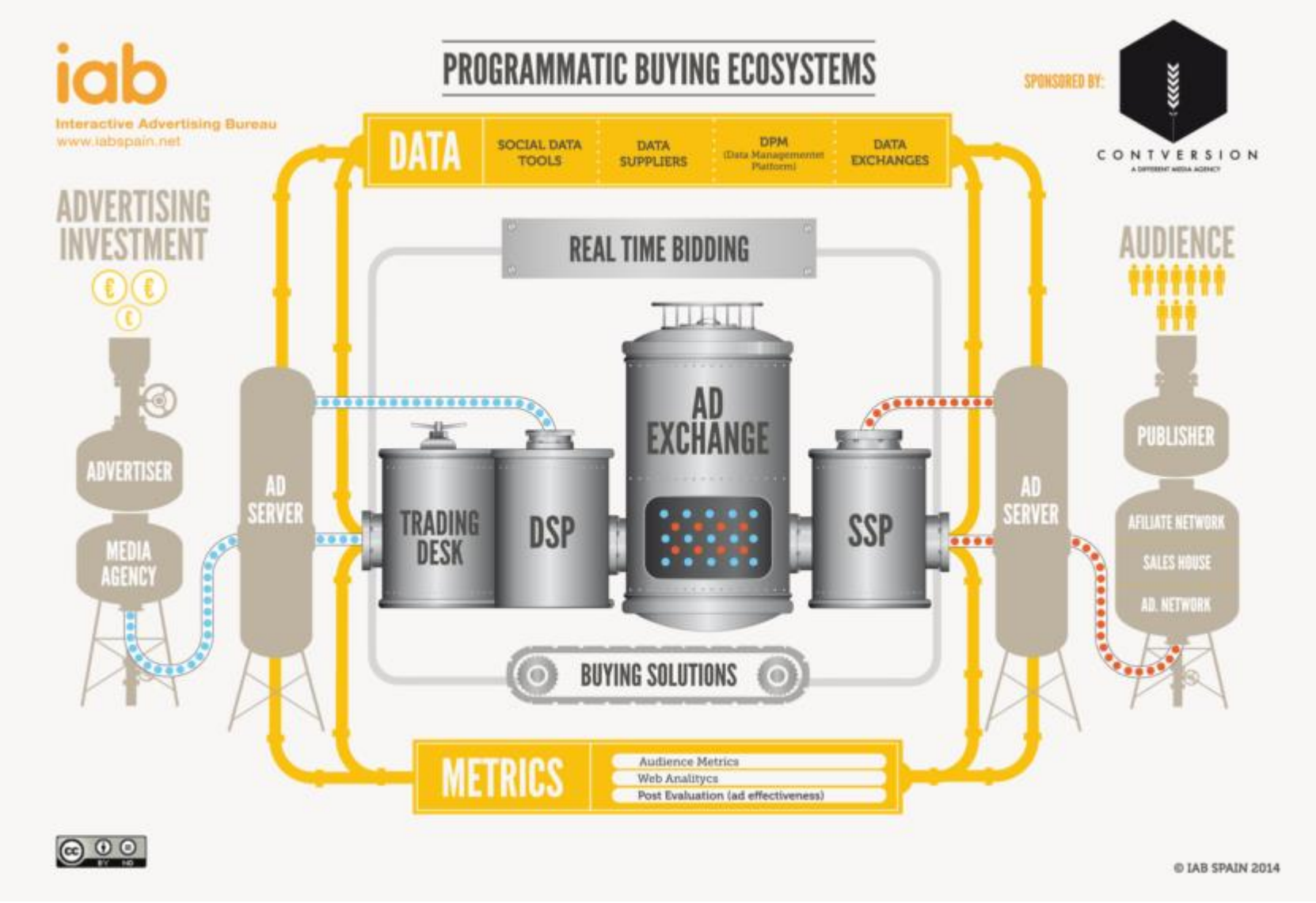
Programmatic Advertising in HbbTV

PRIVACY COMPLIANCE

Discovery

Programmatic Advertising



