

IAB Canada is continuing to follow the concerning developments surrounding Bill C-27 – *The Digital Charter Implementation Act 2022*. As it stands, the bill has passed its second reading and is still in committee at INDU which is set to resume discussions September 16th of this year. The model is moving more towards opt-in, explicit consent making it much harder for businesses to use targeted ads. This will impact all businesses in Canada as well as international businesses that advertise to Canadians – all publishers, agencies, brands, and AdTech.

Privacy - CPPA

Legitimate Business Interest:

The Legitimate Interest Section of Bill C-27 (s. 18 (3)) fails to recognize advertising as a legitimate business activity. It will make it so that users will need to consent to the collection of their personal information numerous times in their daily use of their favourite sites to the point of exhaustion. The digital advertising industry stands to lose up to 40% in signal loss due to opt-in requirements and face insurmountable costs to comply, eroding consumer trust in Canada through the resultant vilification of advertising.

- **IAB Canada's Recommendation:**

- Amend C-27 to explicitly recognize that advertising and marketing online is an essential, legitimate business interest without which businesses could not function or succeed.

Sensitivity Provisions:

There is a vast amount of data that passes through the ecosystem, with only a portion of it at risk of actually being sensitive. Despite this, the CPPA would classify all incoming data as sensitive and require explicit user consent multiple times. The bill has no exceptions and covers every activity used in the collection, processing, and sharing of personal data for the purposes of advertising. Furthermore, *all* children's personal information is classified as sensitive requiring explicit consent. It is not made easier that consent is entirely context dependent and based on the minor's understanding and ability, with no explicit age-range defined anywhere in the bill. Furthermore, there is legal precedence for nuance as Law 25 in Quebec delineates between minors aged 13 and under where parental

Consent is required every time their personal information is shared and for those aged 14 and over where a minor can provide consent but still require enhanced privacy protections.

- **IAB Canada's Recommendations:**

- Avoid an overly prescriptive categorization of sensitive data which can restrict the industry's ability to conduct business activities efficiently.
- Research and development should be entirely exempted from these provisions.
- There should be clear guidelines on protections related to age assurance, with protections that consider the full age range of minors.

Compliance & Enforcement

The need to conduct risk assessments, maintain detailed records, and ensure transparency, is written to be so far-reaching that operational costs alone on digital advertisers will hamper their profitability and ability to compete effectively in the market. Given the harshness of the penalties for non-compliance and the tremendous investments required by the industry to do so, significant expenditure of time and resources will be required - stripping away all efforts in innovation and the improvement of business practices. The penalties for a violation are prohibitively harsh with a standard fine of \$10 million CAD or 3% of global revenue to a maximum of \$25 million CAD or 5% of global revenue.

- **IAB Canada's Recommendations:**

- Allow the industry to develop accessible frameworks and standardized codes of practice to assist in widespread adoption to aid in compliance. This is the best solution to ensure inclusivity of the small-to-medium sized business (SME) community in Canada.
- Allow for a phased-in implementation of C-27 so businesses, especially SMEs, have the time to adapt and conform to the new regulations.

Personal Information and Data Protection Tribunal (PIDPT)

Seeing as how the Tribunal will be composed entirely of members recommended by the federal Cabinet, there is a serious risk of members being appointed who lack the expertise to adjudicate appeals made by the OPC. Digital advertising involves complex data analytics and targeting practices that require specialized knowledge to understand. Without this expertise the Tribunal will not appreciate the legitimate business practices that occur daily in the industry and could impose penalties or restrictions that are disproportionate or misinformed.

- **IAB Canada’s Recommendation:**

- Ensure the Tribunal includes members with expertise in digital advertising as well as a framework for regular consultations with industry stakeholders. This will keep the Tribunal informed on regular developments in the industry.

AI - AIDA

The AIDA portion of C-27 requires having to demonstrate how an automated system makes decisions *whenever this information is request by the Minister*. This would be required whenever a violation is registered, even a minor one. Fully explaining how a sophisticated AI makes even a single decision requires an exhaustive explanation, consuming excessive time and resources.

- **IAB Canada’s Recommendation:**

- The focus should be on penalizing *harm* committed by AI instead of when a process is circumvented or violated. AI vendors have the technology in place to respond to and minimize any number of circumventions.

If C-27 is Not Amended

Short-Term Effects: Media publishers and brands will be forced to scramble to collect data, creating a negative user experience while spending costly to comply.

Long-Term Effects: The erosion of investments from all stakeholders in the digital media ecosystem – collapsing the digital media value proposition in Canada.

Macroeconomic Fallout: C-27 hampers the ability for content providers to offer a choice for users to pay for what they wish to see or see for free with ads. Small-to-medium sized businesses (SMEs) will be disproportionately affected as an opt-in consent model reduces the ability of programmatic advertising to effectively connect with Canadian consumers – a functionality on which SMEs heavily rely. C-27 will also deter investment towards content that Canadians want and remove the attractiveness of what was once heralded as the best market in the world in which to test new technology. Canadian consumers will be conditioned to believe that advertising is nefarious due to the nightmare of constant consent requests destroying the usability of a once free platform.

IAB Canada believes in a system that balances commercial needs with the privacy rights of every Canadian. However, Bill C-27, in its attempt to safeguard privacy, imposes overly

burdensome requirements that go far beyond what is necessary for protecting personal information.

We urge MPs to acknowledge our sector as critical and to maintain a balanced approach to privacy and business needs. We encourage all in our industry to assess the exposure to your organization by auditing your data processing and collection procedures, invest in privacy technology that is scalable and committed to flexibility, and get informed on TCF Canada and other privacy technology solutions offered to the industry.

If you are an IAB Canada member and would like to join any of our policy discussions, please reach out to policy@iabcanada.com.