

Ms. Justyna Romanowska,  
Permanent Representation of Poland to the EU,  
Rue Stevin, 139,  
1000 Bruxelles

Brussels, 8 November 2019

Dear Ms. Romanowska,

I am writing to respectfully voice our concern amidst suggestion that the Council of the EU will advance towards a General Approach on the proposed ePrivacy Regulation in the coming weeks. In our engagement with the Council of the EU to date, IAB Europe has aimed to communicate the interests of our broad membership which comprises publishers, advertisers, agencies and technology companies, all of whom would suffer greatly if the current Council text were to advance to trilogues with the European Parliament.

Whilst IAB Europe is pleased to note the addition of clarifying language surrounding '*genuine choice*' in Recital 20 in the newest text, there are a number of other crucial issues which remain unresolved. On which note IAB Europe draws your attention to Recital 20's discussion of proportionality of consent as a condition, which contains ambiguous language surrounding an '*equivalent offer*'. This language, if unresolved, will result in data protection authorities relying on the EDPB's opinion which arbitrarily claims that "[...] *consent cannot be considered as freely given if a controller argues that a choice exists between its service that includes consenting to the use of personal data for additional purposes on the one hand, and an equivalent service offered by a different controller on the other hand*"<sup>1</sup>, even though the GDPR merely lays out some practices to consider when determining whether consent is freely given without generally prohibiting them.

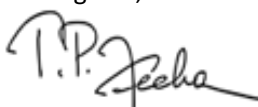
IAB Europe fails to understand why, with the GDPR in effect for 18 months now, the proposed Regulation would undermine consent as a legal basis for ad-supported online services that meet all the criteria for legality specified in the GDPR. IAB Europe thus urges Council to ensure that Article 8, and respective Recitals, feature strong, unequivocal language confirming the right of publishers and other ad-funded online services to make access to their content and services conditional on well-informed consent for storing and/or accessing information on user devices for advertising purposes.

Moreover, IAB Europe reiterates that Article 10 on software privacy settings, as well as similar language in Article 4.2, and Recital 20a, should by no means feature in the text. Failing this, publishers and providers of other online services that rely on an advertising revenue stream will be denied the opportunity to engage directly with their users, with said engagement instead being mediated by a third party with potentially competing commercial interests. This deprives media and other ad-funded websites of their freedom to decide the terms on which their products and services are placed on the market, whilst the user experience will be hampered and many websites will now prove inaccessible.

As a final word, IAB Europe appeals to Member State delegations to review the current text in careful consideration of the compromises which will have to be reached with the European Parliament during eventual trilogue negotiations; a process which will probably water down whatever relatively tolerable language we could have achieved in the Council text.

For reference, I am sending on our position papers on Article 8 and 10, and I 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'.

**Townsend Feehan**, Chief Executive Officer, IAB Europe

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<sup>1</sup> EDPB, Guidelines on Consent under Regulation 2016/679 (wp259rev.01).