

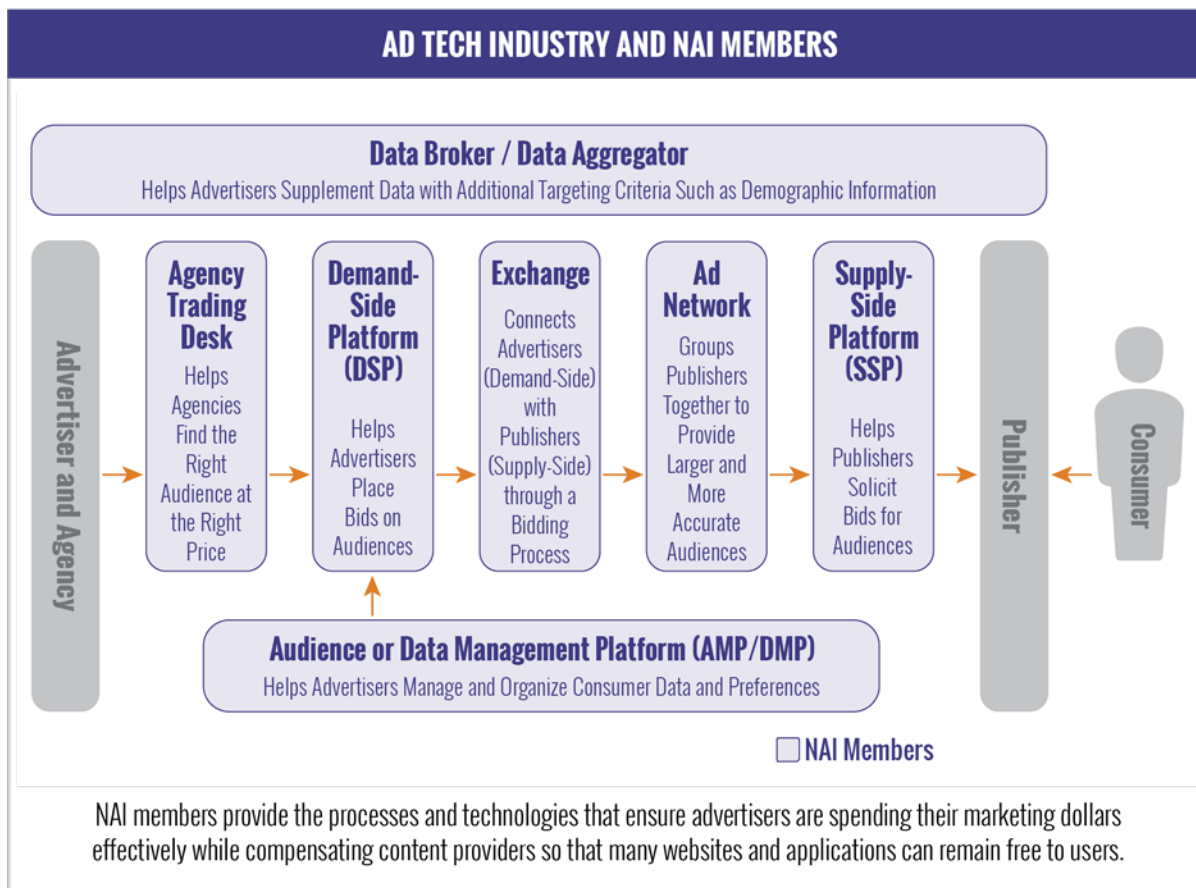
2020 ANNUAL REPORT

TABLE OF CONTENTS

2	Introduction
4	2020: The Year in Review
7	Public Policy
9	The NAI Compliance Program
11	Monitoring of Members
12	Annual Review
16	2020 Annual Review Findings
17	Education
18	Transparency and Notice
20	User Control
22	Use Limitations
23	Transfer Restrictions
24	Data Access, Quality, Security, and Retention
25	Accountability
26	Investigations and Sanctions
28	Summary of Findings
29	Conclusion
32	Endnotes

INTRODUCTION

Since 2000, the Network Advertising Initiative (NAI) has been the leading self-regulatory body for advertising technology companies, with the NAI Code of Conduct (Code)¹ governing member engagement in Tailored Advertising² and Ad Delivery and Reporting (ADR)³ in the United States. With regular updates to keep up with advancements in advertising technology, the NAI covers Interest-Based Advertising (IBA)⁴ across websites, Cross-App Advertising (CAA)⁵ across mobile applications, Retargeting,⁶ the use of offline data for digital advertising, known as Audience-Matched Advertising (AMA),⁷ and advertising on connected television screens, known as Viewed-Content Advertising (VCA).⁸ At the time of this publication, the NAI has 93 member companies. These NAI members include a wide range of businesses such as ad networks, exchanges, platforms,⁹ data aggregators, connected television companies, and other technology providers. Across websites, mobile applications, and connected television screens, these intermediaries form the backbone of the digital advertising ecosystem – helping advertisers reach audiences most likely to be interested in their products and services while allowing consumers to receive ads that are relevant to their interests. **This relevant advertising continues to power free content and services in the digital ecosystem, including websites, mobile applications, and television programming.**¹⁰



Member companies work together with NAI staff to help craft stringent yet practical guidelines for data collection and use in connection with Tailored Advertising and ADR. This process also results in regular updates to the 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 2020 compliance period, NAI staff reviewed eligible members’ compliance with the Code. This report provides a summary of the NAI’s work in 2020 as well as staff’s findings from the 2020 compliance review. This report is intended to provide consumers, regulators, and others with visibility into the NAI’s compliance program and self-regulatory process. In addition, this report helps illustrate how the compliance process shapes the evolution and goals of the NAI’s policies and procedures. Ensuring that the NAI continues to offer a vibrant self-regulatory program that responds to new issues and technologies in a practical way that continues to be highly relevant amidst marketplace changes.

