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ONLINE BEHAVIORAL ADVERTISING: INDUSTRY’S CURRENT SELF-REGULATORY FRAMEWORK IS NECESSARY, BUT STILL INSUFFICIENT ON ITS OWN TO PROTECT CONSUMERS

December 2009

These comparison charts are designed to accompany CDT’s online behavioral advertising report.

Scope of Framework

	Federal Trade Commission <i>Self-Regulatory Principles for Online Behavioral Advertising – February 2009</i>	Network Advertising Initiative <i>NAI Principles 2008: The Network Advertising Initiative’s Self-Regulatory Code of Conduct</i>	Interactive Advertising Bureau <i>Self-Regulatory Principles for Online Behavioral Advertising</i>	Privacy Group Coalition <i>Legislative Primer September 2009</i>
Behavioral Advertising Definition	<ul style="list-style-type: none"> Defined as “the tracking of a consumer’s online activities over time – including the searches the consumer has conducted, the web pages visited, and the content viewed – in order to deliver advertising targeted to the individual consumer’s interests.” Definition is “not intended to include ‘first party’ advertising, where no data is shared with third parties, or contextual advertising, where an ad is based on a 	<ul style="list-style-type: none"> The NAI Code distinguishes between Online Behavioral Advertising, Multi-Site Advertising and Ad Delivery & Reporting. Define “OBA” as “any process used whereby data are collected across multiple web domains owned or operated by different entities to categorize likely consumer interest segments for use in advertising online.” Define “Multi-Site Advertising” as “Ad Delivery & Reporting across multiple web domains owned or operated by different entities.” 	<ul style="list-style-type: none"> The guidelines cover “the collection of data online from a particular computer or device regarding Web viewing behaviors over time and across non-affiliate Web sites for the purpose of using such data to predict user preferences or interests to deliver advertising to that computer or device based on the preferences or interests inferred from such Web viewing behaviors. The Principles do not apply to a Web site’s collection of viewing behavior solely for its own Uses.” Contextual advertising is not 	<ul style="list-style-type: none"> Define “Behavioral Targeting” as “the practice of collecting and compiling data from and about an individual’s activities, interests, preferences, behaviors, or communications for interactive advertising and marketing targeted to the individual, including but not limited to the use of a profile that may be stored or linked to a browser cookie, IP address, or any other persistent user identifiers or tracking methods.”

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	<p>single visit to a web page or single search query,” without the collection and retention of data about the consumer’s online activities over time.</p>	<ul style="list-style-type: none"> Define “Ad Delivery & Reporting” as being “separate and distinct from OBA [Online Behavioral Advertising] and means the logging of page views or the collection of other information about a browser for the purpose of delivering ads or providing advertising-related services, including but not limited to: (i) providing a specific advertisement based on a particular type of browser or time of day; (ii) statistical reporting in connection with the activity on a website; and (iii) tracking the number of ads served on a particular day to a particular website.” The following principles apply to Ad Delivery & Reporting data: (1) notice on member site; (2) requirement of reliable sources; (3) security; and (4) data retention. Choice, use limitations, transfer & service restrictions and access principles do not apply. The guidelines apply solely to “third party” entities that collect information for advertising purposes. They do not regulate 	<p>covered by these regulations.</p> <ul style="list-style-type: none"> The guidelines apply solely to “third party” entities that collect information for advertising purposes. They do not regulate information that Web sites themselves collect about their users. These guidelines do not apply to third-party entities that are collecting data for advertising purposes from sites with which they are affiliated. 	<ul style="list-style-type: none"> Definition of “Behavioral Targeting” does not include contextual advertising.

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		<p>information that Web sites themselves collect about their users.</p> <ul style="list-style-type: none"> • These guidelines do not apply to third-party entities that are collecting data for advertising purposes from sites with which they are affiliated. 		
Data Covered	<ul style="list-style-type: none"> • Included within the Principles’ scope is “any data collected for online behavioral advertising that reasonably could be associated with a particular consumer or computer or other device,” regardless of whether the data is “personally identifiable” in the traditional sense. • Whether information “reasonably could be associated” with a particular consumer or computer or other device “will depend on the factual circumstances and available technologies” (e.g., individual pieces of anonymous data combined 	<ul style="list-style-type: none"> • The NAI Code covers any data (PII or non-PII) used for OBA, Multi-Site Advertising or Ad Delivery & Reporting. • Different requirements apply for OBA, Multi-Site Advertising and Ad Delivery & Reporting. • Define Personally-Identifiable Information (PII) as including “name, address, telephone number, email address, financial account number, government-issued identifier, and any other data used or intended to be used to identify, contact, or precisely locate a person.” 	<ul style="list-style-type: none"> • The regulations pertain to PII and non-PII collected by non-affiliate third parties for advertising-related purposes. They also pertain to sensitive information. Data collected by Internet Service Providers, toolbars, browsers, desktop applications or software that “[collect and use] data from all or substantially all URLs traversed by a web browser across Web sites for Online Behavioral Advertising” are all covered by the regulations. 	<ul style="list-style-type: none"> • “Individuals should be protected even if the information collected about them in behavioral tracking cannot be linked to their names, addresses or other traditional ‘personally identifiable information,’ as long as they can be distinguished as a particular computer user based on their profile.”

