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When the NAI Speaks: Fifteen Years of Rising to the Challenge

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I am honored to have the unique opportunity to speak here on the 15th anniversary of the NAI's founding and to set the stage for the important conversations today that will help our industry responsibly push innovation forward.

Epsilon and Conversant, Epsilon's newest family member, are on the leading edge of developing technology that helps our clients elevate their marketing campaigns—across channels—by incorporating and embracing new technologies. As we do so, we set high standards for ourselves and our clients for responsible collection and use of consumer data. These high standards are developed by industry leaders like those thought leaders present today. We are honored to be here today with our industry peers to discuss those issues that impact each one of our companies.

For the past 15 years, the NAI has shaped the self-regulatory landscape for third-party digital advertising companies and will continue to do so as we are faced with new challenges. The discussions we have today will help frame how our industry deals with important issues, such as cookie-less tracking, the Internet of Things, and all things cross device. How will we preserve consumer trust, honor consumer choice, and promote consumer privacy with technologies that don't easily lend themselves to transparency? Today the internet is embedded in every part of the way businesses operate and the way consumers live, and now the ubiquity of the internet of things creates some unique challenges, but this is not the first time Americans have faced—and successfully addressed—unique challenges.

The NAI is uniquely positioned to help us overcome these challenges. When the NAI speaks, it does so using the combined voices of those leaders in our industry. When the NAI speaks, it does so with industry-specific guidance tailored to the industry needs and developments. When the NAI speaks, it helps us all move forward in a unified, responsible manner.

The NAI also benefits the consumer in a number of ways. By setting a code of conduct that provides notice, transparency, choice, and data security requirements, NAI member companies go beyond the legal requirements and, in fact, revisit and update the code as technology and consumer habits and attitudes change. The NAI provides oversight to those industries under its purview, allowing for more direct, honest, and timely interaction with companies that may have strayed from the code of conduct.

As we move forward today, remember that we are setting the tone for international practices as well. American innovation is not our only export; we also export our self-regulatory guidelines. As companies around the world embrace American innovation, they also embrace those boundaries we have set for our industry. On the eve of the EU's overhaul of their privacy regime and reimagining of the Safe Harbor with the Department of Commerce, we are showing the world how to promote innovation and growth

while monitoring businesses using industry standards and industry enforcement. We are showing the world how to “get it done.”

With the emergence of the digital age, we are focused on defining the best ways to balance innovation and growth while protecting consumer privacy. All the signs point to self-regulation. I cannot stress the importance of self-regulation enough. When I go to DC or meet with the Attorneys General, I am faced with questions about how to best regulate industry. The answer I give: “Don’t try; the industry’s got this covered.” When government steps into an area as dynamic and complex as third-party digital advertising, they simply cannot understand the nuances and the fast changing complexities of our industry. And, even if they do—big if—they cannot put that understanding into legislation that will help consumers in any meaningful way without creating legal uncertainty and hurting innovation.

In many ways the innovation I’m talking about today relates to [U.S. Secretary of Commerce Penny Pritzker’s statements on April 23rd](#) at the Inaugural Meeting of the Commerce Data Advisory Council to stress the importance of “America’s Data Agency”, the U.S. Department of Commerce, making data easier to find, access and use. We agree. An example of this type of public/private innovation is Conversant’s work with the Federation for Internet Alerts (FIA), which recently won the Webby Award for Interactive Advertising in the Public Service and Activism category. But this Webby wouldn’t have been possible without help from America’s Data Agency. You see, we have used our media platform, built on a privacy bedrock of self-regulation, to override online interest-based advertising messages to displaying dynamic, detailed alerts for imminent threats to human lives. We have activated this technology to serve more than 8.5 million geographically relevant tornado warning impressions for threats issued by the National Oceanic and Atmospheric Administration (which, if you weren’t aware, is an Operating Unit of the U.S. Department of Commerce).

FIA, a partnership formed by many in this room today originating from a 2011 collaboration between Conversant and the National Center for Missing and Exploited Children to distribute AMBER Alerts, are setting aside competition in these instances to expand and work responsibility together to distribute alerts worldwide. That’s the type of innovation that flourishes through open data regimes like the current one we are in today. In short, this is innovation that has saved lives.

FTC Commissioner Maureen K. Ohlhausen, the keynote speaker at the 1st NAI Summit, said it best at the Progressive Policy Institute in March with her [three principles to promote innovation](#). She said that we need to, principle #1, *Embrace Regulatory Humility*. She said this is needed, “[b]ecause it is so difficult to predict the future of technology, government officials ... must approach new technologies and new business models with a significant dose of regulatory humility.” Regulators must know the technology to the point of knowing the future of the technology—a feat that is difficult even for those of us in this room—before proposing any legislation.

Principle #2 is to *Focus on Identifying and Addressing Real Consumer Harm*. We have all seen the articles about the hypothetical situations showing some possible harm for online marketing. We need to focus on bad actors causing real consumer harm rather than trying to preempt some speculative harm. And as I say this, we in the room also need to limit ourselves to talking about those harms that are imminent and real. Our Code of Conduct was strategically worded broad enough to capture those fringe cases that may negatively reflect on our industry.

The third principle is also relevant to everyone in this room: *Use Appropriate Tools*. When regulators use the wrong tools—like creating statutes—it creates legal uncertainty that stifles innovation. Commissioner Ohlhausen pointed out that self-regulatory guidelines are easier to reconfigure than federal or state legislation and have the additional benefit of being “well attuned to market realities.”

Going back to my statement, “Don’t try; the industry’s got this covered,” we do have this covered. The Code is not some toothless document. The member requirements provide the very protections that we see in the Fair Information Practice Principles, or FIPPs. The Code provides very definite notice and choice mechanisms, provides guidance on using more sensitive data and limitations. Members are subject to more oversight than a governmental agency with limited resources would be able to provide. Members are audited annually and are investigated in cases of potential violations by NAI board members. Noncompliant members are subject to penalties that may include referral to the FTC.

The NAI turns to the next 15 years. Upon the Code’s adoption in 2000, cross-device, digital fingerprinting, the Internet of Things were all futuristic concepts. I wish I had the ability to predict the challenges that the NAI and those of us in this room will face in the next 15 years, but I can predict that we are in for an interesting ride. What will be the next big idea? What will be the consumer reaction? Will they embrace it or shun it? Will the government try to regulate it? I don’t know the answers to these questions but I do know that the framework that the NAI has developed can keep pace with the new developments. We have updated our Code in the past and we will update the Code in the future, while helping the Members transition during the innovative times we have ahead of us.