



Privacy First Marketing Solutions
A Legal Overview

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Agenda

- Legal Framework
The basics
- Privacy First Solutions
How to think compliant
- Q&A

Legal Framework

The basics



Data Protection Authority



Competition, consumer rights
and telecommunication



MORE SPECIFIC



GDPR

Processing of personal data



7 key principles

- Lawfulness, fairness and transparency
- Purpose limitation
- Data minimisation
- Accuracy
- Storage limitation
- Integrity and confidentiality
- Accountability

GDPR Legal Basis



Consent



Vital interests



Legitimate interest



Legal obligation



Performance of a contract



Public interests

GDPR Legal Basis



Consent



Legitimate interest



Performance of a contract



- Free, Freely given
- Informed
- Unambiguous
- Specific
- Prove (accountability)
- Withdrawable (as easy as giving consent)
- Withdrawal of consent or not giving consent may not have negative consequences

Consent

Valid consent in the GDPR:

“Consent should be given by a **clear affirmative act** establishing a **freely given, specific, informed** and **unambiguous** indication of the data subject’s agreement to the processing of personal data relating to him or her, such as by a written statement, including by electronic means, or an oral statement.



1. Acceptable under law, sufficiently clearly articulated, represent a real interest
2. Necessary for the purposes of legitimate interests
3. Balance of interests

Legitimate interest

Interest of the organisation

- Proportionality
- Subsidiarity

Impact on the privacy of the data subject

- Appropriate safeguards
- The expectation of the data subject
- Transparency

GDPR Legal Basis



Consent

Versus



Legitimate interest

- Specific
- Can be uncertain
- Limits further processing

- Flexible
- Right to object
- Can be complex

Information = key

Starting point: provide information at the same moment you're collecting the personal data

- **Collection of (first party) data for analytics**

Cookiebanner, Cookie statement, Privacy statement

- **Building profiles**

Privacy statement

- **Usage for marketing purposes**

Privacy statement or at a fill-in form

Right to be informed:

What information do you need to provide the data subject?

- Which legal basis
- Data retention periods (or at least how you determine them)
- (if) Legitimate interest, which interest does your organisation have
- (if) Contact details of the DPO
- (categories of) Third Parties
- Third Countries
- Extra rights
- Right to withdraw consent
- Right to complain
- Obligation to provide information for the performance of a contract
- Automatic personal data processing
- Source of the data
- Identity data controller
- Purpose of processing
- Right on access and rectification
- Right to object and erasure

ePrivacy Directive

Cookies & similar techniques



Definition of cookies

Article 5 paragraph 3:

“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...”



- Free, Freely given
- Informed
- Unambiguous
- Specific
- Prove (accountability)
- Withdrawable (as easy as giving consent)
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Main rule: consent and providing information

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Exception:

“This shall not prevent any technical storage or access for the sole purpose of carrying out the transmission of a communication over an electronic communications network, or **as strictly necessary** in order for the provider of an information society service explicitly requested by the subscriber or user **to provide the service.**”

> Necessary and functional cookies

Exception:

In some member states, no consent is needed:

“Legitimate Interest if the cookies are intended to measure the **effectiveness** of a service (like a website). But only if the processing has **little or no impact** on the data subject.”

> Analytical & Affiliate cookies

Privacy First Solutions

How to think compliant



Privacy First Solutions

- Google
 - Consent Mode
 - Enhanced Conversions
 - Topics/Fledge
 - Server Side Tagging
- Meta
 - Conversions API
- First Party Data
 - Customer Matching (Cleanrooms)
- Contextual advertising
- And many more!



FAQ's

- Do I need to inform about using this tooling?
- How do I inform about using this tooling?
- Can i use this tooling without consent?
- Is this tooling in line with GDPR?
- Is this tooling really privacy friendly?
- Are there any settings we need to adjust to be compliant?
- If we only send hashed data, we're good?
- Can third parties access our data?



Legal Talk-serie: Tech in een privacy-first wereld

Al enige tijd zien we in het marketinglandschap een verschuiving plaatsvinden naar een méér 'privacy-first wereld'. Alternatieve technische oplossingen schieten als paddenstoelen uit de grond. Maar zijn deze oplossingen wel écht privacy-first én voldoen ze aan wet- en regelgeving? In deze serie Legal Talks over Tech in een privacy-first wereld geven we antwoord op die vragen vanuit juridisch én technisch perspectief.

6 STEPS

1. Is there personal data being processed?
2. What is my role?
3. On which legal basis?
4. How do you inform?
5. How do you provide the possibility to object?
6.  **Balance of interests** 

6 STEPS

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4 STEP TEST:

1. Any information
2. Natural person
3. Relating to
4. An identified or identifiable

What is personal data?

