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Vienna, 25.09.2024

noyb Case number: C089

Complainant:

[REDACTED]

represented according to  
Article 80(1) GDPR by:

noyb - European Center for Digital Rights  
Goldschlagstraße 172/4/3/2, 1140 Vienna

Respondent:

**Mozilla Corporation**  
149 New Montgomery St, 4th Floor,  
San Francisco, CA 94105  
USA

because of:

Article 5(1)(a) GDPR Article  
6(1) GDPR  
Article 12 GDPR  
Article 13 GDPR

## COMPLAINT UNDER ARTICLE 77 GDPR

## 1. REPRESENTATION

1. *noyb* - European Center for Digital Rights is a non-profit organization active in the protection of the rights and freedoms of data subjects with regard to the protection of their personal data, with its registered office at Goldschlagstraße 172/4/3/2, 1140 Vienna, Austria, and with registration number ZVR: 1354838270 (hereinafter: *noyb*) (**Annex 1**).
2. The complainant is represented by *noyb* pursuant to Article 80(1) GDPR (**Annex 2**).

## 2. PROPERTY

### 2.1. Unsolicited activation of advertising measurement

3. The complainant uses the web browser *Mozilla Firefox* (hereinafter: Firefox), which is offered by the respondent.
4. On 17.07.2024, the complainant discovered that the option "Allow websites to perform privacy-preserving ad measurement" was activated in the settings of the web browser under the heading "Website Advertising Preferences" (**enclosure 3**).
5. The complainant had not personally activated this option, nor had he been informed about the introduction and activation of this option.

### 2.2. Functionality of the "Privacy-Preserving Attribution"

6. According to information provided by the respondent, this is a function called "Privacy-Preserving Attribution" (hereinafter: "PPA") which is implemented from Firefox version 128 onwards. It serves to develop an alternative to conventional tracking (**Exhibit 4**).<sup>1</sup>
7. According to the respondent, there is no tracking by websites. Rather, personal data is processed directly in Firefox (**Exhibit 4**)<sup>2</sup>:

*"PPA does not involve websites tracking you. Instead, your browser is in control."*

**In German:** *"With PPA, you are not tracked by websites. Instead, your browser is in control."*  
(machine-based translation)

8. According to information provided by the respondent, the mechanism works as follows (**Exhibit 4**)<sup>3</sup>:

(i) Websites can send a request to the Firefox web browser to store information about an ad "impression" in the browser itself.

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<sup>1</sup> *Mozilla*, Privacy-Preserving Attribution, <https://support.mozilla.org/de/kb/privacy-preserving-attribution#firefox.win10.fx128>; accessed on 19.07.2024.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

Firefox then stores certain information about the interaction with the advertisement. According to the respondent's technical documentation, the information stored included whether the advertisement was viewed or clicked (**Exhibit 5**)<sup>4</sup>. The target website that the advertisement was intended to encourage users to visit was also processed and stored.

(ii) If the target website is accessed and a <sup>conversion</sup><sup>5</sup> takes place on it (such as a purchase or another event to be determined by the website), the website can request a report from the browser. The website can specify the advertisements to be evaluated for this conversion.

(iii) The Firefox web browser then creates such a report. The previously saved impressions (see step (i)) would be compared with the conversion (**Appendix 5**)<sup>6</sup>. This report would not be sent directly to the requesting website. Instead, the report would be sent "anonymously" from the browser to an "aggregation service".

(iv) The aggregation service would then combine many similar reports. The summary of the reports would also be enriched with additional information (so-called noise) <sup>to</sup> ensure "differential privacy"<sup>7</sup>.

(v) The summary of the reports would be sent regularly to the requesting website.

9. The respondent declares in particular, that the "aggregation service" the "Distributed Aggregation Protocol (DAP)" (hereinafter: DAP) (**Appendix 4**).

