

Smart supplier series: Data Privacy and AI deployment

Wednesday, 9 July 2025

Today's session

Agenda

- Intros
- The specific challenges in the use of personal data in AI.
- What we have learned about using legitimate interests as a legal basis for the use of AI.
- Current regulator guidance.
- The current enforcement environment, in UK and the EU.

Today's session

Speakers

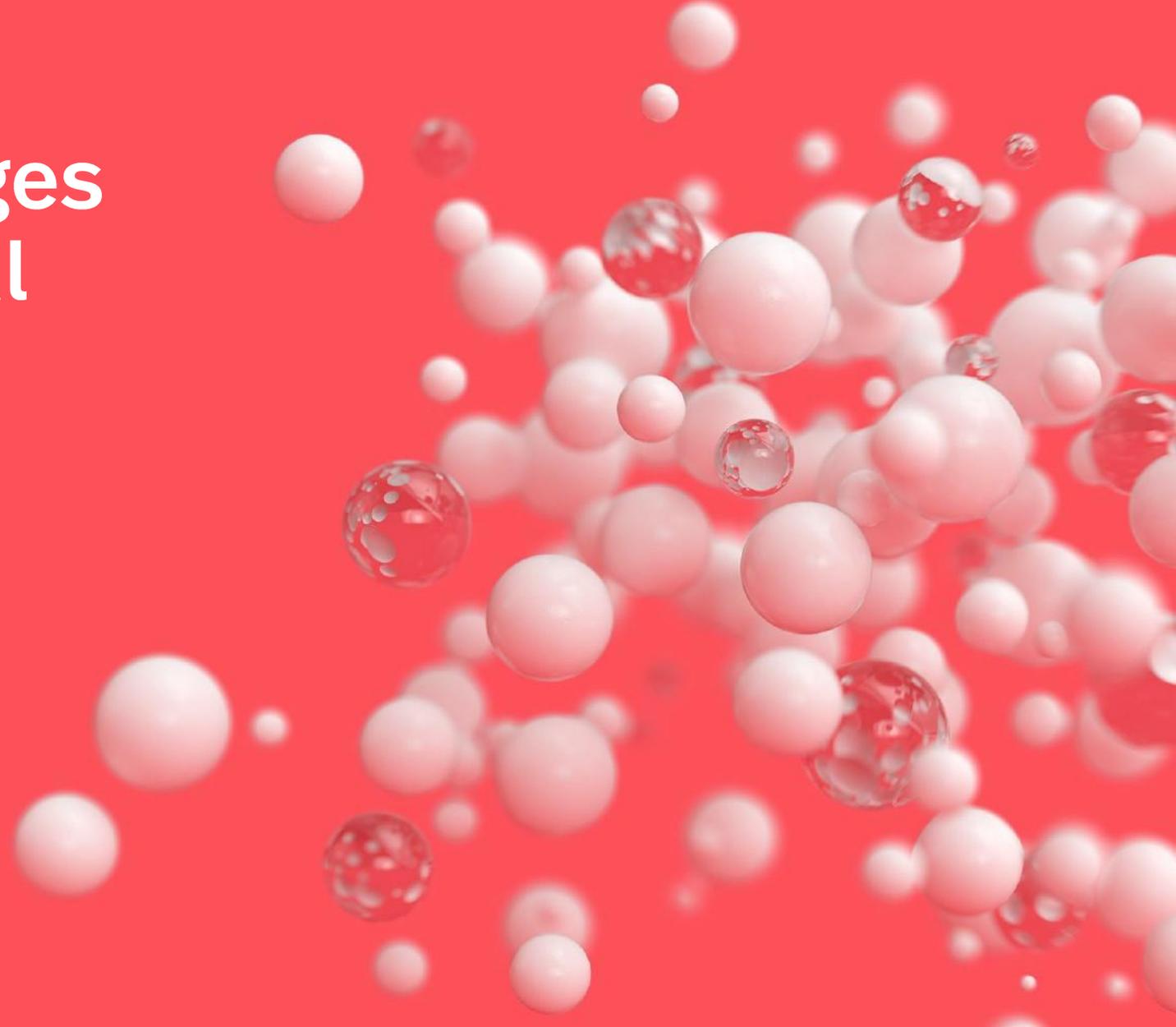


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**The specific challenges
in the use of personal
data in AI.**



The specific challenges in the use of personal data in AI

- First some **familiar considerations**:
 - Controller/Processor?
 - Development/testing Phase/Deployment Phase?

