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Internet Policy Task Force  
National Telecommunications and Information Administration  
U.S. Department of Commerce  
Washington, D.C. 20230

Submitted electronically to: [privacy-noi-2010@ntia.doc.gov](mailto:privacy-noi-2010@ntia.doc.gov)

Re: Information Privacy and Innovation in the Internet Economy  
Docket No. 100402174-0175-01

## **Introduction**

The Network Advertising Initiative (“NAI”) appreciates the opportunity to provide Comments to the Department of Commerce’s Internet Policy Task Force (“Task Force”). The NAI is a coalition of more than 40 leading online advertising companies committed to developing actionable self-regulatory standards that establish and reward responsible business and data management practices and standards.<sup>1</sup> The NAI maintains a centralized choice mechanism that allows consumers to opt out of online behavioral advertising by some or all of the NAI’s member companies, across the many different Web sites on which NAI members provide such targeting (at [www.networkadvertising.org](http://www.networkadvertising.org)).

The NAI’s comments will address the Task Force’s questions as applied in the context of online behavioral advertising. Specifically, these comments: (1) explain how the free flow of data has been critical to innovation on the Internet by enabling new advertising models that permit increasingly diverse content and services to be offered to consumers free of charge; (2) address some of the Task Force’s questions with respect to the U.S. privacy framework going forward, with particular emphasis on the importance of self-regulation; and (3) describe privacy-enhancing

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<sup>1</sup> The NAI currently comprises 45 companies that span a significant cross section of the online advertising marketplace, including all 15 of the largest ad networks, as well as the leading data exchange and marketing analytics services providers. See comScore Media Metrix, *comScore Releases December 2009 Ranking of Top 15 Ad Networks*, at [http://www.comscore.com/Press Events/Press Releases/2010/1/comScore Releases December 2009 Ranking of Top Ad Networks](http://www.comscore.com/Press%20Events/Press%20Releases/2010/1/comScore%20Releases%20December%202009%20Ranking%20of%20Top%20Ad%20Networks).

technologies that have recently been developed by the NAI and its member companies to offer consumers greater transparency and choice with respect to the collection and use of data for online advertising.

## **I. The Free Flow of Data is Critical to Ad-Supported Internet Innovation**

As the Task Force recognizes, “companies need clear policies that enable the continued and free flow of data.”<sup>2</sup> The free flow of data has been critical to the rapid growth of Internet content and services supported by advertising revenue.

### *Role of Online Advertising in Innovation of the Internet*

Over the past 15 years, the World Wide Web has provided consumers access to an incredible variety of new content and services, ranging from online news, blogs, and other content to e-mail, search, social networking, video, and other Web-based services. The explosion in Web services and their ease-of-use have transformed consumers’ ability to access public information and entertainment, and created entirely new platforms for community and collaboration. Web-based technologies have also radically enhanced the ability of small businesses and specialty content providers to establish and connect with new audiences, creating new jobs and substantially increasing the diversity of public discourse. Consumer consumption of such Web services has continued to grow rapidly.<sup>3</sup>

Advertising revenues have permitted the great majority of these Web sites and services to be provided to consumers free of charge. Instead of requiring visitors to register and pay a subscription fee, the operators of Web content and services subsidize their offerings with various types of advertising. These

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<sup>2</sup> NOI at 21227.

<sup>3</sup> See generally Center for the Digital Future, USC Annenberg School for Communication, *Highlights from the 2009 Digital Future Report* (April 2009), available at [http://www.digitalcenter.org/pdf/2009\\_Digital\\_Future\\_Project\\_Release\\_Highlights.pdf](http://www.digitalcenter.org/pdf/2009_Digital_Future_Project_Release_Highlights.pdf) (noting that 51% of consumers prefer ad-supported online content); The Nielsen Company, *Television, Internet and Mobile Usage in the U.S. – A2 M2 Three Screen Report* (1st Quarter, May 2009), available at [http://blog.nielsen.com/nielsenwire/wpcontent/uploads/2009/05/nielsen\\_threescreenreport\\_q109.pdf](http://blog.nielsen.com/nielsenwire/wpcontent/uploads/2009/05/nielsen_threescreenreport_q109.pdf) (noting continued growth in monthly Internet usage generally by over 160 million U.S. users, and of online video in particular). Cisco expects Internet traffic to grow fivefold by 2013. See Cisco, *Cisco® Visual Networking Index (VNI) Forecast and Methodology, 20082013* (Summary, June 2009), available at [http://newsroom.cisco.com/dlls/2009/prod\\_060909.html](http://newsroom.cisco.com/dlls/2009/prod_060909.html). See also IAB/Hamilton Consultants Inc., Drs. John Deighton and John Quelch, *Economic Value of the Advertising-Supported Internet Ecosystem* at 4 (June 10, 2009), available at <http://www.iab.net/economicvalue> (estimating that the advertising-supported Internet accounts for \$300 billion of economic activity).

advertising revenues provide the creators of free Web content and services – site publishers, bloggers, and software developers – with the income they need to pay their staffs and build and expand their online offerings.

