

# The European policy landscape

Dietrich von Klaeden

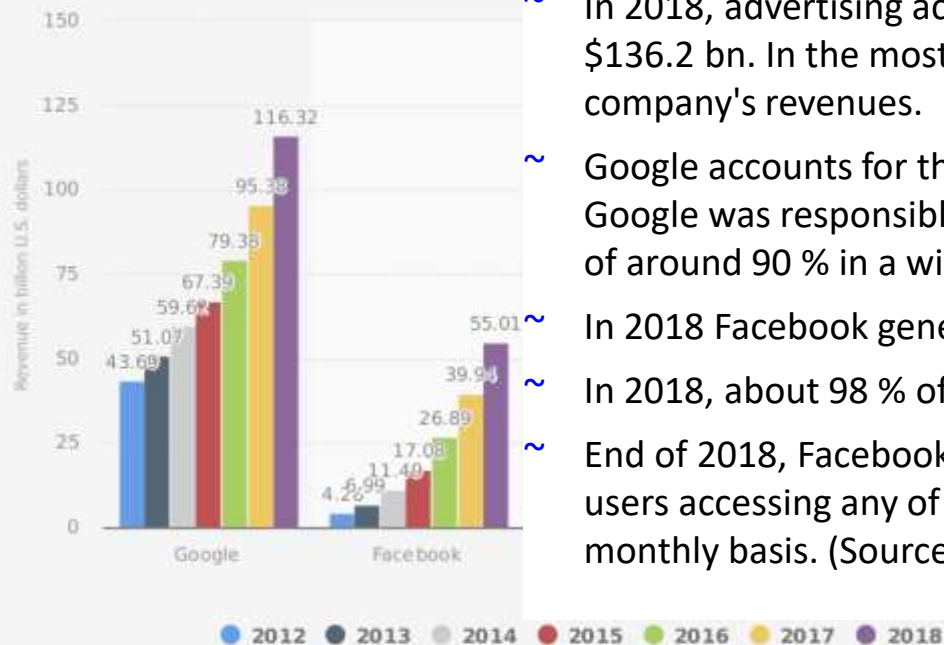
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# Increasing market dominance of Google and Facebook – A challenge for fair competition

Selected online companies ranked by total digital advertising revenue from 2012 to 2018 (in billion U.S. dollars)



- ~ In 2018, advertising accounted for the majority of Google's total revenue, which amounted to a total of \$136.2 bn. In the most recent fiscal period, advertising revenue through Google Sites made up 70.9 % of the company's revenues.
- ~ Google accounts for the majority of the online and mobile search market worldwide. As of January 2019, Google was responsible for almost 90 % of global desktop search traffic. The company holds a market share of around 90 % in a wide range of digital markets.
- ~ In 2018 Facebook generated \$55 bn in ad revenues.
- ~ In 2018, about 98 % of Facebook's global revenue was generated from advertising,
- ~ End of 2018, Facebook had more than 2.3 bn global monthly active users with a cumulative total of 2.7 bn users accessing any of the company's core products Facebook, WhatsApp, Instagram, and Messenger on a monthly basis. (Source: Statista)

Sources:  
Statista; Yahoo; Facebook; Google  
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Additional Information:  
Worldwide; Google; Yahoo; Facebook; 2012 to 2018

# EU Commission strengthens level playing field with platforms

- ~ **Google:** Three fines by EU Commission with a total amount of over **\$9 bn**. In 2017, Google was fined it €2.4bn/\$2.7 bn for favoring its own content in shopping search results, in 2018 a record €4.3bn/\$5 bn fine for illegal practices regarding Android mobile devices and in March 2019 Google was fined about €1.5bn/\$1.69 billion for 'abusive' AdSense publisher contracts.
- ~ **Apple:** In August 2016, the EU Commission ruled that Apple had received unfair tax incentives from the Irish government. It had to reimburse **€13.1 bn, plus €1.2 bn** interest. In March 2019 Spotify filed a complaint against Apple for unfairly favoring its own music services over rivals. One of its main criticisms: A 30 percent tax on companies through the Apple payment system. Other complaints have been filed recently by two smartphone app developers
- ~ **Facebook:** under constant pressure by the EU Commission and national legislators for its responsibility during election campaigns (political ads), online disinformation and hate speech: 2016 EU Code of conduct on online hate speech, 2018 EU Code of Practice on Disinformation, May 2019 changes to terms how to buy political ads, national legislation and other initiatives in France, Germany (NetzDG), UK and others
- ~ **Amazon:** In September 2018 the EU Commission opened a preliminary investigation to assess the dual role of the e-commerce giant, hosting but also competing against other merchants. Concerns were raised that Amazon could be using sensitive information about its competitors' products to its own advantage.

