

**ETHICAL DATA
ARE THE ANSWER.
AT LONG LAST.**

Dr Johnny Ryan

@johnnyryan

Problem Set 1:
**The “Facebook and Cambridge
Analytica Problem”**

**How to enforce control over
personal data that 3rd parties
access from your websites?**

Control Problem

No data protection of personal data accessed by 3rd party widgets and assets.



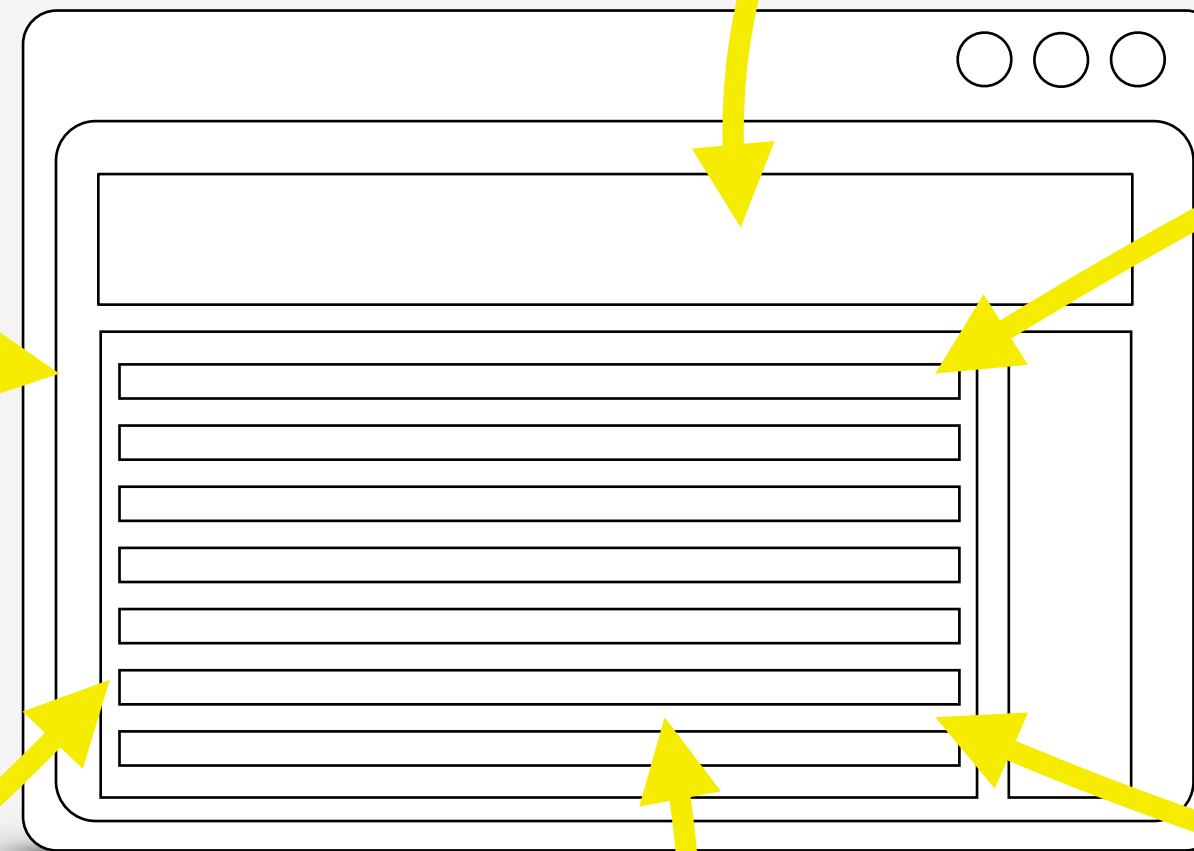
Embedded videos



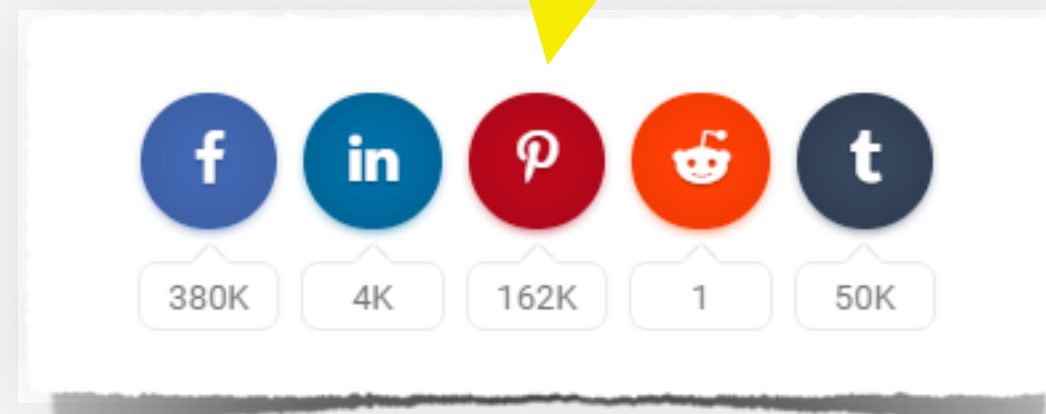
Images hosted on other domains

Google Fonts

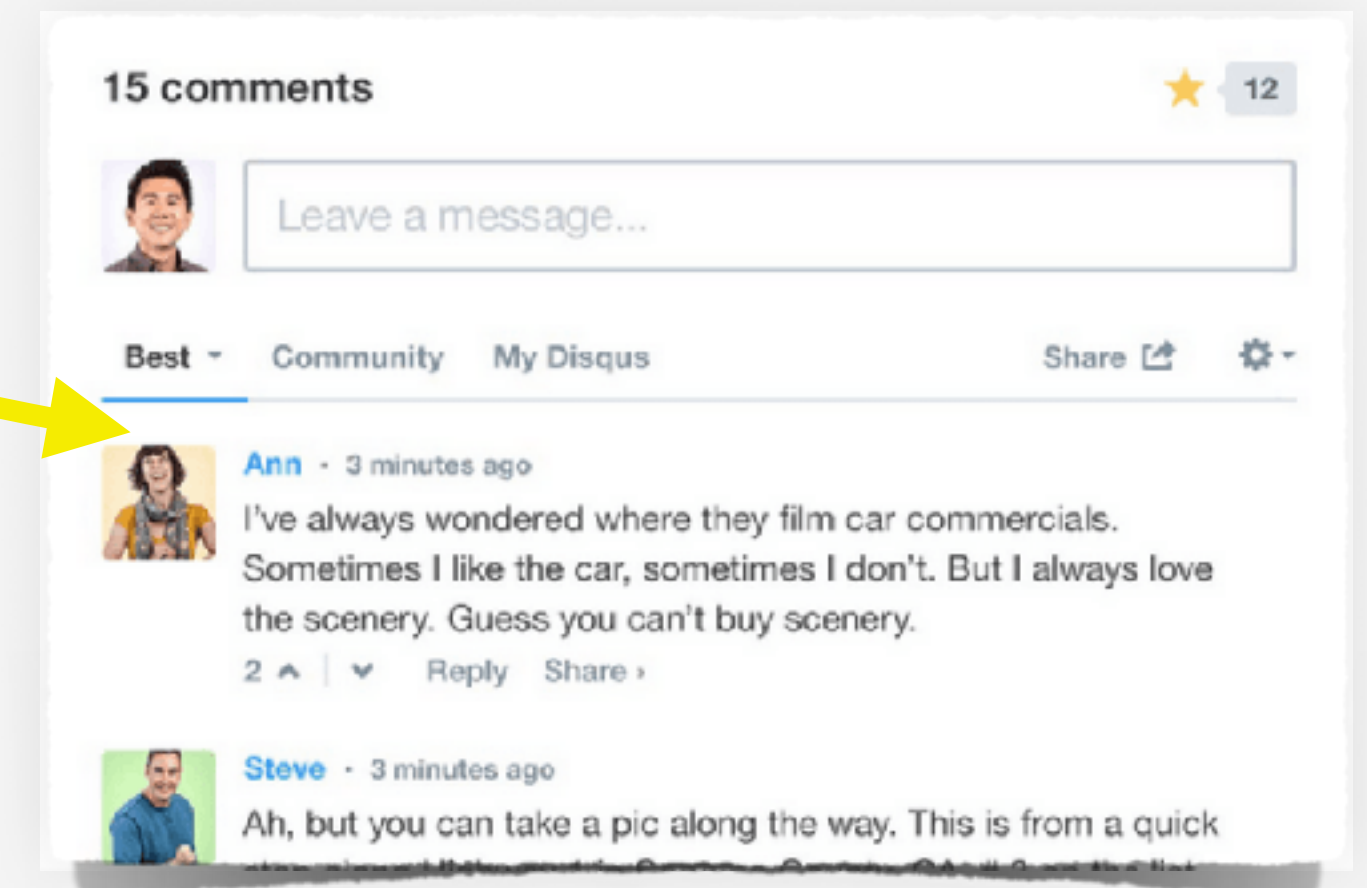
Fonts and other resources loaded from other domains



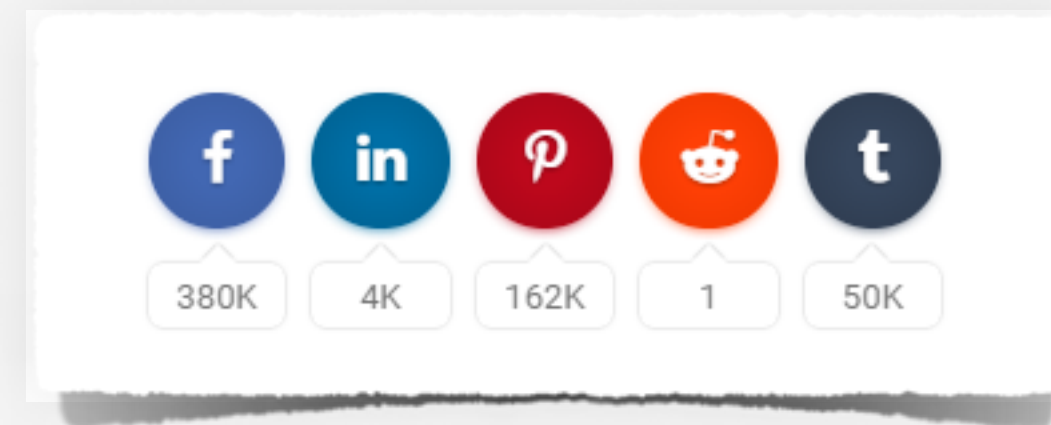
3rd party audio players, etc.



Social sharing widgets



Commenting widgets



Control Problem

No data protection of personal data accessed by 3rd party widgets and assets.

AddThis processes the cross-web actions and content engagement behaviors from consumers across nearly every country in the world.

15M

1.9B+

YOUR WEBSITES

WEBSITES
WORLDWIDE

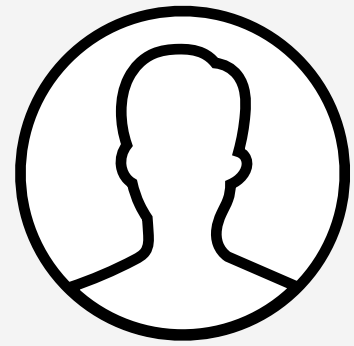
UNIQUE USERS
MONTHLY

YOUR AUDIENCE

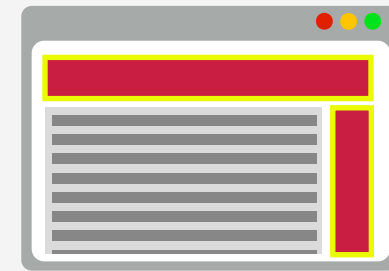
How RTB/ programmatic works

“Behavioural” ad targeting & “programmatic” trading.

