expected of any company's disclosures
- Archive when a category is no longer required, or has evolved enough that old examples should be nullified and re-evaluated.

Status	Name
Active	Non-Cookie Tech: Disclosure that this company uses non-cookie tech. This does not include IDFA, Google Ad-ID, as those are mobile
Active	Third Party

Review Annotations

When you approve or reject, the annotation creator will see that it was approved or rejected. This is so that interns creating annotations have quick feedback. *One At a Time View*

[Download all confirmed as .csv](#)

#	Text	Category	Confirm	Reject
1	If you have an Apple device, you can opt out of interest-based advertising by updating to iOS 6.0 or higher, and setting Limit Ad Tracking to 'ON'. You can do this by clicking on Settings -> General -> About -> Advertising and toggling Limit Ad Tracking to 'ON'. Our system is designed to respect your choice and not use information to provide IBA when this setting is ON.	mobile_opt_out	Confirm	Reject
2	In Android devices with Google Play Services 4.0 and higher, companies can target advertising to mobile app users by using a unique identifier called the "Android Advertising Identifier". Interest Based Ads information to prov	mobile_opt_out	Confirm	Reject

Annotation Review Feedback

Recent annotations that were approved or rejected as a good example of the target category.

#	Text	Category	Confirmed By Reviewer?
1	OPT OUT To go directly to our opt out, click here.	web_based_opt_out	true
2	Data Security We have implemented reasonable security measures to protect the information in our care, both during transmission and once we receive it. This includes, but is not limited to, the use of firewalls and encryption. No method of transmission over the Internet, or method of electronic storage is 100% secure. Therefore, while we strive to use commercially acceptable means to protect your information, we cannot guarantee its absolute security.	reasonable_security	true

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 2019, the NAI received and reviewed 2,025 queries through its website and 97 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, many communications were questions from users about junk email, attempts to reach the publishers of specific websites, or other issues not covered by the Code.

In 2019, the NAI received over 2000 consumer queries through its website or via email.

Approximately ten percent of consumer inquiries were related to the NAI, 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.

All consumer communications received by the NAI in 2019 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.**

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 regulatory bodies.** In 2019, NAI staff conducted one investigation based on public allegations of potential non-compliance with the Code.¹⁹

ANNUAL REVIEW

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 2019 annual compliance review, NAI staff reviewed the 93 companies that were members from January 1 through December 31, 2019.²⁰ These members are referred to as “evaluated member companies” throughout this report. Those members that joined the NAI after January 1, 2019²¹ 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 2019 annual compliance review. Those members will be assessed again during the 2020 annual review process.²²

Training

In 2019, the NAI provided a number of training and educational sessions for its members, including webinars and staff visits to member company offices.

The NAI hosted a webinar, in coordination with legal experts, to help educate members about the effects of legislation in Nevada. NAI staff also hosted four educational webinars to explain member obligations under the 2020 NAI Code of Conduct, as well as a training webinar and Twitter town hall coinciding with the publication of the NAI’s Guidance on Opt-In Consent.

In total, **the NAI held six all-member calls and webinars throughout 2019, including educational calls featuring legal experts.** NAI staff also made numerous visits to member company offices in order to provide in-person education regarding Code requirements and ongoing developments in the industry.

The 2019 Annual Review included 93 member companies.

Written Questionnaire and Supporting Documentation

Evaluated member companies submitted written responses to the 2019 compliance questionnaire, which was revised to include Viewed Content Advertising.²³ 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. Where relevant, 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 policies governing Personalized Advertising practices; contractual requirements imposed on business partners concerning notice and choice around Personalized Advertising activities;²⁴ other protections for data collected and used for Personalized Advertising purposes, such as data retention schedules; and processes for oversight and enforcement of contractual requirements. At the end of the compliance review period, the NAI required members to sign attestation forms to confirm that their responses continued to be accurate to the best of the member’s knowledge.

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.

EVALUATED MEMBER COMPANIES

33Across	Factual	PulsePoint
AcuityAds	Flashtalking	Qualia
Adara	Freckle	Quantcast
AddThis	Fysical	Rakuten Marketing
Adobe	Google	Retargetly
AdRoll	GumGum	Reveal Mobile
AlikeAudience	IHS Markit	RhythmOne
Amobee	Index Exchange	Rubicon Project
Apollo	inMarket	RUN
AppNexus (a Xandr Company)	Innovid	SafeGraph
Appreciate	Intent Media	Salesforce Audience Studio
AuDigent	Inuvo (formerly Netseer)	Samba TV
BazaarVoice	Kargo	ShareThis
Beeswax	KBM Group	Signal
BounceX	Lotame	Simpli.fi
Branch	Media.net	Skyhook
Choozle	MediaMath	Steelhouse
Clickagy	Microsoft	Taboola
Clicksco	MiQ	TapAd
Conversant	Narrativ	The Trade Desk
Criteo	Nativo	Throttle
Cross Pixel Media	Neustar	TrueData
Cuebiq	NinthDecimal	Undertone
DataPlusMath	Numberly	Varick Media Management
DataXu	Oracle Data Cloud	Verizon Media (formerly Oath)
Datonics	Outbrain	Viant
EMX (formerly Engine Media)	OwnerIQ	Vibrant
Exelate	Parrable	Weborama
Exponential	Place Exchange	Xaxis
Eyeota	PlaceIQ	Yieldmo
EyeView	Pubmatic	
	Pulpo	

These materials generally included news articles, the member company's website, privacy policies, terms of service, and sample advertising contracts.