Display advertisements – sometimes called “banner” ads – are an important means by which many Web content and services providers (also called “Web publishers”) generate such advertising revenue. Display-related ads generated approximately \$8.0 billion in advertising revenue even during the recessionary period of 2009.<sup>4</sup> Among other things, display ads serve a vital role in online commerce by enhancing consumer brand awareness and Web traffic to retailers.<sup>5</sup> The Web sites that publish banner ads have a dual incentive to ensure that they serve their users with the most relevant ads possible: not only do more relevant advertisements generate greater user response and revenue for the publisher; greater ad relevance enhances the user experience and avoids the potential nuisance effect to users from less customized marketing.<sup>6</sup>

While “contextually” targeted ads (such as an ad for ocean cruise on a Web page devoted to Caribbean travel) can sometimes offer the most direct approach to reaching consumers, contextually-targeted advertisements are not feasible for every type of Web content. An online photo sharing service, or an online newspaper’s section devoted to international affairs coverage, for example, often are not readily suited to contextual advertisements. Web publishers therefore must rely on other potential attributes of their Web site visitors to help ensure ad relevance, such as

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<sup>4</sup> See Interactive Advertising Bureau, *2009 IAB/PricewaterhouseCoopers Internet Advertising Revenue Report*, at 9 (April 2010), available at <http://www.iab.net/media/file/IAB-Ad-Revenue-Full-Year-2009.pdf>. The report notes that display-related advertising includes display banner ads (22% of 2009 full year revenues or \$5.1 billion), rich media (7% or \$1.5 billion), digital video (4% or \$1 billion), and sponsorship (2% or \$383 million). *Id.* Moreover, e-commerce providers separately provide a substantial amount of proprietary advertising, encouraging commerce. IAB/Hamilton Consultants Inc., Deighton and Quelch, *Economic Value of the Advertising Supported Internet Ecosystem*, *supra* note 2 at 3. Of the amount spent on display advertising in 2008, it is also estimated that online behavioral advertising generated \$775 million in revenue. See eMarketer, “Behavioral Targeting: Marketing Trends” (June 2008), available at [http://www.emarketer.com/Reports/All/Emarketer\\_2000487.aspx](http://www.emarketer.com/Reports/All/Emarketer_2000487.aspx).

<sup>5</sup> See AdAge, “Why Search May Not Click for Retailers: Consumers Going Directly To Retailers’ Sites for Six Out of Ten Visits” (Nov. 3, 2009) (summarizing Nielsen Online survey results that less than 10% of online retailers’ Web traffic comes from search engines, and that 61% results from consumers choosing to visit retailers’ sites directly), available at [http://adage.com/digital/article?article\\_id=140089](http://adage.com/digital/article?article_id=140089).

<sup>6</sup> A TRUSTe study found that when online advertising for products and services is not relevant to consumers’ wants and needs, 72% of consumers find the experience intrusive or annoying. See TRUSTe, *2008 Study: Consumer Attitudes about Behavioral Targeting* (March 28, 2008).

registration information reflecting their gender, age, or zip code; or, alternatively, other potential interests of their users inferred from prior Web activity, either on the publisher's site or elsewhere on the Web. And even for large Web sites or services providers, there is no assurance that they will be able to sell their entire potential advertising inventory at rates sufficient to support their operating costs.

Smaller-scale Web publishers – such as blogs and specialty interest content sites – face an additional challenge. The monthly audiences of these sites vary in size from hundreds of thousands to millions of visitors.<sup>7</sup> Such small Web publishers cannot employ their own dedicated sales force to sell banner inventory to potential advertisers. More importantly, the smaller audiences of such sites do not easily lend themselves to the execution of large-scale brand advertising campaigns preferred by major companies.

Over the past decade, technological innovation designed to bring more efficient and scalable approaches to online advertising has enhanced the potential revenue opportunities for both large and small Web publishers. Advertising networks, exchanges, and other business models constantly innovate to allow Web publishers to find the revenue needed to continue providing the content and services consumers want. These businesses, large and small, help to connect advertisers to interested audiences, while at the same time enhancing the relevance of the advertisements served to users. The important functions these companies provide include:

- Acting as intermediaries for Web publishers and advertisers, by acquiring unsold impressions from both large and smaller Web content sites, and aggregating them into broad potential audiences for advertisers (for example, generating a multi-site campaign for a movie's opening weekend);
- Supporting a variety of more flexible pricing models for advertisers, including cost-per-impression (CPM) pricing preferred by brand awareness advertisers; or cost-per-action or click (CPA or CPC) pricing favored by advertisers looking to generate direct online sales (for example, banner ads for online universities);
- Offering niche-based approaches for particular types of publishers (ad networks focused on auto or women's interest publisher sites); and

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<sup>7</sup> The statistical diversity of smaller Web sites outside the large-traffic Web sites is sometimes referred to as the Web's "Long Tail." See, e.g., Interactive Advertising Bureau, *I Am the Long Tail* (2009), available at <http://iamthelongtail.com/> (offering video examples of the extraordinary diversity in subject matter and business types of small Web publishers).

