

ABERDEEN 2040

Teaching During the Pandemic A Privacy Perspective

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ESCALATE/CRISP workshop
'The digitisation of higher
education'

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NOT ONLY ZOOMBOMBING

WHAT RISKS FOR
DATA PROTECTION
AND PRIVACY?

The
Guardian

'Zoom is malware': why experts worry about the video conferencing platform

The company has seen a 535% rise in daily traffic in the past month, but security researchers say the app is a 'privacy disaster'



The Team



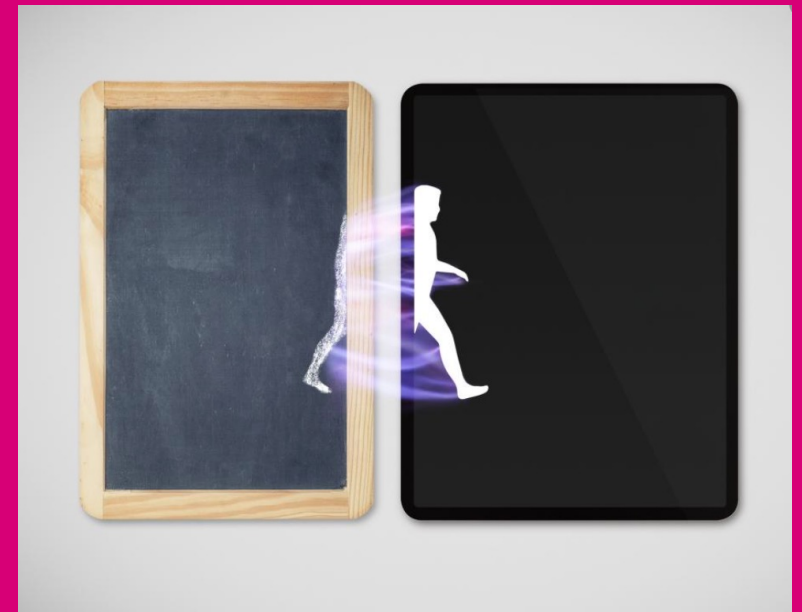


Agenda

1. Outline of the study on Emergency Remote Teaching (ERT)
2. “Platformisation of education”: Data protection aspects
 - Purpose of the processing
 - Lawfulness of the processing
 - Data subject rights
3. Post-covid and the classroom

