

Rise 2 project

WORKSHOP ON DATA - THE BALANCING ACT BETWEEN PROTECTION AND USAGE

REPORT

Pearle conference Madrid, 24 November 2017

P7330

Silke Lalvani : Introduction to the theme

Workshops on

- a) **The future of data protection in the live performance sector – legal overview and guidance how to prepare the implementation of the GDPR for your organization and members.**

Herman Croux, Partner MVVR law firm

- b) **How to transform data into information and knowledge? The use of data for audience building.**

Pepe Zapata, Communication Director Group Focus

Introduction

On 24 November 2017, two workshops on data were held at the Pearle conference in Madrid, one provided a legal overview as well as guidance how to prepare the implementation of the General Data Protection Regulation (GDPR) for members' organisations (workshop A held by Herman Croux, Partner MVVR law firm) and the other addressed questions on how to transform data into information and knowledge and use it for audience building campaigns (workshop B held by Pepe Zapata, Communication Director Group Focus).

The workshops were held simultaneously and participants could choose which one to attend.



WORKSHOP A

Legal overview and guidance how to implement your privacy policy and comply with new rules on data protection (GDPR)? held by Herman Croux

Five quick tips on how to handle your data and address new data protection rules:

TIP 1 – Data – which data?

Have a look and assess which type of data your company is working with and which activities are linked with data.

TIP 2 – Assess your responsibilities

Use plain language and write down your privacy policy in 6-8 bullet points, explaining which data you hold and how you use it. Try to be understandable for everyone.



TIP 3 – Don't consider data to be a technical issue

Privacy policy is the responsibility of the CEO or the director of a company and not the IT department. The data protection approach should be in the 'genes' of the company and people have to get training in order to understand it.

TIP 4 – Copy-paste is not an option

Privacy rules must be tailor-made for your organisation, you work differently with data than other companies, also depending on the size of the company.

TIP 5 – Store data as long as you need them

Don't store data for too long, think about an appropriate time frame and whether you need the data again in the future.

The workshop addressed two important issues relevant for live performance organisations: Firstly, the definition of "public bodies", and which responsibilities go with it for organisations considered as public; secondly, the question whether live performance organisations can, instead of asking consent from data subjects before when i.e. using their data to send out information on performances, the notion of "legitimate interest" can be applied.

Herman Croux gave the following answers:

Rules for public bodies - in which way do they have to comply differently with the new rules than private bodies?

The main point is that public bodies always need to designate a Data Protection Officer (DPO) (art. 37 GDPR). There are some other specific rules without much specific relevance for us (competent courts for legal proceedings by the data subject - art. 79 GDPR; public access to data in accordance with the applicable law - art. 86 GDPR).

The interesting question is what constitutes a '*public authority or body*'. The GDPR does not define this. The EU Working Group of Data Protection Agencies¹ considers that such a notion is **to be determined under national law**². Reference is also made to EU Directives on public procurement, under which non-commercial organizations that are largely publicly funded are 'public bodies'. The easy answer then is that cultural organizations which receive more than 50 % public funding are public bodies. One can try to challenge this answer and argue that 'public body' in the sense of the GDPR must be interpreted more narrowly, namely linked to the exercise of public authority/power (which should be the criterion leading to a more burdensome GDPR obligation).

The Working Group also recommends that even when there is no obligation, as a good practice, private organizations carrying out public tasks designate a DPO. The question remains: do performing art organizations carry out a public task which makes it necessary to treat them under the GDPR in the same way as the public authority?

The notion of public bodies – in practice:

Does my organisation/my members need a data protection officer (DPO)?

It depends, how the notion of "public body" in the context of the data protection rules is interpreted in your country. The Working Group of National Data Protection Agencies recommend to designate a DPO for organisations carrying out public tasks.

We advise members to get in contact with their respective national Data Protection Agency to get relevant information.

The notion of legitimate interest - can this be used as an alternative for getting consent from the data subjects in case the organization would struggle to get consent or avoid administrative burdens?

Even without consent or necessity to perform the contract data can be processed if there is a legitimate interest. The Working Group gives in its Opinion 06/2014 of 9 April 2014³ the example of a store that obtains from its customers their contact details in the context of the sale of a product, and uses these contact details for marketing similar products. Customers are clearly informed about their opportunity to object, free of charge and in an easy manner when their contact details are collected, and each time a message is sent, in case the customer did not object initially. The transparency of the processing, the fact that the customer can reasonably expect to receive offers for similar products as a client and the fact that he/she has the right to object helps strengthen the legitimacy of the processing. However, intrusive profiling with use of click-stream data and predictive algorithms is not considered legitimate at all.

¹ [Composition and Structure](#) of the Working Group

² See: [Guidelines on Data Protection Officers](#) of the EU working group of Data Protection Agencies, 30 October 2017

³ See the [Opinion 06/2014](#) on the notion of legitimate interests of the data controller

The fact that the controller has a legitimate interest in the processing of certain data does not mean that it can necessarily rely on this as a legal ground for the processing. The legitimacy of the data controller's interest is just a starting point, followed by a balancing test. Controllers may have a legitimate interest in getting to know their customers' preferences so as to enable them to better personalize their offers, and ultimately, offer products and services that better meet the needs and desires of the customers.

