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June 7, 2022

Attn: Ruth Yodaiken
National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Avenue, NW, Room 4725
Washington, DC 20230

RE: FR Docket NTIA-2022-0001

Pursuant to the notice published on April 22, 2022, in the Federal Register, thank you for the opportunity to comment on the National Telecommunications and Information Administration's (NTIA) Report on Competition in the Mobile App Ecosystem.

The Network Advertising Initiative (NAI) is the leading self-regulatory organization dedicated to responsible data collection and use by advertising technology companies engaged in Tailored Advertising and Ad Delivery and Reporting (ADR)¹ in the United States. The NAI, a non-profit trade association, was formed in 2000, and has over 100 member companies who are leaders in privacy standards across the digital advertising ecosystem. NAI members are part of the technological backbone of the digital advertising ecosystem—helping advertisers reach audiences most likely to be interested in their products and services, while allowing consumers to receive ads and content that are tailored to their interests.

The U.S. mobile application ecosystem is essentially controlled by two companies, Apple and Google, who provide the two primary app stores and run the operating systems for over 95 percent of all mobile apps across the U.S. Therefore, we believe that it is imperative to have vigilant oversight over how these companies develop and implement policies that impact data sharing practices broadly across apps and their third-party partners that operate within the ecosystem. The app marketplace is predominantly composed of apps that are offered to consumers for free or very low cost. From games and productivity solutions to essential services like public parking apps, the real costs of creating and maintaining these apps are substantially enabled by data-driven advertising and marketing.

¹ See Network Advertising Initiative, 2020 NAI Code of Conduct (2020), https://www.networkadvertising.org/sites/default/files/nai_code2020.pdf.

The majority of users prefer ad-supported digital content, apps and services.² Therefore, an app marketplace or mobile operating system’s corresponding policy or business practice that *assumes* advertising, particularly certain data-driven advertising, is uniformly not in the best interest of consumers, fails to contemplate negative market externalities to such consumers, including that less reliance on data-driven advertising is likely to result in an increase in fee-based digital content and apps. This is an outcome that would be contrary to many consumers’ stated preferences.

The NAI is particularly concerned with aspects of Apple’s App Tracking Transparency (ATT) policy, and the corresponding requirements they have implemented across the iOS app marketplace. To be clear, while we are strongly supportive of maximizing transparency and user choice regarding collection of consumer data, it is essential that such policies be crafted fairly to avoid unfairly disadvantaging various market participants, while still promoting privacy benefits for consumers. For instance, in Apple’s case, they define the concept of “tracking” so broadly that publishers could be prohibited from collecting user data on their own app if the user does not opt-in to “tracking” for the use of that app through the iOS platform controls, regardless of whether a user has already given that publisher consent for the use of their data for advertising.

Platform policies, like Apple’s, could drive wider adoption of fee-based apps, rather than ad-supported apps that consumers prefer. That is, if fewer consumers opt-in to the use of data from their apps to support advertising and marketing, app developers will likely be forced to charge consumers for their apps, as well as offer more in-app content, to offset lost advertising revenue. This would create an advantage for Apple’s current revenue model.³ Apple relies less on advertising revenue, and more on generating revenue from user fees, subscriptions and commissions from partners based on fees that apps charge their users directly.⁴

Google also announced earlier this year that they are seeking to enhance privacy across the Android apps marketplace, replacing their mobile ad ID with “new, more private advertising solutions,” and that these solutions will “limit sharing of user data with third parties and

² NAI’s 2019 consumer survey revealed that nearly 60% of respondents prefer their online content to be paid for by advertising, while another question sought feedback from consumers on how much they currently pay for online content and how much they would be willing to pay. Nearly 90% said they are unwilling to pay a significant amount of money to continue receiving apps and online content that they currently receive for free. The survey provided a strong affirmation that the ad-supported content model is ideal for most consumers. See, [Blog | NAI](#).

³ Freund, Leigh. “Requiring App-by-App Opt-in for Personalized Ads Will Confuse Consumers, Harm Developers, and Benefit Apple.” Network Advertising Initiative , 23 June 2020, http://www.networkadvertising.org/sites/default/files/press_release-requiring_app-by-app_opt-in_for_personalized_ads .doc.pdf.

