Picture perfect: Data Protection & EUIs' photo booths

Why photo booths? Photo booths are a great way for the EU institutions and bodies (EUIs) to reach out to the public. They are frequently used during events, including the annual EU Open Day.

Given that photo booths are used publicly, with the aim of generating a positive customer experience, it would be counterproductive to use them in a way that could violate anyone's fundamental right to data protection. The EDPS has therefore developed some guidance on the use of photo booths by EUIs, based on the results of our 2019 investigation on the topic.

Why data protection? The purpose of a photo booth is to take pictures of individual visitors. As the operation consists of taking images that identify natural persons, it involves the processing of personal data as described under Article 3(1) of Regulation 2018/1725 (the Regulation). This applies regardless of the retention period applicable to the pictures in the memory of the photo booth as, under Article 3(5) of the Regulation, 'processing' means any operation performed on personal data, not just its storage, but also its collection and erasure. Operating a photo booth therefore necessarily involves the processing of personal data.

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Why should I care? If you are operating a photo booth on behalf of an EUI, you are processing personal data and are therefore responsible for doing so in compliance with data protection rules.

Under Article 3(8) of the Regulation, 'controller' means the EUI (Directorate-General or any other organisational entity) that, alone or jointly with others, determines the purposes and means of the processing of personal data. In the case of photo booths, your EUI has decided to do outreach (purpose) via a photo booth (means). Even if you outsource the operation of the photo booth to a contractor (see *Outsourcing* below), your EUI remains responsible as controller.

Who can help? Each EUI has a Data Protection Officer (DPO). In bigger EUIs, the DPO is also supported by a network of coordinators (DPCs). DPOs and DPCs are your first port of call for questions relating to data protection.

In addition, the EDPS website contains a wealth of information to help you meet your obligations as controller.

Accountability means that you, as controller, not only comply with data protection rules, but are also able to demonstrate this compliance. This involves:

- Making data protection friendly choices (**Privacy by design**). Some photo booths generate pictures on the spot, make them directly available to visitors and delete the data collected immediately after. Others store the image in the booth's memory for a certain amount of time and, following the production of the picture, send it to the visitor's email address. The second option involves the collection of additional personal data (name and contact details) and might also entail a transfer of the collected data to a service provider (see *Outsourcing* below). Three principles must be respected:

- **data minimisation**: you should not collect more data than necessary. This means that you should try to avoid solutions that involve the collection of visitors' names and addresses;
- **storage limitation**: you must delete the data collected as soon as it is no longer needed for the original purpose, namely the production of the picture of the visitor;
- **purpose limitation**: you must not use the data collected for anything other than the original purpose. Reuse of the visitor's picture on your webpage or in your annual report, for example, would violate this principle.

See Article 4 of the Regulation for an overview of all data protection principles.

- Submitting a **record** of your processing activity to your DPO. The record should contain all of the information listed in Article 31 of the Regulation. More information on how to compile and submit a record can be found in Part 1 of our Guidelines on *Accountability on the Ground*.

- Informing all users of the photo booth ('data subjects') of all the elements listed in Article 15 of the Regulation, through a **data protection statement**. For example, the statement should inform users about who you are, the legal basis on which you are handling their data, whom you are sharing it with, how long you will keep it and what their rights are. The guidance provided in our Transparency Paper might be helpful in preparing the statement.

- Operating your photo booth using the correct **legal basis**, based on Article 5 of the Regulation. While photo booths are a great way to interact with visitors during open days and similar events, their operation is not *necessary* for the performance of a task carried out in the public interest, as described in Article 5(1)(a) of the Regulation. The functioning of your EUI does not depend on it and many EUIs choose not to use photo booths at all. The only lawful basis for operating a photo booth is therefore **consent**, outlined under Article 5(1)(d) of the Regulation.

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What is consent? Consent is any freely given, specific, informed and unambiguous indication of a data subject's wishes, in which they signify agreement to the processing of their personal data by a statement or by clear affirmative action (Article 3(15) of the Regulation). Your EUI gives visitors the choice to get their picture taken and the operation of a photo booth is straightforward. You can therefore consider a visitor entering the booth fully informed by your data protection statement (see above) as a freely given and unambiguous affirmative act. However:

- Under Recital 26 of the Regulation, the controller should be able to **demonstrate** that the data subject has given consent to the processing operation. The EDPS therefore recommends that you install a touch screen in the photo booth, on which you can bring the data protection statement to the visitors' attention, ensuring informed consent. You should then ask for the visitors' agreement with the described processing operation by giving the options to choose *agree* or *disagree* on screen. To make sure consent is freely given and unambiguous, do not use pre-ticked boxes for this purpose. If the visitor does not agree, the system should not allow the picture to be taken. In this case, you might want to suggest that visitors take a photo using their own device instead.

- Under Recital 27 and Article 8 of the Regulation, **children**, classed as anyone under the age of 13, merit specific protection. They are also likely to be among the most avid users of your photo booth! While you can use the touch screen to ask visitors to confirm that they are over 13 years old, there would be nothing to prevent younger visitors from accidentally, or even consciously, picking the wrong option. The EDPS therefore recommends having staff on the spot, to intervene if children try to use the photo booth on their own. Where parents or legal guardians are present, they should be encouraged to enter the photo booth alongside the child, in order to ensure that it can be demonstrated that consent was given on their behalf.

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What about outsourcing? Having a contractor run the photo booth on your behalf does not mean you are no longer responsible for its operation (see *Why should I care?* above).

You must have a contractual processor agreement in place. This needs to specify that the contractor must implement appropriate **technical and organisational measures** to comply with the Regulation and to ensure the protection of the **rights of the data subject**. It should also clearly identify responsibilities, properly address any data protection issues and comply with the additional requirements set out in Article 29 of the Regulation. For more information on data subject rights, consult the EDPS Guidelines.

Keep in mind that **EU/EEA processors** may be more familiar with EU data protection rules. By selecting an EU service provider, you can avoid any risks relating to international data transfers and ensure compliance with the principles of privacy by design and by default.

The EDPS has published Guidelines for the use of cloud-based services by EUI. We have also issued standard contractual clauses under Article 29(8) of the Regulation for controller-processor contracts, which are integrated into DG BUDG's model contracts.

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