



Data Protection Moot Court (DPMC) Case

Variant 2: Controller Teams

30 October 2024

Data Driven

In late 2020, Ricardo Noon left his managing position at a large car rental company in Randomia, Randomistan's capitol, to fulfill his dream of founding his own company in this sector. Ricardo knew that he would only stand a chance in the saturated car rental market of Randomistan if he had a unique selling point. His vision was simple: While most his competitors still relied primarily on combustion engine cars and focused on luxury brands, Ricardo wanted to provide his customers with affordable electric cars. To realize this idea, he registered his freshly founded company as *ChEap-Car Ltd* – with a capital “E” for “electric” – in the commercial registry of Randomistan.

Ricardo, now CEO of *ChEap-Car*, found the perfect partner for his enterprise in the German car manufacturer *E-Blitz AG* that had set itself the goal of becoming the market leader in the lower price segment of electronic cars by claiming market shares from its Chinese competitors. After Ricardo had succeeded in finding enough investors and obtaining bank loans, he was able to purchase 50 *E-Blitz Generation Zero* electric limousines in Spring 2021 to start his fleet of rental cars.

In 2023, after securing additional investments, the company had built up a fleet of more than 700 cars that mostly consist of *E-Blitz Next Level*, the latest compact car by *E-Blitz AG*, the all-wheel drive electric SUV *E-Blitz Offroad* and the van *E-Blitz Cargo*. A couple of older models such as the *E-Blitz Generation Zero* and a handful of electric cars from other manufacturers are part of the fleet as well. *ChEap-Car* has set up local rental facilities at several train stations and airports in Randomistan and also cooperates with furniture and hardware stores by offering special deals for the *E-Blitz Cargo*.

Business is going well. However, inflation in 2023 was at 8,8 % in Randomistan and the prices for electricity and for car maintenance rose by more than 9 %. *ChEap-Car's* CFO warned Ricardo that *ChEap-Car* would fail its target of becoming profitable in 2027 if they did not increase rental prices by at least 11 %.

That was out of the question for Ricardo. To keep prices low, he had to create additional revenue streams: *ChEap-Car* would no longer finance its business only by rental costs but also start selling data that is generated during the usage of rental cars to third parties. On the one hand, *ChEap-Car* managed to strike a deal with *E-Blitz AG* which set out to significantly lower selling and leasing prices and would in return receive data on customer's driving behavior. *E-Blitz AG* was especially interested in data on the usage and performance of the innovative automatic driving assistant that was included in every *E-Blitz* manufactured after July 2022. On the other hand, several companies specialized in marketing and advertisement agreed to pay good prices for data on rental car users.¹

That way, Ricardo managed to keep the increase of the rental prices at 2 %. However, several customers complained on social media about the sharing of their personal data without their agreement and even threatened to take legal steps against *ChEap-Car*. This came as a surprise to Ricardo, as his brother, who works as a lawyer for the government of Randomistan told him that “*under the GDPR, you only need a legitimate interest to do marketing stuff with personal data*” and even drafted a short passage for the privacy policy of *ChEap-Car*.

After consulting with *ChEap-Car's* part-time data protection officer and a specialized external law firm, it was agreed that *ChEap-Car* would start asking customers for their consent before sharing any data related to the use of rental cars with third parties. As Ricardo was afraid that this would lead to a

¹ See **Attachment 1** for a list of advertisement partners and other partners of *ChEap-Car*.

drastic drop in available data, it was decided to incentivize “data donations” by customers. At the same time, the data protection officer insisted that customers should at any point in time have the option to rent a car without any data sharing – even when they initially consented to sharing their data. The company’s **terms and conditions²** and **privacy policy³** were adapted accordingly.

