

**2013** **NAI Mobile  
Application Code**



## INTRODUCTION

The NAI Mobile Application Code, like the 2013 NAI Code of Conduct, governs only NAI member companies. It does not govern all data collection by member companies, but is limited to their “Cross-App Advertising” and “Ad Delivery and Reporting” activities as defined in this code. This code does *not* govern member companies’ activities insofar as they are acting as first parties or as “service providers” collecting and using data solely on behalf of a single first party. To the extent a company is collecting data across websites owned or operated by different entities, that activity will be governed by the 2013 NAI Code<sup>1</sup>. Although a single member’s activities may be covered by two separate codes of conduct, the NAI believes that the mobile and desktop ecosystems are rapidly converging and it is our intention to keep the high-level principles of notice, choice, and transparency consistent between our documents, with the goal of merging them together once the mobile ecosystem has more fully matured.

The NAI recognizes that the mobile advertising ecosystem is still in its infancy and is rapidly developing new technologies and business models to take advantage of the unique opportunities afforded by mobile devices. As a result, the NAI acknowledges that maintaining an effective Mobile Application Code may require, at least initially, regular iterations, with full notice and participation by stakeholders. The NAI may also publish from time to time additional guidance documents related to individual requirements in the Mobile Application Code.

In addition to closely monitoring business and technology developments in the mobile ecosystem, the NAI will review changes in other codes of conduct and best practice documents to ensure that our members are held to the highest standards in the ecosystem.

Compliance with the NAI Mobile Application Code will not be required as part of the 2013 compliance review process.

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<sup>1</sup> The 2013 NAI Code is available at [http://www.networkadvertising.org/2013\\_Principles.pdf](http://www.networkadvertising.org/2013_Principles.pdf). When necessary, mobile-specific implementation guidance may be provided as a supplement to the 2013 NAI Code.

## 2013 NAI MOBILE APPLICATION CODE OF CONDUCT

### I. Definitions

#### A. CROSS-APP ADVERTISING

Cross-App Advertising means delivering advertising based in whole or part on Cross-App Data

*Commentary: Cross-App Advertising does not include "contextual advertising," in which the ad selected depends upon the content of the application or page on which it is served, or "first party" marketing, in which first parties customize content or suggest products based upon the content of the application(s) or users' activity in their application(s) (including the content they view or the searches they perform), so long as the application provider is also the content provider. To the extent NAI member companies are engaged in such activities, those activities are outside of the scope of the NAI Mobile Application Code.*

#### B. CROSS-APP DATA

Cross-App Data is data collected through applications owned or operated by different parties on a particular device for the purpose of delivering advertising based on the preferences or interests inferred from this data. Cross-App Data does not include De-Identified Data.

#### C. AD DELIVERY AND REPORTING

Ad Delivery and Reporting is separate and distinct from Cross-App advertising and means the collection of information about a 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 time of day; statistical reporting in connection with the activity in an application; analytics and analysis; optimization of location 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 application or device.

#### D. PERSONALLY IDENTIFIABLE INFORMATION (PII)

Personally Identifiable Information (PII) is any information used or intended to be used to identify a particular individual, including name, address, telephone number, email address, financial account number, and government-issued identifier.

#### E. NON-PII

Non-PII is data that is not PII as defined in the NAI Mobile Application Code, but that is linked or reasonably linkable to a particular computer or device. Non-PII includes, but is not limited to, unique identifiers associated with users' computer(s) or device(s) and IP addresses, where such identifiers or IP addresses are not linked to PII. Non-PII does not include De-Identified Data.

#### F. DE-IDENTIFIED DATA

De-Identified Data is data that is not linked or reasonably linkable to an individual or to a particular computer or device.

## G. PRECISE LOCATION DATA

Precise Location Data is information that describes the precise real-time geographic location of a device derived through any technology that is capable of determining with reasonable specificity the actual physical location of a person or device, such as GPS level latitude-longitude coordinates or Wi-Fi triangulation. Precise Location Data does not include De-Identified Data.

