

# WHITE PAPER. EU COOKIE LAW COMPLIANCY

What All Marketers and Businesses Should Know  
About the EU Cookie Law // 7 Essential steps towards  
cookie compliancy

Think the EU cookie law only affects large business? Think again. Chances are it could also impact on you.

*Essentially website owners must gain consent from website users before sending cookies”.*

On the 26th May 2012 the 2009 'E-Privacy' Directive (PECR) A.K.A 'EU Cookie Law' became enforceable in the UK. Essentially website owners must gain consent from website users before sending cookies.

For many direct and digital marketers this subject is old hat. However a quick Google search reveals many individuals and SME's are yet to be cookie compliant. It appears the message is just not filtering out fast enough.

This FREE download White Paper article acts as a tool to help you understand what you need to be doing towards developing your own cookie compliancy solution. First, we'll will take a look at the 7 most commonly asked questions first.



## SMART FACTS

The law affects all web-connected devices from smart TV's, computers to smart phones.

Prior to the law becoming fully enforced KPMG conducted a survey that revealed 95% of websites are yet to be compliant

## ABOUT THIS DOCUMENT

In no way should this article be your sole point of reference. It has been created and designed to help you on your journey towards finding out more about the topic. You are encouraged to use the links and resources included to help research the topic further. **This is a legal issue, so seek legal advice. Feel free to forward this article to anyone in your network.**

*“Prior to the law becoming fully enforced on the 26th May 2012 KPMG conducted a survey that revealed 95% of websites are yet to be compliant.*

*Is that you?”*

# EU Cookie Law: 7 Commonly Asked Questions

## > What is a cookie?

Cookies are small lines of text that are dropped and stored on a users web-browsing device (text and flash files) to help individuals navigate around frequently visited websites. Typically marketers use cookies to customize online experiences, for web analytics, to recommend products, to allow auto login and generally build a profile of the web users.

***It is a misconception that the law only affects cookies...***

Though the term 'cookie' is used to describe the text file dropped on to a device, it is also used to describe technologies such as IP address, web beacons, text and flash cookies. The EU Cookie law impacts on all. Therefore if you use digital advertising to market what you do and/or use a web analytics program or service such as Google Analytics to gain insight into your customers' behavior this law affects you.

***There are two types of cookies- functional and non-essential.***

Functional (essential)	Targeted & Advert Cookies (non-essential)
<ul style="list-style-type: none"><li>• Browser History</li><li>• Login / Password</li><li>• Credit Card Payment</li><li>• Shopping Cart Content</li><li>• Prevent offering services again</li></ul>	<ul style="list-style-type: none"><li>• Browsing Habits (web surfing)</li><li>• Web Analytics</li><li>• Ad Response Rates</li><li>• Affiliate Tracking</li><li>• Targeted Adverts</li><li>• Providing links (social networks, email, etc.)</li></ul>

In reference to the above table, it should be noted that in most instances the EU Cookie Law does not affect functional cookies, as they are essential for improving the users' online experience. The law affects non-essential cookies that are often used in methods of online direct marketing.

## > What is the EU Cookie Law?

The '2009 EU Privacy and Electronic Communications "E-Privacy" Directive' is often referred to as the EU Cookie Law by media and industry. This is the directive that has recently been updated. The amended "E-Privacy" Directive requires marketers and website owners to get specific consent from European web users before deploying cookies or such technologies for the purpose of collecting information and profiling website visitors. All 27 EU state members need to comply, but have the right to self-regulation. Moreover each country will implement the directive in there own way.

## Implementation of The EU Cookie Law in The UK

Enforcement and administration sits with the Information Commissioner (ICO). The UK's previous Privacy and Electronic Communications Regulations (PECR) of 2003 required owners of websites to give users information of how they use cookies and on how they could remove or opt-out of cookies, which is often placed in privacy policies and hence mostly unread.

The revised UK PECR of 2011 is designed to increase consumer protection and requires providing clear and comprehensive information about the purposes of the storage or access of information. Importantly, websites need to obtain informed consent from visitors before they drop technologies on to connected devices. The updated regulation officially came into effect in the United Kingdom on the 25th May 2011.

## Continued >

Because of the lack of clear information given by the EU the UK government gave a one-year period of grace by pushing the cookie compliance deadline back to the 26th of May 2012 giving firms operating in the UK time to comply. Companies that use cookies need to abide by the law or risk maximum fines of up to £500,000 for serious breaches (ICO, 2011).

### **An important development to note:**

At the eleventh hour of the law becoming live on the 26th of May 2012, the ICO announced a change in its stance in how it interprets the EU cookie directive. To help you get your head around the change view the video uploaded on:

[www.hellogeorge.co.uk](http://www.hellogeorge.co.uk).

**Privacy: a fundamental human right.**

**In the legal context it is 'the right to be let alone'.**

## >Why has the law been implemented?

*The technology used today encourages the sharing of consumer data as well as the capture of personnel information.*

The fact of the matter is data retention in the UK is subject to European privacy laws. The European Union (EU) is concerned about the online tracking and profiling of individual's online behavior. However the law is primarily concerned with tackling the issue of spyware and other such covert practices that take place. To add the consumers understanding of cookies and how they are used is very limited.

### **The Issue of Privacy...**

Research by the DCMS in 2011 revealed that the issue for the consumer is Privacy. Therefore, the directive is about the protection of Internet users privacy and the right for firms to collect and store data for use.

