

Challenges at the intersection of new technologies and privacy

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Agenda



Personal data and new technologies



Data subjects' rights and remedies



Other limits and solutions in the intersection between GDPR and new technologies

Importance of personal data for new technologies



Still on principles... Accountability

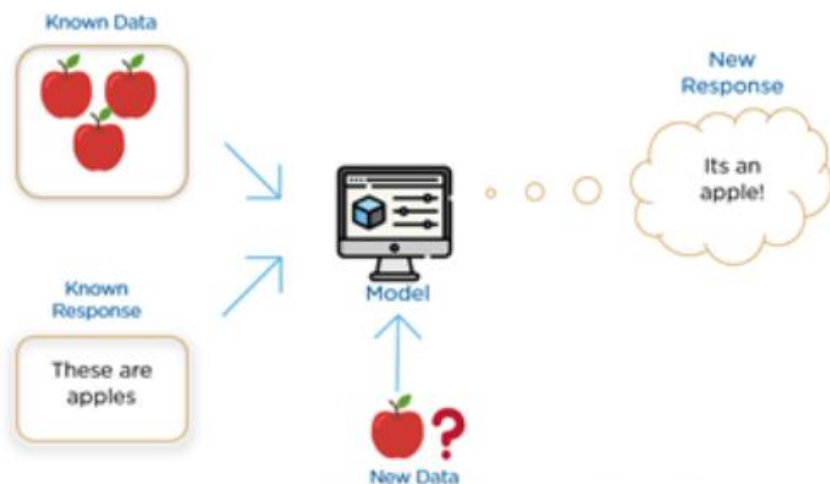
- Controller is responsible for and must be able to demonstrate compliance with the principles;
 - Via = data records of processing activities.
 - Cooperate with supervisory authorities, including by making these records available.
 - Data Protection Officer (DPO) → bridge, not responsible

Data protection-by-design and by-default (Article 25)

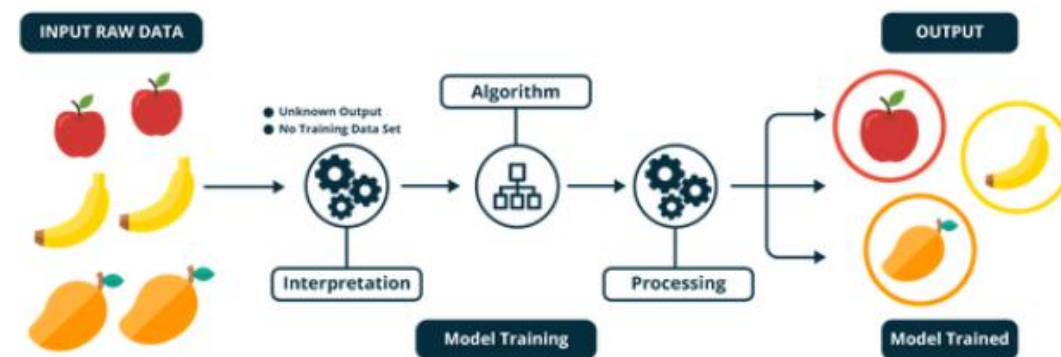
- By-design: since the beginning of development of products and services;
- By-default: no additional actions to guarantee the data minimisation.
 - Obligation to the controller, **not** the subject

Growing importance of data protection

- Data (personal and non-personal) is the input for new business models and technological development



