

GDPR Case Study: Analyzing the GDPR violation fine of \$888m against Amazon Europe

Amrit Singh Rana
Brown University

Abstract

Ten thousand Amazon users in France, led by a digital rights advocacy group, raised a complaint against Amazon Europe to CNIL for violating GDPR[1]. They complained that even though Amazon declares the data they collect and how they process it, they do not explicitly ask for consent for processing. CNPD, Luxembourg's data protection authority eventually levied a fine of \$888m against Amazon Europe for collecting and processing data without user consent (Article 6 of GDPR).

1 Introduction

La Quadrature du Net (LQDN) is an association of law 1901 in France. It describes itself as an organization with nonprofit object, particularly encouragement of users' autonomy and their control over their data. LQDN filed a complaint in May 2018 on behalf of 10,065 people, claiming that Amazon data processing is not based on "free consent".

Invoking Article 80 of the GDPR, LQDN invited individuals residing in France to mandate LQDN to represent them, and use the rights bestowed upon them by Article 77 of the GDPR to lodge a complaint[2] against Amazon with the National Commission on Informatics and Liberty (CNIL), the french regulatory for GDPR. 10,065 people, claiming to use Amazon services, responded to LQDN and signed the complaint.

They claimed that Amazon declares that it carries out certain data processing operations on personal data of users, but nowhere explicitly asks users for their consent, leading to the violation of Article 6 of the GDPR.

Amazon in its notice, "Protection of your personal data"[5], describes the following data that it processes to provide its services:

- Orders Placed
- Products, Content or Services sought

- Information and Documents related to identity
- Images, videos and other files uploaded to a server
- Playlists, wishlists, gift lists and lists of favorites
- IP address of device
- Information about the device - Operating System, Browser, Mobile/Desktop, Timezone
- Location of device
- Information related to interaction with content - downloads, streams, views
- Interactions on page - scrolling, clicks, mouse movements
- Interactions with third party to whom Amazon provides technical, logistical and advertising services

In the same notice, they further mention:

We use your personal information to serve you interest-based advertisements for features, products and services that may be of interest to you.

This leads to another notice, "Interest-based ads notice"[4], that mentions:

In order to serve you interest-based advertisements, we use information such as information about your use of Amazon sites, content or services.

This notice further says:

Amazon offers you a number of choices about receiving advertisements from Amazon based on your interests. You can choose not to receive advertising from Amazon based on your interests. You will continue to see the ads,

but they will not be based on your interests. Please visit the Amazon Ads Preferences page to learn how to set your preferences.

However, when we navigate to the "Amazon Ads Preferences"[3] page, the option "Do not display ads from Amazon based on my interests" option is unchecked by default.

This makes it clear that Amazon processes personal data to carry out behavioral analysis and targeted advertising without explicit consent of the users.

Amazon, whose purpose here is to display targeted ads to users, is the data controller. It is safe to assume that Amazon processes the data on its own infrastructure, and hence, might be the data processor as well. Users of Amazon's services are the data subjects.

National Data Protection Commission (CNPD), Luxembourg's regulator issued fine of \$888m to Amazon in July 2021. CNPD has not released any more details on account of "professional secrecy" laws in Luxembourg, which prevent releasing case information until an appeal process has been completed. Amazon plans to appeal against the decision.

Amazon's spokesperson claims the ruling is based on "subjective and untested" interpretations of the GDPR and the proposed fine is out of proportion, even with that interpretation[7].

This article will explore the possible reasons that might have led to the biggest GDPR fine issued to date.

2 GDPR Violations

Article 6 of GDPR describes the lawfulness of processing, i.e., the conditions under which processing of data is permitted. We explore some conditions under which processing is lawful, and test them for the case of Amazon to find if they hold any ground.

2.1 Consent

Article 6(a) says data processing is lawful if the data subject has consented to their data getting processed, for one or more purposes. This consent must be asked for in a free and fair manner and given explicitly by data subject.

Consent should be a positive act (Article 4). Boxes checked by default, inactivity or silence means no consent (Recital 32). Continuing ordinary use of services is not a behaviour that implies consent for data processing (Article 29 Working Group).

2.2 Contract

Article 6(b) mentions that processing is permitted when it is necessary to honor a contract to which the data sub-

ject (user) is a party. Amazon might states in its conditions of use[6] that:

As part of Amazon Services, we will recommend features to you, products and services, including third party advertisements, which are likely to interest you, we will identify your preferences and we will customize your experience.

By this, Amazon could indicate that its purpose for processing data for targeted advertising is in the contract with its users, and thus, they have to process the data to honor it.

However, Amazon users do not use Amazon services to participate in behavioral analysis and viewing targeted advertisements. To quote the CNIL, "Processing user data for ad targeting purposes does not match to either the main object of the contract, nor to the reasonable expectations of users"(decision SAN-2017-006)

Typically, for users, the main object of the contract with Amazon is the use of its website for buying and selling goods. This functionality can perfectly be pursued without establishing common profiles and without targeted advertising.

2.3 Legitimate Interest

Amazon does not explicitly invoke its legitimate interests as a basis of this behavioral analysis and targeted advertisements (Article 6(f)). That would anyway violate user privacy rights.

3 Discussion

This is the biggest GDPR fine issued till date and is more than double of all prior fines combined. This fine is very important in my opinion. A lot of cases are being filed under GDPR but very few reach a conclusion. This ruling shows GDPR has power. This fine, if sustained, will serve as a good example for other service providers to become more careful about data privacy. It will also improve people's trust in GDPR, which has been waning.

Under GDPR, a complaint raised in a member state against a service provider, will be transferred to the member state where the company has headquarters. Most of the big tech companies in EU are based out of Luxembourg and Ireland. Coming from Luxembourg's DPA, this ruling is even more significant. This can act as a warning for other big tech companies in Luxembourg.

While LQDN has welcomed this ruling, Amazon plans to appeal against it. It is possible that appealing and negotiating may bring the fine down. We have seen this happening in other cases. In a case against British

Airways, fine was dropped from \$251m to \$27m. In another case against hotel group Marriott, fine was reduced from \$250m to \$24m.

References

- [1] General Data Protection Regulation.
- [2] Claim against Amazon Europe.
- [3] Preferences for Ads on Amazon.
- [4] Ads based on your interests.
- [5] Notice: Protection of your personal information.
- [6] CONDITIONS OF USE AND GENERAL SALES.
- [7] BURGESS, M. Why Amazon's £636m GDPR fine really matters [Amazon's fine is the first significant GDPR ruling against Big Tech. But secrecy around the decision exposes the regulation's flaws]. *Wired*.