Guidance for NAI Members:
Use of Non-Cookie Technologies for Interest-Based Advertising

April 2017 Update

NAI
Network Advertising Initiative

Disclaimer

NAI members will be granted a period of time to implement policies and procedures to comply with this Guidance. **During this implementation period members may use non-cookie technologies for Interest-Based Advertising and Ad-Delivery and Reporting provided they meet the requirements set forth in this Guidance.** However, NAI requirements pertaining to members' use of NAI's new opt-out tool will become effective after the NAI has completed testing and integrating new functionality into NAI's central industry opt-out page.

I. Application to the NAI Code of Conduct

The Network Advertising Initiative (NAI) issues this Guidance[1] for the use of non-cookie technologies for Interest-Based Advertising (IBA) and Ad Delivery and Reporting (ADR) consistent with the NAI's self-regulatory framework and the 2015 Update to the NAI Code of Conduct (NAI Code).[2] This Guidance is not an update or amendment to the NAI Code, nor an endorsement of any specific technology or business model. Rather, this Guidance explains how the NAI Code may apply in this limited context, sets baseline best practices and explains how NAI staff may review business models that use non-cookie technologies for IBA during annual compliance reviews.[3] This Guidance will be effective upon its publication to the NAI membership. Following publication, members will be given a period of time to implement this Guidance.[4] During this implementation period NAI staff will work with members to inform, educate and help them align their business practices with this Guidance.

The NAI recognizes that the digital advertising ecosystem is rapidly evolving and companies may be developing new technologies and business models to address changes in the ecosystem. As always, the NAI staff will be guided by the overarching mission of evaluating member compliance with the requirements of the NAI Code. NAI staff will look to whether member practices meet the NAI Code, whether or not their practices are addressed in this Guidance, and regardless of the technology used. Because of members' rapid innovation, this Guidance may be updated periodically, and NAI staff may evaluate members' practices on a case-by-case basis. The NAI may publish, from time to time, additional guidance as questions relating to the application of NAI Code requirements arise, as members suggest new compliance options, or as implementation challenges surface.

The NAI Code requires notice and choice with respect to IBA and imposes a host of substantive restrictions on members' collection, use, and transfer of data used for IBA. NAI Code requirements are designed with generally accepted Fair Information Practice Principles in mind.[5]

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 identifiers.

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1   Pursuant to Section III.B of the 2015 NAI Code of Conduct, NAI may update policies and procedures from time to time. This *Guidance for NAI Members: Use of Non-Cookie Technologies for Interest-Based Advertising* (this Guidance) is the product of the Beyond Cookies Working Group, a group comprised of representatives from members and staff. The implementation of certain technical and policy requirements may be modified as necessary following the publication of this Guidance.

2   Members' data collection and use across mobile-web browsers for targeted advertising is covered by the NAI Code as IBA. The collection of data across mobile applications for Cross-App Advertising (CAA) is governed by the 2015 NAI Mobile Application Code (NAI App Code) which went into effect in 2016. This Guidance does not apply to members' CAA, their linking of devices in a cross-device graph, or the collection and use of data across browsers and/or devices. Separate guidance or best practices may be issued to address members' cross-device linking and advertising activities.

3   The NAI Code is intended to be technology neutral with respect to the collection and use of data for IBA although the application of NAI Code requirements may vary based on the technologies used. This Guidance illustrates how the NAI Code may be applied and enforced when members use non-cookie technologies for IBA. The NAI does not preclude the use of technologies for collecting data, whether available today or developed in the future, so long as the technologies used satisfy the requirements of the NAI Code. The NAI, a non-profit self-regulatory membership organization, does not dictate which technologies members may use but helps ensure that members understand and comply with their obligations under the NAI Codes of Conduct.

4   NAI staff will begin enforcing compliance with this Guidance on April 17, 2017.

5   Although only certain NAI Code requirements are discussed in this Guidance, members are required to comply with the full NAI Code when using non-cookie technologies. Any questions about compliance should be directed to the NAI compliance team.

