

**Initiative for a voluntary business pledge to simplify the management
by consumers of cookies and personalised advertising choices**

DISCUSSION PAPER FOR STAKEHOLDERS' ROUNDTABLE

1. What are the challenges to be addressed?

When a user accesses a website, this website, in most cases, tracks the device (e.g. using cookies) and profiles the user for purposes linked to targeted advertising.

In compliance with the e-privacy Directive, the users' consent is required for the placing of cookies which go beyond what is allowed under this Directive, for example for the technical functioning of the website visited by the user¹. This consent needs to comply with the GDPR.

The current cookie consent mechanisms can however be very complex: with cookie banners popping up every time users visit a new website (or come back to a website where cookies were previously refused or erased by the browser or OS); and with choices often presented in a confusing way which does not allow users to make a fully informed decision or drives them to make choices they would otherwise not necessarily have made.

Many people are tired of having to engage constantly with complex cookie banners generating the so-called cookies fatigue and as a result they may simply give up trying to express their real privacy preferences.

More and more cookie banners allow users to refuse all non-necessary cookies as easily as to consent to them. However, after a refusal, users are increasingly faced with the information that this choice means that they cannot access the website or either have to pay a fee or change their mind and accept cookies. Putting the choices in this order is contrary to consumer law, as people should be informed upfront about companies' business model and the counterpart requested to access their website.

The heavy use of advertising trackers raises many concerns: intrusion in privacy, efficiency of targeted advertising, the lost trust of consumers, etc. Various research shows that consumers do not want to be tracked and when empowered to do so they actively refuse tracking².

¹ Under e-Privacy directive Article 5(3) no consent is required for carrying out the transmission of a communication; or for the provision of an information society service explicitly requested by a user.

² <https://edaa.eu/your-online-voices-your-voice-your-choice/> ;
<https://fil.forbrukerradet.no/wp-content/uploads/2021/06/consumer-attitudes-to-surveillance-based-advertising.pdf> ;
<https://op.europa.eu/en/publication-detail/-/publication/8b950a43-a141-11ed-b508-01aa75ed71a1/language-en> ;
<http://extranet.greens-efa.eu/public/media/file/1/7267>

However, this does not mean that consumers would be against personalised advertising, as they want to continue benefiting from free of monetary payment online content and relevant ads. Personalisation therefore needs to be more respectful of their privacy aspirations.

All actors of the digital advertising ecosystem are currently reflecting about solutions allowing users to better manage cookies and privacy options. News media publishers, in particular, are increasingly using cookie banners stressing their underlying advertisement-based business models. To address users' privacy choices, browsers and mobile operating systems are increasingly implementing settings that prevent, or considerably reduce the placing of trackers. The phasing out of third-party cookies is also considered or already done by several players such as Google or Firefox and alternative tracking models appear within the digital advertising sector (Identifiers, Pseudonymisation, Pixels, data collection joint venture by internet service providers, etc...). However, the compliance of these innovations to competition law and/or the GDPR and e-privacy legislation still needs to be assessed.

These different developments are in fact questioning the continued sustainability and relevance of tracking-based advertising business models.

1. Commissioner Reynders' initiative for a voluntary pledge

In view of the above-mentioned challenges, Commissioner Reynders proposed to launch a reflection on a possible voluntary business solution that would permit to simplify consumer choices, reduce the cookie fatigue, and respect the wish of the majority of consumers not to be tracked for advertising purposes.

This voluntary pledge would be based on the principles of consumer law as a starting point. Indeed, in a commercial context, consumer law provides that people need to be fully informed of the business model when agreeing to a service such as navigating a website. When a website operator gets remunerated by exposing their users to advertisement and/or collecting data about their navigation for the account of third-party services in the digital advertising ecosystems, this is a commercial context subject to consumer law.

Making it clear upfront which advertising models and related advertising services are concerned, and the privacy consequences should trackers be needed, is the best way to empower consumers to make informed choices at the same time complying with applicable data protection and privacy legislation, in addition to respecting consumer law requirements.

