

Personalised Ads Regulation, Pay or Consent or Else

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Regulatory environment has evolved



Personalised advertising

- *Legitimate activity*
- *Highly regulated activity*

Overview of applicable Regulation to advertising

- EU Charter, comprising *inter alia* data protection and privacy, freedom of expression, IP rights, right to conduct a business (which includes the right to determine service contract and price), etc.
- Digital Content Directive 2019/770 + Consumer Rights Omnibus Directive 2019/2161
- GDPR - Balance among fundamental rights (Rec 4) & conditions for data processing
- ePD - Protection of privacy in end-user devices
- DMA - DMA consent requirements for personal data combination
- DSA - Specific data use restrictions on profiling for personalised ads
- Political Ads Regulation - Specific data use restrictions for personalised ads, consent requirement and ad archive (transparency)

Jurisprudence

- Court of Appeal Vienna - 6Ob56/21k, para. 107 - Personalised ads business model “neither immoral nor unusual”
- French Conseil d’État decision on cookie walls
- CJEU-German Federal Cartel Office (C-252/21)
- Most recent: Regional Court Regensburg concluded that Meta’s consent mechanism (Subscription for No Ads) was valid

Personalised advertising

- *Freedom to conduct a business is a human right (Art. 16 CFR)*
- *Right to protection of personal data has to be balanced against other fundamental rights (Rec.4 GDPR)*

EU Commission Letter to Dutch DPA

*“... the **freedom to conduct a business**, including pursuing pure commercial interests such as profit maximisation, is a human right enshrined in Article 16 of the **Charter of Fundamental Rights** of the European Union (EU Charter). Recital 4 of the GDPR underlines that the right to protection of **personal data is not an absolute right** and it **has to be balanced against other fundamental rights**, such as the freedom to conduct a business. The **strict interpretation of the Dutch DPA does not allow an appropriate balance** to be struck between the rights at issue, as the right to data protection is given precedence by virtue of the fact that certain interests rooted in the freedom to conduct a business are categorically considered illegitimate... we recall that the **purpose of the GDPR is not to hamper business activities** but rather to allow the conduct of business while concurrently ensuring a high level of data protection..”*

Regulatory Evolution & Interplay

CJEU Decision in FCO Case

- **Consent** is generally the appropriate legal basis for behavioural ads (particularly where that includes **Off-platform data**)
- **Pay or Consent models** are an appropriate way to obtain such consent

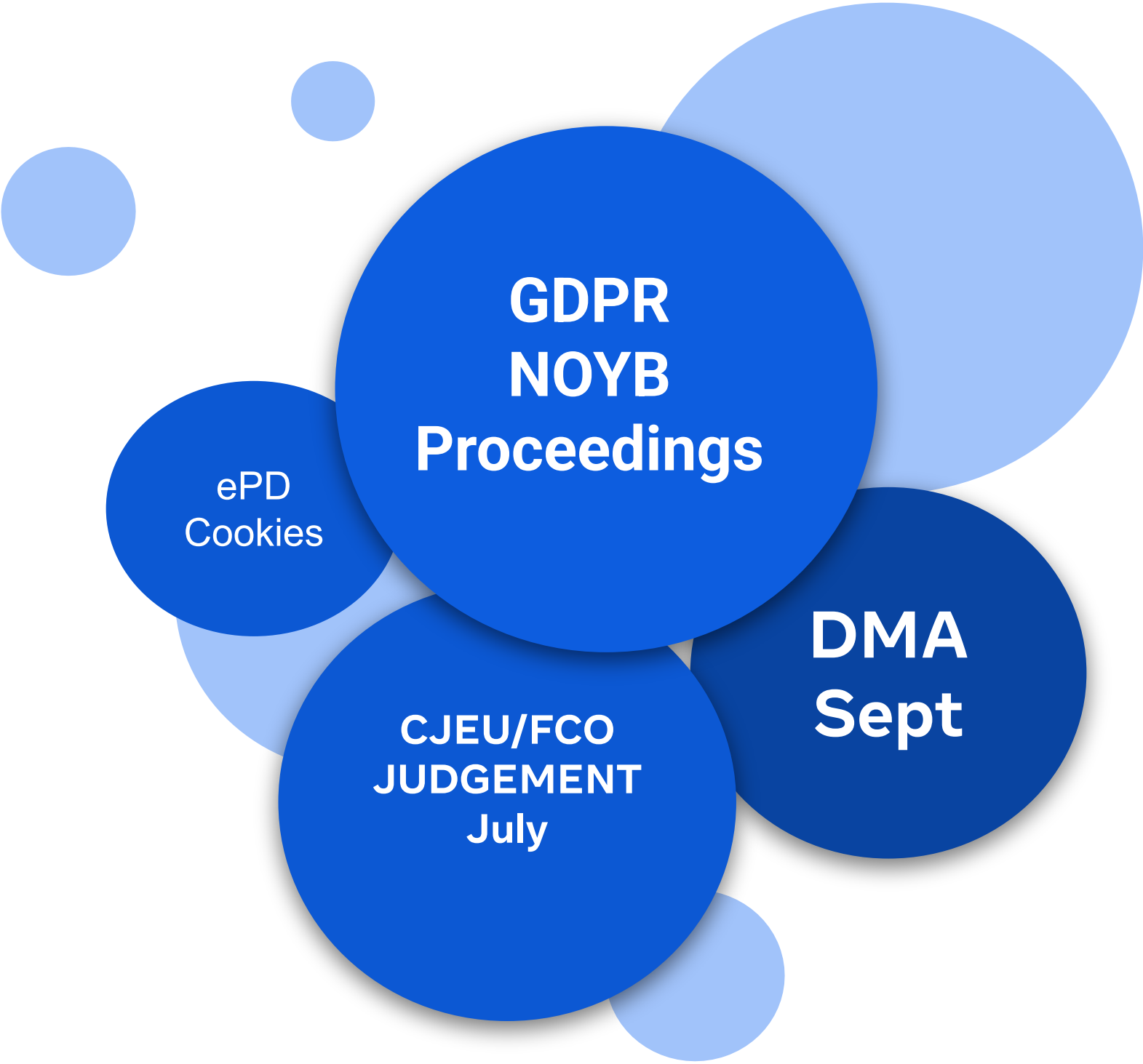
*... those users **must be free to refuse individually**, in the context of the contractual process,*

