



## 2008 NAI PRINCIPLES

**THE NETWORK ADVERTISING INITIATIVE'S  
SELF-REGULATORY CODE OF CONDUCT**

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## The Network Advertising Initiative's Self-Regulatory Code of Conduct

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## SECTION I: Introduction

Advertising is fundamental to the accessibility, affordability and dynamism of the Internet. Online advertising underwrites the rich variety of online content choices available to consumers at no cost or at a far lower cost than would otherwise be possible – similar to what we see in television and radio. More relevant advertising creates a benefit for both consumers and companies, because consumers find more of what interests them and companies spend less on ineffective advertising. In addition, many small and emerging companies depend on online advertising to compete against more well-established companies. Effective online advertising helps to maintain the low barriers to entry that have played a crucial role in the robust competition and innovation that fuel this medium.

In 2000 the NAI Principles were first developed by the signatories to the Network Advertising Initiative (“NAI”) to guide business practices with respect to online advertising services. Traditionally, companies offering online behavioral advertising services—including Online Preference Marketing (“OPM”) as it was then conceptualized—most commonly followed an advertising network business model.

Although implementation may vary, an ad network grounds its business model in part on its ability to show web surfers display banner advertisements based on data collected across multiple websites, commonly through use of cookies, web beacons or other similar technologies. The process used to deliver advertisements within this model would look something like this:

- A consumer goes on to the Internet and types a URL into their browser to visit a website.
- Because that website has signed an agreement with an ad network to be part of its “network” of websites, when the consumer visits the website a separate “connection” with a third party ad server is also established.
- The ad server then answers the call and identifies the computer that called it by serving a cookie file to that consumer’s computer.
- The ad server simultaneously creates its own file that will allow it to start predicting what consumer marketing segment that computer may fall into.
- As the consumer moves to a different website that is also part of that same “network” of websites, the consumer’s computer will again call that same third-party ad server, which will see that it has already placed a cookie and will add information to its own marketing segment file associated with that cookie.
- The ad server will then choose an appropriate banner ad based on the user’s presumed interests contained in the marketing segment file, and will send that ad out to the website where it will be shown to the consumer, typically in a box of varying size that appears on the web page seen by the consumer.

Recognizing that this business model raised unique questions as to how fair information practices should be applied to this kind of data sharing and data use, the original members of the NAI worked with legislators and regulators, including the Federal Trade Commission, to develop the first version of the present SELF-REGULATORY CODE OF CONDUCT to govern such practices.

Since 2000, the marketplace has spawned new and innovative online advertising solutions and business models. Although some new advertising models do not involve third parties engaging in market segmentation to deliver ads on websites, many still do. Undoubtedly, new innovative third-party advertising models will continue to evolve and shape the robust online advertising landscape. The NAI is committed to working with new third-party business models to help shape responsible privacy practices for those businesses. In so doing, it will draw on the applicable provisions of this Code and work to help generate new business model-specific provisions where appropriate, thereby expanding the scope of the NAI membership base.

NAI members believe that self imposed constraints help achieve the balance needed to preserve consumer confidence in the use of this revolutionary medium. Even where there is reduced privacy impact in use of anonymous or anonymized data, the NAI recognizes that consumers will only trust and continue to engage with advertisers online when there is appropriate deference shown to consumers' concerns about the privacy of their websurfing experience. As third-party business-to-business service providers engaged in complex technical processes, NAI members understand that transparency to consumers, while challenging, is critical to maintaining such trust. To that end, third-party online behavioral advertisers that make up the membership of the NAI are committed to educating consumers about the services they provide that are of benefit to consumers, and to enhancing consumers' ability to control the use of information about them when they visit websites.

Through the present 2008 revision to the NAI's SELF-REGULATORY CODE OF CONDUCT, NAI members continue their commitment to respect appropriate fair information practices adapted for this medium and to their business models, maintaining self-regulation with respect to *notice, choice, use limitation, access, reliability and security*.

## SECTION II: Terminology

Recognizing the inherent complexity of terminology in the online advertising space, this Section offers definitions that are to be attributed to specific important concepts represented in this document. These definitions should be used to both interpret and apply the provisions of this SELF-REGULATORY CODE OF CONDUCT. Although certain terms that appear in this Code are not unique to online behavioral advertising, application of this Code will be based on the specific meanings attributed to terms in this Section. Alternate definitions for similar terminology in non-NAI contexts may remain appropriate for those contexts.

