


LAW AND DIGITAL TECHNOLOGIES
INTERNET PRIVACY AND EU DATA
PROTECTION


**Principles and Rules for
Processing Personal Data**

Gerrit-Jan Zwenne
Seminar III
October 25th, 2017



data protection rules

- lawfulness, fairness and transparency → *lawfulness can be derived from consent, vital data subject interests, legitimate controller interests etc.*
- purpose specification and limitation
- data and storage minimisation → *'time-limits on storage'*
- accuracy
- effectiveness → *'credit-worthiness assessments'*
- integrity
- **accountability** → *demonstrate compliance*




Recital 39
Art. 5(a) GDPR

“lawfulness, fairness and transparency”
means personal data is processed lawfully, fairly and in a transparent manner in relation to the data subject


→ *'fair relationship between controller and data subject'*

↓
eg. a privacy statement



```

    graph TD
      A["processing grounds:  
• data subject consent  
• contract  
• legal obligation  
• etc.  
art. 7 DPD, art 6(1) GDPR"] --> B["collection for specified, explicit and legitimate purposes  
art. 5(1b) DPD, art. 5(1)(b) GDPR"]
      B --> C["no further processing in a way incompatible with purpose for which data is collected  
art. 6(1b) DPD, art.5(1)(b) GDPR"]
      B --> D["retention no longer than necessary  
art. 6(1e) DPD, art. 5(1)(e) GDPR"]
      C --> A
  
```



Art.6 GDPR

lawfulness of processing

- data subject consent
- performance of a contract
- compliance with a legal obligation
- vital interest of the data subject
- public authority
- legitimate interest of controller or third parties to whom the data are provided




Art. 7 GDPR

conditions for consent

- burden of proof
- written declaration which also concerns another matter
- withdrawal of consent
- purpose limitation

consent must be presented clearly distinguishable in its appearance from this other matter



Art. 8 GDPR

children's personal data


- consent of parent or guardian
- clear language

younger than 13 years

but will not affect national contract law

appropriate to intended audience

controller must take reasonable efforts to verify consent, taking into consideration available technology without causing otherwise unnecessary processing of personal data




won't somebody please think of the children!?





Art. 7(4) GDPR

When assessing whether consent is freely given, utmost account shall be taken of whether, inter alia, the performance of a contract, including the provision of a service, is conditional on consent to the processing of personal data that is not necessary for the performance of that contract.

↓

Cf. recital 43: Consent is presumed not to be freely given if it does not allow separate consent to be given to different....



vital interests




legitimate interest...

factors to consider when carrying out the balancing test :

- nature and source of the legitimate interest and whether the data processing is necessary for the exercise of a fundamental right, is otherwise in the public interest, or benefits from recognition in the community concerned;
- impact on the data subject and their reasonable expectations about what will happen to their data, as well as the nature of the data and how they are processed;
- additional safeguards which could limit undue impact on the data subject, such as data minimisation, privacy-enhancing technologies; increased transparency, general and unconditional right to opt-out, and data portability





Recital 39
Art. 5(1)(b) GDPR

“purpose specification” and “purpose limitation” means personal data collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes

↓

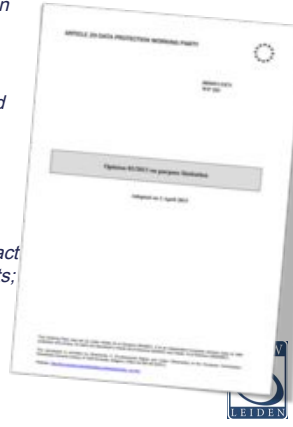
- personal data which airlines gathered about their passengers for flight purposes cannot subsequently be used by immigration services at the destination
- achmea and albert heijn



purpose limitation

A substantive compatibility assessment requires an assessment of all relevant circumstances. In particular, account should be taken of the following key factors:

- the relationship between the purposes for which the personal data have been collected and the purposes of further processing;
- the context in which the personal data have been collected and the reasonable expectations of the data subjects as to their further use;
- the nature of the personal data and the impact of the further processing on the data subjects;
- the safeguards adopted by the controller to ensure fair processing and to prevent any undue impact on the data subjects.



