



**COMPLAINT TO THE NORWEGIAN DATA PROTECTION AUTHORITY UNDER
ARTICLE 77(1) OF THE EUROPEAN GENERAL DATA PROTECTION
REGULATION¹**

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¹ Regulation (EU) 269/2016



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A. INTRODUCTION

1. Forbrukerrådet (the Norwegian Consumer Council), has been instructed by Inger Lise Blyverket (the “complainant”) to file this complaint on her behalf, pursuant to Article 80(1) of the GDPR. A signed mandate from the complainant was included as one of the attachments to this complaint.
2. This complaint is filed against Google Ireland Limited (“Google”), Gordon House, Barrow Street, Dublin 4, D04E5W5, Ireland.
3. The complainant wishes to complain about the way Google processes her data:
 - i. as part of the registration process when setting up a Google account (“sign-up”); and
 - ii. as the result of settings activated by the complainant during sign-up.
4. The complainant created her Google account in the Chrome Browser on 21.06.2022.²
5. The complainant requests that the Norwegian Data Protection Authority investigates this complaint pursuant to Article 57(1)(f) GDPR to determine whether Google complies with Articles 5, 6, 7, 12, 13 and 25 of the GDPR. The concrete action sought from the Norwegian Data Protection Authority is detailed at Section D below.

B. BACKGROUND

6. Google lists 73 services, including the *Chrome* browser, *YouTube*, *Google Search*, *Gmail*, *Google Maps* and the *Google Play Store*.³ An individual may

² The sign-up process is the same on Android or iOS phones.

³ Google says it provides 73 services, see <https://about.google/intl/de/products/#all-products> (24.3.2022). However, the real number is likely to be much higher, see, <https://www.matrics360.com/google-products-and-services/>



create a user account (a 'Google account') that unifies and personalises their experience across all Google services.⁴ Some Google services – such as Gmail and the Play Store *require* a Google account before they can be accessed.

7. Google's privacy policy⁵ says that Google "*use the information we collect from all our services for the following purposes*"⁶
 - i. Service provision;
 - i. Service maintenance, improvement, and development;
 - ii. Personalisation of services;
 - iii. Personalisation of advertising;
 - iv. Performance measurement;
 - v. Communication with users; and
 - vi. The "protection of Google, its users and the public".
8. Google states that account holders "*have choices regarding the information [Google] collect and how it's used.*"⁷ Sign-up is the critical point at which Google invites users to indicate their "choices" about how their Google account will operate. These choices have significant consequences for account holders in terms of how Google will process their personal data, including to profile them.

⁴ Google describe the function of the account thus: "Your account helps you do more by personalizing your Google experience and offering easy access to your most important information from anywhere."
- <https://www.google.com/account/about/>

⁵ <https://policies.google.com/privacy>; note that these are the broad categories of purpose listed. Google provide non-exhaustive examples of sub-purposes that fall within these categories in the policy.

⁶ <https://policies.google.com/privacy>

⁷ <https://policies.google.com/privacy#infochoices>



During sign-up, the complainant was invited to indicate a binary on/off preference by choosing “personalisation settings” in relation to three categories:

- i. **Web & App Activity** – The processing of data about her use of Google services, including a log of all actions taken in Chrome, Google Search history, and Google Maps activity (including the complainant’s location).

The data collected through Web & App Activity can be viewed later within the users’ Google account. This data is used, among other things, for advertising purposes on and off Google.

Web & App Activity is described by Google during the account setup as “*for faster searching, save your Web & App Activity*” and “*this setting will be turned on for things like faster searching, more relevant results and more helpful app and content recommendations*”.

- ii. **YouTube History** – The processing of data about her searches for and watching of videos on YouTube.

The data collected through YouTube History can be viewed later within the users’ Google accounts. The policy states that this data are used, among other things, for advertising purposes on and off Google.

YouTube History is described by Google during the account setup as “*for a better YouTube homepage, save your YouTube History*” and “*this setting will be turned on for things like better video recommendations and to help remember from where you left off*”.

- iii. **Ad Personalisation** – The processing of personal data (including from categories (i) and (ii) above) to deliver personalised adverts.

Within Ad Settings, there is a section called “*How your ads are personalised*”. This is followed by a range of topics that Google “*estimates*”



you are interested in (the complainant's estimated ad interests are detailed at Annex 1 – Description of the Web & App Activity, YouTube History and Ad Personalisation Settings). To compile this ad profile, Google profiles users over time, including using information collected through the Web & App Activity and YouTube History features (if these are switched on).

Ad Personalisation is described by Google during the account setup as “*for more tailored ads, turn on Ad Personalisation*” and “*this setting will be turned on to make the ads that you see more useful to you*”.

9. The descriptions of these categories (Web & App Activity, YouTube History and Ad Personalisation) are summaries based on the complainant's understanding after reading information on various parts of Google's website both during and after sign-up (see Annex 1 – Description of the Web & App Activity, YouTube History and Ad Personalisation Settings for relevant screenshots), as well as viewing the data collected in her Google account. They are not provided by Google in these terms during sign-up. Indeed, part of this complaint relates to the lack of clarity with which these three on/off options were described to the complainant during sign-up.
10. Google makes two routes available to users during sign-up to configure these account settings: 'express personalisation' (1 step) and 'manual personalisation' (5 steps). Annex 2 – Description of Express and Manual Sign-Up Process details the differences between 'manual' and 'express' sign-up options, with illustrative screenshots.
11. The complainant selected the 'manual' sign up option and “saved” her Web & Activity and YouTube History for 18 months / 36 months respectively. She also indicated “on” for Ad Personalisation. She was also presented with an 'express' sign-up option, which through one click, would have defaulted each of these



options to 'on'. The complainant finally had to agree to Google's privacy policy⁸ and terms of service⁹ to complete the setup of her account.

12. Users are also said to be able to change these settings after sign-up using the Google account settings. Following sign-up, the complainant noted that within her Google account, she is presented with additional controls regarding the use of her data for these three categories which were not made available to her on sign-up.¹⁰ These additional features were only made available to the user *after* sign-up, not during the sign-up process (see Annex 1 – Description of the Web & App Activity, YouTube History and Ad Personalisation Settings).

C. **COMPLAINT**

13. Indicating 'yes' to one or more of the options had significant consequences for how much of her personal data would be processed, how it would be processed, and for what purposes. These consequences were not properly explained and were not clear at the time. Important information about the impact of the choices on the processing of her personal data was not prominently displayed and was difficult to find. Even upon further investigation, the full extent and nature of Google's processing of her personal data – and the impact of this on the options available through her Google account – are still not clear.
14. She understands that from these choices, Google inferred her consent to data processing for certain purposes for which Google relies on consent as its legal basis under Article 6(1)(a) of the GDPR. This was not made sufficiently clear, and the attempt to elicit consent was bundled with a range of other matters as part of the three on/off options.

⁸ <https://policies.google.com/privacy?hl=en-GB>

⁹ <https://policies.google.com/terms?hl=en-GB>

¹⁰ These include additional storage options for her data, and additional subsettings to control how her data is used.



15. Sign-up was designed in a way that made the complainant feel pressured and/or encouraged to indicate preferences that resulted in more extensive processing of her personal data, and in her data being retained for longer periods.
16. For these reasons, the complainant believes that the sign-up process, and the processing of her personal data that Google has engaged in as a result of it, are contrary to the GDPR:
 - i. Google has relied on consent as a legal basis for some processing, but no valid consent to that processing has been collected (Articles 5(1)(a), 6 and 7 GDPR) nor does Google have an alternative valid legal basis for its processing (Articles 5(1)(a) and 6 GDPR).
 - ii. Google's processing of her personal data has not been fair, because the design elements during and after sign-up sought to influence and/or caused her to agree to more processing of personal data than she otherwise would have (Article 5(1)(a)).
 - iii. Google's processing of her personal data has not been transparent (Articles 5(1)(a), 12 and 13 GDPR).
 - iv. Google has processed her personal data for purposes that were not specified and explicit at the time it was collected (Articles 5(1)(b) and 13(1)(c) GDPR).
 - v. Google has processed more of her data than was necessary, and retained it for longer than was necessary, in breach of the principles of data minimisation and storage limitation (Articles 5(1)(c) and (e)).
 - vi. The overall design of Google's sign-up process and account settings, and the impact they have (lack of clarity and a tendency towards more extensive processing) are inconsistent with 'data protection by design and by default' (Article 25 GDPR).



C.1 No valid consent

17. Google's privacy policy¹¹ does not state which legal bases it relies on for which acts or purposes of processing in a way that relates directly to the three categories presented on sign-up. It does state that Google relies on consent as a legal basis for at least two types of processing:

"With your consent

We ask for your agreement to process your information for specific purposes and you have the right to withdraw your consent at any time. For example, we ask for your consent to provide you with personalised services, such as ads based on your interests. We also ask for your consent to collect your voice and audio activity for speech recognition. You can manage these settings in your Google Account.

[...] when ads are personalised, we ask for your consent." (emphasis added)

18. The Ad Personalisation option thus relates to processing for advertising based on users' interests, for which Google relies on consent as a legal basis.
19. Navigating to further information about the Web & App Activity and YouTube History options during and after sign-up (in the Google account) further shows that both options impact Ad Personalisation, processing for which Google relies on consent. Google states (for each):

"Depending on your Ad settings, you may also see ads on and off Google that are tailored to you based on this data [...] This data helps Google give you more [...] useful ads, both on and off Google."

20. Thus, each of the three choices presented on sign-up appear, in part, to be a means by which Google purported to gather the complainant's consent to

¹¹ <https://policies.google.com/privacy>



processing her personal data for (at least) Ad Personalisation, including Ad Personalisation which is based on data collected through Web & App Activity and YouTube History.

21. This is reinforced by the fact that there is no other means by which Google asked for or collected the complainant's consent to this processing. This consent was not valid, because it was not freely given, specific and informed, or unambiguous, and because withdrawing consent was not as easy as giving it (Articles 4(11) and 7 GDPR).
22. Google's privacy policy also provides the following, non-exhaustive, examples of what constitutes "personalised services":

"Provide personalised services, including content and ads

We use the information we collect to customize our services for you, including providing recommendations, personalised content, and customized search results. For example, Security Check-up provides security tips adapted to how you use Google products. And Google Play uses information like apps you've already installed and videos you've watched on YouTube to suggest new apps you might like.

Depending on your settings, we may also show you personalised ads based on your interests. For example, if you search for "mountain bikes," you may see an ad for sports equipment when you're browsing a site that shows ads served by Google. You can control what information we use to show you ads by visiting your ad settings...

Activity Controls

[...] if you have Web & App Activity turned on, your searches and activity from other Google services are saved in your account so you can get more



personalised experiences like faster searches and more helpful app and content recommendations.” (emphasis added)

23. Thus, the three choices presented on sign-up may also be a means by which Google purported to gather the complainant’s consent to processing her personal data for various other activities which fall within “*personalised services*”, such as “*faster searches*”, “*providing recommendations*”, “*personalised content*”, and “*customized search results*”. It is not entirely clear because this processing is not expressly listed in the legal basis section as instances of processing for which Google relies on consent, but instead are provided as examples of “*personalised services*” in other sections of the policy. To the extent Google relies on consent to provide the complainant with other types of “*personalised services*” beyond Ad Personalisation, that consent was also not valid, because it was not freely given, specific and informed, or unambiguous, and because withdrawing consent was not as easy as giving it (Articles 4(11) and 7 GDPR).

Not freely given

24. The complainant was not provided with a real choice about whether to give her consent. Consent is not freely given if there is “*any element of compulsion, pressure or inability*”¹². The invitation to turn on Web & App Activity YouTube History and Ad Personalisation during sign-up is deficient in several respects:

25. Firstly, it is not made clear to the user that they are providing their consent pursuant to Article 6(1)(a) GDPR to Google’s processing of their data for the purposes of ad personalisation (and potentially for the purposes of Google providing them “*personalised services*” more generally). Google does not use the language of consent during sign-up, apart from a brief mention in the “*how you can manage your data section*” that users can withdraw their consent via the Google account. Instead, users are asked to “*confirm personalisation settings*” –

¹² EDPB, Guidelines 05/2020 on Consent under Regulation 2016/679, https://edpb.europa.eu/sites/default/files/files/file1/edpb_guidelines_202005_consent_en.pdf



in the case of the express sign-up option, or to “*choose whether to save*” Web & App Activity and YouTube History. Even for Ad Personalisation, a processing purpose for which Google expressly relies on consent, users are asked to “*turn on*” ad personalisation rather than provide consent for the processing governed by the GDPR.

26. Secondly, sign-up was designed to encourage the complainant to indicate ‘on’ to each option by default through the ‘express’ sign-up option, which requires significantly fewer clicks than the ‘manual’ sign-up option. There is no equivalent ‘express’ option which would have allowed the complainant to default each option to ‘off’. While the complainant elected to set up her account using the manual registration process, any consent which Google gathers through the express option is invalid because Google pre-selects ‘on’ for these features.
27. Thirdly, the information provided by Google was not clear as to the purposes to which users are consenting to having their data processed. The complainant had to click “*learn more*” to get important information about the purposes of the processing, and the choices she has to control her data. This includes information that Web & App Activity and YouTube History will be used for ad personalisation which is not clear from the initial description of the processing, but also information about the full range of retention (auto-delete) options available to the user. This information is only available if the complainant clicks “*Learn More*”. If the complainant had selected the express option, she would only have learned about the ability to opt for “contextual” adverts in place of personalised adverts if she clicked on the “learn more” link.
28. Fourthly, even if the complainant finds and reads the information under “*Learn More*”, insufficient granularity is provided about the extent to which her data is being used by Google. This is because Google presents a non-exhaustive list of ways in which the data will be used to personalize the user’s experience. It is also not clear if Google relies on the user’s consent for all its personalisation purposes,



or if Google relies on consent solely for ad personalisation purposes. The privacy policy also does not provide any further clarity for users regarding these matters.

29. Fifthly, the complainant had no real choice due to Google's conflation of purposes and processing types:

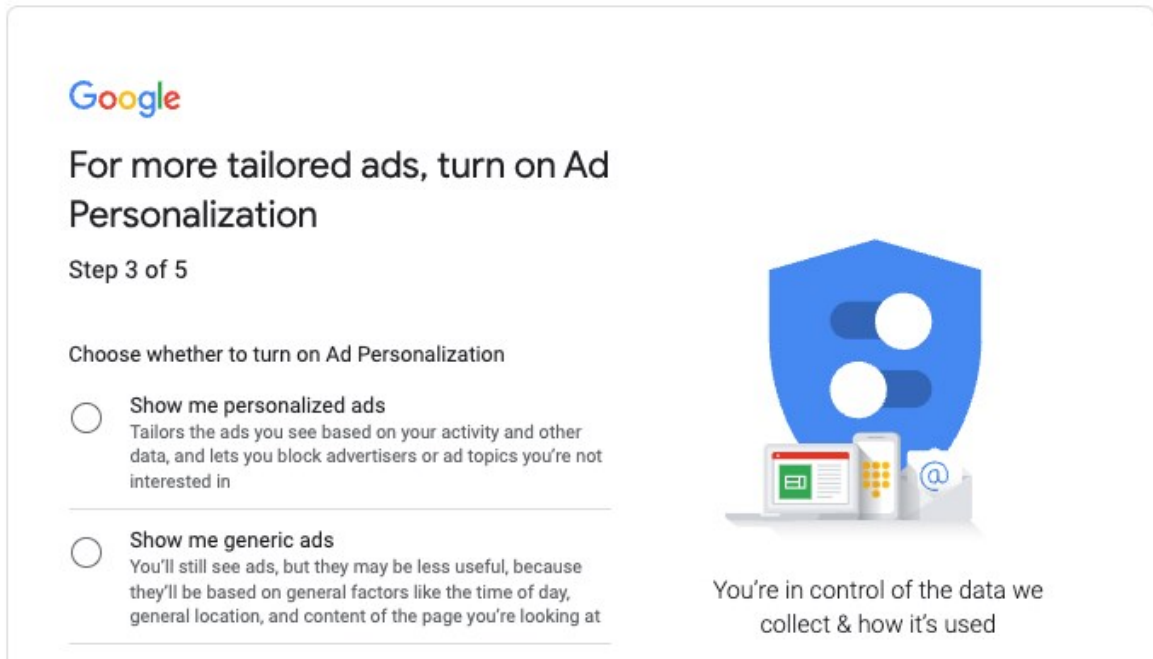
29.1 The toggle 'on' button for Web & App Activity and YouTube History "saves" personal data in a user's Google account. That data can be used for processing for which Google does not rely on consent as a legal basis because Google's privacy policy permits the use of data from all services across all purposes,¹³ e.g., processing for "*improving Google's services*" (for which Google relies on legitimate interests). The toggle 'on' function is therefore not a consent button *per se* but a button that facilitates processing of that data by Google more generally once it is saved in a user's account.