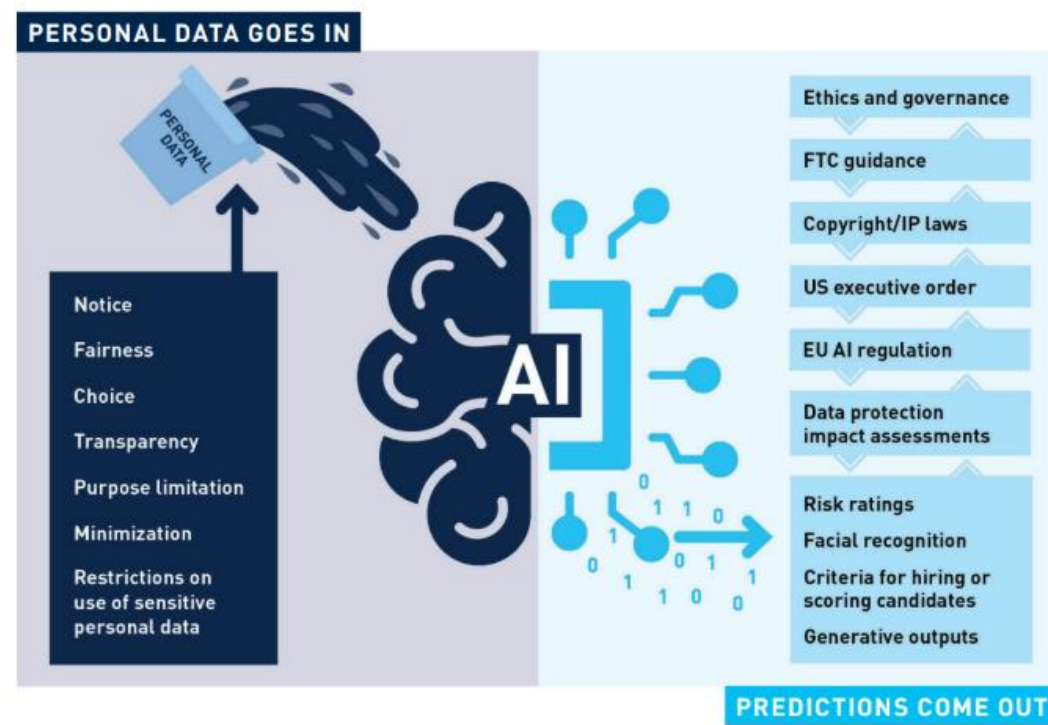
Above, supervised learning is explained with apples.



Unsupervised training

Growing importance of data protection

- Data (personal and non-personal) is the input for new business models and technological development



Growing importance of data protection

- EU understood the importance of data
 - Data Governance Act
 - Data Act
 - Open Data Directive
 - AI Act...
- Making more data more available
- Simplifying GDPR
 - SMEs and documentation

Publicly available data
≠ freely usable data

Publicly available data

Publicly accessible  Freely reusable

Social media and data scrapping: what do you think?

Growing importance of data protection

- EU understood the importance of data = Data Strategy + Digital Omnibus
- Making more data more available
- BUT
- Personal data protection still applies



Growing importance of data protection

- EU understood the importance of data = Data Strategy + Digital Omnibus
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- BUT
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- GDPR is an established framework
- Data protection = strategic investment
- Data subjects' rights = useful remedies
- Co-existence of legal instruments

Data subjects' rights and remedies



General rules

- Depend on a request by the data subject
 - Importance of knowing who the controller is
- Time for response: **1 month** + 2months (Art. 12(3) GDPR)
- Free of charge (Art. 12(5) GDPR)
- No need to justify the request
- Controller must notify recipients
- Form: writing or standardised icons (Art. 12 (1) and (7) GDPR)
 - Special attention to children

Right of access

- *Ex-post* $\leftrightarrow$ Right to information (art. 13 and 14 GDPR)
- Initial step for exercising other rights
 - Completeness of the information
- 3 components:
 - Confirmation about their data being processed or not;
 - Access to their personal data;
 - Access to information about the processing.
- Cannot have adverse effects on the rights and freedoms of others
- Identification of the data subject

