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Sent by email to: [REDACTED]
[REDACTED]

5 March 2024

Dear [REDACTED],

Thank you for the constructive meeting with you and your members on 11 January to discuss how they could achieve compliance with data protection law in relation to advertising cookies.

At our meeting, I offered to address your members' queries regarding the implications of alternative advertising models to help them comply with the law and guide their investment decisions. By way of this letter, I set out our views on the different models proposed.

Contextual advertising models

Contextual advertising models – in which personal information is not used to determine the ad that is served to an individual – remain the easiest way to achieve compliance with data protection law.

Personal information may nonetheless be processed to support functions such as ad measurement and fraud detection. As the law currently stands, consent is

required when using cookies and similar technologies for such purposes. Our guidance¹ states that:

"If your service includes cookies used for the purposes of online advertising, you cannot rely on the strictly necessary exemption. Online advertising cookies are not exempt from PECR's consent requirements and never have been.

"This includes all third-party cookies used in online advertising, including for purposes such as frequency capping, ad affiliation, click fraud detection, market research, product improvement, debugging and any other purpose."

We recognise that such processing is typically less intrusive than that associated with serving personalised ads. We note your discussions with government regarding the potential for such processing to be exempted from requirements for consent in the Privacy and Electronic Communications Regulations (PECR) via the Data Protection and Digital Information (DPDI) Bill and stand ready to provide the government with further technical advice as needed.

The ICO will publish updated guidance for consultation in relation to the use of cookies and similar technologies after the DPDI Bill receives Royal Assent. We expect to be able to provide more detailed guidance regarding the interplay between consent for targeted advertising and functionality that can be considered "intrinsically linked" on a technical level to that purpose. We would welcome feedback from your members on the guidance when it is launched for consultation.

Personalised advertising models

Personalised advertising involves processing personal information in order to determine the ad that is served to an individual. We expect all websites using cookies or similar technologies to serve personalised ads to give people a fair choice over whether they consent to the use of such technologies.

The easiest way to give users a fair choice is to ensure that users can reject non-essential advertising cookies as easily as they can accept them. We understand however that some of your members are considering so-called

¹ <https://ico.org.uk/for-organisations/direct-marketing-and-privacy-and-electronic-communications/guide-to-pecr/guidance-on-the-use-of-cookies-and-similar-technologies/how-do-we-comply-with-the-cookie-rules/>

"consent or pay" models² and wish to understand our regulatory position to guide their investment decisions.

As a result, we will tomorrow launch a call for views³ regarding our approach to "consent or pay" business models and the factors that organisations considering these should take into account. The responses from you and your members will help us further develop our position in respect of these alternative models, which will be reflected in the ICO's upcoming guidance on cookies and similar technologies.

Determining duration of consent

We understand that some of your members are considering whether to vary the duration of cookie consents in tandem with amending the choices presented to users and are seeking clarity on the ICO's position in relation to so-called "reconsenting".

ICO guidance [explains](#) that any first time visitors should be provided with clear information about the cookies an organisation is using and given choice and controls about any non-essential ones. The guidance also provides factors that organisations should consider when deciding their approach to cookie duration as well as asking users to select their preferences.

We will consider whether any updates to our position are necessary in the ICO's upcoming guidance on cookies and similar technologies.

Next steps for industry

Following our November intervention, 88 of the UK's 100 most frequented websites now meet the ICO's expectations by offering users a fair choice over whether to consent to advertising cookies. We are committed to ensuring that organisations who operate within the law face a level playing field.

We continue to offer support to organisations seeking clarity on our position regarding alternative advertising models and to engage with technological developments, such as the deprecation of third-party cookies by Google. However, organisations must not use this as an excuse to delay achieving full compliance with data protection law.

² In which people are offered a choice between accessing online services without payment if they consent to their personal information being used for personalised advertising or, if they refuse this consent, having to pay to access that service.

³ <https://ico.org.uk/cookies-call-for-views-202403>

Where organisations continue to ignore the law, they should expect the ICO to take action to enforce it. Building on our intervention with the 100 most frequented websites, we are preparing to write to the next 100. Meanwhile, we are working to develop technologies to enable us to identify and address these practices at scale.

Thank you in advance for assisting your members to achieve swift compliance.

Yours sincerely,



Stephen Almond
Executive Director, Regulatory Risk