

Guide on use of cookies

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INTRODUCTION¹

Internet plays a pivotal role in our society, and is one of the few sectors of the economy that continues to grow and which has become a market pioneer at the local and European levels. The Internet currently contributes 3.8% to the GDP of the European Union, and, at a national level, by 2018 it already represented 7% of Spain's GDP and directly contributed 81,600 million euros to the Spanish economy¹.

A large part of investments on the Internet comes from online advertising. A survey from IHS Markit, an independent financial research company, shows that digital advertising contributes 526 billion to the EU's annual GDP.² As it is widely known, one of the methods for successful advertising in the Internet is through cookies. Cookies are tools with a key role to provide many services within the information society, which concentrate a majority of advertising investment, smooth user browsing experience and sometimes display relevant advertising based on browsing habits.

The importance of online publicity is reflected on investing numbers, which grew by 10.6% last year. For the first time in 2019, investment on the Internet is consolidated on the first position with a sum of EUR3,150M surpassing investments on TV. This means 46.3 % out of the total investment on media³.

Beyond direct or indirect contributions to economy, digital advertising also contributes an important added value to citizens as consumers, since it provides contents to consumers at a very low or zero price point. In other words, income arising from online advertising enables consumers to extract a high value from the online services they use. This surplus amounts to nearly 40 euros per month and household, more than the amount an average family pays for bandwidth access at home⁴.

Another aspect that should be considered is that advertising has a multiplying effect in the entire economy through direct and indirect employment, as it may translate into an increase in sales, for example.

¹ ICT and contents sectors annual report for Spain, available at: https://www.ontsi.red.es/ontsi/sites/ontsi/files/InformeAnualSectorTICC2018_0.pdf.

² The Economic Contributions of Digital Advertising.

³ Survey on Advertising Investment on Digital Media, available at: <https://iabspain.es/estudio/estudio-anual-de-inversion-publicitaria-en-medios-digitales-2019>. . ⁴ White paper "Consumers driving the digital uptake. The economic value of online advertising-based services for consumers". McKinsey & Company survey for IAB Europe (2010).

According to a survey titled *The economic contribution of advertising in Europe*⁴, issued by Deloitte, it is also an advantage for European economy at labour market level, since 5,762,573 jobs on the EU depend on advertising, which amounts to 2.6% of total jobs in the area (considering both jobs directly impacted by publicity and compatible works in the activity chain).

Nonetheless, it must be considered that using storage devices and data recovery in users' devices has significant implications with regard to their privacy. Cookies are one of those widely used devices, therefore, from now on, such devices shall be generally referred to as cookies.

Citizens, politicians and consumer representatives, among other stakeholders, have advocated for the need of an effective privacy guarantee. Such interest has been translated into several documents issued by data protection authorities, including, among others, the Opinions of the Article 29 Working Party (hereinafter WP29)⁵ which was been currently replaced by the European Data Protection Board (hereinafter EDPB). Industry is also fully aware that any digital development involves guaranteeing user's trust in the network, and, therefore, ensuring that any cookie use respects user privacy.

Obtaining users' trust involves making such users aware of the value placed by the entire Internet ecosystem on their browsing habits and allow them to assess the advantages associated to providing information to Internet services providers and to show them how to manage their acceptance or refusal of such advantages.

Ultimately, cookies are used by service providers obtain data related by users which may be subsequently used for providing specific services, to display relevant advertising or as a basis to develop new or improved products and services occasionally offered for free. This circumstance determined to need to implement a system in which users are fully aware of which devices are being used and to which purpose, and that they are informed of the purposes for which their relevant data are collected as well to the hazards that this system poses to their privacy. For the above reasons, European and national laws require to obtain an informed consent with the aim of ensuring that users are aware of the fact that their data are collected and for which purpose.

When determining the level of detail provided with regard to information on cookies, as well as the manner in which user consent must be obtained, a clear reference must be

⁴ Available at: http://www.iabeurope.eu/wp-content/uploads/2017/01/Value-of-Advertising_EconomicContribution-of-Advertising-in-Europe.pdf.

⁵ The Article 29 Working Party was the independent consulting party of the UE regarding personal data and private life, created by virtue of the aforementioned article of Directive 95/46/EC.

considered with regard to users' level of understanding about cookies. In this sense, and although digital literacy is increasing and the average consumer is increasingly well informed about the technical aspects of cookies and their available management options, more detailed information needs to be provided when addressed to users with lower technical knowledge or who use the Internet less frequently.

In a nutshell, the digital industry and more particularly the industry of digital advertising and their representatives are aware of the importance of privacy on the Internet and of the need to implement information and consent formulas that comply with the requirements of transparency and control set forth by the relevant standards, formulas that should be adapted to users' digital literacy level. Such measures are to be implemented avoiding any harm to the significant investments made in this industry, but translating the clear interest of the industry issued of implement a transparent system.

In this sense, the industry and their representatives thank the Spanish Data Protection Agency for its good disposition and for the opportunity to cooperate in solution design, and they also show their commitment to comply with the relevant regulations regarding cookies through a series of proposals. Such proposals are solutions aimed at achieving well-formed, mature Internet users by providing them with knowledge on information society tools in a manner that both promotes responsible use of these tools and creates a creative and transparent environment.

All solutions proposed in this guide intent to provide guidelines on how to comply with any obligations provided for in section two of article 22 of Act 34/2002, of 11 July, on information society services and e-commerce (hereinafter, Act on Information Society Services), related to Regulation (EU) 2016/679 of the European Parliament of the Council, of 27 April 2016, on General Data Protection (hereinafter, GDPR) and Organic Act 3/2018, of 5 December, on Data Protection and Guarantee of Digital Rights (hereinafter, , Act on Data Protection). It must be highlighted that the regulations set forth by the Act on Information Society Services are considered special rules.

This must be understood notwithstanding any potential further development in the sense of updating such guidelines or providing specific answers to any business model more complex than those provided herein⁶.

⁶ Particularly, it must be considered that there is a Regulation proposal on respect of personal life and personal data protection in electronic communications repealing Directive 2002/58/EC (Directive on privacy and electronic communications) must be considered. Such proposed Regulation would regulate the relevant protective measures implemented for that information regarding, or stored in, users' computers. However, this initiative is still at the proposal stage and its final contents may not be known yet. Therefore, until such proposal is enacted, currently valid laws and regulations must be complied with.

Considering the multiple complexities involved by cookies, the guidelines set forth herein do not intend to provide a one-fits-all solution for complying with the relevant laws. Instead, they aim to be used as a guidance so that stakeholders may make the best possible decisions considering their interest and their business model.

1. SCOPE OF REGULATIONS

Section two of article 22 of Act 34/2002 of Act on Information Society Services states:

“Service providers may use storage and data recovery devices on users' terminal devices on the condition that they give their consent after being given clear and complete information on their use, in particular, for data processing purposes, in accordance with the provisions of Organic Act 15/1999, of 13 December, on Personal Data Protection.

Where technically possible and efficient to do so, the consent of the recipient to accept the processing of their data may be facilitated using the appropriate parameters of the browser or other applications.

The above provisions shall not prevent any possible storage or technical access for the sole purpose or proceeding to transfer a communication through an electronic communications network or when it is strictly necessary to provide an information society service expressly required by an user.”.

Consequently, the guidelines set forth here shall be used in such cases to which section two of article 22 of Act 34/2002 of Act on Information Society Services may apply, pursuant the provisions of Chapter II of this same Act, titled *“Scope of application”*.

Particularly, it is interesting to specify that, pursuant the extract above, the above provisions apply to any *“storage and data recovery devices”* in any *“users' terminal devices”* and that the annex to the aforementioned Act on Information Society Services defines *“recipient or service recipient”* as any *“natural or legal person who uses any information society service, regardless of whether this use is for professional reasons or not.”*.

Therefore, article of the Act on Information Society Services and this guidelines refer to cookies and similar technologies (such as local shared objects or flash cookies⁷, web

⁷ Local shared objects or flash cookies are types of cookies capable of storing much more information than traditional cookies. Since they are independent of the browser used, they are harder to locate, visualize or erase, and may be used, for example, to regenerate standard cookies.

beacons or bugs⁸, etc.) in order to store and retrieve data from an user's device (for example, their computer, smartphone or tablet) of a natural or legal person who uses an information society service, be it for professional reasons or not. The aforementioned standard also applies to fingerprinting techniques.

