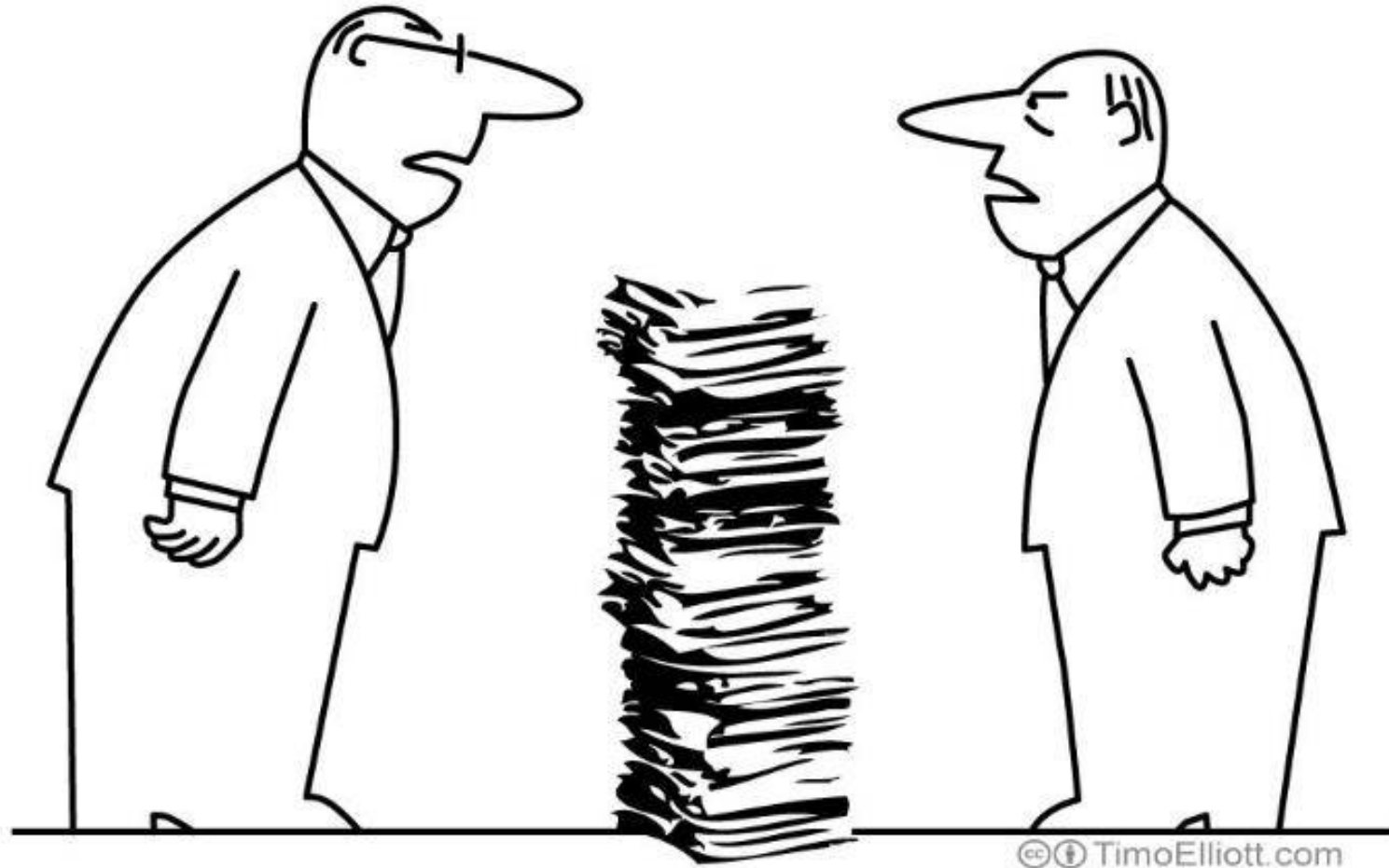


# GDPR and intellectual property

Andrea Nour, Legal Counsel  
[a.nour@cgiar.org](mailto:a.nour@cgiar.org)