2020: THE YEAR IN REVIEW

The NAI's self-regulatory program regularly adapts to changes in digital advertising technology and considers the evolution of privacy expectations and norms domestically and globally. Each year the NAI sets forth its goals for the following year, and for 2020 the NAI pledged to:

- continue educating members about the many new requirements in the 2020 NAI Code of Conduct;
- begin enforcement of the thoroughly revised 2020 Code of Conduct;
- help guide the industry with respect to interpreting and responding to new and existing laws; and
- further expand public policy efforts and outreach on the state and federal level.

In 2020, six new member companies were approved by the NAI Board of Directors.

The NAI published the 2020 NAI Code of Conduct in May 2019, and NAI staff began enforcing its new requirements on January 1, 2020. The 2020 Code encompasses new business models and marketing strategies, including the use of “offline” data by advertisers, which had not been directly addressed by the NAI’s self-regulatory efforts in the past. The 2020 NAI Code of Conduct also reexamines much of the terminology used by the NAI and introduces numerous new concepts. The NAI published its “Guidance for NAI Members: Health Audience Segments” in January of 2020, clarifying requirements for audience modeling based on demographic information, which is often derived from the “offline” data now covered by the Code, and closing potential loopholes in addressing sensitive health conditions under the guise of demographic targeting.¹¹ In June of 2020, the NAI published “Best Practices: Using Information Collected for Tailored Advertising or Ad Delivery and Reporting for Non-Marketing Purposes” to address potential misuse of data that could fall outside of the NAI’s traditional scope of digital advertising.¹²

In 2020 the NAI held regular meetings with members to help guide the industry with respect to interpreting and responding to the California Consumer Privacy Act (CCPA). These efforts resulted in several analyses presented to the full NAI membership to facilitate consistent member compliance with state legislation.



After seven years of hosting its annual in-person Summit at locations throughout the United States, the public health crisis of 2020 forced the NAI to hold its 2020 Summit virtually. This annual event provides member companies with an opportunity to join robust discussions about the latest technologies, regulatory and legislative trends, and emerging business models. In spite of the digital format in 2020, the latest Summit included lively discussions about impending changes to advertising addressability, the privacy implications of the COVID-19 pandemic, conversations with prominent privacy advocates, and other relevant topics which inform NAI members’ behavior in the marketplace.

Six new members joined the NAI in 2020. Interest in NAI membership persisted even after the public health crisis introduced significant economic uncertainty. Several

other companies applied for membership toward the end of the year with the aim of becoming members in 2021. This demonstrates that effective self-regulation of advertising technology continues to be a vital component in building trust not only between participating NAI members and consumers, but also between member companies and service providers, publishers, and advertisers.

Also in 2020, **the NAI website saw robust growth in consumer engagement, with over sixteen million visits to the NAI opt-out page, nearly three million visits to the NAI homepage**, and a significant increase in visits to the NAI’s educational material, as well as consistent growth in visits to the NAI’s instructions for operating privacy controls on mobile devices, televisions, and other connected devices.

PUBLIC POLICY

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

Several key developments contributed to 2020 being a milestone year for consumer privacy regulation in the United States. The CCPA, the first comprehensive U.S. state consumer privacy legislation, came into effect in January, enforcement by California Attorney General Xavier Becerra began on July 1, and the implementing regulations were adopted in August. Additionally, California citizens ratified a ballot measure to enact the California Privacy Rights Act (CPRA) in November, creating a new set of requirements seeking to clarify and extend the original objectives of the CCPA.

Meanwhile, myriad U.S. states and the Federal Government progressed with deliberations around new state laws and a national privacy framework, respectively, supplemented by extensive discussions around narrower privacy laws applying restrictions to the use of citizens’ data as

it pertains to the COVID-19 pandemic and health outcomes more broadly. Although neither the states nor the Federal Government enacted substantial new laws in 2020 pertaining to consumer data, the deliberations were significant in shaping the evolving discussions on this continually relevant issue.

The NAI’s public policy efforts in 2020 were focused in three major areas: (1) helping shape the CCPA implementing regulations and the industry’s implementation of new policies and practices to comply with the new legal requirements; (2) promoting a national privacy framework; and (3) engaging with state policymakers to caution against the adoption of a state patchwork of disparate consumer privacy laws.

Engagement on CCPA Enforcement and Implementation

Throughout 2020, California Attorney General Xavier Becerra engaged all stakeholders in a process to adopt final implementing regulations for the CCPA. The NAI submitted multiple sets of comments to the attorney general leading up to the regulations being adopted on August 14, as well as multiple comments on additional draft modifications later proposed to further amend the regulations after they became effective.¹³ The NAI’s comments on the CCPA implementing regulations represented the viewpoint of digital advertising companies with the aim of identifying ways to modify the regulations to better balance the law’s new consumer privacy protections with the need to maintain a competitive marketplace for digital advertising as a driver of rich internet content. To help

NAI member companies operationalize new privacy requirements established by the CCPA, the NAI led discussions among members around key CCPA compliance issues. The NAI also provided industry-specific analyses to enhance members' understanding of CCPA requirements as they apply to the digital advertising ecosystem. In September, the NAI published guidance for NAI members about managing compliance risks while acting as a CCPA "Service Provider,"¹⁴ and in October, the NAI published a white paper for digital media publishers and advertisers seeking to engage ad-tech companies as service providers under the CCPA.¹⁵

