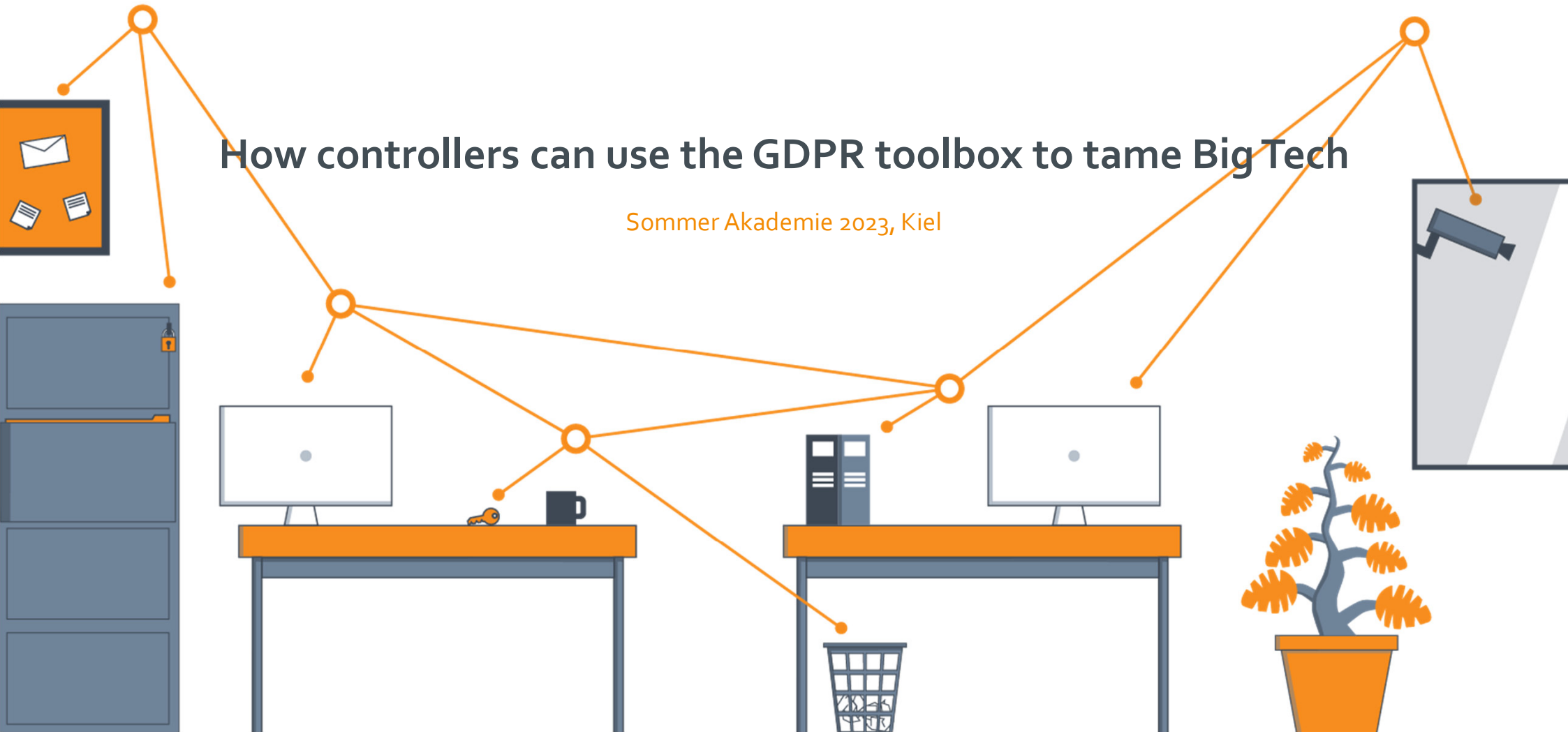


How controllers can use the GDPR toolbox to tame Big Tech

Sommer Akademie 2023, Kiel





Who doesn't use Big Tech?

