



noyb – European Center for Digital Rights
Goldschlagstraße 172/4/3/2
1140 Vienna
Austria

Commission Nationale de l'Informatique et des Libertés
3 Place de Fontenoy
75334 Paris
FRANCE

Via CNIL's complaint services

Vienna, 24.20.2024

noyb Case-No: C090

Complainant:

[REDACTED], born on [REDACTED]
[REDACTED]

represented under
Article 80(1) DSGVO by:

noyb – European Center for Digital Rights
Goldschlagstraße 172/4/3/2, 1140 Vienna, Austria

Respondent:

Pinterest, Inc.
651 Brannan Street
San Francisco, CA 94107
United States of America

Regarding:

The violation of Articles 6(1) and 15(1)(c) GDPR

COMPLAINT

1. REPRESENTATION

1. *noyb* – European Center for Digital Rights is a not-for-profit organisation active in the field of the protection of data subjects’ rights and freedoms with its registered office in Goldschlagstraße 172/4/2, 1140 Vienna, Austria, registry number ZVR: 1354838270 (hereinafter: „*noyb*“) (**Attachment 1**).
2. *noyb* is representing the complainant under Article 80(1) GDPR (**Attachment 2**).

2. FACTS PERTAINING TO THE CASE

3. Pinterest is a social media platform based in the USA with 136 million users in the European region, according to its latest Quarterly Report to the U.S. Securities and Exchange Commission.¹ The company describes the platform as “*a visual discovery engine for finding ideas*”.² In short, Pinterest allows users to save their ideas through “*Pins*” which are shared on “*Boards*”. Pinterest’s business model relies (at least in parts) on third-party advertising.³

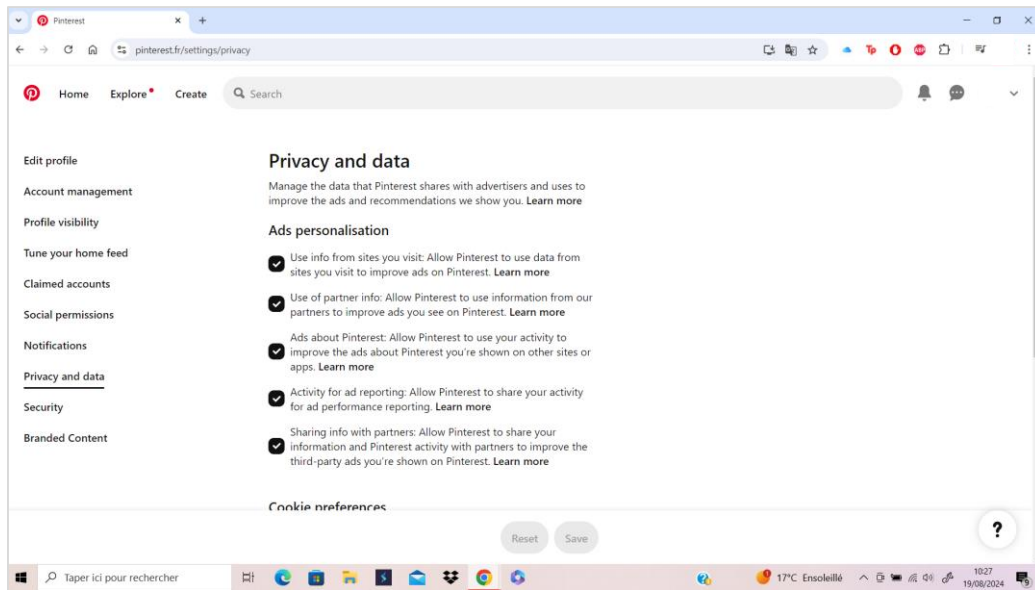
2.1. Pinterest has its “Ad personalisation” settings turned-on by default