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	into a profile sufficiently detailed that it could become identified with a particular person).			
Sensitive Data Definition	<ul style="list-style-type: none"> • FTC does not directly define what constitutes sensitive data, but highlights what it considers to be clear examples: financial data, data about children, health information, precise geographic location information, and Social Security numbers. • Staff encourages development of more specific standards to address this issue and “to consider whether there may be certain categories of data that are so sensitive that they should never be used for behavioral advertising.” 	<ul style="list-style-type: none"> • Define “Sensitive Consumer Information” as “social security numbers or other government-issued identifiers; insurance plan numbers; financial account numbers; information that describes the precise real-time geographic location of an individual derived through location-based services such as through GPS-enabled devices; and precise information about past, present, or potential future health or medical conditions or treatments, including genetic, genomic, and family medical history.” • Potentially broad definition of “sensitive” information, but definition will be further developed in an implementation guideline. 	<ul style="list-style-type: none"> • “Financial account numbers, Social Security numbers, pharmaceutical prescriptions or medical records about a specific individual.” 	<ul style="list-style-type: none"> • “Should be defined by the FTC and include data about health, finances, ethnicity, race, sexual orientation, personal relationships and political activity.” • “Financial information” is “any information, regardless of source, about an individual’s income, wealth, investments, or bank or other financial accounts.” • “Health information” is “any information, regardless of source, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; and the past, present, or future payment for ...health care.”

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Applicability to Behavioral Trackers Who Collect All or Substantially All Internet Traffic Content in Order to Target Individuals	<ul style="list-style-type: none"> • Not specifically addressed 	<ul style="list-style-type: none"> • Not specifically addressed 	<ul style="list-style-type: none"> • Applicable to data collected by Internet Service Providers (for example, using Deep Packet Inspection), toolbars, browsers, desktop applications or software that “[collect and use] data from all or substantially all URLs traversed by a web browser across Web sites for Online Behavioral Advertising” are all covered by the regulations. The regulations collectively refer to these entities as “Service Providers.” In these comparison charts we refer to them as “Behavioral Trackers Who Collect All or Substantially All Internet Traffic Content.” 	<ul style="list-style-type: none"> • Not specifically addressed

Transparency

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Where Is Notification?	<ul style="list-style-type: none"> • Every Web site where data is collected for behavioral advertising should provide notice. 	<ul style="list-style-type: none"> • “Members shall collectively maintain an NAI website to serve as a centralized portal offering explanations of online behavioral advertising and member companies’ compliance with the NAI Principles program, including information about and centralized access to consumer choice mechanisms.” • Notice must be posted on Web sites of members who engage in OBA, Multi-Site Advertising and/or Ad Delivery & Reporting. • Each member engaging in OBA, Multi-Site Advertising and/or Ad Delivery & Reporting “shall require that a website with which it contracts for OBA and/or Multi-Site Advertising services shall . . . post notice – or ensure, that such notice be made available on the website where data are collected for OBA and/or Multi-Site Advertising purposes.” 	<ul style="list-style-type: none"> • Notification, with a link to a disclosure, must be “[on] or around” the place on the Web page where data is collected or elsewhere on the Web page, in space donated by the publisher. • Entities that collect data on a Web page must provide notice, even if the entity has no ads on the Web page. 	<ul style="list-style-type: none"> • “Websites and other online services collecting user data must clearly and prominently provide on their ads – via linked webpages as well as within privacy policies – a consumer-friendly explanation of their data collection practices.”

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Types of Notification	<ul style="list-style-type: none"> • FTC encourages “companies to design innovative ways – outside of the privacy policy – to provide behavioral advertising disclosures and choice options to consumers.” • FTC notes “different business models may require different types of disclosures,” and “calls upon industry to develop self-regulatory regimes for these business models that effectively implement the transparency . . . principle.” 	<ul style="list-style-type: none"> • The NAI has stated in testimony that “as a practical matter . . . notice and choice is usually provided within a Web site’s privacy policy.” The NAI Code, however, “allows NAI members the flexibility to pursue any disclosure approach so long as companies ensure that clear and conspicuous notices are available to consumers on the websites where online behavioral advertising occurs.” Further, “the NAI and its member companies believe that technologies should be developed and built to allow for enhanced notice by any entity engaged in online behavioral advertising” and are now working to this end.¹ • “Members shall use reasonable efforts, both individually and collectively, to educate consumers about behavioral advertising, and the choices available to consumers with respect to behavioral advertising.” 	<ul style="list-style-type: none"> • Third parties must: <ol style="list-style-type: none"> 1. Post “clear, meaningful, and prominent” notices on their Web pages that “describe the types of data collected and their uses” and how users can opt out of data collection, use, or transfer to a non-Affiliate. 2. And either <ol style="list-style-type: none"> a) “Link to its notice from a location in or around the advertisement on the Web page where the data is collected (in a field that is controlled by the Third Party) or from a location on the Web page where data is collected.” The notice must be “clear, meaningful, and prominent.” Or b) A Web page on which the data is collected <i>or used</i> must include a “clear, meaningful and prominent link . . . to a disclosure that either points to the industry-developed Web site(s) or individually lists such Third Parties.” • The Web page does not have to satisfy 2(b) if it is only collecting data and the third party uses 2(a). If the page uses data for behavioral advertising but data-collectors give notice near the location of data <i>collection</i>, obligations are unclear. 	<ul style="list-style-type: none"> • Not specifically addressed, but the recommendations appear to generally rely on privacy policies, notice on ads, and the establishment of a Behavioral Tracker Registry.

