10 October 2019

Re Industry support for privacy protection in an ePrivacy Regulation

Dear Colleague,

I represent Brave, a private web browser with offices in Europe and the United States. Our CEO, Brendan Eich, is the inventor of JavaScript, and co-founded Mozilla/Firefox. Our employees work on machine learning, blockchain, and private online advertising technology. Brave works with publishers across the globe.

The ePrivacy Regulation is necessary to build a foundation of trust for the digital market. However, we are concerned about two elements of the current draft.

1. We oppose “cookie walls” (Recitals 20 and 21, which accompany Article 8).

Advertising is fundamental to financing the web, but it must respect users’ rights and expectations. As technologists, we know that the rights to privacy and data protection enshrined in the European Charter are compatible with innovation. Many companies, including Brave, have developed advertising systems that support publishers with no privacy sacrifice. A robust ePrivacy Regulation will spur further innovation.

But as currently drafted, the text permits “cookie walls” that make pervasive tracking a condition of access to a website. EU data protection authorities have good reason to regard such cookie walls as unlawful.1

Cookie walls would not serve the economic interests of publishers, as the latest research makes clear.2 Recitals 20 and 21 allow cookie walls that facilitate “real-time bidding” behavioural advertising. But this system is economically inefficient,3 rife

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3 The Guardian purchased advertising on its own web site as a buyer, and received only 30% of its spend as a supplier. See “Where did the money go? Guardian buys its own ad inventory”, Mediatel Newsline, 4 October 2016 (URL: https://mediatel.co.uk/newsline/2016/10/04/where-did-the-money-go-guardian-buysits-own-ad-
with fraud,\textsuperscript{4} provides the business model of disinformation,\textsuperscript{5} and is responsible for the largest data breach ever recorded.\textsuperscript{6}

Google and IAB Europe, which control the “real-time bidding” ad industry, are both under investigation by their lead authorities under the GDPR for precisely the same practices that would be facilitated by cookie walls.\textsuperscript{7} Indeed, these practices very recently made front page news in \textit{The Financial Times}.\textsuperscript{8}

Competition authorities in several Member States are examining the problems of the online advertising and media market caused by these same practices.

2. We believe that Article 10 should be reinstated to protect privacy by default.

Public trust in how data is handled has been damaged by scandals such as Cambridge Analytica. The ePrivacy Regulation should contribute to rebuilding that trust rather than perpetuating the business practices which undermine it.

\textsuperscript{inventory/}). The tracking industry’s own trade body notes that publishers receive only 45% of every Euro spent by advertisers in the online behavioural advertising system, in “The Programmatic Supply Chain: Deconstructing the Anatomy of a Programmatic CPM”, IAB, March 2016 (URL: https://www.iab.com/wp-content/uploads/2016/03/Programmatic-Value-Layers-March-2016-FINALv2.pdf). In other words, publishers appear to receive only 45% - 30% of money spent by advertisers in Europe’s €16B “RTB” online advertising market. The 30% figure is from an investigation by


\textsuperscript{8} For example, see ’Google accused of covertly passing users’ personal data to advertisers’, \textit{The Financial Times}, 5 September 2019, front page.
Users should be able to trust their software not to disclose personal data without consent. Research shows that users rarely modify their settings,\(^9\) which is why the choice of defaults is fundamental.

We urge the Working Group to take this into account in its deliberations. I am happy to brief you further on these issues.

Yours sincerely,

Alan Toner
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Brave