Hence, from July 2023 onward, *ChEap-Car* offers three modes of rental, with the exact prices being set by each local rental facility individually within a margin (depending on the car model) determined by the headquarter:

- The ***sporty mode***, which costs between **€ 20 and € 50 per day** and includes a “data donation” by the customer based on their GDPR-consent. In the sporty mode, there are no limitations on the car’s performance.
- The ***relaxed mode***, which costs between € 25 and 70 per day and does not involve any data sharing. In this mode, the car’s range and engine power are reduced by 15 to 60 %, depending on the car model; in any case, the rental car’s performance must remain reasonable.⁴ The relaxed mode’s daily rental fee must not be lower than that of the sporty mode for the same car model – to take account of the fact that customers who choose the sporty mode also pay with their data.
- The ***premium mode***, which costs three times the relaxed mode’s daily fee for the same car model and involves neither data sharing nor reductions on the car’s performance.

Each manager of a local rental facility has the task of optimizing profit by adjusting at the beginning of each month (i) the specific rental price per car model and rental mode and (ii) the restrictions on range and engine power for the *relaxed mode* within the specified margin.⁵

This system is working well. From July 2023 to July 2024 on average, **52 %** of customers chose the ***sporty mode***, **19 %** the ***relaxed mode*** and **29 %** the ***premium mode*** and the revenue from both car rentals and data selling are satisfactory.

During rental periods of less than a week, only 2 % of customers switch rental modes, for longer periods it is 8 %, the rest stays with the initially chosen rental mode:

- 42 % of switches are from *relaxed* to *sporty mode*, 8 % from *relaxed* to *premium mode*,
- 32 % from *sporty* to *relaxed mode*, 2 % from *sporty* to *premium mode*,
- 10 % from *premium* to *sporty mode* and 6 % from *premium* to *relaxed mode*.

Customer satisfaction surveys (1,256 participants) for that period show the following numbers:

	sporty mode users	relaxed mode users	premium mode users
general satisfaction	79 % great 12 % OK 9 % bad	55 % great 32 % OK 13 % bad	95 % great 4 % OK 1 % bad

² **Attachment 2.**

³ **Attachment 3.**

⁴ For example, with the older E-Blitz Generation Zero, that has a rather low range anyway, range reduction is basically capped at 18,7 %.

⁵ Local rental facilities are no legal entities of their own and their managers are employed directly with *ChEap-Car*.

However, there's always customers who you simply cannot please: In Autumn 2024, the data protection authority of Randomistan serves *ChEap-Car* with a complaint by former customer Ms Linda Walthers, who seems upset with *ChEap-Car's* rental modes and alleges *ChEap-Car* of having infringed the GDPR. The authority orders *ChEap-Car* to submit a written reply to the complaint no later than 20.11.2024.



(AI generated image)

Ricardo tasks the head of the customer service unit to provide him with all information available on Ms Walthers in order to prepare a defense against her allegations. Apparently, Ms Walthers had been renting an *E-Blitz Next Level* at the airport of Coasttown, where *ChEap-Car* is the only rental car provider (the next one, CarRentJoy is 20 min train ride away). Ms Walthers first rented the car in *sporty mode* and later switched to *relaxed mode*.

Ricardo is provided with all available information on Ms Walther's car rental in August 2024 stored in ChEap-Car's customer data base.⁶ Additionally, he is provided with the email correspondence with Ms Walthers.⁷

Ricardo comes to your law firm and asks you to draft a reply to Ms Walther's allegations. He is convinced that his company didn't infringe the GDPR, as their customers always have a choice not to donate any data. Freedom of contract is surely still a thing in Randomistan!

Please note the following:

- Assume that the CheAp-Cars terms and conditions are lawful under European consumer protection law and the law of Randomistan.
- The case brought to you must be reviewed based on the GDPR.
- Be aware of the competence of the DPA of Randomistan, which only has the tasks and powers assigned under Articles 57 and 58 GDPR.
- In any case, make sure to comply with point 8 of the [Rule Book](#).

⁶ Attachment 4.

⁷ Attachment 5.