# Big data

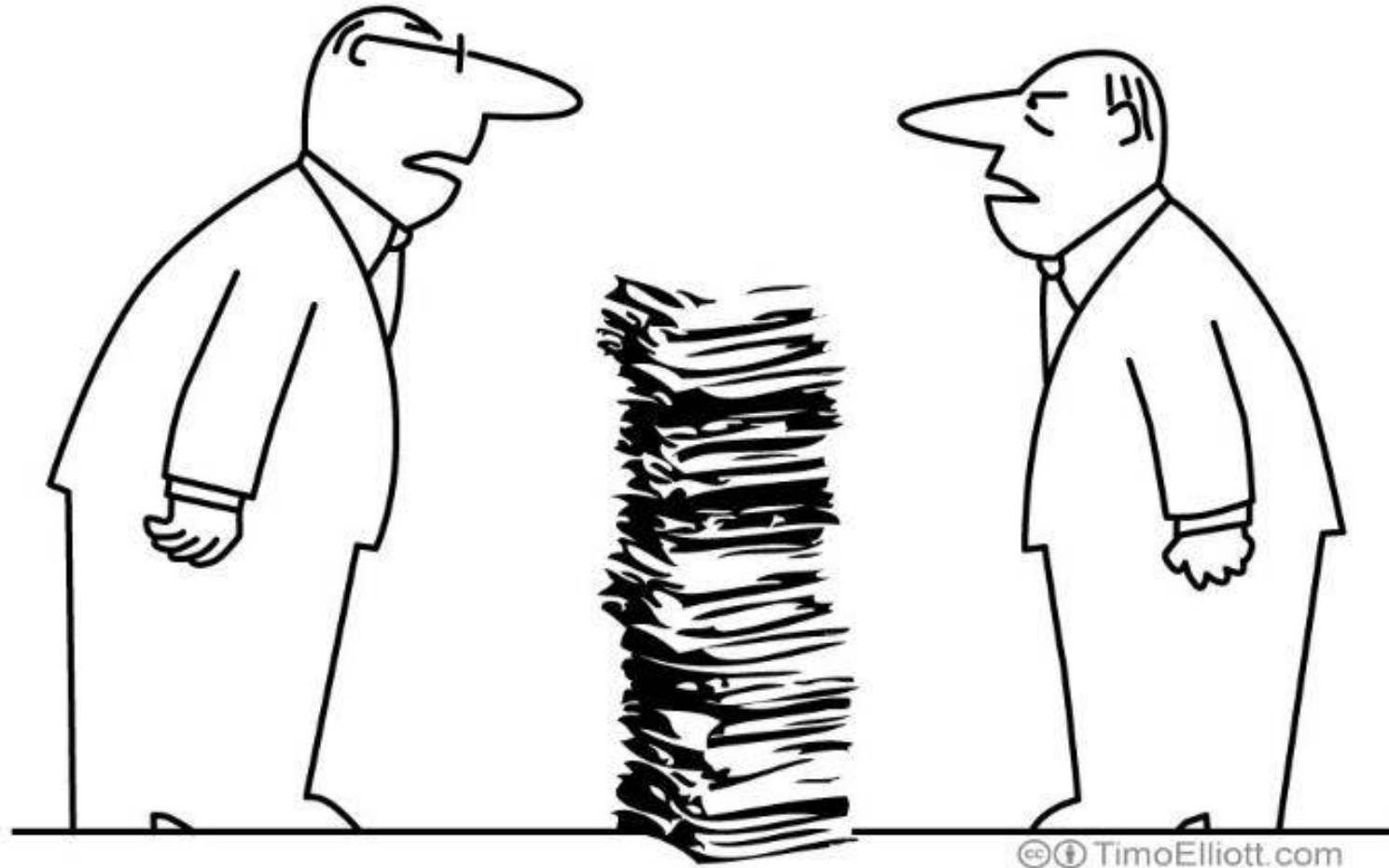


*"No, it's MY data!"*

# Big car



# Big data



*"No, it's MY data!"*



# Big data

Who owns it?

Who can use it  
(legally and ethically)?

# Who owns it?



◀ **The donor?**

# Big data

## Who owns it?

If the donor agreement is not yet signed, negotiate the intellectual property clause...

If the donor agreement is already signed, **be a detective**... look at the donor agreement's clause on intellectual property...



# Big data

## Who owns it?

### Examples of good IP clauses

All intellectual property rights, including copyright, in the outputs produced under this Agreement are vested in the Donor, including, without any limitations, the right to use, publish, translate, sell or distribute, privately or publicly, any item or part thereof. The Donor hereby grants to ICARDA a non-exclusive royalty-free license to use, publish and distribute the outputs delivered under this Agreement for non-commercial purposes, provided that the Donor is acknowledged as the source and copyright owner.

#### In plain English:

The data belongs to the Donor. ICARDA has a right to use the data:

- for non-commercial purposes, and
- as long as ICARDA cites the Donor as both the owner and the source of the data



# Big data

## Who owns it?

### Examples of good IP clauses

Any data or data sets, both hard and electronic copies, and other intellectual property generated as part of the activities, shall be the **joint property of the Donor and ICARDA**....

#### In plain English:

The data belongs to the Donor and ICARDA.  
ICARDA has a right to use the data for any purpose.



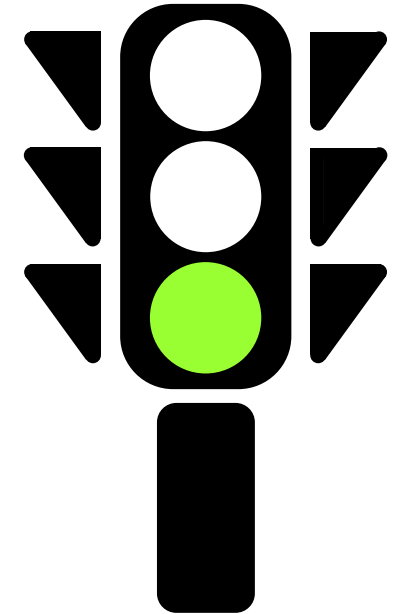
# Big data

## Who owns it?

Negotiate!