- Using online advertising technologies to aggregate insights from single or multiple Web publishers to enhance the relevance and quality of user advertisements.

The technological innovation in the online advertising industry has grown exponentially even over the last year, bringing increasingly efficient and scalable approaches to online advertisers and publishers. Specifically, the advent of “real time bidding” and the growth of advertising exchanges have resulted in automated, algorithmic trading that allows advertisers to find optimal ad impression opportunities. Rather than requiring advertisers to purchase guaranteed advertising blocks on fixed, pre-negotiated prices, real-time bidding creates a far more efficient liquid market.<sup>8</sup> Publishers are able to fetch higher revenue for their inventory because advertisers can find, in real time, the audience most likely to be interested in their ads, resulting in optimal revenue for each ad impression. These models also benefit advertisers by giving them increased transparency into the audiences for their campaigns, resulting in greater flexibility, better value, and the ability to fine-tune media buys to meet audience needs.<sup>9</sup> Publishers and advertisers are also able to dynamically reduce irrelevant, uninteresting ad impressions that generate scant response. Consumers, in turn, get increasingly tailored and appealing web experiences based on their inferred preferences.

This technical innovation has provided myriad benefits to consumers, publishers, and advertisers. At the same time, the advertising networks, exchanges, and other online advertising business companies represented by the NAI have also engaged in extensive innovation around protecting consumers’ privacy, and providing consumers with increased transparency and meaningful choice with respect to online behavioral advertising. Those innovations are discussed below.

### *Benefits of Online Advertising Innovations to Consumers, Publishers, and Advertisers*

#### Consumers

The online advertising technological innovations developed by NAI member companies provide considerable economic and non-economic benefits across the entire online ecosystem, including consumers, publishers, and advertisers. From the perspective of the consumer, these benefits include the following:

- As previously discussed, the increased revenues associated with relevant advertising are vital to supporting the continued growth in ad-supported

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<sup>8</sup> “Getting Real: Ad Exchanges, RTB, and the Future of Online Advertising” desilava & phillips LLC White Paper, at 4-5 (March 2010), available at <http://www.mediabankers.com/PDF/Getting%20Real%20White%20Paper.pdf>.

<sup>9</sup> See *id.*

Web content and services, which remains the predominant business model;<sup>10</sup>

- Online advertising makes useful information available to consumers, including information about product availability and comparative pricing;<sup>11</sup>
- Online advertising models using targeted information is of particular importance for smaller Web publishers, helping them generate the revenue needed to sustain a greater diversity of content offerings and viewpoints; and
- Ad-supported business models continue to remain the principal source of venture and investment capital for innovation in Web services that have enjoyed rapid consumer adoption (social networks, *e.g.*).

### Publishers

From the Web publisher perspective, online advertising technologies enable and preserve the ability to operate their sites free of charge, without adopting subscription requirements that might significantly limit the size of their audience. A recent study commissioned by the NAI and performed by former Director of Consumer Protection for the Federal Trade Commission, Howard Beales, demonstrated that the average CPM paid for behaviorally-targeted advertising enabled by NAI member companies is twice as much as the average CPM for run of network advertising, and that the majority of ad network display ad revenues flow back to publishers because they are used to acquire inventory.<sup>12</sup> Additionally:

- Large Web sites derive incremental revenue for the sale of ad impressions that they themselves cannot sell, and that would otherwise generate no income;

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<sup>10</sup> Most newspapers, for example, have not achieved broad-based adoption of fee-based services. See <http://newsosaur.blogspot.com/2010/02/why-many-newspaper-pay-sites-may-fail.html#comments>; <http://newsosaur.blogspot.com/2010/01/only-24-subscribe-at-newspaper-pay.html> (citing survey of newspaper sites that have established pay walls showing only an average of only 2.4% of paying subscribers).

<sup>11</sup> See generally Lenard & Rubin, "In Defense of Data: Information and the Costs of Privacy" (Technology Policy Institute, May 2009), at <http://www.techpolicyinstitute.org/files/in%20defense%20of%20data.pdf>.

<sup>12</sup> Howard Beales, "The Value of Behavioral Targeting" (March 24, 2010), available at [http://www.networkadvertising.org/pdfs/Beales\\_NAI\\_Study.pdf](http://www.networkadvertising.org/pdfs/Beales_NAI_Study.pdf).