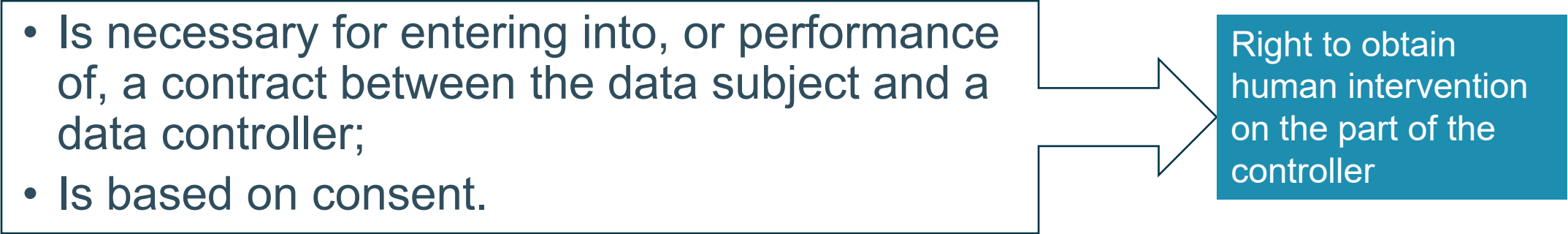
Right of access

Example 17: An individual fraudulently uses the identity of someone else in order to play poker online. The perpetrator pays the online casino using the credit card they stole from the victim. When the victim finds out about the identity theft, the victim asks the provider of the online casino to provide him or her with access to his or her personal data and more specifically, to the online games played and information about the credit card used by the perpetrator.

There is a link between the collected data and the victim as the latter's identity has been used. After the detection of the fraud, the personal data mentioned above still has a link by reason of their content (the victim's credit card is clearly about the victim), purpose and effect (the information about the online games played by the perpetrator may for instance be used to issue invoices to the victim). Therefore, the online casino shall grant the victim access to the aforementioned personal data.

Right against automated individual decision-making

- Right to not be subject to a decision based solely on automated processing that produces **legal effects** or **similarly significantly affects** the data subject
 - No human involvement in the decision process
- A person can be subject to a completely automated processing if:
 - Is authorized by law;
 - Is necessary for entering into, or performance of, a contract between the data subject and a data controller;
 - Is based on consent.



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graph LR; A["• Is necessary for entering into, or performance of, a contract between the data subject and a data controller;"] --> B["Right to obtain human intervention on the part of the controller"]; C["• Is based on consent."] --> B;
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Right to obtain human intervention on the part of the controller

Right of access and understanding automated decisions = right to explanation

JUDGMENT OF THE COURT (First Chamber)

27 February 2025 (*)

(Reference for a preliminary ruling – Protection of personal data – Regulation (EU) 2016/679 – Article 15(1)(h) – Automated decision-making, including profiling – Scoring – Assessment of the creditworthiness of a natural person – Access to meaningful information about the logic involved in profiling – Verification of the accuracy of the information provided – Directive (EU) 2016/943 – Point 1 of Article 2 – Trade secret – Personal data of third parties)

In Case C-203/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgericht Wien (Administrative Court, Vienna, Austria), made by decision of 11 February 2022, received at the Court on 16 March 2022, in the proceedings

CK

v

Magistrat der Stadt Wien

other party:

Dun & Bradstreet Austria GmbH,

Right to explanation

- **Existence and logic involved** in an automated processing
 - Clear information considering the targeted public

Example

A controller uses credit scoring to assess and reject an individual's loan application. The score may have been provided by a credit reference agency, or calculated directly based on information held by the controller.

Regardless of the source (and information on the source must be provided to the data subject under Article 14 (2) (f) where the personal data have not been obtained from the data subject), if the controller is reliant upon this score it must be able to explain it and the rationale, to the data subject.

The controller explains that this process helps them make fair and responsible lending decisions. It

provides details of the main characteristics considered in reaching the decision, the source of this information and the relevance. This may include, for example:

- the information provided by the data subject on the application form;
- information about previous account conduct, including any payment arrears; and
- official public records information such as fraud record information and insolvency records.

The controller also includes information to advise the data subject that the credit scoring methods used are regularly tested to ensure they remain fair, effective and unbiased.

The controller provides contact details for the data subject to request that any declined decision is reconsidered, in line with the provisions of Article 22(3).

