

Quo Vadis Transparency Principle?



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The views expressed in this article do not reflect the views of Meta – these are my own personal views as a professional in the area of data protection.

Transparency. One of the key principles of contemporary data protection and privacy. Enshrined in the GDPR's Article 5¹ and likewise present across several other regulations and frameworks across the globe. Historically speaking, one of the first references to the principle, within the context of information technology, appeared in the OECD privacy guidelines² from 1980, although it was called the *openness principle* back then. Either way, the principle of Transparency is certainly one of the pillars which modern data protection and privacy rests upon, particularly in a European context.

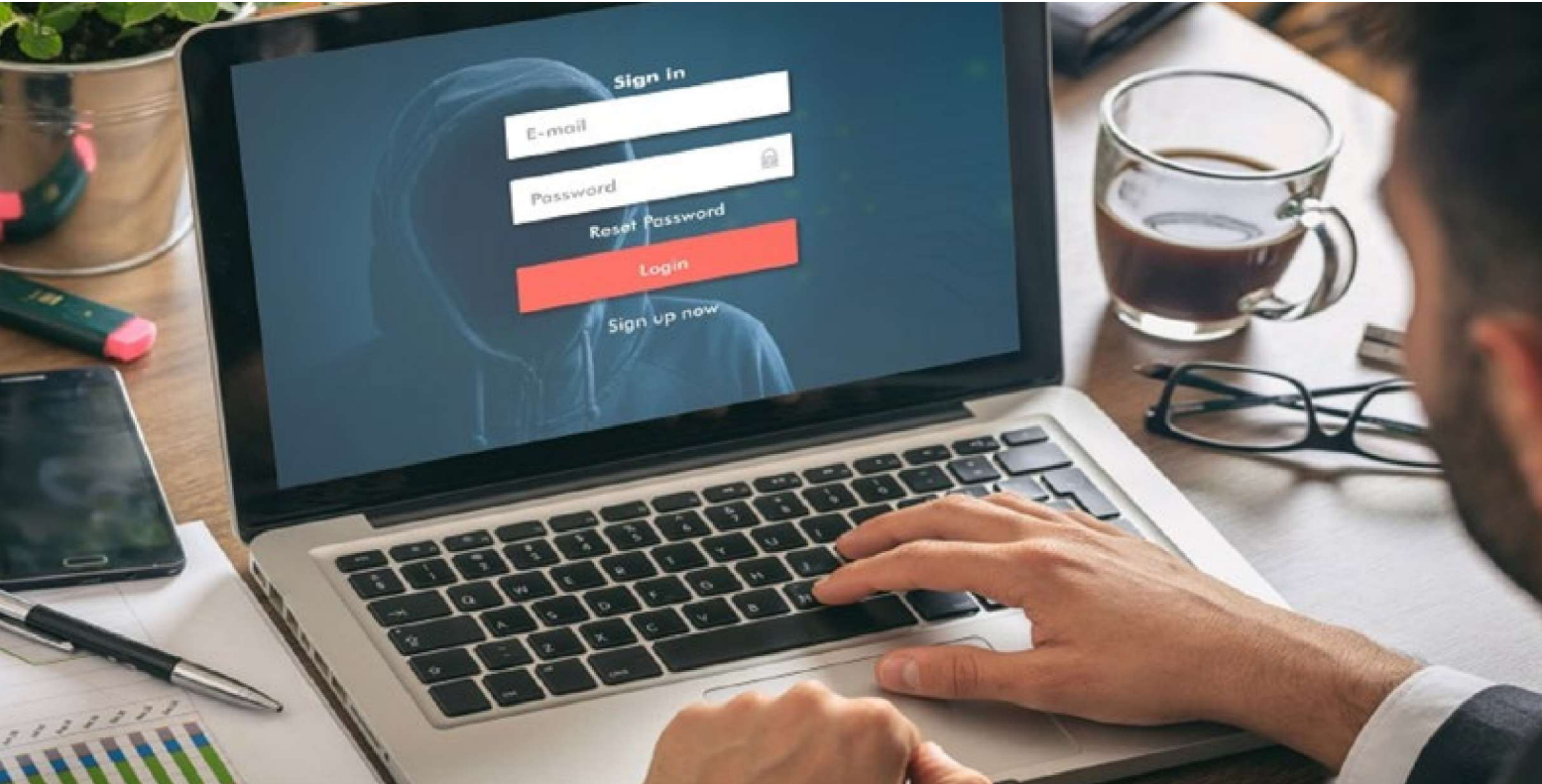
Do we really know how we should think about the principle of Transparency when embedding it in products and services?