(This jargon means: automatic auctions for the right people’s attention)



Visitor



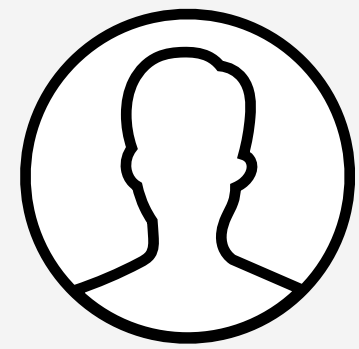
Site



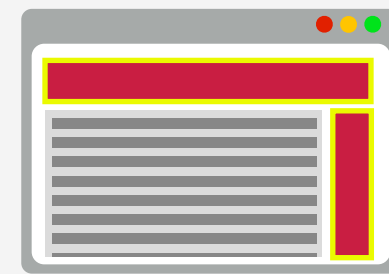
Brand

“Supply side”

“Demand side”



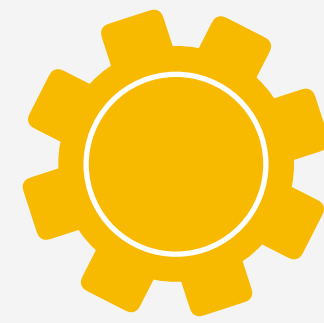
Visitor



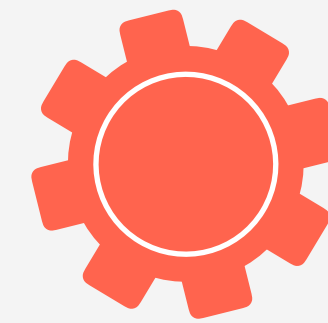
Site



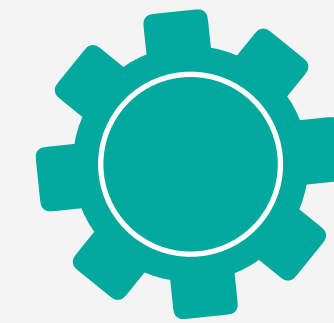
SSP



Ad Exchange



DSP



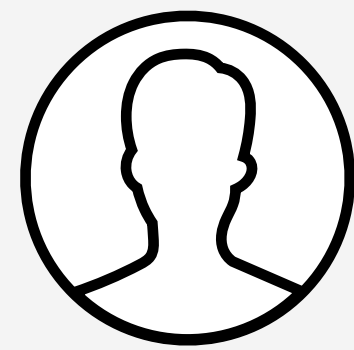
DMP



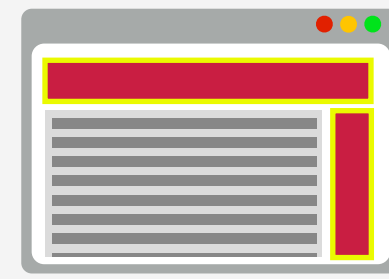
Brand

“Supply side”

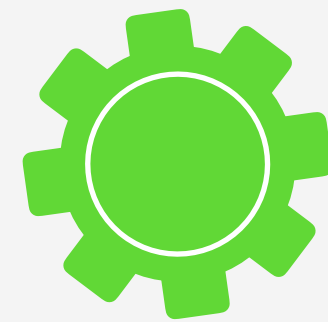
“Demand side”