29.2 Google also bundled a request for consent to Ad Personalisation with a wide range of other personalisation purposes and the complainant was not able to make a choice specifically about the processing for which Google required her consent, nor was it made clear to the complainant which of these purposes Google required her consent for. The complainant would have wished to switch on useful aspects of the service (like picking up videos where they left off) without – through the same 'on/off' switch - being required to consent to her data being processed to personalise adverts. This bundling of consent is in breach of Article 7(2) GDPR which stipulates that "*if the data subject's consent is given in the context of a written declaration which concerns other matters, the request for consent shall be presented in a manner which is clearly distinguishable from the other matters...*" (emphasis added).

¹³ As stated, it is not clear which purposes in the context of the Web & App Activity and YouTube History settings Google relies on consent for.



30. Sixthly, information provided to the complainant throughout sign-up highlights the benefits of selecting 'on' (and, in the case of Ad Personalisation the detriments of not selecting 'on', see screenshot below).



31. If the user attempts to disable the features later in his account settings, he is also shown vague notices about reduced functionality, suggesting a disadvantage for those withdrawing consent, see screenshots below. The complainant was strongly encouraged by this framing to select 'on' for each category and to maintain this 'on' setting after completing the sign-up process.



Pause Web & App Activity

Pausing Web & App Activity may limit or disable more personalized experiences across Google services. For example, you may stop seeing more relevant search results or recommendations about places you care about.

This setting will be paused on all sites, apps, and devices signed in to this account.

Even when this setting is paused, Google may temporarily use information from recent searches in order to improve the quality of the active search session.

Pausing this setting doesn't delete any of your past data. You can see or delete your data and more at myactivity.google.com.

Visit account.google.com to change this and your other Google Account settings and learn about the data Google continues to collect and why at policies.google.com.

Cancel

Pause

Pause YouTube History

Pausing YouTube history may limit or disable more personalised experiences across Google services. For example, you will not see recommendations for content or creators based on videos that you watch or search for after you pause this setting. You may also get recommendations for videos that you've already watched.

This setting will be paused on all sites, apps and devices signed in to this account.

Pausing this setting doesn't delete any of your past data. You can see or delete your data and more at myactivity.google.com.

Visit account.google.com to change this and your other Google Account settings and learn about the data that Google continues to collect and why at policies.google.com.

Cancel

Pause



Turn off personalisation

When you turn off Ad Personalisation:

- You'll still see ads (but they may be less useful to you)
- You'll no longer be able to set preferences for ads or advertisers
- Choices that you've made for ads won't be saved

With personalisation off, ads that you see can still be based on general factors, like the subject of what you're looking at, the time of day or your general location.

[Keep on](#) [Turn off](#)

32. **Annex 3** – Calhoun *et al.* v Google LLC to this complaint contains excerpts from Discovery in the U.S. case of *Calhoun et al v. Google LLC*. Documents internal to Google acknowledge that Google uses “*abstract language*” which means “*people struggle to gauge the potential service implications of deleting data or denying consent*”. Google’s “*broad permissions*” mean “*it is difficult for people to fully / meaningfully give permission*” and result in “*people feeling unequipped to make informed decisions or even questioning whether they have a genuine choice if they want to enjoy Google services*”. Those documents also contain statements that:

When people consent without knowing what exactly they're agreeing to share with Google - and what's "in it" for them -they "set and forget" the toggle - then are often negatively surprised by unexpected personalisation down the line.

33. Considering Articles 4(11), 5.1(a), 5.1(b), 6.1(a), 7, 12.1 and 13.1(c) of the GDPR, consent given under these circumstances cannot be deemed as “freely given” and is therefore invalid. Any processing operations in the context of Web & App Activity, YouTube History, and Ad Personalisation based on such consent,



particularly those related to advertising purposes, breach the GDPR. Pursuant to Article 7(2), any consent received in these circumstances should not be considered binding.

Not specific nor informed

34. Article 6(1)(a) of the GDPR requires the consent of the data subject to be given in relation to “*one or more specific*” purposes and the data subject shall have a choice in relation to each of them. Consent must also be “*informed*” to be considered valid. This means that users must be (i) presented with sufficient granularity of information that is necessary to understand what they are consenting to, (ii) provided a separate opt-in for each purpose, to allow users to give specific consent for specific purposes, and (iii) that it should be clear what the consequences of giving consent could be.¹⁴
35. There is insufficient specificity or information about the processing that the complainant was taken to have consented to by indicating ‘on’. The most prominent information for Web & App Activity and YouTube History focuses on positive impacts for her such as providing faster searching, more relevant results, and streamlined viewing of YouTube videos. Only on seeking further information does Google indicate that the option will result in “*more personalised*” experiences across Google’s services, including “*ads on and off Google that are tailored to you based on this data*”. As Google relies on consent for the personalisation of adverts following an ‘on’ indication, such processing should have been displayed much more prominently to be considered “specific” and “informed”.
36. The concept of “*more personalised*” services is broad and vague, and Google uses language that indicates that the lists of purposes it provides under this heading

¹⁴ EDPB, Guidelines 05/2020 on Consent under Regulation 2016/679 https://edpb.europa.eu/sites/default/files/files/file1/edpb_guidelines_202005_consent_en.pdf at para 13 to para 16.



are non-exhaustive. This is exacerbated by the large number of Google services and Google's use of the complainant's data across all of them.

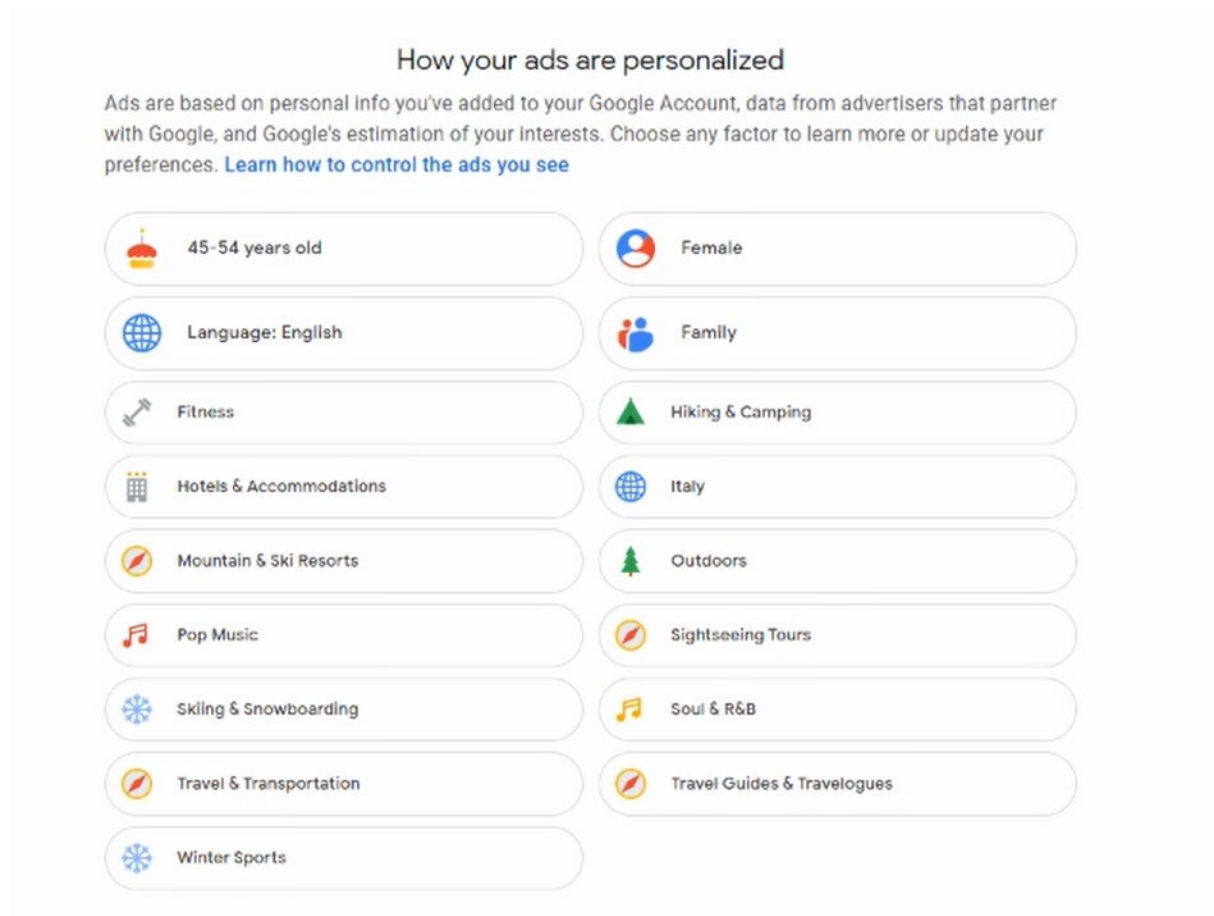
37. The objective of Ad Personalisation is stated to be *"to make the ads you see more useful to you"*. A user must click *"learn more"* to get the relevant information about the extent of the profiling Google intends to conduct. This includes information that adverts will be personalised

"based on your activity on Google services, including your queries on Google Search, videos that you watch on YouTube, apps that you install on your Android device, ads or content that you interact with and associated information like your location. Similarly, we can use your activity on other sites and apps that use our advertising services. Activity can come from any device on which you sign in with your Google Account. We use information that you have provided in your Google Account, such as your age and gender. We can also use your activity on other sites and apps that use our advertising services."

Again, Google uses conditional and vague language (e.g., "such as", "including", and "can"). This did not do enough to fully explain how the complainant's data would be processed to target adverts at her, despite this being a core part of Google's business model, and despite the significant amount of personal data that would be processed for advertising purposes (such as the complainant's location history). The full extent of how adverts are targeted at Google's users only becomes visible over time if users navigate to their ad settings in their Google



account to view the wide range of topics that Google associates with them.



38. The information provided by Google at the point it sought consent was not clear and did not relate to specific purposes. The complainant was not put in a position to:

- i. understand how her data would be processed for a range of purposes based on the consent sought; or
- ii. foresee the consequences of the processing that would result across Google's wide range of services.

39. The overall impact is that by indicating 'on', the complainant was being asked to consent to processing across an undefined set of purposes, some of which could be of benefit to her, but others of which were likely to primarily benefit Google. The



net result is that any purported reliance on consent is invalid, as that consent is not specific nor informed as Google themselves recognize and admit. For example, see **Annex 3** – Calhoun *et al.* v Google LLC to this complaint which contains excerpts from Discovery in *Calhoun et al v. Google LLC*. These excerpts demonstrate that Google knows that “*terms like ‘web & app activity’ mean zero to a user*” and confuse users. Moreover, those documents show internal Google documents which state (sic):

“When we ask people to turn on a setting like Web & App Activity or Ads Personalisation, we highlight enhanced functionality and personalisation. The reality though is we’re relying on that data for many purposes, including improving our products and fueling our ads-based revenue – neither of which benefit individual users directly, yet both of which fall under this broad and contradictory consent.”

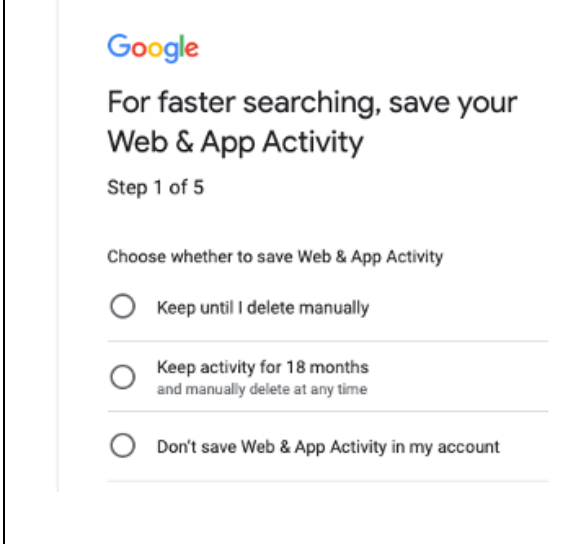
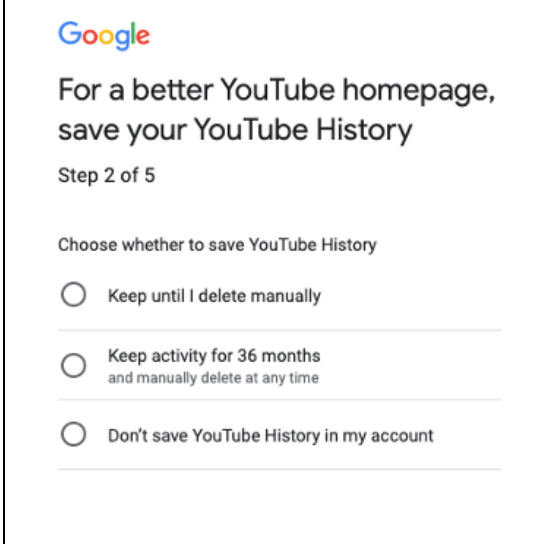
Not unambiguous

40. For consent to be valid, the complainant must have given an “*unambiguous indication*” through a “*clear and affirmative*” action, that she consents to Google processing her data for the purposes communicated by the company. According to the EDPB’s Consent Guidelines, “*it must be obvious that the data subject has consented to the particular processing*”.¹⁵
41. The three options presented to the complainant were presented as choices about service customisation and about the retention of her data (“*choose personalisation settings*”, “*choose whether to save*” Web & App Activity / YouTube History, “*turn on*” Ad Personalisation), and not as a means to obtain the complainant’s consent, see screenshots below. For example, the word ‘consent’ (which might be expected to put users on a higher alert about what is being asked of them) is not used in

¹⁵ EDPB, Guidelines 05/2020 on Consent under Regulation 2016/679 https://edpb.europa.eu/sites/default/files/files/file1/edpb_guidelines_202005_consent_en.pdf at para 75.



any of the descriptions available. Selecting 'on' to the options is therefore not an unambiguous indication of consent to processing of personal data. This is reinforced by the lack of clear information and bundling of the consent indication with other matters, detailed from paras 24 above.

	
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42. Within the 'express' sign-up option, these three features are defaulted to 'on' leading to ostensibly innocuous, if not positive outcomes, such as *"faster searching"*, *"better video recommendations"* and to *"make the ads that you see more useful to you"*. This could not amount to an unambiguous indication of consent for any users who choose the express route. The use of pre-ticked opt-in boxes is invalid under the GDPR, and according to the Consent Guidelines, *"silence or inactivity on the part of the data subject...cannot be regarded as an active indication of choice"*.

