

GDPR & IP Q&A session

TNC 2019, Tallinn, Estonia

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AGENDA



- **GDPR territorial scope**
- **Direct marketing communication**
- **Q & A session**

GDPR TERRITORIAL SCOPE: ESTABLISHMENT CRITERION (ART. 3 P. 1)

Processing of
personal data

In the context of
the **activities of an
establishment** of a
**controller or a
processor in the
Union**

No matter where
the processing
takes place (inside
or outside EU)



GDPR TERRITORIAL SCOPE: THE ESTABLISHMENT CRITERION

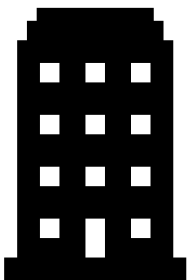


- A technological company with headquarters in the Canada has a fully-owned branch and office located in Paris overseeing all its operations in Europe.

GDPR TERRITORIAL SCOPE: THE ESTABLISHMENT CRITERION

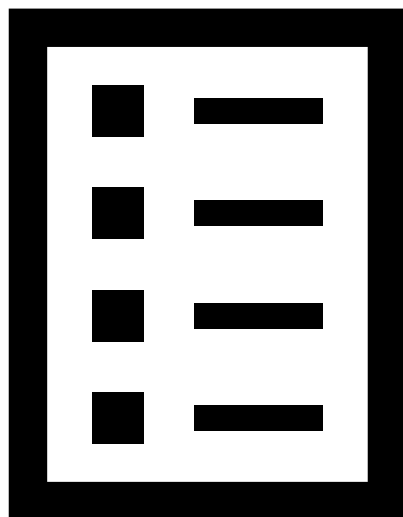


A French company has developed a car-sharing application exclusively addressed to customers in Morocco, Algeria and Tunisia. The service is only available in those three countries but all personal data processing activities are carried out by the data controller in France.



A processor established in Spain has entered in a contract with a Mexican retail company, the data controller, for the processing of its clients' personal data. The Mexican company offers and directs its services exclusively to the Mexican market and its processing concerns exclusively data subjects located outside the Union.


GDPR TERRITORIAL SCOPE – CRITERION OF OFFERING GOODS OR SERVICES TO INDIVIDUALS IN EU (ART. 3 P. 2 L. A)



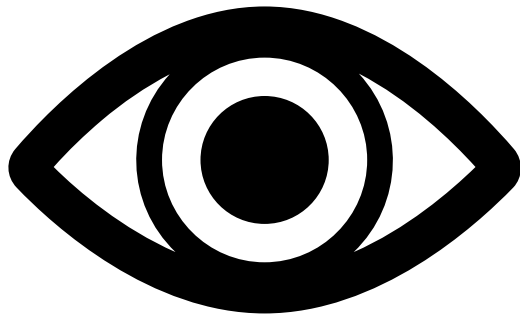
Factors taken into considerations:

- Addresses/phones in EU member state/s
- Advertising dedicated to EU audience
- Use of EU domain (.eu, .de etc.)
- Language or/and currency other than used in trader's country
- Delivery of goods in EU states

CRITERION OF OFFERING GOODS OR SERVICES TO INDIVIDUALS IN EU

- A. An university based in Monaco processes personal data of its employees for the purposes of salary payment. A large number of the company's employees are French and Italian residents.
-  B. An American university in San Francisco is launching its Master degree selection process, by making available an online platform where candidates can upload their CV and cover letter, together with their contact details. The selection process is open to any student with a sufficient level of English and holding a Bachelor degree. The University does not specifically advertise to students in EU Universities, and only takes payment in US dollars.
- C. The university mentioned in point B also offers summer courses in International relations in German and advertise this offer in German and Austrian universities in order to maximise the courses' attendance.

GDPR TERRITORIAL SCOPE:
CRITERION OF THE MONITORING OF THE BEHAVIOUR OF DATA SUBJECTS IN THE EU AS FAR
AS THEIR BEHAVIOUR TAKES PLACE WITHIN THE UNION (ART. 3 P. 2 L. B)



Broad range of activities:

- Behavioural advertisement
- Geo-localisation activities
- Online tracking through the use of cookies or other tracking techniques such as fingerprinting
- Personalised diet and health analytics services online
- CCTV
- Market surveys and other behavioural studies of individuals
- Monitoring/reporting on an individual's health status

GDPR TERRITORIAL SCOPE: THE MONITORING OF THE BEHAVIOR CRITERION



- A research company established in the Dubai provides advice on retail layout to a shopping centre in France, based on an analysis of customers' movements throughout the centre collected through Wi-Fi tracking.

Direct marketing communication



As far is ruled by Privacy and Electronic Communications Directive 2002/58/EC on Privacy and Electronic Communications (ePrivacy Directive)



As a general rule, arising out from art. 13 ePrivacy Directive unsolicited electronic marketing requires prior opt-in consent (which is waived under the 'same service/product' exemption)



Different implementation in EU countries

Draft ePrivacy regulation



Stricter rules:

- (a) the identity of the sender must be provided as well as true effective return addresses or numbers;
- (b) information about the marketing nature of the communication and the identity of the legal or natural person on behalf of whom the direct marketing communication is sent,
- (c) for individuals must be provided the right to object or to withdraw their consent clearly and distinctly, free of charge, at any time, and in an easy and effective manner.

Golden Marketing Rules:



- Opt-in consent
- Clear sender identity
- Quick and effective opt-out
- Provided information about the marketing nature of the communication
- If the marketing is realized by different entity - the identity of the legal or natural person on behalf of whom the direct marketing communication is sent should be provided

Useful resources:



- EDPB guidelines on GDPR territorial scope: https://edpb.europa.eu/sites/edpb/files/consultation/edpb_guidelines_3_2018_territorial_scope_en.pdf
- Revised text of ePrivacy regulation: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CONSIL:ST_7099_2019_REV_1&from=EN

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Q & A session



Thank you very much!

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