DCMS GDPR Consultation

Channel 4 welcomes the opportunity to respond to the 'Call for Views' issued by the Department for Culture, Media and Sport on the derogations to be implemented by the UK from the General Data Protection Regulation ('GDPR').

Channel 4

Channel 4 is a publicly owned but commercially funded Public Service Broadcaster with a statutory remit to deliver high quality, innovative, alternative content that challenges the status quo. Channel 4's statutory remit encourages the widest possible consumption of its content.

Theme 5 - Archiving and Research

Channel 4 maintains an Archive for the purposes of business continuity and corporate memory. The archive captures and reflects an important aspect of Britain's cultural history, as it consists of historical records reflecting the development of Channel 4's contribution to public service broadcasting in the UK since the establishment of the Channel, the growth of the British film industry through Film 4 investments and Channel 4's contribution to broader historic and cultural events such as the Paralympics. Academics and researchers regularly utilise the Channel 4 Archive as part of their research and it has helped inform numerous academic studies and publications.

Channel 4 considers material processed and retained come under the derogations for research and archive pursuant to Articles 9 (2) (J) and Article 89 of the GDPR.

The Archive is maintained by the Channel 4 Information & Archives team. It is responsible for ensuring the records of the corporation are systematically appraised and non-historically significant records are routinely destroyed in line with specified retention periods, whilst only the most historically significant material is retained for the archive. The retention scheduling programme at Channel 4 ensures compliance with legislative requirements governing the retention/disposal of records. Records containing personal data are appraised with regard to current Data Protection legislation, this process involves balancing the rights of data subjects, specifically considerations around the fairness of continued processing, against the historical and archival value of the record. The responsibilities of the Information & Archives team in this respect are enshrined in paragraph 20(e) of *Channel 4's Arrangements Under Schedule 9 of the Communications Act*.

All records and archives are stored in secure environments and Channel 4 ensures robust security procedures are in place to protect the integrity and security of our records.

Theme 9 – Rights and Remedies

The derogation relating to Article 22 – Automated individual decision making including profiling.

In 2011, Channel 4 was the first broadcaster in the world to ask viewers to register for its VOD service. The registration system was launched alongside our award winning "Viewer

Promise" which clearly informs All 4 viewers how their personal data will be processed in a user friendly format (provided both in a video format and in a written notice).

The data strategy has enabled Channel 4 to introduce new targeted advertising for video on demand, which has helped drive growth in Channel 4's digital revenues. An increasing proportion of the corporation's commercial revenues are now being directly or indirectly supported by first party data from individual users. In 2015, Channel 4's digital revenues increased by 30% to £82 million. Targeted advertising income accounted for 31% of the total digital advertising revenue in 2015.

Channel 4 carries out profiling on its online service All 4 to enhance the viewer experience and to provide the business important insight into the viewing habits of its users in order to enable the corporation to commission relevant programming for its audiences. By serving relevant targeted advertising, Channel 4 is able to generate more advertising revenue that it would do otherwise.

Targeted advertising and programme recommendations potentially fall under the definition of profiling under Article 22 of the GDPR. However, Channel 4 believes that the profiling it carries out should fall under one or more of the following derogations because:

I. The right does not apply when a decision does not have a legal or similarly significant affect an individual.

II. A lawful basis for profiling i.e. profiling is necessary for the purposes of the legitimate interests pursued by the data controller – in the case of Channel 4 targeted advertising in return for viewing All 4 content. Channel 4 believes there is a reasonable expectation that those who register with our online service All 4 will have access to content in return for watching targeted advertising. This is made clear at the time of registration and in the Viewer Promise.

The right does not apply when a decision does not produce legal effects or similarly significant affects an individual.

Channel 4 believes that there are examples of where profiling can produce a "legal effect" or "similarly significantly affects" an individual such as "an automatic refusal of an online credit application or e-recruiting practices without any human intervention" which are the examples provided in Recital 71 of the GDPR.

Channel 4 carries out profiling in the following circumstances:

- **When**: It varies by platform, but broadly when a viewer wishes to access the All 4 service on a device that supports viewer registration.
- **How:** Using a single sign on solution, we capture **First Name, Last Name, DOB, Gender, Optional Post Code** and **Email Address**. We anonymise this data and merge it with behaviour data and survey data to create models that classify a user into segments.
- **Why:** The segments are then used to 1) drive commercial innovation – through new advertising products and 2) drive viewing by delivering a personalised viewing experience on platform as well as targeted communications off platform.

The registration data is provided directly by All 4 viewers and in our Viewer Promise. We make it clear how we collect the data, what exactly we collect, and what we do with the data. Channel 4 recognises that personal information is valuable and that it needs to be treated with care which is why we ensured viewers are clearly informed how, when and why their personal data is processed at the registration stage.

Channel 4 does not restrict access to our content library, so while a viewer may receive a recommendation for a specific content title, they can always access and watch any of our content that is available on the platform as long as they have signed in.

A viewer can opt out of targeted advertising at any time therefore providing the viewer an option to opt out of profiling activity, however given the significantly low opt out rate to date, we do not believe our profiling activity which we require for our programme recommendations and targeted advertising significantly impact an individual.

The ICO have cited examples of where marketing profiling activities have a significant adverse effect on people and have stated that profiling in connection with marketing activities can lead to unfair discrimination on the individual. However, given the examples above, our profiling activity helps to create a better viewing experience for the viewer.

