

By email

The Consumer Voice in Europe

Ref.: BEUC-X-2019-099/UPA/DMA/rs

Brussels, 20 December 2019

Re: New research shows Netflix, Amazon and Spotify not respecting GDPR // YouTube and children's data.

Dear Dr. Jelinek,

I am writing to you regarding two different matters that we would like to bring to the attention of the European Data Protection Board (EDPB). The first matter is the recent publication of a study by the Trans-Atlantic Consumer Dialogue (TACD) which finds that Netflix, Amazon and Spotify are not respecting their obligations under the GDPR. The second matter is the action undertaken by the US Federal Trade Commission regarding the unlawful processing of children's data by YouTube. We would like to kindly ask that these matters are discussed in the relevant technical groups and the plenary of the EDPB, and that all concerned national data protection authorities (DPAs) take appropriate action.

TACD study: Netflix, Amazon and Spotify not respecting GDPR

On 12 December, TACD and the Heinrich-Böll Foundation published research that examines how different aspects of privacy and data protection are working for consumers in the EU and the US.

The research, which took place between September and October 2019, analysed the practices of three major global platforms: Amazon, Netflix and Spotify. It examined to what extent their customers based in the US receive a standard of privacy and data protection comparable to that of their EU customers. It also looked at compliance with EU data protection legislation.

The companies were found to have increased privacy protections and choices in the EU when compared with the US. However, the results of the research also show certain practices which we consider in breach of the GDPR and merit to be looked at by the data protection authorities. In particular, these companies:

- Use default settings that allow third parties to track users. Amazon was found to be the platform with the most intrusive third-party tracking, and Netflix was the one with the least.

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- Do not obtain valid opt-in consent for cookies, which record the user's browsing activity, and instead rely on implied consent, which is in contradiction to the requirements of the ePrivacy Directive and the GDPR. Spotify, for example, installed an automatic advertisement cookie on the website app without obtaining consent.
- Apply privacy policies that are ambiguous about what data the companies collect and why, meaning key transparency obligations under GDPR are not met. For example, the Netflix privacy notice advises that personal information may be processed for "other purposes described in the Use of Information section of this Privacy Statement", but such purposes are not expressly defined in the statement.
- Use design features and wording which support privacy intrusive defaults. For example, Spotify advises those who seek to disable cookie tracking that in doing so, it may negatively impact their experience, but does not explain why.

The full report is attached to this letter and can be found [here](#).

YouTube and children's data

In 2018, a group of US civil society advocacy groups [filed a complaint](#) urging the US Federal Trade Commission (FTC) to investigate YouTube and Google for massive, ongoing violations of the Children's Online Privacy Protection Act (COPPA).

At the beginning of September 2019, Google, agreed to pay \$170 million to settle allegations by the FTC and the New York Attorney General that YouTube illegally collected personal information from children.

YouTube violated COPPA by collecting personal information from viewers of child-directed channels, without first notifying parents and getting their consent. Over the years, YouTube has made millions of dollars by pretending these channels were not actually for kids and using the personal information to deliver targeted ads to children watching them.

In addition to the monetary penalty, among other things the settlement requires Google and YouTube to develop, implement, and maintain a system that permits channel owners to identify their child-directed content. Naturally, it also requires Google and YouTube provide notice about their data collection practices and obtain verifiable parental consent before collecting personal data from children.

As a result of all this, Google has committed to restrict data collection and advertising on child-directed content on YouTube. For this type of content, advertising should be contextual instead of behaviourally targeted. We understand Google intends to apply this policy worldwide, not only in the US.

Despite the shortcomings of the settlement¹, this is a major development for children's privacy, as YouTube is one of the most popular platforms among kids all over the world, including in the EU.

YouTube's business model and practices are basically the same in Europe as in the US. Nevertheless, to our knowledge, so far European DPAs have not taken decisive action to ensure that YouTube complies with EU data protection law and protect children using the platform. Now is the time to amend that, also given the fact that the EDPB is set to develop guidelines on the processing of children's data under the GDPR for next year.

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¹ [See Dissenting Statement of Commissioner Rohit Chopra](#)

We call on DPAs to investigate YouTube's practices in relation to the processing of children's data and ensure any past or ongoing infringement of the GDPR does not go unaddressed nor unsanctioned. We also call on the authorities to cooperate with the FTC as appropriate and keep a close eye at the implementation in Europe of the commitments that Google has made in the US. Children should not be subject to commercial surveillance and pervasive advertising.

Yours sincerely,

Ursula Pahl
Deputy Director General