Engagement with Federal Policymakers in Support of a National Privacy Framework

The NAI continued to serve as the leading voice of the advertising technology industry in 2020, promoting a strong federal consumer privacy framework that provides for combined federal and state enforcement. The COVID-19 pandemic, occurring in a heavily partisan election year, presented a difficult environment to enact consumer privacy legislation, but the NAI highlighted to policymakers how the pandemic underscored the need for a national preemptive consumer privacy framework, and how self-regulation can work hand-in-hand with new regulatory frameworks at both the state and federal levels to promote shared policy goals. In April, NAI President and CEO, Leigh Freund, provided testimony before the Senate Commerce Committee hearing on Enlisting Big Data in the Fight Against Coronavirus.¹⁶ The NAI also continued as executive committee members of Privacy

for America,¹⁷ a diverse industry coalition promoting a federal legislative model to clearly define and prohibit unreasonable data practices that make personal data vulnerable to breach or misuse, while preserving the benefits that come from responsible use of data.

Engagement with State Legislators Opposing a Patchwork of Consumer Privacy Laws

On the state level, the NAI also increased its advocacy efforts by engaging a state policy consultant and submitting comments and virtual testimony across a wide range of states considering consumer privacy legislation. The NAI's outreach and cautioning of policymakers about the potential adverse effects of a patchwork of inconsistent state laws and regulations helped contribute to decisions across the states to hold off enacting disparate sets of new privacy requirements in 2020.

THE NAI COMPLIANCE PROGRAM

JOINING THE NAI: COMPLIANCE BEGINS BEFORE MEMBERSHIP

Companies interested in NAI membership cannot simply join the NAI; they must commit to compliance with the Code and to oversight by the NAI of those compliance efforts. Compliance efforts begin even before a company becomes a member. At least two members of NAI staff with legal and technical 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. NAI staff then conducts interviews with high-level employees at the company, asking further detailed questions, including those aimed at resolving potential discrepancies identified based on the application materials, or assessing business practices that may be inconsistent with the Code.

An applicant that wishes to 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.¹⁸ NAI staff evaluates each applicant's practices and disclosures, highlighting those that need to be addressed before the company can become a member of the NAI. Though some companies attain membership within a few weeks, for others, the initial qualification assessment can be a months-long process, with the NAI providing guidance and suggestions about compliance along the way. As a result of the NAI application review process, many applicants make substantial revisions to their public privacy disclosures to provide the full level of notice required by the Code. Typically, NAI staff provides technical guidance to help an applicant develop an Opt-Out Mechanism¹⁹ that is capable of meeting the Code's requirements and to ensure compatibility with the NAI opt-out page. At times, applicants have abandoned or dramatically revised entire lines of business that did not, or could not, meet the requirements of the Code.

Once this pre-membership review is completed, NAI staff submits a recommendation for membership to the Membership Subcommittee of the NAI Board of Directors, followed by the full Board. The NAI Board of Directors is comprised of seasoned privacy 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 2020, six companies²⁰ completed the application process and were approved for membership by the Board.

At the close of the 2020 compliance review period, the NAI Board consisted of:

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

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

Alan Chapell, Secretary, NAI Board of Directors; *President, Chapell & Associates, representing Eyeota*

Ken Dreifach, Treasurer, NAI Board of Directors; *Shareholder, ZwillGen, representing NextRoll*

Dana Edwards, SVP, Engine Group

Paul Harrison, CTO and Co-Founder, Simplifi

Matthias Matthiesen, Senior Privacy Counsel, Quantcast

Duncan McCall, CEO and Co-Founder, PlacIQ

Grant Nelson, Senior Product Manager, Xandr

Tamera Reynolds, Associate General Counsel N.A., Senior Partner, Xaxis

Markus Ruhl, Global Data Privacy Officer, Publicis Groupe

Audrey Trainor, Manager, Data Policy & Governance, MediaMath

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 ongoing reviews of member opt outs including routine manual checks of the NAI's opt-out page as well as 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 2020 were the result of changing browser interaction with third-party cookies. 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 regular manual testing and review of consumer communications helps the NAI and its members limit opt-out downtime and resolve opt-out issues before they result in non-compliance with the Code.

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 2020, the NAI received and reviewed approximately 3000 queries through its website and 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 2020, the NAI received approximately 3000 consumer queries through its website or via email.

Approximately eight 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 2020 that could be resolved by the NAI as part of its compliance reviews were promptly resolved by NAI staff. **There were no consumer allegations of member non-compliance with the Code that NAI staff determined to be material in nature.**

Investigating Other Allegations and Complaints

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

ANNUAL REVIEW

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

During the 2020 annual compliance review, NAI staff reviewed the eighty-seven companies that were members from January 1 through December 31, 2020.²¹ These members are referred to as "evaluated member companies" throughout this report. Those members that joined the NAI after January 1, 2020²² 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 2020 annual compliance review. Those members will be assessed again during the 2021 annual review process.²³

In 2020 the NAI reviewed 87 member companies.

