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Learning Analytics and the General Data Protection Regulation

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Traditional model of learning analytics

Apparently treating it as human-subject research...

Learning Analytics

» Consent

GDPR-valid consent

Must be...

Free/easily withdrawn

» So can't link it to participation in something else (e.g. learning)

Informed

» So can't use it for things not foreseen at collection time (3+ years ago)

Active

» So can't infer it from silence

So consent fails for...

Data Collection

- » Most input to Learning Analytics is observed/leftover data
- » Getting consent for data we already have is hard; opt-in means biased

Model Building/Pattern Finding (how to detect students needing help?)

- » We may not know in advance what we're looking for
- » Not opting in might well be a signal, but we can't use it!

Pattern matching (does this student need help?)

- » We want to check patterns across whole cohort
- » Those who opt in probably don't need help!

Much better legal basis for these...

With requirements that are things we want anyway...

Legitimate interest (in delivering the best learning experience)

- » So only use learning analytics results for that

Necessary (no less intrusive way to do that)

- » Minimise/protect the data we process and the results
- » Only use inputs likely to be meaningful (use pilots to determine that?)

Not overridden by individual rights/freedoms (balancing test)

- » So assess, minimise and monitor risks/impacts we create
- » Good way to detect/avoid discriminatory algorithms

More informative model of learning analytics

Based on Cormack AN (2016), 3(1) Journal of Learning Analytics 91-106

Collection

- » *Data debris*
- » **Necessary** for 1^y purpose

Donation

- » *Voluntary self-reporting*
- » Free, informed **consent**
- » No detriment

Analysis

- » *Pattern-finding*
- » Stated 2^y purpose
- » **Legitimate interests**
- » Necessary processing
- » Minimise impact
- » Balance rights & interests
 - › Individual opt-out

Intervention

- » *Pattern-matching*
- » Maximise impact
- » Free, informed **consent**
 - › Choice: personal/vanilla

Improvement

- » *Pattern-using*
- » No personal data

Advantages for...

Students

- » Data only used to your benefit
- » Privacy and other rights protected
- » Meaningful, informed choices, at point of intervention

Teachers

- » Supports good relations with students (“helping”, not “spying”)
- » Privacy and other rights protected

Institutions

- » Lots of guidance available
- » Demonstrate good practice (GDPR accountability good for reputation)
- » Clear distinction from “creepy” uses of Big Data

Existing guidance

From Article 29 Working Party of DP Regulators

Purpose Limitation (Opinion 03/2013 WP203)

» How to avoid purpose-creep?

Legitimate Interests (Opinion 06/2014 WP217)

» Which Interests are Legitimate?

» How to do the balancing test?

Consent (Guidelines 10th April 2018 WP259rev.01)

» How to get valid consent?

Sensitive Personal Data/Special Category Data

Can't use legitimate interests for

- » Race, ethnicity
- » Religious/philosophical beliefs
- » Trade union membership
- » Genetic, biometric, health data
- » Sex life, sexual orientation

So need consent (or legal obligation) for

- » Collection (or obtaining from elsewhere)
- » Identifying and applying patterns
 - › Can't postpone consent, as for non-SPD
 - › i.e. must know consequences at start

So more constraints on "data-driven" for these data

Usually donated info anyway: encourage users to trusting/truthful

Seeking consent probably a good way to identify objectionable proposals

If **generating** SCD (e.g. suicide risk) discuss first with DP & Medical authorities

References

Article 29 Working Party

- » Purpose Limitation http://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2013/wp203_en.pdf
- » Legitimate Interests http://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2014/wp217_en.pdf
- » Consent http://ec.europa.eu/newsroom/article29/item-detail.cfm?item_id=623051

Me:

- » <https://community.jisc.ac.uk/blogs/regulatory-developments/tags/Learning-Analytics>
- » “Learning Analytics” <http://www.learning-analytics.info/journals/index.php/JLA/article/view/4554>
- » “Downstream Consent” <https://journals.winchesteruniversitypress.org/index.php/jirpp/article/view/9>

Thanks

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<https://community.jisc.ac.uk/blogs/regulatory-developments/tags/Data-Protection-Regulation>



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