



Mr Andrus Ansip

Vice-President of the European Commission
European Commission
200 Rue de la Loi
B-1049 Brussels

Mr Günther H. Oettinger

Commissioner for the Digital Economy & Society
European Commission
200 Rue de la Loi
B-1049 Brussels

22 December 2016

Dear Vice-President Andrus Ansip,
Dear Commissioner Günther Oettinger,

The undersigned associations represent publishers (EMMA, ENPA, EPC, NME), the digital advertising industry (IAB Europe), direct marketers (FEDMA), advertisers (WFA) and advertising agencies (EACA). We write to express our serious concerns about the direction the review of the ePrivacy Directive seems to be taking, based on a draft proposal for an ePrivacy Regulation that has been leaked in early December. We realise that the text is still evolving but fear that a proposal on the lines of the leaked draft would forever change the internet as we know it for the worse by undermining the advertising business model upon which millions of people in Europe depend for access to content and services free at the point of access online, whether as individual citizens or small businesses. Yet, ironically such an approach would fail to meet the stated objectives of the legislation to provide Europeans with the confidence and trust they deserve because the strict requirements on processing data would instead create endless and unnecessary demands on their time, attention and patience when using every-day essential services. European companies will suffer competitive disadvantage by comparison to other markets and ultimately damage the potential of Europe's data-driven economy.

The General Data Protection Regulation (GDPR) adequately addresses the vast majority of the issues the ePrivacy regime seeks to cover. In fact, a new law, along the lines of the leaked draft ePrivacy Regulation, would undermine the GDPR and much of the intended value attributed to that as-yet-to-be-implemented instrument. We see insufficient evidence in the Commission's draft explanatory memorandum that an ePrivacy Regulation adopted under Article 114 TFEU would meet the requirements of subsidiarity and proportionality particularly as the GDPR is in the process of being implemented. We appreciate that consumer groups have called for clarity around the way in which data is collected and processed but this matter has been met fully in the GDPR. .

We are surprised at what can only be described as a misrepresentation of industry's views in the draft's explanatory memorandum, which neglects to mention that many industry organisations, including ours, repeatedly called for a simple repeal of the ePrivacy Directive as the first, best option, at both the April workshop and the October roundtable with Commissioner Oettinger.¹

In a letter dated 23 November 2016, some of us brought to your attention the critical role that revenue from data-enabled advertising plays in the financing of online media.² We explained that it provides an indispensable revenue stream without which European media would be hard-pressed to manage the challenging transition to the online environment with obvious negative implications for media plurality over the medium- to long term, and, ultimately, for an informed citizenry — the basis of any functioning democracy. Unfortunately, requirements in the leaked draft would indeed seriously reduce the online media's ability to build much needed advertising revenues, and hamper their relations with third parties which serve to provide insights to improve digital business models. We are especially concerned with the proposals on browser settings, third party cookies and privacy by design.

We believe the ePrivacy Regulation should be technology neutral allowing companies to choose the best and most appropriate technology for their individual needs, all in accordance with the GDPR.

Lastly, we are disheartened that the promised "streamlining" of the so-called cookie rules appears to boil down to introducing only one new, extremely narrow, exemption for first party analytics to the existing prohibitive rules on the use of cookies. Furthermore, by limiting the available legal grounds for using cookies to just one – consent – the proposal would also have the pernicious effect of favouring certain business models over others. Particularly key third party

¹ See Joint Statement Empowering trust and innovation by repealing the e-Privacy Directive, signed by inter alia ETNO, ECTA and GSMA, available at <https://ec.europa.eu/eusurvey/files/ccf27ee2-83d8-4ac7-aa7f-a376e16e5138>

² See IAB Europe Press Release, European publishers urge European Commission to recognise importance of digital advertising in review of the ePrivacy Directive, available at <http://www.iabeurope.eu/all-news/press-releases/european-publishers-urge-european-commission-to-recognise-importance-of-digital-advertising-in-review-of-the-eprivacy-directive/>

data-driven business service providers would be disadvantaged as they are not in a position to obtain consent.

We urge the Commission to take a critical look at its draft proposal for an ePrivacy Regulation, taking into due consideration the constructive warnings and feedback industry have provided during the past year. In particular we ask you to refrain from introducing additional rules on cookies, consent and privacy by design until the GDPR has been applied in practice.

Yours sincerely,

European Association of Communications Agencies (EACA)
European Magazine Media Association (EMMA)
European Newspaper Publishers' Association (ENPA)
European Publishers Council (EPC)
Federation of European Direct and Interactive Marketing Associations (FEDMA)
Interactive Advertising Bureau Europe (IAB Europe)
News Media Europe (NME)
World Federation of Advertisers (WFA)

Cc:

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Ms Věra Jourová
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Ms Margrethe Vestager
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