purpose limitation

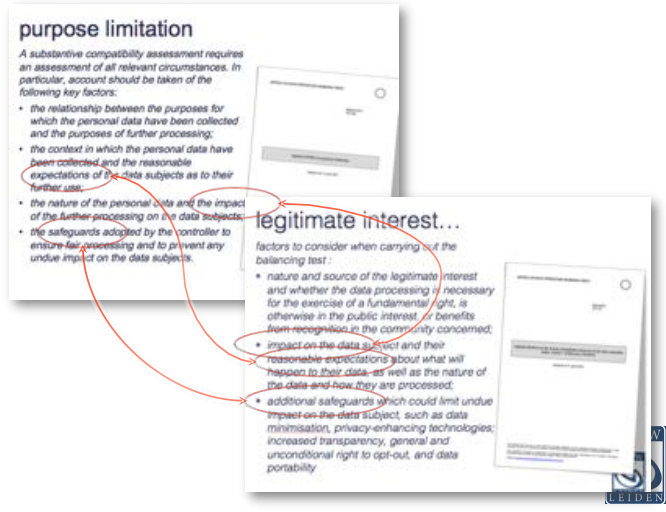
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- the safeguards adopted by the controller to ensure fair processing and to prevent any undue impact on the data subjects.

legitimate interest...

factors to consider when carrying out the balancing test:

- nature and source of the legitimate interest and whether the data processing is necessary for the exercise of a fundamental right, is otherwise in the public interest, or benefits from recognition in the community concerned;
- impact on the data subject and their reasonable expectations about what will happen to their data, as well as the nature of the data and how they are processed;
- additional safeguards which could limit undue impact on the data subject, such as data minimisation, privacy-enhancing technologies, increased transparency, general and unconditional right to opt-out, and data portability.



“**data minimisation**” means personal data is adequate, relevant, and limited to the minimum necessary in relation to the purposes for which they are processed;

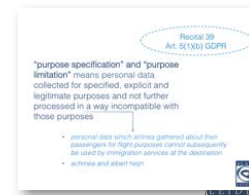
Art. 5(1)(c) GDPR

they shall only be processed if, and as long as, the purposes could not be fulfilled by processing information that does not involve personal data



“**storage minimisation**” means personal data is kept in a form which permits direct or indirect identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed

Art. 5(1)(e) GDPR



Art. 5(1)(d) GDPR

“accuracy” means personal data is accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay



Art. 5(ea) GDPR

“effectiveness” means personal data is processed in a way that effectively allows the data subject to exercise his or her rights



Art. 5(1)(f) GDPR

“accountability” processed under the responsibility and liability of the controller, who shall ensure and be able to demonstrate the compliance with the provisions of this Regulation



Art. 9 GDPR

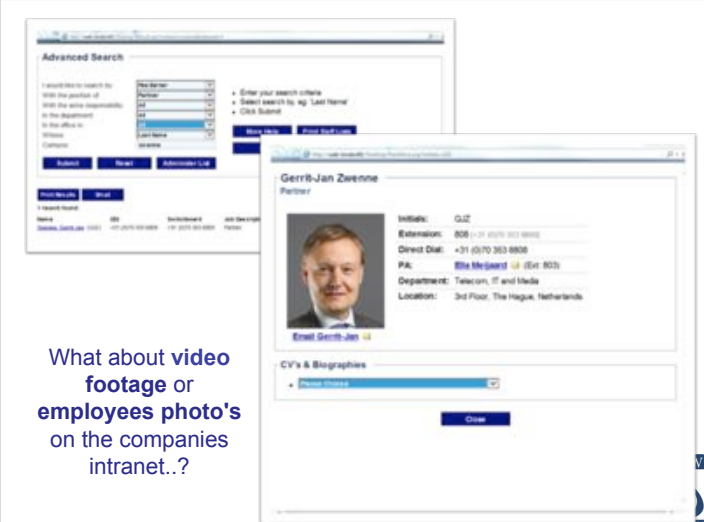
special (categories) of data

- race or ethnic origin
- political opinions
- religion or philosophical belief
- sexual orientation or gender identity
- trade union membership
- genetic or biometric or health or sex life
- administrative sanctions, judgments, criminal or suspected offences, convictions, security measures

processing not allowed, unless

- *by certain controllers for their specific purposes*
- *specific exemptions such as explicit consent*






What about **video footage** or **employees photo's** on the companies intranet..?

