

Network Advertising Initiative
409 7th Street NW, Suite 250
Washington, DC 20004

December 11, 2019

Ms. Kristin Cohen
Mr. Peder Magee
Mr. James Trilling
Division of Privacy and Identity Protection
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

RE: COPPA Rule Review, 16 CFR Part 312, Project No. P195404

Dear Ms. Cohen, Mr. Magee and Mr. Trilling:

On behalf of the Network Advertising Initiative (NAI), thank you for providing the opportunity to revisit the crucial priority of protecting children on the internet. NAI submits these comments in response to the Federal Trade Commission's (FTC) Request for Comment (RFC) on the Children's Online Privacy Protection Act (COPPA) Rule (85 Fed. Reg. 35842, July 25, 2019).

Introduction

The NAI is a non-profit organization that, since 2000, has been the leading self-regulatory organization dedicated to responsible data collection and use governing third parties engaged in Tailored Advertising and Ad Delivery and Reporting (ADR) in the United States. Members of the NAI adhere to the NAI Code of Conduct (Code), a FIPPs-based set of requirements focused on privacy-protective principles, including the responsible use of data and ensuring proper notice and choice are offered to users.

The NAI has over 100 member companies, each of which is required to adhere to the strong digital advertising best practices set forth in the Code by implementing stringent consumer privacy protections. The NAI employs a variety of means to verify that its members adhere to the privacy commitments embodied in the Code. In the event that a compliance deficiency identified by any means remains unaddressed by a member, the NAI retains the power to impose a range of sanctions, including referral to the FTC and suspension or revocation of NAI membership. At the same time, by requiring all members to publicly attest to compliance, the NAI Code provides a basis for FTC enforcement in the event of non-compliance.

Our members include a wide range of businesses such as ad networks, exchanges, platforms, and other technology providers.¹ Across websites, mobile applications, and connected television screens, our member companies form the backbone of the digital advertising ecosystem – helping advertisers reach audiences most likely to be interested in their products and services, while allowing consumers to receive ads that are tailored to their interests.

The NAI’s members are only one piece of the digital advertising ecosystem, and they must therefore work cooperatively with partners who are publishers and advertisers. These comments reflect the NAI’s efforts to provide industry-leading privacy protections for children over the last two decades.

NAI Restrictions on Tailored Advertising Directed to Children

The NAI has prioritized privacy protection for children since 2008, when NAI restricted members from creating Behavioral Advertising—now referred to as Tailored Advertising—segments specifically targeting children under the age of 13 without verifiable parental consent. This restriction preceded the parental consent requirements established by the FTC’s 2013 COPPA Rule, which in essence extended COPPA protections to digital advertising.

Under the 2020 updates to the Code, the minimum age restriction for which NAI members may specifically target advertising without obtaining parental consent was raised from 13 to 16, intended to add protections for a group of minors—sometimes referred to as “twens”— that are increasingly spending substantial amounts of time on digital media and are therefore subject to a wide range of advertising. The change is consistent with the new requirements of the California Consumer Privacy Act (CCPA), which prohibits “sales” of personal information of children below the age of thirteen without parental consent, and “sales” of tween data without their opt-in consent.

As a practical matter, it is difficult for the ad-tech ecosystem to effectively function with multiple different consent standards. The NAI therefore decided to prohibit its members from offering Tailored Advertising to children and tweens absent parental consent in the 2020 Code of Conduct. Recognizing that verifiable parental consent mechanisms are challenging and expensive to implement, and result in considerable drop-off, the practical reality is that most ad-tech companies simply seek to avoid advertising to children altogether. Thus, the NAI is not aware of any members that currently seek verifiable parental consent to advertise to children, and we expect an extension of this approach to children through age 15. The NAI strongly supports a preemptive federal data privacy framework establishing a uniform national law that adopts a pragmatic, use-based approach, and prevents the confusion and disruption associated

¹ NAI membership spans various technology platforms, including demand side platforms (DSPs), supply side platforms (SSPs), data management platforms (DMPs) and audience management platforms (AMPs).

with disparate age standards and other requirements across various states, as we already have considerable inconsistency between COPPA and the CCPA.

The NAI is Exploring Additional Guidance to Enhance NAI Code and COPPA Compliance for the Ad Tech Industry

Prior to the FTC's announced RFC, the NAI had already initiated a review of industry practices to assess the need for new industry guidance in several areas, with particular focus on the following: (1) handling data from tweens, and (2) possible best practice guidance for member companies pertaining to the use and transmission of COPPA flagging technology. Our 2020 Code reflects the conclusion that members should treat those 15 and younger as "children" for purposes of NAI Code compliance. While our assessment into possible additional guidance on COPPA flagging technologies is still ongoing, we are hopeful that this proceeding will provide useful insights into additional technical or operational measures on flagging options that may be helpful to guide effective compliance with both COPPA and the NAI Code of Conduct in 2020 and beyond.

With respect to the expansion of the NAI Code's coverage to tweens, member companies will need to assess current segments and make changes to avoid directing ads to children below 16, not just below 13. This will include various changes in current practices, including but likely not limited to reviewing segments directed broadly towards "teens," to help ensure those broader segments do not include tweens.

The NAI will continue in 2020 to assess the extent to which companies could benefit from additional guidance around the treatment of advertising inventory that is communicated with a COPPA flag.

