

SOCIAL LISTENING

Responding effectively to online insights

What is social listening?

Social listening involves monitoring social media to find out what is being said about you and your industry and using these insights to improve your business and engage with customers.



What are the opportunities?

Driving product development and innovation

See how customers respond to your products and products of your competitors. What features do they like? What don't they like? What products do they want to see?

Monitoring IPR infringement

Find out if your customers or potential customers are talking about a product which is a copy of your own.

Improving customer service

Spotting trends in customer feedback and complaints in relation to you and your competitors, and identifying opportunities for prompt customer engagement. Social listening can create opportunities for interaction with customers who feel dissatisfied but have not communicated this to you directly.

Producing personalised marketing materials

Producing personalised content based on an understanding of your customers. How does your target market converse, what words do they use? How can your target market be segmented into different categories?

Measuring marketing campaign success

Compare mentions of your products before and after the running of a campaign. Metrics for "impressions" or "views" alone can be unreliable.

Crisis management

Track brand health in response to negative publicity to seek opportunities for remediation and mitigation.

Identifying customers, potential customers and influencers

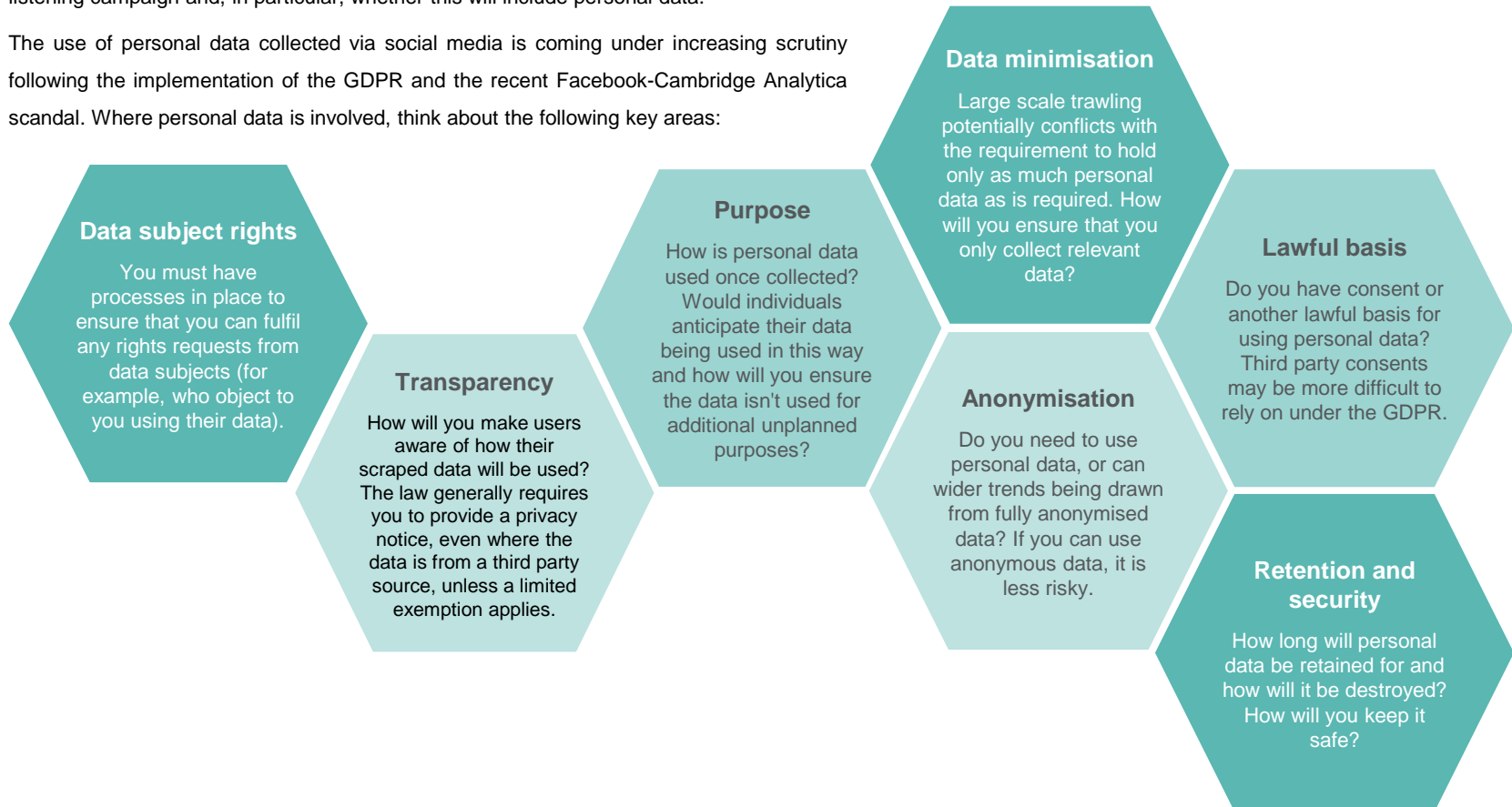
Find out the best places to focus your marketing efforts and identify potential influencer relationships. Who is sharing information about your brand/industry? And where are they sharing it?

Key legal and practical considerations

Data privacy

It's important to consider what data is collected and processed as part of any social listening campaign and, in particular, whether this will include personal data.

The use of personal data collected via social media is coming under increasing scrutiny following the implementation of the GDPR and the recent Facebook-Cambridge Analytica scandal. Where personal data is involved, think about the following key areas:



Data scraping: Website operator objections

Social media website operators may object to data scraping to protect the value of data on their sites. The law surrounding the legality of data scraping and the rights of website operators is a complicated and developing area. Possible arguments include:

Website terms and conditions

Arguments based on breach of terms and conditions may be the most feasible argument for website operators in some circumstances, and it's common for website terms of use to prohibit data scraping. The key question is whether there is a valid contract incorporating the terms and conditions. I.e. is there a passive set of website terms and conditions? Or is there a walled garden environment, whereby access to the database is conditional upon entering into access terms and conditions?



Copyright infringement

It would be difficult for social media website operators to bring copyright infringement claims, as proving that a "substantial part" of data was copied would be problematic. However, you should consider if users' copyright in content may be infringed.

Database Rights

The key issue for claims based on database rights will be whether database rights exist. Again, this would be tricky for social media website operators: UK case law indicates that database rights are unlikely to arise where users generate content, rather than the website seeking content.



Other arguments

A question to be tested in the UK is whether data scraping could be a breach of the Computer Misuse Act 1990, which relates to hacking. Similar arguments have been brought in the US in relation to comparable legislation but, whilst the US courts have not taken a consistent approach, there seems to be an unwillingness to prohibit the harvesting of publicly available data on the basis of (old) anti-hacking legislation.

Service Provider terms

Make sure terms with social listening providers contain adequate protections, particularly in relation to the points discussed above. Key considerations include:



Intellectual property

Consider seeking contractual protections to cover infringement of intellectual property rights in relation to scraped data.



Data

Consider documenting agreed collection methods and think about whether it's necessary to conduct due diligence on the methods the provider uses to obtain data. Is this with agreed terms of use with platform owners or by the use of unauthorised bots? Be aware that contracts with providers are likely to contain restrictions on your use of any data provided, so processes should be in place to comply with such restrictions.

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