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Notification In Response To Law Enforcement Requests	<ul style="list-style-type: none"> • Not specifically addressed 	<ul style="list-style-type: none"> • Not specifically addressed 	<ul style="list-style-type: none"> • Not specifically addressed 	<ul style="list-style-type: none"> • If legally required to disclose information about an identifiable individual, the behavioral targeter must, when permitted by law, “make reasonable efforts to (a) notify the individual prior to responding to the subpoena, court order, or legal process; and (b) provide the individual with as much advance notice as is reasonably practical before responding.”
Standards For Notice	<ul style="list-style-type: none"> • All notice should be “clear, concise, consumer-friendly, and prominent.” • “Where data collection occurs outside the traditional website context, companies should develop alternative methods of disclosure . . . that meet the [clear concise, consumer-friendly, and prominent] standards.” 	<ul style="list-style-type: none"> • Notice must be clear and conspicuous. • “Clear and conspicuous” requirement does not comport with FTC principle. • NAI explained in its Response to Public Comments that it is reluctant to meet the FTC standard for fear that more prominent and consumer-friendly notices may not work properly across a broad array of Web sites and web browser software.ⁱⁱ 	<ul style="list-style-type: none"> • “Clear, meaningful, prominent” with links to disclosures about the collection, use and transfer of data and mechanisms for consumer choice. 	<ul style="list-style-type: none"> • Clear and prominent notice on ads. • “A consumer-friendly explanation of . . . data collection practices.” • Privacy policy must be understandable by the average consumer.

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Sensitive Data Collection Notification	<ul style="list-style-type: none"> • Companies must obtain “affirmative express consent from the consumer to receive such advertising.” • No specifics regarding notice of sensitive data collection. 	<ul style="list-style-type: none"> • “Use of Sensitive Consumer Information for OBA shall require a consumer’s opt in consent.” There is no such consent provision for sensitive consumer information collected or used for Multi-Site Advertising. • No specifics regarding notice of sensitive data collection. 	<ul style="list-style-type: none"> • No special notice required. Consent is required before entities can collect and use “financial account numbers, Social Security numbers, pharmaceutical prescriptions, or medical records about a specific individual.” 	<ul style="list-style-type: none"> • Not specifically addressed – “Sensitive information should not be collected or used for behavioral tracking or targeting.”
Disclosure Content	<ul style="list-style-type: none"> • A “clear, concise, consumer-friendly, and prominent statement that (1) data about consumers’ activities online is being collected at the site for use in providing advertising about products and services tailored to individual consumers’ interests, and (2) consumers can choose whether or not to have their information collected for such purpose.” 	<ul style="list-style-type: none"> • NAI members must include on their Web sites clear descriptions of their data collection, transfer, and use practices, which includes the following: “(i) the OBA, Multi-Site Advertising and/or Ad Delivery & Reporting activities undertaken by the member company; (ii) what types of data are collected by the member company; (iii) how such data will be used by the member company, including transfer, if any, of data to a third party; (iv) the types of PII and non-PII that will be merged by the member company, if any, and how any merged data will be used, including transfer to a third party; (v) an easy to use procedure for exercising choice to opt out or opt in with respect to 	<ul style="list-style-type: none"> • The type of data collected • Which PII is collected for the purposes of behavioral advertising. PII seems to be limited to: name, address, telephone number, and email address “when used to identify a particular individual.” • The ways that collected data will be used • A “mechanism for exercising choice” over how data can be collected, used, and transferred for the purposes of behavioral advertising. This mechanism can be on another Web site and a link can be provided. 	<ul style="list-style-type: none"> • Entities engaged in behavioral targeting “must have a publicly available privacy policy that describes its practices and policies with respect to the collection, maintenance, use, and disclosure of information about an individual used for behavioral targeting.”

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		<p>such data use for OBA; and (vi) the approximate length of time that data used for OBA, Multi-Site Advertising and/or Ad Delivery & Reporting will be retained by the member company.”</p> <ul style="list-style-type: none"> • Notice on a Web site with which a member contracts for OBA and/or Multi-Site Advertising – or the notice on the Web site where data are collected for these purposes – must contain: “(1) a statement of the fact that OBA and/or Multi-Site Advertising is occurring; (2) a description of types of data that are collected for OBA and/or Multi-Site Advertising purposes; (3) an explanation of how, and for what purpose, that data will be used or transferred to third parties; and (4) a conspicuous link to the OBA choice mechanism (e.g., opt out link) provided by the NAI member, and/or a conspicuous link to the opt-out page on the NAI’s consumer website.” 	<ul style="list-style-type: none"> • Whether the data will be transferred to a non-affiliate for use in behavioral advertising. 	
Notice Of Changes To Existing Privacy	<ul style="list-style-type: none"> • “[B]efore a company can use previously collected data in a manner materially different from 	<ul style="list-style-type: none"> • “If a member changes its own privacy policy with regard to PII and merger with non-PII for OBA, prior notice shall be posted on its 	<ul style="list-style-type: none"> • The IAB guidelines require “entities to obtain consent before applying any change to their online behavioral advertising 	<ul style="list-style-type: none"> • “To change its privacy policy, a behavioral targeter must provide public notice on its website 30 days in

