

## **European Commission General Data Protection Regulation: IAB Ireland Position Paper**

**30 March 2012**

### **1. Introduction:**

The European Commission (EC) has published new plans to reform data protection rules across Europe. Its overall aim is to update the existing law in light of technological development and the significant increase in the exchange of data over the years. It also wants to make these rules consistent across all EU markets aiming to make it simpler and less burdensome to do business across the region. The full text of the Regulation is available at: [http://ec.europa.eu/justice/data-protection/index\\_en.htm](http://ec.europa.eu/justice/data-protection/index_en.htm)

This position paper sets out IAB Ireland's views and primary concerns on the draft Regulation, the potential implications to digital advertising and businesses, as well as key recommendations for the Irish Government to assist with its developing negotiating position in Europe.

### **2. The Evolving Digital Landscape:**

Today's internet is significantly different to that of 1995 and this is to the massive benefit of citizens across the European Union.

Advertising plays a significant role in the development of the internet. It is the lifeblood of the digital economy in Ireland, EU and globally. As in traditional media, it is the business model for making (non-publicly funded) content widely available to Irish citizens for little or no cost. It pays for much of the content and many of the services online: from search, webmail, social networking websites and price comparison sites, to productivity suites, blogs, video/photo sharing and the majority of news, information and video / entertainment sites.

Data is the fuel for its continued growth. Data-driven models allow advertising to be tailored to Irish citizens. The greater efficiency of these models has reduced the barriers to market entry for businesses of all sizes, allowing the richest mixture of content and services to be made widely available to the public. The IAB acknowledges that the development of the internet (including via mobile and other connected devices) - including the significant increase in the exchange and use of data - means that there is a need to review and update data protection rules across Europe. We welcome the opportunity to streamline these rules – via a Regulation - to reduce the burdens on businesses operating across markets.

### **3. Innovative Advertising Self-Regulation:**

The IAB believes that innovation is the way to address consumer concerns and safeguard data and overall privacy. In doing so we believe a balance can be met whilst maximising the significant benefits the responsible data use brings to EU citizens.

Whilst still in its developing stages in Europe, the advertising industry is introducing an 'icon' in ads on websites linked to transparent information about data collection and use for customised advertising based upon previous web browsing activity, and empowering mechanisms of control. This initiative has a proven track record – with strong political support – already in the US. The IAB believes the development of this self-regulatory programme across Europe, in consultation with the European Commission itself as well as other consumer and civic society groups, can only evolve without an overly prescriptive data protection regime which would only act as a disincentive to such an approach.

#### 4. Primary Concerns:

Whilst the IAB recognises the need to update data protection rules, we believe EU citizens, businesses and the public sector stand to generate significant benefits from the responsible use of online data, including for customised advertising to make it more relevant to consumers. However, we believe the proposals go too far and are unclear in a number of different areas. This may have damaging consequences for data-led advertising models, as well as the businesses that these support. It may also impact growth and innovation, as well as the innovative self-regulatory approach as outlined in 3.

- I. **The IAB believes the scope of personal data (as well as the definition of 'data subject') has been broadened too widely and places a disproportionate burden on businesses providing services that are beneficial to citizens, such as customised advertising and the businesses it supports (Article 4).** We believe that some of the legal concepts that seek to regulate the processing of personal data are out of step with today's commercial practices. For example: the Regulation makes no distinction between the use of data to personally and directly identify an individual (eg a name and full postal address) and the use of data that may be unique to a device but does not directly identify an individual (eg the collection of web behaviour linked to a 'cookie', not a real identity). We believe that an overly broad definition of personal data would expand the framework in such a way that it would become unworkable and impossible for businesses to comply with. Our view is that it would be better to restrict the scope of personal data based on the likelihood of identification of an individual. A broader definition of personal data will also have an impact on other provisions in the Regulation such as the right to subject access, the right to erasure and data portability, which will place a disproportionate burden on business. This is an issue highlighted by the UK Information Commissioner's Office (ICO) as well<sup>1</sup>.

