



IAB TCF and CMP System Infringes the GDPR

On February 2, 2022 the Belgium Data Protection Authorities, published its [decision](#) that the online advertising industry's trade body "**IAB Europe**" commits multiple violations of the GDPR in its processing of personal data in the context of its "**Transparency and Consent Framework**" ("**TCF**") and the real time bidding system "**OpenRTB**".

The IAB TCF and OpenRTB system is the number one industry solution for conveying consent data in the programmatic auction, the DPA concluded this solution is illegal in its current form and gave the IAB 6 months to fix the illegality. Nonetheless, this decision is not a surprise, it was made clear in 2018 under the CNIL's decision against Vectaury DSP that the IAB Consent Management Platform ("**CMP**") is not compliant with the GDPR requirements. Further, the IAB notified the members that it is expecting the DPA to rule against

The DPA found **IAB Europe acts as a data controller** and can be held responsible for potential GDPR violations, such as:

Failure to Comply with Article 5.1 and 6 of the GDPR:

Article 5(1)(a) states that Personal Data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject, Article 6 requires the controller to establish a lawful basis for such processing. The DPA concluded that the IAB did not establish a lawful basis for processing the **consent string** associated with an identifier and that legitimate interest cannot be established as the individual does not have an expectation to such processing. Further it was concluded that the TCF cannot establish a valid consent under the GDPR.

Failure to Comply with Articles 12, 13, and 14 GDPR:

Article 12, 13 and 14 requires transparency and disclosure on data processing practices, users of a website or an application participating in the TCF are not given sufficient information about the categories of personal data collected about them, nor are they able to determine in advance the scope and consequences of the processing. The information given to users is too general to reflect the specific processing of each vendor, which also prevents the granularity — and therefore the validity — of the consent received for the processing carried out using the OpenRTB protocol. Data subjects are unable to determine the scope and consequences of the processing in



advance, and therefore do not have sufficient control over the processing of their data to avoid being surprised later by further processing of their personal data.

Failure to Comply with Articles Article 5(1)f, and 32 GDPR:

The IAB fails to ensure personal data are kept secure and confidential, as under the current TCF system, ad-tech vendors receive a consent signal without any technical or organisational measure to ensure that this consent signal is valid or that a vendor has actually received it (rather than generated it).

Further, the IAB Fails to implement measures to ensure that data processing is performed in accordance with the GDPR (Article 24 GDPR) and fails to respect the requirement for “data protection by design” (Article 25 GDPR).

It also found that IAB Europe had failed to honour its data protection obligations to maintain records of data processing (Article 30 GDPR), to conduct a data protection impact assessment (DPIA) (Article 35 GDPR), and appoint a Data Protection Officer (Article 37 GDPR).

EU data protection authorities ordered IAB Europe to permanently delete personal data already processed in the TCF system from all its IT systems, files and data carriers, and from the IT systems, files and data carriers of processors contracted by IAB Europe, and imposed an administrative fine of 250.000 EUR on IAB Europe. In addition, the authorities ordered to undertake a series of corrective measures aimed to bringing the current version of the TCF into compliance with the GDPR.

These measures include (among others):

- the establishment of a valid legal basis for the processing and dissemination of users' preferences within the context of the TCF, as well as the prohibition of the use of legitimate interest as a basis for the processing of personal data by organisations participating in the TCF;
- the strict vetting of participating organisations in order to ensure that they meet the requirements of the GDPR.

This Decision by the EU data protection authorities may have major implications on the ad tech industry and operations. We will keep update on additional news and developments

APM Privacy and Cyber Team