

IAB UK response to ICO consultation on draft ‘Guidance on the use of storage and access technologies’

Contents

1. Introduction
2. Draft revised guidance: overarching concerns
3. Clarity of guidance
4. Draft Impact Assessment feedback
5. Appendix 1

1. Introduction

The Internet Advertising Bureau (IAB UK) is the industry body for digital advertising. Our purpose is to build a better future for digital advertising, for the benefit of everyone. We do this by bringing together members from all parts of the commercial, paid-for digital advertising supply chain including publishers, ad tech providers and agencies to share knowledge and insights that can support policymaking.

We appreciate the opportunity to respond to the ICO’s consultation on its draft revised guidance and the lengthy consultation period. We recognise the importance of periodically reviewing guidance to reflect changing circumstances and developments in the policy and legal environment.

IAB UK and its members also have significant concerns about both the substance and timing of the guidance, and the associated Impact Assessment (IA).

The draft guidance reflects a notable expansion of scope that poses some very significant issues for digital businesses. These issues could impact their ability to maintain operational and commercial continuity and make informed, long-term business decisions. In particular, the guidance has specific implications for the operational and commercial continuity of the digital advertising ecosystem, only some of which are addressed in the draft guidance and IA.

This consultation comes at a critical moment of regulatory complexity, with numerous intersecting policy issues evolving simultaneously– including the Competition and Markets Authority’s (CMA) work on digital market competition¹

¹CMA ‘Online platforms and digital advertising Market study final report’, 1 July 2020, para. 44
https://assets.publishing.service.gov.uk/media/5efc57ed3a6f4023d242ed56/Final_report_1_July_2020_.pdf

and the ICO's own 'consent or pay' guidance². The regulatory landscape in the EU is also shifting. These parallel developments are material to business investment across Europe, including the UK, and require careful coordination.

We welcome the ICO publishing a draft impact assessment (IA) as part of this consultation, but we are concerned that the IA is cursory and incomplete. We believe the assessment requires further work to ensure it provides a robust and credible foundation for decision-making.

As drafted, the guidance risks unintended negative impacts on the digital economy, with a particularly disproportionate impact on ad-supported services. As identified in the draft IA, implementation will create substantial cost burdens and reduce revenue streams and business profitability, potentially forcing many ad-supported services to exit the market. The timing is particularly problematic as workable, profitable and sustainable alternatives for monetising non-consented traffic are not yet readily available and do not currently offer a strong case for business investment.

IAB UK has engaged extensively with its members to inform this response, drawing on deep industry expertise to identify and analyse critical concerns. We may add further points as the process continues and more information becomes available to us that is relevant to the consultation.

We recommend that the ICO pauses adoption of the guidance to allow for broader consultation and alignment with other regulatory bodies (particularly the CMA), to prioritise other work (specifically, a review of 'strictly necessary exemptions to consent requirements under PECR) and to fully assess market dynamics and potential consequences.

Without such reconsideration, this guidance risks inflicting damage to the UK's digital economy, with far-reaching ramifications for competition, innovation, consumer choice, and societal access to information.

2. Draft revised guidance: overarching concerns

We have some significant concerns regarding the ICO's approach to its revised guidance which collectively threaten the sustainability of the digital advertising ecosystem in the UK.

Breadth of the ICO's approach

The proposed revised guidance significantly expands the scope of PECR Regulation 6 by categorising a much broader range of widely used techniques as

² 'Consent or pay guidance impact assessment', ICO, January 2025 <https://ico.org.uk/media/about-the-ico/impact-assessments/4032418/consent-or-pay-impact-assessment.pdf>

‘storage and access’, requiring user consent for their lawful use. This expansion would affect many basic and fundamental technical operations not only in digital advertising but also wider online commerce, as well as alternative advertising models and privacy-enhancing technologies which the ICO itself promotes. The guidance and IA do not adequately explain how digital services as a whole could operate in scenarios to which the guidance applies and where a user has chosen to “reject all” uses of PECR-regulated technologies.

Economic impact on the digital advertising industry

It is apparent that the implementation and enforcement of this guidance will negatively affect the digital economy, with particularly adverse consequences for the digital advertising industry. We believe that the draft IA underestimates the true cost and disruption for businesses and consumers.

The Government has asked many regulators to demonstrate how their work supports investment and growth. The ICO’s brief letter to the Prime Minister on this issue asserts that this revised guidance and the online tracking strategy³ recognise that ‘there are aspects of the digital advertising regulatory landscape that businesses find difficult or burdensome to navigate’.

However, industry stakeholders believe that this position is in part a result of the ICO’s previous guidance and its strategy to actively deter the use of identifiers for ad targeting and campaign management, which together are constraining the market, and that the revised guidance – both broad in scope and conservative in its interpretation of the law – will exacerbate these difficulties.

The IA notes that increased compliance costs and reduced advertising revenue are likely to result in slower growth and the withdrawal of some ad-supported services from the market. Many content providers, especially smaller publishers, rely heavily on advertising revenue to support their operations and may not have viable alternative business models.

This is at odds with the Government’s investment and growth agenda and its expectations that regulators proactively reduce regulatory barriers and burdens and to support growth and innovation. The ICO’s approach suggests that the legal certainty the guidance claims to provide and further efforts to maximise data protection rights are overriding and justify this expansive approach in spite of the adverse effects set out in the IA. On the contrary, the ICO has an opportunity to adopt a more modern and pragmatic approach to the interpretation of data protection laws which balances other user rights and the ICO’s duties to have regard to the impact on innovation, competition and growth, rather than seeking to

³ ‘Taking control: our online tracking strategy’, ICO, January 2025 <https://ico.org.uk/about-the-ico/our-information/our-strategies-and-plans/online-tracking-strategy/>

align with the prevailing restrictive interpretation of the data protection and privacy law by EU regulators.

There needs to be a wide and objective discussion, involving all relevant policy and regulatory stakeholders, about the best regulatory approach to ensure an appropriate balance between the protection of user privacy and personal data; supporting access to a diverse choice of online content and services; and protecting business rights. The draft guidance and IA do not persuasively balance those considerations

Timing and regulatory coordination

The publication of this guidance– along with the wider 'online tracking strategy'– contradicted the ICO's public commitment to providing a guidance pipeline that would give stakeholders proper notice and regulatory predictability. Stakeholders, including trade groups that represented impacted businesses, had no advance notice that this guidance was due to be published or when, nor that the related "consent or pay" guidance would be published simultaneously.

