CHAIR
DATA PROTECTION
ON THE GROUND

in partnership with BNP PARIBAS FORTIS

Personal data protection in the media sector

Roundtable report

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The VUB Chair "Data Protection On the Ground" (DPOG) promotes the investigation into actual practices of data privacy in organizations and the dissemination of best practices. The focus of its research is on developments in smart cities, health, media, and banking. For this the Chair compares practices in public sector organizations with those in the private sector, and organizations experienced in personal data protection with beginners. In lectures, workshops, roundtables and other events, the Chair brings experts and practitioners together to stimulate the discussion of best practices.

The Chair is coordinated by the research center imec-SMIT (Studies on Media, Innovation & Technology) in collaboration with the research group LSTS (Law, Science Technology & Society), and supported by BNP Paribas Fortis. For more information, please visit the Chair's website at www.dataprotectionontheground.be.

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Abstract

Media sector experts indicate that the sector struggles with a lack of clarity when it comes to personal data protection. While some of this unclarity may be intentionally created by lobbyists and the use of so-called dark patterns, a major part of it has to do with the novelty of enforced data protection legislation. Interpretations of what is required differ between stakeholders; media companies, advertising companies, regulators, consumers/citizens, civil society, and academia. Interpretations can also differ within stakeholder groups – between a company and its corporate partners, for example.

To achieve more clarity, collaboration is an important first step. To a certain extent, the media industry can devise its own benchmarks and standards. Codes of conduct, while not easy to achieve, are a solution that has already successfully been adopted by Belgian journalists. Collaboration in this sense will require initiative and engagement of all stakeholders.

Collaboration between regional, national, and European partners can also improve smaller players' negotiating positions towards larger competitors from the U.S.A. This is particularly important in data markets, which are characterized by a winner-takes-all competition model that may create higher risks for personal data protection than disparate collections of personal data in more complex media ecosystems.

More clarity for consumers, the 'data subjects', can be achieved with open communication that includes the benefits of sharing personal data, as well as striving for explainable AI, possibly through certification. Consumer organisations can also play a role here by lowering the threshold for consumers to ask questions and file complaints, and by direct advocacy towards the industry.

Last but not least, the Data Protection Authority can improve clarity by engaging more directly with the industry, and by providing guidelines for specific issues, such as asking consent. Even enforcement, in the shape of fines, is brought up as a way to clarify which practices are deemed acceptable.

1. Introduction

On Friday, 22 February 2019, 13 representatives from different stakeholder groups in the media sector (news media, telecommunications providers, civil society, academia, the data protection authority, law firms, advertising technology and intermediaries) participated in a roundtable discussion on personal data protection in the media. The discussion topics were:

1. What are the main personal data protection challenges in the media sector?
2. Which solutions do we know of or can we imagine?
3. How do we evaluate the challenges and solutions?

The complete set of challenges listed during the meeting can be found in addendum A.

"Data protection regulation is still a battleground."

Participant quotes

2. Improving clarity

2.1 The lack of clarity

An overarching theme in the discussion was the lack of clarity experienced by different stakeholders in the sector. This issue has many sides:

Lack of clarity on GDPR requirements

- Companies collecting personal data face a lack of clarity in the GDPR requirements they have to comply with and the enforcement of the GDPR.
- Interpretations of the GDPR requirements differ between companies, between companies and consumers/citizens (data subjects), and between regulators and companies.

"You do not know if the interpretation that you give to it, in the end will comply with regulations."

Lack of clarity for data subjects

- Data subjects face a lack of clarity about what happens with the data that is collected about them.
- The lack of clarity for data subjects is also a challenge for companies, who struggle to reassure data subjects about the use they make of personal data.
- It is often unclear what happens with personal data due to the complexity of automated systems, like recommender systems or personalization algorithms.
- Lack of clarity about what happens with personal data is also due to the complexity of personal data ecosystems, such as the online advertising ecosystem (in particular in programmatic advertising).

"Consumers do not know how the algorithms work. They will not be able to understand all the parameters. It's actually impossible at human level."