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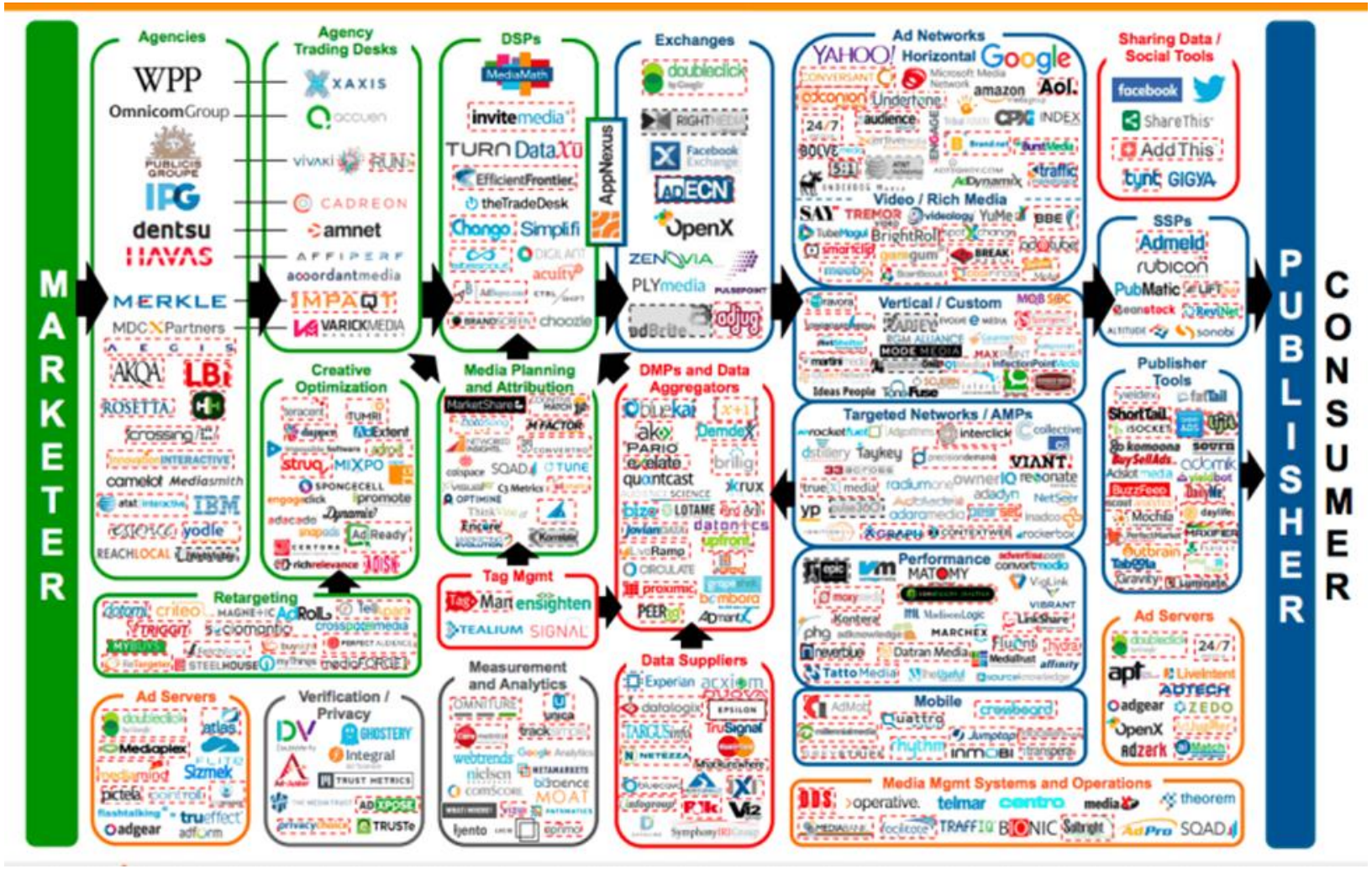
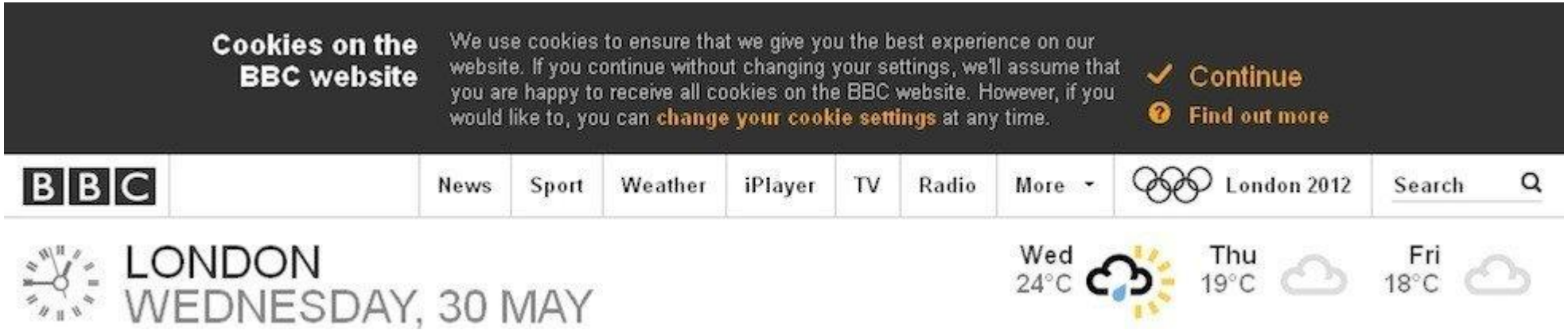
Programmatic Advertising Ecosystem



