

**Microsoft Consumer Profiling Report – Annex 1 – Windows**

**DMA.100160 – Microsoft; DMA.100026 – Microsoft – Operating Systems;**  
**DMA.100017 – Microsoft – Online Social Networking Services**

**1. INTRODUCTION**

**1.1. Glossary**

1. This document uses the following terms:

**Automated Decision-Making:** automated decision-making means the automated decision-making, including profiling, referred to in Article 22(1) and (4) of the GDPR.<sup>1</sup>

**Consent:** consent of the data subject as defined in Article 2, point (32) of the DMA.<sup>2</sup>

**Personal Data:** personal data as defined in Article 2, point (25) of the DMA.

**Profiling:** profiling as defined in Article 2, point (31) of the DMA.

**Third Party:** third party means a natural or legal person, public authority, agency, or body other than Microsoft.

2. This document describes the techniques Windows applies for Profiling of consumers as of 6 January 2024 because the Commission’s template for this document notes: “[f]or the first audited description due six months after designation [i.e., 7 March 2024], the observed period [for the audit] should be the ‘point in time’ two months prior submission of that first audited description [i.e., two months before the compliance deadline].”<sup>3</sup>
3. There is only one instance in which Microsoft engages in consumer Profiling with data collected by Windows or where personalized experiences in Windows are informed by consumer Profiling, and that is when Windows provides users with personalized promotions and recommendations in Windows, an experience that Microsoft refers to as Tailored Experiences. As of 6 January 2024, Microsoft combined personal data from Windows with personal data from other Microsoft products and services to perform this consumer Profiling. Article 5(2) of the DMA introduced a new requirement to obtain Consent for this data combination. To comply with Article 5(2), Microsoft stopped this consumer Profiling on PCs in the EEA before the DMA compliance deadline and will not resume until Microsoft obtains new Consent to combine personal data for the purpose of providing Tailored Experiences. Other data processing performed by Windows does not involve consumer Profiling. The description below covers the

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<sup>1</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation or “GDPR”).

<sup>2</sup> Regulation (EU) 2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets Act or “DMA”).

<sup>3</sup> See [Article 15 DMA Template \(consumer profiling report\)](#), dated 12 December 2023, Section 4.2(b).

techniques Windows used for consumer Profiling that were in place on 6 January 2024. These practices did not comply with the DMA but were subsequently halted before the compliance deadline.

## 2. WINDOWS ONLY USES PROFILING TO DELIVER TAILORED EXPERIENCES

### 2.1. Overview

4. Windows provides users with Tailored Experiences, which sometimes uses consumer Profiling to select the content displayed. These personalized promotions and recommendations are displayed on several surfaces in Windows. They include suggestions on how to use and customize Windows, as well as recommendations and promotions for Microsoft and third-party products and services, features, applications, and hardware to improve the customer’s experience on Windows.<sup>4</sup> Most such promotions are for Microsoft’s own products and services. Microsoft alone selects the third-party products included in promotions. Sometimes Microsoft enters into agreements with Third Parties to include their products in promotions on Windows. For example, Microsoft might agree to promote a third-party application if the Third Party agrees to develop a version of a popular app for Windows.
5. The chart below shows the current surfaces in Windows 10 (“W10”) and Windows 11 (“W11”) where Tailored Experiences that rely on Profiling may appear. Microsoft may also show Tailored Experiences in other Microsoft products, such as the Microsoft Store.

**Table 1. Tailored Experiences On Windows**

Surface In Windows	Description
Settings (home page and accounts page) on W11	Settings include a home page and an account page where offers and recommendations may surface, <i>e.g.</i> , to try Microsoft services like M365.
Lockscreen Spotlight (image on the lock screen) on W10/W11	Windows Spotlight delivers a curated image on a user’s lock screen when they log in, where programmable messaging can be included.
Mini Spotlight on W10/W11	Mini Spotlight offers a tip hotspot on the lock screen when users personalize their lock screen with an image of family, pets, or a favorite place.
Start Menu on W10/W11	Programmable messaging ( <i>e.g.</i> , to try a product, service, or feature) may be included within the user’s Start menu.
Action center notifications on W10/W11	Notifications may include tips and recommendations delivered as “toasts” in the lower righthand corner of the screen before “decaying” (moving) into Action Center. They can also appear in Action Center without sending a toast.

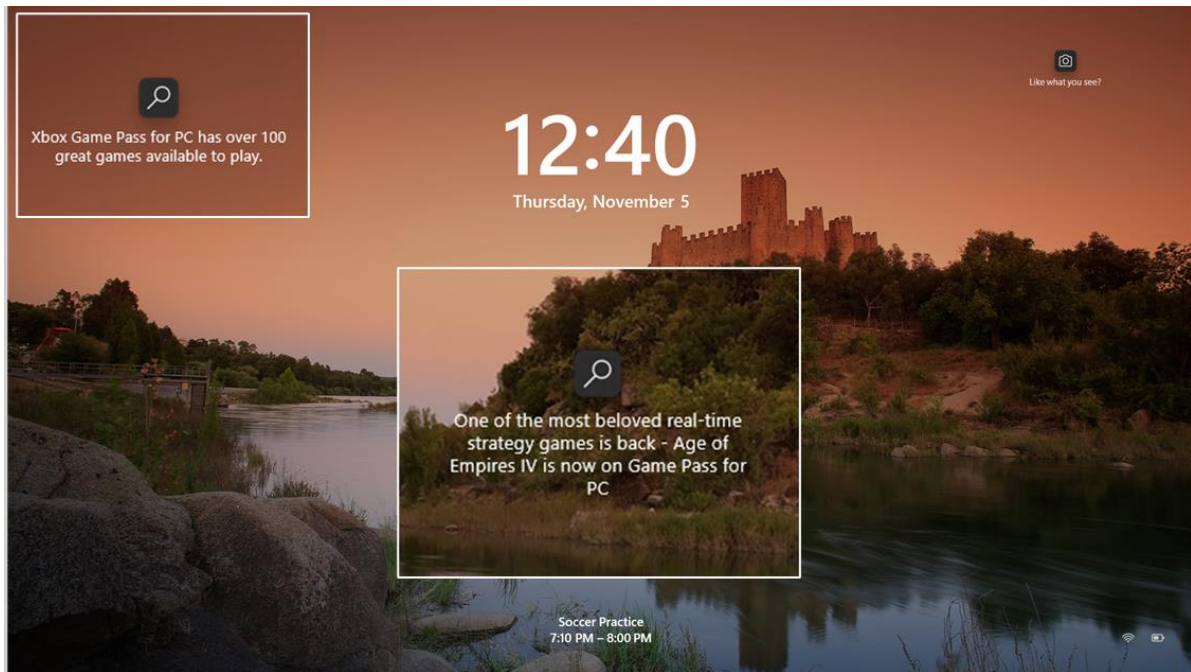
<sup>4</sup> See [Diagnostics, feedback, and privacy in Windows – Tailored Experiences](#).

Surface In Windows	Description
Soft Landing / Bubble tips on W10/W11	A user's action while on their computer may trigger a "bubble tip."
File Explorer on W10/W11	Banners at the top of the file view pane may include promotions and recommendations, <i>e.g.</i> , related to file / storage.
Desktop Spotlight (the image on the Desktop) on W10/W11	A feature of Windows that downloads images and displays as background wallpaper and may include occasional messaging.
Start Account Badging on W10/W11	Users are prompted to complete the setup of their account or device within the Windows Start Menu.
"Second chance" device setup experience on W10/W11	A configuration experience shown to users upon upgrade and other key moments, to help them complete the setup of their device.

