

Having been a long-time fan of the EDPB (and being currently enrolled in your “Support Pool of Experts”), I must admit that the draft guidelines are extremely disappointing. If this were April 1st I would have laughed at the “Sponsored by OneTrust” joke.

By considering that UTM or any other URL variables constitute “access to the terminal”, **you are effectively condemning the few privacy-first digital analytics solutions available out there** (Simple Analytics, Plausible, Seal Metrics, Fathom Analytics..) **to require a consent banner akin to those currently compulsory for much more intrusive alternatives** based on cookies, fingerprinting, or unique identifiers. This does away with the key benefit of the new breed: a greater sample of audience signals for aggregated statistical purposes.

Requiring consent will now put all of these privacy-minded solutions at a disadvantage against large, well-established vendors, which are able to provide much greater depth at individual level - often at the expense of Privacy by Design principles.

In short, either we take the opportunity to extend an EU-wide exception for cookieless, non-granular, stand-alone digital analytics tools, or we **keep data protection concerns away from ePrivacyD considerations** (let the GDPR do its job!) by focusing on a strict interpretation of “gaining access” to the terminal that is consistent with the ePrivacyD’s original worries: setting cookies, writing to the browser’s local storage (HTML5), writing and reading from a mobile app’s SDK, reading an IDFA/IDFV, etc.. This will cover the upcoming Privacy Sandbox (Topics API) and many ID-based solutions intending to replace third party cookies with more intrusive means of addressability, but it will also allow many small businesses to keep measuring and improving the effectiveness of their digital assets without need for a consent banner that has literally destroyed the European internet experience.

In other words, **by expanding the concept of “access” you would be provoking a “race to the bottom” in terms of privacy safeguards. Since, no matter what you do, consent will be required, companies will simply make the most of the annoyance** and take the new carte blanche (now assisted by a “free” consent or pay choice in the case of large publishers) as far as we can.