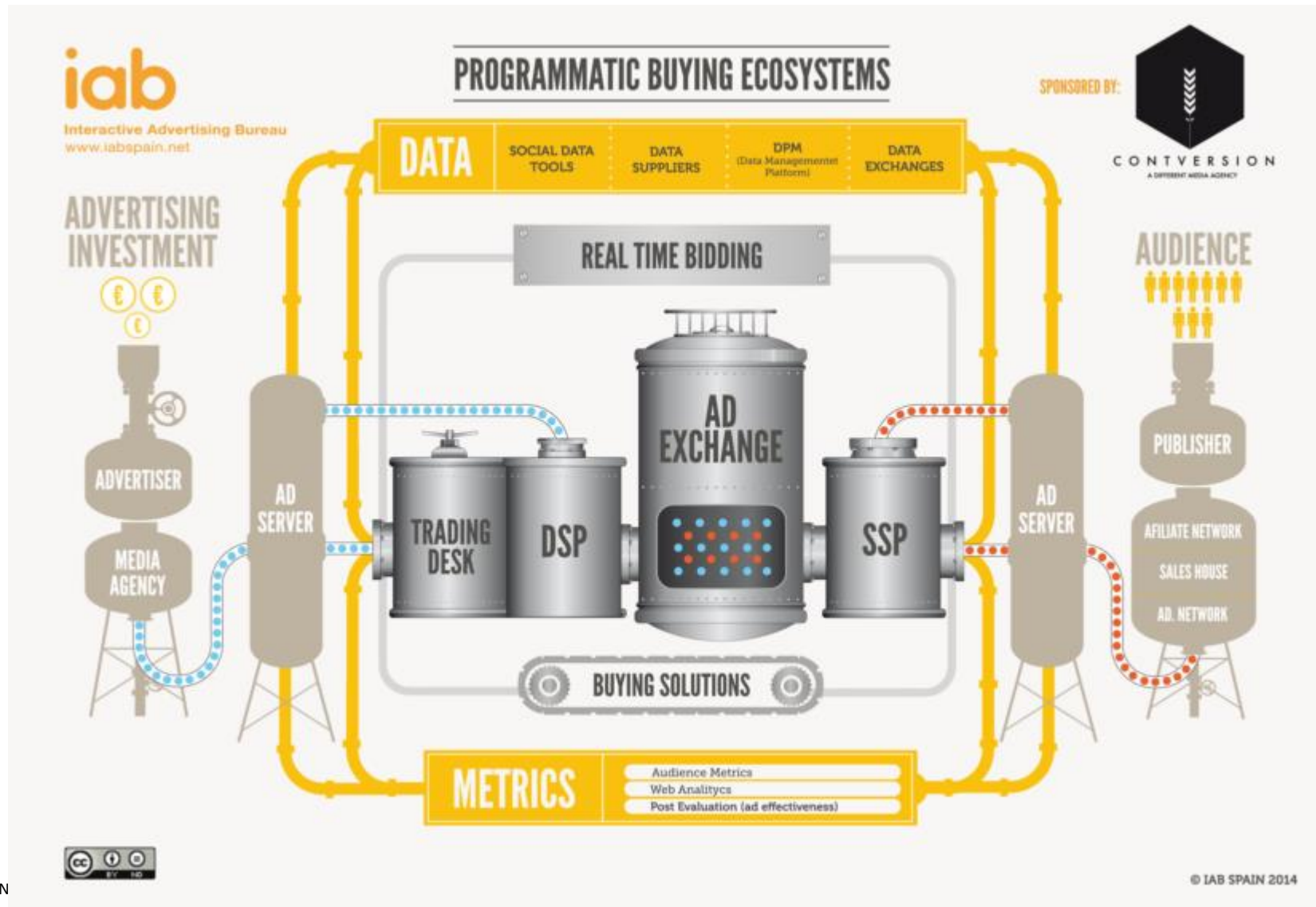


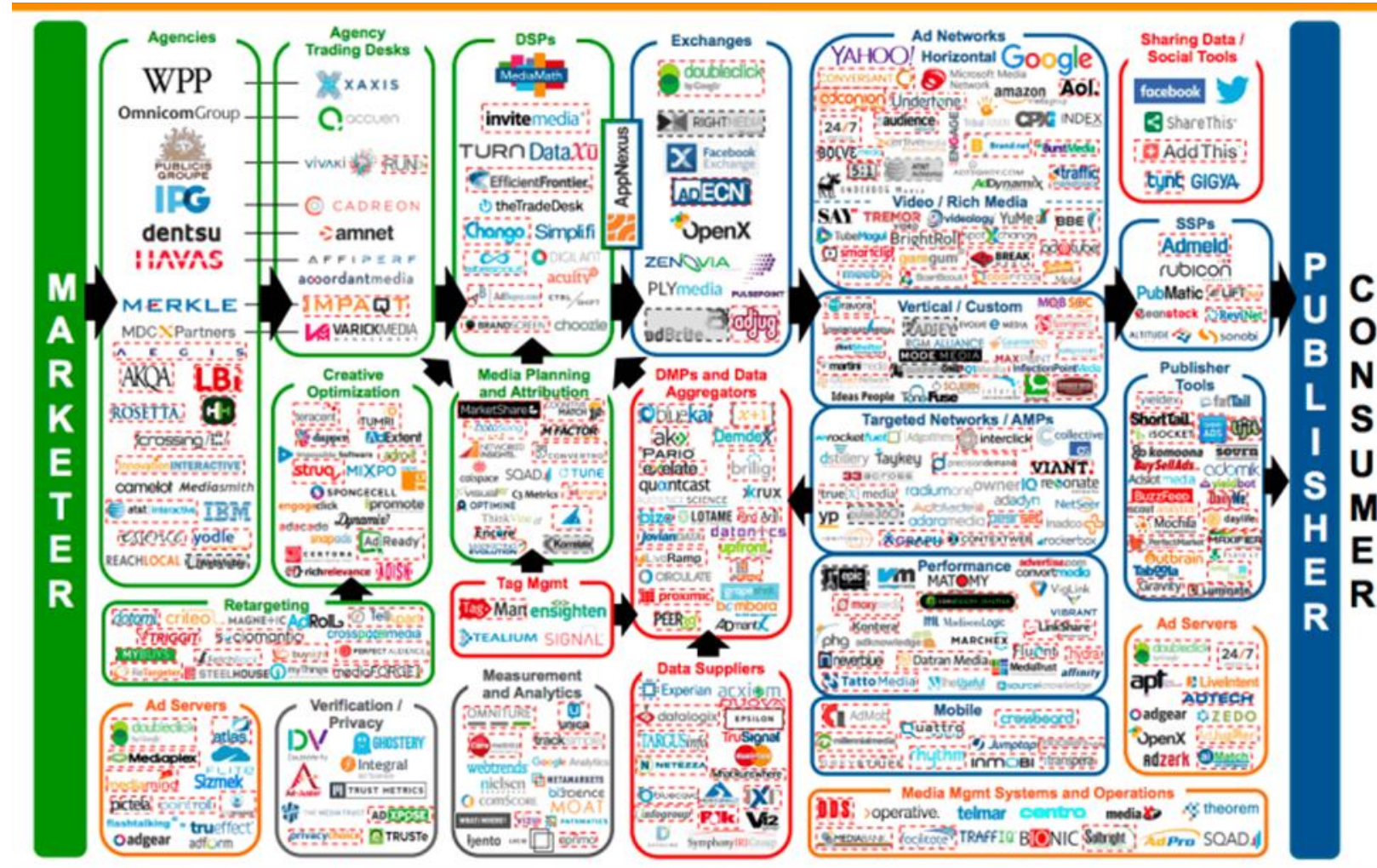


# Programmatic Advertising





# Programmatic Advertising Ecosystem





# Cookies/Tracking Consents: *Prior to GDPR*

## EU Cookies Directive



- 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

A screenshot of the BBC website's cookie banner and navigation bar. The banner is dark grey with white text. It says "Cookies on the BBC website" and explains that cookies are used to enhance the user experience. It offers two options: "Continue" (with a checkmark icon) and "Find out more" (with a question mark icon). Below the banner is the BBC navigation bar, which includes the BBC logo, links to News, Sport, Weather, iPlayer, TV, Radio, and a "More" dropdown menu. To the right of the navigation bar is a search bar and a link to "London 2012". At the bottom of the screenshot, there is a weather forecast for London on Wednesday, 30 May, showing temperatures for Wednesday (24°C), Thursday (19°C), and Friday (18°C) with corresponding weather icons.