*Source: Microsoft*

6. In the following example, illustrated in **Figure 1**, Tailored Experiences on the Lockscreen Spotlight shows a promotion for Xbox Game Pass. Microsoft maintains an inventory of current campaigns containing the available promotions and recommendations together with the criteria for when they should be shown to end users. Some campaigns rely on consumer Profiling, for example to target users in particular audience segments. Other campaigns do not rely on Profiling data but instead depend on matching characteristics directly available from the PC. For example, a campaign might show promotions offering the user a deal for a new PC on devices that are more than four years old, but this does not depend on any Profiling of the user. Lastly, Microsoft always maintains an inventory of "untargeted campaigns" with promotions that do not depend on either Profiling or specific device data. These campaigns often promote general awareness of Microsoft products and technology that are not targeted at particular users. The example shown in **Figure 1** may have used consumer Profiling to determine that the user could be a "Gamer" interested in video games and so is more likely to engage with game-related content. On the other hand, sometimes Microsoft includes this type of content in untargeted campaigns where it might be delivered to any user.

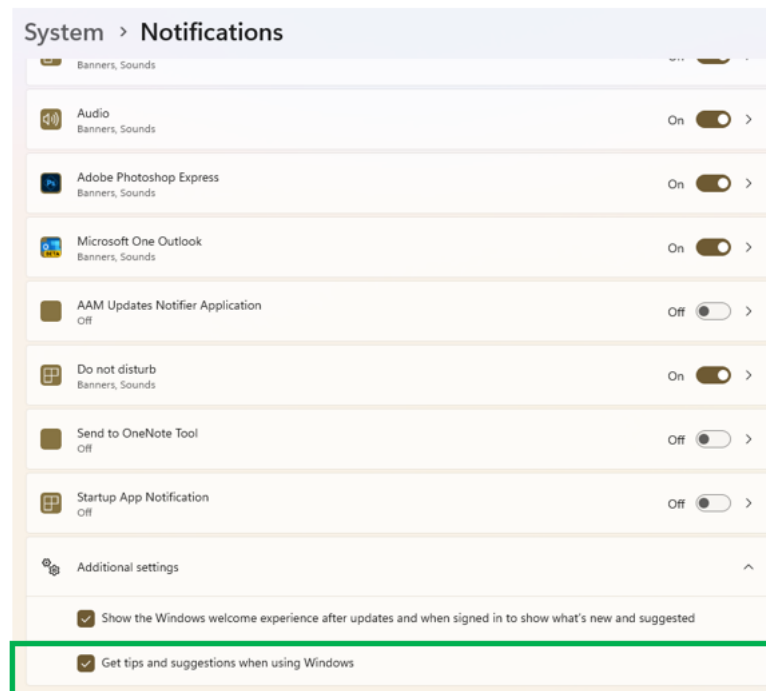
**Figure 1. Tailored Experiences On The Lockscreen Spotlight (Promotional Areas Zoomed In For Readability)**



*Source: Microsoft*

7. The surfaces in Windows where Tailored Experiences uses consumer Profiling can appear each have their own setting that allows the user to control whether promotions do appear, and there are user controls for each. For example, the user can use the following setting to turn off Tailored Experiences on the “Soft Landing” surface (*see **Figure 2***).

**Figure 2. Windows Setting To Control Tailored Experiences For The “Soft Landing” Surface**



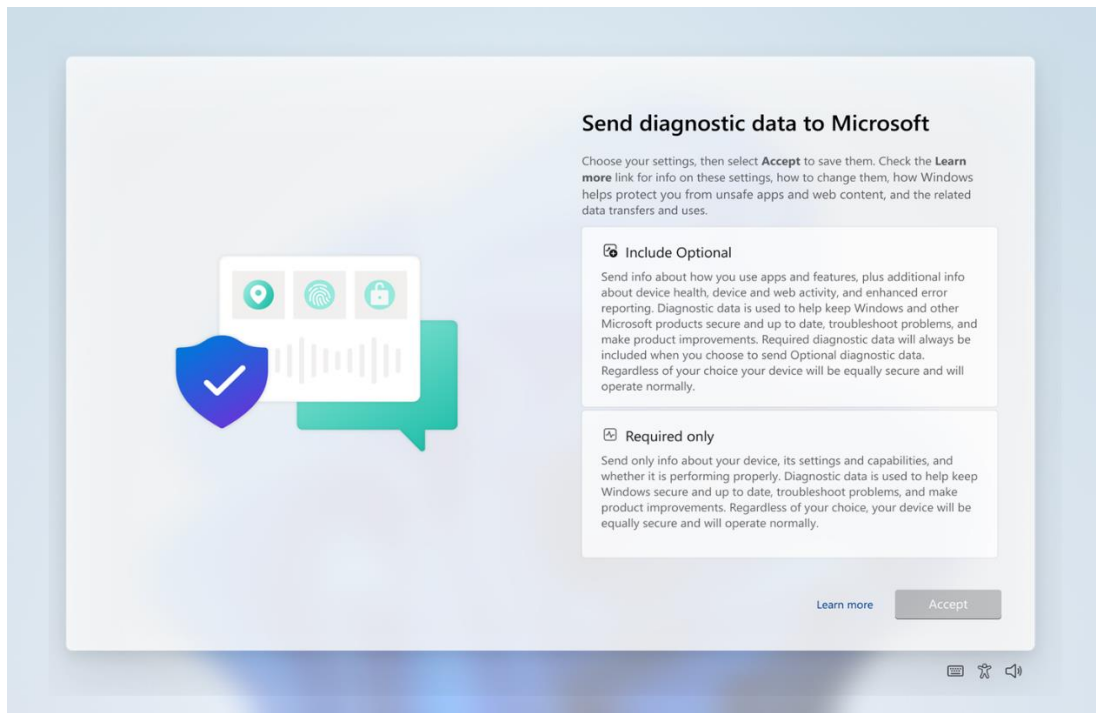
*Source: Microsoft*

8. There are other surfaces in Windows used to show recommendations, but determining what content to show in those locations never relies on consumer Profiling.

### **2.1.1. Microsoft Performs Consumer Profiling To Customize Tailored Experiences**

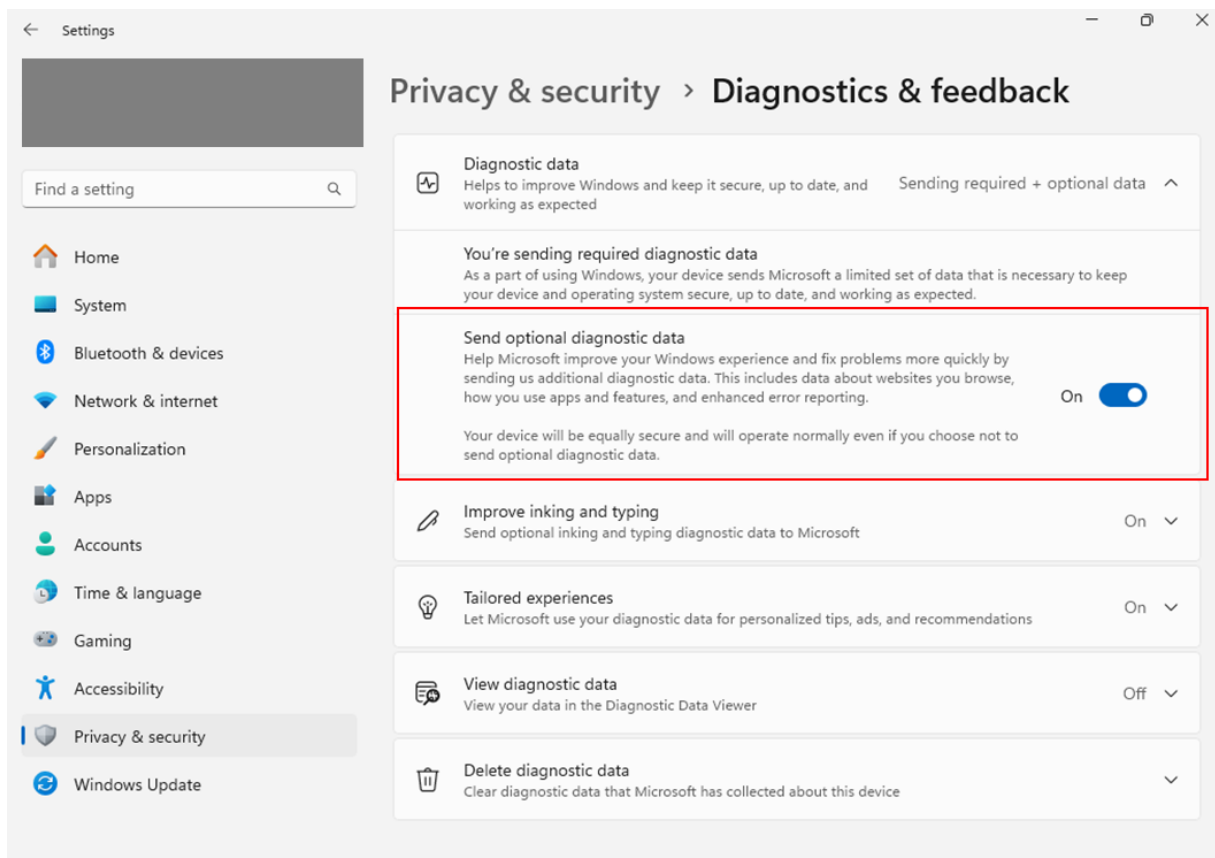
9. Microsoft performs consumer Profiling using personal data from Windows combined with personal data from other Microsoft products and services. Windows uses this Profiling to select the Tailored Experiences it shows the user.
10. The personal data from Windows used for consumer Profiling is Windows Diagnostic Data. Collection of Windows Diagnostic Data in the first place is subject to separate Consent. Windows always collects required Diagnostic Data, which Microsoft uses to keep Windows secure, updated, and working as expected. The user can consent to also provide optional Diagnostic Data, which Microsoft uses to improve Windows and other products and services. The Consent to collect optional Windows Diagnostic Data is gathered through the Consent setting in the device setup experience (**Figure 3**). The user can also control the Consent in Windows settings (**Figure 4**).

