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ONLINE AGE VERIFICATION MECHANISMS IN THE PERSONAL DATA PROTECTION FRAMEWORK

A Battle for the Ages?

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Are online AV mechanisms in accordance with the EU personal data protection framework?

Can friction between AV mechanisms and PDP be relieved?

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1. WHAT IS ONLINE AGE VERIFICATION?

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ELEMENTS

Fourfold:

- Technical measure
- Age of internet user is verified
- Minimum age or within a certain age range
- Access age-restricted content and services / remotely order age-restricted goods

= closes loophole of internet anonimity

See: V. Nash, R. O'Connell, B. Zevenbergen and A. Mishkin, "Effective age verification techniques: Lessons to be learnt from the online gambling industry – Final Report", Oxford Internet Institute (December 2013)

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COMEBACK

UK Digital Economy Act, c. 30

Loot boxes in video games: UK Gambling Commission

Article 8 GDPR: implied

- If controller relies on consent for lawfulness + ISS offered directly to <16: consent by holder of parental responsibility (reasonable efforts to verify)
- Consent underage child: processing unlawful (A29WP, Guidelines on Consent)

Updated Audio-Visual Media Services Directive

- Art. 6a: audiovisual media services harmful to minors must be restricted. “Such measures may include (…) age verification”
- Art. 28a: age verification to protect minors from harmful content on video-sharing platforms

2. AGE VERIFICATION AND PERSONAL DATA PROTECTION: A TENSE RELATIONSHIP

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COMPETING OBJECTIVES

AV mechanisms seek thorough processing to verify personal fact (age)

PDP protects from intrusive processing

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ELEMENTS OF FRICTION IN THE GDPR

Data minimisation (article 5 (1) c)

- AV seeks data maximisation
  - Effectiveness
  - Corporate interests
- Goal: age verification, **not** identity verification
- Crucial for verification through ID documents

Purpose limitation (art. 5 (1) b)

- Targeted advertising
- Prevent use for further purposes individuals might find “unexpected, inappropriate or otherwise objectionable” *(Article 29 Working Party, Opinion 03/2013 on purpose limitation (2 April 2013) 11)*
- Criteria in art. 6 (4); context

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Storage limitation (Art. 5 (1) e)

- Consumer-friendly
- Strict compliance with non-identification relieves tension

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Children’s online rights

- Extra transparency (art. 12)
- Importance of right to erasure (recital 65)
- If data controller relies on ‘legitimate interests’: strict lawfulness of processing (art. 6 (1) f)
- UK ICO: up to date AV procedures to reduce risk
- Privacy by design and default

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Data protection impact assessment (art. 35)

- 9 criteria for high risk to rights and freedoms; 2 require DPIA *(A29WP, Guidelines on Data Protection Impact Assessment (4 April 2017) 9-11)*
- 6 criteria applicable to AV mechanisms
  - Sensitive data / data of highly personal nature
  - Data processed on a large scale
  - Matching or combining datasets (if data aggregation or gvt. database)
  - Data concerning vulnerable subjects
  - Innovative use or applying new technological or organisational solutions
  - Processing to prevent from (…) using a service or a contract

POSITIVE INTERACTION

Accuracy (art. 5 (1) d)

- Correct and effective AV
- However: need for corporate incentive

Right to rectification (art. 16)

- Particularly AV through credit card verification and data aggregation

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3. RECONCILING ONLINE AV WITH PDP PRINCIPLES: A BRIEF CASE STUDY

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AGE ID FOR UK ACCESS TO PORNOGRAPHY

Mindgeek

Name, address, telephone number, date of birth

= allows direct identification

- Contrary to data minimisation, purpose limitation and storage limitation
- “Encrypted, one-way hashed, anonymised login”

Cfr. Ashley Madison

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ALTERNATIVE AV METHODS

Attribute Based Access Control (ABAC)

- Immutable (unchangeable facts), assigned (biographical information on record) and related attributes (changeable information)
- Specific profile without ever identifying individual
- Strict compliance with data minimisation and privacy by design = attribute minimisation (only age)
- Downsides:
  - Corporate ire
  - Special categories of personal data
  - eID (although: EIDAS!)

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Federated identity management system

- Private and public organisations as “identity provider” (eg. banks)
- Downsides:
  - Transparency
  - Decentralisation

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Profiling

- Under certain circumstances, it is “(…) necessary for controllers to carry out solely automated decision-making, including profiling, with legal or similarly significant effects in relation to children, for example to protect their welfare”
- A29WP, Guidelines on Automated individual decision-making and Profiling for the purposes of Regulation 2016/679 (3 October 2017) 28
- Potential, but caution

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4. CONCLUSION

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Friction between PDP principles

/ corporate interpretation of AV procedures

Need for innovative solutions

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