Discovery

Cookies/Tracking Consents: *Prior to GDPR*

- EU "Cookies Directive" was a 2011 amendment to the ePrivacy Directive
- Required **consent** for cookies and other online tracking technologies (cookies, pixels, web beacons, SDKs, etc.)
- However, "**implied consent**" was generally accepted as adequate
  - This was accomplished through "cookie banners" that essentially said that by continuing to use a service you are agreeing to being tracked



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Cookies/Tracking Consents: *After GDPR*

- In 2018, unclear how prescriptive GDPR rules for getting "consent" to data processing impacted ePrivacy Directive rules on cookies/trackers
  - ePrivacy Regulation did not come to fruition to clarify things….
  - So, market practice generally continued unchanged with implied consent "cookie banners" until well into 2019 ➔ when various EU data protection regulators issued guidance tracking consent + important top EU court decision
- Court decisions and regulatory guidance have continued to evolve in the EU on the legal requirements for the use of cookies and "similar technologies," but now clearly the law that:
  - **With some exceptions, GDPR-sufficient consent (*express, opt-in consent*) is required for the use of any "non-essential" tracking technologies**
- **Consent requirement applies to all tracking technologies** – cookies, pixels, web beacons, SDKs or other "similar technologies" (defined as "any technology that stores or accesses information on a user's device" including device fingerprinting, local storage, etc.)

ePrivacy Directive vs. GDPR

ePrivacy Directive	GDPR
•"Cookie" consent rules apply to *any storage of information on **or** collection of information from, user devices* •Applies beyond personal data •Applies regardless of data controller/processor roles •Exceptions apply: • Transmission of communications • Essential for services *users have specifically requested*	•Applies to personal data •Requirements apply to data controllers and data processors • Data controllers bear primary legal responsibility •Imposes strict legal requirements for obtaining consent (including consent under ePrivacy Directive)

Cookies/Tracking Consents: *Scope of Consent*

<u>Scope of Consent Requirement</u>: Regulators have made clear that the opt-in consent requirement extends to all types of tracking technologies used for any purpose, with the only exceptions being:

- **"Strictly Necessary" (a/k/a "Essential") trackers***: EU regulators have defined "essential" trackers very narrowly – only those trackers strictly necessary to effectuate the basic functions and security of a service (e.g. shopping cart)

- **1st Party basic analytics (law is <u>mixed</u>)**: EU regulators are split on this topic – some regulators have said that you need GDPR-level consent for even basic measurement & performance analytics, whereas others have said you can default these trackers "on" – some regulators have changed their own previous guidance on this in the past 12 months, so it is an evolving issue

