

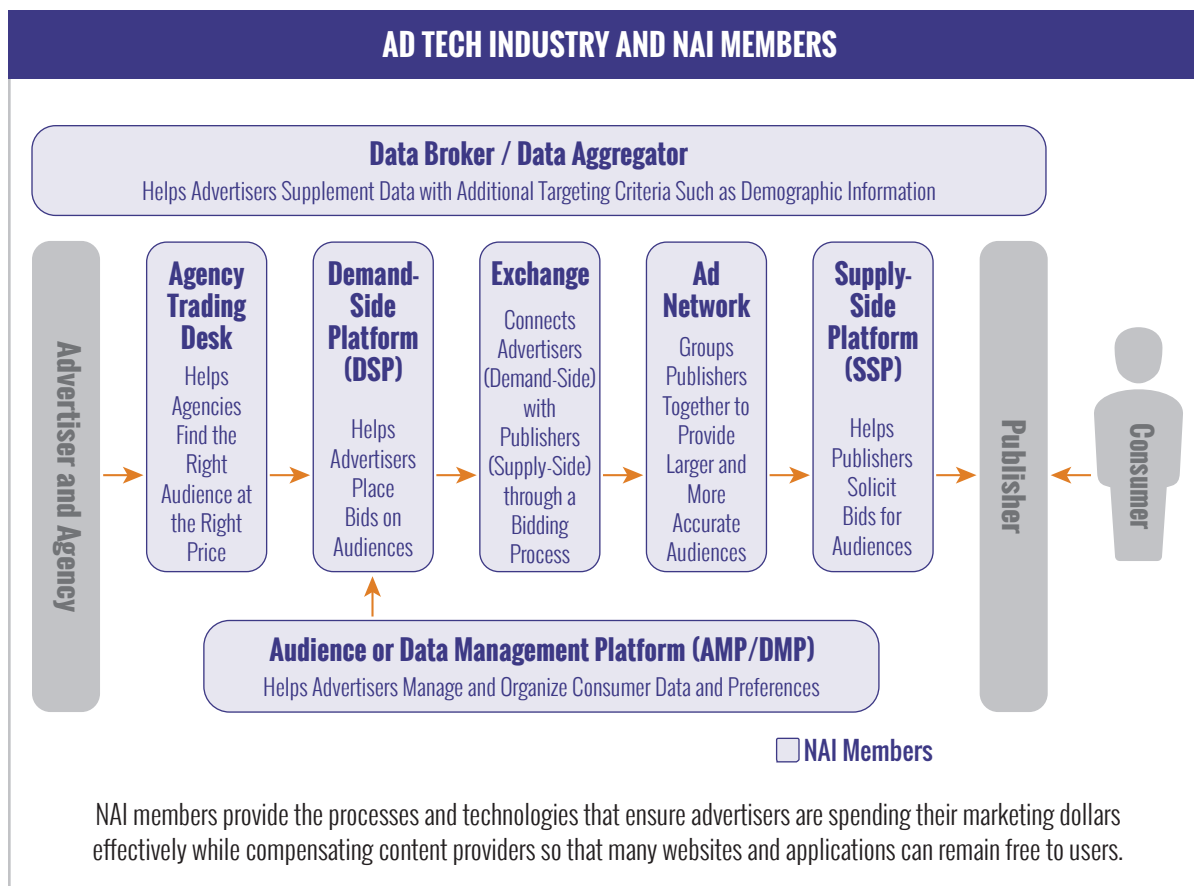
2018 ANNUAL REPORT

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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, enforced as of January 1, 2018, also created a new term, Personalized Advertising, to collectively encompass IBA, CAA, and Retargeting.⁵ At the time of this publication, the NAI has 103 member companies. These NAI members include a wide range of businesses such as ad networks, exchanges, platforms, data aggregators, and other technology providers.⁶ Across websites and mobile applications, 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 content and services in the digital ecosystem, including websites and mobile applications.**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 periodic 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 2018 compliance period, NAI staff reviewed eligible members' compliance with the Code. This report provides a summary of the NAI's work in 2018 as well as staff's findings from the 2018 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, to ensure 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.

