

GUIDELINES REGARDING DIGITAL TELEVISION AND PRIVACY PROTECTION

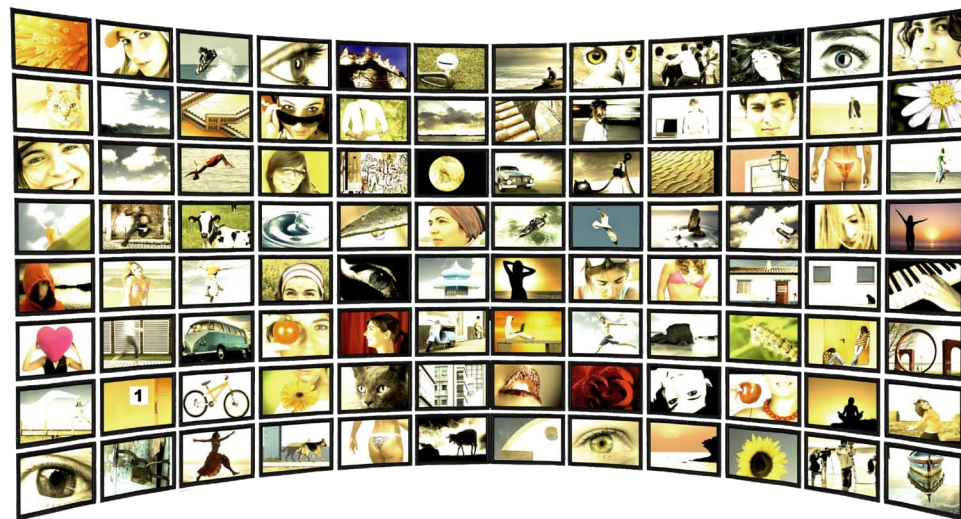


The purpose of the document:	These guidelines provide answers to some frequently asked questions from the perspective of the Personal Data Protection Act requirements regarding digital television, such as: under which conditions is it allowed to collect and process personal data of the users, what are the obligations of operators and the rights of users, what are the specific regulations regarding digital television.
Target publics:	Digital television operators offering interactive services or are planning to introduce them, institutions preparing digital television strategies.
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About the Guidelines

These guidelines have been prepared by the Information Commissioner and address the issues of personal data processing. They have been written in the form of questions and answers in a simple, reader-friendly way so as to provide guidance to the consumers on how to protect their personal data. Hopefully, the readers will get some useful advice on how to exercise their rights related to processing personal data according to the Personal Data Protection Act (Official Gazette RS, No. 94/07 – official consolidated text).

The legal basis for publishing this text derives from Art. 49 of the Personal Data Protection Act, under which the Information Commissioner may prepare and issue non-binding instructions and recommendations regarding protection of personal data.

See also:

- Opinions issued by the IC: <http://www.ip-rs.si/varstvo-osebni-podatkov/iskalnik-po-odlocbah-in-mnenjih/>
- Brochures published by the IC: <http://www.ip-rs.si/publikacije/prirocniki/>
- The Guidelines are available at: <http://www.ip-rs.si/varstvo-osebni-podatkov/iskalnik-po-odlocbah-in-mnenjih/smernice/>

Introduction

In the last decade, television has undergone many changes. One of these being the switchover from analogue to digital transmission another being the delivery of television services as digital signals over the Internet. As a result, new interactive services have been introduced, such as TV-based commerce, enabling consumers to buy anything they desire only with a click on their remote control, distance learning, video-on-demand, home-banking, communication with other users, etc. New digital interactive television systems are generally based on a sealed “black box” controlled by operator giving the user little or no control. Operators can this way gather huge amounts of data about viewers, their behaviour, favourite channels, the interactive services and passwords they use. Interactive digital television is therefore very similar to the Internet – operator can precisely follow every activity of an individual viewer, which made data mining and profiling for marketing purposes a reality also when speaking of interactive digital television.

Digital television can also pose new threats, especially with respect to the protection of privacy of viewers. Therefore, gathering, processing, supplying and disclosing of data has to be in accordance with data protection legislation. The conditions for performing interactive digital television activities have to be explained in the light of legislation defining rights, responsibilities, principles and measures with which unconstitutional, unlawful and unjustified encroachments on the privacy and dignity of an individual in the processing of personal data are to be prevented.

The purpose of these guidelines is to clarify the characteristics of digital and interactive television, to explain the dilemmas regarding personal data protection in the context of interactive digital television and to present relevant legislation. With these guidelines we wish to offer answers to frequently asked questions relating to digital television and processing of personal data and to give recommendations, with the help of which activities of operators can become more transparent. The Information Commissioner’s special wish is for the guidelines to be appropriately considered when preparing or revising strategic documents and on these documents based measures for the development of digital television.

General about Digital Television

Novelties introduced by digital television

The conversion from analogue collecting, recording, transmission and reproduction of television signal to digital will be accomplished in 2012 when analogue transmission will no longer be possible. Because of signal compression enabled by digital technique a great deal of bandwidth space, previously used for analogue transmission of television signal, will be released. After the conversion is fully accomplished, part of the bandwidth space will become available for other radio frequency users, such as mobile services, wireless Internet, new television services, etc.

Digital television is a telecommunication system for broadcasting and receiving moving pictures and sound by means of digital signals. Sound and pictures are converted into a digital format and compressed, using as few bits as possible to convey the information on a digital signal. Digital signals can be received by standard aerials, satellite dishes or via cable or Internet connection but have to be decoded and turned back into sound and pictures by using a separate digital Set-Top Box (STB), or a decoder built into the television (Integrated Digital TV set).

The digital STB accepts commands from the user (via use of handheld remote control, keypad, voice recognition unit or keyboard) and transmits these commands back to the network operator through some sort of back channel (which may be a separate phone line). STBs can make it possible to receive television signals, connect to networks, play games via a game console (which might be built-in to the STB), browse networks including the Internet, interact with Electronic Program Guides (EPG), virtual channels, send e-mails, and videoconference. Many STBs are able to communicate in real time with devices such as camcorders, DVDs, CD players, portable media devices and music keyboards. Some have huge hard-drives and smart card slots to put your smart card into for identification and purchases.

