



## 2008 NAI PRINCIPLES

**THE NETWORK ADVERTISING INITIATIVE'S  
SELF-REGULATORY CODE OF CONDUCT FOR ONLINE BEHAVIORAL ADVERTISING**

**DRAFT: FOR PUBLIC COMMENT**

## 2008 NAI PRINCIPLES

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### The Network Advertising Initiative's Self-Regulatory Code of Conduct for Online Behavioral Advertising

#### CONTENTS:

Section I:	Introduction	2
Section II:	Terminology	4
Section III:	OBA Requirements for NAI Members	6
Section IV:	Procedural Matters & Enforcement	10

#### ADDENDA:

A:	Guidelines on Restricted and Sensitive Consumer Segments	11
B:	Guidelines on Notice Language	14
C:	Sample Mock-ups <i>(Pending Open Comment Period)</i>	16

## SECTION I: Introduction

Advertising is fundamental to the accessibility, affordability and dynamism of the Internet. Online advertising underwrites the rich variety of online content choices available to consumers at no cost or at a far lower cost than would otherwise be possible – similar to what we see in television and radio. More relevant advertising creates a win-win for both consumers and companies, because consumers find more of what interests them and companies spend less on ineffective advertising. In addition, many small and emerging companies depend on online advertising to compete against more well-established companies. Effective online advertising helps to maintain the low barriers to entry that have played a crucial role in the robust competition and innovation that fuel this medium.

In 2000 the NAI Principles were first developed by the signatories to the Network Advertising Initiative (“NAI”) to guide business practices with respect to online advertising services delivered on the Internet. Traditionally, companies offering online behavioral advertising services—including Online Preference Marketing (“OPM”) as it was then conceptualized—most commonly followed an advertising network business model.

Although implementation may vary, an ad network grounds its business model in part on its ability to show web surfers display banner advertisements based on data collected across multiple websites, commonly through use of cookies, web beacons or other similar technologies. The process used to deliver advertisements within this model would look something like this:

- A consumer goes on to the Internet and types a URL into their browser to visit a website.
- Because that website has signed an agreement with an ad network to be part of its “network” of websites, when the consumer visits the website a separate “connection” with a third party ad server is also established.
- The ad server then answers the call and identifies the computer that called it by serving a cookie file to that consumer’s computer.
- The ad server simultaneously creates its own file that will allow it to start predicting what consumer marketing segment that computer may fall into.
- As the consumer moves to a different website that is also part of that same “network” of websites, the consumer’s computer will again call that same third-party ad server, which will see that it has already placed a cookie and will add information to its own marketing segment file associated with that cookie.
- The ad server will then choose an appropriate banner ad based on the user’s presumed interests contained in the marketing segment file, and will send that ad out to the website where it will be shown to the consumer, typically in a box of varying size that appears on the web page seen by the consumer.

Recognizing that this business model raised unique questions as to how fair information practices should be applied for this unique kind of data sharing and data use, the original members of the NAI worked with legislators and regulators, including the Federal Trade Commission, to develop the first version of the present self-regulatory code of conduct to govern such practices.

Since 2000, the marketplace has spawned new and innovative online advertising solutions and business models. Although many new advertising models do not involve third parties engaging in market segmentation to deliver ads on websites, many still do. Undoubtedly, new innovative third-party advertising models will continue to evolve and shape the robust online advertising landscape.

Accounting for market changes in the online advertising realm, the term behavioral advertising is increasingly used colloquially in policy, business and technology circles to cover an ever-broadening array of online advertising practices. These practices and related business models range from basic techniques that are analogous to display advertising offline to robust uses of user data that raise significant new issues that could justify newer standards of notice and choice.

NAI members believe that self imposed constraints help achieve the balance needed to preserve consumer confidence in the use of this revolutionary medium. Even where there is reduced privacy impact in use of anonymous or anonymized data, the NAI recognizes that consumers will only trust and continue to engage with advertisers online when there is appropriate deference shown to consumers' concerns about the privacy of their web-surfing experience. As third-party B2B service providers engaged in complex technical processes, NAI members understand that transparency to consumers, while challenging, is critical to maintaining such trust. To that end, third-party online behavioral advertisers that make up the membership of the NAI are committed to educating consumers about the services they provide that are of benefit to consumers, and to enhancing consumers' ability to control the use of information about them when they visit websites.

