



AT INTERNET

Digital Intelligence Solutions

# AT INTERNET & THE GDPR

ADDITIONAL INFORMATION FOR LEGAL TEAMS

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## SUMMARY

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<b>1. GDPR KEY POINTS .....</b>	<b>3</b>
<b>1.1. Definitions .....</b>	<b>3</b>
1.1.1. Personal Data – GDPR Art 4.1.....	3
1.1.2. Controller – GDPR Art 4.7 .....	3
1.1.3. Processor – GDPR Art 4.8.....	3
<b>1.2. Scope of application .....</b>	<b>3</b>
1.2.1. Uniform application in the EU.....	3
1.2.2. Application to all Internet users residing in the EU – GDPR Art 3.....	3
<b>1.3. Accountability .....</b>	<b>4</b>
<b>1.4. Scope of responsibility .....</b>	<b>4</b>
<b>1.5. Transparency .....</b>	<b>5</b>
<b>1.6. Administrative fines.....</b>	<b>5</b>
<b>2. DIRECT CONSEQUENCES FOR ANALYTICS TOOLS.....</b>	<b>5</b>
<b>2.1. Previous obligations have been strengthened .....</b>	<b>5</b>
2.1.1. Location of storage .....	5
2.1.2. Length of conservation .....	6
2.1.3. Transparency with the Internet end user, GDPR Art 13 & 14.....	7
<b>2.2. New obligations for analytics providers.....</b>	<b>7</b>
2.2.1. The Data Protection Officer – GDPR Art 37 to 39.....	7
2.2.2. Documentation .....	7
2.2.3. Transparency and traceability in the contractual relationship between customer and analytics provider	8
2.2.4. Profiling (GDPR Art 4.4) and Data Protection Impact Assessment – Art 35.3.a)	9
<b>3. A FIRST LOOK AT THE NEW E-PRIVACY REGULATION .....</b>	<b>9</b>
<b>3.1. Consent.....</b>	<b>9</b>
<b>3.2. Timeline .....</b>	<b>10</b>

# 1. GDPR KEY POINTS

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## 1.1. DEFINITIONS

### 1.1.1. PERSONAL DATA – GDPR ART 4.1

Personal data refers to all data that can directly or indirectly identify an individual:

- › Directly: name, picture, phone number, address...
- › Indirectly: all navigational data, IP address, usernames, unique cookie ID

### 1.1.2. CONTROLLER – GDPR ART 4.7

The controller is the legal entity (company or public authority) or natural person who determines the aim and means of processing.

- AT Internet will be considered as a controller regarding the management of its employees, job candidates, suppliers, clients, and prospects.

### 1.1.3. PROCESSOR – GDPR ART 4.8

The processor is the legal entity (or natural person) who processes the personal data on behalf of the controller.

- As the provider of a digital analytics solution, AT Internet should be considered as a processor. AT Internet processes data collected on its clients' behalf via its digital analytics solution.
- AT Internet's customers shall be considered as controllers.
- All data originating from the AT Internet® digital analytics solution, including navigational data, IP address, GPS location, and visitor ID, shall be considered as personal data by default.

## 1.2. SCOPE OF APPLICATION

The GDPR takes effect on 25 May 2018.

### 1.2.1. UNIFORM APPLICATION IN THE EU

The GDPR is uniformly applied to the entire European Union: the legal nature of the text implies direct and identical application within all the countries of the EU. Therefore, the legislation concerning personal data will be the same for all the EU.

Concurrent with its exit from the EU, and to be considered as a country offering similarly appropriate guarantees regarding the protection of personal data, the United Kingdom should logically adopt legislation similar to this regulation.

### 1.2.2. APPLICATION TO ALL INTERNET USERS RESIDING IN THE EU – GDPR ART 3

The GDPR applies not only in the EU territory: it applies to all controllers, regardless of

whether they are established in the EU, as long as they address EU residents. Concretely, the European regulation applies every time an EU resident is the object of data processing activities, including data processing via Internet.

