

## Key actors

### Open Rights Group

Open Rights Group (ORG) is a non-profit digital rights campaigning organisation based in London and Edinburgh. It works to protect rights to privacy and free speech online. It challenges threats to privacy by the government (through the surveillance of personal communications) and by private companies (who gather personal data to increase their profits). ORG raises awareness of these threats and challenges them through public campaigns, media commentary, strategic litigation and policy interventions.

ORG is working with a network of stakeholders across Europe to challenge the practice of unregulated, targeted online advertising. One of its strategies has been to file complaints against the regulatory bodies that oversee how data is stored and shared, targeting as many jurisdictions as possible. ORG has partnered with other organisations and data rights experts to coordinate actions and increase its impact. These include:

- The Civil Liberties Union for Europe (Liberties), a non-governmental organisation promoting the civil liberties of European citizens. Liberties facilitated partnerships between ORG and Liberties' member organisations that filed complaints in their own jurisdictions;
- European Digital Rights (EDRi), a European network defending rights and freedoms online. EDRi partnered with ORG by reaching out to its network to find organisations willing to file complaints;
- Ravi Naik, a data privacy lawyer who works at AWO, a data rights agency. Ravi Naik worked with ORG to draft complaints to the Irish Data Protection Commission and the UK Information Commissioner's Office (ICO);
- Dr Johnny Ryan, formerly at Brave – a web browser company – and now at the Irish Council for Civil Liberties. Dr Johnny Ryan wrote a comprehensive background report on behavioural advertising and personal data. He worked with ORG and Dr Michael Veale of University College London to file initial complaints to the Data Protection Authorities.

DFF

Digital  
Freedom Fund

The Digital Freedom Fund (DFF) supports partners in Europe to advance digital rights through strategic litigation. This is one of a series of case studies, which highlight the work of DFF's grantees working to protect digital rights.

## Open Rights Group Pre-litigation Research for AdTech Complaints

### Overview

Open Rights Group (ORG) is working with a coalition of partners filing complaints with Data Protection Authorities across Europe. They are asking these authorities to ensure that the AdTech industry conforms to the EU's General Data Protection Regulation. ORG wants to put an end to data breaches that arise due to a practice known as Real Time Bidding.

### Key Terms

**AdTech** (short for advertising technology) is the umbrella term for the software and tools that help agencies and brands target, deliver, and analyse their digital advertising efforts.

**Data Protection Authorities (DPAs)** are independent public authorities that supervise the application of European data protection laws. They provide expert advice on data protection issues and handle complaints.

**Real Time Bidding (RTB)** takes personal data about website viewers and broadcasts it in 'bid requests' so that advertisers can bid for the opportunity to place their advert on the website the individual is viewing. This happens instantaneously, billions of times a day.

## Background

Every time anyone opens a webpage that uses personalised adverts, data about that person is immediately broadcast to hundreds of thousands of advertising industry companies. The data can then be bought and sold with no protection mechanisms for personal data in place. This process is known as Real Time Bidding (RTB) and is a widespread feature of the online advertising industry.

ORG is concerned that the online advertising industry is insufficiently regulated and the practice of RTB breaches European data protection and privacy laws. It has mobilised a coordinated campaign with a network of stakeholders to challenge the practice. To date this network has filed complaints with Data Protection Authorities (DPAs) in 21 jurisdictions across Europe. ORG is currently working on efforts to expand these complaints to cover all jurisdictions in the EU.

In September 2018, ORG filed General Data Protection Regulation (GDPR) complaints about RTB to the Irish Data Protection Commission and the UK Information Commissioner's Office (ICO). They worked with experienced data privacy experts to draft and file the complaints. In June 2019, the ICO issued a report concluding that the RTB process was problematic and non-compliant with the GDPR. But, disappointingly, the ICO made no concrete recommendations about how to enforce the law in this area.