***to give their consent** to particular data processing operations not necessary for the performance of the contract, **without being obliged to refrain entirely from using the service** offered by the online social network operator,*

*which means that **those users are to be offered, if necessary for an appropriate fee, an equivalent alternative not accompanied by such data processing operations.***

Regulatory Evolution & Interplay

Timeline



'18: Changes to Privacy Policy aligned with GDPR and 3PD opt-ins: Meta relies on CN for behavioural ads as a part of its personalised service

'21: Austrian Courts (CoA): CN okay for behavioural ads

'22: DPC draft decision concluding that CN in principle could be available for behavioural ads

Dec '22 : IDPC/EDPB NYOB decision: CN not okay for behavioural ads

April '23: Meta implements LI for behavioural ads

July '23: CJEU preliminary ruling: preferred GDPR legal basis for behavioural ads - consent & subscription models

Aug '23: Meta's public announcement of move to consent

Sept '23: DMA designation of CPSs (FB, IG and Ads)

Oct '23: Meta's public announcement of Subscription for No Ads

Nov '23: Meta offers new choice - pay v consent consistent with CJEU ruling

April '24: EDPB Opinion 08/2024 on Valid Consent in the Context of Consent or Pay Models Implemented by Large Online Platforms

July `24: EC preliminary findings that Meta's "pay or consent" advertising model does not comply with the DMA

Nov `24: Update to Subscription for No Ads (Less Personalised Ads, Price, etc)

Pay or Consent models: nothing new

DER SPIEGEL

Resolution: EU-Kommission wegen an Ungarn verhängt

Chinesisches Bohrerboot

Mit dem zum Mittel der Erde

Wohrtes Loch: ken mysteriöse Her Heimatgalaxie

Welcomel

With advertising and tracking
Storage and processing of data for personalized advertising with profiling.

Read ad-free
No sharing of your data with advertisers. Use us for a fee without any ad tracking and practically free of advertising.

Consent and continue | **Check out details**

Details on advertising and analysis trackers as well as the revocation that is possible at any time can be found in our **Privacy Policy** or in the **Privacy Center** at the bottom of each page.

Already an "ad-free" user? [Log in here.](#)

Tracking: We work with **third party providers** to improve and finance our web products. Together with these up to 148 third-party providers, we collect and process personal data on our platform. Using cookies stored on your device, personal identifiers such as device identifiers or IP addresses, and based on your individual usage patterns, together with these third party providers we can:

- ... Store and/or retrieve information on a device. For the processing purposes disclosed to you, cookies, device identifiers or other information may be stored or accessed on your device.
- ... Execute personalized ads and content, ad and content measurement, audience and product development insights: Ads and content can be personalized based on a profile. Additional data can be added to improve personalized ads and content. The performance of ads and content will be measured. Insights will be derived about the target groups that have viewed the advertisements and used our services.
- ... he used to create or improve usability, systems and software.