EVALUATED MEMBER COMPANIES

33Across	Gravy Analytics	Retargetly
AcuityAds	GumGum	Reveal Mobile
AddThis	Hivestack	RhythmOne
AdForm	IHS Markit Digital	Rubicon Project
Adobe	Index Exchange	SafeGraph
AlikeAudience	inMarket Media	Salesforce
Amobee	Innovid	SambaTV
Apollo	Inuvo	Semasio
AppNexus	Kargo	ShareThis
Appreciate	KBM Group	Signal
Audiencerate	Lotame	Simpli.fi
AuDigent	Media.net	Skyhook
Beeswax	MediaMath	Steelhouse
Branch	Microsoft	Swoop
Carbon	MiQ	Taboola
Choozle	Nativo	TapAd
Clickagy	Neustar	Throttle
Conversant	NextRoll	Trade Desk
Criteo	Numberly	TrueData
Cross Pixel Media	Oracle Data Cloud	Ubimo
Cuebiq	Outbrain	Undertone
Datonic	OwnerIQ	VDX.tv
EMX	Parrable	Verizon Media
Exelate	Place Exchange	Viant
Eyeota	PlacelQ	Vibrant
Factual	Pubmatic	Weborama
Flashtalking	Pulpo	Wunderkind
Fysical	Quantcast	Xaxis
Google	Rakuten Marketing	Yieldmo

Training

In 2020, the NAI provided a number of training and educational sessions for its members. The NAI hosted a webinar, in coordination with the BBB, to help educate members about the just-in-time notice requirements for the collection of location data. The NAI also hosted legal experts on a webinar to discuss the state legal and regulatory landscape in advance of the fall 2020 election cycle, and the Brand Safety Institute partnered with the NAI to provide a webinar on the value of brand safety officers. At the onset of the public health crisis, the NAI hosted a webinar for members to discuss the privacy and policy implications of the COVID-19 pandemic. NAI compliance staff hosted an online meeting for members to help prepare them for the 2020 compliance review process, and to highlight key provisions of the Code. As mentioned earlier, the NAI substituted its annual Summit for a series of webinars on timely topics, including a key webinar on non-marketing uses of data, including government sales, with the goal of informing future policy and efforts by the NAI to address this important area of concern. The NAI hosted a training webinar and Twitter town hall coinciding with the publication of the NAI's Guidance on Opt-In Consent. Finally, the NAI also provided training and information to members regarding the technical changes to popular browsers and mobile platforms.

In total, the NAI held fifteen all-member calls and webinars in 2020, including educational events featuring legal experts, regulators, journalists, privacy advocates, as well as other trade associations and self-regulatory bodies. NAI staff also typically visits member company offices in order to provide in-person education regarding Code requirements and ongoing developments in the industry, although that practice was curtailed in 2020 on account of health concerns.

Written Questionnaire and Supporting Documentation

Evaluated member companies submitted written responses to the 2020 compliance questionnaire, which was updated to include all of the requirements of and references to the 2020 Code. The questionnaire required evaluated member companies to describe their business practices and policies in relation to the requirements of the Code and NAI Guidance documents. 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 Tailored Advertising practices; contractual requirements imposed on business partners concerning notice and choice around Tailored Advertising activities;²⁴ other protections for data collected and used for Tailored Advertising purposes, such as data retention schedules; and processes for oversight and enforcement of contractual requirements. At the end of the compliance review period, the NAI required evaluated member companies 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 evaluated member company representatives about data flows, opt-out functionality, data retention policies and procedures, and technologies used for Tailored Advertising.

Conducting interviews with all evaluated member companies provides the compliance team with additional in-depth insight into each company's products, especially as new business models and technologies continue to emerge. This integrated view of the industry, resulting from direct engagement and regular contact with nearly one hundred companies comprising a significant portion of the third-party advertising technology

ecosystem, greatly increases the staff's ability to flag potential privacy issues for members and shapes NAI staff recommendations regarding future guidance and policies. The candor reflected in compliance questionnaire and interview responses is only possible due to the mutual trust between NAI members and the organization.

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

As this was the first compliance review under the all new 2020 NAI Code of Conduct, which introduced a multitude of material changes in member requirements and obligations, NAI staff worked with all members to ensure they were in a good position to comply with all of the Code's new and modified requirements.

Attestations

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

2020 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 2020 annual review. This section also more fully summarizes the obligations imposed by the Code but does not restate all principles and requirements set forth in the Code, and as such it should not be relied upon for that purpose. The full Code, including definitions of relevant terms, can be found through the links provided in this report.

EDUCATION

Key Requirements:

(Code § II.A.)

Members shall use reasonable efforts to individually educate users about Tailored 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 Tailored 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 Tailored 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 Tailored 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 thousands of consumer visits to the NAI website.

Several NAI members also played 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 Tailored 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 Tailored Advertising and Ad Delivery and Reporting, including any DII, PII, Sensitive Information, Viewed Content Information, Precise Location Information, Sensor Information, and Personal Directory Information, if applicable. Members must also provide links to or instructions for Opt-Out Mechanisms and attestations of NAI membership and compliance with the Code.

(Code § II.B.2.) (Revised for 2020)

Members that use audience segments for Tailored Advertising that are based on health-related information or interests are required to disclose a full list of all such standard segments and a representative sample of custom segments.

(Code § II.B.3.) (New for 2020)

Members that use audience segments for Tailored Advertising that are based on political information or interests are required to disclose a full list of all such standard segments and a representative sample of custom segments.

(Code § II.B.4-6.)

Members that have direct contracts with website, mobile app, or connected television publishers with which they engage in Tailored Advertising are required to take steps to contractually require those publishers to provide users with notice of third-party data collection and use for these purposes, the types of data collected, and a conspicuous link to or a description of how to access an Opt-Out Mechanism.

(Code § II.B.8.)

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

Review Method:

NAI staff assessed the privacy policies and other privacy-related disclosures of evaluated member companies based on the Tailored Advertising and Ad Delivery and Reporting practices described in each company's annual interview, its corporate site, responses to the annual compliance review questionnaire, business model changes, and news articles. Where appropriate, the NAI offered suggestions to make privacy disclosures clearer and easier to understand.

NAI staff verified whether evaluated member companies' websites provided links to Opt-Out Mechanisms for the companies' Tailored Advertising across websites and mobile applications, as well as on television screens, as applicable.

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

NAI staff reviewed 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 Tailored Advertising data collection and use.