The unexpected timing of the publication of significant new guidance creates challenges for regulatory certainty and business planning. This issue must be addressed as the ICO considers how to take forward this guidance and the other workstreams in its online tracking strategy.

The timing also creates confusion about how the proposed guidance will align with the work of other regulators, such as the CMA, and the Government's broader agenda on investment and growth. It is unclear whether these various initiatives are aligned and driving towards the same outcome.

Damaging narrative around personalised advertising

We are concerned that through this guidance, and the 'consent or pay' guidance, the ICO is driving business changes and creating a damaging negative narrative around personalised advertising and the 'consent or pay' model.

Recent Parliamentary debates on the Data (Use and Access) Bill demonstrate the damage caused by this narrative. For example, some Peers mistakenly believe that paid-for options constitute 'paying for data protection' – a serious misunderstanding about why people are being asked to 'consent or pay', why service providers are adopting these models and what this means in practice, particularly in terms of the application of data protection law. This mischaracterisation must be addressed by the ICO in its communications with policymakers and its planned work to 'Support the public to take control of how they are tracked online.'

Forced business model changes

We are particularly concerned by the ICO's continued efforts to steer the market away from targeted advertising toward commercially unproven alternatives. The consultation lacks a detailed legal rationale for this approach and makes broad, unsubstantiated statements about unquantified theoretical or isolated risks. It disregards evidence of consumers' growing understanding of ad-supported models and targeted marketing communications, as shown in research from the GDMA.⁴ This issue requires deeper analysis and a more robust IA (see our specific comments on this document below). The ICO should set out a clear legal rationale for its approach, supported by specific examples and evidence of risks,

The ICO's activity is looking narrowly at the market for digital services and effectively forcing online service providers, primarily publishers but also others with ad-supported business models, towards adopting paid-for options which may or not be feasible or commercially viable over the long term. The combined effect of the storage & access guidance and the 'consent or pay' guidance is to dictate business models to online service providers, leaving them with few commercial choices or, for some, unfeasible options:

1. Adopt non-personalised ads, which may not be practical for many services, generate substantially lower revenue, and still require consent for storage & access technologies.
2. Provide the service entirely for free to unconsented users where impressions cannot be profitably monetised – an economically unviable option for commercial organisations
3. Implement paid-for options– which many users will be unwilling or unable to pay for, particularly (a) younger audiences which research shows are less willing to pay, and (b) in respect of new-to-market services that are trying to build an audience but do not have an established presence or brand (i.e. it is particularly damaging to new market entrants)

For many providers of ad-supported services, the likely consequence is market exit, reducing choice media plurality for UK consumers – and overall making the UK market less competitive.

Market interventions of this nature are outside the ICO's statutory remit. Its guidance should remain business-neutral and not favour one form of advertising versus another (i.e., personalised versus contextual).

'Essential/strictly necessary' storage

The ICO has opted not to express a view on what constitutes 'essential' use of

⁴ UK Data Privacy: What the Consumer Really Thinks 2022, GDMA/DMA, December 2022
<https://dma.org.uk/research/uk-data-privacy-what-the-consumer-really-thinks-2022>

technology to deliver economically viable ad-supported online services in the current context. Additionally, the revised guidance unnecessarily constrains future consideration of this issue by asserting that ‘strictly necessary’ should be viewed solely from the user’s perspective (not the provider’s) and that storage and access for digital advertising could never be considered strictly necessary since ad-supported services can be ‘technically’ provided without it. (Whether this is possible is disputable, particularly given the ICO’s extremely broad interpretation of the scope of PECR Regulation 6 in this revised guidance).

Neither of these points are set out in the law. This interpretation needs to be thoroughly reassessed, along with its broader implications for the digital economy, in the next phase of the ICO’s process.

It has been evident for a number of years that existing interpretations of PECR have created legal barriers to functions that support a healthy digital advertising market, including those that are unrelated to personalised ad targeting, such as audience measurement. While these issues are a consequence of regulatory guidance, the ICO has characterised them as legal barriers. This framing has led to an ongoing, protracted and unproductive circular discussion for the industry, with no certainty about how these issues will be resolved.

For the avoidance of doubt, we are not questioning the need for guidance to be reviewed or for organisations to comply with the law. It is appropriate that the ICO targets obvious non-compliance that poses genuine risks to consumers. However, the ICO’s position has internal tensions, and it must justify its legal interpretations and assess the real-world impacts of the proposed guidance and related statements to the Government. Outdated or overly restrictive interpretations that may go beyond what the law requires or its intended scope and constrain low-risk, low-intrusion practices should be reconsidered.

The ICO could better support the sector by pausing work on this guidance to first review and revise the interpretation of ‘strictly necessary’ in the context of today’s internet – particularly given the apparent intention to widen the scope of what constitutes ‘storage and access’. This would provide greater legal certainty and business continuity and avoid the disruption – and other impacts outlined in the draft IA, including financial costs – of adapting to new binding guidance which may change soon after adoption.

Relatedly, the ICO's proposal to HMT⁵ that it 'relax' enforcement of consent requirements to encourage the development of alternative advertising models is not a legally robust or acceptable option for ad businesses. If adopted, the revised storage and access guidance would bind the ICO and carry significant weight in the event of litigation, potentially exposing businesses to increased regulatory enforcement and third-party litigation risks for non-compliance. The ICO's proposal does not represent a sound basis for financial investment in alternative models, nor is there evidence put forward to support the assertion that it would deliver market growth or create viable market conditions for alternative models. On the contrary, the ICO's proposal appears to recognise that the law as it stands is no longer fit for purpose and is unworkable for the digital advertising ecosystem.

Performance-based ad models

Previous ICO guidance has addressed the question of 'strictly necessary' in relation to performance-based forms of advertising, such as those used for cashback and by incentive and loyalty publishers, and voucher publishers.⁶ The commercial model for this advertising depends on attribution, i.e. a form of measuring an outcome and linking it to an ad. For example, with cashback, storage and access technology (typically a cookie) is used to (i) record the referral of the consumer to the advertiser and attribute that to the publisher and then (ii) record the completion of a transaction on the advertiser's purchase confirmation page. The ICO's existing guidance recognises that cookies may be strictly necessary to deliver the service requested by the user (i.e. a voucher, cashback, etc.) because the commercial model cannot work without them.

