Google Chrome announcement
Alliance Digitale’s observation

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Introduction

Alliance Digitale has taken note of Google Chrome's decision not to deprecate third-party cookies in its browser from its blogspot published July 22nd.

In response to this announcement, the Competition and Market Authority (CMA) has initiated a consultation period until August 12th, aiming to gather feedback from industry stakeholders on the potential implications for consumers and market dynamics.

Alliance Digitale is pleased to provide its following preliminary observations with the CMA. These observations have been structured into 2 parts:

1. Learnings and recommendations from the H1 PSB market testing
2. Google Chrome's new experience

Part I - Learnings and recommendations from the H1 PSB market testing

1. H1 Market testing results

Alliance Digitale has been actively following the Privacy Sandbox (PSB) market testing and analyzing its performance across key metrics in comparison to the current third-party cookies (3PC)-enabled environment.

However, our members' test results indicate that several key challenges remain to be addressed. These issues, if left unresolved, could lead to potential drawbacks that would negatively impact the advertising ecosystem, in contradiction with Google's Commitments to the CMA.

Moreover, the conclusions from H1 testing reveal that the competition concerns associated with the Privacy Sandbox have not yet been adequately addressed.

Below is a summary of key learnings made by market testers that shall require CMA's attention:

a. <u>Performance Impact</u>
   i. Both sell (revenue, impressions, CPM, viewability) & buy-side major KPIs (CPD, CTR, ROAS / Spend, ECPQV), are severely impacted when 3PC are disabled;
   ii. Despite 3PC being disabled, impact on performances is less pronounced when PSB APIs are available;
   iii. Presence of Topics does not positively impact auction prices.

b. <u>Cost and Complexity</u>
   i. Implementation of PSB is complex, requiring high levels of engineering expertise, debugging, and substantial infrastructure costs to scale (auction servers, TEEs,..), especially for other APIs than Topics. Only a few companies can afford such experiments further reinforcing the existing market imbalances.

c. User Experience Impact
    i. Advertisement rendering latency has significantly increased as long as Protected Audience API is involved in auction dynamic. This can lead to decreasing ad delivery performances (impressions, CTR, viewability, etc.) as well as longer page load times.

d. Key marketing features
    i. Frequency capping is limited to campaign-level only, with difficulties maintaining consistent capping across different interest groups and contextual campaigns;
    ii. Measure & Attribution
        1. Aggregated Reporting API (ARA) does not support full funnel reconstruction, impacting post-click attribution.

    Note: Alliance Digitale expects more tests to be conducted to properly evaluate the actual status of these features.

e. Market Dynamics and Competition
    i. Google's advertising tools captured a larger share of impressions and revenue when PSB was enabled, demonstrating a significant increase in publishers' dependence on Google for advertising revenues, as well as a reinforcement of Google's position on online advertising market;
    ii. Less-performant auction dynamics may lead to shifting more budgets away from the Open Web to walled-garden environments.

f. Major limitations encountered while testing Privacy Sandbox
    i. The initial tests showed limited PSB-enabled supply & demand traffic;
    ii. An important part of the traffic was not labeled (treatment & control groups) reducing potential test base and thus making harder to reach representativeness population thresholds;
    iii. Test results lack information on measurement and attribution since those operations are still complex to perform in the Privacy Sandbox's current state of the art;
    iv. Only a limited number of Topics were transmitted within bid requests, making it challenging to draw definitive conclusions about their effectiveness;
    v. Debugging & troubleshooting auction dynamics were highly complex due to the opacity of Privacy Sandbox's tools.

g. Alliance Digitale's Stance
    i. The Digital Alliance emphasizes the need for high-performing cookieless environments to maintain advertiser investments in the Open Web;
    ii. Numerous tests conducted by our members have shown that the improvements made to the Privacy Sandbox are not sufficient to meet Google's commitments to the CMA;
    iii. This situation, as the complete deprecation supposedly approaches (whether all at once or through user choice), is increasingly concerning to the market since the PSB is not sufficiently viable and still raises numerous competitive concerns.

