Implications of the draft EDPB Guidelines on Article 5(3) of the ePrivacy Directive for the digital advertising industry

Dear Minister,

IAB Europe welcomes the EDPB ambition to ensure a consistent interpretation of the ePrivacy directive across European countries. We view these guidelines as an opportunity to strike the right balance between privacy and innovation.

However, the current draft of the guidelines represents a missed opportunity to provide national publishers and adtech intermediaries with a clear framework to innovate confidently while safeguarding high privacy standards.

The guidelines expand a widely accepted interpretation of Article 5(3), potentially exceeding the original intent of the ePrivacy directive. This is especially concerning given that the ePrivacy directive is, in itself, already an outdated legislative instrument that has not kept pace with changing business models. The European Commission and co-legislators need to reassess ePrivacy rules that are workable for the current form of consumers and internet services, while aligning with the EU's General Data Protection Regulation. Any changes to Article 5(3) should consider broader policy developments and evolving technical requirements. Rather than providing short-term guidance, IAB Europe wishes to encourage a wider legislative discussion on ePrivacy reform, ensuring sufficient stakeholder input and debate.

A primary concern stemming from the draft guidelines is the broad interpretation of 'gaining of access to information already stored in the terminal equipment of the user', as defined in the ePrivacy directive. This expansive interpretation would capture Internet protocols that are essential to enable some digital advertising use-cases including:

- Displaying ads: Ad technology companies rely on these Internet protocols to properly display ads, for example, ensuring that their format fits within content, thus improving users' browsing experiences. These protocols also enable the customisation of ads to resonate with users, taking into account factors such as their country location or language, based on IP addresses. This customisation not only enhances user engagement but also ensures compliance with specific country rules. Furthermore, these protocols facilitate the display of non-targeted advertising, often supported by authorities.

- Measuring ad delivery for the fair flow of investments: Publishers, advertisers and ad tech intermediaries rely on these Internet protocols to count the number of ad impressions. This allows publishers to determine advertising charges. For advertisers, measuring that an ad was effectively delivered is essential to manage their media spend. These practices sustain not only accurate billing but also foster fair and efficient revenue allocation in the digital advertising ecosystem.

- Ensure security and prevent ad fraud**:** Internet protocols play a pivotal role in identifying and preventing fraudulent traffic, including internet bots mimicking human activity. This not only fosters a safer online environment but also bolsters the overall user experience by upholding ad delivery integrity.

These use-cases, which do not significantly compromise users' privacy, could be subject to consent as a result of the draft guidelines. However, the stringent consent requirements may inadvertently hinder the digital industry's ability to provide monetisation services for a wide range of national companies. This limitation may lead to more services and content being placed behind consent walls or paywalls, restricting access to valuable resources from cooking classes to health information to their customers at low or no cost. Additionally, they would significantly affect users' experience online and exacerbate consent fatigue - in particular in the absence of any guidance relating to the two exemptions provided by the ePrivacy directive.

As the draft guidelines are being reviewed following the public consultation, we urge careful consideration of these concerns. Regulatory guidance should be proportional to the privacy risks and support the digital industry in providing the best experience for users. We respectfully request the EDPB to ensure that the Internet protocols underpinning the above-mentioned use-cases will not fall under the technical scope of the ePrivacy directive.

List of signatories

IAB Europe: IAB Europe is the European-level association for the digital marketing and advertising ecosystem. Through its membership of national IABs and media, technology and marketing companies, its mission is to lead political representation and promote industry collaboration to deliver frameworks, standards and industry programmes that enable businesses to thrive in the European market.

Alliance Digitale: Alliance Digitale is the leading professional association for digital marketing players in France. It was formed in 2022 from the merger of IAB France and the Mobile Marketing Association France. Alliance Digitale's main mission is to structure the development of the digital marketing industry and promote innovative, responsible and interoperable solutions by defining industry standards and best practices. The association is also a privileged interlocutor for public authorities, the media and other professional organisations in matters of digital regulation and the promotion of an open Internet. The association brings together the vast majority of digital marketing players in France, representing more than 250 companies (Brands, Media, Agencies, Tech).

IAB Ireland: IAB Ireland is the trade organisation for digital advertising in Ireland and part of the global IAB network. Our remit is to prove, promote and protect the Irish digital advertising industry. Our remit is delivered through the development of standards, commissioning research,

sharing knowledge through annual conferences and webinars as well as engaging with national and EU policy makers on behalf of our members across advertisers, agencies, adtech, platforms and publishers.

IAB Italia: IAB Italia is the Italian chapter of the Interactive Advertising Bureau, the leading association of digital marketing and advertising. Since 25 years it has significantly contributed to the diffusion of digital culture and to the acceleration of market growth in Italy through the development of ethical and sustainable communication. IAB Italia pursues its mission through the realisation of vertical events, special projects, training activities and with IAB Forum, the largest Italian event dedicated to marketing and digital innovation on the most relevant issues for the industry, involving top national and international speakers. The Association has more than two hundred members, among the main Italian and international operators active in the interactive advertising market.

IAB Polska: IAB Polska is a Polish advertising industry organisation that unites and represents entities of the interactive industry. IAB Poland members include more than 200 companies, including the biggest web portals, global media groups, interactive agencies, media houses and technology providers. In 2012 the organisation received the MIXX Awards Europe, honouring the best IAB bureau in Europe. The mission of IAB Poland is to support development of the Internet industry and take regulatory actions to enhance the competitiveness of the market, conducting research projects, leading educational programs and providing legal protection.

IAB Spain: IAB Spain undertakes a comprehensive mission as a forum for meeting and representing the digital advertising industry in Spain. Since its inception in 2001, IAB Spain has played a crucial role in the promotion and development of digital advertising. IAB Spain's mission unfolds on various strategic fronts: With the aim of contributing to the proper regulation of the sector, by contributing, assisting, and fostering conversations with public administrations. Furthermore, IAB Spain proactively works on creating industry standards, with the goal of establishing guidelines and best practices that promotes the sustainable and ethical growth of digital marketing, advertising and therefore promoting innovation and positivities for the society. Members of IAB Spain encompass a wide range of stakeholders in the digital advertising ecosystem, including digital and audiovisual publishers, platforms, media agencies, marketing and advertising agencies, advertisers, consulting firms, technology providers, advertising networks, and others, such as eCommerce and research institutes.

IAB Sweden: IAB Sweden is the leading association for interactive advertising and digital marketing in Sweden. By gathering stakeholders throughout the nation digital marketing ecosystem, IAB Sweden advances the progression of a well-functioning and sustainable industry. The fundamental mission of IAB Sweden is to unite, educate and promote the market for digital and interactive advertising in Sweden.