Advantages of digital television:

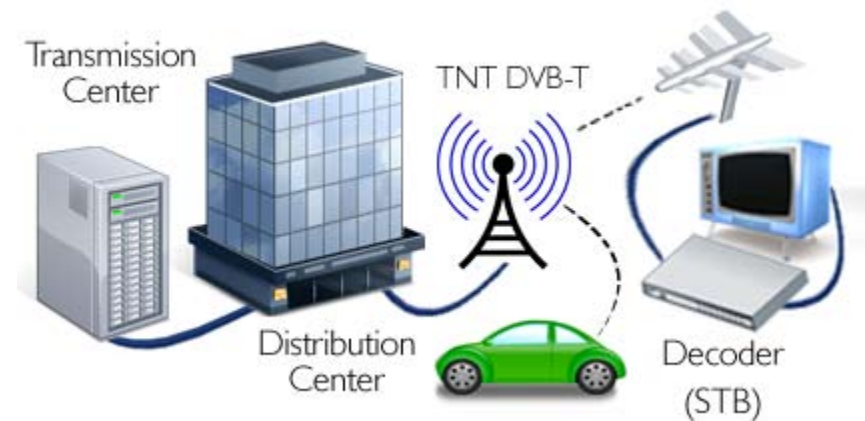
- digital channels take up less bandwidth space - this means that digital broadcasters can provide more digital channels in the same space;
- digital television has a superior image, improved audio quality, and better reception than analogue television;
- digital television permits High-Definition digital service;
- digital television permits special services such as multicasting (more than one

- program on the same channel) and electronic program guides;
- digital television allows other non-television services such as pay-multimedia services or interactive services.

Digital television transmission means

The audio/video stream used by digital television can be transmitted not only by all the traditional analogue television transmission means (cable, satellite) but also by the existing means of digital data transmission (Internet providers, mobile networks, etc.).

Digital Terrestrial Television - DTT or DTTV

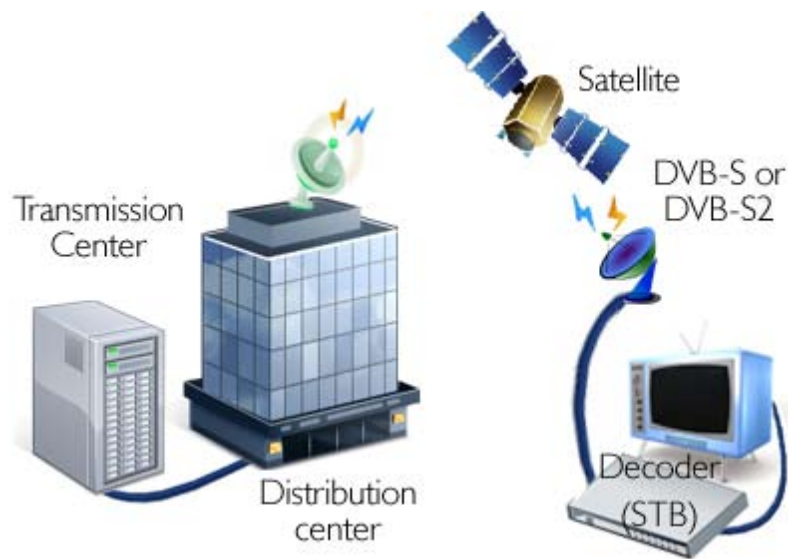


DTTV is transmitted on radio frequencies through the airwaves that are similar to standard analogue television. DTTV is received via a digital STB, or integrated receiving device (even portable), that decodes the signal received via a standard aerial. DTTV can also be received by computers equipped with a TV tuner card (component that allows television signals to be received by a computer).

In Europe and Australia the DVB-T (Digital Video Broadcasting – Terrestrial) standard is used for terrestrial digital television.

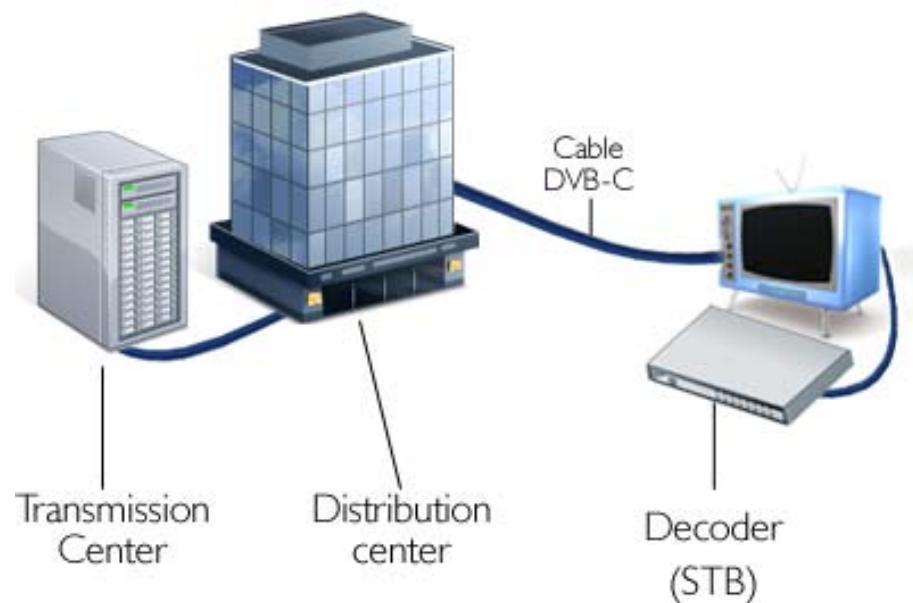
Digital Video Broadcasting via Satellite

DVB-S standard (Digital Video Broadcasting Forward Error Coding and Modulation Standard for Satellite Television) is used for satellite transmission since 1995. DVB-S2 (Digital Video Broadcasting - Satellite - Second Generation) is an enhanced specification to replace the DVB-S standard that will probably be used for all future new European digital satellite multiplexes, and satellite receivers will be equipped to decode both DVB-S and DVB-S2. DVB-S is received via a digital STB that decodes the signal received via a satellite-dish antenna.

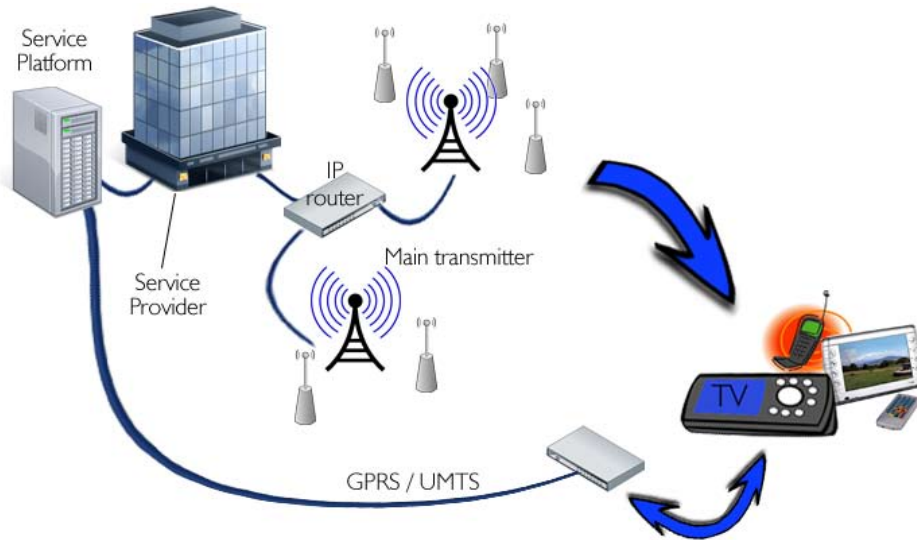


Digital Video Broadcasting via Cable

DVB-C (Digital Video Broadcasting – Cable) is the European standard for the broadcast transmission of digital television over cable. Digital Video Broadcasting via Cable is received via a digital STB that decodes the signal received via the cable.