10. According to the technical description of the DAP, two "aggregators" would be used in each case. The information sent by a "client" (e.g. a web browser) would be divided between these two aggregators. Each aggregator would receive a so-called "input share" (input share). With only one input share, it is impossible to recover the input information in plain text (**Annex 6**, point 2 "Overview").<sup>8</sup>

11. Accordingly, the document states at the outset (**Annex 6**, point 1 "Introduction")<sup>9</sup>:

*" [...] as long as at least one of them [the aggregators] executes the protocol honestly, no input is ever seen in the clear by any aggregator."*

**In German:** *" [...] as long as at least one of the aggregators executes the protocol honestly, no aggregator ever sees an input in plain text."* (machine-based translation)

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4 Mozilla, Experiment: Privacy-Preserving Attribution Measurement API, <https://github.com/mozilla/explainers/tree/main/ppa-experiment>; accessed on 19.07.2024.

5 [https://de.wikipedia.org/wiki/Konversion\\_%28Marketing%29](https://de.wikipedia.org/wiki/Konversion_%28Marketing%29); accessed on 19.07.2024.

6 Mozilla, Experiment: Privacy-Preserving Attribution Measurement API, <https://github.com/mozilla/explainers/tree/main/ppa-experiment>; accessed on 19.07.2024.

7 [https://de.wikipedia.org/wiki/Differential\\_Privacy](https://de.wikipedia.org/wiki/Differential_Privacy); accessed on 19.07.2024.

8 T. Geoghegan et. al, Distributed Aggregation Protocol for Privacy Preserving Measurement, <https://datatracker.ietf.org/doc/html/draft-ietf-ppm-dap#name-overview>; accessed 19.07.2024. 9

Ibid.

12. According to the Respondent's documentation, it operates its DAP aggregators jointly with the organization <sup>ISRG</sup><sup>10</sup> (**Exhibit 4 & Exhibit 5**, paragraph "Aggregation").

13. The respondent clarifies (**Exhibit 5**, paragraph "Aggregation"):

*"Privacy is lost if the two organizations collude to reveal individual values."*

**In German:** *"Confidentiality is lost when the two organizations collude to disclose individual values."* (machine translation)

14. This means that the information available to the two aggregators is pseudonymous at best.

15. In summary: According to its own documentation, the Respondent tracks the online behavior of users via the Firefox browser as soon as a website instructs it to do so. This is at least information about (i) which interaction was made with a certain element, (ii) the time and (iii) the website. This information is stored in the browser of the respective person.

16. The temporarily stored information is then split up and sent to two "aggregators", which merge this individual information with that of other people. Depending on the network, the IP addresses are also disclosed to these "aggregators". The ultimate purpose of this tracking is to use the aggregated data to inform advertisers about the success of their advertising.

### 2.3. Opt-out instead of opt-in

17. According to the information provided by the respondent, the PPA function is activated by default (**Annex 5**, paragraph "Opt Out").

18. A developer of the respondent justifies this by stating that users cannot be trusted to make an informed decision (**Exhibit 7**):

*"Opt-in is only meaningful if users can make an informed decision. I think explaining a system like PPA would be a difficult task. And most users complain a lot about these types of interruption."*

*In my opinion an easily discoverable opt-out option + blog posts and such were the right decision. "<sup>11</sup>*

**In German:** *"Opt-in only makes sense if users can make an informed decision. I think explaining a system like PPA would be a difficult task. And most users complain a lot about this kind of interruption."*

*In my opinion, an easy-to-find opt-out option as well as blog posts and the like were the right decision."* (machine translation)

19. The Technical Director (CTO) of the Respondent publicly justifies this choice as follows (**Exhibit 8**):

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<sup>10</sup> <https://www.isrg.org/>; accessed on 19.07.2024.

<sup>11</sup> [https://mastodon.social/@Schouten\\_B/112784434152717689](https://mastodon.social/@Schouten_B/112784434152717689); accessed on 19.07.2024.