2018: THE YEAR IN REVIEW

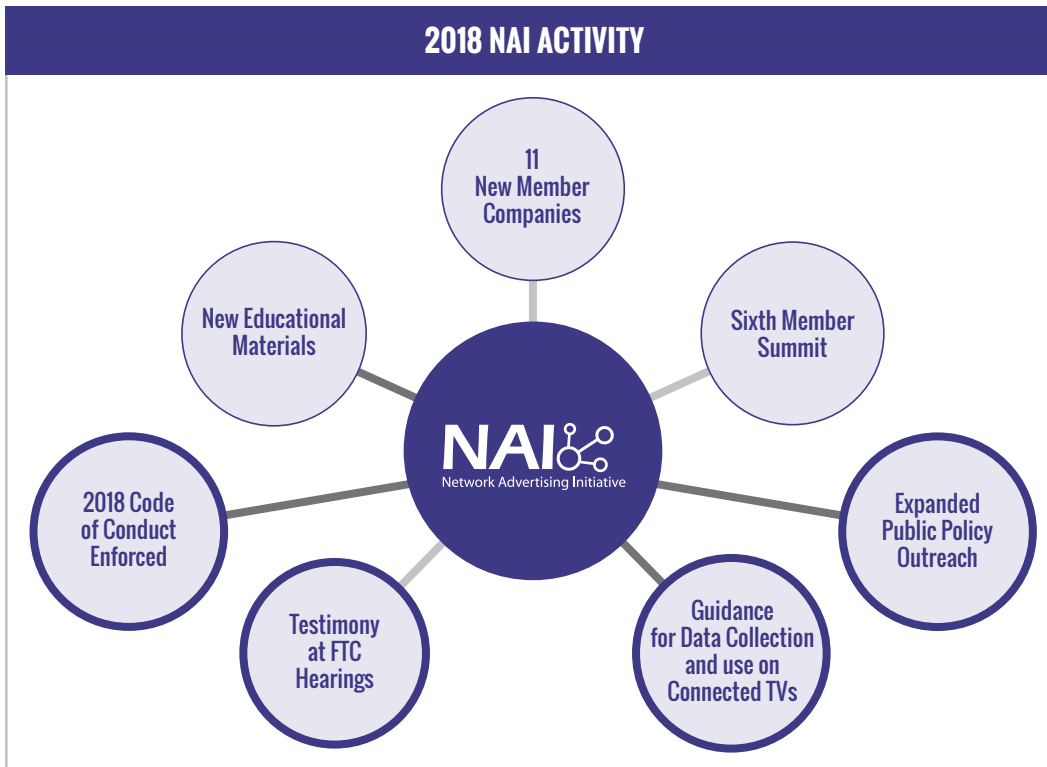
The NAI's self-regulatory program continues to develop and progress along with the advertising technology ecosystem and the privacy field more broadly. Each year the NAI sets forth its goals for the following year, and for 2018 the NAI pledged to: (1) begin enforcement of the 2018 NAI Code of Conduct; (2) publish Guidance relating to the collection and use of data on connected televisions; (3) work with members and industry stakeholders to reexamine terminology in the Code while working on the development of a thoroughly revised Code of Conduct, intended to incorporate the use of "offline" or Customer-Relationship Management (CRM) data; and (4) continue improvement of its technical monitoring suite.

In 2018, 11 new member companies were approved by the NAI Board of Directors.

The NAI began its enforcement of the 2018 Code of Conduct in January of 2018, helping to ensure that all members were in a good position to comply with the Code during the course of the year. The NAI published its "Guidance for NAI Members: Viewed Content Advertising," in July of 2018, bringing its self-regulatory efforts to the television space.⁸ The NAI Board and NAI staff dedicated extensive time in 2018 to draft a new Code of Conduct for a new decade of digital advertising, culminating in a thoroughly reworked Code of Conduct that encompasses new business models and marketing strategies, including the use of "offline" data by advertisers. This 2020 NAI Code of Conduct,⁹ which the NAI published in May of 2019, also reexamines much of the terminology used by the NAI and introduces numerous new concepts. The 2020 Code of Conduct is scheduled to go into effect on January 1, 2020. The NAI further revamped its technical monitoring tools to streamline its analysis methods and to better prepare for monitoring of the NAI opt-out page in 2019.