ATTACHMENT 1**List of advertisement partners and other partners of ChEap-Car (excerpt from records of processing activities)**

Recipient and status	Data shared	Purpose of transmission
E-Blitz AG Germany Electronic car manufacturer Independent controller	(i) geolocation data (ii) driving behavior (iii) times and duration of usage and charging and (iv) the use of additional features and connected devices	Improving products and services of recipient, scientific research, statistics
MassiveAdAttack Ltd Ireland Data broker for online advertisement Independent controller	(i) geolocation data, coarsened to 40 kilometer squares (ii) email address	Advertisement/marketing
UltimateHardcoreMarketing S.p.A Italy Data broker for online advertisement Independent controller	(i) geolocation data, coarsened to 40 kilometer squares (ii) email address (iii) age	Advertisement/marketing
Allwecareaboutisads GmbH Austria Data broker for online advertisement Independent controller	(i) email address (ii) age (iii) chosen rental mode	Advertisement/marketing
Allwecareaboutisads GmbH Austria Data broker for online advertisement Independent controller	(i) geolocation data, coarsened to 40 kilometer squares (ii) email address (iii) chosen rental mode	Advertisement/marketing, scientific research
Marketeer-Racketeer Ltd Malta Data broker for online advertisement Independent controller	(i) email address (ii) chosen rental mode (iii) rental duration	Advertisement/marketing, scientific research

ATTACHMENT 2**Terms and Conditions of ChEap-Car (excerpt)****1. Scope**

These terms and conditions apply to all rental agreements concluded between ChEap-car Ltd (“we”/“us”) and non-commercial users.

[...]

3. Rental Modes

We offer different modes for car rental:

In the relaxed mode, the car’s motor power and access to the battery charge are reduced by up to 60% via remote access by the local rental facility. All customers are entitled to choose the relaxed mode.

In the sporty mode, no limits are applied on the car’s performance. Only customers that have agreed on a data donation as outlined in our privacy policy are entitled to choose the sporty mode. The customer agrees to refrain from using any technical means that might prevent or impair data donations. In the event of the customer ending his or her data donation during the rental period, we are entitled to switch the usage mode to the relaxed mode.

In the premium mode, no limits are applied on the car’s performance. Only customers that agree on paying the premium fee of three times the relaxed modes’ fee are entitled to choose the premium mode.

Customers may switch usage modes during rental by contacting customer support. A switch to a different mode will be executed via remote access by the local rental facility as soon as any missing amount is credited to our account or – in case of a switch to sporty mode – as soon as commencing a data donation has been accepted by the customer.

4. Prices and Payment

Rental costs and deposit costs are set by the local rental facility and must be paid in advance. For customers under the age of 24 or above the age of 70 the local rental facility is entitled to charge an additional risk-fee of up to 12 percent.

Furthermore, we reserve the right to charge an additional risk-fee of up to 15 percent for recurring customers if the car’s automatic driving assistant has registered dangerous driving behavior during previous car rentals under the sporty mode.

[...]

7. Automatic Driving Assistant

All our cars are equipped with an automatic driving assistant (ADA) that can be switched off at any time using the yellow “ADA”-button to the left of the steering wheel. Deactivation of the ADA does not affect data donations to the car manufacturer as outlined in our privacy policy.

The customer acknowledges that the ADA is only a supportive tool and is not capable of driving the car autonomously. Details can be found under www.e-blitz-germany.de/ada/en.

ATTACHMENT 3**Privacy Policy of ChEap-Car**

This privacy policy explains which data we (ChEap-car Ltd., Roadstreet 36, 679 Randomia, Randomistan, support@cheapcar.rd) collect, use and share as a data controller when you rent a car from us.

1. Processed Data, Purpose and Legal Basis**1.1. Contract Performance**

We collect your name, date of birth, address, email address, driver's license information and payment information in order to conclude and perform the car rental agreement subject to our terms and conditions.

