



smaato

GDPR Q&A

for Publishers



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Introduction

With all of the complex and hard-hitting information surrounding the GDPR, we have provided some background information to help our Smaato partners better understand what the GDPR is and how it may affect their mobile advertising business.

Brief Overview

The European Union's General Data Protection Regulation (GDPR) will go into effect on May 25, 2018, significantly changing how companies handle personal data of their European Economic Area (EEA), Switzerland, and United Kingdom (UK) consumers. The GDPR will replace the current EU Data Protection Directive as the overarching data privacy framework across the EEA. With ad tech companies striving to create the best user experience by delivering the most relevant advertisements, the effects of the GDPR will be substantial.

To sum it up, the GDPR applies to the personal data of all EEA, Switzerland, and UK residents, and anyone on EEA soil. The type of data that is affected by the GDPR includes all "personal data," which broadly includes IP addresses, mobile device/advertising identifiers, geolocation, and any combination of data points that could identify a particular data subject. The fines for companies not acting in compliance with the GDPR will range from up to €20 million or 4% of global revenue, whichever is higher.

For more information about the GDPR and the effects, please visit the following Smaato resource pages:

<https://blog.smaato.com/gdpr-faq>

<https://www.smaato.com/resources/gdpr>

We would like to emphasize that every organization handles and processes data differently, and therefore implementation of policies and procedures for each organization will vary under the GDPR. Please consult with your own legal counsel regarding the steps your organization must take to comply with the GDPR.

General Questions

What data is considered “personal data” according to the new GDPR regulations?

User-related data/information typically used for targeted advertising in the mobile environment is regarded by the GDPR as personal data, including:

- Geolocation (GPS-based or IP-based)
- Advertiser ID (IDFA/Google Ad ID)
- Internet Protocol Address (IP)
- Any other “online identifier” (e.g. device IDs, user names, etc.)

Additionally, the following constitute personal data under the GDPR:

- One or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of that natural person
- Name
- Physical/mailing address
- Email address

Can publishers exclude EEA end-users from targeted ads?

Yes, publishers can exclude any EEA end-user. Smaato will do so, based on consent or non-consent. As long as a publisher does not heavily store end-user data on their backend, it should be easy to incorporate any CMP that adheres to the [IAB Mobile In-App CMP API](#) to allow easy monetization in Europe.

Can publishers provide targeted ads conditionally without consent?

No, publishers cannot. In case a technical dependency is given, it is clear that the service cannot be performed without the given consent (and therefore consent is likely not the appropriate basis to process personal data).

What’s the difference between a data controller and a data processor?

Generally, a data controller decides the purpose(s) for which personal data will be used and in what manner. A data processor, on the other hand, acts according to the data controller’s express instructions in the processing of the data. Although every ad tech company is different and handles data in varying ways, publishers and demand partners will most likely fall under the category of data controllers. However, in certain circumstances and for limited purposes, ad exchanges (including Smaato) and/or demand partners may also act in a data processor capacity.

What Is Smaato Functioning As?

Is Smaato a data controller or a data processor?

Smaato will generally act as a data controller, because we make certain decisions about what data is collected, as well as who receives data, and to some extent when and how. It's hard to take the position that we're a processor if, for instance, we are making decisions with the data, such as what inventory to offer or how to optimize ads. However, in limited cases, depending on the nature and scope of data processing, Smaato may act as a data processor. But generally speaking, Smaato will act as a data controller for the purposes of most data processing.

What's Smaato's responsibility in relation to partners and service providers?

It is the responsibility of all data controllers to check their third parties' GDPR compliance. This means that we, as a data controller, will be sending our partners Data Processing Addenda (DPA) to their existing contracts, and asking them to sign them to ensure they are fully aligned with the GDPR.

Will Smaato's SDK handle device identifiers for EEA end-users differently in the future?

Our SDK — release numbers Android 8.0.0 and iOS 9.0.0 and up — gathers additional signals from publishers (GDPR and consent) if the publishers provide them (as they should) using the [IAB Mobile In-App Consent APIs v1.0](#). The SDK will also act according to the consent given, and not collect personal data if not appropriately indicated. The Smaato Exchange will operate differently depending on the GDPR case and if the demand partner has signed the GDPR DPA under which they agree to handle GDPR and consent in accordance with the IAB Europe Transparency & Consent Framework, including registration with the IAB Global Vendor List. If appropriate consent is provided and the demand partner is registered with the IAB Global Vendor List, then the full advertising IDs will be passed. If we receive no consent signal from publishers, then advertising IDs and other data points will not be gathered (or will be removed entirely).

GDPR for Publishers

How is Smaato planning to assist publishers with getting consent from their EEA app end-users?

