

Position Paper on Online Advertising

In today's dynamic e-commerce landscape, online advertising stands as a fundamental element of success for businesses selling products and services online. It empowers businesses, and especially smaller ones, to connect with genuinely interested consumers, and ultimately scale up. Personalised advertising, in particular, plays a critical role in ensuring that consumers are shown relevant content while enabling businesses to optimise their limited marketing budgets. This ability to effectively reach potential customers through digital channels is not merely an advantage, it is a prerequisite for innovation, competition, and sustained economic growth.

State of play of the legal framework

The EU's online advertising legislative framework is highly complex, with legal provisions dispersed across multiples pieces of legislation, including the General Data Protection Regulation (GDPR), ePrivacy Directive (ePD), Digital Services Act (DSA), Artificial Intelligence Act, Digital Markets Act (DMA), the wider consumer acquis, guidance from the European Data Protection Board (EDPB) and various national Data Protection Authorities (DPAs). In addition to well-established industry tools in place playing an important role of self-regulation.

While new initiatives such as the upcoming Digital Fairness Act (DFA) and Digital Omnibus under development, the current legislative framework already encompasses a lot of aspects of digital advertising and presents significant compliance challenges for businesses. The primary challenge does not lie in the absence of rules, but rather in their confusing interplay and inconsistent implementation across jurisdictions. We therefore believe that **new rules should only be considered if, and only after, a thorough impact assessment properly identifies specific issues and legal gaps, and demonstrates their strict necessity, proportionality, and avoidance of redundancies and regulatory overlaps**. Existing rules however, would benefit from greater clarification and alignment in line with the EU's Better Regulation and Simplification principles.

Key Asks

- Maintain the ability of e-commerce players to offer personalised advertising while ensuring appropriate consumer protections
- Reduce regulatory complexity by clarifying existing frameworks, and aligning future cookie rules with Article 6 GDPR to unlock innovation and PETs uptake
- Expand the definition of "essential cookies", and ensure consistent consent exemptions and requirements across the EU

I. Personalised advertising in the e-commerce sector

Online retailers are committed to consumer privacy and upholding high standards of data protection. While specific concerns around the misuse of consumer data needs to be carefully assessed, it is important to distinguish between data misuse and responsible, compliant, personalised advertising, as these are not a trade-off but mutually compatible and expected by consumers.

The GDPR provides a robust legal framework for the processing of personal data for digital advertising ensuring transparency, accountability, and user control. In that regard, digital literacy is crucial. Users need to understand their rights and the value exchange that underpins much of the internet: personalised advertising enables access to a wide range of online services at little to no cost. This is essential to empower consumers and enable informed data decisions.

• Personalised advertising improves the customer experience

Personalised advertising offers mutual benefits to businesses and consumers. Both parties gain when ads are relevant and targeted, rather than being broadly distributed to a vast, uninterested audience. For consumers, personalised ads translate into a far more positive and less intrusive online experience. A recent study¹ by IAB Europe clearly demonstrates that **80% of consumers express a preference for fewer but more relevant ads**, underlying a desire for quality over quantity.

Conversely, poor ad targeting, such as repeatedly displaying ads for products already purchased, causes ad fatigue and directly leads to **consumer frustration**. In today's digital economy, **relevance** is a key driver of customer satisfaction, and personalised marketing transforms the online experience into something more enjoyable.

In addition, according to a study by Ipsos², 68% of EU consumers believe personalised ads help local small businesses connect with relevant customers and help support small firms in attracting more business. This reflects growing public recognition of the benefits of personalised advertising for SMEs.

The IAB study also sheds light on the nuanced relationship consumers have with the use of their personal data in various online contexts. Specifically, consumers expressed³ the highest level of acceptance for the processing of data related to their past online purchases compared to more sensitive information, such as precise location or activity on social media. This indicates that consumers do not view all personal data equally and **value their personal data differently in a shopping context**. This in turn influences their trust in the service and willingness to share their data.

E-commerce thrives on the trust businesses build with their customers. This creates a positive cycle where the more tailored the experience, the deeper the trust consumers place in the web shop. Personalised ads play a key role in forging these stronger connections, ultimately boosting both customer satisfaction and engagement.

• Personalised advertising sustains e-commerce

Personalised advertising is a **key element of a merchants' competitive edge**. It generates the revenue needed to invest in a better customer experience, more intuitive websites, responsive customer service,

¹ <https://iabeurope.eu/new-iab-europe-study-highlights-consumer-attitudes-towards-personalised-advertising-privacy-and-the-value-of-free-online-services/>

² <https://www.ipsos.com/en-us/news-polls/ipsos-consumer-online-survey>

³ See Chart 7, IAB study

and better quality products and services. It enables them to continuously innovate with new features that keep pace with evolving customer demand. Without the revenue stream from personalised ads, these crucial investments would be significantly hampered, potentially leading to a less convenient and more expensive online shopping environment for European consumers.

