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## EDPB OPENS CONSULTATION ON GUIDELINES 3/2019 ON PROCESSING OF PERSONAL DATA THROUGH VIDEO DEVICES

DEADLINE FOR COMMENTS 09/09/2019

The European Data Protection Board welcomes comments on the Guidelines 3/2019 on processing of personal data through video devices. Such comments should be sent to [EDPB@edpb.europa.eu](mailto:EDPB@edpb.europa.eu) by 09/09/2019 at the latest.

The EDPB guidelines, available [here](#), provide useful guidance on how to lawfully combine video devices and GDPR principle by analyzing possible lawfulness for processing, disclosure to third parties, processing of special categories of data and transparency and information obligations.

The guidelines will have a significant impact on how to use video devices for market research (audience analysis and intelligent video analysis). Please do not hesitate to [email me](#) you'd wish to flag any particular aspect.



## NEXT EUROPEAN COMMISSION TAKES AIM AT AI

ARTIFICIAL INTELLIGENCE WILL BE THE NEXT GDPR

The European Commission has given itself the mission of drawing up rules for the age of artificial intelligence over the next five years, building on its legacy as the world's premier regulator of online privacy.

[Politico](#) has the story





## ARE GDPR FINES INSURABLE IN IRELAND?

ARTICLE BY APRIL MCCLEMENTS, AISLING KAVANAGH, CHRIS BOLLARD OR FININ O'BRIEN FROM MATHESON  
[WWW.MATHESON.COM](http://WWW.MATHESON.COM)

The position on the insurability of GDPR fines remains a grey area and there is a large question mark over whether such GDPR fines will be insurable in Ireland where there is an element of "moral turpitude" in the infringement. The GDPR calls for fines to be "dissuasive" and if all GDPR fines are indemnifiable under insurance, the public policy behind the fines could arguably be undermined. It may be that some element of moral turpitude or wrongdoing would be required for the fine to be uninsurable, which could potentially result in a sliding scale of insurability, with criminal or quasi-criminal fines likely to be uninsurable.

The introduction of the EU General Data Protection Regulation (2016/679) (GDPR) has raised data protection to a board-level issue, leading to an increase in the take up of cyber insurance policies and some significant administrative fines being levied by European regulators. In particular, the UK Information Commissioner's Office has announced its intention to impose the largest GDPR fine to date on British Airways (£188.38 million) and a fine of £99 million on the Marriott Hotel chain. It seems likely that it will only be a matter of time before fines are imposed by the Irish Data Protection Commissioner (DPC) under the GDPR, with the DPC's 2018 Annual Report strongly suggesting that the first fines are imminent and there is potential for the DPC to impose very significant fines, given the worldwide annual turnover of the companies its regulates.

While some cyber insurance policies expressly exclude cover for fines and penalties, others provide cover "to the extent insurable by law". However, the extent to which GDPR fines are insurable is still uncertain in Ireland and in several other jurisdictions, including the United Kingdom. The Irish Data Protection Act 2018 is silent on the insurability of administrative fines and, as a new regime, the question of whether GDPR fines are insurable has not yet come before the Irish courts.

The *ex turpi causa* legal doctrine prevents a claimant from pursuing legal remedies in order to recover or benefit as a result of their own illegal acts. Where a fine or penalty is intended to be a deterrent or dissuasive, public policy would clearly be undermined if a wrongdoer could simply insure against paying a fine. The English courts have considered the *ex turpi causa* doctrine in other contexts and while decisions of English courts would not be binding on an Irish court, they would likely be persuasive. The English courts have held that some element of "moral turpitude" is required (*Safeway v Twigger*), suggesting that perhaps a purely innocent breach or wrongdoing would not attract the doctrine and could in theory be insurable (although on appeal Lord Justice Pill considered that the policy of the relevant statute would be undermined if companies were able to pass on the liability to their employees' directors and officers insurance). In another English case, *Patel v Mirza*, the English Supreme Court considered whether:

- the purpose of the prohibition would be enhanced by refusing the claim;
- there were public policy reasons to do so; and
- it would be disproportionate to refuse the claim for public policy reasons.

Following a recent Irish Supreme Court decision (*Quinn v IBRC*) the position in relation to *ex turpi causa* in Ireland remains unclear and the application of the maxim in Ireland depends on the nature of the wrongdoing.