Through the present draft 2008 revision to the NAI'S SELF-REGULATORY CODE OF CONDUCT FOR ONLINE BEHAVIORAL ADVERTISING, NAI members continue their commitment to respect appropriate fair information practices adapted for this medium and to their business models, maintaining self-regulation with respect to *notice, choice, use limitation, access, reliability and security*.

## SECTION II: Terminology

Recognizing the inherent complexity of terminology in the online advertising space, this Section offers definitions that are to be attributed to specific important concepts represented in this document. These definitions should be used to both interpret and apply the provisions of this self-regulatory code of conduct.

The term “behavioral advertising” has been used colloquially in policy, business and technology circles to cover a broad range of online advertising practices. These practices and related business models could range from basic advertising techniques analogous to display advertising offline, to robust uses of user data that raise distinct issues potentially justifying higher standards of notice and choice. It is clear that consumers, policymakers, technologists--and often many in industry--do not fully appreciate the distinctions among different business models observable in this area. To contribute to an industry-wide effort towards greater transparency with respect to online advertising practices, the NAI undertakes in the present document to further clarify the role of its member companies within this diversifying online advertising environment.

One set of behavioral advertising practices, previously described as OPM, involves a certain type of data sharing and data use. The NAI standards are uniquely relevant to such practices, and are best suited to certain business models for distinctive reasons. Those practices, often—though not exclusively—carried out by third party ad networks, may now be better understood as “third-party online behavioral advertising,” which is the governing terminology used in this 2008 draft revision to this Code of Conduct.

### 1. **THIRD-PARTY ONLINE BEHAVIORAL ADVERTISING (“OBA”)**

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OBA means 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.<sup>1</sup>

### 2. **AD DELIVERY & REPORTING**

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AD DELIVERY & REPORTING means processes including but not limited to:

- providing a specific advertisement based on a particular type of browser or time of day;
- statistical reporting in connection with the activity on a website; and
- tracking the number of ads served on a particular day to a particular website.

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<sup>1</sup>I.e. delivered through a web browser viewable on any appropriately-enabled device.

Like OBA, data used for Ad DELIVERY & REPORTING purposes can include: type of browser, operating system, domain name, day and time of visit, page(s) visited and other data that is not used to identify, contact or locate an individual.

### 3. OPT IN TO OBA

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OPT IN TO OBA means that a consumer<sup>2</sup> expressly consents to allow OBA, either in response to a clear and conspicuous request for such consent or at the consumer's own initiative, prior to engaging in OBA about the consumer. A consumer's OPT IN consent requires some affirmative action on the consumer's part that manifests the intent to OPT IN.

### 4. OPT OUT OF OBA

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OPT OUT OF OBA means that a consumer is provided an opportunity to exercise a choice to disallow OBA with respect to a particular browser.<sup>3</sup>

### 5. PERSONALLY-IDENTIFIABLE INFORMATION ("PII")

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PII means data used or intended to be used to identify, contact or locate a person, including name, address, telephone number, or email address.

### 6. RESTRICTED AND SENSITIVE CONSUMER SEGMENTS<sup>4</sup>

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RESTRICTED and SENSITIVE CONSUMER SEGMENTS include, but are not limited to:

- Certain medical/health conditions; and
- Certain personal life information.

RESTRICTED CONSUMER SEGMENTS rely only on non-PII for targeted advertising based on specified categories, whereas SENSITIVE CONSUMER SEGMENTS rely on the use of PII for targeted advertising based on those categories.

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<sup>2</sup> A consumer opts in via a single web browser. As a result, all users of that same web browser are effectively opted in.

<sup>3</sup> This Code is technology-neutral with respect to the technologies that can be used to track a browser. Although the primary technology currently used for tracking data for OBA is the http cookie, any other tools, such as local shared objects colloquially described as "flash cookies," or other state management mechanisms, are subject to equivalent requirements for user notice and choice if they are to be used in compliance with this Code.

<sup>4</sup> Recognizing the subjectivity of these data classifications, the NAI offers specific guidance on its approach to RESTRICTED and SENSITIVE data in Addendum A.

### SECTION III: OBA Requirements for NAI Members

The following requirements apply to NAI member companies:

#### 1. Transparency

- a) 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.
- b) Members shall use best efforts, both individually and collectively, to educate consumers about behavioral advertising, and the choices available to consumers with respect to behavioral advertising.

#### 2. Notice

- a) Each member shall clearly and conspicuously post notice on its website that describes its data collection and use practices. Such notice shall include clear descriptions of the following, as applicable:
  - i. The types of OBA and 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 non-aggregate 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 such data use;<sup>5</sup> and
  - vi. The approximate length of time that data used for OBA will be retained by the member company.