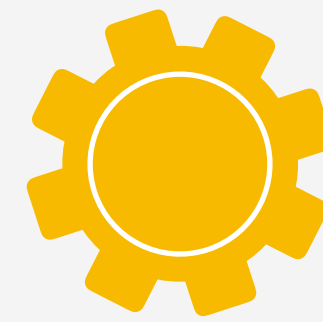
Visitor



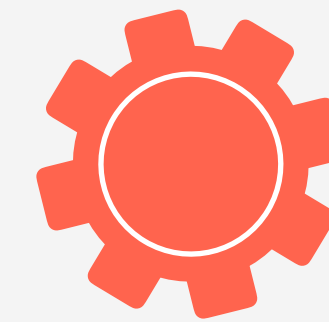
Site



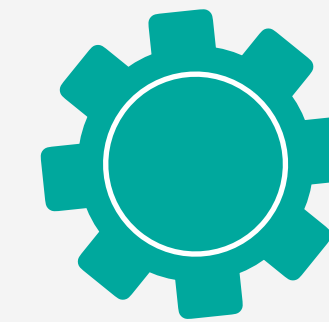
SSP



Ad Exchange



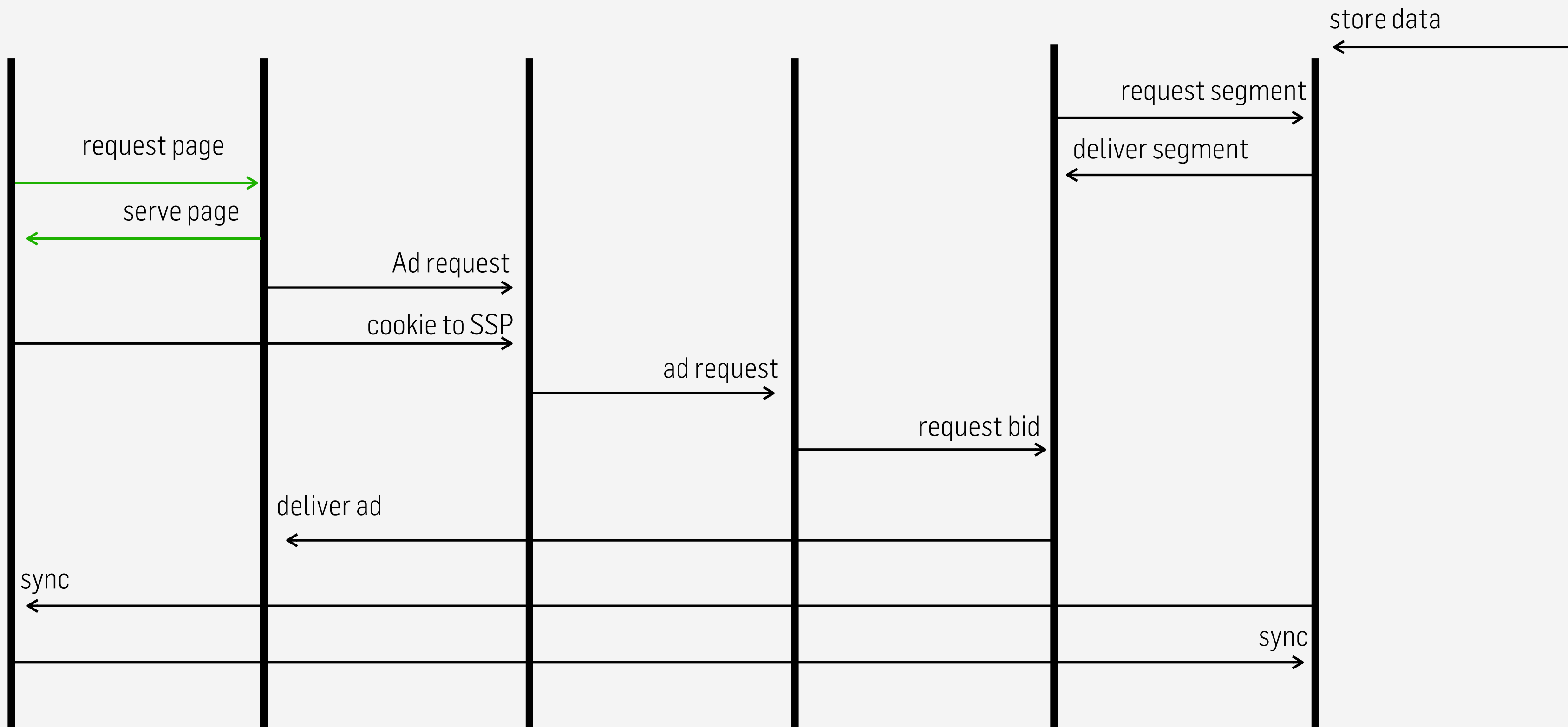
DSP

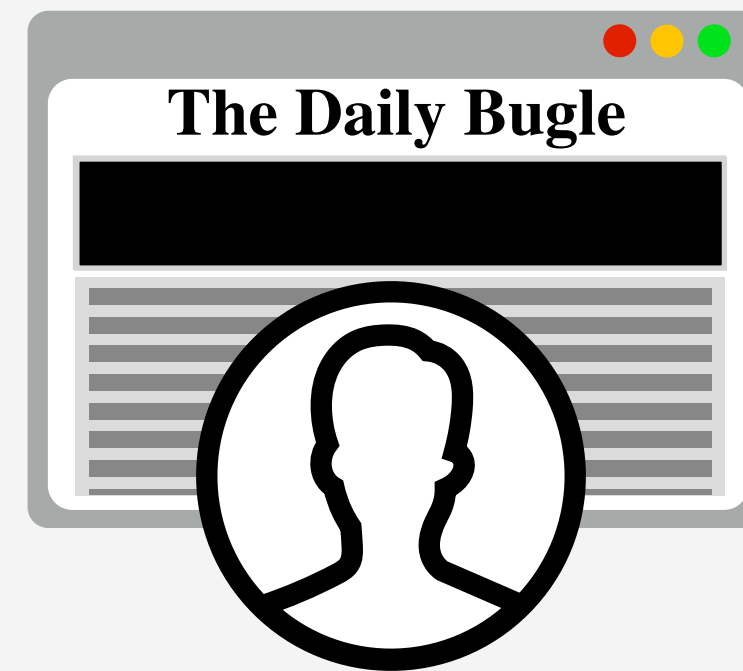


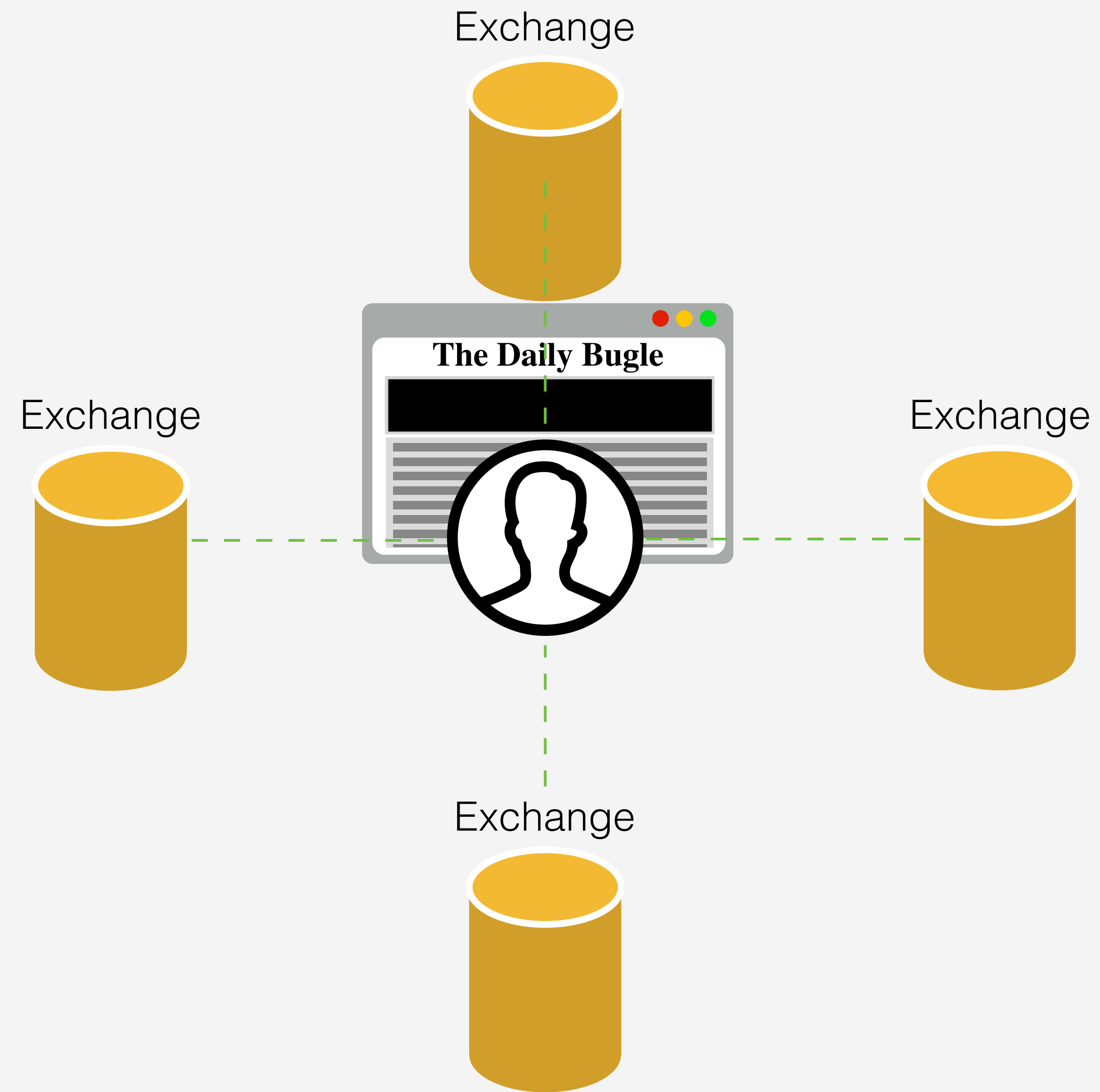
DMP

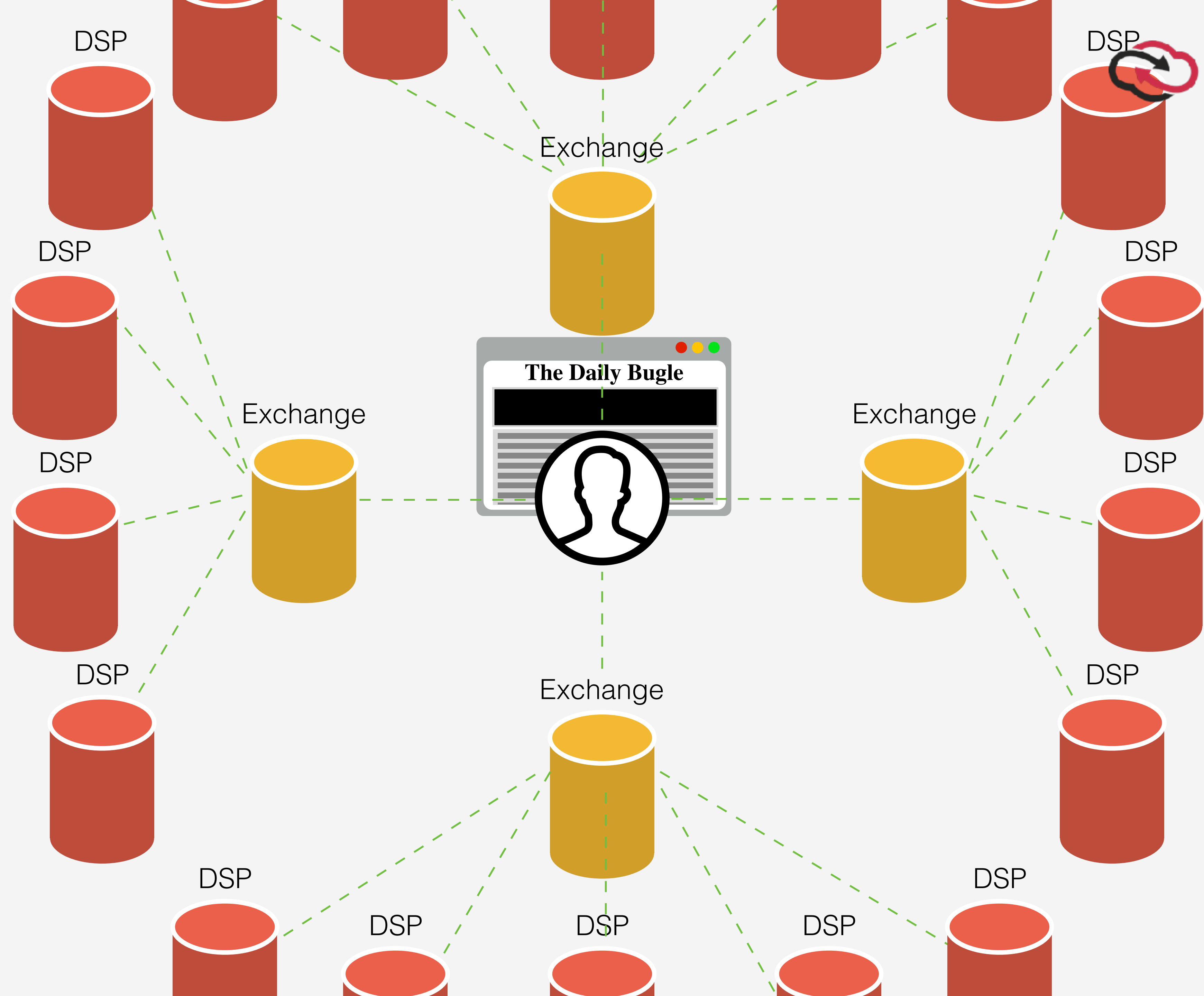


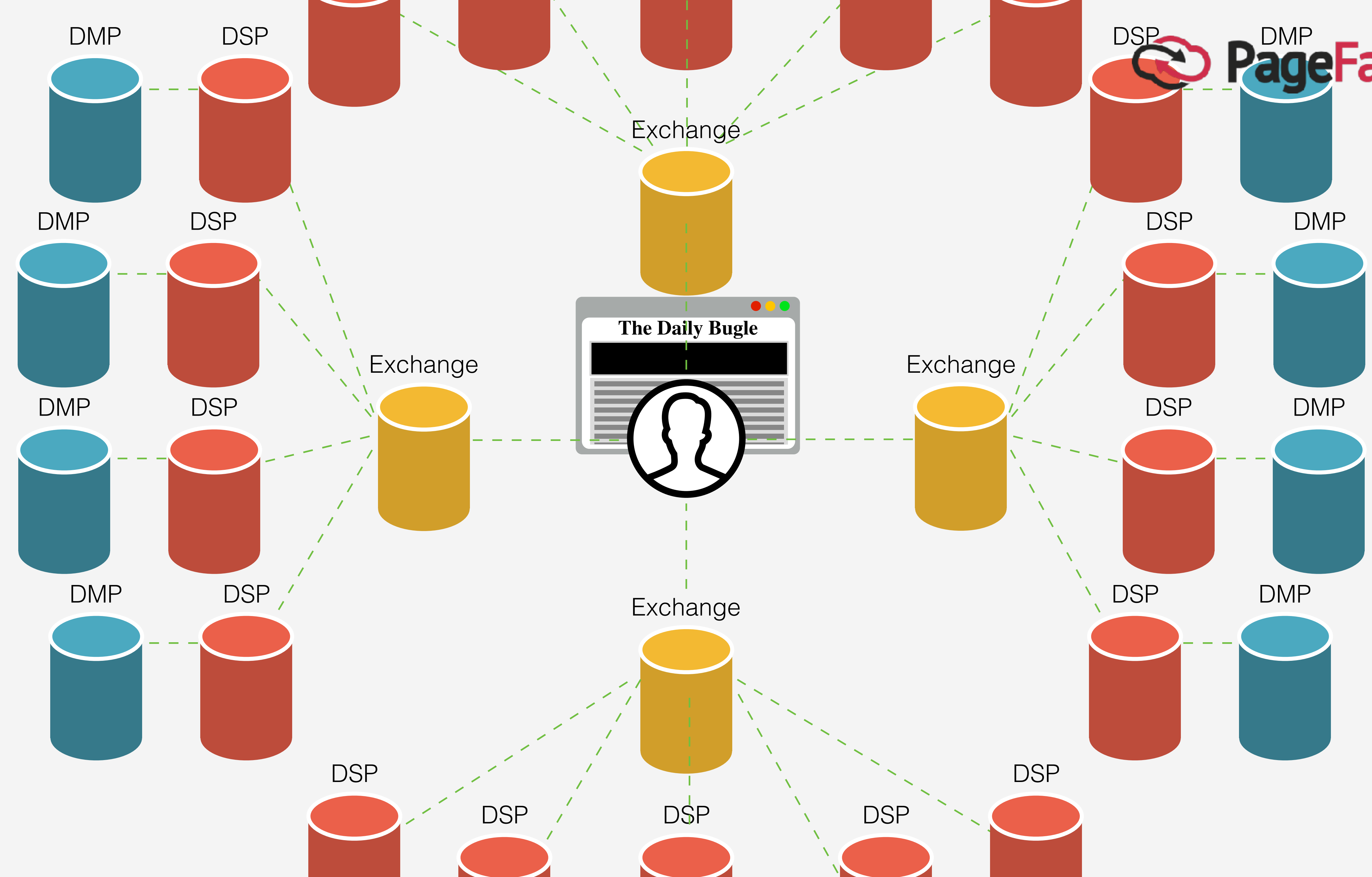
Brand

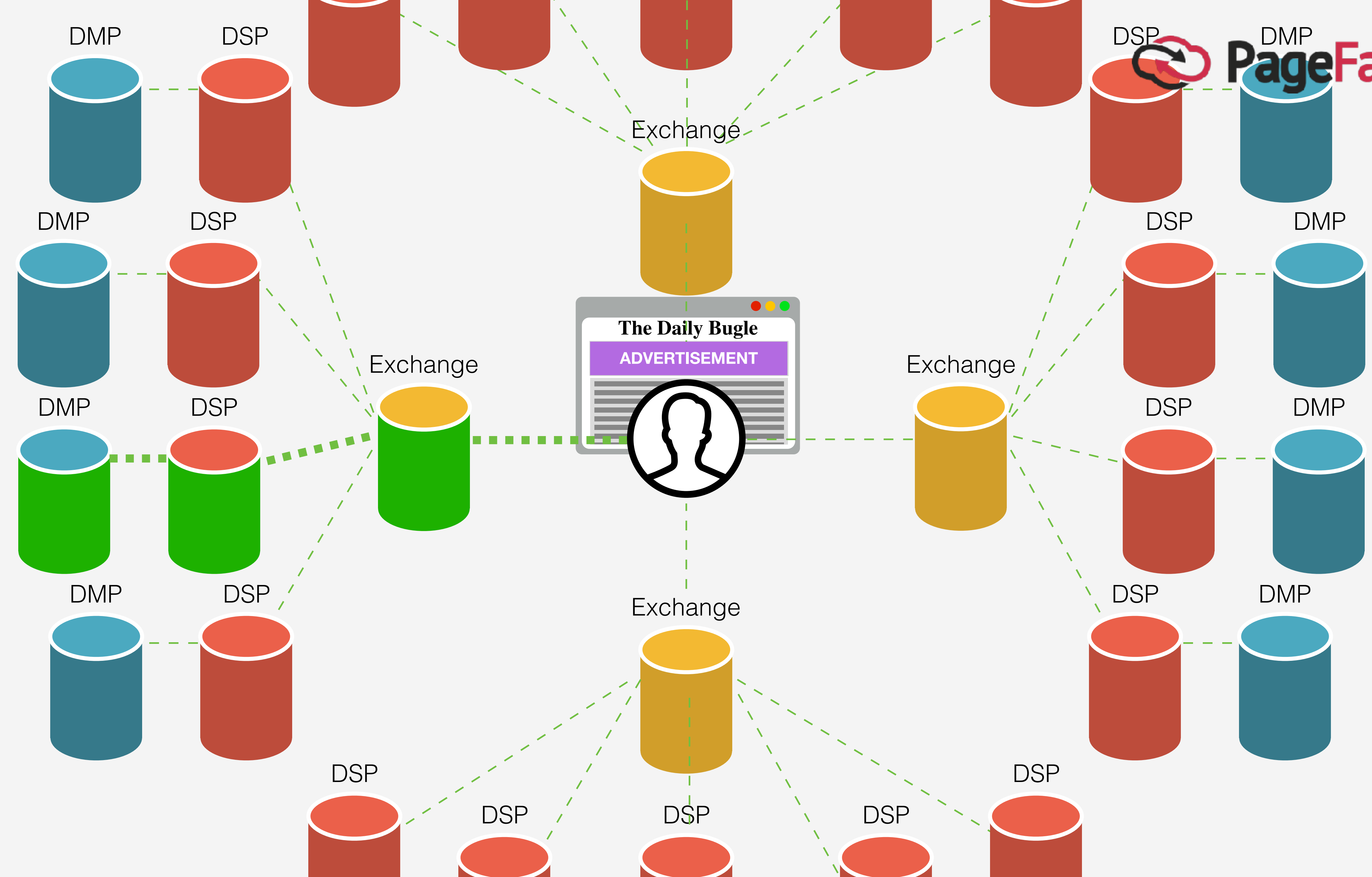


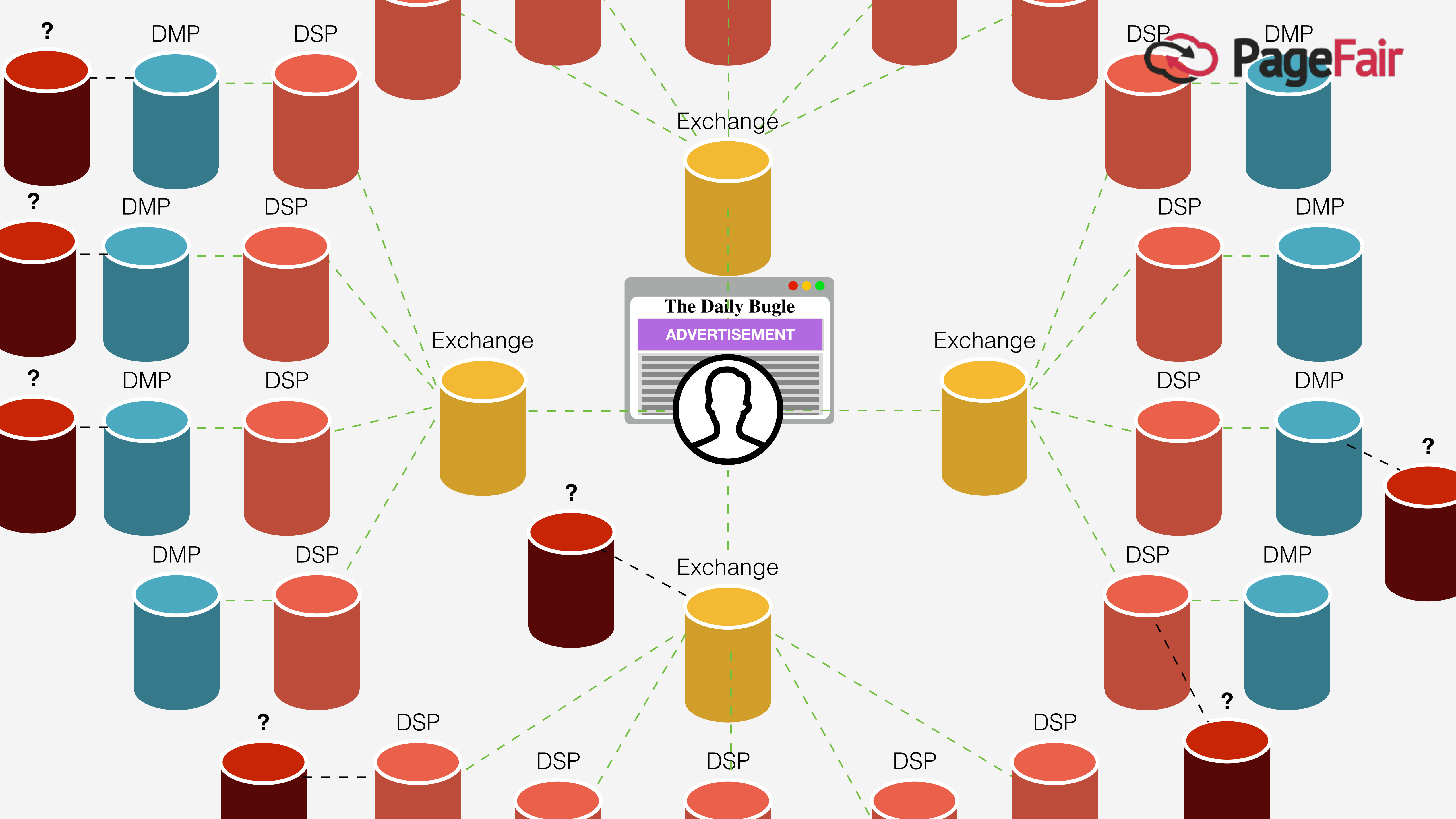


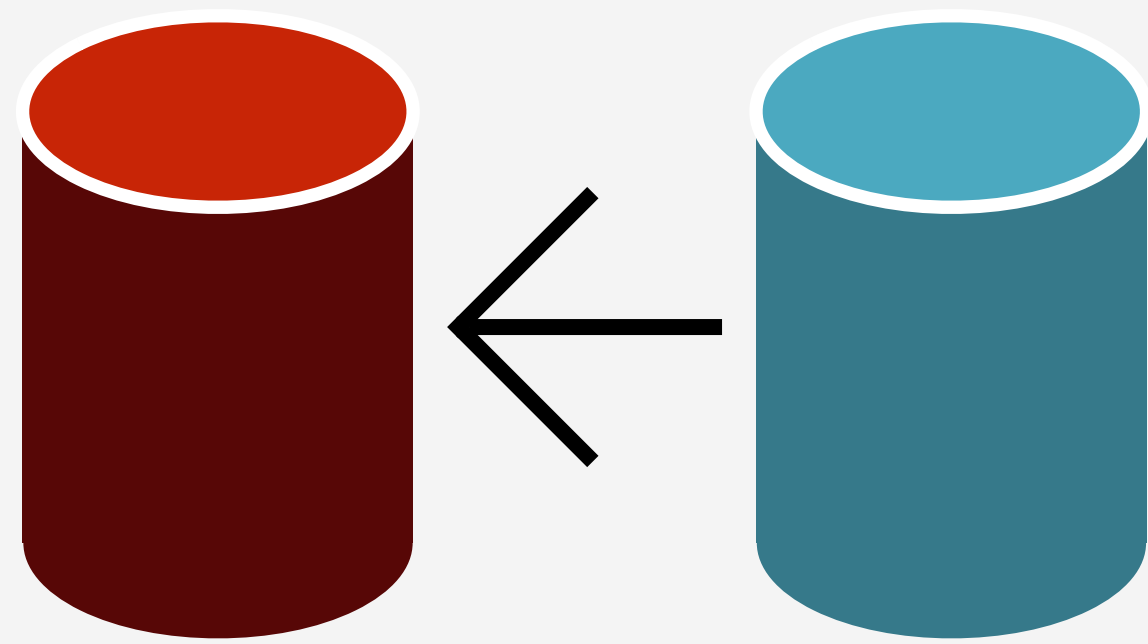




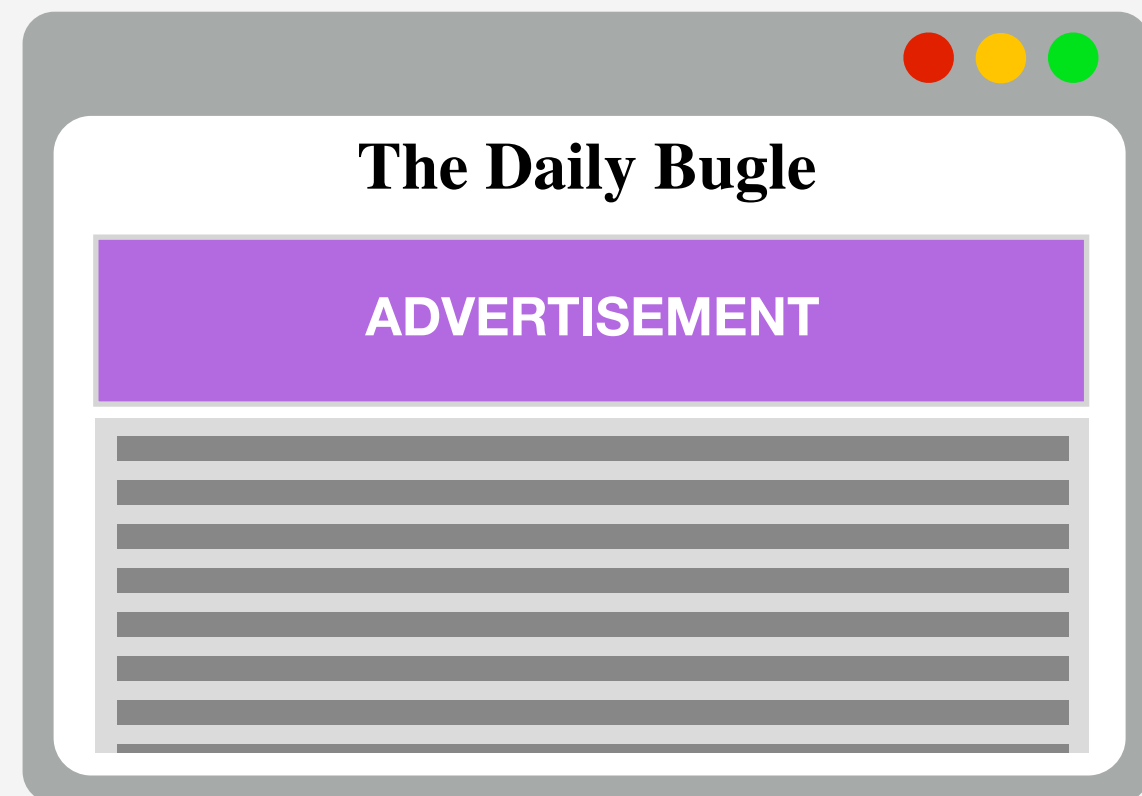








Any one of the hundreds or thousands of parties receiving personal data via ad exchanges can profile and / or trade with unauthorized parties.



JavaScript ad creatives can summon unauthorized trackers.

Plus, other data leakage via SDKs on mobile, 3rd parties on page, logging on load of 3rd party assets, etc.