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. These interviews were conducted primarily with high-level legal, management, or engineering representatives of evaluated member companies. 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. As appropriate, the NAI compliance team also queried evaluated member company representatives about data flows, opt-out functionality, data retention policies and procedures, and technologies used for Personalized 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 over 100 companies comprising a significant portion²⁵ of the third-party advertising technology ecosystem, greatly increases the 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 reliable sources. The NAI often provided recommendations on alternative language for privacy disclosures, based on NAI staff's collective experience reading hundreds of member and website publisher privacy policies.

As the NAI published the 2020 NAI Code of Conduct in the Spring of 2019, with enforcement scheduled to take place on January 1, 2020, NAI staff spent a significant portion of each compliance review helping member companies identify the most relevant new provisions to their business models, and suggesting the most important steps necessary to bring each company's practices into compliance with the 2020 Code ahead of the scheduled enforcement date.

Attestations

After the 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.²⁶

2019 ANNUAL REVIEW FINDINGS

The Code requires the NAI to publish the results of its annual 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 2019 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:

(Code § II.A.)

Members should use reasonable efforts to individually educate consumers about Personalized Advertising, and are required to collectively maintain an NAI website for the same purpose.

Review Method:

NAI staff reviewed member websites to assess educational components in privacy policies and elsewhere on the sites.

NAI staff monitored member contributions to the NAI's educational public service advertising campaign.

NAI staff interviewed members to assess other educational and public service efforts.

Findings:

All members collectively educated consumers through the provision of the NAI website, which serves as a centralized portal for explanations of Personalized Advertising and associated practices, as well as for providing consumer access to choice mechanisms.

NAI staff found that evaluated member companies provided information regarding the technologies used for Personalized Advertising, as well as a clear link to a consumer choice page. 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 Personalized Advertising activities and provided consumers with an easy-to-locate choice mechanism.

A number of NAI members donated impressions to the NAI's public service advertising campaign, resulting in over 130,000 consumer visits to the NAI website.

Several NAI members also play key roles in the Federation for Internet Alerts (FIA), which uses digital advertising technology for the common good, distributing life-saving information to the right viewers at the right time, including such crucial communications as missing child Amber Alerts and severe weather warnings. Other NAI members participated in programs such as Data for Good, providing the scientific community with access to limited data sets which can improve models to enhance evacuation planning and execution in disaster areas or optimize city planning and transportation. **Through their contributions to the NAI's education campaign, as well as through informational material on their own websites, evaluated member companies collectively invested considerable effort and resources to educate consumers about Personalized Advertising while also using advertising technology to benefit society.**

TRANSPARENCY AND NOTICE

Key Requirements:

(Code § II.B.1.)

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 Personalized Advertising and Ad Delivery and Reporting, as well as links to or descriptions of Opt-Out Mechanisms and attestations of NAI membership and compliance with the Code.

(Code § II.B.2.)

Members that use standard interest segments for Personalized Advertising that are based on health-related information or interests are required to disclose such segments on their websites.

(Code §§ II.B.3-4.)

Members that have direct contracts with website or mobile app publishers with which they engage in Personalized 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.6.)

Members are required to provide, or support the provision or implementation of, notice of Personalized Advertising data collection and use practices and the NAI-supported choices available to users, in or around advertisements that informed by such data.

Review Method:

NAI staff used technical monitoring tools to identify changes to member company privacy disclosures on a regular basis. Staff reached out to member companies when those changes appeared to remove required disclosures or indicated material changes to the company's products and practices.

NAI staff assessed the privacy policies and other privacy-related disclosures of evaluated member companies in juxtaposition with the Personalized 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 discovered through ongoing technical monitoring, and news articles.²⁷ Where appropriate, the NAI offered evaluated member companies suggestions to make privacy disclosures clearer and easier to understand.

NAI staff reviewed the websites of evaluated member companies to determine if they met the obligation to provide "prominent" notice.

NAI staff reviewed sample 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 Personalized 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 Personalized Advertising.

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

Findings:

NAI staff found that all NAI member companies provided privacy policies that described their respective Personalized Advertising and ADR practices. Member companies continued to provide more thorough and easier to understand disclosures regarding data collection and use in mobile apps, as well as clearer explanations of Cross-Device Linking practices, as applicable.

NAI staff worked with member companies to provide feedback and suggestions when disclosures were not clear in given areas. In those instances when a required disclosure was missing or inadequate, evaluated member companies worked with NAI staff to provide updates in a timely manner.

NAI staff found that 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 several instances when new graphic designs or features on a website impacted the prominence of a link to privacy disclosures, NAI staff worked with members to address the issue in a timely manner.

NAI staff found that 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.

A review of evaluated member companies' sample 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. NAI staff advised several member companies to also include contractual requirements for partners to provide a link to an industry opt-out page on a going-forward basis, if such requirements were not already present.

