

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

Dear Madame Chair,

IAB Europe welcomes the EDPB's ambition to ensure a consistent interpretation of the ePrivacy Directive across EU member states. Indeed, the proposed guidelines are intended to clarify in practice which requirements may apply to new technologies and should provide companies operating in the digital advertising supply chain with improved legal certainty when investing in mechanisms other than cookies.

This said, we would respectfully suggest that in their current state, the draft guidelines represent a missed opportunity to provide European publishers and ad tech intermediaries with a clear framework to innovate confidently while safeguarding high privacy standards. This is because they notably open up new scope for divergence of interpretation by national regulators.

As noted in our [response](#) to the public consultation, the guidelines expand a well-established and widely accepted interpretation of Article 5(3), appearing to considerably exceed the original intent of the ePrivacy Directive. The newly-proposed, expansive definition would capture Internet protocols¹ that are essential to the delivery of several critical digital advertising use cases, none of which entails the tracking of users' activity. These use cases are:

- **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 selection of ads to resonate with users, taking into account factors such as their country location or language, based on IP addresses. Such a selection 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. However, subjecting non-targeted advertising to the same obligations as targeted advertising may deter businesses from investing resources in this less lucrative form of advertising.
- **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.

¹ TCP/IP

- Ensuring security and preventing 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.

By extending the scope of Article 5(3) to include the use of these Internet protocols without providing any guidance as to whether their use may qualify for exemption from the consent requirement, the draft guidelines create a broad scope for divergent interpretations by national regulators, undercutting the adduced objective of increased harmonisation. The impact of the draft guidelines is not limited to digital advertising. They will significantly affect users' experience online and exacerbate consent fatigue, particularly in the absence of any guidance relating to the two exemptions provided by the ePrivacy directive.

We would welcome the opportunity to discuss our contribution to the public consultation with your team and remain at your service for further input and support. We strongly believe that better decisions can be achieved through increased collaboration between the digital advertising industry and the EDPB.

Yours sincerely,

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 nations 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.