GDPR: Key concepts & data supply chain management

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Agenda

1. Introduction
2. GDPR update
3. Personal data and actors of the GDPR
4. Vendor obligations
5. Contractual requirements
6. How to make it work
7. Q&A
Key development since May 25th

• National implementations of the GDPR have been introduced

• First enforcement notice issued in the UK against analytics company
  • Facebook currently under investigation by Irish DPC following recent data breach.

• Pressure on companies to sign data processing agreements sometimes.
  with unlimited liability – Traditionally capped at 2x, 3x or 4x contract value.

• Class actions filed on May 25th against a number of social media companies by NGO noyb.eu collectively worth €3.9 billion.
  • Many consumer rights groups rallying against companies in class action.
  • Cannot insure against GDPR fines in the EU except in Norway & Finland.
Ethics is the sense we all have, often subconscious, of right and wrong in different circumstances.

We do not yet have consensus in Europe as regards what Digital Ethics is.

Technology used to be driven by humans for humans. But how do we manage ethics when machines start determining what is built, consumed or seen?

And our leisure time also is spent on what machines determine we should see. Autoplay and recommendations – automated, algorithmic decisions – are responsible for 70% of online video viewing.

Europe is developing a standard on digital ethics and AI.
Who is being sued and investigated?

Max Schrems & NOYB.EU

Google

Facebook

Coimisiún Cosanta Sonraí
Data Protection Commission

ICO
Information Commissioner’s Office
Foundations of the claims

• Privacy à la “take it or leave it”?
• GDPR prohibits “Bundling” of consent
• Separation of necessary & unnecessary data usage.
• Important for SMEs. Usually cannot force their customers to agree to policies - other than big online monopolies

<table>
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<tr>
<th>Company</th>
<th>Authority</th>
<th>Maximum Penalty</th>
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<tbody>
<tr>
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<td>CNIL (France)</td>
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<td>Facebook</td>
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HUGE FINES

Non-compliance puts companies at risk of being fined 4% of annual global turnover or €20 million whichever is greater.

DATA SUPPLY CHAIN

Liable for entire data supply chain
- Struck off approved vendor list

TERRITORIAL SCOPE

GDPR applies when you target EU residents with products or services or monitor their behaviour.
i.e. Global impact
It wasn’t me!

WASN'T ME
Understanding “personal data” (not PII)

What is personal data? – Breyer Case

Any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier etc..

What is personal data processing?

Any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;
Understanding Controllers v Processors

**Controller:** determines the means and purpose of the processing. May only use processors that offer “sufficient guarantees”

**Processor:** processes data on behalf of the controller (must be governed by a contract in accordance with article 28 GDPR)

**Joint-controller:** two controllers who together determine the means and processing of the data. Relevant in practice when a processor acts outside of the written instructions.

**Sub-processor:** relationship must echo the terms in the contract between the controller and processor. May only be engaged with prior written permission from the controller.
Processor obligations and operational challenges

As a vendor you would usually be a data processor and will be asked to sign a DPA.

Article 28 (1) GDPR. [...] the controller shall use only processors providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that processing will meet the requirements of this Regulation and ensure the protection of the rights of the data subject.
What goes into the contract?

1. The subject-matter and **duration** of the processing, the nature and purpose of the processing, the type of personal data and categories of data subjects and the obligations and rights of the controller.

2. Instructions from the controller

3. Instructions as regards transfers of personal data **outside of the EU**

4. Rules regarding access controls & confidentiality agreements

5. **Ensure adequate levels of security (article 32 GDPR)**

6. Not engage sub-processors unless prior consent from the controller is obtained
What else?

7. Assist the controller with executing data subject rights

8. Assist with data protection impact assessments

9. At the end of the provision of services the processor must delete or return all personal data.

10. Make available any documentation that will aid the controller in demonstrating compliance with the regulation. (Accountability!!)
How to manage all of this?

**People:** who is responsible?

**Process:** View vendor management as a lifecycle. Think of the ability to audit as well as ensuring procurement and legal are aware of what is required.

**Technology:** Compile and maintain a complete inventory of vendors and vendor contracts.

**KPIs:** GDPR is about accountability and demonstrating your compliance journey. This means keeping documentation which demonstrates compliance with GDPR.
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Because privacy matters
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