

# Shifting to first party data and techniques



# Shifting to first party data and techniques: all the latest legal tips and tricks

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DDMA



## What is DDMA?

- DDMA = Data-Driven Marketing Association
- Non-profit knowledge platform based in Amsterdam
- Representing the data and marketing sector in the Netherlands
- With knowledge sharing, professionalization and self-regulation we bring the sector to a higher level



## Agenda

1. Shift to 'privacy first'
2. Legal tips & tricks
3. Q&A



DDMA



WOW YOU SOU YOU BABY PROD COUPONS. WITH DAUGHTER'S HIGH SCHOOL AGE!

WOW YOU YOU! MY DAUGHTER'S HIGH SCHOOL AGE!

YOU BOUWER'S WITH HIGH SCHOOL AGE!

TARGET BABY PRODUCTS 25 OFF

HOW YU KNOW BABY TARGET PREDICTION.?

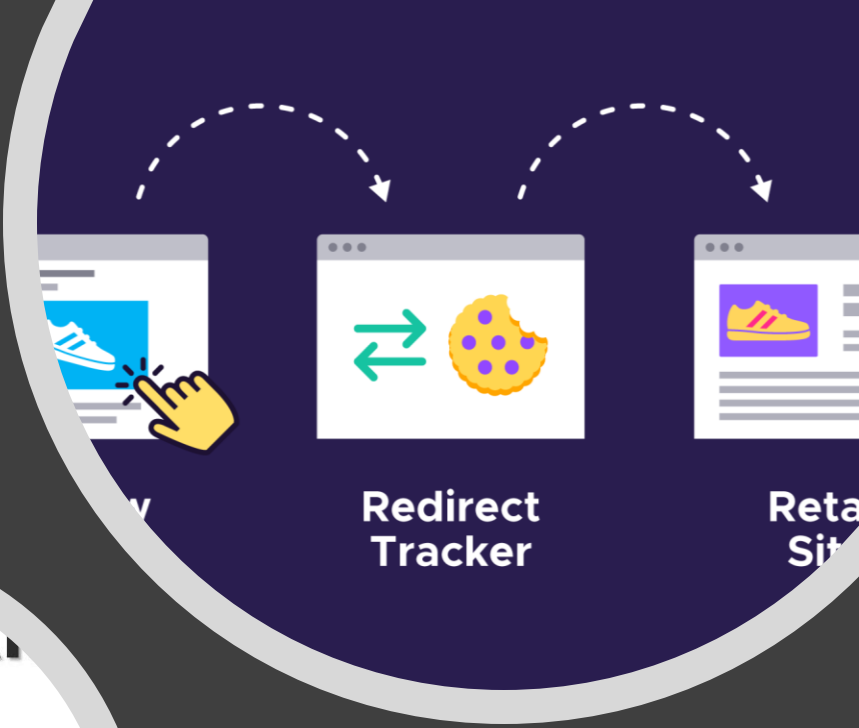
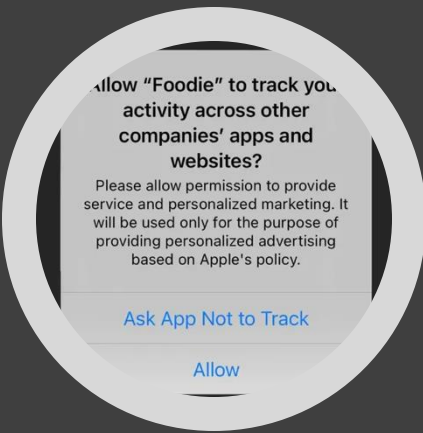
...SHONT MIXING BABY PRODUCTS WITH LAWN MOWERS.

TARGET MARKETING HIDDEN PREGNANCY

...YOU'S MIXING... BIXEY BABY PRODUCT DUCTS, WITH LAWN MOWERS.

# Fast forward to 2024...

- Higher privacy expectations from consumers
- Tracking prevention (e.g. 3PCD, ITP/ETP)
  - See: <https://www.cookiestatus.com/>
- Meta & Google: removal of sensitive targeting options (DSA)
- Consent Mode V2 (DMA)



