# Privacy, Transparency and Quality Issues Drive Changes in Digital Marketing

### 5th Edition: Trends in Marketing Communications Law

Throughout 2018, publishers, marketers and agencies will continue to employ new technologies, products and services to address evolving consumer privacy, advertiser transparency and brand safety issues.

Among the new consumer privacy obstacles for digital advertisers are changes in the use of cookies. Traditionally used to track user activity and build consumer profiles for targeted advertising, cookies are often critical to digital ad product offerings. When Apple released its iOS 11 in late 2017, however, it included an "Intelligent Tracking Prevention" feature that blocks certain cookies, making this more difficult. On the regulatory front, enforcement of the European Union's new General Data Protection Regulation (GDPR) begins May 25, 2018, which complicates the ability of digital marketers to use tracking cookies to collect data from, and retarget, EU consumers. Under the GDPR, tracking cookie data is considered personal data and requires a legal basis (such as consent from the data subject) in order to process such data. Accordingly, marketers seeking to collect cookie data from EU data subjects for behavioral advertising purposes should implement affirmative opt-in mechanisms, work closely with their publishers, set up internal compliance procedures and provide easily accessible opt-out mechanisms.

The rise of ad blocking technologies continues to present challenges for the industry, but marketers are responding by improving the user experience and minimizing ad intrusiveness to stem the tide. Even ad blocking technology providers have refined their approaches to focus on ad curation rather than solely blocking. One company, for example, has its own ad network that requires ads to meet a set of acceptability criteria, such as non-disruptive placement, distinguishability as ad content and size and content restrictions. On the whole, consumers may ultimately prefer more nuanced approaches that increase ad relevance and consumer satisfaction over technologies that simply block ads.

Technological developments also play an important role in the continued battle against ad fraud and ensuring brand safety. The ability to reliably monitor site quality and ad adjacency is increasingly important in an environment where fake news sites abound. Major brands have pulled ads from YouTube due to concerns about being associated with inappropriate or disturbing video content. Many in the industry are hopeful that blockchain technology, with its potential transaction transparency benefits, may help marketers and their agencies address this concern and improve viewability. Additionally, a growing number of marketers and their agencies are employing quality control tools and technologies to confirm (and in some cases to implement) whitelist and blacklist compliance in programmatic advertising.

## Key Takeaways

- Both regulators and major technology companies are focused on protecting consumer privacy.

- Digital marketers will need to find new ways of building consumer profiles to comply with new regulatory requirements, like the GDPR.

- Ad blocking technologies still loom large in the digital advertising space, with marketers focused on improving ad quality and relevance; and new ad networks provide paths to ad curation and seek to provide pre-approved ads, rather than blocking ads entirely.

- Viewability, ad fraud and brand safety risks abound, but so do promising new technologies that industry stakeholders hope will increase transparency in the digital and programmatic transactional chain.

## Related People

**Richard S. Eisert**
Partner/Co-Chair Advertising + Marketing
212 468 4863
reisert@dglaw.com

**Gary Kibel**
Partner
212 468 4918
gkibel@dglaw.com

**Maxine Sharavsky Garrett**
Partner
212 468 4845
msgarrett@dglaw.com