

Position Paper – November 2012

egta position on the European Commission's proposal for a General Data Protection Regulation

egta is the trade association of television and radio sales houses that commercialise the advertising space of both private and public TV/radio channels all over Europe.

- 87 TV members and 34 Radio members
- 28 European countries including 23 EU Member States
- More than 75% of the European TV advertising market and 50% of radio advertising market in countries represented by the egta members

egta and its members welcome the opportunity to revise and improve the EU's general data protection framework. This position paper sets out the views and primary concerns about the proposal for a *General Data Protection Regulation*.

Why does data protection matter for sales houses? As sales houses commercialise the advertising space for TV and radio channels, new technologies affecting advertising are of utmost concern. Advertising in its new forms plays a significant role in the development of the internet and comparable to traditional media; it is the business model for making (non-publicly funded) content widely available to EU citizens for little or no cost. In order to maintain this growth, processing data is vital to allow advertising to be tailored towards the consumer.

Developments in the field of media and advertising (connected devices, Connected TV, online social networks etc) including significant increases in the exchange and use of data - mean that there is a need to review and update data protection rules across Europe. Therefore egta welcomes the chance to streamline these rules, reducing the burdens on businesses and allowing broadcasters to collect and process personal data, thus permitting them to provide their services on new platforms and devices.

egta appreciates and recognises the need to update the current rules on data protection as both citizens and businesses will benefit from the responsible use of online data, especially for online behavioural advertising (OBA). However while the proposal from the commission clarifies certain aspects of the current Data Protection Directive, it goes too far and is unclear in some areas. Importantly the draft text changes several definitions already contained in existing EU law, such as the e-privacy directive, which is currently being implemented into national law. The proposed text could overrule national interpretations of definitions, for example by adding "explicit" to the idea of consent. The amount of rules has increased significantly since the data protection directive and will certainly complicate the day to day business of sales houses that use personal data for commercial purposes, such as OBA for example.

For sales houses, the main concerns from a marketing perspective that will have an adverse impact on the industry are the definition of personal data, the notion of consent and the age of a child.

Personal data (article 4 (2)): In the Commission's proposal, 'Personal data' means '*any information relating to a data subject*'. egta believes this definition is too wide-ranging and does not differentiate between sensitive, personally identifiable and anonymous data and therefore places a disproportionate burden on businesses that wish to use this data and provide services such as OBA. For instance, the proposed Regulation does not distinguish between the use of data to directly identify an individual and the use of data that is unique to a device such as an IP address but does not directly identify an individual.

Therefore egta recommends making a distinction between three types of data: non-personally identifiable data; personal data (allowing identification of a specific individual); and sensitive data.

Consent (article 4.8 and 7). The issue of consent is an important one for sales houses that use personal data for targeted advertising. egta believes that the requirement to obtain explicit consent for processing personal data overlooks a contextual and consumer-friendly approach. The practice is both difficult to implement and creates a burden on the business while creating a cumbersome online experience for users. As with 'personal data', the proposal does not make the difference between categories, for example 'cookies' and the risk is that we might end up creating explicit consent fatigue (through consumers having to tick boxes on every site).

The draft Regulation indicates in **Article 19** and **Recital 57** that "where personal data are processed for **direct marketing purposes**, the data subject shall have **the right to object** free of charge the processing of their personal data for such marketing. This right shall be explicitly offered to the data subject..." In that sense, this provision clearly favours an opt-out approach (as opposed to an opt-in solution based on prior user consent). These provisions are certainly relevant for those broadcasters that undertake online advertising by either collecting data on users' web-viewing behaviour on their own websites or selling part of their online inventory to one or more advertising networks and handing over the process to them.

In the realm of consent, the issue of parental consent (article 8) raises many concerns about children, privacy and targeted advertising. According to the draft proposal, collection and processing of personal data of a child below the age of 13 years by providers of information services directed to children shall only be lawful if consent is given or authorised by the child's parent or custodian.

egta welcomes this suggestion as it gives parents more control over their children's personal data while still letting the industry offer entertainment, information and social networking opportunities to that age group. It should be noted that in self-regulatory initiatives such as the European Advertising Standards Alliance Best Practice Recommendation (BPR) on Online Behavioural Advertising, the age that companies agree not to create segments for OBA purposes that are specifically designed to target children is people age 12 and under.

Definition of a child (article 4 (18)): According to the Commission proposal, a 'child' is defined as any person below the age of 18 years. In defining a child as aged 18 and under, the draft regulation does not differentiate between the differing abilities and understanding of older teenage viewers, as opposed to younger children. There is no other definition of a 'child' in EU law, and blanket provisions applying to an age group spanning from 6 year old children to 17 year old teenagers are likely to be ineffective. egta

recognises that while the intention as highlighted in recital 29, is to provide ‘specific protection of the personal data of children’, there needs to be a balance between the protection of processing/using children’s data and not preventing the media from engaging with young audiences, particularly regarding public service content and services which are specially designed for young children.

- ***Agree with the proposed requirement for parental consent in relation to children aged 12 and under, but recommend that detailed provisions for obtaining parental consent be established through standards developed in agreement with economic operators, rather than delegated or implementing acts, as currently proposed.***
- ***Suggest that, should they be deemed necessary, other specific provisions on children be defined on a case-by-case basis, not relying on a one-size-fits-all definition of children.***

Recognition of self-regulation in this field: egta would like to highlight that alternatives to legislation, such as co-regulation and self-regulation, should be considered to help achieve the objectives of some of the provisions of the draft Regulation. As an example, the recently launched European Interactive Digital Advertising Alliance (EDAA), of which egta is a board member, is a NGO set up by the European advertising industry to provide transparency, choice and control to consumers when it comes to online privacy.

This body has two primary roles:

- the EDAA will ensure that companies who wish to practice OBA within Europe can apply for an annual ‘OBA licence’ which would provide them with the use of an OBA ‘icon’ (a registered trademark) to be displayed on online ads;
- the EDAA will primarily be responsible for licensing the icon and, in due course, deciding on the selection, accreditation and oversight of the compliance monitoring bodies.

egta is also a signatory of the European Advertising Standards Alliance Best Practice Recommendation (BPR) on Online Behavioural Advertising which expresses that Third Parties should not create segments that are specifically designed to target children using Online Behavioural Advertising. The BPR does not restrict the collection of OBA data for the purpose of marketing children’s products to parents and other adults.

Based on these actions, egta calls on the Commission to encourage stakeholders to implement certain provisions by means of self-regulation, and give a clear authorization to economic operators to develop effective, enforceable standards in consultation with the European Commission.

In conclusion, egta recommends:

- Making a distinction between three types of data: non-personally identifiable data; personal data (allowing identification of a specific individual); and sensitive data.
- Having a consumer-friendly and opt-out approach for consent regarding the placement of cookies. There should be a consistent approach to this in regulatory instruments.
- That detailed provisions for obtaining parental consent be established through standards developed in agreement with economic operators.
- Due recognition of the effectiveness of self-regulation in the field of data protection and calls on the Commission to encourage stakeholders to implement certain provisions by means of self-regulation.