Privacy First Marketing Solutions
A Legal Overview
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

Autoriteit Consument & Markt

Competition, consumer rights and telecommunication

GDPR Privacy
Personal data

ePrivacy Directive Marketingchannels
Cookies & similar techniques
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
- Legitimate interest
- Performance of a contract
- Vital interests
- Legal obligation
- Public interests
GDPR Legal Basis

- Consent
- Legitimate interest
- Performance of a contract
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.
Legitimate interest

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

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
  Cookie banner, 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...”
Main rule: consent and providing information

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“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.
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

- Contextual advertising

- Meta
  - Conversions API

- First Party Data
  - Customer Matching (Cleanrooms)

- 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

Controller
- Decides on the means and purposes

Data subject

Processor
- Processes data on the instructions of

Joint controllership

Processor B

Sub-processor
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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4. How do you inform?
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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4. How do you inform?
5. How do you provide the possibility to object?
6. **Balance of interests**
What to do?
Takeaways

1. Check the cookie banner 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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