The legal basis for this processing are Article 6(1)(b) and (f) of the General Data Protection Regulation (GDPR).

1.2. Data Donations

If you consent to providing a data donation in connection with the sporty mode, we also collect (i) geolocation data (using the car's built-in GPS-tracker), (ii) driving behavior, (iii) times and duration of usage and charging and (iv) the use of additional features and connected devices.

The purposes of these processing activities lie in (i) improving our services and the services and products of the car manufacturer (E-Blitz AG) and (ii) providing you with personalized offers, recommendations and vouchers, both from us and from our partners. We and our partners might use profiling for achieving these purposes.

The legal basis for these processing activities is your consent under Article 6(1)(a) GDPR. Please note that withdrawal of consent for data donations does not affect the lawfulness of processing based on consent before its withdrawal.

For the provision of personal personalized offers, recommendations and vouchers that are not based on donated data, we rely on Article 6(1)(f) GDPR where we and our partners determine that we have a legitimate interest to process your data for that purpose.

2. Sources, Recipients and Transfers outside the European Economic Area

We only collect data from you directly or (subject to your consent) in connection with your usage of the car as outlined in Point 1.2.

For the purposes outlined in Point 1.2. we might share your donated data with E-Blitz AG, Autostraße 12, 12345 Motorstadt, Germany and with our advertisement partners. Please note that data donations transferred prior to the withdrawal of consent might still be used by a recipient for that purpose. If you have any questions regarding such processing activities, we kindly ask you to contact the recipient.

We do not transfer your data to any third country or international organization.

3. Storage Period/Criteria:

We store your data for three years after the end of the car rental agreement. In the event of a legal dispute concerning your data, we will store your data for up to one year after the legal settlement of the dispute.

4. Your Rights:

You have the right to (i) request access to your data, (ii) request rectification of your data, (iii) request erasure of your data, (iv) object to processing based on legitimate interest and (v) data portability regarding data which you have provided to us. Please send any requests to our data protection officer: data.dataprotection@cheapcars.rd.

You also have the right to lodge a complaint with the Randomistanian Data Protection Authority (RDA), Dataprotectionstreet 1, 679 Randomia, Randomistan if you think that we have infringed your data protection rights.

ATTACHMENT 4

**Information on Linda Walther's car rental in August 2024
as stored in ChEap-Car's customer data base**

FACILITY INFO	
Facility	Coasttown Airport
Manager	Roberta Torris
Clerk	Steve Mc Job
Notes by local facility:	n/a
RENTAL INFO	
Start of use all modes	15.08.2024, 11:30am
End of use all modes	29.08.2024, 04:00pm
Start of use <i>sporty mode</i>	15.08.2024, 11:30am
End of use <i>sporty mode</i>	29.08.2024, 02:15pm
Start of use <i>relaxed mode</i>	29.08.2024, 02:15pm
End of use <i>relaxed mode</i>	29.08.2024, 04:00pm
Start of use <i>premium mode</i>	n/a
End of use <i>premium mode</i>	n/a
Automatic driving assistant on	15.08.2024, 12:02am
Automatic driving assistant off	15.08.2024, 12:35am
Deposit paid	650 EUR
Deposit returned	650 EUR
Rent paid up front	350 EUR
Rent paid upon return	n/a
Notes by local facility:	Mc Job (SMJ): Switch to relaxed w/o prior payment (complicated customer), 7 EUR for 29.08.2024 waived with OK Torris
CAR INFO	
Car	E-Blitz Next Level
Number plate	CT 6279 QE
Maximum range	440 km
Maximum Wattage	200 kilowatts
Costs per day <i>sporty mode</i>	25 EUR
Costs per day <i>relaxed mode</i>	32 EUR
Costs per day <i>premium mode</i>	96 EUR
Range reduction <i>relaxed mode</i>	220 km (50 %)
Wattage reduction <i>relaxed mode</i>	120 kilowatts (60 %)
Notes by local facility:	Torris (RTS): Range problems (places in countryside hard to reach acc. to customers), up range to 320 in Sept.
CUSTOMER INFO	
First Name	Linda
Second Name	Walthers
Date of Birth	22.05.1974
Email	lindawalthers1974@provider.rd
Address	Homestreet 22/3/17, 679 Randomia
Driver's License Number	DL 36304 KM10
Contract details accepted?	Yes

