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Measuring the Cost of ePrivacy

An assessment with a view to the German online advertising industry

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Background to the Study

ePrivacy Directive (2002/58/EC)

- Ensure privacy of electronic communication
- Limit data retention including meta-data relating to electronic communication

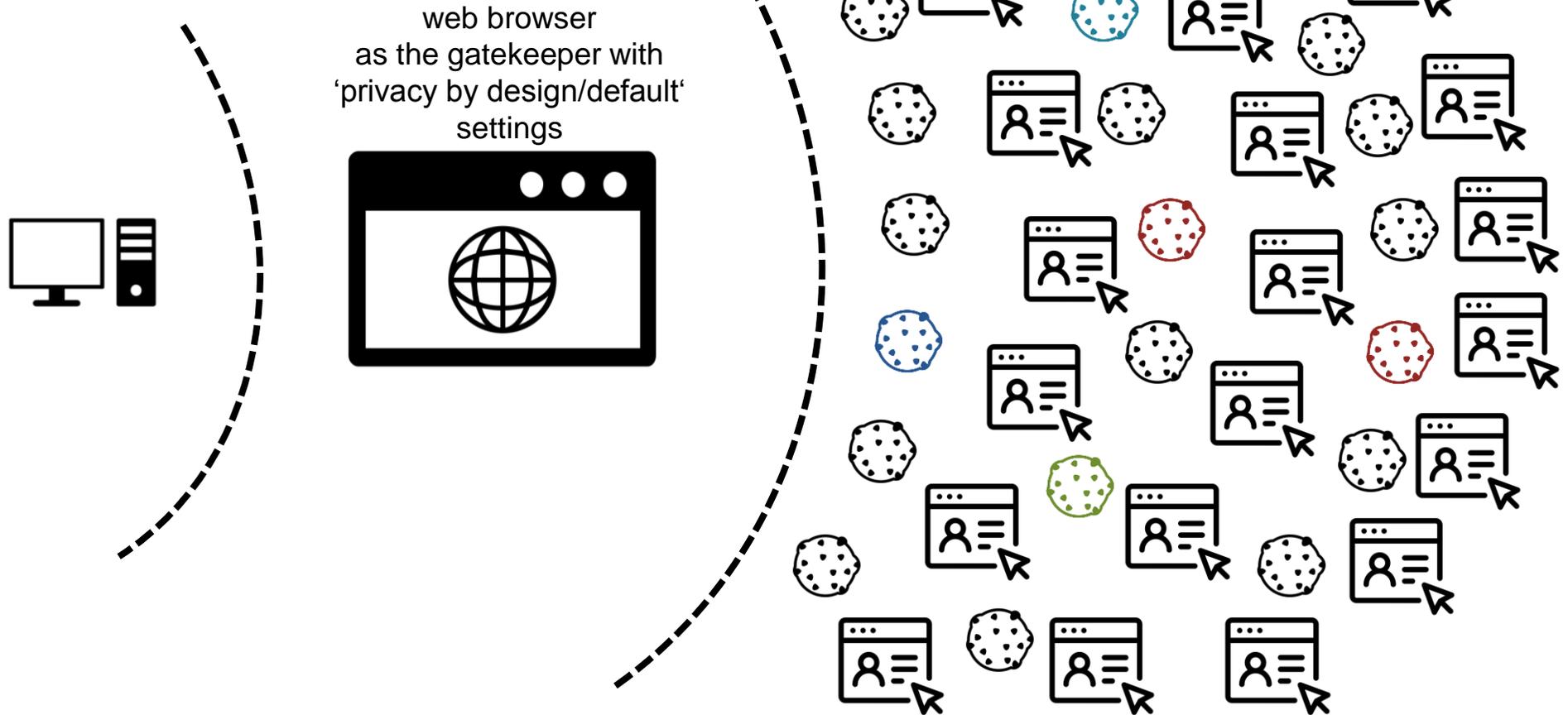
Citizens' Rights Directive (2009/136/EC)

- Amended the original ePrivacy Directive
- Commonly known as 'Cookie Law'

Transfer to ePrivacy Regulation (ongoing)

- Bring ePrivacy up to date with current technology and the General Data Protection Regulation
- Build a level playing field for all kinds of communications services

Idea of the Regulation



...sounds good, but...

what is the impact on

- consumers?
- businesses?
- innovation?
- competition?