### Big Tech's Shift to Privacy

the technology sector's recent public expressions of privacy initiatives





Facebook	Microsoft	Apple	Google
<ul style="list-style-type: none"> <li>Shift from public one-to-many communications to private one-to-one messaging.</li> <li>Six principles: private interactions, encryption, reduced permanence, safety, interoperability, secure data storage.</li> <li>"Simpler platform ... focused on privacy" — specifically, encrypted services.</li> <li>Reducing permanence: "[W]e won't keep messages or stories around for longer than is necessary to deliver the service or longer than people want them."</li> </ul>	<ul style="list-style-type: none"> <li>"Privacy is a fundamental human right."</li> <li>Six principles: control, transparency, security, strong legal protections, no content-based targeting, benefits to you.</li> <li>Commitment to transparency, providing "meaningful choices" and user "control", for example:                             <ul style="list-style-type: none"> <li>Categorizing data as "required" or "optional" and presenting relevant choices for the collection of each to a user.</li> <li>Product documentation that explains why "required" data is necessary.</li> <li>Biannual data collection report with emphasis on explanation of data collection practices.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>"Privacy is a fundamental human right."</li> <li>On-device processing and broad use of encryption.</li> <li>Emphasis on strict privacy guidelines for developers and user-controlled permissions; enforcement within the App Store.</li> <li>Machine learning to limit third-party cookie tracking in Safari browser.</li> <li>Differential privacy.</li> <li>"Sign In with Apple" allows for third-party sign-in without revealing user's email address.</li> </ul>	<ul style="list-style-type: none"> <li>Easy access to user controls and incognito mode.</li> <li>Centralized "Google Account" to access data stored and saved.</li> <li>Quick access to sharing settings from most apps/services.</li> <li>User-controlled auto-deletion.</li> <li>Emphasis on federated learning to train algorithms and on-device processing.</li> <li>Differential privacy, including open-source TensorFlow Privacy library.</li> <li>Make two-factor authentication more accessible.</li> <li>Commitment not to sell personal</li> </ul>









## 3PC alternative techniques















### Collection

-  CDP
-  sGTM
-  Conversions API
-  Lead gen form

### Analysis

-  Consent Mode
-  Enhanced Conversions
-  SKAdNetwork
-  GA4

### Activation

-  First Party Data
  -  Confidential Matching
  -  Custom Audiences
  -  DPG CRM Matching
  -  Liveramp ID
  -  Data Cleanroom
-  Topics API
-  Protected Audiences API
-  First Party Sets API
-  ID Matching
-  Contextual advertising
-  Lookalike audiences
-  Performance Max
-  Advantage+

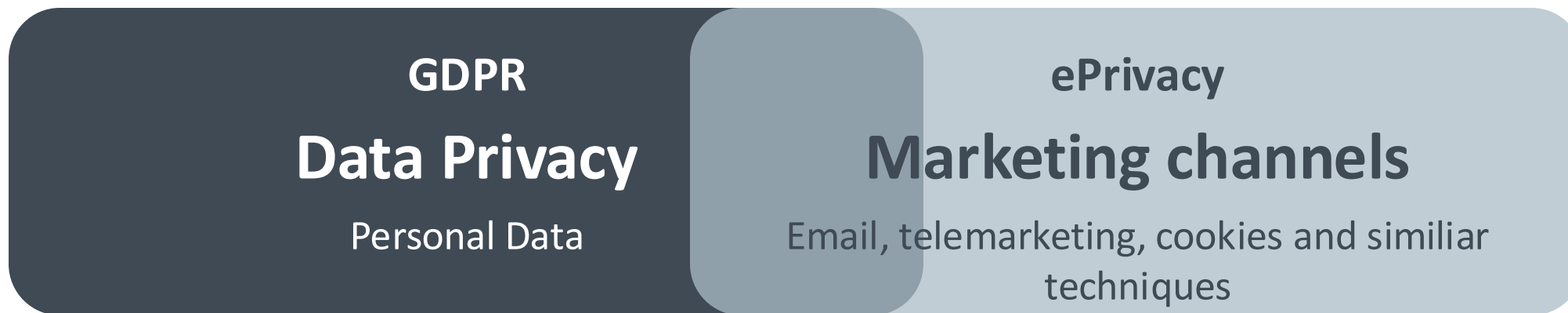


# Legal tips and tricks

## When using first-party data



## Legal Framework



MORE SPECIFIC





#### 4 STEP TEST:

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

# GDPR 101: 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;’ ... account should be taken of all the means reasonably likely to be used, such **as singling out...**”