Make sure the agreement says you have a right to use the data in the ways you want to use it

*“If it isn’t in the agreement, it doesn’t exist”*



# Big data

## Who owns it?

Even if the donor agreement allows ICARDA to use it, what do your sub-agreements/consultancy agreements say?



Who owns it?



Entity paying for  
data collection?

[icarda.org](http://icarda.org)



Entity performing  
data collection?



Sources: ICARDA; donor websites; Unsplash, rawpixel, @ rawpixel





# Big data

## Who owns it?

Do your organization's sub-agreement read something like this?

“All rights to any intellectual property resulting out of the Research shall be **owned jointly and severally** between the parties each party ...”

The parties own the data together



# Big data

## Who owns it?

... or maybe something like this?

“All intellectual property created by you will be automatically owned by ICARDA, which shall grant you a royalty-free, non-exclusive right to use such intellectual property provide that you fully acknowledge ICARDA as the owner of such intellectual property...”

ICARDA owns the data

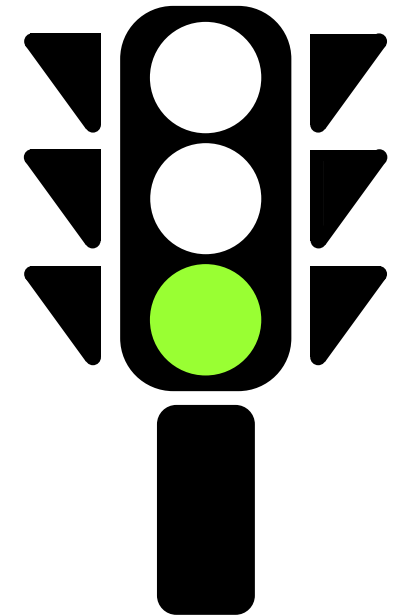
# Big data

## Who owns it?

Negotiate!

Make sure the agreement says you have a right to use the data in the way you want to use it

*“If it isn’t in the agreement, it doesn’t exist”*



# Big data

Who owns it?

Who can use it  
(legally and ethically)?



# Big data

## But how can that be?

- ☐ Donor agreement says ICARDA can use it
- ☐ ICARDA's sub-agreement says ICARDA can use it

What else could possibly be required !?





# Big data

Just because you own it  
contractually,

doesn't mean you can use it  
legally or ethically



# Data protection

Legal and ethical obligations to protect the privacy of individuals

*“Centers are in a position of trust. Mishandling personally identifiable information could very much have consequences on the work that they do.”* – Rodrigo Sara, CGIAR Big Data Platform, IFPRI

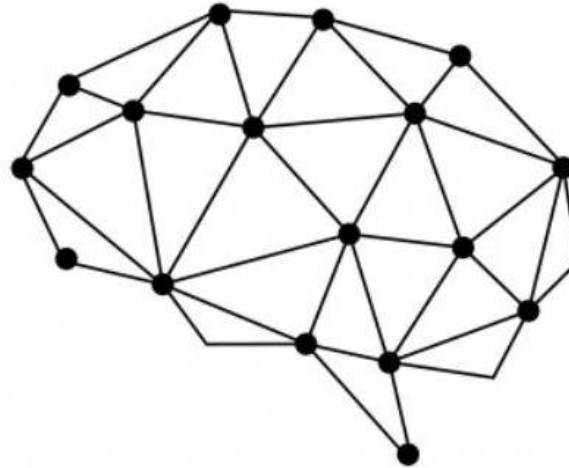


But if the law doesn't require you to protect people's privacy, so what?

Is this just a bunch of the lawyers getting a bit too excited?



# Big data



Cambridge  
Analytica



# Revealed: Aleksandr Kogan collected Facebook users' direct messages

**People who logged into This Is Your Digital Life shared their news feed, timeline, posts and messages**



▲ Aleksandr Kogan's app harvested data not only from the installer, but also from all their Facebook friends.  
Photograph: University of California Berkely





# Facebook fined £500,000 for Cambridge Analytica scandal

Facebook is dealt the maximum pre-GDPR fine for the Cambridge Analytical data scandal



Facebook has been hit with a £500,000 fine by the UK's Information Commissioner's Office (ICO) for "serious" breaches of data protection laws

*"50–60m Facebook profiles were collected by Cambridge Analytica in a 2-month period" – Christopher Wylie*

Cambridge Analytica whistleblower: 'We spent \$1m harvesting millions of Facebook profiles'



ITV REPORT 2 May 2018 at 8:01pm

**Data firm Cambridge Analytica closing down following Facebook scandal**

But it wasn't the **scale** that was the issue ... it was the lack of **clear, informed consent** from millions of Facebook users









"We considered these contraventions to be so serious we imposed the maximum penalty under the previous legislation," said Information Commissioner Elizabeth Denham. "The fine would inevitably have been significantly higher under the GDPR. One of our main motivations for taking enforcement action is to drive meaningful change in how organisations handle people's personal data.