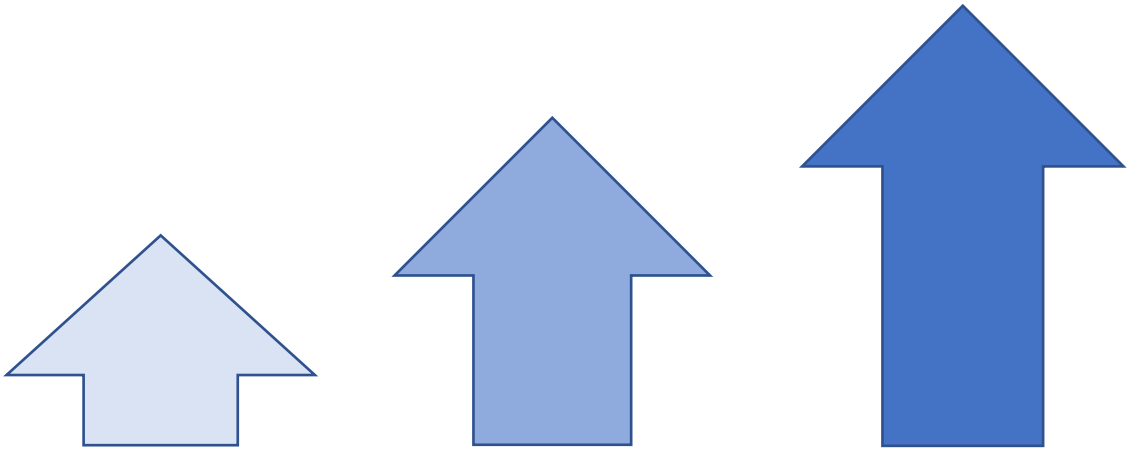
Lack of clarity within organisations

- Within companies, GDPR awareness is low among staff who are not involved in data protection compliance, leading to an internal lack of clarity on the why and how.

> *"Most staff members don't have a background in data protection."*

2.2 More clarity on GDPR requirements

Collaboration can resolve some unclarities regarding GDPR requirements. Collaboration between media companies in Belgium is certainly on the agenda. A crucial matter will be attaining the critical mass to pull weight in the face of large non-European competitors.



Benchmarks	Standardisation	Codes of conduct
Sector-wide reference points for data protection measures provide more clarity and consistency for companies in meeting requirements.	Standard contract clauses are a further step in collaboration. A working group of data protection officers across Flemish media organisations has drawn up a standardised contract for data protection agreements. From this starting point more specific agreements can be made.	Sector-specific codes of conduct are recommended in the GDPR but require monitoring from an independent expert organisation accredited by the Data Protection Authority. The Belgian Council of Journalism is an example of an organisation that has taken up this task.

> *"If we're all by ourselves, fighting for the crumbles so to say, then we won't make progress."*

The position of Google, Facebook, and other big tech companies ('GAFA') in the ecosystem causes friction. Smaller companies are compelled to follow bigger partners' interpretations of GDPR requirements due to a power imbalance: the playing field is simply not level. While all market players will try to advance interpretations that benefit their interests most, the most powerful players' interpretations will prevail. GAFA power partly derives from the 'winner takes all' aspects of data markets: the more an organisation knows about data subjects, the easier it will be to obtain more information from data subjects, and the more

visible the organisation, the easier it is to obtain consent for processing personal data. The GDPR may be an opportunity for publishers to regain some control from GAFA, as they are the point of contact for data subjects. In their position of (co-)controllers they can exercise some control over what data subjects are presented with, e.g. how consent is asked.

GDPR interpretation is also a factor in relations between companies on a more equal footing. As awareness of the GDPR is high, protection of personal data comes up early in innovation projects, with different parties at the table trying to put forward their interpretations to gain a competitive advantage. This can complicate discussions.

"The GDPR is clear, but very general. It is difficult to work together because there are opposite interests at stake."

One of the causes for the lack of clarity in the GDPR is lobbying during the negotiations about the law. Lobbyists also try to influence interpretations now that the law exists. Their counter-weights are consumer organisations. Being aware of these different voices should not lead to confusion, it should entail weighing the sources, while listening to all.

Support and guidance from the Data Protection Authority (DPA) would provide more clarity as well. The DPA should find a way to be more directly involved with companies and take up a coaching role. To enable this, the DPA should have diverse workforce, consisting of staff with varying backgrounds, not just a legal one.

""Last year the Dutch DPA had only two non-lawyers, whereas you need more technical people who can dive into the GDPR and tell people from companies what it means and going into data processes more in depth."

2.3 More clarity for data subjects

The most important source of unclarity for consumers has to do with what 'data controllers' tell them, or rather, do not tell them about the data processing. Media companies are often the touch points with data subjects so the responsibility to explain rests with them. Some types of personal data processing are hard to explain because complex technology is involved or because the data processing chain is complicated. In general, there should be more transparency on the use of personal data by third parties.

"Facilitate, be crystal clear on where consumers can easily find everything in an understandable way."

It is possible to explain the principles of how automated tools work, if not the details. Some automated tools have explanation modules. Certification for explainable AI (especially in data processing for political purposes) can give a positive impetus to companies' choices.

"Certify certain algorithms that use patterns or AI in a right way."

Companies are facing an increasingly critical public that has heard or read about data protection scandals which fuel distrust. These perceptions of a lack of clarity are not always justified, though some misperceptions may also be prompted by misleading ways of asking consent. To address misperceptions, media and data literacy should be improved through education campaigns and, again, transparency on the part of data controllers.

"Literacy has to be secondary to regulations. It's not because you make consumers literate that the power imbalance resolves."

Consumer organisations can relieve some of the complexity for data subjects who want to act on their rights, by providing a quick response and standing up for them in court. The largest fines handed out by DPAs so far were based on complaints from consumer groups. While fines are unpopular and there are disparities between EU countries on the number of fines handed out, they do provide clear guidelines. More enforcement and prosecution improve clarity for all parties. As complaints filed by data subjects are often the start of DPA procedures, a 'GDPR literate' populace promotes better data protection.

"Regulation becomes clear when somebody gets sued."