This guide includes practical guidelines on how to provide information so that the requirement of informed consent is complied with, since the aforementioned article 22.2 of the Act on Information Society Services links obtaining consent to the information provided to users, so that consent provided by user is at all times an informed consent. This article 22.2 refers to Organic Act 15/1999 of 13 December on Personal Data Protection, regarding the requirements for informed consent, although currently this reference has to be considered as made to the GDPR, enacted on 25 May 2018 and the Act on Data Protection, enacted on 7 December 2018. Indeed, it is because of these recent regulating changes that this guideline was reviewed and updated in 2019, and it is now being reviewed and updated once again pursuant to the clarifications made by the EDPB on the conditionality of consent and unequivocal consent through Guidelines 05/2020 on consent under Regulation 2016/679 adopted on 4 May 2020, reviewing and updating the guidelines issued by WG29 on 10 April 2018.

In this sense, the GDPR, Whereas 30, mentions the aforementioned technologies and their impact in data protection: *“Natural persons may be associated with online identifiers provided by their devices, applications, tools and protocols, such as internet protocol addresses, cookie identifiers or other identifiers such as radio frequency identification tags. This may leave traces which, in particular when combined with unique identifiers and other information received by the servers, may be used to create profiles of the natural persons and identify them”*.

For this reason, when using cookies involves processing personal data, the relevant data controllers must ensure that any additional requirements established by the regulations on personal data protection are complied with, particularly with regard to special data categories. Data processing shall be deemed to take place when an user is identified by a name or e-mail address which identifies such user (for example, in the case of a registered user) or when unique identifiers which allow to distinguish users and perform individualised monitoring of users (such as an advertising ID) are involved.

However, with regard to the right of the data holders to protection of their data, when the data controller is not able to identify the data holder, the relevant request may be

⁸ Web beacons or bugs are images too small to be detected by the naked eye (or in such colours as to make it inappreciable), that are stored at a second site and allow the holder of this second site to register an user's visit by means of the information provided by an user's browser when downloading the image (IP address, operative system, browser version, etc.).

rejected by virtue of article 12.2 of the GDPR (except when the data holder, at the time of exerting their relevant right, had provided additional information which allowed the data controller to identify them).

Besides, for the purpose of determining the scope of both the regulation and this guidelines, it must be stated that cookies used for any of the goals described below are exempt from the obligations established by article 22.2. Of the Act on Information Society Services:

- Exclusively allowing communication between users' computers and the network.
- Exclusively providing a service expressly requested by an user.

In this sense, the Article 29 Working Party, in its Opinion 4/2012⁹, interpreted exempt cookies would include those aimed at:

- "User access" cookies¹⁰.
- User identification or authentication (session cookies only).
- User security cookies¹¹.
- Media player session cookies.
- Session cookies for load balancing.
- Cookies for user interface personalisation.
- Certain plug-in cookies to exchange contents from social media¹³.

Therefore, it may be understood that these cookies are excluded from the scope of application provided by article 22.2 of Act on Information Society Services, and therefore, it is not necessary to inform or obtain consent regarding its use. However, the use of any other types of cookies, either own or third-party cookies, or session or persistent cookies, which fall within the scope of application provided by article 22.2 of the Act on Information Society Services will require informing and obtaining consent from users. For this purpose, the guidelines included herein shall be useful.

This considered, for transparency reasons it is recommended to inform, at least in general terms, of those cookies, excluded from the scope of application set forth by

⁹ Available at: https://ec.europa.eu/justice/article-29/documentation/opinionrecommendation/files/2012/wp194_en.pdf.

¹⁰ Session cookies and user access cookies are frequently used to track users' activity when they fill in an online form, or add items to their carts, in order to monitor the items that an user has selected by clicking on them.

¹¹ For example, cookies used to detect repeated erroneous intents to connect to a website.

¹³ This exception only applies to users who have chosen not to close the session.

article 22.2 of the Act on Information Society Services, either in the cookie policy or in the privacy policy (e.g.: “This website uses cookies that allow site operation and the provision of the services offered herein”).

In any case, it must be taken into account that a single cookie may have more than one use (multiuse cookies), so there is a possibility that a cookies is excluded from the scope of application provided by article 22.2 of the Act on Information Society Services for one or several purposes and not for others, the latter being subject to the scope of application of this principle. In the words of the Article 29 Working Party, this should, “encourage website owners to use a different cookie for each distinct purpose”¹².

With regard to cookie setup or management systems referred to in the sections below of these same guidelines, when multiuse cookies with two or more different purposes are used, and such cookies are not excluded from the scope of application provided by article 22.2 of the Act on Information Society Services, guarantees must be provided that those cookies are only to be used when all their aggregate purposes are accepted. This means that, when a cookie serves two purposes, but an user only agrees to one of them, this cookie should not be used, unless the relevant cookie management system allows to provide a differential treatment to the distinct purposes of such multiuse purposes, so that it is possible that when a user only agrees to one of their purposes, the cookie only operates for the purpose agreed to.

2. GLOSSARY AND DEFINITIONS

For the purposes of these guidelines, the key concepts shall be understood as defined above:

2.1. Cookies and similar technologies

The Act on Information Society Services is applicable to cookies understood in the sense stated at the beginning of this guide, that is, as any data storage or recovery device used in an users' terminal device for the purposes of storing formation and recovering stored information, as set forth by article 22.2 of Act on Information Society Services.

Cookies allow to store in userss’ terminal devices a series of data which range from a few kilobytes to several megabytes.

¹² Opinion 4/2012 on cookie consent exemption.

Next, cookies are classified according to a series of categories. However, it must be considered that a single cookie may be included in more than one category.

2.1.1. Cookie categories as per managing entity

Depending on the entity managing the device or domain from which the relevant cookies are sent and processing the data obtained, the following categories may be established:

- a) Own cookies: those cookies sent to users' computers from a device or domain managed by the editor themselves and from which the service requested by users is provided.
- b) Third party cookies: those cookies sent to users' computer from a device or domain not managed by the editor, but by another entity that processes any data obtained through cookies.

When cookies are served from a device or domain managed by the editor themselves, but the information collected by such cookies is subsequently managed by a third party, may not be considered as own cookies if said third party uses them for their own purposes (for example, for improving the services provided by such third party or to provide advertising service in favour of other entities).

2.1.2. Cookie categories as per their purpose.

Cookies may serve a wide range of purposes: Depending on the purpose for which data obtained through cookies are processed, some of these purposes may be:

- a) Technical cookies: cookies that allow user to browse a website, platform or application, and using the different options on services included on these, including those cookies used by the editor to allow operation and management of the website and enable its functions and services, such as controlling data traffic and communication, identifying the session, remembering the items added to their cart, completing the payment process, managing payment, controlling any fraud linked to service security, completing event sign up or participation requests, counting visits for the purposes of invoicing the licenses for the software which allow the service to operate (website, platform or application), using safety elements during browsing, storing contents for video or audio broadcasting, enabling dynamic contents (for example, loading animation for a text or image) or share contents in social media.

Due to its technical nature, this category also includes those cookies that allow for management, in the most efficient manner possible, of advertising spaces that have been included by the editor as an element of the design or layout of a website, platform or application, responding to criteria such as the edited content, and provided that user information is not collected for any other purpose, such as personalising the relevant advertorial or other contents.

Technical cookies are exempted from compliance with the obligations set forth by article 22.2 of the Act on Information Society Services when they are used to provide a specific service requested by users, as it is the case of the cookies listed in the paragraphs above. However, if the same cookies are also used for other purposes which are not exempt (for example, for behavioural advertising purposes), they shall be subject to the obligations set forth in the relevant provision.

- b) Preferences or personalisation cookies: cookies that allow to remember information, so that users may access the service under certain conditions that distinguish their experience from that of other users, such as the language, the number of search results to be displayed, the aspect or contents of the service depending on the browser through which or the region from which it is accessed, etc.

When users themselves choose such conditions (for example, if they choose a website's language by clicking on the corresponding flag), the relevant cookies shall be exempt of the obligations provided by article 22.2 of the Act on Information Society Services, since they are deemed to respond to a service expressly required by users, provided that the cookies are exclusively used for such required purpose.

- c) Analytics or measurement cookies: cookies that allow the cookies manager to perform follow-up and analyses of user behaviour at the websites to which such cookies are linked; this includes a quantitative measurement of the impact of an advertisement. Any information collected by means of this type of cookies is used to measure activity on any website, application or platform, for the purposes of introducing improvements in function of the analysis of the data regarding the service use made by users.

With regard to processing of data collected through analysis cookies, GT29 stated that, although they are not exempt of the duty to seek users' informed consent before their implementation, is highly unlikely that they represent a threat to

users' privacy, provided that they are not third-party cookies, that they process aggregated data with purely statistical purposes, that information on their use is adequately provided and that users are given the possibility to refuse them.

- d) Behavioural advertising cookies: cookies which store information on user behaviour obtained through continuous observation of their browsing habits, which allows to develop a specific profile and display advertisement appropriate to this profile.

In any cases, it must be considered that the above is a non-exhaustive list of categories which includes the most usual types of cookies. Editors and third parties may choose any other classification which adjusts better to the purposes of the cookies used by them, provided that the principle of transparency towards users is respected.

