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Online profiling and cross-channel marketing

The need to comply with privacy rules



What is cross-channel marketing, profiling, current marketing tendencies

Profiling

Any form of **automated processing** of **personal data** consisting of the use of personal data to **evaluate** certain **personal aspects** relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests reliability behaviour, location or movements (Art. 4, § 4 GDPR)



What is cross-channel marketing, profiling, current marketing tendencies

Behavioural advertising

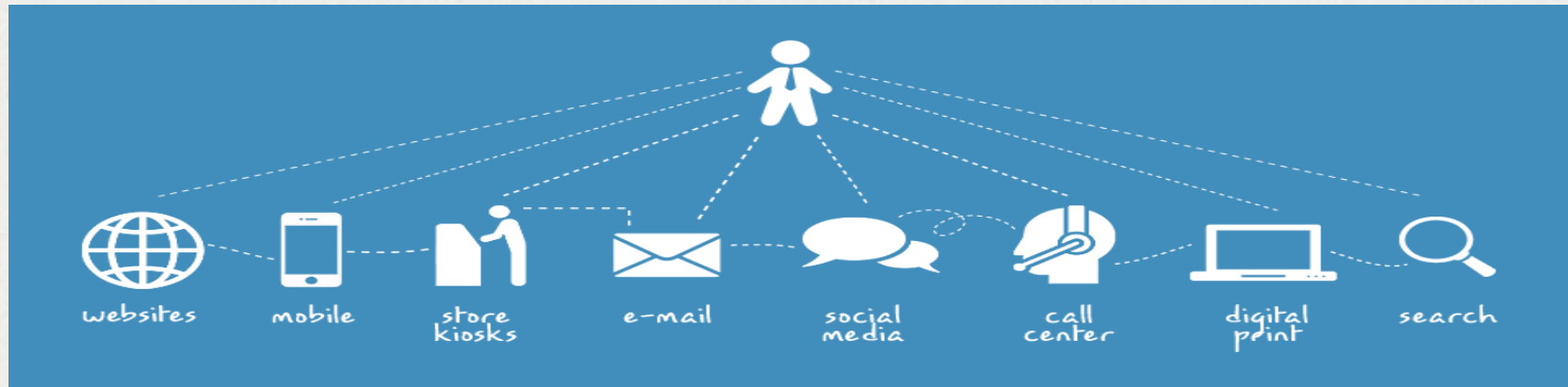
Behavioural advertising seeks to study the characteristics of individual's behaviour through their actions in order to develop a specific profile and thus provide data subjects with advertisements tailored to match their inferred interests.