- **Avoid**:
 - Opacity as a processor as could result in being a controller. Instead consider inputs and outputs.

- **Expect**:
 - Customer due diligence on personal data processing, including the logic involved (inputs and outputs, including inferences)
 - Customer focus on ADM (as a higher risk activity)
 - Customer focus on "quality" (accuracy/bias) as data protection considerations as much as AI Act or commercial ones
 - Customers to add in some onerous and unusual AI terms while practice is settling down

The specific challenges in the use of personal data in AI

- Aspects of the UK **Data (Use and Access) Act 2025** (DUAA) designed to be AI-friendly
 - New concept of "recognised legitimate interests"
 - Automated decision-making (ADM) restrictions only apply to special categories of personal data BUT safeguards (information, right to contest, right to human involvement) apply to all ADM (not just ADM involving special categories)

- Regulator emphasis is on compliance with existing requirements, drawing out **AI-specific challenges**:
 - Fair and lawful processing (during both training/testing and deployment phases)
 - Restriction on ADM
 - Data Protection Impact Assessments (DPIAs)

**What have we learned
about using legitimate
interests as a legal
basis for the use of AI?**

Legitimate interest as a legal basis for processing using AI

- **EDPB (Opinion 28/2024)** on legitimate interests in relation to:
 - First party data
 - Third party data
 - Data obtained from web scraping

- Consider the usual **three stage LIA test**:
 - Expectations of the individual (including based on notices and related exemptions) - how information is given may differ based on whether data made public or first/third party (media campaigns and FAQs)
 - LI must be "*Clearly and precisely articulated*" and "*real and present, not speculative*"
 - Purpose limitation and data minimisation
 - Technical safeguards (anonymisation, pseudonymisation) can help
 - Possible to publish the balancing test conducted?

Legitimate interest as a legal basis for processing using AI

- Relying on legitimate interests when using web scraped data is possible but consider **risk mitigation steps**, such as:
 - Exclude personal data relating to vulnerable categories of individuals
 - Exclude sensitive data categories and sources from scraping
 - Exclude websites (or sections of websites) which clearly object to web scraping or reuse of their content
- **Expect more guidance** from the ICO (based on the new DUAA provisions) post-DUAA

**Current regulator
guidance.**



Current regulator guidance

Key UK and EU DP Guidance

- **ICO:** "Guidance on AI and data protection"
- **DPIAs:**
 - Representational harms – reinforcing subordination of groups
 - Allocative harms – such as disproportionately identifying men rather than women as suitable for a job
 - Trade-offs between (for example) data minimisation and the need for statistical accuracy
- **Explaining AI** (use or creation of personal data)
 - Audience
 - Rationale, data, fairness and/or responsibility
 - Importance of understanding dataflows and logic
 - Outputs, including inferences, may include newly created personal data

Current regulator guidance

Key UK and EU DP Guidance

- EDPB: **EDPB Opinion 28/2024** (on DP in AI models)
 - When are AI models considered to process anonymous data ("*means reasonably likely to be used*") to identify individual test)
 - Appropriateness of "legitimate interests" as lawful ground (summarised above)
 - Consequences of unlawful processing

The current enforcement environment, in UK and the EU.



The current enforcement environment

Key UK and EU Enforcement

- Enforcement:
 - **OpenAI (ChatGPT):** EUR 15m fine and temporary shutdown in Italy
 - **DeepSeek:** similar issues raised by multiple regulators (UK, US, Italy, Ireland, Belgium, France, South Korea, Netherlands, Luxembourg, Taiwan).
 - **UK:** Processor fine - Advanced Computer Software Group Ltd fined £3m for security failings that put the personal information of 79,404 people at risk

Supplier's Tools / Mitigations



Supplier's Tools / Mitigations

- **Contract:**
 - Roles/Responsibilities
 - Warranty
 - Liability cap
 - Exclusion
- **Process:**
 - Document, document, document...
 - Update, update, update...
- **Other:**
 - Look at 'academia'
 - 'market spotting' / trends analysis