⁴ Strategist, Aparna Growth. “3 Ways Apple Makes Money From The iPhone.” MobileAppDaily, MobileAppDaily, 6 May 2019, www.mobileappdaily.com/how-apple-makes-money-from-iphone#:~:text=The%20popularity%20of%20the%20App,made%20through%20the%20App%20Store.

operate without cross-app identifiers, including advertising ID.”⁵ The NAI supports Google’s stated commitment to work collaboratively across the industry to enhance consumer privacy while also supporting data driven advertising. However, there are many details that are still unknown about their future deployment of new technologies and policies across the Android marketplace. The way in which these technologies and policies are implemented for app developers and their partners could greatly impact the ability of these apps to continue providing data-driven advertising that currently supports a robustly competitive app marketplace.

While we recognize and agree that it is imperative to continually assess the privacy protections across these marketplaces, and for the companies who administer the app stores and establish policies for apps to run across their devices to promote enhance privacy for consumers, we are also concerned that some decisions about data sharing can have adverse impacts on the business models of many companies across the mobile app ecosystem. Considering that a majority of consumers have indicated they prefer ad-supported apps over those that are fee-based, any “best intention” assumptions by platforms need to be carefully evaluated.

As identified by our survey referenced above, and additional survey research, consumers have consistently been resistant to subscriptions and content paywalls. In 2019, only 16 percent of Americans paid a subscription for online content. Even among those willing to pay for content, most subscribers are only paying for one subscription. Despite this, in 2019, a full 76 percent of American newspapers established some form of paywall for access to their content.⁶ As publishers search for ways to fund themselves, the paywall model, while presenting opportunities for funding some publishers, particularly the larger ones, suggests a future where consumers have access to less digital content, and the marketplace for this content becomes dominated by larger, dominant platforms that can rely on large historical user bases. Additionally, a paywall-based model serves to keep online content away from most consumers; consumers willing to pay subscription fees are substantially wealthier and more highly educated than most Americans.⁷ Therefore, decisions by the dominant app platforms striving to limit data collection with the assumption that this limitation is in consumers’ best interest, should be evaluated carefully.

Although a consumer may prefer not to participate in data-driven advertising, with all outcomes being equal, it is vital that they be able to make an informed decision, particularly if decisions by dominant technology platforms are likely to promote a shift to a fee-based ecosystem where costs are higher for apps. This is particularly true at a time with substantial inflation, where the price of other goods and services has increased dramatically over the past 12 months.

⁵ Introducing the Policy Sandbox on Android. See <https://www.blog.google/products/android/introducing-privacy-sandbox-android/>

⁶ See Laura Hazard Owen, *Even People Who Like Paying for News Usually Only Pay for One Subscription*, NIEMAN LABS (June 11, 2019), <https://www.niemanlab.org/2019/06/even-people-who-like-paying-for-news-usually-only-pay-for-one-subscription/>.

⁷ *Id.*

As an industry leading self-regulatory organization for more than two decades, the NAI strongly supports consensus approaches to enhancing privacy, and we believe that strong privacy policies are compatible with market competition. We also support a national privacy framework that places emphasis on data uses, and particularly seeks to prevent unexpected and harmful outcomes, rather than placing blanket restrictions on data collection or sharing based on whether a company is a “first party” or a “third party.”

For these reasons, we strongly recommend that your report recognize that legislation and regulations seeking to ensure robust app market competition avoid creating broad exceptions for the dominant app market and mobile operating system providers to develop technologies and platform-based policies that are labeled as privacy enhancing. As we have seen in the case with Apple’s recent policies, these can have the effect of unfairly determining how other essential market participants may collect and utilize their customers data for advertising and marketing purposes. Because of their market position as the only two mobile app gateways to consumers, overly-restrictive data policies could limit the development of more innovative alternative approaches offered by app providers and their partners to achieve similar privacy-enhancing goals.

Instead, legislation and regulations in this area should not only reflect that consumer privacy is a shared priority, but they should also consider the impact of policies established by app and mobile platforms and seek to develop processes to *balance* privacy and competition. Ultimately, the U.S. marketplace should not enable dominant app platforms to craft policies that benefit their business models, particularly to the detriment of other market participants, including app developers and digital marketers. Particularly as we face unique and unprecedented economic challenges, with rising costs for myriad consumer goods and services, the average U.S. consumer cannot afford new policies that will exacerbate these challenges by enabling imbalanced limitations on the robust ad-supported digital media ecosystem that consumers currently enjoy.

Again, we thank you for the opportunity to provide comments on this important issue, and we welcome the opportunity to discuss these challenges in greater detail. If you have questions or would like to discuss these comments or related issues, please contact me at leigh@thenai.org, or David LeDuc, NAI Vice President for Public Policy, at david@thenai.org.

Sincerely,

A handwritten signature in blue ink, appearing to read "Leigh Freund", is enclosed in a thin blue rectangular border.

Leigh Freund
President and CEO
Network Advertising Initiative (NAI)