Withdrawing consent not as easy as giving it

43. Google does not make it as *"easy to withdraw as to give consent"* (Article 7(3) GDPR) for the complainant.



44. Having indicated 'on' to the three options, the complainant can navigate to account settings to adjust these options. These invite the complainant to "pause" the Web & App Activity and YouTube History features after the Google account has been created, which the complainant takes to be a means by which she can withdraw consent to the processing for which Google relies on that legal basis.
45. The EDPB addresses this issue in their guidelines on dark patterns as follows:
- "The easy withdrawal of consent constitutes a prerequisite of valid consent under Article 7 (3) phrase 4 GDPR and should be possible without lowering service levels. As an example, consent cannot be considered valid under the GDPR when consent is obtained through only one mouse-click, swipe or keystroke, but the withdrawal takes more steps, is more difficult to achieve or takes more time."*¹⁶
46. To withdraw (or "pause") all processing purposes that were turned 'on' via the "express personalisation" setting with one click, individuals have to "pause" all purposes separately. Withdrawing therefore takes more steps and is therefore not as easy as it is to give consent.
47. As when Google sought the complainant's consent, this decision is bundled with a range of other purposes. It is not possible for the complainant to *only* withdraw consent to processing for personalisation of adverts for example, she must turn off other features at the same time.
48. The complainant was also discouraged from withdrawing consent in the Google account by vague notices about reduced functionality which are unlikely to be comprehensible to the user, but which focus on the processing as a benefit to the

¹⁶ EDPB, Guidelines 3/2022 on dark pattern in social media platform interfaces: How to recognise and avoid them, https://edpb.europa.eu/our-work-tools/documents/public-consultations/2022/guidelines-32022-dark-patterns-social-media_en, p. 14.



user (to the exclusion of the range of other purposes and types of processing that the consent relates to). See screenshots at para 31 above.

49. Further, it is not clear if Google continues to use the data that has been saved following withdrawal of consent, nor what its legal basis to retain such data is once the user has withdrawn his consent. It is also not clear what happens to the ad profile Google has created on the user after personalisation is turned off. For example, it is not clear if Google continues to use this profile – or the data related to it – for other purposes. The continued use of the data by Google would not appear appropriate in circumstances where users are supposed to be provided with genuine control and choice about whether to activate (and deactivate) these features. However, Google’s privacy policy suggests that all data collected through its services can be used for all of Google’s objectives or purposes. If there is another purpose that Google uses this data for under a different legal basis, this should have been made clear to data subjects at the outset. Otherwise, Google’s apparent further use of this data if it is not deleted by the data subject is in breach of Article 7 GDPR and the user’s right to withdraw consent.

C.2 Lack of valid legal basis (if Google is not relying on consent)

50. As outlined above, Google relies on consent for the purposes of Ad Personalisation. It is not clear to the complainant if Google relies on consent for the purposes of personalisation more broadly (although it appears that it may well do). In particular, Google does not give sufficiently specific information in its privacy policy or during the account signup process as to which legal basis it relies upon to “provide personalised services”.

51. The other relevant legal basis that Google cites within its policy is “legitimate interests”, as governed by Article 6(1)(f) of the GDPR. If a data controller is relying on legitimate interests for processing personal data, this must be balanced against the interests, fundamental rights and freedoms of the data subject.



52. A legitimate interest must also be “lawful”, “sufficiently clearly articulated” and “represent a real and present interest”.¹⁷ Article 6(1)(f) can be broken down into three key elements that must be considered by the data controller¹⁸: purpose, necessity, and balancing exercise.

53. Firstly, in terms of the purpose and legitimate interests pursued by Google in this case, the information provided about the purposes and extent of data collection through Web & App Activity and YouTube History respectively is not clear, as it permits a wide range of non-exhaustive purposes:

“This data helps Google give you more personalised experiences across Google services, like faster searching, more relevant results, and app and content recommendations automatically tailored to you. Depending on your Ad Settings, you may also see ads on and off Google that are tailored to you based on this data.”¹⁹

“Saved data helps Google give you more personalised experiences across Google services, like giving you better recommendations when using YouTube and other Google products, a tailored YouTube homepage and videos that pick up from exactly where you left off. Depending on your Ad Settings, you may also see ads on and off Google that are tailored to you based on this data.”²⁰

54. Secondly, necessity is hard to assess given the lack of clarity regarding Google’s purposes. However, Google can continue personalising users’ experiences across

¹⁷ Article 29 Working Party, “Opinion 06/2014 on the notion of legitimate interests of the data controller under Article 7 of Directive 95/46/EC” p. 25 and p. 52

¹⁸ See ICO guidance on Legitimate Interests – the three part test <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/legitimate-interests/what-is-the-legitimate-interests-basis/>

¹⁹ Description of Web & App Activity in the “Learn More” section.

²⁰ Description of YouTube History in the “Learn More” Section.



its services *without* processing Web & App Activity and YouTube History data. For instance, Google gives users the possibility to turn off these features.²¹

55. Lastly, Google must have a legitimate interest that overrides the complainant's rights and freedoms. This balancing test must be carried out by Google itself²² considering: the nature of the interests of the controller, the prejudice suffered by the controller if the processing does not take place, the nature of the data, the status of the data subject, and the way that data is processed. Additionally, the data controller must consider the fundamental rights and interests of the data subject that could be impacted.²³ The interests of the individual could override the legitimate interests of the controller if data is processed in ways the individual does not reasonably expect.²⁴
56. The extensive tracking performed through Web & App Activity and YouTube History, which is also used for profiling if Ad Personalisation is switched on, is invasive and includes location tracking in the case of Web & App Activity. The complainant did not expect that her data would be used in this way. The extent of the collection of the personal data, including its use for advertising purposes, is not transparent and is hidden behind extra layers of these features. In the case of the express registration option, these settings are also activated by default.
57. Thus, legitimate interests is not a valid legal ground for the processing Google conducts in connection with the Web & App Activity and YouTube History features. In any event, the EDPB has confirmed that relying on legitimate interests as a fallback is not compatible with the fairness principle of Article 5 (1)(a) GDPR.

²¹ This point would also preclude reliance on Article 6(1)(b) – performance of a contract, as the processing could not be considered necessary for the performance of a contract, if the data subject has a choice about whether to switch these features on.

²² GDPR art. 6 (1)(f) GDPR and recital 47.

²³ Article 29 Working Party "Opinion 06/2014 on the notion of legitimate interests of the data controller under Article 7 of Directive 95/46/EC" p. 55.

²⁴ Recital 47 GDPR.



“If a controller chooses to rely on consent for any part of the processing, they must be prepared to respect that choice and stop that part of the processing if an individual withdraws consent. Sending out the message that data will be processed on the basis of consent, while actually some other lawful basis is relied on, would be fundamentally unfair to individuals. In other words, the controller cannot swap from consent to other lawful bases.”²⁵

58. Since consent cannot be considered valid in this situation, and Google cannot rely on legitimate interests, Google lacks a legal basis for processing and is therefore in breach of GDPR.

C.3 Unfair processing & dark patterns

59. The design of Google’s sign-up process, and the account settings controls accessible to the complainant after sign-up, leads the complainant *“into making unintended, unwilling and potentially harmful decisions regarding the processing of her personal data”²⁶*, to the extent that they constitute ‘dark patterns’, as defined by the European Data Protection Board in its guidelines on dark patterns in social media platform interfaces²⁷ (the ‘Dark Patterns Guidelines’). The use of these dark patterns by Google – detailed below – is a breach of the principle of fair processing (Article 5(1)(a) GDPR).²⁸

Longer than necessary

60. According to the Dark Patterns Guidelines:

²⁵ EDPB, Guidelines 05/2020 on Consent under Regulation 2016/679 https://edpb.europa.eu/sites/default/files/files/file1/edpb_guidelines_202005_consent_en.pdf at para 121 to para 123.

²⁶ EDPB, Guidelines 3/2022 on dark pattern in social media platform interfaces: How to recognise and avoid them, https://edpb.europa.eu/our-work-tools/documents/public-consultations/2022/guidelines-32022-dark-patterns-social-media_en.

²⁷ Ibid.

²⁸ See also our discussion on how dark patterns breach the principle of Privacy by Design and by Default (Article 25 GPDR) in para. 91-96 in this complaint.

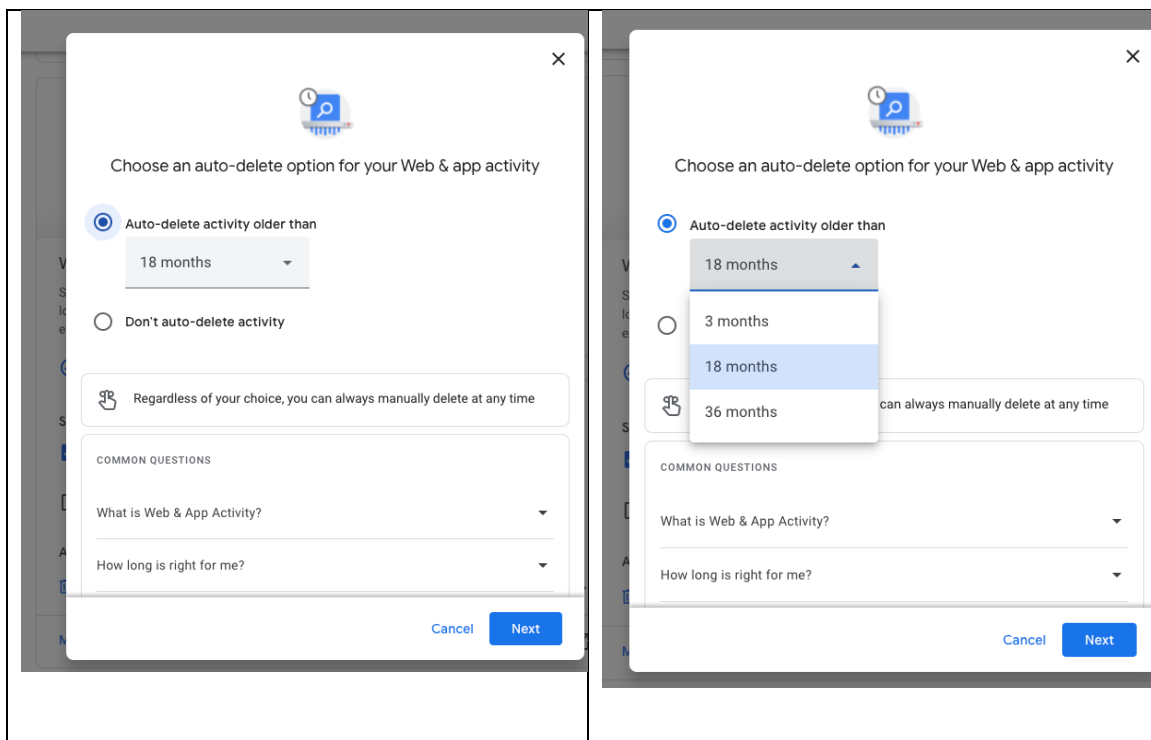


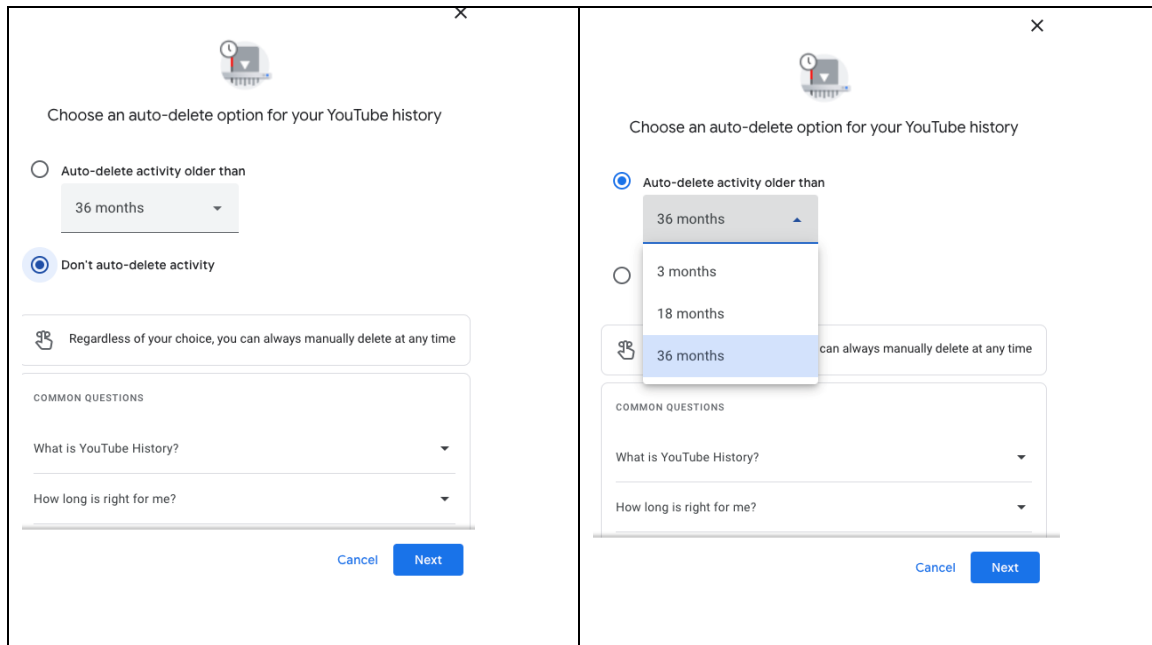
“When users try to activate a control related to data protection, but the user experience is made in a way that requires users to complete more steps, compared to the number of steps necessary for the activation of data invasive options, this constitutes the dark pattern Longer than necessary.”

61. The express and manual sign-up options (compared in Annex 2 – Description of Express and Manual Sign-Up Process) exhibit this “longer than necessary” dark pattern, because the 1-step express option results in more extensive processing of personal data than the 5-step (10 click) manual option.
62. This design discouraged the complainant from opting for less extensive processing of personal data. To the extent there is a hierarchy of ease between options, the option resulting in the least extensive processing of personal data should have been the easiest and quickest for the complainant to select. There is no design reason for the express option being defaulted to ‘on’, other than to create a dark pattern that results in increased data collection.
63. The longer than necessary dark pattern can also be seen in Google’s technique of questioning the complainant’s decisions when she considers amending settings, e.g., requiring repeat confirmation of all settings previously selected by the user during the final step of the manual personalisation process. In contrast, no such warning is provided when a user selects the express option, resulting in the greatest extent of processing.
64. Google’s practices also typify the dark pattern of “deceptive snugness”. The EDPB note that *“because of the default effect which nudges individuals to keep a pre-selected option, users are unlikely to change these even if given the possibility.”* Even though Google’s users are told they can change the settings selected on sign-up later in the Google account, they are likely to retain the more data invasive settings selected on sign-up due to this dark pattern.



65. Another illustration of this dark pattern is Google's pre-selection of retention options. Within the express option, the retention options are pre-set as follows *“In addition to being able to manually delete your activity at any time, Web & App Activity older than 18 months and YouTube History older than 36 months will be automatically deleted”*. Even if the user selects the manual option, the retention options for “auto-delete” are set to this same default, as the screenshots below show.





Emotional steering

66. The Dark Patterns Guidelines state:

“With the Emotional Steering dark pattern, wordings or visuals are used in a way that conveys information to users in either a highly positive outlook, making users feel good or safe, or a highly negative one, making users feel anxious or guilty. The manner in which the information is presented to users influences their emotional state in a way that is likely to lead them to act against their data protection interests. [...] at the sign-up process stage, the stirring effect can be especially strong”.

