



Best Practice Guide

Cookies Law - The Privacy and Electronic Communications
(EC Directive) 2011

March 2012

► What are cookies?

Cookies are small text files (that contain a site name and unique user ID). When you visit a site that uses cookies for the first time, a cookie is downloaded onto your computer or device. The next time you visit that site, your computer or device checks to see if it has a cookie that is relevant (that is, one containing the site name) and sends the information contained in that cookie back to the site.

The site then 'knows' that you have been there before, and in some cases, tailors what pops up on screen to take account of that fact. For instance, it can be helpful to vary content according to whether this is your first ever visit to a site – or your 100th.

- **When are Cookies Created?**

Writing data to a cookie is usually done when a new webpage is loaded - for example after a 'submit' button is pressed data would be stored in a cookie. If the user has elected to disable cookies then subsequent pages / sites which rely on the cookie will either have to take a default action, or prompt the user to re-enter the information that would have been stored in the cookie.

- **Why are Cookies Used?**

Cookies are a convenient way to carry information from one session on a website to another, or between sessions on related websites, without having to burden a server machine with massive amounts of data storage. Storing the data on the server without using cookies would also be problematic because it would be difficult to retrieve a particular user's information without requiring a login on each visit to the website.

For example the first time a user visits a site they may choose a username which is stored in the cookie, and then provide data such as password, name, address, preferred font size, page layout, etc. - this information would all be stored on the database using the username as a key.

- **How Long Does a Cookie Last?**

The time of expiry of a cookie can be set when the cookie is created. By default the cookie is destroyed when the current browser window is closed, but it can be made to persist for an arbitrary length of time after that.

- **How Secure are Cookies?**

Cookies do not in themselves present a threat to privacy, since they can only be used to store information that the user has volunteered or that the web server already has. Whilst it is possible that this information could be made available to specific third party websites, this is no worse than storing it in a central database.

- **What are Tracking Cookies?**

Some commercial websites include embedded advertising material i.e. banner ads, which is served from a third-party site, and it is possible for such adverts to store a cookie for that third-party site, containing information fed to it from the containing site - such information might include the name of the site, particular products being viewed, pages visited, etc. When the user later visits another site containing a similar embedded advert from the same third-party site, the advertiser will be able to read the cookie and use it to determine some information about the user's browsing history. This enables publishers to serve adverts targeted at a user's interests, so in theory having a greater chance of being relevant to the user. However, many people see such 'tracking cookies' as an invasion of privacy since they allow an advertiser to build up profiles of users without their consent or knowledge.

► What's the Directive and legalisation?

On 26th May 2011, new laws came into force in the UK that affects most web sites. If cookies are used in a site, the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011 (UK Regulations) provide that certain information must be given to that site's visitors and the user must give his or her consent to the placing of the cookies.

The Regulations state that consent for a cookie should be obtained from the subscriber or user. The subscriber means the person who pays the bill for the use of the line. The user is the person using the computer or other device to access a website.

The Directive required that the new laws be implemented into the laws of all EU Member States by 25th May 2011. The UK is only one of three member states to meet this deadline. Although the UK gave a year's grace for companies to ensure that their web sites complied with this new law, with a deadline of 26th May 2012.

From May 2012 the ICO will follow the approach to enforcement set out in the Commissioner's Data Protection Regulatory Action Policy. In deciding whether enforcement action is appropriate the ICO will be concerned with the impact of the breach of the new cookie law on the privacy and other rights of website users, not just with if there has been a technical breach of the UK Regulations.

The UK Regulations carry a maximum fine of £500,000 for serious breaches. It is anticipated that this power will only be used in limited circumstances.

► How do I know what cookies are on my site?

Focus will be able to assist you with a cookie audit. For more information please contact your Account Manager or email us: cookies@thisisfocus.co.uk.

Once we have completed an audit we will be able to advise on the options available to ensure that your web site is compliant with the legislation. It is more than likely that you will have some sort of cookie on your site as they are used by Google for the analytics tracking.

► Who is responsible?

If you are based in the UK, your organisation is responsible for ensuring that your web site complies with the legislation.

Focus will provide you advice, information and the possible ways of ensuring that your site is compliant.

► What do I need to do in order to comply?

The following is based on our understanding of the legalisation.

Your web sites must provide users with the following information:

- clear information about any cookies you are using.
- explain what the cookies are doing.
- obtain consent to store a cookie on a user's device.

There is an exception to the requirements about cookies and obtaining consent where:

- the cookies use is for the sole purpose of carrying out the transmission of a communication; or
- where such storage is necessary for the provision of information requested by the user.

In addition to this, Focus would also recommend the following:

- Ensure that your web site has a privacy policy that is accessible via a link on every page.
- Create a specific cookie policy that is accessible via a link on every page.
- Review and if required, amend your web site terms and conditions.

► What options do I have?

The options available to you in order to gain the consent of your website users will depend on your site. Please speak with your Account Manager or contact Focus on cookies@thisisfocus.co.uk for further information.

► When does the legalisation and compliance come into force?

The new legalisation came into force in May 2011; compliance however was deferred for a year until 26th May 2012.

► What are the next steps?

The following is a guide to the next steps which you can follow in order to become compliant with the legalisation.

- Run a cookie audit (or speak to Focus about running one).
- Assess the intrusiveness of your cookies and if any fall under the exemption rule.
- Update your Privacy Policy and possibly create a Cookie Policy.
- Discuss the best options available to gain users consent.
- Review your findings with Focus and discuss plans, timescales and costs.
- Create a cookie compliance project plan.

► Further Information

For more information please contact your Account Manager, email us: cookies@thisisfocus.co.uk or alternatively write to us at:

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Please Note: Focus cannot be held accountable for your organisation not complying with this legalisation.