It is not that your data is also processed by providers in third countries and the USA. If you consent to this data to authorities there. Your rights are protected in accordance with applicable law (adequacy decision, certification, standard contractual clauses).

[Zur deutschen Seite wechseln](#)

Der Spiegel, 154 partners

Continue with ads ...
Visit [ibancalculator.com](#) with ads and tracking as normal. You can revoke your consent at any time through our privacy policy.

Accept and continue

... or with contentpass
Use [ibancalculator.com](#) and over 300 other websites without banner ads, personalized tracking and video ads for only 3,99 € per month.

Ad free for 3,99€ / month

You can revoke your settings at any time in our privacy policy. More information on ads and tracking in our privacy policy: [the list of our partners and the privacy center.](#)

We only use cookies and other technologies that are absolutely necessary for the provision of our offer. Details about the subscription can be found [here](#) and in our [privacy policy](#) (contentpass subscription).

*This is tracking: through information collected on your device (for example cookies) we and our 161 partners can modify our advertisements and content based on your user profile and measure the performance of our advertisements and content. We analyze the data on user behavior and preferences in order to optimize content and advertisements. You can revoke or adjust your consent at any time under "Cookie settings" at the bottom of the page. Your selection will be applied exclusively to this offer. If you would like to use "[ibancalculator.com](#)" without advertising or tracking, you can take out a contentpass subscription for 3,99€ / month. The subscription can be cancelled monthly.

Transfer to third countries
Some third-party providers are located in countries that do not have a level of data protection equivalent to that of the EU (for example, the USA). Government agencies (for example, intelligence agencies) may have unrestricted access to your personal data there and you may not have effective legal protection against this access. Insofar as you accept tracking technologies by clicking "Accept" or "Accept selection", you also consent to a transfer of your data to third-party providers in these countries (consent pursuant to Art. 49 (1) a) GDPR).

Purposes

- Store and/or access information on a device
- Personalized advertising and content, advertising and content measurement, audience research and services development
- Use precise geolocation data
- Actively scan device characteristics for identification

Imprint | Privacy Policy | contentpass FAQ

Contentpass ("Pay or Okay" as a Service)

SEZNAM.CZ

To continue, we need to know how we can display ads to you

Without targeted ads and cookies
The service "Seznam without targeted ads" allows you to obtain content without ads targeted directly at you; non-targeted ads will continue to be displayed.¹

Free with ads
Everything will remain free of charge as before. We will tailor ads and content to your interests and hobbies. Seznam and its services will be tailored to you.²

I will subscribe for 79 CZK/month | **I agree and continue**

[Detailed settings](#)



EL PAÍS

Ofrece las siguientes modalidades de navegación

Navegación gratuita mediante la aceptación de cookies
Esto implicará el uso de su información de navegación con un fin publicitario y de personalización de contenidos. Accederá de forma gratuita a todo el contenido, salvo el exclusivo para suscriptores, de este sitio web mediante la aceptación de cookies y tecnologías.

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Esta modalidad le permitirá, entre otros servicios, lectura ilimitada de El País en web y App, acceder a newsletters con contenidos exclusivos, a experiencias culturales únicas y comentar noticias. Si decide suscribirse, y en virtud de las preferencias que elabore.

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¿Ya eres suscriptor? [Inicia sesión aquí.](#)

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El Pais, 803 partners

Soutenez un journalisme fiable

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Accepter et continuer | **S'abonner**

Déjà abonné? [Se connecter](#)

Le Monde, 170 partners

CORRIERE DELLA SERA

Rifiuta e abbonati

centinaia di giornalisti, grafici e tecnici. Per garantire un'informazione libera e accessibile facciamo ricorso a pubblicità profilata che copre i costi della navigazione così da permettervi di usufruire di una parte dei contenuti gratuitamente. Senza la pubblicità l'accesso ai nostri servizi avviene previo pagamento a pacchetti di abbonamento crescenti per contenuti e costo. Scegli se accedere al [servizio di base](#) permettendoci di erogare pubblicità personalizzata o aderendo a un piano di abbonamento equivalente.