**Figure 3. Windows Diagnostic Data Control In Device Setup Experience**



Source: Microsoft

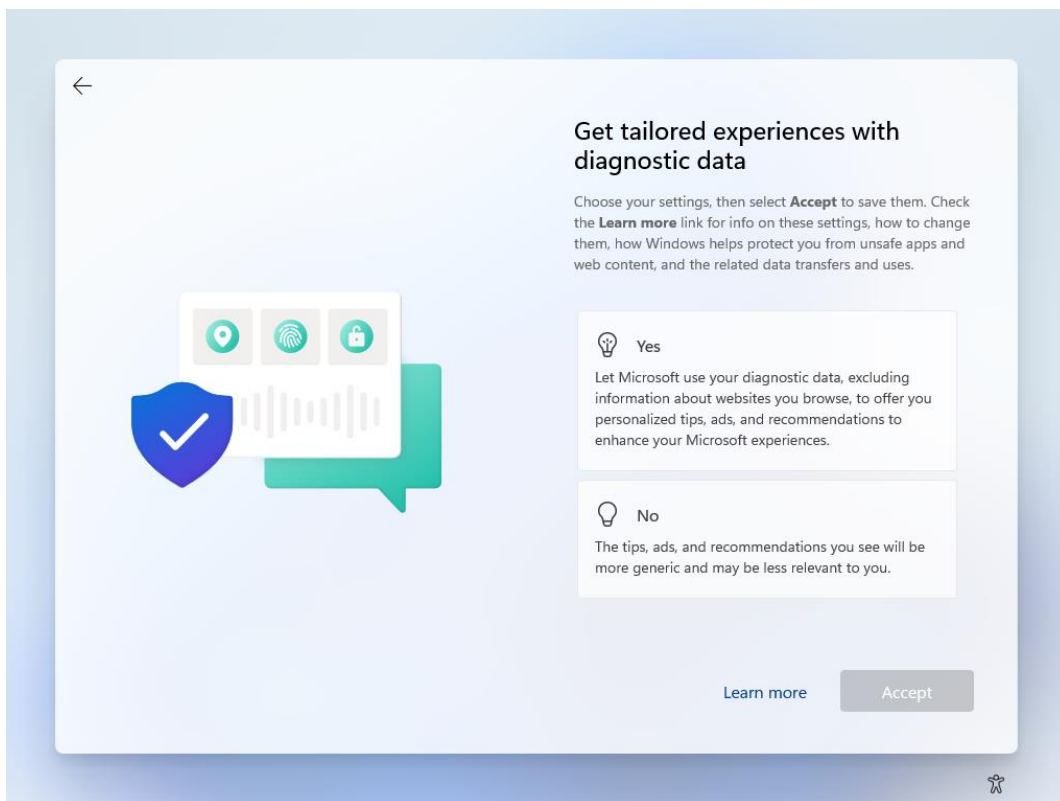
**Figure 4. Windows Diagnostic Data Control In Settings**



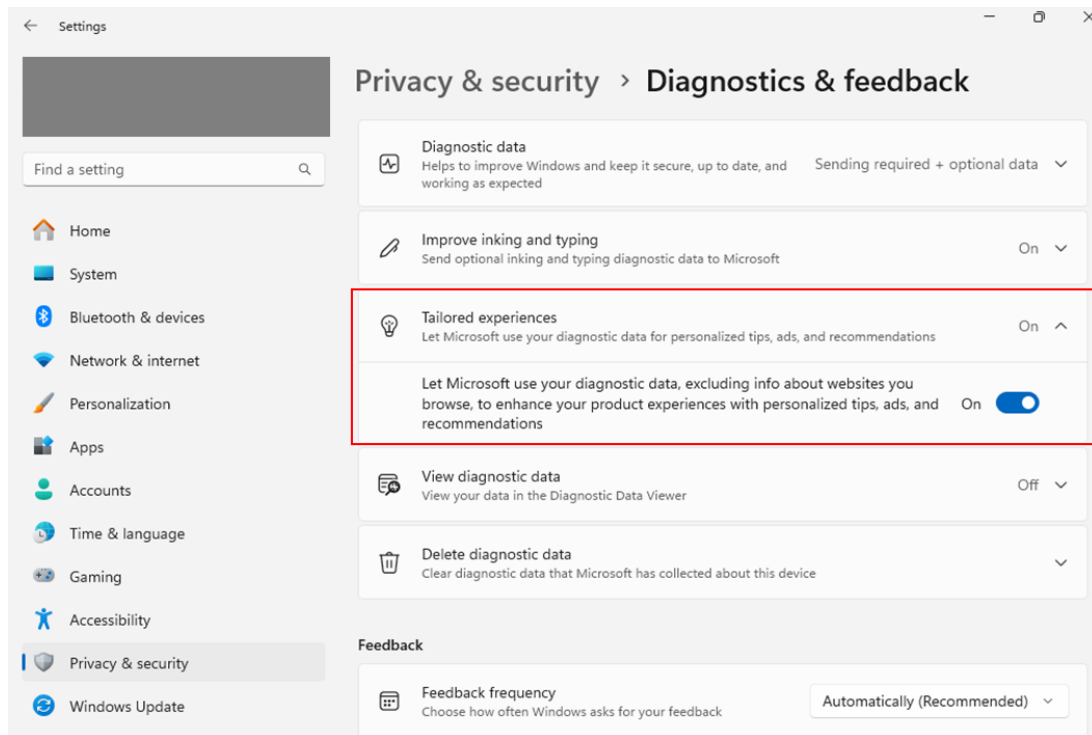
Source: Microsoft

11. Microsoft uses Windows required Diagnostic Data for consumer Profiling if the user consents to use Diagnostic Data for Tailored Experiences. Microsoft only uses Windows optional Diagnostic Data for consumer Profiling if the user both enables collection of optional Diagnostic Data *and* also consents to use Diagnostic Data for Tailored Experiences.
12. The Consent to use Windows Diagnostic Data for Tailored Experiences is called the “tailored experiences” Consent. Windows requests this Consent during the device setup experience (*see* **Figure 5**) and the user can also control the Consent in Windows settings (*see* **Figure 6**).