# Big data

English 

---

[Home](#) > [Law](#) > [Law by topic](#) > [Data protection](#) > [Reforms](#) > [What is personal data?](#)

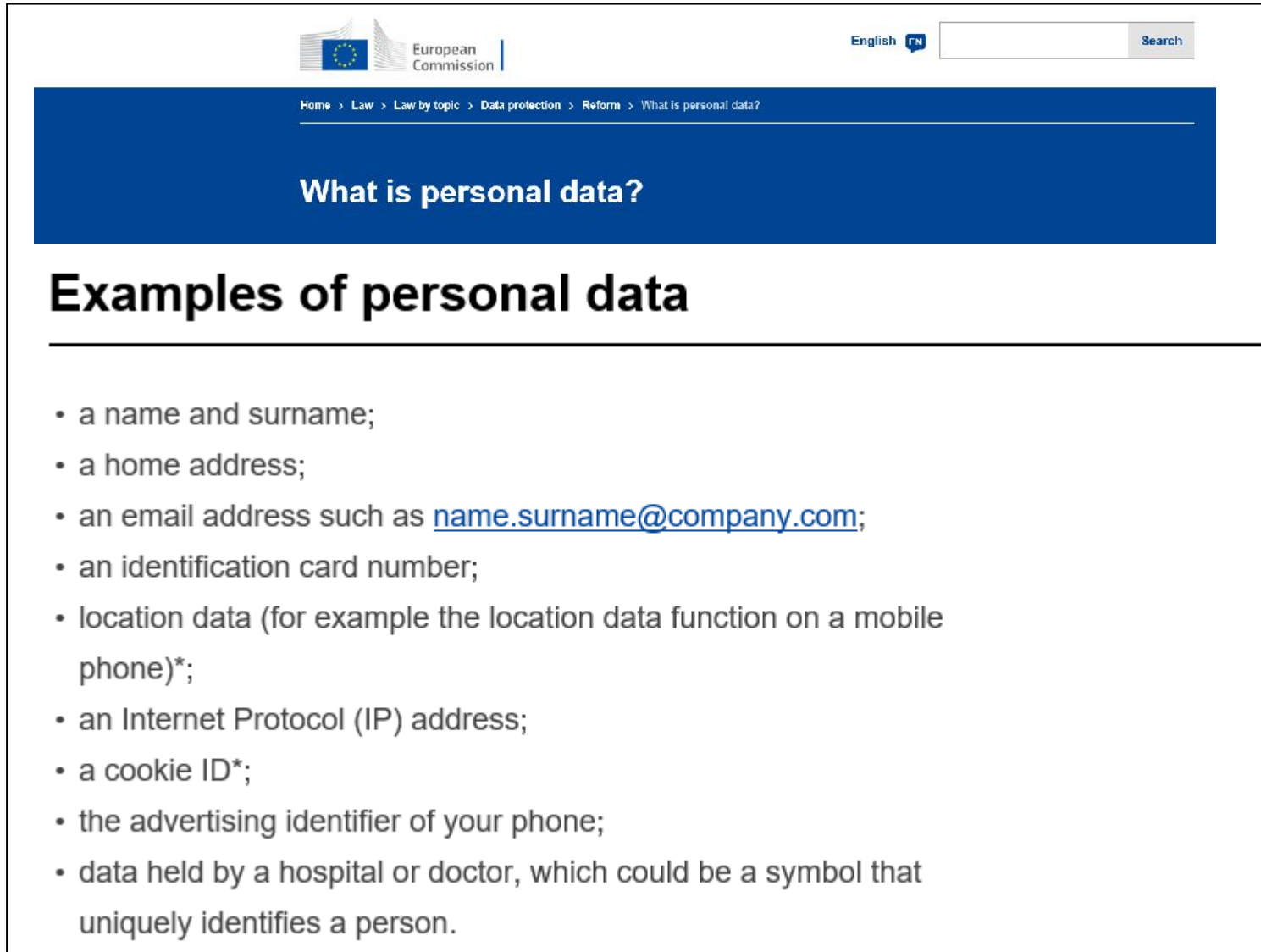
## What is personal data?

Personal data is any information that relates to an **identified or identifiable living individual**. Different pieces of information, which collected together can lead to the identification of a particular person, also constitute personal data.

Personal data that has been de-identified, encrypted or **pseudonymised** but can be used to re-identify a person remains personal data and falls within the scope of the law.

Personal data that has been rendered **anonymous** in such a way that the individual is not or no longer identifiable is no longer considered personal data. For data to be truly anonymised, the anonymisation must be irreversible.