2.1.3. Types of cookies in function of how long they are active

Depending on the period of time that any cookie is active in the terminal devices, the following categories may be identified:

- a) Session cookies: those designed to collect and store data while users access a website. They are regularly used to store information that is only relevant with regard to the provision of the service requested by users in a single situation (for example, a list of purchased products) and which disappear once the session is closed.
- b) Persistent cookies: cookies on which data stay stored and may be accessed and processed for a period of time defined by the cookie manager, which may range from a few minutes to several years.

In this respect, it must be separately assessed whether using persistent cookies is necessary, since the threats to privacy may be reduced by using session cookies. In any case, when persistent cookies are used, it is recommended to limit their duration in time as much as possible considering the purpose they were used for,

In this sense, Opinion 4/2012 of the WP29 stated that, for a cookie to be exempt from the duty of informed consent, their validity must be proportional to their goal. For this reason, session cookies are much more likely to be exempted than persistent cookies.

2.2. Data

Any information obtained through users' terminal device through the data storage and recovery devices, be those cookies or others.

Data shall be considered personal when referring to natural persons either identified or identifiable, in the terms established by article 4 of the GDPR.

2.3. User's terminal device

The device from which users may access any services, such as personal computer, a mobile phone, a tablet, etc., and from which information may be obtained.

2.4. Information society service

Any service provided at the individual request of a user, either paid or unpaid, provided remotely and electronically, provided that, for the purposes of these guidelines, constitutes an economic activity for the editor, and it is the provision of such economic activity that justifies the use of cookies. For example, a service provision consisting on providing access to information through a website or mobile application created by a newspaper or magazine, a financial or entertainment service, an e-Commerce service of an online shop, etc.

2.5. Website

Information society services may be provided by the editor through a platform, application or website which may be accessed from users' terminal devices.

Cookies or storage devices have been traditionally associated to websites. However, currently they are used both on websites and in other types of platforms and applications (for example, in any apps for smartphones and tablets). Throughout this text, the term website shall be understood to include all those possible environments.

2.6. Advertising space

Spaces reserved by the editor, when designing the website, for displaying advertisements of the advertisers' products, services or images. There is a wide range of advertising spaces or formats, from those integrated in the app itself, to banners¹³,

¹³ Banners are ads which adopt the shape of a horizontal rectangle and which may use gif, animation, flash or jpeg technologies, and which appear on the top of a website.

skyscraper ads¹⁴, rectangles¹⁵, buttons, text links, and including the so-called floating ads, such as popups¹⁶, layers¹⁷, curtains, transit interstitials¹⁸, etc.

2.7. Ad inventory

The collection of all advertising spaces in which the editor foresees to display advertisements of the advertisers' products, services or images. It is the global offer of advertising spaces offered by a single editor.

2.8. Stakeholders

The Annex to these guidelines includes a description of the stakeholders that play a role in advertising programming as of the issue date of this document, in order to better understand such environment.

3. OBLIGATIONS

The relevant standards impose two legal obligations: the obligation of transparency and the obligation to obtain consent.

Before the stakeholders study the most appropriate solutions to comply with the aforementioned obligations (pursuant to their type of activity, their business model, and their scope of responsibility), they are advised to review the cookies they used, both internally and with the help of specialised associations or companies. The goal of this review shall be to identify which cookies are actually being used, to analyse whether they are own cookies or third-party cookies, session cookies or persistent cookies, and specifying their respective functions in order to decide whether they are or not in the scope of application provided by article 22.2.

¹⁴ Skyscrapers are ads which adopt the shape of a vertical rectangle and which may use gif, animation, flash or jpeg technologies, and which appear on the side of a website.

¹⁵ Rectangles are ads which adopt the a square shape and is generally displayed at a fixed location within a website.

¹⁶ Pop-ups are ads displayed as a pop-up window over the open browser page.

¹⁷ Layers are floating ads which appear over the page contents and moves around the page.

¹⁸ Curtains or transit interstitials are ads which appear when transiting from one page to another within the same website. They are also known as "welcome pages " or "transitional ads".

Considering any possible changes that may be undergone by cookie management and use, it is recommended to carry out such review periodically in order to update information available with regard to those cookies.

In any case, it is reminded that any solutions implemented in order to comply with the obligations set forth by article 22.2 of the Act on Information Society Services should be technologically neutral, and, therefore, must be recognised by most web browsers.

3.1. Transparency

3.1.1. Information to be provided

Section 2 of article 22 of the LSS establishes that users must be provided with clear and complete information with regard to the use of data storage and recovery devices and, particularly, on the purposes of data processing. Such information must be provided, as stated below, pursuant the provisions set forth by the GDPR, which requires that users' data are processed in a manner that is transparent to them.

Consequently, information on cookies provided when requiring user consent must be sufficiently complete to allow users to understand their intended purposes and use.

Any cookies policy must include the following information¹⁹:

- a) Definition and general function of cookies.

EXAMPLES:

What are cookies This website uses cookies and/or similar technologies which collect and store information as you browse. In general, these technologies may be used for very different purposes, such as, for example, recognize you as a user, obtain information about your browsing habits, or personalize the way the contents are displayed. The specific uses we make of these technologies are described below:

- b) Information about the types of cookies used and their purposes.

EXAMPLES:

What types of cookies are used in this website?

¹⁹ If information is provided in layers, this information shall be included in the second layer, while the first layer will include the basic information provided by section 3.1.2.2.

- Analytics cookies: cookies that are either processed by us or by a third party and which allow us to measure the number of users and therefore carry out an statistical analysis of the use of the relevant service. For these purposes, it analyses your browsing behaviour on our website, with the goal of improving the services or products offered to you.
- Behavioural advertising cookies: cookies that are either processed by us or by a third party and which allow us to analyse your browsing habits in the Internet, so we may display relevant advertising according to your browsing profile.

In case that the editor is not capable of offering a sufficient explanation on the purpose of third-party cookies or on how to remove them, may provide this information including a link to the third party's web page. Consent management platforms (CMP) which comply with the requirements and guarantees stated in section v.d) of the Annex to this guidelines may be a solution.

- c) The cookies final recipients must be identified, that is, it must be stated whether the if information obtained by cookies is processed exclusively by the editor and/or also by third parties which the editor has hired to provide any service for which the use of cookies is required, in which case such parties must be identified.

In line with the requirement established by the GDPR for information to be concise, the specific information about third parties (that is, their name or trademark known by the general public, and, when appropriate, a link to the information this party offers about their cookies) needs not to be directly displayed on the cookies policy, but mechanisms as buttons or pop-up text this information may be used instead to deploy this specific information, and provided that this allow users to easily access information when they wish to do so.

EXAMPLES:

Third-party cookies:

Analytics cookies are cookies that allow to measures the number of users and therefore carry out a statistical analysis of the use of the offered services made by users. For these purposes, it analyses your browsing behaviour on our website, with the goal of improving the services or products offered to you.

[+ More information about third parties](#)

- d) Information on the way to accept, deny or revoke consent for the use of cookies listed through the functionalities made available by the editor (the

management system or cookie setting enabled) or through the shared platforms that may exist for such purposes.

If the cookie management system or setup system enabled does not allow to disable third-party cookies once users have accepted them, information must be provided with regard to the tools included by the browser and offered by the third parties, with the warning that if users accept third-party cookies and subsequently wishes to remove them, they must do so from their own browser or through the system enabled by third parties for such purpose. To that end, and notwithstanding the need to have the relevant management system or cookie setting as stated above, the following information may be provided additionally: *“Keep into account that, if you accept third-party cookies, you will need to eliminate them by tapping on the browser or by tapping not he system offered by such a third party”*.

- e) When appropriate, information on data transfers to third countries carried out by the editor.

The opinion of the WP29 on this matter, later confirmed by the EDPB, is that the GDPR provision allowing the transfer must be identified, as well as the recipient third countries, and information must be provide regarding when and how information regarding appropriateness or adequate guarantees may be accessed, including any binding corporate rules which allow for the relevant transfer. Lacking those, before obtaining users’s explicit consent, users must be informed of the risk of carrying out this data transfer without the appropriate measures or guarantees.

With regard to transfers carried out by third parties, referring to information provided by such third parties shall be considered valid.

EXAMPLES:

You may be informed of such transfers to third parties which, as appropriate, carry out any third parties identified herein in their respective cookie policies (see the links provided under section “Third party cookies”).

- f) When profiling involves taking automated decisions with legal implications for users or that significantly affect them in a similar way, it shall be necessary to inform such user about the used logic, as well about the relevance and intended

consequences of such processing for users in the terms established by article 13.2 f) of the GDPR²⁰.