67. Google employs “emotional steering” through the wording it selects to describe the features it wants users to activate, such as:

“these settings will use your data to give you a personalised experience across services and more control over the ads that you see”

“for faster searching, save your Web & App Activity”



“for a better YouTube homepage, save your YouTube History”

“you’re in control of the data we collect and how it’s used”

68. This wording gave the complainant a highly positive outlook of the impact of processing, focusing on benefits to how the service would be experienced, and giving an illusion of security and control.

Ambiguous wording and information

69. As set out in paras 34 to 42 above, and at C.4 below, the description of the three options provided on sign-up, and the consequences of selecting ‘on’ or ‘off’ in relation to the processing of the complainant’s personal data, used ambiguous and unclear wording. The complainant was ‘left in the dark’ about how her data was to be processed, and what kind of control she had over that processing. The Dark Pattern Guidelines describe “Left in the dark” as follows: *“an interface is designed in a way to hide information or data protection control tools or to leave users unsure of how their data is processed and what kind of control they might have over”*. The sign-up process does this in several ways:

69.1 Firstly, important information about what the processing entails is hidden behind extra clicks within the “Learn More” section. This includes information that Web & App Activity and YouTube History can be used to personalize adverts. If the user opts for the express sign-up option, the information hidden includes that they can opt for “contextual” adverts in place of personalised adverts. This information is also *“Hidden in plain sight”* (another example of a dark pattern within the Guidelines) because it is *“likely to be overlooked”* by the user.

69.2 Secondly, even if users find and read the information under ‘Learn More’ they will still be left in the dark about the purposes for the processing conducted using data gathered through Web & App Activity and YouTube History and the legal basis which Google relies on to support them (nor does the privacy policy provide this information), precluding the user’s ability to control their data.



69.3 Thirdly, it is not clear to users if their personal data will continue to be processed for “contextual” adverts, and if so what data. This in turn hinders users’ ability to make an informed choice regarding the use of their data.

69.4 Fourthly, Google does not make the full range of retention options and sub-settings available to users during signup but only later through the Google account.

C.4 Insufficiently transparent processing

70. The sign-up process and information available through the Account Settings following sign-up did not provide the complainant with transparency about how her data would be processed in the context of the Web & App Activity, YouTube History, and Ad Personalisation features, in breach of Article 5(1)(a) and Articles 12 and 13 GDPR.

71. Paras 34 to 42 above set out how the sign-up process contains unclear information on a range of bundled processing purposes, using ambiguous and expansive language. Google’s transparency was also deficient due to:

Lack of clarity about legal bases

72. The sign-up process and Google’s privacy policy did not give the complainant a clear picture of which legal bases Google relied on for which processing of his personal data or which purpose. Consent collection was confusing and bundled with other matters and the privacy policy does not list Google’s legal bases consistently with the three options provided at sign-up.

73. This lack of clarity means that the complainant was not able to understand whether, by changing a setting to ‘off’, Google would no longer have a legal basis for certain types of processing, or whether it might continue to rely on other legal bases, such as legitimate interests to process data for personalisation purposes or other purposes.



Lack of clarity about personalised vs. generic advertising

74. Both during and after sign-up (through Account Settings), the complainant had the option to set 'Ad Personalisation' to 'off'.
75. Google indicates that if a user does so, they will still be shown 'generic ads' based on "general factors, like the subject of what you're looking at, the time of day, or your general location." During the express set-up this information is only available if the complainant clicks "learn more", see below.

Information about "Contextual" advertisements provided (1) in the Manual Personalisation route during the initial setup process (2) In the "Learn More" section (3) in the Google account settings if a user attempts to turn off this feature after initially switching it on

1



For more tailored ads, turn on Ad Personalisation

Step 3 of 5

Choose whether to turn on Ad Personalisation

- Show me personalised ads**
Tailors the ads that you see based on your activity and other data, and lets you block advertisers or ad topics that you're not interested in
-
- Show me generic ads**
You'll still see ads, but they may be less useful, because they'll be based on general factors like the time of day, general location and content of the page that you're looking at.

What data we use for personalised ads



You're in control of the data we collect and how it's used



2

About Ad Personalization

Ads keep our services free. Ads appear on many Google services, like Search, YouTube, and Maps. Ads also help keep content free on other sites and apps that use Google advertising services. When sites and apps integrate our services, they share information with Google.

If you do not consent to personalized ads, ads will be selected based on contextual factors, such as the content you're viewing, your current search query, your current general location, your device type, and the time of day. We won't use your account information or past activity to select more useful ads.

If you consent to personalized ads, we'll process your activity and account information to infer topics that may be of interest to you, in addition to the contextual factors described above. We never personalize ads based on sensitive categories like race, religion, sexual orientation, or health.

2 (cont)

We'll personalize ads based on your activity on Google services, including your queries on Google Search, videos you watch on YouTube, apps you install on your Android device, ads or content you interact with, and associated information like your location. Similarly, we can use your activity on other sites and apps that use our advertising services. Activity can come from any device on which you sign in with your Google Account. We use information you have provided in your Google Account, such as your age and gender. We can also use your activity on other sites and apps that use our advertising services.

You can change your Ad Personalization setting anytime, and see and edit specific information and interests we're using to personalize your ads at adssettings.google.com. And you can review or delete activity anytime by visiting myactivity.google.com.

[Got it](#)

3

Turn off personalization

When you turn off ad personalization:

- You'll still see ads (but they may be less useful to you)
- You'll no longer be able to set preferences for ads or advertisers
- Choices you've made for ads won't be saved

With personalization off, ads you see can still be based on general factors, like the subject of what you're looking at, the time of day, or your general location.

[Keep on](#) [Turn off](#)

76. Even if the complainant finds and reads this information, it is not clear whether this generic advertising involves the processing of personal data for advertising purposes (which it may well do). For example, generic adverts will select adverts based on contextual factors, such as the *"content that you're viewing, your current general location, your device type and the time of day"*. Alternatively, if users



choose personalised adverts, those adverts will be based on “*your activity on Google services, including your queries in Google search, videos you watch on YouTube, apps you install on your Android device, ads you or content you interact with and associated information like your location*”. These descriptions are confusingly similar – both refer, for example, to content that is being viewed/interacted with by the user and to location data. The complainant was therefore not able to understand how her personal data was being and/or might be processed in the case of contextual adverts, or the extent of her control over that processing.

Impact on the complainant

77. The result of this failure to be transparent about processing is that the complainant was left unable to understand how Google would process her personal data or for what purposes. Despite the illusion of user control through the sign-up process and Account Settings, the user was also left unable to understand how she could influence the extent of this processing. The full extent of the processing carried out by Google in reliance on the preferences that the complainant indicated on sign-up came as a surprise to the complainant and were not within her reasonable expectations.

C.5 Breach of purpose limitation

78. In breach of Article 5(1)(b) GDPR, the complainant’s personal data was not “collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes”.

79. The Article 29 Working Party Guidance on Transparency²⁹ explains the requirements of transparency as follows:

²⁹ Guidelines on transparency under Regulation 2016/679 (WP260 rev.01)



“the data subject should be able to determine in advance what the scope and consequences of the processing entails and that they should not be taken by surprise at a later point about the ways in which their personal data has been used.”

80. The Guidance says that *“the information should be concrete and definitive; it should not be phrased in abstract or ambivalent terms or leave room for different interpretations. In particular the purposes of, and legal basis for, processing the personal data should be clear”*. The Article 29 Working Party uses the phrase *“we may use your data to offer **personalised services**”* (emphasis added in bold) to illustrate a *“Poor Practice Example”* that is *“not sufficiently clear as to the purposes of processing”* because *“it is unclear what the “personalisation” entails”*. This is exactly the phrasing that Google uses.
81. For Web & App Activity and YouTube History, the stated data processing purposes are defined broadly and ambiguously (see paras 34 to 42 above). Even when read in conjunction with Google’s privacy policy, the complainant was left with a non-exhaustive list of *examples* of purposes and types of processing that Google might engage in. What appears to be the main purpose *“provide more personalised experiences”* is not specific, as stated by the Article 29 Working Party. The purposes should be broken down into the constituent elements to ensure foreseeability for the user.
82. Google relies on oversimplified and vague purposes. Thus, the criteria for a specified purpose are not met and therefore the purpose limitation principle is breached. Moreover, purposes must not only be specified but also explicit. An explicit purpose requires transparency and predictability. Because of the mismatch between the options presented during sign-up and the wording of the privacy policy, the complainant was not clear *which* data was collected for *which* purposes. Rather, the complainant understands that, where each option is set to ‘on’ during sign-up, Google takes this to use any and all of the data it collects about the complainant for any and all of its personalisation purposes (as well as for the



other purposes set out in Google's privacy policy). By way of example, Google says it provides 73 services³⁰ (although the real number appears much higher). Four of these are YouTube services. But switching 'YouTube History 'on' means that data about the complainant's use of YouTube can be used for processing, including for advertising purposes, in the context of all Google services, in addition to other Google products. In the case of Web & App Activity, when a user only intends to use one service, such as Gmail, their data may still be used for other services that a user had not foreseen, engaged with, or even known that they were Google services, such as delivering them personalised adverts off Google services. There are no objective reasons to assume that a user would foresee that their data would be used in this way, particularly as Google hides this information from the user behind extra clicks in the "Learn More" section. Therefore, Google does not fulfil the requirements for an explicit purpose.

83. The sign-up process was used to encourage the complainant to 'switch on' processing of her personal data for a variety of processes (with no separation between types of data or purposes) – some relevant to her and some not – and across all Google's services, many of which she may never use.
84. Without a clear delimitation of the primary purposes for which Google collected the complainant's personal data, it is not possible to assess the compatibility of secondary purposes for which processing has been or may be carried out.

C.6 Breach of data minimisation and storage limitation

85. Article 5(1)(c) GDPR requires personal data to be "adequate, relevant, and limited to what is necessary in relation to the purposes for which they are processed" ('data minimization'). Google should therefore only collect the minimum amount of personal data it needs for those purposes, and to only store that data for the minimum amount of time necessary. The sign-up process and options available to

³⁰ <https://about.google/intl/de/products/#all-products> (24.3.2022).



the complainant through Account Settings did not have this effect, for the following reasons:

86. As explained at paras 81 to 84 above, Google does not clearly or completely define all of the purposes for which it processes data, nor limit the processing of data, once collected, to specific purposes. It is therefore by definition impossible for Google to process the minimum amount of data for each of its purposes.
87. Google also does not distinguish between different elements of its services or the use an individual user makes of those services. Google therefore does not collect the personal data necessary for the user's use of its services. Annex 3 – Calhoun *et al.* v Google LLC to this complaint contains excerpts from Discovery in *Calhoun et al v. Google LLC*. Documents internal to Google acknowledge that, in respect of Web & App Activity:

our one vast interconnected ecosystem premise doesn't align with how people actually engage with Google; most use fewer than 6 services, and the connections between them range from subtle to non-existent. So while we communicate that data in = value out, depending on the configuration of someone's individual Google ecosystem, they might not experience any benefit at all as a result of turning on WAA.

88. During sign-up, the complainant was invited to choose what data in the Web & App Analytics and YouTube History categories were to be kept until manually deleted, stored for 18 / 36 months (respectively), or not saved. Had the complainant opted for express sign-up, the longest retention periods are set by default (i.e., 18 and 36 months retention).



Google

For faster searching, save your
Web & App Activity


Step 1 of 5

Choose whether to save Web & App Activity

Keep until I delete manually

Keep activity for 18 months
and manually delete any time

Don't save Web & App Activity in my account



You're in control of the data we
collect & how it's used

Google

For a better YouTube homepage,
save your YouTube History


Step 2 of 5

Choose whether to save YouTube History

Keep until I delete manually

Keep activity for 36 months
and manually delete any time

Don't save YouTube History in my account



You're in control of the data we
collect & how it's used

89. After sign-up, through the Account Settings, the complainant noted that shorter retention periods (e.g., for 3 months) were available but these were not made available to the complainant during the sign-up process. Google makes longer retention periods more prominent as options during sign-up, suggesting that where users select this option, the relevant data is being stored for longer than is necessary.

90. In Account Settings, the complainant had the opportunity to 'pause' any of the three categories of service personalisation. Pausing any category would be a clear



indication that a user no longer requires their personal data to be processed for that element of the service. Despite this, the personal data collected in relation to the category is only deleted if the user manually does this. This suggests that personal data continues to be processed (even if only by being retained in storage) after the point at which it is no longer needed for the main purposes described to a user during the sign-up process.³¹

C.7 Breach of data protection by design and by default

91. Article 25(1) GDPR provides that:

“Taking into account the state of the art, the cost of implementation and the nature, scope, context and purposes of processing as well as the risks of varying likelihood and severity for rights and freedoms of natural persons posed by the processing, the controller shall, both at the time of the determination of the means for processing and at the time of the processing itself, implement appropriate technical and organisational measures, such as pseudonymisation, which are designed to implement data-protection principles, such as data minimisation, in an effective manner and to integrate the necessary safeguards into the processing in order to meet the requirements of this Regulation and protect the rights of data subjects.”

92. The EDPB Guidelines on Data Protection by Design and Default³² set out that data controllers must implement the data protection principles, and consequentially data subject’s rights, to achieve Data Protection by Design and by Default (DPbDD). This includes the principles of transparency, lawfulness, fairness, purpose limitation, and data minimisation. As this complaint has

³¹ The legal basis for retaining the data is also unclear, see sections C.1 and C.2 in this complaint.

³² Guidelines 4/2019 on Article 25 Data Protection by Design and by Default, see https://edpb.europa.eu/sites/default/files/files/file1/edpb_guidelines_201904_dataprotection_by_design_and_by_default_v2.0_en.pdf



explained, Google's registration system breaches these principles in various ways and does not secure effective protection of data subject's rights.

93. The EDPB Guidelines identify elements of the principles for DPbDD. These include:

Autonomy – Data subjects should be granted the highest degree of autonomy possible to determine the use made of their personal data, as well as autonomy over the scope and conditions of that use or processing.

Interaction – Data subjects must be able to communicate and exercise their rights in respect of the personal data processed by the controller.

Expectation – Processing should correspond with data subjects' reasonable expectations.

No deception – Data processing information and options should be provided in an objective and neutral way, avoiding any deceptive or manipulative language or design.

Truthful – the controllers must make available information about how they process personal data, should act as they declare they will and not mislead data subjects.

94. As the Guidelines state, these principles become even more relevant with respect to dark patterns, because a failure to follow these DPbDD principles is likely to constitute a dark pattern. The dark patterns that Google employs infringe the obligation of data protection by design stated in Article 25 GDPR (in addition to breaching the fairness principle, as explained earlier in this complaint). Google's breach of the DPbDD principles, including through its use of dark patterns, is set out below:



94.1 Google's system does not provide the complainant with "autonomy" because it does not allow the complainant meaningful control in limiting the amount of her personal data that would be processed to only what was necessary to make the service work well for her. For example, individuals can register with Google using the "express personalisation" option that "turns on" all data processing purposes with one-click. Google does not provide a similarly quick one-step sign-up option that disables those processing operations. Google also does not present the "express personalisation" and "manual personalisation" options in an objective and neutral way. Instead, Google uses design patterns like "Longer than Necessary", "Deceptive snugness", and "Emotional Steering" to maximise the collection of the complainant's personal data throughout the sign-up process and subsequently in the Google account.

94.2 Google's processing of the complainant's data does not correspond with her reasonable expectations because Google's purposes are vaguely and non-exhaustively defined and do not account for users' use of Google services. Through an ambiguous privacy policy, Google reserves its ability to process any and all of the data under the three categories for any and all of its processing purposes, across its over 73 services. Google fails to follow the "no deception" principle by using dark patterns like "Emotional Steering" and "Deceptive snugness" to encourage users to activate more data invasive options. Google's stated purposes for processing data also do not follow the "truthfulness" principle as they focus on the benefits to users such as enhanced functionality and personalisation, creating the impression that the focus is on the user's experience. However, Google subsequently make use of the complainant's personal data for a wide range of purposes that she could not have reasonably foreseen, including for improving Google's products and for advertising that may not benefit individual users directly.