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Emergency Remote Teaching

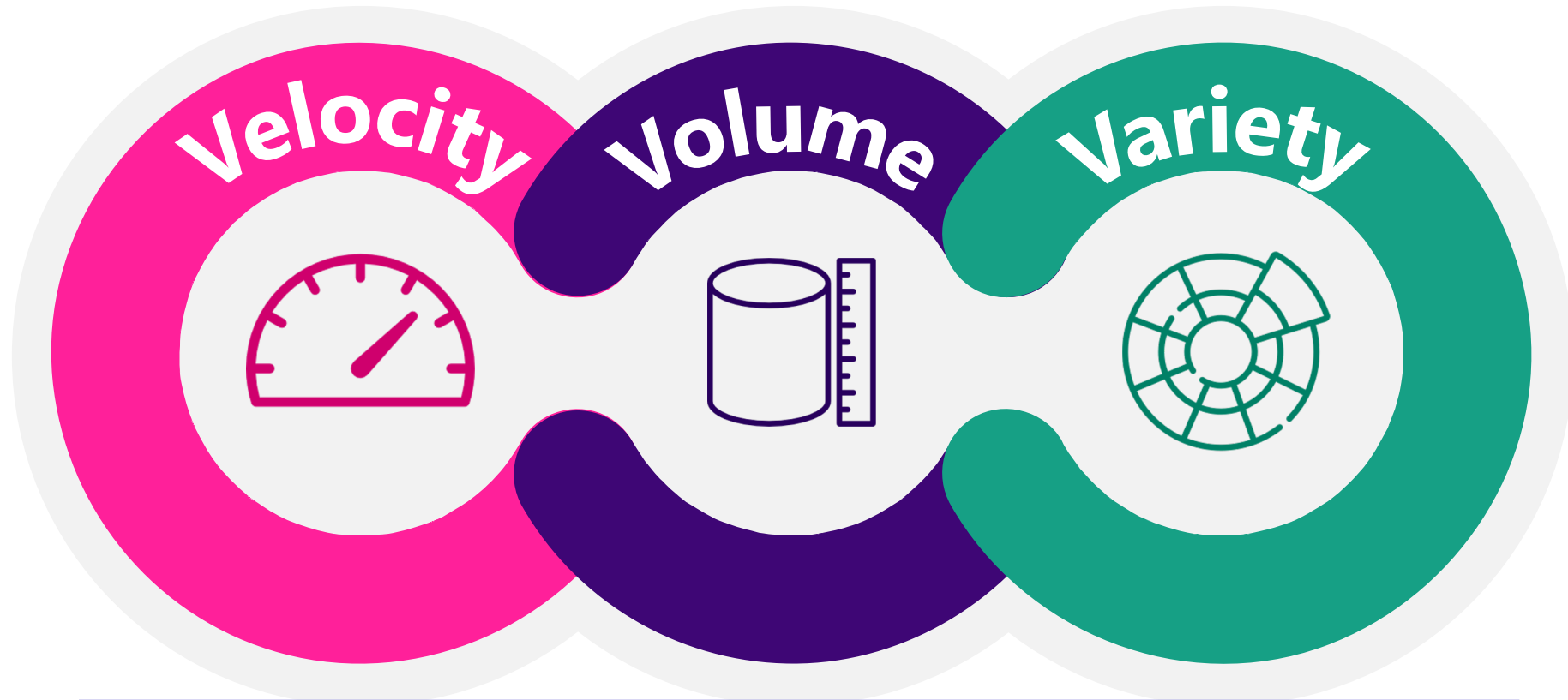


What is (or was) ERT?

“Emergency remote teaching (ERT) is a temporary shift of instructional delivery to an alternate delivery mode due to crisis circumstances. It involves the use of fully remote teaching solutions for instruction or education that would otherwise be delivered face-to-face or as blended or hybrid courses and that will return to that format once the crisis or emergency has abated. The **primary objective** in these circumstances is **not to re-create a robust educational ecosystem** but rather **to provide temporary access to instruction and instructional supports in a manner that is quick to set up and is reliably available during an emergency or crisis**. When we understand ERT in this manner, we can start to divorce it from "online learning."

