

# Can consent survive in a world of online manipulation?

Luiza Jarovsky<sup>1</sup>

<sup>1</sup>Tel Aviv University, Israel  
luizaj@mail.tau.ac.il

**Abstract.** Obtaining data subject's consent before collecting and processing personal data has been one of the foundations of data privacy regimes both in the US and in the EU. The GDPR, despite having raised the bar in terms of measures that should be taken by data processors and controllers to protect personal data, still relies strongly on the data subject's formal autonomy - his or her formal participation agreeing or not to a certain data collection and processing. This framework could work well in a context where (most) data subjects had a) broad knowledge about different types and risks of data practices and b) extreme self-awareness about own individual biases, cognitive distortions and weaknesses that might lead to manipulation. However, due to characteristics inherent to human nature, conditions "a" and "b" above are almost never present. Additionally, commercial players, striving to catch their share in the multi-billion dollar online data market, deploy all sorts of techniques to capture personal data and conquer data subjects' money, emotions, attention, opinions and privacy. Some of these techniques might be considered mere aggressive commercial strategies, others might cross the line to the realm of unlawful manipulation. The main questions here are: how do we protect privacy in a world of online manipulation? Can we remain relying on informed consent in the context of data protection law or do we need to resource to consumer law tools and standards? How do we separate manipulation from lawful commercial practices? How do we curb manipulative practices without harming free speech and the free market?