NAI compliance staff began enforcement of the 2018 Code of Conduct on January 1, 2018.

Throughout 2018, NAI staff worked on the completion of an overhaul of its technical monitoring tools to dramatically improve functionality as well as to provide more consistent results and metrics. While the NAI continues to refine these tools, this work has already led to a more dependable view of members' activities and the availability of Opt-Out Mechanisms on the NAI website.



NAI staff worked with members and other industry stakeholders to monitor technical and policy developments in the connected television space. The information gleaned from this process resulted in the NAI’s publication of *Guidance for NAI Members: Viewed Content Advertising*, in July of 2018.

The NAI hosted its sixth annual Summit in 2018, bringing this one-of-a-kind industry event to Miami 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 2018

Summit included timely discussions about consumer perspectives on data privacy, the nature of personal information, connected televisions, and other relevant topics which inform NAI members’ behavior in the marketplace.

Eleven new members joined the NAI in 2018. 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

2018 saw the General Data Protection Regulation (GDPR)¹⁰ come into force, dramatically changing the way NAI members and other digital advertising businesses operate across Europe. This year also marked the enactment of the first comprehensive U.S. state privacy legislation, the California Consumer Privacy Act (CCPA).¹¹

The NAI greatly expanded its public policy efforts in 2018 by hiring additional staff, including a new Vice President for Public Policy. This investment in staffing and expertise allowed the NAI to engage with legislators and regulators on a far more frequent basis to exchange ideas and information about the intricacies of digital advertising, the most pressing privacy concerns in this area, and how self-regulation can provide a foundation and become an essential complement to new regulations. Highlights from 2018 included NAI Board member testimony at a congressional hearing on digital advertising,¹² the development of detailed educational materials about digital advertising, and NAI staff conducting multiple advertising technology briefings for policymakers and privacy thought leaders.

Over the past year the NAI became a leading voice for the advertising industry and third-party advertisers, in promoting a new federal privacy framework. As part of its efforts in this space, the NAI submitted detailed comments to the Department of Commerce and held a series of meetings on Capitol Hill to help cultivate support for federal legislation that balances consumer privacy with consumer benefits of responsible digital advertising. The

NAI also played a leadership role in the Federal Trade Commission (FTC)'s efforts to inform and shape the national privacy debate, submitting detailed comments and providing testimony by NAI President & CEO, Leigh Freund, on behalf of the industry in support of self-regulation.¹³ On the state level, the NAI increased its advocacy efforts to support multiple amendments to the CCPA, aimed at providing additional clarity for businesses and highlighting some provisions in the act that could potentially impede the privacy-protective practices long promoted by the NAI and its members. As part of this process, the NAI also engaged with the office of the California Attorney General in support of additional flexibility and clarity in implementing regulations.

In Europe, the NAI participated in dialogues with European policymakers on behalf of its members and took a leadership role in the continued development of the Transparency and Consent Framework (TCF) promulgated by the Internet Advertising Bureau in the European Union.¹⁴

The common objective in all of the NAI's public policy efforts was to promote policies that ensure strong consumer privacy protections, but also enable thriving and vibrant digital content that is supported by innovative digital advertising solutions. Further, the NAI has continued to advocate for a key role for self-regulation as a means of supplementing and enhancing state and federal legislation, and a method for companies that participate in such self-regulatory efforts to demonstrate their compliance with legislative and regulatory requirements.

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. 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 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. 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 in order 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 Mechanism¹⁵ 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.¹⁶

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 2018, eleven companies¹⁷ completed the application process and were approved for membership by the Board.