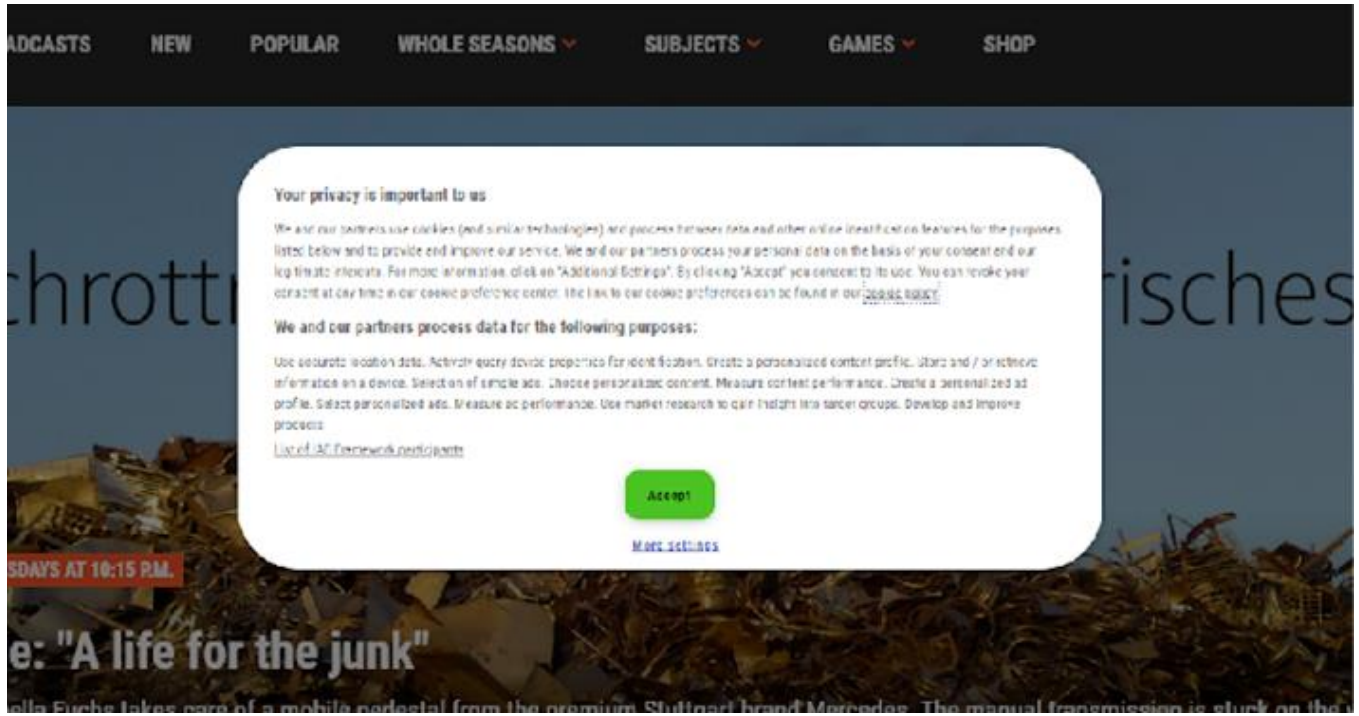
Tracking for <u>any other purpose</u>, including but not limited to advertising/marketing, ad measurement, and content personalization requires express, opt-in consent of the user.

