

HE Mr Andrzej SADOŚ  
Permanent Representation of Poland to the EU  
Rue Stevin 139, 1000 Brussels

Brussels, 19 November 2019

Dear Permanent Representative,

We are writing to express our appreciation of the progress made on the proposed ePrivacy Regulation to date. However, we continue to advise caution and call for further constructive dialogue on the file, thus respectfully reiterating our concerns about taking a rushed decision by the Council of the EU to advance towards a General Approach.

IAB Europe represents the broad digital marketing & advertising ecosystem, which comprises publishers, advertisers, agencies and technology companies. Inadequate ePrivacy rules would affect all these entities and imperil their contribution to the free and open digital media ecosystem, which is reliant on ad-funded business model.

Over the recent weeks, the Council proposed several amendments to Recitals 20 and 21 which showed a willingness to listen to the needs of the media and advertising industry. We are grateful for these improvements yet given that the future of the ad-funded internet is at stake, our hope is that the Council will continue to take the necessary time to improve the clarity of the text.

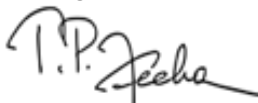
We maintain our strong support for a clear unqualified endorsement of the right of publishers and other ad-funded online services to make access to their content and services conditional on consent for storing and/or accessing information on user devices for advertising purposes. The rigorous application of the GDPR by supervisory authorities who may rely on arbitrary EDPB's interpretation of *consent* as a legal basis, reveals that industry needs strong, unambiguous legal presumptions, beyond the recital language, in favour of allowing private actors to obtain such consent in a seamless manner.

We remain concerned about the language in Recital 20a that in practice – in particular when read in tandem with the Article 4a provisions – encourages browsers and other software enabling access to the internet to act as gatekeepers. When browsers and other software act as gatekeepers, they undermine the ability of publishers and other online services to have a direct dialogue with users about privacy and choice of their services. Many developers of such browsers and other software are also competitors of the very same publishers and online services vis-a-vis whom they act as gatekeepers. Any language that builds on the original Article 10 puts in question sustainability of diverse online media landscape, and yet does not account for a user-friendly feature.

Putting the above into perspective, the ePrivacy deliberations do not happen in a vacuum. First, we are witnessing the real-life impact of the GDPR. Coherence with varying interpretations by different national authorities is vital for the future ePrivacy instrument, which is why we suggest more time is necessary to take stock of these learnings. Second, we are mindful of the extreme position taken by the European Parliament and the fact that any ambiguity in the current text will be exploited during the trilogue negotiations, which necessitates clear and conspicuous language in the Council text.

We would welcome the opportunity to discuss these concerns at your convenience.

Kind regards,

A handwritten signature in black ink, appearing to read 'T.P. Feehan', written in a cursive style.

Townsend Feehan, Chief Executive Officer, Interactive Advertising Bureau Europe