Similarly, cookies are used to create unique voucher codes to prevent fraudulent use of voucher schemes, to secure the service requested by the user.

The draft revised guidance needs to be consistent with previous ICO guidance on this form of digital advertising. As drafted, the blanket approach to what is 'strictly necessary' in relation to digital advertising, considering only the question on what is 'technically possible', is conflicting with existing guidance. We ask that the ICO address this in the final guidance to allow for nuance between different forms of digital advertising.

Critical gaps in relation to alternative advertising models

The ICO's letter to the Prime Minister states that its work will support growth and innovation by clarifying the legal framework and enabling alternative forms of

⁵ <https://www.gov.uk/government/publications/a-new-approach-to-ensure-regulators-and-regulation-support-growth/new-approach-to-ensure-regulators-and-regulation-support-growth.html>

⁶ <https://ico.org.uk/for-organisations/advice-and-services/innovation-advice/previiously-asked-questions/#pecr>

advertising. However, the revised guidance lacks crucial detail. For example, it makes a general statement that contextual advertising makes compliance with the PECR and GDPR easier, but it does not explain which alternatives the ICO has considered or how they could operate in line with the revised guidance in practice (in particular, in a 'reject all' situation). Elsewhere, the draft guidance states in several places that consent must be obtained for the use of storage and access technologies for online advertising purposes – which would include contextual/non-personalised ads and ad products – and that these purposes do not qualify for the 'strictly necessary' exemption. There is an inconsistency in these positions, which creates uncertainty for companies that provide or rely on advertising services, contrary to the ICO's stated aim for producing the revised guidance.

Further work is needed to identify these models (in particular those that can viably and profitably serve ads to unconsented users), whether they are attractive to advertisers and could be commercially viable over the longer term, how they support business continuity, and the implications for UK consumers. This information is essential to develop and strengthen the business case for investing in alternative ad models, and to ensure that the guidance is technology-neutral and future-proof, taking account of market developments in digital advertising. Without it, online service providers have no roadmap to future legal stability and revenue.

The implications of the guidance for the implementation of alternative models need to be identified and included in a more detailed and robust impact assessment, as we have set out in our comments on the draft IA.

Fragmentation

The ICO's guidance is becoming increasingly fragmented for digital service providers. This revised storage and access guidance is separate from the 'consent or pay' guidance (and there are inconsistency between them), and from the ICO/CMA paper on 'harmful design'. There is also a separate paper on the ICO's 'expectations for online advertising proposals'. This fragmentation and overlap makes compliance more difficult as multiple pieces of guidance address different aspects of a user experience or journey. The ICO should consider how best to consolidate its guidance as a single resource, including with practical examples that reflect end-to-end user journeys, to maximise clarity and ease of use.

Summary

As drafted, the draft guidance presents significant challenges in that it:

- Expands the scope of PECR by making common uses of technology subject to prior consent
- Lacks details about what viable alternatives for serving ads to unconsented users the ICO has analysed and considers commercially viable under this and

other existing guidance despite the ICO stating that it wants to encourage adoption of alternative ad models.

- Seeks to impose unproven and potentially unfeasible revenue models, going beyond the ICO's remit
- Compounds adverse effects by prioritising adoption of this guidance before other programmes of work, including a review of 'strictly necessary' and the CMA's work on ad market competition
- Creates a risk of harm to the digital advertising industry through increased costs and reduced revenue, potentially forcing some ad-supported services out of the market. Longer-term work on exemptions and monetisation solutions should precede guidance to prevent market damage.
- Was published without notice, undermining regulatory predictability and creating confusion about alignment with other regulatory initiatives.
- Contributes to a negative narrative about personalised advertising, leading to policy misunderstandings about "consent or pay" models.
- Interprets "strictly necessary" storage as problematically narrow, maintaining an outdated interpretation of the law that affects low-risk, low-intrusion practices and constrains innovation

We believe that these issues need to be addressed before the guidance is finalised.

3. Clarity of Guidance

While the guidance makes positive changes in recognising the intrinsic connection between advertising and measurement, further clarification is needed to address implementation challenges of other aspects of the guidance. These include consent withdrawal mechanisms, technical feasibility, and ambiguities relating to consent UIs. The utility of the guidance would be improved by a more balanced approach that recognises both regulatory compliance and practical implementation considerations and constraints.

Section: What are storage and access technologies

Link decoration and navigational tracking

The position that link decoration/URL tracking involves 'storage or access' within the scope of PECR Regulation 6 has not been convincingly made and we would ask that the ICO re-examines this position and sets out more clearly the legal rationale for this interpretation.

Notwithstanding that point, the definition of link decoration, and in particular the differentiation between static and dynamic link decoration, should be clarified. Currently the guidance differentiates between whether extra information is being attached to the URL when a link is created or whether the extra information is added through the use of a JavaScript code. We disagree with this presentation. We would suggest differentiating on the basis of the type of additional data that is

being added rather than on the technology being used:

- Static link decoration refers to adding non-user level data such as the name of the organisation the ad is attributed to or the impression
- Dynamic link decoration refers to adding user level data

Only the dynamic link decoration would constitute ‘passing tracking information’ according to the draft guidance.

The guidance states that ‘Regulation 6 applies’ to link decoration – it should make clearer which party/ies are responsible for ensuring compliance with consent requirements in relation to link decoration.

PETs

For the avoidance of doubt, the ICO should take the opportunity to address how PECR (and relatedly, the UK GDPR) applies to privacy-enhancing technologies (PETs) that rely on access or storage. According to the proposed guidance, PECR Regulation 6 applies to all advertising-related activity, even if no cookies, local storage or other techniques that are typically understood to actually store information on a device are used. Our understanding is that PECR continues to apply, and therefore that consent would be required for any non-essential access/storage related to PETs (whether by organisations providing or relying on PETs). The impacts of this on incentives to investment in, and adoption of, PETs should be considered in the final IA.

[Section: How do the PECR rules relate to the UK GDPR?](#)

What does PECR say about subsequent processing?

This part of the guidance could helpfully expand on what ‘subsequent’ means in this context, and how it relates to the original PECR consent. A flowchart, similar to the one in the previous section (How does PECR consent fit with the lawful basis requirements of the UK GDPR?), or examples based on relevant cases would be helpful.