Ad Tracking & Targeting Consent: CMPs

To collect and honor the consents needed for online tracking and targeting under European law, publishers on web & mobile typically use a Consent Management Platform (CMP) tool which generally involves 2 components:

- Cookie/tracker Banner (pop-up)
- Cookie/tracker "Privacy Preference Center" (where users can exercise more granular choice)

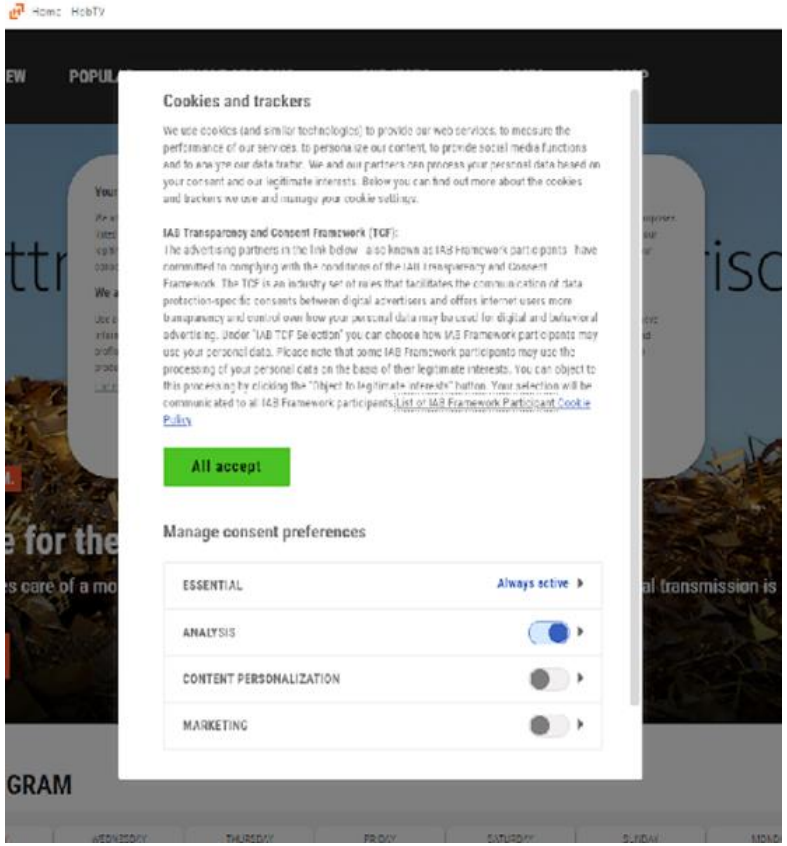
1) **Banner** :