We are supporting the IAB in-app consent tool and the [IAB Europe Transparency & Consent Framework guidelines](#) for handling GDPR consent, and we will be recommending partners to follow suit. We are designing our SDK to support any CMP or self-build solution that adheres to the [IAB Mobile In-App Consent APIs v1.0](#). We do, however, recommend considering and utilizing a CMP that has registered with the IAB Europe Transparency & Consent Framework. We believe that an industry standard for consent will help all companies communicate consent with other partners in the ad tech ecosystem, and promote GDPR-compliant processing of end-user personal data. For more information about the IAB Europe Transparency & Consent Framework, visit <http://advertisingconsent.eu/>.

How will Smaato know if a publisher's EEA end-users have given them their consent or not?

The IAB approach is to communicate this information with each and every ad request, enabling immediate updates.

How will Smaato know if any of a publisher's EEA end-users have retrieved their consent?

The Smaato SDK will automatically fetch consent and GDPR status from the IAB Mobile In-App CMP API on each and every ad event. Smaato will revert to contextual advertising on GDPR inventory if we are unable to acquire the needed information via this API.

How will Smaato know if any of a publisher's EEA end-users have retrieved their consent?

The Smaato SDK will automatically fetch consent and GDPR status from the IAB Mobile In-App CMP API on each and every ad event. Smaato will revert to contextual advertising on GDPR inventory if we are unable to acquire the needed information via this API.

Does GDPR affect all publishers globally?

A publisher is likely subject to the GDPR, unless it can demonstrate that it is **a)** located outside of the EEA and **b)** does not offer services to EEA residents or within the EEA (e.g. New York-related app vs. global gaming app).

What is the position of a publisher regarding data handling under the GDPR?

Classification as either a data controller or data processor under the GDPR is a factual determination that each organization must make, because there are varying ways that organizations handle and utilize personal data. However, a publisher would generally be regarded as a data controller, as a publisher has direct contact with the end-user and determines what personal data points to collect, how long to retain such data, the parties to which the data will be transferred, and the purposes for which the data will be processed.

What should a publisher do to be ready for the GDPR?

First, determine if your organization is subject to the GDPR as mentioned in the previous questions. In case you determine your business might be subject to the GDPR, contact your own legal counsel for specific advice on the compliance steps you must take. Some general considerations include:

- Creating and maintaining a record of all personal data handling practices, including the purposes for which data is processed and on what lawful basis.
- Reviewing and implementing the IAB Europe Transparency & Consent Framework specifications to collect end-user consent for targeted advertising and other purposes within the Framework, as applicable, on behalf of Smaato and downstream demand partners registered on the IAB Global Vendor List.
- Checking the DPAs of your third-party partners, particularly those that might be regarded as data processors.
- Determining whether your company is required to appoint a Data Protection Officer (DPO).
- Conducting Data Protection Impact Assessments (DPIA) as needed according to the GDPR.

Because the practices of each company vary, you should consult with your own legal counsel to determine the necessary actions your company must take to comply with the GDPR.

When does a publisher need to adhere the GDPR?

Even a non-EEA company may be subject to the GDPR if it offers goods or services within the EEA (e.g. allows payment/currency in euros, provides translated materials in EU languages, etc.). It is possible to completely exclude EEA end-users from your services, in which case the GDPR may not apply to you. However, if your services are accessible to EEA end-users (e.g. via the Internet, mobile networks, or other means) and you provide EEA-specific features that are deemed to target EEA end-users, then the regulators may still determine that you are providing services to the EEA. Again, it's recommended that you seek legal advice from your own legal counsel.

Is header bidding affected by the GDPR?

Yes, please connect with all of your demand partners or potential data management platforms. You may need to execute additional Data Processing Agreements/Addenda and make sure such partners are GDPR-compliant.

What does "legitimate interests" mean in regards to the GDPR?

One of the six bases under which personal data may be lawfully processed includes where "processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child." It is up to the data controller to determine whether it can rely on the legitimate interests basis by engaging in an analysis where the purpose of processing is balanced against the rights and freedoms of the data subjects.

Are contextual ads permitted, regardless of EEA end-users' consent?

Yes, they are. In the event that an end-user does not provide valid consent to receive targeted ads, Smaato has determined that contextual ads will still be permitted based on the legal ground of legitimate interests.

How will I, as a publisher, be able to communicate the consent to Smaato?

We have updated our SDKs and AdTag to provide two additional parameters for each ad request. As we've been working together with the IAB and other industry leaders on the IAB in-app consent api and tool. Our new SDK versions (Android 8.0.0 and iOS 9.0.0) include the support of fetching the IAB consent tool data directly to Smaato via our SDK without any further update from the publisher being needed.