*Commentary: Precise Location Data does not include location data that has been or will be altered such that a member is unable to determine with reasonable specificity the actual physical location of a person or device, so long as that data is not used for Cross-App Advertising during that period of time.*

## H. SENSITIVE DATA

Sensitive Data includes:

- Social Security Numbers or other government-issued identifiers;
- Insurance plan numbers;
- Financial account numbers;
- Precise information about past, present, or potential future health or medical conditions or treatments, including genetic, genomic, and family medical history; and
- Sexual orientation.

## I. PERSONAL DIRECTORY DATA

Personal Directory Data is calendar, address book, phone/text log, or photo/video file data (including any associated EXIF data) created by a user that is stored on or accessed through a device.

*Commentary: Modern devices provide access to new forms of data that were not available through conventional Web browsers. This data cannot only be used to recognize individuals, but also to assemble a history of location data. As a result, greater degrees of notice and choice are required by this Code.*

## J. OPT-IN CONSENT

Opt-In Consent means that a user takes some affirmative action that manifests the intent to opt in.

## K. OPT-OUT MECHANISM

Opt-Out Mechanism is an easy-to-use mechanism by which users may exercise choice to disallow Cross-App Advertising with respect to a particular browser or device.

*Commentary: An industry-standard mechanism for expressing choice regarding Cross-App Advertising has not yet been established. In lieu of this mechanism, member companies will be required to maintain or describe how to access an opt-out mechanism that is (1) reasonably easy for users to use and (2) durable, as appropriate given the nature and characteristics of the technology and use. These standards will evolve in step with the technologies available for allowing users to express choice. Platform-provided choice mechanisms that satisfy the above requirements are sufficient to meet the definition of Opt-Out Mechanism.*

## II. Member Requirements

### A. EDUCATION

1. Members shall use reasonable efforts, both individually and collectively, to educate users about Cross-App Advertising, and the choices available to them with respect to Cross-App Advertising.

### B. TRANSPARENCY AND NOTICE

1. *Website Notice:* Each member company shall provide clear, meaningful, and prominent notice on its website that describes its data collection, transfer, and use practices for Cross-App Advertising and/or Ad Delivery and Reporting. Such notice shall include descriptions of the following, as applicable:
  - a. The Cross-App Advertising and/or Ad Delivery and Reporting activities undertaken by the member company;
  - b. The types of data collected, including any PII, Precise Location Data, or Personal Directory Data, collected or used for Cross-App Advertising or Ad Delivery and Reporting purposes;
  - c. How such data will be used, including transfer, if any, to a third party;
  - d. A general description of the technologies used to maintain state by the company for Cross-App Advertising and Ad Delivery and Reporting;
  - e. That the company is a member of the NAI and adheres to the NAI Mobile Application Code;
  - f. The approximate length of time that data used for Cross-App Advertising or Ad Delivery and Reporting will be retained by the member company; and
  - g. An Opt-Out Mechanism.
2. Members that use standard interest segments for Cross-App Advertising that are based on health-related information or interests shall disclose such segments on their websites.
3. *App Store Notice:* Members shall require the applications where they collect data for Cross-App Advertising to clearly and conspicuously post notice, or a link to notice, in any store or on any website where the application may be acquired that contains:
  - a. A statement of the fact that data may be collected for Cross-App Advertising;
  - b. A description of types of data, including any PII, Precise Location Data, or Personal Directory Data, that are collected for Cross-App Advertising purposes;
  - c. An explanation of how, and for what purpose, the data collected will be used or transferred to third parties; and
  - d. A conspicuous link to or description of how to access an Opt-Out Mechanism.

*Commentary:* Where an NAI member company has a direct contractual relationship with an application where it collects data for Cross-App Advertising, it must contractually require the application provider to post notice concerning data collection for Cross-App Advertising anywhere their application may be acquired, including websites and app stores. This requirement is intended to ensure that users are provided notice of data collection for Cross-App Advertising prior to acquiring an application, which NAI members generally are unable to provide.

4. As part of members' overall efforts to promote transparency in the marketplace, members should make reasonable efforts to enforce contractual notice requirements and to otherwise ensure that all apps where they collect data for Cross-App Advertising purposes furnish or require notices comparable to those described above.

