

UK ICO's "Consent of Pay" consultation

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I am responding in a personal capacity as an adtech veteran

[REDACTED] with deep interests in privacy, alternative monetisation models and how the open internet can be funded.

OVERVIEW

I broadly support different types of subscription model including PUR (personalised advertising or payment) to premium subscription for access to restricted content and features. The law does not and should not prohibit by default different funding models. The internet has thrived exponentially by offering free-at-the-point of access content. Initially this was bundled with ISPs such as AOL and Freeserve (charging differently for content), then as search engines grew relative to portals, content became largely ad funded.

Content creation and it's provision requires some kind of funding. Arguments against a free riding "Tragedy of the Commons" problem usually state the incremental costs of provision are low (just server costs) whilst there also is no opportunity cost, goods are informational and therefore can be consumed multiple times. However this is a false analogy and the situation is more equivalent to fare dodging on the train, underground or bus. The argument follows "The train is running anyway and not full up." However if everyone fare dodged there would be no income and no incentive to provide a train service!

The use of data for personalisation (content, advertising) is difficult for consumers to understand. The hyper competitive environment of the open internet means there are many vendors with whom data can be shared with. A "consent or pay" model at least places a value on that data for advertising therefore helping consumers understand and therefore making more informed decisions whether to share personal data or not. Whilst many UK media properties collect consumers' consent for a disproportionately high number of vendors (the majority of vendors not active or not material) adding to lack of transparency, it seems difficult to argue this reduces transparency as consent rates do not significantly vary with vendor count.

The consultation asked about four areas whose importance, in my view, varies according to circumstance.

POWER BALANCE

This address the relative power of media owner vs the consumer. Intertwined is the question around appropriate fee. For example a special interest website e.g. for a specific classic car marque may be more valuable and therefore the media owner hold more power than, say, generic news website. If content is readily available elsewhere it is clear the consumer has lower appetite to pay either through personalised advertising or by a subscription fee. Instead they can simply bounce and navigate to an alternative website or app.

Especial attention should be given to social media sites where network effects of communication play a part. For example it is difficult to argue if all friends and family share through a particular social network, meaning the consumer not only values more but the social network could be a "must have" akin to a fixed line telephone service with their universal service obligation and social tariffs. Rather than disallow a subscription model, social networks could be obliged to offer similar schemes to disadvantaged sections of society.

Therefore the power balance is more important where network effects occur, such as social media than for readily available content, and particular consideration should be given to social networks with respect to subscription charges.

EQUIVALENCE

Whilst both Consent and Pay scenarios have advertising, with the latter non personalised, and therefore the end consumer might not experience a difference, the fact we are discussing PUR models means there is a difference and this is highlighted by having a subscription charge, improving transparency.

Hence it would be incorrect to say there is no difference in service offered.

Removing advertising from websites and apps could mean functionality breaks or the content is not rendered correctly, leading to increased costs for publishers.

APPROPRIATE FEE

Often "Consent or Pay" subscription is seen as a substitute for average advertising revenue, or the total revenue divided by the total number of users. This is incorrect thinking and a fair fee is higher:-

- Consumers who benefit most from paying a fee are those who value privacy more and / or those who consume more content. Both through scarcity or volume have a higher than average advertising ARPU. Indeed a long tail of consumers who read 1 article only usually exists on most content websites.
- consumers are notoriously difficult to track across sessions and devices, meaning an overstatement e.g. one subscription across mobile and desktop but these are counted as two different "users" by 3rd party measurement companies

Therefore a suitable subscription fee should be based on rational methodology but could be 2-3 times difference in advertising revenue (i.e. personalised vs non personalised). If this fee is set too high then consumers could either read same content elsewhere or implement ad blockers which are already widely adopted.

As noted above Social Media which more often acts as a utility, could be subject to social tariffs with a requirement of "universal service obligation". However the same methodology of advertising-revenue foregone can be used. Whilst content is largely user generated the question whether rent-seeking supernormal profits are made is a competition and markets, rather than privacy concern.

PRIVACY BY DESIGN

My suggestion is the "Pay" button replaces the "Reject All" button on Layer 1 of the publisher's TCF Consent Management Platform. The ICO's existing initiatives means this should be displayed prominently and equally whilst TCF guidelines largely dictate transparency (TCF is mostly deployed throughout the UK thanks to the efforts of the publisher, adtech, IAB Europe and lastly Google's instigation). Recent changes with TCF 2.2 (launched November 2023) reinforce transparency with additional examples of how data is used.

SUMMARY

I am in favour of Consent or Pay commercial models if the fee is proportionate to foregone advertising revenue and, for social media, social tariffs available so consent remains freely given by disadvantaged sections of society.