- Smaller Web sites – for example, specialty interest sites or regional online newspapers – can have their available advertising impressions aggregated into combined audiences attractive to larger-scale advertisers who may pay higher rates and thereby provide them the revenue they need to continue to operate; and
- Both types of Web sites gain access to online advertising technologies that enable them to serve more relevant and profitable ads on portions of their sites that do not lend themselves to contextual advertising approaches.

### Advertisers

Finally, the innovations around online advertising provide advertisers the ability to reach an increasingly fragmented Web audience, as online usage continues to diversify across an ever-broader array of content and services:

- Through more relevant ads served to increasingly-focused audiences, the advertiser eliminates wasteful spending on irrelevant ads (for example, automotive advertisers can significantly reduce their advertising expenditures by serving ads for a new car model only to users who have actually expressed interest in that model by researching it, rather than blanketing a wider audience with such ads);
- Larger advertisers gain access to audiences that may be distributed across a great variety of small Web sites, and avoid the otherwise prohibitive costs of attempting to negotiate their ad campaigns on a site-by-site basis;
- Smaller-scale advertisers gain new opportunities to reach focused audiences online that would not have been available to them in the offline world;
- Technologies like retargeting allow an advertiser to offer an improved price offer to a prior visitor to the advertiser's Web site;
- Behavioral advertising technologies result in a several fold increase in user response;<sup>13</sup> and
- Compared to other forms of advertising, online ads continue to offer far greater insight into the effectiveness of advertisers' spending, as well as greater flexibility for advertisers to pay only for ads that actually produce

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<sup>13</sup> *Id.* at 12-13.

a result (performance-based ads that may be particularly important for industries with limited ad budgets).

## II. US Privacy Framework Going Forward

The existing U.S. privacy framework, including self-regulation, has enabled the rapid growth of Internet content and services described above. Under this framework, online advertising technologies have flourished and publishers have found ever-expanding methods of supporting their content and services. At the same time, robust self-regulatory regimes have developed (against a backdrop of FTC enforcement) to provide baseline rules concerning the collection and use of consumers' data for advertising purposes. Any adjustments to the existing privacy framework must be carefully calibrated to preserve the growth of the Internet economy as well as the significant advances in privacy protection already provided by self-regulation.

Robust self-regulatory regimes monitored by third parties like the NAI play an important role in ensuring that companies that handle consumers' information are accountable for the commitments they make. The NAI's compliance program is modeled on the Commerce Department's EU self-regulatory framework. It establishes a set of minimum performance-based benchmarks, described in detail below, governing the collection and use of data for online advertising purposes. To participate in the NAI, all member companies must make a public attestation to their commitment to those rules, and this attestation is enforceable by the FTC. In this way, the NAI and other privacy self-regulatory frameworks weave basic privacy benchmarks into the business models of their members, thereby setting the stage for privacy by design.

At the same time, self-regulatory regimes like the Department's EU Safe Harbor and the NAI provide member companies flexibility with respect to the technical implementation of baseline principles. Self-regulation is scalable to large and small companies, and accordingly does not needlessly hamper innovation around the development of products and services. And it *encourages* innovation around the protection of consumers' privacy and the development of new tools to provide consumers increased transparency and choice with respect to the collection and use of their data, both because companies are not limited by overly-proscriptive rules and because self-regulatory programs promote and ease the sharing of best practices with respect to privacy practices and tools. When provided performance-based objectives that allow for flexibility in technical implementation, companies can far better implement consumer-facing tools that are adapted to their particular business models.

Another advantage of self-regulation is that allows for continuing input from "users and civil society,"<sup>14</sup> including consumers, policy makers, and advocates. The

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<sup>14</sup> See NOI at 2129.

NAI, for example, put out its draft Code of Conduct for public comment. The comments provided to the NAI played a critical role in the ultimate Code of Conduct adopted in December 2008. In addition, the NAI responds to and investigates as necessary complaints raised by consumers, as well as concerns raised by the press and privacy advocates. More informally, the NAI and its member companies constantly engage in a dialogue with regulators and advocates concerning best practices for the protection of information collected and used for online advertising. Such input allows for the constant evolution of privacy-enhancing technologies.

Finally, self-regulation can reflect the advantages of the United States' sectoral approach to privacy. That approach implicitly recognizes that some data, such as that related to financial account numbers, health conditions, and children, is more sensitive and thus deserving of greater protection than others. The NAI Code, for example, requires opt-in consent for use of any such data for marketing purposes. While certain "minimum rules" governing all data – such as those adopted by the NAI – may be appropriate, law, regulation, and self-regulation should reflect that, even when used for marketing purposes, not all forms of data collection and use are equally material to consumers.