*Commentary: Members can meet this requirement by, for example, regularly checking on a reasonably-sized sample of the applications where they collect Cross-App Data to ensure that appropriate notice is being provided on the website(s) and/or in the app store(s) where the application may be acquired.*

5. *Enhanced Notice:* Members shall provide, or support the provision of, notice of Cross-App Data, Precise Location Data, and Personal Directory Data collection and use practices and the choices available to users in or around advertisements that are informed by such data. If notice cannot be provided in or around such advertisements, an arrangement should be made with the application provider serving the advertisement to provide notice within the application<sup>2</sup>:
  - a. As part of the process of downloading an application to a device, at the time the application is launched for the first time, or when the data is accessed, and
  - b. In the application's settings and/or privacy policy.

*Commentary: The NAI recognizes that it may be impractical to deliver enhanced notice in or around an advertisement on some devices. In this case, the draft code would require that member companies arrange to have notice provided within the application as part of the download process or when the application is first launched as well as in an application settings screen and/or in-app privacy policy.*

## C. USER CONTROL

1. The level of choice that members must provide is commensurate with the sensitivity and intended use of the data. Specifically:
  - a. Use of Non-PII for Cross-App Advertising shall require access to an Opt-Out Mechanism.
  - b. Use of PII to be merged with Non-PII on a going-forward basis for Cross-App Advertising purposes (prospective merger) shall require access to an Opt-Out Mechanism accompanied by robust notice of such choice.
  - c. Use of PII to be merged with previously collected Non-PII for Cross-App Advertising purposes (retrospective merger) shall require a user's Opt-In Consent.
  - d. Use of Precise Location Data for Cross-App Advertising shall require a user's Opt-In Consent.

*Commentary: Member companies are not required to obtain Opt-In Consent for the use of Precise Location Data when: (1) The first party has already obtained consent to use Precise Location Data; (2) the member company does not store or otherwise save the Precise Location Data; and (3) the Precise Location Data is used to serve an advertisement based on the user's or device's location at that specific moment in time.*

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<sup>2</sup> The notice requirements of Section II.B.5. are separate and distinct from those of Sections II.B.3. and II.B.4. Section II.B.5. requires that some form of enhanced notice be provided within the application, whereas the prior sections require notice in the app store where an application is acquired as well as on the application provider's website.

- e. Use of Sensitive Data for Cross-App Advertising shall require a user's Opt-In Consent.

**Commentary:** A platform-provided consent mechanism may be sufficient to obtain Opt-In Consent, so long as the user is prominently notified that Precise Location Data and/or Sensitive Data may be shared with third parties and for what purposes such data may be used. If this notice cannot be provided as part of a platform-provided consent mechanism, it may be delivered through a separate pop-up window, at first launch, or in another prominent location.

2. Member companies should not intentionally access a device without user authorization and obtain Personal Directory Data for Cross-App Advertising.

**Commentary:** This requirement is consistent with the belief that member companies should not use Personal Directory Data for Cross-App Advertising without user consent.

3. When a user has opted out of Cross-App Advertising, member companies must honor the user's choice as to the particular device. Companies may continue to collect data for other purposes, including Ad Delivery and Reporting.

**Commentary:** Following an opt out, companies must cease collecting and using data for Interest-Based Advertising purposes, but may continue to collect data for other purposes, including Ad Delivery and Reporting.

While companies may continue to collect and use data for purposes other than Cross-App Advertising following an opt out, their opt-out mechanisms must be consistent with the representations they make to users and to NAI staff. The NAI works with each member company during the pre-certification and annual review processes to ensure that its opt out, at minimum, stops the collection of data across unaffiliated apps for purposes of delivering advertising based on inferred or known preferences or interests. Some companies' opt-out tools cover activity that does not squarely fall within the definition of "Cross-App Advertising" as defined in this Code. The NAI expects that companies' opt outs will be consistent with the representations made to NAI staff and in their privacy policies and will hold companies accountable for their representations through the NAI's sanctions procedures.

4. The technologies that members use for Cross-App Advertising purposes must provide users with an appropriate degree of transparency and control.

