

What is Online Proctoring for Remote Examination?

Online proctoring offers an examinee the possibility to take an exam remotely. Online proctoring solutions have to ensure the integrity of the examination which essentially serves to verify an examinee’s competence. The processing of personal data connected to the performance of proctoring includes the following from EU data protection law:

- The data controller processes personal data, including special categories of data, for the purposes of the legitimate interests pursued by the controller or by the third party or parties to whom the data are disclosed, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject (data subject’s right to object).
- When processing personal data, the data controller is responsible for ensuring that the processing is compliant with all legal guidelines.

General Data Protection Regulation

Online proctoring intersects with the processing of personal data, triggering the application of European Data Protection Law. As a guide, the main rules following from EU data protection law are:

- Lawfulness, fairness and transparency of the processing of personal data.
- Purpose limitation.
- Data minimization.
- Accuracy.
- Storage limitation.
- Integrity and confidentiality.

(Special) categories of Personal Data

Online proctoring involves the processing of the following categories of personal data:

- Video feeds of the examinee.
- Photos of the examinee.
- Government issued ID card (containing a government issued unique identifier (e.g. a social security number)).

These categories of personal data can be a special category of personal data because based on this data it is possible to determine:

- Race of the examinee.
- Religion of the examinee.
- Health-related information (handicap, glassed) concerning the examinee.

Video feeds of the examinee can also be considered to be personal data where there is: ex inessence information captured from the surroundings/background of the examinee (e.g. captured feeds of the home environment) revealing unique characteristics of the particular examinee. Additionally, in some EU countries, the processing of government issued unique identifiers (e.g. social security number) can only be processed if there is a legal necessity to do so.

As mentioned above, the GDPR outlines a detailed regime for processing special categories of data (also called ‘sensitive data’; see article 9 GDPR). Examples of sensitive personal data are data related to race or ethnic origin, political opinions, religious or philosophical beliefs and trade union membership as well as for processing genetic and biometric data for the purposes of uniquely identifying a natural person (i.e. biometric data) and for data concerning health, a person’s sex life or sexual orientation. The processing of sensitive personal data is prohibited in principle, unless exemption applies or there is a legal obligation to process the data. A example of the latter is:

- Data subjects give their (innovative consent form).
- A national law provides an exception, see for example article 25 of the Dutch Implementation Law of the GDPR (UGwD) in which it is stated that:

> The processing of sensitive personal data (medical, sexual or ethnic origin) is not prohibited when for the purposes of identifying the data subject, the processing of personal data revealing racial or ethnic origin is inevitable.

Description of purposes (of the processing)

In order to detect and prevent fraud during exam, it is:

1. necessary to securely identify a test-taker and
2. need to monitor the exam process.

The processing of the data mentioned above is strictly necessary and inevitable for these purposes. Data which is not relevant or vital to achieve the aforementioned purposes are not to be processed.

Possible Lawful basis

<table>
<thead>
<tr>
<th>Purpose of the processing</th>
<th>Public Body (for example a Higher Education Institution)</th>
<th>Private Company (for example a test publisher)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consent</td>
<td>Necessary to execute a contract and protect the company</td>
<td>necessary to execute a contract and protect the company</td>
</tr>
<tr>
<td>Legal obligation</td>
<td>Necessary to execute a contract</td>
<td>Necessary to execute a contract</td>
</tr>
<tr>
<td>Protecting of vital interests</td>
<td>Necessary to protect the company</td>
<td>Necessary to execute a contract</td>
</tr>
<tr>
<td>Public interest and exercise of official authority</td>
<td>N/A</td>
<td>Necessary to execute a contract</td>
</tr>
<tr>
<td>Legitimate interest</td>
<td>Necessary to execute a contract</td>
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</tr>
</tbody>
</table>

Requirements

- HEI: Higher Education Institute
- Data subject: the test-taker providing data
- Data Controller: the HEI processing the personal data
- Data Processor: third party collecting and processing the data on behalf of the Data Controller - with online proctoring this is the online proctoring system provider
- Data Protection Officer of the HEI: responsible for overseeing and ensuring compliance of the data protection issues of the HEI
- Data Protection Authority: the national authorities to which Responsible parties need to report to in case of, for example, data breaches or complaints by data subjects.

Categories of (Personal) Data involved

- Personal data: every type of information related to an identified or identifiable person.
- Special categories of personal data: personal data that fall under a strict regime for processing (see above).

Definition

- Personal data: Every type of information relating to an identified or identifiable individual, which are processed with special sensitivity in order to identify that particular individual. Examples are: name, fingerprint, behavior (behavioral characteristics), biometric data (biometric data), and also personal data which are not considered to be personal data as defined if it is known only to an anonymous individual.

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Define Use Case Precisely

The following template can be used to define the use case at a given institution. Based on the use case, the appropriate lawful basis and measures to protect data can be better defined.

Example:

- The data controller (HEI) has a team X (public vs. private examinees) and is located in Country X.
- The data subject is located in Country Y.
- The data is not processed at all.

Example continued:

- Consent deemed not appropriate.
- Legitimate interest deemed appropriate.
- The data subject has a public interest, but there is not enough public interest.
- The data subject has a private interest, but there is not enough private interest.
- The data subject has a legitimate interest, but there is not enough legitimate interest.
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Provide Arguments for the Lawful Basis

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Describe System, Threats, Impacts and Mitigations (DPIA elements)

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Argue the Balancing Test

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