

Wednesday 28 June 2023  
@DMA\_UK #dmaevents

# / Virtual: Legal Update DPDI Bill

Responsible Marketing

**DMA**  
Data &  
Marketing  
Association **A**

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# / Welcome

Chris Combemale, CEO, DMA @DMA\_UK



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# / Legal & Public Affairs Update

Jaemie Cameron, Director of Policy and Compliance, DMA @DMA\_UK



# / What is DPDI and where are we?

- The Soft Opt-in for email marketing
- Legitimate Interest
- International Data Transfers
- Other developments

# / The Soft Opt-in for email marketing

Non-commercial organisations will be treated the same as commercial organisations

Non-commercial organisations can send emails and texts to a person without consent if:

- You've collected the individual's information directly
- You're selling or negotiating to sell one of your own products or services
- You're sending marketing to offer your similar goods or services
- You give the customer a chance to opt-out at the time you collect their data and in every subsequent communication

The contact details of the recipient *must have been obtained from the individual in the course of that person expressing an interest or providing support for the objectives of the organisation*

# / Legitimate Interest

Movement of recital 47 into the main UK GDPR text



# / International Data Transfers

Clarification of the rules and facilitation of international transfers

The updated SCC in the form of the IDTA and Addendum still hold

Senders must consider whether the standards of protection will be lower than those applicable in the UK, and must act reasonably and proportionately in considering this assessment

# **/ Other points of interest for the industry and our members**

We, the DMA, continue to develop and strengthen regulatory, governmental and industry collaboration

Creating up to date and new resources for members throughout the year



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# / Unravelling the DPDI Bill – Navigating the Cookie Conundrum

Konrad Shek, Director of Policy Research, Advertising Association @ad\_association



# Overview

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- The policy challenge
- The law as it stands
- What changes with the Bill?
- Gaps and issues with the Bill
- Our proposed amendments

# The policy challenge

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- A homage to the humble cookie...



# The law as it stands

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- General Data Protection Regulations (GDPR)
- Privacy & Electronic Communications Regulations (PECR)

Purposes

Accept all

Purposes

- + 1. Store and/or access information on a device  
Consent
- + 2. Select basic ads  
Legitimate Interest  Consent
- + 3. Create a personalised ads profile  
Legitimate Interest  Consent
- + 4. Select personalised ads  
Legitimate Interest  Consent
- + 5. Create a personalised content profile  
Legitimate Interest  Consent
- + 6. Select personalised content  
Legitimate Interest  Consent
- + 7. Measure ad performance  
Legitimate Interest  Consent
- + 8. Measure content performance  
Legitimate Interest  Consent
- + 9. Apply market research to generate audience insights  
Legitimate Interest  Consent
- + 10. Develop and improve products  
Legitimate Interest  Consent

Partners

Save & exit

Purposes

Accept all

- + 7. Measure ad performance  
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- + 8. Measure content performance  
Legitimate Interest  Consent
- + 9. Apply market research to generate audience insights  
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- + 10. Develop and improve products  
Legitimate Interest  Consent

Special purposes

- + 1. Ensure security, prevent fraud, and debug
- + 2. Technically deliver ads or content

Features

- + 1. Match and combine offline data sources
- + 2. Link different devices
- + 3. Receive and use automatically-sent device characteristics for identification

Special features

- + 1. Use precise geolocation data
- + 2. Actively scan device characteristics for identification

Partners

Save & exit

# What changes with the Bill? (1)

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**(2A) Paragraph (1)** does not prevent a person storing information, or gaining access to information stored, in the terminal equipment of a subscriber or user if—

(a) the person provides an information society service,

**(b) the sole purpose of the storage or access is to enable the person—**

**(i) to collect information for statistical purposes about how the service is used with a view to making improvements to the service, or**

**(ii) to collect information for statistical purposes about how a website by means of which the service is provided is used with a view to making improvements to the website,**

(c) any information that the storage or access enables the person to collect is not shared with any other person except for the purpose of enabling that other person to assist with making improvements to the service or website.

# What changes with the Bill? (2)

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**(2B) Paragraph (1)** does not prevent a person storing information, or gaining access to information stored, in the terminal equipment of a subscriber or user if—

(a) the person provides an information society service by means of a website,

**(b) the sole purpose of the storage or access is—**

**(i) to enable the way the website appears or functions when displayed on, or accessed by, the terminal equipment to adapt to the preferences of the subscriber or user, or**

**(ii) to otherwise enable an enhancement of the appearance or functionality of the website when displayed on, or accessed by, the terminal equipment,**

(c) the subscriber or user is provided with clear and comprehensive information about the purpose of the storage or access, and

# Gaps and issues with the Bill

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- Whilst the new exemptions are helpful, there are still gaps for digital advertising.
- Uncertain that statistical purposes includes things like low risk cookies such as “audience measurement” and “ad performance cookies.”