# Big data



The screenshot shows the European Commission website. At the top, there is a navigation bar with the European Commission logo, the text 'European Commission', and a search bar with 'English' and 'FN' buttons. Below the navigation bar is a blue header with the text 'What is personal data?'. The main content area has a title 'Examples of personal data' followed by a list of examples.

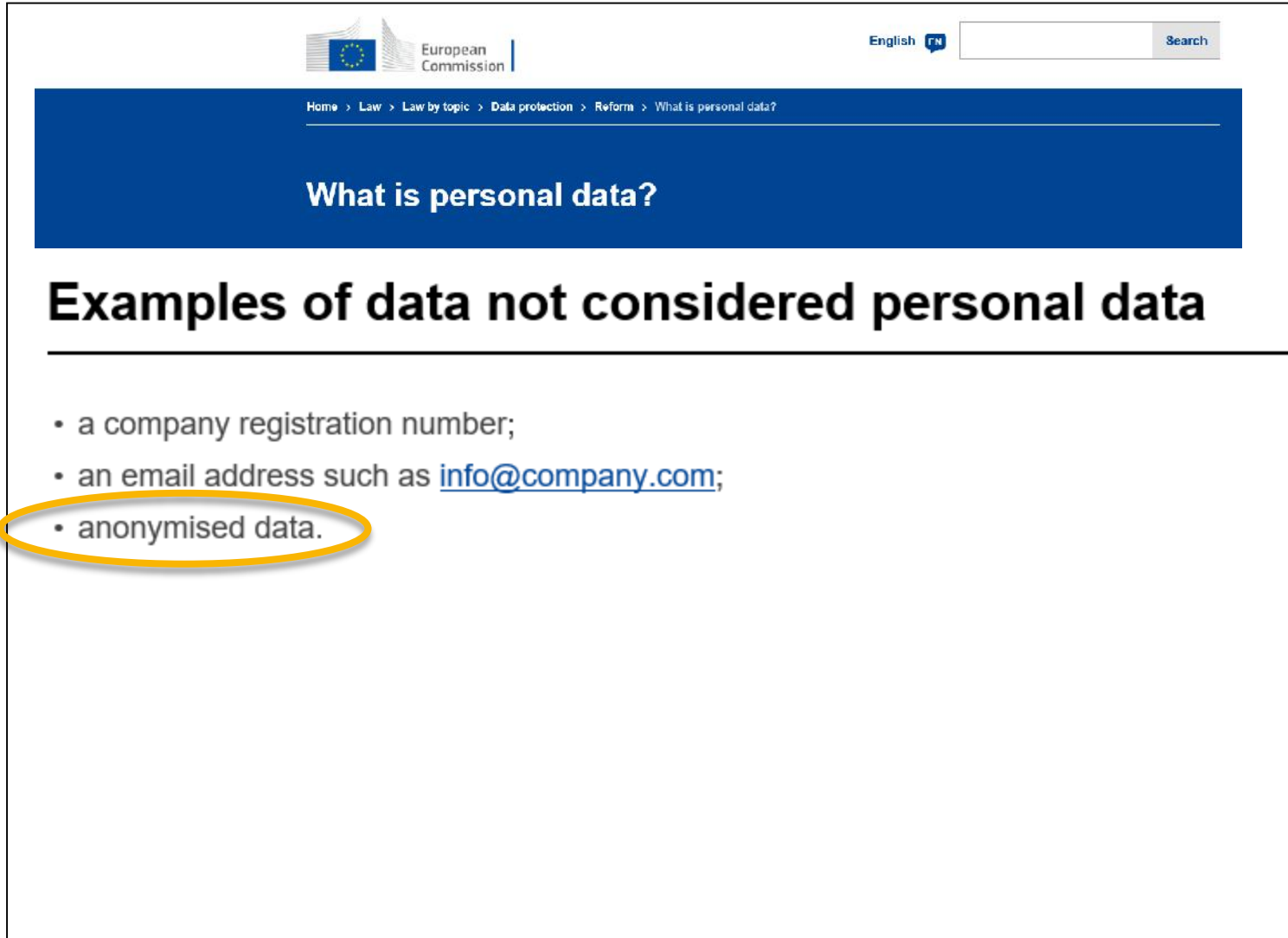
Home > Law > Law by topic > Data protection > Reform > What is personal data?

## What is personal data?

### Examples of personal data

- a name and surname;
- a home address;
- an email address such as [name.surname@company.com](mailto:name.surname@company.com);
- an identification card number;
- location data (for example the location data function on a mobile phone)\*;
- an Internet Protocol (IP) address;
- a cookie ID\*;
- the advertising identifier of your phone;
- data held by a hospital or doctor, which could be a symbol that uniquely identifies a person.

# Big data



The screenshot shows the European Commission website. At the top, there is a navigation bar with the European Commission logo, the text 'European Commission', and a search bar. Below the navigation bar, a blue banner contains the title 'What is personal data?'. Underneath the banner, the heading 'Examples of data not considered personal data' is displayed. A list of three items follows: 'a company registration number;', 'an email address such as [info@company.com](mailto:info@company.com);', and 'anonymised data.'. The third item, 'anonymised data.', is circled in yellow.

