



Pixel de Tracking @pixeldetracking *Mon Mar 21 22:58:10 +0000 2022*

“It is disappointing that many of these concerns appear to be based on self-serving allegations from data aggregators and social media companies interested in compiling large amounts of personal data from various sources and selling personal data.” <https://t.co/GUrdlfHcuj> ■ 1/ <https://t.co/uFPA5nIOiY>

“Unlike third-party advertising service providers, Apple does not need to prompt users for permission to track because it does not engage in this practice.”

Hello adtech players ■ 2/ <https://t.co/HIG65oZ2b6>

114. Apple has made a conscious decision to place itself at a competitive disadvantage for the sake of consumers’ privacy. Apple does *not* engage in tracking consumers across third party apps in the provision of Apple-delivered advertising. Therefore, unlike third-party advertising service providers, Apple does not need to prompt users for permission to track because it does not engage in this practice. Apple simply does not track users in this way.

“Apple also gives users an additional privacy choice related to Apple’s own limited data collection practices across a limited number of first party apps – a choice that third parties do not give users.”

Wondering who those third parties are? ■ 3/ <https://t.co/gS93Arjejk>

115. Apple also gives users an additional privacy choice related to Apple’s own limited data collection practices across a limited number of first party apps – a choice that third parties do not give users. As this is an additional consumer choice about the use of their data, Apple proactively presents users with a more prominent, unavoidable option to choose between Personalised Ads On or Off for Apple-delivered advertising. This choice screen is presented upon launch of the App Store or of Apple Stocks or Apple News in the UK and informs users as to the purpose of Personalised Ads and its privacy practices, so that the user can decide whether to turn on or off Personalised Ads.

Disabling personalized ads? 5 steps on Google, impossible on Facebook ■ 4/ <https://t.co/eLJA4N9ZpJ>

116. In personalising advertising delivery (when users so choose), Apple relies exclusively on a limited amount of first-party data (i.e., data that is collected by a company through the use of its own services, such as the information that a user provides directly to a developer from their use of a developer’s app).¹⁰⁷ By contrast, most major advertising platform companies — including Meta and Google — do not offer users a choice of disabling the use of first-party data for targeted advertising. And those that do offer such a choice bury it beneath a cumbersome process involving numerous settings screens. Apple is once again at the forefront, by expressly and unavoidably prompting users for permission to use first-party data to deliver Personalised Ads.

“The interests that want less transparency and power in the hands of consumers have sought to compare the Personalised Ads prompt and the ATT prompt.”

Hello again adtech people ■ 5/ <https://t.co/HAkjJvGjHY>

117. The interests that want less transparency and power in the hands of consumers have sought to compare the Personalised Ads prompt and the ATT prompt. They argue that the differences in the prompt may make it more likely that users will choose to allow Personalised Ads than to allow tracking, thus preferencing Apple. These concerns are unfounded – given the fundamentally different nature of the two, there is no reason to conclude that the choice architecture and prompt wording should be identical.

“If the first party does not share information with third parties or track consumers across third-party websites, the practice would be consistent with the context of the consumer’s interaction with the company.”

Yes, tracking is substantially worse than first-party ads ■ 6/ <https://t.co/01X4Hj9td7>

118. First, as set out above, ATT concerns “tracking” user data across developers (in other words, using third-party data for purposes of advertising), whereas Personalised Ads concerns only the use by Apple of first-party data collected through its own services. There is a real and substantive

¹⁰⁷ As acknowledged at fn 529 of the IR, “ads on the App Store do not access consumer data from other Apple services like Apple Pay, Maps, Siri, iMessage, and iCloud or data from devices through services and functions such as the Health app, HomeKit, email, contacts, or call history.” Moreover, Apple groups users into anonymised segments of at least 5000 people before ads can be shown to them, to further protect user privacy (IR, para 6.232).

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difference between the two, widely recognised in the industry, with the former being considerably more intrusive than the latter.¹⁰⁸

- As the U.S. Federal Trade Commission noted in a recent report on recommendations for consumer privacy: “As to the first type of data collection, for the reasons discussed above, if the first party does not share information with third parties or track consumers across third-party websites, the practice would be consistent with the context of the consumer’s interaction with the company. Therefore, the framework would not call for a consumer choice mechanism. In contrast, because the second type of data collection involves the transfer of data from one business to another and does not directly involve the consumer (and therefore is typically unknown to the consumer), it is unlikely to be consistent with a transaction or relationship between the consumer and the first party.”¹⁰⁹
- The Center for Digital Democracy also focused on the distinction between first and third-party tracking, given users have less knowledge about this sort of data gathering and the privacy policy of third-parties: “Not only is it hard for users to know which data brokers have their information or how they obtained the data, but users also do not have access to the privacy policies of such third parties brokers. Lack of knowledge of third-party privacy policies impedes the individual’s ability to meaningfully and knowingly opt-in to this tracking process.”¹¹⁰

“The logical outcome would be to require that third parties also display a prominent, unavoidable Personalised Ads choice prompt when they seek to use their first-party data for their own advertising services.”

