


The Daily: Microsoft's quest to acquire Activision Blizzard, social media algorithms in the EU, and more Google privacy problems

Audio



On today's podcast episode, we discuss the details and regulatory headaches surrounding Microsoft's attempts to acquire the video game company Activision Blizzard. "In Other News," we talk about how Meta is allowing EU users to turn off their algorithms, and YouTube's current issues around violating children's privacy through tracking-based advertising on "made-for-kids" content. Tune in to the discussion with our guest host Bill Fisher and analysts Daniel Konstantinovic and Evelyn Mitchell-Wolf.

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Episode Transcript:

Speaker 1:

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Evelyn Mitchell-Wolf:

Had this acquisition been proposed and scrutinized, say five years ago, it probably would've gone through. But in the last five years, there seems to have developed a desire to prevent big tech from gaining even more influence; economic influence, social influence, political influence.

Bill Fisher:

Hello, everybody. It's Tuesday, September 5th. Evelyn, Danny, and listeners, welcome to Behind the Numbers Daily, an eMarketer podcast made possible by Awin. I'm not Marcus. I'm Bill, host of the Around the World show, and your guest host for today's daily episode whilst Marcus is away. I'm joined by a couple of superstars. First up, one of our senior analysts on the media and marketing team and based out of Virginia is Evelyn Mitchell-Wolf. Hey, Evelyn.

Evelyn Mitchell-Wolf:

Hello. Top of the morning to you. Sorry, I thought I'd try something new. Maybe we...

Bill Fisher:

You've taken me aback with that one. Let's see if the next greeting is more normal. We also have one of our analysts on the advertising and marketing briefings team based in New York. It's Daniel Konstantinovic. Hi, Danny.

Evelyn Mitchell-Wolf:

Hey, Bill. How are you doing?

Bill Fisher:

That's more normal. I'm good, thank you.

Daniel Konstantinovic:

Top of the morning.

Bill Fisher:

Strangely enough, you are a regular on this show, Danny, but this is the first time I think that we have ever spoken in person.

Daniel Konstantinovic:

I think so, yeah. Right before I got on this call, I was talking to Jeremy Goldman and he was like, "Bill has a great recording voice." So look forward to that. And you know what? It's true.

Bill Fisher:

I've been told I've got a face for radio. Anyway, great to have you both on the show. I believe it's Fact of the Day time. Right? Am I doing this right? Yep. Well, the last time I was on a podcast with Evelyn, it was revealed to me that she had a fondness for cows. So just for you, Evelyn, today's fact is cow related.

Evelyn Mitchell-Wolf:

Yay!

Bill Fisher:

You may know that a cow has four stomachs. Technically, it's actually one, but it's made up of four distinct compartments. Anyway, the main compartment is called the rumen, and it can hold up to 50 gallons of partially digested food. To put that into context, that's about the same volume as a regular bathtub, a big old vessel. But it needs to be big because a cow will consume about 40 pounds of food in a day, and it's all grass or hay, of course, and the rumen needs to hold all that partially digested food and break it down slowly as it goes through the other three stomach compartments. Quite a complicated digestive system. You'd like to own a cow, Evelyn, still even after hearing that?

Evelyn Mitchell-Wolf:

Oh, yes. Yes. One day, that is a goal of mine. I don't know if I'll ever have enough land for it, but I would. I'll shoot for it for sure.

Bill Fisher:

You need a large food source. What about you, Danny? You've got room for a cow in NYC.

Daniel Konstantinovic:

I could talk my roommate into it. I think we've got a big living room compared to most people I know.

Bill Fisher:

Anyway, today's real topic, can Microsoft appease the regulators and finally acquire games publisher Activision Blizzard?

In today's episode, in the first half, Evelyn, Danny, and I will talk about this proposed Microsoft acquisition, which has so far been blocked due to anti-competitive concerns. Then in the second half of the show, we have a couple of other regulatory related topics to cover. We'll discuss some of the social media giants' algorithm busting attempts to appease regulators in the EU, and then we'll dig into Google's latest privacy issues. This time, YouTube is accused of tracking kids without consent.

But we start with this Microsoft story. The background here is that Microsoft has a pretty big stake in the gaming industry via its Xbox console, but it trails behind Sony with its PlayStation devices and Nintendo with its Switch device. For Microsoft, buying into a large gaming franchise is one way to up its game. And Activision Blizzard has an impressive roster of games headlined by Call of Duty, or COD as the kids call it. I'm reliably informed. That's what my kids call it.