Digital Video Broadcasting for handheld (mobile) receivers



Mobile television is a name used to describe a service to subscribers via mobile telecommunications networks and involves bringing television services to the mobile phones. Mobile television over cellular networks allows viewers to enjoy television with content specifically adapted to the mobile medium. The services and viewing experience of mobile television over cellular networks differs in a variety of ways from traditional television viewing. Another opportunity for users is Mobile television “pod casts”, where content is delivered to a user’s mobile on demand or by subscriptions. Stored locally on the handset, this content can then be viewed even when there’s no network connection. And a service provider can schedule the delivery to “off-peak” hours, for example during the night.

Technically, there are currently two main ways of delivering mobile television. The first is via a two-way cellular network and the second is through a one-way dedicated broadcast network. Both include DVB-H (Digital Video Broadcasting - Handheld). DVB-H is the latest development within the set of DVB transmis-

sion standards. DVB-H can offer a downstream channel at high data rates which can be used standalone or as an enhancement of mobile telecoms networks which many typical handheld terminals are able to access anyway. Using the existing 3G (Third Generation) network is another way to get Mobile television.

Digital Video Broadcasting through IP networks

IPTV (Internet Protocol Television) is a system where a digital television service is delivered using the Internet Protocol over a network infrastructure, which may include delivery by a broadband connection. For residential users, IPTV is often provided bundled with other services such as Web access and telephony. The commercial bundling of IPTV, telephony and Internet access is referred to as a Triple Play. Adding the mobile voice service leads to the Quadruple Play denomination. IPTV is typically supplied by a broadband operator using a closed network infrastructure and can be received on a digital television through a STB. As a contrast to IPTV, the Internet Television or television over the Internet is the delivery of television content over public Internet. In the Internet Television approach, the model is open to any rights holder, as it is based on the same publishing model that exists on the Web - anyone can create an endpoint and publish that on a global basis. Thanks to open standards and formats which have helped create this opportunity, Internet Television wants to be for the television just as the web is today - accessible from any type of computer and connection around the world and not physically tied to the user living room or STB.

Interactive digital television

A novelty introduced by digital television is interactivity between the operator and the viewer/user and refers both to usage and technology. A generally accepted definition is that Interactive television is: any television providing to the viewer the possibility of what is called a “return path” – information flows not only from broadcaster to viewer, but also back from viewer to broadcaster and offering to each television set, or to each viewer who uses that television set, the ability to receive a different choice of content.

There are two general types of iTV:

- 2-screens iTV where the viewer interacts with the television programming on a »screen« other than the television – the viewer is watching the television but interacting using personal computers, media centres, phone, or other electronic devices. Text messaging is very popular when the phone is used.
- Single-screen iTV when the program’s interactive enhancements are accessible using the viewer’s STB, remote control, television system, etc.

With Digital Terrestrial Television, Digital Video Broadcasting via Satellite and via Cable interactivity is made possible through different channels with the use of DVB-MHP standard (Digital Video Broadcasting – Multimedia Home Platform). For transmission the broadcaster uses one channel, the viewer uses another one for return information (telephone line, broadband network). Single-screen iTV is in its true sense of meaning only possible with Digital Video Broadcasting through IP networks where the broadband connection allows both sending and receiving at the same time.

Digital Video Broadcasting – MHP

DVB (Digital Video Broadcasting) standards that are commonly used in Europe for broadcast transmission of digital television over air, satellite and cable allow interactivity through MHP standard (Multimedia Home Platform). DVB-MHP is a collective name for a compatible set of middleware specifications developed by the DVB Project. MHP was designed to work across all DVB transmission technologies and has a core based around a Java virtual machine. MHP can be described as a set of instructions that tells the operating system on a digital television receiver how to deal with an interactive television application it has received.

Three versions of MHP have now been developed. The first allows enriched television services but does not provide for a “return path”, therefore interactivity is only of a local nature. The second profile encompasses interactive television: besides the activities offered by the first profile, a viewer can with the help of a return channel communicate with the operator. This helps the operator gather individualized information about any viewer to adapt immediately and accordingly to a specific viewer’s preferences. The third MHP profile is meant for IPTV, which on its own includes interactivity, since the transmitting and the receiving channels are the same.

For the moment the DVB-MHP standards allows applications such as electronic programme guides, voting (in a reality show for example) during the programme without having to pay for the phone call or log onto a computer, customized or localized information (such as news or weather), interactive sports (which can include the ability to watch an event an angle of your choice), interactive games, video-on-demand, interactive advertising (at any time you can find out more about a specific product), radio, etc. You may have a look at the applications on: <http://www.mhp.org/applications.htm>.

Interactivity and IPTV

Due to broadband connection, IPTV allows the operator and the user to communicate through the same channel. The services already in operation and the ones that are yet to be operative are many and the television has in its service-ability become very similar to the Internet. Additional services can be enabled free of charge or on the basis of a subscription. Therefore operators have the possibility to reach new target audience with distinguishing the transmitted programme regarding specific segments of viewers.

Besides the services allowed by DVB-MHP standard on other platforms (additional information on a specific content, electronic programme guide, etc.), IPTV also allows many other interactive services:

- the program credits could be available anytime during the show instead of only at the beginning and/or end;
- while viewing one program, you can keep abreast of specifics of other television program(s), including sports;

- customized and localized information (such as news, weather and sports);
- home banking;
- home shopping and instant shopping – when seeing a product or service you want, you can buy it or order it immediately;
- polls/surveys – make your vote count during a program (or after) without having to pay for a toll call or log onto a special computer;
- interactive game shows – play along and/or compete with others;
- interactive sports (which may include the possibility to watch an event from your choice of camera angles);
- distance learning;
- videoconferencing, e-mail, instant messaging;
- interactive advertising;



Guidelines Regarding Privacy Protection and Interactive Digital Television



On one hand, digital-TV-related new possibilities mean that users will get the contents and services adapted to their own wishes and needs, while opening up a number of issues concerning the protection of privacy, on the other hand. By enabling interactivity between the user and the operator, digital television implicates processing of user's personal data. With active use of digital television users give away certain information about themselves that need to be treated as personal data - information about programmes watched, preferences and user's shopping habits, political, religious or other beliefs, health status, through taking part in opinion polls users also communicate their opinions on current affairs, etc. All these data are considered as personal data because they all refer to an identifiable individual. At any moment, digital television operator has insight in which television channels, for how long and how often a specific user is watching. At the same time operator also processes the data the user himself »communicates« to him by the (inter)active usage of the television.