A proscriptive legislative or regulatory model would lack the adaptability and scalability of self-regulation. As discussed above, much of the diversity and utility of the online content and services popular with consumers today has developed as a result of advertising revenues, fueled in part by technological advances in the ability of companies to find audiences for their advertisements across websites. An overly-proscriptive legislative or regulatory framework for privacy could stifle this innovation and negatively impact the myriad of ad-supported content and services available to consumers today. Indeed, a recent study demonstrated that even modest privacy regulation has serious impacts on the effectiveness of ads served – and thus ultimately on the price publishers can fetch for their inventory and use to support the content and services they provide consumers.<sup>15</sup> Significant impediments to the collection and use of even non-personally identifiable information for marketing purposes could force online publishers to rely solely on contextual advertising, greatly limiting the ability of publishers to obtain the maximum revenue for their available advertising inventory. It is accordingly apparent that regulators and policymakers should tread lightly in this area if they hope to preserve a vibrant Internet. If "minimum or default

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<sup>15</sup> See generally Avi Goldfarb and Catherine E. Tucker, Privacy Regulation and Online Advertising (May 19, 2010), available at [http://papers.ssrn.com/sol3/Delivery.cfm/SSRN\\_ID1611803\\_code512675.pdf?abstractid=1600259&mirid=1](http://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID1611803_code512675.pdf?abstractid=1600259&mirid=1). This study concluded that even moderate privacy regulation could reduce the effectiveness of ads so dramatically that online revenues for online display advertising could fall from their current level of \$8 billion to \$2.8 billion. See *id.* at 30.

requirements”<sup>16</sup> are incorporated into law, these requirements should be sufficiently broadly stated to permit different Web business models to develop their own frameworks for implementation, so as to not “freeze” technology or stifle innovation.

### *Self-Regulatory Rules Governing Online Behavioral Advertising*

The NAI and its member companies believe that existing legal regimes and self-regulatory approaches strike an appropriate balance between privacy and innovation with respect to the collection and use of information for online advertising. The NAI believes that its approach, like the Commerce Department’s Safe Harbor Program, could serve as a useful model for other self-regulatory approaches to privacy. While the NAI Code governs online behavioral advertising, its basic framework of attestation to a code of conduct, complaint mechanisms, periodic compliance reviews, and enforcement mechanisms is equally applicable to the collection and use of data for other purposes that are material to consumers.

While NAI member companies are prohibited from using PII for marketing purposes without opt-in consent, some consumers have expressed concerns with respect to the collection and use of data about them for advertising purposes. Self-regulatory organizations like the NAI, with a backdrop of FTC enforcement, have addressed these concerns by ensuring that consumers are provided meaningful notice and easy-to-use choice with respect to use of their information for online advertising purposes. Self-regulation of online behavioral advertising seeks to achieve an appropriate equilibrium: innovation on the Internet generally and in online advertising in particular continue to flourish, while consumers are provided ever-increasing transparency and easy-to-use tools for exercising choice with respect to behavioral advertising.

As noted above, the NAI sets and enforces rules by which all members must comply concerning the collection and use of data for online advertising. Specifically, all NAI members must publicly attest their commitment to the NAI Code of Conduct. The Code generally requires members to: (1) provide notice about their collection, transfer, and use of information for online advertising, both on their own websites and on the websites where data is collected for such purposes; (2) provide and honor consumers’ choice with respect to the use of their information for advertising purposes (generally, opt out choice for non-PII and opt-in choice for sensitive information and PII); (3) provide consumers access to PII and other information associated with PII retained for online advertising purposes; and (4) provide reasonable security for such data. In addition, the NAI Code extends COPPA protections to non-PII, forbids the use of behavioral marketing data for purposes other than marketing, imposes particular obligations on companies with respect to the collection and transfer of PII and non-PII to be merged with PII for marketing purposes, requires members to make reasonable efforts to ensure that they obtain

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<sup>16</sup> See NOI at 21229.

advertising data from reliable sources, and limits the retention of marketing data.<sup>17</sup>

The NAI employs a variety of means to help ensure that its members adhere to the privacy commitments embodied in the NAI Code, including: (1) public attestations of compliance with its Code of Conduct (enforceable by the FTC); (2) annual reviews of member companies; and (3) a mechanism for consumer questions and complaints relating to NAI compliance. In the event of a compliance deficiency identified by any of these means that remains unaddressed by a member, the NAI also retains the power to impose a range of sanctions, further bolstering its enforcement powers. Together, these tools compose an effective accountability regime that complements governmental enforcement mechanisms, and that provides for meaningful assessment of participating companies' policies and practices with respect to the handling of consumer data. Despite the costs of enforcement, NAI member companies collectively understand that it *is* in their economic interests to maintain a strong self-regulatory regime.<sup>18</sup>

In addition to the adoption of its own Code of Conduct, the NAI also actively participated in the formulation of industry-wide self-regulatory principles for online behavioral advertising, across a broad spectrum of associations representing thousands of advertisers, publishers, and marketers.<sup>19</sup> The Associations Principles represent a significant widening of the self-regulatory approach to behavioral advertising. The NAI and its members are committed to supporting this initiative, and in particular the Principles' commitment to the provision of notice and choice by all players in the online advertising ecosystem and the deployment of "enhanced" notice (notice provided in or around the ad) mechanisms, described in detail below.