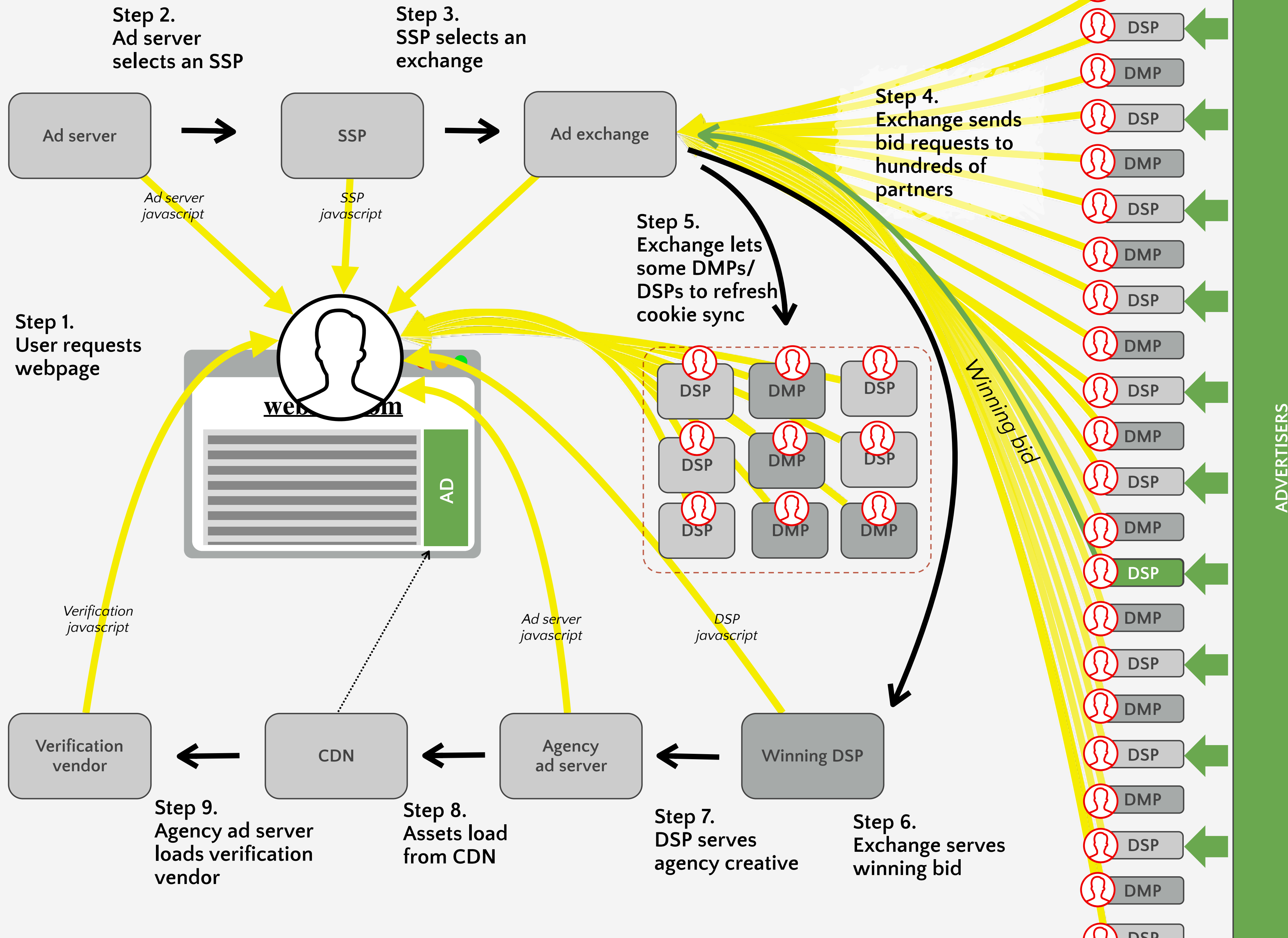
Risk

DATA LEAKAGE IN ONLINE ADVERTISING

This is the current process of real-time bidding that is used in online behavioural advertising.

Legend

- Channel of data leakage
- Money
- Personal data



Problem Set 2: Consent for ad tracking

97%¹ - 80%² would reject 3rd party ad tracking (single dialogue)

1. "Research result: what percentage will consent to tracking for advertising?", PageFair, September 2017 (URL: <https://pagefair.com/blog/2017/new-research-how-many-consent-to-tracking/>)
2. "Europe Online: an experience driven by advertising", IAB Europe, 2017, p. 7 (URL: https://www.iabeurope.eu/wp-content/uploads/2017/09/EuropeOnline_FINAL.pdf).

A *non-compliant* GDPR consent screen (single screen)

NO MENTION OF THE DURATION FOR WHICH DATA ARE STORED.