- in cases of first and non-intentional non-compliance: a warning in writing
- regular periodic data protection audits

a fine up to €10 or 20 mio or up to 2% or 4% of the annual worldwide turnover (whichever is greater)



LAW AND DIGITAL TECHNOLOGIES
INTERNET PRIVACY AND EU DATA PROTECTION



Data Protection and Datafication, Big Data
and Internet-of-Things, Artificial Intelligence, Machine Learning (etc.)

Gerrit-Jan Zwenne
Seminar IV
October 25th, 2017


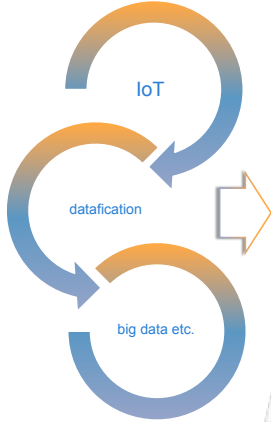


roadmap


- *What is IoT (datafication & big data anyhow?)*
- *Quick recap of DP-law*
- *How IoT & Datafication & Big Data (etc.) challenge DP Law*

A. WHAT IS 'INTERNET OF THINGS'..? WHAT IS DATAFICATION? AND WHAT IS BIG DATA? (ETC..?)

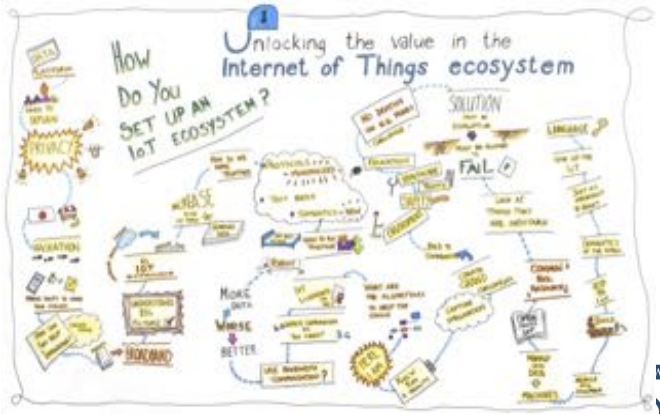
The diagram illustrates a cyclical relationship between three concepts: IoT, datafication, and big data etc. Each concept is enclosed in a blue circular arrow, and these three are connected by larger blue arrows in a clockwise cycle. An orange arrow points from this cycle towards a document titled 'VERORDENINGEN' (Regulations), which appears to be a legal text from the European Union.




Internet of Things ("IoT")

Unlocking the value in the Internet of Things ecosystem

How Do You SET UP AN IoT ECOSYSTEM?



A detailed mind map titled 'How Do You SET UP AN IoT ECOSYSTEM?' and 'Unlocking the value in the Internet of Things ecosystem'. The central theme is 'SET UP AN IoT ECOSYSTEM?'. Major branches include 'PROBLEMS', 'SOLUTION', 'FAIL', 'HOW DO YOU SET UP AN IoT ECOSYSTEM?', 'MORE DATA', 'BETTER', and 'USE BUSINESS CONNECTION?'. The diagram is filled with handwritten notes, icons, and sub-branches, providing a comprehensive overview of the challenges and solutions in building an IoT ecosystem.




the guardian

Forget the internet of things - we need an internet of people

The internet of things is a vision of **ubiquitous connectivity**, driven by one basic idea: screens are not the only gateway to the ultimate network of networks.

With **sensors, code and infrastructure**, any object – from a car, to a cat, to a barcode - can become networked. But the question we need to ask is: should they be? **And, if so, how?**

[J. Judge & J. Powles 25 May 2015]





[U. Judge & J. Powles 25 May 2015]

It's hard to see what this [ie IoT] would look like, exactly. But imagining it shouldn't just be delegated to tech companies and opportunists riding the hype cycle.

Artists, designers, philosophers, lawyers, psychologists and social workers must be just as involved as engineers and internet users in shaping our collective digital future

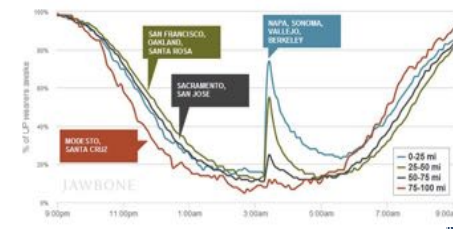


every **breath** you take
 every **move** you make
 every **bond** you break
 every **step** you take...



datafication [dey•tuh•fi•key•shuh•n]

a modern technological trend turning many aspects of our life into **computerized data** and transforming this information into **new forms of value** [Mayer-Schönberger & Cukier 2013]



Big Data
Big BS?
Big Bucks!