[Section: ‘How do we manage consent in practice?’](#)

Consent UI and Graphics Issues

This part of the guidance needs further detail and clarification to address some ambiguities and give more certainty about the requirements of the law, as set out here:

- The graphics demonstrating consent UIs are difficult to follow when viewed sequentially rather than side-by-side, limiting comprehension of the overall consent expectations.
- There is no clear explanation of colour coding within these graphics, which risks misinterpretation.

- There is ambiguity about whether these graphics represent examples of compliance or prescriptive requirements (we assume the former). The guidance should explicitly clarify their status and intended use.
- The digital advertising industry has, via the Transparency and Consent Framework (TCF), established a standard language for communicating cookie purposes in a consistent way to consumers, that differs from the terminology used in the graphics. The guidance should be sufficiently flexible to accommodate this established language and avoid unnecessary disruption to the user experience.
- The examples do not address increasingly common ‘consent or pay’ models, or subscriber models, which is a significant gap in guidance for organisations implementing such approaches. The separate ‘consent or pay’ guidance contains different examples, and is not cross-referenced, which is unhelpful for guidance users. Please also see our more detailed comments on guidance fragmentation.
- The relationship between this guidance and the ICO/CMA paper on ‘harmful design’ remains unclear, with minimal cross-referencing between the documents.

Withdrawal of consent and data deletion

In general, this section needs more detail and clarity about the actions and responsibilities of different parties in the supply chain in relation to data deletion, including when sending and receiving erasure request notifications.

Conflation of Separate Legal Rights

The guidance merges two distinct rights under UK GDPR: the right to withdraw consent (Article 7) and the right to erasure (Article 17). This creates confusion about regulatory requirements and how to comply in practice. It also makes assumptions about users’ intentions that may not be correct and expands the law beyond what was intended by legislators. We suggest that the use of ‘must’ in this respect is changed to ‘could’.

This part of the guidance would benefit from redrafting to provide legal clarity and avoid confusion. In particular:

1. The ICO should clarify the relationship in relation to the deletion requirement between PECR and the UK GDPR, reflecting the approach taken in the guidance on consent requirements in ‘What does ‘consent’ mean?’. The guidance should reference the relevant PECR and UK GDPR provisions clearly and separately and explain how they interact to give rise to deletion/erasure requirements, specifically in relation to Article 19 and Article 17(1)(b) of the UK GDPR.
2. The guidance should also make clearer the distinction between PECR consent withdrawal and consent withdrawal and/or requests for erasure

under the UK GDPR, including the scope of each. For example, making clear that a PECR consent withdrawal would affect access and storage for the purpose(s) for which the consent was given, and that obligations under Articles 17 and 19 of the UK GDPR only arise where PECR consent for the purpose of processing personal data is withdrawn. (We have provided a suggested approach to redrafting this section in Appendix 1 to demonstrate how this could be done in practice).

The guidance should also make clear that while withdrawal of consent may require deleting personal data tied to a specific purpose, a deletion request does not necessarily mean consent has been withdrawn. For example, where a data subject withdraws their consent for marketing emails, this does not apply to personal data unrelated to marketing emails. However, if a data subject requests deletion of their personal data, this is not an automatic consent withdrawal for marketing emails.

Scope of deletion

The guidance on withdrawal and deletion raises additional questions which require more detail so that guidance users can fully understand the guidance and implement processes to comply with it.

In relation to information stored on a user's device: the guidance could helpfully address whether deletion in response to a consent withdrawal under PECR also applies to data already stored on a user's terminal equipment. For example, if an organisation stores data on a user's browser, it will stop doing so when consent is withdrawn, but the guidance does not address whether the organisation is also required to delete previously stored data. The guidance should also address the situation where deletion is technically unfeasible, and clarify whether access to the terminal equipment for deletion purposes once consent has been withdrawn is permitted.

It should also make clear whether cookies/technologies used to store consent preferences can be retained.

It is unclear what the expectations are in this context for third parties, for example, when a third-party organisation places a cookie on a user's browser. The guidance could usefully clarify whether the third party must delete the cookie when the user withdraws the (PECR) consent they had given to that third party for that domain but has not revoked consent for another domain. There are also potential complexities arising where a user may be using a combination of consent-based access to some domains and paid-for access to others.

In relation to information not stored on a user's device: The ICO should provide clear guidance on its expectations for deletion of non-personal data that is stored outside of the terminal equipment. A requirement to search for and delete non-

personal data in response to a consent withdrawal would potentially be beyond what the law requires and may be impractical or impossible to meet in practice, especially if the information is not tied to an identifier or is not unique enough to be personal data.

We agree that under the UK GDPR, withdrawal of consent should lead to the deletion of personal data when consent was the sole legal basis relied on and there is no other legal basis available. For the avoidance of doubt, the guidance should reiterate that storing personal data constitutes processing, meaning that withdrawal of consent also affects storage.

Unintended Consequences of Data Deletion

Users withdrawing consent may not intend to request deletion of all historical data, particularly when such deletion could negatively impact their user experience. We do not believe it is appropriate to assume this is the case, and doing so creates legal confusion.

While the guidance states that organisations should "make any effects of withdrawing that consent clear," This should be extended to include the implications of data deletion, and should allow organisations to provide users with meaningful choices about whether consent withdrawal automatically triggers complete erasure.

Practical complexities

The guidance creates some practical complexities for deleting data in a digital advertising context, which stem from the purpose for which a user has given consent. We would welcome the ICO providing more details to enable organisations to fully understand what information or data needs to be deleted. We have provided an illustrative example in Appendix 1 based on implementation of the Transparency and Consent Framework.

Notification: technical feasibility

For a number of reasons, it is likely to be challenging, if not infeasible, to comply with this section of the guidance in practice.

Where Consent Management Platforms (CMPs) are used for website/app consent management, online service providers often lack the means to identify or contact users who withdraw consent, making it technically impossible to send a response to the user, as required by the ICO's guidance on 'right to erasure'. Third parties who may have received data have no means to identify or contact the individual user.

In programmatic advertising delivered via Real-Time Bidding (RTB), the requirement to 'notify each recipient to whom the personal data has been disclosed' presents extraordinary technical challenges:

- Data can flow to multiple partners across complex supply chains.
- No universal mechanism exists to track precisely where each user's data has been sent.
- The decentralised ecosystem makes propagating deletion signals nearly impossible with current technology.