NAI staff questioned evaluated member companies to ensure that they provide or support the provision or implementation of notice in or around ads informed by Tailored Advertising.

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

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

Findings:

NAI staff found that all NAI member companies provided privacy policies that described their respective Tailored Advertising and ADR practices. Member companies continued to provide more thorough 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 opt-out links for web-based Tailored Advertising, and/or instructions for opting out on mobile devices, in their privacy policies or consumer choice pages.

NAI staff observed a significant improvement from the prior year in evaluated member companies' disclosures of data collection and use on televisions, as well as in the provision of instructions for opting out on television sets and on connected devices. The NAI will continue to work with member companies to help bring further transparency and consistency to connected television-related disclosures and consumer choice mechanisms.

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.

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.

NAI staff found that evaluated member companies understood the new requirement for disclosures of political segments, and the majority of member companies using such segments independently provided the required disclosures. Several member companies worked with NAI staff to add such disclosures when necessary.

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 found that many evaluated member companies conduct due diligence on websites and applications where they sought to conduct Tailored Advertising activities, when initiating a relationship with those partners. Some evaluated member companies trained their sales teams to evaluate 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 Tailored Advertising, 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.) (Revised for 2020)

The level of choice that members must provide is commensurate with the sensitivity and intended use of the data. This includes: (a) provision of an Opt-Out Mechanism for the use of DII for Tailored Advertising; (b) robust notice for the merger of PII with DII to be collected on a going forward basis for Tailored Advertising; (c) obtaining a user's Opt-In Consent for the merger of PII with previously collected DII for Tailored Advertising; (d) obtaining a user's Opt-In Consent for the use of Precise Location Information, Sensitive Information, Sensor Information, or Personal Directory Information for Tailored Advertising and Ad Delivery and Reporting; and (e) obtaining a user's Opt-In Consent for the collection of all or substantially all Viewed Content Information from a television for Viewed Content Advertising. The Code commentary clarifies that when relying on platform controls for consent, such as when a user consents to location data sharing on their mobile device, NAI members must take steps to ensure the user is prominently notified about the sharing of the data and its use for advertising, before or during the consent process. *The enforcement of this provision has been delayed to July 1, 2021 to allow additional time for technical development of the notification process amid resource shortages caused by the health crisis.*

(Code § II.C.2.)

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

(Code § II.C.3.) (New for 2020)

Members engaging in Audience-Matched Advertising must provide an Opt-Out Mechanism linked to the PII or hashed PII used for such matching. *The enforcement of this provision has been delayed to July 1, 2021 to allow additional time for technical development of the choice mechanism on the NAI site amid resource shortages caused by the health crisis.*

(Code § II.C.4.)

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

(Code § II.C.6.)

The technologies that members use for Tailored 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 a review of the expiration dates of opt-out cookies.

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

NAI staff reviewed the instructions provided by members for opting out of Viewed-Content Advertising, including through platform-provided choice mechanisms.

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

NAI staff reviewed detailed questionnaires, required of all evaluated member companies, regarding the functionality of their Opt-Out Mechanisms, the technologies used for Tailored

Advertising, and the purposes for any unique identifiers existing after an opt out. 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.

NAI staff worked with evaluated member companies to help them understand new Code requirements around just-in-time notice needed to obtain consent for the collection of Precise Location Information. The NAI also worked with members to develop technical and contractual methods to help ensure consent includes such notice.

NAI staff worked with evaluated member companies engaged in Audience-Matched Advertising to ensure they understood the NAI's requirements for user choice, and to finalize the functionality and specifications of the NAI's Audience-Matched Advertising Opt-Out Mechanism.

Findings:

All members engaged in web-based Tailored 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. In the rare instances where NAI staff discovered glitches or malfunctioning links, these were addressed by affected member companies within a reasonable timeframe, typically in less than a week. In all such cases, NAI staff determined that the malfunction was unintentional, appeared in limited locations and/or for a limited time period, and did not affect a significant number of users.

NAI staff found that any cookies used by NAI members after an opt out were used only to maintain the user's opt-out status or for Ad Delivery and Reporting, as permitted by the Code. Staff also found that all opt-out cookies were set to expire at least five years in the future, and often many years beyond that.

NAI staff confirmed with all evaluated member companies engaged in Cross-Device Linking that they provided opt outs that met NAI requirements for disassociating the opted-out device from other devices for Tailored Advertising purposes, and that these member companies provided disclosures explaining the opt out's effect on Cross-Device Linking. In those instances where evaluated member companies' disclosures could have benefited from additional clarity in this area, staff provided suggestions of industry best practices.

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 industry best practices, 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 Viewed-Content Advertising obtained Opt-In Consent when appropriate, and otherwise provided required disclosures regarding the user choice mechanisms available on connected televisions, and other connected devices. NAI staff also observed significant improvement in evaluated

member companies' instructions for choice mechanisms on televisions and connected devices, often pointing to the NAI's own instructions for users who wish to enable privacy controls on their televisions and other devices. In those instances where evaluated member companies' disclosures could have benefited from additional clarity in this area, staff provided guidance on industry best practices.

NAI staff found that all evaluated member companies engaged in the collection and use of Precise Location Information for Tailored Advertising obtained Opt-In Consent through device platform consent mechanisms. NAI staff also found that all evaluated member companies were aware of the changes to the NAI Code regarding the need for just-in-time notice of third-party data collection and use for advertising when obtaining consent through platform controls, and were actively working to prepare for the planned

enforcement of these requirements.

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

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

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

data collection.

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

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

NAI staff found that all evaluated member companies were aware of the NAI's requirements for an Audience-Matched Advertising Opt-Out Mechanism and were actively working on a technical solution ahead of the NAI's planned enforcement date of July 1, 2021, with several companies successfully functioning in the NAI's staging environment.