From a GDPR standpoint, it is worth noting that the principle of Transparency is not explicitly defined in the text, leaving aside some references on Recital 58³. On the other hand, we did obtain a series of guidelines⁴ from the Working Party 29 (the historical predecessor to the European Data Protection Board "WP29") on the interpretation of Transparency, paying close attention to Article 12. These guidelines were originally issued in 2017 and revised in 2018. Please allow me to share a quote from this text which I believe is very relevant as we aim to come to terms with the ultimate purpose of the principle in question:

“ Transparency, when adhered to by data controllers, empowers data subjects to hold data controllers and processors accountable and to exercise control over their personal data by, for example, providing or withdrawing informed consent and actioning their data subject rights. The concept of transparency in the GDPR is user-centric rather than legalistic and is realised by way of specific practical requirements on data controllers and processors in a number of articles.”

While the spirit of the guidelines seems to indicate that Transparency experiences should be user-centric; as a professional in the field of data protection, I would struggle to affirm that users of products and services feel at the centre of Transparency-related experiences, for example, when reading Privacy Notices.

No discussion, however brief, about the principle of Transparency would be complete without reference to the GDPR's Article 12⁵, itself subject to a detailed breakdown in the aforementioned WP29 guidelines. Let's remember that Article 12 sets out the rules applicable to the provision of information such as *“it must be concise, transparent, intelligible and easily accessible [...] clear and plain language must be used [...]”*.



We could spend time further dissecting these guidelines and what the GDPR outlines on Transparency; however, I suggest we look more into the practicalities of Transparency-related experiences today.

Privacy Notices, Privacy Notices Everywhere

Looking into the practicalities of how Transparency is translated into data subject or users' experiences, we first come across the Privacy Notices or Statements. In some cases, it would appear that the Notices are everything some controllers offer in terms of Transparency. However, Privacy Notices are tools. Useful for some purposes but not for all. Several companies have learned through research that users and many data subjects have mixed levels of interaction with Privacy Notices. Indeed, there are users across different products and services openly admitting to the fact they never read them. In fact, many of us surely know that cases of these *anti-notices-readers* within our friends and family circles.

One might argue that notices are not necessarily designed with the data subjects in mind but instead, they are created to appeal to regulatory requirements. As static pieces of information, they are undoubtedly fit for regulatory analysis. Yet they often struggle in being relevant to the data subjects they claim to serve.

It has been extensively discussed how difficult understanding privacy statements and policies can be. The 2019 Privacy Project⁶, commissioned by the New York Times, concluded that there are privacy policies that exceed college reading level and some organisations come close to the readability level required to understand Immanuel Kant's *Critique of Pure Reason*. I am not sure how many of you have read this book; I had the pleasure of doing so back in my days as a student in philosophy and intelligibility or conciseness are not terms that would come to mind when describing it. Certainly, I do not know whether

Immanuel Kant himself considered his readers *average members of the intended audience* as the WP29 guidelines state.