- g) Conservation period of data for the different purposes provided by article 13.2 a) of the GDPR.
- h) With regard to any other information required by article 13 of the GDPR which does not explicitly refer to cookies (for example, rights of the stakeholders), the editor may refer to the privacy policy.

3.1.2. Correct display of information

3.1.2.1. Information requirements

Among the transparency requirements, the following requirements, applicable to the manner in which users must provide information regarding the use of cookies.

- a) Information or communication must be concise, transparent and intelligible.

Information must be brief to avoid information fatigue and must be written in a simple, clear language, so as to ensure that an average user can understand it.

The WP29, in its Opinion 15/2011, recommended to take into consideration the average intended user and adapt the language and content of messages to their technical level. In this same line, in their guidelines on transparency, WP29 states that information *“should be understood by an average member of the intended audience”*. The lower that the technical level of the average user of a specific website is, the more simple the language used should be (avoiding technical terms which may be difficult to understand) and the more complete provided information should be, starting by a basic presentation of what are cookies and how do they work. In any rate, such lower technical level shall not prevent information from being as clear as possible. Any unnecessary detail which may distract users or cause informative overload must be avoided.

²⁰ However, the opinion of the WP29 on automated decision making and profiling, issued on 3 October 2017 and reviewed for the last time and enacted on 6 February 2018, it is acknowledged, for example, that behavioural advertising does not normally fall within the scope of article 22.2 of the GDPR, since “[i]n many

On the contrary, when intended website users are presumed to have a high level of knowledge about the internet, basic information regarding what are cookies and what are they used for may not be necessary. However, detailed information about what types of cookies are used in the relevant page and for which purposes must be included.

typical cases the decision to present targeted advertising based on profiling will not have a similarly significant effect on individuals ”.

An average user's knowledge about cookies and their management must be considered at all times. Notwithstanding the above, additional information may be provided when the relevant websites are specifically addressed to users which, due to their profile, may be supposed to have a lower level of knowledge.

- b) Language used must be clear and simple, avoiding any misleading statements or expressions that jeopardize clear understanding..

For example, statements such as “we use cookies to personalise content and create a better user experience” or to “improve your browsing experience” or “we may use your personal data to provide personalised services” when referring to behavioural advertising cookies. Expressions such as “can”, “may”, “might”, “some”, “any”, “often” and “possible” must be avoided.

- c) Information must be easily accessed.

User must not sear for the information; it must be obvious to them where and how this information is to be accessed. This may be achieved by means of a clearly visible link which points directly to the information and is labelled by a commonly used expression such as “cookie policy” or “cookies”.

Informing users is not a new phenomenon on the Internet. Most website editors know which methods need to be used to call their user’s attention to any information that needs to be highlighted, as they do to highlight offers, promotions or satisfaction surveys, as well as to obtain users’ consent, even in other contexts (for example, changes in users’ terms and conditions, confirmation of purchases or verifications of required minimum age). The manner in which users are informed must leverage the experience acquired in these past experiences.

Besides, in case that an user consents to cookie use, information must stay easily accessible in the website or application (which must not be more than two clicks away as recommended by the WP29 on their guidelines on transparency). On a website, for example, cookie policy accessibility and visibility may be highlighted in several ways:

- By link format: for example, increasing its size or using a different font so that the relevant link stands out from the regular text on the website.
- By link location: Positioning the link in locations that are more visible to users or in which the average user expects to find it, as it is where it is usually and generally found, may help guarantee the link's accessibility or visibility.
- By using a descriptive, intuitive label for the relevant link: Using a selfexplanatory expression as "Cookie policy" instead of a general label such as "Privacy policy" in order to improve the message's accessibility or visibility.
- By means of other techniques that help to highlight the importance of this informative link, such as framing or underwriting the link, or displaying a notice when the mouse is positioned over the link or using an image encouraging to click on it to have more information.

Particularly, it is advisable that information regarding the manner in which cookies are managed (including how to revoke consent and remove cookies) is available in an accessible and permanent manner at all times through the relevant website, application or online service. For these purposes, and notwithstanding any other solution which may be adopted, it shall be considered that this requirement is complied with when the cookie management system (setup panel, CMP, etc.) is integrated in the cookie policy itself or when this policy includes a link that leads directly to the management system.

In any case, compulsory information may be displayed by means of different systems. As we will see below, generally, these methods not only provide the necessary information, but may also request user consent to use the relevant devices.

3.1.2.2. Layered information

In their guidelines on transparency, the WP29 recommends the use of layered statements or privacy notices; that is, statements that present information in layers, so that users may go to those sections which are most interesting to them, thus avoiding

information overload. Notwithstanding the above, all the information must be available at a single location or in a single document which may be easily accessed by users who wish to read it in its entirety.

This layered system can consist on a first layer with essential information, displayed when users accessed the page or application, and a complementing second layer by means of a page containing more detailed and specific information about cookies.

The first layer, which, for clarity's sake, must be identified by a generally used term (such as "cookies"), would include the following information:

- a) Identification of the managing website editor. It shall not be necessary to identify the editor by their corporate name, provided that their complete identification data are stated in other sections of the website (legal notice, privacy policy, etc.) and their identity can be clearly deducted from the website itself (for example, when the domain name is the same as the editor name or the trademark by which they are known by the general public, or when such name or trademark are clearly stated on the website).
- b) Identification of the purposes of the cookies used on the website.
- c) Information about whether such cookies are exclusively the website manager's own cookies or also third-party cookies from any associated third party which needs to not be disclosed in this first layer.
- d) General information on the type of data which are to be collected and used in case that user profiling is carried out (for example, when behavioural advertising cookies are used).
- e) The manner in which users can accept, set up and reject cookie use, including the warning that, if they proceed to carry out certain actions, it shall be understood that users accept cookie use.
- f) A clearly visible link addressed to a second informative layer which includes more detailed information, labelled, for example, as "Cookies", "Cookie policy" or "Click here for more information". This same link may be used to point users to the cookie setup panel, provided that such access to the setup panel is done directly (users do not have to browse the second layer of information to locate it).

This information must be provided before cookies are used or even installed, as appropriate, though a format that may be visible for users and which must be maintained until the relevant user gives their consent or refusal in the manner provided.

Example no. 1:

COOKIES

We use our own and third-party cookies to analyse our services and show ads related to your preferences, according to profiling based on your browsing habits (for example, websites visited). You may know more and set up your preferences [HERE](#).

ACCEPT COOKIES

REJECT COOKIES

It can be observed that, in the relevant example, information is provided in the use, both by the editor and by third parties, of analytics and behavioural advertising cookies, and explicit user consent is obtained when users click on the relevant button. If the relevant users does not click on "Accept cookies", cookie use is not authorised. Consequently, if users just keep browsing without clicking in "Accept cookies", it is not allowed to enable cookies.

Another valid example for a first layer, with the same type of cookies, would be as follows:

Example no 2:

We use our own and third party cookie for analytic purposes and in order to show personalised ads according to profiling based on your browsing habits (for example, websites visited). Click [HERE](#) to know more. You may accept all cookies by clicking on "Accept" or [REJECT OR SET UP YOUR PREFERRED CONFIGURATION BY CLICKING HERE](#).

ACCEPT

If the relevant users does not click on "Accept", cookie use is not authorised. Consequently, if users just keep browsing without clicking in "Accept".

In any event, it will be necessary for the user to carry out an action that may classify as a clear affirmative action for the consent to be considered as validly granted.

Obtaining consent through the behaviour of users other than an acceptance button, provided such a behaviour may be construed as a clear affirmative action, will be admissible if the conditions in which such conduct occur offer enough certainty that an informed and an unequivocal consent is being granted and if evidence can be presented in the sense that such a behaviour has occurred. In any event, the sole act of staring at the screen, scrolling or browsing through the website will not be construed as a clear affirmative action under any circumstance.

The first layer information must be completed by a setup system or panel by means of which users may choose between accepting or not accepting cookies one by one, or, alternatively, a link pointing to such system or panel.

Users can also be given a third option consisting on including two buttons so that they may accept or set/reject cookies:

Example number 3:

We use own cookies and third-party cookies for analytical purposes and to show you customised publicity based on a profiling made out of your browsing habits (such as, for example, the pages you have visited). Click [HERE](#) to obtain more information. You can accept all cookies by clicking on "Accept" or set or reject them by clicking on "Set".

SET

ACCEPT

The option "Accept" may be substituted with equivalent terms such as "Accept and continue", "OK" or "Accept and close". Likewise, and also by way of an example, the option "Set" may be substituted with other terms such as "Options", "More options", "Other options" or "Privacy setting". These options will be admissible provided the consequences have been clearly stated on the choice of accepting or setting the cookies.

The link or button for managing preferences, must point users directly to setup panel; avoiding making users scroll down a long text in search of the relevant information, which must be permanently accessible. This panel may be included in the second information layer.

