

## JUS5630 H22

Answer the following two questions. Expressed as percentages of the final grade, the answer to question 1 will count for approximately 70% of the final grade. Question 2 will count for approximately 30% of the final grade. Please note that Question 2 is related to the facts in Question 1.

### Question 1 (70%)

PuntClub (**PC**) is an online gambling company that operates solely in the EU. It offers various gambling products, including sports betting and casino-style games like blackjack and roulette. Most of its profits come from a small portion of users that are frequent users of the site, who might be described as 'problem gamblers'.

Recently, PuntClub has noticed a downturn in its profitability. It has attributed this downturn to various governmental initiatives (at the EU and Member State level) that have sought to reduce the impact of problem gambling. These initiatives include the roll-out of counselling services directed at problem gamblers, and laws requiring that gambling companies (including PuntClub) allow individuals to 'self-exclude' from using their services for a period of 6 months.

In an attempt to increase profitability, PuntClub decides to implement an aggressive, data-driven marketing strategy. It internally develops a marketing tool called 'Discrimin8' (**D**) that uses big data analytics and artificial intelligence to optimally target its users with advertisements and promotions. Discrimin8 relies on a large quantity of information to function effectively, including data derived from its users (e.g. users' age, gender, address, gambling habits, gambling gains or losses, and types of games and sports bet on) and data from other sources (e.g. statistics, publicly available information, information about the win rates of its games, and sport schedules and results). Discrimin8 automatically (i.e. without human intervention) delivers different advertisements and promotions to its users at different times and frequencies with the goal to maximise PuntClub's profits.

When users sign up to PuntClub online, they encounter a checkbox that reads as follows:

*I agree with the **terms and conditions** and the **privacy policy***

Users must click on the checkbox if they wish to create an account with PuntClub that enables them to gamble on the site. The text '**terms and conditions**' and '**privacy policy**' contain hyperlinks to longer PDF documents.

Within the privacy policy PDF document is a heading 'Purposes', which contains the following text:

*'We may use your personal data to provide service functionality, comply with our legal requirements, and enhance user experience. This includes processing your data for:*

- *Registering and verifying your account*
- *Analysing use of our site and apps*
- *In-app or in-service personalisation*
- *Marketing*
- *Complying with anti-money laundering laws*
- *Sharing with our trusted third parties...'*

Brad (**B**) is a self-described gambling addict who has recently taken steps to address his addiction. His preferred gambling website was always PuntClub, but 5 months ago he put himself on the 'self-exclusion' list, so he is currently unable to access their services.

Recently, Brad noticed he was receiving a large amount of promotional material from PuntClub through his email and when browsing the web through advertisements. Brad feels that PuntClub or its algorithms 'know' that he is a problem gambler who is only 1 month away from being able to access his PuntClub account when the 6 month 'self-exclusion' period expires. Brad would like to know what data PuntClub has about him and why PuntClub seems to be targeting him with advertisements. He would also like this perceived targeting to stop.

**Advise** Brad on his rights under the GDPR to this end, and how he can exercise those rights, with respect to PuntClub's processing of his personal data.

## Question 2 (30%)

Consider the following variation of the scenario in **Question 1**. Rather than PuntClub implementing their marketing strategy themselves (i.e. in-house), PuntClub's "Discrimin8" tool is created, trained, and implemented by a big data analytics and artificial intelligence firm, Scrupeless (**S**), that conducts all of its activities from its office in Vietnam. According to a contract between the two, Scrupeless is to 'run PuntClub's online marketing operations as they see fit, with the goal of maximising user engagement and PuntClub's revenue.'

In order to build and operate Discrimin8, Scrupeless has complete access to PuntClub's data, including PuntClub user data. However, the storage of this data remains on PuntClub's private servers in the EU at all times. In other words, Scrupeless builds and implements Discrimin8 remotely, with none of PuntClub's data stored on Scrupeless' servers in Vietnam.

**Briefly advise** PuntClub whether, under the GDPR, (i) this arrangement constitutes a transfer of personal data to a third country under the GDPR; and (ii) whether PuntClub and/or Scrupeless are controllers or processors. It is not necessary to consider whether any transfer of personal data to a third country is lawful.