What is Online Proctoring for Remote Examinations?

Online proctoring offers the examinee the possibility to take exams remotely. Online proctoring solutions have to ensure the integrity of the examination which essentially serves to verify an examinee's competence.

General Data Protection Regulation

Online proctoring involves the processing of personal data, triggering the application of European Data Protection Law. At a glance, the main rules following from EU data protection law are:

- Lawfulness, fairness and transparency of the processing of personal data;
- Purpose limitation;
- Data minimization;
- Accuracy;
- Storage limitation;
- Integrity and confidentiality.

(Special) categories of Personal Data

Online proctoring involves the processing of the following categories of personal data:

- Video footage of the examinee;
- Photos of the examinee;
- Government issued ID card (containing a government issued unique identifier (e.g. a social security number)).

These categories of personal data may be combined in a (special) category of personal data because based on this data it is possible to determine:

- Race of the examinee;
- Religion of the examinee;
- Health-related information (handicap, glasses) concerning the examinee.

Video footage of the examinee can also be considered personal data where there is access information captured from the surroundings/background of the examinee (e.g. captured footage of the home environment, invoking unique characteristics of the particular examinee). Additionally, in some EU-countries, the processing of government issued unique identifiers requires special treatment under the law and in some cases may not only be processed if it is in a legal reason to do so.

As mentioned above, the GDPR contains a detailed regime for processing special categories of data (also called "sensitive data") (see article 9 GDPR).

Examples of sensitive personal data are data regarding racial or ethnic origin, political opinions, religious or philosophical beliefs and trade union membership as well as for processing genetic and biometric data for the purposes of uniquely identifying a natural person (technical means), and for data concerning health, a person's sex life or sexual orientation. The processing of sensitive personal data is prohibited in principle, unless exemptions apply or there is a legal obligation to process the data. A example of the latter is:

- Data subjects give their (consent) explicit consent freely given consent, requires that consent can be freely revoked. However, if the test-taker withdraws his or her consent before the review of the examination by data controller has been concluded the examination process is hindered.
- Frequently, obtained consent may not be possible because the test-taker may feel that there is an imbalance of power between himself/herself and the data controller.

Consent deemed not appropriate

- The data controller (HEI) has data X (public - private characterisation) and is located in Country Y.
- The normal school subject is located in Country Z.
- Personal data is (not processed) A) without a breach of security (by using the use of biometric data: ASD or FR based on human/observer).

Provide Arguments for the Lawful Basis

Consent deemed not appropriate

- Fully given consent requires that consent can be freely revoked. However, if the test-taker withdraws his or her consent before the review of the examination by data controller has been concluded the examination process is hindered.
- Freely obtained consent may not be possible because the test-taker may feel that there is an imbalance of power between himself/herself and the data controller.

Consent deemed appropriate

- The data processing that online proctoring entails is not strictly necessary for the performance of the contract between the test-taker and the data controller.

Legitimate interest deemed appropriate

- Article 6 (1) (f) of the GDPR may deemed appropriate, as it provides that personal data may be lawfully processed if it is strictly necessary for the pursuance of the legitimate interests pursued by the controller or by third party or parties to whom the data are disclosed, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject (test-taker). A example of the latter is:

- Interests:
- In the Netherlands in response to this prohibition to process special categories of data states in article 25 of the Dutch Implementation Law of the GDPR (AVG) that:

- The processing of sensitive personal data (including racial or ethnic origin) is prohibited when for the purposes of identifying the data subject the processing of personal data revealing racial or ethnic origin is inevitable.

Describe System, Threats, Impacts and Mitigations (DPIA elements)

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Possible Lawful basis

- The test-taker can be located in any country of the EU/EEA and or countries with an adequate level of data protection as determined by the European Commission.
- Personal data is (processed) with technical means, but authentication and proctoring is fully based on human intervention.

Definitions

- HEI: Higher Educational Institute
- Data subject: the examinee
- Data controller: the HEI processing the personal data
- Data Processor: third-party software provider processing the data on behalf of the Data Controller - with online proctoring this is the online proctoring software provider
- Data Protection Officer of the HEI: responsible for overseeing and ensuring compliance of the data protection issues of the HEI
- Data Protection Authority: the national authorities to which Responsible parties need to report in case of, for example, data breaches or complaints by data subjects.

Categories of (Personal) Data involved

- Personal data: every type of information related to an identified or identifiable person;
- Special categories of personal data: personal data that fall under a stricter regime for processing (see above);
- As a note - Biometric data: Physical, physiological or behavioral characteristics of an individual, which are processed with technical means in order to identify that particular individual. Examples are: voice (recognition), typing (behavioral recognition), iris scanning (biometric), fingerprint scanning and recognition. In most processing situations, any biometric data is involved an assessment of data is based solely on an anonymous person.

In order to detect and prevent fraud during an exam, it is:

1. necessary to correctly identify a test-taker and
2. monitor the exam process.

The processing of the data mentioned above is strictly necessary and/or licit for these purposes.

Data which is not relevant to either shall be deleted and/or anonymized.

Public Body (for example a Higher Education Institution)

Private Company (for example a test publisher)

Consent

- Performance of a contract
- Legal obligation
- Protection of vital interests
- Public interest and exercise of official authority
- Legitimate interest

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Define Use Case Precisely

The following template can be used to define the use case of a given institution. Based on the use case, the appropriate lawful basis and measures to protect data can be better defined.

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