The legal framework for web archiving: focussing on GDPR

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Legal context for web archiving

Article 10 ECHR

Web archives

Facilitate research and access to information for the public

Right to information
Heritage value
Legal context for web archiving

“The maintenance of Internet archives is a critical aspect [for enhancing public’s access to news and facilitating the dissemination of information] and the Court considers that such archives fall within the ambit of the protection afforded by Article 10”

ECHR (4th section), case *Times Newspaper LTD v. the United Kingdom (Nos 1 and 2)*, 10 March 2009, §27.
Legal context for web archiving

- Web archiving (selecting, collecting, archiving, long-term preservation and access)
- Copyright Sui generis right of databases
- Definition of the « national » web
- Privacy law Data protection law
- Missions of national cultural heritage institutions
- Illegal contents
- Probative value of web archives
The GDPR specific regime for archiving in the public interest

GDPR applies to web archiving as it implies processing of websites containing personal data...

*Personal data: « any information relating to an identified or identifiable natural person »

e.g. in web archiving sector: name, first name and contacts (email, address, phone number) of natural person; bibliographic data; photo; biography; religious or philosophical beliefs; cultural preferences; quality of life; ...

*Processing: « any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means »

e.g. in web archiving sector: harvesting; collecting; capturing; long-term preservation; consultation; communication; access; erasure; ...
The GDPR specific regime for archiving in the public interest

...but GDPR foresees a « softened regime » in terms of principles, obligations and rights for data processing for archiving purposes in the public interest

Beneficiaries of this specific regime?

« Public authorities or public or private bodies that hold records of public interest should be services which, pursuant to Union or Member State law, have a legal obligation to acquire, preserve, appraise, arrange, describe, communicate, promote, disseminate and provide access to records of enduring value for general public interest »

(recital n° 158)
The GDPR specific regime for archiving in the public interest

So, in practice, **who can really benefit** from this derogatory regime?

Not a lot of data controllers...

- National Archives of each MS that have a legal obligation
- ??? National Library ???
- Natural persons
- Cumulative list of actions to be legally imposed...
- On the other hand, recitals help to interpret the GDPR text but have no binding force

But MS can define this concept in national law and designate services covered by this concept of « data processing for archiving in the public interest »
<table>
<thead>
<tr>
<th>Type of derogation</th>
<th>Details</th>
<th>Conditions</th>
<th>Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>Further processing</td>
<td>Compatible with the initial purposes → art. 5, §1, b)</td>
<td>- Adoption of appropriate safeguards for rights and freedoms of data subjects (technical and organisational measures)</td>
<td>GDPR</td>
</tr>
<tr>
<td>Storage limitation</td>
<td>Storage for longer periods OK → art. 5, §1, e)</td>
<td></td>
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<tr>
<td>Prohibition of processing of special categories of personal data</td>
<td>Data controller can process special categories of personal data if necessary for this specific purpose → art. 9, §2, j)</td>
<td>- Adoption of appropriate safeguards for rights and freedoms of data subjects (technical and organisational measures)</td>
<td>Union law or MS national law</td>
</tr>
<tr>
<td>Information to be provided where personal data have not been obtained from the data subject</td>
<td>Not applicable → art. 14, §5, b)</td>
<td>- If provide this information proves impossible or would involve a disproportionate effort - Implementation of appropriate measures such as making the information publicly available</td>
<td>GDPR</td>
</tr>
<tr>
<td>Right to erasure</td>
<td>Not applicable → art. 17, §3, d)</td>
<td>- Adoption of appropriate safeguards for rights and freedoms of data subjects (technical and organisational measures)</td>
<td></td>
</tr>
<tr>
<td>Rights of access, rectification, restriction and object</td>
<td>Not applicable → art. 89, §§2 et 3</td>
<td>- Adoption of appropriate safeguards for rights and freedoms of data subjects (technical and organisational measures)</td>
<td>Union law or MS national law</td>
</tr>
<tr>
<td>Right to data portability</td>
<td>Not applicable → art. 89, §3</td>
<td>- If such derogation is necessary for the fulfilment of the specific purpose - The exercise of such right is likely to render impossible or seriously impair the achievement of the specific purposes - Implementation of potential specific procedures for that the data subject is able to exercise her/his right if appropriate</td>
<td></td>
</tr>
<tr>
<td>Notification obligation regarding rectification, erasure or restriction</td>
<td>Not applicable → art. 89, §3</td>
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</tr>
</tbody>
</table>
Conclusion

GDPR applies to web archiving

But foresees a specific « softened » regime

Some clarifications by MS are needed
Thanks!

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