# 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   |
|---|--|
| <ul style="list-style-type: none"><li>• “Cookie” consent rules apply to <u>any storage of information on or collection of information from, user devices</u></li><li>• Applies beyond personal data</li><li>• Applies regardless of data controller/processor roles</li><li>• Exceptions apply:<ul style="list-style-type: none"><li>• Transmission of communications</li><li>• Essential for services <i>users have specifically requested</i></li></ul></li></ul> | <ul style="list-style-type: none"><li>• Applies to personal data</li><li>• Requirements apply to data controllers and data processors<ul style="list-style-type: none"><li>• Data controllers bear primary legal responsibility</li></ul></li><li>• Imposes strict legal requirements for obtaining consent (including consent under ePrivacy Directive)</li></ul> |



# Cookies/Tracking Consents: *Scope of Consent*



**Scope of Consent Requirement**: 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)
- **1<sup>st</sup> Party basic analytics (law is mixed)**: 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

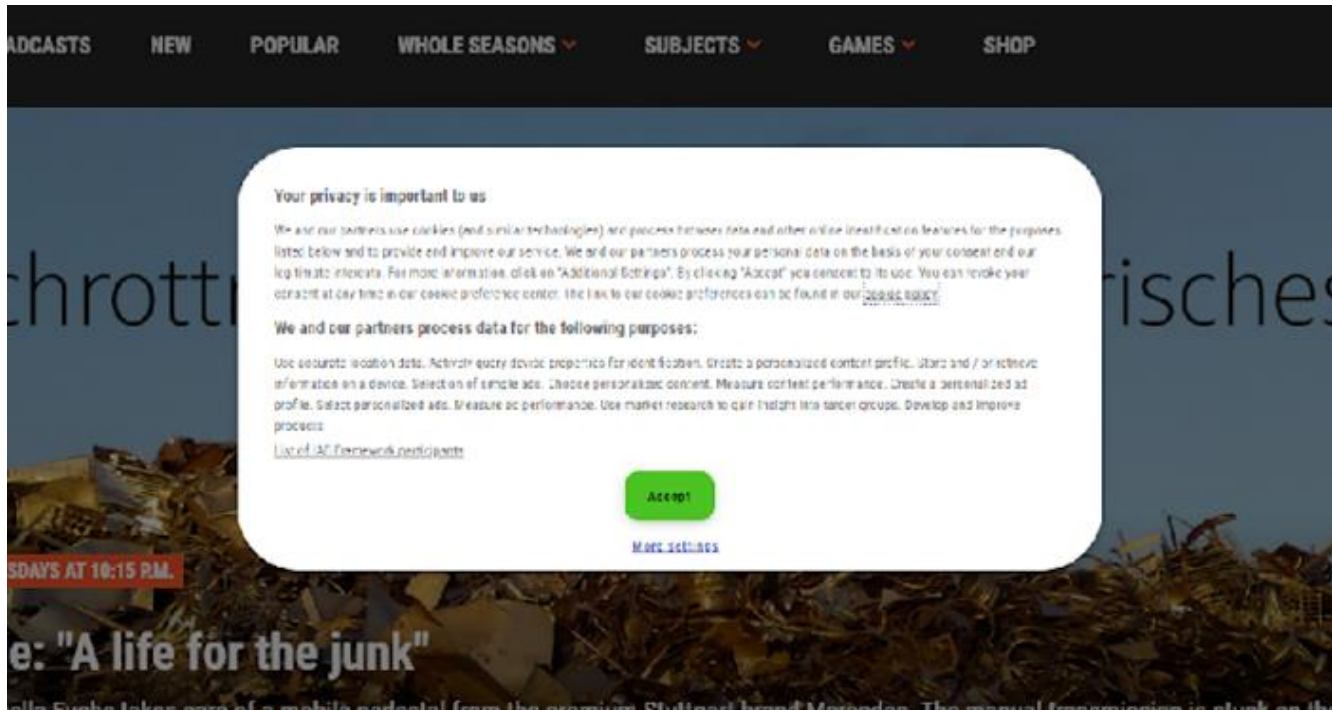
Tracking for any other purpose, including but not limited to advertising/marketing, ad measurement, and content personalization requires express, opt-in consent of the user.