94.3 The complainant is not able to "interact" and exercise her rights because Google does not make it as easy for the complainant to subsequently withdraw her



consent as it was to give that consent during registration. Google utilises dark patterns such as “Longer than necessary” (for instance, individuals must “pause” all purposes separately, whereas they could consent to processing with one click using “express personalisation” during set-up) and “Emotional Steering” techniques (showing users vague notices about reduced functionality if they try to turn off settings). This hinders users from withdrawing their consent.

95. Art 25 (2) GDPR provides that the *“controller shall implement appropriate technical and organisational measures for ensuring that, by default, only personal data which are necessary for each specific purpose of the processing are processed.”* As detailed in this complaint, Google does not clearly or completely define all the purposes for which it processes data, nor limit the processing of data, once collected, to specific purposes, making it by definition impossible for Google to process the minimum amount of data for each of its purposes. Google also preselects options that result in the complainant’s data being retained for longer periods, despite the availability of shorter options (see paras 11 and 88-89 above). This suggests that data is being retained for longer than is necessary.
96. Google’s registration process is accordingly also in breach of the principle of data protection by design and default set out in Article 25 GDPR, sub-paras (1) and (2).

D. REQUESTS TO THE NORWEGIAN DATA PROTECTION AUTHORITY

97. We request that the Norwegian Data Protection Authority fully investigates the concerns raised in this complaint with “all due diligence” using all the powers vested in it under Article 58 of the GDPR and, if appropriate and to the extent that cross border data processing might be involved, that it brings up this complaint to the consideration of the European Data Protection Board.
98. In the event that the Norwegian Data Protection Authority is not considered to be the Lead Supervisory Authority for this complaint, we remind the Norwegian Data Protection Authority of its general obligation to cooperate as set out in Article 60



of the GDPR and we respectfully encourage the Norwegian Data Protection Authority to act with all due diligence in the swift handling of this complaint given the public importance of the issues it raises.

99. In particular, we request that the Norwegian Data Protection Authority investigates and determines whether Google's processing of account holders' personal data to provide personalised services is lawful, including:

- i. whether Google's provision of personalised services, including personalised advertising services, is in compliance with the GDPR.
- ii. whether Google has valid legal bases to process the complainant's personal data to provide her with personalised services, particularly where it is processed for the purposes of targeting advertising.
- iii. whether the conditions set out in Article 7 of the GDPR for valid consent are met for the processing for which Google relies on consent as a legal basis.
- iv. whether the design of the sign-up process, in encouraging consumers to opt for the greatest extent of processing of personal data, are compatible with Articles 5(1)(a), (b), (c) and Article 25 of the GDPR regarding the fairness and transparency of processing, the requirements for purpose limitation and data minimisation, and for data protection by design and by default.

100. We further request that Norwegian Data Protection Authority requires Google to stop any unlawful processing operations related to the use of personal data, notably those operations related to the use of such data for advertising purposes.

101. We further request that Norwegian Data Protection Authority requires Google to design and implement a compliant sign-up process that provides meaningful transparency to users about how their data will be processed, and allows them



meaningful choice over the range of purposes and services for which Google seeks to process their personal data.

102. Finally, we request that Norwegian Data Protection Authority imposes an effective, proportionate, and deterrent fine against Google for the infringements of the GDPR, taking into account:

- i. The number of users affected beyond the complainant (potentially anyone with a Google account);
- ii. That Google is a 'repeat offender' in infringing data protection law³³;
- iii. The extensive tracking and profiling of users that is occurring through these features and the failure to transparently inform users about these practices;
- iv. The financial gains that Google takes from processing personal data for advertising purposes and the dominant market power of the company; and
- v. That fundamental principles of the GDPR and data subjects' rights have been infringed.

³³ In 2018, consumer organisations of the BEUC network filed complaints across Europe against Google for breach of GDPR regarding how Google collects users' location data, see <https://www.beuc.eu/press-media/news-events/gdpr-complaints-against-google%E2%80%99s-deceptive-practices-track-user-location>



Annex 1 – Description of the Web & App Activity, YouTube History and Ad Personalisation Settings

Web and App Activity

1. Web & App Activity is a Google account feature, which collects different user data from a variety of Google services to provide the user with various “*personalised services*”. These personalised services are described by Google in non-exhaustive fashion.
2. As seen below, during the Google account setup, Web & App Activity is described as “*for faster searching, save your Web & App Activity*”³⁴ and “*this setting will be turned on for things like faster searching, more relevant results and more helpful app and content recommendations*”.³⁵
3. The data collected through the Web & App Activity feature is also used to personalise advertising, but this information is not clearly communicated to the user unless the user clicks to “*Learn More about Web & App Activity*”, as shown in the screenshots below.

Information about Web & App Activity: (1) in the Express Personalisation route during the initial set up process (2) in the Manual Personalisation route during the initial set up process (3) in the “Learn More” section (4) in the Google account settings if a user attempts to reactivate feature after having switched it off.

³⁴ Manual personalisation option

³⁵ Express personalisation option



Google

Confirm personalisation settings and cookies

These settings will use your data to give you a personalised experience across services and more control over the ads that you see



Web & App Activity

This setting will be turned on for things like faster searching, more relevant results and more helpful app and content recommendations.

[Learn more about Web & App Activity](#)



YouTube History

This setting will be turned on for things like better video recommendations and to help remember from where you left off. [Learn more about YouTube History](#)



Ad personalisation

This setting will be turned on to make the ads that you see more useful to you. [Learn more about ad personalisation](#)

What data is used



Web & App Activity saves your activity on Google sites and apps, such as Search and Maps, and includes associated info, such as location. It also saves synced Chrome history and activity from sites, apps and devices that use Google services.

1



You're in control of the data we collect and how it's used

2

What data is used

Web & App Activity saves your activity on Google sites and apps, including searches and associated information, such as location. It also saves synced Chrome history and activity from sites, apps and devices that use Google services.

How we use this data

When this setting is on, Web & App Activity saved in your account may be used in any Google service where you're signed in to give you more personalised experiences when using Google products, like faster searching, more relevant results and app and content recommendations automatically tailored to you.



About Web & App Activity

What data is saved when this setting is on

Web & App Activity saves the things that you do on Google sites, apps and services, including your searches, interactions with Google partners and associated information, such as location and language.

This setting also saves synced Chrome history and activity from sites, apps and devices that use Google services, including:

- activity from sites and apps that partner with Google to show ads
- Chrome history (if saved in your Google Account via Chrome sync)
- app activity, including data that apps share with Google
- Android usage and diagnostics, like battery level, how often you use your device and apps, and system errors (if your Android usage & diagnostics setting is on)

If you use your device without an Internet connection, your data may be saved in your account once you return online.

Not all Google services save this data in your account.

How we use this data

Saved data helps Google give you more personalised experiences across Google services, like faster searching, more relevant results, and app and content recommendations automatically tailored to you.

Depending on your Ad Settings, you may also see ads on and off Google that are tailored to you based on this data.

Turn on Web & App Activity

Web & App Activity saves the things you do on Google sites, apps, and services, including your searches, interactions with Google partners, and associated information, like location and language.

If you use your device without an internet connection, your data may be saved in your account once you return online.

Not all Google services save this data in your account.

This data helps Google give you more personalized experiences across Google services, like faster searches, better recommendations, and useful ads, both on and off Google.

This data may be saved and used in any Google service where you are signed in to give you more personalized experiences. You can delete your data manually, choose an auto-delete option, stop saving data, and more at account.google.com.

[No thanks](#) [Turn on](#)

4. Web & App Activity is configured on by default if a user sets up an account using the express personalisation route.
5. Google users can view the data collected through Web & App Activity through the “My Activity” timeline on their profile.³⁶ This detailed log includes actions taken in

³⁶ “Google – My Activity” <https://myactivity.google.com/myactivity>



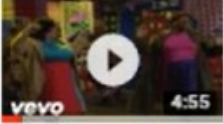
Chrome, Google Search history, and Google Maps activity (including the complainant's location).

Today ✕

⋮ Some activity may not appear yet


YouTube ✕

Watched **The Weather Girls - It's Raining Men (Video)**
[TheWeatherGirlsVEVO](#)

2:36 PM • Details 

YouTube ✕

Watched **Communicate like a Pro | Win at Work With Grammarly**

Watched at 14:36 

2:36 PM • Details

YouTube ✕

Searched for **it's raining men**

2:36 PM • Details


Ads ✕

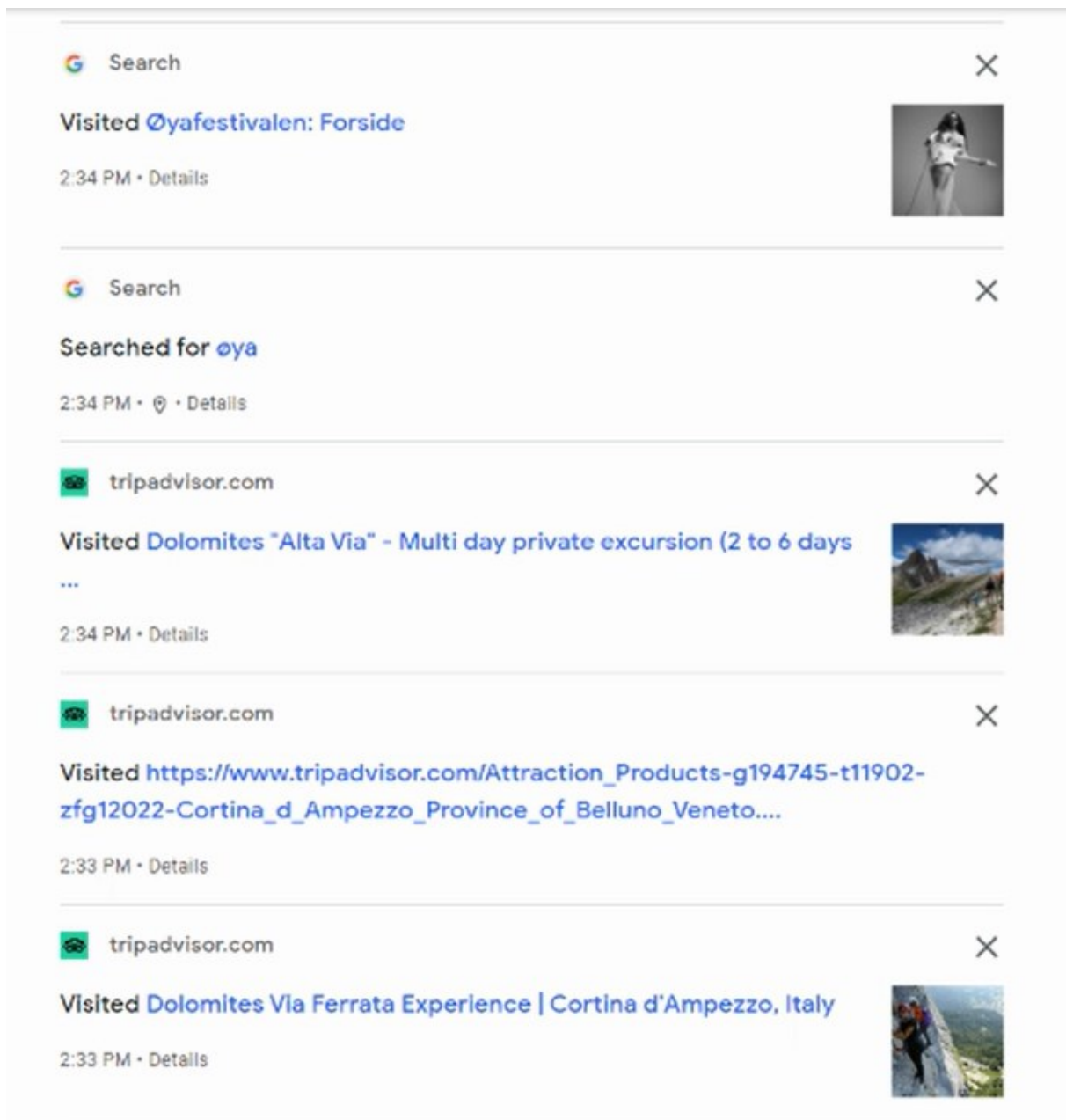
Visited https://clickserve.dartsearch.net/link/click?lid=43700068856203779&ds_s_kwgid=58700007624256583&ds_a_cid=271657806&ds...

2:35 PM • Details

Search ✕

Searched for **youtube**

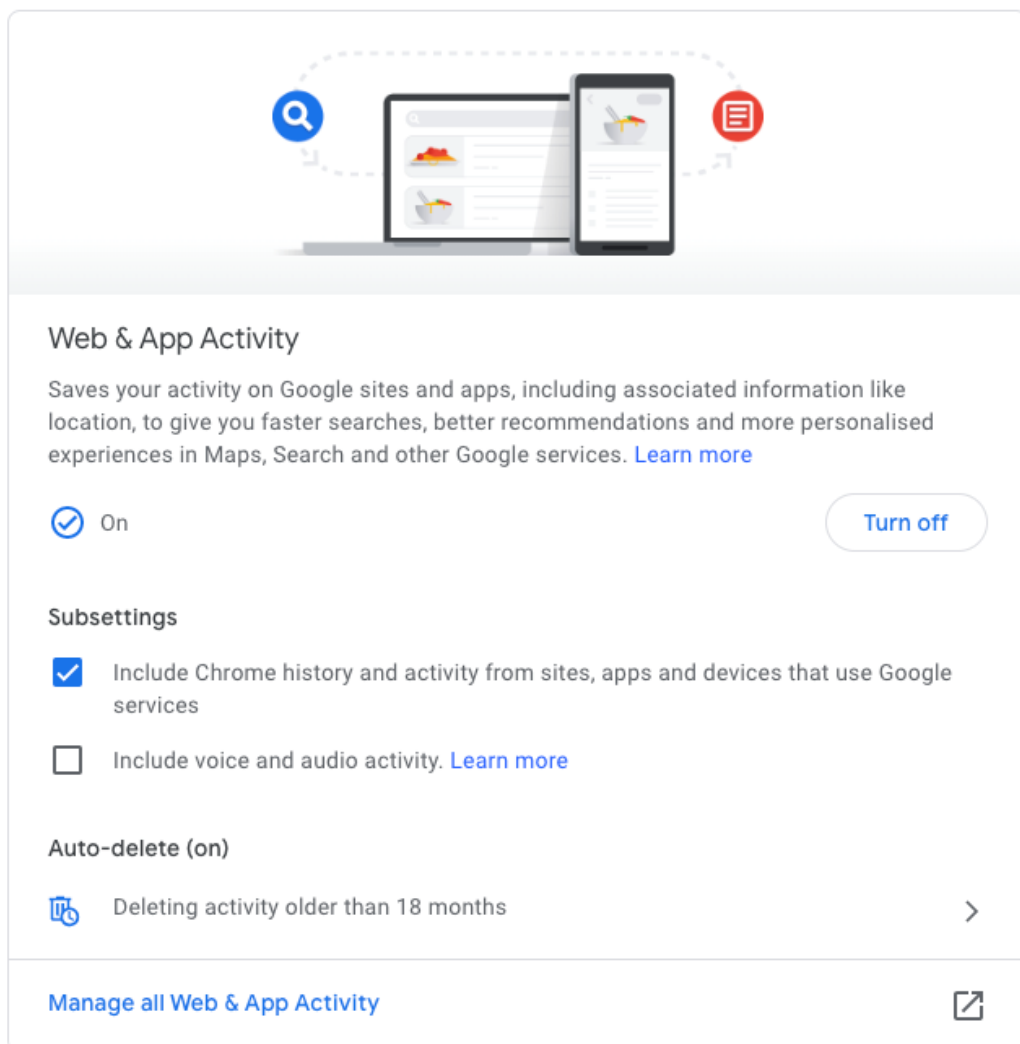
2:35 PM •  • Details



6. The activity controls of the Google account contain various settings for Web & App Activity. These include two sub-settings “[i]nclude Chrome history and activity from sites, apps, and devices that use Google services” and “[i]nclude voice and audio activity”, which can be switched on and off by the user. These sub-settings are not visible to the user on sign-up but only through the Google account after sign-up. Based on tests conducted by the Norwegian Consumer Council, when the Web & App Activity feature is configured “on” during signup, the sub-setting “[i]nclude



