

Legitimate Interest Assessment and Right to Object: SmartFrame's Ad Play Solution

Version (v1.0)

Date: 27/10/2020

Background

SmartFrame Technologies Limited (“**SmartFrame**”) uses its own proprietary technology and in conjunction with the engagement of ad tech suppliers collects and uses data that may be construed as personal data or personal information under applicable data protection laws to serve contextually relevant adverts within SmartFrames (the “**Ad Play Solution**”).

The data we collect is limited to IP addresses and other pseudonymous identifiers such as device type, operating system and browser configuration parameters which may be used to single out particular devices (collectively, the “**Solution Data**”).

We take the view that the Solution Data as used in our Ad Play Solution cannot be used by us to directly or indirectly identify an individual and as such is not personal data that is subject to applicable privacy laws. However, if there is a finding or conclusion to the contrary, we have taken the view that we can rely on our processing being necessary for our legitimate interest as the lawful basis for processing the Solution Data.

In order to assess whether legitimate interest is an appropriate lawful basis, SmartFrame has conducted the following legitimate interest assessment (“**LIA**”). Our primary purpose of the LIA is to confirm that any risks to an individuals' rights and freedoms are proportionate to any effect that the processing of the Solution Data may have on that individuals.

SmartFrame has applied the following 3-part test:

- 1) identify our legitimate interest(s) (i.e., why SmartFrame harvests Solution Data, what personal data is included, and what the Solution Data is used for) (**Purpose test**);
- 2) establish that the processing is necessary to achieve our interests (i.e., we can't reasonably undertake to meet our identified goals without use of the data) (**Necessity test**); and
- 3) consider whether our purpose for processing is balanced against an individuals' interests, rights and freedoms (including an individual's right to privacy and the right to be forgotten). (**Balance test**).

| No. | Question | Answer |
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| | Purpose test | |

| No. | Question | Answer |
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| 1. | Why does SmartFrame want to process the Solution Data? | <ul style="list-style-type: none"> — To enable the full functionality of a SmartFrame which includes generating revenue for an image rights holder by serving adverts within a SmartFrame — To serve adverts that are relevant to the image being displayed within the SmartFrame — To serve adverts that are relevant to the location where the image within a SmartFrame is being viewed — To limit the number of times the same advert is served within the same image — To serve images and adverts that are correctly displayed on the device where the image is to be viewed — To only serve adverts on websites that have appropriate content and are deemed to be brand safe |
| 2. | What benefit or value does SmartFrame expect to get from the processing? | <ul style="list-style-type: none"> — The building of a best in class product that can be used by an image rights holder to protect and monetise their images online — The generation of advertising revenue from it and its partner's inventory of images |
| 3. | Does anyone else benefit from the processing and in what way? | <ul style="list-style-type: none"> — Image rights holders will benefit from the income that can be derived from their images — SmartFrame partners who provide SmartFrame access to the images will benefit from the income derived from their images — SmartFrames suppliers who generate the adverts to be used and those partners that evaluate the appropriateness of the websites where SmartFrames are to be displayed will benefit by being paid to provide their services to SmartFrame |
| 4. | Are there any wider public benefits from the processing? | <ul style="list-style-type: none"> — Yes, image rights holders will have a greater incentive to share their images thus increasing the quality and inventory of images that are available for public access and viewing — Images are generally beneficial to society as they are helpful tools to document historical and present times. |
| 5. | What would the impact be to SmartFrame or other parties if processing does not happen? | <p><u>SmartFrame</u> – SmartFrame would be unable to deliver a fully functioning product (i.e. its product would not have all the features it was designed to have). The adverts served in a SmartFrame would not be relevant to the image inside the SmartFrame. SmartFrame would also be unable to determine if the website where the image appear is suitable for the type of advert to be shown.</p> <p><u>Image Rights Holders</u> – Owners of the image rights would generate less income from the use of their images online.</p> <p><u>Website Users</u> – Users would not see adverts that are associated with the images that appear on the website pages they view that contain SmartFrames.</p> |