# 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 :

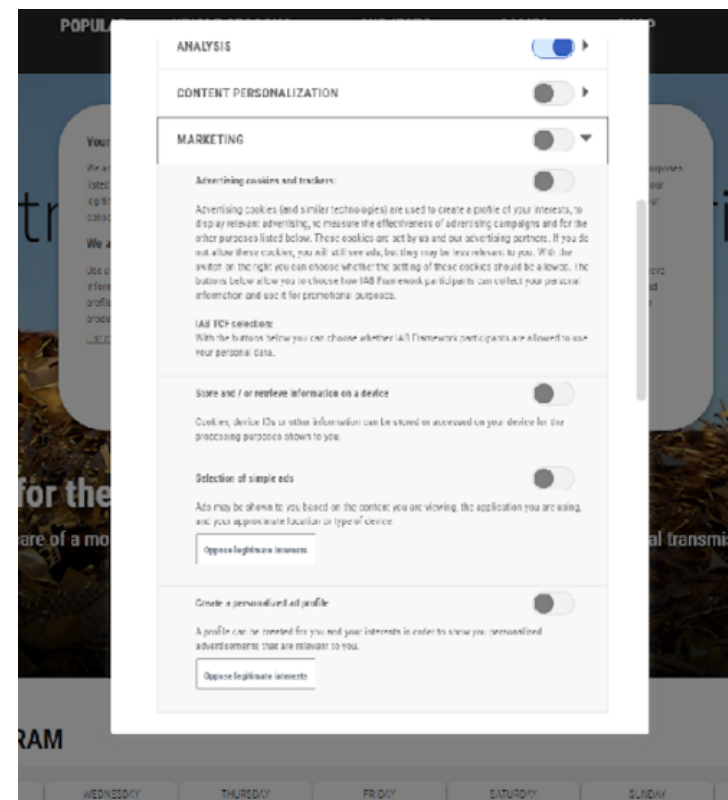
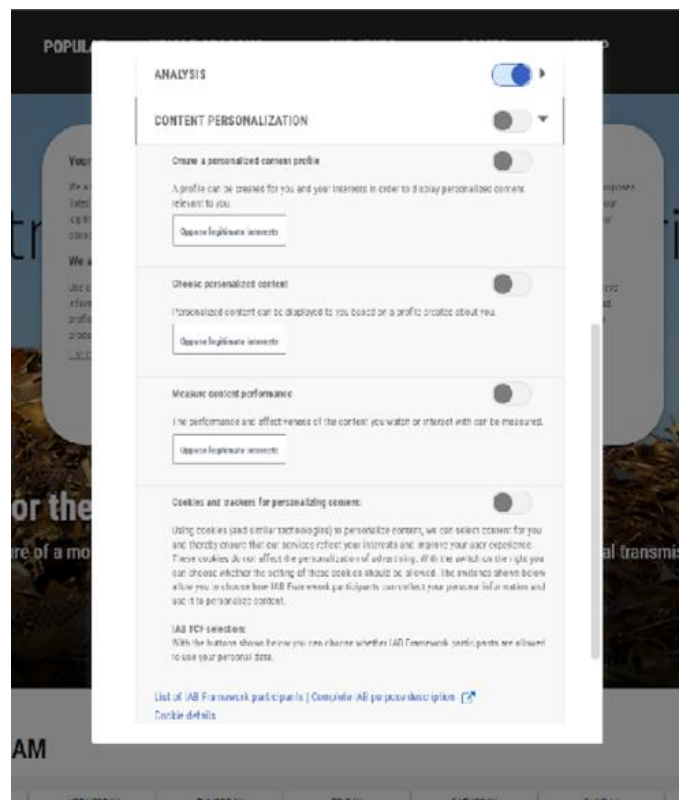
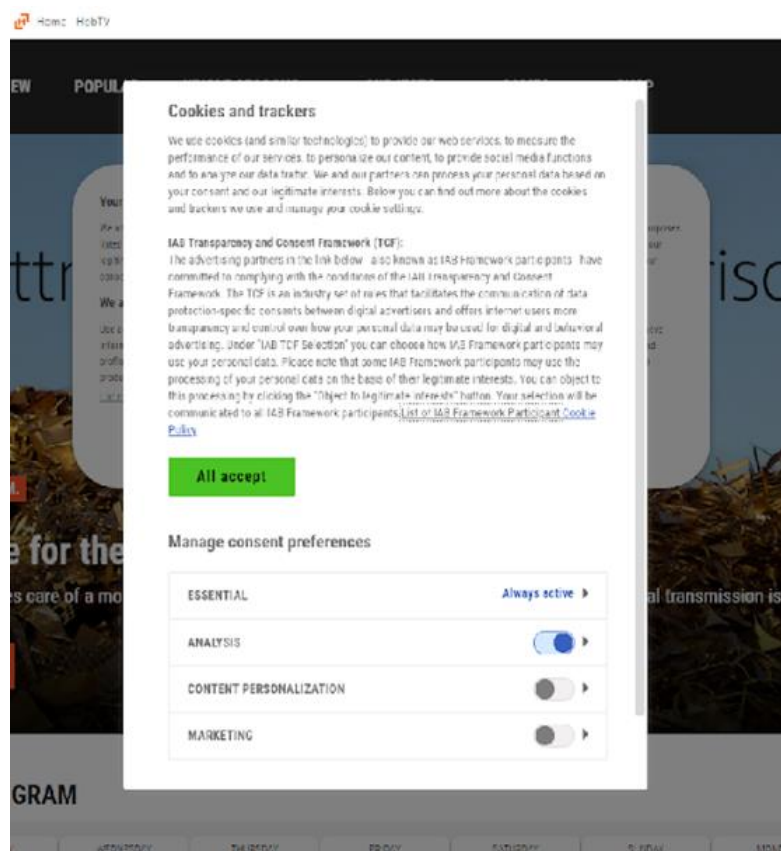