While the IAB Tech Lab's Data Deletion Request Framework⁷ may provide a starting point from which to begin to address these challenges, full implementation requires significant development resources, and industry adoption will take time. The ICO's enforcement approach needs to account for these practical constraints, and the IA should recognise the cost of developing and implementing the systems and processes needed to support compliance with these particular requirements.

Section: 'How do the rules apply to online advertising?'

Measurement: definition and scope

The guidance helpfully recognises that ad measurement is "intrinsically linked" to online advertising. However, this section needs more detail to explain what is meant by the statement '*Ad measurement does not require a **separate** consent.*' Specifically:

- What is the definition/scope of 'measurement' in this context?
- Does consent to storage and access for 'advertising' purposes implicitly cover measurement?
- What consent requirements apply to ad measurement for non-personalised advertising contexts, such as contextual ads and certain search ads.
- Specifically, how measurement can be carried out when customers opt out of interest-based ads and decline to give their consent to advertising cookies. It is critical for advertising service providers and publishers to be able to measure the delivery and effectiveness of the (non-targeted) ads served to those users.
- How the principle of "intrinsically linked" purposes can be considered in other contexts, such as for activities that support the management and functionality of advertising inventory and functional ad delivery, or anti-fraud measures.

Not all digital advertising involves programmatic ad delivery and/or real-time bidding. The section on measurement should be expanded to make clear how it can apply to measurement for affiliate marketing purposes.

⁷ Data Deletion Request Framework, IAB Tech Lab, May 2024
<https://iabtechlab.com/standards/data-deletion-request-framework/>

The affiliate model involves a closed network of identified parties (publisher, affiliate marketing network/platform operator, advertiser).

It is possible for one party to obtain consent on behalf of another party (provided that GDPR consent standards are met). We would welcome the guidance making clear that a 'single' or 'grouped' consent for 'advertising purposes' can cover measurement even if this purpose is split amongst two entities. For example, where Party A and Party B are part of a closed affiliate network, if Party A obtains consent for use of storage and access technologies for online advertising purposes, this can cover the advertising measurement purposes of Party B, for that same ad.

In practice, this would mean a publisher of a website could obtain consent for its advertising purposes and advertisers could then benefit from that consent when the outcome of that advertising is measured (i.e. measuring the fact of a referral of a consumer by the publisher and whether the advertisement resulted in a sale).

Consent exemption for ad measurement

We remain of the view that ad measurement cookies should be categorised as essential, thus exempting them from consent requirements altogether, and this should be resolved before the guidance is adopted.

We recommend the ICO explicitly acknowledges that storing or accessing information for aggregated measurement of non-targeted advertising should not require consent under PECR Regulation 6, provided such measurement is limited to that purpose and not used for any other purpose.

This would be consistent with the ICO's claim that "In principle, contextual advertising more readily enables you to comply with both your PECR and UK GDPR obligations. While it can still involve personal data processing, this is less extensive than with other types of targeted advertising (for example, those that involve profiling, like behavioural advertising). This is because personal data is not used to determine what ad a user sees."

Other

We have identified some cross-cutting issues with the draft revised guidance where more detail and/or clarification is necessary.

Alternative advertising methods

The proposed guidance and the ICO's wider public narrative present non-personalised advertising as a viable and preferred alternative. However, as set out above, the guidance does not offer any detail on how these alternatives could operate viably and compliantly, including when a user rejects storage and access technology. The guidance states that consent is required for all uses of 'storage

and access technology' for digital advertising purposes, including frequency capping, fraud detection and other essential functionality. It makes no distinction between the requirements that apply to personalised advertising versus other approaches, such as contextual targeting or technologies that do not rely on personal data but still use 'storage and access' technology to function. This includes the section on measurement, which does not address how measurement can work where consumers have opted out of personalised ads and refused the use of storage and access technologies for advertising purposes.

The guidance therefore appears to undermine the potential development and adoption of non-personalised ad models since they are subject to the same legal framework and face the same consent challenges as personalised models. This creates a contradictory and unhelpful situation for online service providers, with no obvious legal or practical avenues offered to support the adoption of alternative approaches or serving ads to non-consented users.

The IA itself identifies that this approach may be unfeasible for many services, would significantly reduce revenue, and– crucially– would still require consent for the underlying technologies to operate.

There are also potential inconsistencies between this position and the 'consent or pay' guidance which implies that contextual/content-based targeting could be offered as an alternative to the 'consent' option for personalised advertising. The ICO needs to ensure that these two pieces of guidance work together in practice (see also our separate comments on guidance fragmentation).

Granular consent

The guidance states that consent must be specific and granular. However, it also notes that "long lists of checkboxes" for granular consent might lead to user disengagement. This creates an inherent tension for guidance users. The guidance would be improved by including practical solutions for achieving transparency in instances where extensive information disclosure is legally required.

Similarly, the guidance also states electronic consent requests should not be "unnecessarily disruptive" but acknowledges "some level of disruption may be necessary." As the draft IA identifies, the expansive scope of the revised guidance and the lack of consent exemptions is likely to lead to increased consent requirements. This will, counterproductively, increase user disruption, particularly when users are being provided with information about and asked to consent to very technical and functional uses/purposes that have no impact on their privacy and are unlikely to be meaningful to them.

It is unclear for guidance users how these competing expectations can be resolved. The guidance should explain how 'necessary' and unnecessary' should be

assessed, and make clear how to comply with the requirements of the law in this context.

Bundled/Grouped Purposes

Grouping of consent is an obvious means to address issues of user disruption and fatigue. The A clearer and more consistent approach to ‘grouping’ related purposes (in the context of obtaining consent) would therefore be beneficial. This is currently addressed in separate places, and in different ways. For example, the consent graphics section suggests consent can be sought under grouped headings (analytics, social media tracking, advertising), and the measurement section refers to grouping consent requests that are “intrinsically linked”. However, this point is not referenced in the *“Can we bundle consent requests?”* section. Elsewhere, the guidance states that ‘Specific consent for personalised advertising can include the use of data and storage and access technologies required to deliver adverts and storage and access technologies used to measure the effectiveness of your advertising’.