The reason why personal data protection principles must be applied when speaking of digital television becomes specially obvious in the case of profiling for marketing purposes on the basis of user's preferences (choosing a specific content). Interactive digital television namely allows for simultaneous transmission of different advertisements to different users or groups of users. Operator can thus perform target marketing or market segmentation on the basis of user's socio-demographical characteristics (age, education, from the user's side communicated preferences, shopping habits, etc.) and transmit certain advertisements only to a specific segment/group.

In addition, interactive digital television also allows behavioural marketing/targeting, which is based on gathering users' behavioural patterns (operator follows what a specific user is viewing and when, which interactive applications he uses, etc.). On the basis of the data on users' behaviour and other data collected by the operator, a detailed profile of a specific user can be created, which enables a completely personalized behavioural marketing. At the moment we are probably not far away from having two users watching different, to their characteristics, preferences, habits and behaviour adjusted, "custom made" advertisement, at the same time, on the same channel. Target and behavioural marketing via digital television implicates processing of personal data, which are not only user's contact information, therefore operators have to strictly follow the personal data protection legislation.

Fundamental principles that every interactive digital television provider should consider regarding privacy and personal data protection are the following:

- digital television has to remain a cultural service ensuring freedom of information, diversity of opinion and media pluralism; attempts to manipulate viewers via dedicated programming have to be banned;
- the possibility of anonymous use of digital television must be maintained: the entire information system (organisation, hardware, software) set up to deliver digital television has to be designed, built and configured to promote and assure anonymity or minimization of the use of personal data (principle of proportionality), except when viewers expressly agree with processing of their personal data;
- processing (including collection) of personal data has to be fair and legitimate.

Following we give concrete instructions on how to process personal data in a fair and legitimate way when speaking of interactive digital television. These guidelines should serve as guidance to digital television providers, whereby they can provide for digital television services compliant with the Personal Data Protection Act (Official Gazette RS, No. 94/07 – official consolidated text).

In the following text:

- “operator” stands for network operators as defined in item 6 Article I of the Digital Broadcasting Act and for service providers as defined in item 7 Article I of the Digital Broadcasting Act.
- “user” stands for individual using digital television services, regardless of subscription;



When may operators process personal data of users?

According to the Personal Data Protection Act personal data is any data relating to an individual that identifies him. Typical personal data include name, surname, address, unique citizen identification number – EMŠO, etc., however we should not forget about sensitive personal data (data on racial, national or ethnic origin, political, religious or philosophical beliefs, trade-union membership, health status, etc.). Processing of personal data means any operation or set of operations performed in connection with personal data that are subject to automated processing or which in manual processing are part of a filing system or which are intended for inclusion in a filing system, such as in particular collection, acquisition, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, communication, dissemination or otherwise making available, alignment or connecting, blocking, anonymising, erasure or destruction.

Operators may process personal data of users only considering the provisions of the Personal Data Protection Act. The basic conditions for processing of personal data are the following:

1. Operator needs an appropriate legal basis for processing of personal data (statute, personal consent or if this is necessary and appropriate for the fulfilment of contractual relations). If collection and processing of personal data is provided by statute, the statute has to determine also the purpose of processing. However, if the operator processes users' personal data on the basis of personal consent, the user has to be previously notified about the purpose of processing and if circumstances require so also about other information if this is necessary to ensure lawful and fair processing of personal data.
2. Following the principle of proportionality, operator may only process those personal data that are adequate and in their extent appropriate in relation to the purposes for which they are collected and further processed (e.g. for sending a bill the operator only needs to process the address and not also the number of family members).
3. The purpose of collection and further processing has to be specific and lawful. It is essential that the operator truly only processes those personal data that are necessary for the fulfilment of the purpose of processing. The user has to know which of his personal data the operator is processing and for what purposes.

On what legal basis may operators process personal data of their users?

As already explained, legal basis for processing of personal data can be provided either by statute or by personal consent of an individual.

The Electronic Communications Act (Official Gazette RS, No. 13/07 – official consolidated text) provides that digital television operators may collect the following data on their users:

1. full name or title of subscriber and its organisational form;
2. activity of the subscriber, at his request;
3. address of the subscriber;
4. subscriber number or other numbering element used to establish connections to the subscriber;
5. at the request of the subscriber, the academic, scientific or professional title of the subscriber or the address of his electronic mail;
6. on the basis of payment, additional data if so desired by the subscriber, provided that this does not encroach on the rights of third parties;
7. tax number for natural persons, and tax and registration numbers for legal entities.

The data collected may only be used for the conclusion, implementation, monitoring and termination of subscriber contracts, for billing for services and for the preparation and issuing of subscriber directories in accordance with The Electronic Communications Act.

If processing of personal data is not provided by statute, the operator needs to obtain personal consent of the user. The Personal Data Protection Act provides that personal consent of an individual is a voluntary statement of the will of an individual that his personal data may be processed for a specific purpose, and this is given on the basis of information that must be provided to such individual by the data controller. Personal consent of an individual may be written, oral or some other appropriate consent of the individual.

Special attention is needed when collecting personal consent for processing of personal data of a minor. Applicable legislation provides that children up till the age of 15 have no capacity to contract. Thus collection and processing of personal data of children under the age of 15 is not possible on the basis of their personal consent but only if this is provided by statute or on the basis of personal consent

of a statutory representative. When minors get 15 years of age they obtain partial capacity to contract, which means that they need parents' approval if a deal is of such importance that it essentially affects the minors' life or if it is such to affect the minors' life after coming of age. For example, processing of personal data via digital television in the context of a prize contest - in the Information Commissioner's opinion – is not of such importance for the minors' life. In certain cases however this is not true, which depends on the execution of a specific prize contest and on the consequences of the processing of personal data.