Picture: davbis93/Reddit.

The German Federal Ministry for Economic Affairs and Energy contracted WIK for a study:

- Analysis of the draft ePrivacy Regulation
- Analysis of the public consultation and impact assessment
- 20 stakeholder interviews
- Desk research
- Focus on online advertising and business models depending on online advertising

Results of Impact Assessment Analysis

The Impact Assessment¹ arrives at an estimated saving of €950m, but...

- it takes on a very narrow data protection perspective.
- it does not evaluate the potential losses incurred to businesses and consumers.

The accompanying Eurobarometer survey²

- does not feature any question on the benefits from cookies etc. (e.g. quality of services, more suitable advertising);
- neither does it feature any question concerning consumers' understanding of tracking and its purpose, outcomes or the specificity of the information that is being tracked.
- The key question (Q4) is not at all specific about which information the browser should stop from being shared by default.
- The responses to Q6 indicate that consumers seek a (vaguely identified) level of comfort when browsing the internet.

Results of the Stakeholder Interviews

Interviewed stakeholders see risks in the following areas:

- **Functioning of online services**
 - Main question: Which “use of processing and storage capabilities [...] and collection of information from end-users’ terminal equipment [...] is necessary”?
 - More fundamentally: Is it sensible to regulate the technology instead of the (unwanted) outcome?
 - Click fraud identification may not be possible anymore.
- **Europe’s ability to innovate and differentiate service offers**
 - Innovative services may not be developed by European firms acting within Europe.
 - European citizens may be denied access to innovative services of global content and application providers.
- **Neutral audience measurement**
 - Implicit preference for first party cookies transpiring through the text of the Recitals.
 - Neutral audience measurement is basically impossible without third party cookies.
- **Competition in digital markets**
 - Global players suffer less, browser and app providers may be in a (stronger) gatekeeper position.
- **Funding for publishers and content owners**
- **Consumer privacy**
 - Log-in systems may proliferate due to superior user experience. Thus, there is less privacy than with the advertising-funded system of today.

Overarching Trade-Offs to Be Considered

Data protection vs data economy

- Internet ecosystem offers significant individual, societal and economic benefits commonly financed by advertising and thus eventually the use of the processing, storage and information of the end-user's terminal equipment in one way or the other.
- Browser (pre-)settings do not enhance transparency for consumers. Trade-offs can only be evaluated when presented to the consumer in situ.

Data protection vs competition

- Browser (pre-)settings will harm small competitors and new entrants more than established large players (with first party end-user access).
- This may accelerate the trend towards monopolies observed with some kinds of online platforms.
- It is also unclear if and how browser and app providers may abuse their potential power over (pre-) settings.
- Multiplying efforts to configure privacy settings with different browsers, apps, etc. may prevent consumers from multi-homing resulting in more concentration in the web browser and apps competitive landscape.

Programmatic Advertising

- Programmatic Advertising is a significant contributor to the revenue stream of publishers.
- It enables marketing even to small audiences to the benefit of advertisers, publishers and consumers.
- Programmatic Advertising requires user data and interaction with the end-user's terminal equipment.
- Contextual and semantic targeting cannot achieve the same level of targeting.
- No alternative payment method offers a similarly granular micro-allocation of funds.