Big Data
Big Brother?
Big Business!



Big Data is a generalized, **imprecise term** that refers to the use of large data sets in data-science and **predictive analytics** [Mayer-Schönberger & Cukier 2013]

Big data can be used to identify more general trends and correlations but it can also be processed in order to **directly affect individuals** [WP29 2013]



high-volume, high-velocity and high-variety information assets that demand cost-effective, innovative forms of information processing for enhanced insight and **decision making**

[www.gartner.com/it-glossary/big-data]



...a massive phenomenon that has rapidly become an **obsession** with entrepreneurs, scientists, governments and the media [Financial Times 2014]

unprecedented computational power and sophistication make possible **unexpected discoveries**, innovations, and advancements in our quality of life [Whitehouse 2014]



distinctive aspects of big data analytics

- use of algorithms
- opacity of the processing
- tendency to collect 'all the data'
- repurposing of data, and
- use of new types of data



artificial intelligence or AI – the analysis of data to model some aspect of the world. Inferences from these models are then used to predict and anticipate possible future events

[UK Government Office for Science 9 November 2016]

giving computers behaviours which would be thought intelligent in human beings


[www.aisb.org.uk/public-engagement/what-is-ai]




machine learning – the set of techniques and tools that allow computers to 'think' by creating mathematical algorithms based on accumulated data

[<https://iq.intel.com/artificial-intelligence-and-machine-learning/>]






Can life as a data point save America's at-risk children?
Workforce | Special Advertising | Thursday, 17 Jan 2011 12:02 PM EST

THE PULSE@MARKET


Up to \$80 billion is spent annually across the U.S. to confront child abuse and neglect, an ugly underside of American life that afflicts hundreds of thousands of children.


Los Angeles County, with the largest child protective services agency in the country, believes there has to be a better way to protect at-risk youth than the current outdated and costly approach. LA County is piloting the use of predictive analytics technology — informally known as big data — from Cary, North Carolina-based software company SAS, to do a better job of identifying children who may otherwise be left in a vulnerable position.




The main advantage of Big Data is that it can reveal **patterns** between different sources and data sets, enabling **useful insights**

The use of Big Data by the top 100 EU manufacturers could lead to savings worth **€425 billion**, and by 2020, Big Data analytics could boost EU economic growth by an additional **1.9%**, which means a GDP increase of **€206 billion**

[EC The EU Data Protection Reform and Big Data Factsheet April 2015]



B. QUICK RECAP OF DP LAW



personal data
 transparency
 consent or other processing ground
 dataminimalization
 purpose specification and limitation
 profiling
 etc.

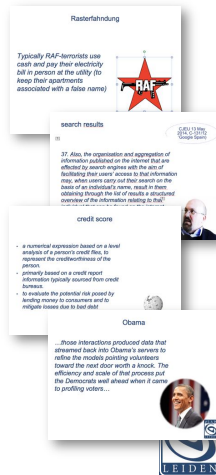


profiling

automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person

in particular to analyse or predict aspects concerning that natural person's

- performance at work
- economic situation
- health
- personal preferences
- interests
- reliability
- behaviour
- location or movements



rules for profiling

a right

- not to be subject to a decision based solely on automated processing, including profiling,
- which produces legal effects concerning him or her
- or similarly significantly affects him or her

exceptions

- necessary for entering into, or performance of, a contract between the data subject and a data controller
- authorised by Union or Member State law to which the controller is subject and which also lays down suitable measures to safeguard the data subject's rights and freedoms and legitimate interests
- based on the data subject's explicit consent.