| No. | Question | Answer |
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| 6. | Does the GDPR, ePrivacy Regulation or other national legislation /rules or industry codes of practice specifically identify the processing activity as being a legitimate activity, subject to the completion of a balancing test and positive outcome? | <p>Recital 47 of the GDPR expressly provides that the processing of personal data for direct marketing purposes may be regarded as carried out for a legitimate interest. In this case, our activities would not be direct marketing, but it is reasonable to extrapolate that the less intrusive non-direct marketing would be similarly recognised as being a legitimate interest.</p> <p>The ICO has also highlighted that a legitimate interest can include commercial interests, individual interests or broader societal benefits.</p> |
| Necessity test | | |
| 7. | Will this processing help SmartFrame achieve its purpose? | <ul style="list-style-type: none"> — Yes, in order to serve adverts that are contextually relevant to the image, SmartFrame must know the location where the image is being viewed. For example, if there is an advert for a concert in New York City, it would achieve the purpose of the SmartFrame by showing adverts for the concert in images viewed in New York or surrounding areas. — Yes, in order to display adverts that are appropriately sized for the device the image is being displayed on, not inundate a website visitor with the same adverts, and ensure the websites are content appropriate for the adverts, the processing of the Solution Data will not only be helpful but will be required. |
| 8. | Is the processing proportionate to the purpose? | <ul style="list-style-type: none"> — Yes. SmartFrame is not interested in tracking or learning about the behavior of specific individuals rather the focus of the Solution Data collection is to select the advert that should be associated with the image and to make decisions about how to optimize the display and frequency with which the advert is served. — Yes, the Solution Data is further limited by anonymising the IP address that forms part of the Solution Data as soon as the relevant country data has been extracted and the information is not otherwise stored. |
| 9. | Is there another way of achieving the purpose? | <ul style="list-style-type: none"> — No, achieving the purpose requires knowing where the image is being viewed and how to present the advert in a manner that is not disruptive to a visitor to the website or on a website that is inappropriate for the advert. |
| 10. | What is our objective as Data Controller and our legitimate interest in carrying out the processing? | <ul style="list-style-type: none"> — SmartFrame's objective is to deliver a product that has all the features dedicated to an image rights holder enabled, but only utilises personal data that is required to associate the right advert, appropriately displayed, with the image. — SmartFrame's legitimate interest is to offer an online technology product for its commercial purposes. |
| 11. | Could the objective be achieved by processing less data or processing the data in a different (less intrusive) way? | <ul style="list-style-type: none"> — No. The Solution Data is already reduced to only data that is required for effecting the solution. The IP address is anonymised after collection and further limited in use by the extraction of the country specific data. |
| Balancing test | | |

| No. | Question | Answer |
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| 12. | Is special category data or criminal offence data involved? | — No. |
| 13. | Is the data likely to be considered particularly private? | — No. IP addresses are generally collected by websites for purposes of geo location so that website providers can determine which edition of their website is to be offered to an end user. Additionally, information about the device used to access the website is also collected so that decisions can be made about how the content of a website is to be displayed. So, there is a reasonable expectation from website users that this type of data will be processed. |
| 14. | Is any data of children or vulnerable individuals involved? | — No. We don't proactively collect data from children or vulnerable individuals. The Solution Data is limited and does not include any data points that are linked to the identity of the user |
| 15. | Is the data about people in their personal or professional capacity? | — No. The Solution Data is limited and does not include any data points that are linked to the profession of the user. |
| 16. | Is there an existing relationship with the individual? <ul style="list-style-type: none"> • What is the relationship? • How has their data been used in the past? | — No. The Solution Data is limited and does not build on historic data. Information is deleted after 24 hrs when the SmartFrames refreshes. |
| 17. | Is the data collected directly from the individual and what were they told at the time? | — The Solution Data is collected automatically, and users are notified of how we use data in our privacy policy that is posted inside of our SmartFrames |
| 18. | If the data was obtained from a third party, what did they tell the individuals about reuse by other parties and does this notice cover SmartFrame? | — The Solution Data is not obtained from a third party |
| 19. | How long ago was the information collected and are there changes since then that would affect expectations? | — The information is only collected in real time and the collection does not relate to information that has been collected in the past, so there are no changes that would impact a user's expectations. |
| 20. | Is the intended purpose and method widely understood? | — Based on the growth of online advertising technology, the serving of adverts in conjunction with video and images is widely understood. There are concerns about targeted advertising without a user's consent and tracking a user's activity across devices and websites. However, our use of the information that we process does not include direct or targeted marketing or tracking a user across websites. |
| 21. | Is there anything new or innovative about the processing? | — No, SmartFrame's own proprietary technology is innovative but the processing activities applied to the Solution Data uses established online processes and partners for ad buying and selecting applicable adverts. |

