

Introduction

Thanks to the NTIA for conducting this initiative, and for including me in the conversation.

Part 1 – The Role of the NAI and Privacy Self-Regulation

The NAI promotes the health of the online ecosystem by maintaining and enforcing high standards for the collection and use of data for digital advertising.

We're proud that our industry-leading Code of Conduct includes an outright prohibition against the secondary use of information collected for Tailored Advertising for certain eligibility purposes, including credit, insurance, housing, and education, regardless of whether such information is ever sold, and even when a consumer has not opted out of Tailored Advertising.

We believe that maintaining a robust, ad-supported digital media ecosystem is not in conflict with the objectives of increasing privacy, enhancing protections for civil rights, and avoiding harmful outcomes.

The NAI has recently engaged its members and key stakeholders to identify steps to mitigate risks to privacy and civil rights. We remain committed to raising industry awareness, promoting industry standards and practices that increase transparency, and working with members and their business partners to adequately evaluate and mitigate disparate impacts.

Part 2 – Unique Challenges We Must Move Beyond

Collectively, we must overcome several challenges in order to make trust and accountability the foundations of digital advertising.

1. **First, privacy self-regulation has limitations.** The NAI has worked for many years to establish privacy guidelines, and we have significantly enhanced protections for consumer data. But ultimately, self-regulation increasingly forces the best-intentioned companies to compete with others who maintain lower standards.
2. **Second, the “Notice and Choice” framework must evolve.** The notion of consumers serving as the primary guardians of their data is simply not pragmatic given the wide range of data-driven products and services that power our modern lives and the digital economy.
3. **Third, broad bans on data collection and use are simply impractical, and undesirable.** There are many cases where these data types are utilized to reach at-risk communities and promote beneficial products and services, and increase diversity. Most recently, tailored advertising was effectively deployed by health organizations to reach at-risk populations and educate them about the value of COVID vaccines.

4. **Finally, the emerging state patchwork is a well-intended stopgap, but is not in the best interest of either consumers or businesses.**

Part 3 - The Path Forward

The NAI and our members recognize the need to do more, both within industry, and by enacting a comprehensive national consumer privacy framework that provides strong, uniform protections for all U.S. consumers, a uniform set of rules for businesses, and consistent enforcement.

Data Protection Assessments

Data Protection Assessments (DPAs) are essential to responsible data processing - they identify and minimize risks posed by the collection and processing of personal data, not just in the digital advertising industry, but also more broadly.

DPAs have become a common practice for many companies operating in Europe, and they are also critical elements of the consumer privacy laws recently passed in the US. As these practices become more common, we need to ensure that they can act as an important protection for civil rights objectives, as well as privacy.

In response to these new requirements, the NAI has begun mapping DPA elements to digital advertising practices, building on core NAI compliance requirements as the foundation, with a critical focus on avoiding harmful and disparate outcomes from data-driven advertising.

We believe the NAI is well suited to help develop and implement best practices, including risk assessments, across the digital advertising industry to ensure individual rights and freedoms are continually protected.

What we need most is to Establish a National Consumer Privacy Framework

While the new state law requirements for DPAs are a critical step forward, they have different standards and requirements. A national framework could help to streamline and extend these essential data protections for consumers across the country.

NAI is a founder and leading member of the Privacy for America Coalition, an industry group supporting a national privacy framework that would establish a “new paradigm,” that identifies and prohibits certain practices as “unreasonable” and provides for enhanced enforcement, among other protections.

This approach is in many ways consistent with the proposals to adopt a set of responsibilities for companies that handle personal data, such as duties of care and loyalty. We believe that clear definitions of prohibited practices, combined with strong enforcement, will help ensure

consumer and business trust in data use, and create a framework for responsible corporate action.

The Privacy for America framework includes key elements that seek to minimize discrimination and civil rights violations, such as a codification of the NAI's prohibition on the use of personal data for eligibility decisions for employment, credit, insurance, health care, educational admissions, financial aid, or housing, and a ban on the use of personal data to charge higher prices based on demographic characteristics. In addition, the Framework would empower the FTC and state attorneys general with enhanced enforcement authority of anti-discrimination laws.

Finally, the Framework would establish a model for effective co-regulation by creating FTC certification programs, including rigorous standards and oversight by the FTC to ensure, as efficiently as possible, that companies are complying with legal requirements.

Conclusion

Again, thank you for the opportunity to participate, and we look forward to continuing this discussion with the Biden Administration, members of Congress, and other key policymakers and stakeholders.