**Figure 5. Windows “Tailored Experiences” Consent During Device Setup Experience**



*Source: Microsoft*

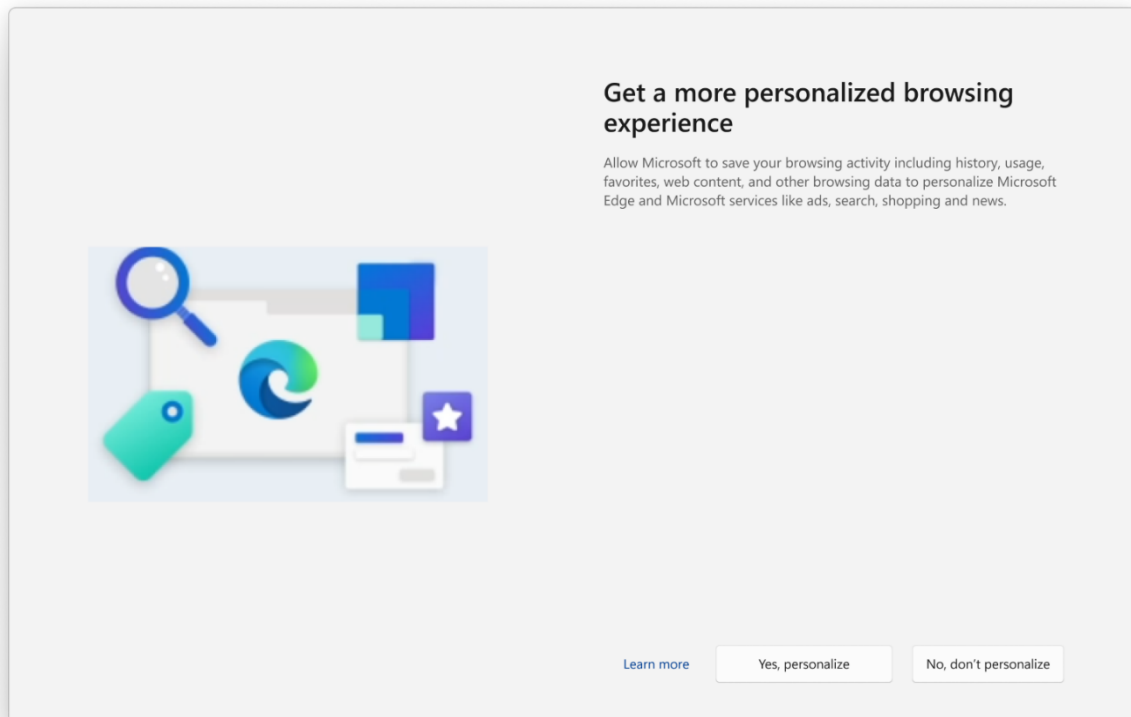
**Figure 6. Windows “Tailored Experiences” Control In Settings**

Source: Microsoft

13. Windows processes personal data from other Microsoft products and services to deliver Tailored Experiences. The controls that determine whether Windows uses personal data from those products or services for Tailored Experiences are determined by each product. For example, Windows may use personal data from Microsoft Edge such as the user’s browsing activity or favorite sites. The Consent to use Edge browsing activity for this purpose is called the “Search, Advertising, and News” Consent (“**SAN**” **Consent**) and is presented separately to the user either during the Windows device setup experience or when Edge is first run (see **Figure 7**). The user can also control this Consent in Edge settings (see **Figure 8**).

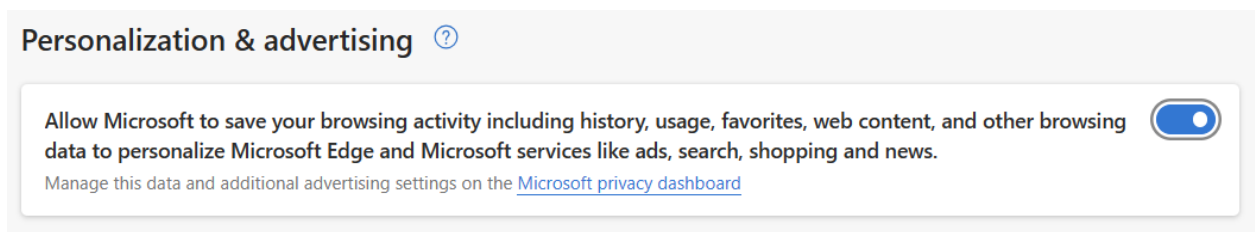


**Figure 7. Microsoft Edge “SAN” Consent In Device Setup Experience**



*Source: Microsoft*

**Figure 8. Microsoft Edge “SAN” Consent In Edge Settings**



*Source: Microsoft*

14. Microsoft performs consumer Profiling using personal data from Windows and other products and services to help sort users into groups of similar characteristics and interests called “audience segments” and generally to determine which promotions will most interest the user. For example, Microsoft may offer different Tailored Experiences for users in specific audience segments.

***2.1.2. Windows Selects Tailored Experiences Using Profiling If Available And Otherwise Uses Non-Profiling Data***

15. As described above, there are several surfaces in Windows where Tailored Experiences may appear. Each surface has its own control allowing the user to decide whether to

see promotions in that location. Windows relies on a cloud service to provide the content that Tailored Experiences displays on these surfaces.

16. When Windows calls the cloud service to request a Tailored Experience, it passes contextual data to the service called the “Session Context.” The Session Context contains information from the device, such as the device identifier, device configuration information, the type of device, the age of the device, the language and locale settings of the device, together with information about where in Windows the Tailored Experiences promotion will be displayed. This Session Context is used to show appropriate promotions to the user regardless of whether Profiling is involved. For example, the Session Context is used to make sure content is in the correct language and appropriate depending on whether the user is an adult or a child.
17. The Session Context also includes the current state of the Windows “tailored experiences” Consent setting, which the cloud service uses to determine which data can be used in selecting the requested promotion. The data included in the Session Context is prepared in real time when a promotion is requested. The same data is typically available to applications running on Windows through public application programming interfaces (“APIs”).
18. The cloud service will use the results of consumer Profiling, if available, together with the Session Context to return a targeted promotion most likely to be relevant to the user. If the user has agreed to the “tailored experiences” Consent, then Windows Diagnostic Data will be included in the consumer Profiling. If the user has not agreed to the “tailored experiences” Consent, the cloud service will not use Windows Diagnostic Data for consumer Profiling, but in some cases may still use the results of consumer Profiling using data from other Microsoft products and services. If no consumer Profiling has been performed for the user, then the cloud service will use only the Session Context to determine what content to return.
19. When a campaign is delivered, beacons collect information about the user’s interactions with the campaign (e.g., clicks, likes, dislikes) on Windows surfaces where promotions are displayed, and send this data to Microsoft. This information may be used by the cloud service to update audience segments, help the service run, and produce reports, which in turn can help increase promotional relevance of future campaigns.
20. The cloud service maintains the inventory of available promotions for different campaigns. As described above, some campaigns rely on Profiling data, some campaigns do not rely on Profiling data but instead use device information provided in the Session Context, and, finally, the cloud service always maintains an inventory of untargeted campaigns with promotions that do not depend on either Profiling or specific device data.

### **2.1.3. *Changes To Consumer Profiling Practices On PCs In The EEA Before The DMA Compliance Deadline***

21. Microsoft halted consumer Profiling on Windows PCs in the EEA before the DMA compliance deadline. Prior to the DMA compliance deadline, Windows performed consumer Profiling for Tailored Experiences using personal data from Windows combined with personal data from other Microsoft products and services. This document generally describes the consumer Profiling techniques in Windows applied

on 6 January 2024. As explained in this section, to comply with the DMA, Microsoft stopped consumer Profiling on Windows PCs in the EEA until Microsoft obtains new Consent to combine personal data for the purpose of providing Tailored Experiences.