*"That said, we consider modal consent dialogs to be a user-hostile distraction from better defaults, and do not believe such an experience would have been an improvement here."*<sup>12</sup>

**In German:** *"However, we consider modal consent dialogs to be a user-hostile distraction from better default settings and do not believe that such a feature would have been an improvement in this case."* (machine translation)

#### **2.4. No information in the data protection information**

20. The Respondent does not provide any information at all in its privacy policy with regard to "PPA". Neither in the general privacy policy (**enclosure 9**) nor in the privacy information for Firefox (**enclosure 10**) is any relevant information apparent.

21. The last update of the Firefox privacy policy took place on May 13, 2024.

#### **2.5. GDPR analysis seems to be completely missing**

22. The respondent is publicly committed to data protection-friendly initiatives and also appears to be pursuing the goal of making tracking less data-intensive with "PPA". Nevertheless, there seems to be no consideration of the GDPR.

23. The respondent appears to be taking a logical step (according to US law) to make tracking less data-intensive. However, the GDPR does not provide a legal basis for *less data processing than the status quo*. Any - even well-intentioned - processing must comply with the requirements of the GDPR. However, any GDPR analysis of "PPA" seems to be completely missing.

24. After all, it is likely that systems such as "PPA" will not replace other tracking mechanisms (just as browser fingerprinting or Android/Apple advertising IDs have not replaced long-established cookies). Rather, "PPA" is another tool that can be used in addition to cookies and the like.

25. Although "PPA" may be well-intentioned, there is no discussion of the need to have a legal basis under the GDPR even for less intensive tracking.

### **3. COMPETENT SUPERVISORY AUTHORITY**

26. The complainant has his habitual residence and place of work in Austria. Therefore, the complainant may lodge a complaint with the Austrian supervisory authority pursuant to Article 77 GDPR.

27. The Respondent does not appear to have an establishment in the EEA (**Exhibit 9**).

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<sup>12</sup> [https://www.reddit.com/r/firefox/comments/1e43w7v/a\\_word\\_about\\_private\\_attribution\\_in\\_firefox/](https://www.reddit.com/r/firefox/comments/1e43w7v/a_word_about_private_attribution_in_firefox/); accessed on 19.07.2024.

## 4. GROUNDS FOR COMPLAINT

### 4.1. Infringements

28. The respondent has violated the following GDPR provisions:
- (a) Article 5(1)(a) GDPR: Good faith and transparency principle
  - (b) Article 12(1) in conjunction with Article 13(1),(2) GDPR: Information on data processing
  - (c) Article 6(1) GDPR: Missing legal basis

### 4.2. Personal reference

29. Several processing steps take place, each of which must comply with the provisions of the GDPR.
30. Step 1: Local collection of personal data. Obviously, "PPA" tracks individual browsing behavior and stores it locally.
31. Step 2: Sharing of personal data. Subsequently, this information, which relates specifically to a natural person, is shared with the respondent and another organization. With the data of both organizations, the individual browsing behavior can also be recovered in plain text.
32. This is therefore pseudonymous data processing at best. There is a personal reference. The processing serves, among other things, to separate out and evaluate the individual behavior of users.

### 4.3. Violation of Articles 5(1)(a), 12(1) and 13(1),(2) GDPR

33. Article 5(1)(a) GDPR requires that personal data be processed *"fairly and in a manner that is comprehensible to the data subject"*.
34. Article 12(1) GDPR specifies the principle and requires that information *"relating to processing shall be provided in a concise, transparent, intelligible and easily accessible form, using clear and plain language"*.
35. Article 13(1) GDPR also stipulates that when collecting personal data from the data subject, the controller must provide various information *"at the time of collection"* (see Article 29 Working Party, Guidelines on transparency under Regulation 2016/679, WP 260 rev.01, para. 27): Among other things, the purposes of the data processing and the legal basis (Article 13(1)(c) GDPR).
36. Article 13(2) GDPR requires controllers to provide further information, such as the duration of data processing (Article 13(2)(a) GDPR).
37. Recital 39 (sentence 2) GDPR also states: *"There should be transparency for natural persons regarding the collection of personal data concerning them,*