II. Transparency and Notice (NAI Code Section II.B)

A. A member that uses non-cookie technology[6] shall include the following information in their privacy policy and/or readily accessible privacy notice:

  1. A general description of the technology used for IBA and/or ADR, including a disclosure that non-cookie technology is used for IBA and/or ADR;

  2. A description of, and navigation to, an easy-to-use opt-out mechanism by which users may exercise choice to disallow IBA with respect to a particular browser, including the use of non-cookie technology for IBA on that browser;

  3. A description of, and navigation to, a consumer transparency tool;[7] and,

  4. Any required update to representations that browser cookie controls in isolation halt IBA where such representations would otherwise be in error.

B. Pursuant to the current requirements set forth in NAI Code Sections II.B.3 and II.B.4, a member that uses non-cookie technology for IBA shall take steps to require websites where their non-cookie technology is used for IBA to provide notice that non-cookie technology may be used by third parties on that site.

  1. As part of a member's efforts to promote transparency in the marketplace, a member that uses non-cookie technology for IBA should make a "reasonable effort" to ensure that such notice is present on partners' websites.

  2. A member that has previously offered their partners suggested language relating to the use of cookies for IBA, should make additional effort to have such language updated and amended as the member deems appropriate.[8]

C. Users shall have an appropriate degree of transparency of the technologies members use for IBA. A member who uses non-cookie technology that cannot be viewed or controlled using native browser controls (i.e. server-side statistical identifiers) shall implement a consumer-facing transparency mechanism. Such a mechanism shall display the following elements, at a minimum:

  1. On both[9] the member's website and the NAI opt-out tool (1) whether data is being collected for IBA on a specific browser using their non-cookie technology and (2) the opt-out status for that specific browser; and,

  2. On the NAI's opt-out page (1) an icon or other similar disclosure[10] to inform consumers that the member is using non-cookie technology for IBA, and (2) a link back to the member's website for more information about their use of non-cookie technology.[11]

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6   A non-cookie technology is a methodology used to collect data from a browser across unaffiliated websites for the purpose of IBA or ADR.

7   A description of the transparency tool is provided in Section II.C.

8   An illustration of the type of language that may be used to update partner notice is provided in Addendum A to this Guidance. Where a member deems it appropriate to update their notice requirements, a member should act in a commercially reasonable manner. Partners, however, are solely responsible for assuring that any notice they provide to consumers is accurate and consistent with their policies and data collection activities.

9   To comply with this requirement members shall work with NAI staff to update their opt-out mechanisms to comply with the specifications of NAI's new opt-out tool. Members may meet this transparency requirement by offering a link from their privacy disclosures to the transparency mechanism on the NAI site along with an explanation that the linked transparency mechanism will communicate to users whether the member is utilizing non-cookie technology on that particular browser.

10   The NAI's new opt-out tool will include a disclosure that meets this requirement when a member indicates they are using a non-cookie technology for IBA on a particular browser.

11   This should link back to the member's privacy policy or publicly accessible privacy notice that includes the disclosures required in Section II.A of this Guidance.

III. User Control (NAI Code Section II.C)

A. Consistent with the requirements of NAI Code Section II.C,[12] a member who uses non-cookie technology for IBA must provide an opt-out. A member who uses non-cookie technology for IBA shall enable an opt-out mechanism on their website and through the NAI's opt-out tool.

    1. A member may continue to use non-cookie technology for non-IBA purposes following an opt-out provided that no data collected while a consumer is opted out shall be used for IBA.

    2. An opt-out must cover the browser on which the choice is expressed.

        a. A member must respect the opt-out preference recorded by an opt-out cookie on the browser where the consumer has set that preference.[13]

        b. The NAI opt-out tool sets opt-out cookies as third-party or first-party cookies. If third-party cookies are not able to be set, a member who uses non-cookie technology for IBA shall either:

            i. Set a first-party opt-out cookie;[14] or,

            ii. Honor a consumer's preference to opt-out of IBA through other means,[15] as approved by the NAI in the future.

        c. In addition to honoring an opt-out cookie, a member who uses non-cookie technology for IBA for which consumer-facing browser controls do not exist (such as a statistical ID), shall:

            i. Offer a user the ability to stop the member's prospective data collection[16] with the non-cookie technology; or,

            ii. Offer the user the ability to disassociate previously collected data from their browser.

