



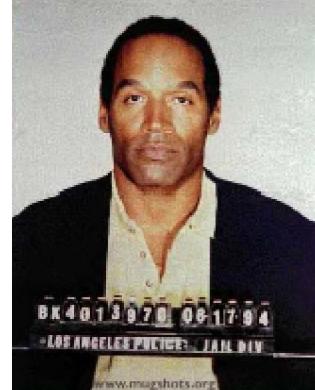
Ready, steady, Regulation!

How will the new
Data Protection Regulation
affect your marketing?

Rosemary Smith



Remember 1995?



Apple looked like
this...



Check out my mobile!



This guy was just 11

Regulation not Directive



6 “New” Principles

- lawfulness, fairness and ***transparency***
- purpose limitation
- data minimisation
- accuracy
- storage limitation
- integrity and confidentiality (security)



Definitions of Personal Data & Data Subject

of communication and connection
The degree of clarity with which a televised message
broadcast signal is received

def·i·ni·tion n. 1.
The teacher gave definitions of the new words.
of an image (picture)
as seen in series

'Personal data' means 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 or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;**

Are these personal data?

A screenshot of a Google search results page. The search query "what's my ip" is entered in the search bar. Below the search bar, there are navigation links for "All", "Shopping", "News", "Apps", "Videos", "More", and "Search tools". A message indicates "About 252,000,000 results (0.25 seconds)". The main result is a large box containing the text "87.83.45.140" and "Your public IP address".



JID: [REDACTED]@gmail.com/
android3feda87978a6
Device ID: android-20013fea6bcc820c
Session: open
Connected: true
Connection state: ONLINE
connection error: NO ERROR
Presence: INVISIBLE
Intended presence: INVISIBLE

A red arrow points to the "Device ID" line in the log output.

GDPR Enforcement and Penalties

- Fines up to €20 million or 4% of annual worldwide turnover
- Co-operation and consistency between supervisory authorities



It was all going so well...





BREXIT

The global scope of the GDPR

GDPR will apply to organisations which have EU “establishments”, where personal data are processed “in the context of the activities” of an establishment.

Applies irrespective of whether the actual data processing takes place in the EU or not.



Begin prep w, make a plan



Practical Step 1

Definition of Consent

The degree of clarity in which a televised image broadcast signal is rec...
def.i.ni.tion n. 1.
The teacher gave de...
of the new words.
of an image (picture)
as next screen

After

'Consent' of the data subject means any freely given, specific, informed and **unambiguous** indication of the data subject's wishes by which he or she, by a statement or by **a clear affirmative action**, signifies agreement to the processing of personal data relating to him or her;

Consent for marketing

- Cannot be pre-ticked
- Cannot be conditional
- Cannot be delivered by silence or inactivity
- Must be provable



What about existing data - will I still be able to use it?

(171) Directive 95/46/EC should be repealed by this Regulation. Processing already under way on the date of application of this Regulation should be brought into conformity with this Regulation within the period of two years after which this Regulation enters into force.

Where processing is based on consent pursuant to Directive 95/46/EC, it is not necessary for the data subject to give his or her consent again if the manner in which the consent has been given is in line with the conditions of this Regulation, so as to allow the controller to continue such processing after the date of application of this Regulation. Commission decisions adopted and authorisations by supervisory authorities based on Directive 95/46/EC remain in force until amended, replaced or repealed.



Practical Step 2

Assess the impact 'opt-in'
would have on the database

Alternative to consent

‘Legitimate interests’

Legitimate interests can be used as grounds for processing provided that the interests of the data subject are not overriding; it must be *within the reasonable expectations of data subjects.*

May be used by a Data Controller and also third parties to whom data is disclosed.

For Direct Marketing

“The processing of personal data for *direct marketing purposes may be regarded as carried out for a legitimate interest*”

Recital 47

HURRAH
HURRAH



LEGIT.

Practical

Consider using legitimate
interests for Direct Mail and
telephone

Definition of Profiling

'Profiling' means any form of **automated processing of personal data** consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, ***in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements***

Not all profiling is equal

- Profiling with legal effects

“producing a decision which produces legal effects concerning him or her or similarly significantly affects him or her”

- Profiling for direct marketing





Check your profiling. Does it
need consent?

Practical Step 4

Other information to be provided when data is collected directly from individual

- Who is the Data Controller?
- Their contact details
- What are the purposes of processing?
- Are Legitimate Interests being relied upon by you or third parties?
- Who the recipients of the data may be
- If the data will be transferred outside the EU and how this is protected



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continued...

- How long will it be stored?
- How to exercise rights
- The right to withdraw consent
- The right to complain to the Supervisory Authority
- Whether data is required for contractual purposes and the consequences of refusing
- Whether profiling with legal effect exists



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And when data is obtained from other sources (e.g. list rental)

As for direct collection PLUS....

