



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.

Will online behavioural advertising be possible?

The European Parliament has been given a mandate to start negotiations regarding the new ePrivacy Regulation with the Commission and the Council of the EU. The Parliament's position is alarming for the industry as you can see in the following envisaged changes:

- 1. Browsers to be gatekeepers** – All browsers would be set to 'privacy by default' from the start and they would reject all third party tracking.
- 2. Media funding suffers** – Consumers would be given access to all content of internet service providers without having to accept third party tracking.
- 3. All data collection may be impossible without user consent** – Users would have to give specific consent.

- 4. Direct marketing** remains broadly defined to encompass 'any advertising directed to an identified or identifiable person'. And a consumer would 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? Now that the Parliament and the Commission have agreed on their respective positions, EU Member States have to agree on theirs. Following that, the three parties will enter negotiations to finalise the text, not before the second half of 2018.

GDPR rules on profiling

The General Data Protection Regulation (GDPR) will enter into force in May 2018 and will also impact agencies regarding their use of consumer data. Additional implementation guidance is provided by the Article 29 Working Party (A29 WP), which represents all European data protection authorities.

The A29 WP recently adopted guidelines on profiling and automated decision making. To the former, the general rules of the GDPR apply. To the latter, the specific rules of Article 22 apply. This effectively means that automated decision-making data processing, which produces a decision which legally or significantly affects individuals is forbidden unless individuals explicitly consent to it. For example, it could be forbidden to have online advertising which, for example, results in differential pricing or showing a gambling ad to a person with a gambling problem.

What next? EACA is planning to submit comments on the A29 WP guidelines on profiling together with other associations representing the advertising industry in Brussels and to follow developments in this field.

Rules on transparency

The A29 WP will also publish guidelines on the implementation of transparency rules in the GDPR by the end of this year/beginning of the next one. Before their release, the WP called on all stakeholders to share their views. EACA did just that and here is a quick summary.

- The guidelines need to be technologically neutral and take into consideration future tech developments by providing principle-based solutions.
- User interface is limited, therefore agencies and other companies should be free to decide how they are going to present information to individuals while ensuring compliance.
- The goal is to have an informed individual who will be able to understand how to exercise their rights, not just to serve a bundle of privacy notices.

Will tech platforms be held responsible for their unfair behavior?

The European Commission will **take action to address unfair contractual clauses and trading practices identified in relationships of online platforms and their suppliers** (such as agencies). These actions will be announced by the end of the year and will be a mix of regulatory instruments and softer tools such as co-regulation.

Until now, EACA presented agency concerns around 2 areas:

- Data access restrictions: agencies are unable to independently verify audiences sold by major online platforms
- Unfair terms and conditions containing unbalanced provisions on data access, payment terms etc.