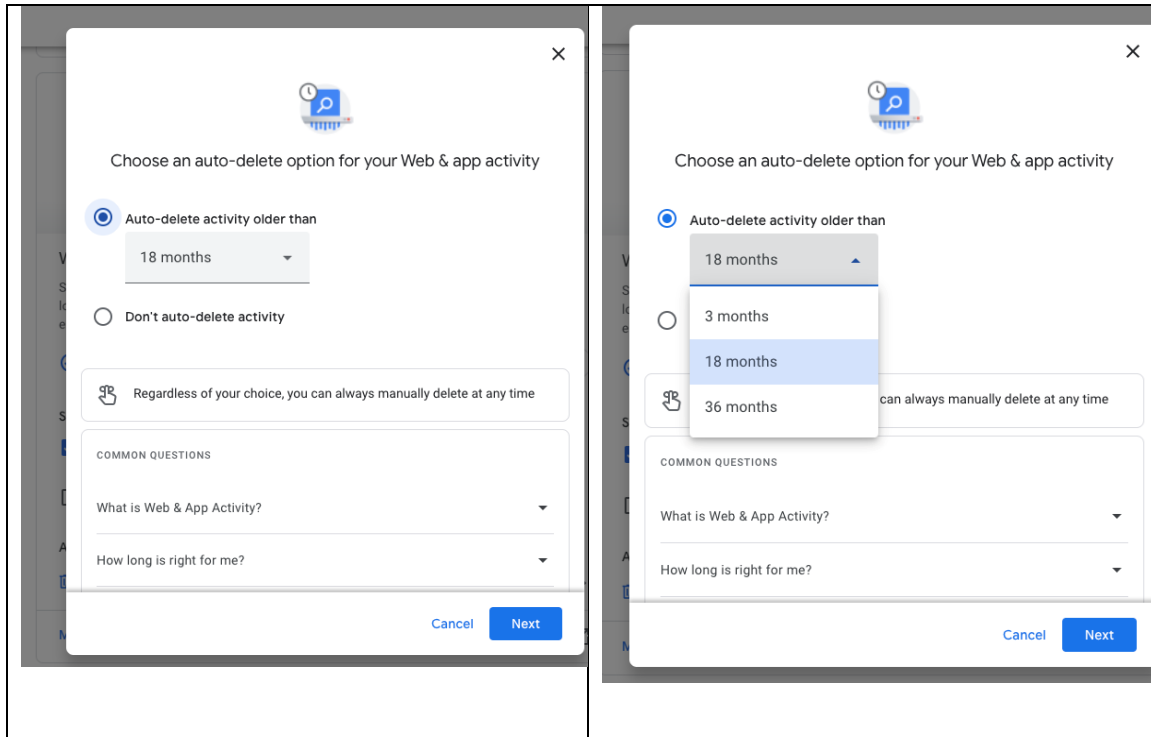
Chrome history and activity from sites, apps and devices that use Google services” is turned on in the Google account. The other sub-setting “*[i]Include voice and audio activity*” is not turned on and requires additional confirmation from the user to activate this setting, see screenshot below.



7. There is also an auto-delete feature which provides users with different options, specifically there is the option of “*don’t auto-delete activity*” or to “*auto-delete activity older than*” 3 months / 18 months / or 36 months respectively. These additional auto-delete periods of 3 / 36 months are not made available to the user on setup. 18 months is set as the default option both during account setup but also if the user subsequently seeks to amend his account settings, see screenshot



below. Users retain the option to “*manually delete at any time*”, regardless of their choice of an auto-delete option.



8. It is not possible to turn off Web & App Activity, but only to pause it (by clicking “turn off”), and, if the user attempts to do this, he receives a warning that this will limit or disable more personalised experiences across Google services, see screenshots below. Pausing this setting does not delete past data although the user can delete this separately.



Pause Web & App Activity

Pausing Web & App Activity may limit or disable more personalised experiences across Google services. For example, you may stop seeing more relevant search results or recommendations about places that you care about.

This setting will be paused on all sites, apps and devices signed in to this account.

Even when this setting is paused, Google may temporarily use information from recent searches in order to improve the quality of the active search session.

Pausing this setting doesn't delete any of your past data. You can see or delete your data and more at myactivity.google.com.

Visit account.google.com to change this and your other Google Account settings and learn about the data that Google continues to collect and why at policies.google.com.

Cancel

Pause

YouTube History

9. YouTube History is a Google account feature which collects data from Google's YouTube services to provide the user with various "*personalised services*". These personalised services are described by Google in non-exhaustive fashion.
10. As seen below, during the Google account setup, YouTube History is described as "*for a better YouTube homepage, save your YouTube History*"³⁷ and "*this setting will be turned on for things like better video recommendations and to help remember from where you left off*"³⁸.
11. The data collected through the YouTube History feature is also used to personalise advertising, but this information is not always clearly communicated

³⁷ Manual personalisation option.

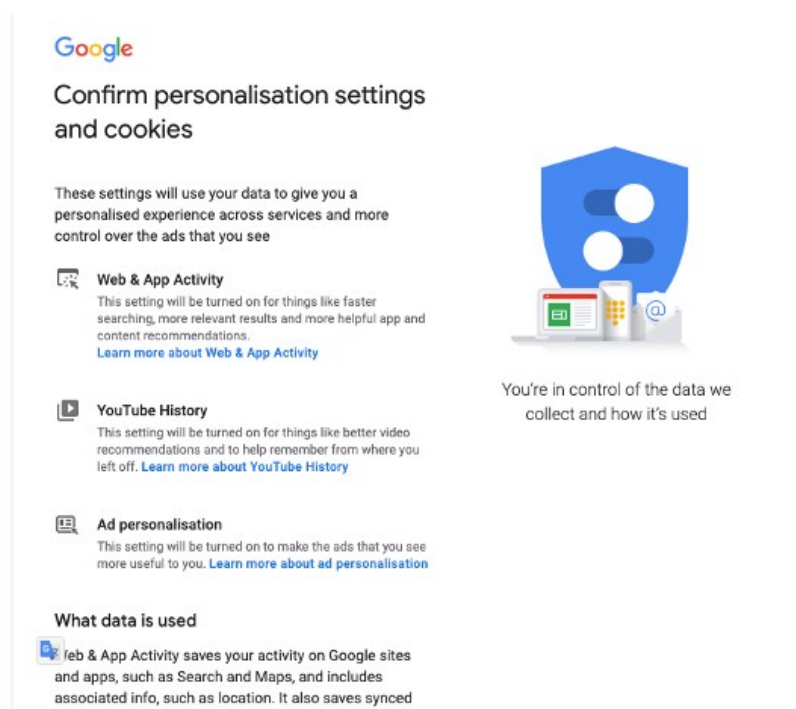
³⁸ Express personalisation option.



to the user unless the user clicks to “*Learn more about YouTube History*”, as shown in the screenshots below.

Information about YouTube History: (1) in the Express Personalisation route during the initial set up process (2) in the Manual Personalisation route during the initial set up process (3) in the “Learn More” section (4) in the Google account settings if a user attempts to reactivate feature after having switched it off

1



2

What data is used

YouTube History saves the videos that you watch and the things you search for when you use YouTube.

How we use this data

When this setting is on, YouTube History saved in your account may be used in any Google service where you're signed in to personalise your experience, like giving you better recommendations when using YouTube and other Google products; for example, articles, apps, a tailored YouTube homepage and videos that pick up from exactly where you left off.



3

About YouTube History

What data is saved when this setting is on

YouTube History saves your activity on YouTube, like the videos you watch and the things you search for.

If you use your device without an Internet connection, your data may be saved in your account once you return online.

How we use this data

Saved data helps Google give you more personalised experiences across Google services, like giving you better recommendations when using YouTube and other Google products, a tailored YouTube homepage and videos that pick up from exactly where you left off.

Depending on your Ad Settings, you may also see ads on and off Google that are tailored to you based on this data.

Turn on YouTube History

YouTube History saves the YouTube videos you watch and listen to and the things you search for on YouTube.

If you use your device without an internet connection, your data may be saved in your account once you return online.

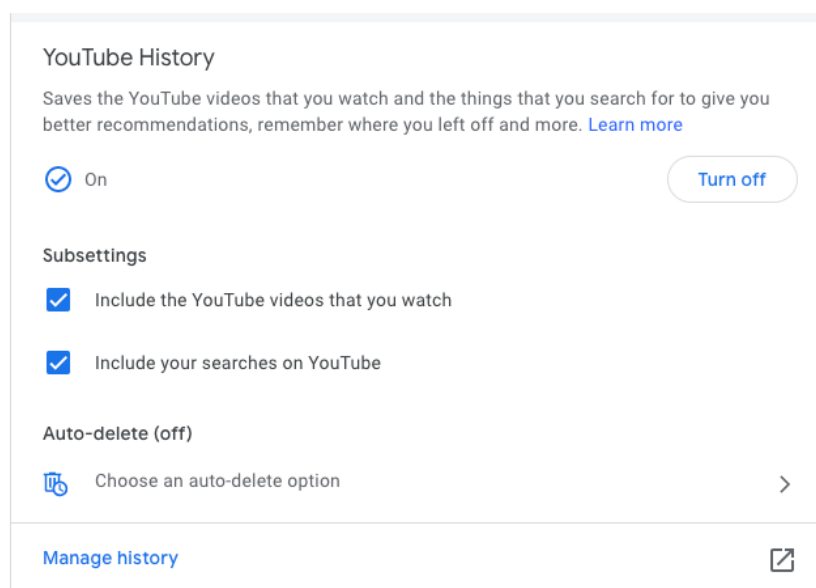
Not all Google services save this data in your account.

This data helps Google give you more personalized experiences across Google services, like giving you better recommendations, suggesting creators you might like, remembering where you left off when you resume a video, and showing you useful ads, both on and off Google.

This data may be saved and used in any Google service where you are signed in to give you more personalized experiences. You can delete your data manually, choose an auto-delete option, stop saving data, and more at account.google.com.



12. YouTube History is configured on by default if a user sets up an account using the express personalisation route.
13. Google users can look at the data collected through YouTube History through the “My Activity” timeline on their profile.³⁹ This detailed and timestamped log includes information about videos watched and searches made on YouTube.
14. The activity controls of the Google account contain various settings for YouTube History. These include two sub-settings “*[i]nclude the YouTube videos you watch*” and “*[i]nclude your searches on YouTube*” which can be switched on and off by the user. These sub-settings are not visible to the user on sign-up but only through the Google account after sign-up. Based on tests conducted by the Norwegian Consumer Council, when the YouTube History feature is configured to “on” during sign-up, both sub-settings are turned on in the Google account, see screenshot below.

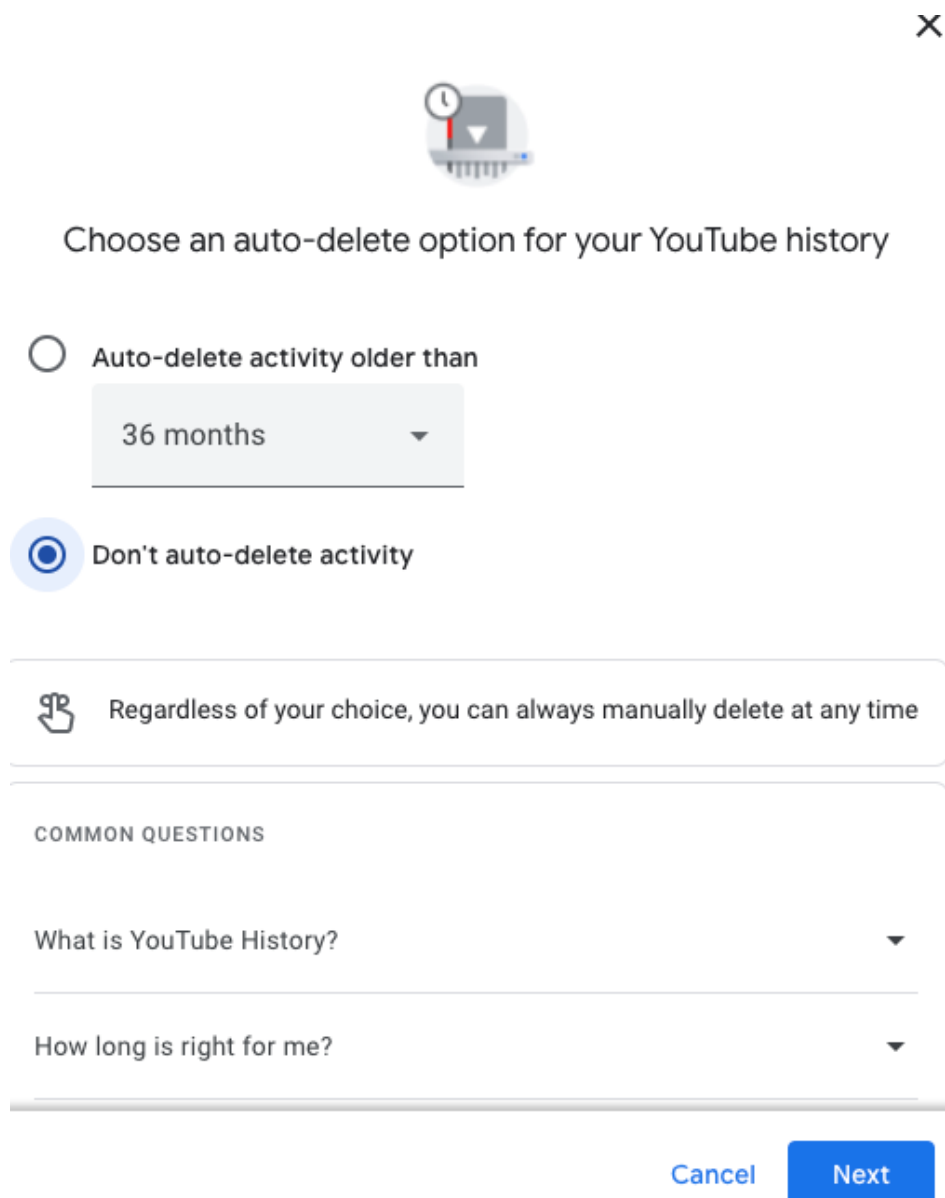


15. There is also an auto-delete feature which provides users with different options, specifically there is the option of “*don’t auto-delete activity*” or to “*auto-delete*”

³⁹ “Google – My Activity” <https://myactivity.google.com/myactivity>



activity older than 3 months, 18 months, or 36 months. These additional auto-delete periods of 3 / 18 months are not made available to the user on setup. 36 months is set as the default option both during account setup but also if the user subsequently seeks to amend his account settings, see screenshot below. Users retain the option to “*manually delete at any time*”, regardless of their choice of an auto-delete option.