Personalised ads also help to maintain competitive pricing, making products more affordable for consumers and helping EU-based merchants remain competitive. For SMEs, personalised advertising is absolutely essential as it allows them to effectively reach the right audiences in a cost-efficient and flexible way. A targeted approach that prevents them from wasting budget on irrelevant audiences. A recent study⁴ from CIPL shows that **80% of SMEs surveyed reported attracting more customers after adopting personalised advertising**. And even more compelling, **86% of SMEs saw an increase in their overall revenue** in the past year directly linked to using personalised advertising. These figures underline that personalised advertising is not just a theoretical benefit for businesses, it is a vital revenue-generating tool that empowers them to thrive and grow.

- **Contextual advertising: a complement not a substitute**

Contextual advertising can only be considered as complementary to personalised advertising, but not as a substitute. It is especially not a suitable solution for all e-commerce players with large and well-funded companies benefitting more from contextual advertising than SMEs who need cost-efficient advertising to target specific audiences in order to grow and for which contextual advertising has proved ineffective and unaffordable. A recent study by Implement Consulting Group⁵ shows that nearly 3 out of 4 SMEs say it would be impossible or difficult to find the customers their business needs without personalised advertising. On its own, **contextual advertising is not a sustainable solution for e-commerce**, especially for smaller businesses.

- **Maintaining the ability to offer personalised advertising**

A ban or very strong restrictions on personalised advertising would have harmful consequences on the sector. By severely impacting the competitiveness of businesses, while resulting in a less enjoyable online experience for consumers with more irrelevant ads and reduced access to quality content and services.

A blanket shift away from personalised advertising would inevitably raise customer acquisition costs, hurting European e-commerce competitiveness. It would disproportionately harm SMEs who rely on it to reach specific audiences, while benefiting larger players who already have the brand recognition, and can afford broader reach without the same need for precision targeting. **Thus, personalised advertising is essential for a level playing field within the Single Market.**

We strongly believe **online and offline channels are complementary and should be treated equally** from a regulatory perspective. Personalised advertising is not a phenomenon limited to the online world as recommendations in brick-and-mortar shops made by a sales assistant are always tailored to the client's personal characteristics, interests or budget.

⁴https://www.informationpolicycentre.com/uploads/5/7/1/0/57104281/cipl_public_first_the_impact_of_digital_advertising_eu_competitiveness_study_mar25_.pdf

⁵<https://implementconsultinggroup.com/article/personalised-advertising>

II. Recommendations for a future-proof framework

Over the years, there have been consequent efforts from the industry to navigate the complex set of rules, while innovating, making advertising more transparent and maintaining a high level of data protection for consumers. To reduce regulatory complexity and incoherences, future EU policy initiatives on cookies should now focus on **clarifying** and **aligning existing frameworks**, in line with the EU's Better Regulation and simplification principles.

- **Aligning future Cookie Rules with the GDPR**

Ecommerce Europe is supportive of modernising the current framework to make it fit for the future of digital commerce and calls for **maximum alignment of any future cookie-related regulations with the GDPR. In particular, we believe that Article 5(3) of the ePrivacy Directive should be aligned with the six legal bases for processing established under Article 6 GDPR.**

The ePrivacy Directive applies a basic “on/off” mechanism that relies solely on consent. This approach is unfit for today's highly complex technical environment, where it is unrealistic to provide explanations that the average user can meaningfully understand. Moreover, the technical scope of Article 5(3) ePD has been significantly broadened by the recent guidelines of the EDPB, bringing a wide range of tracking tools, beyond traditional cookies, under a consent-only regime. This scope expansion has been introduced without clear and consistent exemption guidance, creating greater legal uncertainty and fragmentation. Critically, it also goes beyond Article 6 GDPR, which provides a flexible approach and six legal bases, such as legitimate interest, for data processing activities.

Bringing Article 5(3) of the ePrivacy Directive in line with the GDPR would make it possible to apply the GDPR's risk-based approach to cookies and similar tracking technologies, rather than relying exclusively on consent. Depending on the level of risk, the use of cookies or other tracking tools could be justified on the basis of legitimate interest (Article 6(1)(f) GDPR), provided that appropriate safeguards are ensured. These risks are already reduced by existing legislation, in particular the Digital Services Act: Article 26(3) DSA bans personalised advertising based on sensitive data, while Article 28(2) DSA bans personalised advertising to minors. Importantly, data subjects have the right to object to such processing under Article 21(1) GDPR.

