



What an agency needs to know

Background

The European Association of Communications Agencies (EACA) represents agency interests on a daily basis in discussions with the industry (brands, media, ad tech). We also influence all relevant regulation at the EU level so that agencies' right to conduct business freely and responsibly is ensured.

Challenges for the ad industry are immense, ranging from alcohol advertising to digital fraud issues, data protection regulation etc. That is why we decided to develop this publication which will only list the current key topics an agency needs to be aware of in order to understand the ad landscape better. The goal is for you to be better prepared for changes by spotting them early.

Consumers to be in control of their privacy

The ePrivacy Directive, which stipulates rules on when and how you can store or access information on a user's equipment is now being replaced by a revised Regulation. The new proposal came out in January and these are the main points:

- 1. All data collection may be impossible without user consent** – No, not even a cookie banner or self-regulation may work. Users will have to consent and be given a lot of information (who, how, why and what the consequences of data processing are).
- 2. Browsers to be gate-keepers**– All browsers or apps will ask users, upon installation, to consent to or reject 3rd party tracking.
- 3. Covering almost everything**– The proposal covers the Internet of Things, WhatsApp, Facebook messenger and much more.

- 4. Direct marketing** is defined terribly broadly to encompass 'any advertising directed to an identified or identifiable person'. And a consumer will have to give a consent to this as well. So if you want to send an ad on SnapChat, for example, the user would have to agree first.

What next? This discussion is far from over. EACA has developed a clear position calling on the legislator not to burden consumers by imposing consent-based data processing, not to make browsers gate-keepers of the Internet and to allow a development of different privacy tools, including self-regulatory ones.

Audiovisual regulation

Food and alcohol advertising – The negotiations are still ongoing, but it seems that the industry has prevented a watershed ban of alcohol advertising and commercial communications covering foods with high level of fat, sugar and salt, in the latest position of the European Parliament. However, the industry still has not dodged the bullet. The negotiations will continue at the Council level, where some issues may be re-discussed.

Children's programmes – During negotiations, there was a tendency to extend the industry's obligations under self-regulation to limit exposure of children to alcohol or food advertising during programmes with a significant children's audience (almost any programme such as X Factor, sports events etc.) This has now been revised back to 'children's programmes'.



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Self-regulation under threat – Many members of the European Parliament do not believe that self-regulation is effective, which is why they aim to give enforcement of codes of conduct to national governments.

YouTube, Vimeo under the spotlight – Product placement, sponsorship etc. might have to be clearly labelled as such even in user-generated videos, which will place more pressure on Alphabet and others to police the content better.

Will tech platforms be held responsible for their unfair behavior?

Google, Facebook and other platforms are under scrutiny by the Commission for their often unfair trading behaviour towards their suppliers. EACA is currently working on this with media agency networks. Issues at stake are the following:

Data access restrictions

Many businesses, including agencies, cannot access performance data (such as media measurement) which represents a problem for their business development and innovation abilities.

Transparency of algorithms

How content coding works, and whether algorithms can be set in a way to benefit their creators, were also among the main points discussed during Commission-sponsored working groups.

General Data Protection Regulation

The General Data Protection Regulation will change the way data is being processed and kept. It will enter into force in May 2018. However, a couple of provisions are very vague and before they can be properly applied, they will need to be clarified and properly interpreted. The Data Protection Authority organised a workshop where how profiling will be regulated was discussed .

Which profiling may be done only with a consumer consent?

The Regulation stipulates that profiling which results in a decision which causes a significant legal or similar effect on an individual will be possible only if the individual gives their explicit consent. The issue is: does advertising cause a legal effect on people? It was concluded that advertising which is discriminatory or political may produce a significant effect on individuals.

What information is to be provided to individuals?

The Regulation also says that when profiling occurs, a company needs to disclose the logic involved and potential consequences for the individual. The conclusion was that the intention was to provide individuals with enough information to allow them to contest decisions made in relation to them.

The Guidance based on the workshop will be released by the end of the year.