

THE REACH OF THE EU GDPR IN AUSTRALIA

The following Australian digital media and advertising companies are captured by the new EU Regulations on data processing:

- an Australian Digital Media or Advertising business with an office in the EU;
- an Australian Digital Media or Advertising business whose website targets EU customers for example by enabling them to order products in a European language (other than English) or enabling payment in euros;
- an Australian Digital Media or Advertising business whose website mentions customers or users in the EU; or
- an Australian Digital Media or Advertising business that tracks individuals in the EU on the internet and uses data processing techniques to profile individuals to analyse and predict personal preferences, behaviours and attitudes.

In less than six months, every country within the EU will undergo the greatest change in decades to data protection laws. The changes come into play on 25 May 2018 and are seen as a step change - not a revolution - for data protection processes and rights in the EU.

But what do the changes mean for Australian Digital Media and Advertising Companies based outside the EU? It means that your company will have to comply with higher privacy standards even if your operations are here in Australia. If you process any amount of European citizen data then you are captured by the new changes.

Given the market size of the EU, the GDPR will force “change in practice” within any international company with a global footprint in Europe. By default this is likely to set the precedent for future data protection requirements around the world. The Office of Australian Information Commissioner now provides official Australian guidance on their website about how companies here can prepare for the new EU regulations. This demonstrates just how connected all digital business are to any global movement in privacy regulation.

IAB Australia recommends that before the new regime is in force (May 2018), Australian digital media and advertising businesses think about whether they are caught by the changes. If the answer is ‘yes’ start planning for the procedural, legal and operational changes necessary to ensure you stay on the right side of the new laws.

Familiar Data Protection Concepts for Digital Media Companies in Australia	New Data Protection Concepts for Digital Media Companies in Australia
<p>Concept of personal data is similar to Australia's current legal definition of 'personal data'. (In Australia however, the determination of "personal data" is currently under review with report expected Dec 2017)</p>	<p>GDPR contains a right to be forgotten. It means a consumer can demand that your company deletes their data. There is no similar fundamental right under Australian law.</p>
<p>Importance of consent when dealing with personal data remains a core part of both GDPR and Australian Privacy law. Australian Digital Media and Advertising Companies should ensure their methods of obtaining consent from a consumer is in line with Australian Privacy law.</p>	<p>GDPR requires a data controller (Publishers, Advertisers, anyone collecting data directly from a consumer) to provide a consumer's data in a machine-readable format. The point is to make the data "mobile" so the consumer can move it around between data controllers. Australian privacy data law does not demand that Australian digital media and advertising companies provide consumer data in a machine-readable format.</p>
<p>Data breach requirements are mandatory under both the GDPR and Australian law. Authorities must be notified of any breach. Shorter time frames exist in the GDPR - 72 hour limit on notification. Australian data breach require an authority to be notified in 30 days.</p>	<p>Data controllers can only appoint data processors must demonstrate guarantees to implement technical measures to ensure processing meets new GDPR requirements. Australian law does not currently stipulate legal differences between processors or controllers of data for digital media and advertising companies.</p>
<p>Both GDPR and Australian Privacy Law require you to demonstrate compliance with privacy principles. As part of compliance with privacy principles, good governance practices around privacy are included in both data protection law frameworks.</p>	<p>No annual turnover requirement - Digital media and advertising companies with an annual turnover of \$3 million or less must comply with Australian Privacy laws. Under new GDPR laws, if you handle EU consumer data, regardless of your annual turnover size, must comply with GDPR.</p>
<p>GDPR and Australian Privacy Principles emphasise transparency and 'privacy by design' approach. This is an area of commonality between both data protection frameworks in EU and the Australian framework.</p>	<p>Digital Media Companies which breach Australian Privacy law can be stung with a fine up to \$1.7 million. The penalties under GDPR are much bigger. Your exposure for a breach of the GDPR is €20 million or 4% of your annual worldwide turnover (whichever is higher).</p>

Next steps: This note is not intended to be an exhaustive list of requirements and changes. if you think you might be affected by the GDPR, IAB Australia recommends a good starting point is the [resource](#) on the Office of Australian Information Commissioner (OAIC) website. For further information please contact Director of Regulatory Affairs at the IAB Australia, Kamani Krishnan on Kamani@iabaustralia.com.au