Personal data may also be processed in respect of users that have contractual relations with the operator or are on the basis of the users' initiative negotiating on the conclusion of a contract, provided that processing of personal data is necessary and appropriate for conducting negotiations for the conclusion of a contract or for the fulfilment of a contract (e.g. name, surname, address for sending the bill for the services provided, etc.).



When processing sensitive personal data the provisions for processing are even stricter (view question no. 7 and 8).

A special question arising from the legal basis for processing of personal data via digital television is the way in which personal consent of an individual is given. The Information Commissioner recommends personal consent to be acquired by signing a written contract, which needs to precisely determine also the extent and the purposes of the processing of personal data.

If personal consent is acquired via the television and its equipment each time separately, the Information Commissioner recommends – if this is possible – the use of the principle of double opt-in. This refers to the operator sending a message to the user (to the address indicated by the user or to the place of receipt to which only the user has access) and the user answering to the message and by doing so confirming that he was actually the person entering the data. In this manner the operator avoids eventual difficulties in case of misuse and reports if data is entered by a different person not the one it refers to.

When speaking of interactive digital television, if personal consent is acquired each time separately, this also opens many questions relating to the identification of the user giving his consent. The difference between interactive digital television and the Internet is regarding their transactional characteristics no more very apparent. As already mentioned, users will be able to perform many activities over digital television that have till now only been possible to perform over the Internet. It is however important to mention the fact that in contrast to the Internet television has an explicitly collective character, which means that the operator will have difficulties determining which person (in a household with only one subscription package) in fact gave its consent for a specific service or processing of personal data. In the future we can therefore expect to be faced with many challenges regarding the mechanisms and technologies for giving consent and identification methods.

Which are the rights of users regarding processing of their personal data?

Users of digital television have two different groups of rights towards the operators (data controllers) – the right to information and the right to supplement, correct, block, erase and to object.

Right of the individual to information

Data controller is on request of the individual obliged to enable consultation of the filing system catalogue, to certify whether data relating to him are being processed or not, and to enable him to consult personal data contained in filing system that relate to him, and to transcribe or copy them. The operator must as well supply the individual an extract of personal data contained in the filing system that relate to him. On request of the user the provider must also provide him information on the sources on which records contained about him in a filing system are based, and on the method of processing and must also provide information on the purpose of processing and the type of personal data being processed, and all necessary explanations in this connection. The user can also ask to provide him a list of data recipients to whom his personal data were supplied, when, on what basis and for what purpose.

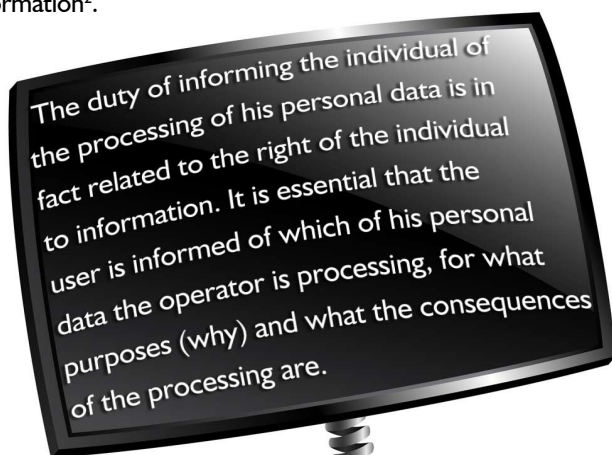
Right to supplement, correct, block, erase and to object

On request of the individual to whom personal data relate, the data controller must supplement, correct, block or erase personal data which the individual proves as being incomplete, inaccurate or not up to date, or that they were collected or processed contrary to statute. On the request of the individual the data controller must inform all data recipients and data processors to whom the controller has supplied the personal data of the individual of their supplementation, correction, blocking or erasure. The data controller has to perform the supplementing, correction, blocking or deletion of personal data within 15 days of the date of receipt of the request, and to inform the person who lodged the request thereof, or within the same interval to inform him of the reasons why he will not do so. If the data controller concludes on his own that the personal data are incomplete, inaccurate or not up to date, he has to supplement or correct them and inform the individual thereof, unless otherwise provided by statute.

Which are the obligations of operators as data controllers?

Informing the individual of the processing of his personal data

As the data controller, the operator has a duty to inform. This means that he must communicate to the individual the following information: data on the data controller and his possible representative (personal name, title or official name respectively and address or seat respectively) and the purpose of the processing of personal data. In special circumstances¹ he must communicate also some additional information².



The duty of informing the individual of the processing of his personal data is in fact related to the right of the individual to information. It is essential that the user is informed of which of his personal data the operator is processing, for what purposes (why) and what the consequences of the processing are.

¹ View Article 19 of the Personal Data Protection Act.

² E.g. declaration as to the data recipient or the type of data recipients of his personal data, a declaration of whether the collection of personal data is compulsory or voluntary, and the possible consequences if the individual will not provide data voluntarily, information on the right to consult, transcribe, copy, supplement, correct, block and erase personal data that relate to him.

Duty to secure

According to the Personal Data Protection Act the operator must secure the collected personal data in order to prevent accidental or deliberate unauthorised destruction, modification or loss of data, and unauthorised processing of such data. Different instruments are in use to secure data. Security of personal data comprises technical as well as organisational procedures and measures. As a widely accepted security instrument the Information Commissioner recommends the AAA approach, which consists of three different steps to secure personal data: authentication, authorization in accountability.

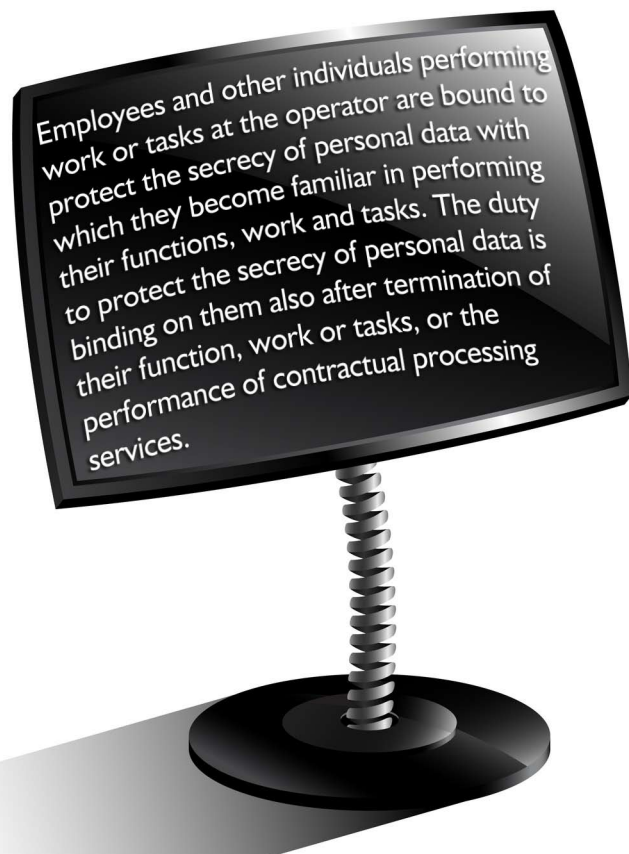
The first element of the AAA approach is authentication, a procedure in which the identity of the user, who wishes to access the information system and personal data kept in it, is verified. It is a way to prevent unauthorised access by verifying the user's identity.