22. As of the compliance deadline, Microsoft only uses the Session Context to select appropriate content, but no other data is used to determine what is delivered through Tailored Experiences to PCs in the EEA. As a result, Tailored Experiences on PCs in the EEA provides less personalized content that might not be relevant for the end user.
23. Microsoft did not remove the “tailored experiences” Consent from Windows but, prior to the DMA compliance deadline, stopped processing Windows Diagnostic Data collected from PCs in the EEA to deliver Tailored Experiences even if end users give Consent for this purpose. Microsoft expects at a later date to replace the “tailored experiences” Consent on PCs in the EEA with a new DMA-compliant consent and will subsequently resume consumer Profiling for users who provide Consent.

## **2.2. Information About The Consumer Profiling Technique**

24. Microsoft halted consumer Profiling on Windows PCs in the EEA until Windows is updated to obtain new Consent to combine personal data from Windows with personal data from other Microsoft products and services for the purpose of showing Tailored Experiences. In accordance with the Commission’s Article 15 DMA Template,<sup>5</sup> the details regarding Tailored Experiences in this section describe Microsoft’s data practices on 6 January 2024 even though these practices were stopped prior to the DMA compliance deadline. Future versions of this report will include additional information based on changes to those practices such as if Microsoft reintroduces consumer Profiling techniques on Windows PCs in the EEA.

### **2.2.1. Specific Purpose Pursued By The Profiling Technique**

*a) the specific purpose(s) pursued by each profiling technique(s);*

25. Microsoft engages in consumer Profiling in Windows, and this experience is referred to as Tailored Experiences. Tailored Experiences offer suggestions on how to use and customize Windows, as well as recommendations and promotions for Microsoft and third-party products and services, features, apps, and hardware to improve the Windows experience. Windows uses Profiling to place users into different audience segments, which it then uses to improve the relevancy of the promotions for individual users.

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<sup>5</sup> See [Article 15 DMA Template \(consumer profiling report\)](#), dated 12 December 2023.

**2.2.2. Categories Of Personal Data And Data Derived From User Activity Processed For Profiling Consumers**

*b) a description of each category of personal data and data derived from user activity (in particular, distinguish data and personal data categories actively provided by consumers<sup>6</sup> from observed data<sup>7</sup>) and sources (e.g., first or third party service) for each of these categories of data and a description of personal data processed for profiling consumers applied to or across the designated core platform services (in particular, distinguish data and personal data originating from each of the gatekeeper’s services);*

26. Microsoft performs Profiling using personal data and data derived from user activity in the following categories and from the first-party applicable sources to deliver Tailored Experiences.

**Table 2. Categories Of First-Party-Sourced Personal Data And Data Derived From User Activity**

Data Category <sup>8</sup>	Provided or Observed	Data Source
<b>Device, Connectivity, and Configuration data:</b> Data that describes the connections and configuration of the devices connected to the service and the network, including device identifiers (e.g., IP addresses) configuration, setting and performance.	Observed	Windows
<b>Product and Service Usage Data:</b> Data captured about the end user’s interaction with a service or product, including through beacons. Captured data includes the records of the end user’s actions, the capabilities used, and commands provided to the capabilities.	Observed	Windows, Office, Microsoft Account, Xbox, Microsoft Edge, First-Party Universal Event Tracking (“UET”) <sup>9</sup>
<b>Product and Service Performance Data:</b> Data collected about the measurement, performance, and operation of the capabilities of the product or service. This data represents information about the capability and its use, with a focus on providing the capabilities of the product or service.	Observed	Windows

<sup>6</sup> For example, profile information (e.g., age, sex, location and other) provided by consumers through any core platform service, or provided through any other service of gatekeeper, when this data is combined or cross-used with that of a core platform service.

<sup>7</sup> Observed data are understood as data provided by the consumer by virtue of using a service or device. For example, data related to, or derived from, the activity of the consumer on the gatekeeper’s core platform services or other services (e.g., the content that a user has consulted, shared, or liked) as well as data related to, or derived from, the use of devices on which the gatekeepers’ core platform services or services are provided (e.g., GPS location).

<sup>8</sup> The table above reflects the data categories used for Tailored Experiences. For examples of the types of data in the data categories listed above, see, e.g., [Description of Windows optional diagnostic data](#) and [Data collection summary for Xbox](#).

<sup>9</sup> Data Microsoft gets when marketers place Microsoft’s web beacons on their sites to allow Microsoft to collect information on their sites. For additional background information on UET, see [Universal Event Tracking - Microsoft Advertising](#).

<b>Data Category<sup>8</sup></b>	<b>Provided or Observed</b>	<b>Data Source</b>
<b>Software Setup and Inventory Data:</b> Data that describes the installation, setup, and update of software.	Observed	Windows
<b>Demographic Information Data:</b> Data containing demographic information about the end user provided to the application or cloud service.	Provided	Microsoft Account, LinkedIn, Xbox
<b>Basic Account Data:</b> Data acquired about an end user’s purchases, subscription, and licensing.	Observed	Microsoft Account, Xbox, Consumer Commerce Data & Analytics
<b>Browsing History Data:</b> Data collected from browsing history to personalize advertising, recommendations, and experiences in Windows (e.g., raw search queries, favorite sites, navigation URLs, domain, search clicks).	Observed	Microsoft Edge, Bing, MSN, Microsoft Advertising

Source: Microsoft

**2.2.3. Description Of Personal Data Originating From Third Parties**

*c) a description of each category of personal data and data originating from third parties (in particular, distinguishing data and personal data originating from third parties, such as advertisers, publishers, developers, or others) and/or derived from user activity on third parties’ services (in particular, distinguishing data and personal data categories actively provided by consumers from observed data and inferred data originating from third parties);*

27. Microsoft uses UET data from third-party websites to deliver Tailored Experiences.

**Table 3. Categories Of Third-Party-Sourced Personal Data And Data Derived From User Activity**

<b>Data Category</b>	<b>Provided or Observed</b>	<b>Data Source</b>
<b>Product and Service Usage Data:</b> Data captured about the end user’s interaction with a service or product, including through beacons.	Observed	UET from third-party websites

Source: Microsoft

**2.2.4. Description Of Inferred Data About Consumers**

*d) a detailed description of the inferred data<sup>10</sup> about consumers derived from the processing of the data and personal data listed in point (b) and/or (c) as well as an explanation of how such derived or inferred data were created;*

28. Windows processes personal data in the categories listed above to produce the following inferences.

<sup>10</sup> Inferred data are understood as data derived by the gatekeeper from the processing of observed data or data actively provided by the consumer. For example, consumers’ interests or socio-economic status. Further guidance on the distinction between provided data, observed data and inferred data, can be found in the European Data Protection Board’s Guidelines on the targeting of social media users.

**Table 4. Description Of Inferred Data About Consumers**

Inferred Data	Inferred Data Description	Inferred Data Creation
Audience Segments	<p>Sorting people into groups of similar characteristics and interests. These groups are called “audience segments.”</p> <p>The available segments change over time and new segments may be created for specific campaigns used to deliver particular promotions.</p> <p>Some examples of audience segments are listed below:</p> <ul style="list-style-type: none"> <li>• Avid Gamers</li> <li>• Edge Primary Browser</li> <li>• Game Launchers</li> <li>• High System Spec Devices</li> <li>• Medium System Spec Devices</li> </ul>	Audience segments may either be created based on programmatic groupings, or through custom segments that are built for specific targeted campaigns.
Remarketing Segments	<p>Sorting people into groups (segments) based on the usage of Microsoft websites.</p> <p>For example:</p> <ul style="list-style-type: none"> <li>• Browsing behavior patterns</li> <li>• Cart abandonment</li> <li>• Checkout</li> </ul>	Remarketing segments are created based off a user’s website usage patterns.
Similar Audience Modeling	<p>Sorting people into groups (segments) based off a remarketing or audience segment.</p> <p>Used when an advertiser wants additional users in a segment that have synonymous characteristics to existing segments.</p>	Created based off a prior segment (either audience segment or remarketing segment).
User Representation in Modeling	<p>Mathematically modeling a representation of a given user as a vector to compare its distance to promotion vectors. The relative distance between a user representation vector and promotion vectors is then used to determine which targeted campaign to promote to the user. The mathematical model is built by encoding user activities into digital tuples to represent users. These tuples are used in multiple modeling projects like Selection and Audience Segments.</p>	UET Data, Product and Service Usage Data are used in the training of the model that represents a given user as a vector. Additional data sources such as location, device and machine learning estimations of behavior are also used.