The term “behavioral advertising” has been used colloquially in policy, business and technology circles to cover a broad range of online advertising practices. These practices and related business models could range from basic advertising techniques analogous to display advertising offline, to robust uses of user data that raise distinct issues potentially justifying higher standards of notice and choice. It is clear that consumers, policymakers, technologists—and often many in industry—do not fully appreciate the distinctions among different business models observable in this area. To contribute to an industry-wide effort towards greater transparency with respect to online advertising practices, the NAI undertakes in the present document to further clarify the role of its member companies within this diversifying online advertising environment.

### 1. **THIRD-PARTY ONLINE BEHAVIORAL ADVERTISING (“OBA”)**

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OBA means any process used whereby data are collected across multiple web domains owned or operated by different entities to categorize likely consumer interest segments for use in advertising online.<sup>1</sup>

### 2. **MULTI-SITE ADVERTISING**

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MULTI-SITE ADVERTISING means AD DELIVERY & REPORTING across multiple web domains owned or operated by different entities.

### 3. **AD DELIVERY & REPORTING**

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AD DELIVERY & REPORTING is separate and distinct from OBA and means the logging of page views or the collection of other information about a browser 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 or time of day;
- statistical reporting in connection with the activity on a website; and
- tracking the number of ads served on a particular day to a particular website.

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<sup>1</sup>*i.e.*, delivered through a web browser viewable on any appropriately-enabled device.

As with OBA and MULTI-SITE ADVERTISING, data used for Ad DELIVERY & REPORTING purposes can include: type of browser, operating system, domain name, day and time of visit, and page(s) visited.

#### **4. OPT IN CONSENT**

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OPT IN CONSENT means that a consumer expressly consents to allow OBA, either in response to a clear and conspicuous request for such consent or at the consumer's own initiative, prior to engaging in OBA about the consumer.<sup>2</sup> A consumer's OPT IN consent requires some affirmative action on the consumer's part that manifests the intent to OPT IN.

#### **5. OPT OUT OF OBA**

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OPT OUT OF OBA means that a consumer is provided an opportunity to exercise a choice to disallow OBA with respect to a particular browser.<sup>3</sup> If a consumer elects to OPT OUT of non-PII OBA, collection of non-PII data regarding that consumer's browser may only continue for non-OBA purposes, such as Ad DELIVERY & REPORTING.

#### **6. ROBUST NOTICE**

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ROBUST NOTICE means the level of notice that must be given to a consumer in order for certain uses of PII for marketing purposes to be permissible under this Code. For notice to be robust the consumer must be afforded clear and conspicuous notice about the scope of any non-PII to be merged with PII, and how the merged data would be used for OBA. Such notice must be provided immediately above or before the mechanism used to authorize submission of any PII.

#### **7. PERSONALLY-IDENTIFIABLE INFORMATION ("PII")**

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PII includes name, address, telephone number, email address, financial account number, government-issued identifier, and any other data used or intended to be used to identify, contact or precisely locate a person.

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<sup>2</sup> A consumer opts in via a single web browser. As a result, all users of that same web browser are effectively opted in.

<sup>3</sup> This Code is technology-neutral with respect to the technologies that can be used to track a browser. Although the primary technology currently used for tracking data for OBA is the http cookie, any other tools, such as local shared objects colloquially described as "flash cookies," or other state management mechanisms, are subject to equivalent requirements for user notice and choice if they are to be used in compliance with this Code.

## 8. SENSITIVE CONSUMER INFORMATION<sup>4</sup>

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SENSITIVE CONSUMER INFORMATION includes:

- Social Security Numbers or other Government-issued identifiers
- Insurance plan numbers
- Financial account numbers
- Information that describes the precise real-time geographic location of an individual derived through location-based services such as through GPS-enabled devices
- Precise information about past, present, or potential future health or medical conditions or treatments, including genetic, genomic, and family medical history

## 9. MARKETING PURPOSES

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MARKETING PURPOSES includes any activity undertaken to collect, aggregate, analyze, maintain, update, or sell information in order to tailor content or services that allows or induces consumers to take action to purchase, rent, or exchange products, property or services, to solicit a charitable donation, to utilize market research or market surveys, or to provide verification services to marketers. Certain non-marketing uses of OBA segments may already be restricted by law. See also *infra* § III.10.

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<sup>4</sup>This provision is to be further developed in a distinct implementation guideline.

### SECTION III: Requirements for NAI Members

The following requirements apply to NAI member companies:

#### 1. **Transparency**

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- a) Members shall collectively maintain an NAI website to serve as a centralized portal offering explanations of online behavioral advertising and member companies' compliance with the NAI Principles program, including information about and centralized access to consumer choice mechanisms.
- b) Members shall use reasonable efforts, both individually and collectively, to educate consumers about behavioral advertising, and the choices available to consumers with respect to behavioral advertising.