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<sup>1</sup> ICO – Initial Analysis of the EC's proposals for a revised Data Protective Legislative Framework: 27 February 2012 [http://www.ico.gov.uk/news/current\\_topics.aspx](http://www.ico.gov.uk/news/current_topics.aspx)

- II. **The IAB believes the language of Article 20 on profiling potentially (and unhelpfully) includes some forms of behavioural advertising.** We believe this needs clarification as it is clear that other aspects of the Article refer to discrimination (such as on price) as a result of profiling as well as the use of sensitive information. We believe the boundaries should be clearer so that businesses can continue with activities that serve ‘legitimate interests’.
- III. **The requirement to obtain explicit consent for processing personal data overlooks a contextual and consumer-friendly approach.** We believe explicit consent is difficult to implement in practice in a digital environment and may place a significant burden on businesses and a cumbersome online experience for users. We support the principle of 21<sup>st</sup> century consent: one that is consumer-friendly and contextual. The IAB believes that such affirmative action may introduce a ‘tick box’ consent culture to the internet making it futile for consumers to even participate. An increasing focus on explicit consent could also jeopardise innovation.

## 5. The Potential Implications:

**The IAB believes the above issues – as drafted - may have a significant impact on the growth of digital advertising as well as the Ireland’s ability to move centre stage as a leading digital economy.**

In particular, the IAB believes extended scope of personal data and the lack of clarity around profiling may impact the following:

**Commerce & Business** – the businesses that advertising supports, such as retail (ecommerce currently estimated to be worth approx 3% of Ireland’s GDP ), in particular small businesses.

It is interesting to note that Minister Rabbitte has recently advised that Ireland’s digital plan would “put in place a blueprint for digital adoption in Ireland to support existing and new businesses and unlock creative potential. It is about sustaining existing jobs and creating new ones”.<sup>2</sup>

If Ireland’s digital plan is to deliver on these objectives it is imperative that the forthcoming regulation does not restrict Ireland’s ability to develop its digital economy.

**A. Publishing** – the businesses that increasingly depend on advertising revenues in a digital environment, such as magazines and newspapers.

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<sup>2</sup> Pat Rabbitte, TD, speaking at the Digital Ireland Forum at the Convention Centre, Dublin March 2012

- B. **Growth & Innovation** – the impact upon technological innovation and developing publisher and advertising business models. In particular innovative new businesses, such as in the music industry.
- C. **Economics** – the impact upon the digital advertising sector in Ireland. The proposals as drafted may potentially cost Ireland €32m in lost advertising revenue (source: IAB Ireland).
- D. **Advertising Self-regulation** – the significant investment businesses are making in delivering innovative self-regulation to enhance transparency and consumer control (via the icon in ads programme across Europe). See 3.
- E. **Political** – the impact upon Ireland’s status as a leading digital economy, with advertising and publishing at its heart.

6. Recommendations for the Irish Government:

- i. **The IAB calls for the Irish Government to advocate an approach where the benefits of the responsible use of data for businesses and citizens are balanced against individual privacy rights. As drafted, the Regulation may not achieve this and it may be detrimental to the digital advertising sector and broader Irish digital economy.**
- ii. **The IAB advocates a more granular approach to personal data similar to the formulation adopted in the Information Commissioner Office’s code of practice on Personal Information Online. We believe a new category of data - ‘indirectly identifiable information’ – should be created that requires and offers consumers greater transparency and control. In doing so, it would avoid placing a disproportionate burden on businesses where other requirements in the Regulation are concerned, such as the right to data subject access, the right to erasure and data portability.**
- iii. **The IAB urges greater clarification on the right not to be subjected to profiling. As currently drafted we believe Article 20 seeks to tackle issues such as pricediscrimination and sensitive information rather than businesses providing services, such as some forms of behavioural advertising, that serve as ‘legitimate interests’.**
- iv. **The IAB believes the requirement to obtain explicit consent should be reconsidered. It is over burdensome on businesses and cumbersome for internet users. Instead consideration should be given to a contextual approach which is more appropriate and user-friendly in a digital environment.**

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