- Raise your hand if you use Microsoft Office or Gmail at least once a week - keep it raised please!
- Lower your hand if you don't have a Facebook, WhatsApp or Instagram account
- Lower your hand if your organisation has a clear exit strategy when Microsoft raises prices by 25%

Taming BigTech with DPIAs and DTIAs

facebook



Microsoft Intune



Google
Workspace

BlackBerry



<https://slmmicrosoftrijk.nl/downloads-dpias/>

8 essential tools from the GDPR toolbox

1. The right to perform a DPIA (and IAMA) on behalf of central procurement
2. Inversed burden of proof for the data controller (art. 5(2) GDPR)
3. The right to transparency (art. 13 and 14 GDPR)
4. The right to data subject access (art. 15 GDPR)
5. Obligations for the processor to assist the controller (art. 28 GDPR)
6. Obligation to agree on a joint controller agreement (art. 26 GDPR)
7. Obligation to assess the subsidiarity as part of the legal ground
8. Prior consultation with the DPA (art. 36 GDPR)

8 essential tools from the GDPR toolbox

1. The right to centrally commission umbrella DPIAs
 - The Dutch government creates leverage by commissioning umbrella DPIAs for cloud services used by the central government. Schools, universities and municipalities have also joined forces.
 - The DPIA assesses the risks of real data processing in scenarios common for these bundled data controllers.



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2. Inversed burden of proof for the data controller

- The data controller must be able to demonstrate that the processing complies with the GDPR principles.
- The data controller cannot afford to engage a non-compliant supplier: put the burden on the processor to demonstrate compliance with the principles.



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3. The right to transparency (art. 13 and 14 GDPR)
 - Suppliers must enable you to comply with your information obligations as controller. Compare their public documentation with the results of your technical tests.
 - Ignore rules in Terms of Service prohibiting interception: the processing involves your personal data, not theirs.
 - Write the DPIA and DTIA in English and announce that you will make the reports public.

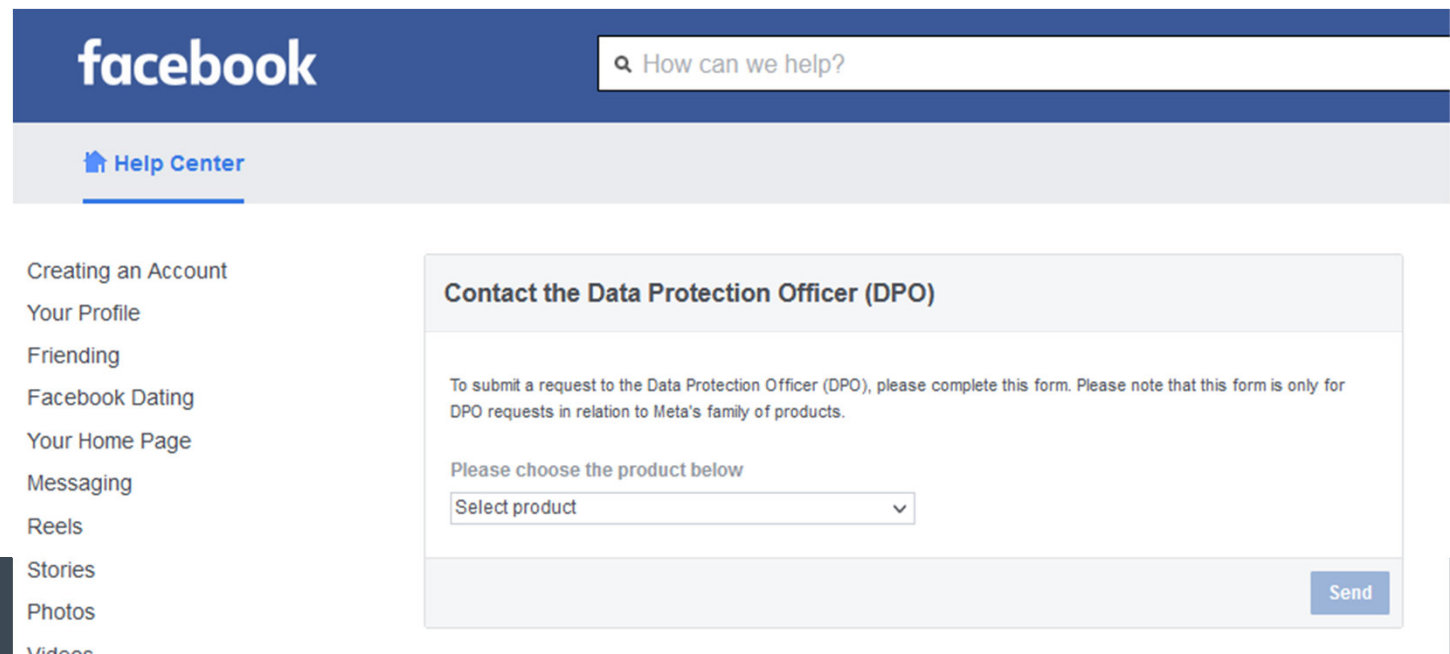


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8 essential tools from the GDPR toolbox

