

## Information from the Questionmark privacy team on complying with the GDPR when using Questionmark Proctoring Record & Review

Last updated: 8 February 2021

### Introduction

This information is aimed at Questionmark customers using Questionmark Proctoring Record & Review in Europe that want to ensure their use of the service is GDPR compliant.

When using Questionmark Proctoring Record & Review, the test taker takes a test at home or an office and has their session recorded via their computer webcam. The computer flags anomalies and administrators can review the recording (or a summary report based on the recording) to check the integrity of the testing process. There has recently been a series of guidance documents or statements from European regulators and one court case relating to online proctoring. The Questionmark privacy team has produced this summary document with six steps for customers to assist them in staying compliant with the GDPR when using Questionmark Proctoring Record & Review.

1	Legal Basis	Identify and document a legal basis under the GDPR for your collection and use of personal data	<input type="checkbox"/>
2	LIA	If your legal basis is legitimate interest, document this in a LIA (legitimate interest assessment)	<input type="checkbox"/>
3	Transparency	Be fully transparent with test takers	<input type="checkbox"/>
4	Retention	Set up and justify a video retention period	<input type="checkbox"/>
5	Requests	Set up to handle test taker requests	<input type="checkbox"/>
6	DPIA	Consider conducting a Data Protection Impact Assessment	<input type="checkbox"/>

This document is not legal or privacy advice, it is provided for information purposes and does not address all possible issues. Each organisation should obtain its own advice based on its individual circumstances. Questionmark can work with customers on an individual basis to address specific requirements.

### **Compliance Steps**

For general information on compliance with the GDPR with assessments, please see the Questionmark white paper [Responsibilities of a Data Controller When Assessing Knowledge, Skills and Abilities](#). Below we address some specific steps to consider for use of Questionmark Proctoring Record & Review in compliance with the GDPR. Please consult with your own privacy team, but you may wish to consider the following points:

1. Legal Basis. Identify and document a legal basis under the GDPR for your collection and use of video personal data. For many organisations, this may be your legitimate interest as test sponsor to maintain test security and the integrity of the testing process. Some educational institutions may be able to use necessity of a task carried out in the public interest as the basis for processing.
2. Legitimate Interest Assessment (LIA). If your legal basis for using video is legitimate interest, you should make a formal document called a Legitimate Interest Assessment which records your reasoning for using video and online proctoring. This document should:
  - Identify the test security reasons to use online proctoring;
  - Explain why video use in proctoring is reasonably necessary;
  - Consider test taker rights and how these balance against your legitimate interests;
  - Justify retaining the video material for a period to review;
  - Include specific examples of cheating relevant to your organization, if possible;
  - Be reviewed at least annually.

Even if your basis of use is other than legitimate interest, it can be helpful to write an LIA as this justifies that you are being proportional in your use of personal data, and can also feed into a DPIA if needed (see below).

3. **Transparency.** Ensure your privacy policy or notice given to test takers in advance of them taking the test clearly and prominently mentions the use of video, includes the legal basis for use of video and mentions the right of test takers to object to use of video (as well as all the other GDPR requirements for personal data in general). Make sure test takers know they are being videoed during the test. In most cases this will be obvious on the test day itself, as they will turn on their webcam, but you don't want a test taker claiming he/she didn't realise. So conspicuously include this in your candidate information or test introduction.
4. **Retention.** The default retention period is 6 months. However, you can delete data sooner yourself using the delete function within Proctoring Gradebook. It's important to justify the retention period within your LIA, including the reasons why you need to keep the data. You may find the Association of Test Publishers guide (see reference below) helpful in putting together this justification.
5. **Test taker requests.** You will need to respond in the normal way to test taker requests. Please reach out to us if you need help in deleting or sharing proctoring data. Also, if a test taker objects to the use of video, consider what your response might be (e.g. reject or allow another way of taking the test).
6. **DPIA.** Under the GDPR, a data controller must conduct a Data Protection Impact Assessment (DPIA) when there is a high risk to the rights and freedoms of individuals resulting from proposed processing of personal data. Many organisations might consider that use of Questionmark Proctoring Record & Review is routine and does not require a DPIA, but if you are testing at high volume, the most prudent course of activity would be to make a DPIA. Consult your privacy team on how to make a DPIA and you may find Questionmark's [template](#) helpful.

There are lots of configuration options in the setup of Questionmark Proctoring Record & Review, for example you can have the video just do a “desk scan” or you can have it do a “room scan”. You should review the various configuration settings from a privacy perspective as well as a security perspective and ensure that you are comfortable that the chosen settings balance test security vs the privacy needs of your test takers.

Proctoring Record & Review uses algorithms to flag possible anomalies but never decides that someone has cheated or not; this is down to you on reviewing the data it provides.

### **Further information**

For further information or if you have any questions, please reach out to the Questionmark privacy team via your account manager.

You may also find the following Association of Test Publishers documents of interest:

- Privacy bulletin on privacy considerations in online proctoring (published April 2020, free of charge)
  - o [https://www.testpublishers.org/assets/privacy%20in%20practice%20bulletin%209\\_%20remote%20proctoring\\_v3\\_04072020.pdf](https://www.testpublishers.org/assets/privacy%20in%20practice%20bulletin%209_%20remote%20proctoring_v3_04072020.pdf)
- Privacy Guidance When Using Video In The Testing Industry (published June 2020, available on Amazon as printed or e-book, small charge)
  - o <https://www.amazon.com/Privacy-Guidance-Using-Testing-Industry-ebook/dp/B08B2ZWM59>
  - o (Also available on Amazon in other countries)