

## How new EU laws may transform digital marketing across the globe

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This article outlines how two major laws in the European Union (EU), the General Data Protection Regulation (GDPR) and ePrivacy Regulation, could impact marketing across the globe when they come into effect next year.

- The provisions of these legislative items include setting a higher bar for consumer consent where data transfer and processing are concerned, and providing greater individual control over this information.
- Given these rules will apply to entities outside the EU which are active in the region, they have the potential to transform international marketing practices.
- The new regulations may represent a chance for brand custodians to hit the reset button on many of the failures now observable across the digital ecosystem.

Two pieces of legislation are set to transform digital marketing in the European Union (EU).

The good news: these changes might motivate brands and publishers across the globe to address their very real shortcomings in the digital space.

"What I want to impress on you is the change that is happening now is a reason – or an excuse – for us to get back to the basics of media that works," Johnny Ryan, Head of Ecosystem at anti-ad blocking solutions provider PageFair, told delegates at the World Federation of Advertisers' (WFA) 2017 Global Marketer Week.

"And that means the discussion about digital, as it matures past its very immature stage now, should start to sound much more like a discussion about print, or radio, or TV – in other words, media that actually function the way they should."

As a starting point, Ryan referenced the two regulatory interventions by the European Union – the world's biggest single digital market, with 315 million people using the web each day in 28 countries – which will significantly impact marketers upon coming into force in May 2018:

- **General Data Protection Regulation (GDPR):** This legislation states that digital platforms cannot use "long illegible terms and conditions full of legalese" when seeking consent from consumers to process personal data. Alongside being clearly distinguished from other issues, opting in or out (and changing these settings) of these arrangements must be easy.

Additional features of the legislation include:

- **Right to Access:** Individuals have the right to confirm whether, where and why their data is being processed – and to receive this information free of charge in electronic form.
- **Right To Be Forgotten:** Consumers can have their personal data erased, instruct that it may no longer be disseminated, and potentially halt further processing by third parties.
- **Privacy by Design:** Data protection should be considered at "the onset of the designing of systems."
- **Data Minimization:** A company should "hold and process only the data absolutely necessary for the completion of its duties."
- **ePrivacy Regulation:** This legal instrument, applying to all electronic communications, is still in draft form. But early iterations offer strong indicators regarding its intent.

Privacy, it dictates, must be guaranteed for communications content and metadata whether using traditional telecoms services or tools like WhatsApp and Skype. Metadata (e.g. the time a call is made) must be anonymized or deleted unless a consumer agrees otherwise.

Under the legislation, browser settings also would provide a simple way to enable (or block) "tracking cookies and other identifiers" intruding on a user's privacy. More broadly, unsolicited electronic communications by email, SMS, and automated calling will be banned.

To achieve GDPR and ePrivacy compliance, consent also should rely on positive statements or actions – meaning automatically pre-checked boxes, failure to tick a box, inactivity, and/or similar techniques no longer would substitute for valid affirmations.

To add perspective on what these stipulations might mean in practice, Ryan compared today's programmatic model with the possibilities represented by tomorrow's consent-based environment:

- **Present:** "I go to The New York Times [website], and, right now, everyone in this room and all of their cousins get to be part of that transaction. That's called 'programmatic advertising.'"
- **Future:** "Under the new system, me visiting The New York Times [website] will be like me visiting my doctor ... No one gets to be in that room unless you and The New York Times both invite them in."

"In this new system, the ad-tech companies will have to get permission from the two people that are allowed to be in the room – and, primarily, from me as the visitor."



And because the GDPR and ePrivacy laws apply to any entity around the world that provides publicly-accessible "electronic communications services", or collects data from users, in the EU, Ryan warned the "new hazard of data protection, or privacy regulation, from the European Union will have a global effect on pretty much all brands."

As an initial response, brands, publishers and ad-tech firms will need to scrutinize their data sets and practices. "We know that wrongly-permissioned personal information will be toxic on the 26th May, 2018. We know that much of the industry is going to have to think about switching off the behavioral data because we don't have a legal basis for it. We know this, and we have to start looking at alternatives," Ryan said.

That task is foreboding, but could address several issues that hamper digital marketing, including the fact many data inputs are "worthless", the web is "cluttered" with brand messages skewed towards bottom-of-the-funnel activities, and that today's complex ecosystem – featuring countless intermediaries – facilitates ad fraud and viewability issues.

Many of these problems encouraged the rise of ad blocking – with PageFair estimating that 615 million devices globally currently utilize these tools. "That is shorthand for a consumer rebellion against the status quo in advertising that has reached epic proportions," Ryan said. And this rebellion, in turn, has prompted regulatory attention from the EU.

"These two things go together – and this is where all of the bad stuff I described flips on its head, and we have a happy ending here," said Ryan. "How do we correct a decade of mistakes in digital – mistakes made because the medium was too young, and we did not yet know what we now know?"

He then outlined how brands and publishers can begin tackling this conundrum:

- **Publishers:** "The world, post-GDPR, is one in which the publishers, for the first time in 15 years, get to be a little bit more in control," Ryan asserted.

"Any publisher that has husbanded and shepherded the trust of their users will finally be able to monetize that, if they're responsible. And all of the other guys and girls who were going into the clickbait game and started firing people from their newsrooms over the last two decades: They are going to be left out in the cold, just as ad-tech would be.

"So, trust, finally, becomes something that you can actually build a business from. But, again, this assumes that, in the wave of paranoia that is due about a year from now, anyone is going to give consent to anything."

- **Brands:** One benefit of the GDPR and ePrivacy rules could be simplification in the marketing supply chain. "That's an amazing world for brands, because, right now, out of every dollar that's spent, at least 50 cents goes to ad-tech companies," said Ryan.

A critical unknown, however, involves whether brands will be liable if their partners – agencies, data providers, and so on – fall foul of regulators. "So, I'm not worried about second parties if I'm brand; I'm worried about all parties – including third parties and third-parties-of-third-parties," Ryan said.

"If I was taking a belt-and-braces approach, if I was about to spend a Euro right now on an ad, I'd probably decide, 'All of that sounds incredibly dangerous. I'm going to go for something super-simple: I'm going to go to a media property that I trust, and I'm just going to show some ads.'"

Looking beyond that short-term "safe" strategy, Ryan made a pair of recommendations:

- PageFair's research has shown that "when we show ads to people that are simply rectangles of products and services – sometimes those rectangles contain video, but the video does not play if you don't click on it – there's no bad reaction. People are happy.

"If we just keep it to the simple truths of rectangles that show products and services, we're probably on a much more solid base than we have been for the last 15 years."

- Contextual advertising, or placing ads next to relevant content, remains a viable solution. "We've had this for 100 years, and we know that it works," Ryan continued.

Ultimately, the GDPR and ePrivacy rules will require specific behind-the-scenes responses, such as carefully crafting consent messages and processes for consumers to access data. At the strategic level, though, brand custodians must place greater weight on the accumulated learnings from legacy media, rather than relying on the insights that have led to ad blocking, regulatory scrutiny, and so on.

"Digital is crammed – packed to the gills – with nonsense," said Ryan. "And as soon as you give into that, and let yourself be bamboozled by 'digital', you're lost. If we all just didn't listen to anything about 'digital' 15 years ago, we'd probably have better returns [now]."

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