At the close of the 2018 compliance review period, the NAI Board consisted of:

Douglas Miller, Chairman, NAI Board of Directors; *Vice President and Global Privacy Leader*, Oath Inc.

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

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

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

Jason Bier, *EVP, General Counsel & Chief Privacy Officer*, Engine Media

Michael Blum, *Chief Legal Officer*, Quantcast

Kevin Ching, *Senior Vice President, Product and Data Strategy*, NinthDecimal

Ken Dreifach, *Shareholder*, Zwillgen, on behalf of AdRoll

Rachel Glasser, *Chief Privacy Officer*, Wunderman

Brad Kulick, *Senior Director of Privacy*, Yahoo!

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

Tia Link, *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 allow staff to flag potential issues for review or investigation. The NAI monitoring suite is under continuous development and was further revised in 2018 to provide improved stability and functionality.

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.

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 promptly reviews the situation. Upon further review, NAI staff typically confirmed that these flags did not actually involve violations of the Code. A common example is that of a flag that may have been raised when a privacy policy appeared to be inaccessible, though further investigation demonstrated that the disclosures in question had been moved to a different URL and continued to be accessible to consumers.

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. For example, several NAI members were acquired by or merged with other companies, resulting in changes to their privacy disclosures. In other cases, members' privacy policy links were accidentally removed, or were not moved to new domains during a rebrand. 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, where 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 2018 were the result of connection speeds. 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, daily 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 or non-conforming Opt-Out Mechanisms. NAI staff works with members to promptly address such inconsistencies.

The Privacy Disclosures Scanner helps bring numerous business model changes to the attention of NAI staff, such as new products offered by NAI member companies, and acquisitions of new brands and business lines.

Because disclosures in privacy policies usually occur in anticipation of the launch of a new product, spotting these changes allows NAI staff to help members evaluate how existing requirements under the Code apply to these new products and offerings. This knowledge, in turn helps the NAI further optimize its monitoring tools and aids NAI staff in incorporating new concepts into the following year's annual compliance reviews.

Many of the changes to members' privacy disclosures in 2018 were the result of members responding to action items and feedback provided by NAI staff, or members proactively disclosing a new product or technology. The 2018 compliance team relied on the Privacy Disclosures Scanner to focus more specifically on verifying that changes discussed with evaluated member companies were incorporated in their privacy disclosures.

In 2018, the NAI Privacy Disclosures Scanner monitored over 340 pages for changes that could affect member compliance with NAI disclosure requirements.

In 2018, the NAI Privacy Disclosures Scanner captured over 2300 snapshots of privacy policies, monitoring over 340 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.

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 2018, the NAI received and reviewed 2000 queries through its website and 77 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 2018, the NAI received over 2000 consumer queries through its website or via email.

Approximately 10 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 2018 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 scrutinized 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 2018, NAI staff conducted one investigation based on public allegations of potential non-compliance with the Code.¹⁸

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.

In 2018, the NAI reviewed 92 member companies.

During the 2018 annual compliance review, NAI staff reviewed the 92 companies that were members from January 1 through December 31, 2018.¹⁹ These members are referred to as “evaluated member companies” throughout this report. Those members that joined the NAI after January 1, 2018²⁰ 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 2018 annual compliance review. Those members will be assessed again during the 2019 annual review process.²¹

Training

In 2018, 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 two webinars, in coordination with legal experts, to help educate members about the effects of privacy legislation in Europe and California. NAI staff also hosted two educational webinars to explain member obligations when collecting or using data for digital advertising on connected televisions, coinciding with the publication of the NAI’s Guidance on Viewed Content Advertising.

In total, the NAI held four all-member calls or webinars throughout 2018, including educational calls featuring legal and technology 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.

Written Questionnaire and Supporting Documentation

Evaluated member companies submitted written responses to the 2018 compliance questionnaire, which was revised to conform with the enforcement of the 2018 Code of Conduct. 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;²² 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. 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 technical 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 portion²³ 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 both 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 privacy policies, as well as the disclosures of a multitude of web and app properties.