Useful resources

CtrlTransfer

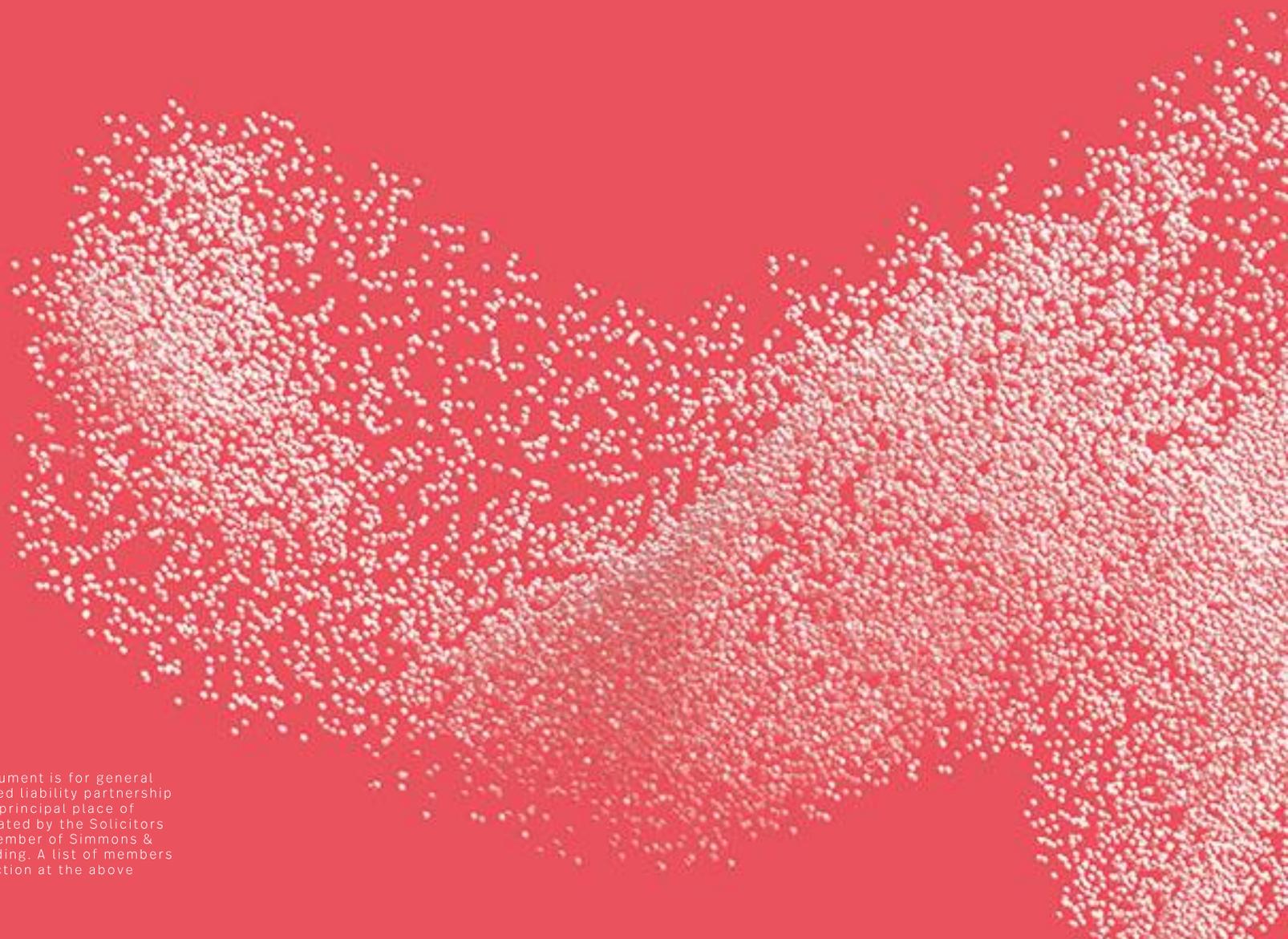


Digital Regulation Tracker



AI Literacy Programme



A large, stylized graphic of the letter 'S' composed of many small white dots, set against a dark red background. The 'S' is positioned on the right side of the page, extending from the top to the bottom.

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