



New rules for personal data protection and media: Why reconcile privacy policies and media business models in the digital environment?

Summary

Media in Serbia are not sufficiently aware of the importance of personal data protection, nor are there developed procedures regarding the fulfilment of standards in line with new rules for personal data protection. Taking into account media business models in a digital environment, which are substantially based on collecting data of visitors and users of websites, it is necessary to advance their practices and internal policies so that they can both use the potentials of digital economy and respect the privacy of their audiences in accordance with the new legislation.

Introduction

All around the world, 25 May 2018 will be remembered as a turning point in the protection of privacy of citizens and as the beginning of a new age of the personal data protection. This was the day when the [General Data Protection Regulation \(GDPR\)](#) entered into force – a new legislative framework which is considered to be the highest standard of the privacy protection. The GDPR introduced additional obligations to all those processing personal data, including media and journalists. The regulation covers media policies in terms of controlling data of users which is a key resource for media business models in a digital environment. In addition, Article 85 of the GDPR places an obligation on the EU member states of 'reconciling' the freedom of expression and information and personal data protection in their laws and thus they are required to establish the balance between these two rights, which also includes processing data for journalistic purposes (European Union, 2016). Beside the protection of data of the EU citizens regardless of where the actor processing their data is, there are new rights of the citizens introduced and they refer to the access, deletion and transfer of data, while the fines are rather drastic. The fines reach 4% of the total annual revenue of a company or even 20 million Euros in the EU countries, and whichever of the two is higher can be applied when the amount of fines is determined. It is important to note that the EU is currently in the process of passing another document with a strategic and long-term importance for the online privacy of the EU citizens –

the [ePrivacy Regulation](#), and media will have to follow this process, too, since it may significantly influence their business models.

The new local [Law on Personal Data Protection](#) (Republic of Serbia, 2018) was adopted in November 2018 and since it was written according to the GDPR, it contains the same principles and obligations for data controllers, and so for media, too. There is a nine-month delay for the new Law to be applied, and so media can ensure compliance with the new rules by August 2019.

Problem description

SHARE Foundation conducted a research on a sample of 70 media websites in Serbia (2018) which showed that media mainly focus on following their websites' visitors, that is, on collecting their personal data through cookies. Out of the total of 70 media websites, 53 have marketing cookies as the most common type, while only 12 media have cookies policy available, which informs the visitors about the types of cookies, their number and the companies which can access their data. However, based on the analysis of media practices related to privacy and controlling the users' data, it can be concluded that only one media outlet has a privacy policy compliant with the GDPR – NI (n1info.com). NI is a regional television which broadcasts its program in Croatia, an EU member state, and it offers its services to the citizens of Croatia, therefore the need for such compliance is rather obvious. It should be noted that almost 60% of media covered by the research do not have privacy policies on their websites at all. On the other hand, all media of which the policies and practices were covered by the research received a questionnaire and its results showed that most media outlets do not have internal acts or procedures of how their employees control the personal data. In addition, the results showed that 50% of media believe that they do not have enough capacities to control personal data.

Do you have an internal procedure/act which defines how your journalists and other employees handle personal data in their work?

26 responses

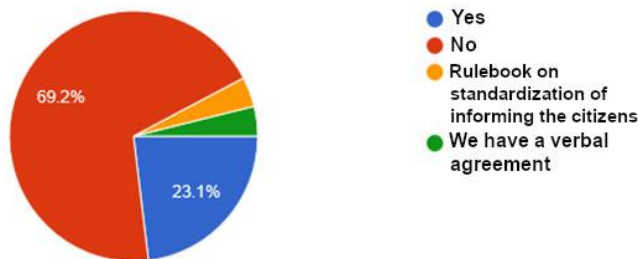


Image 1: Analysis of media responses to the question on internal procedures/acts on personal data protection

Do you think you have enough capacities (legal, technical and organizational) to manage personal data in your work?

26 responses

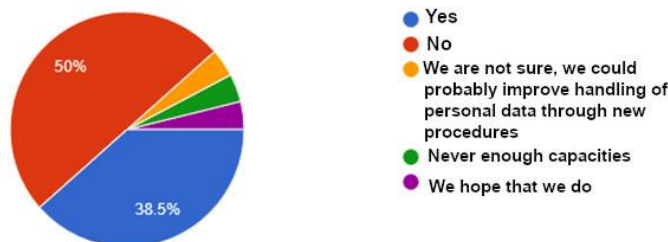


Image 2: Analysis of the media responses to the question on capacities for controlling personal data

Based on the given information, it can be concluded that media do not have enough awareness of the importance of personal data protection of citizens, instead they primarily focus on the business aspect of processing and collecting data. Additionally, the matter does not refer only to the respect of legal provisions, but also to a more transparent relation towards the audience in the context of which data are collected, for what purposes, how they are used and whether they are shared with third parties, i.e. with companies such as Google, Facebook or Gemius, which extract additional values from the data of websites' visitors.¹

A reason for action

The new Law on Personal Data Protection brings several liabilities referring to media, such as: ensuring the rights of data subjects (the right to access, deletion, data transferability, limitation of processing, etc.), providing transparent information to citizens on the processing of their data, application of technical and organizational measures, as well as the measures referring to capacities (e.g. pseudonymization) which must be re-examined and updated, ensuring the processing of only the personal data necessary for the very purpose of processing, keeping the registry on processing activities and conducting security measures (e.g. crypto-protection of data), etc. It is primarily necessary for media to map the risks in order to comply with the new Law by August 2019. This is especially important because editorial offices already have numerous databases such as the contacts of interlocutors, information on subscribers, marketing contacts and similar.

