Measuring the Cost of ePrivacy
An assessment with a view to the German online advertising industry

Dr René Arnold

CEPS 28 November 2017
### Background to the Study

**ePrivacy Directive (2002/58/EC)**
- Ensure privacy of electronic communication
- Limit data retention including meta-data relating to electronic communication

- 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
web browser as the gatekeeper with 'privacy by design/default' settings
...sounds good, but...

what is the impact on

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

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
The Impact Assessment\(^1\) 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 survey\(^2\)

- 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.
(Mis-)Conception of Online Advertising?
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

<table>
<thead>
<tr>
<th></th>
<th>2016</th>
<th>2021</th>
<th>CAGR 2016-2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>Affiliate/Classified</td>
<td>3.237</td>
<td>4.268</td>
<td>5.7%</td>
</tr>
<tr>
<td>Display</td>
<td>353</td>
<td>466</td>
<td>5.8%</td>
</tr>
<tr>
<td>Video</td>
<td>1.481</td>
<td>1.541</td>
<td>0.8%</td>
</tr>
<tr>
<td>Search</td>
<td>975</td>
<td>1.017</td>
<td>0.9%</td>
</tr>
</tbody>
</table>

Mobile advertising

<table>
<thead>
<tr>
<th></th>
<th>2016</th>
<th>2021</th>
<th>CAGR 2016-2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>Affiliate/Classified</td>
<td>239</td>
<td>501</td>
<td>10.5%</td>
</tr>
<tr>
<td>Display</td>
<td>145</td>
<td>284</td>
<td>18.6%</td>
</tr>
<tr>
<td>Video</td>
<td>139</td>
<td>666</td>
<td>29.3%</td>
</tr>
</tbody>
</table>

Impact on Europe’s Digital Economy

Online Advertising Revenue in billion €

- USA
- Europe
- Germany

IAB data and WIK estimates.
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.
Dr. René Arnold  
Head of Department Markets and Perspectives  
WIK Wissenschaftliches Institut für Infrastruktur und Kommunikationsdienste GmbH  
Rhöndorfer Str. 68  
53604 Bad Honnef, Germany  

Contact:  
<arnold@wik.org>  
+49 (0)2224 92 25 25  

The full study (in German) is available here:  
http://www.wik.org/index.php?id=938&id=938&L=1