The NAI's policy-making role extends not only to the development and revision of its Code of Conduct, but also to the determination of specific policy responses to emerging issues of consumer concern. For example, when researchers focused attention on the question of whether Local Shared Objects (LSOs), such as Flash cookies, were being used to undermine consumer preferences for online advertising, the NAI consulted with its members and ultimately adopted a policy broadly limiting the use of LSOs like Flash cookies until such time as web browser tools provide the same level of transparency and control available today for

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<sup>17</sup> See Network Advertising Initiative's Self-Regulatory Conduct, *available at* [http://www.networkadvertising.org/networks/2008%20NAI%20Principles\\_final%20for%20Website.pdf](http://www.networkadvertising.org/networks/2008%20NAI%20Principles_final%20for%20Website.pdf).

<sup>18</sup> See NOI at 21229.

<sup>19</sup> See DMA/IAB/ANA/AAAA/BBBB: Key Trade Groups Release Comprehensive Privacy Principles for Use and Collection of Behavioral Data in Online Advertising (July 2, 2009), *available at* [http://www.iab.net/about\\_the\\_iab/recent\\_press\\_releases/press\\_release\\_archive/press\\_release/pr-070209](http://www.iab.net/about_the_iab/recent_press_releases/press_release_archive/press_release/pr-070209).

standard HTML cookies.<sup>20</sup> Given the breadth of its membership, the NAI's willingness to establish such policies helps to reassure consumers that self-regulation of online behavioral advertising remains comprehensive for all relevant technologies.

### III. State of Privacy-Enhancing Technologies

Just as the NAI's member companies have supported technological innovation on the Internet by enabling and promoting the ad-supported content and services upon which consumers depend, the NAI and its member companies also have been responsible for advances in privacy-enhancing technical innovation. The rapid development of these technologies and tools demonstrates that companies increasingly compete on privacy grounds, and that the market, supplemented by an ongoing dialog with regulators, provides ample incentive for companies to innovate around privacy-enhancing technologies.

Industry's efforts to implement novel technological approaches to "enhanced" notice in or around ads offers an excellent demonstration of recent developments with respect to the delivery of notice and choice of behavioral advertising practices. Regulators and other thought leaders in the online advertising industry have suggested that consumer notice for online behavioral advertising might be enhanced through the provision of additional mechanisms that provide notice through the advertisement itself (i.e. by providing disclosures directly within, or immediately adjacent to, the ad). Several NAI members have deployed a variety of potential implementations of consumer notice in direct proximity to banner ads, which can inform potentially wider adoption by industry:

- Yahoo! has extensively tested a variety of implementations of notice "in or around" display ads, including significant Web publishers such as eBay;<sup>21</sup>
- FetchBack, a retargeting company, also deployed direct links to its Privacy Center (a single location incorporating consumer information and its opt-out link) within the ads it serves;<sup>22</sup> and

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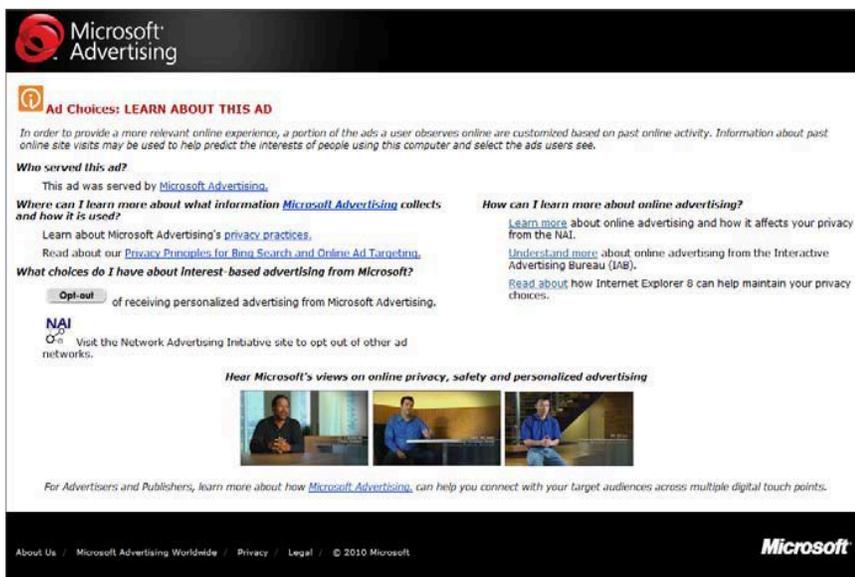
<sup>20</sup> See [http://networkadvertising.org/managing/faqs.asp-question\\_19](http://networkadvertising.org/managing/faqs.asp-question_19).