In order to enable easy choice by users, the panel may include two buttons, the first for accepting all cookies and the second for rejecting all cookies. This option is especially advisable when there is a large number of different cookies involved. If the second or the third examples are used as a way of obtaining consent, a button to reject all cookies must be included in the panel to respect the requirement that revoking consent be as easy as granting consent. For such purposes, for example, this requirement will be considered as fulfilled when the setting panel includes a “Reject all cookies” button or a button to store the setting made by the user and, in this second case, if it is also expressly stated that, if the user saves their setting without selecting any cookie, this will equal a rejection of all cookies. Regarding this second possibility, be reminded that pre-ticked boxes in favour of accepting the cookies are not acceptable. For the save button, the following may be stated:

By clicking on “Save settings”, the selection of cookies made by you will be stored. If you have not selected any option, to click on this button will equal rejecting all cookies.

Save settings

The level of detail with the panel displays the relevant cookies selection must be assessed by the website editor. However, the editor is advised to consider the following rules:

- At the very least, cookies must be grouped by purpose (so that, for example, users may choose to accept analytics cookies and not behavioural advertising cookies). It must be considered that the purposes provided for in these guidelines are not exhaustive. There are many ways to group cookies according to their purpose. Within each purpose, and to the prerogative of the website editor, cookies may be grouped according to the third party who is to use them (for example, users may choose to accept analytics cookies from a certain third party and not another).
- With regard to third-party cookies, it shall be sufficient to identify such third parties by their name or by the trademark by which they are known to the public; there is no need to include their full corporate name.
- The maximum number of granularity, that is, making the cookie accept or reject cookies one by one, since excessive information hinders the decision making process.

The second layer, which must be permanently available on the website or application, would include the information provided in section 3.1.1.

3.1.2.3. *Alternative methods for displaying information*

Besides layered information, there are many other popular methods for providing information on cookies. For example:

- a) Providing information by means of a sufficiently visible notice (see section 3.1.1).
- b) When subscribing to a service, or before downloading or an application, this information may be provided together with the privacy policy, or with the user terms and conditions, provided that there is a direct access or link to the cookie sections of the corresponding document.

For the purposes keeping the information about cookies visible, this must be distinct and highlighted (for example, by means of a different hyperlink) to be set apart from any other information regarding terms and conditions or their privacy policy.

In these cases, it may also be possible to provide the relevant information and obtain user consent through conventional methods (*off-line*), as long as there is proof that users have been individually informed and they have granted their consent (by means of loyalty cards, for example).

3.2. Consent

3.2.1. *Consent as the ground for complying with the relevant standards*

The use or not-exempt cookies shall require obtaining user consent at all times. This consent may be obtained by means of express formulas, such as clicking on a section labelled as “I consent”, “I accept” or other similar term. Such consent may be obtained by deducing it from an unequivocal action carried out by users, in a context where such user has been provided with clear and accessible information on the purposes of the relevant cookies, and on whether they are to be used by the same editor or by third parties, so that it may be understood that such user accepts that cookies are installed. The mere lack of action by users may not, in any case, be understood as consent.

In order to such consent to be valid, such consent must have been freely granted from an informed user. Therefore, it is necessary to consider:

- a) That consent may be granted by means of different methods. When consent may be obtained by users clicking on a certain link or button or similar action, there shall be proof that such consent has been obtained. This formula may be the most appropriate for registered users.
- b) The user must have carried out a clear affirmative action.
- c) It must be evident for the user to know through which precise action by them the use of cookies is being accepted. In this regard, the use of a button like the type “Accept” will be considered sufficient information without the need to specify that by pressing “Accept” cookies are accepted. However, complex or less obvious actions such as the use of acceptance or save selected setting buttons need to be explained for the user.

The EDPB has established that the fact of continuing to browse is not a valid way to provide consent. Likewise, the consultation of the second information layer in case the information is presented in layers, as well as the necessary browsing for the user to manage their preferences with regard to cookies is not an active behaviour from which the acceptance of cookies can be inferred.

- d) That users, in any rate, may refuse to accept any cookies.
- e) That any information provided to users so that they may consent to cookie use must be separated from any information provided on other issues.
- f) That accepting the website or service terms and conditions must be separated from accepting the privacy policy or the cookie policy.
- g) That, even though cookies are not usually present in cases where the GDPR requests the explicit consent of data subjects²¹, when such an explicit consent is required [Articles 9.2 (a), 22.2 (c), and 49.1 (a) of the GDPR], consent will only be obtained through acceptance buttons, provided a specific legend is included with the term “consent” and full information is provided on the special data categories that are being accepted, the automated individual decision-making or the data transfers to third countries, as the case may be.

²¹ As stated above, WP29’s opinion on automated decision-making and profiling recognises that, for example, behavioural advertising does not generally fall within the scope of article 22.2 of GRPD).

Example:

COOKIES

We use own cookies and third-party cookies for analytical purposes and to show you customised publicity based on a profiling made out of your browsing habits (such as, for example, the pages you have visited). You can read more information and set your preferences [HERE](#).

ACCEPT COOKIES

REJECT COOKIES

☐ Tick this box if you give your consent for us to use special data categories for such analysis and profiling purposes (*mention the special data categories to be used in each case here*).

For the purposes of the example above, it will be accepted that the banner text make a reference to “special data categories”, underlined and highlighted in a different colour, such as a link so that a balloon appears specifying the special data categories that are to be used or that the user is directly conducted to a list of such special data categories.

3.2.2. Persons authorised to grant their consent

Pursuant to section 2 of article 22 of LSSO, consent must be granted by the “recipients” of the relevant information society service.

Pursuant to paragraph d) of Annex to Act on Information Society Services the “*recipient or service recipient*” shall be understood as “*natural or legal person who uses any information society service, regardless of whether this use is for professional reasons or not.*”. And, pursuant to the definitions included in the corresponding section, the “recipient” is the same person as the “user”, the latter term being preferred in these guidelines.

That is, information must be addressed directly to users so they may grant their acceptance or express their refusal.

3.2.3. Methods to obtain consent

In order to determine which method shall be more appropriate to validly obtain consent for using cookies shall be dependent on the type of cookies to be used, on their purpose and on whether they are own or third-party cookies. An aspect to be considered is whether a relationship is established between users and editor or between user and third parties.

In this sense, it must be stated whether consent is only granted with regard to the website from which it is requested or also with regard to other websites with which it shares an editor, or even with regard to third parties somehow associated to the relevant webpage editor, in the framework of the purposes of the cookies for which information has been offered.

The following consent mechanisms, among others, may be used:

a) When subscribing to a service.

It is possible to request consent for using cookies when users subscribe to a service, provided that such consent is granted in a separate manner and not together with acceptance of the website user terms and conditions, privacy policy or general service terms.

b) During the website or application operation setup process.

Many websites and mobile applications allow users to setup their service preferences, such as language, font, wallpaper colour, etc. Depending on the app's specific characteristics, users are also requested to allow access to information in their terminal (such as contacts, in order to suggest friends, or photo album).

Therefore, consent for cookies to be used may be set up during this characteristics specification process by users. In this case, the consent is integrated in users' choices and setup.

c) Through consent management platforms (CMPs).

As long as CMPs comply with the requirements and guarantees stated in section .a) of the Annex, they shall be deemed an appropriate tool for obtaining consent.

d) Just before downloading a service or application offered, for example, non the website.

Another possible method to obtain consent is to do so just before downloading a service included on a website or app (for example, a video, image, or game).

In such cases, when the intended cookies are not necessary for service or application operation, users must be allowed to grant their consent before the relevant service or application download begins.

It must be remembered that, if a webpage offers audio-visual consents, these are part of the service expressly requested by users, and they are thus exempt of the duty of requesting such consent before displaying the relevant contents.

When users wish to exert a legally recognised right (for example, unsubscribing from a telephone service, Internet access or other kind) and the relevant service or app is the only means provided to them in order to exert such right, access to such application or service must never be conditioned to accepting unnecessary cookies.

e) Through layered information.

In the layered information model described above, the first layer, which includes the core information, must also include the cookie consent request.

For such cases, the user declares whether they accept or refuse the use of such cookies by carrying out or refraining from carrying out the affirmative action of which they have been duly informed, and they are likewise informed on a permanent basis on the use of cookies and the way to set them and/or reject them on the second layer.

For these purposes, and by way of example, clicking on a cookie acceptance button by a user shall be understood as granting consent.

Information provided in this first layer may be shown by means of a format visible for users, such as a banner or bar, or by means of similar techniques or devices, considering that those elements are best seen when located on top of the page.

In small-screened devices, the size and contents included in the first layer may be adjusted to the screen size.

f) Through browser setup.

