

Lucid folks -

Yesterday, NOYB, the advocacy group founded by Max Schrems (who took down the EU/US Safe Harbor), filed three complaints with the CNIL (French DPA). The complaints are directed towards three websites (CDiscount, [Allocine.fr](https://www.allocine.fr), and Vanity Fair), where consent is requested for cookies, and cookies are apparently set nonetheless, regardless of whether consent is obtained.

*As these sites participate in RTB, the number of cookies is quite large (CDiscount has sent "fake consent" signals to 431 tracking companies per user, Allocine to 565 and Vanity Fair to 375, as the analysis of the data flows now show.)*

The complaint is a formal request for investigation to the French authorities and a request for ePrivacy related investigations, criminal penalties (including prison time), and GDPR fines. The direct targets of the complaints are the publishers themselves, as well as Facebook, AppNexus, and Pubmatic. The hundreds of third parties setting cookies despite the refusal of the data subject are also implicated, as well as the CMPs involved.

On the surface, this seems to be a clear case of a CMP improperly configured on a website, perhaps not operating with a tag manager capable of restricting third party tags. But it is also possible that this is a common problem in the marketplace, with potentially damaging consequences for the marketplace at large, particularly when taken up by folks like Schrems.

In addition to the failing consent barrier, the complaints describe a mismatch between the companies requesting consent and the trackers appearing on the site:

*The number of 431 vendors also contrasts very strongly with the 102 partners listed in the "Accept Cookies" tool (Exhibit n°8). It seems Cdiscount does not only send incorrect consent signals, but also sends personal information to far more vendors than listed in the cookie banner.*

The IAB EU's TCF is also mentioned as a culprit, and this complaint could do damage to the credibility of the TCF. Of course, the IAB EU would say that the conduct described is a clear violation of TCF policies. But again, the questions will be a) how common is this non-compliance; and b) what is the IAB EU and the rest of the marketplace doing to fix this?

We'll be following these events closely.

Best,

Colin

NOYB complaints: <https://noyb.eu/say-no-to-cookies-yet-see-your-privacy-crumble/>

IAB EU initial response: <https://iabeurope.eu/all-news/iab-europe-news/iab-europe-statement-on-noyb-eu-complaints-to-the-cnil-10-december-2019/>