2.4 More awareness within organisations

There is little awareness of the value of personal data protection in organisations. Data protection is often seen as an external demand rather than an internal conviction. There is often resistance to change, possibly caused by the corporate culture. Mindsets need to change to improve accountability and this change needs to come from the top down. Staff awareness of personal data protection should also be raised by role-specific training. A related issue is posed by legacy systems: older systems and databases that are not GDPR-compliant and difficult to adapt retrospectively.

One tactic to change mindsets is to incentivize organisations to care more about privacy, but so far, no major companies have managed to turn trusted data management into a market advantage or a source of profit. Another tactic to change mindsets is to compare data protection to other forms of protection, such as fire insurance or financial regulation: companies may not want it, but they are obliged to comply.

"Seatbelts are a great example: they didn't come due to market demand but were imposed by the government."

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3. Selling personalisation

Data protection may be a 'hard sell', but companies also struggle to explain the advantages of personalisation to data subjects. Customer often do not understand the consequences of not sharing personal data, while this will reduce the level of service. Better communication with customers will help them see the relevance and benefits of the collection of personal data, but trust needs to be gained first.

There is value in finding out what customers actually want rather than working from assumptions. A lot of research has been done into consumer perceptions of online privacy (see e.g. Correia & Compeau, 2017). In some cases, more transparency improves click-through rates (Tucker, 2012), but other research shows that transparency in online advertising backfires when it exposes practices that violate norms of information flows (Kim et al, 2018). Generally, when trust is high and information flows to first parties only, internet users are more amenable to consent to sharing their data.

Data collection purposes should be explained in a compelling way. At the moment, it is mostly compliance staff that is explaining privacy aspects without referring to benefits. Communication specialists and marketeers will have to collaborate with compliance staff to improve explanations about not only the 'how' but also the 'why'.

"Start with trust and then you can build on it."

One issue with solutions focusing on gaining consumer trust is that consumers are often no longer the most important source of revenue. As income has shifted to a business-to-business market, so has the weight on the balance shifted away from consumer interests. As a consequence, there is a temptation to manipulate consumers into handing over more personal data than is in their best interest or in accordance with their wishes ('dark patterns'). Needless to mention, this is not conducive to the trust needed to obtain consent.

"From my consumer perspective, we are often misled by companies."

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4. Other challenges

A few topics were mentioned during the roundtable session that were not discussed in much detail, which does not reflect these were not pertinent – perhaps merely that there are few solutions yet:

- children's rights,
- privacy by design and by default,
- data subject rights.

Personal data protection for children in the media is a major challenge, specifically the issues of whether asking for parental consent is always appropriate or helpful, and whether age verification is possible or reliable. Privacy by design and by default, as well as data subject rights, were briefly discussed but not in extensive detail. These challenges can be explored in future meetings in the media sector to find collaborative approaches to specific challenges.

5. Conclusion

The solutions described in this report are aimed at different stakeholders and different levels of action. The most promising avenue to the overarching challenge of clarity on requirements, as also indicated by participants in the roundtable as their main takeaway, is closer collaboration between stakeholders. This does not only include media companies, but also regulators, academics, and consumer organisations (the 'quadruple helix').

Calls for collaboration are made vainly if there is no program for follow-up. To put it bluntly, somebody needs to take the initiative. Article 40 (1) GDPR indicates either the national government or the Data Protection Authority when it comes to the most advanced form of collaboration mentioned above (codes of conduct): "The Member States, the supervisory authorities, the Board and the Commission shall encourage the drawing up of codes of conduct intended to contribute to the proper application of this Regulation".

As the new board of the Belgian Data Protection Authority will take up its responsibilities within a few weeks from publication of this report, promoting collaboration within the media sector (and other sectors) should be a consideration for their program of action. The VUB Chair on Data Protection On The Ground will gladly support stakeholder discussions for policy development, based on the extensive experience of the research center imec-SMIT, which coordinates the Chair, and with the collaboration of legal scholars from its close partner, the VUB research institute LSTS.

Addendum: Personal data protection challenges in the media sector

The challenges listed by participants at the beginning of the discussion were:

• Programmatic advertising and the many (unknown) parties involved in it.	• Transparency challenges and perceptions
• Updating legacy systems for personal data protection.	• Consumer expectations fueled by incorrect GDPR information in the media.
• Large organisations lacking an overview of data flows and practices.	• Consent confusion and fatigue.
• Raising awareness internally.	• Dark patterns in design; "forcing" consent.
• Changing corporate culture.	• Security and compliance regarding consent
• 'Black box' algorithms and end-user understanding.	• Protecting children, parental consent, and respecting children's rights.
• Reliance on third parties, especially when there is a power imbalance.	• Customer experience and personalization; do consumers understand what they are consenting to?
• Explaining terminology / different definitions.	• The GDPR is still a battleground.
• The rules are not clear yet; interpretations are too open.	• Privacy is a hard sell to companies.
• Controller-processor designation when contracting with other companies.	• Business-to-business (B2B) is more sensitive to data protection than business-to-consumer (B2C).

Table 1 Main personal data protection challenges in the media sector, as listed by roundtable participants