*“People in the UK are more worried about misuse of their personal data than the future of the NHS”*

**Christopher Graham,  
Information Commissioner,  
March 2012**

**Use the QR code at the back of this document.**



## > I operate outside the EU and UK does it affect what I do?

If you use web analytics software or service (for example Google analytics) or hire 3rd party advertising firms to do your digital marketing towards the EU web user consumer market chances are it does.

## >I'm a Blogger does the cookie law impact on what I do?

See above. Again, like above if your answer is yes you too may be affected. Your blogging/social site might have measures in place. Find out by asking other members via forums.

## >What Should I do to ensure I'm cookie Compliant

As already pointed out the ICO has issued new guidelines clarifying its stance in its interpretation the EU Cookie Law and the guidance is very clear. The updated guidelines may have been released because of the practicalities of implementing the more holistic approach, which the ICO and DCMS are aiming to achieve. It is also noted that large businesses will have to invest a lot of time and money in to becoming cookie compliant.

The updated ICO guidelines now focuses on the term implied. This suggests that in most cases the responsibility it now focused on the web user.

Though the ICO has softened its stance in its interpretation of the directive many are still unsure if this update now breaks EU rules. How all this will pan out is not yet known. I guess we have to 'watch this space.' For the purpose of this document it is suggested a holistic approach is still taken towards your own cookie compliance solution.



## >What are the benefits of becoming cookie compliant?

There are both positive and negative aspects to the change in the regulation. It is widely believed that The EU Cookie law could interrupt the customer online experience and purchasing behaviour, as cookies are integral in the use of online tools used to push prospects and customers towards purchase. The issue is how to be as unobtrusive as possible so not to damage the customer's online experience when implementing measures to comply.

## *“Becoming cookie compliant could give you the competitive advantage”*

The research conducted for the co-authored thesis 'EU Cookie Law and the Impact On Digital Marketing (and online consumer behavior)' (2012) helped in drawing to the natural conclusion of:

- The update of the PERC regulation is made in response to the fact that the law has to keep up with the pace of change in today's technologies.

In respect to the issue of consumer's online privacy concerns, being transparent (as the law suggests) may in fact help benefit marketers in two ways:

- Firstly, It could create consumer trust & loyalty towards the brand and therefore have a direct and positive impact on bottom line.
- Secondly, in a world of data bloating, the data collected could become more valuable.





# 7 Essential Steps To Cookie Compliancy

*This article is not just for businesses with marketing departments, marketing is the ownership of all departments. If you are reading this document the following steps will set you on the path towards developing your own cookie compliancy solution.*

## **EDUCATE ALL**

Make everybody aware of the situation. From senior level management to business associates who help you to provide your products. Importantly educate frontline staff who will be dealing with consumers' enquiries and concerns about cookies & privacy.

## **COOKIE STATEMENT ON WEBSITE**

While you work towards cookie compliancy place a cookie statement on your website such as 'we are working toward cookie compliancy'. This should be located on a cookie policy page. Ensure the link to the cookie policy page is positioned prominently on the homepage/landing page and is VERY easy to find.

## **CONDUCT A COOKIE AUDIT**

This needs to be done with whoever looks after your IT and any 3rd party digital advertising firms that you may work with. Check every web page to see which cookies are used. This should be done on all your websites (both the active and deactivated). The aim is to identify which cookies are used and why they are used - essentially their purpose.

## **LIST ALL COOKIES**

Ensure that you present information on your website cookie policy page about the cookies used by you and why. The language used should be easy to understand. Imagine your telling your granny all of this information. How could you make her understand without frying her brain? See here for example.

## **EDUCATE WEBSITE USERS**

Ensure web user is given the option to opt-out of receiving cookies. See sites such as the BBC for examples. Ensure you present information via your cookie policy page, which gives visitors details of how to remove cookies from their BROWSER.

## **TEST & MONITOR THE LANGUAGE USED**

If you find the number of website visits decreases change the language and test, test again.

## **THE GOLDEN RULE**

Like anything you need to ensure that you plan, implement and measure throughout this process. Ensure that you keep a paper trace / record of findings. Also ensure you keep up-to-date with developments. I post updates such as this via my blog and twitter, so why not keep in touch.

# Where Should You Go For Further Information

View links:

## **All About Cookies:**

A free resource to help marketers and consumers the issue surrounding the use of cookies  
<http://www.allaboutcookies.org/>

## **Information Commissioner:**

Read guidance on the new cookie regulations and find out what you need to do about the new EU e-Privacy Directive.

[http://www.ico.gov.uk/for\\_organisations/privacy\\_and\\_electronic\\_communications/the\\_guide/cookies.aspx](http://www.ico.gov.uk/for_organisations/privacy_and_electronic_communications/the_guide/cookies.aspx)

## **DMA:**

The one-year amnesty on enforcement of the EU e-Privacy Directive (or cookie law) ended on 26 May 2012. <http://www.dma.org.uk/toolkit/cookie-watch>.

## **For further insight read::**

Understanding of Cookies, Privacy and EU Cookie Law (DCMS, 2011)

## **The article that analyses the ICO update.**

<http://www.guardian.co.uk/technology/2012/may/26/cookies-law-changed-implied-consent>

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Found this information useful? Please let me know via email or comment via my blog.

Special thanks to:

My family  
Jonathan Taylor and LMBS  
Tina Tubbesing  
All at DMA

## **WANT TO READ MORE?**

If you would like to read a sample of the co-authored thesis entitled 'EU Cookie Law and the Impact On Digital Marketing (and online consumer behavior)' (2012) by George B and Tina Tubbesing please email. A link to a PowerPoint which summarizes the content of the document can be found here. It is not the final version, the full and final version will be up shortly.

# THANK YOU FOR READING



You are invited to connect with George and see if she is right for your business

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