

## Creating the Content The Sell Sider



*"[The Sell Sider](#)" is a column written by the sell side of the digital media community.*

*Today's column is written by Aram Zucker-Scharff, engineering lead for privacy at [The Washington Post](#). After this exclusive first look for subscribers, the story will be published in full on [AdExchanger.com](#) tomorrow.*

Gaining and keeping readers' trust when it comes to their data and privacy is paramount for publishers. Yet it is clear that the [IAB's Multi-State Privacy Agreement](#) (MSPA) puts that trust at risk by asking publishers to choose sides in a battle to define privacy law.

The IAB has redefined longstanding industry terms in their new MSPA contract, which is intended to manage privacy compliance in the US. This is sure to muddle how privacy is understood to work and how businesses work with each other across the advertising ecosystem.

### New definitions

In the contract's proposed text, the MSPA has changed "first-party advertising" to include most of the ad tech supply chain, namely, "Advertising delivered to a Consumer on a Publisher's Digital Property, whether through a Direct Transaction or through RTB, that is selected solely on the basis of: (a) Consumers' activities on the Publisher's Digital Properties; and/or (b) Contextual Advertising." The term no longer refers to only a direct relationship, but rather the entirety of real-time bidding.

Combined with a brand-new definition of "contextual" (which includes "the context of the Consumer's visit [...] or information about the consumer's network or device"), the MSPA will pressure publishers to send all of a user's data to every ad tech middleman. This will make it significantly harder for publishers to argue for (and succeed at) minimizing what data is sent downstream, disintermediating publishers at the point where their responsibility to readers is highest.

Instead, every party will ask for every possible piece of user data needed to create the type of digital fingerprints designed to individually identify users across the web. And many vendors will attempt to shelter themselves behind how service providers are defined in the MSPA.

### Trouble with machine learning

A "third-party segment" has been redefined to allow the creation of these segments under user opt-outs, even though ad tech professionals understand that such segments must tie back to a user somehow (which seems to defeat the purpose of the user opting out).

Machine learning (ML) can be used to define audience segments in the absence of user opt-ins, but the MSPA does not mention these or related systems even once. That's despite the fact that ML has proven to be a significant focus of lawmakers and regulators, who understand its capabilities to track and reidentify users without the traditional long-term storage or IDs other methods require.

Data used to train ML systems is usually considered to fall into the definition of "sell or share," especially when it builds on the type of signals that can be used for fingerprinting, which the IAB has allotted for ad tech middlemen in its new definition of "contextual" data.

To truly address machine learning, the contract must include clear restrictions around using data for ML training, especially when the user is opted out.

## **Compliance confusion**

How can we cede all this data to middlemen when the MSPA doesn't even provide a clear framework for data deletion, data checkout and the auditing required by state laws that would allow publishers to check up on compliance?

The MSPA's lack of contract language for deletion requests is also notable, as it regresses from the IAB's preceding contract, the Limited Service Provider Agreement, on giving clear instructions for deletion that are needed under changes in California's law.

Additionally, the MSPA doesn't provide a strong framework to address or eject rule breakers from the signatory list when they are caught or identified by whistleblowers. Instead of providing a true contract between publishers and all ad tech parties, the MSPA leaves major portions of compliance still up to publishers to negotiate.

It seems impossible to use the MSPA as the only contractual part of compliance in good faith with US privacy laws. The MSPA expects that we would be exchanging opted-out user data for increased ad revenue, which seems to fit inside the definition of a sale. However, there is just enough room in the released US state-level regulations to leave a gray area this contract can claim to function in.

## **The price for publishers**

Publishers must handle serious costs when the MSPA, much like the IAB's Transparency and Consent Framework (TCF), inevitably gets challenged by states looking to protect citizens' privacy.

Most concerningly, it will prove impossible for publishers with programmatic advertising to say "no" to the MSPA. If the ad tech companies publishers work with sign on – and they will – publishers must do so as well to participate in the ad tech economy.

The result will be publishers forced to give up control of the flow of opted-out user data on their own sites in ways that might be legal but may not be particularly ethical, depending on the publisher's ability to obtain additional contractual assurances from downstream entities.

There is a real likelihood that any attempt to object to sending data downstream by publishers will be met with resistance from ad tech firms. The MSPA contract insists that advertising systems don't just want but own all the user data they can guzzle up.

In asking publishers to hurriedly sign on to the MSPA, the IAB is asking them to step into the crossfire by making them the face of opposition to [a broadly supported national movement toward privacy](#).

By redefining industry terms, the contract puts publishers in the middle of an international fight between regulators and ad tech firms to decide what is or is not tracking. It forces publishers onto the side of ad tech intermediaries, even when they don't share interests.

The industry should hope the final version of the contract manages to protect privacy and follow the law better than this one. Otherwise, in its attempts to avoid having to change the real-time bidding ecosystem, the IAB might just kill it instead, and take the rest of us down as well.

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