Factsheet: New EU ePrivacy Regulation

Q. What is the ePrivacy Regulation?

A. The European Commission (EC) published a [proposal](#) for a new ePrivacy law on 10 January 2017. The EC aims to update the existing ePrivacy Directive (aka 'cookie law') to align it with the recent overhaul of EU data protection law – the General Data Protection Regulation (GDPR) (see below), improve it in light of technological developments (i.e. the advent of the 'Internet of Things') and to address the fragmentation of the existing Directive (i.e. different laws in different countries). The proposal is what is known as a 'Regulation' and it will apply directly across EU markets when it comes into force.

Q. Is this a new 'cookie law'?

A. Yes, and it will repeal the existing ePrivacy Directive (as implemented in the UK as the [Privacy and Electronic Communications Regulations 2011](#)). But – to be very clear – this proposal is not just about cookies as it covers all technologies used in the processing of data, whether personal or not. Also – at this stage – this is a proposal and one that has to go through the Brussels legislative process. However, in a nutshell, there will be a new ePrivacy law that the digital advertising industry will need to comply with, in addition to adhering to the new GDPR (see below).

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Q. But isn't there a new EU data protection law coming into force soon? Why is a new ePrivacy law needed?

A. In May 2018 a new EU General Data Protection Regulation (GDPR) will apply across the European Union governing the way personal data is used and safeguarded, including in digital advertising – see the IAB's specific [briefing](#) for member businesses on the GDPR. The IAB has argued that there is no need for further regulation as the new GDPR already regulates the use of personal data in digital advertising. However, the EC believes there is a need for sector-specific rules for electronic communications to safeguard the privacy of users. This is based upon its [survey](#) of over 25,000 people across Europe carried out in July 2016.

Q. How is the ePrivacy proposal different to the GDPR?

A. The proposed ePrivacy Regulation applies to all electronic communications data – whether personal or not – and introduces a more stringent consent standard for digital advertising. It would introduce a 'prior consent' or 'opt in' approach. There are some exemptions to the need for consent where it is "necessary" to process and store information for the transmission of a communication over a network or for services that, in the EC's

view, pose little or no privacy intrusion to users. Examples providing a service that has been requested by the user and 'first party' web audience measuring.

The ePrivacy proposal has the same territorial scope as the GDPR: in other words, it applies to the provision of electronic communication services in the EU, regardless of the organisation's location. The proposal also significantly increases the level of fines for non-compliance or breaches and more in line with those under the GDPR (€10m or 2% of global annual turnover).

Q. I've read that the new law may mean the end of the 'publisher site notice' approach to consent? Is this correct?

A. The new Regulation proposes to move towards obtaining consent through browser settings (such as 'Do Not Track' or DNT). The proposal suggests users will be prompted to choose their privacy settings on the installation of a web browser, and that browsers should ensure users can easily revisit their options to maintain their preferences. It is unclear how this will work in practice if such a proposal becomes law.

The background to this is that the EC believe that notices put up by publishers disrupt the user's internet experience. The EC also believes cost-savings will be realised by moving to this new approach (i.e. publishers will no longer need site notices). However, publishers (websites and apps) would still be able to ask users to reconsider their choice, which would likely result in an increase in intrusive user notices.

Q. What does this all mean for digital advertising?

A. It is too early to assess the impact of the proposal at this stage. Depending on the outcome of the legislative process (see below), it could potentially make digital advertising less effective and efficient, deprive publishers with important advertising revenue to help fund their content and services, and disrupt or challenge the very existence of many digital advertising models. You can read IAB UK's reaction to the proposal here.

Q. When will it come into force?

A. The EC's originally aimed for the new law to come into force at the same time as the GDPR (25 May 2018). However, the EU's legislative process means that the two legislative bodies – the European Parliament (EP) and the Council of Ministers – have to scrutinise the proposal first before a final law can be agreed. At this point, only the EP have done so, suggesting changes to the proposal that – to many – would have the potential to damage the digital advertising industry even more than the EC's original proposal. The Council of Ministers – made up of representatives from EU Member States – have yet to consider the proposal in earnest.

Q. How will Brexit affect this?

A. It is unlikely to and, because of the territorial scope of the proposal, digital advertising business are likely to have to comply regardless of whether they are located in the EU or not. However, Brexit may impact the UK Information Commissioner's Office's (ICO) role in enforcing it but this will depend on the UK's future relationship with the EU.

Q. I'm preparing for the GDPR to apply from May 2018. How can I prepare for this?

A. It is difficult for an organisation to specifically prepare for a new ePrivacy Regulation until we known what the final law looks like. To this extent, organisations should continue to prepare for the GDPR applying from 25 May 2018. The IAB will update this factsheet on a regular basis.

For further information contact out Policy Team on policy@iabuk.com

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