

Minister for Justice Helen  
McEntee TD  
Department of Justice  
51 St. Stephen's Green  
Dublin  
D02 HK52

28 September 2020

**Data Protection Commission's failure to monitor and enforce  
the application of the GDPR**

Dear Minister McEntee,

I write to draw your attention to the "Real-Time Bidding" (RTB) data breach, which continues to have a devastating impact on the data protection rights of all Irish and European citizens. The Irish Council for Civil Liberties (ICCL) is committed to defending and upholding the privacy and data protection rights of all persons in Ireland. We are deeply concerned at the failure of Ireland and the Data Protection Commission (DPC) to take effective measures to enforce the GDPR and Data Protection Act in the two years since it was formally notified of this privacy crisis.

This month marks two years since a formal complaint to the DPC by Dr Johnny Ryan, now a Senior Fellow of the ICCL, about the RTB system, which operates behind the scenes on websites and apps. RTB constantly broadcasts the private things we do and watch online, and where we are in the real world, to countless companies. There is no way of limiting what then happens to these data. This vast data free-for-all infringes Article 5(1)f of the GDPR and section 71(1)(f) of the Irish Data Protection Act at a vast scale.

I enclose evidence of the consequences that the DPC's failure to act. In particular, allow me to draw the following points to your immediate attention.

- As a result, we are all an open book to data broker companies, and others, who can build intimate dossiers about each of us. For example, Google's RTB system allows users to target 1,200 people in Ireland profiled in a "**Substance abuse**"

category, provided by the data broker company "OnAudience", using RTB data. Other health condition profiles from the same data broker available via Google included "Diabetes", "Chronic Pain", and "Sleep Disorders".

- Google's RTB system sends RTB data to 964 companies.
- The IAB's RTB system allows users to target 1,300 people in Ireland profiled in a "AIDS & HIV" category, based on a data broker profile build with RTB data. Other categories from the same data broker include "Incest & Abuse Support", "Brain Tumor", "Incontinence", and "Depression".
- A data broker company that uses RTB data to profile people **influenced the 2019 Polish Parliamentary Election by targeting LGBTQ+ people.**
- The IAB's RTB system allows users to target 1,300 people in Ireland profiled in a "AIDS & HIV" category, based on a data broker profile build with RTB data. Other categories from the same data broker include "Incest & Abuse Support", "Brain Tumor", "Incontinence", and "Depression".
- A data broker that gathers RTB data tracked **the movements of people in Italy** to see if they observed the **Covid-19 lockdown.**
- A data broker that illicitly **profiled Black Lives Matters protesters** in the United States has also been allowed to gather **RTB data about Europeans.**
- The industry template for profiles includes intimate personal characteristics such as "Infertility", "STD", and "Conservative" politics.

RTB is the most massive data breach ever recorded. In these two years, the RTB data breach has been allowed to continue, it appears to have worsened.

- Google's RTB system now **sends people's private data to more companies, and from more websites than when the DPC was notified two years ago.**

The complaint two years ago concerned serious infringements of the data protection rights of an individual, and were and remain of a serious and specific nature. The failure by the DPC to adequately progress this complaint and enforce the GDPR is a failure to carry out the tasks specified in Article 57 of the GDPR and section 12 of the Irish Data Protection Act.

The DPC's failure to act is of critical importance because it is the lead supervisory authority for Google in the European Economic Area. This failure also prevents the

vindication of data subjects' rights across the EEA to access justice, enshrined in Article 47 of the EU Charter of Fundamental Rights, and European Charter, and Article 13 of the European Convention on Human Rights.

In the absence of decisive action on the DPC's part, the infringement of GDPR Article 5(1)f in Google's RTB system continues to expose the private activities of all Europeans, amounting to a continuous data breach of massive proportions.

It is unacceptable that the largest data breach ever recorded should be permitted to continue more than two years after the DPC was made aware of it. The DPC took eleven months to open a limited inquiry into the matter, and that limited inquiry fails to examine the central issue of security of data raised in Dr Ryan's original complaint. Continued failure will further harm citizens, and damage Ireland's reputation.

The RTB privacy crisis, and the DPC's inaction, threatens our elections, privacy, and the rights to protection of personal data enshrined in the European Charter.

ICCL recognises the status of the DPC as a statutory body independent of Government. However, we also recognise **the duty of the Government to ensure that Ireland meets its obligations under Article 52(4) of the GDPR**. In that context, we believe that it is incumbent on the Government and your Department to establish whether the DPC is capable of advancing urgent investigations of this nature.

Specifically, we suggest that your Department should examine whether the actual effective regulatory output (rather than ongoing actions) of the DPC indicates that it has adequate resources, including technical and procedural competence, to discharge the tasks required of it under Article 57 of the GDPR.

Action on these matters is urgently required for people across Europe to have confidence that their data is being treated safely and legally, and that Ireland's reputation as a regulatory leader is restored. I and my team are at your disposal.

Yours sincerely,



Liam Herrick  
Executive Director  
Irish Council for Civil Liberties

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Submission to the Data Protection Commission

Appendix A Data broker "OnAudience" case study of influencing election in Poland

Appendix B Data broker "OnAudience" data taxonomy

Appendix C Data broker "Mobilewalla" data directory

Appendix D Data broker "UberMedia" data directory

Appendix E IAB Audience Taxonomy

Appendix F 964 companies that receive our data from Google's RTB system