<sup>21</sup> An example of eBay's implementation is available at <http://cgi6.ebay.com/ws/eBayISAPI.dll?DisplayAdChoice&w=1&y=3FwEhZwEEKTEEUExpAAAsPQEEKVgCVC1RU1YtDlcCeA0AV3k%3D> (accessed June 15, 2009).

<sup>22</sup> See Press Release, *FetchBack to Provide Enhanced Notice in Behavioral Ads* (June 15, 2009), available at [http://www.fetchback.com/press\\_061509.html](http://www.fetchback.com/press_061509.html).

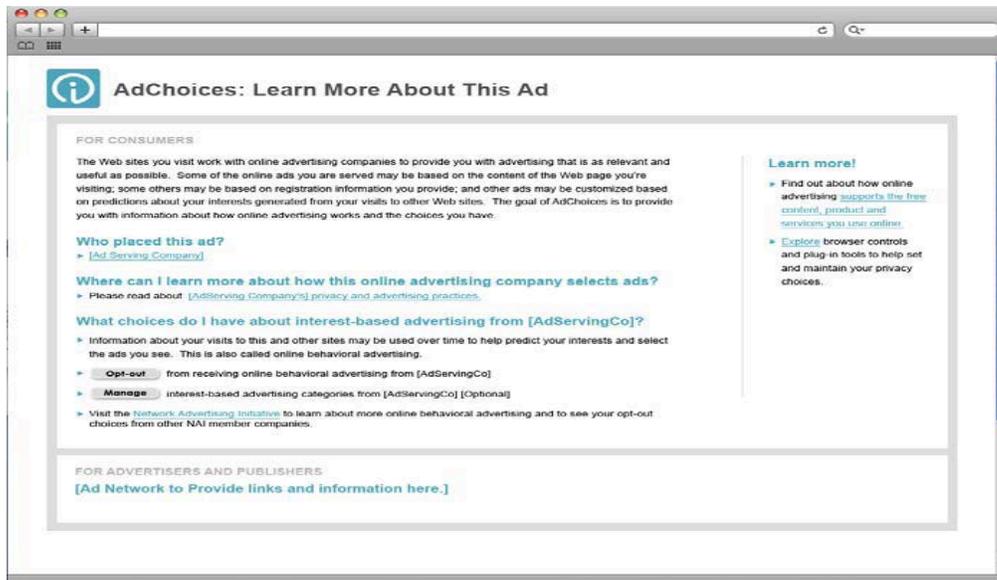
- In October 2009, Google deployed clickable “Information”-icon links directly within the display advertisements it serves.<sup>23</sup>

More recently, the NAI and the Interactive Advertising Bureau (IAB) released a set of technical specifications enabling enhanced notice in online ads. These CLEAR Ad Notice Technical Specifications are intended for use by all players in the online advertising ecosystem to convey metadata about the ad served during the ad serving process. The metadata conveyed includes information on which organization(s) served the ad, where to find their advertising policies, and how to opt-out of such targeting in the future. The specifications will allow advertisers and ad networks to begin offering a clickable icon in or near online ads that directs users to additional information, such as through a landing page, about online behavioral advertising and choices about such ads.<sup>24</sup> Two examples of how such information might be conveyed through a landing page are as follows:



<sup>23</sup> See Pablo Chavez, Google Public Policy Blog, *Coming to an Online Ad Near You: More “Ads By Google” labels* (Oct. 15, 2009), available at <http://googlepublicpolicy.blogspot.com/2009/10/coming-to-online-ad-near-you-more-ads.html>. AlmondNet likewise offered a direct “Powered by Almondnet” hyperlink within behaviorally targeted banner advertisements for one of its product lines from 2004-2006, enabling consumers to access AlmondNet’s opt-out choice more directly.

<sup>24</sup> The NAI and IAB press release describing the specifications can be found at [http://www.networkadvertising.org/pdfs/Clear\\_Ad\\_Notice\\_Tech\\_Specs\\_Release\\_Final.pdf](http://www.networkadvertising.org/pdfs/Clear_Ad_Notice_Tech_Specs_Release_Final.pdf). The specifications are available at [http://www.networkadvertising.org/pdfs/CLEAR\\_Ad\\_NoticeApril2010.pdf](http://www.networkadvertising.org/pdfs/CLEAR_Ad_NoticeApril2010.pdf).