4. The complainant has an account on Pinterest’s social media platform. On 1st of February 2024, the complainant visited her account settings, in particular the “*privacy and data*” settings. She then realised that the setting regarding “*ads personalisation*” was turned on by default for her account.
5. The “Ads personalisation” section of the account settings includes the following:
 - “*Use info from sites you visit: Allow Pinterest to use data from sites you visit to improve ads on Pinterest.*”
 - “*Use of partner info: Allow Pinterest to use information from our partners to improve ads you see on Pinterest.*”
 - “*Ads about Pinterest: Allow Pinterest to use your activity to improve the ads about Pinterest you’re shown on other sites or apps.*”

¹ See: https://s23.g4cdn.com/958601754/files/doc_financials/2024/q2/ddda6fff-bdcf-4239-9643-654f69b23481.pdf (Accessed: 21 August 2024)

² Source: <https://help.pinterest.com/en/guide/all-about-pinterest> (Accessed: 7 August 2024)

³ See: page 38 of Pinterest’s 10Q report, mentioned above.



Screenshot of Privacy Settings on the complainant's Pinterest account

2.2. Pinterest uses personal data for personalised advertising purposes

6. The platform, according to its Privacy Policy (**Attachment 3**), processes personal data for three different purposes, which essentially consist of personalised advertising. Its first purpose is to show each users *“content that’s relevant, interesting and personal”*. The second such purpose it *“to deliver advertising that is relevant, interesting and personal”* on the platform. The third purpose is *“to deliver ads, off Pinterest, that are relevant, interesting and personal [...] about Pinterest”*.

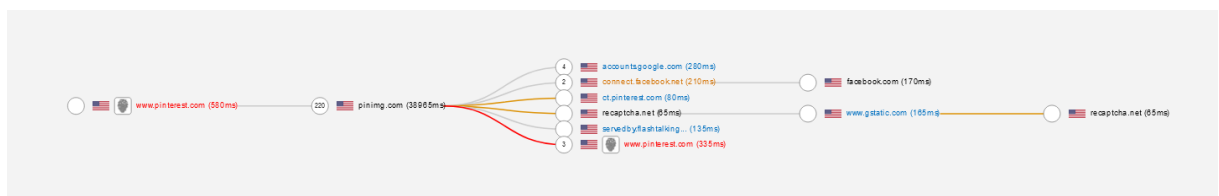
2.3. The complainant’s access request

7. The complainant filed an access request through Pinterest’s *“request your data”* option on its *“privacy and data”* Setting’s page on February 1st 2024. She received a copy of her data on the same day (**Attachment 4**). After examining the data, she realised that her copy did not include any information on the recipients of her personal data. The complainant contacted Pinterest asking them whether they could provide further information regarding the recipients of her personal data (**Attachment 5**).
8. Pinterest replied on the 30th of April 2024 stating that they *“can share personal data with different recipients”* and provided her with a list of several companies. This list included the following companies: Google, Facebook/Meta, Snapchat, TikTok, LinkedIn, LiveRamp, TradeDesk, Flashtalking, Lucid, Kantar, Nielsen, Adjust, AppsFlyer, Branch/Tune, Kochava, Singular/Apsalar, Oracle Moat, DoubleVerify and Integral Ad Science (**Attachment 6 and 7**).
9. Given that Pinterest’s answer was very vague, the complainant followed-up on her request with a third email, on the 9th of June 2024, asking Pinterest to indicate precisely the personal data that each of the recipients received (**Attachment 8**).
10. Pinterest responded two months later (!), on the 28th of August 2024, providing the complainant with information on the recipients of her personal data, but not about the

categories of personal data received by each of these recipients (**Attachment 9**). With regard to the latter, Pinterest merely stated that they share “*the categories of personal data as they are described in the Privacy Policy*” without giving the requested information to the complainant.