contextual advertising

segmented advertising

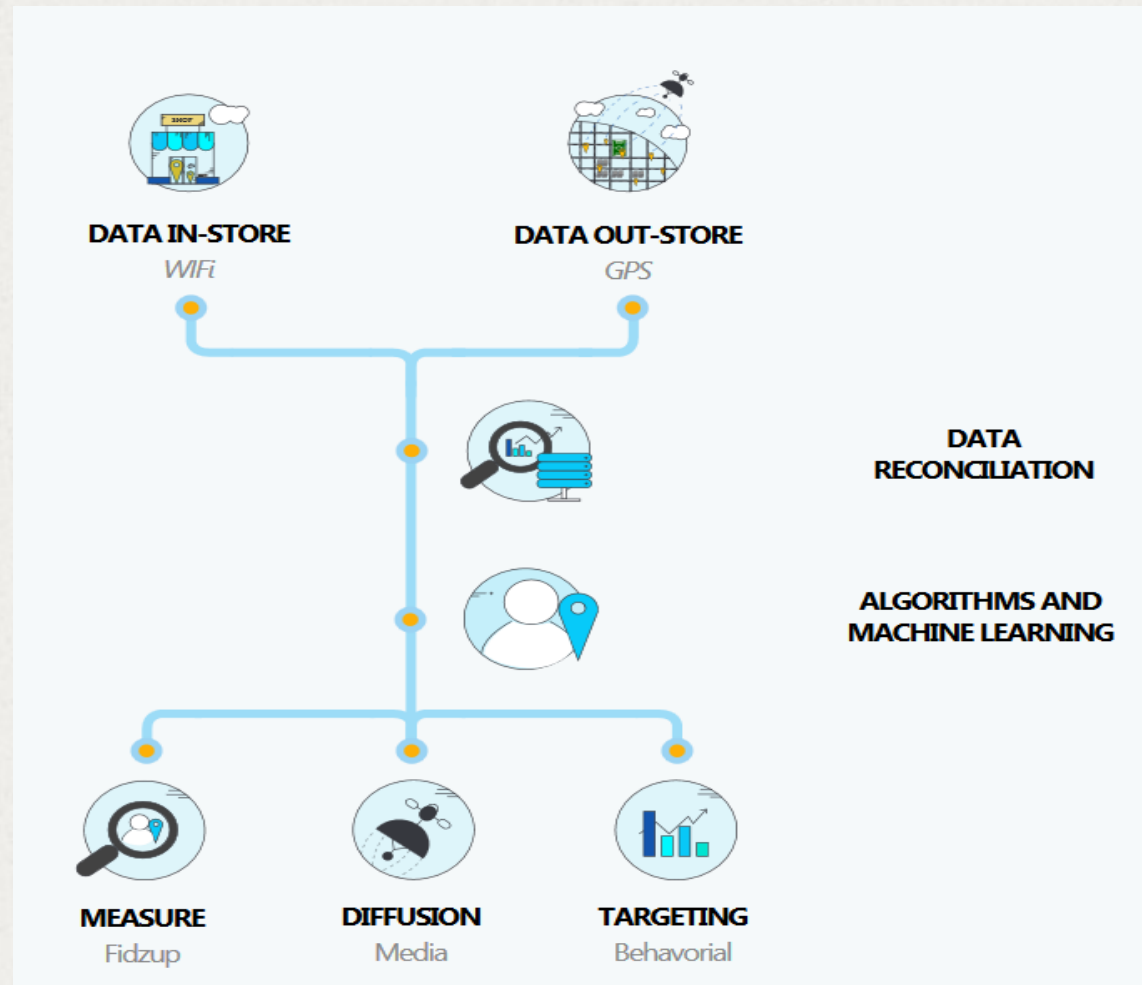
What is cross-channel marketing, profiling, current marketing tendencies

Cross-channel marketing



a marketing strategy where integrated advertising campaigns are carried out simultaneously on various communication channels (e.g. *Facebook, You Tube and Twitter*) and/or multiple devices (pc, tablet, mail, catalogue, retail store)

The French example of FIDZUP





PRIVACY LAW REQUIREMENTS

- 1) Global presentation of GDPR
- 2) Focus on information, consent, transparency and PIA
- 3) Focus on profiling and retention period
- 4) Focus on cookies



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PRIVACY LAW REQUIREMENTS

GLOBAL PRESENTATION OF GDPR



GLOBAL PRESENTATION OF GDPR

MAIN PRINCIPLES

- **GDPR applies since May, 25th 2018 to the processing of personal data**
 - in the context of the activities of an establishment of a controller or a processor in the Union, regardless of whether the processing takes place in the Union or not.
 - of data subjects who are in the Union by a controller or processor not established in the Union.
- **GDPR changes the way to think the processing of personal data and provides new principles such as :**
 - **Privacy by design**
 - **Privacy by default**
 - **Data minimization**
 - **Accountability**



GLOBAL PRESENTATION OF GDPR SANCTIONS

- Failure to comply with GDPR may result in significant fines
- Up to 20 millions euros or 4% of your company's global turnover for certain breaches

GLOBAL PRESENTATION OF GDPR

MAIN NEW OBLIGATIONS

- **Maintain a record of processing activities** under the controller or the data processor responsibility. This record shall contain all the information listed (**art. 30**)
- **Appoint a Data Protection Officer (DPO)** who are responsible for monitoring compliance with GDPR, when the company's activity is based upon **regular and systematic monitoring on a large scale** (**art. 37**)
- **Identification of processors and amendment to current agreements** (**art. 28**)
- **New rights for data subjects:**
 - Right to data portability
 - Right to erasure – Right to be forgotten
 - Right to restriction of processing



