



NDPR Academy® Foundation Course

MODULE 4:

OBLIGATIONS OF DATA CONTROLLERS AND ADMINISTRATORS



Module 4: Overview

In this Module, we will learn about, the:

- 4.1 differences between Data Controllers and Data Administrators; and



- 4.1 obligations of Data Controllers and Data Administrators

4.1 The Data Controller and the Data Administrator: Differences

- 4.1.1 We got introduced to the concepts of the Data Controller and the Data Administrator in Module 1. Please recall that we defined the Data Controller as an organisation or individual who determines the purposes for and the manner in which Personal Data is processed or to be processed. The Data Administrator was defined as an organisation or individual that processes Personal Data, usually at the instance of the Data Controller. Given these two separate definitions, we should readily conclude that there are differences between the two roles.



- 4.1.2 The major difference lies in the Data Controller being the principal of the Personal Data processing activity while the Data Administrator is the agent of the Data Controller.
- 4.1.3 NDPR places greater obligations on the Data Controller as the Data Administrator, more often than not, carries out its processing activities on the instruction of the Data Controller.
- 4.1.4 Some other actors in the Personal Data processing space are those we refer to as Third Parties. Do you recall the definition from Module 2? A Third Party is a person or entity that is not the Data Controller or Data Administrator but by virtue of his/her/its relationship with the Data Controller or Data Administrator, processes or has access to the Personal Data of the Data Subjects of the Data Controller or Data Administrator.

- 4.1.5 These Third Parties typically do not have contracts or other legally binding relationships with the Data Controller, otherwise they would have been Data Administrators. They usually come into possession of the Personal Data of the Data Subjects by other lawful means. An example of a Third Party could be an auditor of a Data Administrator.
- 4.1.6 Depending on the context, a Data Aggregator could easily be any of a Data Controller, Data Administrator or Third Party. Data Aggregators are online service providers who create platforms to process Personal Data whether or not collected by themselves. They include search engine platforms, payment or fintech solutions etc.
- 4.1.7 In **Google Spain SL and Google Inc. v. AEPD (Agencia Espanola de Proteccion de Datos) and Mario Costeja Gonzalez**¹ the Court held that Google by the use of its search engine is a Data Controller in the circumstance that it collects data, including Personal Data stored on the internet, and which data it subsequently retrieves, records, stores and discloses or makes available to its users. It is irrelevant that the search engine undertakes these processing activities in respect of data generally, in as much as it collects Personal Data in the process.

4.2 The Data Controller and the Data Administrator: Obligations

- 4.2.1 Data Administrators must only process Personal Data according to the documented instructions from the Data Controller. NDPR's standards require the relationship of the Data Controller and Data Administrator to be in writing, in a contractual binding document.



- 4.2.2 Data Controllers must ensure that there are confidentiality clauses in their contracts with Data Administrators to ensure that the Data Administrators and Third Parties maintain the integrity of the Personal Data that comes into their possession. Concept such as: staff reliability, non-disclosure agreements, training, monitoring, awareness, disciplinary procedures, et. al. must be present in the contracts.

¹(C-131/12), available at:
<http://curia.europa.eu/juris/document/document.jsf?text=&docid=152065&doclang=EN>

4.2.3 Prior to their execution of a formal contract, the Data Controller needs to establish and be satisfied of the Personal Data security controls and processes that the Data Administrator has in place. The Data Controller must be satisfied with the effectiveness of these security controls. Data Administrators need to be able to assist Data Controllers by taking appropriate technical and organizational measures to protect Personal Data that come into their possession.



4.2.4 The Data Administrator must respect and observe the conditions for Personal Data processing as set out in its contract with the Data Controller. The contract needs to authorize the Data Administrator to undertake the relevant processing activity being undertaken by the Data Administrator or to be undertaken by any Third Party who may act on the Data Administrator's behalf.



4.2.5 Data Controllers need to pay particular attention to the termination clause in their agreements with Data Administrators. Essentially, the termination clause needs to state what the Data Administrator must do with the Personal Data after the completion of the processing activity. Options open to the parties include the Data Administrator securely deleting the Personal Data or returning the Personal Data to the Data Controller.

4.2.6 Data Controllers and Data Administrators will take responsibility for the processing activities of their Third Parties. Data Controllers are required to publish a list of Third Parties with whom Personal Data may be shared. This publication must be included in the audit filing report and must contain:

- 4.2.6.1 categories of the Third-Party recipients;
- 4.2.6.2 name of Third Parties;
- 4.2.6.3 jurisdiction of Third Parties;
- 4.2.6.4 purpose for sharing Personal Data with Third Parties;

4.2.6.5 nature of Personal Data shared, etc.

4.3 Definitions of Common Terms in Module 3

We set out below, a glossary of the new terms and abbreviations used in this Module:

Term	Meaning
Data Aggregator	They are online service providers who create platforms to process Personal Data whether or not collected by themselves. They include search engine platforms, payment or fintech solutions etc.

4.4 Module 4: Summary

- 4.4.1 Data Administrators often obtain their contractual right to process Personal Data from the Data Controller. The Data Controller is ultimately responsible for the infractions of the Data Administrator by virtue of their principal and agent relationship.
- 4.4.2 Data Controllers and Data Administrators must ensure that a documented contract is in place between them.

Further Reading:

1. 2019 Nigeria Data Protection Regulation³
2. **Google Spain SL and Google Inc. v. AEPD and Mario Costeja Gonzalez**⁴

³ Available at: [ndpracademy.ng/resources/Nigeria Data Protection Regulation.pdf](http://ndpracademy.ng/resources/Nigeria%20Data%20Protection%20Regulation.pdf)

⁴ (C-131/12), available at:
<http://curia.europa.eu/juris/document/document.jsf?text=&docid=152065&doclang=EN>