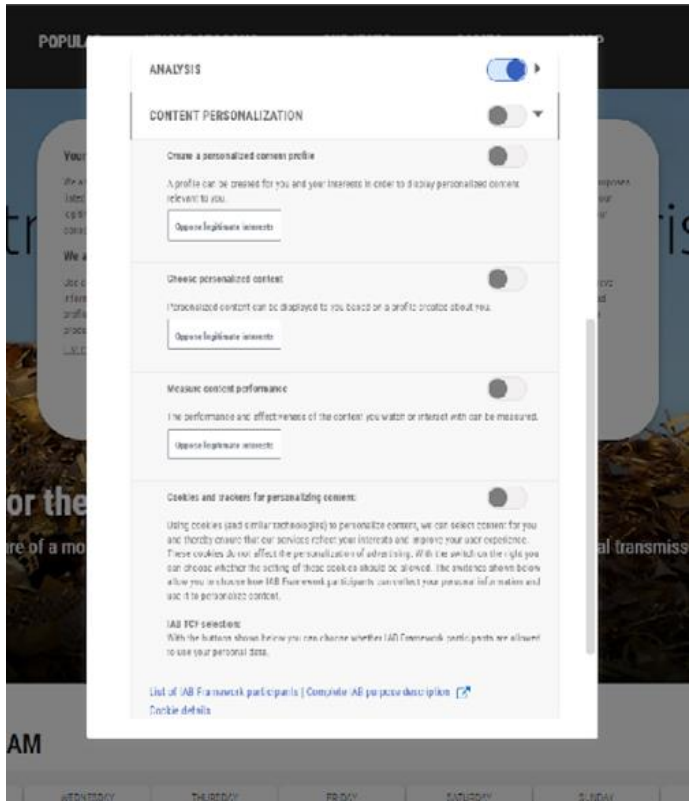


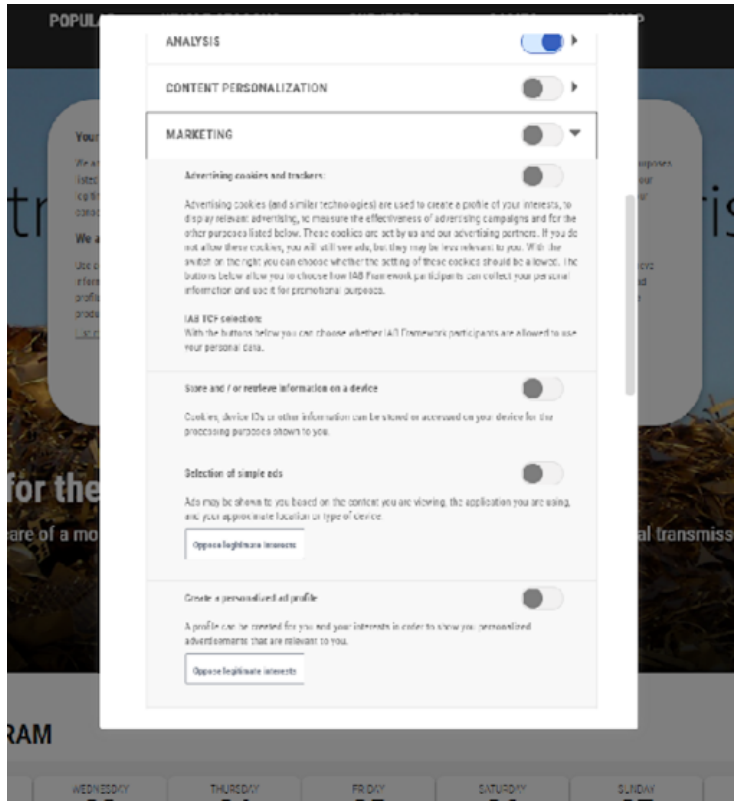
Users can either "Accept" to clear the banner, OR they can click on "More Settings" to get to the
Privacy Preference Center (next slide)

Ad Tracking & Targeting Consent: CMP

2) **Privacy Preference Center**:







IAB Transparency & Consent Framework (IAB TCF)

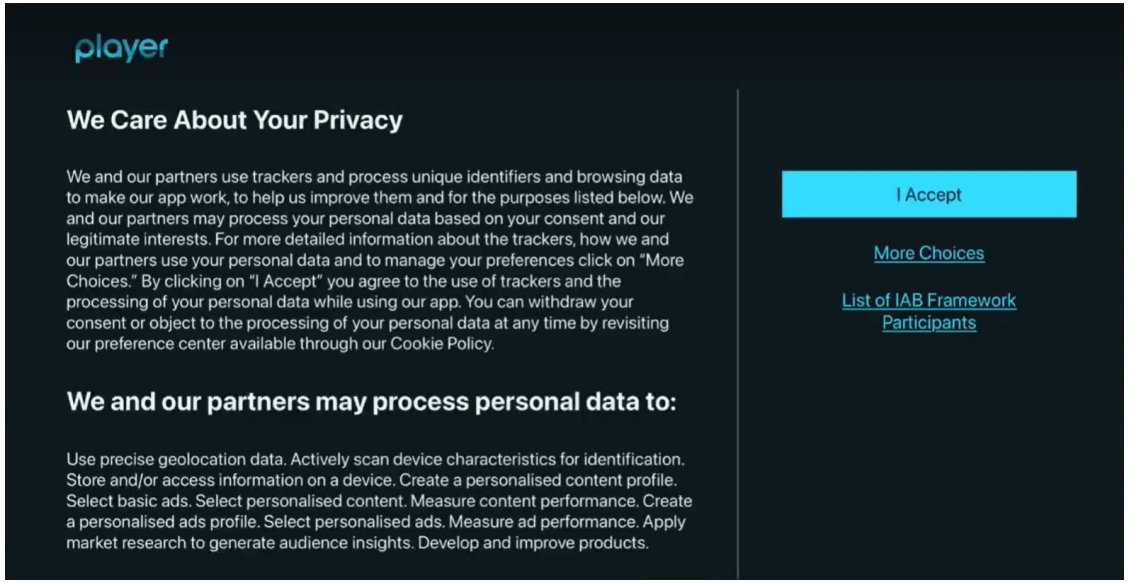
- The IAB (Internet Advertising Bureau) ➔ advertising / ad tech industry association that created an industry self-regulatory framework (Transparency & Consent Framework (TCF)) for compliance with the cookie/tracking consent rules in Europe
- IAB TCF principally set up to address consents for programmatic advertising and all the ecosystem players collecting and/or processing user personal data in connection with the RTB process
- IAB TCF sets out specific set of consents for that must be gathered for 3rd party trackers and downstream processing of user personal data + tech specs for passing consent "strings" downstream to IAB TCF members