3. COMPETENT AUTHORITY

11. Pinterest’s Privacy Policy states “*For the purposes of the General Data Protection Regulation if you are a resident in the EEA [...] Pinterest Europe Ltd. and Pinterest, Inc. are joint data controllers of your personal data*”.
12. Pinterest Europe Ltd. is a subsidiary of Pinterest, Inc., with its registered seat in Ireland. Pinterest, Inc., on the other hand, is a Delaware based company, with its Principal Executive Offices in San Francisco, California.⁴ As mentioned, both companies are joint controllers of the personal data processed for the purposes of the Pinterest platform.
13. There are, therefore, two controllers, with Pinterest, Inc. acting as “Controller #1”, being the “parent company”, and Pinterest Europe acting as “Controller #2”, being the subsidiary. Importantly a separate controller in the EU cannot also be the “main establishment” of the other controller - given that they cannot be separate but also a part of the other entity.
14. Article 77(1) GDPR allows the data subject to choose to lodge a complaint also against only one of two joint controllers and thereby - for the time being - not exercise his or her rights against the EEA controller
15. The data subject decided to lodge her complaint against Pinterest, Inc. only, retaining her right to enforce her rights against the Irish entity, if she chooses to file an additional complaint with the Irish entity as a defendant.
16. Overall the role of the Irish entity beyond a mere “post box” to avoid taxes and undermine the enforcement of EU law is highly questionable. It is manifest from a single “pagexray” analysis that the browser requests are all sent to the USA. This further underlines the factual processing by the USA entity and its decisive power on the processing at hand.



Screenshot from the analysis of the responses of the pagexray analysis of Pinterest's website.

17. Overall, the complainant lives and resides in France. The CNIL is the competent authority to investigate the complaint against any non-EEA entity according to Article 55 and 77 GDPR.

⁴ According to page 1 of Pinterest’s 10Q report.

4. GROUNDS FOR THE COMPLAINT

4.1. Violations

18. The respondent violated the following provisions of the GDPR:

- (a) Article 6(1) GDPR by processing the complainant's personal data for personalised advertising based on its legitimate interest and not on consent.
- (b) Respondent's obligation, to provide access to the recipients of the complainant's personal data, under Article 15(1)(c) GDPR.

4.2. Violation of Article 6(1) GDPR

19. Pinterest's "additional Info for EEA, Swiss and UK Data Subjects: Legal bases we rely on where we use your information" Section in its privacy policy, states that "We use info based on legitimate interests". According to Pinterest, its legitimate interest relies in delivering "advertising that is relevant, interesting and personal on our Services", providing "measurement and ad analytics", and delivering "ads off Pinterest, that are relevant, interesting and personal to you about Pinterest" (**Attachment 3**).

20. According to Article 6(1) GDPR, processing of personal data is lawful only to the extent that it happens under one of the legal bases that it provides. The CJEU has found that personalised advertising cannot be based on legitimate interest under Article 6(1)(f) GDPR. According to the CJEU in case C-252/21 *Bundeskartellamt*, para. 115 - 117:

"115 First, with regard to personalised advertising, it must be borne in mind that, according to recital 47 of the GDPR, the processing of personal data for direct marketing purposes may be regarded as carried out for a legitimate interest of the controller.

116 However, such processing must also be necessary in order to achieve that interest and the interests or fundamental freedoms and rights of the data subject must not override that interest. In the context of that balancing of the opposing rights at issue, namely, those of the controller, on the one hand, and those of the data subject, on the other, account must be taken, as has been noted in paragraph 112 above, in particular of the reasonable expectations of the data subject as well as the scale of the processing at issue and its impact on that person.

117 In this regard, it is important to note that, despite the fact that the services of an online social network such as Facebook are free of charge, the user of that network cannot reasonably expect that the operator of the social network will process that user's personal data, without his or her consent, for the purposes of personalised advertising. In those circumstances, it must be held that the interests and fundamental rights of such a user override the interest of that operator in such personalised advertising by which it finances its activity, with the result that the processing by that operator for such purposes cannot fall within the scope of point (f) of the first subparagraph of Article 6(1) of the GDPR."

21. It is, therefore, unlawful and contrary to CJEU case-law to conduct processing of personal data based on legitimate interest for the three purposes specified in 519 of the present complaint.