*Source: Microsoft*

### 2.2.5. *Retention Duration Of Provided, Observed, And Inferred Data*

*e) the retention duration of each category of data and personal data listed in points (b), (c), and (d), or duration of retention of the profile itself;*

29. Microsoft retains personal data for as long as necessary to provide products, fulfill transactions, or for other legitimate purposes. As indicated in the Microsoft Privacy Statement, because these needs can vary for different data types, the context of Microsoft's interactions with customers or their use of products, actual retention periods can vary significantly.<sup>11</sup> For example, personal data collected from Windows and used by Tailored Experiences is typically retained for 10 days, but may be stored for up to 18 months. Microsoft uses the personal data processed for Tailored Experiences (listed in [Section 2.2.2](#) and [Section 2.2.3](#) above) for other purposes, which determine for how long that personal data is retained.
30. Regarding the inferred data described in [Section 2.2.4](#) above, users are sorted into audience segments for promotions and this data is retained for a maximum of 30 days. Audience Segments are typically refreshed every 24 hours. Similar Audience Modeling data is stored for 30 days. Remarketing segments are defined by advertisers, so these segments could be active for any duration between one day and 390 days.

### 2.2.6. *Legal Ground For Consumer Profiling*

*f) the legal ground relied on by the gatekeeper under Article 6(1) and, where applicable, Article 9(2) of Regulation (EU) 2016/679. The reporting under the present point should distinguish the legal ground relied on under Regulation (EU) 2016/679 for the processing of personal data collected directly by the gatekeeper from the legal ground relied on for the processing of personal data originating from third parties;*

31. The primary legal ground for the processing of personal data collected directly by Microsoft to deliver Tailored Experiences includes the provisions described in [Table 5](#) below.

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<sup>11</sup> Microsoft's data retention practices are described in [Microsoft Privacy Statement](#).

**Table 5. Profiling Techniques From First-Party-Sourced Data And Relevant Legal Ground**

<b>Data Source</b>	<b>Legal Ground Under GDPR Article 6(1)</b>
Windows	(a) Consent for Diagnostic Data, (f) Legitimate Interest for Beacon Data
Microsoft Edge	(a) Consent
Xbox (Purchase, User dimensions, Titles)	(f) Legitimate Interest
Consumer Commerce Data & Analytics	(f) Legitimate Interest
Microsoft Advertising (Ad impressions, clicks)	(f) Legitimate Interest
UET (from 1P websites)	(f) Legitimate Interest
Bing (Search queries, results, page titles)	(f) Legitimate Interest
Office	(f) Legitimate Interest
MSN	(f) Legitimate Interest
Microsoft Account	(f) Legitimate Interest
LinkedIn	(f) Legitimate Interest

*Source: Microsoft*

32. The primary legal ground for the processing of personal data collected by Third Parties to deliver Tailored Experiences includes the provisions described in **Table 6** below.

**Table 6. Profiling Techniques From Third-Party-Sourced Data And Relevant Legal Ground**

<b>Data Source</b>	<b>Legal Ground Under GDPR Article 6(1)</b>
UET (from 3P websites)	(f) Legitimate Interest

*Source: Microsoft*

33. Microsoft does not rely on any legal ground under Article 9(2) of the GDPR for processing of personal data for Tailored Experiences.

#### ***2.2.7. Consent For Consumer Profiling Under Article 5(2) Of The DMA***

*g) whether consent is required under Article 5(2) of Regulation (EU) 2022/1925 for the processing of data and personal data listed in points (b), (c) and (d) for each purpose of profiling consumers. The reporting under the present point should distinguish between consent under points (a) to (d) of Article 5(2) of Regulation (EU) 2022/1925. In addition, if consent is not required, the reporting under the present point should provide an explanation;*

34. Consent was not required under Article 5(2) of the DMA for the practices in effect on 6 January 2024 because this was prior to the DMA compliance deadline.

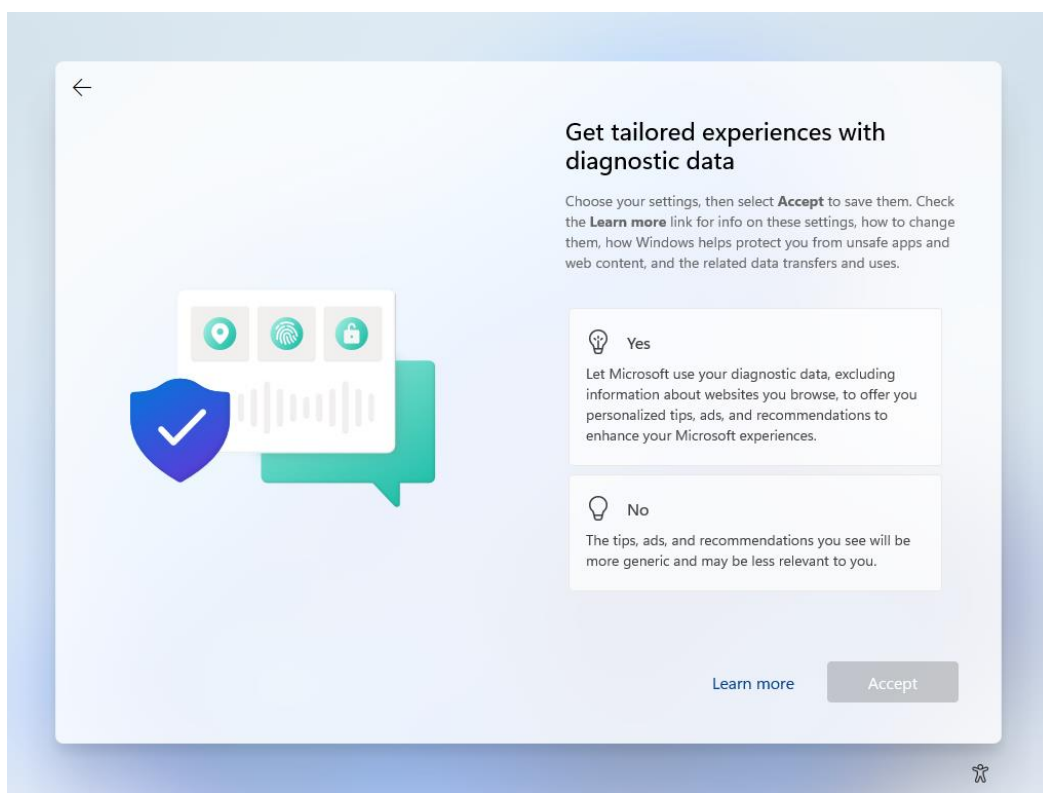


**2.2.8. Steps Taken To Seek Consent For Consumer Profiling**

*h) where consumer consent is required for the given purpose and obtained by the gatekeeper under Regulation (EU) 2016/679, Directive 2002/58/EC and/or Regulation (EU) 2022/1925, a description of any steps taken to seek such consent to profiling, including visual representations (click-by-click) on how consumers can refuse or withdraw consent, any consequences of such refusal or withdrawal, and how any such consequences are notified to the consumer;<sup>12</sup>*