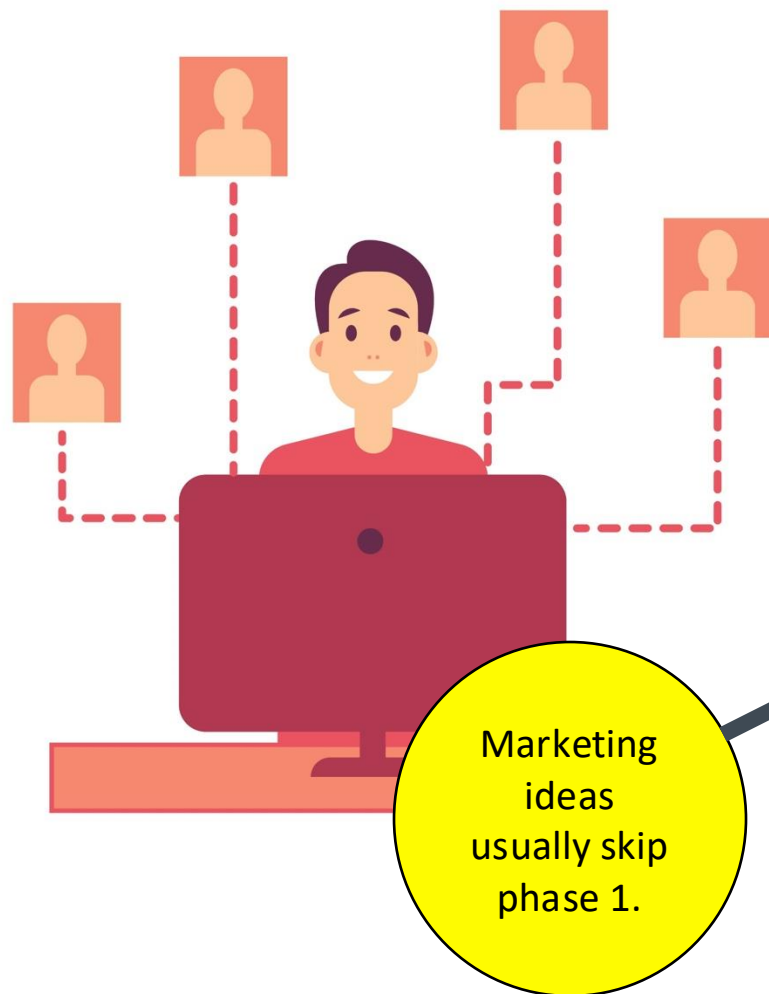
# FIRST PARTY DATA - 6 STEPS FRAMEWORK

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. 

# Today: top three most crucial legal tips!

**No. 3:** Figure out your **purpose** beforehand





## First party data in 3 phases

1. Data collection
2. Building customer profiles
3. Utilizing profiles/data for marketing and analytics purposes

Why is that an issue?

Why is that an issue?

Legal assessment starts here!

Phase 1: Data collection

GDPR

ePrivacy / cookie rule

Website

- cookie id's
- page views and visit duration
- bounce rates etc.
- conversion events
- a/b test results

App

- app usage and metrics
- crash reports and technical logs

Advertising data

- Ad impressions and click-through rates
- Conversion rates from ads
- Audience targeting parameters

Email

- open rates and click-through rates
- unsubscribe and bounce rates

CRM

- Customer and leads profiles (email etc.)
- (in store) Purchases history and value
- Customer service interaction
- Return ratio

User accounts

- Registration information

... chatbot interaction, surveys, loyalty programs, cms (forms)...

common data sources

Customer Data Platform (and/or other tools)

Phase 2 and 3: Data usage

Analytics, measurement and activation or personalisation

**Cookies used by NS**

You can adjust your cookie preferences below. Functional cookies are always active to ensure that the website or app functions properly; for other types, you can choose whether we can save cookies or not.

[More information](#)

**Allow All**

**Manage Consent Preferences**

A functionally good and secure website or app **Always Active** >

Analysing and testing our websites and apps to improve their quality and effectiveness  >

Personalisation and relevant information in NS e-mails, websites and/or apps  >

Personalisation and relevant information in the NS websites and/or apps and elsewhere  >

**Reject All** **Confirm My Choices**

## Purpose limitation and data minimisation

Personal data must:

- Be collected for **specific, explicitly defined, and legitimate purposes** and not be further processed in a manner incompatible with those purposes;
- Be adequate, relevant, and **limited to what is necessary for the purposes** for which they are processed.

**One escape:** the ‘new purpose’ is compatible with the ‘original purpose’!

👉 Think carefully before you start collecting data.



# Today: top three most crucial legal tips!

**No. 2:** Choose the appropriate **legal basis**

**No. 3:** Figure out your **purpose** beforehand



# GDPR Legal basis (for marketing)



Consent



## Consent must

1. 🍷 Free, Freely given
2. 📖 Informed
3. ✅ Unambiguous
4. 🔍 Specific
5. 📄 Prove (accountability)
6. 🔄 Withdrawable (as easy as giving consent)

7. 😊🚫 Withdrawal of consent or not giving consent may not have negative consequences



Legitimate interest



**Legitimate interest: see next slide!**



Performance of a contract



**Contract:** Personal data must be

- **'objectively indispensable'** for a purpose that's a...
- **'integral part of the main subject matter of the contract'**

Meta cannot rely on this for combining of datasources (for personalisation).



### 1. Legitimacy test

Is the pursued legitimate interest illegal?



### 2. Necessity test

Is the processing **necessary** for the legitimate interest?