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Practices And Promises	<p>promises the company made when it collected the data, it should obtain affirmative express consent from affected consumers.”</p> <ul style="list-style-type: none"> • Specifics regarding notice of such material changes are not addressed. 	<p>website” (see Use Limitation Comparison Chart).</p>	<p>data collection and use policy that is less restrictive to data collected prior to such material change.” (see Use Limitation Chart).</p>	<p>advance of the change, and, at the same time, specific notice to any person who has requested notice of privacy policy changes.”</p> <ul style="list-style-type: none"> • “Any change to a privacy policy that has the effect of allowing additional uses or disclosures of information about an individual may apply only to information collected after the effective date of the change” (see Use Limitation Comparison Chart).
Applicability To Data Collection By Behavioral Trackers Who Collect All or Substantially All Internet Traffic Content	<ul style="list-style-type: none"> • Not specifically addressed 	<ul style="list-style-type: none"> • Not specifically addressed 	<ul style="list-style-type: none"> • These entities must post “clear, meaningful, and prominent” notices on their Web sites that “describe the types of data collected and their uses, as well as an easy to use mechanism for” (opt-in) control over collection, use, or transfer of data. 	<ul style="list-style-type: none"> • Not specifically addressed
Deception And Pretext	<ul style="list-style-type: none"> • Not specifically addressed 	<ul style="list-style-type: none"> • Not specifically addressed 	<ul style="list-style-type: none"> • Not specifically addressed 	<ul style="list-style-type: none"> • Reject the use pretexting to obtain user information.

Individual Participation

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Mechanisms For Consumer Control	<ul style="list-style-type: none"> • FTC Principles do not generally specify whether consumer choice would be opt-in or opt-out – “just that it be clear, easy-to-use, and accessible to consumers.” 	<ul style="list-style-type: none"> • Consumers have the ability to opt out of “OBA”, defined as situations in which collected information is used to “categorize likely consumer interest segments.” No opt-out mechanism is available for other types of behavioral advertising (dubbed Multi-Site Advertising by the NAI). • “The level of choice ... shall depend on the manner in which data is intended to be used. Choice is commensurate with the increased privacy implications of data to be used.” • As described in the Transparency section, all Web sites on which data is collected for advertising purposes must include a notice of OBA practices with a “conspicuous link” to a mechanism for consumer control. • Use of non-PII for “OBA” (but not Multi-Site Advertising) requires an opt out mechanism be made available “on both the NAI member’s website and on the NAI 	<ul style="list-style-type: none"> • Basic mechanism is opt-out with respect to the collection, use, and transfer of behavioral advertising data. See below for information about sensitive data/ISP-based behavioral advertising. • As described in the Transparency section, all Web pages on which data is collected for advertising purposes must include a notice of behavioral advertising practices. These notices must link to disclosures about the data collection process. These disclosures must link to a mechanism for user control. • This mechanism for control may be hosted on an industry-developed Web site or on a Web site hosted by the third party. • If, at the time of data collection, the disclosure states that only non-PII is collected, but later on the third party decides to combine PII and non-PII, then this combination requires user 	<ul style="list-style-type: none"> • Personal and behavioral data “should be obtained by lawful and fair means and, where appropriate, with the knowledge or consent of the individual.” • “Any consent for the collection of information for behavioral targeting purposes must be recent (e.g., within three months) and revocable. Once consent has expired or been revoked, information collected with consent must be deleted promptly.” • “Websites should only initially collect and use data from consumers for a 24-hour period, with the exception of information categorized as sensitive, which should not be collected at all. Any subsequent use or collection of non-sensitive consumer data must have the affirmative consent of the

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		<p>consumer website.”</p> <ul style="list-style-type: none"> • Prospective merger of PII and non-PII for “OBA” (but not Multi-Site advertising) purposes requires “a consumer opt out mechanism accompanied by robust notice of such choice... available at the location where robust notice is provided.” • NAI’s opt-out choice mechanism has been effectuated through opt-out cookies. The NAI has a beta version of a Firefox add-on to protect these opt-out cookies from inadvertent deletion. • Merging PII with previously collected non-PII for use in “OBA” (but not Multi-Site Advertising) requires “consumer’s opt-in consent at the time such PII is collected online or, if collected offline, first used online.” 	<p>consent.</p>	<p>individual user, including specific consent for any sale or other sharing of the data.”</p>

