

Balancing Assessment for Legitimate Interest - Advertisers

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1. Introduction

This assessment has been prepared for Advertisers with whom we have direct relationships, using the [Data Protection Network’s assessment template and guidelines](#).

Our contention is that, where we have a direct relationship with an advertiser, we have been retained by them to help them deliver relevant advertisements to their customers and measure the effectiveness of their campaigns. They have a legitimate interest in both measuring the effectiveness of campaigns, and to monetise their site by marketing to their visitors.

We are not advancing the basis of legitimate interest for indirect relationships via SSPs or Exchanges. In those cases, we do not know with absolute certainty the context in which users are arriving at websites therefore the necessary assurances are much less clear. While it may be possible to revise this (using strict white lists, for example), we are intending to use the legal basis of consent in such cases, via the IAB Europe consent mechanism.

2. The Assessment

2.1 Identifying a Legitimate Interest

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| What is the purpose of the processing Operation? | To help monetize the advertiser’s site by means of targeted advertising to their users, and to measure the effectiveness of the ads we thereby show. |
| Is the processing necessary to meet one or more specific organisational objectives? | Our organisation depends on targeted advertising – that is our revenue stream. |
| Is the processing necessary to meet one or more specific objectives of any Third Party? | The objectives are ours and the advertisers. |
| Does the GDPR, ePrivacy Regulation or other national legislation specifically identify the processing activity as being a legitimate activity, subject to the completion of a balancing test and positive outcome? | The GDPR does include direct marketing as a legitimate interest, although doesn’t mention online advertising explicitly in this regard. |

2.2 The Necessity Test

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| Why is the processing activity important to the Controller? | Online advertising is the purpose of our company, and that includes residents of EU, and has done for over 15 years. |
| Why is the processing activity important to other parties the data may be disclosed to, if applicable? | We do not disclose the data to other controllers, only processors who act on our behalf. |
| Is there another way of achieving the objective? | Not as effectively; being unable to access personal data of users who convert would mean we’d be unable to build a model to help tailor ads effectively or measure the effectiveness of our campaigns. Being unable to access personal data of users who visit would hamper models and render retargeting impossible. |

2.3 The Balancing Test

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| Would the individual expect the processing activity to take place? | Yes – this is the status quo for the advertisers we already work with. |
| Does the processing add value to a product or service that the individual uses? | Yes – the personal data only applies in this case if the user is interacting with the advertiser, so it is part of their relationship with that brand. |
| Is the processing likely to negatively impact the individual’s rights? | No – we do not use the data for personalising pricing. |
| Is the processing likely to result in unwarranted harm or distress to the Individual? | No – we do not work with advertisers who serve distressing ads, and the personal data we use can’t result in a harmful breach. We also do not work with sensitive ad content. We are |

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| | signatories to the NAI's code of conduct , which has strict guidance on e.g. health, sexuality topics and ensuring cross-device linking has no unexpected effects. |
| Would there be a prejudice to Data Controller if processing does not happen? | Financial harm |
| Would there be a prejudice to the Third Party if processing does not happen? | Financial harm |
| Is the processing in the interests of the individual whose personal data it relates to? | Yes – to make their online advertising experience more relevant. The ad revenue also funds wider online content and better online services. |
| Are the legitimate interests of the individual aligned with the party looking to rely on their legitimate interests for the processing? | Yes – these are the users of the websites with whom we have a business relationship. |
| What is the connection between the individual and the organisation? | There is no connection between user and ourselves save via the service we provide to the website they are visiting. |
| What is the nature of the data to be processed? Does data of this nature have any special protections under GDPR? | Pseudonymous IP address (probably not unique to an individual), cookie id (unique to an individual, but with no other identifiers) and user agent (not unique to an individual). |
| Is there a two-way relationship in place between the organisation and the individual whose personal information is going to be processed? If so how close is that relationship? | In most cases there will not be a two-way relationship between the user and the website they visit. Most of our partners do not have subscribers or members. |
| Would the processing limit or undermine the rights of individuals? | No. |
| Has the personal information been obtained directly from the individual, or obtained indirectly? | Indirectly. |
| Is there any imbalance in who holds the power between the organisation and the individual? | No, given the user can opt out of even the limited data usage we rely on. |
| Is it likely that the individual may expect their information to be used for this purpose? | Yes, given that is the status quo. |
| Could the processing be considered intrusive or inappropriate? In particular, could it be perceived as such by the individual or in the context of the relationship? | As noted above, we do not work with any potentially inappropriate ad content, topics or cross-device delivery. The data is well protected with limited access, not shared with other controllers and retained only as long as strictly necessary (see privacy policy for details). |
| Is a fair processing notice provided to the individual, if so, how? Are they sufficiently clear and up front regarding the purposes of the processing? | Yes, this is mandated in our relationship with the advertiser and must be covered in their privacy policy. |
| Can the individual, whose data is being processed, control the processing activity or object to it easily? | Yes, they can easily opt out or contact us directly. Opt-outs are also available via NAI, DAA, DAAC and youronlinechoices sites. |

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| Can the scope of the processing be modified to reduce/mitigate any underlying privacy risks or harms? | As stated above, there are no privacy risks or harms. |
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2.4 Safeguards and Compensating Controls

1. We will never tailor ads to individuals that involve a specific price for a product based on their profile, that could mean a user pays a different price for the same product.
2. We will never knowingly serve an ad that could be distressing for any user.
3. We are signatories to the NAI Code of Conduct precluding using sensitive categories of data.
4. We will not transfer or sell any user’s personal data to any other controlling company.
5. We will retain the personal data in accessible form only for as long as necessary for troubleshooting:
 - Log files: 60 days
 - Profile: indefinitely, as long as the profile is active (90 days once it becomes stale)

2.5 Reaching a Decision and Document the Outcome

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| Outcome of Assessment: | |
| On the basis of the available information, given the user will expect the scenario given it is the status quo of long standing, and that the data involved bears no risk to the user in either usage or breach, Legitimate Interest seems warranted. | |
| Signed:  | Tim Sleath Data Protection Officer & VP Product Management 19 th April 2018 |
| Review Date: 19 th April 2018 | Reviewer: Dilip DaSilva, CEO |

3. Disclaimer

While we have taken legal advice in the preparation of this document from our counsel, Osborne Clarke, the guidance above should not be taken as legally authoritative and if you have any concerns, you should obtain independent legal advice.