The screenshot shows a settings window with a close button (X) in the top right corner. At the top center is a circular icon with a clock and a play button. Below it is the heading "Choose an auto-delete option for your YouTube history". There are two radio button options: "Auto-delete activity older than" with a dropdown menu currently set to "36 months", and "Don't auto-delete activity" which is selected. Below the options is a box with a hand icon and the text "Regardless of your choice, you can always manually delete at any time". Underneath is a section titled "COMMON QUESTIONS" with two expandable items: "What is YouTube History?" and "How long is right for me?". At the bottom right are "Cancel" and "Next" buttons.



Choose an auto-delete option for your YouTube history

Auto-delete activity older than

36 months ▲

○ 3 months

18 months

☞ 36 months

can always manually delete at any time

COMMON QUESTIONS

What is YouTube History? ▼

How long is right for me? ▼

Cancel

Next

16. It is not possible to turn off YouTube History, but only to pause it (by clicking “turn off”) and, if the user attempts to do this, he receives a warning that this will limit or disable more personalised experiences across Google services, see screenshot below. Pausing this setting does not delete past data although the user can delete this separately.



Pause YouTube History

Pausing YouTube history may limit or disable more personalised experiences across Google services. For example, you will not see recommendations for content or creators based on videos that you watch or search for after you pause this setting. You may also get recommendations for videos that you've already watched.

This setting will be paused on all sites, apps and devices signed in to this account.

Pausing this setting doesn't delete any of your past data. You can see or delete your data and more at myactivity.google.com.

Visit account.google.com to change this and your other Google Account settings and learn about the data that Google continues to collect and why at policies.google.com.

Cancel

Pause

Ad Personalisation

17. When this feature is turned on, Google uses *“information that you’ve added to your Google Account, what we estimate about your interests based on your activity, and interactions with other advertisers that partner with us to show ads”*.⁴⁰ This includes information saved in the user’s account as a result of the Web & App Activity and YouTube History features being turned on.
18. As seen below, during the Google account setup, Ad Personalisation is described as *“for more tailored ads, turn on Ad Personalisation”*⁴¹ and *“this setting will be turned on to make the ads that you see more useful to you”*⁴².
19. Users can also opt for adverts based on “contextual” factors in place of personalised adverts but this information is not always clearly communicated to the user, as shown in the screenshots below. Even if a user finds and reads the

⁴⁰ <https://safety.google/privacy/ads-and-data/>


⁴¹ Manual personalisation option

⁴² Express personalisation option




information under “Learn More”, he will probably not understand the extent to which his personal data will continue to be processed for “contextual” adverts.

Information about Ad Personalisation: (1) in the Express Personalisation route during the initial set up process (2) in the Manual Personalisation route during the initial set up process (3) in the “Learn More” section

1  **Ad personalisation**
This setting will be turned on to make the ads that you see more useful to you. [Learn more about ad personalisation](#)

What data is used

 Web & App Activity saves your activity on Google sites and apps, such as Search and Maps, and includes associated info, such as location. It also saves synced Chrome history and activity from sites, apps and devices that use Google services.

YouTube History saves the videos that you watch and the things you search for when you use YouTube.

Ad personalisation uses information saved in your Google Account (such as your activity, age range and gender) as well as interactions with advertisers. We'll also use your activity on other sites and apps that use our advertising services.

How we use this data

When you're signed in and these settings are on, personal data will be saved in your account and used to personalise your experience in Search, YouTube, Maps and other Google services for things like

- help remembering from where you left off
- more personalised recommendations across Google products, like articles, apps and videos
- a tailored YouTube homepage

We also use your information to show ads. Ads are tailored to you in Google services and on sites and apps that partner with Google, so you can

- see ads that are based on topics that you might find appealing
- block specific topics and advertisers

We don't sell your personal information to anyone.



For more tailored ads, turn on Ad Personalisation 2

Step 3 of 5

Choose whether to turn on Ad Personalisation

- Show me personalised ads**
Tailors the ads that you see based on your activity and other data, and lets you block advertisers or ad topics that you're not interested in
-
- Show me generic ads**
You'll still see ads, but they may be less useful, because they'll be based on general factors like the time of day, general location and content of the page that you're looking at.

What data are used for personalised ads

We'll tailor ads based on your activity on Google services, such as your queries on Google Search, videos that you watch on YouTube, apps that you install on your Android device, ads or content that you interact with and associated information, such as your location. We use information that you have provided in your Google Account, such as your age and gender. We'll also use your activity on other sites and apps that use our advertising services.

How we use data for personalised ads

Data saved in your account may be used anywhere you're signed in to determine topics that may be of interest to you. These interests are used across Google Services to tailor the ads that you see in products, such as Search, YouTube and Maps, and on sites and apps that partner with Google. We don't show you personalised ads based on sensitive categories, such as race, religion, sexual orientation or health.

We don't sell your personal information to anyone.

About Ad Personalisation 3

Ads keep our services free. Ads appear on many Google services, like Search, YouTube and Maps. Ads also help keep content free on other sites and apps that use Google advertising services. When sites and apps integrate our services, they share information with Google.

If you do not consent to personalised ads, ads will be selected based on contextual factors, such as the content that you're viewing, your current search query, your current general location, your device type and the time of day. We won't use your account information or past activity to select more useful ads.

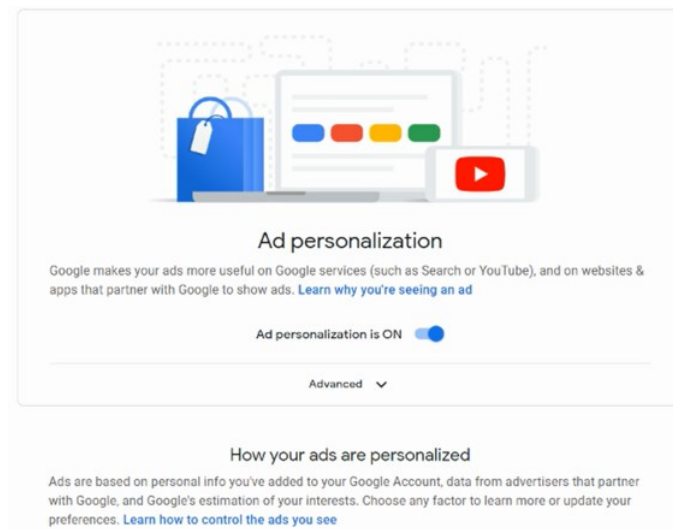
If you consent to personalised ads, we'll process your activity and account information to infer topics that may be of interest to you, in addition to the contextual factors described above. We never personalise ads based on sensitive categories like race, religion, sexual orientation or health.

We'll personalise ads based on your activity on Google services, including your queries on Google Search, videos that you watch on YouTube, apps that you install on your Android device, ads or content that you interact with and associated information like your location. Similarly, we can use your activity on other sites and apps that use our advertising services. Activity can come from any device on which you sign in with your Google Account. We use information that you have provided in your Google Account, such as your age and gender. We can also use your activity on other sites and apps that use our advertising services.

You can change your Ad Personalisation setting at any time, and see and edit specific information and interests that we're using to personalise your ads at adssettings.google.com. You can review or delete activity at any time by visiting myactivity.google.com.

[Got it](#)

20. Ad Personalisation is configured on by default if a user sets up an account using the express personalisation route.
21. The extent of the ad profile that Google builds up on its users is provided to users in the ad settings section of a users' Google account. Within Ad Settings, there is a section called "How your ads are personalised".



22. This is followed by a range of topics that Google “*estimates*” you are interested in. For example, “Hiking & Camping”, “Fitness”, “Pop Music”, “Travel & Transportation” and “Family”. To compile this ad profile, Google profiles users over time, including using information gathered through the Web & App Activity and YouTube History features (if these are switched on).
23. If a user attempts to turn off Ad Personalisation they receive a warning that “You’ll still see ads (but they may be less useful to you)”, see screenshot below. They are also informed “ads you see can still be based on general factors, like the subject of what you’re looking at, the time of day, or your general location.”

Turn off personalisation

When you turn off Ad Personalisation:

- You’ll still see ads (but they may be less useful to you)
- You’ll no longer be able to set preferences for ads or advertisers
- Choices that you’ve made for ads won’t be saved

With personalisation off, ads that you see can still be based on general factors, like the subject of what you’re looking at, the time of day or your general location.

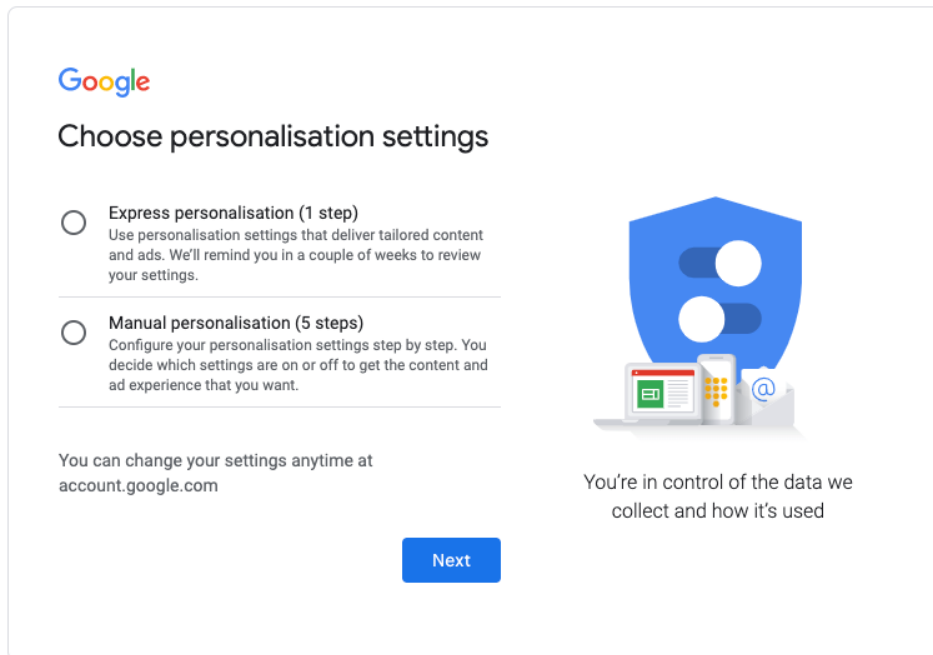
[Keep on](#) [Turn off](#)



Annex 2 – Description of Express and Manual Sign-Up Process

Choosing personalisation settings

24. When registering for a Google account, Google requires consumers to choose their personalisation settings. Google provides two options to consumers for configuring these settings: express and manual.
25. These options are presented by Google without a default option selected. However, the express personalisation is offered as a speedier “1 step” route, described as follows, *“Use personalisation settings that deliver tailored content and ads. We’ll remind you in a couple of weeks to review your settings”*. The manual personalisation is in contrast presented as a 5 steps process. It is described as follows, *“Configure your personalisation settings step by step. You decide which settings are on or off to get the content and ad experience you want”*.
26. Users are informed they can change their settings anytime through their Google account.



Express personalisation

27. As part of the express sign-up option, which defaults each of the three categories to “on”, users are asked to “confirm” that the Web & App Activity, YouTube History, and Ad Personalisation settings will be turned on (screenshots of the full process are provided at the end of this section, with excerpts provided throughout for illustration purposes).
28. Google says Web & App Activity “*will be turned on for things like faster searching, more relevant results and more helpful app and content recommendations*”. The section “*what data is used*” says “*Web & App Activity saves your activity on Google sites and apps, such as Search and Maps, and includes associated info, such as location. It also saves synced Chrome history and activity from sites, apps and devices that use Google services*”.
29. Google says YouTube History “*will be turned on for things like better video recommendations and to help remember from where you left off*”. The section






“what data is used” says “YouTube History saves the videos that you watch and the things you search for when you use YouTube”.

30. Google says Ad Personalisation “will be turned on to make the ads you see more useful to you”. The section “what data is used” says “Ad personalisation uses information saved in your Google account (such as your activity, age range and gender) as well as interactions with advertisers. We’ll also use your activity on other sites and apps that use our advertising services”.

Google

Confirm personalisation settings and cookies

These settings will use your data to give you a personalised experience across services and more control over the ads that you see

-  **Web & App Activity**
This setting will be turned on for things like faster searching, more relevant results and more helpful app and content recommendations. [Learn more about Web & App Activity](#)
-  **YouTube History**
This setting will be turned on for things like better video recommendations and to help remember from where you left off. [Learn more about YouTube History](#)
-  **Ad personalisation**
This setting will be turned on to make the ads that you see more useful to you. [Learn more about ad personalisation](#)

You're in control of the data we collect and how it's used



What data is used



Chrome & App Activity saves your activity on Google sites and apps, such as Search and Maps, and includes associated info, such as location. It also saves synced Chrome history and activity from sites, apps and devices that use Google services.

YouTube History saves the videos that you watch and the things you search for when you use YouTube.

Ad personalisation uses information saved in your Google Account (such as your activity, age range and gender) as well as interactions with advertisers. We'll also use your activity on other sites and apps that use our advertising services.

31. The section "*How we use this data*" mentions that information will also be used to show adverts. However, it is not entirely clear which of the three features that information relates back to (for example, it is reasonable that a user would understand that to refer to the Ad Personalisation setting only).



How we use this data

When you're signed in and these settings are on, personal data will be saved in your account and used to personalise your experience in Search, YouTube, Maps and other Google services for things like

- help remembering from where you left off
- more personalised recommendations across Google products, like articles, apps and videos
- a tailored YouTube homepage

We also use your information to show ads. Ads are tailored to you in Google services and on sites and apps that partner with Google, so you can

- see ads that are based on topics that you might find appealing
- block specific topics and advertisers

We don't sell your personal information to anyone.

32. A link is provided for users to “*learn more about*” these settings. In the case of Web & App Activity and YouTube History, it only then becomes apparent that the data collected through these features is used for advertising purposes.

33. In the case of Ad Personalisation, the “*Learn More*” link provides more information on the profiling that Google conducts if the setting is activated by the users (although the full extent of the ad profile is only visible later, and over time, through the user's Google account). The “learn more” link also provides important information that the user can opt for adverts based on “contextual” factors in place of personalised ads (although it is unclear if personal data are still processed for contextual ads).

34. In the section “*How you can manage your data*”, users are informed that Web & App Activity and YouTube History will be deleted from their accounts after 18 / 36 months respectively, and that they can also manually delete their activity at any



time. Users are informed “*you can see your data, delete it, change your settings and withdraw your consent at account.google.com*”.

35. The section “*About cookies and IDs*” contains some further information about personalised and non-personalised adverts. Again, it is not entirely clear for the user which of the settings this relates back to. This information is bundled with information on cookies, making it unlikely the user will notice it.

For non-personalised content and ads, what you see may be influenced by things like the content that you’re currently viewing and your location (ad serving is based on general location). Personalised content and ads can be based on those things and your activity like Google searches and videos that you watch on YouTube. Personalised content and ads include things like more relevant results and recommendations, a customised YouTube homepage, and ads that are tailored to your interests.

36. The user is informed that they will be sent a “*privacy reminder*” to review these settings in a couple of weeks.



Confirm personalisation settings and cookies

These settings will use your data to give you a personalised experience across services and more control over the ads that you see



Web & App Activity

This setting will be turned on for things like faster searching, more relevant results and more helpful app and content recommendations.

[Learn more about Web & App Activity](#)



YouTube History

This setting will be turned on for things like better video recommendations and to help remember from where you left off. [Learn more about YouTube History](#)



Ad personalisation

This setting will be turned on to make the ads that you see more useful to you. [Learn more about ad personalisation](#)

What data is used



Web & App Activity saves your activity on Google sites and apps, such as Search and Maps, and includes associated info, such as location. It also saves synced Chrome history and activity from sites, apps and devices that use Google services.

YouTube History saves the videos that you watch and the things you search for when you use YouTube.

Ad personalisation uses information saved in your Google Account (such as your activity, age range and gender) as well as interactions with advertisers. We'll also use your activity on other sites and apps that use our advertising services.