USE LIMITATIONS

Key Requirements:

(Code § II.D.1.) (Revised for 2020)

Members shall obtain verifiable parental consent for the creation of Personalized Advertising segments specifically targeting children under 16 years of age.

(Code § II.D.2.) (Revised for 2020)

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 16 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 16.

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 unaffiliated parties to which they provide PII for Tailored Advertising and ADR purposes, adhere to the provisions of the Code concerning PII.

(Code § II.E.2.)

Members shall require all parties to which they provide DII collected through Tailored Advertising and ADR, not attempt to merge such DII with PII held by the receiving party or to otherwise re-identify the individual for Tailored Advertising purposes without obtaining the individual's Opt-In Consent.

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 Tailored Advertising shall provide users with reasonable access to that PII and other information that is associated with the PII, retained by the member for Tailored Advertising purposes.

(Code § II.F.2.)

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

(Code § II.F.3.)

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

(Code § II.F.4.)

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

Review Method:

NAI staff found that very few evaluated member companies engaged in the collection of PII for Tailored Advertising or the merger of such data with DII collected for Tailored Advertising. Where applicable, NAI staff confirmed that evaluated member companies provided reasonable access to this data through consumer-facing portals.

NAI staff reviewed detailed questionnaires, required of all evaluated member companies, and interviewed members to help confirm that all evaluated member companies understand the importance of choosing responsible sources of data, and that NAI members take this responsibility seriously.

NAI staff reviewed detailed questionnaires, required of all evaluated member companies, to help confirm that all evaluated member companies provide reasonable security for data collected for Tailored Advertising and ADR purposes.

NAI staff reviewed detailed questionnaires, required of all evaluated member companies, and interviewed members to help confirm that all evaluated member companies retain data only so long as a legitimate business need exists, and that each evaluated member company's disclosures reflect such finite retention periods accurately. In the case of cookie-based data collection, NAI staff manually examined the expiration dates of evaluated member companies' cookies and posed additional questions when those cookies' lifespans exceeded the stated retention periods.

Findings:

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

Evaluated member companies overwhelmingly reported conducting due diligence on data sources to help ensure their responsible practices, particularly when those partners were not members of the NAI and thus could not be counted on to have undergone the same compliance review. In the few instances where members did not fully understand

Code due diligence requirements, NAI staff offered suggestions and best practices to help them improve their processes in this respect.

All evaluated member companies attested that they complied with the obligation to reasonably secure data. There were no publicly reported data breaches regarding Tailored Advertising data by evaluated member companies during the 2020 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 of discussions with NAI staff.

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 Tailored Advertising and shall make reasonable efforts, in a timely manner, to respond to and resolve questions and concerns that implicate the company's compliance with the Code.

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 sent a series of pseudonymous "consumer" queries to gauge the member's responsiveness and timeliness of such responses.

Findings:

At least one individual at each evaluated member company who filled out the annual compliance questionnaire 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. In the few instances where evaluated member companies' updated disclosures were unclear about NAI membership and adherence to the NAI Code, those members worked with NAI staff to improve their disclosures.

After two rounds of testing consumer question mechanisms, NAI staff noted that 77% of members responded in a timely and informative manner after the first round, and 92% of members did so after the second round. The NAI will continue to press all NAI members to respond to consumer questions in a timely and informative manner, with a goal of achieving a 100% response rate on the first attempt.

INVESTIGATIONS AND SANCTIONS

Overview:

A thorough initial qualification process, coupled with the annual compliance assessment process to flag and address issues quickly, and the availability of strong 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 continue to 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 five investigations of potential material violations of the Code during the 2020 compliance review period. In each case, NAI staff found that the companies in question did not willfully violate the Code, that changes to browser specifications caused three of the problems, and consequently sanction procedures were not appropriate.

Investigations One, Two, and Three

The first three NAI investigations resulted, independently of each other, from NAI staff testing the functionality of various Opt-Out Mechanisms provided by member companies on their own websites and on the NAI website. NAI staff found that three evaluated member companies that engaged in web-based Tailored Advertising experienced problems in setting persistent, generic, opt-out cookies. These cookies were being set as session cookies, expiring when the browser is closed. This potentially affected the members' ability to comply with the Code's requirement of an Opt-Out Mechanism for Tailored Advertising.²⁵

Further investigation revealed that the issues were caused by a recent change to a major web browser and the way it handled cookies from external domains. This meant that the evaluated member companies were attempting to set persistent and generic opt-out cookies that expired at least five years in the future, but that the browser was

deleting the cookies or changing their status to expire at the end of the session. All three affected companies were responsive and updated their technologies within a few business days of identifying the issue, thus remedying the problem.

In all three cases, the problem was inadvertent, affected only users of a specific version of the browser in question, and was addressed as soon as the companies were able to identify the issue.

Investigation Four

The fourth NAI compliance investigation stemmed from an NAI staff review of a member company's website and blog. The blog indicated that the company may utilize bid request data, including location data from bids it had not won, to create audiences for Tailored Advertising purposes.

In such an event, it would be difficult for a company to meet Code requirements that adequate notice is provided to users,²⁶ or that user consent²⁷ to location data collection and sharing is obtained for secondary uses. While NAI staff does not enforce contractual terms between member companies and/or their partners, such use of "bidstream" data could have also violated the terms of the real-time-bidding auctions.

The NAI's investigation indicated that the blog post was drafted in a manner that potentially mischaracterized the company's practices, in an attempt to

demonstrate the potential scope of bids available to advertisers. The member company's representatives attested that the company does not retain any bid request data from bids it does not win, and that data from won bids is only retained for reporting, in imprecise form. The company immediately corrected the information on its website upon learning of the error.