(I accept the terms and conditions and the privacy policy [Hyperlinks] ⁸	
Consent given for <i>sporty mode</i> data donation?	Yes
(I accept to provide a data donation to ChEap-Car (<i>Sporty Mode</i> only) for the purposes of improving the services of ChEap-Car and its partners and providing the user with personalized offers, recommendations and vouchers. I note that I can withdraw this consent at any time. Such withdrawal shall not affect the lawfulness of processing based on my consent before its withdrawal. Details can be found in ChEap-Cars privacy policy [Hyperlink]. ⁹)	
Signature	<i>L Walthers</i>
Notes by local facility:	n/a
ADVERT MGMT	
CheAP-Car, legitimate interests	NO
CheAP-Car, consent (data donation)	NO
Third Parties, legitimate interests	NO
Third Parties, consent (data donation)	NO
Notes by SUPPORT	Harold (HMA): Customer called on 23.09.2024 at 08:56am and asked to stop ads by us. Objection confirmed. Also asked to stop ads from others. Told customer to contact senders of unwanted ads. Deactivated all ads on legitimate interest, consent was already deactivated.

⁸ Clicking the Hyperlink opens a pop-up that allows the user to read the relevant documents directly on the screen of a tablet used in all CheAp-Car facilities to onboard customers.

⁹ See above.

ATTACHMENT 5

Email exchange between ChEap-Car and Linda Walthers

From: noreply@cheapcar.rd

To: lindawalthers1974@provider.rd

Date: 15.08.2024, 11:24am

Dear Linda,

We are happy to welcome you to ever-growing family of ChEap-Car users. You chose the sporty mode, so be prepared to feel the full power of the E Blitz! :D We also thank you for donating your data!

Should you have any questions, please do not hesitate to contact us: support@cheapcar.rd

Blitz regards ;)

Your ChEap-Car team

[Attachment: Receipt 2024-08-15- PO8G_CT 6279 QE_COASTT]

From: lindawalthers1974@provider.rd

To: dataprotection@cheapcars.rd

Date: 18.08.2024, 09:02am

Good evening,

I am currently renting an E-Blitz from you. Number plate: CT 6279 QE.

While I am quite upset that this will apparently limit the car's battery and engine, I kindly ask you to stop tracking me. My driver's license no. is DL 36304 KM10.

Kind regards,

Linda Walthers

From: support@cheapcar.rd

To: lindawalthers1974@provider.rd

Date: 24.08.2024, 10:34am

Dear Ms Walthers,

Thank you for your message. We are sorry that you decided to end your data donation! As this also ends your sporty mode subscription effective immediately, we kindly ask you to transfer € 42 to our bank account with the IBAN RD76 9289 0123 2034 0221 to switch to the relaxed mode. Upon receipt of payment the change will be executed.

Kind regards,

Your ChEap-Car team

From: lindawalthers1974@provider.rd

To: support@cheapcar.rd

Date: 27.08.2024, 03:54pm

Hello,

Can you please just stop tracking me? When I signed the form to rent the car, I was informed that I can withdraw consent to this data donation thing at any time. "Any time" was a couple of days ago, when I first texted you!

Thanks, Linda Walthers

From: support@cheapcar.rd

To: lindawalthers1974@provider.rd

Date: 29.08.2024, 02:27pm

Dear Ms Walthers,

We confirm that we have changed your subscription model to the relaxed mode. Please be so kind as to pay the remainder of € 7 upon return of your car.

Kind regards,

Your ChEap-Car team