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PRIVACY LAW REQUIREMENTS

**FOCUS ON INFORMATION,
TRANSPARENCY AND CONSENT**

FOCUS ON INFORMATION, CONSENT, TRANSPARENCY

- **The data processing shall be deemed lawful if :**
 - processing is necessary for the **performance of a contract** to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract
 - the data subject has given **consent** to the processing of his or her personal data for one or more specific purposes,
 - processing is necessary for the purposes of the **legitimate interests** pursued by the controller or by a third party

Example : it's not because you open an account on a website that you consent to the subscription to the newsletter automatically

You need to get consent to use personal data (art. 6 and 7)

- Goal : to ensure that the individual understand to what he or she is consenting
- **The consent should be freely given, specific, informed and unambiguous by way of a request presented in clear and plain language**
- The consent should be given **by an affirmative act** (*checking a box inline or signing a form*)
- **Consent must be specific** to ensure a degree of user control and transparency for the data subject
- It is up to the controller to prove that valid consent was obtain from the data subject – as long as the processing activities last



FOCUS ON INFORMATION, CONSENT, TRANSPARENCY

When user gives his/her consent, which information shall be provided to data subject?

•It's necessary to inform the data subject of certain elements that are crucial to make a choice such as :

- *the controller's identity,*
- *the purpose of each of the processing operations for which consent is requested,*
- *the type of data that will be collected and used,*
- *the retention duration...*

•Presented in written or oral statements, audio or video messages

•Providing information to data subjects **prior** to obtaining their consent is essential

•**Risk : If the controller does not provide accessible information, user control become illusory and consent will be an invalid basis for processing**

The information or communication shall comply with the following rules (**art. 7 and 12**) :

•It must be **concise, transparent, intelligible and easily accessible**

•**Clear and plain language** must be used

•Where requested by the data subject it may be provided orally

•It must be provided free of charge



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PRIVACY LAW REQUIREMENTS

**FOCUS ON DATA PROTECTION
IMPACT ASSESSMENT**



FOCUS ON DATA PROTECTION IMPACT ASSESSMENT

- **A DPIA is only required when the processing is “*likely to result in a high risk to the rights and freedoms of natural persons*” (art. 35)**
- A DPIA is required when the processing affects personal data such as right to privacy, freedom of speech, of expression, of movement, of conscience and religion and the prohibition of discrimination
- According to the Article 29 Group, the following 9 criteria should be considered :
 - Evaluation and scoring, including profiling and predicting
 - Automated-decision making with legal or similar significant effect
 - Systematic monitoring
 - Sensitive data or data of highly personal nature
 - Data processed on a large scale
 - Matching or combining datasets
 - Data concerning vulnerable data subjects
 - Innovative use or applying new technological or organizational solutions
 - When processing in itself “*prevents data subjects from exercising a right or using a service or a contract*”
- Example : The gathering of public social media data for generating profiles requires a DPIA



FOCUS ON DATA PROTECTION IMPACT ASSESSMENT

When a company makes cross-channel marketing to promote its sales and makes profiling, it means that **it matches up** all the personal data processed. Therefore, the company may need to carry out a Data protection impact assessment to certify its compliance.

- **A DPIA is a process for building and demonstrating compliance :**
 - It helps controllers to comply with the rules of GDPR
 - It demonstrates that appropriate measures have been taken to ensure compliance

How to carry out a DPIA ?