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ACCETTA E CONTINUA | **PREFERENZE**

Sei già abbonato? [Accedi](#)

Il Corriere de la Sera, 779 partners

Until now, we have been able to pay for the operation and development of our services thanks to income from targeted advertising. However, this model is no longer sustainable, the market is changing. At Seznam, like similar companies around the world, we are trying to find the best solution. For us, this is a paywall in the form of the Seznam without targeted ads. For users who continue to allow targeted advertising, nothing changes, and they can use our services as before. For others, we now offer an alternative to using our services without targeted advertising for a fee of 79 CZK per month. For more information, see [video](#) or [read more here](#).

You can access your [email inbox](#) without any restrictions.

1 The service "Seznam without targeted advertising" allows you to obtain content without ads targeted directly at you; non-targeted ads will continue to be displayed.

If you purchase this product, we will tailor ads and content to your interests and hobbies. Seznam and its services will be tailored to you.²

By clicking the "I will subscribe for 79 CZK/month" button, you consent to the transfer of your data to third-party providers in these countries (consent pursuant to Art. 49 (1) a) GDPR).

ACCETTA E CONTINUA | **PREFERENZE**

transfermarkt

Witamy! Jak chcesz korzystać z Transfermarkt?

Bezpłatnie z reklamami i śledzeniem...
Odwiedź Transfermarkt z reklamami i śledzeniem jak zwykle. Możesz cofnąć swoją zgodę w dowolnym momencie odwiedzając stronę polityki prywatności.

... lub bez reklam z Contentpass
Korzystaj z Transfermarkt i ponad [300 innych stron internetowych](#) bez banerów reklamowych, spersonalizowanego śledzenia i reklam wideo za jedyne **3,99€ za miesiąc**.

Zaakceptuj i kontynuuj | **Bez reklam za 3,99€ za miesiąc**

Więcej informacji na temat reklam i śledzenia w naszym [polityka prywatności](#) w [centrum prywatności](#).

Jesteś już abonentem contentpass? [Zaloguj się tutaj](#)

Jest to śledzenie: dzięki informacjom zebranych na Twoim urządzeniu (np. pliki cookie) my i nasi [130 partnerzy](#) możemy modyfikować nasze reklamy i treści w oparciu o profil użytkownika oraz mierzyć wydajność naszych reklam i treści. Analizujemy dane dotyczące zachowań i preferencji użytkownika w celu optymalizacji treści i reklam.

Cele, do których wykorzystywane są Państwa dane, wymienione są tutaj:

- ▶ **Przechowywanie informacji na urządzeniu lub dostęp do nich**
- ▶ **Reklamy oparte na ograniczonych danych, spersonalizowany profil reklamowy i pomiar reklam**
- ▶ **Spersonalizowane treści, pomiar treści i badanie odbiorców**
- ▶ **Wykorzystanie profili do wyboru spersonalizowanych reklam**
- ▶ **Rozwój i ulepszanie usług**
- ▶ **Użycie dokładnych danych geolokacyjnych**

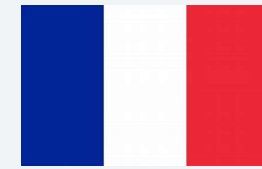
nie charakterystyki urządzenia do celów identyfikacji

hrona danych | [contentpass FAQ](#)

DPAs previously endorsed Pay or Consent models



Germany- March 2023 DSK Conference



France- May 2022 CNIL guidelines on Cookie-Walls



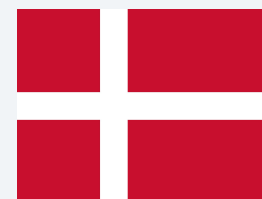
Austria- March 2023, GZ: 2023-0.174.027 „pay or okay“ ruling



The Netherlands- DPA opinion on cookie walls



Spain- Jan 2024 Spanish DPA opinion on cookie wall



Denmark- DPA opinion on cookie walls and GulogGratis decision



Norway- 2023 Grinder decision (Privacy Appeal Board)

EDPB Opinion

When the EDPB is Weaponized, It Is Our Privacy That Is at Risk

Op-ed on what we know of the EDPB opinion on Pay or OK
By Charles Helleputte, Head of EU Data Privacy, Cybersecurity & Digital Assets, Squire Patton Boggs
April 17, 2024, 5.15pm (Brussels)

Today, the EDPB plenary had a moment. It discussed an opinion on the Pay or OK models for social media. It was not its role, but it was likely trapped to do, as Art. 64(2) GDPR didn't consider that national data protection authorities would sometimes use tactics similar to privacy activists to weaponize fundamental rights in a fight that has very little to do with privacy at its core. The discussion is much more about the Internet we want (or not).