NAI staff found that many evaluated member companies conduct due diligence on websites and applications where they sought to conduct Personalized Advertising activities, when initiating a relationship with those partners. Some evaluated member companies trained their sales teams to evaluate such 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. A number of evaluated member companies reviewed thousands of publishers for the required disclosures.

NAI members continued to lead industry efforts to provide 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 which is served in nearly all targeted ads. Those evaluated member companies that offer technology platforms, and only facilitate the collection of data by their clients for IBA or CAA, provided their clients with the ability to include this notice on their advertisements through their own platform settings.

USER CONTROL

Key Requirements:

(Code § II.C.1.)

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 DII for Personalized Advertising; (b) robust notice for the merger of PII with DII to be collected on a going forward basis for Personalized Advertising; (c) obtaining a user's Opt-In Consent for the merger of PII with previously collected DII for Personalized Advertising; and (d) obtaining a user's Opt-In Consent for the use of Precise Location Data, Sensitive Data, or Personal Directory Data for Personalized Advertising.

(Code § II.C.2.)

An Opt-Out Mechanism for a member's web-based Personalized Advertising shall be made available on both the member's website and on the NAI website.

(Code § II.C.3.)

While a browser or device is opted out of Personalized Advertising by a member, that member shall cease data collection on the opted-out device for Personalized Advertising use on any other browser or device associated through Cross-Device Linking, and shall cease Personalized Advertising on the opted-out device using data collected on any other browser or device associated through Cross-Device Linking.

(Code § II.C.5.)

The technologies that members use for Personalized Advertising purposes shall provide users with an appropriate degree of transparency and control.

Review Method:

Throughout the year, NAI staff monitored 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 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 the expiration dates of opt-out cookies.

NAI staff reviewed the instructions provided by members for opting out of Cross-App Advertising through applications or platform-provided choice mechanisms.

In those instances where an evaluated member company engaged in Cross-Device Linking, NAI staff confirmed with the member company that opt outs met NAI Code requirements and the effect of opt outs on Cross-Device Linking was clearly explained to users by the company.

NAI staff reviewed detailed questionnaires, required of all evaluated member companies, regarding the functionality of their Opt-Out Mechanisms, the technologies used for Personalized Advertising, and the purposes for any unique identifiers existing after an opt out. These responses were referenced during each member company's annual interview.

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.

Findings:

All members engaged in web-based Personalized Advertising provided opt outs on both their own websites and the NAI industry opt-out tool. NAI testing indicated that these opt outs functioned correctly during a vast majority of the time. In the several 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.

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. In the few instances where opt-out cookies appeared to fall short of the required five-year timespan, this was on account of leap years, and staff advised members to account for such discrepancies.

NAI staff found that all evaluated member companies engaged in Cross-Device Linking appeared

to provide opt-outs that met NAI requirements for disassociating the opted-out device from other devices for Personalized Advertising purposes, and that these member companies provided disclosures explaining the opt out's effect on Cross-Device linking. In those instances where evaluated member companies' disclosures could have benefited from additional clarity in this area, staff provided guidance on how disclosures could provide further clarity.

NAI staff found that all evaluated member companies engaged in Cross-App Advertising provided an easy-to-use consumer choice mechanism. Staff found that the vast 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 those instances where evaluated member companies' disclosures could have benefited from additional clarity in this area, staff provided guidance on how disclosures could provide such clarity, for example by including more detailed instructions on where in their device's settings users can find the relevant privacy controls.

NAI staff found that all evaluated member companies engaged in the collection and use of Precise

Location Data for Personalized Advertising obtained Opt-In Consent, or reasonable assurances that the party collecting the data obtained such consent on the member's behalf under the DAA's guidance on this topic.²⁸ Staff found that the vast majority of evaluated member companies provided clear disclosures around the collection of Precise Location Data and the choices available to users with respect to such collection. In those instances where evaluated member companies' disclosures could have benefited from additional clarity in this area, staff provided guidance on how disclosures could provide further clarity.

NAI staff found that very few evaluated member companies collected PII for Personalized Advertising or merged such data with DII collected for Personalized Advertising. Where members did engage in these practices, NAI staff confirmed that the member provided robust notice and obtained Opt-In Consent where applicable.

NAI staff found that very few evaluated member companies engaged in the use of Sensitive Data for Personalized Advertising. Where applicable, NAI staff evaluated the Opt-In Consent obtained by member companies engaged in the use of such data for Personalized Advertising and found that it met Code requirements.

User Control Findings, continued

NAI staff found that no NAI members engaged in the collection of Personal Directory Data for Personalized Advertising purposes, and thus did not evaluate any Opt-In Consent mechanisms used for such data collection.

NAI staff found that all evaluated member companies using Non-Cookie Technologies for web-based Personalized Advertising provided adequate disclosures around this topic and were integrated with the NAI's Opt-Out Mechanism for the use of Non-Cookie Technologies.

USE LIMITATIONS

Key Requirements:

(Code § II.D.1.)

Members shall obtain verifiable parental consent for the creation of Personalized Advertising segments specifically targeting children under 13 years of age.

(Code § II.D.2.)

