



OnSite & InBox Data is Anonymous Data

A Review of Supporting GDPR Articles, Recitals and EU Court Rulings

OneSpot's OnSite and InBox products do not handle any personal data as defined or regulated by the General Data Protection Regulation (GDPR). We engaged with TrustArc™, a reputable privacy risk management firm, to do a thorough GDPR assessment of our products. TrustArc confirmed that these OneSpot products do not touch personal data nor perform any high-risk processing activities.

The purpose of document is to educate our customers around how OneSpot and TrustArc arrived at this conclusion through applying the definitions of personal data in GDPR Articles and Recitals, as well as a review of relevant EU court cases as they relate to the OneSpot data and processes.

INTRODUCTION

OneSpot's privacy by design approach keeps end-user privacy at the center of what we do.

We believe we have a responsibility to safeguard privacy and support anonymity in user behavior analysis, so that trust between our customers and their end users can be assured and maintained.

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There are some oversimplifications online relative to GDPR regarding cookie technologies. Too often we read online that any cookie tracking, IP address logging or web behavior analysis is personal data and subject to GDPR. The fact is that it's not as simple as cookies, IP addresses, or behavior tracking = personal data. **For GDPR to apply to cookies they need to make it possible to IDENTIFY a person.**

What follows is our interpretation of the current GDPR definition of personal data as it applies to the data, processes and controls at OneSpot for the OnSite and InBox products. We will review relevant GDPR Articles, Recitals and EU case law in order to show how TrustArc and OneSpot arrived at the conclusion that no personal data, as defined by GDPR, is processed by InBox or OnSite.

GDPR ARTICLE 4.1: DEFINITIONS

GDPR only regulates 'personal data', which is defined in Article 4.1¹:

'Personal data' means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

- The key point is that in order for OneSpot IDs to qualify as 'personal data' they **need to be able to identify a person.**
- OneSpot browser cookie IDs are randomly generated and we don't handle any data that we can correlate to those cookies that would allow us to identify a 'natural person.'
- The email user IDs that we process for InBox are all non-identifiable ids (email hashes or ESP contact IDs are used, never actual email addresses) and we don't handle any data that we can correlate these IDs that would allow us to identify a 'natural person.'

¹ Personal Data Definition: <https://gdpr-info.eu/art-4-gdpr/>

GDPR RECITAL 26: NOT APPLICABLE TO ANONYMOUS DATA

Recital 26² titled “Not Applicable to Anonymous Data”, clarifies the following points:

- This recital reinforces that GDPR only covers information about **identified** or **identifiable** natural persons.
- This recital clarifies GDPR **does not apply to anonymous data** or to data that can’t be re-identified using techniques “that are reasonably likely to be used.”
- When determining whether there is a technique for re-identifying a user that is “reasonably likely to be used” we should consider “all objective factors, such as the costs of and the amount of time required for identification, taking into consideration the available technology.”
- This means that in order to be considered ‘identifiable’, any potential re-identification scenario cannot be far-fetched, or one that would take an unreasonable amount of time, effort and cost - it needs to be a technique that’s reasonably available to us and its likely we would use.
- OneSpot IDs are not identifiable, we have no data that can identify the user, and we have no data or technology that we are “reasonably likely” to use in order to re-identify any user. Therefore, they and the data we collect and process are outside of GDPR.

GDPR RECITAL 30: ONLINE IDENTIFIERS FOR PROFILING & IDENTIFICATION

Recital 30³ titled “Online Identifiers for Profiling and Identification,” talks about when online identifiers could be considered personal data:

Natural persons may be associated with online identifiers provided by their devices, applications, tools and protocols, such as internet protocol addresses, cookie identifiers or other identifiers such as radio frequency identification tags. This may leave traces which, **in particular when combined with unique identifiers and other information received by the servers, may be used to create profiles of the natural persons and identify them.**

- This recital calls out that online identifiers “MAY” leave traces that identify natural persons and therefore be considered personal data **if they can be combined with other information received by the servers to identify them.** But the word “MAY” makes it clear that there are some online identifiers that “MAY NOT” leave any such traces.

² Recital 26: <https://gdpr-info.eu/recitals/no-26/>

³ Recital 30: <https://gdpr-info.eu/recitals/no-30/>

- **OneSpot identifiers do not leave such traces and our servers do not receive any other information that enable us to identify these natural persons** and therefore our identifiers should not be classified as personal data.
- Furthermore, OneSpot has technical, and administrative measures in place to avoid incidentally receiving additional data that would let us identify users and we have made public commitments not to attempt to re-identify our customers end-users.

RELEVANT EU CASE LAW

On October 19th, 2016 the Court of Justice of the European Union (the "CJEU") published its judgment in **Case 582/14 – Patrick Breyer v Germany**⁴, in which it held that IP addresses are personal data in certain circumstances.

- The CJEU decided that a dynamic IP address will be personal data in the hands of a website operator if:
 1. There is another party (such as an ISP) that can link the dynamic IP address to the identity of an individual; and
 2. The website operator has a "legal means" of obtaining access to the information held by the ISP in order to identify the individual.
- This underscores the point that, in order for some online identifier to be considered personal data, the party who holds the identifier needs to have both the identifier AND the mapping table to identify the person. If they only have the identifier and not the mapping table to identify the person, then it is not personal data.
- OneSpot does NOT have any mapping tables that allow us to use our identifiers to identify the person, and we don't have any ability to construct such a table that is reasonably likely to be used.

In October 2010 the Irish High Court issued a judgment in the case of **EMI vs UPC**⁵ that came to the same conclusion.

- It found that IP addresses are personal data in the hands of ISPs but NOT in the hands of a record label.
- The Judge held that: "Privacy is not infringed as the system simply reads numbers which identify the illicit nature of the transmission. Integral to that, I infer from the other evidence presented to the Court, is that a relevant computer address can also be recovered, as it is part

⁴ Case 582/14: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=184668&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1116945>

⁵EMI vs UPC: <http://www.bailii.org/cgi-bin/format.cgi?doc=/ie/cases/IEHC/2010/H108.html>

of the transmission. There are, therefore, no privacy issues involved as no aspect of the system described involves the identification of a customer.”

OTHER REFERENCES

For a more detailed and nuanced reading of Article 4, Recital 26 and Recital 30 as they relate to cookie IDs, please read **The New GDPR – Are there still anonymous data within online marketing?**⁶

⁶ The New GDPR – Are there still anonymous data within online marketing?:
https://www.eprivacy.eu/fileadmin/Redakteur/News/ePrivacy_on_ExchangeWire_GDPR_and_anonymous_data.pdf