Right to object

- **At any time**, object to processing based on **public interest** or legitimate interest.
 - *Including profiling*
- Controller must stop the processing activity, unless they can demonstrate compelling reasons that override the interests, rights and freedoms of the data subject **or** for the establishment, exercise or defence of legal claims.
 - Or scientific or historical research or statistical purposes for reasons of public interest
- Very important for direct marketing purposes = opt-out
- Can be exercised by automated means = technical specifications

Right to rectification

- Rectification of inaccurate personal data
- Complete incomplete personal data
- Directly connected to data **accuracy**
 - ... **and self-determination**

PRESS RELEASE No 34/25

Luxembourg, 13 March 2025

Judgment of the Court in Case C-247/23 | [Deldits] ¹

GDPR and transgender identity: the rectification of data relating to gender identity cannot be made conditional upon proof of surgery

[Link to access](#)

GenAI, accuracy and hallucinations

Man files complaint after ChatGPT said he killed his children

21 March 2025

Imran Rahman-Jones
Technology reporter

Share  Save 

[Rahman-Jones, 'Man files complaint after ChatGPT said he killed his children'. *BBC*](#)

[Sankaran V, 'ChatGPT cooks up fake sexual harassment scandal and names real law professor as accused', *The Independent UK*](#)

Tech

ChatGPT cooks up fake sexual harassment scandal and names real law professor as accused

'When first contacted, I found the accusation comical. After some reflection, it took on a more menacing meaning'

Vishwam Sankaran • Thursday 06 April 2023 07:15 BST •  3 Comments



Right to erasure ('right to be forgotten')

Situation 1: You put your name in a search engine platform, where you find news articles with inaccurate information about you. What can you do?



Right to erasure ('right to be forgotten') → a discussion prior to GDPR

JUDGMENT OF THE COURT (Grand Chamber)

13 May 2014 (*1)

'Personal data — Protection of individuals with regard to the processing of such data — Directive 95/46/EC — Articles 2, 4, 12 and 14 — Material and territorial scope — Internet search engines — Processing of data contained on websites — Searching for, indexing and storage of such data — Responsibility of the operator of the search engine — Establishment on the territory of a Member State — Extent of that operator's obligations and of the data subject's rights — Charter of Fundamental Rights of the European Union — Articles 7 and 8'

In Case C-131/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Audiencia Nacional (Spain), made by decision of 27 February 2012, received at the Court on 9 March 2012, in the proceedings

Google Spain SL,

Google Inc.

v

Agencia Española de Protección de Datos (AEPD),

Mario Costeja González,

THE COURT (Grand Chamber),

CJEU, Case C-131/12, Google Spain v. Mario C. González, 13/05/2014

Right to erasure ('right to be forgotten') in the GDPR

- When?
 - Data no longer necessary
 - Consent withdraw with no other legal ground;
 - After an objection request, without overridden interests;
 - Data was unlawfully processed;
 - Erasure is needed for compliance;
 - Data collected to offer information society services to children
- If the data is **made public** = controller must take **reasonable steps**, considering the technology available and costs, to inform other controllers that are using the data

Right to erasure ('right to be forgotten') and inaccuracy

Judgment of the Court in Case C-460/20 | Google (Dereferencing of allegedly inaccurate content)

Right to erasure ('right to be forgotten'): the operator of a search engine must dereference information found in the referenced content where the person requesting dereferencing proves that such information is manifestly inaccurate

Such proof need not however result from a judicial decision made against the publisher of the website

Right to erasure: limits

- Right to erasure does not apply when the processing is **necessary**:
 1. For exercising the right of freedom of expression and information;
 2. For compliance with a legal obligation;
 3. For the performance of a task carried out in the public interest;
 - Area of public health, archiving in the public interest, scientific or historical research or statistical purposes are highlighted
 4. For the establishment, exercise or defense of legal claims.

