

Report: CAMLA AdTech Seminar

By **Amy Riley**, Senior Associate – Allens

As policy makers around the world seek to regulate AdTech and as the ‘tech giants’ proactively make their own changes as ‘custodians’ or simply react to the regulatory landscape, it is important for consumers, businesses and their advisors to understand what these changes actually mean for how they do business and how data is sold, collected and used. To the benefit of attendees, on 29 September 2021 CAMLA’s **Eli Fisher** (10ViacomCBS and co-editor) and **Sophie Dawson** (Bird & Bird) facilitated a panel of experts to explain changes and developments from legal, regulatory, commercial, domestic and international perspectives.

The panel comprised:

- **Alex Dixie**, Partner of Bird & Bird – Head of AdTech (London)
- **Francine Cunningham**, Regulatory and Public Affairs Direction at Bird & Bird (Brussels)
- **Joey Nguyen**, Co-Founder and Head of Technology at Venntifact
- **Josh Slighting**, Head of Data & Digital Audience for 10ViacomCBS
- **Thomas Jones**, Partner of Bird & Bird (Sydney)

Alex Dixie provided an overview of the developments of the Apple and Google AdTech ecosystems and how their various changes are reshaping the flow of data from users to advertisers. Key take-aways included below:

- Apple’s AdTech ecosystem has fundamentally changed as a result of the iOS 14.5 and iOS 15 updates. The pre-iOS 14.5 world included the IDFA feature – an identifier for advertisers to identify a device, track the user’s activity and target content based on that activity. Advertisers could then share that IDFA with data

partners. However, the flow and richness of data that existed in the mobile ad supply chain before iOS 14.5 has slowly been cut off.

- With the ‘App Tracking Transparency’ update introduced with iOS 14.5, Apple has introduced a process on privacy that has had fundamental changes to the ecosystem requiring apps to request opt-in consent before ‘tracking’ a user. This has resulted in high opt-out rates by users despite being done previously without notice so, for the majority of users, app publishers and advertisers do not have access to an IDFA or device identifier that has been critical to revenue in the mobile ad supply chain, such as tracking conversions and behaviour across devices.
- The iOS 15 update is focused on email privacy, including ‘Hide my Email’ functionality and blocks to email tracking, so could result in reduced data available from email marketing.
- Alex deciphered what Google’s recent privacy “sandbox”/ Federate Learning of Cohorts (**FLoC**) actually means – a process by which Google has taken third party cookies off the table and will only feed advertisers from sandboxes of no fewer than 1000 users per bucket. This means that advertisers no longer receive individual data and insights...but Google does.

Thomas Jones later provided a competition law perspective on the consequences of these ‘fearsomely’ complex changes that advertisers and publishers have to navigate and how the ‘tech giants’ may be able to entrench their dominance through barriers to data.

Francine Cunningham provided a timely ‘postcard from Brussels’, setting out the developments

regarding the proposed EU ‘Digital Services Act’ tabled to amend the e-Commerce Directive. Law makers in Europe are seeking new laws that target ‘very large online platform services’ (**VLOPS**) (ie, tech companies with more than 45 million active users per month) and include new market practices that require online platforms to make clear to users if information displayed is an ad and on whose behalf an ad is being displayed (to give meaningful information to the recipient but why they are receiving the ad).

From an enforcement perspective, European policy-makers are seeking maximum penalties that equate to 6% of annual income and extraterritorial scope so that these laws will apply to all companies that supply services to EU citizens even if a company is not incorporated in the EU. At the time of the seminar, there were over 3000 amendments proposed with a goal for the legislation to be adopted in 2022 and implemented in 2023. Francine also noted that there may be a further Digital Markets Act to address the perceived insufficiencies of competition law in regulating ‘gatekeeper’ platforms.