Members shall not use, or allow the use of, data collected for Personalized Advertising or ADR for the purpose of determining or making eligibility decisions regarding employment, credit, health care, or insurance, including underwriting and pricing.

Review Method:

NAI staff reviewed detailed questionnaires, required of all evaluated member companies, and interviewed members, regarding Personalized Advertising segments specifically targeting children under 13 years of age.

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 Personalized Advertising, and all confirmed that they do not specifically target children under 13.

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:

(Code § II.E.1.)

Members shall require any partners to which they provide PII for Personalized Advertising and ADR purposes, adhere to the provisions of the Code concerning PII.

(Code § II.E.2.)

Members shall require all parties to which they provide DII not attempt to merge such DII with PII held by the receiving party or to otherwise re-identify the individual for Personalized Advertising purposes without obtaining the individual's Opt-In Consent. This requirement does not apply if the DII is proprietary data of the receiving party.

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 applicable data transfers either explicitly or implicitly.

DATA ACCESS, QUALITY, SECURITY, AND RETENTION

Key Requirements:

(Code § II.F.1.)

Members retaining PII for Personalized Advertising, and not offering an Opt-Out Mechanism to exclude such PII from Personalized Advertising, shall provide users with reasonable access to that PII and other information that is associated with the PII, retained by the member for Personalized Advertising purposes.

(Code § II.F.2.)

Members shall conduct appropriate due diligence to help ensure they obtain data used for Personalized Advertising from reliable sources that provide users with appropriate levels of notice and choice.

(Code § II.F.3.)

Members that collect, transfer, or store data for use in Personalized Advertising and ADR purposes shall provide reasonable security for that data.

(Code § II.F.4.)

Members shall retain DII and PII collected for use in Personalized Advertising and ADR only as long as necessary to fulfill a legitimate business need, or as required by law.

Review Method:

NAI staff found that very few evaluated member companies engaged in the collection of PII for Personalized Advertising or the merger of such data with DII collected for Personalized Advertising. Where applicable, NAI staff confirmed that evaluated member companies provided an Opt-Out Mechanism for their use of PII for Personalized Advertising and/or provided reasonable access to this data through consumer-facing portals.

NAI staff reviewed detailed questionnaires, required of all evaluated member companies, and interviewed members to help confirm that all evaluated member companies obtain data only from reliable sources.

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 Personalized 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.

Findings:

NAI staff found that while the vast majority of evaluated member companies did not engage in the collection or use of PII for Personalized Advertising purposes, in the rare instances where it was applicable, evaluated member companies provided the required consumer choice for such data and/or user access to this data through consumer-facing portals.

Evaluated member companies overwhelmingly reported conducting due diligence on data sources to help ensure their reliability, including reviewing the potential partners' business 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 the few instances where members did not fully understand Code due diligence requirements, NAI staff offered suggestions and best practices to help them improve their processes in this respect.

All evaluated member companies attested that they complied with the obligation to reasonably secure data. There were no publicly reported data breaches regarding Personalized Advertising or ADR data by evaluated member companies during the 2019 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 also stated in the members'

privacy disclosures. In several instances evaluated member companies had inadvertently removed retention policies from disclosures during updates, but these were quickly spotted by NAI staff and the members corrected the error within a reasonable timeframe. 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. NAI staff also used this opportunity to encourage members to reduce their data retention periods where possible, and a number of evaluated member companies agreed to shorter retention timelines as a result.



ACCOUNTABILITY

Key Requirements:

(Code § III.A.2.)

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.3.)

Members shall publicly and explicitly disclose their membership in the NAI and their adherence to the NAI Code.

(Code § III.C.1.)

Members shall provide a mechanism through which users can submit questions or concerns about the company’s collection and use of data for Personalized 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.

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 companies 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, and where relevant, sent a series of pseudonymous “consumer” emails 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 spoke with NAI staff during the company’s compliance interview.

Evaluated member companies overwhelmingly met the requirement to publicly disclose their membership in the NAI and compliance with the Code. The few evaluated member companies that were unclear in their public disclosure of NAI membership and adherence to the NAI Code worked with NAI staff to improve these disclosures.

After two rounds of testing consumer question mechanisms, NAI staff noted that 82% of members responded after the first round, and 97% of members responded after the second round. The NAI will continue to press all NAI members to respond to consumer questions in a timely and informative manner, with a goal of achieving a 100% response rate on the first attempt.

VIEWED CONTENT ADVERTISING

Overview:

2019 was the first year that NAI staff evaluated member compliance with the requirements of the NAI's Guidance for NAI Members: Viewed Content Advertising, which adapts the NAI Code principles to connected televisions. As the digital television advertising ecosystem is still in its nascency, the NAI found that many member companies were unable to meet all of the requirements of the Guidance due to technical and/or contractual limitations. NAI staff worked extensively with evaluated member companies to help improve the consistency of disclosures and adequacy of consumer choice mechanisms, but issued a public compliance warning to all members in October, 2019 that stricter enforcement would be in place for 2020.³¹

Key Requirements:

(Viewed Content Advertising Guidance § II.A.1.)

Members engaged in Viewed Content Advertising shall publicly disclose that they collect or use Viewed Content Data, and if such data is collected directly from or used on a television.

