



NAI COMPLIANCE PROGRAM ATTESTATION REVIEW PROCESS

Last Updated: 17 February 2009

The NAI Principles impose a binding set of requirements on NAI members, which must attest that they comply with each material provision of the NAI Self-Regulatory Code of Conduct that applies to their business models. Although one overarching vehicle for enforcement of business attestations is Section V of the U.S. Federal Trade Commission Act, separate enforcement by the NAI of its member's privacy promises is an important service performed on behalf of consumers by the NAI. The two vehicles for triggering an attestation reviews by the NAI are a) credible consumer complaints; and b) voluntary pre-certification and annual attestation reviews by prospective members, and active members in good standing, respectively.

To carry out its obligations under Section IV of the 2008 NAI Principles Self-Regulatory Code of Conduct, the Board of Directors adopts the following procedures for its attestation review process:

1. Pre-certification Reviews

Upon application to the NAI of a prospective member company, NAI staff shall seek to pre-certify applicants as eligible for membership, as either compliant or able to comply with material provisions of the 2008 NAI Principles Self-Regulatory Code of Conduct.

To carry out this review, NAI staff shall refer to each of the following prior to making a Board recommendation on eligibility:

- Representations of business practices on applicant's public website
- Representations of business practices in applicant's privacy policy
- Representations of business practices in applicant's terms of service/advertising contracts
- Representations of business practices reflected in applicant's marketing materials
- Responses to specific questionnaire (membership application) focusing on compliance with each provision of the NAI Principles Code
- Interviews with senior responsible executives within the company authorized to bind the company and make attestations as to compliance, and to represent technology platforms used by the company
- Board instruction about new business models that might be integrated within the NAI through the creation of implementation guidelines to its Code

Where applicable, staff shall make compliance recommendations to advise on what NAI Principles requirements may apply to a business model or business practice, and what modifications of practices or representations ought to be required to align the prospective member company with the practices agreed-to by NAI member companies.



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NAI staff shall facilitate and provide applicants an opportunity to supplement, correct or modify any representations made to the NAI over the course of this review process, prior to referral of the application to the Board of Directors.

Prior to recommending an applicant to the Board, staff shall also conduct independent tests of applicant's consumer choice mechanism (required by the NAI Principles) on widely-adopted consumer platforms, including:

- Windows XP, Service Pack 2
 - o I.E. 7
 - o Firefox
 - o Safari
 - o Opera
 - o Chrome

- Intel/Mac 10.5
 - o Safari
 - o Opera
 - o Firefox

2. Annual Compliance Reviews

NAI staff shall undertake a review of member companies once annually beginning the year following admission to the NAI as a new member in which a pre-certification review was conducted. An annual compliance review shall seek to verify member eligibility for membership in good standing, by re-certifying that member is compliant with material provisions of the 2008 NAI Principles Self-Regulatory Code of Conduct that apply to the business model or models in use at the time of the review.

To carry out this review, NAI staff shall refer to each of the following prior to publishing a summary reference to a finding of compliance or to an unresolved defect in compliance as part of the NAI's Annual Compliance Report:

- Representations of business practices on applicant's public website
- Representations of business practices in applicant's privacy policy
- Representations of business practices in applicant's terms of service/advertising contracts
- Representations of business practices reflected in applicant's marketing materials
- Responses to specific questionnaire (membership application) focusing on compliance with each provision of the NAI Principles Code
- Interviews with senior responsible executives within the company authorized to bind the company and make attestations as to compliance, and to represent technology platforms used by the company
- Responses to any alleged defects in compliance raised by press, member companies or the NAI's consumer complaint process



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Where applicable, staff shall make compliance recommendations to advise on what NAI Principles requirements may apply to a business model or business practice, and what modifications of practices or representations ought to be required to re-align the member company with the practices agreed-to by NAI member companies. NAI staff shall also seek to brief any new member employees on the substance of the NAI Principles, to reinforce the company's internal compliance program.

In all cases, any compliance defects identified as part of an annual compliance review must be remedied within 30-business days of identification of the defect. NAI staff may, at its discretion, extend this deadline to accommodate technical difficulties or unavoidable delays.

3. Ongoing Testing

In addition to the annual review, staff shall continue to conduct independent tests of each member's consumer choice mechanism (required by the NAI Principles) on widely-adopted consumer platforms including:

- Windows XP, Service Pack 2
 - o I.E. 7
 - o Firefox
 - o Safari
 - o Opera
 - o Chrome

- Intel/Mac 10.5
 - o Safari
 - o Opera
 - o Firefox

These tests shall be monitored and updated on a weekly basis, and shall be summarized as part of the NAI's annual compliance Report.

4. Board Referral & Sanctions

If a member either fails to respond to staff notice of non-compliance in relation to the results of an attestation review, fails to provide an action plan to redress the defect within 30-business days, or fails to accomplish its action plan within 30-business days from the date of notice by NAI staff, the matter shall be referred to the NAI Board of Directors for review, with a recommendation by staff for sanctions. The member will have the opportunity to address the Board, and, if desired, rebut the recommendation made by staff.

The Board shall, at its discretion, determine whether: a) additional information is required or additional time to cure the defect should be permitted, or b) whether interim or final sanctions are appropriate. Available sanctions include:



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- Temporary suspension of membership status for a fixed or indefinite term, subject to further opportunity to cure
- Permanent revocation of membership
- Publication of revocation by press release
- Referral of evidence of non-compliance as deceptive trade practices violation to the U.S. Federal Trade Commission's Consumer Protection Division, or to state attorneys general or other enforcement bodies.