- The GDPR applies to all website, mobile site and mobile app publishers around the world
  - as well as their service providers (regardless of where they are geographically located)
  - who process EU residents' data.

### 1.3. ACCOUNTABILITY

The processor and the controller shall implement appropriate technical and organisational measures to be able to demonstrate at any time (from creation and design of the service and by default) that processing is performed in accordance with the Regulation (GDPR Articles 24 & 28).

A record of processing activities shall be implemented, both for the controller and for the processor.

For companies and entities whose core activities involve processing personal data, it is mandatory to designate a Data Protection Officer (DPO). In all other cases, the French data protection authority (CNIL) strongly recommends designating a DPO. It's interesting to note the possibility of designating a single DPO for a group of companies.

- All companies looking for an analytics provider should ensure their provider has taken all the necessary technical and organisational measures to ensure the right protection.
- For May 2018, AT Internet is preparing a record of personal data processing activities related to our solution – GDPR Art 30. It will be communicated to our customers upon request.
- AT Internet has already designated a Data Protection Officer, Nicolas Boudillon, whose contact details are published on the AT Internet website. AT Internet's DPO's role is to act as an advisor and verify the compliance of processing activities with the GDPR.

### 1.4. SCOPE OF RESPONSIBILITY

In order to precisely define the scope of responsibility, it is essential to create a specific contract (Data Processing Agreement, or DPA) between the controller and the processor – GDPR Art 28.

The GDPR specifies the scope of responsibility of the processor – GDPR Art 28. To work with a processor, the controller must verify that the processor is compliant with the GDPR. In some cases, the processor has the same obligations as the controller (designation of a DPO, creation of a record, etc ...).

- AT Internet will provide each of its customers with a Data Processing Agreement, or DPA. This document's goal is to determine the conditions within which the processor commits to carrying out personal data processing activities on the controller's behalf in order to provide the digital analytics solution. The scope of each party's responsibility is also defined.
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- AT Internet is fully transparent in how it handles personal data in its solution, in a fully GDPR-compliant way.

## 1.5. TRANSPARENCY

The controller must inform the data subject about what data is collected about him/her and the reason it is collected – GDPR Art 13. This obligation requires details to be given about the processing.

This obligation to inform users is not new. But with the GDPR, the list of the details to communicate has grown. For example, the controller is obligated to indicate:

- the period during which data will be stored - Art 13.2.a). On this topic, it should also be noted that it has been mandatory in France since October 2016 (*Loi pour une République numérique*) to inform users of this storage period.
- the contact details of the DPO (where applicable)
- the new rights of end users (the right to data portability<sup>1</sup>, the right to lodge a complaint with a supervisory authority, the right to withdraw consent, the right to request erasure, etc.)  
The right to erasure of data requires the existence of a mechanism enabling data to be erased within a reasonable time.

The transfer of data outside the EU should also be communicated to end users.

- To enable its customers to fulfill their obligation of informing their end users, AT Internet provides all necessary information in its DPA.
- AT Internet has also implemented the appropriate procedures allowing data subjects to exercise their rights.
- AT Internet communicates its privacy policy with full transparency on its website (<https://www.atinternet.com/en/company/data-protection/>)

## 1.6. ADMINISTRATIVE FINES

The GDPR increases the amount of the administrative fines.

If the controller or processor violates an obligation, the administrative fine can go up to 10 million euros, or in the case of an “undertaking” (an entity which undertakes an economic activity), 2% of the total worldwide annual turnover of the preceding financial year, whichever is higher – GDPR Art 83.4.

For the most serious violations: 20 million euros, or in the case of an undertaking, up to 4% of

<sup>1</sup> This right seems difficult to apply to digital analytics (there is no advantage for users to request their navigational data be transferred to another digital analytics provider!). This right should be distinguished from the reversibility which is applicable between a customer and his/her provider.

the total worldwide annual turnover of the preceding financial year, whichever is higher – GDPR Art 83.5.

