



The Information Commissioner's Office Consultation on the Draft Updated Guidance on Storage and Access Technologies

Response by the Affiliate and Partner Marketing Association

Introduction

The Affiliate and Partner Marketing Association (APMA) is pleased to have the opportunity to submit comments on the Information Commissioner's Office (ICO) consultation regarding the draft updated guidance on storage and access technologies.

Affiliate marketing plays a crucial role in the marketing landscape, though it can often be misunderstood and conflated with the wider digital advertising industry. Unlike other forms of advertising, affiliate marketing is less intrusive to privacy and operates on a Cost-Per-Acquisition (CPA) model. In this model, retailers and their partners earn revenue only when a consumer completes a specific action, such as making a purchase in response to a product or service they have specifically sought out, or where there may be a targeted offer, discount or savings.

APMA Recommendations

- 1. APMA supports the proposed amendments to the Privacy and Electronic Communications Regulation (PECR) through the Data (Use and Access) Bill, particularly Clause 112, which allows the Secretary of State to introduce new exemptions to consent requirements after consulting the ICO.**
- 2. APMA believes this allows the ICO to differentiate between high- and low-risk scenarios, ensuring that many non-privacy-intrusive affiliate marketing models qualify for exemption. This also meets the goal in the (draft) legislation to ensure the fair treatment of low-risk business models.**
- 3. APMA therefore supports the ICO's emphasis on minimising disruption to the consumer experience in consent mechanisms. APMA welcomes the clarification that measurement activities do not require additional consent, reducing unnecessary friction for businesses and consumers.**
- 4. However, APMA would welcome further clarification on whether the single consent for advertising purposes covers measurement even if this purpose is split out amongst two entities.**
- 5. APMA recommends that the final guidance clearly distinguishes between affiliate marketing and programmatic display advertising, particularly regarding data collection and privacy practices to ensure the less privacy-intrusive characteristics of the affiliate marketing industry are recognised and not**

conflated with other forms of online advertising, particularly those that build interest profiles to target / deliver personalised advertising.

6. APMA supports the ICO's clarification that a 'strictly necessary' exemption may apply to cookies and similar technologies used where the service is specifically requesting a product or services, including being contingent on a consumer interacting with the activity (e.g., the use of cookies and similar technologies for providing consumer reward services such as cashback, loyalty points, voucher codes, and gift certificates). APMA recommends including specific examples or case studies in the final guidance to provide practical clarity for businesses.
7. APMA welcomes the ICO's focus on technologies beyond cookies that perform similar functions, particularly as the role of cookies diminishes. APMA also appreciates the distinction between legislative requirements and good practice, which provides much-needed clarity for organisations exploring alternative solutions.
8. When appropriate, APMA seeks further collaboration with the ICO, as outlined in current Clause 116 of the Data (Use and Access) Bill, to build on its own Code of Conduct to provide guidance that reflects the specific data processing operations within the affiliate and partner marketing sector.

Who is the Affiliate and Partner Marketing Association (APMA)?

APMA is the UK's sole trade association dedicated to representing and advocating for the affiliate and partner marketing sectors. Established in 2023, its membership spans the entire industry and includes a diverse range of stakeholders such as brands, agencies, publishers, networks, and technology providers. In 2023 APMA's member companies generated [£21bn](#) (10% of retail ecommerce) in annual online sales for UK retailers. For further information please visit <https://theapma.co.uk>.

APMA is eager to increase its collaboration with the ICO to share detailed insights about the sector and to promote constructive dialogue and closer cooperation. APMA will be reaching out to the Information Commissioner with an invitation to speak at a dedicated session with its member companies, offering an opportunity to delve deeper into these matters and exchange valuable perspectives.

APMA advocates for [ethical data protection and privacy practices](#) among its member companies, emphasising:

- Relying on data collected directly from consumers rather than via third-party sources.
- Avoiding the collection of unnecessary personal data.
- Clearly disclosing affiliate relationships and how consumer data will be used.

By adhering to these principles, the affiliate marketing industry can continue to thrive while maintaining a strong commitment to consumer privacy and transparency.