According to FandomWire, the COD franchise has reached 450 million in lifetime unit sales and is worth over \$30 billion in 2023. Now, acquiring a company like this is always going to make regulators sit up and take notice. But this deal has been given the green light in most jurisdictions, the EU and the US, but the UK's competitions and markets authority, the CMA, continues to veto the deal. So what next? Well, Microsoft has returned to the table with a restructured proposal in an attempt to win over the UK regulator, but will it work? Well, let's try and unpack that.

Let's start with you, Danny. Microsoft, it's got a history of this, right? It's acquired other games publishers. It owns Minecraft, which is... To my mind, that's a massive game. So what's the difference with this deal?

Daniel Konstantinovic:

Well, yeah, it owns Minecraft, which was a huge one that it acquired for... compared to 69 billion for Activision very cheaply back in the day. A couple of years ago, it also acquired ZeniMax Media, which owns a lot of large development and publishing studios itself. What makes this one so big is... I think part of it is a little bit of inflation from previous deals driving up the value of large games publishers. But Activision Blizzard is an enormous publisher and development studio with some of the biggest, most lucrative intellectual properties in games.

And not just on consoles, but on home computers, on phones, and on consoles. It really has a deep penetration in all of the markets. Something that is not in the Activision Blizzard name but is one of its biggest assets is King, which is a mobile game company that created Candy Crush. So it would give Microsoft a sizable chunk of the mobile gaming market, which continues to grow. And like you said, Call of Duty is really one of the biggest parts of this acquisition. It's consistently one of the highest selling video game series out there. It has yearly releases and it has an enormous effect on the revenues of console manufacturers.

Sony and Microsoft really went to battle over exclusivity of the Call of Duty series. The fear was that Microsoft would acquire Activision and it would say Call of Duty can only be on Windows computers and Xboxes now. But eventually, they ended up negotiating a deal to share rights of the series with Sony for the next decade. Part of why, as some court filings from Sony about the acquisition revealed, is that in 2021, over one million PlayStation users only played Call of Duty and it generated 800 million in revenue for PlayStation.

So as the series continues to grow, it would really... For one million people to essentially use their PlayStation as a Call of Duty machine, it would mean a lot of lost sales and a lot of lost revenues for PlayStation.

Bill Fisher:

Did it have a similar setup with the Minecraft thing, right? Because Minecraft is available on the other platforms as well, right?

Daniel Konstantinovic:

Yeah, Minecraft is available pretty much everywhere. I think that one is a little bit different. I mean, Call of Duty is a military shooting game that even though it's played by a wide range of ages, it's... I would say generally aimed at a slightly older audience. Minecraft is probably more comparable to something like Roblox. It's this creative tool and engine like virtual Legos that

it would make sense for Microsoft to want to get kids no matter what platform they're on into that ecosystem early to be lifelong customers. Call of Duty is in a different bucket.

Bill Fisher:

Yeah. So as I said, Microsoft has come back to the CMA with a restructured proposal. Is this going to work? I mean, what's it doing? It's offloading streaming to Ubisoft. I don't know if I'm saying that right. Is that enough?

Daniel Konstantinovic:

It's a good question. I think it will be enough. I think the fact that other major markets like the EU and the US approving the deal is going to make it harder for the CMA to remain as the sole regulator blocking it. But I think that the reason they're offloading game streaming is so significant is because it was the chief complaint that the CMA levied against the acquisition. They were worried that it would give Microsoft an unfair advantage in cloud gaming, which is basically instead of downloading the game to your console or your computer, whatever, you just stream it and play it from a server elsewhere and you don't have to devote hard drive space or whatever or worry about hardware limitations.

Playing games on your computer, for example, requires some intensive hardware. It's a market that's growing, but it's a market that's not huge right now. Microsoft has dabbled in it with a service called Game Pass, which is like a subscription game service. There is a high tier that you can pay for that gives you access to cloud gaming. A lot of companies are starting to mess with it. Nintendo has also done it to put some pretty demanding games on Switch, which is a console that has really old innards compared to the other consoles on the market.

The thing that's interesting about the deal is that it addresses the chief complaint that the CMA had, but it also doesn't shut the door on cloud gaming completely. Microsoft has basically agreed to give Ubisoft the right to handle cloud gaming for all previously released Activision Blizzard games and new games released in the next 10 years in perpetuity. But after that, it can handle it itself. So 10 years from now when the market is sizable enough, Microsoft can still come in with a huge portfolio of incredibly popular and in-demand games to offer a cloud gaming service.

