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The voice
of digital business

IAB Europe Guidance

*Five Practical Steps to help companies
comply with the E-Privacy Directive*

Foreword

The steps laid out below are intended to help brand advertisers, publishers and advertising businesses (e.g. media agencies or technology companies) comply with Article 5.3 of the revised ePrivacy Directive, also known as the “Cookie Directive”, as transposed into national law throughout the EU. They are not in and of themselves a complete solution in all EU markets, but together they provide a “best practice” guidance that will help businesses ensure they have the correct approach from the start.

Article 5.3 states that:

“The storing of information, or the gaining of access to information already stored, in the terminal equipment of a subscriber or user is only allowed on condition that the subscriber or user concerned has given his or her consent, having been provided with clear and comprehensive information in accordance with Directive 95/46/EC, inter alia, about the purposes of the processing¹”.

While there are differences in national implementations of this Article, and in the guidance provided by the various national regulators to market players, all implementations require that the consent of users be obtained for the use of certain cookies and similar technology.

This guidance aims to cover only the use of cookies and similar technologies in digital advertising, so businesses that use such technologies in other contexts will need to adapt their practices as appropriate.

Disclaimer: *The guidance does not constitute legal advice. It is intended to outline a practical approach for businesses around how to think about their compliance with Article 5.3 of the Directive across EU markets. Businesses should seek independent legal advice to guide their decisions around compliance. These decisions may also be guided by their branding and relationships with end users.*

Businesses should also be aware of the evolving EU legal and regulatory landscape for data protection.

Brussels, July 2015

¹ Amended E-Privacy Directive 2009/136/EC, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:337:0011:0036:en:PDF>.

1. Monitor and assess your digital property.

- A. Get to grips with how your digital property - whether a website or other application – works and what technologies (e.g. cookies, other forms of local storage, device identifiers or device attributes) you're working with or allowing others to use on your digital property.
- B. Make sure you carry on a regular audit of your digital property, to understand what you use, which partners have access to consumer data on your properties, and what each data collection technology (cookies or otherwise) does.
- C. Be particularly cautious when using partners who are collecting data on your property. This may easily lead to conflicts of interest, which are a source of consumer privacy concerns, and are being clamped down on by regulatory authorities. Thus be sure to understand a third party's use for data collected from your property, and how safe this use is for consumers.
- D. You should make sure unnecessary data collection tools are removed promptly.

2. Be clear and transparent in how you present information to consumers.

- A. Use plain and easy-to-understand language where possible and ensure that you are honest and accurate with users – they mustn't be misled in any way and the information should be relevant.

You don't necessarily need to state what would be obvious to a reasonably informed user. However, tell them how and why you use technologies (i.e. specify the purposes), explain (if it's the case) that cookies (or other technologies) may be used by third parties, and explain the choices and controls available. Tailor your information to your specific audience.

- B. Take a 'layered approach' to your privacy policy: start simply and offer further and more detailed information for those consumers that want to find out more.
- C. Point to helpful websites such as www.aboutcookies.org or – if appropriate - www.youronlinechoices.eu, which are available in multiple language versions for the different EU markets.
- D. Regularly revisit your privacy policy to make sure that you are being clear and transparent about the technologies that are being used as your services and products evolve.

3. Make things prominent.

- A. Make your privacy policy or information prominent on your digital property and make it available as soon as practical. This is not always easy, especially in a mobile environment. On a website, you can place it 'above the fold' and on mobile you can use just-in-time notifications to inform users about your data processing.
- B. Simple formatting changes, such as using a different font or colour, can help to make the information more distinguishable from normal text or other links.
- C. You might also label it something a little more eye-catching. Instead of 'privacy policy' at the top of a website or within your app, why not 'how does this site (or app) work?' or 'how do we collect and use your information?'

4. Context is king!

- A. Consider ways to achieve consent in a contextual way. There is more than one way to do this and which approach is best will depend on what activity you are seeking to derive consent for. The key point is that you must gain consent by giving the user specific information about what they are agreeing to and providing them with a way to indicate their acceptance.
- B. One way to do this is via a simple and discrete one-time 'banner overlay' or pop up using clear and simple language as well as linking to ways for people to control cookies or other technologies.
- C. It's also possible for consent to be obtained via the terms of use or terms and conditions if users need to agree to those before cookies or similar technologies are used.
- D. As they have a direct relationship with the end user, publishers are usually best placed to obtain consent on behalf of themselves and their [advertising, analytics and other] partners, so they should take steps to disclose clearly to people their use, as well as their partners' use, of cookies and other technologies. They should also obtain consent from users to these purposes.

This may mean:

- i. Explaining why cookies or other technologies are used, and letting users know if this means that information will be shared with third parties.
 - ii. Getting consent from visitors to the use of these technologies and to any sharing of visitors' information that takes place.
- E. Here's a suggested template:

*We use technologies, such as cookies, to customise content and advertising, to provide social media features and to analyse traffic to the site. We also share information about your use of our site with our trusted social media, advertising and analytics partners.
[See details]*

- F. A user may want to review his or her choice, so give them the option to revisit and change their decision eg via a link to the privacy policy.

5. Consider joining the EU industry programme to provide greater contextual transparency and control to consumers over customised digital advertising.

- A. Whilst not a mechanism to obtain consent, digital advertising businesses should consider joining the EU industry initiative to provide consumers with greater transparency and control over behavioural or interest-based advertising.
- B. If you are a third party ad business active in behavioural advertising (including retargeting) then you should consider getting involved in this EU industry initiative. Find out how at www.edaa.eu.
- C. At the heart of the initiative are ways in advertisements (e.g. an icon) to provide clear and transparent information and mechanisms of control (e.g. www.youronlinechoices.eu).
- D. If you're a media agency or brand advertiser (and not a third party) then you should make sure that your data partners are involved.



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Protect



Promote



Prove



Professionalise

About IAB Europe

IAB Europe is the voice of digital business and the leading European-level industry association for the interactive advertising ecosystem. Its mission is to promote the development of this young and innovative sector by shaping the regulatory environment, investing in research and education, and developing and facilitating the uptake of business standards. Together with its members – companies and national trade associations – IAB Europe represents over 5,500 organisations.