"In most cases, it will not be possible for large online platforms to comply with the requirements for valid consent if they confront users only with a binary choice between consenting to processing of personal data for behavioral advertising purposes and paying a fee" says the opinion (according to the leak from POLITICO).

Subject to reading more than one paragraph (as I anticipate the opinion to be more nuanced than what POLITICO and NOYB leaked this afternoon) and looking at the elements that the EDPB is providing to assess the criteria of valid consent (according to its press release), this outcome (potentially) contradicts not only a ruling from the Court of Justice of the European Union (C-252/21) in *Meta Platforms Inc. v. Bundeskartellamt* (that probably also went one step too far but here we are), but also the fundamental



Opinion 08/2024 on Valid Consent in the Context of Consent or Pay Models Implemented by Large Online Platforms

Adopted on 17 April 2024

Verfassungsblog

- Verfassungsblog
- Verfassungsdiskussion
- Verfassungspodcast
- Verfassungsentwürfe

About Submissions Projects Libraries Search here...

15 April 2024

GDPR Overreach?

The Challenges of Regulating Pay-or-Consent Models through Data Protection Law

I. Dispute over the classification under data protection law

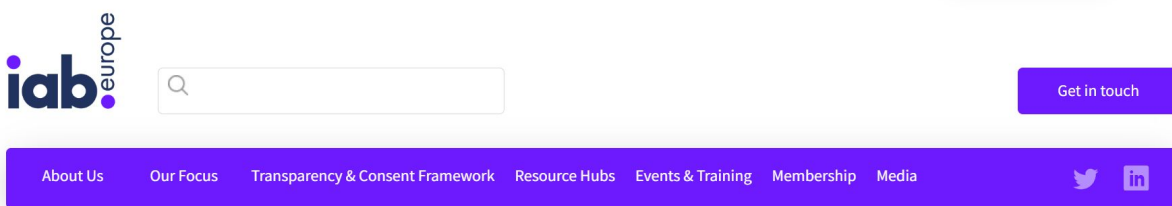
Various institutions in Europe are currently in the process of carrying out a legal assessment of so-called "pay-or-consent" models. The term refers to online business



Martin Nettesheim
Martin Nettesheim is a Professor of Constitutional, Administrative, European and International Law at the University of Tübingen.

Explore posts related to this:
[DSA, DSGVO, EU, Europarecht, Internet, data protection](#)

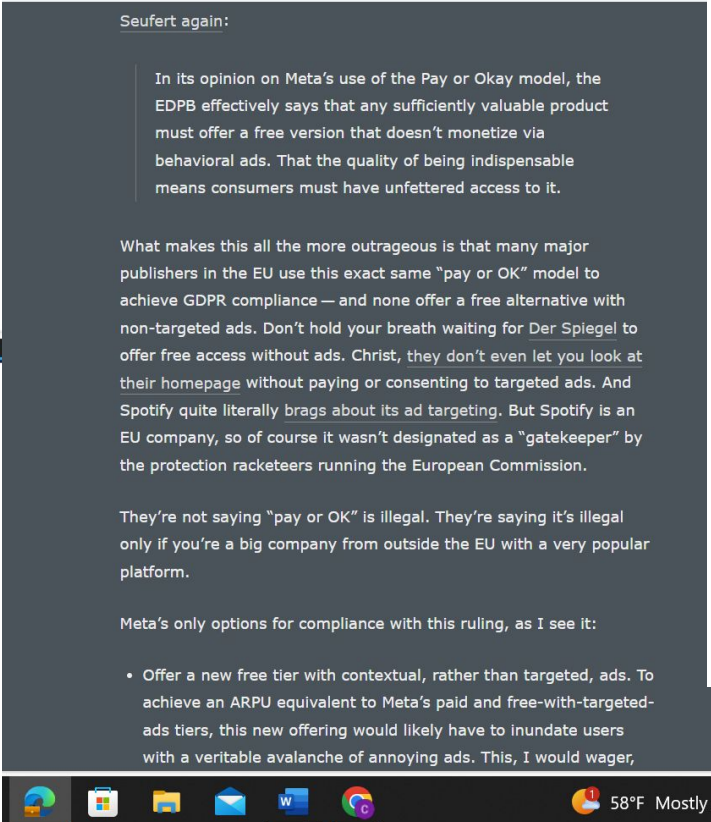
No Comments



IAB Europe Sends Letter to the EDPB on the 'Consent or Pay' Model

Brussels, Belgium, 19 March 2024 - IAB Europe, Alliance Digitale, IAB Italia, and IAB Spain have sent a joint letter to the European Data Protection Board (EDPB) to highlight important considerations in the context of the EDPB's upcoming Opinion and subsequent Guidelines on the "Consent or Pay" model, and to request a public consultation on the latter.

