

DRAFT PLEDGING PRINCIPLES

A. The consent request will not contain information about the so-called essential cookies nor the reference to collection of data based on legitimate interest.

As essential cookies do not require consent, not showing information about them in the context of the request for consent will reduce the information that users need to read and understand. In addition, legitimate interest is not a ground for data processing based on Article 5(3) of the e-Privacy Directive so it should not be included in the cookie banner. The issue of further processing of data based on legitimate interest should be explained in additional layers.

B. When content is financed at least partially by advertising it will be explained upfront when users access the website/app for the first time.

From the moment a business obtains revenues either i) by exposing consumers to tracking-based advertising by collecting and using information about consumers' online behaviour through trackers or ii) by selling to partners the right to put trackers on consumer's devices through their website, the consumers need to be informed of the business model in question at least at the same time as when cookie consent is required. Asking consumers to read complex cookie banners and only after they did not consent confronting them with a "pay or leave" ultimatum, could be considered manipulative.

C. Each business model will be presented in a succinct, clear and easy to choose manner. This will include clear explanations of the consequences of accepting or not-accepting trackers.

Most cookies are used to implement a business model and therefore this concomitance should be easily described, understood and implemented in one joint panel regrouping the agreements under consumer law and consent under the e-Privacy/GDPR law. In this panel, the business model options (i.e. accepting advertising based on tracking, accepting other types of advertising or agreeing to pay a fee) will be presented together with the consequences in terms of the purpose of trackers, and this in plain and simple language.

D. If tracking based advertising or paying a fee option are proposed, consumers will always have an additional choice of another less privacy intrusive form of advertising.

In view of the extremely limited number of consumers who accept to pay for online content of various sorts and as consumers may navigate tens of different websites daily, asking consumers to pay does not appear a credible alternative to tracking their online behaviour for advertising purposes that would legally require to obtain consent.

E. Consent to cookies for advertising purposes should not be necessary for every single tracker. For those interested, in a second layer, more information on the types of cookies used for advertising purposes should be given, with a possibility to make a more fine-grained selection.

When users agree to receive advertising, it should be made clear to them at the same time how this is carried out and especially if cookies, including if relevant third-party cookies, are placed on their device. It should not be necessary for them to check every single tracker. Indeed, this may request checking one to two thousand different partners, making the choice totally ineffective and either giving an illusion of choice or

discouraging people to read further, leading them to press “accept all” or “refuse all” buttons. This principle should be without prejudice to stricter rules in other sectoral legislation, such as the DMA.

F. No separate consent for cookies used to manage the advertising model selected by the consumer (e.g. cookies to measure performance of a specific ad or to perform contextual advertising) will be required as the consumers have already expressed their choice to one of the business models.

One reason of the cookie fatigue is that all types of cookies are very often described in a lengthy and rather technical fashion that render an informed choice complex and cumbersome and de facto ineffective. Furthermore, from the moment the business model is made clear and agreed by the consumer, the need of businesses to measure the performance of their advertising services or to prevent fraud can be deemed inextricably linked to the business model of advertising, to which the consumer has consented. Other cookies not strictly necessary for the delivery of the specific advertising service should still require a separate consent.

G. The consumer should not be asked to accept cookies in one year period of time since the last request. The cookie to record the consumer’s refusal is necessary to respect his/her choice.

One major reason of the cookie fatigue especially felt by the persons most interested in their privacy is that negative choices are not recorded and need to be repeated each time they visit a website or even every page of a website. Recording such choice is indispensable for an efficient management of a website and for respecting consumers’ choices. Furthermore, to reduce the cookie fatigue, a reasonable period e.g. a year should be adopted before asking again for consumers’ consent.

H. Signals from applications providing consumers with the possibility to record their cookie preferences in advance with at least the same principles as described above will be accepted.

Consumers should have their say if they decide that they want to systematically refuse certain types of advertising models. They should be empowered to do this and privacy and data protection legislation should not be used as an argument against such a choice provided the automated choice has been made consciously.