BREACH OF THE GDPR, ARTICLE 13, PARAGRAPH 2, A

NO PRECISE DESCRIPTION OF A PURPOSE OF PROCESSING, AND NO NOTIFICATION OF PROFILING.

BREACH OF THE GDPR, ARTICLE 4, PARAGRAPH 1), AND ARTICLE 13, PARAGRAPH 1, C, AND PARAGRAPH 2, F, AND RECITAL 60.

APPEARS TO BE HARD TO NOT GIVE CONSENT

BREACH OF THE GDPR, ARTICLE 4, PARAGRAPH 1), AND RECITAL 42, AND RECITAL 32.

[Site] and our partners set cookies and collect information from your [browser] [device] to provide you with [website] content, deliver relevant advertising and understand [web] audiences. [View partner info](#)

We use technology such as cookies on our site to collect and use personal data to personalize content and ads, to provide social media features and to analyse our traffic. We also share information about your use of our site with our partners who also use technologies such as cookies to collect and use personal data to personalize content and ads, to provide social media features and to analyse our traffic on our site and across the internet. [View info on our partners and their use of this data](#). You can always change your mind and revisit your choices.

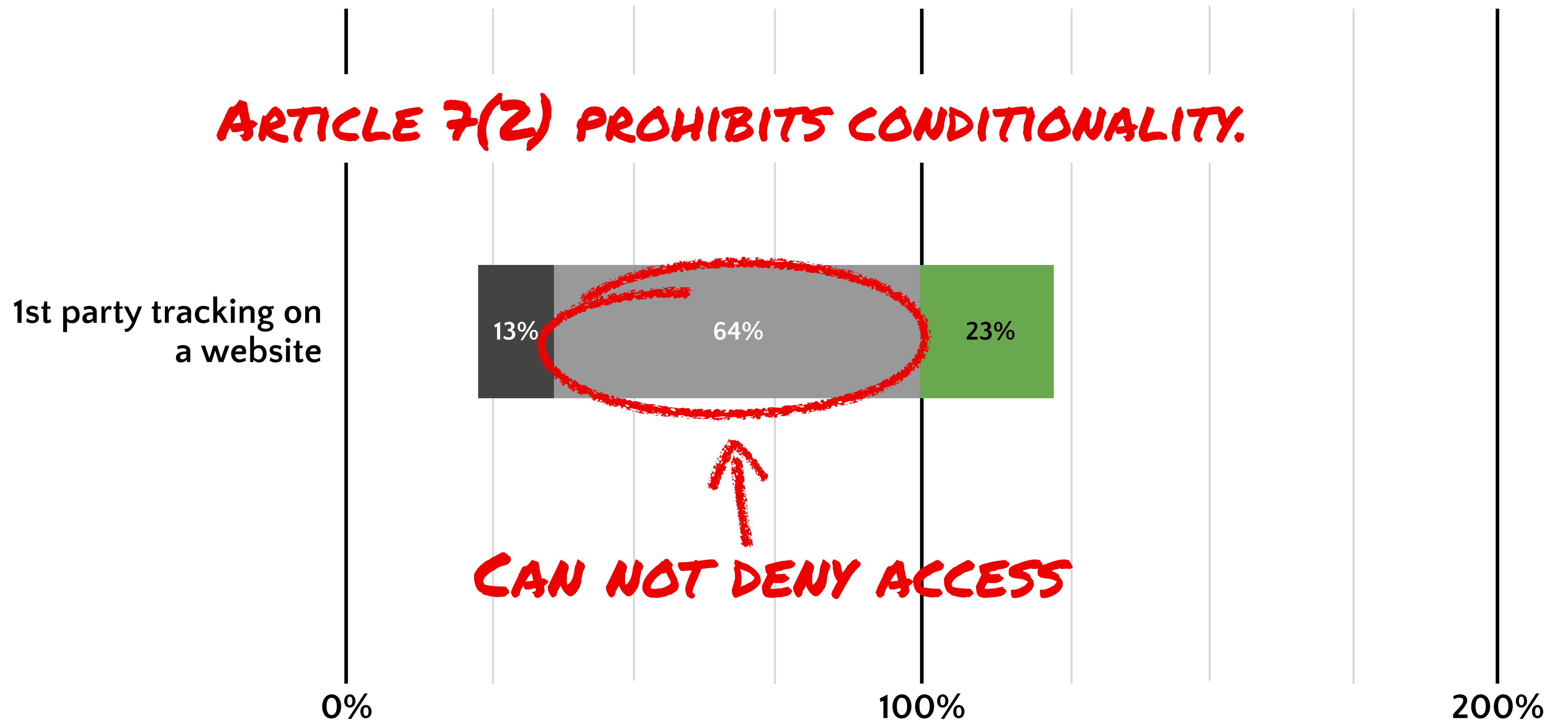
Manage use of your data

OK

CONFLATION OF MULTIPLE PURPOSES
BREACH OF THE GDPR, ARTICLE 5, PARAGRAPH 1, B, RECITAL 32, AND RECITAL 43.

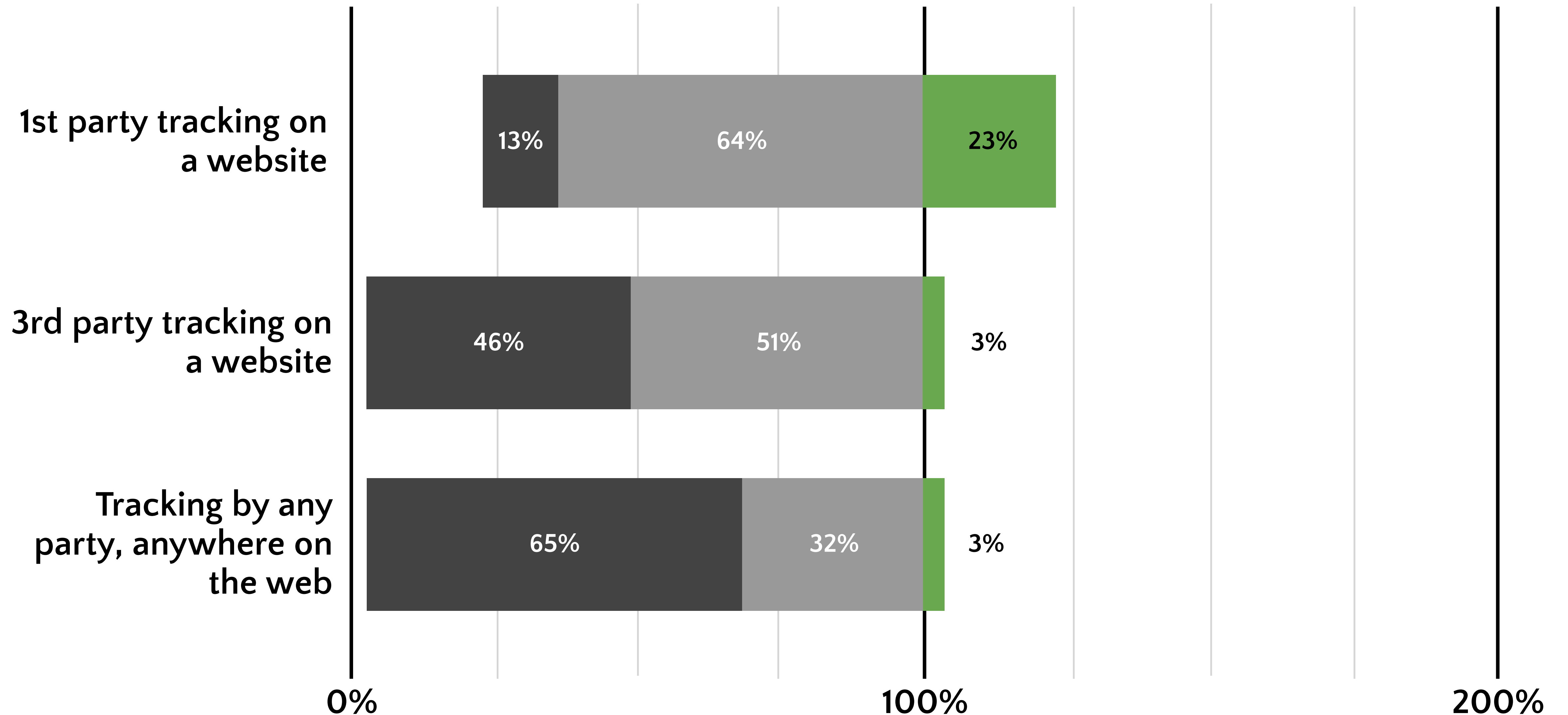
Do you believe that users will opt-in to tracking for the purposes of advertising?

■ No ■ Yes, if denied access to the site otherwise ■ Yes



Do you believe that users will opt-in to tracking for the purposes of advertising?

■ No ■ Yes, if denied access to the site otherwise ■ Yes



**But the GDPR requires
separate legal basis
(consent in this case) for
each processing purpose**

An opt-in for each processing purpose

DURATION

ARTICLE 13, PARA 2, A.

UNAMBIGUOUS, SPECIFIC AFFIRMATIVE ACTION. NOT YES BY DEFAULT.

ARTICLE 4, PARA 11, AND RECITAL 32.

CONTACT DETAILS OF THE DATA CONTROLLER, AND LIST OF CATEGORIES OF PROCESSOR.

ARTICLE 13, PARA 1, A, AND RECITAL 42.

Help keep Example.com profitable

Let these companies combine your browsing habits for 6 months with data they already have collected about you to improve their profile of you, including by inferring insights, to show you relevant advertising. (This profile may include your income bracket, age and gender, habits, social media influence, ethnicity, sexual orientation, religion, political leaning, etc.).

OFF

Item 1 of 9 [Next](#)

Viewing 2 of 251 partners	
Acxiom GmbH Martin Behaim Strasse 12, 63263 Neu-Isenburg, Germany	View details
Google Ltd. Gordon House, Barrow	View details

[Learn about your data rights here.](#)

PURPOSE OF PROCESSING, AND NOTIFICATION OF PROFILING.

ARTICLE 4, PARAGRAPH 11, AND ARTICLE 13, PARA 1, C, AND PARA 2, F.

GRANULAR OPT-IN FOR SEVERAL PURPOSES

RECITAL 32, AND ARTICLE 29 WORKING PARTY GUIDANCE NOVEMBER 2017

DETAILS OF RIGHTS TO COMPLAIN TO SUPERVISORY AUTHORITY, AND TO ACCESS, CORRECT, AND TRANSFER DATA, ETC.

ARTICLE 13, PARA 2, B, C, AND D.

Explicit consent for special categories of personal data

**THIS DESIGN REQUIRES
TWO TAP / CLICK / DRAG
ACTIONS TO SIGNAL
CONSENT EXPLICITLY**

Help keep Example.com profitable

Let these companies combine your browsing habits for 6 months with data they already have collected about you to improve their profile of you, including by inferring insights, to show you relevant advertising. (This profile may include your income bracket, age and gender, habits, social media influence, ethnicity, sexual orientation, religion, political leaning, etc.).

CONFIRM?

Item 1 of 9 [Next](#)

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**"EXPLICIT CONSENT" (TO
PROCESS SPECIAL
CATEGORIES OF DATA)
ARTICLE 9, PARAGRAPH 2, A.**

Explicit consent for special categories of personal data

**THIS DESIGN REQUIRES
TWO TAP / CLICK / DRAG
ACTIONS TO SIGNAL
CONSENT EXPLICITLY**

Help keep Example.com profitable

Let these companies combine your browsing habits for 6 months with data they already have collected about you to improve their profile of you, including by inferring insights, to show you relevant advertising. (This profile may include your income bracket, age and gender, habits, social media influence, ethnicity, sexual orientation, religion, political leaning, etc.).

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**"EXPLICIT CONSENT" (TO
PROCESS SPECIAL
CATEGORIES OF DATA)
ARTICLE 9, PARAGRAPH 2, A.**

**Most people will not
click OK to any of this**

(So what is the answer?)

**CLEAN, SAFE
DATA***

***non-personal data**

GDPR scale: FACEBOOK

5	Needs “opt-in” consent, but is unable to communicate with users	
4	Needs “opt-in” consent, but user has little incentive to agree	<ul style="list-style-type: none">• Facebook Audience Network• WhatsApp advertising (see assumption 1)
3	Needs “opt-in” consent, and may get it	
2	Can show an “opt-out” before using data	<ul style="list-style-type: none">• NewsFeed ads (based only on personal data with no “special” personal data (e.g. ethnicity, political opinion, religious or philosophical beliefs, sexual orientation), unless marked “public” or visible to “friends of friends” (see assumptions 1 and 2))• Instagram ads (see assumption 1)
1	Out of scope of the regulation, if business is modified.	
0	Already out of scope of the regulation.	