#### 2. **Notice**

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- a) Each member directly engaging in OBA, MULTI-SITE ADVERTISING and/or AD DELIVERY & REPORTING shall clearly and conspicuously post notice on its website that describes its data collection, transfer, and use practices. Such notice shall include clear descriptions of the following, as applicable:
  - i. The OBA, MULTI-SITE ADVERTISING and/or AD DELIVERY & REPORTING activities undertaken by the member company;
  - ii. What types of data are collected by the member company;
  - iii. How such data will be used by the member company, including transfer, if any, of data to a third party;
  - iv. The types of PII and non-PII that will be merged by the member company, if any, and how any merged data will be used, including transfer to a third party;
  - v. An easy to use procedure for exercising choice to OPT OUT or OPT IN with respect to such data use for OBA;<sup>5</sup> and
  - vi. The approximate length of time that data used for OBA, MULTI-SITE ADVERTISING and/or AD DELIVERY & REPORTING will be retained by the member company.
- b) Each member directly engaging in OBA and/or MULTI-SITE ADVERTISING shall require that a website with which it contracts for OBA and/or MULTI-SITE ADVERTISING services shall clearly and conspicuously post notice—or ensure, that such notice be made available on the website where data are collected for OBA and/or MULTI-SITE ADVERTISING purposes—that contains:

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<sup>5</sup> See § III.3, *infra*, for the choice standard required by various data uses.



- i. A statement of the fact that OBA and/or MULTI-SITE ADVERTISING is occurring;
  - ii. A description of types of data that are collected for OBA and/or MULTI-SITE ADVERTISING purposes;
  - iii. An explanation of how, and for what purpose, that data will be used or transferred to third parties; and
  - iv. A conspicuous link to the OBA choice mechanism (e.g., OPT OUT link) provided by the NAI member, and/or a conspicuous link to the opt-out page on the NAI's consumer website.
- c) If a member has been notified or otherwise becomes aware that a contractee is in breach of any requirement established in this Section, the member shall make reasonable efforts to enforce the contract.<sup>6</sup>
- d) As part of members' overall efforts to promote transparency in the marketplace, even in the absence of contractual relationships, members shall make reasonable efforts to ensure that all companies participating in their OBA, MULTI-SITE ADVERTISING and/or AD DELIVERY & REPORTING services should furnish or require notices comparable to those described above.<sup>7</sup>

### 3. Choice

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- a) The level of choice that members must provide and honor in order to directly engage in OBA shall depend on the manner in which data is intended to be used. Choice is commensurate with the increased privacy implications of data to be used. Specifically:
- i. Use of non-PII for OBA purposes shall require provision of a consumer OPT OUT mechanism. The mechanism shall be available on both the NAI member's website and on the NAI consumer website.
  - ii. Use of PII to be merged with non-PII on a going-forward basis for OBA purposes (prospective merger) shall require provision of a consumer OPT OUT mechanism accompanied by robust notice of such choice. The choice mechanism shall be made available at the location where robust notice is provided.
  - iii. Use of PII to be merged with previously collected non-PII for OBA purposes (retrospective merger) shall require a consumer's OPT IN consent at the time such PII is collected online or, if collected offline, first used online.
  - iv. Use of SENSITIVE CONSUMER INFORMATION for OBA shall require a consumer's OPT IN consent.

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<sup>6</sup> This provision is to be addressed in a distinct implementation guideline.

<sup>7</sup> Certain members may not only engage in OBA, MULTI-SITE ADVERTISING and/or AD DELIVERY & REPORTING, but also enable other entities to engage in these activities via advertising platforms. The application of this Code's requirements to the function of the member advertising platforms that enable other entities to engage in these activities is a discreet issue to be addressed in a distinct implementation guideline.

#### 4. Use Limitations

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- a) Use of non-PII or PII to create an OBA segment specifically targeting children under 13 is prohibited without verifiable parental consent.<sup>8</sup>
- b) Members directly engaging in OBA shall only use, or allow use of, OBA segments for MARKETING PURPOSES.
- c) Members shall not collect PII for OBA purposes from companies in the absence of a contractual relationship with that company.
- d) If a member changes its own privacy policy with regard to PII and merger with non-PII for OBA, prior notice shall be posted on its website. Any such material change in policy shall apply only to information collected following the change in policy, per § III.3 (a)(ii). Information collected prior to the material change in policy shall continue to be governed by the policy in effect at the time the information was collected, unless the consumer OPTS IN to allow collected information to be governed by the new policy.
- e) Members shall not merge non-PII with PII for use in OBA if that non-PII was collected pursuant to a member's privacy policy that stated that such information would *never* be merged with PII, without a consumer's OPT IN CONSENT.

