

By e-mail

The Consumer Voice in Europe

Ref.: BEUC-X-2020-002/MGO/cs

Brussels, 14 January 2020

Consumer organisations call to stop online advertising companies' massive surveillance practices infringing EU laws

Dear Executive Vice-President Vestager,

We would like to bring to your attention a [report "Out of Control - How consumers are exploited by the online advertising industry"](#) which Forbrukerrådet, BEUC's Norwegian member, published today.

The study shows a hidden side of the data economy, particularly how the online marketing and adtech industry operates. It concludes that the comprehensive tracking and profiling of consumers that is at the heart of the current adtech ecosystem are by their very nature exploitative practices which do not respect the General Data Protection Regulation (GDPR).

Consumers carry their mobile devices everywhere. Smartphones record information about sensitive topics, such as their health, behaviour, interests and sexual orientation. The report focuses on the personal data collected from 10 mobile apps ranging from dating to fertility and children's apps and the hidden ecosystem behind them. It shines light on the commercial third parties that receive and exploit consumers' personal data without any valid legal basis. These are the **key issues identified**:

- 1. Personal data is systematically hoovered and exploited** by multiple businesses under potentially invalid legal bases and beyond the consumer's knowledge or control. In particular:
 - These companies do not obtain valid consent from consumers to process their personal data, including for the processing of data which would fall under Article 9 of the GDPR (special categories of data) and would therefore require explicit consent.
 - These companies also fail to meet the requirements to resort to legitimate interest as a legal basis for processing personal data, which in any case would not be a suitable legal basis for the processing operations analysed in the report.
- 2. Consumer harms.** The comprehensive profiling and categorisation of consumers can trigger different types of harm, both for individual consumers and for society as a whole. This includes different forms of discrimination and exclusion, widespread fraud, manipulation, and the chilling effects that massive commercial surveillance systems may have both on individuals and more generally on consumer trust in the digital economy.
- 3. Consumers cannot avoid being tracked.** Firstly, they are not provided with the necessary information to make informed choices when using the apps for the first time. Secondly, the extent of tracking, data sharing, and general complexity of the adtech ecosystem is incomprehensible to them. Individuals cannot make real choices about how their personal data is collected, shared and used.

./..

- 4. Even if consumers had comprehensive knowledge of how adtech works, there would still be no way to stop or control this data exploitation.** The number and complexity of actors involved in the adtech ecosystem surrounding the use of websites and apps is staggering, and consequently consumers have no meaningful ways to resist or otherwise protect themselves.
- 5. It is worth noting that the prevalence of tracking and profiling may also have negative effects on competition:** start-ups and other innovative entities are discouraged from developing privacy-friendly alternatives when the digital advertising market relies on expansive tracking and profiling. This creates an uneven playing field for companies that aim at respecting consumer and data protection rights. For example, companies that use less invasive advertising technologies such as contextual advertising may suffer barriers to market entry. If service providers and publishers that adhere to the law are put at a competitive disadvantage, this fuels a race to the bottom, where the companies that perform the most sophisticated tracking may squeeze out companies that try to innovate with privacy-enhancing technologies. Furthermore, the way the adtech ecosystem currently works, enabling the leading platforms to amass and monetise vast amounts of personal data, may further strengthen these platform's market power to the detriment of other market players and ultimately consumers.

All of this means that the massive commercial surveillance going on throughout the adtech ecosystem is systematically at odds with our consumer and fundamental rights and freedoms. These problems are also contributing to the erosion of trust in the digital economy and negatively impacting on our society and democracy.

On the basis of these findings, **Forbrukerrådet has filed [complaints](#)** before the Norwegian Data Protection Authority against five adtech companies (MoPub, AppNexus, OpenX, AdColony, Smaato) and the dating app Grindr as an example to bring accountability to a toxic, non-compliant adtech ecosystem. The research has been carried out in Norway, but some of the apps analysed and third parties behind them operate on a European and global scale. Therefore, **10 other BEUC members have also [notified](#) their national supervisory authorities.** Overall, more than 20 European and non-European groups have joined the action.

We are urging European Data Protection Authorities (DPAs) to take active enforcement measures to address these issues and ensure that the adtech industry fundamentally changes the way it operates. This is possible as alternative business models can be envisaged. BEUC will also notify the Consumer Protection Cooperation Network (CPC) – a network of national consumer authorities – to ask them to investigate potential consumer law breaches, notably with regards to unfair commercial practices used by these businesses.

We hope that you will take the time to look into this report and our concerns. The negative impact generated by this commercial surveillance system and the adtech industry practices affect every consumer and citizen in the EU. This is not only about ensuring respect for the GDPR, but also about the need for measures that enable consumers to use digital services and products while maintaining their autonomy, dignity and privacy. This massive tracking and profiling of people is also at the source of the dissemination of disinformation and election manipulation and thus a danger for our open societies and democracies.

We need a comprehensive European policy including the promotion of more and swifter European wide enforcement as well as incentives for industry to change the adtech business model, in order to stop these profoundly worrying and misguided developments.

./...

We have also sent a similar letter to Commissioners Thierry Breton and Didier Reynders, the European Data Protection Supervisor (EDPS) and the European Data Protection Board (EDPB).

We remain available for any question or comment you may have.

Thank you very much in advance for your time and consideration.

Yours sincerely,

Monique Goyens
Director General

Ursula Pachi
Deputy Director General