



# Global Considerations

**First Face-to-Face Meeting  
Berlin 11-12 March 2013**

**Hosted by Deutsche Telekom**

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# Outline

- Scribing
- Introduction & Issues
- Create projects in Tracker
- BREAK: Market research discussions
- DNT for First Parties
- Making Consent with DNT
- DNT:0 Definition issues
- EU-Regulation relation
- Next steps

# Topics for later

- APEC Privacy Enforcement Agreement
- OECD Works on Guidelines
- Canadian Requirements

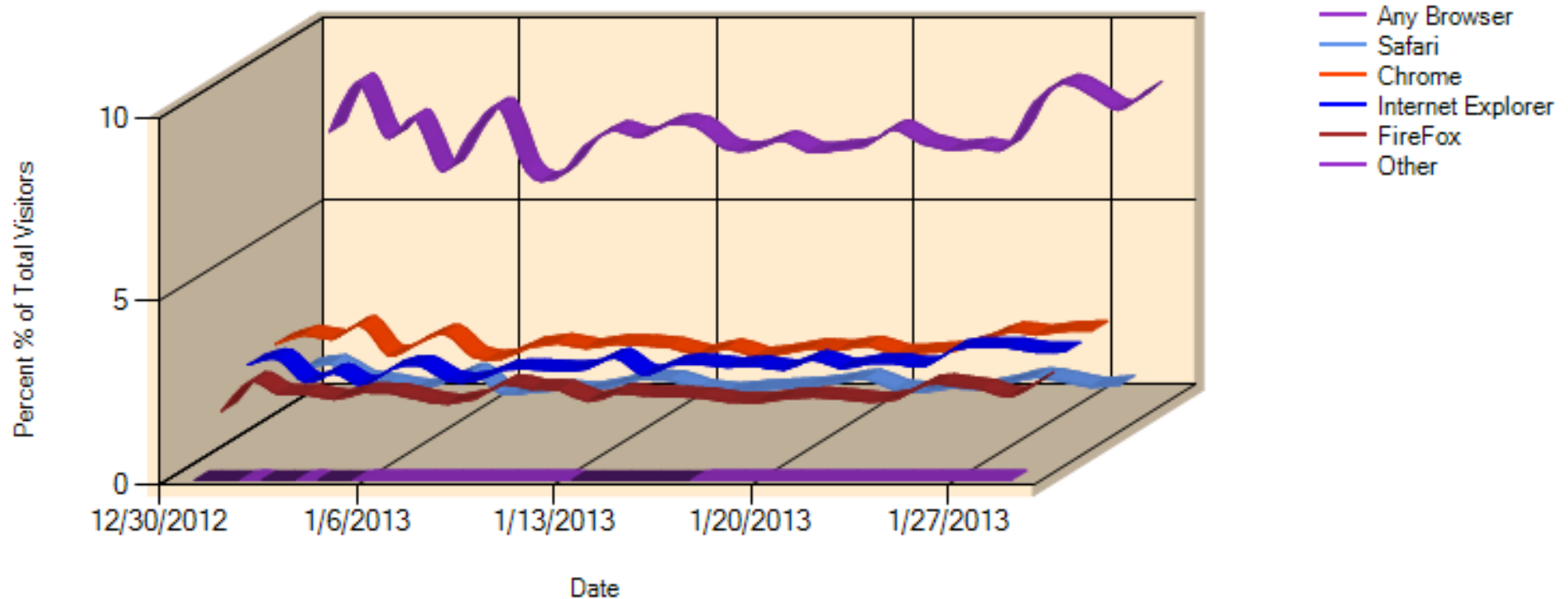
# DNT uptake



**Percent DNT set on 1/30/2013 was 8.36%**

**Average DNT set this year is 7.18%**

**733,012 requests had DNT set out of a total of 10,203,400**



# What is our output? Possibilities

- Suggested wordings for TPE and TCS
- W3C Group Note
- Global implementation guide
- Best Practices document (Note?)
- Webplatform.org Documentation
- => Goal to have no different technical document

Task Force means



**There is no final decision here!**

All wording and result produced here will be fed into the normal Working Group Process.