Potential Amendment of the Definition of "Website or Online Service Directed to Children"

As the FTC's current review process will likely reveal, it is often quite difficult to differentiate between what constitutes a general audience websites or online services, and those directed to children. In some cases, the publishers may intend to target a general audience but provide a service that ultimately appeals substantially to children. COPPA, however, clearly establishes that only websites or online services directed to children, or those operators with actual knowledge that information has been collected from a child under 13, are subject to COPPA. The COPPA Rule also allows operators of websites and services secondarily directed to children to implement an age screen; tailored advertising is permitted to individuals that pass the age screen.

It is not practical, nor would it be consistent with the statute, for the COPPA Rule to be modified to somehow impose an obligation for ad-tech companies to be responsible for monitoring the content of all websites and online services to make an independent

determination that any particular website or service is child-directed. Therefore, third parties are dependent on—and must rely on—publishers of websites and online services to directly communicate the nature of their online service to all its partners and vendors through the use of a COPPA flag.

As the Commission considers amending the definition of “website or online service directed to children,” the Commission should fully weigh the potential benefits of a revised definition against the potential negative consequences, such as less advertising support for a wider range of high-quality, ad-supported online content. As the FTC staff correctly noted last year in its comments to the NTIA, Tailored Advertising, which relies on collection of data from consumers, provides considerable value to consumers.² Today, a broad array of rich content is available on the Internet, including video and music streaming services, games, learning resources, and interactive services such as email and social networks. These have all experienced robust growth over the last several years, providing transformative benefits to consumers for free, or for little cost, supported by Tailored Advertising revenue. A restrictive approach that focuses on demographic cutoffs as a single metric would, for example, likely harm innovation and reduce available content.

As the internet-based media ecosystem has become richer and more diverse, one thing has remained constant: by far the most popular model through which consumers enjoy and experience online content is free or low-cost ad-supported content. The research below highlights the significant value consumers place on ad-supported content, and the value Tailored Advertising provides to consumers.

In October, the NAI published a report reflecting the results from an online consumer survey we conducted with responses from 10,000 consumers from all demographics and geographic areas of the U.S. to assess their opinions on privacy, digital advertising, and the ad-supported internet. The survey revealed that nearly 60% of respondents prefer their online content to be paid for by advertising. While they indicated that they place a high value on the digital content they consume, nearly 90% said they are unwilling to pay a significant amount of money to continue receiving apps and online content that they currently receive for free. The survey provided a strong affirmation that the ad-supported content model is ideal for most consumers.³

Additionally, recent data from Nielsen suggests that while the media landscape expands, the type of content consumers are spending time with has remained fairly consistent. Ad-supported content remains the medium that consumers gravitate toward the majority of the time in their viewing habits.⁴ According to Nielsen data, the share of time spent with ad-supported content on platforms (such as TV, radio, smartphones, video games and tablets) for

² [FTC Staff Comment to the NTIA: Developing the Administration’s Approach to Consumer Privacy](#) (Nov. 2018).

³ [Consumer Survey on Privacy and Digital Advertising](#), Network Advertising Initiative (October 22, 2019).

⁴ Nielsen Company, [As the Media Universe Grows, Ad-Supported Content Remains a Preferred Source](#) (March 14, 2018).

adults in 2017 was 86%—a rate that has remained relatively flat over the past decade.⁵ Nielsen’s broad conclusion based on this research is as follows:

Although consumption of ad-supported media has varied over the past 15 years, it is still far more dominant and successful than perception may indicate. Today, ad-supported content remains a consumption stalwart as consumers’ media palates expand and consumption habits swell. While such revenue models have existed for some time, they seemingly have the versatility and adaptability to keep pace with an ultimately dynamic and fragmented landscape. This new age of media consumption allows marketers and advertisers to reach consumers in more ways than ever before and do so with ease.⁶

While it is difficult to place a dollar value on the benefit that advertising-funded content provides to consumers, a survey commissioned by the Digital Advertising Alliance (DAA) revealed that consumers valued the cost of services like news, weather, and video content, at \$99.77 per month, or \$1,197 per year. A large majority of surveyed consumers, 85%, stated they like the ad-supported model, and 75% indicated that they would greatly decrease their engagement with the Internet if a different model were to take its place.⁷

Other research has explored the value of different types of advertising. An economic study by Professor Howard Beales and Jeffrey Eisenach of Navigant Economics found that the use of cookie technology to increase relevance of advertising increased the average impression price paid by advertisers by 60% to 200%, depending on a series of variables.⁸ This data underscores the value of Tailored Advertising, whereby data used to determine the relevance of ads is a critical variable for successful ad-supported content. When advertisers are willing to pay more for impressions, consumers are able to enjoy a wider range of free or low-cost web content, mobile applications, and other services. This is particularly true for smaller publishers and app developers who would not otherwise be able to attain sufficient revenue to serve their consumers.

Ultimately, the Commission should continue to balance the crucial need to protect children online, but to not unduly limit opportunities for the provision of rich, ad-supported content that appeals to broad audiences that span consumers from diverse age groups.

Conclusion

Again, thank you the opportunity to comment on this important issue. NAI appreciates the opportunity for a robust dialogue around children’s privacy and to continue improving our

⁵ Ibid.

⁶ Ibid.

⁷ [Zogby Analytics Public Opinion Survey on Value of the Ad-Supported Internet](#), Commissioned by the Digital Advertising Alliance (May 2016).

⁸ Beales, Howard , and Eisenach, Jeffrey, [An Emperical Analysis of the Value of Information Sharing in the Market for Online Content](#), commissioned by the Digital Advertising Alliance (January 2014).

industry-leading self-regulation in this area. If you have any questions or would like to further discuss, please contact David LeDuc, Vice President of Public Policy, at 703-220-5943, or via email at david@networkadvertising.org.

Sincerely,

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

Leigh Freund
President and CEO