The second A stands for authorisation. The procedure of authorisation defines the users or groups of users, services or processes their rights of access to all or parts of the information system, services, applications and other elements. From the view of personal data security - to which personal data the authorised individuals may access and what are they authorised to do with the accessed personal data (access rights).

The third, last but key element of the AAA approach is accountability or the option to subsequently determine when a certain personal data became part of a filing system, when it was used or processed and who the processor was.

In order to approach the security of personal data comprehensively and systematically, it is advisably to use the internationally accepted and widely used standards for information security, such as the ISO/IEC 27001:2005 standard. ISO/IEC 27001:2005 standard represents a systematic and a fully integrated approach towards establishing, maintaining and managing the system of information security.

In their internal acts operators must prescribe the procedures and measures for security of personal data and define the persons responsible for individual filing systems and the persons who, due to the nature of their work, are allowed to process individual personal data (for instance, in order to issue and send an invoice an accountant may process the following personal data: name, last name, address and e-mail of the person placing an order; the accountant may process also the data he needs in order to check if the commitment has been properly met).



Filing system catalogue and entry in the Register of Filing Systems

The operator offering interactive digital television services and therefore collecting and further processing personal data of his users has to be aware of the fact that by doing so he is creating a filing system for which he must establish a filing system catalogue. Different filing systems may be created by offering different interactive digital television services, which are kept or processed for different purposes (e.g. for the purpose of direct marketing, for carrying out opinion polls or prize contests, etc.). Each of these filing systems may contain different categories of personal data and may be secured in a different manner. Therefore, a separate

filing system catalogue (description) has to be established for each separate filing system.

For every filing system the operator must establish a filing system catalogue that has to contain information defined in the Personal Data Protection Act. Certain data from the filing system catalogue have to be supplied to the Information Commissioner, who manages and maintains a Register of Filing Systems (Article 27 of the Personal Data Protection Act). The entry of a filing system as well as any subsequent changes of the filing system in the Register can be made through the Information Commissioner's website (Register tab). The operator has to supply the requested information to the Information Commissioner at least 15 days prior to the establishing of a filing system or prior to the entry of a new type of personal data. He must supply any modification to the data no later than 8 days from the date of modification.



When may data be supplied or disclosed to third parties?

Contractual processing

Data controller may by contract entrust individual tasks related to processing of personal data to data processor that is registered to perform such activities. In such cases the data processor has to ensure appropriate procedures and measures for the security of personal data, which need to be precisely defined by a written contract. The operator has rights and obligations to supervise the data processor, since the data processor has to guarantee the same standards of data protection as does himself (the operator). Data processor may perform individual tasks associated with processing of personal data within the scope of operator's authorisations (operator may not transfer more rights than are entrusted to him), and may not process personal data for any other purpose.

Direct marketing

View question no. 7 regarding the supply of personal data for the purposes of direct marketing.

Statistics

Operator may the already collected personal data supply to data recipient for historical, statistical and scientific-research purposes. In such cases, personal data may only be supplied in an anonymised form, unless otherwise provided by statute or if the individual to whom the personal data relate gave prior written consent for the data to be processed without anonymising. Personal data supplied to data recipient have to be destroyed or returned to the data controller on completion of processing, unless otherwise provided by statute. Results of processing may only be published in anonymised form, unless otherwise provided by statute or unless the individual to whom the personal data relate gave written consent for publication in a non-anonymised form.

For example, if operator wishes to process personal data to conduct a rating survey with the use of anonymised data, he needs an appropriate legal basis – either

statutory or based on explicit personal consent of the users. Following which channels a certain user watches cannot be regarded as necessary for the implementation of the contract on supply of digital television concluded between the operator and the user, therefore operator needs to acquire special personal consent from the user. Operator also needs to take into consideration the fact that he may only process those personal data that are adequate and in their extent appropriate in relation to the purpose for which they are collected and further processed – for carrying out a survey. Data on what users watch may immediately be anonymised by the operator, thus rendering impossible for the operator to check who watches what and only enabling him to check what a certain number of users watches. However, if operator has appropriate legal basis, he may also only collect the data and in an anonymised form supply them to third parties for the purpose of conducting a survey.

What are the data retention periods and how to deal with personal data after the data retention period has expired?

Contract with the end user, with which the operator also obtains personal consent for data processing, has to contain information about which user's personal data will be processed and for what purposes. The Information Commissioner however recommends including also information about the data retention period into the contract. The data retention periods have to consider the principles defined in the Personal Data Protection Act, under the provisions of which, personal data may only be stored for as long as necessary to achieve the purpose for which they were collected or further processed. On completion of the purpose of processing, personal data have to be erased, destroyed, blocked or anonymised. The data retention period has to be transparent also in the cases of the operator collecting personal consents for processing of personal data for the purposes not covered by the original contract (e.g. if the user decides to allow the operator to process his personal data also for the purposes of behavioural marketing).

What do operators have to consider when implementing dedicated programming?

While individually targeted programme contents and advertisement messages (localised information, programme targeted to a certain group of users, etc.) themselves are from the perspective of personal data protection not relevant, it is however important who, in what way and for what purposes someone is collecting and further processing personal data in the case of profiling users for the purpose of target and behavioural marketing.

Applicable legislation does not provide for explicit regulation for personal data processing for the purposes of individually targeted programme contents. However, general principles of the Personal Data Protection Act have to be considered. The operator needs appropriate legal basis and may only process those personal data that are adequate and in their extent appropriate in relation to the purposes for which they are collected and further processed. Besides, the obligations of the data controller, respectively the operator, have to be considered (duty to notify, protection of personal data, and registration of filing systems catalogues) as well as the rights of individuals, respectively the users (right to information, supplement, correct, block, erase and to object). If the operator wishes to supply or disclose personal data of users to third parties, he may do this only on the basis of users' personal consent or on statutory grounds.

With individually targeted messages one can also process sensitive personal data, whereby specific conditions apply (view questions no. 7 and 8)

What do operators have to consider when performing direct marketing activities?