Home > Law > Law by topic > Data protection > Reform > What is personal data?

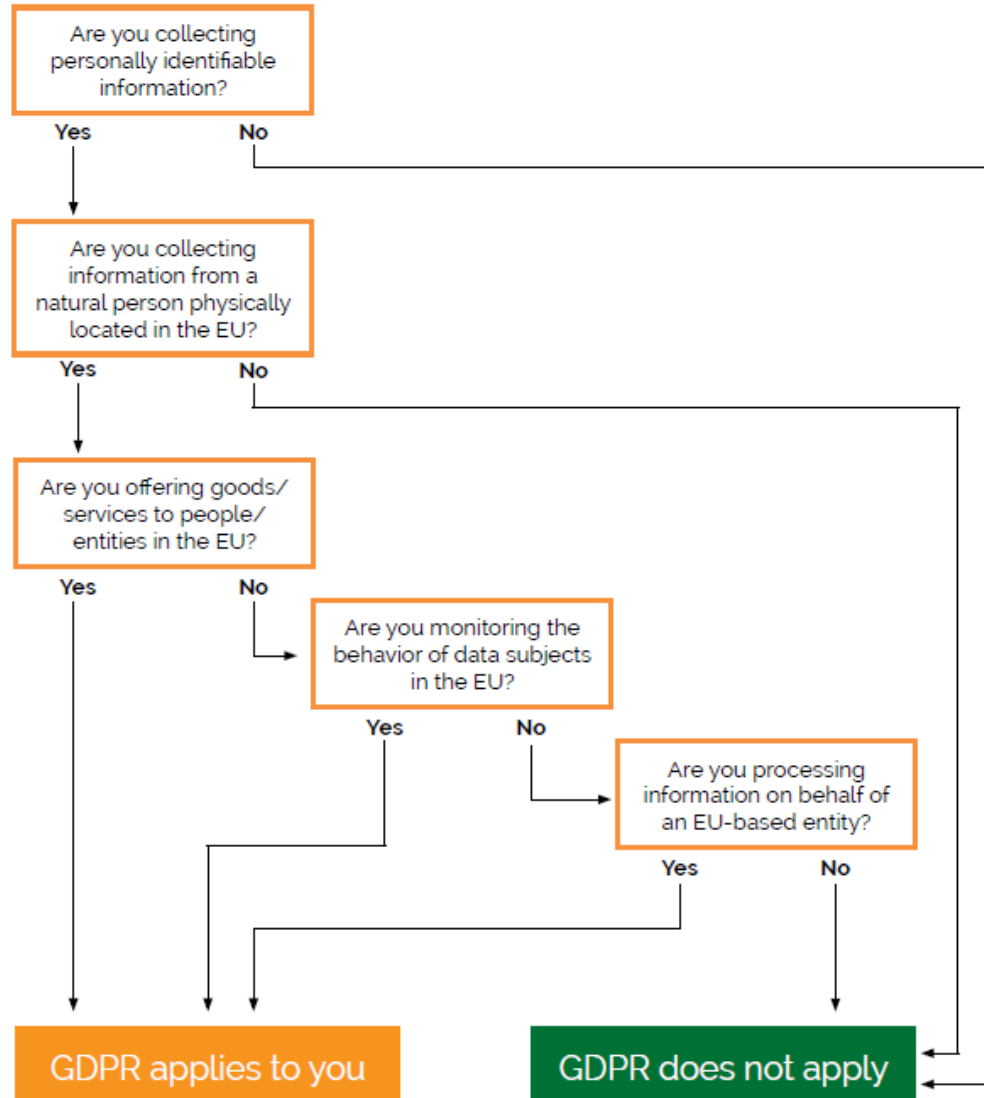
## What is personal data?

### Examples of data not considered personal data

- a company registration number;
- an email address such as [info@company.com](mailto:info@company.com);
- anonymised data.

# GDPR Checklist

FOR CENTERS, DOES GDPR APPLY?



## Big data



Source: Wikimedia Commons, Creative Commons.

# Can you use the data?

## EU General Data Protection Regulation

- ☐ Protects **personal data of living people**
- ☐ Came into effect in May 2018
- ☐ **You can only process personal data if:**
  1. the individual has freely given consent and your request was easy to understand
  2. it is “necessary for the performance of a contract” that the individual has signed
  3. the law requires you to
  4. it is necessary to protect the “vital interests” of the individual or someone else
  5. it is necessary for a task carried out in the public interest
  6. legitimate interests of your organization or a third party, unless they go against fundamental, individual rights & freedoms (like right to privacy)





# Can you use the data?

## EU General Data Protection Regulation

Assume you need to seek consent ... every time your organization collects data





# Can you use the data?

## EU General Data Protection Regulation

Provides significant protection to individuals!

