

ADDRESS

Brussels, 10 October 2019

Re: Discussions within the Council of the EU on Article 10 in the proposed ePrivacy Regulation

Dear __,

This letter aims to convey the concerns of IAB Europe, the European-level association representing the digital marketing and advertising ecosystem, regarding [comments](#) circulated by the German delegation concerning the ePrivacy Regulation, dated 25 July 2019. IAB Europe welcomes the Communication's proposal to retain Recital 21 on exceptions to the consent requirement, along with the suggestion that Germany would demand more specific language on conditionality of access to content in Article 8 if this recital language is deleted. However, the Communication also features a worrying recommendation to restore the currently deleted Article 10 on software privacy settings, which IAB Europe warns strongly against, especially in light of strategic considerations in advance of eventual trilogues with the European Parliament.

Appraising the implications of Article 10, IAB Europe has serious concerns about encouraging browsers and other software enabling access to the Internet to provide the option to prevent the use of processing and storage capabilities of terminal equipment and the collection of information from end-user's terminal equipment. An important unintended consequence of users prohibiting all cookies, under the option that Article 10 encourages browser manufacturers to provide, would be to hamper the user experience and not allow the use of many websites. In addition, considering the requirements of Article 8, only websites can say which cookies are necessary for the provision of the service, rather than the browser. As a result, services would either not function properly or would require users to continually change their browser settings in order to use each specific service, adding more irritation without added value.


On this note, IAB Europe recognises the ePrivacy Regulation's objective to address the overload of consent requests for internet users by allowing users to express their consent on a *general* basis. However, it is doubtful that Article 10 would reduce the amount of notices users receive as general consent is unlikely to meet the specificity requirement of consent under the GDPR. Again, user irritation is to be expected. IAB Europe believes that where processing is based on consent it is important that legislation is technologically neutral and does not dictate which technologies must be used to carry out such processing, in order not to unnecessarily inhibit innovation around providing information and requesting consent in the most appropriate fashion.

The view reflected in the comments circulated by the German delegation that Article 10 is needed in order to ensure that browsers are not used to *undermine* the protection of privacy seems at variance with the reality of current business and technology trends in this space. Features already introduced by some browsers, as well as the open ecosystem of plugins and apps found on browsers and platforms, provide users with an unprecedented degree of choice and control over their browsing experience. It is therefore unnecessary for the legislator to endorse a particular technical approach, requiring browsers to offer a restrictive browsing experience that will have significant negative effects on the Internet ecosystem.

A final consideration is the clear anti-competitive impact that a future European law actively encouraging browsers to play this 'gatekeeper' role would have. While we understand that the proposed regulation is concerned in the first instance with protecting users' right to privacy and data protection, the Council will be aware that law-making on privacy does not take place in a vacuum. There are clearly fewer browser-makers than publishers. Vesting more influence over user behaviour and the future evolution of the Internet in these players might disserve EU citizens by undermining other fundamental rights and interests, notably the right to availability of quality information on terms that make it accessible to users at all income levels.

On the basis of these considerations, IAB Europe encourages Member States to carefully consider the German delegation's proposals and continues to support the deletion of Article 10. We are grateful for the opportunity to submit these observations and look forward to continuing to contribute to the Council's reflections over the coming months, in light of which we further endorse the maintenance of discussions at Council level, rather than referring the file to COREPER.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'T.P. Feehan'.**Townsend Feehan**, Chief Executive Officer, IAB Europe