#### Sample Notice Language for use of Non-PII data for OBA

We use third party advertising companies to serve ads when you visit our website. Some of these companies may use information (not including your name, address, email address, or telephone number) about your visits to this and other Web sites in order to provide advertisements about goods and services of interest to you. If you would like more information about this practice and to know your choices about not having this information used by these companies, [click here](#).

<sup>5</sup> See § III.3, *infra*, for the choice standard required by various data uses.

- b) Each member shall require that a publisher with which it contracts for OBA services shall clearly and conspicuously post notice, or ensure, as applicable, that such notice be made available on the website where data are collected for OBA purposes, that contains:
  - i. A statement of the fact that OBA is occurring;
  - ii. A description of types of data that are collected for OBA purposes;
  - iii. An explanation of how, and for what purpose, that data will be used or transferred to third parties; and
  - iv. A conspicuous link to the OBA choice mechanism (e.g., OPT OUT link) provided by the NAI member.
- c) If a member knows or has reason to know that a contractee is in breach of any requirement established in this Section, the member shall make reasonable efforts to enforce the contract.
- d) As part of members' overall efforts to promote transparency in the marketplace, even in the absence of contractual relationships, members shall make reasonable efforts to ensure that all companies participating in their OBA services should furnish or require notices comparable to those described above.

### 3. Choice

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- a) The level of choice that members must provide and honor in order to engage in OBA shall depend on the nature of the data to be used. Choice is commensurate with the increased privacy implications of data to be used. Specifically:
  - i. Use exclusively of non-PII for OBA shall require provision of a consumer OPT OUT mechanism.<sup>6</sup> The mechanism shall be available on both the NAI member's website and on the NAI consumer website.
  - ii. Use of non-PII to be merged with PII prospectively for OBA (on a going-forward basis) shall require provision of a consumer OPT OUT mechanism accompanied by robust notice<sup>7</sup> of such choice. The mechanism shall be made available at the location where robust notice is provided.

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<sup>6</sup> Note: If a consumer elects to OPT OUT of non-PII OBA, collection of non-PII data regarding that consumer's browser continues for non-OBA purposes, such as AD DELIVERY AND REPORTING.

<sup>7</sup> For notice to be robust the consumer must be afforded clear and conspicuous notice about the scope of non-PII to be merged with PII, and how the merged data would be used for OBA. Such notice must be provided immediately above or before the mechanism used to authorize submission of any PII.



- iii. Use of PII to be merged with previously collected non-PII (retrospective merger) for OBA shall require provision of a consumer OPT IN mechanism at the time such PII is collected online or, if collected offline, first used online.
- iv. Use of RESTRICTED CONSUMER SEGMENTS for OBA shall require provision of a consumer OPT IN mechanism.

#### 4. Use Limitations

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- a) Use of non-PII or PII to create an OBA segment specifically targeting children under the age of 13 is prohibited.<sup>8</sup>
- b) Use of SENSITIVE CONSUMER SEGMENTS for OBA is prohibited.
- c) Members shall only use, or allow use of, OBA segments for marketing purposes.<sup>9</sup>
- d) Members shall not collect PII for OBA purposes from companies in the absence of a contractual relationship with that company.
- e) 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 effect at the time the information was collected, unless the consumer OPTS IN to allow collected information to be governed by the new policy.
- f) 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 *never* be merged with PII.

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<sup>8</sup> This standard incorporates by reference the definition of "child" established in the Children's Online Privacy Protection Act, 15 U.S.C § 6501 *et seq.*

<sup>9</sup> "Marketing purposes" includes 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. Certain non-marketing uses of OBA segments may already be restricted by law. See also *infra* § III.9.

## 5. Transfer & Service Restrictions

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- a) Members shall contractually require that any third parties to which they provide PII for OBA services adhere to applicable provisions of this NAI Self-Regulatory Code of Conduct.
- b) 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 services, must adhere to the applicable provisions of this NAI Self-Regulatory Code of Conduct. This requirement does not apply if that non-PII is itself proprietary data of the third-party publisher or advertiser.

## 6. Access

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- a) Members shall provide consumers with reasonable access to PII, and other information that is associated with PII, retained by the member for OBA purposes.

## 7. Reliable Sources

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- a) Members shall make reasonable efforts to ensure that they are obtaining data for OBA from reliable sources.