- ☐ Right to be forgotten
- ☐ Right for individual to receive his/her personal data in a structured, commonly used and machine-readable format
- ☐ Obligation to inform individual of a data breach within 72 hours

# Google loses landmark 'right to be forgotten' case

**Businessman wins legal action to force removal of search results about past conviction**



**Even if the data relates to a crime you committed...**



# EU General Data Protection Regulation

- ☐ Has “extra-territorial” effect/effect outside of the EU
- ☐ Applies automatically; no need for national implementing laws
- ☐ Penalties of up to 4% of annual global turnover or €20 Million (whichever is greater)



# And if you can use the data...

## EU General Data Protection Regulation

### General principles

- ☐ Use if a lawful, fair and transparent way
- ☐ Use only for specified, explicit, legitimate reasons
- ☐ Collect the minimum amount you need for your purpose
- ☐ Keep it up-to-date and take reasonable steps to erase out-of-date data



# And if you can use the data...

## EU General Data Protection Regulation

### General principles (cont'd)

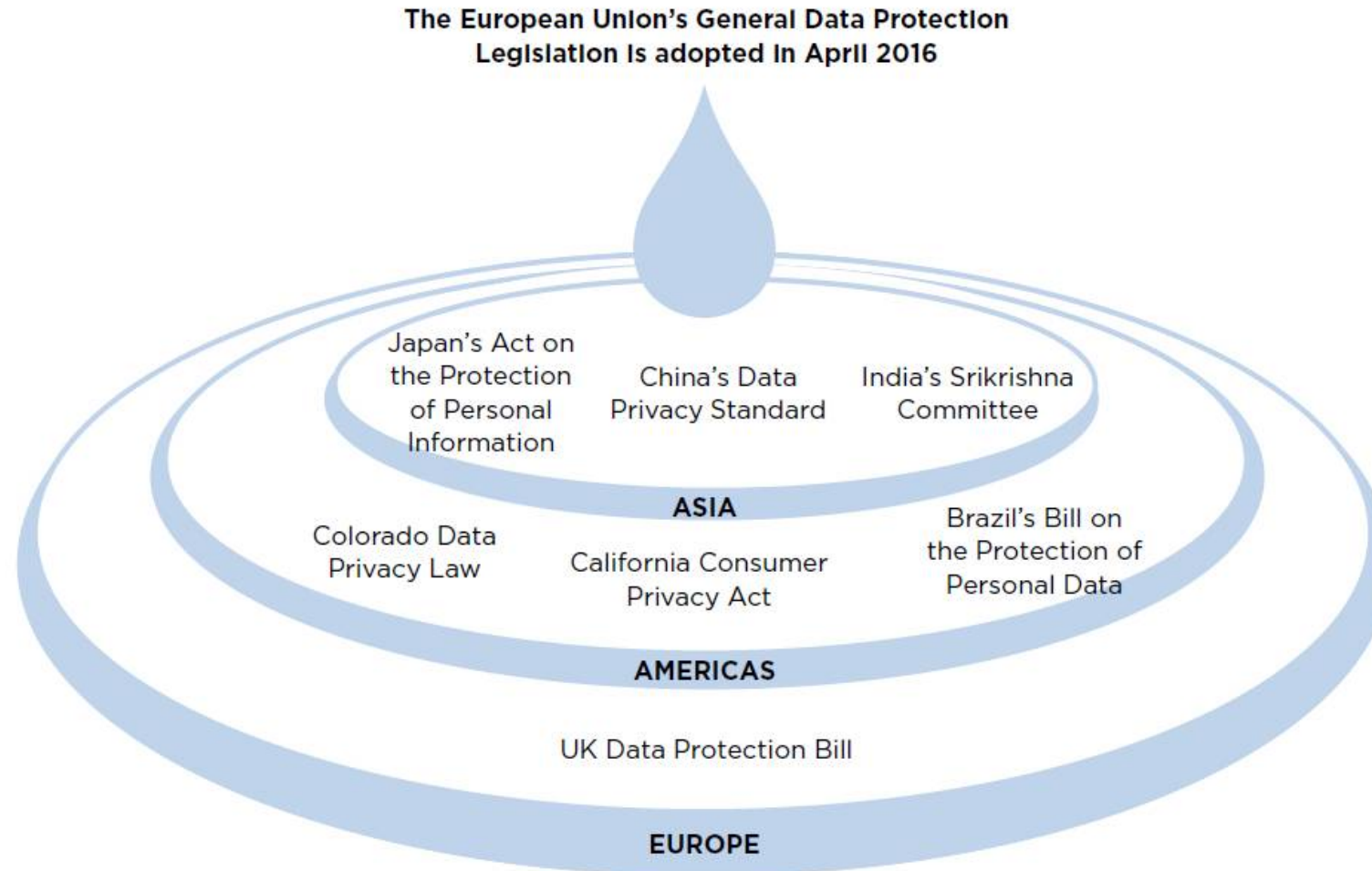
- ☐ Keep it in a form that only allows for the individual to be identified for as short a time as possible
- ☐ Put in place appropriate security
- ☐ And be able to show that you are complying with all of the above



# RIPPLE EFFECT OF GDPR

GDPR-Inspired Legislation Around the World  
*Select Global Legislation*

## Big data



# RIPPLE EFFECT OF GDPR

## Big data

### Beware!

Data protection obligations placed on you as a researcher through donor agreements...