Rasterfahndung

Typically RAF-terrorists use cash and pay their electricity bill in person at the utility (to keep their apartments associated with a false name)



credit score

- a numerical expression based on a level analysis of a person's credit files, to represent the creditworthiness of the person.
- primarily based on a credit report information typically sourced from credit bureaus.
- to evaluate the potential risk posed by lending money to consumers and to mitigate losses due to bad debt



WIKIPEDIA
The Free Encyclopedia



'online profiling or behavioral advertizing'

- *advertising based on observation of behavior of individuals over time*
- *seeks to study characteristics of this behaviour through actions*
- *to develop a specific profile and provide these individuals with advertisements tailored to their interests*



ethnic profiling

- *stopping or detaining the driver of a vehicle based on the determination that a person of that race, ethnicity, or national origin is unlikely to own or possess that specific make or model of vehicle*
- *stopping or detaining an individual based on the determination that a person of that race, ethnicity, or national origin does not belong in a specific part of town or a specific place*



Obama

...those interactions produced data that streamed back into Obama's servers to refine the models pointing volunteers toward the next door worth a knock. The efficiency and scale of that process put the Democrats well ahead when it came to profiling voters...



search results

CJEU 13 May 2014, C-131/12 'Google Spain)

37. Also, the organisation and aggregation of information published on the internet that are effected by search engines with the aim of facilitating their users' access to that information may, when users carry out their search on the basis of an individual's name, result in them obtaining through the list of results a structured overview of the information relating to that individual that can be found on the internet enabling them to establish a more or less detailed profile of the data subject



C. HOW IOT & DATAFICATION & BIG DATA (ETC.) CHALLENGE DP LAW



correlation \neq causation



in a big-data age most innovative secondary uses [of data] haven't been imagined when the data is first collected. How can companies provide notice for a purpose that has yet to exist? How can individuals give informed consent to an unknown...?

[Mayer-Schönberger & Cukier 2013]

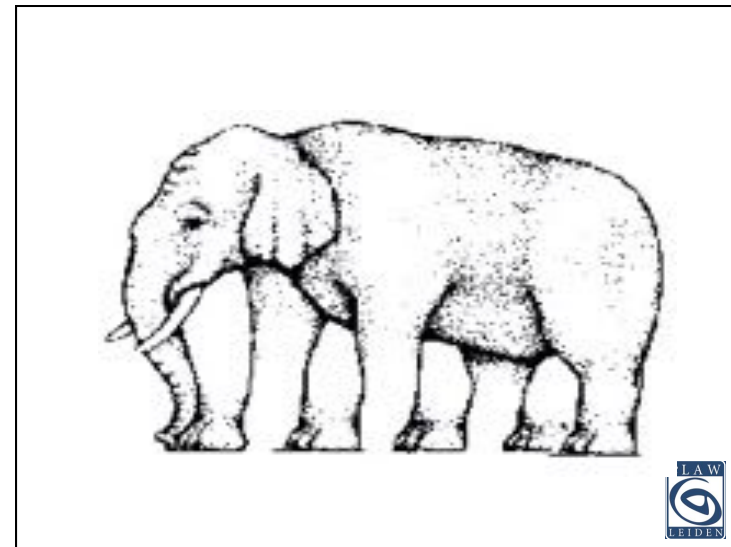
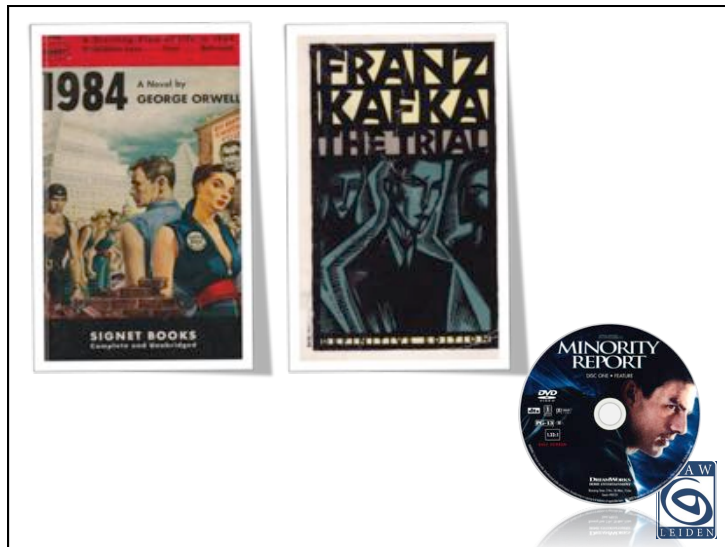
free, specific, informed and unambiguous 'opt-in' consent would almost always be required, otherwise further use cannot be considered compatible

[WP29 2013]



personalization
stigmatization
discrimination
dehumanization
presumption of innocence
etc.





questions?
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