

**Position Paper for
W3C Workshop: Do Not Track and Beyond
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**Respectfully submitted to the W3C by:
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Please find below some brief remarks submitted for consideration during the W3C's upcoming "Do Not Track and Beyond" workshop. These remarks include background on the Network Advertising Initiative (NAI), a general explanation of the indispensable role that NAI members play in supporting content and services online, and an explanation of why the NAI's self-regulatory model is a success. I hope that this will be useful input to the particular topic of Do Not Track, which primarily affects NAI members, as well as the general discussion of the future of privacy public policy.

About the NAI

The NAI is the leading self-regulatory organization in the U.S. focused exclusively on the third-party online advertising ecosystem. With over 90 member companies, ranging from the largest online businesses in the world, to small, nascent startups, nearly every ad served online in the United States involves the technology of one or more NAI members. NAI members provide crucial services and infrastructure to the diverse range of ad-supported content and services users enjoy every day, from major news websites to niche blogs to independently developed apps.

The NAI was formed in response to early concerns regarding the collection and use of data by third parties for the purpose of making ads relevant to users. The first NAI Code of Conduct was published in 2000. The current NAI Code,¹ published in 2008, reflects the evolution of third party business models, and the accompanying evolution in privacy concerns. The Code includes requirements for notice and choice, as well as other requirements and restrictions around the collection and use of data for online advertising, including limitations on the use of PII and limitations on the use of various types of sensitive data.

Additionally, the NAI implements and enforces policies to further the goals underlying the Code. For example, in 2009, the NAI enacted a policy limiting the use of Flash Cookies, LSOs, and other technologies that do not provide users "an appropriate degree of transparency and control."² This is an example of the NAI's unique ability to quickly build and implement industry consensus around policy issues.

¹ <http://www.networkadvertising.org/sites/default/files/imce/principles.pdf>

² <http://www.networkadvertising.org/faq#n185>

The NAI maintains a rigorous annual compliance program to enforce its Code and associated policies.³ The NAI's team of lawyers and technologists are given considerable access to members' employees and proprietary information. NAI Staff use this access to assess whether its members are in compliance with the Code, as well as to develop best practices for online advertising practices. This virtuous cycle is one of the key benefits of the self-regulatory model.

The NAI continues to innovate and raise the bar for online privacy. In 2009, the NAI joined other associations in creating the Digital Advertising Alliance,⁴ a fast-growing self-regulatory body that now encompasses the entire online advertising ecosystem, and includes members ranging from small advertising networks to major brands. The NAI participates in and contributes to a wide variety of meetings, workshops, working groups, and other proceedings related to all areas of online privacy. And the NAI is currently in the process of further updating its Code of Conduct to keep pace with the rapidly evolving practices and technology of the online advertising ecosystem.

NAI Members Are an Indispensable Part of the Internet Ecosystem

NAI members are key constituents in supporting diverse content and driving innovation. Their contributions benefit publishers and advertisers, online innovation generally, and therefore ultimately benefit users.

Good for publishers, especially small publishers

NAI members are indispensable for online sites and services that rely on advertising for financial support. For many sites and services, third-party interest-based advertising is the only feasible form of economic support. Without the revenue made possible by interest-based advertising, they would be forced to charge users for the content they provide, or to cease operation. While major publishers have the audience and the market power to garner relatively high rates for their advertising inventory even without interest-based advertising, small- and mid-size publishers do not.

Consider this example. Imagine a niche ad-supported publisher of a site catering to aspiring writers of science fiction. Because the site cannot afford its own sales staff or other overhead associated with making direct sales of its advertising inventory, it must rely on a third-party service to generate ad revenue. And because the market for contextual ads directly aimed at science fiction writers is too small, the site cannot depend on contextual advertising alone.

