

IAB Europe position on a Digital Single Market strategy for Europe

I. Digital advertising is fundamental to achieving a functioning European Digital Single Market

Advertising is essential to the success of the European digital market. It has a key role in helping fund digital content, services and applications, making them widely available at little or no cost, as well as driving growth in the digital sector. As Europe is seeking to define a strategy to unleash the potential of the Digital Single Market for growth and jobs, IAB Europe would like to highlight the fundamental role that digital advertising plays in solidifying the three pillars of the Digital Single Market Strategy for Europe as defined in the Commission's [Communication](#) of 6th May 2015.

Digital advertising enables better access for consumers and businesses to online goods and services across Europe. By promoting products available online, digital advertising has a critical effect on online sales. In the UK, £1 billion spent by advertisers on "Online Performance Marketing" (a specific branch of digital marketing) generated £14bn in online sales in 2013, directly resulting in at least 10% of all UK e-commerce retail sales.¹ In addition, the wider ecosystem of digital services is fundamentally based on advertising, from media and content creators to search and email providers as well as social networks and apps. For example news sites, video platforms, mapping services, price comparison websites are mostly funded by advertising.

Digital advertising helps create the right conditions for digital networks and services to flourish. The European digital advertising ecosystem is full of innovative start-ups creating high-quality jobs and growth in Europe (see some best-case examples on www.digitalinnovationeurope.eu). In and of itself, digital advertising also empowers small business and diversity. Digital has democratised advertising, making it a real opportunity for SMEs to use advertising to increase promote their products. Digital advertising also enables SMEs to reach larger and cross-border audiences as well as more targeted ones. By enabling them to reach the right audience at the right time and in the right setting, digital advertising helps SMEs scale up both nationally and globally.

Digital advertising maximises the growth potential of our European Digital Economy. Digital advertising is continuously driving more money into the digital economy. In 2006, the value of the EU market stood at €6.6 billion, versus €30.7 billion in 2014. This is an increase in spend of €24.1 billion and translates into a compound annual growth rate of 21.2%, or an average €3.0 billion per year.² With a growth rate of 11.8% in 2014 compared to a mere 1.3% increase in overall EU GDP³, the digital advertising sector

¹ [Online Performance Marketing study by IAB UK /PwC. 2014.](#)

² [AdEx Benchmark report - the state of online advertising in Europe. IAB Europe. 2014.](#)

³ [eurostat](#)

continues to outperform the overall EU economy.⁴

II. The General Data Protection Regulation could endanger the digital advertising industry and jeopardise the Digital Single Market

IAB Europe is concerned that the various texts of the General Data Protection Regulation feature a very broad and potentially all-encompassing definition of personal data, meaning that a wide spectrum of data would fall under the entire suite of obligations outlined in the regulation. At the same time the proposed texts would restrict the legal grounds for processing, potentially introducing a one-size-fits-all explicit consent requirement and severely limiting the availability of the legitimate interests legal basis leaving some controllers no feasible way to justify harmless processing activities that are legal today as well as potentially prevent processing for future innovations.

Opportunities remain for the trilogues

IAB Europe calls on the European Parliament to adopt a risk based approach to data protection that focuses regulatory scrutiny and enforcement on processing that entails meaningful risks to the data subject. To this end IAB Europe supports the European Parliament's introduction of a definition of pseudonymous data. This helpful first step should now be followed by providing clear rules for its use.

IAB Europe urges the European Parliament to support the Council's nuanced consent model, which requires a stricter standard of explicit consent for the processing of sensitive categories of data, such as medical data, which is associated with a meaningful risk to data subjects, while only requiring more flexible unambiguous consent for the processing of non-sensitive categories of data, such as pseudonymous data, which is associated with significantly lower risks to the data subject.

In addition, IAB Europe urges to ensure that the legitimate interests of the controller remain a viable legal ground for processing for important intermediaries without a direct relationship with the data subject and who cannot leverage the data subject's consent as a result. To this end IAB Europe warns against making meeting "the reasonable expectations of the data subject based on his or her relationship with the controller" a condition for using the legitimate interests of the controller legal ground for processing. Doing so would not only leave important third parties without a legal basis for processing altogether, it would also potentially hamper important innovation, which by its very nature is unexpected. At the same time, IAB Europe strongly supports the European Parliament's adherence to a risk-based approach by creating a presumption that where only pseudonymous data are processed, the interests of the data subject, such as his or her reasonable expectations, are met. This presumption would incentivise the pseudonymisation of personal data and processing of pseudonymous data over ordinary personal data and contribute to the overall goal of data-minimisation.

⁴ [AdEx Benchmark report - the state of online advertising in Europe. IAB Europe. 2014.](#)

III. The review of the ePrivacy Directive should not place a disproportionate burden on online players

IAB Europe has taken note of the Commission's study 'ePrivacy Directive: assessment of transposition, effectiveness and compatibility with proposed Data Protection Regulation' (SMART 2013/0071). IAB Europe warns against some of the recommendations contained in the report, which, if followed will endanger the digital advertising industry's ability to support the development of the European Digital Single Market.