Assumption 1. That the use of personal data to target advertising will be accepted as a “compatible” purpose with the original purpose for which personal data were shared by users, under GDPR Article 6, paragraph 4. GDPR Recital 61 says that if the further processing is compatible then the company must alert the data subject that it is using their data for this further purpose before it starts processing. GDPR Article 21, paragraph 2 and 3 say that the data subject must be alerted about their right to object to their data being used for direct marketing, and can do so at any time. GDPR Recital 70 says this alert should be presented clearly and separately from any other information. However, the Article 29 Working Party’s opinion on purpose limitation notes that among the various things that the compatibility assessment must consider are “the impact of the further processing on the data subjects”.

Assumption 2. GDPR Article 6, paragraph 4, c, indicates a higher bar for “special categories of personal data” that reveal race, ethnicity, political opinion, religious or philosophical beliefs, trade union membership, or related to a data subject’s sex life or sexual orientation. However, this does not apply if the data have been “manifestly made public by the data subject” (GDPR, Article 9, paragraph 2, (e)). This may mean that the publicity settings that a user places on their post will prevent or enable those posts to be mined for advertising.

GDPR scale: GOOGLE

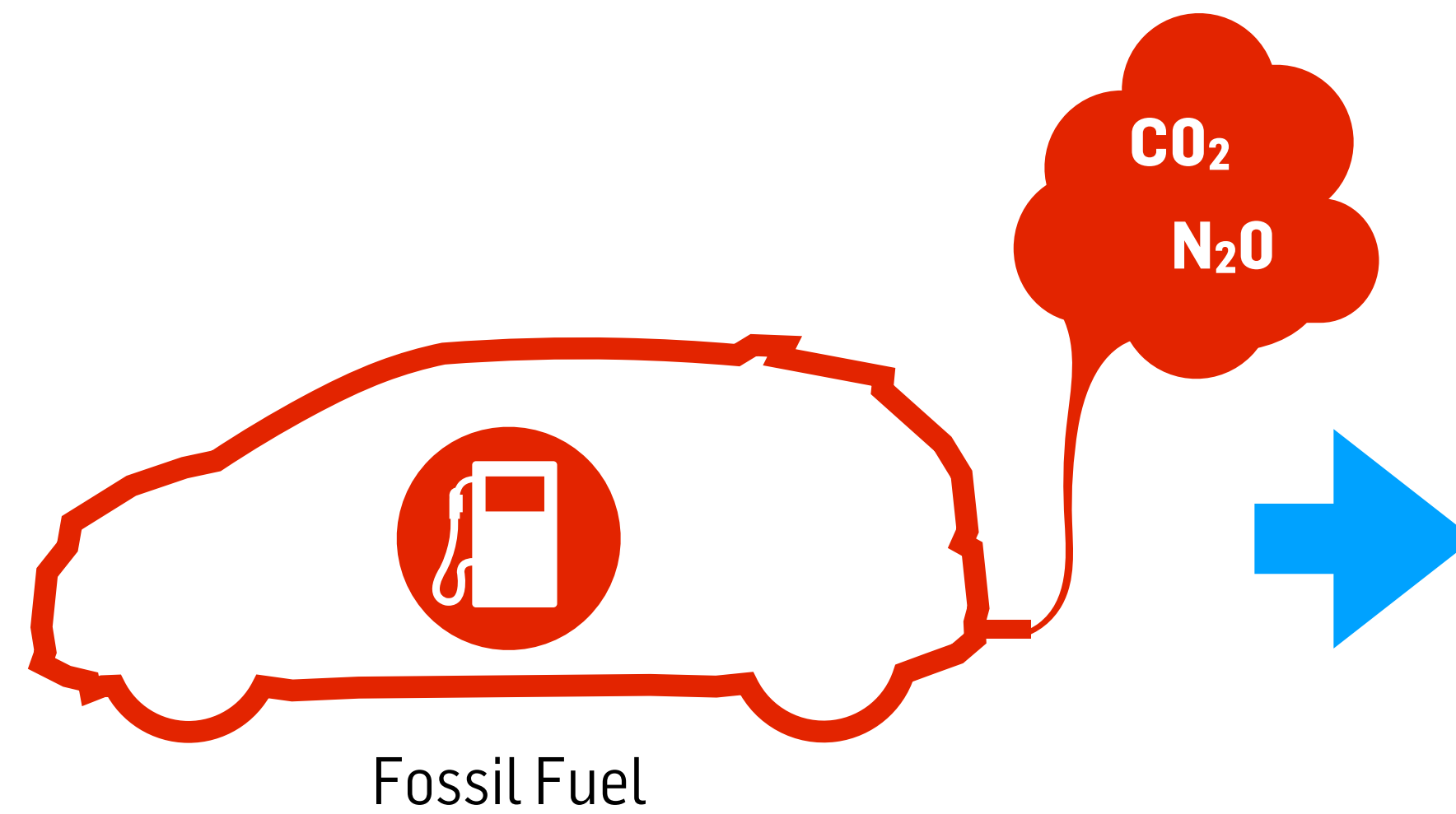
5	Needs “opt-in” consent, but is unable to communicate with users	
4	Needs “opt-in” consent, but user has little incentive to agree	<ul style="list-style-type: none">• Most personalized AdWords ads on Google properties including Search, Youtube, Maps, and the Google Network (including “remarketing”, “affinity audiences”, “in-market audiences”, “demographic targeting”, “similar audiences”, “Floodlight” cross-device tracking), “customer match”, “remarketing” (see assumption 1)• Gmail ads• Programmatic services (DoubleClick)
3	Needs “opt-in” consent, and may get it	
2	Can show an “opt-out” before using data	<ul style="list-style-type: none">• Location targeting in Maps (see assumption 2)
1	Out of scope of the regulation, if business is modified.	<ul style="list-style-type: none">• AdWords (if all personalized features are removed) on Google properties including Search, Youtube, Maps
0	Already out of scope of the regulation.	<ul style="list-style-type: none">• “Placement-targeted” ads on Google properties.

Assumption 1. That the average user does not “sign in” to Google Search or Chrome. If, however, users did sign in then Google may be able to further process their data for other purposes.

Assumption 2. That the use of personal data to target advertising will be accepted as a “compatible” purpose with the original purpose for which personal data were shared by users, under GDPR Article 6, paragraph 4. GDPR Recital 61 says that if the further processing is compatible then the company must alert the data subject that it is using their data for this further purpose before it starts processing. GDPR Article 21, paragraph 2 and 3 say that the data subject must be alerted about their right to object to their data being used for direct marketing, and can do so at any time. GDPR Recital 70 says this alert should be presented clearly and separately from any other information. However, the Article 29 Working Party’s opinion on purpose limitation notes that among the various things that the compatibility assessment must consider are “the impact of the further processing on the data subjects”.