Based on this assessment, changes are needed to improve the Privacy Sandbox. Here below are Alliance Digitale's recommendations.

2. Recommendations

In light of these challenges, Alliance Digitale puts forth a series of recommendations to enhance the performance of the Privacy Sandbox. These recommendations are designed to align the Privacy Sandbox with established performance standards while ensuring fair competition.

a. Enhance advertiser & publisher performance
   i. Make more ad formats and media types eligible to PSB auction dynamics;
   ii. Move part of the bid computation server side, instead of on-device, for better models, and better performance;
   iii. Extend interest group duration to a 90-day minimum to support longer sales cycles;
   iv. Enable combining interest groups at bidding time for highly targeted audiences that increase competition and CPMs.

b. Critical functionalities
   i. Support exclusion targeting in PA API;
   ii. Support Interest Group-based traffic shaping;
   iii. Support ad-level frequency capping.

c. 3PCD rollout & future governance
   i. Provide transparency about user opt-out rates from Privacy Sandbox APIs;
   ii. Follow an orderly rollout schedule to test efficacy at scaled market participation without harm to publishers;
   iii. Provide a predictable and detailed, rolling out roadmap;
   iv. Establish an independent governance which Google commits to oversee future evolutions of Privacy Sandbox.

Part II - Google Chrome's new experience

1. Introduction

Google's announcement on July 22 raises many questions. While many details remain unknown at this time, it is important for us to share our initial analysis of this change.

a. Privacy Sandbox is still not ready to be rolled out

Google's decision to introduce a "user-choice" prompt, rather than deprecating third-party cookies globally as foreseen these past four years, should not be a way for Google to deploy the Privacy Sandbox APIs before they meet performance objectives and address all competition concerns.

As mentioned above, the Privacy Sandbox APIs are still not viable and do not sufficiently meet the commitments made to the CMA. Furthermore, stakeholders are concerned that this

approach may be used to circumvent the CMA's oversight and to expedite the transition by compelling users to adopt the Privacy Sandbox APIs instead of relying on third-party cookies.

A great deal of work and multiple iterations are still required before even considering the implementation of a user prompt, in any form.

b. New Chrome's experience could still undermine competition and publisher monetization

Alliance Digitale noted that Chrome already offers users the ability to opt out of third-party cookies via its settings. Shifting from this configuration to a proactive choice notice fundamentally alters the decision-making framework for users. This change can significantly influence users to reject third-party cookies. For example, before Apple introduced the App Tracking Transparency (ATT) prompt, iOS users could opt out of the IDFA by turning off the "Limited Ad Tracking" option in their phone settings. Under this setup, the opt-out rate was around 20%, but it has increased to 80% after the ATT prompt was introduced[1].

Additionally, introducing a user-choice prompt will lead to reduced availability of third-party cookies, although it is currently difficult to estimate how many users will block third-party cookies due to limited information about the planned prompt.

Ultimately, most users are not familiar with technical terms such as third-party cookies (3PC) or Privacy Sandbox, raising doubts about their ability to make informed choices about their confidentiality preferences. This could increase user fatigue from cookie prompts ("cookie fatigue") and lead to an uninformed choice, which undermines the very purpose of user choice mechanisms and raises questions about its true objective.

As a result, the main competition concerns identified by the CMA regarding the phasing out of third-party cookies are still pertinent with this new approach.

c. User perception as a catalyst for competitive disadvantages

The announcement of this user choice prompt seems incongruous.

Firstly, user consent is already required for processing related to personalized advertising within the European Union as per GDPR and ePrivacy directive. There is thus no need to ask the user to make a choice again, especially within the EU, where users are afforded a high level of protection regarding the use of their personal data.