**“ We urgently need to get the enforcers to do their jobs. There are two major DPAs – one in Ireland and one in Belgium – who regulate the biggest players in the RTB industry. We need to focus on getting those DPAs to enforce the law.**

Dr Johnny Ryan, Senior Fellow, Irish Council for Civil Liberties

## Strength in numbers – coordinating a pan-European approach

ORG recognises that a collaborative and coordinated approach is necessary when challenging the actions of the powerful companies behind the online advertising industry. A successful strategy ORG used was to develop a complaints template for individual organisations to use in their own jurisdictions. ORG worked with The Civil Liberties Union for Europe (Liberties) and European Digital Rights (EDRI) to find potential partners willing to make complaints to their respective DPAs. These networks also helped ORG to find organisations not usually focused on digital rights willing to file complaints.

ORG is working with a diverse group of stakeholders to raise awareness about the harms related to online advertising. ORG attended consumer rights conferences and meetings to share more about the complaints process. Liberties is hosting a website with more information about RTB and explanations about how to make complaints. ORG and Liberties have generated media attention through a range of outlets including social media, international and national press.

ORG has also taken steps to build trusted connections with advertising networks and industry representatives. These connections have helped ORG to understand the advertising industry better and to develop well-informed advocacy strategies.

In July 2019, ORG hosted a strategy workshop in Barcelona for a group of stakeholders. During the workshop they discussed the complaints procedure and developed a strategy for future advocacy and litigation. The workshop included donors, NGOs, advertising industry experts and consumer group representatives.

“ We saw this as an opportunity to start coordinated action across Europe to uncover the full picture of the advertising industry in Europe.

Matthew Rice, Scotland Director, ORG

## Shedding light on the murky world of online targeted advertising

Anyone accessing the Internet is at risk of having their personal data harvested and shared, such as private information about sexuality, ethnicity, political opinions, and religious beliefs. The data can then be used by advertising companies to target personalised adverts on the website being viewed. Many people will have no way of knowing that their data has been shared and so are unable to consent or object to it being passed on in this way. For some people, receiving unsolicited personalised adverts may just be an unwanted nuisance. But for others it can result in being exposed to harmful, even trauma-inducing, content such as when the adverts reflect personal health issues or other deeply private information.

The unregulated nature of the online advertising industry means it is difficult to pin down the blame when specific harms arise. This is a practice that affects millions of people on a daily basis. It is driven by two industry giants – Google and the Interactive Advertising Bureau (IAB) – and perpetuated by hundreds of thousands of other faceless companies. Unless there is better regulation, companies are likely to continue to share people’s personal data as they are driven by financial incentives to do so. ORG, and its partners across Europe, are pushing for better enforcement and regulation. The coordinated complaints to Data Protection Authorities (DPAs) has been the first step, but if enforcers fail to act then ORG and its partners will go on to explore additional strategic litigation as a means to drive forward change

“ Working with partners to file complaints in other jurisdictions helped build a sense of momentum and showed the scope of the problem. But it doesn’t appear to have had much impact legally or put much pressure on the two DPAs that matter – and that’s a problem.

Dr Johnny Ryan, Senior Fellow, Irish Council for Civil Liberties



## DFF’s role



### Financial assistance

DFF provided financial support to ORG in the form of a pre-litigation research grant. This enabled ORG to coordinate partners across Europe, draft template complaints, host a strategy workshop for key stakeholders, and develop an overarching advocacy strategy.



### Strategy support

The DFF grant gave ORG the opportunity to learn about the practical aspects of working with GDPR complaints, such as the politics of the DPA process and the timing for filing complaints.



### DFF workshops on digital rights litigation

ORG benefitted from widening its network through the DFF retreats and events. These convenings presented valuable opportunities to foster links and partnerships with other groups. In particular, it was helpful to engage with a wider group of digital rights organisations willing to share their strategies and experiences.

“ Bringing new ideas in through consumer rights or civil liberties organisations has been a very positive experience for us. DFF helped us keep that door open. Adding further allies to this process has been a very welcome development.

Matthew Rice, Scotland Director, ORG