

## European Union Privacy Directive Requires User Consent for Cookies

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The information in this document is not intended as legal advice. Rather, it is meant to serve as a primer for e-Dialog clients regarding the recent changes to the European Union (EU) Privacy Directive. Many of the questions raised by the statute will require careful analysis by your legal counsel.

The EU has passed a new law amending the EU Privacy Directive requiring Internet users' consent before cookies (small pieces of text stored on users' computers by Web browsers) can be placed on their computers. While this new law came as a surprise to many it was not totally unexpected. Consumer privacy protection has been a growing concern as of late due to the rapid increase in unwanted targeted and behavioral advertising flooding Internet users.

While this development could have huge implications for e-mail marketing and the online advertising industry in general, the final interpretation and subsequent compliance standards have not been set. The 27 EU member states have up to 18 months (April 26, 2011) to interpret and implement the Directive.

### What we know

The finalized text states that a cookie can only be stored on a user's computer if the user "has given his or her consent, having been provided with clear and comprehensive information." An exception does come in to play when the cookie is "strictly necessary" for the condition of a service to be completed, which must be "explicitly requested" by the user. Meaning for example, a cookie used to load a Web page or a cookie used to store an item in an online shopping cart will be exempt from consumer consent. However, if you use tracking cookies such as, the site-specific cookies we use for conversion track, or through Web metric services like Google Analytics, Omniture, Coremetrics, etc. you will be required to gain consumer consent before a cookie can be passed.

The EU is seeking to ensure privacy controls surrounding cookie usage are easier to locate and more persistent. As of now, it is possible that the law could be interpreted by way of one or two extremes:

1. Compliance may fall under enhanced notice, which would require users to provide their consent for every cookie they pass. This could result in consent via pop-up windows or landing pages, allowing consumers to opt-in or out for cookies.
2. On the other hand, consent could fall in a consumer's browser settings. Meaning it will be up to Internet Explorer, Mozilla Firefox and the like to offer users the ability to allow or deny cookies from Web sites (many of which already do).



### **How e-Dialog can help**

As stated earlier the final interpretation and compliance standards of this Directive have not been set, and may not be before April 26, 2011. Therefore, it is a bit premature to provide thoughtful and intelligent recommendations on how we can help e-Dialog clients comply with the standards of this Directive. While the direction of this law is still unfolding and no immediate action is necessary, e-Dialog is committed to providing you with a solution that complies with the most stringent interpretations that come out of this Directive. We will continue to monitor this new law, the direction it is taking, and provide you with the necessary information as member states interpret the Directive and more information becomes available.

It is important to realize consumer privacy protection will continue to be a trending matter. The United States is not far behind the EU in passing similar legislation to regulate behavioral advertising and overall consumer privacy protection. As more and more personal and sensitive data is being collected, stored, and used so too is an increased need for privacy protection laws. e-Dialog will remain committed to providing you with intelligent solutions.

If you have any questions regarding this new EU Privacy Directive or would like additional information please contact, Rick Buck, director of privacy and ISP relations, CIPP, at [rbuck@e-dialog.com](mailto:rbuck@e-dialog.com) or contact your e-Dialog account team.