Module 5

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

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Web advertising

**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
Targeting of social media users

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

**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; unsubscripton

- 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

• 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

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.