(Viewed Content Advertising Guidance § II.A.2.)

Members engaged in Viewed Content Advertising shall provide an easy-to-use Opt-Out Mechanism directly on the member's website, or if choice cannot be expressed on the device viewing the website, a description of how to access and use such an Opt-Out Mechanism for Viewed Content Advertising.

(Viewed Content Advertising Guidance § III.A.)

Members engaged in the collection of all or substantially all of the Viewed Content Data from a television for Viewed Content Advertising shall obtain a user's Opt-In Consent.

(Viewed Content Advertising Guidance § III.E.)

Members shall contractually require Viewed Content Data providers with whom they have a contractual relationship, to obtain appropriate permission to use and share the Viewed Content Data.

Review Method:

NAI staff assessed the privacy policies and other privacy-related disclosures of evaluated member companies in juxtaposition with the Viewed Content Advertising practices described in each company's annual interview, its corporate site, responses to the annual compliance review questionnaire, and news articles.

NAI staff reviewed member companies' disclosures to help ensure that every member company engaged in Viewed Content Advertising provided a consumer Opt-Out Mechanism for Viewed Content Advertising, or a description of how to access and use such an Opt-Out Mechanism.

For those NAI member companies collecting Viewed Content Data directly from televisions, NAI staff confirmed that companies collecting all or substantially all Viewed Content Data from televisions obtained Opt-In Consent from users.

For NAI member companies receiving Viewed Content Data for Viewed Content Advertising pursuant to a contractual relationship, NAI staff verified whether these members contractually require data providers to obtain appropriate permission from users to use and share the Viewed Content Data.

Findings:

NAI staff found a lack of consistency in the level of disclosure provided by evaluated member companies regarding Viewed Content Advertising and the associated data collection and use practices, especially among companies that did not collect data directly from televisions, but rather facilitated the targeting of Personalized Advertising on connected televisions through Cross-Device Linking.

NAI staff found a lack of consistency in the description of Opt-Out Mechanisms for connected televisions and peripheral devices, primarily caused by the multitude of different platforms available to users and the fact that many evaluated member companies did not collect data from these devices, but only customized advertising through Cross-Device Linking. To enable more consistent descriptions of Opt-Out Mechanisms, the NAI developed a page that provides verbal and pictographic instructions for the use of the most commonly found platform controls, encouraging NAI members to point to these instructions in their own disclosures.³⁰

While most NAI member companies do not collect data directly from television sets, NAI staff found that the few evaluated member companies collecting all or substantially all Viewed Content Data from connected televisions provided a mechanism to obtain users' Opt-In Consent for such data collection and use on these devices, and provided adequate disclosures on their own websites regarding Viewed Content Advertising activities and practices.

NAI staff found that members engaged in Viewed Content Advertising took steps to ensure that partners contractually require data providers to obtain appropriate permission from users to use and share the Viewed Content Data. However, these efforts were at times offset by the immaturity of the digital television advertising ecosystem, and especially technical limitations around the ability to consistently distinguish television sets from one another and thus to provide robust Opt-Out Mechanisms for individual devices.

INVESTIGATIONS AND SANCTIONS

Overview:

The keystone of the NAI self-regulatory program is the combination of a thorough initial qualification process, coupled with the annual compliance assessment and the availability of strong sanctions should members fail to comply. 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. Ultimately, sanctions and enforcement function primarily as a deterrent against noncompliance and as a means of ensuring responsiveness from member companies, rather than as a demonstration of the NAI's compliance efforts through detailed disclosure of every issue discovered by NAI staff.

NAI staff investigates private and public allegations of noncompliance. Staff also search for evidence of noncompliance in the reports generated by the NAI's monitoring tools. 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.

Investigations:

NAI staff conducted three investigations of potential material violations of the Code during the 2019 compliance review period. In each case, NAI staff found that the companies in question did not materially violate the Code and that incomplete information or misunderstandings caused the investigations, and consequently sanctions procedures were not appropriate.

Investigation One

The first NAI investigation involved a potentially malfunctioning Opt-Out Mechanism provided by a member company on the NAI website. This company relied on several other companies' technology for Personalized Advertising as well as for consumer choice. In other words, while this member company was listed on the NAI opt-out page, the underlying Opt-Out Mechanism was operated by several other companies. In the compliance questionnaire submitted by the NAI member company in question, more opt-out endpoints were listed than were actually discovered during technical testing of the Opt-Out Mechanism this company provided on the NAI website, leading NAI staff to suspect that the company's Opt-Out Mechanism did not cover all of its Personalized Advertising activity.

Further investigation revealed that the missing opt-out endpoint applied only to a data provider partner, and that this partner's data could not be used in the presence of the member's existing Opt-Out Mechanism, as that mechanism successfully prevented the member company from delivering any Personalized Advertising to users, regardless of the data sources.

In other words, the missing opt-out endpoint was part of a "belt and suspenders" approach which was intended to cover all partners, even though the member company's existing Opt-Out Mechanism already successfully stopped all Personalized Advertising by the company.

Because the problem was inadvertent, resolved rapidly once discovered, and did not compromise the functionality of the member company's Opt-Out Mechanism, NAI staff determined that it was not a material violation of the Code and that sanctions would not have been appropriate.