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Special Mechanisms For Control Over Sensitive Data	<ul style="list-style-type: none"> “Companies should collect sensitive data for behavioral advertising only after they obtain affirmative express consent from the consumer to receive such advertising.” 	<ul style="list-style-type: none"> “Use of Sensitive Consumer Information for OBA shall require a consumer’s opt in consent.” There is no such consent provision for sensitive consumer information collected or used for Multi-Site Advertising. “Use of non-PII or PII to create an OBA segment specifically targeting children under 13 is prohibited without verifiable parental consent.” There is no such consent provision for sensitive consumer information collected or used for Multi-Site Advertising. 	<ul style="list-style-type: none"> “Entities should not collect and use financial account numbers, Social Security numbers, pharmaceutical prescriptions, or medical records about a specific individual for Online Behavioral Advertising without consent.” “Entities should not collect ‘personal information’, as defined in the Children’s Online Privacy Protection Act (‘COPPA’), from children they have actual knowledge are under the age of 13 or from sites directed to children under the age of 13 for Online Behavioral Advertising, or engage in Online Behavioral Advertising directed to children they have actual knowledge are under the age of 13 except as compliant with the COPPA.” 	<ul style="list-style-type: none"> “Sensitive information should not be collected or used for behavioral tracking or targeting.” “No behavioral data should be collected or used from children and adolescents under 18 to the extent that age can be inferred.”
Duration Of “Consent”	<ul style="list-style-type: none"> Not specifically addressed 	<ul style="list-style-type: none"> Not specifically addressed 	<ul style="list-style-type: none"> Not specifically addressed 	<ul style="list-style-type: none"> “Data collected on users who consent must not be retained beyond a period of three months.” Consent expires after three months.

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Consumer Access To Behavioral Data	<ul style="list-style-type: none"> • Not specifically addressed 	<ul style="list-style-type: none"> • “Members shall provide consumers with reasonable access to PII, and other information that is associated with PII, retained by the member for OBA and/or Multi-Site Advertising purposes.” 	<ul style="list-style-type: none"> • Not specifically addressed 	<ul style="list-style-type: none"> • “An individual should have the right: (1) to obtain from a behavioral tracker, or otherwise, confirmation of whether or not the behavioral tracker has data relating to him; (2) to have communicated to him data relating to him within a reasonable time; at a charge, if any, that is not excessive; in a reasonable manner; and in a form that is readily intelligible to him; (3) to be given reasons if a request under subparagraphs (1) and (2) is denied, and to be able to challenge such denial; and (4) to challenge data relating to him and, if the challenge is successful, to have the data erased, rectified, completed or amended.”

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Mechanisms For Consumer Control Against Behavioral Trackers Who Collect All or Substantially All Internet Traffic Content	<ul style="list-style-type: none"> • Not specifically addressed 	<ul style="list-style-type: none"> • Not specifically addressed 	<ul style="list-style-type: none"> • Appears to be opt-in. “Service providers” must “obtain the consent of users before engaging in online behavioral advertising.” • Service providers “should provide an easy to use means to withdraw Consent to the collection and use of that data for Online Behavioral Advertising.” 	<ul style="list-style-type: none"> • Not specifically addressed

Purpose Specification

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Purpose Specification Standards	<ul style="list-style-type: none"> Not specifically addressed, but see Transparency Comparison Chart. 	<ul style="list-style-type: none"> NAI members and Web sites with which they contract for behavioral advertising services must post notice with clear descriptions of what types of data are collected, and how such data will be used, including whether it will be transferred to a third party. “Members directly engaging in OBA shall only use, or allow use of, OBA segments for Marketing Purposes.” There is no such consent provision for consumer information collected or used for Multi-Site Advertising. NAI defines “Marketing Purposes” as “any activity undertaken to collect, aggregate, analyze, maintain, update, or sell information in order to tailor content or services that allows or induces consumers to take action to purchase, rent, or exchange products, property or services, to solicit a charitable donation, to utilize market research or market surveys, or to provide verification services to marketers.” 	<ul style="list-style-type: none"> Disclaimers linked to by notices (see Transparency Comparison Chart) must describe the types of data collected and how collected data will be used. 	<ul style="list-style-type: none"> “The purposes for which both personal and behavioral data are collected should be specified not later than at the time of data collection, and the subsequent use limited to the fulfillment of those purposes and with any change of purpose of the data the individual must be alerted and given an option to refuse collection or use.”

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Purpose Specification Standards For Behavioral Trackers Who Collect All or Substantially All Internet Traffic Content	<ul style="list-style-type: none"> • Not specifically addressed 	<ul style="list-style-type: none"> • Not specifically addressed 	<ul style="list-style-type: none"> • These behavioral trackers must “take reasonable steps to protect the non-identifiable nature of data if it is distributed to non-Affiliates including . . . obtaining satisfactory written assurance that such entities . . . [will] use or disclose the data only for purposes of Online Behavioral Advertising or other uses as specified to users” and that any further transfers of the data by these non-affiliates will be in accordance with the regulations. 	<ul style="list-style-type: none"> • Not specifically addressed