This would benefit from explicit confirmation that categorised groupings are permitted and what types of grouping the ICO considers to be compliant.

For ease of use and clarity, we recommend that the guidance section that addresses online advertising contains a consolidated section on this point.,

4. Draft Impact Assessment feedback

Process and methodology

The ICO has presented a draft Impact Assessment (IA) that concludes that the proposed guidance would have serious adverse effects on ad-supported businesses, the ad supply chain and on choice for advertisers and consumers. The ICO states that the negative effects for businesses – and implicitly, those for consumers – ‘are expected to be outweighed by the wider societal benefits of reduced data protection harms’, however marginal these may be. and the ‘expected...increase [in] regulatory certainty’. The IA further states ‘On balance we expect the guidance to have a net positive impact.’ Our members seriously question this conclusion.

Of further concern is that, while welcome as a matter of good regulatory practice, the draft IA falls significantly short of providing a comprehensive analysis of how its proposed guidance will affect the digital ecosystem. There are substantial gaps that must be addressed before the impact of this guidance can be fully assessed. Further work is needed to complete the IA following the consultation, and the guidance should not be finalised while this work is ongoing.

The IA does not appear to be based on a robust and objective methodology. Rather than providing a thorough evaluation, it acknowledges the need for more evidence and offers an incomplete picture that disproportionately focuses on digital advertising while overlooking the broader implications of an expanded scope on the operation of any digital business that depends on ‘storage and access’ technologies.

We are concerned that the ICO appears not to have consulted with other regulatory bodies– particularly the CMA– whose expertise is essential for understanding the consequences of these proposals on the operation of digital markets and effects on consumers. The ICO must therefore consult with other regulators whose work is relevant to and may be affected by this guidance to ensure relevant impacts are identified and considered.

The IA needs to include more explanation and analysis of how different rights and impacts have been considered and balanced - including consumer’s rights beyond privacy/data protection, and business rights - and it should include justifications for the conclusions the ICO has drawn.

The compound impact of this guidance, the ‘consent or pay’ guidance and the ICO’s stance on alternative ad models should be assessed together. We note that the IA for the ‘consent or pay’ guidance was not consulted on and is likely to have gaps similar to those identified in this response. We would suggest that impacts are better considered holistically, taking into account other relevant guidance updates, rather than in isolation.

Incomplete Impact Assessment

The ICO’s IA framework acknowledges a number of factors the ICO must take into account when carrying out its work, that are relevant for IAs. These include:

- ‘the right to the protection of personal data is not absolute, and must be balanced against other rights and freedoms in a proportionate manner’;
- IAs should ‘balance different obligations and objectives, and ensure that regulatory action is both proportionate to the issue at hand and not unduly burdensome on those that they regulate.’
- the ICO’s duties to ‘consider the desirability of promoting economic growth and carry out activities in a way that supports those we regulate to comply and grow’.

However, these factors do not appear to have been fully reflected in the draft IA for this guidance, which has some important gaps. Despite acknowledging that data protection rights are not absolute and must be weighed against other freedoms, the document provides no evidence that such balancing has occurred. Nor does the IA demonstrate how the ICO has weighed business continuity and

viability alongside privacy concerns, or how it has accounted for consumer access to services alongside data protection.

Viable business model analysis

The IA does not appear to consider the effect of the guidance on the operation and viability of different ad models.

As we have noted, the guidance itself does not set out the full range of alternative advertising models the ICO has considered (only contextual advertising and ‘consent or pay’ are mentioned specifically).

The IA does not consider the likely demand for advertising models that rely on less processing of personal data. Advertisers pay a premium for ad products that enable targeting to particular audiences or types of consumer and significantly less for unaddressable audiences. The ICO should engage with online service providers to understand how ‘reject all’ and ‘consent or pay’ implementations have affected consent rates, user engagement, audiences and advertising revenues and remodel its assessment of the impact this guidance could have.

There is no consideration of the consequences for online service providers when users choose to reject all uses of PECR-regulated technology – an increasingly common scenario with the prominent “reject all” options the ICO encourages – which limits or prevents the effective use of commercially-available ad products. Analysis conducted by the CMA for its ‘Online platforms and digital advertising’ market study⁸ found that UK publishers earned around 70% less revenue when they were unable to sell personalised advertising. Adverse impacts of this nature and scale should be central to the cost-benefit analysis in the IA, which should also take account of the number of online services that may become commercially unprofitable as a result, and the consequences of a reduction in the offerings available to consumers.

Conflict with economic growth objectives

The ICO’s online tracking strategy recognises the need for publishers to have economically viable business models but that is not addressed in the IA. In its letter to the Prime Minister, the ICO identifies ‘there are aspects of the digital advertising regulatory landscape that businesses find difficult or burdensome to navigate’ but the revised guidance compounds these challenges rather than helping to resolve them.

⁸ CMA ‘Online platforms and digital advertising Market study final report’, 1 July 2020, para. 44
https://assets.publishing.service.gov.uk/media/5efc57ed3a6f4023d242ed56/Final_report_1_July_2020_.pdf

When examining economic impacts, there is an inherent disconnect between the ICO's stated objectives and its analysis. While the IA asserts the ICO's commitment to "empower responsible innovation and sustainable economic growth," it identifies no benefits that would advance this goal.

The ICO could better demonstrate its commitment to supporting market growth by addressing the issues we have identified with the current application and interpretation of the law (see our comments above on the clarity of the guidance) that are unnecessarily constraining digital advertising businesses and not meaningfully contributing to user privacy.

In addition, the costs captured in the IA, while not complete, clearly identify negative impacts for businesses. This is likely to have direct and indirect consequences for economic growth and for investment in innovation which are not directly explored in the IA.

Underestimated costs

The cost analysis within the IA does not adequately reflect real-world requirements. Familiarisation costs are severely underestimated at £124 per organisation, by assuming one person reading the guidance once would suffice. In reality, storage and access technology management is highly complex, spans multiple business functions and requires organisation-wide engagement. This element of the IA needs to be expanded and made more robust, based on an informed assessment of the time and cost involved for organisations both in the compliance phase and in a 'business as usual' state.

The IA does not quantify (in monetary terms) the business costs of the revised guidance and lacks an analysis of the economic impact on affected sectors, including the digital advertising industry. The ICO needs to put effort into understanding these impacts and make them transparent to stakeholders, including policymakers. The IA states that 'Providing a quantification of the impacts of the proposed draft guidance is challenging' – that may be the case, but that does not mean that no assessment can be made.