# GDPR one year after entry into force

We achieved: For the first time harmonized data protection rules across the entire Single Market in Europe. Flexibility for data processing due to several legal grounds such as opt-out with legitimate interest, consent and contract. No explicit consent for profiling for marketing purposes.

Reality one year later :

- ~ High bureaucracy-efforts which are costly for European enterprises.
- ~ Threat of fines difficult to handle for smaller businesses in Europe.
- ~ One additional resource in AS, but in reality more staff is working daily on handling data protection issues such as information and deletion requests.
- ~ 2-3 procedures with Data Protection Authorities (DPAs) per month, since May 2018 about 30 procedures.
- ~ In addition, still high legal uncertainty, how e.g. freely given consent will be interpreted by DPAs and if legitimate interest can be legal ground for marketing purposes.
- ~ Google is asking publishers to send consent signal and is pushing the advertising market into consent only – advantage for login giants but difficult for smaller publishers to obtain consent.
- ~ At the same time several complaints have been filed in different EU Member States against Google and Facebook over the way they deal with data in online advertising, transparency and consent.
- ~ First fine against Google in 2019 of €50 Million for GDPR violation by French DPA CNIL.

# Challenges of the E-Privacy Regulation

The E-Privacy Regulation regulates as a „Lex Specialis“ next to the General Data Protection Regulation (GDPR) the protection of personal data within electronic communications. The basic requirements for tracking (opt-out data processing given a legitimate interest) under the GDPR are endangered by the proposal for an E-Privacy Regulation:

- ~ The proposal threatens to tighten the current legal situation, through a Europe-wide opt-in for cookies.
- ~ The proposal provides "first party" login platforms a competitive advantage and enhances the supremacy of browsers via the users privacy settings.
- ~ Due to a strict interpretation of consent in the GDPR, access to web pages can most likely not be linked to the consent to the use of cookies.
- ~ The e-privacy regulation, is due to become a directly applicable law and would will replace the previous E-privacy Directive as well as the corresponding national laws.



## Timing:

January 2017 – Proposal by European Commission  
October 2017 – Adoption of report by European Parliament  
May 2019 – Progress report by Austrian Presidency  
July 2019 – Finnish Presidency and new EU Parliament start  
31 October 2019 – End of current European Commission

## Next Steps:

Either substantial changes are made by Member States and in Trilogue or EU Commission has to revise the proposal.

# Why we are so committed to the Publisher's Right

- ~ It gives publishers the legal standing already enjoyed by music, film and broadcasters which the press needs to assert its copyright online.
- ~ It is an important pillar against the exploitation of the cultural and media landscape: ~ 50% of all internet users only read the excerpts provided by the online services such as Google News.
- ~ It encourages companies such as Google and Facebook that wish to re-use and monetize publishers' content to negotiate licenses and simplifies the enforcement of rights by press publishers.
- ~ It entitles journalists to a fair share of any additional license revenue granted by the Right.
- ~ It is essential for small newspapers and magazines with their numerous journalistic digital startups across Europe.

# Next Steps for a successful Publisher's Right

## Implementation into national legislation

- ~ It is important that the Publisher's Right is effectively implemented in all member states in order to ensure a European wide successful licensing with large players such as Google, FB and others and in order to avoid negative examples for legislation from other countries.
- ~ France to be first country to adopt a publishers right before the summer – close to the final text in the Directive.

## Enforcement of the publishers right

- ~ We have to ensure an effective collective enforcement of the Publisher's Right in all member states.
- ~ All publishers need start enforcing the right otherwise Google and other platforms will try to split publishers by making individual agreements with only some players in the market.
- ~ Options are enforcement by individual publishers, by national or by a European wide collecting society. The publishers right does not provide for an obligation of a collecting society – however collective enforcement provides for better bargaining power.



# Future of free and independent journalism

## How can we set standards for more competition, copyright and data protection globally?

- ~ US Justice Department is preparing an antitrust investigation of Google. This is an important step to tackle the monopoly question also in the US.
- ~ It shows it is not a question of European protectionism but a question of fair competition and diversity in the media sector.
- ~ Copyright protection of press publishers also outside Europe is needed.
- ~ We hope for a signal effect in the US market.
- ~ Since publishers worldwide face the same challenges and the European Publisher's Right has an impact on global standards, we should fight together for a comprehensive international publishing law.
- ~ Learn from the challenges of GDPR and mistakes of EPrivacy proposal and adopt global Data Protection standard by delivering transparency, choice and control for citizens without providing a competitive advantage to already dominant login giants or making browsers to gatekeepers