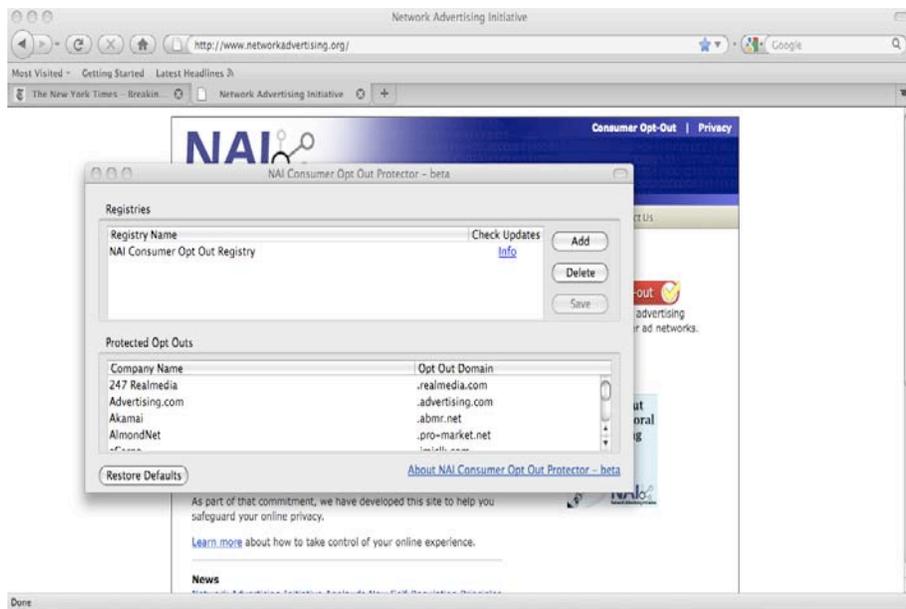


Another major advance in privacy-related innovation developed by NAI member companies (and applauded by regulators) is the deployment of ad preference management tools that allow consumers to see and adjust the inferred interest segments associated with their browsers. Such tools are already in use by seven NAI member companies, both large and small, and under development by several more.<sup>25</sup> The rapid adoption of preference managers illustrates how marketplace competition facilitates privacy-related innovation, and how self-regulatory frameworks like the NAI can facilitate adoption of such tools by smaller companies. The evidence available thus far from these tools indicates that they increase user trust that their information is appropriately collected and used; when consumers see the interest segments associated with their browsers, for example, they most often adjust those segments or do nothing at all, rather than “turn off” all targeting.<sup>26</sup>

<sup>25</sup> For examples of preference management tools offered by NAI member companies, see BlueKai consumer preferences registry (<http://tags.bluekai.com/registry>); eXelate preference manager (<http://www.exelate.com/new/consumers-optoutpreferencemanager.html>); Google ad preference manager ([www.google.com/ads/preferences](http://www.google.com/ads/preferences)); Lotame preferences manager (<http://www.lotame.com/preferences.html>); Microsoft Ad Preference Tool (<https://choice.live.com/UserPreferences>); Safecount (<http://www.safecount.net/yourdata.php>); Yahoo! ad interest manager ([http://info.yahoo.com/privacy/us/yahoo/opt\\_out/targeting/](http://info.yahoo.com/privacy/us/yahoo/opt_out/targeting/)).

<sup>26</sup> Exploring Privacy: An FTC Roundtable Discussion, December 7, 2009, Panel Two Transcript, at 7, available at [http://htc-01.media.globix.net/COMP008760MOD1/ftc\\_web/transcripts/120709\\_sess2.pdf](http://htc-01.media.globix.net/COMP008760MOD1/ftc_web/transcripts/120709_sess2.pdf) (Google’s Alan Davidson explaining that four times as many people who come as visitors to the site change their preferences rather than opt out).

Still another recent technical privacy-protecting innovation by the NAI, building on software developed by NAI member company Blue Kai, is a Firefox browser Add On to protect user opt outs stored in browser cookies, pictured here.<sup>27</sup>



While the NAI has always given consumers the ability to opt out of the use of their information for advertising purposes through an opt-out cookie, some have raised concerns about the vulnerability of cookie-based opt outs to accidental user deletion. Leveraging extensible software developed by BlueKai that allows consumers to select multiple lists of opt out cookies (not just the NAI's), the NAI secured the participation of its entire membership to provide consumers with a tool that prevents opt-out cookies from being deleted when consumers delete their cookies, thereby providing them with a more durable opt-out mechanism.<sup>28</sup>

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The NAI appreciates the chance to comment on these questions, and looks forward to working with the Task Force as it evaluates the nexus between privacy policy and innovation in the Internet economy.

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<sup>27</sup> The beta Add-On is available for download at:  
[http://networkadvertising.org/staging/pre/managing/protector\\_license.asp](http://networkadvertising.org/staging/pre/managing/protector_license.asp).

<sup>28</sup> Still another example of innovation around privacy with respect to advertising is the methods developed by companies to ensure that advertising profiles are not linked to PII. Microsoft, an NAI member company, has published a white paper on its efforts to ensure that it bases its ad selection solely on data that does not personally and directly identify individual users. See <http://download.microsoft.com/download/3/1/d/31df6942-ed99-4024-a0e0-594b9d27a31a/privacy%20protections%20in%20microsoft%27s%20ad%20serving%20system%20and%20the%20process%20of%20de-identification.pdf>.