Hello again Google and Facebook ■ 7/ <https://t.co/e8i6iMzVyA>

122. If the CMA is keen to ensure “equality” between Apple and third parties in this respect, the logical outcome would be to require that third parties also display a prominent, unavoidable Personalised Ads choice prompt when they seek to use their first-party data for their own advertising services. The alternative reading of the IR’s concerns is that Apple would be better placed to engage in tracking activities and then place the ATT screen on front of its users thereby ensuring a race to the bottom in relation to the use of user data. Apple cannot agree with this view and does not consider it likely that this is, in fact, what was contemplated by the IR.

“The evidence does not suggest that the implementation of ATT has materially boosted the performance of Apple’s own advertising services.”

So much for this adtech conspiracy theory ■ 8/ <https://t.co/D1hPK5NqQm>

123. Finally, the IR assumes, without evidence, that the stylistic differences between the ATT and Personalised Ads prompts will necessarily account for an unfair divergence in user choice rates. First, this conclusion rests on the tenuous presumption that users must equate cross-company tracking with first-party data use, and therefore any difference in choice must be attributed to presentation style and not substance. Second, and more generally, while it is too early to gauge the full impact of ATT, the evidence does not suggest that the implementation of ATT has materially boosted the performance of Apple’s own advertising services.

“Apple considers it highly relevant that the majority of the concerns identified in the IR appear to be driven in large part by data-harvesting companies like Meta.”

Facebook at its best ■ 9/ <https://t.co/dDuQJ0RYNk>

125. Apple considers it highly relevant that the majority of the concerns identified in the IR appear to be driven in large part by data-harvesting companies like Meta. This is clear from the IR's consideration of the "impact of ATT on developers" at paragraphs 6.268 to 6.273, not the impact on users. Apple recognises that ATT may have a negative impact on data-harvesting activities. However, it is this kind of hidden data collection and tracking activity that causes harm, as recognized by the ICO, and is intended to be addressed by ATT.¹¹³ As Apple has pointed out to the CMA, consumer protection associations and privacy advocates have widely welcomed ATT, and the ICO has given Apple only positive feedback on the introduction of ATT. For example:

- Amnesty International, Human Rights Watch, the Electronic Frontier Foundation and others openly supported and advocated for these changes. The Center for Democracy and Technology applauded the feature, noting that it "*will help rebalance the ecosystem so that data collection and sharing is more transparent and tracking is no longer the default. Systemic change of this breadth is a huge leap forward for consumers.*"¹¹⁴
- The Mozilla foundation launched an online petition to support the introduction of the ATT prompt: "*Apple's planned implementation of anti-tracking features is a huge victory for consumers, many of whom may not be aware that tracking can be done through their phone's*

¹¹³ A recent Washington Post-Schar poll found that 79% of respondents thought tech companies did not provide them with enough control over how their information is tracked and used. This same poll found that only 20% of respondents trusted Facebook to responsibly handle their personal information and data on their internet activity. See, https://www.washingtonpost.com/context/nov-4-22-2021-washington-post-schar-school-tech-poll/1f827037-688f-4030-a3e4-67464014a846/?itid=lk_inline_manual_6.

¹¹⁴ See, <https://www.apple.com/newsroom/2021/01/data-privacy-day-at-apple-improving-transparency-and-empowering-users/>

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*applications. Indeed, a 2019 Mozilla-Ipsos survey found that half of iPhone owners were not even aware of the existence of IDFA and data collection through applications. In addition, those who were aware of their existence did not know how to reset them. Now, with the ability to opt out of tracking directly at the point of use, consumers will no longer have to search through their phone settings to protect their privacy. But first, Apple must implement this change. We need to ensure that the company does not move away from this measure".*¹¹⁵

"Apple's stated intention with ATT is largely consistent with preserving individuals' privacy and place individuals in control of their personal data."

Shouldn't we put users first, before data-harvesting companies interest? ■ 10/ <https://t.co/wUps5jDUh4>

127. Given the harms specifically being addressed by ATT, the CMA's assessment of its impact on developers cannot simply consider the financial impact and negative effects on their advertising activities and end there. Instead, the CMA must also take due account of the important countervailing benefits that ATT brings to consumers. For example, ATT provides users with the ability to choose to allow tracking on a developer-by-developer basis, encouraging developers to compete on privacy to attract users and gain users' trust. Users have exercised that choice, choosing to allow tracking for some developers at higher rates than others.¹¹⁷ In the IR, in the few places where the CMA focuses on the effect of Apple's efforts on consumers, it acknowledges the benefit to users, noting in paragraph 6.301 that "*Apple's stated intention with ATT is largely consistent with preserving individuals' privacy and place individuals in control of their personal data.*" Apple would encourage a further analysis of these users' benefits, rather than just a superficial acknowledgment of them, and welcomes a proper assessment of how ATT counters the harm raised by hidden tracking and data-harvesting.