| No. | Question | Answer |
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| 22. | Is there any evidence about reasonable expectations e.g. market research/focus groups? | — No. However, the serving of adverts as part of the online experience has become an established practice, particularly so when the adverts are not of a targeted nature. |
| 23. | Identify whether methods of complying with the data subject's rights exist or indicate whether the processing undermines the rights of individuals in any way. | — Owing to the limited nature of the information that is included in the Solution Data, SmartFrame will be unable to identify an individual and as such would be unable to fulfil an individual user's request to exercise their rights. |
| 24. | Is there anything to suggest the processing would not be expected or anticipated by the individual? | — No. Identifying the location where a website's content is being viewed and determining how to optimise viewed content is an established principle of online use. |
| 25. | What is the possible impact of the processing on people and its likely severity? | — The possible impact of SmartFrame's processing activities on individual data subject is minimal. The most extreme impact is that an individual may see an advert that they would prefer not to see but this would not be an advert that is linked to the individual or the individual's preference. |
| 26. | Will individuals lose any control over their data? | — The information will be collected automatically, but is consistent with the information that is automatically collected in relation to a user's general use of a website. In the case of IP addresses, these are anonymised after collected and accordingly SmartFrame will relinquish any control it may have over such data. |
| 27. | Would some people be likely to object to the processing or find it intrusive? | — SmartFrame considers that it is very unlikely that some individuals would be likely to object to the processing as the processing activities are not used to serve targeted adverts to an individual and are not use to build a user profile or to track the activities of a user across the internet. |
| 28. | Will SmartFrame be explaining the processing to individuals? | — Yes, SmartFrame 's privacy policy that explains SmartFrame's activities in relation to the personal data they collect will be included within the SmartFrame containing the image and viewable after any advert has been served. |
| 29. | Can opt-outs or tools to manage choices /preferences be offered? | — No. Owing to the limited nature of the information that is included in the Solution Data, SmartFrame will be unable to identify an individual and as such would be unable to fulfil an individual user's request to exercise their rights. |
| 30. | Can any safeguards be adopted to minimise any impact of the processing? | — Yes. SmartFrame already incorporated safeguards such as the anonymisation of the IP addresses they collect. |

Assessment conclusion

| No. | Question | Answer |
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| | Can SmartFrame rely on legitimate interests for this processing and retention? | Yes / No |
| | <p>We rely on Legitimate Interest as the lawful basis for our processing of any personal data we collect, which in any event is limited to an IP address that is subsequently anonymised and information about the browser and device accessing a SmartFrame. In assessing our legitimate interest we have considered: (i) our purpose for processing personal data – in this case we collect IP addresses and device information to ensure that SmartFrames only show relevant content and displays content in a user friendly and limited manner; (ii) whether our processing is necessary to achieve our purpose – in this case IP addresses contain the country code we need to contextualise the content and the device info will best inform the cadence of our content delivery; and (iii) balance our activities against a user’s rights and freedoms – in this case none of the content we serve will be personalised to a user or will serve to build a profile of a user based on the users online activities, instead the focus will remain on the continued effective functioning of the SmartFrame.</p> | |