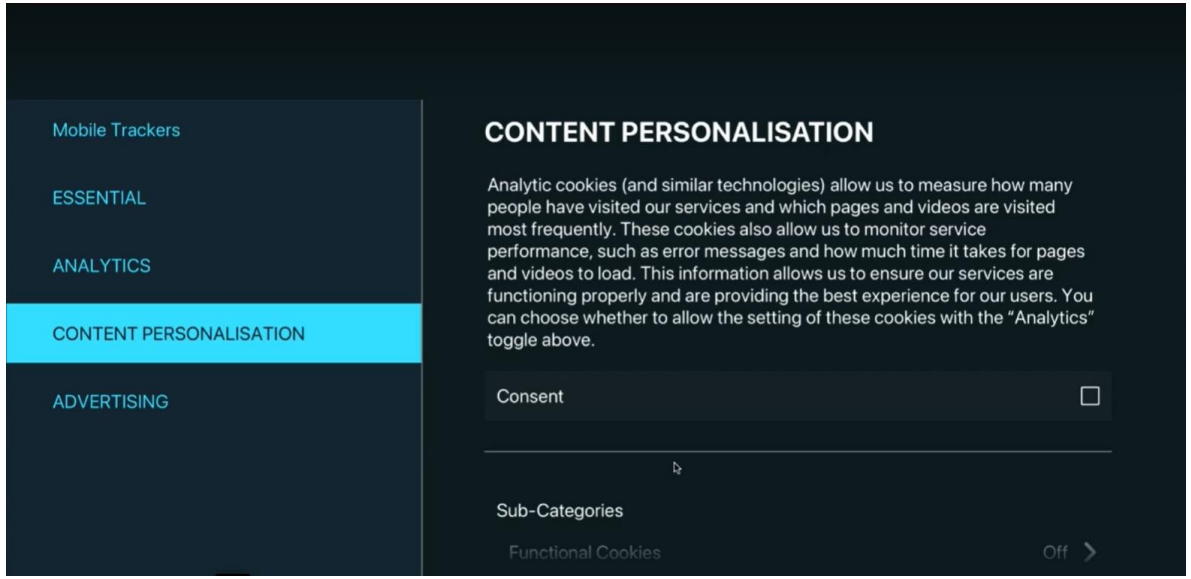
Belgian DPA recently issued a decision finding certain aspects of the IAB TCF to be a violation of GDPR

Ad Tracking & Targeting Consent: CTV

- CMPs not yet widely implemented in CTV environment
- Off-the-shelf CMP products had not been available until fairly recently for CTV
- UX more challenging with remote control navigation

Example: TVN Player (Poland)