Performing direct marketing with the use electronic communication means (including individually targeted communication through digital television) is only allowed on the basis of prior consent by an individual (opt-in). The operator may however perform direct marketing also with other means of communication (through the use of postal services, telephone calls) without prior consent of an individual (opt-out). In such cases, the operator may for the purposes of direct marketing use only the following personal data collected from publicly accessible

sources or within the framework of the lawful performance of activities: personal name, address of permanent or temporary residence, telephone number, e-mail address and fax number. For direct marketing of its own products or services operator may however also use e-mail addresses obtained from its users as buyers of its products.

Operator wishing to send an advertisement to its subscribers without their prior consent by regular post may only use the abovementioned personal data. He may not use for example also the date of birth of an individual subscriber, in spite of the fact that the data was obtained within the framework of the lawful performance of its activities.

The following also needs to be considered by operators when performing direct marketing:

- commercial messages sent to users have to be clearly recognizable as such;
- terms for accepting special promotional offers (discounts, bonuses, prizes, gifts) have to be clearly and unambiguously stated and unequivocally marked as such;
- general terms and conditions for participating in prize competitions or gaming have to be clear, unambiguous, easily accessible and as such easily recognizable;
- all electronic messages have to be sent from a valid (electronic) address; e-mails sent for the purposes of direct marketing have to contain the identity of the sender on whose behalf the message is sent and must contain a valid address to which the recipient may send a request for such direct marketing to cease;
- each time a commercial message is sent, the recipient has to be informed of his rights regarding cessation of use of his personal data for the purposes of direct marketing; the recipient also has to be informed of the method and costs of deregistration and of the operator's duties thereof.

Individuals may at any time in writing or in another agreed manner request that the data controller permanently or temporarily ceases to use his personal data for the purpose of direct marketing. The data controller is in such case obliged within 15 days to prevent as appropriate the use of personal data for the purpose of direct marketing, and within the subsequent 5 days to inform in writing or another agreed manner the individual who so requested.

Interactive digital television allows for different types of direct marketing, whereby operators collect different kinds of personal data. The more marketing is individually targeted, the more personal data operators have to collect.

Form of marketing from the perspective of personal data	Personal data collected and processed	Terms under which marketing is permitted
Marketing, where target public is all or part of the users, whose contacts the operator possesses (e.g. all subscribers of a certain digital TV service).	Contact information of the users (e.g. postal or e-mail address, telephone number).	<ul style="list-style-type: none"> opt-in when performing marketing with the use of automated calling systems without human intervention (automatic calling machines), facsimile machines, electronic mail or other means of electronic communication; opt-out when performing marketing with the use of other means of communication (postal services, telephone calls, etc.).
Target marketing Marketing, where target public is a specific segment or group of individuals (e.g. a specific age group, group of individuals with specific preferences or shopping habits).	Socio-demographical characteristics (age, education, from the user's side communicated preferences, habits, etc.).	Opt-in
Behavioural marketing Marketing, where the target is one specific individual (on the basis of a precise profile that is formed by the operator by collecting various personal data about the individual).	<ul style="list-style-type: none"> socio-demographical characteristics; behavioural patterns (what an individual is viewing, when, which interactive application he uses, etc.); biometric data (e.g. mode of handling the remote control). 	Opt-in

Increasing extent of personal data

When performing target and behavioural marketing that in the context of television represents a novelty, operators need to strictly consider the principle of proportionality. Personal data that are being processed must namely be adequate and in their extent appropriate in relation to the purposes for which they are collected and further processed. The Information Commissioner would like to stress that when for example performing marketing activities targeted to a special group of people there is no need to process other personal data than contact information and information on which group or groups a certain user belongs to. If marketing is performed by a third party, the necessary amount of personal data is even smaller, since the third party doesn't need to know who belongs to a certain group but can only demand from the operator to deliver his advertisement to one specific group (e.g. Mozart fans). Operator may in such a process act as some kind of an anonymisation interface, since only he knows who belongs to a certain group. Digital television technology allows the operator to collect large amounts of personal data, therefore violations of the principle of proportionality can easily occur.

Particularly problematic is processing of sensitive personal data (e.g. data on political beliefs if a user votes for a certain political party). Processing of sensitive personal data is only allowed if provided so by statute or if an individual has given explicit personal consent for this, such consent as a rule being in writing, and in the public sector provided by statute. Sensitive personal data may also be processed if an individual to whom the sensitive personal data relate publicly announced them without any evident or explicit purpose of restricting their use. When the Personal Data Protection Act was passed, the legislator did not envisage that transmission of sensitive personal data will be possible also via digital television and did therefore not envisage special provisions on the protection of sensitive personal data when transmitted in such a way. Suitable change to the legal provisions relating to the consideration of this technical possibility will consequently be necessary.

When processing personal data for the purposes of target or behavioural marketing, the operator needs:

- personal consent of the user to collect and further process his personal data for the purposes of marketing (in case of processing of sensitive personal data the consent needs to be explicit, personal and as a rule in writing);
- special personal consent of the user if the operator wishes to supply or disclose his personal data to third parties; the Information Commissioner recommends to supply personal data in an anonymised form, if personal data aren't necessary for performing direct marketing (specially in case of target or behavioural marketing, where data processor only needs the data on the characteristics of certain groups or individuals and not also their names and contact information);
- every given consent needs to be based upon a clear notification by the operator on who will process user's data, which data and for which purposes; if the operator only notifies the user of processing of his personal data, this cannot be regarded as a given consent (the so-called "silent consent").

What do operators have to consider when carrying out opinion polls or prize contests?

Interactive digital television allows the performing of various opinion polls and prize contests that can contain also questions about sensitive personal data (e.g. affiliation to a certain political party). Regarding the applicable legislation, operators may perform opinion polls and prize contests only based on explicit personal consent of users. If processing sensitive personal data, the user needs to explicitly state that he agrees with such processing of his personal data (as a rule in writing).

Users need to have the possibility to an informed decision – they have to be correctly informed about who will process their personal data (e.g. the operator, political party), which data will be processed (e.g. name, surname, socio-demographical data, data on political belief) and for what purposes (e.g. for the purposes of marketing of health products). The Information Commissioner recommends operators to precisely define and clearly present this information to the users.

If operator intends to supply or disclose the personal data collected by an opinion poll to third parties, he needs to obtain explicit personal consent of the users. In such cases, the terms of use should contain a warning informing the users on the possibility of the operator to use the collected personal data also for other, precisely defined purposes. Besides, the terms of use should also contain a statement for the user to sign, if he agrees for the supply of his personal data to third parties.