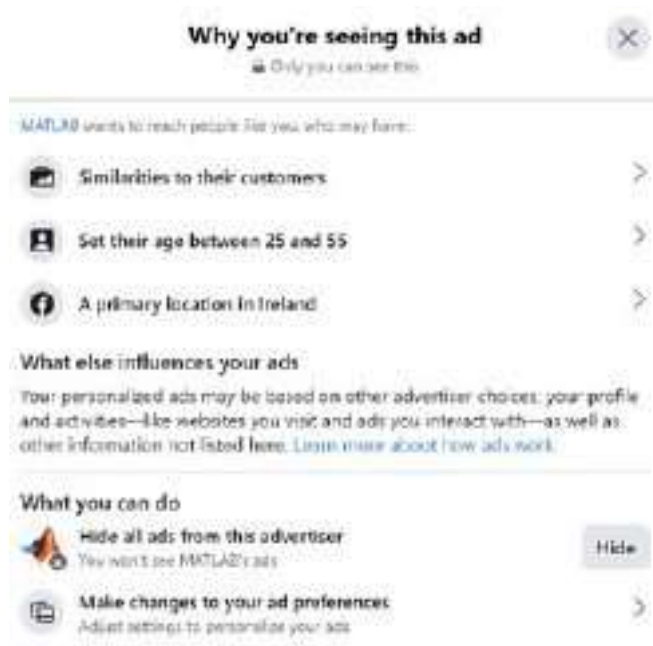
Beyond Privacy Notices

Switching gears on Transparency-related experiences and moving away from Notices for now, we should acknowledge there are many other more or less innovative approaches such as the now ubiquitous layered notices, audio visuals and even cartoon-like stories explaining the processing of the data. This information is presented along with controls on how users can determine in a more sophisticated manner how they wish their experience to be when using the product or service in question. This seems to be improving the overall experience of the users and closer to the idea of user-centricity the WP29 suggested.

The journey of Transparency is one that needs to balance regulatory requirements with understanding users' experiences and design methods. This is an area where the Privacy professional meets the User Experience (UX) designer and together, they can build innovative operational compliance solutions.

For example, the Privacy Center⁷ launched by Meta presents contents in plain language for users to educate themselves and understand the mechanisms behind data processing. I encourage those of you using Meta products to visit this Center and navigate through the different sections.

Another good Meta example of a somewhat new way to provide transparency is via a functionality called *Why Am I Seeing This Ad?* which is available on Facebook and Instagram once users are presented with an ad on their accounts. It explains the factors that contribute to seeing the ad; for example, location, age, and the ad provider. Likewise, it provides controls for users to update their preferences.



Example of Why Am I Seeing This Ad? Functionality on facebook.com - screenshot for illustration purposes only.

What do Users Say?

Going back to the users, the true centre of the world of Transparency experiences. What are they saying about some of these new ways of presenting information? Again, this is based on personal experiences dealing with users of different technologies across the industry, not only Meta technologies. Following experiences observing users' focus groups and reviewing related studies, I have noticed that while users appreciate the investments made by organisations in presenting the information clearly and making it easier to navigate, I also sensed what we could call *self-help fatigue*. The onus placed on users is significant and GDPR itself is an exercise of user empowerment in a way unseen before. I appreciate this goes beyond Transparency itself; however, I believe there are important lessons to learn. We could apply these lessons to the notices and users' experiences. Likewise, I have observed very positive feedback from users in relation to getting personalised experiences when it comes to controlling their privacy settings although they also want to get those very efficiently and quickly. It is a challenging balance to presenting valuable and relevant information, written clearly and that also gives users the controls to personalise their

experiences. You may agree this is not an easy task indeed.

Next Generation Transparency

One does not need a crystal ball to conclude that Transparency is a core principle of data privacy that will only increase in importance as technologies become more sophisticated.

Let me offer a good example on how this is being addressed by Meta in relation to an increasingly sophisticated technology such as Artificial Intelligence (AI). Understanding how AI operates can be difficult for everyday users. A good practical example of how to help users understand AI is the AI System Card tool⁸. This tool has been publicly available since earlier this year. There is a particular case on how the Instagram feed ranking operates, explaining it step by step and the rationale behind why users see certain posts and share the controls available. This is but one example and again, a step toward user-centric Transparency experiences.

With the arrival of new technologies, new challenges and also opportunities are arising. It is our job as professionals to maximise those opportunities to our benefit and, for instance, use those technologies to improve Transparency practices. It is very early days on Virtual Reality (VR) experiences; however, one can start thinking about the uses of VR in the future to enable clear, concise, and transparent communications.

One day, as we walk down the Metaverse, who knows, we could be presented there and then with the choices and controls that today appear somewhat statically in front of us on a flat screen. Perhaps, AI models will be smarter to help us guide our experiences more seamlessly. This is nothing but speculation right now but in relatively near future, we could have the opportunities and the technology to embed Transparency into the users' experiences in ways we can only imagine about today.

REFERENCES:

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- 2 <https://www.oecd.org/sti/ieconomy/oecdguidelinesonthe protectionofprivacyandtransborderflowsofpersonaldata>
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