The full story is available here: <https://www.internationallawoffice.com/Newsletters/Insurance/Ireland/Matheson/Are-GDPR-fines-insurable-in-Ireland>





## CNIL PUBLISHES ACTION PLAN REGARDING ONLINE TARGETED ADVERTISING

THE CNIL HAS ELABORATED AN ACTION PLAN FOR THE YEAR 2019-2020 IN ORDER TO OUTLINE THE APPLICABLE RULES AND TO HELP STAKEHOLDERS IN THEIR COMPLIANCE PROCESS.

The CNIL has received an important number of individual and collective complaints (La Quadrature du Net, Privacy International, NOYB) relating to online marketing. In 2018, 21% of the complaints were related to marketing in the broad sense. Meanwhile, online marketing professionals and their representatives are seeking to better understand their obligations under the General Data Protection Regulation (GDPR). The recent public formal notices have been closed and have also raised many questions. The CNIL has therefore decided to make targeted online advertising a priority topic for 2019.

### Step 1: publication of new guidelines in July 2019

In July, the CNIL will repeal its 2013 cookie recommendation that has become outdated in some respects (in particular for what concerns the expression of consent), and publish guidelines outlining the applicable rules of law. These guidelines will be based on elements that have already been harmonized at the European level. The CNIL will give stakeholders a transitional period of 12 months, so that they have the time to comply with the principles that diverge from the previous recommendation. During this transition period, scrolling down, browsing or swiping through a website or application will still be considered by the CNIL as acceptable. Nevertheless, the CNIL will continue to investigate complaints and, if necessary, inspections to ensure, among other things, that no cookie is implemented before consent is collected. Obligations that have not been modified in the Guidelines (e.g. transparency, withdrawal of consent) as well as other obligations under the GDPR (e.g. security obligations) may also be subject to inspections and, where appropriate, corrective measures, during this transitional period.

Step 2: consultation with stakeholders to develop by December 2019 - early 2020 a new recommendation relating to the operational aspects of the collection of consent. Working sessions will be held in the second half of 2019 between the CNIL services and each category of stakeholders (content editors, advertisers, service providers and intermediaries in the marketing ecosystem, civil society), through their representative organizations. The aim of this work will be to outline practical arrangements for collecting consent and to brainstorm. The CNIL will publish its recommendation, for public consultation, by the end of 2019 or, at the latest, at the beginning of 2020. The CNIL will carry out inspections on this; the final recommendation 6 months after its final adoption.

The full story here: <https://www.cnil.fr/en/online-targeted-advertisement-what-action-plan-cnil>

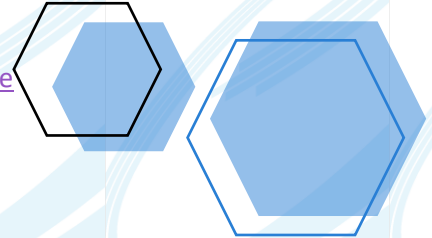


## NEW ICO GUIDANCE ON THE USE OF COOKIES AND SIMILAR TECHNOLOGIES

THE GUIDANCE CLARIFIES THE REQUIREMENTS FOR THE USE OF COOKIES OR SIMILAR TECHNOLOGIES SUCH AS DEVICE FINGERPRINT AND TRACKING PIXELS, WITH A PARTICULAR FOCUS ON CONSENT AND TRANSPARENCY.

The Privacy and Electronic Communications Regulations (PECR) cover the use of cookies and similar technologies for storing information, and accessing information stored, on a user's equipment such as a computer or mobile device.

The guidance is available [here](#)



## AMAZON'S ALEXA WILL DELIVER NHS MEDICAL ADVICE IN THE UK

THE NHS SAYS THE PARTNERSHIP COULD REDUCE PRESSURE ON DOCTORS

The UK's National Health Service (NHS) has announced what it claims is a world first: a partnership with Amazon's Alexa to offer health advice from the NHS website.

Britons who ask Alexa basic health questions like "Alexa, how do I treat a migraine?" and "Alexa, what are the symptoms of flu?" will be given answers vetted by NHS health professionals and currently available on its website. At the moment, Alexa sources answers to such questions from a variety of places, including the Mayo Clinic and WebMD.

Although the Royal College of GPs has welcomed the move, it warned that independent research is required to ensure the advice given out is safe.

Its chairwoman, Professor Helen Stokes-Lampard, said: "This idea is certainly interesting and it has the potential to help some patients work out what kind of care they need before considering whether to seek face-to-face medical help, especially for minor ailments that rarely need a GP appointment, such as coughs and colds that can be safely treated at home. "However, it is vital that independent research is done to ensure that the advice given is safe, otherwise it could prevent people seeking proper medical help and create even more pressure on our overstretched GP service."

[THE VERGE](#), [The Guardian](#) and [SKYNEWS](#) have the full story