Following on from the observations from their international colleagues, **Sophie Dawson** and **Thomas Jones** provided a local update on matters including potential legal reforms to expand the scope of Personal Information following the Full Federal Court’s interpretation of ‘personal information’ in *Privacy Commission v Telstra Corporation Limited*; changes to penalties for breaches the *Privacy Act*; and observations of the ACCC’s findings from its Digital Advertising Services Inquiry. Thomas noted the significance of the ACCC’s conclusion in its Report that Google has dominance (from its access to data, vertical integration

and strategic acquisitions), the ACCC's dissatisfaction with *ex poste* litigation and the corresponding recommendation to the Government that it be given more *ex ante* regulation powers (including such powers to develop a code for the Adtech supply chain and the recommendation that merger reforms specifically address 'big tech').

Having heard from our legal and policy panellists, **Joey Nguyen** (Head of Technology at Venntifact) and **Josh Slighting** (Head of Data & Digital Audience for 10ViacomCBS) shared commercial and industry perspectives that provided practical insights about what the changes introduced or proposed by Apple, Google and regulators mean for business. For example:

- sophisticated players are trying to frame what needs to change and define a clear roadmap for the future;
- companies are increasingly trying to understand what data they are capturing, where it came from and where it is being sent – 'what is under the hood' – and working out what data they actually need to measure and track;
- beyond privacy policies, there is an increasing sense of corporate awareness and concern about whether customers would be happy with the extent of their data being tracked; and
- rapid changes create a 'new frontier' for business that can render certain business projects unviable – educating technical

subject matter experts about the consequences of getting it wrong is key so they don't invest in tools that need be thrown away.

There was also discussion about how AdTech reform (or lack of reform) reflecting the perceived philosophies of Apple 'privacy custodian – privacy is a right', Google 'privacy is a choice' and Facebook 'privacy is a trade-off' and how, in practice these 'philosophies' depend on the degree to which money is made from advertising.

CAMLA again thanks the excellent panellists for sharing their time and insight, the moderations Sophie Dawson and Eli Fisher who coordinated the event with James Hoy, and to Bird & Bird for its support in hosting another excellent CAMLA event.

Ian Angus - 1948-2021



The media law world lost one its most experienced and respected practitioners with the unexpected passing of Ian Angus on 31 October 2021.

Ian was born in Bedford, England on 6 September 1948. After finishing his schooling in Hertfordshire, he studied law at Manchester University, before commencing his legal career in London. A desire for travel and adventure saw him come to Australia in the mid 1970s, where he landed a job at Stephen

Jaques and Stephen, as the firm now known as King & Wood Mallesons then was. After a couple of sojourns back to England, Ian finally settled permanently in Australia, and at Stephen Jacques & Stephen, in 1980.

The firm had acted for *The Sydney Morning Herald* since the early colonial days and, by the time Ian came on board, the Fairfax empire included the Seven Network and the Macquarie Radio group. These clients formed the basis of a thriving practice for Ian, together with the firm's other media partner, Graham Bates, but there were many other media clients who had the benefit of their services along the way, including AAP and Sky News, to name just a couple.

Among Ian's more prominent cases was his defence of the proceedings brought by John Marsden against Channel 7, culminating in a lengthy and highly publicised trial and, in one of his rare forays into the world of plaintiffs, his representation of

Andrew Ettingshausen when he famously sued HQ Magazine over the publication of photos of him naked in the shower.

Ian had a sharp intellect and a kind and gentlemanly manner. He trained and nurtured numerous of today's media lawyers with his wisdom, superior legal skills and good humour.

After retiring from Mallesons Stephen Jaques (as it had become), he joined Banki Haddock Fiora as a part-time consultant in 2011, giving a whole new generation of media lawyers the benefit of his mentorship and guidance, and continuing to provide clients with his expertise and wise counsel. He was still retained by the firm until his sad passing some 10 years later. He will be sorely missed.

Leanne Norman, Partner, Banki Haddock Fiora

Leanne worked with Ian at Mallesons Stephen Jacques from 1984 to 1992 and then at Banki Haddock Fiora from 2012 to 2021.