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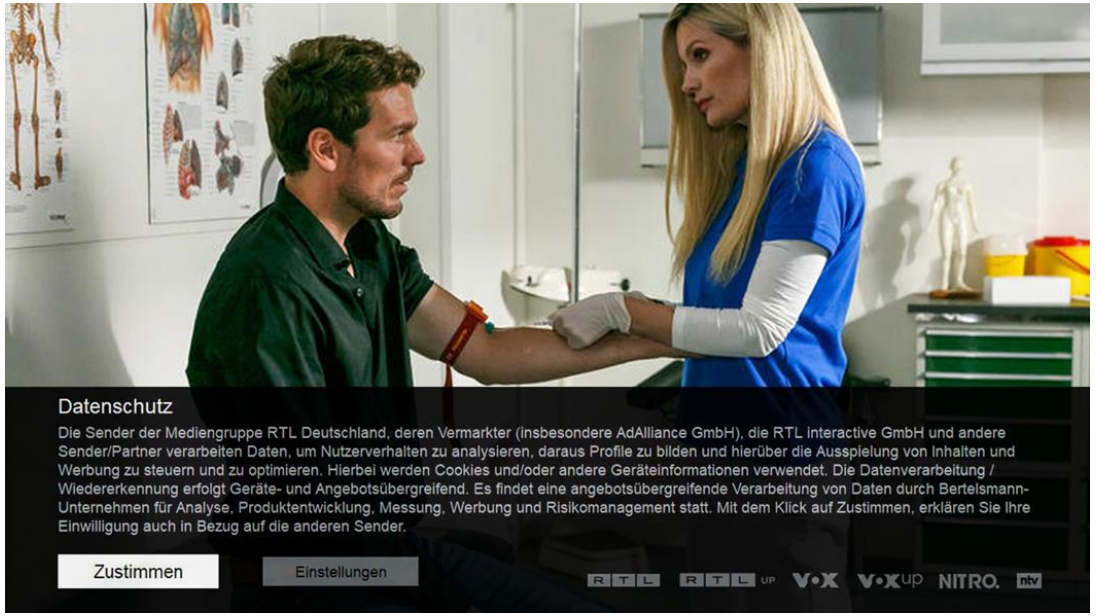
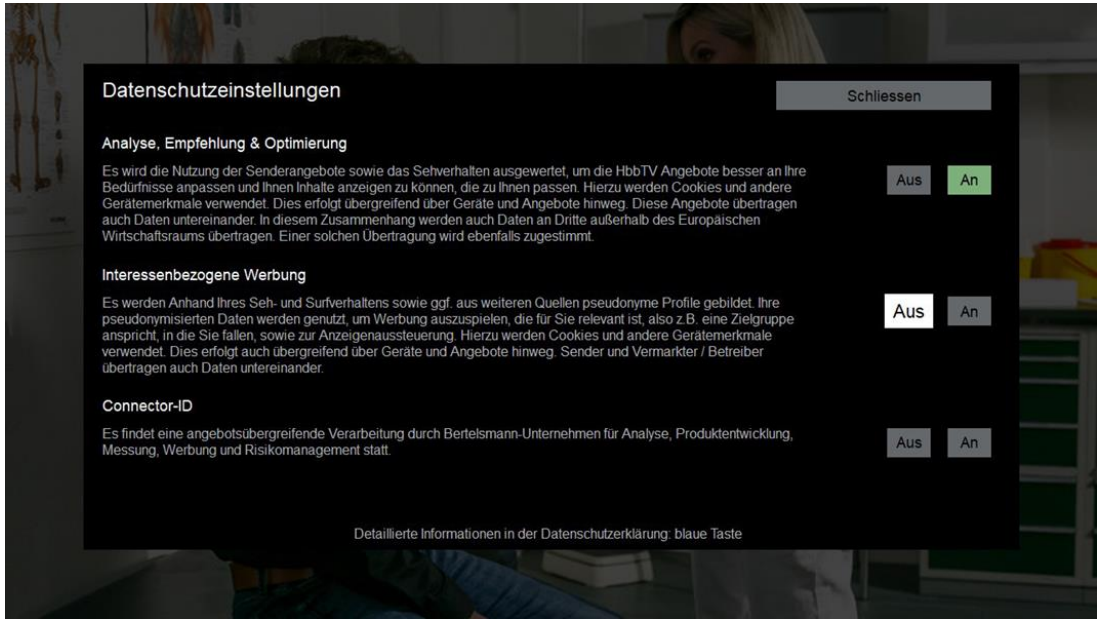
Ad Tracking & Targeting Consent: HbbTV

- CMPs not yet widely implemented in HbbTV environment
- Off-the-shelf CMP products just starting to come to market
- As with CTV apps generally, UX more challenging with remote control navigation

Example: RTL (Germany)





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