*used, viewed or otherwise processed and to what extent the personal data is processed and will be processed in the future."*

38. Recital 60 (sentence 1) GDPR clarifies: "*The principles of fair and transparent processing require that the data subject be informed of the existence of the processing operation and its purposes.*"
39. The relevant ECJ case law also recognizes a "right to information" of data subjects (ECJ ruling of 11 July 2024, C-757/22, para. 57 & 61).
40. In this case, the respondent has completely failed to provide any information regarding data processing for "PPA" in its privacy policy.
41. It is therefore not clear to the complainant what purpose the data processing serves, nor what legal basis the respondent is relying on.
42. The scope of data processing, duration of processing and possible recipients are also unknown to him.
43. The complete absence of any information in the privacy policy is an obvious violation of Article 13(1),(2) in conjunction with Article 12(1) and Article 5(1)(a) GDPR.
44. The respondent also blatantly failed to inform the complainant in any way about the new function. He did not receive a notification, a pop-up or any other communication. He was left completely in the dark about the processing of his personal data.
45. Even for the complainant's representative, the search for relevant information turns into hours of research into blog posts, Github entries and other sources.
46. Such an approach is miles away from information in a "*concise, transparent, intelligible and easily accessible form, using clear and plain language*" (Article 12(1) GDPR).
47. The lack of reference to new data processing is also a clear violation of Article 13(1),(2) in conjunction with Article 12(1) and Article 5(1)(a) GDPR.

### **4.3. Violation of Article 6(1) GDPR**

48. Due to the settings activated by default in his Firefox browser, the complainant must assume that data relating to him is being processed.
49. This is all the more the case as the respondent does not provide any essential information about the websites that use "PPA". Nor does the respondent explain how and where the complainant could access the data stored about him (in his browser).

50. The respondent has not claimed a legal basis for this data processing (see above). It is not clear to the complainant what legal basis the respondent is relying on.
51. Since the respondent relies on an opt-out, the only obvious legal basis appears to be Article 6(1)(f) GDPR. This is because Article 21 GDPR grants data subjects a corresponding right to object with regard to Article 6(1)(f) GDPR (similar to an opt-out).
52. However, this legal basis fails in this case. None of the three cumulative conditions of ECJ case law are met (ECJ ruling of June 17, 2021, M.I.C.M., C-597/19, para. 106).
53. Firstly, there is no justification for the legitimate interest of the respondent (or a third party). This was simply not communicated to the complainant (see ECJ ruling of July 4, 2023, C-252/21, para. 107 & 126).
54. Secondly, data processing is not necessary to count conversions. This would also be possible via less invasive alternatives as described in an online blog (**supplement 11**):
- "All an advertisement has to do is link to a unique URL: Instead of linking to example.com one could link to example.com/ad01, and the website operator simply has to track how many people visit the ad01 page on their end. "<sup>13</sup>*
- In German:** *"All an ad has to do is link to a unique URL: instead of example.com, you could link to example.com/ad01, and the website operator only has to track how many visitors visit the ad01 page on their website." (machine translation)*
55. In this context, reference should be made to Recital 39 (sentence 9) GDPR:
- "Personal data should only be processed if the purpose of the processing cannot reasonably be achieved by other means."*
56. Thirdly, the balancing of the respective opposing rights and interests is in favor of the complainant. This is because the complainant was not informed in any way and therefore "could not reasonably expect such processing" (ECJ judgment of July 4, 2023, C-252/21, para. 112).
57. Furthermore, the ECJ has already found that Facebook users cannot "reasonably" expect Facebook to process their data (without consent) for personalized advertising (ECJ ruling of 4 July 2023, C-252/21, para. 117). This is remarkable, as Meta (formerly Facebook) generates revenue almost exclusively through personalized advertising.
58. In the case of the respondent, which advertises its browser as *privacy-friendly*<sup>14</sup>, an evaluation of surfing behavior in the interests of advertisers seems even less likely.