Investigation Two

The second NAI compliance investigation stemmed from a public settlement by an NAI member tied to alleged violations of the Children's Online Privacy Protection Act (COPPA). After a public announcement of the member company's settlement, NAI staff investigated with the company to verify whether any violations of the NAI Code were implicated.

The NAI's investigation revealed that the allegations were tied only to contextual advertising, which does not involve any collection of user data across unaffiliated websites or mobile applications for the purpose of targeting advertisements based on the collected data, and as such, fell outside the scope of the NAI Code and the NAI's enforcement.

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

Investigation Three

The third NAI compliance investigation resulted from a member company's compliance questionnaire and interview responses indicating that the company may have used patients' pharmaceutical records without obtaining the users' Opt-In Consent as required by the Code.

The NAI's investigation and follow-up questioning revealed that the member company allowed a pharmacy client to target its own known customers with a campaign for flu shots, but that the process did not involve the users' pharmaceutical records. Rather the pharmacy client "onboarded" only its' clients hashed contact details, pursuant to its own terms of service, through an intermediary, and that these users received advertising

for flu shots offered by the pharmacy client without any medical or pharmaceutical information being leveraged in the process.

Based on these findings, 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 helped fix issues expeditiously, while reserving sanctions primarily for instances in which member companies are unwilling to make requested changes or fail to cooperate with NAI staff, thus helping to ensure the viability of the digital advertising ecosystem.

Similar to prior annual reviews, NAI staff found a number of lesser potential problems with several member companies. These member companies willingly resolved each issue raised by NAI staff. Often, affected member companies implemented additional measures voluntarily, to reduce the likelihood of future noncompliance. Based on its historical approach to minor infractions, typically caused by misunderstandings or technical glitches, NAI staff worked with members to resolve issues before they became material violations of the Code.

SUMMARY OF FINDINGS

NAI staff found that in 2019 evaluated member companies overwhelmingly complied with the Code, and that to the extent that any potential violations were identified, they were not material in nature.

However, NAI staff noted disappointing and inconsistent compliance with the requirements of the NAI's Guidance for NAI Members: Viewed Content Advertising, which was newly enforced in 2019. This lack of consistent compliance extended to a plurality of NAI members and was often caused by shortcomings in the entire digital television advertising ecosystem, including connected device manufacturers, application publishers, and digital advertising technology providers, as well as by NAI members' own failure to provide adequate disclosures regarding data collection and use, primarily through third-party applications delivering video content. This systemic lack of adequate compliance resulted in a public warning to all NAI members. Having provided its member companies with an additional year to improve compliance with NAI requirements for data collection and use on connected devices in 2019, the NAI will pay close attention to this matter during the 2020 compliance review period. The NAI may take enforcement actions against member companies who continue to provide inadequate disclosures or Opt-Out Mechanisms for data collection and use on connected devices in 2020.

Evaluated member companies otherwise 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.

CONCLUSION

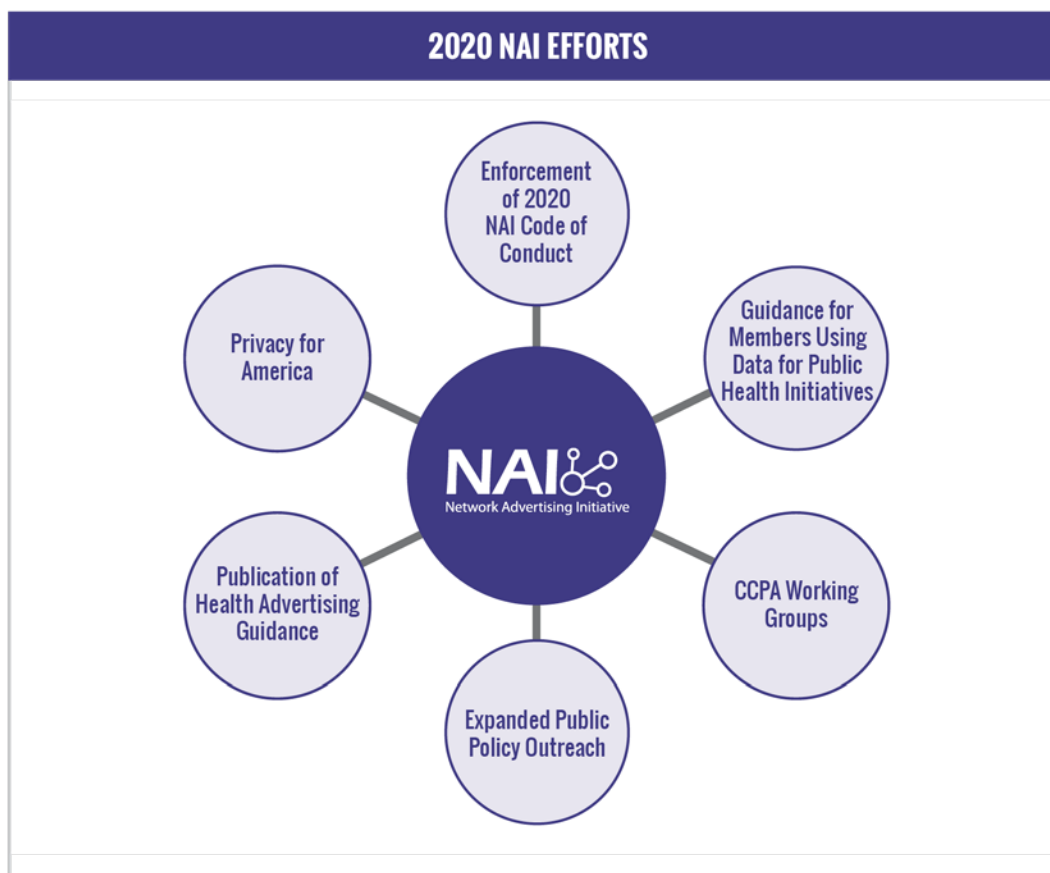
This report validates the role of the NAI's Code and self-regulatory process in promoting consumer privacy in the digital advertising industry. The NAI continues to update its Code and guidance to keep pace with technological developments and changing norms, culminating most recently in the publication of the 2020 NAI Code of Conduct, which went into effect in January 2020. This new Code greatly expands the scope of the NAI's compliance program and will provide many new privacy protections for users in the realm of device sensors, location data, sensitive data, and offline data use for digital advertising. NAI members continue to devote valuable resources to cooperate in the NAI's thorough annual reviews of their policies and practices. **The common goal is to ensure that members adhere to privacy principles embodied in the NAI Code and guidance when offering new and existing products, even at a time of global and domestic regulatory uncertainty.**