## 8. Security

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- a) Members that collect or store data for use in OBA shall provide reasonable security<sup>10</sup> for that data.

## 9. Applicable Law

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- a) Members shall always adhere to all laws applicable in the jurisdictions where they engage in OBA.
- b) Where the requirements of applicable law exceed the requirements of this document, members shall abide by applicable law.
- c) Where the requirements of this document exceed the requirements of applicable law, members shall conform to the higher standard imposed by this document provided that compliance is not contrary to applicable law.

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<sup>10</sup> 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.

## SECTION IV: Procedural Matters & Enforcement

### 1. Accountability

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- a) These Principles are self-regulatory in nature and are binding on all members of the NAI.
- b) Membership in the NAI requires public representations that a member company's business practices are compliant with each aspect of the Principles that apply to its business model. Such representations involve explicit acknowledgement of NAI membership and compliance with the NAI Principles in each member's publicly-available privacy policy, and inclusion in a group listing of participating companies on a designated page of the NAI consumer website.
- c) Members shall fully abide by the policies and procedures established by the NAI's Board of Directors for handling of mandatory compliance reviews, and shall fully cooperate with an NAI designee that engages in the compliance reviews, including responding to any questions regarding potential compliance issues. The NAI's policies and procedures for compliance reviews may be adapted from time to time, and these policies and procedures shall be made available upon request. These policies and procedures shall not only describe the process undertaken for a compliance review, but shall also articulate the penalties that could be imposed for a finding of non-compliance, including referral of the matter to the Federal Trade Commission.
- d) A compliance review shall be undertaken by an NAI designee at a minimum:
  - i. upon application to the NAI for new membership;
  - ii. at least once annually thereafter; and
  - iii. in response to a credible unresolved consumer complaint justifying compliance review.
- e) An annual summary relating to consumer complaints received, and any enforcement actions taken, shall be made available upon request.

### 2. Consumer Communications

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- a) A centralized mechanism linked to the NAI website shall be maintained to receive consumer questions or complaints relating to members' compliance with the NAI Principles.
- b) Each member shall respond to and make reasonable efforts to resolve all consumer questions implicating its compliance with the NAI Principles within a reasonable period of time established by policy of the Board of Directors.

## ADDENDUM A: Guidelines on Restricted and Sensitive Consumer Segments

### GENERAL CONSIDERATIONS

Valid privacy concerns are raised by the prospect of using certain categories of information as the basis for behaviorally-targeted online advertising campaigns. Given that consumer privacy expectations vary greatly by person, culture and context, an attempt to label specific consumer segments as RESTRICTED or SENSITIVE is an inherently difficult and subjective undertaking. It is clear that what makes one consumer personally uncomfortable may bear little relation to the privacy expectations of another consumer.

Nevertheless, the online behavioral advertising marketplace would benefit from clarification as to how OBA should work in order to remain compatible with the general consumer's privacy expectations where RESTRICTED and SENSITIVE consumer data is involved. This effort is critical to maintaining consumer trust in marketing undertaken by third parties that do not have a direct relationship to consumers. Consistent with this goal, balanced approaches to this subject would acknowledge that:

1. By subsidizing free content and helping to reduce irrelevant advertising, OBA based on RESTRICTED consumer segments can still offer unique positive benefits for consumers and the marketplace without implicating PII;
2. First-party ads relying on RESTRICTED or SENSITIVE consumer segments are typically of less concern due to the inherent connection between the ad and the party responsible for the delivery of that ad, whereas OBA ads delivered by third parties raise important concerns about transparency and consumer choice, given that the consumer may not have a direct relationship with or knowledge about the activities of the third party; and
3. Marketers must always adhere to all laws applicable in their jurisdictions. Many address the use of "sensitive" data in a given situation. For example, marketers should appropriately account for several privacy laws, including but not limited to:
  - the European Union Data Protection Directive (and member state implementations of the same);
  - the Gramm-Leach-Bliley Act;
  - the Health Insurance Portability and Accountability Act;
  - the Fair Credit Reporting Act and Fair and Accurate Credit Transactions Act;
  - the Children's Online Privacy Protection Act; and
  - the Personal Information Protection and Electronic Documents Act (Canada).

In some cases, the provisions of the NAI Principles may exceed the requirements of applicable laws. In the event of a conflict, or where applicable law may exceed the requirements of this document, the requirements of applicable laws must govern.

