

November 7, 2024

Submitted via electronic form at

<https://coag.gov/resources/colorado-privacy-act/rulemaking-comment-form/>

The Honorable Philip J. Weiser
Attorney General
Colorado Department of Law
Ralph L. Carr Judicial Building
1300 Broadway, 10th Floor
Denver, CO 80203

Dear Attorney General Weiser,

On behalf of the Network Advertising Initiative (“NAI”), thank you for the opportunity to comment in response to the proposed draft amendments (“Proposed Amendments”) to the Colorado Privacy Act (“CPA”)¹ rules proposed on September 13, 2024.² The NAI applauds your continued commitment to public involvement and transparency in this important rulemaking process. We have appreciated the opportunity to provide written comments throughout your office’s rulemaking initiatives under the CPA and strongly support the Department of Law’s current Proposed Amendments implementing a process for issuing opinion letters and interpretive guidance.

The NAI is a non-profit, self-regulatory association dedicated to responsible data collection and use for digital advertising. The NAI has been a leader in this space since its inception in 2000, promoting the highest voluntary industry standards for member companies, which range from small startups to some of the largest companies in digital advertising. NAI’s members are providers of advertising technology solutions and include ad exchanges, demand and supply side platforms, and other companies that power the digital media industry by helping digital publishers generate essential ad revenue, helping advertisers reach audiences interested in their products and services, and helping to ensure consumers are provided with ads relevant to their interests.

As you may be aware, the NAI announced in June 2023 an initiative to revamp our self-regulatory program by moving away from a prescriptive, industry-developed Code of Conduct.³ Our new program will focus instead on helping member companies adjust to, and comply with, a growing variety of state and federal privacy laws and regulatory initiatives that may apply to their businesses.⁴

¹ See generally Colo. Rev. Stat. §§ 6-1-1301 - 1314.

² Proposed Draft Amendments to the CPA Rules, 4 CCR 904-3 (proposed Sept. 13, 2024).

³ Network Advertising Initiative, 2020 Code of Conduct (2020), https://thenai.org/wp-content/uploads/2021/07/nai_code2020.pdf.

⁴ *NAI Reimagines its Compliance Program for a New Era*, The NAI Blog (Jun. 27, 2023), <https://thenai.org/nai-reimagines-its-compliance-program-for-a-new-era/>.

We are taking this step because we believe the role of self-regulation is changing with respect to consumer data privacy,⁵ and we are confident that the NAI can help promote compliance and minimize the need for enforcement in the digital advertising space. As such, we view this new approach as a win-win-win for consumers, regulators, and the industry. To this end, our emphasis going forward will include efforts to foster consistency and collaboration across the industry for privacy compliance. We look forward to sharing additional information about our new self-regulatory program as we finalize it in the coming months. We also believe our new approach to self-regulation is particularly well-aligned with the efforts of your office through the Proposed Amendments to offer additional guidance to companies regulated by the CPA.

The Proposed Amendments setting out the process for your office to issue opinion letters and interpretive guidance to businesses covered by the CPA is a valuable step towards enhancing collaboration and promoting compliance with the CPA,⁶ and the NAI fully supports your office's efforts to that end. We believe your office's efforts will lead to more robust compliance with the CPA than would enforcement alone; and will therefore result in better privacy protections for consumers. Indeed, the issuance of interpretive guidance and opinion letters will enable well-intentioned companies to navigate the intricacies of the CPA and achieve compliance without being unnecessarily penalized. Further, guidance outside of enforcement will be helpful for organizations like the NAI to provide clarity around industry practices and reduce uncertainty, which is essential across a complex industry such as digital advertising.

Thank you for providing a thorough and open process for considering amendments to the CPA regulations. The NAI is grateful for this opportunity to comment on the Proposed Amendments.

Respectfully Submitted,

Leigh Freund
President and CEO
Network Advertising Initiative (NAI)

⁵ Allison Schiff, *The FTC's Director Of Consumer Protection On What Self-Reg Orgs Can Do To Avoid 'Fading Into Irrelevance'*, AdExchanger, <https://www.adexchanger.com/data-privacy-roundup/the-ftcs-director-of-consumer-protection-on-what-self-reg-orgs-can-do-to-avoid-fading-into-irrelevanceearlier-this-week-i-attended-the-national-advertising-division/>.

⁶ See Colo. Rev. Stat. § 6-1-1313(3); Rule 10.01, 4 Colo. Code Regs. § 904-3 (proposed).