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.²⁴

EVALUATED MEMBER COMPANIES

33Across	Fysical	PlacIQ
AcuityAds	Google	Pubmatic
Adara	GumGum	Pulpo
AddThis	Ignition One	PulsePoint
Adobe	IHS Markit	Qualia
AdRoll	Index Exchange	Quantcast
Amobee	inMarket	Rakuten Marketing
Apollo	Innovid	Retargetly
AppNexus	Intent Media	Reveal Mobile
Appreciate	Kargo	RhythmOne
BazaarVoice	KBM Group	Rubicon
Beeswax	Krux	RUN
Bouncex	Lotame	SambaTV
Choozle	Magnetic	ShareThis
Clickagy	Media.net	Signal
Collective	MediaMath	Simpli.fi
Conversant	Microsoft	Sizmek
Criteo	MIG	Skyhook
Cross Pixel Media	MiQ	Steelhouse
Cuebiq	Narrativ	Taboola
DataXu	Netmining	TapAd
Datonic	Netseer	The Trade Desk
Drawbridge	Neustar	Throttle
EMX	NinthDecimal	Turn
Exelate	Numberly	Undertone
Exponential	Oath	Varick Media Management
Eyeota	OneMarket	Viant
EyeView	Oracle	Vibrant
Factual	Outbrain	Xaxis
Flashtalking	OwnerIQ	Yahoo!
Freckle	Parrable	Yieldmo

2018 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 2018 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 or on the NAI website.



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 170,000 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 warning. 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.²⁵ 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. Compared to previous reviews, 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. As in prior years, NAI staff noted that compliance with this requirement continues to improve from year to year with more complete and accessible disclosures resulting from prior discussions with NAI staff.

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

(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 all of 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 companies that were 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.²⁶ 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 nearly all evaluated member companies did not engage in the collection of PII for Personalized Advertising or the merger of such data with DII collected for Personalized Advertising. Where applicable, NAI staff evaluated the robust notice provided by evaluated member companies, and/or the Opt-In Consent obtained by member companies engaged in the merger of PII with DII for Personalized Advertising and found that they met Code requirements.

User Control Findings, continued

NAI staff found that nearly all evaluated member companies did not engage 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.

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 nearly all evaluated member companies did not engage 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 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 an Opt-Out Mechanism 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 requirements regarding data quality, NAI staff offered suggestions and best practices to help them develop due diligence 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 2018 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:

There was 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.

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 three rounds of testing consumer question mechanisms, NAI staff noted an average response time under two days. 70% of members responded after the first round of testing, 94% of members responded after the second round of testing, and 100% of members responded after the third round. This demonstrates continued improvement over prior reviews, and the NAI will work with members to further.

INVESTIGATIONS AND SANCTIONS

Overview:

A thorough initial qualification process, coupled with the annual compliance assessment process, use of technology to flag and address issues quickly, and the availability of strong sanctions 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. 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 2018 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 its own website and on the NAI website. This company initially relied on another NAI member company's technology for Personalized Advertising as well as for consumer choice. Proprietary technology issues caused occasional technical malfunctions which led the Opt-Out Mechanism to not work correctly when a user tried to opt out of only this one member company. However, because nearly all users of the NAI Opt-Out Mechanism select the option that allows them to opt out of all member companies at once, through the use of a prominent button on the page, those users would be opted out of the company providing the underlying technology to the member in question, effectively opting them out of both companies.

To address this problem, the member in question developed its own opt-out technology that functioned as a "belt and suspenders" approach and set a second opt out directly from this member, which would signal to them not to use the second company's technology for Personalized Advertising. Thus, the user would be opted out of both the company supplying the Personalized Advertising technology, and the company using that technology. In practice, either of these two opt outs would have been sufficient to opt the user out of this company's Personalized Advertising activities, outside of two isolated advertising campaigns that did not leverage the partner's technology.