How we use this data

When you're signed in and these settings are on, personal data will be saved in your account and used to personalise your experience in Search, YouTube, Maps and other Google services for things like

- help remembering from where you left off
- more personalised recommendations across Google products, like articles, apps and videos
- a tailored YouTube homepage

We also use your information to show ads. Ads are tailored to you in Google services and on sites and apps that partner with Google, so you can

- see ads that are based on topics that you might find appealing
- block specific topics and advertisers

We don't sell your personal information to anyone.



You're in control of the data we collect and how it's used



How you can manage your data

In addition to being able to manually delete your activity at any time, Web & App Activity older than 18 months and YouTube History older than 36 months will be automatically deleted. You can see your data, delete it, change your settings and withdraw your consent at account.google.com.

About cookies and IDs

We rely on [cookies](#) and device IDs to remember your settings and other preferences across your signed-in devices. We also use cookies, IDs and data to:

- deliver and maintain services, such as tracking outages and protecting against spam, fraud and abuse
- measure audience engagement and site statistics to understand how our services are used

If you agree, we'll also use cookies, IDs and data to:

- improve the quality of our services and develop new ones
- deliver and measure the effectiveness of ads
- show personalised content, depending on your settings
- show personalised or generic ads, depending on your settings, on Google and across the web

For non-personalised content and ads, what you see may be influenced by things like the content that you're currently viewing and your location (ad serving is based on general location). Personalised content and ads can be based on those things and your activity like Google searches and videos that you watch on YouTube. Personalised content and ads include things like more relevant results and recommendations, a customised YouTube homepage, and ads that are tailored to your interests.

You can change your browser settings to reject some or all cookies.



Privacy reminder

We'll send you a reminder to review these settings in a couple of weeks

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[Confirm](#)



Manual personalisation

37. Users are guided through a longer 5-step (10-click) registration process through which users manually configure the settings for Web & App Activity, YouTube History, Ad Personalisation as well as whether they want occasional privacy reminders. In the final step, they are asked to confirm all the choices made in the first four steps, see screenshots of the full 5-step process at the end of this section.
38. This “manual” process is the main option presented to users to exercise choice over how their data is used. There is no option to turn off these settings through a “1 step” process as there is to turn them on in the express personalisation option.
39. Within both the Web & App Activity and YouTube History settings, users are asked to choose whether to save Web & App Activity and YouTube History and are presented with the following options for the retention of data in these categories:
- i. Keep until I delete manually.
 - ii. keep activity for 18 / 36 months (for Web & App Activity / YouTube History respectively) and manually delete at any time.
 - iii. Don't save Web & App activity / YouTube History in my account.⁴³
40. In the case of Web & App Activity, the section “*what data is used*” says “*Web & App Activity saves your activity on Google sites and apps, including searches and associated information, such as location. It also saves synched Chrome history and activity from sites, apps and devices that use Google services.*” The section “*how we use this data*” says “*When this setting is on, Web & App Activity saved in your account may be used in any Google service where you're signed in to give*

⁴³ These options differ from those offered through the Google account.



you more personalised experiences when using Google products, like faster searching, more relevant results and app and content recommendations automatically tailored to you". Notably, there is no mention of advertising in this list.

41. In the case of YouTube History, the section "*what data is used*" says "*YouTube History saves the videos that you watch and the things you search for when you use YouTube.*" The section "*how we use this data*" says "*When this setting is on, YouTube History saved in your account may be used in any Google service where you're signed in to personalise your experience, like giving you better recommendations when using YouTube and other Google products; for example, articles, apps, a tailored YouTube homepage and videos that pick up from exactly where you left off*". Notably, there is no mention of advertising in this list.
42. Within the Ad Personalisation setting, users are asked to choose whether to turn on Ad Personalisation, as follows: (i) Show me personalised ads (ii) Show me generic ads.
43. A link is provided for users to "*learn more about*" these settings. In the case of Web & App Activity and YouTube History, it only then becomes apparent that the data collected through these features is used for advertising purposes.
44. In the case of Ad Personalisation, the "*Learn More*" section provides more information on the profiling that Google conducts if the setting is activated by the users (although the full extent of the ad profile is only visible later, and over time, through the user's Google account). However, even if the user clicks "*Learn More*", it is not clear to users whether their personal data would still be processed for adverts based on contextual factors which limits the user's ability to understand how the other contextual option practically differs from personalised ads.
45. Users are informed "*you can see your data, delete it, change your settings and withdraw your consent at account.google.com*" in the case of Web & App Activity



and YouTube History. In the case of Ad Personalisation, users are informed that they can update their preferences for ads on Google services, and on apps and websites that use Google services, at g.co/adsettings.



For faster searching, save your Web & App Activity

Step 1 of 5

Choose whether to save Web & App Activity

- Keep until I delete manually
- Keep activity for 18 months and manually delete at any time
- Don't save Web & App Activity in my account



You're in control of the data we collect and how it's used

What data is used

Web & App Activity saves your activity on Google sites and apps, including searches and associated information, such as location. It also saves synced Chrome history and activity from sites, apps and devices that use Google services.

How we use this data

When this setting is on, Web & App Activity saved in your account may be used in any Google service where you're signed in to give you more personalised experiences when using Google products, like faster searching, more relevant results and app and content recommendations automatically tailored to you.

How you can manage your data

You can see your data, delete it and withdraw your consent at account.google.com.

[Learn more about Web & App Activity](#)

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English (United Kingdom) ▾

[Help](#) [Privacy](#) [Terms](#)



For a better YouTube homepage, save your YouTube History

Step 2 of 5

Choose whether to save YouTube History

- Keep until I delete manually

- Keep activity for 36 months
and manually delete at any time

- Don't save YouTube History in my account



You're in control of the data we
collect and how it's used

What data is used

YouTube History saves the videos that you watch and the things you search for when you use YouTube.

How we use this data

When this setting is on, YouTube History saved in your account may be used in any Google service where you're signed in to personalise your experience, like giving you better recommendations when using YouTube and other Google products; for example, articles, apps, a tailored YouTube homepage and videos that pick up from exactly where you left off.

How you can manage your data

You can see your data, delete it and withdraw your consent at account.google.com.

[Learn more about YouTube History](#)

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For more tailored ads, turn on Ad Personalisation

Step 3 of 5

Choose whether to turn on Ad Personalisation

- Show me personalised ads**
Tailors the ads that you see based on your activity and other data, and lets you block advertisers or ad topics that you're not interested in
-
- Show me generic ads**
You'll still see ads, but they may be less useful, because they'll be based on general factors like the time of day, general location and content of the page that you're looking at.



You're in control of the data we collect and how it's used

What data are used for personalised ads

We'll tailor ads based on your activity on Google services, such as your queries on Google Search, videos that you watch on YouTube, apps that you install on your Android device, ads or content that you interact with and associated information, such as your location. We use information that you have provided in your Google Account, such as your age and gender. We'll also use your activity on other sites and apps that use our advertising services.

How we use data for personalised ads

Data saved in your account may be used anywhere you're signed in to determine topics that may be of interest to you. These interests are used across Google Services to tailor the ads that you see in products, such as Search, YouTube and Maps, and on sites and apps that partner with Google. We don't show you personalised ads based on sensitive categories, such as race, religion, sexual orientation or health.

We don't sell your personal information to anyone.

How you can manage your data

You can update your preferences for ads on Google services, and on apps and websites that use Google services, at g.co/adsettings.

[Learn more about ad personalisation](#)



Get occasional privacy reminders

Step 4 of 5

Choose whether you want occasional reminders to take a Privacy Check-up and review key privacy settings

- Choose the types of data that we save
- Update what you share with friends or make public
- Adjust the types of ads that you'd like to see

Privacy reminders
Get occasional email reminders about these settings

You can change your settings anytime at account.google.com

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You're in control of the data we collect and how it's used



Confirm personalisation settings and cookies

Step 5 of 5

- Web & App Activity**
This setting will be turned off
- YouTube History**
This setting will be turned off
- Ad Personalisation**
This setting will be turned off
- Privacy reminders**
Occasional email reminders aren't set



You're in control of the data we collect and how it's used

About cookies and IDs

We rely on [cookies](#) and device IDs to remember your settings and other preferences across your signed-in devices. We also use cookies, IDs and data to:

- deliver and maintain services, such as tracking outages and protecting against spam, fraud and abuse
- measure audience engagement and site statistics to understand how our services are used

If you agree, we'll also use cookies, IDs and data to:

- improve the quality of our services and develop new ones
- deliver and measure the effectiveness of ads
- show personalised content, depending on your settings
- show personalised or generic ads, depending on your settings, on Google and across the web

For non-personalised content and ads, what you see may be influenced by things like the content that you're currently viewing and your location (ad serving is based on general location). Personalised content and ads can be based on those things and your activity like Google searches and videos that you watch on YouTube. Personalised content and ads include things like more relevant results and recommendations, a customised YouTube homepage, and ads that are tailored to your interests.

You can change your browser settings to reject some or all cookies.



“Learn More” sections

46. Below is the full text of the “*Learn More*” sections which the user will see if they proactively seek out more information by clicking “Learn more” within the express and manual options.

Learn more about Web & App Activity

About Web & App Activity

What data is saved when this setting is on

Web & App Activity saves the things that you do on Google sites, apps and services, including your searches, interactions with Google partners and associated information, such as location and language.

This setting also saves synced Chrome history and activity from sites, apps and devices that use Google services, including:

- activity from sites and apps that partner with Google to show ads
- Chrome history (if saved in your Google Account via Chrome sync)
- app activity, including data that apps share with Google
- Android usage and diagnostics, like battery level, how often you use your device and apps, and system errors (if your Android usage & diagnostics setting is on)

If you use your device without an Internet connection, your data may be saved in your account once you return online.

Not all Google services save this data in your account.

How we use this data

Saved data helps Google give you more personalised experiences across Google services, like faster searching, more relevant results, and app and content recommendations automatically tailored to you.

Depending on your Ad Settings, you may also see ads on and off Google that are tailored to you based on this data.

How you can manage your data



In addition to being able to manually delete your data at any time, you can choose to have your Web & App Activity older than 3, 18 or 36 months automatically deleted. You can see your data, delete it, change your settings and withdraw your consent at account.google.com.

[Got it](#)

About YouTube History

What data is saved when this setting is on

YouTube History saves your activity on YouTube, like the videos you watch and the things you search for.

If you use your device without an Internet connection, your data may be saved in your account once you return online.

How we use this data

Saved data helps Google give you more personalised experiences across Google services, like giving you better recommendations when using YouTube and other Google products, a tailored YouTube homepage and videos that pick up from exactly where you left off.

Depending on your Ad Settings, you may also see ads on and off Google that are tailored to you based on this data.

How you can manage your data

In addition to being able to manually delete your data at any time, you can choose to have your YouTube History older than 3, 18 or 36 months automatically deleted. You can see your data, delete it, change your settings and withdraw your consent at account.google.com.

[Got it](#)

About Ad Personalisation

Ads keep our services free. Ads appear on many Google services, like Search, YouTube and Maps. Ads also help keep content free on other sites and apps that



use Google advertising services. When sites and apps integrate our services, they share information with Google.

If you do not consent to personalised ads, ads will be selected based on contextual factors, such as the content that you're viewing, your current search query, your current general location, your device type and the time of day. We won't use your account information or past activity to select more useful ads.

If you consent to personalised ads, we'll process your activity and account information to infer topics that may be of interest to you, in addition to the contextual factors described above. We never personalise ads based on sensitive categories like race, religion, sexual orientation or health.

We'll personalise ads based on your activity on Google services, including your queries on Google Search, videos that you watch on YouTube, apps that you install on your Android device, ads or content that you interact with and associated information like your location. Similarly, we can use your activity on other sites and apps that use our advertising services. Activity can come from any device on which you sign in with your Google Account. We use information that you have provided in your Google Account, such as your age and gender. We can also use your activity on other sites and apps that use our advertising services.

You can change your Ad Personalisation setting at any time, and see and edit specific information and interests that we're using to personalise your ads at adssettings.google.com. You can review or delete activity at any time by visiting myactivity.google.com.

Got it



Annex 3 – Calhoun et al. v Google LLC

47. These discovery documents are relevant to the practices complained of in this complaint as they speak directly to:

- iv. the lack of valid consent collected by Google for processing of users' personal data through the Web & App Activity and Ads Personalisation settings;
- v. the insufficiently transparent and unfair nature of Google's processing that is not in line with expectations of users who activate these settings on signup or through their Google account;
- vi. consequent and associated breaches of the purpose limitation principle and data minimization principle because purposes are vaguely defined and do not account for users' use of Google services.

Cruz Decl., Exhibit 5 (GOOGCALH-00042297) states

*“we know that **terms like ‘web & app activity’ mean zero to a user, but at least we’ve improved the descriptions.**”* [the term] ‘activity’, “we still believe it confuses users” (internal emails from 2018)

Cruz Decl., Exhibit 6 (GOOG-CABR-04754292), states (emphasis added in bold):

“What we’re solving for” [...]

*Unfortunately, our current approach to data collection and usage is fundamentally problematic, and at the core of the privacy challenges we face today. **When we ask people to turn on a setting like Web & App Activity or Ads Personalisation, we highlight enhanced functionality and personalisation. The reality though is we’re relying on that data for many***



purposes, including improving our products and fueling our ads-based revenue – neither of which benefit individual users directly, yet both of which fall under this broad and contradictory consent.

What's more, our one vast interconnected ecosystem premise doesn't align with how people actually engage with Google; most use fewer than 6 services, and the connections between them range from subtle to non-existent. So while we communicate that data in = value out, depending on the configuration of someone's individual Google ecosystem, they might not experience any benefit at all as a result of turning on WAA.

These tensions force us to use abstract language, and prevent us from making specific promises to our users about the value data provides to their experience. This also means people struggle to gauge the potential service implications of deleting data or denying consent.”

When people consent without knowing what exactly they're agreeing to share with Google - and what's "in it" for them -they "set and forget" the toggle - then are often negatively surprised by unexpected personalisation down the line. After all, the things Google knows about them are like dark matter in the universe. People may understand that something is there, but don't really know what, or why, or how that might impact their lives.”

“How this should feel” [...]

“The key difference is that they'll always get the best possible experience requiring the least amount of data - and won't be asked to consent to any data being collected unless absolutely necessary.”

Cruz Decl., Exhibit 7 (GOOG-CABR04754160), states (emphasis added in bold):

“Broad permissions



It is difficult for people to fully / meaningfully give permission

Not only are the implications of WAA extremely broad and varied, but people use Google in such diverse ways – much of the language intended to be comprehensive feels vague and hard-to-parse for non-engineers/lawyers, and our examples are not universally resonant.

- ***We have a few permissions covering a broad scope of activity, info & data collection and use***
- ***The lack of clarity around what specific role people's data plays in their experience of our services – and the fact that everyone uses a different constellation of services – means **many struggle to grasp,*****
 - *The value their collected data enables*
 - ***How their data will be used*** (and by extension, whether it could make them vulnerable to privacy issues)
 - ***The service implications of denying Google access to their data***
 - ***What will happen with data after it's collected: it's very difficult for users (and us) to assess long-term risk***
- ***This can result in people feeling **unequipped to make informed decisions,** or even questioning whether they have a genuine choice if they want to enjoy Google services.***
- ***When consent is given despite an inaccurate or incomplete understanding of the above people experience negative surprises / trigger moments (encountering unexpected personalisation) eroding their trust in Google.***

... so people struggle to know what exactly they're sharing...



Cruz Decl., Exhibit 10 (GOOGCABR-04754257) contains the following slide from an internal Google presentation, illustrating the confusion a user experiences when navigating permissions on Google:

