Drivers and Obstacles for the Adoption of Consent Management Solutions by Ad-Tech Providers

Paulina Jo Pesch
1. Introduction: embedding “ad-tech”
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1. Introduction: involving a CMP

User \(\text{visits}\) Publisher \(\text{embeds}\) Ad-tech vendor

- User requests consent
- Publisher embeds
- CMP vendor configuration
- Ad-tech vendor joins and configures

GVL = Global Vendor List

- = consent management provider
1. Introduction: involving a CMP

We and our partners store and/or access information on a device, such as cookies and process personal data, such as unique identifiers and standard information sent by a device for personalised ads and content, ad and content measurement, and audience insights, as well as to develop and improve products.

With your permission we and our partners may use precise geolocation data and identification through device scanning. You may click to consent to our and our partners’ processing as described above. Alternatively you may click to refuse to consent or access more detailed information and change your preferences before consenting. Please note that some processing of your personal data may not require your consent, but you have a right to object to such processing. Your preferences will apply to this website only. You can change your preferences at any time by returning to this site or visit our privacy policy.
1. Introduction: involving a CMP

We and our content partners use technology such as unique identifiers to deliver content and advertising. 

With your permission, content partners may use this information to

1. serve you content and advertisements; 
2. measure its effectiveness; 
3. identify audience 

Depending on your settings and the content partners’ requirements, this information may be used to

1. identify you (by combining identifiable information); 
2. recognize your return visits; 
3. identify your preferences; 

on your next visit. 

You can change your settings and  

1. consent to the technologies; 
2. withdraw your consent to the technologies at any time by clicking “Manage Consent.” 

If you choose to withdraw consent, some technologies may still remain in your browser’s cache, for example, to remember your content preferences.

Please note you may not be able to access the site if you 

1. refuse the use of cookies; 

For more information about cookies and your choices regarding them, please visit our Cookie Policy.

Key information about consent

<table>
<thead>
<tr>
<th>Partner Name</th>
<th>Consent Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quantcast</td>
<td>OFF</td>
</tr>
<tr>
<td>1Agency</td>
<td>OFF</td>
</tr>
<tr>
<td>Aarki, Inc.</td>
<td>OFF</td>
</tr>
<tr>
<td>adbalancer Werbeagentur GmbH</td>
<td>OFF</td>
</tr>
<tr>
<td>Adelaide Metrics Inc</td>
<td>OFF</td>
</tr>
<tr>
<td>Affiliation Media Solutions</td>
<td>OFF</td>
</tr>
</tbody>
</table>

**PARTNERS**  **LEGITIMATE INTEREST**

SAVE & EXIT
1. Introduction: the TCF

TCF = Transparency and Consent Framework
Industry standard by the Interactive Advertising Bureau (IAB)
Comprising technical specifications and policies for CMPs, ad-tech vendors and publishers
In order to collect consent through CMPs, ad-tech vendors have to
(1.) join the GVL and
(2.) set their config, i.e.
   (a) choose which purposes they process personal data for, and
   (b) which legal basis they base the data processing on
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• Appendix A: Purposes and Features Definitions
  - A. Purposes
  - Purpose 1 - Store and/or access information on a device
  - Purpose 2 - Select basic ads
  - Purpose 3 - Create a personalised ads profile
  - Purpose 4 - Select personalised ads
  - Purpose 5 - Create a personalised content profile
  - Purpose 6 - Select personalised content
  - Purpose 7 - Measure ad performance
  - Purpose 8 - Measure content performance
  - Purpose 9 - Apply market research to generate audience insights
  - Purpose 10 - Develop and improve products
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   i. consent as its sole legal base
   ii. legitimate interest as its sole legal base
   iii. consent or legitimate interest as its Legal Bases, selected in accordance with the Policy and Specifications
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1. Introduction: the TCF

The TCF purpose definitions are too unclear to base informed consent on.

CNIL, 2018

Often the option to refuse consent is hidden, or refusing consent requires more clicks than giving unrestricted consent. In these cases users’ consent is not valid.

CNIL, 2019; Nouwens et. al., 2020

Often cookies are stored on the user’s computer without them having given consent. In these cases there is no consent.