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

Investigation Five

The fifth NAI compliance investigation resulted from NAI staff review of an evaluated member company's disclosures. NAI staff noted that the company's disclosures appeared to be missing several required statements, and that the company's website did not provide prominent notice of the company's Tailored Advertising due to the apparent lack of, at minimum, a clearly labeled opt out link in the footer of the company's site. The company did provide another link to its opt-out from within its privacy disclosures. Upon further investigation, NAI staff noted that the same issue had existed during the company's prior compliance review, when the company's representative assured NAI staff that the problem would be addressed.

The NAI's investigation revealed that the company had gone through a change in ownership

and the individual responsible for the company's NAI membership was no longer an employee. Upon learning of the problem, the company assured that all the required disclosures are present, and that the links in the company's website footer clearly directs users to an Opt-Out Mechanism.

Missing or incomplete disclosures discovered during compliance reviews are typically flagged for members, with notice that the problem must be rectified. However, failure to make the changes required by the NAI can lead to enforcement action if the member company is unresponsive. This issue stemmed from a staffing problem at the company during reorganization, and the company addressed the issue as soon as it was made aware of the problem. Consequently, sanctions were not appropriate.

Summary:

The NAI's approach to compliance helps 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. This accountability and oversight are a foundation on which the digital advertising ecosystem can build for the future.

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

SUMMARY OF FINDINGS

2020 was a challenging year in many respects, from the disruptions to daily life and work caused by the global COVID-19 pandemic, to the ripple effects it has had on the broader economy, and especially certain sectors such as travel and related advertising. NAI staff was reassured to find that evaluated member companies continued their record of strong compliance with the Code, in spite of the financial and staffing challenges many companies faced. NAI staff found that in 2020 evaluated member companies once again overwhelmingly complied with the Code, and that to the extent that any potential violations were identified, they were not material in nature.

The previous year, the NAI noted disappointing and inconsistent compliance with the requirements of the NAI's Connected TV Guidance, which was newly enforced in 2019. In 2020, these requirements are now incorporated in the NAI Code and after the prior year's educational efforts and related compliance warning,²⁸

NAI staff observed significant improvement in evaluated member companies' disclosures regarding connected televisions and information about privacy controls on those devices.

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

CONCLUSION

This report readily demonstrates the key role of the NAI's Code and self-regulatory process in promoting consumer privacy in the digital advertising industry, particularly as the digital ecosystem faces radical change through technology and legislation. Through the years, the NAI continues to update its Code and guidance to keep pace with technological developments and changing norms, culminating most recently in the publication of the 2020 NAI Code of Conduct. This new Code greatly expanded the scope of the NAI's compliance program and provided many new privacy protections for users in the realm of device sensors, location data, sensitive data, and offline data used 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, coupled with dramatic changes to addressability in web browsers and on mobile devices.**

At a time when the nature of digital advertising is being questioned and reconsidered globally, 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 2020 the NAI evaluated 87 member companies, while separately reviewing six 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 enforcement priorities for 2021. 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. In 2020 this cycle of growth and technological progress has been interrupted by the global health crisis, challenges to the broader economy, new legislation, and technical changes to the pseudonymous identifiers that allowed digital advertising to thrive.

Recognizing this seminal moment in the digital economy, the NAI has devoted its resources to the development of a novel framework to provide the same thought leadership and industry consensus that it has become known for, while accounting for the changes in regulatory and consumer expectations with respect to transparency, consent, and responsibility in digital advertising. To that end, the NAI has redoubled its public policy efforts, and is hosting numerous working groups to help develop new technical and regulatory standards.

The NAI is participating in a number of diverse initiatives with the goal of coalescing the digital advertising industry around technical standards and privacy-protective regulatory measures that meet or surpass new legal requirements while allowing for Tailored Advertising to adapt to new addressability standards in web browsers and mobile operating systems. From a technical standpoint, the NAI is an active participant in IAB Tech Lab Rearc, W3C,

Google Sandbox, and the TCF Steering Group, keeping NAI members apprised of developments in these groups while speaking on behalf of the many small and medium sized companies that represent NAI membership. In the policy space, the NAI is a leader in the Partnership for Responsible Addressable Media (“PRAM”) initiative, as well as Privacy for America, a diverse coalition of businesses to promote a national privacy law. The NAI will continue these efforts to bring the digital advertising industry together while launching its Audience-Matched Advertising opt out, and commencing enforcement of just-in-time notice requirements for the collection of location data.

At a time when the nature of digital advertising is being questioned and reconsidered globally, 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.