Data Minimization

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Mechanisms For Reducing Data Collection	<ul style="list-style-type: none"> • Not specifically addressed 	<ul style="list-style-type: none"> • “Members shall not collect PII for OBA purposes from companies in the absence of a contractual relationship with that company.” There is no such consent provision for consumer information collected or used for Multi-Site Advertising. • “Use of Sensitive Consumer Information for OBA shall require a consumer’s opt in consent.” There is no such consent provision for sensitive consumer information collected or used for Multi-Site Advertising. • “Use of non-PII or PII to create an OBA segment specifically targeting children under 13 is prohibited without verifiable parental consent.” There is no such consent provision for consumer information collected or used for Multi-Site Advertising. • “Members directly engaging in OBA shall only use, or allow use of, OBA segments for Marketing Purposes” (see Purpose Specification Comparison Chart). There is no 	<ul style="list-style-type: none"> • PII, as defined by COPPA (address, e-mail address, telephone number, social security number, or other information, such as cookies ID number, that makes identification possible), may not be collected from children who can be affirmatively identified as under 13 or from sites directed to children under 13 for the purposes of behavioral advertising. 	<ul style="list-style-type: none"> • “Personal and behavioral data should be relevant to the purposes for which they are to be used.” • “Websites should only initially collect and use data from consumers for a 24-hour period, with the exception of information categorized as sensitive, which should not be collected at all. Any subsequent use or collection of non-sensitive consumer data must have the affirmative consent of the individual user, including specific consent for any sale or other sharing of the data.” • “No behavioral data should be collected or used from children and adolescents under 18 to the extent that age can be inferred.”

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		such consent provision for consumer information collected or used for Multi-Site Advertising.		
Data Retention	<ul style="list-style-type: none"> Data retention is not tied to the purpose for which data was collected – “Companies should retain data only as long as is necessary to fulfill a legitimate business or law enforcement need.” 	<ul style="list-style-type: none"> Data retention is not tied to the purpose for which data was collected – NAI members shall retain data collected “only as long as necessary to fulfill a legitimate business need, or as required by law.” 	<ul style="list-style-type: none"> “Entities should retain data that is collected and used for Online Behavioral Advertising only as long as necessary to fulfill a legitimate business need, or as required by law.” 	<ul style="list-style-type: none"> “Websites should only initially collect and use data from consumers for a 24-hour period . . . Any subsequent use or collection of non-sensitive consumer data must have the affirmative consent of the individual user.” “Any consent for the collection of information for behavioral targeting purposes must be recent (e.g., within three months) and revocable. Once consent has expired or been revoked, information collected with consent must be deleted promptly.”

Use Limitation

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Secondary Uses Of Tracking Data	<ul style="list-style-type: none"> Not addressed in the FTC guidelines at this time, but Staff recognizes that the issue merits additional consideration and dialogue. 	<ul style="list-style-type: none"> Not specifically addressed, but see Transparency Comparison Chart. 	<ul style="list-style-type: none"> “If such an entity plans on using, for materially different Online Behavioral Advertising purposes, data collected from individuals [before the disclosure revealed this potential use], the Principle requires the entity to obtain Consent from the affected individuals for the materially different use.” 	<ul style="list-style-type: none"> “No behavioral targeting data can be used by any person in any way other than for the advertising purposes for which it was collected. The use of the data for any credit, employment, insurance, or governmental purpose or for redlining should be prohibited.”
Transfer Of Behavioral Data	<ul style="list-style-type: none"> Not specifically addressed 	<ul style="list-style-type: none"> Members must contractually require that third parties adhere to applicable provisions of the NAI Code (see Accountability and Auditing Comparison Chart). 	<ul style="list-style-type: none"> Disclaimers provided to consumers about the collection of data for the purposes of behavioral advertising must include information on how the data will be transferred to non-affiliates. No explanation needs to be provided regarding transfer to affiliates. 	<ul style="list-style-type: none"> “Personal and behavioral data should not be disclosed, made available or otherwise used for purposes other than those specified in advance except: (a) with the consent of the individual; or (b) by the authority of law.”
Transfer Of Behavioral Data By Behavioral	<ul style="list-style-type: none"> Not specifically addressed 	<ul style="list-style-type: none"> Not specifically addressed 	<ul style="list-style-type: none"> User must be able to exercise control over whether information about them can be collected, used, or transferred for the 	<ul style="list-style-type: none"> Not specifically addressed

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Trackers Who Collect All or Substantially All Internet Traffic Content			<p>purposes of behavioral advertising.</p> <ul style="list-style-type: none"> • Service providers must provide extensive controls to protect data they collect for the purposes of behavioral advertising that is then transferred to a non-affiliate. For example, they must “. . . take reasonable steps to protect the non-identifiable nature of data if it is distributed to non-Affiliates including not disclosing the algorithm or other mechanism used for anonymizing or randomizing the data, and obtaining satisfactory written assurance that such entities will not attempt to re-construct the data and will use or disclose the anonymize data only for purposes of Online Behavioral Advertising or other uses as specified to users.” Service providers must “take reasonable steps to ensure that any non-Affiliate” to which data is transferred will ensure that if any <i>other</i> non-affiliate is given the data, it will respect the above restrictions. 	

