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Getting online made simple



Cookie Law and your organisation

May 2012

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New European Union Cookie Directive

On the 26 May 2012 The EU introduced a law which requires Companies, Organisations and anyone who runs a website to ask website visitors for permission to use cookies. This short note from Websites4Christians sets out our understanding of the legislation and what we believe you need to do about it. This isn't legal advice and we'd strongly advise you to ensure that your own lawyers are happy with the stance that you decide to adopt and the subsequent actions that you take!

What is a cookie?

A cookie is a small file that websites store on your computer to allow them to track your movements around the website. Sometimes they are also used to track your movements around the web. You can view the cookies stored on your browser by looking in the setting area. If you've never looked I'm sure you'll be amazed at how much information is being gathered about your use of the web!

Often people think that cookies are a bad thing. They feel that their privacy is being invaded and that information is being gathered about them secretly. However cookies can be a good thing. For example they can be used to remember that you have been to a site before and so automatically log you in. Alternatively they might remember your preferences for a site, which parts to hide and which to show.

Cookies can however be used for purposes that users might not be so happy about. An advertising company might have adverts on multiple sites across the web. They will store a cookie on your machine which will enable them to track you across the web. They'll know what sites you visited, what type of thing interests you and so on. This kind of detailed surveillance of your habits often makes people uncomfortable. They feel especially uncomfortable when they find out it is happening in the background without them realising it is going on.

Cookie control

The EU has decided that privacy needs to be enforced. As a result last year they brought forward and introduced legislation across Europe requiring member states to introduce and enforce strong privacy law in respect of cookies. This law has been out to consultation for over a year and you may have been aware of it.

The fines for non-compliance for companies are substantial (up to £500,000) and the EU is now starting its enforcement work. For example they have just taken five countries to court for not introducing appropriate legislation: they have asked the European Court of Justice to impose fines on Belgium, the Netherlands, Poland, Portugal and Slovenia.

In the UK the ICO has played down the threat of fines, they really just want companies to show they either are compliant or are on their way to compliance. The BBC quoted Dave Evans from the ICO:

"Up until now, if we received a complaint about your website we would point you in the direction of our guidance....Given that everyone has had a year [to comply], we're going to shift from that kind of approach to one which will be very much more focused on those people who don't appear to have done anything and asking them 'why not?'"

What guidance is there?

Although the consultation was extensive there is not specific guidance about the way to introduce the cookie legislation. It is becoming clearer as companies start to test systems but the EU and in the UK the ICO have not offered anything beyond high level guidance.

The guidance that exists says that you are not allowed to use Cookies or similar mechanisms unless the subscriber or user of the computer, iTouch, iPad, Android devices etc (called the terminal equipment):

1. is provided with clear and comprehensive information about the purposes of the storage of, or access to, that information; and
2. has given his or her consent.

You need to ensure that the text you use to inform the user is appropriately complete and understandable to allow users to clearly appreciate the likely consequences of allowing the use of cookies (or similar).

The Regulations state that once a person has used such a device to store or access data in the computer, iTouch, iPad, Android devices etc (called the terminal equipment) of a user, that person will not be required to do so on subsequent occasions, as long as they met these requirements initially.

What should I do?

If your website uses cookies you need to take action. The ICO and EU seem unlikely to take enforcement action immediately and even if they did they'd ask what you are going to do. So there is a window now to assess the law and ensure that you comply.

Generally Websites4Christian supplied websites use cookies. We use them so that you can track the number of visitors to your site and the number of views each page has and similar information. Additionally for many sites we install and use Google analytics. These cookies require the users permission.

There are two ways of obtaining consent; implied and explicit.

Implied consent is when a notice is displayed at the start of a visit to your website to explain to the user that you use cookies and unless they explicitly ask you not to you will use them. If they ignore the message it will disappear when they navigate away from the page and the user will have implied that they consent. No further messages will be shown unless they choose to manually remove your cookies from their browser.

Explicit consent is when a notice is displayed at the start of the visit and remains visible unless a user actively clicks a button to consent. In this way they will have given explicit permission.

In both cases you must have somewhere on your site where you explain to them about cookies and what information you'll store about them.

Decide on consent

When deciding on the type of consent you require you need to consider your user. If you are collecting information about what pages they've visited on your site then you might think that implicit consent is reasonable. You're not collecting anything personally identifiable but rather aggregating information to help you decide on the type of content that is desired by your visitors. However perhaps you have a log in area in the site. Then you would be able to identify who was browsing the site, what information they looked at and then use it to target that person. In this instance you might feel that explicit permission is needed.

There is no one size fits all answer. Your organisation needs to decide what is appropriate for you and then implement a solution on that basis. We can of course advise you and update the site as needed. We have already developed permission software that allows for implicit or explicit permission and can suggest text for web pages.

If you like to read more about this topic please have a look at the ICO's website:

http://www.ico.gov.uk/for_organisations/privacy_and_electronic_communications/the_guide/cookies.aspx

This goes into the topic in more detail and provides links to lots of advice.

Finally please remember that you do need to take action.