LEGITIMATE INTERESTS ASSESSMENT

When to use this template

Under the GDPR, you can only Process Personal Data if you can demonstrate that you are doing so on one or more lawful basis of processing (Art 6). One potential lawful basis of processing is called "legitimate interests".

If you are going to be relying on legitimate interests, carrying out a balancing test is mandatory and accountability is mandatory (i.e. keeping records of such balancing tests to demonstrate that you have assessed it properly as a suitable basis). This can be achieved by undertaking a legitimate interests assessment (LIA).

There is no mandatory form for undertaking an LIA. Below is a suggested approach. The Data Protection Network has produced a more detailed LIA template with guidance document which are available for free registration and download here.

Notes

• The LIA outcome should be documented as evidence and reviewed periodically, particularly where the criteria used in the assessment change materially in any way that could affect the outcome.

	Question	Response
1.	What is the purpose for the Personal Data processing and how is it intended that this be carried out?	The purpose of the personal data processing is to facilitate display advertisements to data subjects with a frequency that is effective to advertiser, and positive to the user experience of receiving ads.
2.	What Personal Data will it involve?	The personal data is a unique random identifier stored in a web cookie in the data subject's browser, and a record of what ad was displayed, and when it was displayed to the data subject.
3.	What are the business reasons for carrying out the intended Processing?	BidTheatre executes advertising campaigns for our clients. In order for this to be effective, we need to be able to regulate the frequency of ad exposure.
4.	Is the Processing really 'necessary' for those legitimate interests? Are there another way of achieving the objective?	The alternative way to legitimate interest would be to obtain consent from the data subject. This may prove difficult, as the company is a third party unknown to most subjects. The company will largely be dependent on the work done by publishers in this regard, and their approach to programmatic and GDPR is uncertain and varying.
5.	Would this type of Processing be a surprise to the Data Subject?	We do not believe frequency capping to be a surprise, but rather the expected user experience when receiving internet ads.
6.	Are there any benefits to the Data Subjects of the Processing? On balance is it likely to be received positively by them?	Yes, the benefit of the data subject is that it will be exposed to a variety of ads, instead of the same ad repeatedly. The latter would likely be regarded negatively.
7.	Are there any potential negative impacts for the Data Subjects from the Processing? On balance is it likely to be received negatively by them?	We cannot see any potential negative impacts, or that the processing is likely to be received negatively. A record of displayed ads does not convey anything personal about the data subject.
8.	Would be the negative impacts on the company if the Processing were not to go ahead?	Yes, without the ability to keep track of ad frequencies, the effect and impact of the advertising done for the company's clients would be severely reduced, and the advertiser received negatively by the data subject. No one likes to see the same ad repeatedly over and over. This would impact the company's business severely.
9.	Are the there any wider benefits of the Processing?	Yes, the ecosystem of running ads of the internet is the financing model for millions of publishers, and the preferred way of many end users to access of internet content that is costly to produce.
Decision:		BidTheatre claims legitimate interest for ad frequency records.
Safeguards:		The id stored in the web cookie is a randomized identifier. In case of breach or access by a non-authorized party, this will be meaningless. We see no further possible or necessary safeguards.
Rights:		BidTheatre's Privacy Tool can be used by data subjects to opt-out of the recording of ad impressions for frequency capping purposes.