If limited to contextual ads, the value of the site's ad inventory will be a small fraction of what it could be if sold via interest-based advertising. This is because

³ <http://www.networkadvertising.org/code-enforcement/enforcement>

⁴ <http://www.aboutads.info/>

inferences about visitors' interests that are carried over from unrelated sites make this site's ad inventory significantly more valuable. Some of the site's visitors may be in the market for a new car. Others may be planning travel. Others may be interested in sporting goods. Still others may be shopping for stereo equipment. There is no way these interests could be inferred from the context of the site; these inferences can only be made based on the users' behavior on unrelated sites. With knowledge about the users' interests (using only non-Personally Identifiable Information), a much broader base of advertisers are willing to purchase the science fiction site's inventory, and they are willing to pay a higher rate than the site would get based on context alone. This is why third-party Interest Based Advertising is responsible for much of the free content and services available to users, and why it is a crucial component of the diverse and democratic Internet users enjoy today.

[Good for advertisers, especially small advertisers](#)

For advertisers, this means easy access to quality supply at competitive prices. In other words, advertisers, whether large multi-national brands, or small local businesses, depend on interest-based advertising to efficiently and effectively reach potential customers.

Take the example of a small, family-owned restaurant wanting to advertise online. Limited to contextual advertising, how would they find their customers? Limiting their ad buying to contextual would be inefficient and would limit their reach. Using third party services, however, they can find their audience across the web. They might even buy ads on the science fiction site from the example above.

Similarly, consider the example of a small manufacturer of specialized components for industrial systems. They are trying to reach an international market. The availability of relevant contextual ad inventory is extremely limited. Also, they are young and small, and they must use their marketing budget carefully. Only with interest-based advertising can they reach their relatively small audience across the entire Internet, even on websites not directly relevant to industrial systems. This is good for them, and good for the sites on which they advertise.

[Good for innovation and competition](#)

Consider also that this demand for third-party services drives innovation and competition, because it creates a market with minimal barriers to entry, where companies can launch quickly and the network effects compound rapidly. This has given rise to an explosion of competitive young companies. In the US alone, the market includes hundreds of companies, employs thousands (maybe hundreds of thousands) of people, and generates billions of dollars while greatly supporting the economic vitality of small and medium businesses.

[Good for users](#)

Of course, in the end, Internet users benefit from this Interest-Based Advertising, because it creates a more dynamic, distributed, and democratic Internet, with a wide range of free content and services.

Self-regulation works

Despite these benefits of third-party online advertising, the industry has acknowledged that users' privacy must be considered. As a result, industry has committed, through self-regulatory associations, to maintain and enforce strict codes of conduct regarding the collection and use of data for online advertising purposes.

Self-regulation is an ideal model for this for several reasons that culminate in fast and effective responses to policy issues:

- **Expertise.** NAI staff draw on their own considerable expertise in law, business, technology, and privacy, and are also able to draw on the vast expertise of the NAI's member companies, to fully understand issues, and the technology underlying the issues, and the potential consequences of proposed policy responses. This can occur in a cooperative and transparent manner. Because member companies give NAI staff exceptional access to personnel and proprietary information, staff and members can have frank and thorough discussions that would otherwise not occur. This leads to a deep understanding of issues and problems, and so leads to more effective solutions.
- **Buy-in.** The NAI has buy-in from its members and from the industry as a whole. This helps the NAI gain wide adoption of its policies and best practices.
- **Enforceability.** Through NAI members' public commitments to abide by the NAI Code, they become legally bound to do so, and face liability when they do not. Beyond that, however, the NAI's expertise, in conjunction with its access to inside personnel and information, make it uniquely situated to discover and mitigate issues on an ongoing basis. In fact, this happens proactively; NAI member companies regularly contact NAI staff to discuss the privacy implications of technology and product ideas before they are launched.

Thanks to these advantages, the NAI continues to have ongoing success in raising the bar for online privacy. And the entire ecosystem benefits from this success.

Conclusion

In the interest of brevity, I have not gone deeply into any of the points above. Rather, I hope these general points will be topics of deeper discussion during the upcoming workshop. Given the difficulties and importance of developing sensible, effective policy to regulate practices on the Internet, and given the potential consequences from any "Do Not Track" standard, the group should include the concepts I have introduced into any thinking regarding ways forward with Do Not Track and other policy efforts.