In France, since October 2016, administrative fines could already reach 3 million euros.

- AT Internet recommends its customers and prospects verify that their current providers do not automatically transfer responsibility to them (the customer).
- The DPA established between AT Internet and its customers precisely defines the rights, obligations, and responsibilities of each party.

## **2. DIRECT CONSEQUENCES FOR ANALYTICS TOOLS**

### **2.1. PREVIOUS OBLIGATIONS HAVE BEEN STRENGTHENED**

#### **2.1.1. LOCATION OF STORAGE**

If personal data is stored in the EU, or imported into the EU, there is no problem.

If personal data is transferred outside the EU, the controller or processor must verify that guarantees exist regarding the protection of this personal data – GDPR Art 44 & 46.

Several possibilities exist, notably:

- Storing the data in a non-EU country which offers a level of protection considered to be adequate
  - ➔ For now, the US-EU Privacy Shield guarantees that the United States offers an adequate level of protection, but upcoming developments should be tracked very closely.
- Implementing standard contractual clauses

Additionally, Internet users must be informed if personal data is being transferred outside the EU (GDPR Art 13.1.f and 14.1.f).

- All AT Internet data is stored in the EU, and this information is available on our website and in our contracts.

#### **2.1.2. LENGTH OF CONSERVATION**

As before, the length of conservation of personal data must be proportional to the finality – (GDPR Art 5.1.e) and it should be reasonable (GDPR Art 5.1.c).

For example, France’s data protection supervisory authority (CNIL) indicates a period of 13 months for the cookie’s lifespan.

The length of conservation of IP addresses, detailed analytics data about a visitor, and unique ID should also be carefully determined and well-documented.

- All AT Internet data is stored for a limited and reasonable duration. AT Internet customers may also request their data be purged at any time. Detailed information is available on our website and in our DPA.

### 2.1.3. TRANSPARENCY WITH THE INTERNET END USER, GDPR ART 13 & 14

- › The right to request access to personal data from the controller
- › The right to request access to and rectification or erasure of personal data from the controller – Art 13.2.b and 14.2.c
- › Or restriction of processing concerning the data subject – Art 13.2.b and 14.2.c
- › The right to withdraw consent at any time – Art 13.2.c and 14.2.d
- › The right to lodge a complaint with a supervisory authority – Art 13.2.d and 14.2.e

The controller shall provide the data subject with information on action taken following his/her request under Articles 15 to 22, without undue delay and in any event within one month of receipt of the request. This period may be extended by two further months where necessary, taking into account the complexity and number of the requests. (Art 12.3)

- AT Internet has transparent and easily comprehensible communication on its website about all rights of Internet end users.
- AT Internet offers an opt-out option for its solution allowing Internet end users to refuse the collection of their navigational data.
- AT Internet commits to responding to the Data Controller without undue delay, so that the controller may respond to the Internet end user within the required timeframe.
- AT Internet can erase personal data within a reasonable timeframe and will liaise directly with Internet end users if necessary.

## 2.2. NEW OBLIGATIONS FOR ANALYTICS PROVIDERS

### 2.2.1. THE DATA PROTECTION OFFICER – GDPR ART 37 TO 39

As data collected by digital analytics solutions is considered to be personal data, it is vital to designate a Data Protection Officer.

- AT Internet has appointed Nicolas Boudillon as its Data Protection Officer since the 1st of July 2017. [Learn more](#)

### 2.2.2. DOCUMENTATION

The controller and processor must:

- › implement appropriate and effective technical and organisational measures
- › be able to demonstrate the compliance of their processing activities with this Regulation, including the effectiveness of these measures
- › maintain a record of processing activities (see GDPR Art 30 for further information about which content the records should contain)

The principle is now a principle of conformity: The controller no longer needs to declare its data processing activities beforehand to the supervisory authority, but must be able to prove, at any time, that its processing conforms to the EU Regulation.

