

Steering brief

Scene setter

Reason for redaction: protection of personal data, in accordance with Regulation (EC) 45/2001.

You will meet the European Interactive Digital Advertising Alliance (EDAA). They want to emphasise the benefits of the Online Behavioural Advertising (OBA) self-regulatory initiative [REDACTED] encouraged this initiative.

EDAA might want to convince you that an opt-out regime to tracking provides a sufficient protection for internet users and that therefore the current "cookie" consent rule in the ePrivacy Directive (Article 5.3) based on opt-in should be repealed.

EDAA is the secretary bureau of OBA whose members include publishers and advertising associations (e.g. EMMA – magazine publishers, ENPA – newspaper publishers, FEDMA – direct marketing, IAB – interactive advertising). OBA was started in 2011. It is currently supported by 165 associated companies. It is based on 7 principles. The most important are transparency around personalised advertisement and user choice. The initiative provides the possibility for citizens to opt-out of being tracked online through a website: An icon is displayed next to an ad. The user can click on this icon for more information about tracking. The user is then redirected to www.youronlinechoices.eu. However, this is not the webpage where the user can opt-out directly. It can be complex for some users to identify the purpose of this webpage and how to opt-out. EDAA argues that this initiative reached millions of citizens and therefore is successful.

The Article 29 Working Party strongly questions the compliance of this initiative with the prior consent rule in the ePrivacy Directive.

The ePrivacy Directive requires consent to access or store information in users' devices. It applies to online websites. Publishers and the advertisement industry are in favour of giving consumers more choice online but through self-regulation. In their view, the cookie rule (opt-in) does not work and stifles their business model of OBA activities based on tracking citizens online in order to deliver targeted advertising. They prefer opt-out. They are against introducing an option where users can choose not to "pay" with their data, but only with money.

EDAA are concerned that many users install Do-Not-Track (DNT) software on their devices, while the same users consent to being tracked by big US companies. These companies establish a relationship with users via login systems and thus obtain a "derogation" to DNT-software from their users. This business model can be used by all players, European and non-European. EDAA argues that the use of DNT software by European users puts the big US players in a more dominant position compared to European players.

As regard direct marketing/unsolicited communications, some OBA members (e.g. publishers) support an opt-out regime for voice-to-voice direct marketing calls (other than through automated calling machines), or maintain the status quo (currently it is up to MS to choose between an opt-in or opt-out regime). They argue that direct marketing is a way to obtain new subscribers to their services (typically for the press and media).

You could make the following points and inquire about further details:

- COM supports initiatives that ensure more transparency regarding tracking and targeted advertising, but this does not dispense companies to comply with legal requirements.
- The Art. 29 Working Party questions the compliance of the OBA initiative with the ePrivacy Directive. It is not up to COM to assess the compliance of industry initiatives with the EU framework on ePrivacy and data protection, it is up to national data protection authorities.
- How an opt-out approach gives users the control they need?
- Does the OBA ensure an effective protection of users' privacy?
- Is information provided about online tracking is understandable for an average user?
- How do you ensure that the choice made on 'youronlinechoices' to opt-out remains valid when websites force citizens to consent to tracking cookies (e.g. by statements such as: "by continuing surfing on this website you agree to the use of cookies")?
- **If raised** - Will you keep the "cookie" consent rule in the revised ePrivacy Directive?
- This provision aims to protect the user from unwarranted intrusion into their smart phones, computers, etc. They are considered part of the private sphere. The review assesses the effectiveness of the rule. We look at the experience gained through its application in recent years and aim at presenting a proposal early next year.
- **If raised** - will you impose opt-in for spam?
- Current rules on spam already require opt-in consent, except for ongoing relationships. The review will render the rule future proof, more coherent while taking into account the interest of companies to conduct direct marketing. The GDPR rules on direct marketing do not render the ePrivacy Directive rules on spam redundant. They regulate different things: GDPR regulates the right to process data for direct marketing purposes; ePrivacy Directive regulates the follow-up to such processing.
- **If raised** - Do-Not-Track software puts dominant non-European companies in a more dominant position compared to European companies
- All players active on the European market need to comply with the same rules. We see a call from citizens for more privacy. We encourage industry to develop their business model accordingly and invest more in privacy oriented tools and techniques.
- **If raised** - does the Audiovisual Media Services Directive impact online behavioural advertising?

- [REDACTED]

Contacts – [REDACTED]
[REDACTED]

Steering brief

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redaction:
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scope of the
request.

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