Right to be forgotten in new technologies? Machine unlearning

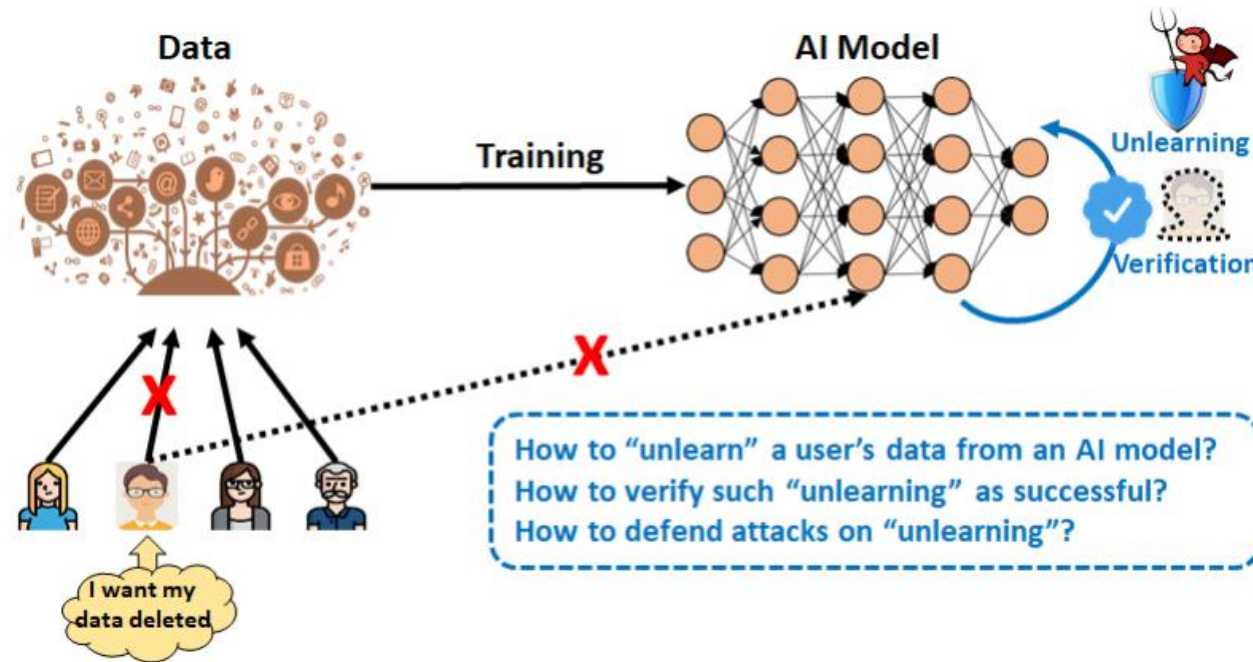


Fig. 1. Diagram of a **general scenario** for machine unlearning

Right to data portability

- Receive their personal data in a **structured, commonly used and machine-readable format** to another controller
- When?
 - Processing based on consent
 - Processing based on a contract
 - Processing is carried out by automated means
- Real goal = increase competition
 - Reality?

Other limits and solutions in the intersection between GDPR and new technologies



Identifiability and anonymisation

- As in previous class → Recital 26 GDPR and Identifiability test
- Synthetic data = a solution for AI training?
- Discrimination and training biases

Unique people's face photos, that do not exist, but they look like 100% real

Generate

Download

Generate Unreal: **Cat**
Horse
Art
Beach



Source: unrealperson.com

Lawfulness and purpose limitation

- Compatibility assessment
 - AI training
 - GenAI
 - General Purpose AI (GPAI)
 - Scientific purposes x real-life training
- More flexibility? Is this still a possible solution?

Recital 50 GDPR: The processing of personal data for purposes other than those for which the personal data were initially collected should be allowed only where the processing is compatible with the purposes for which the personal data were initially collected. In such a case, no legal basis separate from that which allowed the collection of the personal data is required ... Further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes should be considered to be compatible lawful processing operations.

Other (fundamental) rights



Encryption, freedom of expression and protection of children online



Anonymity and access to information and internet



Social media and democracy



Post-mortal rights?

when you thought everything would be
easy peasy lemon squeezy but it's
actually difficult difficult lemon difficult

And what is next?

Digital Omnibus: de-regulation or
simplification?



Thank you!

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