- CATEGORIES
- 101 Videos
 - Ad Blocking
 - Ad Effectiveness Library
 - Ad fraud
 - Ad spend
 - Advertising effectiveness
 - Affiliate Marketing
 - All news



Herz-Jesu-Datenschützer am Werk

Mit einer überzogenen Entscheidung entzieht der europäische Datenschutz-Ausschuss Geschäftsmodellen im Internet die Grundlage.
Von Stefan Brink



Facebook ist besonders im Visier der Datenschützer. Foto AP

Die Europäische Union hat den Datenschutz mächtig gemacht. Seit 2018 regiert die Datenschutz-Grundverordnung (DSGVO) mit exorbitanten Bußgeldern und durchschlagenden Betroffenenrechten. Mehr als die Hälfte dieser Vorschriften befassen sich dabei gar nicht mit der Frage, was die Digitalwirtschaft mit den häufig sensiblen Daten anstellen darf, sondern weist staatlichen Stellen, den Datenschutz-Aufsichtsbehörden, zahlreiche Befugnisse zu: von der Aufklärung der Öffentlichkeit über Risiken der Datenverarbeitung bis zu Anordnungs- und Vollzugskompetenzen.

steht, sondern allein dem Gesetzgeber gebührt. Auf rechtfertigende Gesetze vermag sich der EDPB hierfür nicht zu berufen: Als Quelle seiner Rechtskenntnis gibt er lediglich eine Richtlinie der EU-Kommission aus dem Jahr 2019 an – welche seine Opinion aber gar nicht stützt: Diese Richtlinie möchte lediglich sicherstellen, dass bei Geschäftsmodellen, bei denen „der Verbraucher keinen Preis zahlt“, die Verbraucher „Anspruch auf vertragliche Rechtsbehelfe haben“ – nicht mehr, nicht weniger. Auch die DSGVO sieht solche Einschränkungen der Marktfähigkeit personenbezogener Daten nicht vor, sondern garantiert vielmehr den „freien Verkehr“ dieser Daten „in der Union“. Auch der EuGH hatte kürzlich keinerlei Zweifel an einem „Pay or consent“-Modell geäußert (so in der Entscheidung „Bundeskartellamt“).

Mit seiner Argumentation verkennt der EDPB zudem die Zielrichtung von Grundrechten: Sie richten sich nicht gegen Unternehmen, sondern gegen den Staat – und sie umfassen gerade nicht die gegenleistungsfreie Inanspruchnahme fremder Leistungen. Der EDPB unterminiert damit wesentliche Teile der internetbasierten Geschäftsmodelle. Und all dies entwickelt der Ausschuss jenseits der Öffentlichkeit und ohne Beteiligungsmöglichkeiten Betroffener.

Regulatory Evolution & Interplay

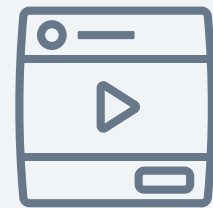
National court rulings after the Opinion conforming the legitimacy of Meta's pay or consent model

- **April 2024 Austrian Federal Administrative Court** confirmed legitimacy of Cookie Walls for normal publishers and Pay or Consent models for dominant companies.
- **June 2024 German Court (Regensburg)** confirms validity of Meta's pay or consent model.
- **LG Mosbach (2 O 89/23) stated that:**
“It is obvious from common sense that the defendant can only provide its offer for free because it sells advertising. This is neither defamatory nor prohibited. If the plaintiff feels uncomfortable with this, they are free not to use the defendant's offers or to pay for an offer without advertising.”

UPDATES NOVEMBER 2024

We announced several updates to our subscription for no ads offering to address evolving regulatory feedback from across Europe

We will ask all users who have previously chosen to use Meta Products with ads to decide whether they would like to subscribe for no ads or to continue to use our Products free of charge with ads. People choosing to use our Products with ads will subsequently be able to adjust their experience to a less personalized one.



Less-personalized ads

A new offering to see ads based on significantly less data. As a result, the experience includes ads that cannot be skipped for a few seconds (known as 'ad breaks').



Updated experience

We've integrated feedback to provide additional transparency and adjusted the consent flow design to help users make informed choices in a balanced manner.