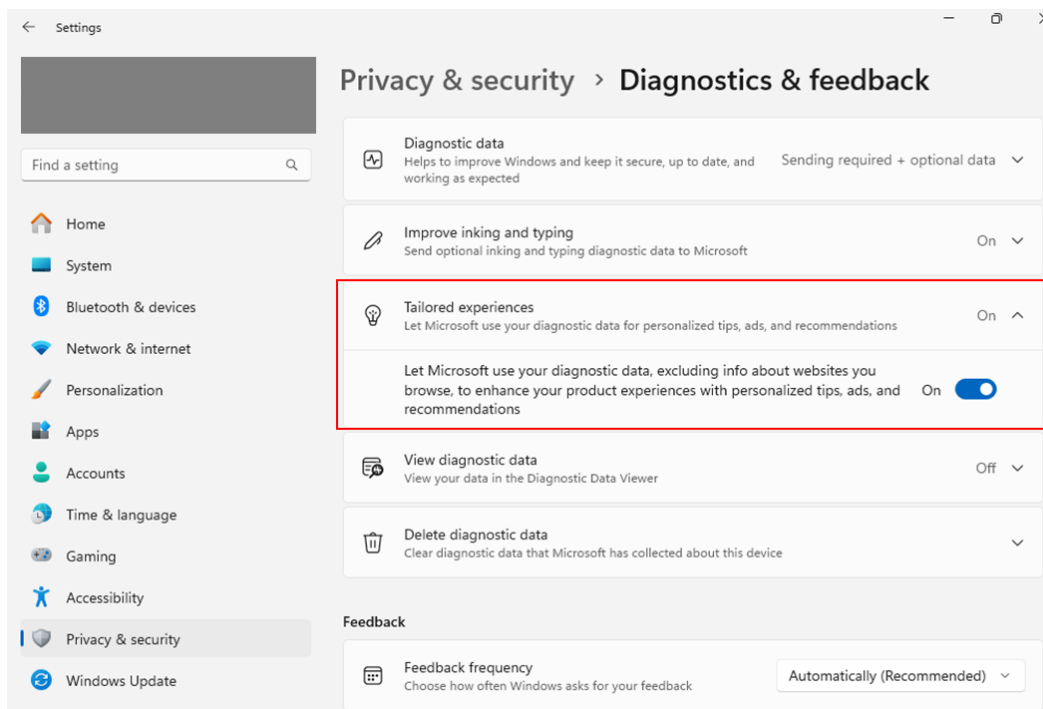
35. The Consent to use Windows Diagnostic Data for Tailored Experiences is called the “tailored experiences” Consent. Windows requests this Consent during the device setup experience (see **Figure 5** copied below) and the user can also control the Consent in Windows settings (see **Figure 6** copied below).

**Figure 5. Windows “Tailored Experiences” Consent During Device Setup Experience**



Source: Microsoft

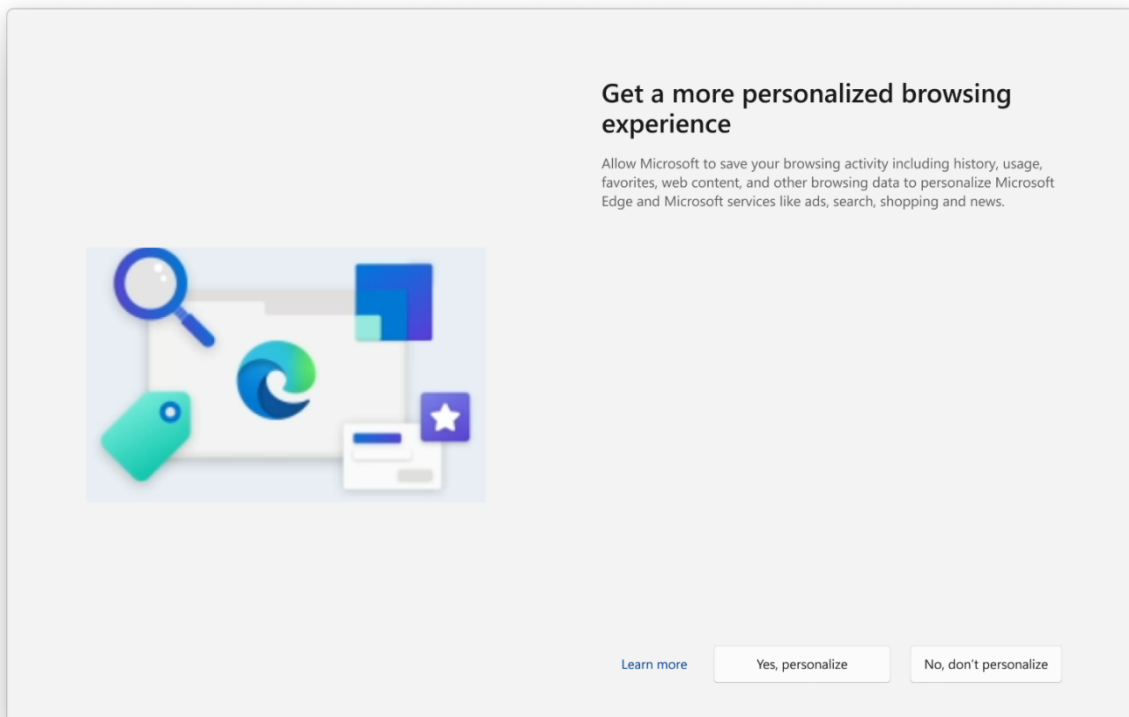
<sup>12</sup> It should be clear from the description what measures (e.g., in design) the gatekeeper takes to guarantee a neutral presentation of choices to the end user, and the level of facility or ease (e.g., how many clicks) for an end user to refuse or change their consent. The consequences of such refusal or withdrawal should also be clear from the description.

**Figure 6. Windows “Tailored Experiences” Control In Settings**

Source: Microsoft

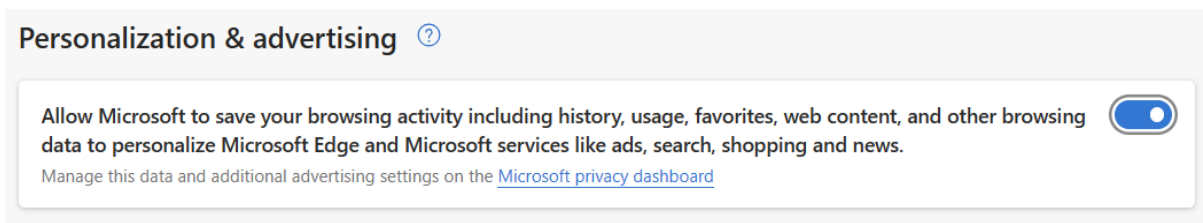
36. The consequences of accepting, refusing, or withdrawing the “tailored experiences” Consent are the following: (i) if the user has agreed to the “tailored experiences” Consent, then Windows Diagnostic Data will be included in the consumer Profiling, and (ii) if the user has not agreed to the “tailored experiences” Consent, the cloud service will not use Windows Diagnostic Data for consumer Profiling, but in some cases may still use the results of consumer Profiling using data from other Microsoft products and services.
37. The steps taken to notify consumers are described in **Section 2.2.12** below.
38. The Consent for Windows to use Edge-browsing activity for Tailored Experiences is the “Search, Advertising, and News” Consent, or SAN Consent, which is presented separately to the user either during the Windows device setup experience or when Edge is first run (see **Figure 7** copied below). The user can also control this Consent in Edge settings (see **Figure 8** copied below). There are no consequences to refusing or withdrawing this Consent except that the associated data will not be used for the purposes indicated in the Consent language, which includes Tailored Experiences.

