

LAW AND DIGITAL TECHNOLOGIES

# Internet Privacy and Data Protection

Seminar 4

Key concepts of EU Data Protection Law and  
its applicability *prof. dr. Gerrit-Jan Zwenne*

October 21<sup>th</sup>, 2015



# programme

## context

- privacy and privacy law
- the need for harmonisation

## players

- data subject
- controller
- processor
- DPA and DPO

## playing field

- processing of personal data and filing system
- personal or household activities
- journalism
- the territorial scope

## rules of the game

- processing grounds
- purpose limitation
- storage and retention
- security
- special categories of data
- social security numbers
- etc.



datasubjects, controllers, processors, dpo's and dpa's, art. 29 WP

**PLAYERS**

# players

Art. 4 GDPR &  
Art. 2 95/46/EC

## data subject (or 'individual')

- an identifiable person (ie a natural person who can be identified, directly or indirectly)

## controller

- controls the purposes and means of processing
- natural person, legal person, or government institution

## processor

- processes data for the controller, without being directly under its authority

## DPA

- authority overseeing the processing of personal data

## DPO

- officer for protecting data

*in particular by reference to an identifier such as a name, an identification number, location data, unique identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social or gender identity of that person*

# "controller"

Art. 4(5) GDPR &  
Art. 2(d) 95/46/EC

*the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes and means of the processing of personal data.*

→ both factually and legally

# THE PLAYING FIELD



# "processing"

Art. 4(3) GDPR &  
Art. 2(b) 95/46/EC

*means any operation or set of operations, which is performed upon personal data or sets of personal data, whether or not by automated means*

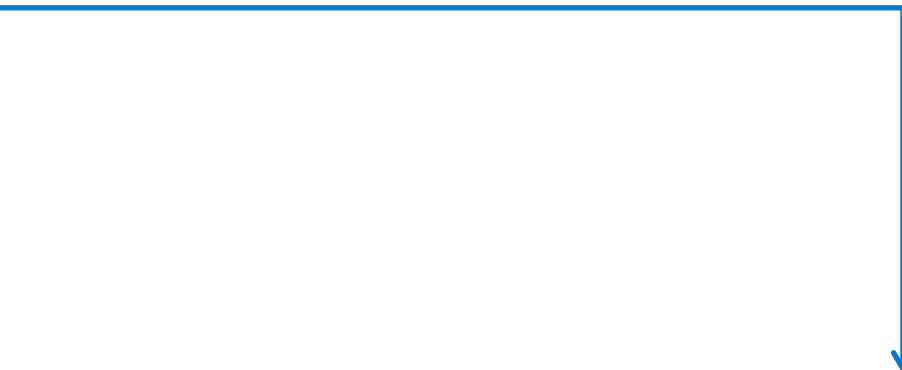
*electronically*

*such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, erasure or destruction*

# "personal data"

Art. 4(2) (cons. 23) GDPR &  
Art. 2(a) 95/46/EC

*any information relating to an identified or identifiable natural person ("data subject")*



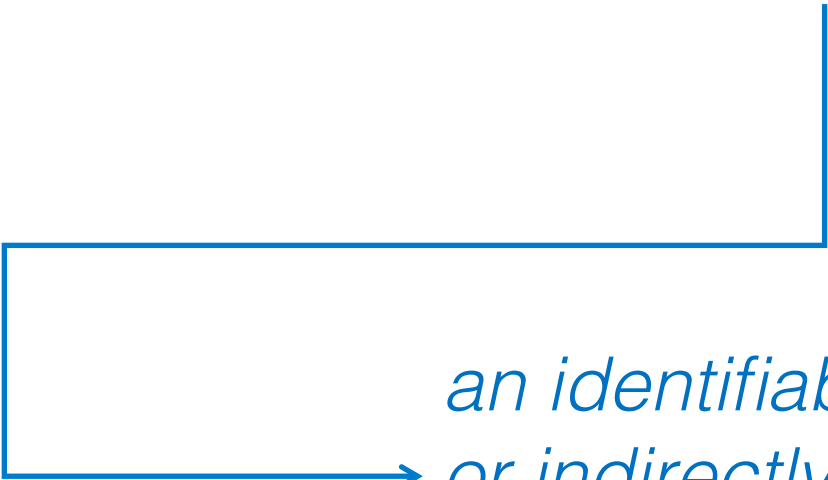
*an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, unique identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social or gender identity of that person*



