

Lucid folks -

The ICO Adtech forum on 3/6 was quite an event. Advocates and the ICO itself took the majority of the airtime, but I'm not certain this was the ICO's fault. In fact, outreach from the ICO to industry members behind the scenes would indicate that they were concerned about a lack of industry representation, and a bit uncomfortable about the impression this would leave. The moderator also challenged industry, stating 'the lack of an industry response does not speak well for the industry, and undermines confidence that the industry has a responsible story to tell' (paraphrase).

Several members of coalitions that have submitted complaints to regulators against the adtech community had presentation time in front of the group, including Johnny Ryan of Brave and Ailidh Callander of Privacy International. There was a robust back and forth between these folks and Google and Matthias Matthiesen of the IAB EU, who was the only advocate of the adtech community on the formal agenda.

The ICO itself kept their views rather close to the vest, though they did mention that consent under GDPR should be 'opt-in,' further icing folks hoping to maintain an implied consent model.

The accusations of the advocates can be broadly organized into two buckets:

1. **The RTB industry is casually trafficking in sensitive data segments.** I generally chalk this up to misinformation and convenient extrapolation from what COULD be placed within RTB based on IAB RTB specs.
2. **The RTB system makes transparency of data processing virtually impossible to consumers and publishers and generally sends personal data to an infinite number of parties without any accountability.** While the characterization here is a bit histrionic, I view this to be a more credible concern and one that I think we'll need to address to avoid unwanted regulatory attention.

Towards the end of the day, Simon MacDougall was personally recruiting industry participants to articulate a defense of sorts, and I was called up for a 15 minute monologue. The follow-up was very positive, and I'll be meeting with Simon directly as a follow-up. The Irish DPC was also in attendance, and I'll be meeting with the full technology practice group in Dublin next week.

Full notes on the day follows ...

NOTE: the event was conducted under 'Chatham House Rules.'

*The Chatham House Rule reads as follows: When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.*

**In other words, please do not use individual or company based attribution for any of the comments below in a public forum.**

**ICO AdTech fact-finding forum  
Wednesday 6 March 2019**

9.30 – 10.00 Arrival and coffee

## 10.00 – 10.15 **Welcome & introduction to transparency session**

Opening comments:

- Focussing on existing rules (Pecr, ePrivacy D, GDPR)... not looking forward at all (unsaid: ePR)
- Not focusing on attribution issues
- Transparency is perhaps the most important element of GDPR
- There is tension between the complexity of RTB and transparency obligations
  - 'RTB is clever ... mind blogging ... but if it is mind boggling to us, how mind boggling is it to consumers?'
  - ICO consumer research
    - Most consumers are fine with basic ad/content trade-off (65%)
    - But approval drops off rapidly when a basic explanation of RTB is provided (37%)
- Security of the RTB ecosystem ... no one will come up and vouch for the security of the industry. Doesn't speak well for the industry.
- How can you explain RTB in a simple manner to consumers?
- Let's have a kindly discussion

Moderator

## 10.15 – 10.45 **Views on transparency**

'I'm here not to break things ... but to encourage us to solve a significant problem that should never have happened'

- 'Once the bid request is gone, it's gone ... it's off without a chaperone'
- Name dropping
  - 'Cambridge Analytica is a DMP'
  - Vectuary: 'privacy is built into our DNA' ... really?
  - Your data on an RTB journey ... 'imagine this is your mother or your child'
- A sample bid request
  - IP, device ID, lat/long, demographics
  - 'This is madness!'
- TCF feedback
  - 'You may choose to not pass bid requests containing personal data to other vendors that do not have consent' — a central point of concern
  - 'thousands of vendors in a transaction AFTER the framework!'
  - 'This is a 'trust everyone' solution ... it should be a 'trust no one' solution'
- Suggestions:
  - **Remove the portion of the attributes in RTB that are personal data**
  - 4% of the data in RTB

Comment:

- We've taken the bull by the horns ... GDPR has been transformative for adtech
- Technical impossibility is not the standard for compliance ... cars can exceed the speed limit
- The cookie notices of the past are no longer good enough
- Summary of the progress TCF has made to date and key elements of 2.0 spec

#### 10.45 – 12.15 Moderated open floor discussion

- Publishers are supportive of the TCF .. helpful to help them manage complex compliance/control and disclosure objectives
- Recognition and distribution of the icon

#### Open discussion:

- Feedback from publishers
  - Legal folks:
    - This has been very difficult .. understanding the adtech on our sites ... lack of insight into what is happening to our data once in the hands of these 3rd parties is alarming
    - Contractual management has been good wrt to smaller 3rd party companies, but the larger players are not responsive to publisher terms
  - Commercial feedback
    - 'We are substantially worse off ... targeted advertising works and we get less revenue with GDPR'
    - Publishers are not in a great position to declare what all these companies will do with data
    - We see about 2% of folks opting out when we ask for consent
      - Unsaid: this is a massive level of disruption for something few consumers seem to be taking action on
  - Repeatedly stated: we have a lack of transparency into what is happening
  - Comment:
    - The data suggest that consumers do not care about this stuff in context ... brands want/need to establish trust, but they are not rewarded by interaction when they bring this discussion to consumers
    - Look at competition law as a model
    - It's virtually impossible to comply with GDPR for adtech
    - *It's only advertising!!!*
  - Comment:
    - Publishers will net net lose value this year ... Google and FB will still have phenomenal year over year growth
    - GDPR does, in a sense, tilt more power towards publishers
  - Comment
    - This conversation needs to broaden to include advertisers and broader marketing tech implications
    - Adtech is just the tip of the spear
  - Comment
    - We need to focus on second and third layers of notice experience ... contextual information
  - Comment
    - <https://www.ukaop.org/aop-team>—advisory-board
    - Supportive of TCF ... let's be grown ups and wait for this to evolve .. cross industry efforts have great value
    - *Data leakage and the ability of adtech companies to be able to build segments off this data is the single biggest threat to our industry (!)*

- Comment
  - Perhaps we can focus on the controllers and not the processors
    - (But what about ePrivacy?)
- Comment
  - We have pulled back our spend from individual DMPs and other adtech and have moved everything to a handful of trusted platforms
  - We would like to expand that spend, but we need to see some of these problems being solved .. there is a spend at stake and upside for the industry
- Machine learning expert working for brands
  - RTB is a botnet's dream
  - Your data doesn't change very often ... we don't need this continuous pulsing of data
- Academic researcher
  - A call for machine readable attribute for consumer preference management
  - Publishers will be liable for all this stuff happening on 3rd party services
- Mail online
  - Complaints from privacy international and others are 'helping the industry with digital literacy'
  - If you are in a race to comply with GDPR and all the guidance, you will kill your business model and Google and FB will sweep up all of your revenue
- Comment
  - You can't simply strip the IDs out of RTB or you will create a terrible ad experience for consumers
    - frequency capping
- Comment
  - IDs are also used for negative targeting (alcohol ads for example)

12.15 – 13.15 Lunch

### 13.15 – 13.30 **Introduction to lawful basis session**

#### Review of consent requirements

- must be an ACTIVE consent ...
- Need to keep consent records
- All you need is a 'clear opt-in'

#### For legitimate interests

- 3 part test
  - Purpose test
  - Necessity test
  - Balancing test
- Must be able to document your test
- LIA (Legitimate interests assessment)
  - Why do you want to process?
  - Is it necessary?
- Transparency

- You need to disclose what your basis is and if LI, you need to explain what those interests are
- PECR
  - Still requires consent for non-strictly necessary cookies
  - Behavioral advertising is not strictly necessary
  - PECR requires (now) requires GDPR defined consent

### 13.30 – 14.00 Views on lawful basis

- Review of current bid request stream, attempting to reduce FUD related to specific fields
- Demo of current disclosures and tools
- 'Google is not dogmatic' ... the current legal proceedings will create jurisprudence
  - Happy to switch away from consent as a legal basis if that's where the guidance goes
  - After demo of consent, who in the room has a more robust consent model?