**Commentary:** The NAI Code is intended to be technology-neutral, imposing the same obligations on member companies regardless of the technologies they use for Cross-App Advertising and Ad Delivery and Reporting. At the same time, the NAI believes that all technologies member companies use for advertising activities should afford users an "appropriate" degree of transparency and control. The current technologies available for collecting Cross-App Data differ in many ways from standard HTTP cookies and, as a result, transparency and control in the Cross-App context will be interpreted differently than it would be for Interest-Based Advertising.

The NAI also recognizes that some technologies used for Cross-App Data collection do not provide adequate transparency for the NAI compliance staff to perform independent technical monitoring of member's adherence to this code. In these circumstances, members will be required to implement tools and/or policies that allow the NAI staff to perform this necessary compliance function.

#### **D. USE LIMITATIONS**

1. Member companies shall not create Cross-App Advertising segments specifically targeting children under 13 without obtaining verifiable parental consent.
2. Members shall not use, or allow use of, data collected for Cross-App Advertising or Ad Delivery and Reporting for any of the following purposes:
  - a. Employment Eligibility;
  - b. Credit Eligibility;
  - c. Health Care Eligibility; or
  - d. Insurance Eligibility and Underwriting and Pricing.
3. Members who make a material change to their Cross-App Data collection and use policies and practices shall obtain Opt-In Consent before applying such change to data collected prior to the change. In the absence of Opt-In Consent, data collected prior to the material change in policy shall continue to be governed by the policy in effect at the time the information was collected.

#### **E. TRANSFER RESTRICTIONS**

1. Members shall contractually require that any unaffiliated parties to which they provide PII for Cross-App Advertising or Ad Delivery and Reporting services adhere to applicable provisions of this Code.
2. Members shall contractually require that all parties to whom they provide Non-PII collected across applications owned or operated by different entities not attempt to merge such Non-PII with PII held by the receiving party or to re-identify the individual without obtaining the individual's Opt-In Consent. This requirement does not apply where the Non-PII is proprietary data of the receiving party.

#### **F. DATA ACCESS, QUALITY, SECURITY, AND RETENTION**

1. Members shall provide users with reasonable access to PII, and other information that is associated with PII, retained by the member for Cross-App Advertising purposes.
2. Members shall conduct appropriate due diligence to ensure that they obtain data used for Cross-App Advertising from reliable sources that provide users with appropriate levels of notice and choice.
3. Members that collect, transfer, or store data for use in Cross-App Advertising and/or Ad Delivery and Reporting shall provide reasonable security for that data.
4. Members engaged in Cross-App Advertising and/or Ad Delivery and Reporting shall retain Non-PII and PII collected for these activities only as long as necessary to fulfill a legitimate business need, or as required by law.

### **III. Accountability**

#### **A. MEMBER OBLIGATIONS**

1. This Code is self-regulatory in nature and is binding on all members of the NAI.
2. To help ensure compliance with the NAI Code of Conduct, each member company should designate at least one individual with responsibility for managing the company's compliance with the NAI Code and providing training to relevant staff within the company.
3. Membership in the NAI requires public representations that a member company's business practices are compliant with each aspect of this Code that applies 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 website.

#### **B. NAI OVERSIGHT**

1. Members are required to annually undergo reviews of their compliance with the NAI Code by NAI compliance staff or other NAI designee. Members shall fully cooperate with NAI compliance staff or NAI designee, including in the course of annual compliance reviews and any investigation of a potential violation of the NAI Code.
2. The NAI's policies and procedures for annual compliance reviews and compliance investigations may be updated 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.
3. The NAI shall annually post on its website a report summarizing the compliance of its members with the NAI Code and NAI policies, including any enforcement actions taken and a summary of complaints received.

#### **C. USER COMPLAINTS**

1. The NAI website shall include a centralized mechanism to receive user questions or complaints relating to members' compliance with this Code.
2. Each member shall provide a mechanism by which users can submit questions or concerns about the company's collection and use of data for Interest-Based Advertising, and shall make reasonable efforts to timely respond to and resolve questions and concerns that implicate the company's compliance with the NAI Code and NAI policies.



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**NAI**   
Network Advertising Initiative