### THE NEED FOR COMMON UNDERSTANDING BY INDUSTRY

In this context, clearer indications of what is generally deemed SENSITIVE can be helpful to industry players in order to comply with appropriate self-regulatory and best practice standards. Similarly, the NAI uses the term RESTRICTED to describe the same characteristics when using exclusively non-PII. The goal of this guidance is to establish common understandings that industry players can apply in similar ways.

For purposes of the NAI Principles, at a minimum RESTRICTED and SENSITIVE CONSUMER SEGMENTS include, but are not limited to:

#### **1. Certain medical/health conditions–**

- A. HIV/ AIDS status
- B. Sexually-related conditions (e.g., sexually transmitted diseases, erectile dysfunction)
- C. Psychiatric conditions
- D. Cancer status
- E. Abortion-related

#### **2. Certain personal life information–**

- A. Sexual behavior/orientation/identity (i.e., Lesbian/Gay/Bisexual/Transgender)
- B. Criminal victim status (e.g., rape victim status)

## POTENTIALLY RESTRICTED or SENSITIVE CONSUMER SEGMENTS

Although the following consumer segments when used in OBA may potentially be considered RESTRICTED and SENSITIVE, they may not always be considered RESTRICTED and SENSITIVE depending on their intended use in OBA and accounting for appropriate jurisdictional, legal and socio-cultural considerations:

- Age/Birthdate
- Addictions (e.g., drugs, alcohol, gambling)
- Alienage or nationality
- Criminal history
- Death
- Disability
- Ethnic affiliation
- Marital status
- Philosophical beliefs
- Political affiliation or opinions
- Pregnancy
- Race identification
- Religious affiliation (or lack thereof)
- Trade Union membership

This second category of *potentially* RESTRICTED and SENSITIVE consumer segments is admittedly more challenging to apply, because it is predicated on the notion that individual companies will have to make determinations as to whether a segment used to market products to some of these common marketing categories should be considered RESTRICTED or SENSITIVE in a given context. As all OBA can be beneficial for consumers, the NAI's intent is not to engage in cost/benefit analysis, but instead to highlight categories that require special care, more individualized review for content, and independent business judgment about what consumers could find particularly objectionable, but often do not. Once again, certain marketing and non-marketing uses of such data may also already be constrained by existing law.

## ADDENDUM B: Guidelines on Notice Language

Samples are illustrative only and do not establish any “one-size-fits-all” standard. Within the categories of Non-PII and merger of PII with non-PII, the business models employed by companies engaged in OBA can vary significantly. The placement of notices and the key facts that must be disclosed to consumers in an appropriate notice, therefore, can also vary.

As a consequence, one should expect that clear and factually-accurate notice ought to be narrowly tailored based on the business model employed. Adequate notices may therefore vary by advertising company and web publisher site. So long as the notice is accurate, it need not be overbroad nor track the notice language that may be appropriate in another setting. Nevertheless, in all instances, notice must be factually-accurate and must objectively lead the reasonable reader to know about certain key aspects of the practices of the third-party advertiser, as well as the consumer’s ability to choose not to participate.

In order to satisfy the NAI’s “clear and conspicuous” standard for online disclosures required by this Code, members should account for factors articulated by the Federal Trade Commission in its *Dot.Com Disclosures: Information about Online Advertising*.

### Sample Notice Language for Non-PII OBA

We use third-party advertising companies to serve ads when you visit our website. Some of these companies may use information (not including your name, address email address or telephone number) about your visits to this and other websites in order to provide advertisements about goods and services of interest to you. To learn more about this practice, its benefits, or about your choice to opt-out of this practice, [click here](#).

### Sample Notice Language for Merger of PII and (Previously Collected) Non-PII

Please [click here](#) to allow us to share this information with our third party advertising company so it can market more effectively to you. Because our advertising company may link your name, address and/or e-mail address to your past web usage, some of your past and future activity will be known to them, and will be used by them to select appropriate online advertisements. To learn more about this practice, [click here](#).

**Sample Notice Language for Merger of PII and (Prospective) Non-PII**

We share this information with our third-party advertising company in order to market more effectively to you. Our advertising company may link your name, address and email address to other information which they collect, such as past purchase information and your future Web usage from other sites. By providing your personal information here, some of your future web activity will be known to them, and will be used by them to select appropriate online advertisements. To learn more about this practice, [click here](#). To opt-out of this practice used by our third party advertising partner, [click here](#).



**ADDENDUM C:**  
**Sample Mock-ups**

(To be developed post-comment period)