On completion of the purpose of processing, the operator must erase, destroy, block or anonymise the personal data – after an opinion poll or a prize contest is concluded, the collected personal data must be destroyed or transformed into an impersonal form (anonymised), unless users gave their personal consent for a longer retention period.

What do operators have to consider when enabling home shopping?

Among the services allowed by interactive digital television is also home shopping. As far as the operator isn't only a middleman (e.g. host), he has to take into consideration all the provisions of the Personal Data Protection Act when allowing and implementing home shopping.

When speaking of home shopping, the user has to be aware of the fact, who he is concluding a contract to purchase goods or services with (with the operator or with a shopping centre) and whom he is supplying or disclosing his personal data to. Only personal data necessary for the sales of goods or services may be collected – e.g. name, surname, address for sending the purchased goods. Since these data are necessary for carrying out the service, it is thus not necessary to obtain personal consent of the user. However, if also other personal data, which are not necessary for the service to be carried out, are collected and processed, special legal basis is needed (provided by statute or by explicit personal consent of an individual). This is of a special importance when processing sensitive personal data (e.g. data on the purchase of medical products), where written personal consent is necessary.

Special attention has to be drawn also to the security of the collected personal data. Operator needs to ensure organisational, technical and logical-technical procedures and measures to protect personal data, and to prevent accidental or deliberate unauthorised destruction, modification or loss of data, and unauthorised processing of such data. This is of special importance when also payment via digital television is allowed.



Recommendations for Interactive Television Suppliers

Following, we give some general recommendations for operators in the light of privacy protection and lawful processing of personal data.

Operators should prepare a document binding them to good practice when assuring privacy protection and protection of personal data of the users. The document should be published in a visible and easily accessible place.

Users of interactive digital television services have to be acquainted with the purposes of collecting and further processing of personal data and with their rights thereof in a clear, easily accessible and transparent way. Operators can as guidance use the guidelines that the Information Commissioner has prepared on informing consumers about personal data protection (Being an informed consumer – who is allowed to handle my personal data and why?) and on appropriate and lawful ways to obtain personal consent of the users for processing of their personal data (Code of conduct in handling personal data collections).

With digital television, it is difficult for the operator to check who in fact is the one entering his personal data, which is very similar to the Internet. Therefore, operators have to provide for appropriate safety mechanisms to prevent children from unauthorised dissemination of their personal data.

When collecting personal data for the purposes of carrying out opinion polls or prize contests, all forms of direct marketing (specially target and behavioural marketing) and for other purposes, it is advisable to follow the following principles:

1. If using confirmation fields, they should be adopted as unconfirmed. If performing direct marketing with the use of electronic communication, one should namely follow the opt-in principle (the principle of consent in advance), therefore it is appropriate for the user to confirm his willingness for the processing of his personal data on his own by clicking into the confirmation field.
2. If operator collects personal data for more purposes or for more data controllers and uses a confirmation field, it is advisable for the operator to prepare more confirmation fields, among which an individual can freely choose.
3. If this is possible, the use of the so called double opt-in is recommendable

(to send a message to the address the user has indicated, so that the user can with his reply confirm that he truly was the person entering his personal data).

What obligations do operators have when processing personal data of their subscribers?

- Operators have to have legal grounds for processing of personal data (statute, personal consent or if this is necessary and appropriate for fulfilment of contractual relations).
- Operators may only process those personal data that are adequate and in their extent appropriate in relation to the purposes for which they are collected and further processed.
- The purposes of processing have to be specific and lawful.
- Users have to be notified of who the operator is and for what purposes does he process their personal data; in specific circumstances¹, however, additional information have to be communicated².
- The collected personal data have to be protected in order to prevent accidental or deliberate unauthorised destruction, modification or loss of data, and unauthorised processing of such data.
- In their internal acts, operators have to prescribe procedures and measures for security of personal data and define the persons responsible for individual filing systems and the persons who, due to the nature of their work, process individual personal data.
- Employees and other individuals performing work or tasks at the operator are bound to protect the secrecy of personal data with which they become familiar in performing their functions, work and tasks. The duty to protect the secrecy of personal data is also binding on them after termination of their function, work or tasks, or the performance of contractual processing services.
- Operators have to establish for each filing system a filing system catalogue containing personal data, as provided in the Personal Data Protection Act. Certain data from the filing system catalogue have to be supplied to the In-

¹ View Article 19 of the Personal Data Protection Act.

² E.g. declaration as to the data recipient or the type of data recipients of his personal data, a declaration of whether the collection of personal data is compulsory or voluntary, and the possible consequences if the individual will not provide data voluntarily, information on the right to consult, transcribe, copy, supplement, correct, block and erase personal data that relate to him.

formation Commissioner, which manages and maintains a Register of Filing Systems.

For subscribers/users – when and under which circumstances may the operator process my personal data?

- Operators may process your personal data only if the processing is provided by statute, if you have given the operator your personal consent for the processing, or if this is necessary and appropriate for the fulfilment of contractual relations (e.g. to be able to send you the bill, the operator needs your contact information).
- However, the operator may not process any data he wishes, but only those that are adequate and in their extent appropriate in relation to the purposes for which they are collected and further processed. For example, for sending a bill the operator only needs your address and not also the number of family members or your salary.
- Also, if the operator has your personal consent for the processing of your personal data, he may only process them for the specific purposes that you have agreed with. If you gave your operator your consent to send you notices regarding eventual programme changes by e-mail, this does not give him the legal basis to send you also advertisements regarding the newest offers of the closest shopping centre.
- It is the operator's duty to notify you of who he is and for which purposes he will be processing your personal data.
- It is your right to request the operator to certify whether data relating to you are being processed or not, and to enable you to consult personal data contained in filing system that relate to you, and to transcribe or copy them. On your demand he also has to supply you an extract of personal data contained in filing system that relate to you.
- You can also request the operator to provide you a list of data recipients to whom personal data relating to you were supplied, when, on what basis and for what purpose.
- On your request, the operator must supplement, correct, block or erase personal data relating to you, which you prove to be incomplete, inaccurate or not up to date, or collected or processed contrary to statute.

Conclusion

The digital switchover or the conversion from analogue transmission and reception of television signal to digital is so to say here. In Slovenia the strategic access to the switchover is defined in the Strategy of the Republic of Slovenia for the Switchover from Analogue to Digital Broadcasting, whereby the elements of privacy and personal data protection were unfortunately not properly considered. The Information Commissioner's aim when preparing these guidelines was therefore to draw attention and give preliminary answers to questions relating to digital television when speaking of personal data protection. When digital television is in full swing, it will certainly be necessary to adequately adapt the legal and logical-technical measures, and by doing so provide for proper protection of personal data with the numerous services that digital television will be offering in the near future.

Main Sources

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