ENDNOTES

- 1 Unless noted otherwise, all references to the NAI Code refer to the 2020 NAI Code of Conduct, which can be found at: https://www.networkadvertising.org/sites/default/files/nai_code2020.pdf.
- 2 The Code defines Tailored Advertising (“TA”) as “the use of previously collected data about an individual, browser, or device to tailor advertising across unaffiliated web domains or applications, or on devices, based on attributes, preferences, interests, or intent linked to or inferred about that user, browser, or device” (Code § I.Q.).
- 3 The Code imposes requirements with respect to Ad Delivery & Reporting (“ADR”). ADR is defined in the Code as “the collection or use of data about a browser or device for the purpose of delivering ads or providing advertising-related services, including, but not limited to: providing a specific advertisement based on a particular type of browser, device, or time of day; statistical reporting, traffic analysis, analytics, optimization of ad placement; ad performance, reach, and frequency metrics (e.g., frequency capping); security and fraud prevention; billing; and logging the number and type of ads served on a particular day to a particular website, application, or device” (Code § I.A.).
- 4 Interest-Based Advertising (“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.G.).
- 5 The Code defines Cross-App Advertising (“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.C.).
- 6 Since 2015 the NAI has formally applied the Code’s IBA requirements to the practice of Retargeting, defined as “the practice of collecting data about a browser’s or device’s activity in one unaffiliated web domain or application for the purpose of delivering an advertisement based on that data in a different, unaffiliated web domain or application” (Code § I.M.).
- 7 Audience-Matched Advertising (“AMA”) is “the practice of using data linked, or previously linked, to Personally-Identified Information (PII) for the purpose of tailoring advertising on one or more unaffiliated web domains or applications, or on devices, based on preferences or interests known or inferred from such data” (Code § I.B.).
- 8 Viewed Content Advertising (“VCA”) is the collection of Viewed Content Information (“VCI”), or the use of such data for the purpose of tailoring advertising based on preferences or interests known or inferred from the data collected” (Code § I.R.).
- 9 NAI membership spans various technology platforms, including demand side platforms (“DSPs”), supply side platforms (“SSPs”), data management platforms (“DMPs”) and audience management platforms (“AMPs”).
- 10 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, Navigant Economics, An Empirical Analysis of the Value of Information Sharing in the Market for Online Content (2014), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2421405.
- 11 Guidance for NAI Members: Health Audience Segments can be found at: https://www.networkadvertising.org/sites/default/files/nai_healthtargeting2020.pdf.
- 12 Best Practices: Using Information Collected for Tailored Advertising or Ad Delivery and Reporting for Non-Marketing Purposes can be found at https://www.networkadvertising.org/sites/default/files/nai_nonmarketing-bestpractices-0620_final.pdf.
- 13 The NAI submitted multiple written comments to California Attorney General Xavier Becerra. The NAI’s 45-day written comments (Mar. 8, 2019) can be found at: <https://oag.ca.gov/sites/all/files/agweb/pdfs/privacy/oal-sub-45day-comments.pdf>. The NAI’s first set 15-day written comments (Feb. 25, 2020) can be found at: <https://oag.ca.gov/sites/all/files/agweb/pdfs/privacy/oal-sub-15day-comments-set1.pdf> or https://www.networkadvertising.org/sites/default/files/nai_comment_letter_-_ccpa_modified_proposed_regulations_february_25_2020.pdf. The NAI’s second set 15-day written comments (Mar. 27, 2020) can be found at: <https://oag.ca.gov/sites/all/files/agweb/pdfs/privacy/oal-sub-15day-comments-set2.pdf> or https://www.networkadvertising.org/sites/default/files/nai_comment_letter_-_ccpa_second_set_of_modified_regulations_march_27_2020.pdf.

- 14 Guidance for NAI Members: Managing Compliance Risks While Acting as a CCPA “Service Provider” can be found at: https://www.networkadvertising.org/sites/default/files/1-service_provider_guidance_for_ad_techs_09.23.2020.pdf.
- 15 Considerations for Digital Media Publishers and Advertisers Seeking to Engage Ad-tech Companies as CCPA “Service Providers” can be found at: https://www.networkadvertising.org/sites/default/files/service_provider_guidance_for_publishers_and_advertisers_09.23.2020.pdf.
- 16 NAI President and CEO, Leigh Freund, testimony before the Senate Commerce Committee hearing on Enlisting Big Data in the Fight Against Coronavirus can be found at: <https://www.commerce.senate.gov/services/files/3AE22675-7424-4CCD-859A-DDBBD3CAA082>.
- 17 More information on the Privacy for America Coalition can be found at: www.privacyforamerica.com.
- 18 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.
- 19 Opt-Out Mechanism is defined under the Code as “an easy-to-use mechanism by which users may exercise choice to disallow Tailored Advertising with respect to a particular identifier, browser, or device.” (Code § I.I.).
- 20 The following six companies completed the new member application process and became NAI members in 2020: Artsai, Catalina, Crossix, Sonobi, Ti Health, and X-Mode.
- 21 The following companies were NAI members on January 1, 2020 but were not among evaluated member companies in 2020:
- a. Data+Math, DataXu, Freckle, Ninth Decimal, and Drawbridge were no longer independently engaged in Tailored Advertising operations in the United States. These companies terminated their NAI memberships and did not complete the 2020 annual compliance review.
 - b. Bazaarvoice, Eyeview, Intent Media, and RUN ceased operations altogether in 2020.
 - c. Adara, AdFire Health, Adstra Data, Narrativ, PulsePoint, and Varick did not renew NAI membership in 2020.
- 22 See *supra*, note 19.
- 23 NAI staff makes an effort to review its newest member companies early during the subsequent annual review, in order to minimize the time between a member’s initial membership application review and its first annual compliance review.
- 24 If a member has an agreement with a partner to collect data on the partner’s site or app for Tailored Advertising purposes, the member is obligated to require through its contractual provisions that the partner provide notice to the user and a link to an Opt-Out Mechanism (Code § II.B.5-7.). This requirement is discussed more fully below.
- 25 Use of Device-Identified Information for Tailored Advertising purposes shall require access to an Opt-Out Mechanism (Code § II.C.1.a.).
- 26 NAI members must contractually require partners to provide notice about data collection and sharing with third parties for Tailored Advertising, and should make reasonable efforts to confirm that such notice is present (Code § II.B.4-5.).
- 27 Since they rarely interact directly with users, NAI member companies typically rely on website and application publishers to obtain a consumer’s Opt-In Consent regarding third-party data collection of Precise Location Information for advertising purposes (Code § II.C.1.f.).
- 28 Update on Viewed Content Advertising (2019) can be found at: <https://www.networkadvertising.org/blog-entry/update-viewed-content-advertising/>.

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