# "anonymous data"

Art. 4(2) (cons. 23) G  
DPR

*information that does not relate to an identified or identifiable natural person*

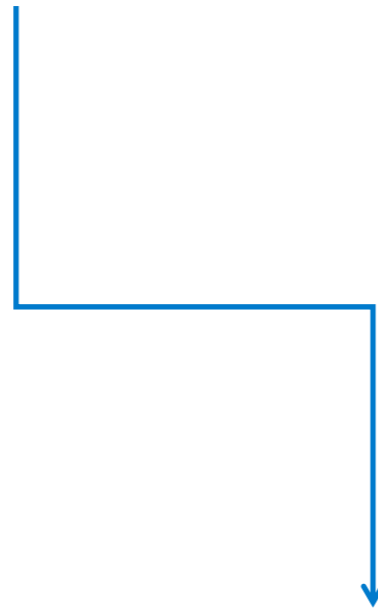


*an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, unique identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social or gender identity of that person*

# "pseudonymous data"

Art. 4(2a)  
GDPR

*personal data that cannot be attributed to a specific data subject without the use of additional information*

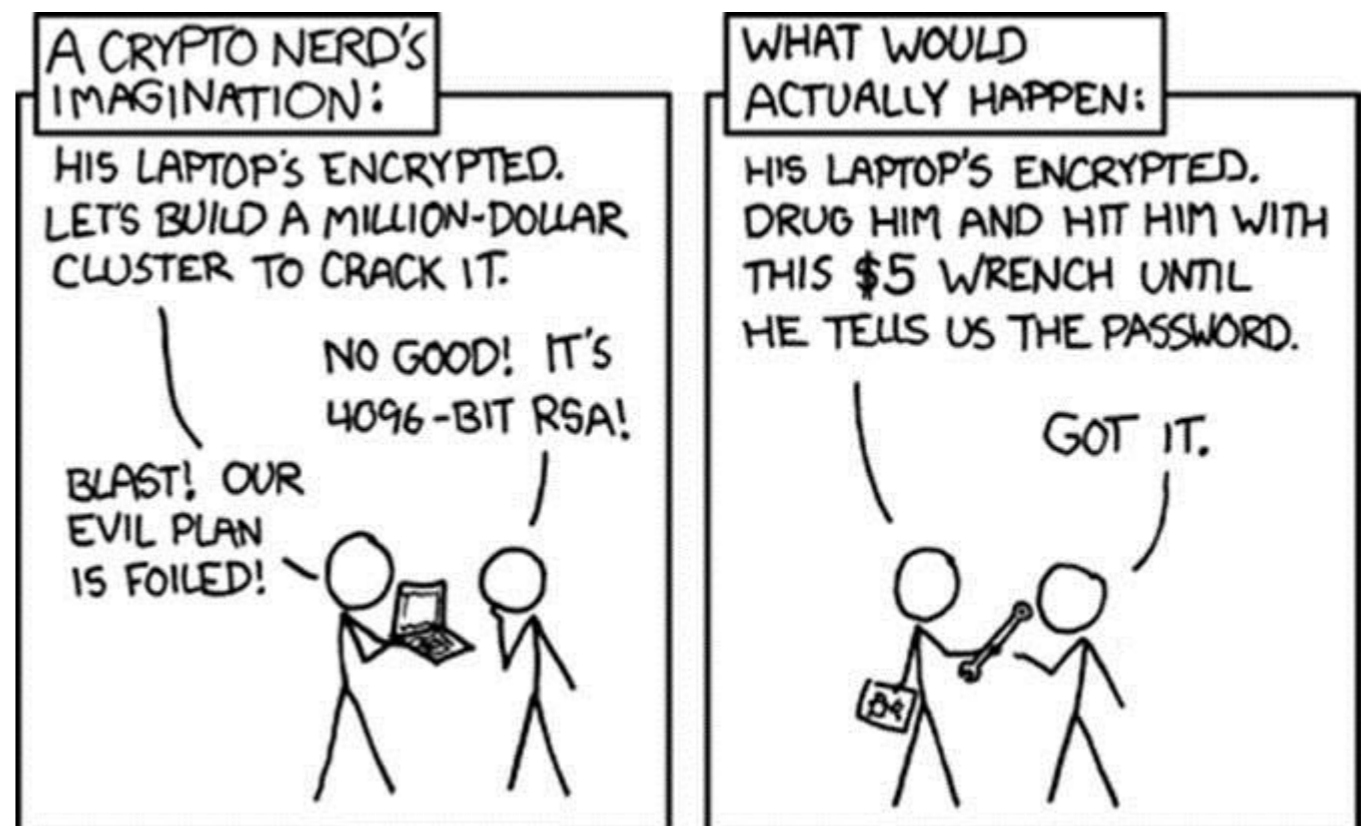


*as long as such additional information is kept separately and subject to technical and organisational measures to ensure non-attribution*

# "encrypted data"

Art. 4(2b)  
GDPR

*personal data, which through technological protection measures is rendered unintelligible to any person who is not authorised to access it*



# question

can you name an activity with respect to personal data that is *not* covered by the definition of 'processing of personal data'

# "single out"

*“A very common family name will not be sufficient to identify someone – i.e. **to single someone out** – from the whole of a country’s population, while it is likely to achieve identification of a pupil in a classroom.*