4. The right to data subject access (art. 15 GDPR)

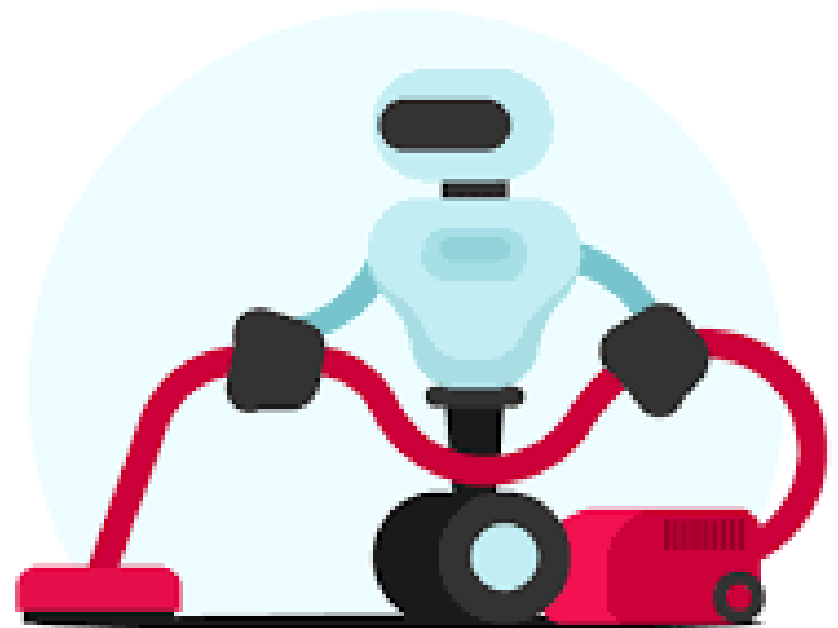
- Compare your input from the test scenarios with the output from the supplier by filing an individual Data Subject Access Request.
- Ask for a copy of all personal data, not just data including your e-mail account or name. Ask for the purposes per category of data, any recipients, retention periods and the logic of profiling.



The screenshot shows the Facebook Help Center interface. At the top, the Facebook logo is on the left, and a search bar with the text "How can we help?" is on the right. Below the search bar is a "Help Center" link with a house icon. On the left side, there is a vertical menu with the following items: "Creating an Account", "Your Profile", "Friending", "Facebook Dating", "Your Home Page", "Messaging", "Reels", "Stories", "Photos", and "Videos". The main content area displays a form titled "Contact the Data Protection Officer (DPO)". The form contains the following text: "To submit a request to the Data Protection Officer (DPO), please complete this form. Please note that this form is only for DPO requests in relation to Meta's family of products." Below this text is a label "Please choose the product below" and a dropdown menu with the text "Select product" and a downward arrow. At the bottom right of the form is a blue "Send" button.

8 essential tools from the GDPR toolbox

5. Obligations for the processor to assist the controller (art. 28 GDPR)
 - Make maximum use of the processor obligations in art. 28 GDPR to ensure collaboration with the DPIA, negotiate effective audit rights and demand access to pen-tests and third party audit reports, encourage suppliers to develop self-service access tools for data subjects, be in control over effective compliance in the chain: right to object against subprocessors.
 - Make suppliers develop tools to inspect Telemetry Data from end user devices (Microsoft and Google now offers such tools!).



publicdomainvectors.org

8 essential tools from the GDPR toolbox

7. Obligation to agree on a joint controller agreement (art. 26 GDPR)
 - If the supplier insists on processing some personal data for its own purposes, and the processing is inextricably linked to, and impossible without your use of these services, you will have to agree on a joint controller agreement.
 - Such an agreement is way more complex than a processor agreement that includes a list of permitted further processing for the supplier's own legitimate business purposes.



Illustration Neguiel Hicks - US privacy attorney

8 essential tools from the GDPR toolbox

7. Obligation to assess the subsidiarity as part of the legal ground (Art. 6 GDPR)
 - Big Tech does not want to appear less privacyfriendly than competitors
 - Make use of all available public information about competing comparable services
 - Set up tests to test the viability of Open Source alternatives - see the work of the EDPS



Illustration Bert Knot from the Eisinga Planetarium, CC BY-SA 2.0

8 essential tools from the GDPR toolbox

8. Prior consultation with the DPA (art. 36 GDPR)

- If initially you don't succeed in lowering high risks in your DPIA and DTIA (art. 35 GDPR), you can go to the DPA for prior consultation (art. 36 GDPR)
- Most tech providers consider this dangerous for their reputation, and will try to prevent this.
- Nuclear option: you may be ordered to immediately stop using those services, while the cloud provider remains active while waiting for enforcement by the Irish DPC.



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Questions?

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