APMA would welcome the opportunity to work with the ICO to develop good practice (and a Code of Conduct) - as outlined in Clause 116 of the Data (Use and Access) Bill - on complying with the Privacy and Electronic Communications Regulations (PECR) to reflect specific data processing operations within the affiliate and partner marketing sector. We acknowledge the legislation is still being debated in Parliament.

The UK Affiliate & Partner Marketing Industry

How does it work?

Affiliate and partner marketing is a performance-driven marketing strategy where a brand collaborates with third-party websites to promote its products or services, drive traffic to its own website, and generate sales. In exchange, the third-party - often referred to as an affiliate, partner, or publisher - earns a commission or payment for their role in facilitating the sale.

Unlike other marketing channels that are defined by their format (e.g., email, display advertising etc.), affiliate and partner marketing is best characterised by its Cost-Per-Acquisition (CPA) model. This means success is measured solely when a user completes a specific action, such as making a purchase. Common affiliate marketing techniques include price comparison sites, cashback platforms, loyalty and reward portals, and voucher code websites. The channel has also expanded to include influencers, tech start-ups, and bloggers, who leverage it to generate revenue and support their growth.

The strength of this business model lies in its reliance on 'first-party' activity to ensure sales are completed and commissions are allocated. This is managed directly on the brand's website which ensures the brand retains control over the consumer retail experience and, by extension, privacy. Unlike programmatic digital advertising, there is no Real-Time Bidding (RTB) auction or profile building, eliminating the need for multiple third-party companies to share and use consumer data for personalised ad targeting.

These models are not dissimilar to practices in the offline world. For instance, businesses often collaborate with independent sales representatives (e.g., in insurance or cosmetics) who earn commissions for driving sales without being directly employed by the company. Similarly, online affiliates earn commissions for generating sales, but with the added advantages of global reach and efficiency. Online affiliate marketing ensures the right organisations receive appropriate commissions, while consumers benefit from savings on the products or services they seek.

Promoting Economic Growth

The UK affiliate and partner marketing industry plays a vital role in the UK economy, contributing [£21bn](#) to ecommerce and delivering substantial savings and benefits to consumers. The sector has experienced significant growth ([17% in 2023](#)) and has become a retail powerhouse, firmly embedded within the UK's digital marketing ecosystem. A substantial portion of the revenue and therefore ongoing viability of price comparison services such as MoneySavingExpert, Comparethemarket and Uswitch depends on the affiliate channel.

Traditional news brands and publishers such as News International, Telegraph Media Group and Hearst Publishing are also turning to the channel to diversify their revenue streams. British publisher Future [announced](#) that their content drove more than 10m affiliate transactions resulting in 2023 revenue of over £80.7m. Publishers create content that consumers seek out and use to help them make more informed purchasing decisions or to save money, such as reading a product review on Which?, earning points on Nectar's loyalty scheme or redeeming a voucher code with Groupon.

Saving Consumers Money

Consumers request to see promotional content as part of the service to which they sign up and therefore the value exchange is well understood. A 2023 YouGov [survey](#) found

that 94% of consumers claimed they used affiliate models to save money in the previous 12 months, with price comparison as the top-ranking tactic (36%). Discounts were used by 32% of consumers, and a quarter took advantage of rewards via loyalty schemes.

Specific Comments on the Draft Updated Guidance

1. **Assessing Privacy Risk:** APMA recognises that the ICO does not set legislation. However, we support proposed amendments to the PECR through the Data (Use and Access) Bill, which is currently under parliamentary debate - specifically Clause 112. This clause grants the Secretary of State the authority to introduce new exemptions to consent requirements, following consultation with the ICO.

APMA sees this as an opportunity for the ICO to differentiate between high- and low-risk scenarios. As previously highlighted, APMA believes that many affiliate marketing business models, which are not privacy-intrusive, should qualify for such exemptions. The core function of affiliate marketing is to "*record information or selections made by users on an online service,*" enabling the attribution of sales to the specific product or service requested by the consumers. This process not only benefits consumers through savings but may also reduce the friction caused by excessive consent pop-ups. This balance is explicitly acknowledged in the current Data (Use and Access) Bill (Clause 111 and Schedule 12).