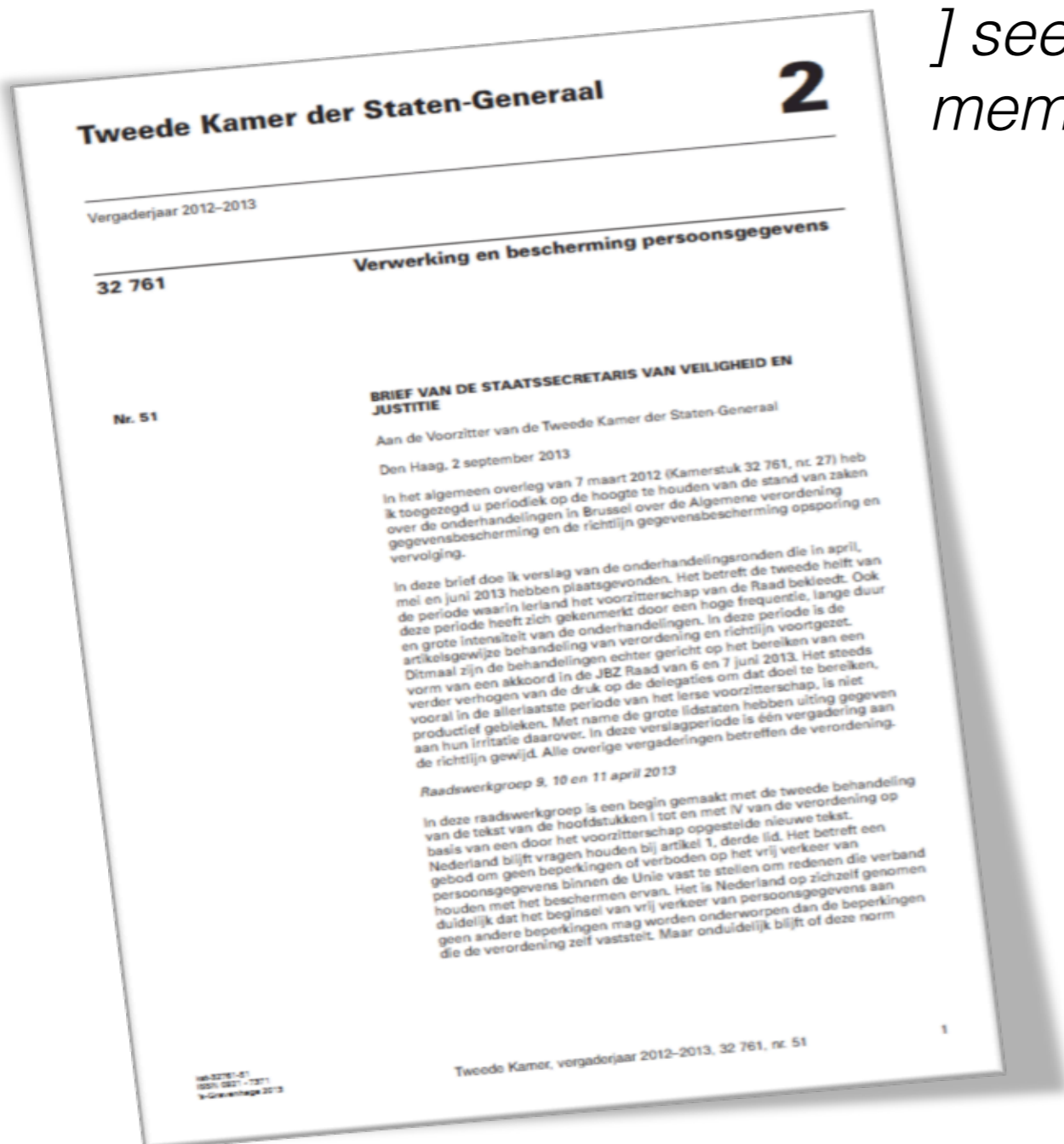


*Even ancillary information, such as “the man wearing the black suit” may identify someone out of the passers-by standing at a traffic light.”*

WP29 opinion on the concept of  
personal data 20th June 2007

*“[There] is no support at all for further refining the concept 'personal data' with categories like 'singling out'.*

*The proposed definition [without singling-out] seems to the Netherlands and many member states complicated enough.”*



Prof.dr. Gerrit-Jan Zwenne

## Diluted Privacy Law



Universiteit  
Leiden  
The Netherlands

Discover the v

## Diluted Privacy Law

Paraphrased translation from Dutch of the  
inaugural lecture by

Prof.dr. Gerrit-Jan Zwenne

on the acceptance of his position of professor of  
Law and the Information Society  
at the Universiteit Leiden  
on Friday, April 12, 2013.



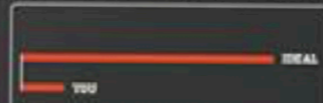
Universiteit  
Leiden

TOTO INTELLIGENT YOU-RINAL — POWERED BY GOOGLE STREAMSENSE ANALYTICS



**YOU AREN'T GETTING ENOUGH VITAMIN D.**  
 ONE CAN OF GENENTECH ENHANCED SARDINE SHAKE HAS 270% OF USRDA.

WHY IS THIS RECOMMENDED?  
 VITAMIN D LEVEL IN URINE: **10 PG/ML**



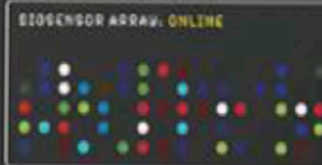
**YOU ARE DANGEROUSLY DEHYDRATED.**  
 RESTORE YOUR LIQUIDITY WITH POLAND SPRING 100% NATURAL BOTTLED WATER.

