

Assessing compliance of IAB Europe’s TCF v2.0

Paulina Jo Pesch
Center for Applied Legal Studies
Karlsruhe Institute of Technology
Karlsruhe, Germany
paulina.pesch@kit.edu

Cristiana Santos
RENFORCE
Utrecht University
Utrecht, Netherlands
c.teixeirasantos@uu.nl

Abstract—We aim to perform an in-depth interdisciplinary legal and empirical analysis on the current IAB Europe Transparency and Consent Framework (TCF v2.0) that is present on thousands of popular websites and mobile apps and used by millions of data subjects across the EU. Discerning the correct positioning of each of the players involved in the TCF ecosystem (publishers, consent management platforms, ad-tech vendors, IAB Europe TCF) is crucial since compliance measures and liability depend on their accurate characterization.

Keywords—GDPR, IAB Europe TCF, data controllers, data processors, consent management, CMPs, ad-tech vendors, online advertising

I. MOTIVATION

Context. Myriads of website publishers embed extensive consent dialogues by consent management providers (CMPs). These dialogues ostensibly inform users about the intended use of their personal data by ad-tech providers, the purposes the data is processed for, the legal bases the processing is based on, and request the users’ consent. Consent dialogues follow the Transparency & Consent Framework (TCF), an industry standard created by the Interactive Advertising Bureau (IAB) [1] that is advertised as a consent solution that is compliant with the General Data Protection Regulation (GDPR) [2]. The TCF lays down rules for publishers, ad-tech vendors and CMPs and comprises a list of purposes that ad-tech vendors implementing the TCF can choose from [2]. Beginning with the GDPR’s entry into force in 2018, CMP adoption has increased fast [3]. In 2020, the TCF has been actively used on 1,426 out of top 22,000 EU websites [4], counting with a growing number of ad-tech vendors [5] (780 in January 2022), and CMPs represented by bigger players such as Onetrust and Quantcast, occupying most of the market share [3].

Motivation. While IAB claims [6] the TCF is compliant with the GDPR, several scholars [5, 7–11] and supervisory authorities [12–16] concluded that the consent collection under the TCF does not meet the requirements of the GDPR. However, a comprehensive in-depth legal analysis is still missing. It is necessary, among other things, to critically assess i) the roles and responsibilities of all involved companies [cf. 6, 9, 11, 12, 17], ii) the TCF features, special features, stacks and their relation to the overall 10 purposes defined in the TCF, and iii) the establishment of sufficient legal bases for different data processing activities under the TCF, including the creation, storage and transfer of user preferences and the further processing of personal data especially in Real-Time Bidding (RTB) [18], cf. [9, 12, 17]. Additional interdisciplinary legal and empirical research is essential to assure legal certainty of this de facto industrial standard

pervading the web and online consumer data processing. Discerning a clear allocation of the responsibilities of each of the players involved in the TCF ecosystem is crucial since compliance measures and liability depend on their accurate characterization (Recital 79 of the GDPR).

II. DESCRIPTION OF THE IDEA

We propose an in-depth *legal analysis* of both, the TCF in general, and its factual implementation by the involved parties, substantiated with *measurement data* on consent dialogues on a large number of websites and a *qualitative empirical study* on the implementation of and the decision-making under the TCF. Our analysis consists of two parts.

(1) Firstly, we assess whether TCF consent dialogues are compliant with the GDPR. The assessment will look at legal issues of the TCF i) in general, i.e. involve an analysis of the purpose and feature definitions of the current TCF, that have not been analysed in an integrated way yet; and ii) in specific, towards legal issues stemming from concrete implementations of the TCF. The analysis of concrete implementations will be based on measurement data collected through extensive browser crawls (for details on the data collection see [5]).

(2) Secondly, we analyse the roles, responsibilities, and liabilities of publishers, ad-tech vendors, CMPs, advertisers, and the IAB under the GDPR. The analysis critically assesses the Belgian DPA’s classification of IAB, publishers and CMPs as joint controllers (Art. 26 GDPR) [12, 17] and examines if, and if so, under which circumstances, advertisers act as (joint) controllers. Joint controllership requires the joint determination of the “means” and “purposes” of the data processing, while the term is interpreted widely by the Court of Justice of the EU [19–21] and the European Data Protection Board [22]. Therefore, an in-depth legal assessment requires market insights into the *factual* decision-making that we will gather in a qualitative empirical study that builds on the results of the preliminary study on the TCF implementation and decision-making by ad-tech vendors [23]. We envisage to carry out semi-structured interviews with other actors, namely publishers, CMPs, IAB Europe, and advertisers. The qualitative study does not require a representative selection of interviewees but benefits of a reasonable number of well-selected interviewees. We are in contact with IAB. Publishers and CMPs will be selected based on measurement data [5] and our findings in part 1 of the analysis, while we focus on widely adopted CMPs and publishers with significantly incompliant consent dialogues.

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