At a time when the nature of digital advertising is being questioned and reconsidered in Europe, in several U.S. states, and on a federal level, it is even more important for self-regulatory efforts in the U.S. to clearly demonstrate that a thoughtful and flexible self-regulatory approach can provide robust consumer privacy protection while also allowing digital advertising technology, and the Internet economy more broadly, to flourish. Perhaps most importantly, the NAI's approach aims to preserve free and equal consumer access to a bounty of diverse content online.

In 2019 the NAI performed one of its largest compliance reviews, with 93 evaluated member companies, while separately reviewing ten additional companies who were accepted as new members during the year. Through this review, NAI staff³² closely monitored the digital advertising ecosystem, staying current with the latest developments and challenges, which translated directly into enforcement priorities for 2020. The feedback loop of drafting policy to preserve and enhance consumer privacy in the digital advertising ecosystem, while conducting annual reviews of the companies that compose a large 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, which it will continue into the next decade.

At a time when the nature of digital advertising is being questioned and reconsidered in Europe, in several U.S. states, and on a federal level, it is even more important for self-regulatory efforts in the U.S. to clearly demonstrate that a thoughtful and flexible self-regulatory approach can provide robust consumer privacy protection while also allowing digital advertising technology, and the Internet economy more broadly, to flourish. The most recent NAI survey indicated that an overwhelming majority of consumers prefer an ad-supported Internet, and are not willing to pay for the content they currently receive free of charge. Perhaps most importantly, the NAI's approach aims to preserve free and equal consumer access to a bounty of diverse content online.³³

To that end, the NAI is devoting a large part of its compliance resources in 2020 to continuing member education regarding the 2020 Code of Conduct, and the many new requirements presented by that document. The NAI continues to publish new, and revise existing, guidance documents to clarify and expand on requirements in the 2020 Code. Topics covered in NAI guidance for 2020 include health-related audience targeting and the use of Precise Location Data. To facilitate consistent member compliance with state legislation, notably the CCPA, the NAI continues to hold regular meetings with members to help inform and guide the industry with respect to interpreting and responding to new and existing laws. The NAI is also further expanding its public policy efforts and outreach on a state and federal level, speaking with regulators and legislators alike to inform them about the intricacies of digital advertising, the most pressing privacy concerns in this area, and how self-regulation can work hand-in-hand with additional state and federal legislation and regulations.



