

Ms. Elizabeth Denham
Chair, Global Privacy Assembly
Chair, ICO

By email

The Consumer Voice in Europe

Ref.: BEUC-L-2020-107/UPA/cs

Brussels, 21 April 2020

Subject: Civil society organisations take action against widespread commercial surveillance by adtech industry

Dear Ms. Denham,

We address you in your capacity as Chair of the Global Privacy Assembly, on behalf of BEUC (The European Consumer Organisation) and its member organisations, national consumer groups from across Europe.

We would like to bring to your attention recent actions of consumer organisations and other civil society organisations against the widespread commercial surveillance practices and privacy breaches that are at the heart of the online advertising industry.

In January this year, Forbrukerrådet, BEUC's Norwegian member, published the report "[Out of Control - How consumers are exploited by the online advertising industry](#)". This report shows a hidden side of the data economy, particularly how the online marketing and adtech industry operates. It concludes that the comprehensive tracking and profiling of consumers which fuels the current adtech industry are by their very nature exploitative practices which do not respect the General Data Protection Regulation (GDPR). These practices affect not only consumers but citizens and society at large. People carry their mobile devices everywhere. Smartphones record information about sensitive topics, such as their health, behaviour, interests and sexual orientation.

The report reveals the extent of personal data which is collected from users of 10 mobile apps – ranging from dating to fertility and children's apps – and the hidden industry behind this data collection. It sheds a light on the commercial third parties that receive and exploit consumers' personal data without any valid legal basis. These are the **key issues identified**:

- 1. Personal data is systematically hoovered up and exploited** by multiple businesses under potentially invalid legal bases and beyond the consumer's knowledge or control. In particular:
 - These companies do not obtain valid consent from consumers to process their personal data, including for the processing of data which would fall under Article 9 of the GDPR (special categories of data) and would therefore require explicit consent.
 - These companies also fail to meet the requirements to resort to legitimate interest as a legal basis for processing personal data, which in any case would not be a suitable legal basis for the processing operations analysed in the report.
- 2. Consumer harms.** The comprehensive profiling and categorisation of consumers can trigger different types of harm, both for individual consumers and for society as a whole. This includes different forms of discrimination and exclusion, widespread fraud, manipulation, and the

chilling effects that massive commercial surveillance systems may have both on individuals and more generally on consumer trust in the digital economy.

- 3. Consumers cannot avoid being tracked.** Firstly, they are not provided with the necessary information to make informed choices when using the apps for the first time. Secondly, the extent of tracking, data sharing, and general complexity of the adtech industry is incomprehensible to them. Individuals cannot make real choices about how their personal data is collected, shared and used.
- 4. Even if consumers had comprehensive knowledge of how adtech works, there would still be no way to stop or control this data exploitation.** The number and complexity of actors involved in the adtech industry surrounding the use of websites and apps is staggering, and consequently consumers have no meaningful ways to resist or otherwise protect themselves.
- 5. It is worth noting that the prevalence of tracking and profiling may also have negative effects on competition:** start-ups and other innovative entities are discouraged from developing privacy-friendly alternatives when the digital advertising market relies on expansive tracking and profiling. This creates an uneven playing field for companies that aim at respecting consumer and data protection rights. Furthermore, the way the adtech industry currently works – enabling the leading platforms to amass and monetise vast amounts of personal data – may further strengthen these platforms’ market power to the detriment of other market players and ultimately consumers.

All of this means that the massive commercial surveillance going on throughout the adtech industry is systematically at odds with consumers’ fundamental rights and freedoms. These problems are also contributing to the erosion of trust in the digital economy and negatively impacting on our societies and democracies.

On the basis of the findings of their report, **Forbrukerrådet** filed [complaints](#) before the Norwegian Data Protection Authority against five adtech companies (MoPub, AppNexus, OpenX, AdColony, Smaato) and the dating app Grindr, with the goal to start bringing accountability to an “out of control”, non-compliant adtech industry by showing that they do not have a valid legal basis to process personal data. Those complaints are currently being reviewed by the Norwegian DPA.

This research was carried out in Norway, but the apps that were analysed, and third parties that were observed receiving personal data, operate on a European and global scale. Therefore, **10 other BEUC member organisation also notified their national supervisory authorities.** Overall, more than 20 European and non-European groups have joined the action. Furthermore, in March, **11 human rights and digital rights organisations sent letters** to their national authorities regarding the findings in the “Out of Control” report. To this date, more than [40 organisations](#) worldwide have supported this action.


We are urging Data Protection Authorities to take active enforcement measures to address these issues and ensure that the adtech industry fundamentally changes the way it operates. In addition to protecting consumers’ fundamental rights and freedoms, this will create a level playing field for alternative business models for funding online content, including privacy-respecting advertising.

The negative impact generated by this commercial surveillance system and the adtech industry practices affect every consumer and citizen in the EU and beyond. This is not only about ensuring respect for the GDPR, but also about the need for measures that enable consumers to use digital services and products while maintaining their autonomy, dignity and privacy. This massive tracking and profiling of people is also at the source of the dissemination of disinformation and election manipulation and thus a danger for our open societies and democracies.

We hope that you find the time to look into this report and our concerns and discuss them within the Global Privacy Assembly, as well as taking it into account in the context of ongoing investigations by the ICO into the adtech industry.

We remain at your disposal for any questions you might have and look forward to hearing from you.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Ursula Pacht', written in a cursive style.

Ursula Pacht
BEUC Deputy Director General