The research on policies and practices of media regarding the personal data protection conducted by SHARE Foundation (2018) shows that more than 80% of media involved in the research have

¹ A detailed overview of third party cookies on media websites in Serbia is available in the research conducted by SHARE Foundation (2018) 'Data, business models and sustainability – analysis of policies and practices of media regarding the personal data protection'

their business models based on advertising: targeting advertisements posted with the help of third party cookies or generic advertisements, most often in the form of banners.

The most common category of cookies on the media website

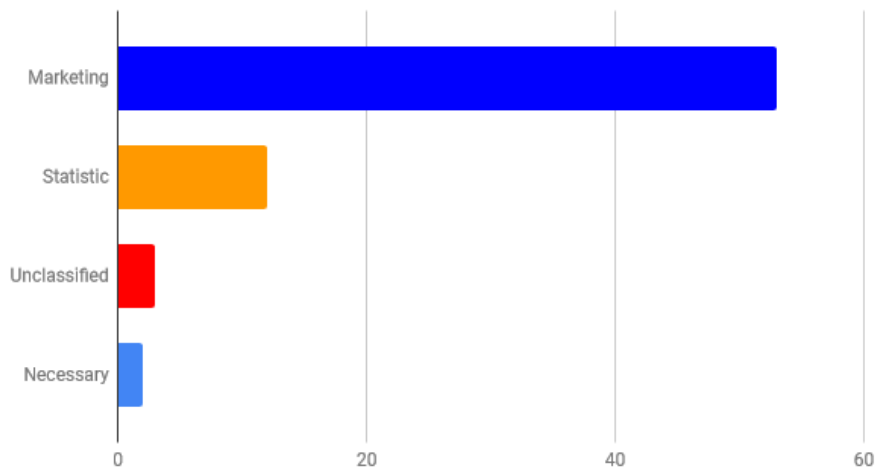


Image 3: The most common category of cookies on the media website

It should be taken into account that after the GDPR entered into force there was a 22% decrease in third party cookies on media websites in the EU member states, when compared to the period before GDPR. This also includes a 14% decrease of marketing and advertising cookies (Libert, Graves, Nielsen, 2018: 1), and so a similar effect can be expected when observing local media, too. However, it is important to notice that in more than 1000 cases, the USA media such as Chicago Tribune, New York Daily News and Los Angeles Times blocked the access for the EU users because publishers did not make their policies compliant with the GDPR (South, 2018), which is one of the first indicators of how the new regulation influences media business strategies.

Cookies on websites and other ways of following users are yet to be affected by the new legislation since the EU is conducting a reform of the e-privacy framework. More specifically, it is expected that the ePrivacy Regulation will be adopted and that it will replace the current ePrivacy Directive and make this field compliant with the GDPR (Blaschke, 2018). One of the goals of the Regulation is enabling simpler rules for cookies, so that it is easier for users to reject cookies following their behaviour (European Union, 2018). Serbia is also in the process of ensuring compliance with the legislative framework of the EU regarding ePrivacy – it has been announced that there will be a new Law on Electronic Communications, and the Government adopted the Draft in October 2017 (Government of the Republic of Serbia, 2017).

Possible solutions

It should be kept in mind that among founders of many media in Serbia - legal entities which are *de facto* controllers of personal data, there are many of those which are not big international

corporations, or even non-commercial entities (e.g. associations of citizens). Compliance with new obligations according to the new local Law on Personal Data Protection which require financial investments and other resources, may be a serious burden for entrepreneurs, small and medium-sized enterprises in media business, but at the same time it is a chance for a development, as well.

Recommendations

In case of a lack of compliance of media with the Law on Personal Data Protection, there would be not only legal and financial, but reputational risks, too. When it comes to legal consequences, they primarily refer to offence liability based on the new Law, and possibly to the liability regarding damage compensation, or even criminal liability in the most extreme cases. Reputational consequences refer to public losing the trust into media which inadequately control personal data of citizens, which is directly connected to competition on the market and lower revenues for such media. In the upcoming period of time, media should focus on the following recommendations:

Understanding the Law on Protection of Personal Data in the context of media business:

- Media should adopt a document on privacy in line with their business models
- When it comes to advertisements, cookies and trackers, transparency is the most important – users should be clearly informed about these technologies, it should be determined which cookies are used on websites, what is the legal basis for each of them and which third parties are data shared with;
- If media which receive donations collect more personal data from the donors for other purposes which do not fall into the obligations of respecting positive regulations, then they should conduct the analysis of what the data are needed for and whether collecting them also requires a donor approval, or is a legitimate interest a sufficient legal basis for processing;
- Media with subscription should, before collecting the subscribers' data, determine all the purposes for which the personal data will be used, whether each of these purposes has adequate legal basis, the scope and type of data necessary for achieving each specific purpose and expiration dates of data storage;
- If they require consent of a person for sending promotional messages, e.g. for a direct marketing through mailing lists, media using such communication should ensure a way of obtaining the consent and a way of keeping the evidence that such consent was provided freely. Also, in this case, it is necessary to provide users with simple options for revoking their consent;
- Within the context of processing the personal data of employees, it is recommended for media to first establish which data is processed, because it is a legal obligation of employer

as a data controller and then to determine which personal data is necessary for contracts of employment to be executed.

Personal data protection and journalistic exemption:

- When journalists work with databases which contain large datasets (e.g. Panama papers), they should be aware that irrelevant data of persons who are subjects of a research or data of persons not covered by the research will not be a legal basis for processing. Such data should be treated carefully and they must not be used, shared, left unprotected and similar.
- Although they can rely on a journalistic exemption in their work in order to respect all the requirements contained in regulations of personal data protection, media should use internal rules and procedures to determine all purposes for which the personal data of sources will be used, and to determine adequate legal basis, type and scope of collected data, and the period of time of their storage.

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