Both the Directive on privacy and the LLSI suggest that the setting of the browser could be one of the ways to obtain consent. For this option to be valid, the setting of the browser must be able to be used in such a way that it allows for users to

express their conformity with the use of cookies pursuant to the provisions in the GDPR and taking into account the resolutions by the EBDP²² in their guidelines on consent, that is, consent should be separated for each of the purposes envisaged and information made available should identify data controllers. For the purposes of this notification, the full registered name will not be necessary, only the trademark or name by which the data controller is presented to the public.

Under such terms, the setting of the browser would be a valid option to obtain consent, but it would not serve as a single mechanism for the user to reject or revoke consent with regard to the use of cookies. In any event, the editor must offer the user a formula so that they can reject or revoke the consent granted for the use of cookies through their own webpage or, as the case may be, through the provision of information on the tools made available to revoke consent by third parties who use the cookies, so that the user may exert their right to revoke consent as easily as they granted it.

3.2.4. Consent granted by under-14s

Websites or online service specifically aimed at underage minors, additional cautionary measures, such as using a simple, more clear language, need to be considered.

When such services are addressed at under 14s, the data controller shall make all reasonable efforts to verify that consent to process any personal data was granted by the holder of the parental responsibility, considering the available technologies and the circumstances under which data are processed. Therefore, among other facts, when establishing measures to verify that consent was granted or authorised by the holder of the parental responsibility, the level of risk associated to cookie use must be considered (for example, assessing the nature of data collected by such cookies) and be especially observant of the principle of data minimisation²³. The lower the risk, the simpler may be the verification system implemented.

²² Guidelines on consent under Regulation (EU) 2016/679, adopted on 28 November 2017, last reviewed and adopted on 10 April 2018.

²³ The EDPB, in its opinion on consent under Regulation (EU), states: “the European Data Protection Board recommends the adoption of a proportionate approach, in line with Article 8(2) GDPR and Article 5(1)(c) GDPR (data minimisation). A proportionate approach may be to focus on obtaining a limited amount of information”.

For example, considering unregistered users of a website addressed to underage users, if the collected device and browsing data are collected for purely analytic purposes, the consent of the holder of the parental responsibility could be obtained by means of a previous call or warning to the underage user, at the first information layer, that, if they are under 14, they need to call their father, mother, or tutor, and to have them to accept, refuse or set up cookies. This method avoids having to request additional data from the minor or the holder of the parental responsibility.

Example 1:

If you are under 14 years of age, please ask your father, mother or tutor to read this message.

We use both our own and third-party cookies to find out how you use our website and prepare statistical surveys. [More information](#).

Your father, mother or tutor may press “Accept” if he or she agrees with us using all cookies. He or she may also set up or refuse these cookies [HERE](#).

ACCEPT

When the intended purpose of data is to remember certain information about users or their terminals in order to automatically alter and personalise certain aspects of the browsing experience (for example, the website language or the contents layout) without actually profiling the underage user, generally, notwithstanding the corresponding risk analysis with regard to the specific circumstances of each case, additional precautionary measures should be adopted in order to verify that the consent was actually granted or authorised by the holder of the parental responsibility.

Thus, for example, it may be possible to ask users if they are 14 years or older in the first place, and, when they state that they are not, display the following message:

Example 2:

Please call your father, mother or tutor and ask him or her to enter the year in which he or she was born.

[BIRTH YEAR FIELD] (this information shall not be stored but only used for consent verification purposes)

We use our own as well as third-party cookies to know why do you use our website and prepare statistical surveys, as well as for personalising your experience (for example, adapting the layout or language of our website or games). [More information](#).

if he or she agrees with us using all cookies. He or she may also set up or refuse these cookies [HERE](#).

ACCEPT

The system in the example should be capable of detecting any incidents leading to conclude that data entered are not correct, in which case, cookies will be withheld until the consent of the holder of the parental responsibility is obtained. Such incidents may include birth years in the future or according to which the holder of the parental responsibility is underage, is too old to be reasonably alive or to have children under 14.

Editors may use any reasonable verification in order to verify that consent has been effectively granted by the holder of the parental responsibility, and not by the under-14 user (for example, by means of questions or CAPTCHAs).

For uses presenting a higher risk than that described on examples 1 and 2 (for example, when personal aspects are assessed in order to predict personal preferences or interest or to display personalised advertisement, especially when such data are shared with third parties) may require additional information from parents or holders of parental responsibility, for verification purposes (for example, a contact e-mail address to which the editor may send a verification email in order to double-check the parent's or tutor acceptance).

With regard to this particular aspect, it must be considered that the WP29 ²⁴ recommended organizations to refrain, in general terms, to perform marketing profiling

²⁴ Opinion on automated decision-making and profiling under Regulation 2016/679. Adopted on 3 October 2017 and last reviewed and adopted on 6 February 2018.

on underage users, since children are a specially vulnerable group of users. For these reason, whenever users are over 14 and therefore the relevant consent is not granted by their parents or tutor, editors are advised to refrain from using behavioural cookies on webs addressed to underage users or whose public is overwhelmingly underage.

When consent regarding cookies is obtained during the registration method in a service, or in the context of a separate process in which personal data are requested to underage users, such as their name or surname, e-mail address or other contact data. In those cases, for verification purposes, additional information may be requested about parents and tutors, such as their name or surname, email addresses for verification purposes as above, or even a copy of an ID document) in order to request them to state their consent.

3.2.5. When to use and, if appropriate, install cookies

With respect to the time in which consent has to be obtained in order to use and, when appropriate, install cookies, article 22 of the Act on Information Society Services must be considered:

“Service providers may use data storage and recovery devices in the recipients’ terminal devices, as long as such recipients have granted their consent after being provided with clear and complete information with regard to their future use, particularly on the purposes of data processing, pursuant Organic Act 15/1999 of 13 December, on Personal Data Protection.”

Consequently, cookie use may only take place when the relevant user has been provided with the relevant compulsory information and consent is obtained as per and following a method recognised by the relevant procedures. In this sense, using cookies should entail users’ informed consent to such use, so that recipients have a chance of examining the relevant information and deciding whether to agree or not with the use of such devices.

3.2.6. Obtaining consent to use cookies when a single editor provides services across several websites

When a single editor provides services across different domains, this editor may, through a single website, inform and obtain consent to use any cookies sent from any domain held by this same editor and which displays similar characteristics, for the purpose of providing any services requested by users, as long as such users give their

consent after being informed, besides everything else, of which websites or domains are held by the same editor and thus authorised to send cookies, and of the categories and purposes of such cookies.

In case that those pages across which a single editor provides different services display characteristics or offer contents which are not similar (for example, if any of those pages host adult contents), additional precautionary measures must be implemented.

3.2.7. Changes in cookie use

As a general rule, whenever a consent has been validly obtained, it does not need to be obtained again each time that a user visits again the same website from which the relevant service is provided.

In any case, it is obvious that when the purpose of the relevant cookies or of third-parties using those cookies after users have given their consent, the relevant cookie policy must be updated and users must be given a chance to make a fresh decision.

3.2.8. Updating consent

The EDPB, in their guidelines on consent, recommends to renew consent at regular intervals as the best practice. This entity considers good practice that consent granted by users to use a specific cookies is valid for a period no longer than 24 months. During this time, users' preferences may be stored so they are not asked to set them up again every time they visit the relevant page.

3.2.9. Withdrawing consent to use cookies

Users may withdraw any previously granted consent at any time. For this purpose, the website editor must ensure that users are provided with information on how to withdraw consent and remove cookies.

Users must be able to withdraw consent easily. The system provided to withdraw such consent must be as easy as the system used to grant such consent. A system shall be considered easy to use, for example, when users may access easily and permanently to the cookie setup or management system.

3.2.10. Access to services denied due to cookie refusal

Pursuant to the EDBP guidelines on consent, for consent to be granted freely, access to the services and functionalities must not be subject to the acceptance by the users of the use of cookies. For such purposes, the so-called “cookie walls” will not be used if they do not offer an alternative to consent, as explained below. This criterion is specifically important in cases where the refusal of access would hamper the exercise of a right legally awarded for the user, for example, if access to a website is the sole means made available for the user in order to exert such a right.

Certain cases may exist where lack of acceptance of the use of cookies prevents access to the website or to the partial or full use of the service, provided that users are adequately informed on it and an alternative of access to the service without the need to accept the use of cookies is provided. Pursuant to the Guidelines 05/2020 on consent by the EDPB, the services of both alternatives must be genuinely equivalent, and equivalent services offered by an external entity with regard to the editor will not be accepted.

4. PARTIES' RESPONSIBILITY IN COOKIE USE

The Act on Information Society Services does not define who shall be responsible for complying with the obligation of providing information on cookies and obtaining the relevant consent.

All stakeholders using cookies must collaborate to ensure that compulsory legal requirements are complied with.

Basically, in cookie management and processing of obtained data, the two scenarios described below may occur, depending on the purpose for which data obtained through cookies are processed.