Bill Fisher:

Yeah, sure. So I just want to jump ahead a little bit actually and talk about the regulatory ecosystem, because this confuses me a little bit, that you can... They're both US companies, right? Microsoft and Activision Blizzard? I'm right in saying that, aren't I? Yeah.

Daniel Konstantinovic:

Yeah, that's right.

Bill Fisher:

So-

Evelyn Mitchell-Wolf:

Ubisoft is French though.

Bill Fisher:

Oh, is it?

Daniel Konstantinovic:

It's French-Canadian. They have an office in France and in, I think, Montreal.

Bill Fisher:

Okay. But in any case, the two main protagonists here, Microsoft, Activision Blizzard, US companies. I know there was pushback from the FTC in the US, but I think there was a judgment saying that they had to let the deal go through. Yet you've got little old Blighty over here with the CMA putting a big veto on it. How does that work? What does this mean or how does this reflect on the regulatory ecosystem around the world? Seems messy to me, Evelyn.

Evelyn Mitchell-Wolf:

It is messy. I was kind of doing a little digging and I read a piece from Reuters on the subject, and here's a quote from them. "The fate of Microsoft's deal in Britain has brought into question whether the CMA has the power to kill a mega deal if it is not in tune with the United States, European Union, and China." And that's another reason I agree with all of Danny's points from before about why this restructured deal is likely to be accepted by the CMA.

But I think this messiness is another reason that I think the CMA will accept the restructured proposal because it is a very valid question about whether the CMA has the power to block

this mega deal and the CMA probably doesn't want to go there. But generally, I think regulatory sentiments toward big tech are poor across the board in Western countries. And I think the hullabaloo around the Microsoft-Activision Blizzard acquisition comes down to timing.

Had this acquisition been proposed and scrutinized, say five years ago, it probably would've gone through. But in the last five years, there seems to have developed a desire to prevent big tech from gaining even more influence; economic influence, social influence, political influence.

And I think by and large, the regulatory bodies responsible for competition in the US, UK, and EU are generally on the same page even if the FTC was unable to successfully argue its case against the acquisition in US courts and even if the EU approved the acquisition because the European Commission wouldn't have done so if Microsoft didn't agree to allow European consumers to stream all current and future Activision Blizzard PC and console games that they have a license for that they own on any cloud gaming service in the future. And the UK is no longer a part of the EU, so why wouldn't the CMA then pursue some sort of similar concession? So I think it makes sense. It is messy though. You're right.

Bill Fisher:

We're too big for our boots over here. I think that's where it all boils down to. Okay. Let's go hypothetical. The CMA accepts the new proposal, the acquisition goes ahead. What does this then mean for the wider gaming industry, Danny?

Daniel Konstantinovic:

I think it would turn Microsoft into a really, really dominant force in the industry in a way even larger than it already is. I mean, this is a company that owns some of the most valuable and popular video game franchises in the world. And I think it would really make a dent in the ability for other console manufacturers to compete. I think something that really has to be talked about is Game Pass, the subscription service that Microsoft has, which is really the center point that all of this is orbiting around.

It is a very cheap \$10 a month subscription service that you can pay for and get access to an enormous library of games that is constantly updated. It's a much easier sell to a consumer to pay \$10 monthly for that versus paying \$70 twice a year for new major releases. Right now as we're recording this, the first major first-party game to be released on Game Pass from a

studio acquired from ZeniMax a couple of years ago will be coming out. And it's a major moment for the service to funnel users who want to play these popular games into the Xbox ecosystem.

So if I'm a consumer and I'm debating do I buy a PlayStation, do I buy an Xbox? Do I buy a switch? Although Switch is sort of a little bit of a different beast, the question that I'm going to ask myself is, okay, well, I can pay about the same price for both of these consoles for Xbox and a PlayStation, but on Xbox I can pay \$10 a month to get access to the biggest games that are coming out for cheap consistently. And on PlayStation, not so much. There are still exclusive games over there, but the cost of entry is much higher. So I think it'll really change the balance in a big way.

Bill Fisher:

I'm a Super Nintendo man, if that means anything to anybody.

Daniel Konstantinovic:

Hey, you're a super Nintendo fan or you're a fan of the Super Nintendo, like the very old system?

Bill Fisher:

The very old system. I've still got one. I don't know if it works.

Daniel Konstantinovic:

Nice.

Bill Fisher:

It's gathering dust. Anyway, that's it for today's main story. Evelyn and Danny are going to stick around for the second half though to help me out with In Other News.

Okay, we have two stories for you now, and here is story number one. Meta has confirmed that it will allow European users of its social media platforms to turn off the algorithm rights, Natasha Lomas for TechCrunch. This is so that the platforms adhere to strict rule changes brought in late last month as part of the rebooted Digital Services Act. And it follows hot on the heels of TikTok making a similar announcement just a few weeks prior. So Evelyn, non-algorithmic feeds, the most interesting sentence in this article is what and why?

Evelyn Mitchell-Wolf:

I found the most interesting sentence to be "How long Meta will be able to sustain a situation where it is visibly offering less autonomy to users in major markets like the US and UK versus the EU remains to be seen." I mean, the interesting part of that speaks for itself. You can kind of mull on that for a while. And I'm certainly curious. Speaking from the US perspective, it would not surprise me if American Facebook and Instagram users aren't paying close enough attention to know that their European counterparts are now allowed more choice in what content they see and how that content is served to them.

If this were happening eight, nine years ago when Instagram originally phased out its chronological feed, there would probably be an uproar, but now I could see it taking at least a few more years for the US to catch up. And I think any regulation that forces the change here in the US will be tied to AI rather than privacy.

Bill Fisher:

Okay. Danny, what stood out for you in this article and why?

Daniel Konstantinovic:

For me, it was "The ad tech giant is also clearly hoping to persuade EU users not to flick the AI off switch by doubling down on transparency measures and providing what it claims is an unprecedented level of insight into how our AI systems rank content." I think Meta is being forced to make these changes in order to adhere with these big policy changes in the EU, but it's very unlikely that they're just going to go, "Okay, we're going to comply and you can flip it off if you want." They're definitely going to do everything in their power to keep users in these systems. So the way that it goes about doing that, and if it goes about doing that without tripping alarms in some kind of way-

Evelyn Mitchell-Wolf:

Dark patterns.

Daniel Konstantinovic:

... will be an interesting one to watch. Yeah, dark patterns. Exactly. I foresee the headline already that something like that is going to happen.

Evelyn Mitchell-Wolf:

Yeah, dark patterns are an interesting area. I mean, I can also really see them becoming a central issue here as things unfold. Dark patterns aren't explicitly mentioned in the GDPR or anything, but they are mentioned in several US state privacy laws and there's momentum behind discourse around dark patterns. I'm really interested to see whether that comes into play in this particular conversation as well.

Bill Fisher:

Interesting. I have a real quick anecdote about this, so a Gen Z anecdote. I've got two young sons who fall into that categorization. Normally when I talk to them about work, they just switch straight off. But when I mention TikTok, they listen because they're both on it. When I told them about this change, that TikTok was going to give them the opportunity to turn off the algorithm, what do you think their first response was?

Evelyn Mitchell-Wolf:

Oh no!

Daniel Konstantinovic:

I'm going to take a guess. Yes, exactly. That's what I was going to say. They probably don't want it, right?

Bill Fisher:

Exactly. They said, "Why? Why would I turn it off? It's doing things for me. It's giving me what I want to see." So is this a big deal. I don't know if it's such a big deal. Well-

Daniel Konstantinovic:

Yeah.

Evelyn Mitchell-Wolf:

Well, anyone who was around for the chronological Instagram feed, I certainly miss the days when I could scroll through my Instagram feed and then there was a little symbol that said, "Okay, you're all caught up." And I said, "Okay, I'm going to stop now." But obviously, that's not in Instagram or Meta's or TikTok's or anybody's best interest if they own a social platform. But in terms of the generational divide, there might be significantly more uptake or adoption of that AI Ops switch among older cohorts who experienced the way things used to be.

Bill Fisher:

Absolutely. It's a whole different world.

Daniel Konstantinovic:

I think there's a different perception for sure between the way that TikTok handles recommended content and the way that something like Instagram does. I mean, you've seen the huge backlash in the last year or two against Instagram for pushing so much video content to the feed, increasing ad load. And I think people generally feel like the changes on Instagram are there in the service of showing you more ads. Whereas on TikTok, people like the for you algorithm and the for you page.

There's this sense of training your algorithm to show its stuff you want it to show you, almost like it's a game. And I think people like what they're being served on TikTok a lot of time. So I agree. At least depending on the platform, I think a lot of users are going to be like, "Why would I want to turn off features that are showing me things that I like?"

Evelyn Mitchell-Wolf:

Oh, I just want my and my husband's feeds to be different. We keep sending each other the same videos these days, so I would turn it off if I could.