We strongly believe that **these changes should be made without reopening the GDPR, and without adding additional rules to an already overly complex framework.** It is important that the assessment of the ePrivacy Directive strikes the right balance between protecting privacy and enabling European businesses to innovate. Lastly, any change in law should include a reasonable transition period of at least 12 to 24 months to ensure companies can adapt and comply without service disruption.

- **Boosting Privacy Enhanced Technologies (PETs) adoption**

Privacy Enhancing Technologies (PETs) are a broad category of hard and software solutions designed to protect the privacy of personal data. They use methods such as anonymisation and encryption to prevent the identification of individuals, while still allowing data to be collected, analysed, and shared with minimal exposure. We see great potential in these technologies, however, the PET's landscape is still immature, fragmented and technically complex, which creates a barrier to entry, especially for SMEs.

Today, the ePrivacy Directive requires explicit, opt-in user consent for various PETs that rely on processing or storage capabilities of the user's device. This situation places the development of PETs on the same legal ground as a tracking cookie which creates a major disincentive for business adoption. If the industry

must bear the significant technical complexity and cost of implementing PETs, only to face the exact same consent-related friction and low opt-in rates as the old technology, the business case for innovation is non-existent.

To move forward, the narrative must shift from restriction to strategic enablement, fostering an environment where “privacy by design” is not a compliance burden but a commercially viable and innovative path. For PETs to deliver on their potential, they must be scalable and accessible to all market participants and not limited to expensive, bespoke solutions. Broad, cost-effective adoption is essential to ensure that privacy protections are not a premium feature, but a baseline standard across the ecosystem. To achieve this, Ecommerce Europe recommends:

- **Allowing the usage of PETs without strict consent requirements.** This would be achieved by aligning Article 5(3) of the ePrivacy Directive with the GDPR allowing the six GDPR legal bases to apply to PETs, including legitimate interest and its balancing test. This alignment would provide a strong incentive for increased investment and research in PET development.
- **Developing a common, interoperable PET infrastructure for advertising** with key tech leaders in the market. This infrastructure should be founded upon open, interoperable web and app standards that are platform-agnostic in collaboration with standards bodies (like W3C) to build accessible and affordable PET-based services, moving away from proprietary ‘walled garden’ solutions to ensure a level playing field for all businesses.
- **Broadening the definition of essential cookies and harmonising exemptions**

The current distinction between essential and non-essential cookies is too restrictive and does not reflect the practical needs of modern websites. **We call for a broader definition of essential cookies** to reduce repetitive and intrusive consent banners and enable businesses to provide a smoother, more secure user experience, without compromising user privacy. Specifically, the definition of essential cookies should be expanded to explicitly include:

- **Security and fraud prevention cookies** (e.g., authentication tokens, anti-fraud measures).
- **Anonymised analytics cookies** (e.g., cookies used to gather aggregated performance metrics that do not identify users). Several DPAs have acknowledged that these pose minimal privacy risks, yet diverging national interpretations have created legal uncertainty and fragmented application. The criteria set by DPAs should be clarified and standardised at EU level.
- **Functionality cookies** (e.g., cookies for language preferences, seamless checkout processes, customer support integrations).

In addition, we call for guidance to clearly establish **harmonised exemptions for legitimate, transparent, and low risk processing activities**. In particular, exemptions should be introduced for data processing activities carried out for the purposes of product maintenance, software updates, contextual advertising, frequency capping, and B2B marketing based on publicly available data.

- **Harmonising consent requirements**

In cases where consent would still be required, the rules around consent requirements across Member States should be harmonised. Varied interpretations of GDPR and the ePrivacy Directive have created business confusion and user fatigue from repetitive cookie banners has become a real challenge. This is why **EU-wide practical guidance on consent requirements are much needed for cookies and other tracking technologies**, such as tracking pixels or device identifiers, to ensure compliant use cases.

However, we urge caution when taking steps to reduce cookie fatigue and adjusting Article 5 of the ePrivacy Directive. **Such measures should not involve changes to centralised user controls, including browser or operating-system-level functionalities.** Consent management systems (CMS) would enable users to make decisions about data processing activities in the browser, operating system or through a separate app or browser extension. While we acknowledge that such a system would reduce the use of cookie banners, it should not be considered as a solution to address cookie fatigue. Consumer choices about their privacy are context-specific and users refuse or accept the use of cookies depending on the webpage they are on. It is important for e-commerce players to be able to engage directly with their customers on the way they use their data, the purpose of their processing, and their approach to personalisation. Furthermore, generalising the use of CMS would impose a burden on users, requiring them to change their default settings upon their own initiative. In other words, this would create a risk of users being unaware of their ability to choose and limit their choices on what they can specifically consent to.