This does not mean that controllers would be able to unduly monitor the online or offline activities of their customers, combine vast amounts of data about them from different sources that were initially collected in other contexts and for different purposes, and create complex profiles of the customers' personalities and preferences without their knowledge.

The notion of legitimate interest – in practice:

When people order tickets online, they will leave their e-mail addresses which could be used for advertising performances, for example in a newsletter. Is this allowed without asking for their consent in advance?

Following the reasoning of the example given by the Working Group of Data Protection Agencies, it would certainly be legitimate to send offers which are similar to the performance the target group attended previously – as you can expect them being interested. It is of importance that people have the opportunity to object and refuse further e-mails and newsletter if they don't want to receive those anymore.

Selling of addresses so that another company can use email addresses to send their own offer, is a different topic not falling under "legitimate interest" – even if the advertised performances might be similar.

For more detailed information on the workshop: Handouts and different examples of data protection policies are available, please get in contact with the Pearle office.*

WORKSHOP B

How to transform data into information and knowledge and use it for audience building campaigns? held by Pepe Zapata

Points to be taken into account for effectively transforming data into information and knowledge for audience building:

- Change in communication and relations with audiences: from one dimensional to interactive and multi-channel (the emergence of FEEDBACK)





- Switch from traditional marketing based on offer to inbound marketing, focused on demand
- Multiscreen hyperactivity, digital narratives and online communities as contextual social phenomena
- Link between cultural habits, online activity and social status
- Methodology turn from quantitative data to qualitative (information, knowledge, emotion)

Tips for using data for audience building:

Why-how-what (+to whom, where)

Think about the purposes of your data usage. Different goals (education, creation of participative productions, marketing, etc) require different approaches and action steps. Respect segmentation of your audience and acknowledge categories: age, education, social status, disability, etc.

Retaining audiences/regaining lost audiences/getting new audiences:

Use data with an attention for an optimal balance between assuring loyalty of your present audiences and reaching out to the new ones. To recognize the level of audience engagement, use following categories: frequency (the more time they come, the more they will return), recency (the more recent their visit, the more they will return), value (the more value the more they will return)

No-audiences count!

Data shows a great possibility to capture individuals and groups without cultural habits, with poor or exclusive habits. This means, it is possible to reach out and build new audience communities.

Integral customer journey mapping:

In order to use the full potential of audience data, observe and measure the full experience circle before-during-after activity.

User-centered approach:

Individualise the message you are sending to your audiences. Address their specific profile, needs, interests. Reward their loyalty, show empathy for their emotional input.

Track and rate your audiences :

In order to ratify the growth of your communities, and other possible patterns of transformation, apply the continuous and comparative analysis of gathered data.

Respect the logic of digital transformation:

The successful model for advanced use of data for audience development contains following steps: building audiences; capturing data-selling, not the other way around.

An example of good practice: How to use data to create an homage to the audience, realised by the Barcelona Symphony and Catalonia National Orchestra.

By analysing collected data, the Barcelona Symphony and Catalonia National Orchestra (L'Orquestra Simfònica de Barcelona i Nacional de Catalunya) can identify their most loyal audiences and have information about their preferences in music.

On its 50th anniversary, the orchestra prepared a surprise for the most loyal members of its audience and invited them for a fake interview. This situation is then used for a "private performance" playing their favoured piece of music to reward these people for their loyalty and support.

This example shows how focusing on individual experience and providing space for emotions to emerge, creates an environment where devoted audiences are fully acknowledged as essential part in live performance.

For more information on emotional input and individually addressing the audience, have a look at this video [here](#).

The Pearle office also took a record of the whole workshop session with Pepe Zapata (approx. 1h). If you are interested to see the video, please contact the Pearle office.

Speakers

Herman Croux - Partner MVVR law firm



Mr. Herman Croux is partner at the Brussels law firm MVVP and has been active for more than 20 years in the field of creative industries, technology, media, entertainment, web-driven industries. His practice as an IP lawyer and as a commercial contract lawyer has a strong international focus (advice, contracts, litigation). He was chair of the Copyright and Entertainment Law Committee of the International Bar Association and is a Board Member of the Belgian Copyright Association. He obtained his law degree and philosophy degree at

Leuven University. Personal interests include photography and architecture.

Pepe Zapata – Director of Communication, Marketing and Audiences in Group Focus



Director of Communication, Marketing and Audiences in **Group Focus**, one of the most significant firms in performing arts, cultural contents, audiovisual and events sectors in Spain.

He was partner and consultant in **TekneCultura**, a consulting firm in Barcelona focussed on the analysis of data to get information on arts audiences. Formerly, he was Director of Marketing in Communication in **Mercat de les Flors**, the only Spanish venue dedicated to contemporary dance, Coordinator of **Alícia** Foundation, a

Research Center in Food and Gastronomy with the leadership of chef Ferran Adrià, and Head of Culture and Leisure Activities in **Pompeu Fabra University**.

Pepe is Master in Business Administration and Master in Arts Management. He is a frequent teacher in university programs on arts and culture management, and also a speaker in arts management conferences.