ONLINE AGE VERIFICATION MECHANISMS IN THE PERSONAL DATA PROTECTION FRAMEWORK

A Battle for the Ages?
Are online AV mechanisms in accordance with the EU personal data protection framework?

Can friction between AV mechanisms and PDP be relieved?
1. WHAT IS ONLINE AGE VERIFICATION?
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 anonymity

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
COMPETING OBJECTIVES

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

PDP protects from intrusive processing
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
Storage limitation (Art. 5 (1) e)

- Consumer-friendly
- Strict compliance with non-identification relieves tension
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
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
3. RECONCILING ONLINE AV WITH PDP PRINCIPLES: A BRIEF CASE STUDY
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
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!)
Federated identity management system

- Private and public organisations as “identity provider” (eg. banks)

- Downsides:
  - Transparency
  - Decentralisation
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
4. CONCLUSION
Friction between PDP principles / corporate interpretation of AV procedures

Need for innovative solutions
Carl Vander Maelen

Law & Technology

carl.vandermaelen@ugent.be