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# Gaps and issues with the Bill

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- Whilst the new exemptions are helpful, there are still gaps for digital advertising.
- Uncertain that statistical purposes includes things like “audience measurement” and “ad performance cookies.
- Plans to facilitate via secondary legislation the development or adoption of automated cookie settings.

# Our proposed amendments

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- Our proposed amendments try to address the ad measurement and ad performance cookies issue.
- Further proposed amendments include mechanisms to increase scrutiny of any secondary legislation related to automated consent.

# / DPDI and Research

Debra Harding, Managing Director, Market Research Society @TweetMRS





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Current research provisions

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**2**

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Proposed legislative changes

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**3**

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What this means for research

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# Current research provisions



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- Article 89 of the EU GDPR provides for some derogations relating to processing "*...for achieving purposes in the public interest, scientific or historical research purposes or statistical purposes...*"
  - These terms are not defined although statistical purposes are identified as "*...any operation of collection and processing of personal data necessary for statistical surveys or for the production of statistical results*"
  - Furthermore Recital 159 of the EU GDPR states that "***scientific research purposes should be interpreted in a broad manner, including for example technological development and demonstration, fundamental research, applied research and privately funded research***"
  - Where personal data is processed for scientific, historical or statistical purposes Member States may provide for derogations from the rights referred to in Article 15 (right of access), 16 (right of rectification), 18 (right to restriction of processing) and 21 (right to object) subject to appropriate safeguards
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# Current research provisions



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- The UK GDPR and the DPA 2018 contain provisions for processing personal data for research purposes
  - These provisions refer to three types of research-related purposes for processing personal data, which are:
    - archiving purposes in the public interest
    - scientific or historical research purposes and
    - statistical purposes
  - The UK GDPR and the DPA 2018 do not set out the research provisions in one location
  - The ICO has introduced separate guidance to bring the requirements together in one document:  
<https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/the-research-provisions/what-are-the-research-provisions/>
  - Special provisions for two of the principles – purpose limitation and storage limitation
  - No specific lawful basis for research – legitimate interest, consent or public task used
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# ICO Research Provisions Guidance



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ICO guidance includes helpful points of clarity on definition and scope of application:

- **Fundamental or basic research** – experimental or theoretical work undertaken primarily to acquire new knowledge of the underlying foundations of phenomena and observable facts, without any particular application or use in view
  - **Applied research** – original investigation undertaken to acquire new knowledge, directed primarily towards a specific, practical aim or objective
  - **Experimental development** – systematic work, drawing on knowledge gained from research and practical experience and producing additional knowledge, which produces new products or processes, or improves existing products or processes
  - Public sector bodies may conduct scientific or historical research
  - Commercial or charitable organisations or independent researchers can also carry it out
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So, what's the problem?

- The legislation is fragmented for research
- Commercial research not clearly defined as being in scope
- Some research projects which would benefit from the exemptions are not currently utilising the opportunity
- The ICO guidance is helpful but having a clear definition in the legislation would be beneficial

# Proposed legislative changes



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- The DPDI (No.2) Bill introduces a new definitions:
    - *"References in this Regulation to the processing of personal data for the purposes of scientific research (including references to processing for "scientific research purposes") are references to **processing for the purposes of any research that can reasonably be described as scientific, whether publicly or privately funded and whether carried out as a commercial or non-commercial activity...***
    - *...includes **processing for the purposes of technological development or demonstration, fundamental research or applied research, so far as those activities can reasonably be described as scientific...***
    - *...**processing of personal data for statistical purposes are references to processing for statistical surveys or for the production of statistical results where— (a) the information that results from the processing is **aggregate data that is not personal data**, and (b) **the controller does not use the personal data processed, or the information that results from the processing**, in support of measures or decisions with respect to a particular data subject to whom the personal data relates...."***
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**1**

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Clarity in the legislation

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**2**

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Opportunity for more projects to use the research exemptions

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**3**

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Influence EU considerations on this topic...???

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## But not all the changes are welcomed...



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- MRS has significant concerns regarding the proposed changes to the Privacy & Electronic Communications Regulations, specifically the inclusion of a new exemption for direct marketing provision **used for the purposes of democratic engagement**
  - MRS has had cause to raise concerns with several political parties about their poor practices, known colloquially within the research sector as **'plugging', which is political lobbying under the guise of research**
  - MRS is strongly urging the UK Government to remove this proposed exemption, to reduce the likelihood of increased plugging and to protect the UK's market, opinion and social research sector
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