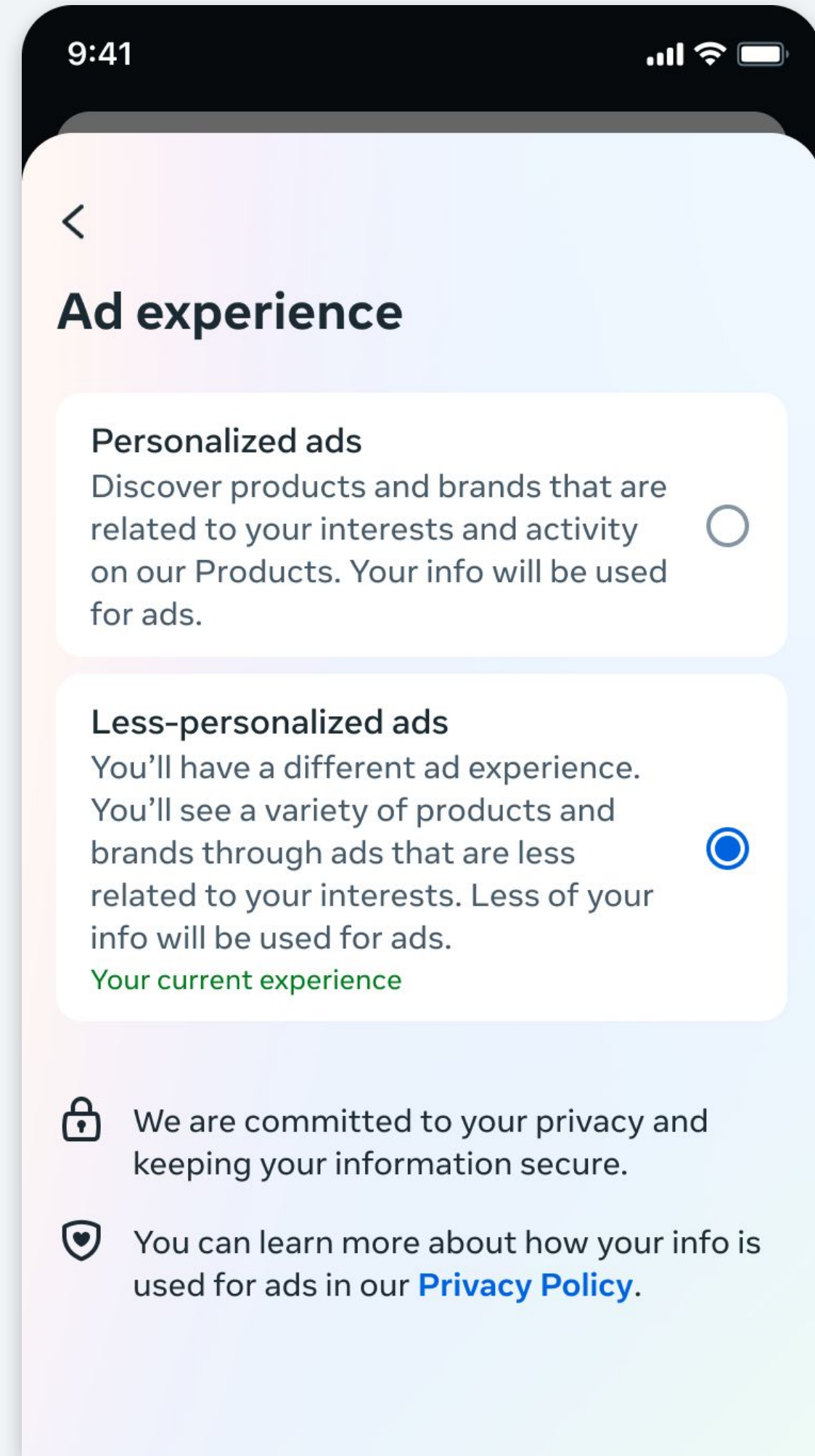


40% price reduction

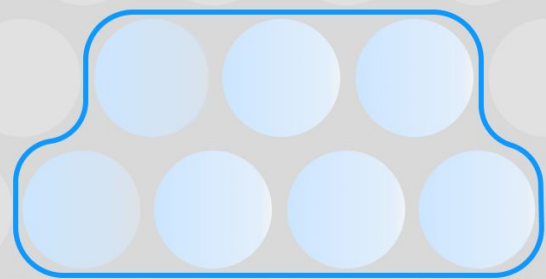
A reduced cost of the subscription for no ads at €5.99/month for 1 account, plus €4.00/month for each additional account on the web (compared to €9.99 plus €6.00, for each additional account)

NOTE Pricing on mobile higher to account for app store fees.