4.1. The editor or any third party use cookies for any purpose exempt of any information and consent obligations.

Whenever an editor offers a service and all cookies sent from their website are exclusively used for the purposes stated above, and those are purposes for which it is not necessary to obtain users' consent, the relevant editors shall not need to inform

about those cookies or to seek users' consent, regardless of whether those cookies are their own or of a third-party.

However, in case third-party cookies are used to provide any service required by users, contracts with such third parties must be subscribed in order to guarantee that data collected are not processed for any other purpose than to provide the intended service. If this is not the case, any other purpose must be notified to users and their consent in this respect must be sought.

4.2. The editor or any third party use cookies for any purpose not exempt of any information and consent obligations.

In this scenario, the editor's own cookies and third-party cookies are identified.

Whenever an editor who, by means of third own cookies, processes data for any purpose not exempt of any information and consent obligations, such editor must inform users about the purposes for which data are to be treated and seek their consent in any of the methods described in these guidelines.

Besides, whenever third-party cookies are used for any not exempt purpose, both the editor and any other cookie managing entity must guarantee that users are clearly informed about cookie use and about the purposes for which such cookies are to be used, before seeking their compulsory consent.

In this sense, when an editor uses a CMP, and this CMP creates an environment in which participating third parties may comply with any information or consent obligations, such third parties shall be individually and directly responsible for complying with such obligations,

Generally, third-party cookies store information in users' terminal device, or use information stored in such devices, because the website, platform or app editor include the possibility of including third-party contents in the design of such website, platform or app or, alternatively, third party software which requires cookies.

For this reason, when editors used third-party cookies, they should guarantee that any stakeholders are properly informed and that appropriate mechanisms to secure such consent have been enabled, for example, through contractual obligations or guarantees that commit the third-party cookie owner to install consent management platforms.

Therefore, when information about third-party cookies is offered through a link to a third party website, the editor must ensure that such links work, and the third party shall be responsible for ensuring that any information provided by such links is not obsolete and is also displayed in Spanish or in any other language with co-official status in Spain.

Thus, in such scenarios and with the purposes of streamlining and guaranteeing compliance with the relevant obligations established in this scope, whenever third-party cookies are used, the corresponding contracts subscribed between editor and third parties must include one or more clauses ensuring that users will be provided with the required information and that such information is to be presented in such a way such as to validly obtain consent regarding cookie use. The methods and consequences for revocation of such consent for the editor and, especially, for any third party which obtained such consent through the editor shall also be addressed.

It must be considered that, in practice, when a CMP is not used, it is more difficult for companies using third-party cookies which do not have a direct relationship with users to comply with the above requirements. Users may therefore address their concerns to the company that they are able to identify and with whom they have any relationship whatsoever, that is, the editor.

It must also be considered that cookie owners, inasmuch as they define the purposes and means of data processing, are responsible for the personal data collected by such cookies and of any further processing of the collected personal data.

Thus, advertisers, editors, agencies, ad networks and other intervening agents shall act as data controller both through the use of their own cookies and by participating on the means and purposes for processing data collected by third-party cookies, regardless of the existence of a data processor; an example of this may be when an advertiser contracts a media agency to perform any data processing activities under their direction and according to their instructions.

Those persons whose acts are limited to following the instruction of the data controller shall be considered data processors. The figure of the data processor is defined in article 2.8 and governed by the provisions of article 28 of the GDPR.

As a general rule, each data controller shall be responsible for the specific processing activities carried out by them. Even in those cases in which different data controller concur, their respective responsibilities shall be different and separated.

Notwithstanding the above, in those cases in which the companies referred to in the above paragraphs (advertisers, agencies, ad networks, editors and other agents) jointly determine the means and purposes of the data processing, they shall be considered joint data controllers and therefore must abide by the provisions of article 26 of GDPR. That said, the fact that there are joint data controllers shall not necessarily imply that all companies involved are equally responsible with regard to personal data processing. Rather, the responsibility of each company will depend on its involvement in a specific processing activity. Therefore, the level of responsibility of each of them must be assessed on a case basis and considering all appropriate circumstances affecting their respective responsibilities in determining the means and purposes of the specific data processing activities.

In this sense, the scope of the editor's obligations of providing information and obtaining consent with regard to third-party cookies is limited to those data processing activities for which they are responsible, including, when appropriate, any joint responsibility in ensuring that the user is aware and consents to the use of cookies by identified third parties for the stated processing purposes. Such obligations shall not be extensive, however, to any subsequent stages of processing in which the editor does not intervene, the responsibility with regard to which shall fall entirely in the relevant third party.

For example, any responsibility regarding subsequent data processing carried out by third parties so that they may offer audience building, profiling or other similar services (based on processing data collected through cookies) would not be extended to the editor. In the same manner, responsibility in preparing such audiences or profiles may not be implied from fact of using such audiences or profiles.

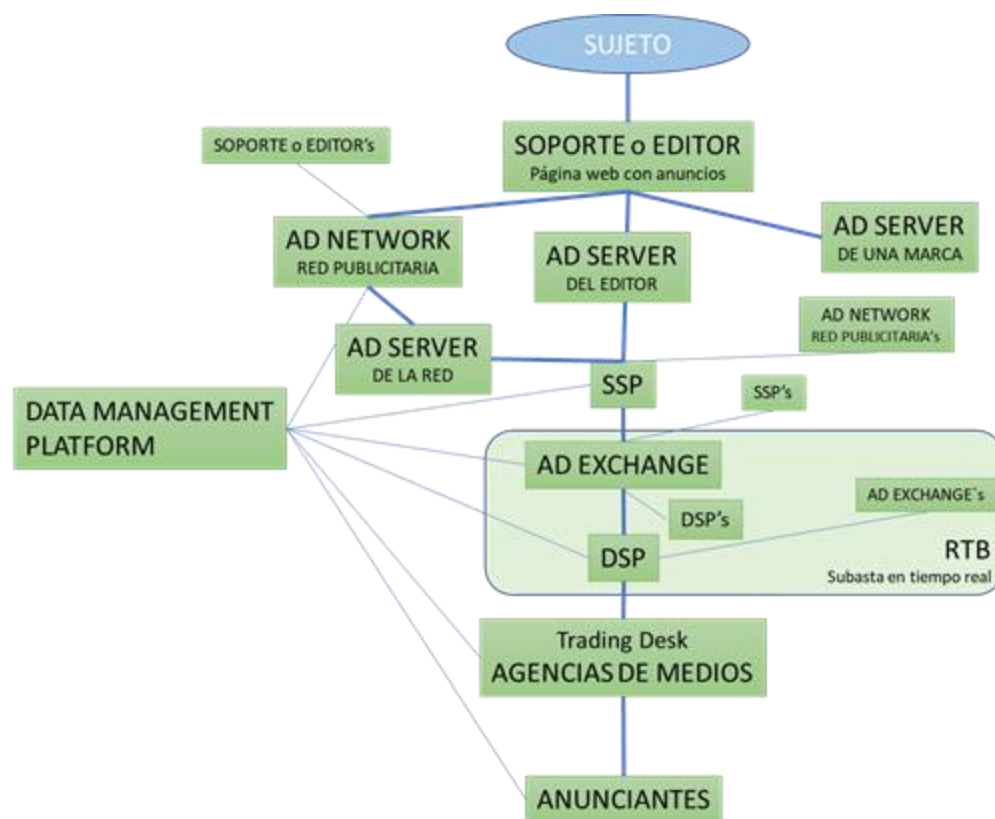
In any rate, administrative responsibility before any supervisory authorities with regard to compliance of any obligations born from the use of cookies shall correspond to each obliged party and may not be contractually transferred.

ANNEX

INTERVENING PARTIES

Usage-based advertising processes involve multiple actors and agents, including certain technological tools, such as *ad exchanges* or *demand side platforms* (DSP).

The following image includes a graphic with the main agents intervening in digital purchase of usage-based advertising (although they do not need to be all present):



		SUJETO	USER		
		AD SERVER DEL EDITOR	EDITOR AD SERVER		
SOPORTE O EDITOR	EDITOR OR SUPPORT	SSP	SSP	AD SERVER	AD SERVER
AD NETWORK RED PUBLICITARIA	AD NETWORK AD NETWORK	AD EXCHANGE	AD EXCHANGE	AD NETWORK RED PUBLICITARIA	AD NETWORK AD NETWORK
AD SERVER DE LA RED	NETWORK AD SERVER	DSP	DSP	AD EXCHANGE	AD EXCHANGE

		DSP	DSP	RTB Subasta en tiempo real	RTB Real Time Bidding
DATA MANAGEMENT PLATFORM	DATA MANAGEMENT PLATFORM	Trading Desk AGENCIAS DE MEDIO	Trading Desk MEDIA AGENCIES		
		ANUNCIANTES	ADVERTISERS		

i. Users

They are natural persons who access any service provided by an editor. A difference may be made between registered and unregistered users. It must be considered that, although legal texts use the term “service recipient”, these guidelines use the more common term use.

ii. Agent or seller: Editor or support

Any information society service provider who is the owner of any website accessible to users provided that cookies are used to provide such services.