#### 5. Transfer & Service Restrictions

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- a) Members shall contractually require that any third parties to which they provide PII for OBA or MULTI-SITE ADVERTISING services adhere to applicable provisions of this Code.
- b) Members shall contractually require that any third parties to which they provide non-aggregate non-PII, to be merged with PII data possessed by that third party for OBA and/or MULTI-SITE ADVERTISING services, must adhere to the applicable provisions of this Code. This requirement does not apply if that non-PII is itself proprietary data of the third party.

#### 6. Access

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- a) Members shall provide consumers with reasonable access to PII, and other information that is associated with PII, retained by the member for OBA and/or MULTI-SITE ADVERTISING purposes.

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<sup>8</sup> This standard incorporates by reference the definition of "child" established in the Children's Online Privacy Protection Act ("COPPA"), 15 U.S.C § 6501 *et seq.* NAI members relying on children's PII should refer to CARU guidelines even for contextual ad selection, which remains unaffected by this provision. Where children's PII can be used to tailor ads through non-contextual OBA or MULTI-SITE ADVERTISING services, the prohibition of Section III.4(a) shall not apply where the member can obtain verifiable parental consent, as defined by COPPA.

**7. Reliable Sources**

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- a) Members shall make reasonable efforts to ensure that they are obtaining data for OBA, MULTI-SITE ADVERTISING and/or Ad DELIVERY & REPORTING from reliable sources.

**8. Security**

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- a) Members that collect, transfer, or store data for use in OBA, MULTI-SITE ADVERTISING and/or Ad DELIVERY & REPORTING shall provide reasonable security<sup>9</sup> for that data.

**9. Data Retention**

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- a) Members engaged in OBA, MULTI-SITE ADVERTISING and/or Ad DELIVERY & REPORTING shall retain data collected and used for these activities only as long as necessary to fulfill a legitimate business need, or as required by law.

**10. Applicable Law**

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- a) Members shall adhere to all laws applicable to their businesses.
- b) Where the requirements of applicable law exceed or conflict with the requirements of this Code, members shall abide by applicable law.
- c) Where the requirements of this Code exceed the requirements of applicable law, members shall conform to the higher standard imposed by this Code provided that compliance is not contrary to applicable law.

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<sup>9</sup> Reasonable security is determined in light of several factors including, but not limited to, the sensitivity of the data, the nature of a company's business operations, the types of risks a company faces, and the reasonable protections available to a company.

## SECTION IV: Procedural Matters & Enforcement

### 1. Accountability

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- a) This Code is self-regulatory in nature and is binding on all members of the NAI.
- b) Membership in the NAI requires public representations that a member company's business practices are compliant with each aspect of this Code that apply to its business model, as supplemented by applicable implementation guidelines that shall be adopted by the NAI Board from time to time. Such representations involve explicit acknowledgement of NAI membership and compliance with the Code in each member's publicly-available privacy policy, and inclusion in a group listing of participating companies on a designated page of the NAI consumer website.
- c) Members shall fully abide by the policies and procedures established by the NAI Board of Directors for handling of mandatory compliance reviews, and shall fully cooperate with an NAI designee that engages in the compliance reviews, including responding to any questions regarding potential compliance issues. The NAI's policies and procedures for compliance reviews may be adapted from time to time, and these policies and procedures shall be made available on the NAI website. These policies and procedures shall not only describe the process undertaken for a compliance review, but shall also articulate the penalties that could be imposed for a finding of non-compliance, including referral of the matter to the U.S. Federal Trade Commission.
- d) A compliance review shall be undertaken by an NAI designee at a minimum:
  - i. upon application to the NAI for new membership;
  - ii. at least once annually thereafter; and
  - iii. in response to a credible unresolved consumer complaint justifying compliance review.
- e) An annual summary relating to consumer complaints received, and any enforcement actions taken, shall be made available on the NAI website.

### 2. Consumer Communications

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- a) A centralized mechanism linked to the NAI website shall be maintained to receive consumer questions or complaints relating to members' compliance with this Code.
- b) Each member shall respond to and make reasonable efforts to resolve all consumer questions implicating its compliance with this Code within a reasonable period of time established by policy of the NAI Board.