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Changes To Existing Privacy Practices And Promises	<ul style="list-style-type: none"> • “[B]efore a company can use previously collected data in a manner materially different from promises the company made when it collected the data, it should obtain affirmative express consent from affected consumers. This principle would apply in a corporate merger situation to the extent that the merger creates material changes in the way the companies collect, use, and share data.” 	<ul style="list-style-type: none"> • “If a member changes its own privacy policy with regard to PII and merger with non-PII for OBA, prior notice shall be posted on its website. Any such material change in policy shall apply only to information collected following the change in policy . . . Information collected prior to the material change in policy shall continue to be governed by the policy in the effect at the time the information was collected, unless the consumer opts in to allow collected information to be governed by the new policy.” There is no such consent provision for consumer information collected or used for Multi-Site Advertising. • “Members shall not merge non-PII with PII for use in OBA if that non-PII was collected pursuant to a member’s privacy policy that stated that such information would <i>never</i> be merged with PII, without a consumer’s opt in consent.” There is no such consent provision for consumer information collected or used for Multi-Site Advertising. 	<ul style="list-style-type: none"> • Here, IAB points to an example in the NAI Code to explain how this principle should be understood. In the example, a third-party’s decision to combine PII and non-PII requires user consent because the combination renders the non-PII personally identifiable. Because users were told at the time of data collection (per the guidelines) that the data would not be personally identifiable, this constitutes a material change. Importantly, notification of such combination must be made even if the non-PII was collected before the IAB guidelines were in place. 	<ul style="list-style-type: none"> • If there is any change of purpose for personal and behavioral data, individuals must be alerted and given an option to refuse collection or use.

Data Quality and Integrity

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Mechanisms For Ensuring Data Is Accurate, Relevant, Timely And Complete	<ul style="list-style-type: none"> • Not specifically addressed 	<ul style="list-style-type: none"> • “Members shall make reasonable efforts to ensure that they are obtaining data for OBA, Multi-Site Advertising and/or Ad Delivery & Reporting from reliable sources.” 	<ul style="list-style-type: none"> • Not specifically addressed 	<ul style="list-style-type: none"> • “Personal and behavioral data should be relevant to the purposes for which they are to be used.” • Individuals should have the right to challenge data relating to him (see Individual Participation Comparison Chart).

Security

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Standards	<ul style="list-style-type: none"> • “Any company that collects and/or stores consumer data for behavioral advertising should provide reasonable security for that data. Consistent with data security laws and the FTC’s data security enforcement actions, such protections should be based on the sensitivity of the data, the nature of a company’s business operations, the types of risks a company faces, and the reasonable protections available to a company.” 	<ul style="list-style-type: none"> • “Members that collect, transfer, or store data for use in OBA, Multi-Site Advertising and/or Ad Delivery & Reporting shall provide reasonable security for that data.” • “Reasonable security is determined in light of several factors including, but not limited to, the sensitivity of the data, the nature of a company’s business operations, the types of risks a company faces, and the reasonable protections available to a company.” 	<ul style="list-style-type: none"> • “Entities should maintain appropriate physical, electronic, and administrative safeguards to protect the data collected and used for Online Behavioral Advertising.” • The IAB Security standard is intended to track the FTC standard. 	<ul style="list-style-type: none"> • “Reasonable security safeguards against loss, unauthorized access, modification, disclosure and other risks should protect both personal and behavioral data.” • “A behavioral targeter must (a) establish appropriate administrative, physical, and technical safeguards to ensure the security and confidentiality of information about individuals, and (b) protect against any anticipated threats or hazards to security or integrity that could result in substantial harm, embarrassment, inconvenience, or unfairness to the individual.”

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Standards For Behavioral Trackers Who Collect All or Substantially All Internet Traffic Content	<ul style="list-style-type: none"> • Not specifically addressed 	<ul style="list-style-type: none"> • Not specifically addressed 	<ul style="list-style-type: none"> • Service providers should “alter, anonymize, or randomize (e.g., through ‘hashing’ or substantial redaction) any PII or unique identifier in order to prevent the data from being reconstructed into its original form in the ordinary course of business . . . [and] take reasonable steps to protect the non-identifiable nature of data if it is distributed to non-Affiliates including not disclosing the algorithm or other mechanism used for anonymizing or randomizing the data, and obtaining satisfactory written assurance that such entities will not attempt to re-construct the data and will use or disclose the anonymized data only for purposes of Online Behavioral Advertising or other uses as specified to users.” Service providers must “take reasonable steps to ensure that any non-Affiliate” to which data is transferred will ensure that if any <i>other</i> non-affiliate is given the data, it will respect the above restrictions. • Service providers must also disclose when data collected for behavioral advertising purposes is subject to a de-anonymization process. 	<ul style="list-style-type: none"> • Not specifically addressed