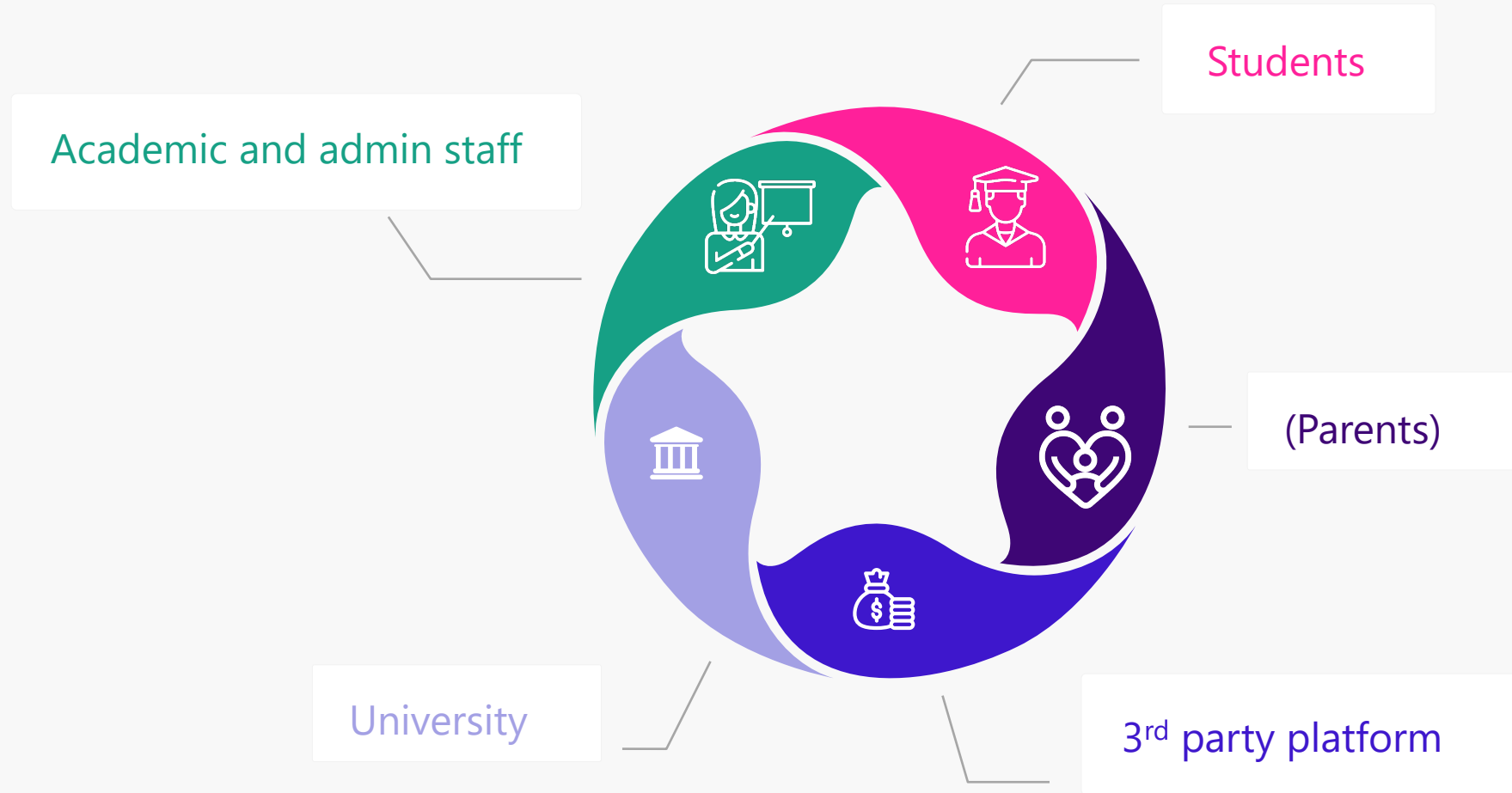
Hodges et al. 2020

The 3Vs of Emergency Remote Teaching



General shift towards the 'platformisation' of education

The educational “circle of trust”



What happens to the data?

2

Emergency data protection issues

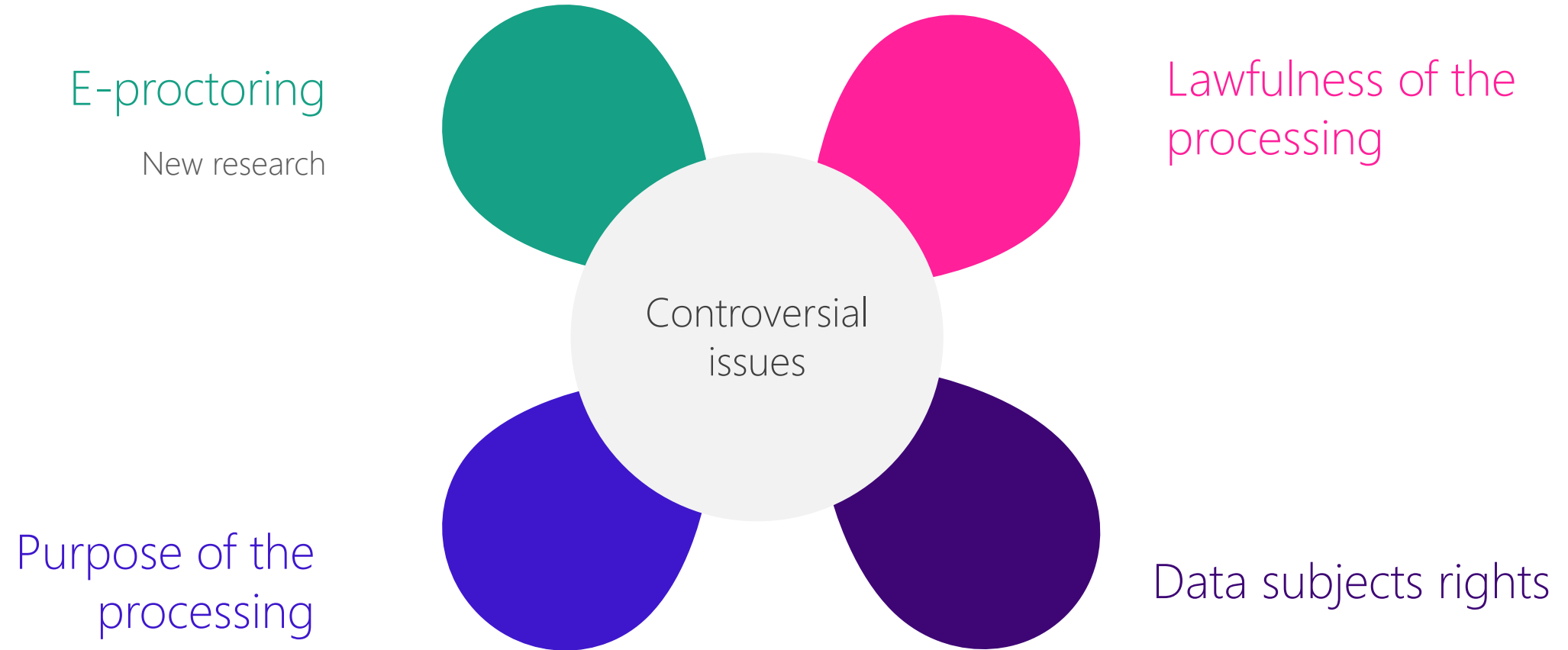
Zooming into Terms and Privacy Policies

The method



- **Private ordering:** traditional law lags behind, T&C as Law
- Cross-reading and analysis of the terms of service, privacy policies, community guidelines, etc. ('legals')
- EU copyright & data protection law focus, but expertise in UK, Italian, French, US, Dutch, Greek, and German law

