

Factsheet: New EU ePrivacy Regulation

Q. What is the ePrivacy Regulation?

A. The European Commission (EC) published a [proposal](#) for a new ePrivacy law on 10 January 2017. The EC aims to update the existing ePrivacy Directive (aka ‘cookie law’) to align it with the recent overhaul of EU data protection law – the General Data Protection Regulation (GDPR) (see below), improve it in light of technological developments (i.e. the advent of the ‘Internet of Things’) and to address the fragmentation of the existing Directive (i.e. different laws in different countries). The proposal is what is known as a ‘Regulation’ and it will apply directly across EU markets when it comes into force.

Q. Is this a new ‘cookie law’?

A. Yes, and it will repeal the existing ePrivacy Directive (as implemented in the UK as the [Privacy and Electronic Communications Regulations 2011](#)). But – to be very clear – this proposal is not just about cookies as it covers all technologies used in the processing of data, whether personal or not. Also – at this stage – this is a proposal and one that has to go through the Brussels legislative process. However, in a nutshell, there will be a new ePrivacy law that the digital advertising industry will need to comply with, in addition to adhering to the new GDPR (see below).

Q. But isn’t there a new EU data protection law coming into force soon? Why is a new ePrivacy law needed?

A. In May 2018 a new EU General Data Protection Regulation (GDPR) will apply across the European Union governing the way personal data is used and safeguarded, including in digital advertising – see the IAB’s specific [briefing](#) for member businesses on the GDPR (N.B. sign-in required). The IAB has argued that there is no need for further regulation as the new GDPR already regulates the use of personal data in digital advertising. However, the EC believes there is a need for sector-specific rules for electronic communications to safeguard the privacy of users. This is based upon its [survey](#) of over 25,000 people across Europe carried out in July 2016.

Q. How is the ePrivacy proposal different to the GDPR?

A. The proposed ePrivacy Regulation applies to all electronic communications data – whether personal or not – and introduces a more stringent consent standard for digital advertising. It would introduce a ‘prior consent’ or ‘opt in’ approach. There are some exemptions to the need for consent where it is “*necessary*” to process and store information for the transmission of a communication over a network or for services that, in the EC’s view, pose little or no privacy intrusion to users. Examples include providing a service that has been requested by the user and web audience measuring “*provided that such measurement is carried out by the provider of the information society service requested by the end-user.*”

The ePrivacy proposal has the same territorial scope as the GDPR: in other words it applies to the provision of electronic communication services in the EU, regardless of the organisation’s location. The proposal also significantly increases the level of fines for non-compliance or breaches and more in line with those under the GDPR (€10m or 2% of global annual turnover).

Q. I've read that the new law may mean the end of the 'publisher site notice' approach to consent? Is this correct?

- A. The new Regulation proposes to move away from the existing 'publisher site notice' approach for obtaining consent to one based on the settings of the browser (such as 'Do Not Track' or DNT). This is because the EC does not believe consent is obtained in a genuine way using this approach and because it has evidence to suggest constant site notices disrupt the user's internet experience. The EC also believes cost-savings will be realised by moving to this new approach (i.e. publishers will no longer need site notices).

The proposal suggests users will be prompted to choose their privacy settings on the installation of a web browser, and that browsers should ensure users can easily revisit their options and maintain whitelists to maintain their preferences. It is unclear how this will work in practice if such a proposal becomes law. However, publishers (websites and apps) would still be able to ask users to reconsider their choice, which could result in an increase in intrusive user notices.

Q. What does this all mean for digital advertising?

- A. It is too early to assess the impact of the proposal at this stage. However, if the proposal becomes law unamended it could have very significant implications for the digital advertising sector. It could make digital advertising less effective and efficient, deprive publishers with important advertising revenue to help fund their content and services, and disrupt or challenge the very existence of many current digital advertising models. You can read IAB UK's reaction to the proposal [here](#).

Q. When will it come into force?

- A. The EC is aiming to try and bring the new law into force at the same time as the GDPR (25 May 2018), and browser-based consent setting approaches would need to be in place by 25 August 2017 at the latest. Given that the proposal needs to go through the Brussels legislative process, this is a very ambitious timetable, although not impossible. However, this proposal is very controversial so we should expect a lengthy debate.

Q. How will Brexit affect this?

- A. It is unlikely to and, because of the territorial scope of the proposal, digital advertising business are likely to have to comply regardless of whether they are located in the EU or not. However, Brexit may impact the UK Information Commissioner's Office's (ICO) role in enforcing it but this will depend on the UK's future relationship with the EU.

Q. I'm preparing for the GDPR to apply from May 2018. How can I prepare for this?

- A. It is difficult for an organisation to specifically prepare for a new ePrivacy Regulation until we know what the final law looks like. To this extent, organisations should continue to prepare for the GDPR applying from 25 May 2018. The IAB will update this factsheet on a regular basis.