Accountability and Auditing

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Compliance Measures	<ul style="list-style-type: none"> • FTC plans to continue to “evaluate the development of self-regulatory programs and the extent to which they serve the essential goals set out in the Principles.” • FTC recognizes the limits of its Principles – “self regulation can work only if concerned industry members actively monitor compliance and ensure that violations have consequences.” • FTC “intends, where appropriate, to initiate investigations of possible unfair or deceptive acts or practices in this area that would potentially violate Section 5 of the FTC Act.” 	<ul style="list-style-type: none"> • “Members shall contractually require that any third parties to which they provide PII for OBA or Multi-Site Advertising services adhere to applicable provisions of [the NAI Code].” • “Members shall contractually require that any third parties to which they provide non-aggregate non-PII, to be merged with PII data possessed by that third party for OBA and/or Multi-Site Advertising services, must adhere to the applicable provisions of [the NAI Code]. This requirement does not apply if that non-PII is itself proprietary data of the third party.” • Code is “self-regulatory in nature and binding on all members.” • Enforcement mechanisms outlined in the NAI Compliance Program Overview (last updated February 17, 2009) include attestation reviews, a consumer complaint process, sanctions and annual reporting. 	<ul style="list-style-type: none"> • The guidelines implicitly refer to the need for agreements between publishers and advertisers/networks relating to the location of notices, but no explicit suggestion is made to have the location of these notices incorporated into contractual agreements. • These are self-regulatory guidelines. They do include a vague discussion of the accountability mechanisms to be put in place. A number of organizations, including the Direct Marketing Association and the Council of Better Business Bureaus, are said to be incorporating the guidelines as parts of their self-regulatory processes. • “Programs” set up by “entities . . . in the behavioral advertising ecosystem . . . will systematically or randomly monitor the Internet for compliance with the Principles.” 	<ul style="list-style-type: none"> • Proposed framework for consumer privacy legislation, which should not preempt state laws. • “A behavioral targeter must designate a Chief Privacy Officer to supervise implementation of and compliance with its privacy policy.” • “A behavioral targeter must provide privacy training to all appropriate staff annually.”

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Auditing	<ul style="list-style-type: none"> • Not specifically addressed 	<ul style="list-style-type: none"> • NAI itself acts as auditor • “NAI designee” will perform compliance reviews of NAI members when they first join the NAI, at least annually thereafter, and in response to consumer complaints. • NAI Principles have been crafted so as to allow a third party to conduct compliance reviews, but NAI plans to conduct reviews in-house for the foreseeable future. • “An annual summary relating to consumer complaints received, and any enforcement actions taken, shall be made available on the NAI website.” 	<ul style="list-style-type: none"> • Not specifically addressed 	<ul style="list-style-type: none"> • Independent auditor • “A behavioral targeter must conduct an independent audit of its operations...and it must make the results ...public.” • Propose establishing a Behavioral Tracker Registry governed by the FTC. • Information provided to the registry will: “(a) contain technical information required so that consumers can opt out of tracking through tracking cookies, browser settings or extensions, and other methods; (b) appear online in a format so that third parties can develop consumer tools such as browser settings or extensions or tracking cookie management software that will automatically update from the registry; (c) include the name, physical address, and contact information of the company doing the tracking, along with information about how to file a complaint about the company or about its opt-out procedures: and (d) include

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Redress	<ul style="list-style-type: none"> • Not specifically addressed 	<ul style="list-style-type: none"> • Consumer complaints • “A centralized mechanism linked to the NAI website shall be maintained to receive consumer questions or complaints relating to members’ compliance.” • “Each member shall respond to and make reasonable efforts to resolve all consumer questions implicating its compliance with this Code within a reasonable period of time established by policy of the NAI Board.” 	<ul style="list-style-type: none"> • “Entities representing the wide range of actors in the online behavioral advertising ecosystem” will create “programs” that “publicly report instances of non-compliance and refer entities that do not correct violations to the appropriate government agencies.” In order to encourage advertisers to correct their practices, instances of non-compliance that have been corrected will be anonymized before they are reported. • Enforcement “programs” that have been set up will take complaints from the public and government affiliates regarding problems with non-compliance. 	<ul style="list-style-type: none"> • “Consumers aggrieved by behavioral targeting activities that violate the law or a published policy should have the right of private action that allows for the awarding of liquidated damages, attorney fees, and costs for successful plaintiffs.” • “Federal and state agencies may bring enforcement actions on behalf of consumers for violations of law or policy.” • Behavioral targeter must provide a prompt response to consumer complaints (within 30 days).

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Process For Developing Framework	<ul style="list-style-type: none"> • FTC issued a set of proposed principles to encourage and guide industry self-regulation for public comment and then set forth revised principles. 	<ul style="list-style-type: none"> • Significant transparency in principles revision process. • NAI first issued the 2008 NAI Principles in draft form, allowing for a sufficient public comment period, incorporating revisions to the principles based on public comments received, and publishing a report detailing how each public comment was treated in the revision process. 	<ul style="list-style-type: none"> • Developed in response to the FTC principles. • We are unaware of any public comment period. • No mention of a process to allow for the evolution of the regulations. 	<ul style="list-style-type: none"> • A group of ten privacy groups issued recommendations for lawmakers.

ⁱ *Behavioral Advertising: Industry Practices and Consumers’ Expectations: Hearings Before the Subcomm. on Commerce, Trade and Consumer Protection and Communications, Technology and the Internet of the House Comm. on Energy and Commerce, 111th Cong., 1st Sess. 12 (June 18, 2009) (statement of Charles Curran, Executive Director, Network Advertising Initiative).*

ⁱⁱ See Network Advertising Initiative, *NAI Response to Public Comments Received on the 2008 NAI Principles Draft* (Dec. 16, 2008) at 14, available at http://www.networkadvertising.org/networks/principles_comments.asp.