**Figure 7. Microsoft Edge “SAN” Consent In Device Setup Experience**



Source: Microsoft

**Figure 8. Microsoft Edge “SAN” Consent In Edge Settings**



Source: Microsoft

### ***2.2.9. Steps Taken To Seek Consent Obtained By Third Parties For Consumer Profiling***

*i) where consumer consent is required for the given purpose and obtained by third parties (e.g., as required under Article 5(2)(a) of Regulation (EU) 2022/1925), a description of any steps taken to seek consent to the sharing of personal data with the gatekeeper for the purpose of profiling, including visual representations (click-by-click) on how consumers can refuse or withdraw consent, and how the gatekeeper ensures respect of consumer’s consent refusal or withdrawal;<sup>13</sup>*

39. Microsoft does not rely on Consent and instead relies on legitimate interest to use third-party data for Tailored Experiences.

<sup>13</sup> The gatekeeper should refer to a consent framework to which it adheres.

### 2.2.10. *Whether Automated Decision-Making Takes Place On The Basis Of An Applied Profiling Technique*

*j) whether automated decision-making takes place on the basis of an applied profiling technique, the number and object of such automated decisions, the legal effects and other similarly significant effects<sup>14</sup> that the automated decision-making mechanism is producing or may produce, and a description of the algorithms underpinning the automated decision mechanism;*

40. Windows, including Tailored Experiences, does not perform any Automated Decision-Making, which means decisions based solely on automated processing that produce legal or similarly significant effects as referred to in Articles 22(1) and 22(4) of the GDPR. There is no Profiling performed in Windows that produces legal or similarly significant effects for end users. Tailored Experiences only provides promotions within Windows, and users can disable these promotions with no impact to any other feature of Windows.

### 2.2.11. *Qualitative And Quantitative Impact Or Importance Of The Profiling Techniques*

*k) qualitative and quantitative impact or importance of the profiling techniques in question for the services and business operations of the gatekeeper. Under this point, please also include information on the number of end users exposed to each profiling technique per year, and the number of business users using the gatekeeper's services based on profiling per year, within the core platform service and, where relevant, across multiple core platform services;*

41. Using Profiling techniques to deliver Tailored Experiences allows Microsoft to target campaigns to users that are more relevant, which increases the likelihood that a user will engage with a promotion including making a purchase where that is offered.
42. Windows does not routinely produce and monitor metrics that compare Tailored Experiences with and without consumer Profiling. Microsoft has identified anecdotal examples from *ad hoc* analyses that compared outcomes with and without personalization based on Profiling.
43. In the first example, Windows displayed a promotion for trials of the Microsoft Game Pass service during the Windows device setup experience. An A/B test result showed that there was significantly more engagement by users identified as gamers versus showing the promotion to users without knowing if they were gamers. In a second example, Microsoft offered users personalized recommendations for websites they might find helpful in the Windows Start menu. In an A/B test comparing personalized website recommendations in Start against a control sample without personalization, Microsoft observed statistically significant increases in user engagement with the personalized websites versus the non-personalized control.
44. Windows allows multiple accounts on a single PC, which lets each user provide or withhold Consent for Tailored Experiences. As of 6 January 2024, out of

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<sup>14</sup> A decision produces legal effects when the subject's legal rights are impacted. This could include, for example, any resulting effect on their right to vote, their ability to take out a loan, and their position in e-recruitment.

approximately 275 million potential Windows PCs in the EEA, approximately 74 million have users who have provided Consent to the Tailored Experiences Profiling technique.

45. Microsoft selects the content included in promotions. Microsoft does not have business users who use Tailored Experiences to choose Content to be included in promotions.

**2.2.12. Actions Taken To Effectively Enable Consumers To Be Aware That They Are Undergoing Profiling And The Relevant Use Of Such Profiling**

*l) actions taken to effectively enable consumers to be aware that they are undergoing profiling and the relevant use of such profiling;*

46. Since Windows does not conduct Profiling that has a legal or similarly significant effect on the user as described in Article 22 of the GDPR, Microsoft has not specifically identified Profiling when describing the personal data processing involved in Windows. However, the action Microsoft takes to enable consumers to be aware that they are undergoing Profiling is to describe the relevant data processing in Consent screens, in-product notices, and the Microsoft Privacy Statement.

47. When users give Consent for personal data to be processed, there is a “Learn More” link that explains what happens when a user turns on Tailored Experiences. Specifically, the “Learn More” link provides:

*“If you choose to turn on Tailored experiences, we will use your Windows diagnostic data to offer you personalized tips, ads, and recommendations to enhance Microsoft experiences... Tailored experiences include suggestions on how to customize and optimize Windows, as well as ads and recommendations for Microsoft and third-party products and services, features, apps, and hardware for your Windows experiences. For example, to help you get the most out of your device, we may tell you about features you may not know about or that are new. If you are having a problem with your Windows device, you may be offered a solution. You may be offered a chance to customize your lock screen with pictures, or to be shown more pictures of the kind you like, or fewer of the ones you don’t. Or, if you are running out of space on your hard drive, Windows may recommend you try OneDrive or purchase hardware to gain more space.”*

48. In addition, the Microsoft Privacy Statement contains similar language as the Learn More, making it easy for users to find this information and become aware that this Profiling is taking place.<sup>15</sup>

<sup>15</sup> See the “How we use personal data” and the “Diagnostics, Tailored Experiences” sections of the [Microsoft Privacy Statement](#).

### **2.2.13. Statistics On How Many Consumers Choose To Undergo Profiling If They Are Given A Choice**

*m) statistics on how many consumers choose to undergo profiling and how many refuse it, if such choice is given;*

49. Windows does not explicitly ask consumers to undergo Profiling and consequently there are no statistics specifically for how many consumers choose or refuse to undergo Profiling in Windows. As indicated in **Section 2.2.11** above, as of 6 January 2024, approximately 27% of PCs in the EEA have a user who opted-in to the “tailored experiences” Consent, but as described in **Section 2.2.8** above, consumers may undergo Profiling even if they refuse the “tailored experiences” Consent.

### **2.2.14. Whether And When The Profiling Technique Has Been The Object Of A Data Protection Impact Assessment And The Conclusion Of Such Assessment**

*n) whether and when the profiling technique has been the subject of a data protection impact assessment<sup>16</sup> and the main conclusions thereof;*

50. The use of Windows Diagnostic Data for Tailored Experiences is covered in the relevant Windows DPIA.<sup>17</sup> DPIAs are reviewed and updated at least annually or when significant changes occur to data processing by Windows. The DPIA was last updated on 24 January 2024. The DPIA concludes that this processing is acceptable and within the data subject’s reasonable expectations because Windows obtains Consent and provides the user with controls to prevent the use of Windows Diagnostic Data for Tailored Experiences and the use of data from other sources is reasonable given the Consent experiences for those products and/or the legitimate interests that exist for the purposes used.

### **2.2.15. Any Alternative Measures To Profiling That Have Been Considered And The Reasons For Not Choosing Them**

*o) any alternative measures to profiling that have been considered and the reasons for not choosing them.<sup>18</sup>*

51. Microsoft interprets “any” to not require a discussion of “all” alternate measures. As of 6 January 2024, Windows provides Tailored Experiences both using Profiling and without using Profiling. The alternative measures to Profiling for Tailored Experiences are delivering content using only Session Context or untargeted campaigns. The reason Microsoft does not prefer these alternatives over consumer Profiling is that Microsoft

<sup>16</sup> A data controller must carry out a data protection impact assessment under Article 35 of Regulation (EU) 2016/679 in certain circumstances that may also involve profiling.

<sup>17</sup> Windows performs data protection impact assessments (“DPIA”) for features and services as a result of privacy reviews, not for individual Profiling techniques. Privacy reviews are more granular than DPIAs and are more detailed. However, within the Microsoft DPIA template, there is a question that asks specifically whether Profiling occurs.

<sup>18</sup> Asking for alternatives to profiling allows an assessment of whether gatekeepers have considered less intrusive measures and is particularly informative in terms of accountability.

has concluded that they are not as effective as measured by *ad hoc* analyses as described in **Section 2.2.11** above.