Secondly, Alliance Digitale emphasizes the fact that this new pop-in does not alleviate the need for publishers to display their own consent pop-ins, as EU Data Protection Authorities require consent to be domain-specific and purpose-specific which is unlikely to be addressed by Chrome's pop-in (i.e. different purposes as targeted advertising). Here again, multiplying consent pop-ins may bring confusion to users' comprehension of what they are consenting to, and thus increase the consent fatigue effect.

Additionally, the introduction of a feature as described by Google could have counterproductive consequences, essentially providing users with an option to opt out of all

[1] Mobile ecosystems and market study, Annex J, June 2021
https://assets.publishing.service.gov.uk/media/62a229c2d3bf7f036750b0d7/Appendix_J_-_Apple_s_and_Google_s_privacy_changes__eg_ATT__ITP_etc__-_FINAL_.pdf

forms of tracking. This would effectively position Google as the gatekeeper for site publishers' consent, thereby increasing their dependency on Google and threatening publishers' revenues as general level choices are empirically unfavorable to media and content providers.

This is a significant issue that had previously sparked intense discussions as per ePrivacy draft regulation, and on which European legislators have failed to reach a consensus due to competition concerns. The French Competition Authority (ADLC) had warned about the dangers of such a solution (see from paragraph 285 of the its 2018 opinion on draft ePrivacy Regulation and in particular paragraph 294[2]).

Moreover, we consider that the Competition and Markets Authority's (CMA) stance regarding the new Chrome experience must be fueled off by the outcomes of Apple's App Tracking Transparency (ATT) statement of objection issued July 2023 that is expected to be made public in October this year. Besides, this statement serves as a significant warning since Apple's implementation of ATT was driven by several factors: encouraging app publishers to shift to subscription models where Apple garners a 30% revenue share, weakening competitors' advertising capabilities by restricting fine-grained targeting signals, and exempting its own products from these restrictions, thereby bolstering its advertising business.

One of the reasons why the ATT case is relevant here is also the issue of self-preferencing, which underpins the investigation initiated by the French Competition Authority (ADLC) in March 2021. Concerns have been raised in exactly the same way since Google's announcement, and several stakeholders have highlighted this in their statement[3]. Indeed, this new user prompt may favor Google in all cases, exacerbated by the drastically low opt-in rates for similar choice mechanisms. On the one hand, Google's Privacy Sandbox could be more chosen by users due to favorable language (describing perceived safety and performance benefits) and/or colors encouraging the user to choose them over third-party cookies, and thus constituting a biased framing (see section "Biased framing", p.18) exactly as described for Apple ATT by the CMA in the Annex J of its Mobile ecosystems market study[4].

On the other hand, if the option to opt out of all tracking were implemented in Google's user prompt, selecting this tracking-free option would not prevent Google from conducting granular targeting within its own logged-in environment (Owned and Operated (O&O) inventory and advertising products). This capability to target in such a precise manner would remain exclusive to Google, setting it apart from its competitors.

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[2] Machine Translation, paragraph 294: '*It appears to the Authority that the mandatory collection of explicit consent from users at the browser level is likely to disadvantage actors that operate using cookies (both First-Party and Third-Party), compared to other actors who have implemented logged-in environments and obtained general consent from users at the time of registration in exchange for services provided. The consent collection stipulated by the proposed regulation should, at the very least, be carried out on a site-by-site basis to ensure that all types of actors are on an equal footing. This obligation should cover all trackers and include logged-in environments, clearly distinguishing processing based on their purpose. This would give users the ability to accept or refuse certain data processing purposes under identical conditions of presentation and information, whether it involves cookies or logged-in environments*'

[3] See for example IAB Europe Statement, https://www.linkedin.com/posts/iab-europe_iab-europe-acknowledges-googles-announcement-activity-7221542374739451904-ZUEl?utm_source=share&utm_medium=member_desktop or Eric Seufert Statement https://www.linkedin.com/posts/ericseufert_google-to-kill-cookies-with-consent-again-activity-7221509448660361217-g-TP?utm_source=share&utm_medium=member_desktop