# DNT as a consent mechanism?

- Art 5.3 of 2002/58/EC
- What does consent mean?
- DNT for first parties vs Window shades
- DNT:0 Specification

# • Art 5.3 of 2002/58/EC

- Member States shall ensure that the storing of information, or the gaining of access to information already stored, in the terminal equipment of a subscriber or user is only allowed on condition that the subscriber or user concerned has given his or her consent, having been provided with clear and comprehensive information, in accordance with Directive 95/46/EC, inter alia, about the purposes of the processing.
- any freely given specific and informed indication of his wishes by which the data subject signifies his agreement to personal data relating to him being processed (WP 187)



# Ways out!

- Whereas 66 of 2002/58EC & 2009/136EC (DNT)
- EU - Regulation Amendment 108 (DNT)
- Window Shades

# Whereas 66

- Where it is technically possible and effective, in accordance with the relevant provisions of Directive 95/46/EC, the user's consent to processing may be expressed by using the appropriate settings of a browser or other application.
- DNT as consent mechanism for Article 5.3
- Revocation by sending DNT:1

# EU - Regulation

- Amendment 108: Article 7 4c
- 4c. The Commission shall be empowered to adopt, after requesting an opinion from the European Data Protection Board, delegated acts in accordance with Article 86 for the purpose of further specifying the requirements and conditions for technical standards referred to in paragraph 2a, and for declaring that a technical standard is in line with this Regulation and has general validity within the Union.

# EU Regulation Debate

- Do we want to discuss EU regulation at all?
  - Scope: What is the meaning of DNT in this debate
  - Who benefits, who loses?
- Is Amendment 108 good enough? What is missing?
- What to do until it is in place? (If DNT is faster)

# Requirements for consent

- Freely Given
  - No pressure, but no right to free content
- Informed
  - No hiding in 22 pages of legalese
- Specific
  - Context and boundaries are important. No blanket consent for everything


# DNT concerns for consent

- How to use exception mechanism
- Will there be a browser information system (different in US/EU?)
- Implicit consent vs Explicit consent and what DNT can provide

# DNT:0 Specification

- Enable most common things
  - Identified Analytics
  - OBA, Personalization
  - Market research
- Perhaps use P3P data classes
- Concern: Why is DNT:0 not the absence of DNT:1 (specific consent)

# DNT for first parties

- Neither Directives no Regulation distinguishes first & third parties => data controllers 
- Restrictions also apply to first parties
- Permissions also needed for first parties
- Problem: What DNT:1 means for first parties
  - First Party Analytics (CNIL permits)
  - First Party Personalization



# Window Shades

- Prima Facie ideal tool (UK)
  - In the face of the user consent permitting everything with pages of legalese
- They are sooo ugly
  - want to see your designers cry?
- They are not future proof
  - Not working on mobile
  - Consumer/Regulator acceptance low
  - Pure tribute to bureaucracy

# DNT reduces Window Shades

- Can we ignore DNT-tools without exception mechanism?
- Exception mechanism allows to test for permission without a window shade
- Permission is stored in a reliable way
- DNT definition will simplify communication in 'ordinary' cases
- DNT will focus user interaction on data that matters, e.g., sensitive data

# Pseudonymous Data

- Working assumption: It is personal data
- Reduced risk == extended permitted uses?
  - Avoid the one-size-fits-all
- DNT would allow pseudonymous control over pseudonymous data
- “Single out” is the new concept against discrimination. Useful term?
- Special rules for sensitive data?

# Consent & Pseudonymous Data

- Consent should be gray area
- Pseudonymous data needs lower, Sensitive data needs higher standards for consent
- Opt-in & Opt-out discussion is futile as DNT gives control: At any moment, a user can flip a switch in a browser (at least that's a goal, see interface debate)
- Pharma Advertisement is the use case to distinguish sensitive data from normal data

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