

ReadSpeaker and Interxion in relation to GDPR

Q&A

Below are some questions and answers about the business relation between ReadSpeaker and its subcontractor of data centre services Interxion Sverige (hereinafter Interxion) in relation to GDPR

What is the GDPR?

The General Data Protection Regulation is a European Union law that was implemented May 25, 2018, and requires organisations to safeguard personal data and uphold the privacy rights of anyone in EU territory. The GDPR not only applies to organisations located within the EU but also to organisations located outside of the EU if they offer goods or services to or monitor the behaviour of EU data subjects. The regulation includes seven principles of data protection that must be implemented and eight privacy rights that must be facilitated. It also empowers member state-level data protection authorities to enforce the GDPR with sanctions and fines, in Sweden the Swedish Authority for Privacy Protection. GDPR, passed in the European Parliament by overwhelming majority, unifies the EU under a single data protection regime.

What is a controller, processor or sub-processor according to GDPR?

The concepts of controller, joint controller and processor play a crucial role in the application of GDPR, since they determine who shall be responsible for compliance with different data protection rules, and how data subjects can exercise their rights in practice. The concepts of controller, joint controller and processor are functional concepts in that they aim to allocate responsibilities according to the actual roles of the parties and autonomous concepts in the sense that they should be interpreted mainly according to EU data protection law.

A controller is a body that determines the purposes and means of the processing, i.e. the why and how of the processing. The controller must decide on both purposes and means. It is not necessary that the controller actually has access to the data that is being processed to be qualified as a controller.

A processor is a natural or legal person, public authority, agency or another body, which processes personal data on behalf of the controller. The processor must not process the data otherwise than according to the controller's instructions. The controller's instructions may still leave a certain degree of discretion about how to best serve the controller's interests, allowing the processor to choose the most suitable technical and organisational means.

A sub-processor is a processor that is a subcontractor to a processor.

What of the above CONCEPTS apply to ReadSpeaker, its customers and Interxion?

ReadSpeaker's customers are controllers of the personal data processed by ReadSpeaker and stored in the servers located in the data centre of Interxion. ReadSpeaker is a processor of such customer data.

The question of whether Interxion qualifies as a sub-processor to ReadSpeaker or not is addressed in a question further below in this Q&A.

What kind of data centre services are provided to ReadSpeaker by Interxion?

ReadSpeaker procures co-location services from Interxion, meaning that ReadSpeaker owns its servers and hardware equipment in which data is stored, however, procures services such as cabinet space, power supply, temperature adjustment, bandwidth connection and other cross connect services for its hardware by Interxion.

In addition to placing its hardware in the data centres of Interxion located within the EU, Interxion performs so-called Hands & Eyes support services on ReadSpeaker's equipment placed in the data centres. Such support services may include power on, power off equipment, pushing buttons, in – or disconnection of cabling and installation of a factory new server. Hands & Eyes services may also include maintenance, installation work, configuration or troubleshooting. Hands & Eyes services may only be carried out provided that ReadSpeaker gives Interxion written consent thereto and in accordance with a working order with specific instructions on the support.

Is Interxion a data processor, and thus a sub-processor to ReadSpeaker?

GDPR introduces specific obligations that are triggered when a processor intends to engage another entity, thereby adding another link to the chain, by entrusting to it activities requiring the processing of personal data. The analysis of whether the service

provider acts as such a sub-processor should be carried out in line with the concept of processor.

Therefore, is Interxion a processor to ReadSpeaker, when providing the above data centre services?

In order for Interxion to qualify as a processor under the GDPR it must process personal data on behalf of ReadSpeaker, and indirectly on behalf of ReadSpeaker's customers in their capacity as controllers. According to the Swedish Authority for Data Protection, it is when an assignment of a supplier includes processing of personal data on behalf of the data controller that the role as processor is established.

The nature of the service will determine whether the processing activity amounts to processing of personal data on behalf of the controller within the meaning of the GDPR. In accordance herewith, the answer to the above-posed question depends on what kind of services Interxion performs for ReadSpeaker. The above-described basic offering of a colocation data centre is the IT infrastructure – the space, power, cooling, security, and connectivity – none of which affects the processing of the personal data stored on ReadSpeaker's servers. Such services do not include any processing of personal data and thus do not make Interxion qualify as a sub-processor of ReadSpeaker.

However, Hands & Eyes services as described above are included in Interxion's service portfolio. Such services are used to a limited extent by ReadSpeaker and never by way of processing of personal data stored on ReadSpeaker's servers. Theoretically, it appears as if such services may include that Interxion's technical staff with physical access to the servers can log on to these and process personal data of ReadSpeaker. Taking that into account, in both ReadSpeaker's and Interxion's perspective none of the Hands & Eyes services performed by Interxion include any processing of personal data, or are intended to be carried out to include any processing of personal data. Furthermore, the Hands & Eyes services of Interxion are provided only after and based on the explicit instructions of ReadSpeaker. In addition, the personal data stored on ReadSpeaker's servers are safeguarded by technical security measures enabling access to the personal data only by getting access to a specific user login and password held by ReadSpeaker, which is not being provided as part of the services. Without the specific access to personal data, and which otherwise would require Interxion to perform a data breach getting access to such personal data, Interxion is not considered as processing any personal data on behalf of ReadSpeaker, nor qualifies as a sub-processor to ReadSpeaker.

Due to Interxion not qualifying as a processor to ReadSpeaker, ReadSpeaker has no obligation under GDPR to inform customers of, or obtain the prior consent from

customers, for the services procured from Interxion. Nonetheless, ReadSpeaker is committed to continue its close and transparent relationship with its customers and communicate its procurement of data centre services from Interxion and its conducted analysis of the legal framework on data protection related thereto. All organisations handle personal data in some way or another in this data-driven world and should place great emphasis on complying with regulations. Having customers that question and challenge us on these topics is a sign that organisations take data protection seriously, in every aspect of their business. ReadSpeaker welcomes its customers to reach out to the company for any further questions on this Q&A.

Would the data centre services of Interxion procured by ReadSpeaker qualify as a transfer of personal data to a third country outside the EU/EEA?

If a third party outside the EU/EEA is given access to process personal data of which ReadSpeaker is either the controller or processor, it constitutes a transfer for personal data to a third country according to the GDPR. The main rule of the GDPR is that no such transfers are permitted, unless certain conditions are upheld. The reason for that is that outside the EU/EEA there are no general rules like the GDPR that provide equivalent protection for data privacy, except for in certain countries for which the EU-commission has adopted an adequacy decision with the effect that personal data may flow from EU member states to such non-EU countries without any further safeguards being necessary. According to the GDPR and the Swedish Authority for Data Protection transfer of personal data to a third country is when personal data is made available to someone outside the EU/EEA.

Interxion is part of the global group Digital Realty and is thus indirectly and ultimately owned and controlled by a U.S. entity. As Interxion does not process any personal data in connection with its data centre services (as analysed and presented in the above question in this Q&A), and as no personal data is made available to Interxion, and indirectly its controlling foreign entity, Interxion's data centre services do not qualify as a transfer of personal data to a third country outside the EU/EEA.