[4] See Figure J.6 p. J29 Mobile ecosystems and market study, Annex J, June 2021 https://assets.publishing.service.gov.uk/media/62a229c2d3bf7f036750b0d7/Appendix_J_-_Apple_s_and_Google_s_privacy_changes__eg_ATT__ITP_etc__-_FINAL_.pdf

As a conclusion, the new Chrome experience suggested by Google could contribute to the potential reinforcement of Google's position as a walled garden, and thus, stifling competition.

2. Recommendations

a. Privacy Sandbox Performance and Rollout Timeline

Next steps must be clear and established as soon as possible. We have no information about them, which puts the adtech and media ecosystems in an uncomfortable uncertainty and ultimately benefits Google, which possesses the information and decides to share it only when it chooses to.

To address this, we recommend the following:

i. Ascertain whether this new experience could be introduced prior to the full deprecation of third-party cookies;
ii. Establishing a new, definitive timeline to keep the ecosystem on track and enable proper allocation of resources for engineering, market testing, and other necessary activities. We expect the new experience being supported from a specific version of Chrome. In such a context, sharing the exact release version supporting the new experience is mandatory;
iii. Require Google to improve the transparency of the decision-making process and involve more external stakeholders throughout the perceived next steps.

b. New Chrome experience rollout rules

As explained in previous parts, how this new experience will be presented to users and how publishers have to adjust their consent messages accordingly still has to be clarified since the overall users comprehension of this new experience is central.

To address this, we recommend the following:

i. New unnecessary Chrome's experience must not be rolled out unless Privacy Sandbox resolves competition concerns as per Google's commitments to the CMA;
ii. If validated, it must not be rolled out unless:
    iii. ATT case's conclusions has not been drawn and taken into consideration;
    iv. Privacy Sandbox shows acceptable advertising performances compared to 3PC (e.g. certain performance thresholds such as Return on Ad Spend (ROAS) generated thanks to the PSB is equal to 80% of ROAS brought by 3PC);
v. If rolled out, the new Chrome's experience should be at website-level instead of browser-level;
vi. If at website-level, new Chrome's experience should be included into publishers consent banners;
vii. Provide publishers with clear guidance for how they should explain to users the value exchange between access to content and their choice of tracking solutions, and if and when they can request users to reconsider their choice;
viii. Defining clear rules for timing and frequency of the consent pop-in display since this could affect user experience and consent dynamics;

ix. Requesting an independent governance body to supervise in the long term this new experience's evolutions as any future changes to the implementation design of this prompt may create a risk of self-preferencing;
x. Clarify ICO's role and view towards this new Chrome experience suggestion
xi. Continue evaluating the extent and direction of this new approach's impact on competition within the Privacy Sandbox, in line with the Commitments and informed by stakeholder feedback.

c. Technical considerations

i. Clarify whether or not the new Chrome experience aligns with the applicable data protection framework (e.g. interoperability with the TCF);
ii. Clarify the precedence of consent (e.g. if users opt into Chrome's experience but out of publishers' consent or vice versa);
iii. Define the technologies that are allowed by each option of the pop-in;
iv. State if all PSB APIs are enabled in case of user choosing the PSB option (today there are two prompts, one for Topics, and one for the other APIs);
v. State if PSB can be active in case of user chose the 3PC option;
vi. Determine if consent signals will be accessible to publishers and ad techs through the browser;
vii. Bring clearance about the status of privacy mitigations initially linked to the PSB launch (IP Protection, Bounce Tracking, etc.);
viii. Clarify the potential extension of this new experience to Android users.

d. Necessary increased transparency

i. Share publicly Topics opt-in rate as a hint towards opt-in rate we can expect from this new Chrome experience;
ii. Share publicly opt-in rates linked to each purpose of the consent pop-in.