Users can either “Accept” to clear the banner, OR they can click on “More Settings” to get to the Privacy Preference Center (next slide)



# 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 3<sup>rd</sup> party trackers and downstream processing of user personal data + tech specs for passing consent “strings” downstream to IAB TCF members



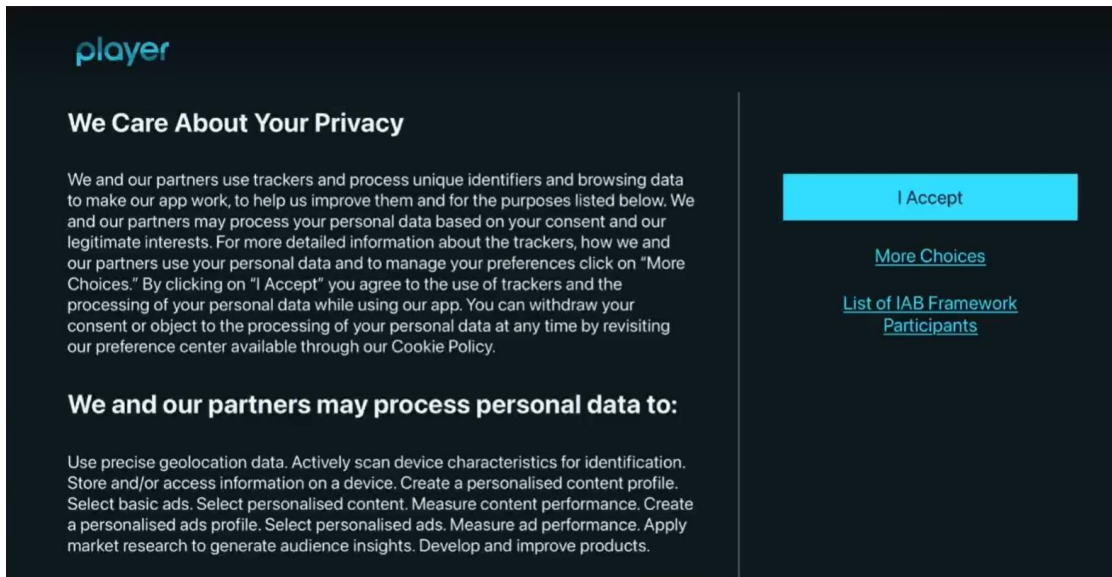
**Belgian DPA recently issued a decision finding certain aspects of the IAB TCF to be a violation of GDPR**



# 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)



The screenshot shows a dark-themed privacy consent screen for 'player'. On the left, under the heading 'We Care About Your Privacy', there is a paragraph of text explaining data usage. Below this, under 'We and our partners may process personal data to:', a list of activities is provided. On the right, there is a large orange button labeled 'I Accept', a link for 'More Choices', and a link for 'List of IAB Framework Participants'.

