

## Module 5

How to use personal data in a legal way in order to boost our marketing activities



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The logo features the word "Data" in a large, bold, blue sans-serif font. Above the letter "a" are five small, colorful stars (yellow, green, blue, red, and purple) arranged in a slight arc. To the left of the "a" are the letters "SME" in a smaller, blue, sans-serif font, with each letter in a separate colored box (S in blue, M in green, E in red).

# Web advertising

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## Obligation of transparency and information

- Essential information shall not be disseminated across several documents
- Clear and comprehensive information
- Specify what data to which third parties and do not transfer other data

## Obligation to have a legal basis for ads personalization processing

- Clear whether the legal basis is consent or legitimate interest
- Consent must be:
  - Informed (on all purposes of processing, on the consequences of rejection, of who might operate tracking etc.)
  - freely given (different consents for different operations, possibility to accept/reject);
  - specific (for the specific purpose)
  - unambiguous consent (no pre-ticked boxes)
- Do not place advertising cookies before consent is given

## Transfer of data to third parties

- Specify what data to which third parties
- Do not transfer other data



*Google EUR 50,000,000 fine*  
*Carrefour France EUR 2,250,000 fine*

# Targeting of social media users

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## Joint controllership and responsibility

- CJEU, C-40/17, Fashion ID
- CJEU, C-210/16, Wirtschaftsakademie
- Precisely define respective obligations, incl. as regards:

## Targeting on the basis of:

- Provided data
  - To the social media provider
  - To the targeter
- Observed data
- Inferred data



## Transparency

Clear phases and actors of the processing  
Further processing by one joint controller

## Right of access

- Re: the targeting, incl. targeting criteria
- Possible single point of contact

## Data Protection Impact Assessments

- Criteria
- If necessary, both joint controllers are responsible

## Protection of special categories of data

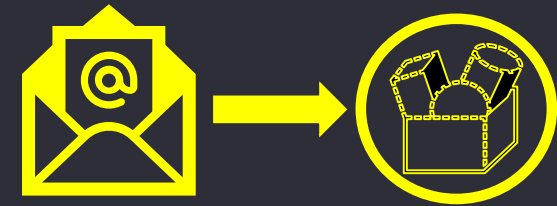
- Explicit
- Inferred or combined

# Email marketing

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## Unrestricted solicited marketing

- Valid consent required: informed, freely given, specific (distinctly given for each purpose) and unambiguous consent (no pre-ticked boxes)
  - CJEU, C-673/17, Planet 49
- Opt-in and (just as) easy opt-out
- Keep records of what the individual has consented to, when and how you got this consent; unsubscription
- Ensure your database is up-to-date
- Genuine market research and routine customer service messages are not direct marketing unless they:
  - include promotional material e.g. aimed at renewing contracts;
  - collect data to use in future marketing campaigns;



# Indirect data collection and use of data brokers

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- The data broker must be able to demonstrate that:
  - the data was obtained in compliance with GDPR;
  - the data can be used for advertising purposes;

If consent-based – consent for transmitting the data to third parties for their own direct marketing.

- the list is up-to date.
- Inform data subjects no later than your first communication that: (i) you have collected their personal data and (ii) you will be processing it for sending them advertising.



# Manage risks with marketing partners

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## Identify where joint controllership exists

- Joint controllership arrangement!
- You remain responsible
- An indemnity for breach of contract would not repair your reputation

**You have entrusted a marketing agency with the organization of a game where awards shall be granted. This involves processing of personal data of the participants and additional personal data of the winners. The marketing agency organizes the entire marketing campaign and you do not have access to the list of participants. But the names of the winners are published on your website.**