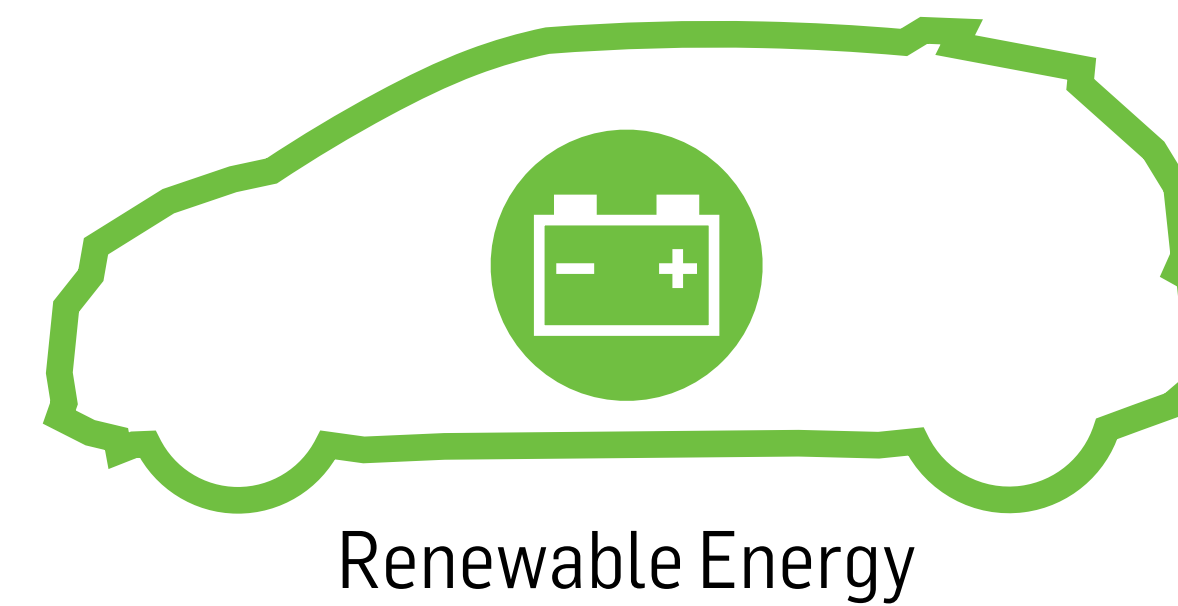
OLD INDUSTRY

Regulatory disincentive



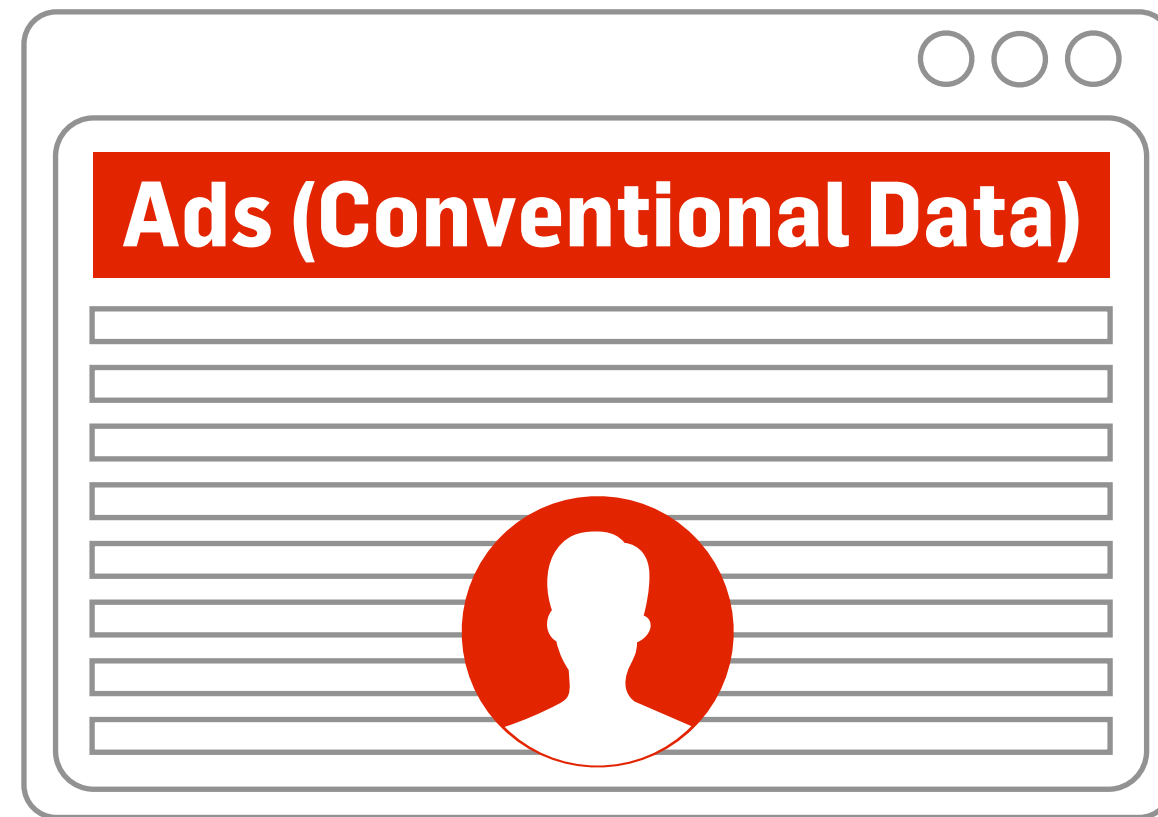
NEW CLEAN INDUSTRY

Regulatory incentive ↑

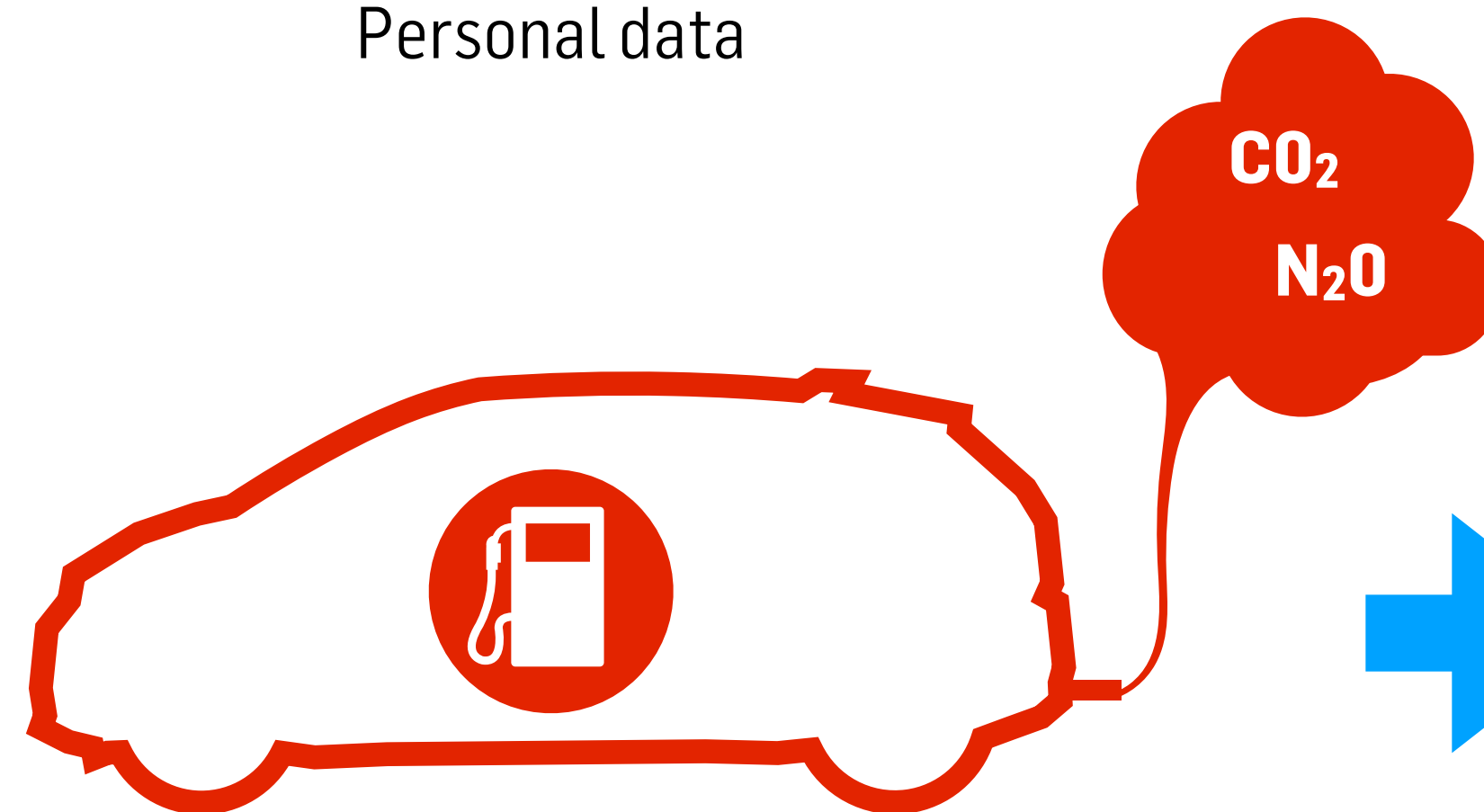


OLD INDUSTRY

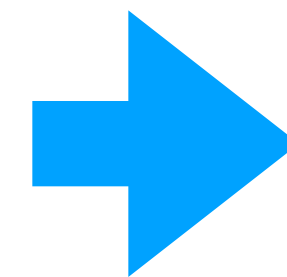
Regulatory disincentive ↓



Personal data

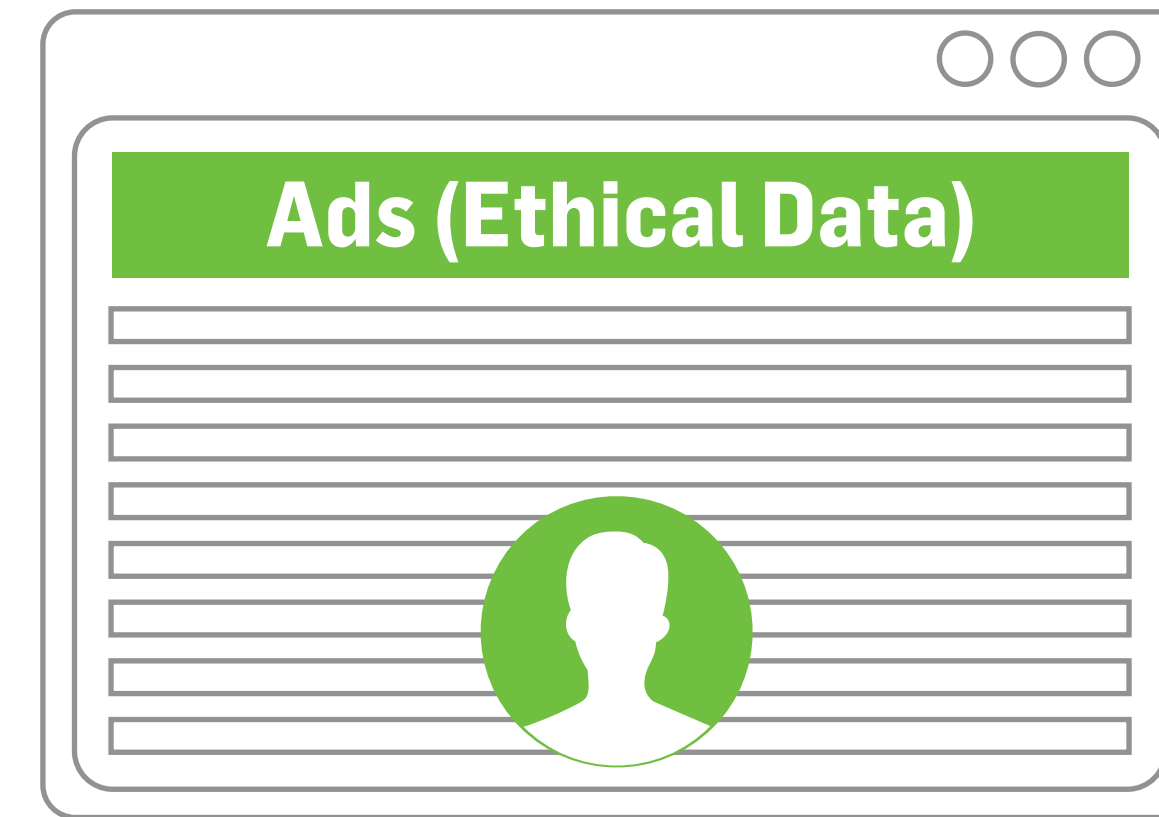


Fossil Fuel

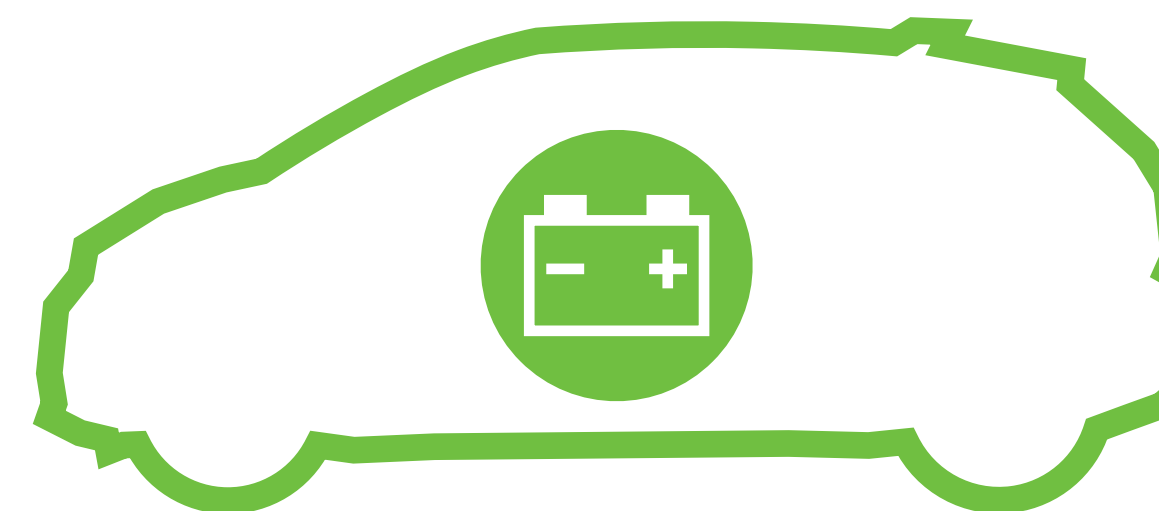


NEW CLEAN INDUSTRY

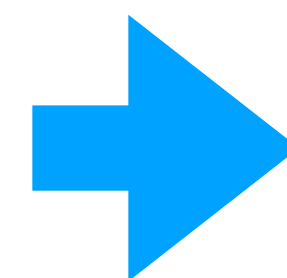
Regulatory incentive ↑



Non-personal data

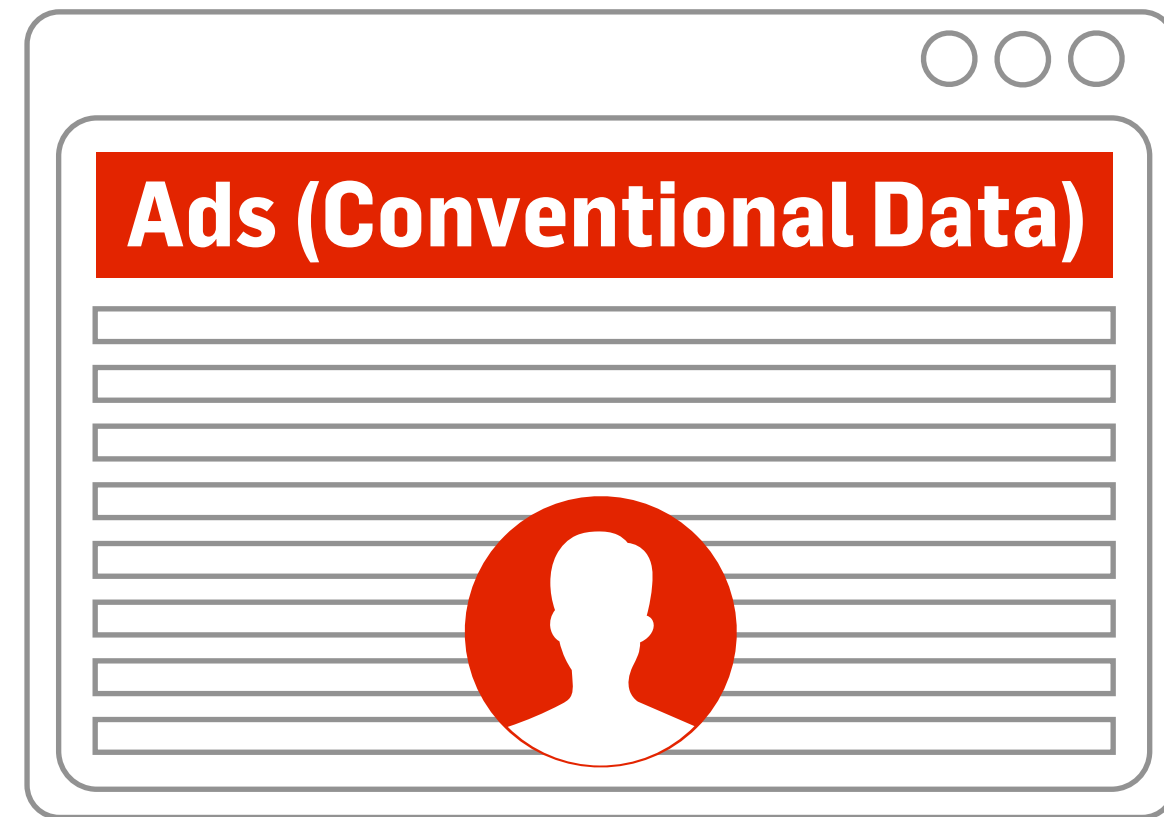


Renewable Energy

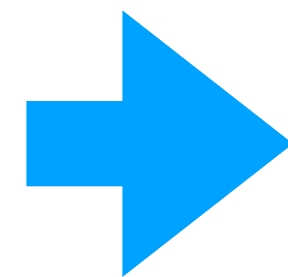


OLD INDUSTRY

Regulatory disincentive ↓

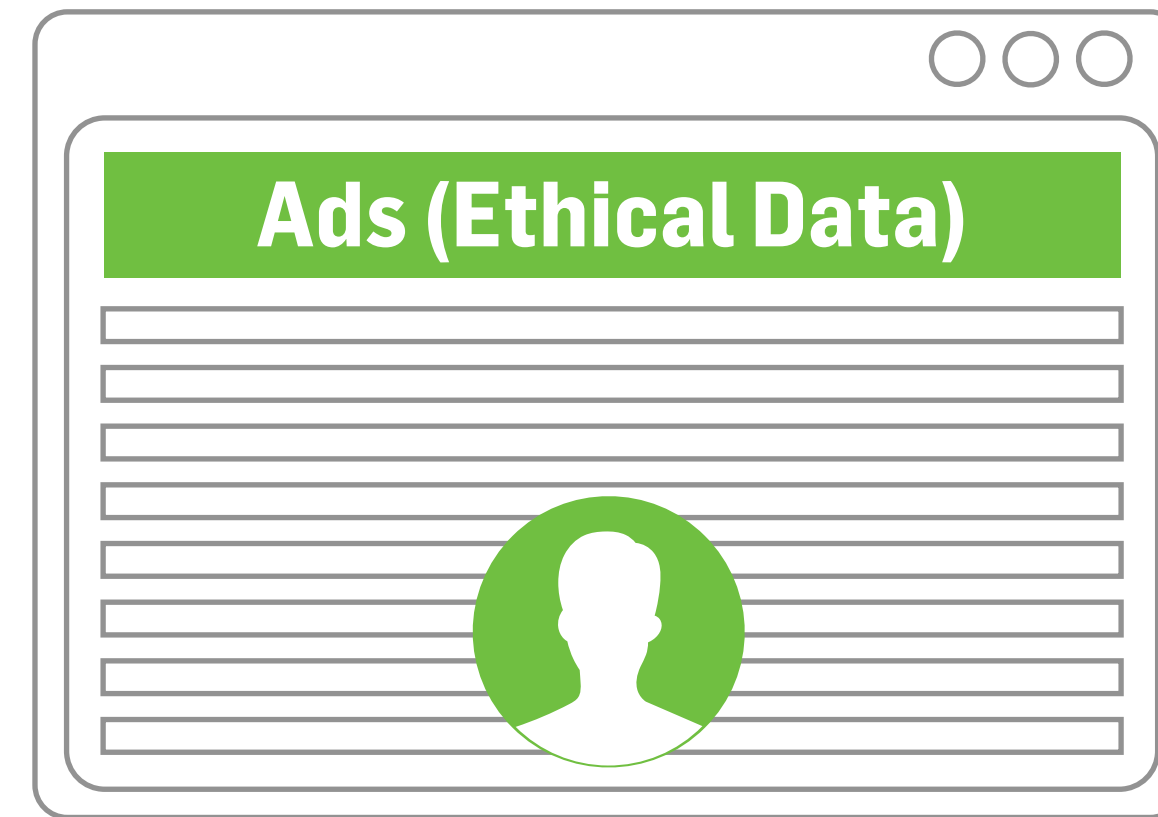


Personal data

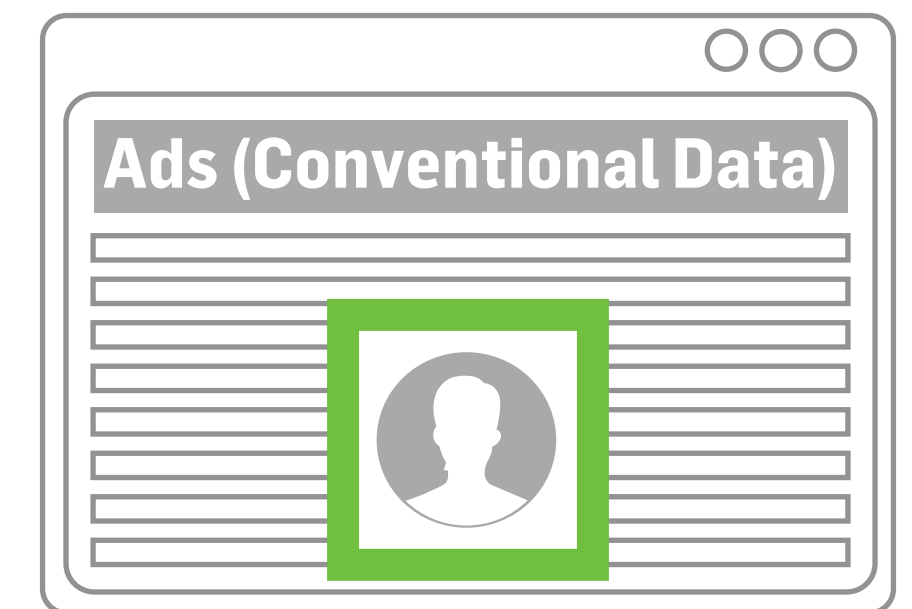