Furthermore, GDPR Art 25 introduces the concepts of data protection by design and by default:

- › **Privacy by design:** implement appropriate technical and organisational measures at the time of determining the means of processing, such as pseudonymisation – GDPR Art 25.1
- › **Security by default:** implement appropriate technical and organisational measures for ensuring the protection of personal data by default – GDPR Art 25.2. Processing should be restricted to only the data necessary to fulfill the purpose, with regards to the quantity of data collected, the extent of processing, the length of storage, and the number of people who have access.

- AT Internet's DPO leads the Privacy by Design and Security by Default internal policies.
- Awareness is raised with AT Internet employees regarding data protection, and they are subject to strict confidentiality obligations.
- AT Internet is currently defining its record of processing activities which will be effective by the end Q1 2018.

### 2.2.3. TRANSPARENCY AND TRACEABILITY IN THE CONTRACTUAL RELATIONSHIP BETWEEN CUSTOMER AND ANALYTICS PROVIDER

As a processor, the digital analytics provider has an obligation to provide transparency and traceability for its clients.

This translates to:

- The existence of a Data Processing Agreement between the controller and processor
- The processor acting only upon documented instructions from the controller
- The processor requesting written authorisation from the controller, should the processor itself subcontract to other processors
- The processor making all necessary information available to the controller that would enable the controller to verify that the processor's obligations are being respected
- The processor enabling audits to be carried out
- The maintenance of a record of processing activities carried out on the controller's behalf



- AT Internet's Data Processing Agreement respects this obligation of transparency and traceability.
- A record of processing activities will be available to each client at the end of Q1 2018 at the latest.

#### 2.2.4. PROFILING (ART 4.4) AND DATA PROTECTION IMPACT ASSESSMENT (ART 35.3A)

Profiling is defined in the GDPR as “any form of 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 [...] behaviour, location or movements.”

A Data Protection Impact Assessment is mandatory for a systematic and extensive evaluation of personal aspects relating to natural persons, based on automated processing, including profiling (eg.: profiling in advertising networks).

The supervisory authority shall establish and make public a list of the kind of processing operations which are subject to the requirement for a Data Protection Impact Assessment – GDPR Art 35.4.

To assist professionals with their Data Protection Impact Assessments, the French data protection authority (CNIL) has made a Privacy Impact Assessment tool available for use: <https://www.cnil.fr/en/open-source-pia-software-helps-carry-out-data-protection-impact-assesment>

- Digital analytics tools enable profiling activities to be carried out.
- AT Internet has performed an impact assessment regarding its digital analytics service. The results indicate that processing carried out by AT Internet, when the digital analytics service is used normally, does not present an elevated risk to the rights and freedoms of data subjects.
- AT Internet recommends its customers use its digital analytics service only to produce statistical audience data and analyses (as defined in its Data Processing Agreement).

## 3. A FIRST LOOK AT THE NEW E-PRIVACY REGULATION

### 3.1. CONSENT

The E-Privacy Regulation project favors the acquisition of consent within the browser (via a “don't track me” option). This will therefore represent the end of intrusive informational banners.

It should be noted that analytics solutions could be exempt from obtaining consent under certain conditions (rather similar to current conditions established by the CNIL, French data protection authority).

- If the E-Privacy Regulation project is voted in, AT Internet will work in close collaboration with the CNIL to guarantee that the AT Internet solution respects this new regulation and will put all possible means in place to obtain default exemption.
- As a reminder, AT Internet currently benefits from an analytics cookie consent exemption (for more information, please see page in French: <https://www.cnil.fr/fr/solutions-pour-les-cookies-de-mesure-daudience>)

### 3.2. TIMELINE

The European Commission's initial objective was to vote on the E-Privacy Regulation in time for it to take effect at the same date as the GDPR.

Currently, the E-Privacy Regulation has still not been voted on and it is looking less and less likely that the regulation will take effect by 25 May 2018.



AT INTERNET

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