

# GDPR scale: Facebook

<b>5</b>	Needs “opt-in” consent, but is unable to communicate with users	
<b>4</b>	Needs “opt-in” consent, but user has little incentive to agree	<ul style="list-style-type: none"><li>• <b>Facebook Audience Network</b></li><li>• <b>WhatsApp</b> advertising (see assumption 1)</li></ul>
<b>3</b>	Needs “opt-in” consent, and may get it	
<b>2</b>	Can show an “opt-out” before using data	<ul style="list-style-type: none"><li>• <b>NewsFeed</b> ads (based only on personal data with no “special” personal data (e.g. ethnicity, political opinion, religious or philosophical beliefs, sexual orientation), unless marked “public” or visible to “friends of friends” (see assumptions 1 and 2))</li><li>• <b>Instagram</b> ads (see assumption 1)</li></ul>
<b>1</b>	Out of scope of the regulation, if business is modified.	
<b>0</b>	Already out of scope of the regulation.	

**Assumption 1.** That the use of personal data to target advertising will be accepted as a “compatible” purpose with the original purpose for which personal data were shared by users, under GDPR Article 6, paragraph 4. GDPR Recital 61 says that if the further processing is compatible then the company must alert the data subject that it is using their data for this further purpose before it starts processing. GDPR Article 21, paragraph 2 and 3 say that the data subject must be alerted about their right to object to their data being used for direct marketing, and can do so at any time. GDPR Recital 70 says this alert should be presented clearly and separately from any other information. However, the Article 29 Working Party’s opinion on purpose limitation notes that among the various things that the compatibility assessment must consider are “the impact of the further processing on the data subjects”.

**Assumption 2.** GDPR Article 6, paragraph 4, c, indicates a higher bar for “special categories of personal data” that reveal race, ethnicity, political opinion, religious or philosophical beliefs, trade union membership, or related to a data subject’s sex life or sexual orientation. However, this does not apply if the data have been “manifestly made public by the data subject” (GDPR, Article 9, paragraph 2, (e)). This may mean that the publicity settings that a user places on their post will prevent or enable those posts to be mined for advertising.

# GDPR scale: Google

<b>5</b>	Needs “opt-in” consent, but is unable to communicate with users	
<b>4</b>	Needs “opt-in” consent, but user has little incentive to agree	<ul style="list-style-type: none"><li>• Most personalized <b>AdWords</b> ads on Google properties including <b>Search, Youtube, Maps</b>, and the Google Network (including “remarketing”, “affinity audiences”, “in-market audiences”, “demographic targeting”, “similar audiences”, “Floodlight” cross-device tracking), “customer match”, “remarketing” (see assumption 2)</li><li>• <b>Gmail</b> ads</li><li>• Programmatic services (<b>DoubleClick</b>)</li></ul>
<b>3</b>	Needs “opt-in” consent, and may get it	
<b>2</b>	Can show an “opt-out” before using data	<ul style="list-style-type: none"><li>• Location targeting in <b>Maps</b> (see assumption 1)</li></ul>
<b>1</b>	Out of scope of the regulation, if business is modified.	<ul style="list-style-type: none"><li>• <b>AdWords</b> (if all personalized features are removed) on Google properties including <b>Search, Youtube, Maps</b></li></ul>
<b>0</b>	Already out of scope of the regulation.	<ul style="list-style-type: none"><li>• “Placement-targeted” ads on Google properties.</li></ul>

**Assumption 1.** That the use of personal data to target advertising will be accepted as a “compatible” purpose with the original purpose for which personal data were shared by users, under GDPR Article 6, paragraph 4. GDPR Recital 61 says that if the further processing is compatible then the company must alert the data subject that it is using their data for this further purpose before it starts processing. GDPR Article 21, paragraph 2 and 3 say that the data subject must be alerted about their right to object to their data being used for direct marketing, and can do so at any time. GDPR Recital 70 says this alert should be presented clearly and separately from any other information. However, the Article 29 Working Party’s opinion on purpose limitation notes that among the various things that the compatibility assessment must consider are “the impact of the further processing on the data subjects”.

**Assumption 2.** That the average user does not “sign in” to Google Search or Chrome. If, however, users did sign in then Google may be able to further process their data for other purposes.

# GDPR scale

5



Needs “opt-in” consent, but are unable to communicate with users

4



Needs “opt-in” consent, but user has little incentive to agree

3



Needs “opt-in” consent, and may get it

2



Can show an “opt-out” before using data

1



Out of scope of Regulation if business is modified

0



Already out of scope of the Regulation