Definition 'personal data' in the GDPR:

“any information relating to an identified or identifiable natural person

- 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

or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;”

Ping – Consent Mode

Functional information (such as headers added passively by the browser):

- Timestamp
- User agent (web only)
- Referrer

Depending on which settings:

- Location (on IP-basis) on country-level



Aggregate/non-identifying information:

- An indication for whether or not the current page or a prior page in the user's navigation on the site included ad-click information in the URL (e.g., GCLID / DCLID)
- Boolean information about the consent state
- Random number generated on each page load
- Information about the consent platform used by the site owner (e.g., Developer ID)

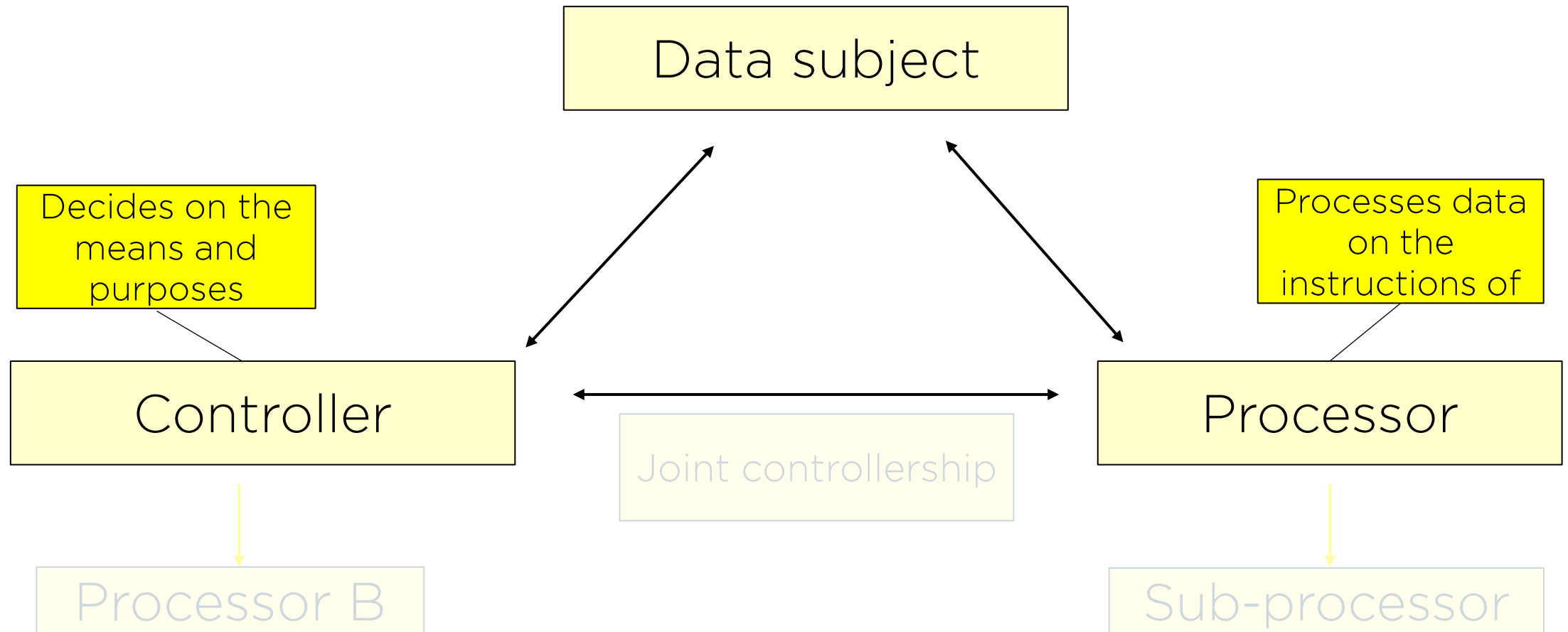
Hashing - sGTM

- Anonymization
 - Unable to single out an individual or decrypting
- Pseudonymization
 - Security measure to limit third party access
 - In theory: decryptable by other parties
- sGTM? The choice is yours

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GDPR Roles



What is my role

- Advertiser responsible

For first party data being collected and being send to a third party

- Third party responsible



For the personal data they collect themselves and use to model and build profiles

- Joint Controllership

?

- Processor responsible?

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GDPR Legal Basis



Consent





Legitimate interest



Performance of a contract

6 STEPS



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6 STEPS



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5. How do you provide the possibility to object?
6.  **Balance of interests** 

Possibility to object (opt-out)

Provide the possibility to object

- At the same moment you collect the data
- Also at a later moment

6 STEPS

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6.  **Balance of interests** 

What to do?

Takeaways

1. Check the cookiebanner at your data points (on consent and information)
2. Check the privacy and cookie statement
3. Get a lawyer involved from the start, who can think along with the campaign your planning
4. If you are responsible: use tracking measurement plan
5. Start to ask: what (personal) data do we really need?
6. Stay up to date on tools you use for your campaigns

Questions?

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