Clause 112 of the draft Data (Use and Access) Bill also seeks to clarify that reference to the placement of cookies or similar technologies also includes "*reference to instigating the storage or access*". This raises questions as to whether affiliate marketing companies that do not have control over how publishers obtain consent on their digital properties / sites can also be responsible for this instigation. It would be helpful for the ICO to clarify this in its revised guidance. Also see 5 below.

2. **Online Advertising:** APMA is concerned that the new section on online advertising in the draft revised guidance conflates the affiliate marketing industry with programmatic display advertising. As noted earlier, there are significant differences between the two, particularly regarding data collection and privacy. Please refer to the details below regarding measurement, which underscores the importance of maintaining a clear distinction. APMA strongly recommends that these distinctions be explicitly acknowledged and reflected in the final guidance.
3. **Exemptions:** In the affiliate marketing channel, cookies or similar technologies are often used to offer cashback and similar services, whereby a share of the commission received by the publisher from the advertiser is shared with the user. This is effectively advertising measurement of some form (i.e., attribution) and tends to be recorded and paid via an affiliate network.

APMA appreciates the ICO's current [efforts](#) (as well as those from other European Data Protection Authorities (DPAs) such as the [CNIL](#) in France) to clarify that a 'strictly necessary' exemption may apply where the product or service is requested by the consumer. This includes the provision of consumer reward services such as cashback, loyalty points, voucher codes, and gift certificates. APMA believes that, because of the commercial model implemented by the publisher rather than the use of technology itself, it is 'strictly necessary' because the service cannot work without it. In other words, consumers are not able to get their reward unless the advertiser drops a cookie to (a) record the referral of the consumer to the advertiser and attribute that to the publisher; and then (b) record the completion of a transaction on the advertiser's purchase confirmation page.

In the case of voucher codes, the cookie is also used to provide uniqueness to the code and is a form of security. If vouchers are offered without being made unique, they inevitably fall into the hands of people who are not eligible for the discount, at which point the voucher initiative offered by the advertiser is vulnerable to abuse. APMA believes it is very important that this nuance is recognised. To enhance clarity and practical understanding, APMA recommends including specific examples or case studies in the final guidance.

4. **Market Clarity:** While PECR has always extended beyond cookies, APMA welcomes the ICO's focus on other technologies that serve similar functions. APMA also appreciates the distinction between legislative requirements and good practice. This clarity is crucial as the role of cookies diminishes and businesses explore alternative solutions to achieve comparable outcomes. This is especially crucial given the proposed increase in penalties for non-compliance.
5. **Consent:** APMA supports the ICO's additional guidance on consent mechanisms, particularly the emphasis on minimising disruption to the consumer experience.

APMA also welcomes the clarification that measurement activities do not require additional consent. It is already accepted that one party (Party A) can obtain consent on behalf of another (Party B), provided GDPR standards are being met. This would include the consent request identifying both Party A and Party B, for example. APMA would welcome it if the revised guidance could make clear that where Party A obtains consent for use of storage and access technologies for online advertising purposes, this can cover the advertising measurement purposes of Party B, for that same advertisement. In other words, this single consent for advertising purposes should cover measurement even if this purpose is split out amongst two entities. In practice, this would mean a publisher of a website could obtain consent for its advertising purposes and advertisers could then benefit from that consent when that advertising is measured (i.e., measuring the referral of the consumer by the publisher and whether the advertisement resulted in a sale).

This is practical in the affiliate marketing ecosystem as it is a closed network of identified parties almost always operating in supply chains of only three parties (publisher, affiliate network, and advertiser).

6. **Affiliate & Partner Marketing Code of Conduct:** APMA has its own [Code of Conduct](#) aimed at promoting integrity, transparency, and professionalism within the sector. APMA would welcome the opportunity to collaborate with the ICO, as outlined in current Clause 116 of the Data (Use and Access) Bill, to further develop this framework. Such collaboration would help ensure compliance with PECR and better reflect the specific data processing operations within the affiliate and partner marketing sector.

APMA, March 2025

For further information please contact Kevin Edwards, APMA Founder & Director, at kevin.edwards@theapma.co.uk.