- ☐ USAID
- ☐ BBSRC
- ☐ UKRI



UK Research  
and Innovation



It is your responsibility to work with your grant manager to understand the terms and conditions, and make sure you can comply with them. If you know you cannot comply, it is essential to re-negotiate the terms before the contract is signed.



# Big data

- ✓ *Draft CGIAR Data Protection Policy and Guidelines*, will be consistent with the requirements of the GDPR and will apply to all Centers irrespective of geographic location of the data subject
- ✓ CGIAR Platform for Big Data in Agriculture, *draft Big Data Platform Guidelines* (\*voluntary and aspirational\*)
- ✓ ICARDA's roadmap, working towards full GDPR implementation by end 2019 (project lead: Hashem Abed)

# *Draft CGIAR Big Data Platform Guidelines*

- ☐ In draft form, still subject to change
- ☐ Voluntary and aspirational for Centers
- ☐ Big Data Platform webinar in mid-December 2018 to introduce the current draft



<https://bigdata.cgiar.org/>

# Draft CGIAR Big Data Platform Guidelines

- ☐ Collect the minimum amount of data you need (*ask yourself*: is this data really needed for the project? Is there truly a legitimate, scientific reason for me to collect this data?)
- ☐ Weigh the scientific interest against the potential legal and reputational consequences of personal data disclosure
- ☐ Create a data lifecycle plan (collection, storage, sharing, archiving and destruction)



<https://bigdata.cgiar.org/>

# **Draft CGIAR Big Data Platform Guidelines**

- ☐ Be transparent with your research subjects on how the data will be used
- ☐ Use plain language when you seek consent from your data subjects
- ☐ Obtain prior informed consent (maybe verbally or in local language)



<https://bigdata.cgiar.org/>



# **Draft CGIAR Big Data Platform Guidelines**

- ☐ Anonymize whenever possible (strip out the personal data)
- ☐ If you cannot anonymize, pseudonymize (encrypt, de-identify)
- ☐ Don't be shy to ask for help from subject matter experts



<https://bigdata.cgiar.org/>

# Other resources



- ✓ Even if data has been pseudonymized (with identifiers removed or encrypted), where the dataset and identifiers are still held by the same organization, it is still personal data

# Other resources

- ✓ Display more detailed privacy information about research projects where people will notice it
- ✓ Use participant information sheets (PIS)
- ✓ Include privacy information on project websites
- ✓ Make your participants aware of this information
- ✓ if your participants cannot read, you must adapt your PIS



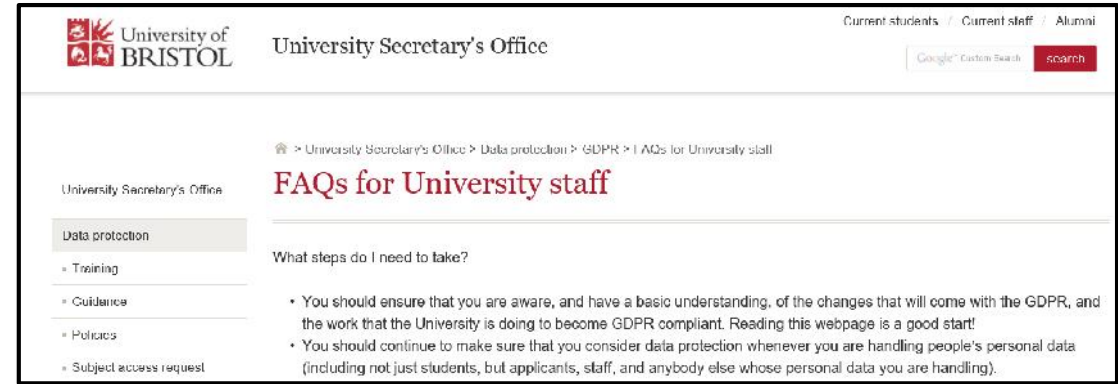
# Other resources

- ✓ Researcher using secondary data sets that were not collected at Lancaster and contain personal data should ensure the participants were supplied with relevant information at the time of the data collection
- ✓ Ethical approval should be sought before analysis starts



**Cambridge Analytica  
did not do this!**

# Other resources



- ✓ Not always possible to know exactly how you would like to use the personal data collected as part of the research
- ✓ Using personal data for further research beyond the original consent is permissible if the purposes of the further use is compatible the original use

# Who owns it?



icarda.org



**Individual from whom  
data is collected?**





# Thank you

[andrea.nour@cgiar.org](mailto:andrea.nour@cgiar.org)