Our current profiling practice relies on the data we directly capture from the viewer, associated behaviour on our platform and surveys they have completed. For our surveys, we follow the Marketing Research Societies Code of Conduct and are compliant with this certification. This includes specific reference to how personal data is handled:

- Researchers shall be transparent as to the subject and purpose of data collection.
- Researchers shall respect the confidentiality of information collected in their professional activities.
- Researchers shall respect the rights and well-being of all individuals.

Adverts served on All 4 have to comply with the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (CAP Code) and therefore follow a high standard of compliance and therefore significantly limit any negative impact an advert could potentially have on an individual by ensuring adverts follow all applicable laws and rules relating to social responsibility, legality and fair competition. Channel 4 employ specialist media agencies to create advertising content for the All 4 service and the appointed agencies are required to contractually confirm all industry codes or practices and regulations are complied with when creating such adverts.

Finally, making viewing recommendations does not significantly affect an individual as viewing choices are not restricted by reference to those recommendations.

A lawful basis for profiling - necessary for the purposes of the legitimate interests pursued by the controller.

Profiling is often necessary for the legitimate business interests of the data controller. As a commercially funded public service broadcaster it is in our interest that as many viewers in the UK consume our services.

Channel 4 believes that the profiling enhances the viewer experience and provides the business important insight into the viewing habits of our users to enable the channel to commission relevant programming for the users.

The benefits to the viewer are as follows:

- **Ease of navigation and discovery** – with over 9,000 hours of archive content available to watch, viewers are often paralysed by choice. The personalisation and recommendation work helps the viewer get to content quicker, by surfacing shows we believe would be most relevant for the viewer. We do not restrict access to archive content, so the viewer is always free to navigate through the 9,000 hours and access any content.

- **Targeted advertising** – Channel4 is primarily reliant on advertising revenues and we aim to provide a tailored advertising experience. As part of the Viewer Promise we empower the viewer to opt out of targeted advertising, but to date have a very low opt out rate. The opt-out process does not remove a viewer from profiling but only the delivery of targeting adverts. These viewers will instead receive advertising that is contextually relevant to the content being watched.

Balancing the impact of such profiling on individuals against our legitimate business interests, we consider that limited profiling in this way, which is consistent with our business objectives as a publicly owned commercially funded public service broadcaster, does and should meet the compelling legitimate grounds requirement.

Theme 10: Processing of Children's Personal Data by Online Services

As a public service broadcaster Channel 4 recognises the importance of protecting children and their data - we have a large number of specific internal processes to ensure this. However, we believe that a balance has to be struck between the level of amount of data collected and the risk to the child, as opposed to the inconvenience to both child and parent and risk of social and digital exclusion.

Channel 4 supports the freedom allowed to Member States under **Article 8** of the GDPR which permits in law the lowering the age of a child with regard to the provision of Information Society Services to 13.

To ensure Children 13 and over are not at risk of social and digital exclusion, parental consent mechanisms should be developed by industry and key stakeholders, in line with the GDPR, in a way which allows industry to develop parental consent mechanisms via Codes of Conduct (**Article 40(2)(g)**).

Theme 11 - Freedom of Expression in the Media

Channel 4 is strongly supportive of Article 85 of the General Data Protection Regulation which obliges Member States by law to reconcile the right to protection of personal data with the right to freedom of expression and information, including processing for journalistic

purposes and the purposes of academic, artistic and literary expression ("Special Purposes"). We would highlight Recital 153 which sets out how the provisions of the GDPR should be interpreted by Member States, namely that " ...In order to take account of the importance of the right to freedom of expression in every democratic society, it is necessary to interpret notions relating to that freedom, such as journalism, broadly".

It is imperative that, in advance of the GDPR becoming enforceable as of 25 May 2018, and indeed at the earliest opportunity to bring certainty to organisations which are already preparing for its implementation, domestic legislation is introduced and commenced to protect the right to freedom of expression and information, as required by the GDPR itself. Such legislation must:

I. Protect media freedom exercised by any controller or processor processing data for the special purposes, to include disseminators of such content, including by limiting the powers of supervisory authorities in connection with processing for the special purposes;
II. Clarify the circumstances in which those processing for the special purposes may be able to comply with the requirements of the DPA;
III. Maintain, clarify and extend the protection already provided for processing for the special purposes under the GDPR, to address deficiencies as well as new and expanded rights of data subjects;
IV. Prevent data protection rights being used to usurp protections afforded to those exercising the right to freedom of expression and information under the Defamation Act 2013;
V. Explicitly reflect the protection provided under the GDPR for news archives;
VI. Explicitly provide a basis to permit those processing for the special purposes to process personal data relating to criminal convictions and offences and special categories of data;
VII. Exempt those processing for the special purposes from certain obligations imposed on data controllers and data processors;
VIII. Provide for international data transfers in the context of processing for the special purposes;
IX. Amend the defence under s55(2) DPA to be consistent with s32;
X. Recognise that the only supervisory authority competent to exercise powers with respect to the exercise of the right to freedom of expression and information by data controllers and processors established in the UK is the UK's supervisory authority; and,
XI. Expand the grounds upon which personal data may legitimately be disclosed to the media by organisations and individuals for the special purposes.

Channel 4 would like to expressly endorse the comprehensive response to this 'Call for Views' submitted on behalf of the Media Lawyers Association (the 'MLA'), an association of in-house media lawyers from many of the UK's leading newspapers, broadcasters, book publishers, magazines and news agencies, of which Channel 4 is a member. The primary focus of the MLA's response to this submission is in relation to Theme 11 and the derogations afforded by Article 85 GDPR. The response does, however, also address other themes in so far as the relevant rights and obligations have a particular adverse impact on the media, specifically issues raised by Themes 1, 2, 9 and 12. The MLA response is appended to this response.

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