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<sup>13</sup> *Jonah Aragon*, "Privacy-Preserving" Attribution: Mozilla Disappoints Us Yet Again, <https://blog.privacyguides.org/2024/07/14/mozilla-disappoints-us-yet-again-2/>; retrieved on 22.07.2024.  
<sup>14</sup> <https://www.mozilla.org/de/firefox/new/>; retrieved on 22.07.2024.



59. There is therefore no legal basis under Article 6(1)(f) GDPR.
60. However, should the respondent rely on consent within the meaning of Article 6(1)(a) GDPR, it should be noted that no request for consent was presented to the complainant. Furthermore, no information pursuant to Article 13 GDPR is provided with regard to "PPA" (see above). Informed consent is therefore not possible (see ECJ judgment of July 11, 2024, C-757/22, para. 59-60).
61. Other legal bases according to Article 6(1) GDPR are not considered.
62. There is therefore no legal basis under Article 6(1) GDPR.

### **4.3 "Tracking by default"**

63. Finally, the respondent pursues a "tracking by default" approach through its opt-out option without providing even the slightest information.
64. This is diametrically opposed to the basic idea of *data protection by default* in Article 25(2) GDPR.
65. Even Google gave users a choice when it introduced its Google Sandbox - albeit a completely misleading one.<sup>15</sup>

### **4.4 Burden of proof**

66. According to Article 5(2) GDPR, the respondent has the burden of proof for compliance with the principles in Article 5(1) GDPR (e.g. ECJ judgment of 11 January 2024, C-231/22, para. 41 & 43). In this respect, it must prove that it has acted transparently and lawfully.

## **5 COMPLAINTS**

### **5.1 Request for a comprehensive investigation**

67. In view of the above, the complainant requests the competent authority to conduct a comprehensive investigation, including the respondent's internal processes, in order to ascertain whether the respondent's actions violate data protection law.

### **5.2 Request for a declaratory judgment**

68. The complainant requests that the complaint be upheld and that the respondent be declared to have violated Article 5(1)(a) in conjunction with Article 13 GDPR, as it did not inform the complainant transparently, contrary to the principle of transparency and good faith.

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<sup>15</sup> <https://noyb.eu/en/google-sandbox-online-tracking-instead-privacy>; accessed on 22.07.2024.

69. The complainant requests that the complaint be upheld and that the respondent be declared to have infringed Article 6(1) GDPR as it processed the complainant's personal data without a valid legal basis.

### **5.3 Request for benefits**

70. The complainant requests that the competent supervisory authority order the respondent to

- (a) provide the complainant with all relevant information about "PPA" in accordance with the GDPR, in particular Article 12 and Article 13 GDPR (Article 58(2)(d) GDPR);
- (b) to prohibit the further processing of the complainant's data processed without a legal basis in connection with "PPA" (Article 58(2)(f) GDPR) and to order the deletion of these data (Article 58(2)(g) GDPR);
- (c) to inform each recipient to whom the complainant's personal data have been disclosed of the unlawful processing and to inform them of the need to stop processing as well (Article 58(2)(g) GDPR).

### **5.4 Suggestion of general remedial measures**

71. The complainant, as one of many affected parties, suggests that the respondent

- (a) in accordance with Article 58(2)(d) GDPR, to provide all relevant information in accordance with the GDPR, in particular Article 12 and Article 13 GDPR, in full and prior to data processing to all data subjects;
- (b) in accordance with Article 58(2)(f) GDPR, to prohibit the processing of all personal data processed without a legal basis in connection with "PPA" and to order their erasure in accordance with Article 58(2)(g) GDPR;
- (c) pursuant to Article 58(2)(d) GDPR to bring all processing of personal data in connection with "PPA" into compliance with Article 6(1) GDPR or to discontinue "PPA".

## **6 CONTACT**

72. We will be happy to assist you if you require further factual or legal details regarding the handling of this complaint. Please contact us at [REDACTED] or at [REDACTED].