### 3. Balancing test

Do the individual's interests override the legitimate interest?

# Legitimate interest

Interest of organisation

- Proportionality
- Subsidiarity

Privacy interest of the data subject

- Additional safeguards?
- Data subject's expectation
- Transparency



## Definition of 'cookies'

*"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..."*

### 👍 Does this apply?

Consent is required, unless:

1. Analytics (in NL!!)
2. Strictly required / technical

### EDPB - also applies to:

- (e-mail) pixels
- Customer id's
- ...

# Dutch DPA about cookiebanners

- Place different options on the same layer;
- Do not hide certain options;
- Do not require someone to click extra;
- Do not use an inconspicuous link in the text;
- Do not check boxes by default.

**Cookies op example.nl**

[...]

Accepteren Naar instellingen

**Cookies op example.nl**

Accepteren Weigeren

**Cookies op example.nl**

Wij gebruiken cookies (en daarmee vergelijkbare technieken) om de website te verbeteren en om gepersonaliseerde inhoud en advertenties aan te bieden.

Met deze cookies verzamelen wij en [onze partners](#) informatie over jou en volgen we jouw internetgedrag binnen, en mogelijk ook buiten onze website. Wij bouwen zo jouw persoonlijke profiel op. Hiermee passen wij onze website en communicatie aan op jouw voorkeuren. Ook kunnen we zo gerichte advertenties laten zien op basis van jouw recente internetgedrag.

Lees hierover meer in ons [privacybeleid](#) en [cookiebeleid](#).  
[Klik hier om te weigeren](#)

Accepteren

**Cookies op example.nl**

Accepteren

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Weigeren

**Cookies op example.nl**

[...]

Weet je zeker dat je wilt weigeren?

Ja Annuleren

Accepteren Weigeren

# Two options to collect first party data and build profiles

## Opt-in: consent

**bol.**

**Jouw privacyvoorkeuren**

Om bol.com goed te laten werken, gebruiken we altijd functionele en analytische cookies en vergelijkbare technieken. Je kunt kiezen voor **je eigen bol.com** met persoonlijke aanbevelingen en advertenties, zodat we beter op jouw interesses aansluiten. Ook in nieuwsbrieven en notificaties als je die krijgt. Verder kun je kiezen voor **persoonlijke advertenties buiten bol.com**.

In beide gevallen bepalen we je interesses. **Hiervoor voegen we info uit je bestellingen samen met je favorieten, algemene klantinfo en gegevens van anderen als je ze hier toestemming voor hebt, gegeven.** Met cookies en vergelijkbare technieken verzamelen we ook je bol.com surfgedrag. Doen we natuurlijk niet als je tracking of cookies uit hebt gezet op je toestel of in je browser.

De persoonlijke advertenties buiten bol.com kun je zien bij onze partners **doordat we versleutelde gegevens** delen en cookies en vergelijkbare technieken gebruiken. **Zie ook ons privacybeleid en cookiebeleid.** Vind je deze twee persoonlijke ervaringen binnen en buiten bol.com oké, kies dan voor 'Alles accepteren'. Zelf instellen kan ook. Kies je voor weigeren, dan plaatsen we alleen functionele en analytische cookies. Achteraf aanpassen kan altijd, bij ons [privacybeleid](#).

**Most important slide!**

## Opt-out: legitimate interest

Yes, I would like to stay informed with fun inspiration from X via email.

## Privacy and unsubscribe

Your personal data will be processed confidentially, you can read more about it in the privacy policy. **We also use your (encrypted) email address to show you relevant ads with media partners. You can unsubscribe from this at any time.**

👉 "Ok" according to guidelines of the EDPB

# Today: top three most crucial legal tips!

**No. 1: Ethical deliberation**

**No. 2: Choose the appropriate legal basis**

**No. 3: Figure out your purpose beforehand**







## ❓ The importance of the ethical deliberation ❓

*“If trust in an organisation is in order, relevance of the requested data and transparency from the organisation are essential before consumers are willing to share data.”*

(DDMA Privacy Monitor)

## ❓ The importance of the ethical deliberation ❓

*“When using AI for personalization there’s a **fine line between delivering results that are useful, and those that border on creepy**. For example, there are several documented campaigns where emails have been sent to congratulate women on their pregnancies when there **was no way the organization should have known** — in some cases, the women didn’t know themselves. Here, AI personalization has gone too far because the data has been used in a way that feels intrusive.”*

(Bloomreach)

## 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. **☐The ethical deliberation ☐**

## Take aways

- It's not just about the rules; customer expectation and ethics are equally important
- Always start with defining your purpose before collection data (e.g. analytics, ads, personalisation)
- Cookie rules also apply to more than just cookies; meaning consent is often required (but there are expectations...)

# Questions?



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