Bill Fisher:

Okay. Enough on algorithms, let's get onto story two. Google is in trouble with the regulators again, this time for violating kids' privacy on YouTube. According to a study from Adalytics and reported on by the New York Times, ads placed around some made for kids YouTube content are taking children offsite and dropping trackers on them potentially violating federal laws. The study also found several YouTube ads around this made for kids content contained violent content.

Google responded by saying it was changing its classifications on violent content, so that deals with that. But it said it was fully compliant with regards to tracking and consent. Danny, you've covered this a lot in the briefing. What's the most interesting sentence in this article for you and why?

Daniel Konstantinovic:

For me, it's "When a viewer who was not signed into YouTube clicks the ads in some of the children's channels on the site, there were taken to brand websites that placed trackers from Amazon, Meta, Google, Microsoft, and others on users' browsers." So like you said, the implication is that you can track a child's movement across the internet from a YouTube for kids video in a way that possibly violates a 2019 agreement with the FTC, but definitely goes against what YouTube says its own policies about children's content are.

I think something that's really interesting about this story is the response from YouTube. We've had these independent industry watchdog groups like Fairplay, which is a children's rights group on the internet, and Adalytics, which is a very interesting force in the industry, I guess you could say. I'm fascinated by Adalytics. But they keep coming out with these very thorough, very detailed reports that show pretty convincingly that, yes, these things are happening on YouTube and these rules that YouTube has are not being followed. Then the response from YouTube is, "That's not true." That's really what it amounts to.

Evelyn Mitchell-Wolf:

That's inaccurate.

Daniel Konstantinovic:

Yeah, that's inaccurate. Everything that Adalytics puts out, they put out several reports about faulty systems on YouTube, YouTube's response has been like, "Well, that's grossly inaccurate." If you're an advertiser and you're looking at that, I mean, first of all, do you really have the option to not advertise on the biggest video platform on the internet? But on the other hand, you also have... This is a huge problem on one side of the scale and here's all the evidence for it, versus, no, it isn't on the other side. I don't think YouTube's messaging has been very convincing or comforting to advertisers who are concerned about this.

Bill Fisher:

I would agree. Evelyn, I know you're itching to talk about this topic. What stood out for you?

Evelyn Mitchell-Wolf:

The quote I picked out is that "Google said it did not notify advertisers or tracking services whether a viewer coming from YouTube had watched a children's video, only that the user had watched YouTube and clicked on the ad." In this case, even if YouTube itself didn't violate COPPA or its 2019 agreement with the FTC, it still put advertisers at risk of unintentionally

collecting and using children's data. And when it comes to data governance, everything has to be intentional, right?

In all of the coverage of this issue, it doesn't appear that there is an easy and reliable way to configure campaigns to avoid made for kids content altogether. So if YouTube is unwilling or unable to provide such a blanket solution and an advertiser wants to dot its Is and cross its Ts when it comes to COPPA compliant data collection practices, one of two things would need to happen. Either YouTube would have to notify advertisers when a clickthrough originates on made for kids content and somehow stop the data collection process in real time or within a window that allows the advertiser to regularly cleanse their data, or advertisers collect zero personal information from traffic generated by YouTube campaigns, full stop.

Neither of those situations is ideal, right? And Google was spot on when it says that these data collection practices aren't unique to YouTube, that personal information is gathered when an ad is clicked on any website. I think it underscores the issues that arise when all internet users are opted into being tracked by default. But a certain subset of internet users receives additional legal protection. That's really, really challenging to operate in compliance with all of these different and competing traditional ways of doing things and legal implications. There's just a lot going on and advertisers are caught between a rock and a hard place, really.

Bill Fisher:

There sure are. And COPPA, you mentioned a couple of times there, that's the Children's Online Privacy Protection Act, right? So that's that?

Evelyn Mitchell-Wolf:

Yes.

Bill Fisher:

Perfect. Awesome. Okay, that's all we have time for today. Thank you for joining me, Evelyn.

Evelyn Mitchell-Wolf:

Thank you, Bill.

Bill Fisher:

And thank you as well, Danny.

Daniel Konstantinovic:

Thank you, Bill. It's great to finally get a chance to chat.

Bill Fisher:

We were all witness to a magical moment. Thanks to Victoria who edits the show, James who copy edits it, Stuart who runs the team, big thanks to Marcus for asking me to do his work for him. And thanks to you for listening in to Behind The Numbers Daily, an eMarketer podcast made possible by Awin. See you all tomorrow for the Reimagining Retail Show hosted by Sarah Libo.