

Privacy Update

Lorenz Privacy Team

Tracking Online Behaviour Has Its Limits

On June 22, 2010 Article 29 Working Party (hereinafter: “Article 29 WP”) has adopted its long expected opinion on online behavioural advertising (hereinafter: “Opinion”).

The Article 29 WP defines behavioural advertising as *“advertising that is based on the observation of the behaviour of individuals over time. Behavioural advertising seeks to study the characteristics of this behaviour through their actions (repeated site visits, interactions, keywords, online content production, etc.) in order to develop a specific profile and thus provide data subjects with advertisements tailored to match their inferred interests”*.

The Opinion contains the following main remarks:

- Prior opt-in mechanisms are promoted as an adequate means to obtain informed consent. The Article 29 WP recommends the advertising industry to require a prior affirmative action of the user (consent) before a cookie is installed on individuals’ hard-drive for purposes of conducting behavioural advertising. Furthermore, it is opined that opt-in mechanisms could be effectively implemented through adequate browser technology.
- Consent by way of browsers or other applications settings should “convey clear, comprehensive and fully visible information in order to ensure that consent is fully informed”.
- The individual’s consent should not be granted “for ever” but should be limited in terms of time and the individual should be able to revoke such consent at any time.
- Opt-in consent through similar default browser settings must be considered unlawful. The Article 29 WP stresses that opt-out mechanisms are not relevant means “to obtain average users informed consent”.
- Ad network providers should restrain from profiling children with a view on behavioural advertising.
- Ad network providers should restrain from processing users’ sensitive data unless such providers deploy mechanisms to obtain explicit and specific prior opt-in consent.
- Information collected and stored for behavioural advertising can typically not be used for other secondary purposes (purpose limitation principle).
- Behaviour data should be deleted on a recurrent basis when no longer needed for development of a user’s profile. The Article 29 WP calls upon ad network providers to develop adequate retention policies.

The Article 29 WP approach on online behavioural advertising builds on the assumption that the majority of internet users lack a basic understanding on the collection of their personal information on

the internet. As a result the Article 29 WP is rather sceptical about the efficiency of an “opt-out” right, since it does not envisage any active participation of the internet user.

The Opinion does not consider whether the proposed requirements are technically achievable. It does, however, welcome a dialogue with stakeholders on technical and practical solutions to ensure behavioural marketing within the boundaries of EU data protection law.

The full text of the Opinion is available [here](#).

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Joanna Tomaszewska & Jan Dhont, for the Lorenz Privacy Team

Contact: Mr. Dhont, Head of Lorenz Privacy Department

j.dhont@lorenz-law.com

Lorenz Brussels

Rue du Trône, 14-16 b.5

1000 Brussels