IAB Europe is alarmed by the report's recommendation to require, for valid and effective consent to be provided, that 3rd party cookies be rejected by default. Currently, 3rd party cookies are the preferred (and most wide-spread) method to fulfill some of the key aspects of running a site. While they are used for advertising, they are also used for more mundane purposes even when related to advertising, such as for instance frequency capping. Other uses include web analytics and audience measurement, which enable websites to better understand what pages Internet users visit, what is their flow through the website, etc., in order to improve their content and services, and enable media buyers to make correct decisions when investing in the digital environment. Given the importance of 3rd party cookies for the proper functioning of the Internet that we know and for digital advertising, and given that users are often unaware of the default setting of their browsers, IAB Europe is of the strong opinion that 3rd party cookies should not be blocked by default. Instead, users should be given the choice to decide whether or not they wish to block such cookies.

IAB Europe supports the view that the report's recommendation to extend the scope of the ePrivacy Directive to also cover information society services should not be followed. This would *de facto* make articles 6 and 9 of the ePrivacy Directive applicable to information society services. Such data, when used by information society providers and to the extent that it constitutes personal data, is currently regulated by the Data Protection Directive. Unnecessarily fragmenting this already complex body of law would create legal uncertainty and impede growth in the European Digital Single Market.

IV. Freedom of contract should be preserved to allow fast-paced digital innovation

IAB Europe welcomes the Commission's initiative and aim to remove contract law obstacles related to online purchases of digital content and tangible goods as well as its consultation, launched on 12th June. The Commission's initiative must pursue the joint objectives of serving European consumers as well as supporting the development of the digital economy and new business models.

Currently, freedom of contract gives parties to a contract the ability to define the terms of their agreement, including what is to be considered as a counter-performance. This recognised general principle of EU law is fundamental for the establishment of a functional and predictable European Digital Single Market. Because the pace of

technological developments warrants innovative contractual solutions and flexibility, we believe that parties' freedom to define whether data or user activities such as watching a video advertisement ought to be considered as counter-performances should not be restricted in the digital world. Any such restriction could seriously impede companies' ability to innovate and hinder the growth of digital innovation in Europe.

V. Any EU-level approach on “follow the money” should take national initiatives on advertising misplacement into account

Experience at national level has shown that the key to developing successful advertising misplacement initiatives is to embrace an approach that is voluntary, flexible and that involves the highest possible amount of relevant players. Existing national initiatives to tackle the misplacements of ads on IPR infringing sites are the result of fruitful collaborations and often long negotiations between governments, rights holders as well as advertising industry players and, as such, currently represent workable solutions for the parties involved. IAB Europe believes that the Commission should encourage the development and convergence of such initiatives across EU member states.

VI. The existing framework of EU consumer law provides strong protection for European consumers

IAB Europe believes that the existing framework of EU consumer law provides sufficient protection for European consumers both online and offline. A broadening of the scope of the Audiovisual Media Services Directive to new online players is thus not warranted. The Unfair Commercial Practices Directive, the consumer Rights Directive, the Unfair Terms Directive, the Misleading and Comparative Advertising Directive and the e-Commerce Directive add up to cover the multiple aspects of content regulation. In addition, the online world is evolving at the rapid pace of digital innovation. Too static regulations on the latter could hinder important developments in the European Digital Single Market. Self and co-regulation involving online players have proved to be effective solutions that should be encouraged as much as possible.

If you have any questions or comments, please contact IAB Europe:

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IAB Europe is the voice of digital business. Its mission is to protect, prove, promote and professionalise Europe's online advertising, media, market research and analytics industries. Together with its members – companies and national trade associations – IAB Europe represents over 5,500 organisations. IAB Europe is part of the Transparency Register.

The member countries are: Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Netherlands, Norway, Poland, Romania, Russia, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey and United Kingdom.

The corporate members include: 21st Century Fox, Adform, AdRoll, ADTECH, AdTruth, Aegis Media, Affectv, AGOF, AOL Advertising Europe, AppNexus, AudienceScience, BBC Worldwide, CNN, comScore Europe, Criteo, Daily Motion, Deutsche Post, DMA Institute, eBay International Advertising, ePrivacy, Expedia Inc, Exponential, Gemius, Goldbach Media Group, Google, GroupM, Improve Digital, Integral Ad Science, Improve Digital, IPG Mediabrands, Koan, MediaMath, Meetrics, Microsoft Europe, Millward Brown, Nextplora, Nielsen, nugg.ad, OMD, Orange Advertising Network, OpenX, PHD, Prisa, Publicitas, Publigroupe, PubMatic, Quantcast, Retailmenot, Rocket Fuel, Sanoma Digital, Selligent, SpotXchange, StickyADs.tv, Teads, The ADEX, The Exchange Lab, The Trade Desk, Triton Digital, TrustE, Turn Europe, United Internet Media, Videology, White & Case, Widespace, WebSpectator, Xaxis, Yahoo!