*Who uses
programmatic
advertising?*

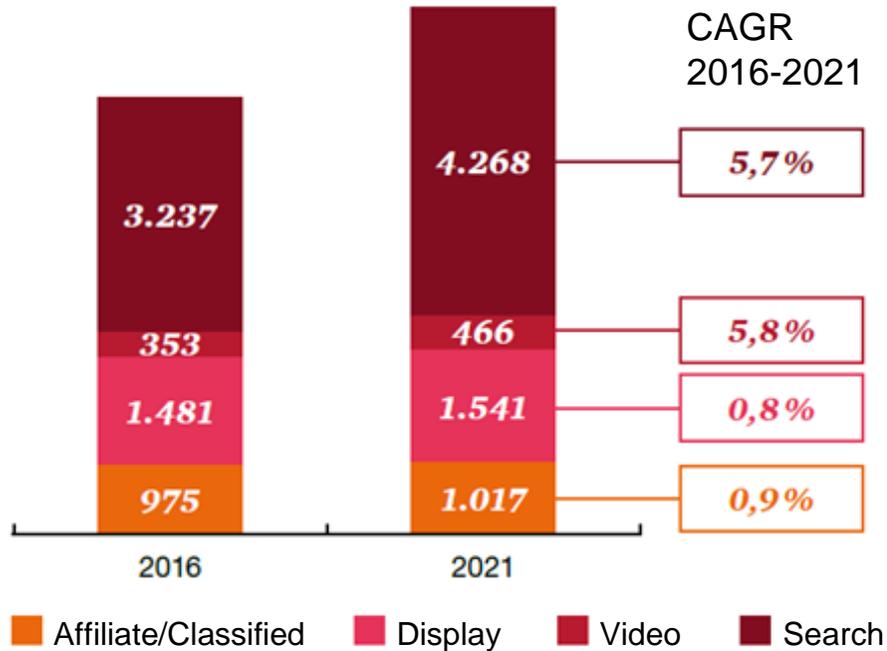
87%
of advertisers

92%
of online agencies

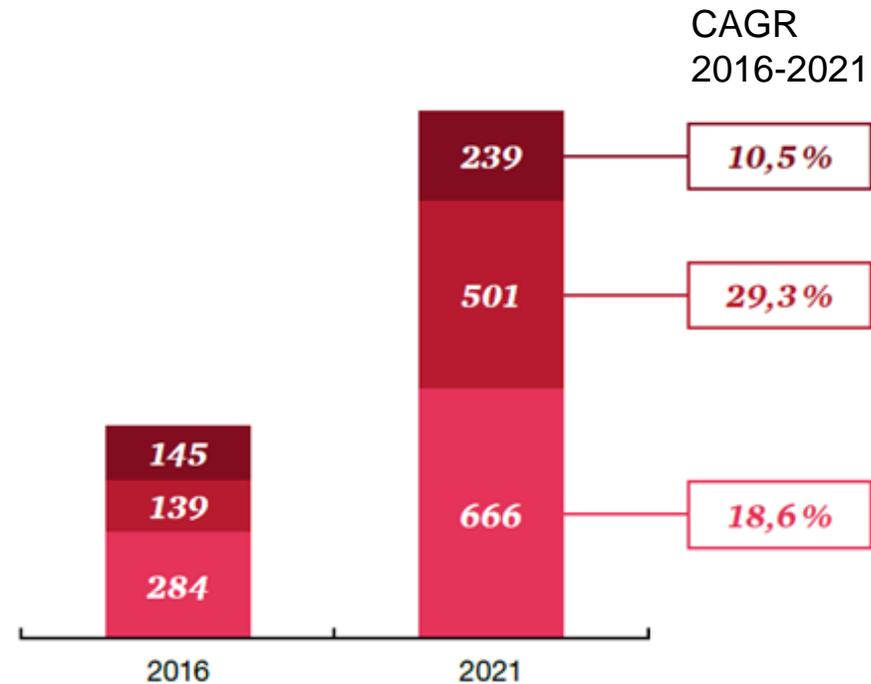
93%
of publishers

Impact on Online Advertising

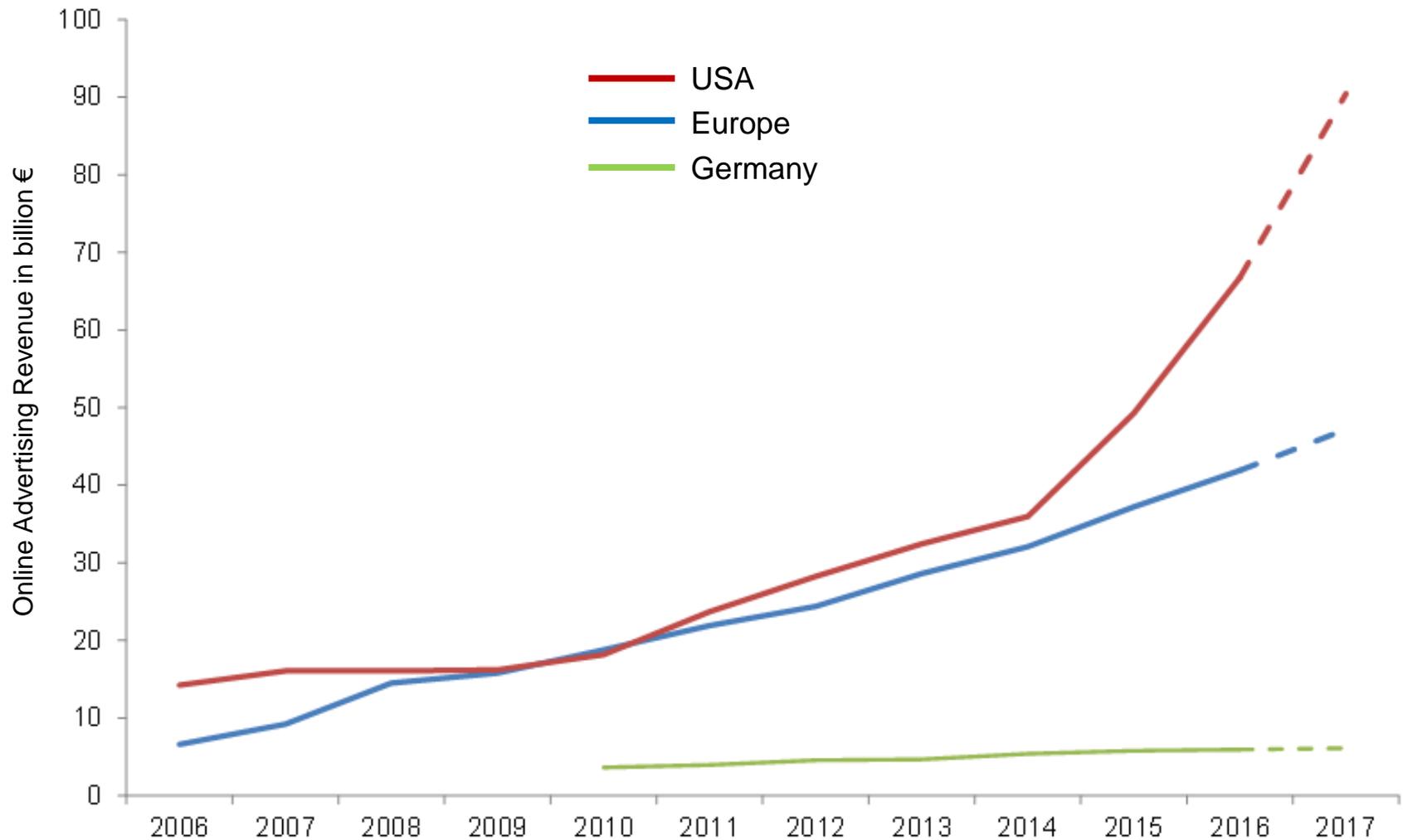
Online advertising



Mobile advertising



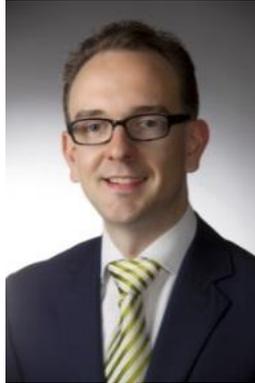
Impact on Europe's Digital Economy



Conclusions

- A holistic solution balancing data protection and other individual as well as economic interests is required.
- The ePrivacy Regulation may
 - substantially harm Europe's digital economy and global competitiveness.
 - in fact reduce consumers' privacy / level of data protection if log-in systems proliferate.
 - decrease consumer choice online and prevent consumers from multi-homing.
 - increase monopolistic trends.
- Self-regulation, co-regulation or a code of practice with accompanying monitoring and enforcement tools could be (could have been) a superior approach to address the apparent issues.
- A European internet characterised by paywalls and closed (log-in) systems cannot be in the interest of Europe's citizens nor its businesses.

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The full study (in German) is available here:

<http://www.wik.org/index.php?id=938&id=938&L=1>