When integrating its own “belt and suspenders” opt out as a backup in the event of failures with the primary opt out provided by its technology partner, the member company left the additional opt out in the “staging” portion of the NAI site, and did not move this opt out to the “production” version of the site, thus making it unavailable to consumers. The NAI discovered this issue during testing and the company moved quickly to address the issue, providing both opt outs as part of its Opt-Out Mechanism.

Because the problem was inadvertent, resolved rapidly once discovered, and because only a very limited subset of users would have been affected by the issue, 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 investigation also involved a potentially malfunctioning Opt-Out Mechanism provided by a member company on its own website and on the NAI website. NAI staff noted during testing that the company’s Opt-Out Mechanism was, in certain browsers rotating the user ID rather than setting a generic opt-out value as required by the NAI, and in other browsers the opt-out value did not extend the lifespan of the cookie to the five year minimum required by the NAI.

Upon investigation by the NAI and the member company, it was determined that this issue only occurred in a testing environment, when a user had two tabs open, one on the NAI site and one on the company’s own site. A race condition between the opt-out action on the NAI site and the regular tracking script on the company’s own site causing the cookie to revert to a user ID, with a six month expiration period, rather than a generic opt-out value and a five year lifespan. Once notified of the issue, the company resolved the problem in its technology.

Because the problem was inadvertent, resolved rapidly once discovered, and was unlikely to occur in normal use outside of testing, NAI staff determined that it did not rise to the level of a material violation of the Code and that sanctions would have been inappropriate.

Investigation Three

The third NAI 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 help ensure that no violations of the NAI Code were implicated.

The NAI’s investigation revealed that the allegations did not apply to the use of audience segments specifically aimed at children, and as such fell outside the scope of the NAI Code. Nonetheless, recent developments have helped led to revisions in the NAI Code of Conduct with regard to children’s data, and to the formation of a working group to address how NAI members can further help protect the privacy of minors.

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

Investigations 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.

Similarly 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 2018 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.

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.

CONCLUSION

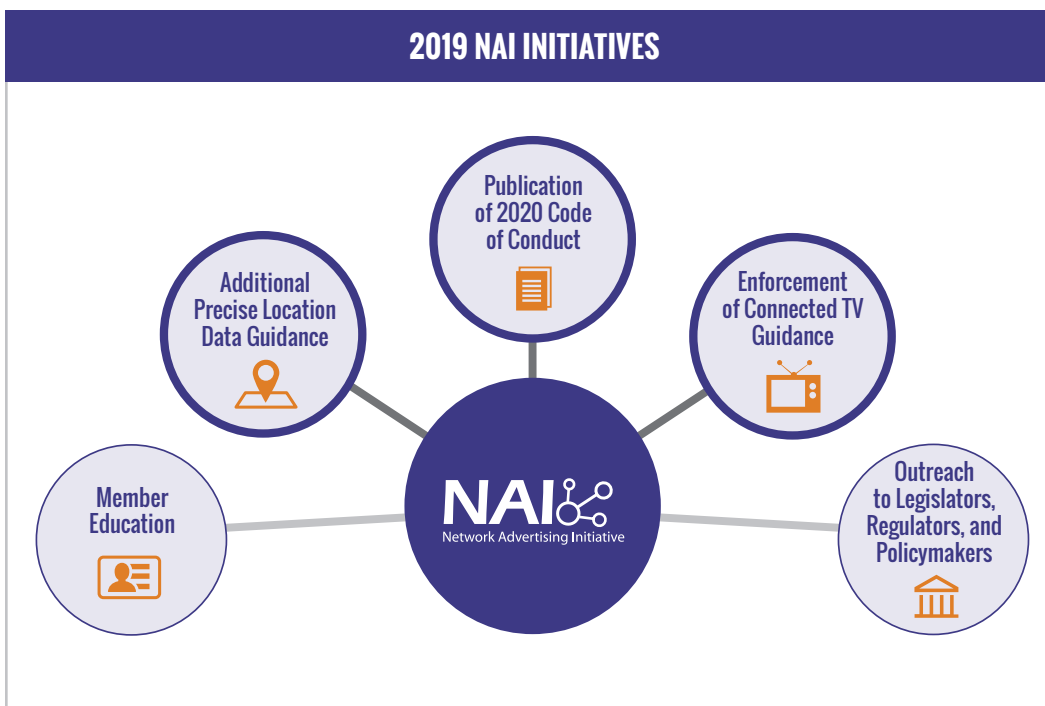
This report validates the role of the NAI's Code and self-regulatory process in promoting consumer privacy in the digital advertising industry. The NAI continues to update its Code and guidance to keep pace with technological developments and changing norms, culminating most recently in the publication of the 2020 NAI Code of Conduct, which is scheduled to go into effect in January 2020. This new Code will greatly expand 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 US states, and on a federal level, it is even more important for self-regulatory efforts in the US 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 2018, the NAI performed one of its largest compliance reviews yet, with 92 evaluated member companies, while separately reviewing eleven 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 the publication of the 2020 Code of Conduct. 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 US states, and on a federal level, it is even more important for self-regulatory efforts in the US 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.