Personalized ads vs Less-personalized ads



PERSONALIZED ADS

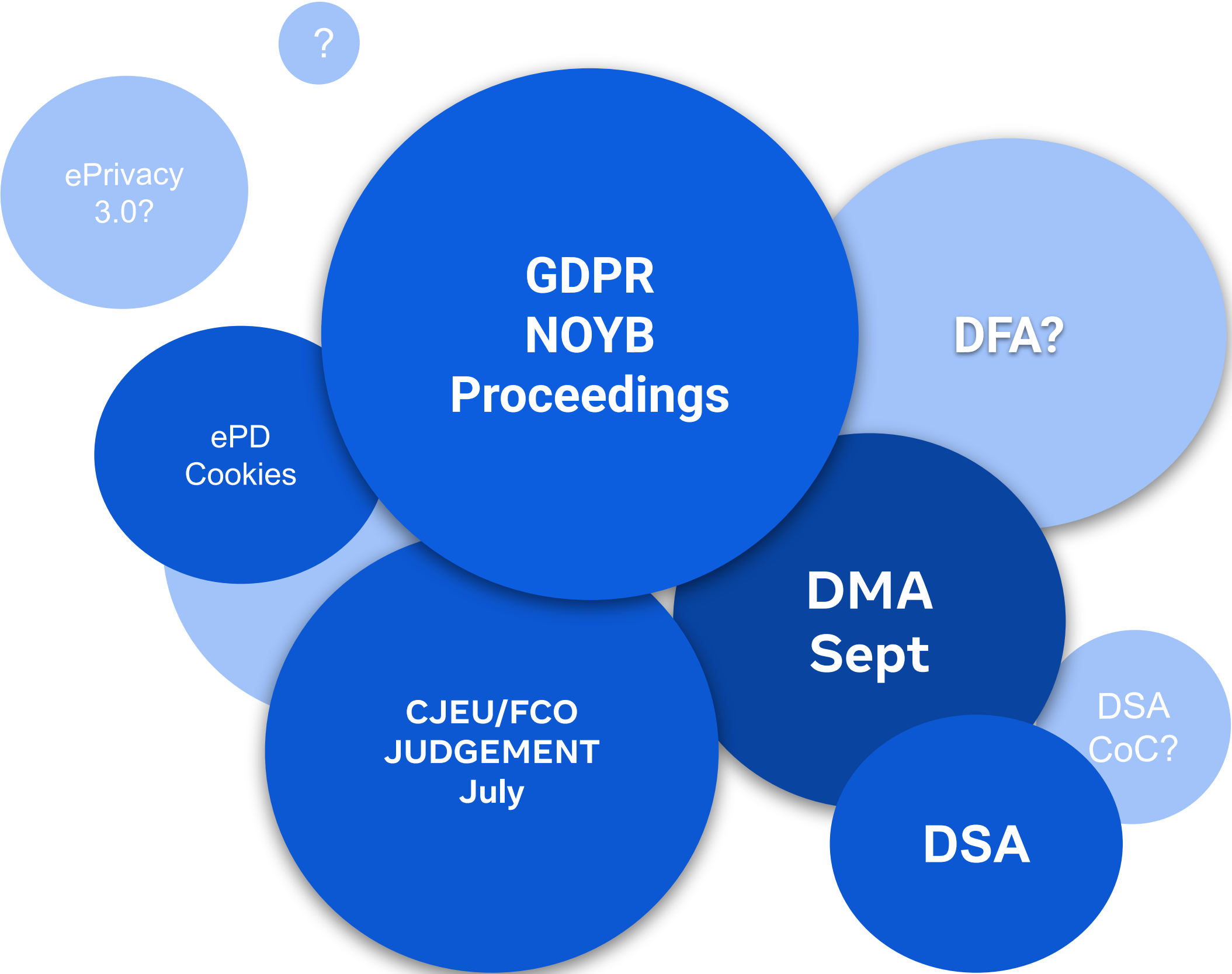


LESS-PERSONALIZED ADS

Available data for personalized & less-personalized ads (representative only)

We're offering an additional control for users to see **less-personalized ads**, which use **significantly less data**.

Regulatory Evolution & Interplay - WHAT'S NEXT?



What's at stake?

For people

Maintains an ad-supported internet and free online services for millions in EU

For businesses

Drives sales of niche products and smaller businesses with limited budgets who need self-serve options

For the economy

Contributes €107 billion annually to European business revenue