Matte et. al., 2020
2. High-level research questions

a) What drives GVL adoption and configuration?
   – Why do ad-tech vendors join the GVL?
2. High-level research questions

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   – Why do ad-tech vendors join the GVL?
   – What drives ad-tech vendors’ configuration decisions?
2. High-level research questions

a) What drives GVL adoption and configuration?
   – Why do ad-tech vendors join the GVL?
   – What drives ad-tech vendors’ configuration decisions?

b) Do ad-tech vendors see compliance risks of the GVL membership?
3. Empirical approach: measurement basis

*Hils et. al.*, Measuring the Emergence of Consent Management on the Web, IMC’20

Longitudinal measurements of the consent management ecosystem:

> 160 Mio. browser-crawls (toplist- and social media based selection of URLs)

Systematic download of all versions of the GVL, i.e. the list of all GVL members and their configurations

Source: [https://vendor-list.consensu.org/v2/vendor-list.json](https://vendor-list.consensu.org/v2/vendor-list.json) and for historical versions Internet Archive, [https://archive.org/web/](https://archive.org/web/)

Field experiment measuring user behaviour
3. Empirical approach: vendor interviews

- User visits Publisher
- Publisher embeds Ad-tech vendor
- CMP joins and configures vendor configuration
- GVL = consent management provider
- Global Vendor List

- User requests consent
- Publisher embeds GVL
- CMP forwards consent
- Ad-tech vendor joins and configures
3. Empirical approach: vendor interviews

- User visits Publisher
- Publisher embeds for Ad-tech vendor
- CMP embeds for Publisher and requests consent
- CMP forwards consent to Ad-tech vendor
- Ad-tech vendor joins and configures

CMP = consent management provider

GVL = Global Vendor List

Global Vendor List
3. Empirical approach: vendor interviews

**Semi-structured interviews**

**Interview guidelines** with questions concerning...

... GDPR compliance in general

... GVL membership

... GVL configuration and the **behaviour of others** under the TCF
3. Empirical approach: vendor interviews

Semi-structured interviews

Round 1: **German-based ad-tech vendors**

Round 2: **International ad-tech vendors**
that met the following 4 criteria

(1) Picked **at least seven purposes**
(2) Claim **legitimate interest** for at least one purpose
(3) Use the “**flexible purpose**” option
(4) „**flexible purposes” are not identical with those that the vendor, by default, claims legitimate interest for
3. Empirical approach: vendor interviews

Semi-structured interviews

Round 1: German-based ad-tech vendors
21 contacted, 4 interviewed

Round 2: International ad-tech vendors
37 contacted, 3 interviewed

Seven ad-tech vendors = ca. 1 %
4. Results

**GDPR compliance and use of CMPs**

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>High relevance for the company</td>
<td>7/7</td>
</tr>
<tr>
<td>≥ 3 persons in GDPR-related decision-making</td>
<td>6/7</td>
</tr>
<tr>
<td>Lawyers involved in the decision-making</td>
<td>5/7</td>
</tr>
<tr>
<td>External lawyers or DPOs involved in the decision-making</td>
<td>4/7</td>
</tr>
<tr>
<td>Name CMPs as the reason for joining the GVL</td>
<td>0/7</td>
</tr>
<tr>
<td>State that they do not obtain any consent via CMPs</td>
<td>2/7</td>
</tr>
</tbody>
</table>

*Actually, CMPs collect consent for both.*

We obtain consent via CMPs, but that was not our reason to join the GVL.

We do not need any consent and we do not use CMPs.
4. Results

Market pressure

Do not consider their GVL membership a free choice 4/7

Feel market pressure regarding their configurations 3/7

State that publishers would want „flexible purposes“ 2/7

Have not had significant problems with data subjects/authorities 7/7

The GVL is business critical. We are forced to collect personal data, even though that does not increase revenues.

Some publishers want to collect consent for everything.

Many advertisers co-operate with GVL members only.
4. Results

Compliance risks

- See compliance risks in the GVL membership itself
- Consider the TCF purpose definitions unclear
- Stated others under the TCF would act unlawful

We interpret the purpose definitions in our favour.

We are too small to take action against unlawful practices of others under the framework.

Many publishers design consent dialogues unlawfully.
5. Conclusion and outlook

Consent collection via CMPs is not a main driver of TCF adoption.

Even data protection friendly *ad-tech vendors* join the GVL.

Big awareness of GDPR violations, but no awareness of compliance risks.

Particularly *publishers* pressurize *ad-tech vendors*.
5. Conclusion and outlook

Broader application of the empirical method (interviews with publishers, CMPs, advertisers)

Woods/Böhme, The Commodification of Consent, WEIS 2020

In-depth legal analysis, particularly regarding the question of joint controllership (Art. 26 GDPR)

On Art. 26 in the context of blockchain systems:

Pesch/Sillaber, Distributed Ledger, Joint Control? (2016)
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Thank you!