WHY IS THIS RECOMMENDED?  
 SPECIFIC GRAVITY: **1.04**



**ARE YOU SATISFIED WITH LEXAPRO?**  
 ASK YOUR DOCTOR ABOUT CYMBALTA FOR YOUR DEPRESSION.

WHY IS THIS RECOMMENDED?  
 SSCITALOPRAM DETECTED: **34 NG/ML**



BIOSENSOR ARRAY ONLINE

- BOLERAUN: NOT DETECTED
- LEUCINE-RICH ALPHA-2-GLOBULIN: NEGATIVE
- PROTEIN LEVELS: LOW
- LEUCINAMINE OXIDASE: NOT DETECTED
- CANNABINOIDS: DETECTED
- METHAMPHETAMINE SULFATE: PRESENT
- BENZODIAZEPINES: DETECTED

- ZODIALENSIC ACID: DETECTED
- HEBBERIA GONORRHOEA: NEGATIVE
- BLADDER CANCER: NEGATIVE
- APPENDICITIS: NEGATIVE
- LIVER FUNCTION: SUBOPTIMAL
- KIDNEY FUNCTION: NORMAL
- BODY TEMPERATURE: ABNORMALLY LOW

NEXT SCHEDULED AUTOCLEAN: 7:40PM 08.16.2019



ALL BENNIGANS EMPLOYEES MUST PERFORM COLD PLASMA STERILIZATION OF HANDS BEFORE RETURNING TO WORK.



HIT TARGET TO OPT OUT OF PERSONALIZED ADS



*social security  
number*

*info@companyname  
.com*

*ip-adres*

*@zwnne*

*zip code, house nr.*

*cookies, device  
fingerprints*

*070 3538800*

*+31(6)2251 8337*

# applicability

*any structured set of personal data which form part of a filing system or are intended to form part of a filing system*

processing of personal data wholly or partly by automated means

- sometimes also non-automated processing

exception

- activities outside scope of EU law
- Ch. 2 Title V of Treaty on EU
- prevention investigation detection or prosecution of criminal offences
- processing for purely personal or household activity

*common security and defence*

*processing of records of non-EU citizens, not in EU Member State, by non EU-based controller*

limited exception for journalistic, artistic, or literary ends  
Art. 80 GDPR & Art. 9 (cons. 37) 95/46/EC

*when access to profile information extends beyond self selected contacts, such as when access to a profile is provided to all members within the SNS or the data is indexable by search engines, access goes beyond the personal or household sphere. [WP29 opinion on social networks 2009]*

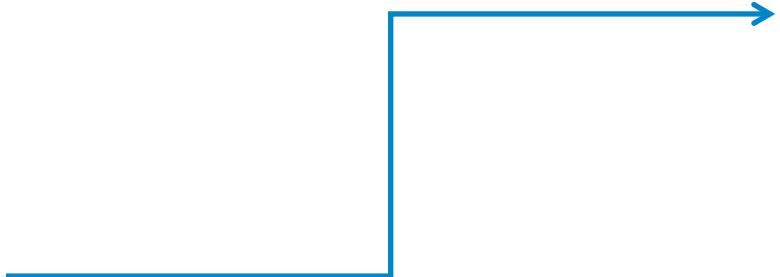
# territorial scope

main rule (95/46/EC)

- processing in the context of the activities of an establishment of a controller in a Member State

sub rule

- if the controller is not established on Community territory and,
- for purposes of processing personal data makes use of equipment, automated or otherwise, situated on the territory of [a] Member State,
- unless such equipment is used only for purposes of transit through the territory of the Community

- 
1. *Who is the controller?*
  2. *does the controller have an establishment in a Member State?*
  3. *is processing taking place in the context of the activities of that establishment?*

# Google Spain

- 1. Who is the controller?*
- 2. Does the controller have an establishment in a Member State?*
- 3. Is processing taking place in the context of the activities of that establishment?*

*55 In the light of that objective of Directive 95/46 and of the wording of Article 4(1)(a), it must be held that the processing of personal data for the purposes of the service of a search engine such as Google Search, which is operated by an undertaking that has its seat in a third State but has an establishment in a Member State, is carried out 'in the context of the activities' of that establishment if the latter is intended to promote and sell, in that Member State, advertising space offered by the search engine which serves to make the service offered by that engine profitable.*

questions?

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