For example, it could be a carpenter or a fishmonger who sets up their own website (which may simply display information about the services offered or include a e-shop through which purchases may be made), or their own mobile app, which may not require cookies.

Some editors, or some supports, also known as publishers, besides providing a service to users offer to act as support for advertisers’ advertising spaces, either by themselves or with the help of one or more third parties, and cookies are required to manage such spaces.

An example of the above would be a newspaper or magazine which provide information to their users through a website or mobile app and, together with such information, displays images or act promoting the products or services of one or more advertisers.

This definition is a good example of the double function that an editor may develop. On one hand, they act as a service provider in the benefit of the user, and cookies may be required to provide this service. On the other hand, they may also act as a support, and as such they may offer advertising spaces to advertisers. Such spaces may be managed by the editor themselves or either by one or more companies simultaneously, by means of technologies whose operation may also require cookies.

This aspect involves acting as the support in which (relevant) ads are displayed to the user through available advertising spaces, which, together, are called “ad inventory”.

The support markets the ad inventory through the following agents:

- Ad networks
- Supply side platforms (SSP)²⁵.
- Agents and/or advertisers by direct agreements by accessing their ad servers (the computer that stores ads and serves them to editors).

The advertising cookies that are installed in the users’ browsers may come from the following agents:

- Supply side platforms (SSP).
- Advertisers, agencies and their ad servers, or ad servers or their DMPs.
- Ad exchanges; the place where supply and demand meet and sales and purchases are completed, and also the place where advertisers meet editors/supports.

iii. Advertisers

Companies whose products, services or image are advertised through the advertising spaces assigned, as appropriate, in the editor’s pages or other applications providing services to users. In this sense, it stands for the demand of advertising spaces.

Frequently, the editor is also an advertiser. The editor shall also act as an advertiser in as much as they use the advertising spaces made available by other editors in order to advertise the services they provide for the users.

Thus, the carpenter or fishmonger of the example above may, besides acting as the editor if their own websites, act as an advertiser if they enter a contract for advertising their products or services either directly (with other editors) or indirectly (with an ad network).

iv. Purchasers

²⁵ Supply side platforms or technological platforms that allow to connect an ad inventory to different ad exchanges.

Persons interested in displaying the ads. They set up a total budget for an ad campaign, define the target public and provide creative materials. With regard to spatial purchases,

purchasers also establish the minimum bidding price that they are willing to pay by impression.

They may intervene:

- through a media agency
- directly with SSPs
- directly with editors through ad servers • Different agents may perform this role.

v. Intermediate agents

a) Consent management platform (CMP)

CMPs are tools installed in the editor's support, website or apps, and which allow that any cookie manager complies with their duties of information and obtaining consent.

In order for a CMP to be valid, it may allow that any entities using it, either editors or other agents, comply with the requirements established by the standards in the terms established in these guidelines.

In particular, a coordinated, consistent environment must be created, in which, by means of agreements or contractual frameworks, editors and third parties are obliged to:

- Comply with any transparency requirements with respect to users.
- Obtain a valid consent from users.
- Subsequently respect users' consent setup and allow users to manage such consent, including revoking it.

Such platform must be submitted to audits or other inspections in order to verify that the aforementioned requirements are complied with.

b) Advertising agencies and media agencies

Those are entities in charge of designing and manufacturing ads, and of creating, preparing and scheduling advertising campaigns for advertisers. They act and purchase

ad space in the name and behalf of such advertisers. In this sense, they may also be considered as the “demand” of advertising space in the benefit of advertisers.

c) Ad networks

A group of companies, who, acting in direct or indirect representation of one or more editors, offer advertisers (either directly to them or indirectly through other stakeholders such as advertising agencies), the possibility of holding advertising spaces or obtaining some other specific result, such as clicks, sales or registers, though the management and processing of data obtained from those cookies which are downloaded or stored in users’ store terminals when such user access to the services provided by the editor.

The purpose of these companies’ job is to manage an advertising space inventory as efficiently as possible. The advertising spaces included advertising spaces held by editors, and the goal of ad networks is to manage them so as to comply with the advertisers’ requirements. That is, they sell the editors’ advertising spaces.

The editor decides whether their entire inventory managed by them, or part of it, is assigned to a single company under an exclusive agreement or to several companies acting simultaneously according to any pre-established criteria.

These type of entities usually provide aggregate offers with regard to advertising spaces and inventories of several editors. They may also purchase inventories from different editors for the advertising campaigns scheduled by advertising agencies.

Certain of these entities use the cookies managed by them to collect information on the browsing habits of those users that access the services or pages offered by any of their represented editors. Such data are collected so that the ads displayed to each user are as relevant as possible. For this purpose, user’s habits are analysed for the purposes of offering the most relevant ads according to their browsing profile. These agents are on the supply side, as they offer space, in direct or indirect representation of one or more editors.

Although these companies show to their clients any data obtained from cookies in an aggregate manner, users must be informed about the fact that their data are to be collected and subsequently aggregated and processed for the purposes of managing the editors’ advertising space, and users must give their consent with regard to this. This consent shall be usually granted from the websites of editors featuring third-party cookies or their own cookies.

In order to manage these advertising spaces in the most efficient manner, different managing devices, technologies, software or apps are used, such as ad server or ad exchanges, which manage data obtained in real time. This allow ads to be included in the advertising spaces in the editors' website automatically according to a set of preestablished criteria.

Finally, it must also be highlighted that this managing tasks is frequently totally or partially outsourced to other companies specialised in advertising spaces management.

d) Trading desk

The technical team within a media agency (although it may also be outsourced) who optimise the purchase of spaces by advertisers by means of connection with several DPS (a bidding technology that allows advertisers and(/or media agencies to buy inventory space in different ad exchanges, that is, where supply and demand meet),

Advertisers have their own trading desk.

Generally, a trading desk is focused on smart audience by multiplatform optimisation technologies (ad exchanges, ad networks, DSPs, supports) so that it is capable of acquiring those impressions that achieve their clients'/advertisers' goals most efficiently.

vi. Bidding model

a) Supply side platform (SSP)

Advertising technological platforms that allow to connect a single inventory to several ad exchanges.

b) Ad exchange

Ad exchanges are the place where supply and demand meet and sales and purchases are completed, and also the place where advertisers an meet editors/supports.

Supports offer and manage their advertising spaces and advertisers create and manage their campaigns.

Ad exchanges come from a technological platform which enables automated bidding based on price and on real-time purchases. This system is known as RTB (real time bidding). Therefore, the operational principle of any ad exchange is real time bidding.

Some, for example, connect ad networks, agencies and platforms focused to third-party demand with a large global inventory in real time.

Ad exchanges install cookies in users' terminal device. Some of them also encrypted or hashed when sent to the associated DPS in order to prevent that the cookies fixed by the advertiser networks to be filtered to third parties.

c) Demand side platform (DSP)

DPS is a bidding technology that allows advertisers and/or media agencies to buy inventory space in different ad exchanges.

DSPs, also known as bidders:

- Assign a value to each impression.
- Optimise the bidding process using audience data.
- Make bids for the inventory.

Therefore, impressions are purchased individually; this is known as real-time bidding. DSPs have a single interface that allow bidding, optimising and obtaining reports.

A DSP cannot access user cookies before contacting such user; and that shall not be possible before bidding successfully for a space. That is why ad exchanges and advertisers use cookie matching and cookie syncing.

vii. Measurement and analysis agencies

Both are companies that measure and/or analyse how do users browse a particular website and how do they interact with any of their elements or with the ads displayed, by means of analysing the data obtained from cookies.

Generally, in order to provide this type of services, third-party cookies are used; that is, cookies that are sent to an user's terminal device not from a device or domain managed and controlled by the editor but from device or domain managed and controlled by the company that carries out data analysis.

Considering the many agents that take part in the process, each of them shall be in charge of analysing their own tasks and assuming their corresponding role, with the aim of determining their degree and scope of responsibility and of complying with the obligations provided by the relevant laws and regulations and developed in these guidelines.

vii. Information providers Data management platform (DMP)

A data management platform (DMP) is a technological platform which collects, stores, packs or groups, and transfers data from users and consumer from different sources or data providers. A DMP may classify data from users and consumers based on their browsing habits and by means of an external source of social, demographic and interest data (3rd party data). A DMP may be owned by the agency or the client, or may be outsourced.

Sometimes the DMP may make decisions with regard to personal data.