To that end, the NAI is devoting a large part of its compliance resources in 2019 to member education regarding the 2020 Code of Conduct, and the many new requirements present in that document. NAI staff and its Board of Directors are also working on new guidance for members regarding Precise Location Data, and how advertising technology companies can help provide additional notice to users, consistent with new requirements in the 2020 Code, and going beyond current messaging in platform-provided consent mechanisms. The NAI is also working on additional guidance around data collection or use on websites targeted to children, as the 2020 Code increases the age threshold from thirteen to sixteen. The NAI is 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 as a foundation and essential piece of additional federal regulation or state and federal legislation.



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). While the NAI’s self-regulatory process applies only to member companies, the NAI encourages all companies that are part of the advertising technology ecosystem to join its program.
- 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 can be found at: https://www.networkadvertising.org/sites/default/files/nai_guidance_viewedcontentadvertising.pdf.
- 9 The 2020 NAI Code of Conduct can be found at: https://www.networkadvertising.org/sites/default/files/nai_code2020.pdf.
- 10 The General Data Protection Regulation can be found at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R0679&from=EN>.
- 11 The California Consumer Privacy Act can be found at: https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB375.
- 12 Rachel Glasser, NAI Board member and Chief Privacy Officer at Wunderman, provided testimony before the House Energy & Commerce Committee in June of 2018. This testimony can be found at: <https://docs.house.gov/meetings/IF/IF17/20180614/108413/HHRG-115-IF17-Wstate-GlasserR-20180614.pdf>.
- 13 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>.

- 14 More information on the Transparency and Consent Framework can be found at: <https://iabtechlab.com/standards/gdpr-transparency-and-consent-framework/>.
- 15 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).
- 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 The following eleven companies completed the new member application process and became NAI members in 2018: AlikeAudience, AuDigent, Branch, Clicksco, Clinch, DataPlusMath, Nativo, Place Exchange, SafeGraph, Twine, and Weborama.
- 18 See Investigations and Sanctions *infra* pp. 26.
- 19 The following companies were reviewed in 2017 but were not among evaluated member companies in 2018:
- a. Accuen, Aggregate Knowledge, Arbor, Atlas, Audience Trust, Brightroll, RadiumOne, Rocketfuel, Tagular, TubeMogul, and YuMe, were no longer independently engaged in Personalized Advertising operations in the United States. These companies terminated their NAI memberships and did not complete the 2018 annual compliance review.
 - b. Comet, Defy Media, TruEffect, and Videology ceased operations altogether in 2018.
 - c. Eyereturn, and iBotta, did not renew their NAI memberships in 2018.
- 20 See *supra*, note 17.
- 21 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.
- 22 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.
- 23 NAI member companies represent 8 of the top 10 Ad Networks according to the comScore Ad Focus Rankings (Desktop Only) last published in December 2018, available at: <https://www.comscore.com/Insights/Rankings>.
- 24 One member company, Magnetic, completed all other parts of its 2018 NAI compliance review but ceased operations before being able to complete its attestation form for the year.
- 25 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.

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