- Prior to processing
- The data controller with the DPO and the data processors
- A DPIA shall contain at least :
 - A description of the envisaged processing operations and the purpose of the processing
 - An assessment of the necessity and proportionality of the processing
 - An assessment of the risks to the rights and freedoms of data subjects
 - The measures envisaged to :
 - Address the risks
 - Demonstrate compliance with the Regulation



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PRIVACY LAW REQUIREMENTS

**FOCUS ON PROFILING AND
RETENTION PERIOD**



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FOCUS ON PROFILING AND RETENTION PERIOD

The Italian experience

Before GDPR

The general rule

*However wants to retain customer data for profiling purposes for more than 12 months has to ask for **authorisation** to the Italian Privacy Authority (Garante Privacy, 24/02/2005)*

Authorisations issued by the Italian Authority

10 years	jewels/cruises and tourism services
7 years	fashion
12-18 months	bingo/gamble



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FOCUS ON PROFILING AND RETENTION PERIOD

Under GDPR

No prior authorisation from the controlling authority

No need to notify the processing to the controlling authority

But

Accountability/Impact Assessment

- Type of product/service
- How often does the customer purchase the product/service
- Decisions of the Controlling authority may still be relevant

Possible prior consultation of the controlling authority



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PRIVACY LAW REQUIREMENTS

FOCUS ON COOKIES

FOCUS ON COOKIES

What is a Cookie?



a cookie is a small piece of data (text file) that a web browser stores on a user's computer or mobile device. The cookie allows the website to remember the user's actions or preferences over time



FOCUS ON COOKIES

Types of cookies

Technical cookies: used for the sole purpose of carrying out a transmission of a communication over an electronic communications network, or strictly necessary in order to provide a service expressly requested by the user

Analytical cookies: used to collect information in aggregate form on the number of users who visit the site

Functional cookies: used to allow the user a better navigation according to a series of criteria selected by the same (e.g. language)

Profiling cookies: aimed at creating user profiles in order to send commercial messages that meet the preferences shown during the visit. Often such cookies, which are not necessary for navigation, are also of third parties, in particular of social networks (eg *Google, Facebook, Instagram*) and are used to make the seller's site interact with the social media account.



FOCUS ON COOKIES

Article 5.3 EU Directive 58/2002

Member States shall ensure that the storing of information, or the gaining of access to information already stored, in the terminal equipment of a subscriber or user **is only allowed** on condition that the subscriber or user concerned has given his or her **consent**, having been provided with **clear and comprehensive information**, in accordance with Directive 95/46/EC, inter alia, about the purposes of the processing. This shall not prevent any technical storage or access for the sole purpose of carrying out the transmission of a communication over an electronic communications network, or as strictly necessary in order for the provider of an information society service explicitly requested by the subscriber or user to provide the service.



FOCUS ON COOKIES

Proposed E-Privacy Regulation

10.1.2017 COM (2017) 10

Article 8 § 1

The use of processing and storage capabilities of terminal equipment and the collection of information from end-users' terminal equipment, including about its software and hardware, other than by the end-user concerned shall be prohibited, except on the following grounds:

- (a) it is necessary for the sole purpose of carrying out the transmission of an electronic communication over an electronic communications network; or
- (b) the end-user has given his or her consent; or
- (c) it is necessary for providing an information society service requested by the end-user; or
- (d) if it is necessary for web audience measuring, provided that such measurement is carried out by the provider of the information society service requested by the end-user.



FOCUS ON COOKIES

Proposed E-Privacy Regulation

10.1.2017 COM (2017) 10

Article 8 § 2

The collection of information emitted by terminal equipment to enable it to connect to another device and, or to network equipment shall be prohibited, except if:

- (a) it is done exclusively in order to, for the time necessary for, and for the purpose of establishing a connection; or
- (b) a clear and prominent notice is displayed informing of, at least, the modalities of the collection, its purpose, the person responsible for it and the other information required under Article 13 of Regulation (EU) 2016/679 where personal data are collected, as well as any measure the end-user of the terminal equipment can take to stop or minimise the collection.



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10.1.2017 COM (2017) 10

Article 9 (Consent)

The definition of and conditions for consent provided for under Articles 4 (11) and 7 of Regulation (EU) 2016/679/EU shall apply.

Without prejudice to paragraph 1, where technically possible and feasible, for the purposes of point (b) of Article 8(1), consent may be expressed by using the appropriate technical settings of a software application enabling access to the internet.