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[12] Under NAI Code Section II.C.1.a, the use of non-PII for IBA shall require an opt-out mechanism, which shall be available both on the NAI website and a member's website.

[13] The Beyond Cookies Technical Working Group has worked to expand the current opt-out tool to include the setting of opt-out cookies in a first-party context for browsers that prevent the setting of third-party opt-out cookies. The policy objective of this technical development is to provide users with an effective and technology-neutral mechanism to opt out of IBA.

[14] Domains that set first-party cookies may experience elevated privileges as a result of browser-defined behavior. These policies are outside of the control of NAI and its members and are subject to change without NAI's knowledge, input or approval. Regardless, a member that uses non-cookie technologies for IBA shall not use such elevated permissions that may result from setting a first-party opt-out cookie through the opt-out tool to set non-IBA cookies.

[15] The NAI may add additional opt-out methodologies to its new opt-out tool, or alter existing ones, as technologies are evaluated on a case-by-case basis.

[16] To comply with this requirement, a member shall cease their data collection with non-cookie technologies that are not subject to consumer-facing browser controls for both IBA and ADR.

IV. Use Limitations (NAI Code Section II.D)

A. A member who makes a material change to their IBA data collection and use policies and practices shall obtain a user's opt-in consent before applying such change to data collected prior to the change. In the absence of opt-in consent, data collected prior to the change in policy shall continue to be governed by the policy in effect at the time the information was collected.

V. Accountability (NAI Code Section III)

A. A member that uses a non-cookie technology for IBA, for which NAI cannot conduct reasonable technical oversight, shall work with NAI staff to develop a process by which the NAI compliance team can conduct reasonable, external technical oversight.[17]

B. A member's opt-out inspection service should enable NAI to determine:

1. Whether changes to an ad interest profile have been made following an opt-out, where such changes would be updated through the use of non-cookie technology; or,

2. Some other methodology that provides NAI compliance staff sufficient information to help ensure compliance with these Guidelines and the NAI Code.[18]

C. Consistent with NAI Code Section III, a member must attest that their business practices are compliant with each aspect of the NAI Code. Before a member may use non-cookie technologies for IBA, the member must ensure that the requirements set forth in this Guidance have been adequately satisfied. It is the responsibility of each member to confirm that any technology used for IBA satisfies the requirements of the Code.[19]

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[17] Reasonable technical oversight and monitoring by NAI staff may include providing NAI access to a form of external verification or access to a member's API.

[18] The NAI may explain the different levels of independent verification in its annual Compliance Report and note technical limitations presented by some non-cookie tracking methodologies. Some implementations may include a member's additional attestation of compliance.

[19] Members may submit amendments to compliance questionnaires or otherwise seek guidance from NAI compliance staff.

ADDENDUM A

Examples of Partner Website Notice under NAI Code Section II.C.3

The language below is provided only as an illustration and is provided only to help guide both NAI members and their partner websites. Not all bullets may apply in every situation. Additionally, not all third party companies are NAI members and subject to the requirements of the NAI Code. NAI members are responsible for alerting partner websites of the need to provide notice that an NAI member is collecting information at the partner site, but partner websites are solely responsible for assuring that notices are accurate and consistent with the partner's privacy policy and data collection activities.

- Partner Website may allow third-party companies, including ad networks, to serve advertisements, provide other advertising services and/or collect certain information when you visit our website.

- Third-party companies may use non-personally identifiable information (e.g., click stream information, browser type, time and date, subject of advertisements clicked or scrolled over) during your visit to this web site in order to provide advertisements about goods and services likely to be of greater interest to you.

- Third-party companies may use non-cookie technologies to recognize your computer or device and/or to collect and record information about your web surfing activity including your activities on this website. These technologies may be used directly on this website. Please keep in mind that your web browser may not permit you to block the use of these non-cookie technologies, and those browser settings that block cookies may have no effect on such techniques.

- To learn more about Interest-Based Advertising or to opt-out of this type of advertising by those third parties that are members of self-regulatory programs such as the Network Advertising Initiative, please visit the NAI's website (www.networkadvertising.org) which will allow you to opt out of Interest-Based Advertising by one, or all, NAI members.