Overlooked indirect and operational costs

The IA does not identify indirect impacts of the revised guidance. For online service providers, these could include increased 'bounce' rates when consumers encounter alternative 'consent or pay' options when they visit a website or use an app. This in turn reduces audience size, which reduces the amount of inventory available for advertising and potential audience reach and engagement with the ads they host.

This is problematic for publishers in terms of the value of their ad offering, including for non-personalised ad models, which the ICO says it wants to encourage.

Additionally, publishers may need to integrate and maintain secure payment gateways, handle disputes and refunds, and manage evolving user expectations regarding pricing and service quality. Subscription-based or pay-per-use models also introduce revenue uncertainties, requiring ongoing adjustments to pricing strategies and potential loss of users who are unwilling or unable to pay.

These factors contribute to a long-term financial and operational burden that should be fully accounted for in the ICO's assessment of costs to industry

Overestimation of consumer risk

The IA risk analysis relies on disproportionate examples that mischaracterise the typical nature of digital advertising and the reality of the risks likely to be associated with consumers experiencing ads online.

By focusing on gambling, financial and health-related scenarios that already face strict regulation through mechanisms like the CAP Code and FCA oversight, the ICO creates a misleading impression of the risk of targeted advertising to consumers. The IA should acknowledge that these examples do not represent general or typical market practice. The ICO should engage with relevant sector regulators via the DRCF to ensure the IA reflects how existing regulatory frameworks and protections for consumers already address these risks.

The IA also fails to recognise the many purposes for which storage and access technologies are used that are low intrusion and low risk in privacy terms, and that personal data is often pseudonymised to reduce risk. Most digital advertising is not harmful or high risk and there is little evidence of the risk of harm having materialised in practice. Therefore, the benefits attributed to the guidance are not accurate since they do not reflect the actual, much lower risk and do not outweigh the significant adverse effects identified.

The ICO's examples of risk are over-generalised and not representative of the vast majority of use cases for storage and access technologies. This element of the draft IA should be reworked to be more illustrative and grounded in how most advertisers typically use targeted advertising techniques and specific, potentially higher-risk types of activity assessed with reference to their prevalence rather than the ICO assuming high risk and bad faith across entire sectors. This will allow for a more reasonable analysis of the impacts and will be more useful for industry consumers of the guidance.

Consumer preferences and expectations

We consider that the IA presents an imbalanced consumer perspective that is not an accurate reflection of consumer attitudes to digital advertising and privacy

There is a striking disconnect between the ICO's assumptions and actual consumer sentiment. The ICO's own [Trust and Confidence Report](#) reveals that personalised advertising ranks as the least concerning aspect of data handling for most people. When asked about their worries regarding personal information, only 4% of respondents in 2021 placed advertising at the top of their list– down from 5% the previous year. Less than a third disagreed with seeing targeted ads in exchange for free content.

Research conducted by Public First for IAB UK found that over half of the population would rather see online ads that are a closer match to their own interests over the same adverts as everyone else - rising to 67% for 18-24 year olds.⁹

These results do not suggest a widespread and consistent concern on this point from the UK public.

More work should be carried out to understand consumers' expectations about advertising on ad-supported online services. We believe consumers would expect to see ads on websites/apps, expect these to be personalised or targeted to some degree (so long as UK GDPR requirements are met), and would expect standard activities such as analytics or functional ad management (e.g. geographical ad selection, frequency-capping, anti-fraud) to take place and not to need their consent. Without these functional controls, they are likely to have a poorer user experience, leading to annoyance and frustration.

These issues need a fuller exploration as part of the IA. The ICO should update its evidence base to reflect current consumer attitudes to inform the IA and present a more balanced perspective

Cost impacts for consumers

The IA does not sufficiently recognise the direct and indirect costs to consumers of reduced access to free, ad-supported content and services. The consumer elements of the cost/benefit analysis are oversimplified in a way that overstates the societal benefits and understates the negative impacts for consumers.

Millions of people depend on accessible online information and connectivity. According to the research conducted by Public First for IAB UK, the

⁹ [https://www.iabuk.com/sites/default/files/public_files/Value of digital advertising to UK consumers2 sheet.pdf](https://www.iabuk.com/sites/default/files/public_files/Value%20of%20digital%20advertising%20to%20UK%20consumers2%20sheet.pdf)

majority of people rely on ad-supported versions of their favourite online services. 70% of adults consider it vital that these services remain free, with 28% reporting increased use of ad-supported content during recent cost-of-living challenges. Digital advertising saves households on average £580 per year compared to having to pay for the online content and services they use. The perceived value that consumers attribute to having free access is even higher, at £14,600 per household.

Businesses are facing increased regulatory burdens and need to maintain economically viable business models, but the consequence of the 'storage and access' and 'consent or pay' guidance is that more content is likely to be moved behind paywalls, which is detrimental to consumers. Research conducted for IAB UK in 2018 found a low propensity to pay for access to online content and services¹⁰, and Reuters research (2024) shows a low willingness among UK consumers to pay for access to news online¹¹

The IA does not put forward any evidence that suggests that consumers want or prefer paid-for options or how these affect the user experience, and whether or not consumers see the implementation of 'consent or pay' models as an improvement or a benefit. Nor does it demonstrate that these models result in a perceived or actual improvement to understanding, choice or control for users.

Reduced free-to-access online content and services is also likely to have implications for digital inclusion, which have not been explored in the draft IA. The IA needs to set out how the ICO has considered these trade-offs.