4.3. Violation of Article 15(1)(c) GDPR

22. In the copy of personal data that the complainant downloaded, the sole information relating to the recipients of her personal data was the following:

“We may have shared your personal information with the following third parties in the last 12 months:

- *Advertisers*
- *ISPs*
- *Analytics Providers*
- *OS/Platform Provider*
- *Social Networks, at your direction*
- *Resellers*
- *Affiliates*
- *Vendors*
- *Legal authorities or others as necessary to comply with a law, regulation, or legal request*
- *Other third parties if we are legally required, in a merger or acquisition, or with your permission”*

23. When asked to provide more precise information, Pinterest responded that they may share the complainant’s personal data with a list of recipients which they sent as an attachment to their email.

24. At first, Pinterest explicitly mentioned in their email that the list that was forwarded to the complainant was “general” and that Pinterest would have to examine its systems in order to generate the actual list of recipients. After examining its systems, Pinterest provided a semi-tailored answer by adjusting the list of recipients. However, still, the categories of personal data that these recipients receive is not specified by the controller.

25. It is manifest from Pinterest’s reply that its answer is not exhaustive and precise, as it should be. Article 15(1)(c) GDPR establishes that the data subject has the right to obtain information concerning the recipients or categories of recipients in third countries or international organisations.

26. Furthermore, according to the judgement of the CJEU in para. 51 in case C-154/21, *Österreichische Post AG*, a controller has the obligation to provide the data subject with the actual identity of recipients. Specifically, the CJEU stated the following:

“[...] Article 15(1)(c) of the GDPR must be interpreted as meaning that the data subject’s right of access to personal data concerning him or her, provided for by that provision, entails, where those data have been or will be disclosed to recipients, an obligation on the part of the controller to provide the data subject with the actual identity of those recipients [...]”.

27. This judgement of the CJEU reinforces the interpretation of Article 15 GDPR as an *ex post* means of review of the controller’s processing activities by the data subject. According to this interpretation, Article 13 and 14 function as an *ex ante* information mechanism about the controller’s processing activities, which is meant to serve more as a prediction of processing, as highlighted by the EDPB.⁵ According to EDPB’s Guidelines on data subject rights, Article

⁵ EDPB, ‘Guidelines 01/2022 on data subject rights - Right of access’, 28 March 2023 (Version 2.1 – final version), p. 40

12(2) should be interpreted as an obligation of a controller to provide an “*individually tailored*” response to the request of the data subject⁶.

28. It is therefore manifest that Pinterest did not provide the complainant with a tailored, definite answer to her request, thereby violating Article 15(1)(c) GDPR.

5. APPLICATIONS AND REQUESTS

5.1. Application to erase the data that was processed for the purpose of personalised advertising

29. We hereby apply for the erasure by both Pinterest and its advertising partners (recipients) of all of the unlawfully processed personal data for the purpose of personalised advertising according to Article 17(1)(d) GDPR. The personal data in question are included but not limited to the “*inferences made about your interests*” Section of the data provided to the complainant. Additionally, we apply for the erasure of the personal data that is or was being processed by Pinterest’s advertising partners, meaning the recipients of the personal data (see **Attachment 4**).

5.2. Application to inform the recipients about the erasure of the complainant’s personal data

30. We apply that the controller informs the recipients about the ceasing of processing, restriction of processing and/or the erasure of the personal data of the complainant, according to Article 19 and 17(1) GDPR. The recipients, acting as controllers, of the data subject’s personal data, are then obligated to erase the data subject’s personal data, as well, given the lack of a legal basis for the processing of personal data at hand.

5.3. Application to order the respondent to fulfil the complainant’s request

31. The complainant requests that the competent supervisory authority orders the respondent to comply with the complainant’s request under Article 15 GDPR. In particular, the complainant requests that the competent supervisory authority orders the respondent to fulfill her request by providing a tailored answer to her request on the recipients of her personal data, according to its obligations under the GDPR.

5.4. Suggestion to impose a fine

32. The complainant suggests that the competent supervisory authority imposes an administrative fine as controller, pursuant to Articles 58(2)(i) and 83(5)(a) and (b) GDPR for the infringements of Articles 6(1) and 15(1)(c) GDPR.

⁶ Ibid.

6. CONTACT

33. Communications between noyb and the CNIL in the course of this procedure can be done by email at [REDACTED] with reference to the **Case-No C090** or at [REDACTED].