Points of frictions with the General Data Protection Regulation



Purpose of the processing

- Original purpose of the processing in ERT: provision of education
- Problematic point: all the services analysed also pursue autonomous purposes
- The purpose of the processing is not always transparently described (e.g, “improvement of the service”)
- Issue of compatibility between the purpose of remote teaching and other purposes pursued by the platform (e.g. marketing, or commercial research)

Lawfulness of the processing

- General lack of transparency regarding the lawful basis
 - Difficult to identify the link data-lawful basis or purpose-lawful basis
- When the lawful basis is consent
 - ‘implied’ consent
 - **bundle consent**, where it is impossible for data subjects to give a separate consent to each use
- Usually no provisions about the processing of sensitive data

Data subjects rights

- Full list of data subjects' rights generally mentioned
- Most policies include an explanation for data subjects on how they can exercise their rights (but not always)
- The existence of such rights is sometimes accompanied by vague formulas like “you might” or “may have the right to”
- Sometimes the reader must solve a puzzle to understand what rights she has or what privacy policy applies
- Dubious formulations about the right to lodge a complaint within the DPA

Why data protection in remote teaching matters

- Bureaucratic checks?
- Data protection is a substantial measure for protecting our students' and colleagues' rights
- General issue of lack of transparency
 - Transparency is a condition for the exercise of data subjects' rights
- Rights to privacy and data protection are also enablers of other FFRR and digital well-being → right to education, freedom of expression, etc.
- --> FINE
- Beyond the GDPR and beyond compliance

Takeaways

- The pandemic has exacerbated existing problems of our education system
- Lack of digital sovereignty (and lack of infrastructure)
 - Lack of knowledge of available infrastructures
- Trend during the emergency → reliance on third party digital platforms (non necessarily tailored for education), mainly based in the US
- The paradigmatic shift toward remote teaching brings not only pedagogical challenges but also ethical, organisational, and **legal challenges**

3

Beyond the emergency

Post-covid and the classroom

Living the crisis and getting ready for the postpandemic university

SHORT TERM solutions

- Mapping the existing platforms and evaluation of their characteristics, including their legal ones
 - Select those platforms that can guarantee an adequate level of protection
- Role of national DPAs → proposal for a sweep day

La CNIL appelle à des évolutions dans l'utilisation des outils collaboratifs étatsuniens pour l'enseignement supérieur et la recherche

27 mai 2021

Living the crisis and getting ready for the postpandemic university

MEDIUM TERM solutions

- EXTERNAL RELATIONSHIP University-platform
 - Enhancing the bargaining power of Universities vis-à-vis platforms
- INTERNAL RELATIONSHIP University-students-staff
 - Governance mechanisms: can students and staff have a say on the tools to use?

Living the crisis and getting ready for the postpandemic university

MEDIUM TERM solutions

- Public infrastructure for educational services (Caso 2020)
- Different options to consider: centralisation v. decentralisation (Gurses 2020)
- Hybrid models?

Future lines of research

Legal Aspects of Digital Education Survey

This is a survey about digital education, specifically addressing university educators from any discipline and seniority level, who are actively carry out teaching activities in Italy, the Netherlands and the UK.

This survey is meant to help understanding of:

- what does digital education practically signify/entail
- how we, as teachers and educators, are coping with it
- how digital education practices can be improved

The questionnaire is developed by a group of academic researchers from Ireland (UCD), Italy (Universities of Trento and Sant'Anna Pisa), the Netherlands (University of Amsterdam IViR), and UK (Universities of Stirling and Aberdeen) under the auspices of the Research Award granted by [BILETA \(British and Irish Law Education and Technology Association\)](#).

- <https://www.stir.ac.uk/about/faculties/arts-humanities/law-and-philosophy/law-research/legal-aspects-of-digital-education-survey/>

A black and white photograph of a unicorn statue in front of a Gothic building. The unicorn is the central focus, depicted in a standing posture with its head turned to the left. It has a single, long, spiraling horn on its forehead and a flowing mane. The background features a large, multi-story Gothic building with intricate stonework, arched windows, and a prominent tower with a decorative top. The sky is overcast with soft, diffused light. The overall mood is historical and majestic.

Thanks for your attention!
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References

- <http://copyrightblog.kluweriplaw.com/2020/05/27/emergency-remote-teaching-a-study-of-copyright-and-data-protection-terms-of-popular-online-services-part-i/>
- <http://copyrightblog.kluweriplaw.com/2020/06/04/emergency-remote-teaching-a-study-of-copyright-and-data-protection-policies-of-popular-online-services-part-ii/>
- https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3779238#