NEW CLEAN INDUSTRY

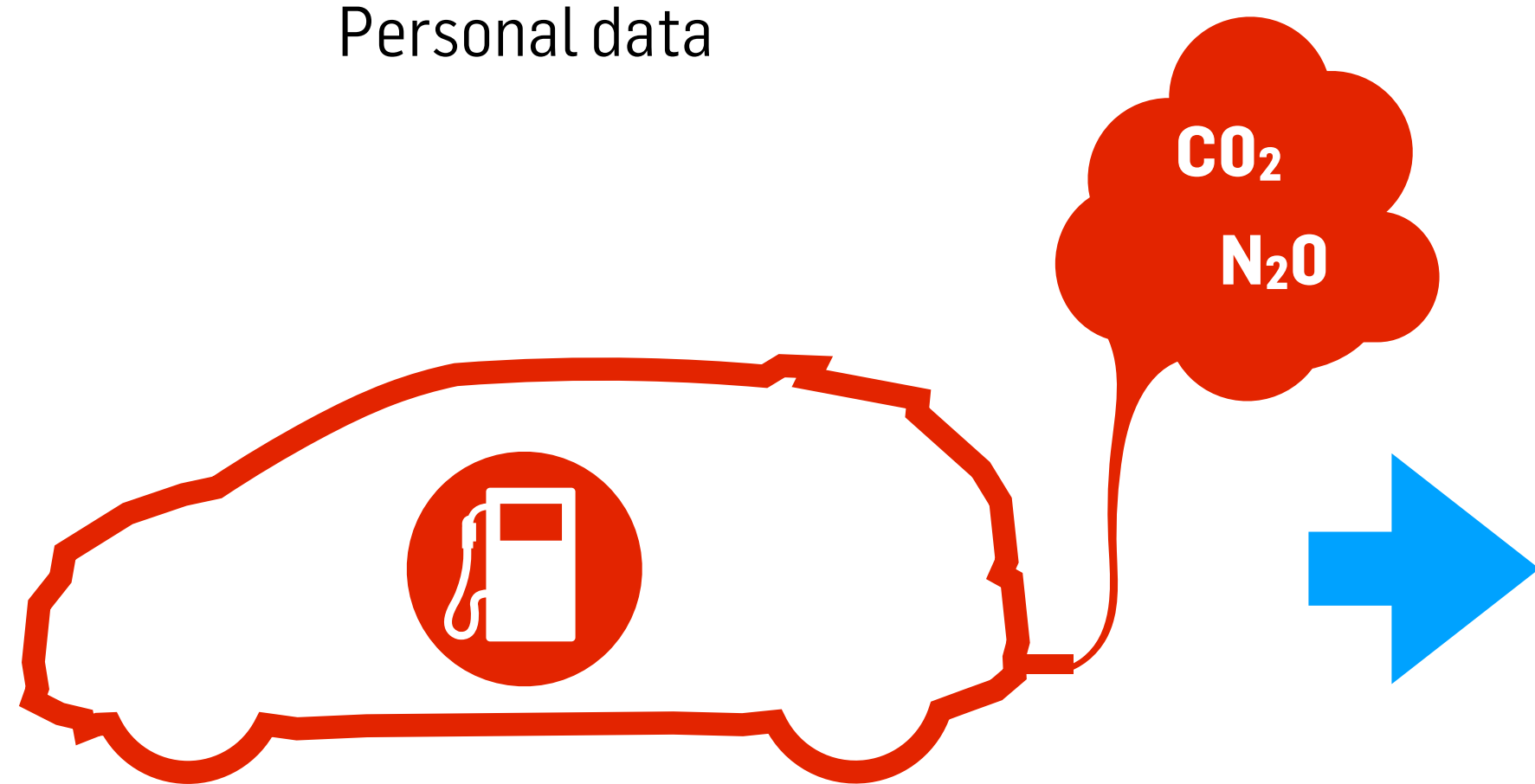
Regulatory incentive ↑



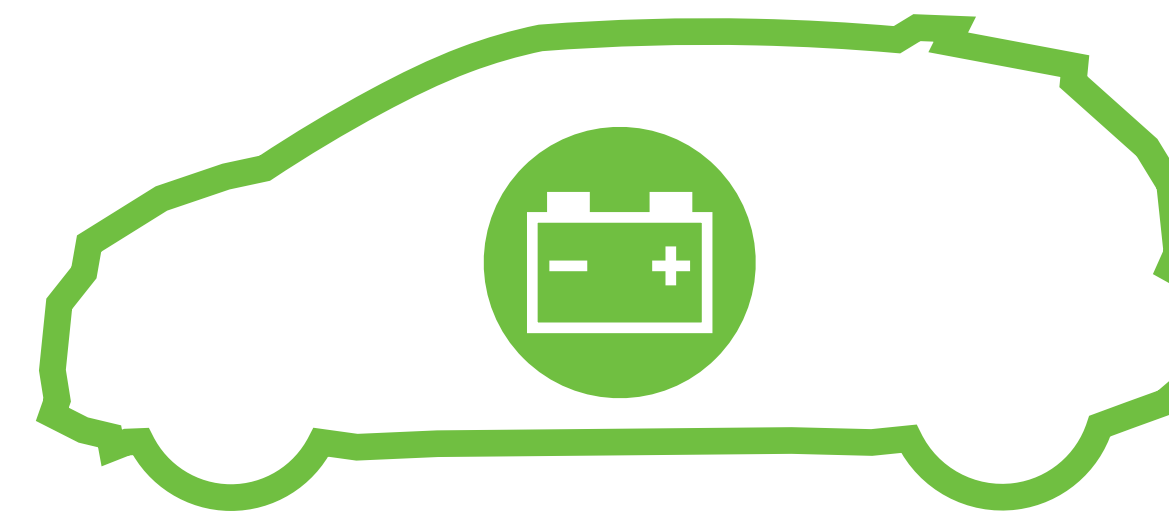
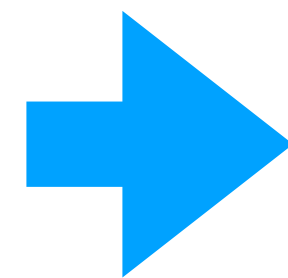
Non-personal data



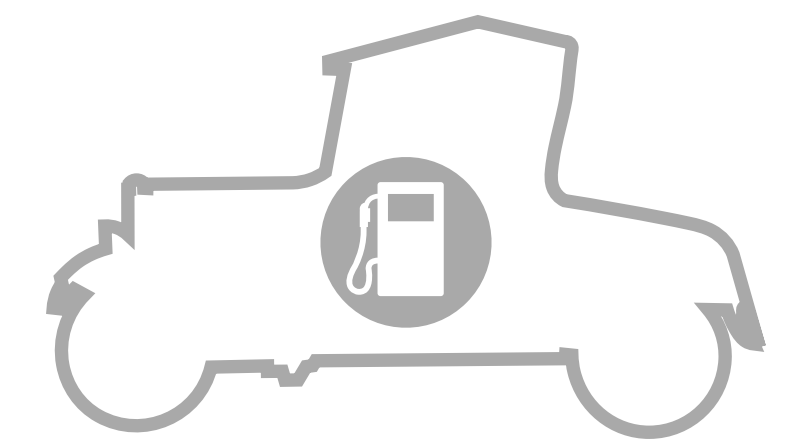
Personal data
(with consent and enforceable protection)



Fossil Fuel



Renewable Energy



Classic Cars

Small, premium market

Summary

@johnnyryan

- 1. “Consent” for RTB/programmatic is lawsuit bait.**
- 2. Leakage of personal data from widgets & adtech exposes publishers, adtech, agencies, and brands to legal risk.**
- 3. Media owners should ask for regulatory action: when you comply, you are not cheated by competitors.**

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