Impact on advertisers

As noted above, both the consultation and the IA take a theoretical approach and do not consider actual or likely advertiser behaviour. For example, the IA fails to recognise that advertising is a discretionary spend for businesses and levels of spending are predominantly determined by performance and ROI which are higher for targeted advertising (both of which the IA acknowledges are likely to be negatively impacted by the proposed guidance). In contrast, untargeted or undifferentiated advertising incurs the same costs (e.g. technology, cost of sale) but is very in and performs poorly compared with targeted advertising. Unsurprisingly, advertiser demand for untargeted advertising remains weak and

¹⁰ Full research results available on request. Summary at

<https://www.iabuk.com/research/consumer-attitudes-towards-digital-advertising>

¹¹[https://reutersinstitute.politics.ox.ac.uk/digital-news-report/2024/how-much-do-people-pay-online-news-what-might-encourage-others-pay#:~:text=The%20headline%20finding%20is%20that,%2C%20and%20Ireland%20\(46%25\).](https://reutersinstitute.politics.ox.ac.uk/digital-news-report/2024/how-much-do-people-pay-online-news-what-might-encourage-others-pay#:~:text=The%20headline%20finding%20is%20that,%2C%20and%20Ireland%20(46%25).)

this undermines the investment case in the alternative models the ICO prefers. As we have set out in section 1 on our overarching concerns, steering the market away from targeted advertising toward commercially unproven alternatives that are less efficient and less effective forms is in tension with the Government's goal to create a climate that helps companies find new customers and grow.

Impact on competition

The IA lacks identification or analysis of the competition and market impact, including for ad-supported services that make up the majority of the UK's most popular commercially-provided sites and apps. There is a risk that this guidance undermines the business case for investment in the UK market and leads to consolidation as smaller online service providers struggle to maintain profitability, compounded by increased compliance costs. In turn this risks creating fewer choices for consumers, increased market share for larger providers, reduced innovation, barriers to entry for new competitors, and potentially higher prices or reduced service quality over time.

The ICO's IA framework notes the ICO's expected duties under the Data (Use and Access) Bill which will require the ICO to have regard to the desirability of promoting competition and to consult other regulators as appropriate. The ICO should consult the CMA as part of the process of developing the IA, on both the impact of this guidance and the 'consent or pay' guidance. In particular, the CMA should be asked to comment on the timing of this proposed change in guidance and to provide an assessment of the impact on competition in the digital advertising market and the consequential consumer and social impacts.

Inconsistency of stated costs and benefits

The IA states that one of the potential 'harms' that justifies intervention is 'psychological harm' including 'fatigue and irritation about [existing] consent banners'. It simultaneously acknowledges the guidance creates a consumer 'cost' in the increased friction due to potential changes in consent management practices by organisations. In reality, the proposed approach would likely increase, not decrease, consent requirements and resulting friction.

Additionally, if functions such as frequency-capping cannot be carried out without consent, this will result in users seeing the same ads repeatedly – a known source of annoyance and frustration and a driver of distrust in advertising – the reasons for which will not be understood by users. There is also a risk that steering ad-supported services toward less viable or profitable ad models leads to increased volumes of ads being served, due to their lower value, which would also be detrimental to users' experience.

The draft IA also states that the guidance will benefit businesses by reducing the time needed for businesses to work out legal requirements and providing

regulatory certainty. We believe that, if adopted in its current form, the guidance would add significant complexity and legal confusion for companies in the digital advertising market

Conclusion

Before proceeding with this guidance, the issues with the draft IA must be addressed:

- **Methodology:** The draft IA does not represent a comprehensive analysis; it needs to incorporate input from other regulators and broader impacts beyond digital advertising and include a robust and accurate cost/benefit analysis
- **Balancing interests:** The IA needs to set out how data protection and other rights have been balanced, including business viability, and justify the conclusions drawn
- **Advertising business model analysis:** The IA needs to analyse the likely effect of the guidance on different advertising models, especially when users reject all tracking technologies.
- **Economic growth:** The IA needs to demonstrate how the ICO has met its commitment to 'empower innovation and growth' and how the guidance will advance this goal.
- **Cost assessment:** The ICO should review the estimated familiarisation costs to reflect real-world requirements and do more work to quantify business impacts in monetary terms.
- **Indirect costs:** Cost calculations need to include those arising from changes to reduced consumer engagement with online services and ongoing costs of implementing alternative payment solutions.
- **Presentation of 'harms':** A more representative approach is required that does not rely on extreme examples that do not have general application (gambling, financial products) and that reflects low-risk use cases, which are more typical.
- **Consumer preferences:** The IA needs a more comprehensive evidence-based approach to presenting consumer views and attitudes to advertising and data use objectively and fairly.
- **Competition impact:** The IA must include an analysis of competition impacts including the consequences for consumers, e.g. reduced choice and increased costs
- **Contradictory claims:** Opposing statements about costs and benefits (consent fatigue, legal clarity) should be reviewed.

A more balanced, evidence-based approach is essential – one that genuinely considers the full spectrum of impacts on businesses, consumers, and the digital economy as a whole. Without a more robust impact assessment, the guidance risks causing significant damage to the very ecosystem it aims to improve.

5. Appendix 1

Data deletion: clarifying separate PECR and UK GDPR requirements

Current version

What if a user withdraws their consent?

[...]

*If someone withdraws their consent to the use of storage and access technologies, you **must**:*

- *stop using them;*
- *cease any processing of personal data the technologies undertake; and*
- *tell any third parties you are working with that the person has withdrawn their consent.*

Suggested redraft

What if a user withdraws their consent?

[...]

*Under PECR, if a user withdraws their consent for access and storage on a device, you **must** stop accessing and storing data on the device for the purpose for which the consent was given.*

*Under the UK GDPR, if a user withdraws their consent to the use of storage and access technologies for the purpose of processing personal data, you **must***

- *stop using them;*
- *cease any processing of personal data the technologies undertake; and*
- *tell any third parties you are working with that the person has withdrawn their consent*

Data deletion illustrative example

The following example is for illustrative purposes only, to show where more detail is needed about how the deletion and notification requirements are intended to apply in practice in the context of RTB.

A data subject has consented to Purpose 3 (Create profiles for personalised advertising) and Purpose 4 (Use profiles to select personalised advertising) under the TCF.

- Under purpose 3, consent allows data to be combined with other sources.
 - If consent is withdrawn, does this only require stopping further data mixing, or must the entire profile be deleted?
 - Are organisations expected to track the origin of every data point (e.g., which third party provided it) and delete it accordingly? Or is deletion based on the most recent data source used to update a given piece of information?

- Under purpose 4, consent applies to the use of a profile.
 - If a data subject withdraws consent, does this prevent further use of the profile entirely, or only in relation to the specific entity or context where consent was withdrawn?
 - Does withdrawal of consent also trigger deletion of the profile?
 - What type of notification must be provided, and what does the ICO expect each party to do to meet the withdrawal of consent and the related deletion obligations?