2. Concrete objectives

The objectives of this reflection would be to identify, together with stakeholders, possible voluntary avenues for website operators on one hand and technical solution providers (such as browsers or ad-tech intermediaries) on the other hand. The objective would be to propose simpler choices of advertising models to consumers, respecting, if this is so, their wish not to be tracked, and provide alternative methods for the personalisation of advertising in exchange of continued free of monetary payment content.

Preliminary consultations on these ideas held with EU level stakeholders³ brought positive results, with large support for the Commission's initiative and interest to participate in the reflection and discussion process. Stakeholders recognised the need for changes in the advertising ecosystem to better respect consumer choices, notably not to be tracked.

To move forward, it is proposed to hold round table discussions with stakeholders centred around two areas (consumer information and alternative personalisation models). During the discussions, possible approaches will be assessed including their technical details and timeframes. Stakeholders could subscribe to the principles of such identified models on a voluntary basis – the form of which will need to be defined (e.g. a voluntary business pledge, codes of conduct).

The discussions will start in April 2023 with the aim to define the content of the pledges and/or codes of conduct by the end of 2023.

3. Issues for the roundtable discussions

I. Information to be provided to consumers

Consumers should be presented upfront and in a clear way with the business model of the website they visit and in case they agree to receive personalised advertising what are the different types of trackers this would imply, with whom which information will be shared and where relevant about the need for their consent to such trackers. Only with a clear explanation of the commercial context can consumers take an informed decision on whether they have to pay for the service and/or whether they are prepared to be subjected to advertising and to the ensuing consequences in terms of privacy should they agree to tracking-based or other types of targeted advertising models.

The following questions could be examined:

- ✓ What are possible ways to present to consumers upfront and in a clear and transparent manner the business model and the counterpart in terms of personal data collection eventually requested to access their website?
- ✓ How can marketplaces inform consumers on their advertising activities carried out in addition to their main business model?
- ✓ How can consumers be informed in a comprehensive, yet understandable manner, about the privacy consequences of their choice of business model and how such business models need to be eventually compliant to the GDPR and ePrivacy Directive should they involve personal data collection?
- ✓ How will information about the business model interact with information obligations in the GDPR, the ePrivacy Directive and other applicable legislation?

³ Stakeholders consulted during the preliminary phase: IAB Europe; Amazon.com Inc. ; European Publishers Council (EPC); Google; Apple Inc.; BEUC; Microsoft; META Inc.); Federation of European Data & Marketing (FEDMA); European Interactive Digital Advertising Alliance (EEDA); German Brand Association (Markenverband); Tik-Tok.

- ✓ How to avoid information overload?
- ✓ How can browser settings that reduce the use of trackers be better explained and known to consumers?
- ✓ Can the choice of business model be automated for example through settings or an app so that consumers do not need to be presented such a choice each time they visit a new website?
- ✓ What are possible other issues?

II. Alternatives to tracking-based advertising

The reflection should identify alternatives to tracking based advertising that would allow providing relevant and effective advertisements to users using personalisation solutions that are less intrusive in terms of privacy and remove the need for the use of cookies and other trackers for advertising purposes.

Technical details of the possible systems should be worked out with the aim to identify how to communicate about them as part the voluntary action, while remaining compliant to GDPR and ePrivacy legislation.

To achieve this the following questions could be discussed:

- ✓ What performance criteria should be achieved to enable publishers and adtech intermediaries to continue to offer attractive advertisements to advertisers and to consumers?
- ✓ What are the possible information or profiles needed to provide meaningful alternatives for personalised advertising?
- ✓ Can certain alternatives to tracking-based advertising models be chosen by consumers as a default option not requiring giving consent each time a new website is visited (or revisited), for example in choosing settings on their browsers or by using some automated solution?
- ✓ Technically what do the different alternatives mean in terms of browser and operating systems settings or implications on other technical questions?
- ✓ Are there solutions to non-tracking based targeted advertising that are independent of browsers and operating systems?
- ✓ What about the trackers that are used to improve website performance and/or to measure advertisement performance? What are the data that would still need to be collected for such a purpose? Would approaches more protective of user's privacy exist?
- ✓ Would you commit to not track users who have installed a browser-based solution anymore?
- ✓ Are there any other issues to be considered?
