

NAI Releases Updated Code of Conduct for Online Behavioral Advertising

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The Network Advertising Initiative (“NAI”) [recently announced](#) final updates to its [2013 Code of Conduct](#) (“NAI Code”). The NAI Code is one of the leading industry self-regulatory codes of conduct governing online behavioral advertising (“OBA”) for third party digital advertising companies. While prior versions of the NAI Code were focused on advertising networks, the 2013 NAI Code keeps pace with developments in the online advertising ecosystem and also governs the actions of participating demand side platforms (“DSPs”), supply side platforms (“SSPs”), and ad exchanges, among others.

The 2013 NAI Code reinforces the requirements for participants to provide education, notice, and choice regarding OBA, stating that industry’s approach must not remain stagnant, but rather adapt to ensure that the self-regulatory framework remains relevant and effective. It was also updated to reflect regulatory guidance including the FTC Final Privacy Report and White House Privacy Report. Additionally, the 2013 NAI Code harmonizes requirements with the Digital Advertising Alliance (“DAA”) Self-Regulatory Principles for Online Behavioral Advertising. [*The NAI is one of the members of the DAA.*]

The 2013 NAI Code introduces a new framework of data “identifiability” that splits the difference between the FTC and industry’s definitions of what is PII:

- PII = Used or intended to be used to identify an *individual*
- Non-PII = Linked or reasonably linkable to a specific *computer* or *device*
- De-Identified Data = Not linked or reasonably linkable to either an individual or a specific computer or device

The online advertising industry continues to face [scrutiny from regulators](#) and [Congress](#) regarding its approach to OBA, with a specific focus on a Do Not Track standard. Companies engaged in any OBA, interest-based advertising, or online remarketing / retargeting activities should stay tuned as the self-regulatory and regulatory framework continues to evolve.