#### Commentor

- Review of current consent models
  - Showed Quantcast UI
    - 'I'm just picking on quantcast here...'
    - 'I accept' is the dominant option on the screen
  - Broad arguments that consent is not being obtained up to GDPR standards for adtech
    - Not freely given, global, 'burden on publishers' (?), not easy to withdraw, consent as a default
- On legitimate interest
  - Some companies are relying on consent under PECR and LI for ad targeting
  - This approach fundamentally undermines both of these legal bases
    - This wasn't well established ...
- Drill down on DSARs
  - Tour of a Quantcast DSAR ('all of these companies that you are in cahoots with')

#### Commentor

### 14.00 – 15.00 Moderated open floor discussion

#### Commentor

- *We are not opposed to LI, but it is a very high bar*

### 15.00 – 15.15 Coffee break

### 15.15 – 15.30 Introduction to security session

Risks - so make sure you are doing a DPIA

- Data matching (not ok based on article \_ didn't catch it)

- Invisible processing

Suggestion that consultations with the ICO when the risk to the data subject is high

What about your digital supply chain?

**15.30 – 16.00 Views on security**

External speakers TBC

16.00 – 17.00 Moderated open floor discussion

17.00 – 17.10 Closing remarks

On security: Comments

1. This is a work in progress ... it is being undertaken in good faith
  1. TCF is only one piece
    1. advertisers and others have other legal bases that cannot be expressed via TCF
    2. there are a range of other steps companies are taking to comply with GDPR
  2. A call for nuance and humility
    1. who in this room can honestly speak for the consumer?
    2. anecdotal data is continuously being taken out of context ... survey data does not match behavioral data ... opt-in/out rates are wildly diluted by the volume of web pages and privacy UIs a consumer interacts with in a given month. They are not making a single, considered decision with you .... they are engaging with a few out of many hundreds of privacy UIs they will experience in a given month.
    3. we need to accept that privacy concerns are valid, but we have a bell curve of concern and we need to be able to meet consumers with where they are at.
2. There are a range of practices that companies are taking individually
  1. Data minimization
  2. Self regulatory audits
  3. Retention periods
  4. Coordination on data removal and access requests
3. More generally, a collective concern about the adtech and marketing tech industries on behalf of consumers and publishers
  1. You can't simply eliminate PD without a range of significant consequences
    1. Device ids are the lifeblood of contemporary advertising
    2. Innovations come from the newer companies
  2. These concerns have to be addressed:
    1. RTB participants must be accountable for ensuring that they have achieved a legal basis for their processing
    2. Companies should also be accountable for reviewing the partners they are passing data to ... do they have a legal basis? We are transitioning out of a 'trust everyone' model.
    3. Contracts alone are no longer sufficient.

1. Diligence is required
3. What is the problem here?
  1. Not complexity per se .. if we trimmed RTB participants from 200 to 80, or controllers on a website from 60 to 25 ... or the number of acronyms in the stack from 8 to 4 ... does any of this move the needle wrt to understandability for consumers?
  2. The real problem:
    1. Historically a lack of accountability and a view that adtech data does not need to be protected
    2. Small actors flouting the law
    3. Massive players with enormously complex business models and disproportionate leverage
4. The stakes are high here:
  1. Publishers are under real commercial pressure ... their ability to support content and journalism is under threat ... this has implications for the value of the internet for consumers and informed nature of the voting public
  2. The industry is rapidly consolidating ... contracting access to data in the marketplace will hurt competition and innovation ... and hand the marketplace to a handful of enormous and powerful giants in the tech market. The platforms are the companies that are growing right now. The impact of GDPR cannot be to complete market consolidation for these platforms.

Additional QA:

- 'low hanging fruit: let's all agree that fingerprinting should be prohibited, potentially even legally.'
  - *Crickets ...*