From which source the personal data originates and, if applicable, whether it came from publicly accessible sources.

An individual must be told

- Within a month or
 - When data is used to communicate or
 - If a further disclosure is made
- UNLESS**
- They already have the information
 - It would involve “disproportionate effort”

Practical Step 5



Get ready to be transparent

Rights to object



Data subjects have the right to object to direct marketing and to profiling.

These rights must be brought to the attention of data subject
“clearly and explicitly and separately from other information” at time of collection or in the first communication.

They also have the *right to have their data erased*

Can you retain data for suppression?

“the further retention of the data should be lawful where it is necessary, for exercising the right of freedom of expression and information, ***for compliance with a legal obligation***”



What happens if I forget I wanted to be forgotten?



Practical Step

Prepare to fulfill Data
Subject rights

Data is minimised after erasure request

I asked to be Erased [date]

I said stop DM Profiling me! [date]

I gave Parental consent [date/child's name]

I objected to processing under Legitimate Interests [date]

I consented to marketing by channel [date/wording]

I explicitly Consented to legal profiling [date]

I explicitly Consented to sensitive data processing [date]

This data is processed under LI

I've made 10 subject access requests this year

I objected to Direct Marketing by channel [date]

I gave general
third party
consent

I gave third
party consent by
sector

I've complained
to the Regulator

This data was
exported to
xxx on [date]

I've
complained
about
marketing

This data
was shared
with xxx on
xxx

I objected to third
party DM
by channel [date]



Make sure Practical Step 7 store proof of consent and multiple permissions

Data protection officers



A DPO is required if processing is ‘likely to result in a risk to data subjects’, involve large scale monitoring or sensitive data.

Public authorities and bodies are required to have a DPO.

Individual States can make their own rules



Practical Step

Consider whether you need
a DPO

Joint responsibility

Both controller and processor can be held responsible for compensation for any damage (material or non-material) suffered

Controller or processor shall be ***exempted if they can prove they are 'not in any way responsible'***

Detailed written contracts need to be in place. Sub-contractors must be notified to Controller and should be bound by same terms as main Processor.

Practical Step



Review Controller to
processor contracts

New ePrivacy Regulation

On 10 January 2017, the European Commission published its draft Regulation on Privacy and Electronic Communications: the e-Privacy Regulation.



Stronger privacy rules for electronic communications

The Commission has proposed a Regulation on Privacy and Electronic Communications to update current rules to technical developments and to adapt them to the General Data Protection Regulation that will enter into application in May 2018. The objective is to reinforce trust and security in the Digital Single Market.

VoIP and OTT services will be included



- The current ePrivacy Directive only applies to traditional telecoms operators and not to all the newer technology providers.
- The new ePrivacy Regulation will apply to internet-based voice and internet-messaging services, such as Skype, WhatsApp and Facebook Messenger [VoIP (Voice over Internet Protocol) or OTT (Over The Top) services]
- New rules for processing “electronic communications data”: except in very limited circumstances, the interception of electronic communications data (including content and metadata) will be prohibited without the consent of the end-user.

Simpler (?) rules on cookies

- Users must be given control of any privacy-sensitive information stored on their devices, without having to click on a banner asking for their consent on cookies each time they visit a website.
- Browser settings will offer an easy way to allow or refuse cookies: BUT browsers will not have to default to 'no cookies'.
- Analytics cookies (e.g. counting visitors) and non-privacy intrusive cookies e.g. to store items in a shopping basket will not require consent.
- Cookies and tracking for online ads remain lawful, but will be governed by clearer rules giving choices to users from the outset when enabling their settings.
- Requirement to revalidate cookie consent every 6 months - not clear how that will take place.

Stronger rules on marketing calls

EUROPEANS WANT MORE TRANSPARENCY ON DIRECT MARKETING



More than **61%** of Europeans say they receive too many unsolicited commercial calls.



59% would like commercial calls to be displayed with a special prefix.

- Data subjects will have to give permission before marketing messages are sent to them by email, SMS or automated calling machines. Permission will also be required for OTTs such as instant messaging and in-app notifications.
- **Soft opt-in will remain an acceptable way to gain permission although it may have more restrictions on usage.**
- People will have to give opt-in permission to receive marketing calls, unless national law gives them the right to object to such calls. Marketing callers will need to display their phone number or use a special pre-fix that indicates a marketing call.

Practical Step



Keep a close eye on the
e PRIVACY CHANGES



learn - apply - comply

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Welcome to the Data Protection Network! Here you will find the latest resources you need to build your knowledge of data protection and networks with like minded individuals in the UK and Europe. You will find

Opinion

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The screenshot shows the LinkedIn homepage with a search bar at the top. Below the search bar, there are navigation links: Home, Profile, My Network, Jobs, Interests, My Groups, and Discover. A prominent feature is the "Data Protection Community" group, which has 1,057 members. The group's profile picture is visible on the left.

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