**player**

### We Care About Your Privacy

We and our partners use trackers and process unique identifiers and browsing data to make our app work, to help us improve them and for the purposes listed below. We and our partners may process your personal data based on your consent and our legitimate interests. For more detailed information about the trackers, how we and our partners use your personal data and to manage your preferences click on "More Choices." By clicking on "I Accept" you agree to the use of trackers and the processing of your personal data while using our app. You can withdraw your consent or object to the processing of your personal data at any time by revisiting our preference center available through our Cookie Policy.

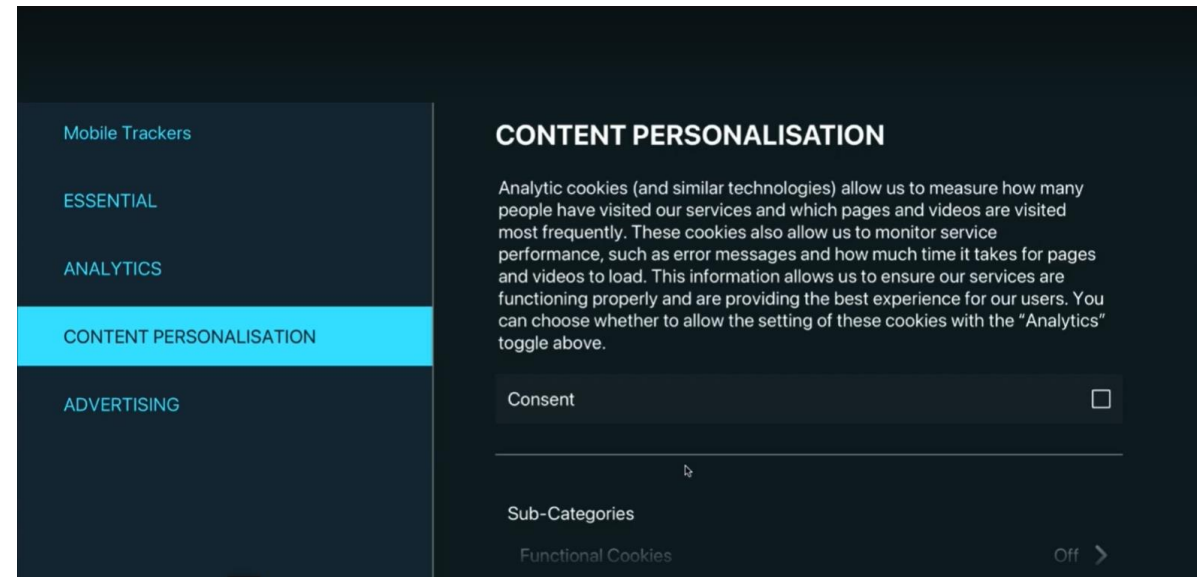
### We and our partners may process personal data to:

Use precise geolocation data. Actively scan device characteristics for identification. Store and/or access information on a device. Create a personalised content profile. Select basic ads. Select personalised content. Measure content performance. Create a personalised ads profile. Select personalised ads. Measure ad performance. Apply market research to generate audience insights. Develop and improve products.

**I Accept**

[More Choices](#)

[List of IAB Framework Participants](#)



The screenshot shows a dark-themed settings menu for 'CONTENT PERSONALISATION'. On the left is a sidebar with categories: 'Mobile Trackers', 'ESSENTIAL', 'ANALYTICS', 'CONTENT PERSONALISATION' (highlighted in orange), and 'ADVERTISING'. The main area on the right is titled 'CONTENT PERSONALISATION' and contains a paragraph about analytic cookies. Below the text is a 'Consent' toggle switch, which is currently turned off. At the bottom, there is a 'Sub-Categories' section with 'Functional Cookies' and an 'Off' toggle with a right arrow.

**Mobile Trackers**

**ESSENTIAL**

**ANALYTICS**

**CONTENT PERSONALISATION**

**ADVERTISING**

### CONTENT PERSONALISATION

Analytic cookies (and similar technologies) allow us to measure how many people have visited our services and which pages and videos are visited most frequently. These cookies also allow us to monitor service performance, such as error messages and how much time it takes for pages and videos to load. This information allows us to ensure our services are functioning properly and are providing the best experience for our users. You can choose whether to allow the setting of these cookies with the "Analytics" toggle above.