ENDNOTES

- 1 IBA is defined in the Code as “the collection of data across web domains owned or operated by different entities for the purpose of delivering advertising based on preferences or interests known or inferred from the data collected” (Code § I.F.). Since 2015 the NAI has also 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 for the purpose of delivering an advertisement based on that data in a different, unaffiliated web domain or application” (Code § I.M.).
- 2 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.).
- 3 The Code covers activities that occur in the United States or affect consumers in the United States. While the NAI encourages its members to apply the high standards of the Code to their Personalized Advertising and ADR activities globally, the NAI only evaluated US-based Personalized Advertising and ADR activity for the purposes of this compliance report. Unless noted otherwise, all references to the NAI Code refer to the 2018 NAI Code of Conduct, which can be found at: https://www.networkadvertising.org/sites/default/files/nai_code2018.pdf.
- 4 The Code defines CAA as “the collection of data across applications owned or operated by different entities on a particular device for the purpose of delivering advertising based on preferences or interests known or inferred from the data collected” (App Code § I.B.).
- 5 Personalized Advertising is defined in the Code as “a collective term for Interest-Based Advertising, Cross-App Advertising, and Retargeting, as well as any combination of these practices” (Code § I.J.).
- 6 NAI membership spans various technology platforms, including demand side platforms (DSPs), supply side platforms (SSPs), data management platforms (DMPs) and audience management platforms (AMPs).
- 7 A 2014 study shows that offering relevant advertising to visitors benefits smaller websites, providing essential revenue to the “long tail” of web content. See J. Howard Beales & Jeffrey A. Eisenach, *An Empirical Analysis of the Value of Information Sharing in the Market for Online Content* (2014), <http://www.aboutads.info/resource/fullvalueinfostudy.pdf>.
- 8 Guidance for NAI Members: Viewed Content Advertising (Connected TV Guidance) can be found at: https://www.networkadvertising.org/sites/default/files/naiguideance_viewedcontentadvertising.pdf.
- 9 The 2020 NAI Code of Conduct can be found at: https://www.networkadvertising.org/sites/default/files/nai_code2020.pdf.
- 10 Guidance for NAI Members: Opt-In Consent can be found at: https://www.networkadvertising.org/sites/default/files/final_nai_optinconsent-guidance19_final.pdf.
- 11 The General Data Protection Regulation can be found at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R0679&from=EN>.
- 12 The California Consumer Privacy Act can be found at: https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=CIV&division=3.&title=1.81.5.&part=4.&chapter=&article=
- 13 More information on the Privacy for America Coalition can be found at: www.privacyforamerica.com.
- 14 Hearings on Competition and Consumer Protection in the 21st Century, held by the Federal Trade Commission, can be found at: <https://www.ftc.gov/news-events/events-calendar/ftc-hearing-6-competition-consumer-protection-21st-century>.
- 15 More information on the Transparency and Consent Framework can be found at: <https://iabtechlab.com/standards/gdpr-transparency-and-consent-framework/>.

- 16 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.
- 17 Opt-Out Mechanism is defined under the Code as “an easy-to-use mechanism by which individuals may exercise choice to disallow Interest-Based Advertising with respect to a particular browser or device.” (Code § I.J.; App Code § I.K).
- 18 The following nine companies completed the new member application process and became NAI members in 2019: AdFire Health, AdForm, AudienceRate, Gravy Analytics, HiveStack, Semasio, Swoop, Ubimo, X-ID.
- 19 See Investigations and Sanctions *infra* pp. 28–29.
- 20 The following companies were NAI members on January 1, 2019 but were not among evaluated member companies in 2019:
- a. Media Innovation Group, Yahoo, X-ID, Sizmek, and Drawbridge were no longer independently engaged in Personalized Advertising operations in the United States. These companies terminated their NAI memberships and did not complete the 2019 annual compliance review.
 - b. Collective Media, IgnitionOne, Magnetic, Netmining, and OneMarket ceased operations altogether in 2019.
 - c. Clinch did not renew its NAI membership in 2019.
- 21 See *supra*, note 17.
- 22 NAI staff makes an effort to review its newest member companies first 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.
- 23 The NAI’s Connected TV Guidance defines Viewed Content Advertising as “the collection of Viewed Content Data, or the use of such data, for the purpose of customizing advertising based on preferences or interests known or inferred from the data collected” (§ I. B.).
- 24 If a member has an agreement with a partner to collect data on the partner’s site or app for Personalized 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.3-4.). This requirement is discussed more fully below.
- 25 NAI member companies represent 4 of the top 5 Ad Networks according to the comScore Ad Focus Rankings (Desktop Only) last published in December 2019, available at <https://www.comscore.com/Insights/Rankings>.
- 26 One member company, Eyeview Digital, completed all other parts of its 2019 NAI compliance review but ceased operations before being able to complete its attestation form for the year. Two member companies, Narrativ and Varick Media Management, completed all other parts of their 2019 NAI compliance reviews, but terminated their memberships in 2020 before completing their 2019 attestation forms.
- 27 As described above, with the Privacy Disclosure Scanner, the NAI monitors member privacy disclosures to ensure that members do not inadvertently remove language required by the Code.
- 28 The DAA’s guidance can be found at: http://www.aboutads.info/DAA_Mobile_Guidance.pdf.
- 29 See Update on Viewed Content Advertising, available at: <https://www.networkadvertising.org/blog-entry/update-viewed-content-advertising/>.
- 30 The NAI Internet Connected TV Choices can be found at: <https://www.networkadvertising.org/internet-connected-tv-choices/>.
- 31 See Update on Viewed Content Advertising, available at: <https://www.networkadvertising.org/blog-entry/update-viewed-content-advertising/>.
- 32 In 2019 NAI staff consisted of Leigh Freund, President and CEO; David LeDuc, Vice President, Public Policy; Anthony Matyjaszewski, Vice President, Compliance and Member Development; Matthew Nichols, Senior Counsel, Compliance and Policy; Julie Karasik, Director, Technology and Product; Tony Ficarrota, Counsel, Compliance and Policy; Rod Ghaemmaghami, Counsel, Compliance and Policy; and Leanny Prieto, Policy and Communications Coordinator.
- 33 Consumer Survey on Privacy and Digital Advertising can be found at: https://www.networkadvertising.org/sites/default/files/final_nai_consumer_survey_paper_22oct2019.pdf.

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