

Guidance for NAI Members: Cross-Device Linking

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INTRODUCTION

The Network Advertising Initiative (NAI)'s self-regulatory framework, including the 2015 Update to the NAI Code of Conduct, the 2015 Update to the NAI Mobile Application Code, and NAI's guidance documents, has long supported the principles of notice, transparency, choice, control, and accountability, and a commitment by member companies to responsible data collection and use practices for customized advertising on a single browser or device. Today, as consumers increasingly access the Internet through many Internet browsers and applications on different devices, such as smartphones, laptops¹ and tablets, member companies have the opportunity to use and integrate data collected across these devices for many purposes, including linking devices for Interest Based Advertising², Retargeting³ (collectively IBA), Cross-App Advertising⁴ (CAA) and Ad Delivery and Reporting⁵ (ADR). For instance, an advertiser may use a technology provider to display an ad campaign for a product on a user's laptop browser and in the same user's smartphone application. This guidance document specifies that NAI member companies should conduct targeted advertising across devices in a manner that is consistent with the NAI's self-regulatory framework.

Linking the devices or browsers of a user for advertising purposes by NAI members will be addressed as "Cross-Device Linking." Specifically, Cross-Device Linking shall mean the practice of linking two or more devices or browsers used or likely used by the same user, for advertising purposes.⁶ In this guidance document, IBA (including Retargeting) and CAA will be addressed collectively as "Personalized Advertising."

¹ For the purpose of this guidance document, laptops shall also include desktops and work stations.

² Interest-Based Advertising is defined under Section I.A. of the 2015 Update to the NAI Code of Conduct to mean "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."

³ Retargeting, although a separate and distinct practice from Interest-Based Advertising, is defined under Section I.C. of the 2015 Update to the NAI Code of Conduct and Section I.C. of the 2015 Update to the Mobile Application Code as the practice of collecting data about a user's activity on one web domain or application for the purpose of delivering an advertisement based on that data on a different, unaffiliated web domain or application.

⁴ Cross-App Advertising, as defined under Section I.A. of the 2015 Update to the Mobile App Code, means the collection of data through applications owned or operated by different parties on a device for the purpose of delivering advertising based on the preferences or interests inferred from that data.

⁵ Ad Delivery and Reporting (ADR) is defined in each of the NAI Codes. In this Cross-Device Guidance ADR shall have the meaning of either the definitions in the NAI Codes, as may be applicable.

⁶ Advertising purposes include the collection of data about a user across unaffiliated websites for the purpose of delivering targeted advertising (Interest-Based Advertising) or the collection of data across applications (Cross-App Advertising) and engaging in Ad Delivery and Reporting (ADR), across browsers or devices that are linked together by a member's Cross-Device Linking.

APPLICATION OF THIS GUIDANCE TO THE NAI CODE OF CONDUCT

This Guidance for NAI Members: Cross-Device Linking⁷ (Guidance) announces that Cross-Device Linking is covered under the NAI Codes' requirements for Personalized Advertising⁸ including the requirements to provide notice and choice, and to comply with transfer restrictions and limitations on the use of Personally-Identifiable Information (PII) and Sensitive Data. This Guidance is not an endorsement of any specific technology or business model. While consistent with the NAI Codes and other NAI guidance documents, this Guidance discusses only certain requirements of the NAI Codes. The NAI recognizes that the digital advertising ecosystem is rapidly evolving and companies may be in the process of developing new technologies and business models to address changes in the ecosystem. Any questions about compliance should be directed to NAI compliance staff who will evaluate member compliance with the requirements of the NAI Codes whether or not addressed in this Guidance, and irrespective of the technology used.⁹

This Guidance will be effective upon publication to the NAI membership. NAI will enforce this Guidance following an implementation period,¹⁰ during which NAI Staff will work to inform, educate and help members align their business practices with the requirements.

Note: This Guidance is not intended as legal advice regarding compliance with laws or regulations. NAI encourages members to consult with legal counsel regarding compliance with laws and regulations in all geographic regions applicable to their businesses, and to review and update business models, privacy policies, terms of service, advertisements, or other representations accordingly. Furthermore, this Guidance does not alter or otherwise offer any opinion on the terms of service or restrictions that non-NAI entities may place on the use of advertising identifiers.

⁷ Pursuant to Section III.B.2 of the 2015 Update to the Code of Conduct, NAI may from time to time update policies and procedures for annual compliance reviews. This Guidance is the product of the Cross-Device Working Group, a group comprised of representatives from member companies and NAI staff. The implementation of certain technical and policy requirements around this Guidance may be modified as necessary following the approval of this draft.

⁸ See footnote 1 of the 2015 Update to the NAI Code of Conduct.

⁹ For instance, members that use audio signals to link or identify devices for advertising purposes must disclose the use of this technology for such purposes in their privacy disclosures and provide users with the requisite notice and choice as laid out in the NAI Codes.

¹⁰ NAI staff will enforce member compliance with this Guidance following the conclusion of this implementation period.

I. Definitions

All capitalized terms not defined herein shall have the meanings set forth in the NAI Codes or NAI guidance documents.¹¹

II. Member Requirements

A. EDUCATION (NAI CODES SECTION II.A.)

NAI members shall support NAI efforts to provide centralized education information about Cross-Device Linking for Personalized Advertising and Ad Delivery and Reporting.¹²

B. NOTICE (NAI CODES SECTION II.B.)

NAI members engaged in Cross-Device Linking for Personalized Advertising and Ad Delivery and Reporting shall include the following in their privacy disclosure, as applicable:¹³

1. A statement that the member is engaged in Cross-Device Linking for Personalized Advertising and/or Ad Delivery and Reporting;
2. A description of, and navigation to, an easy-to-use opt-out mechanism (detailed in Section II.C. below).
3. Pass-On Notice Efforts: As part of members' overall efforts to promote transparency in the marketplace, members who engage in Cross-Device Linking should make "reasonable efforts" to ensure that websites and/or applications with which they contract provide notice comparable to that in Section II.B.1-2 above.

¹¹ NAI guidance documents currently include the following: Guidance for NAI Members: Use of Non-Cookie Technologies for Interest-Based Advertising and Determining Whether Location is Imprecise.

¹² NAI members should provide input on consumer education information about Cross-Device Linking for Personalized Advertising, Transparency and Notice (NAI Code Section II.B.).

¹³ A member may be required to disclose additional information as required under Section II.B. of the NAI Codes.

C. USER CONTROL (NAI CODES SECTION II.C.)

Consistent with the requirements of Section II.C. of the NAI Codes, members who engage in Cross-Device Linking for Personalized Advertising shall offer users choice and honor their choice as follows while a browser or device is opted out:

1. The member shall cease the collection of data for Personalized Advertising on the browser or device¹⁴ on which the users have expressed their choice, for use on that or any other browser or device associated through Cross-Device Linking; and
2. The member shall cease Personalized Advertising on the browser or device on which the users have expressed their choice, with any data collected from a browser or device associated through Cross-Device Linking.

Commentary: When a user has opted out of Personalized Advertising from a member on a browser or device the member company must cease collecting and using data for Personalized Advertising on that browser or device, but may continue to collect data for non-Personalized Advertising purposes (such as Ad Delivery and Reporting) on that browser or device or on other linked browsers or devices.

¹⁴ At this time data collection and use for Personalized Advertising through web browsers and applications are controlled by separate consumer choice mechanisms. "Device" refers to applications on smartphones or tablets that have access to device-wide controls and does not include data collection or use on websites accessed by browsers on that same device, which are subject to separate Opt-Out Mechanisms.