**Consent** ☐

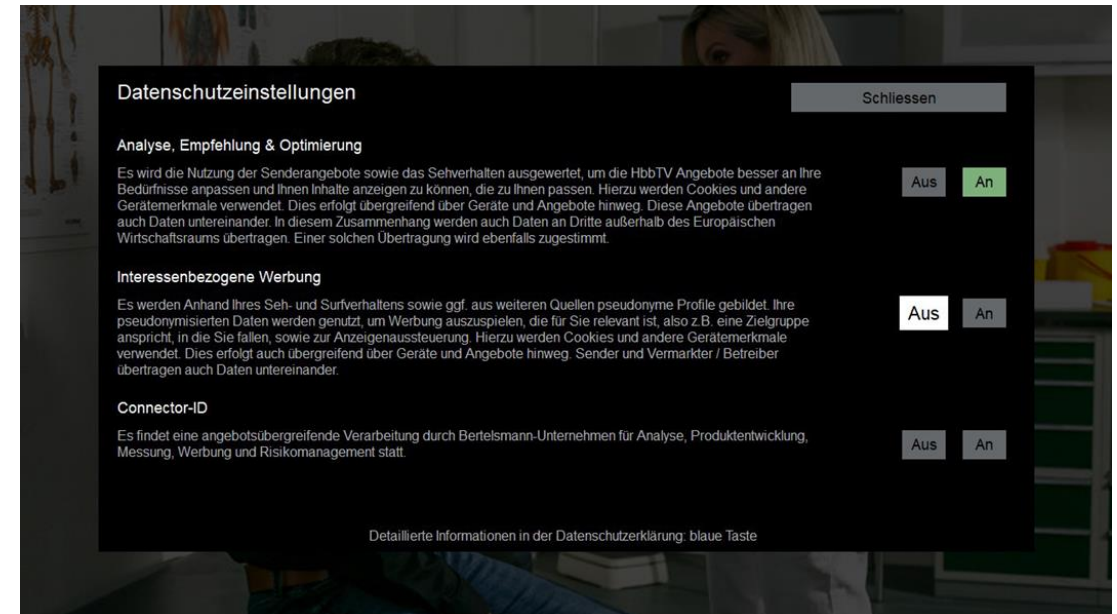
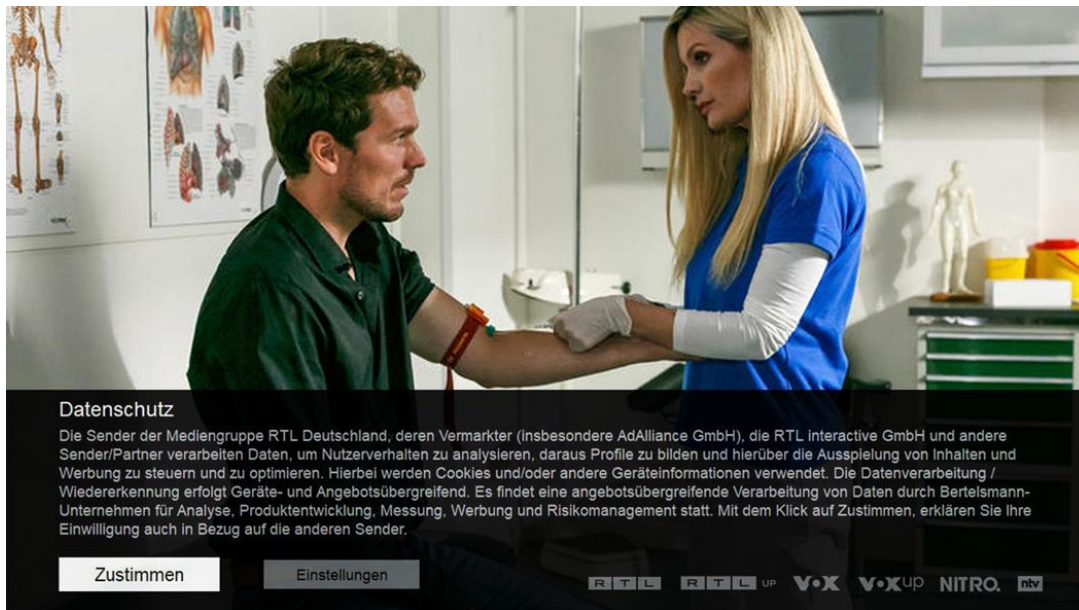
**Sub-Categories**

Functional Cookies **Off** >

# 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)





# Discovery™

