



Momentum

Intellectual Property and IT

11 June 2015

IS YOUR WEBSITE (STILL) NOT COMPLIANT WITH THE *COOKIE LAW*?

Although strongly contested, the amendments to the e-Privacy Directive¹ came into effect in 2009, and Member-States were given until 25 May 2011 to transpose them to their legal systems. However, there are still a large number of websites that serve EU users that do not comply in full with the provisions requiring that websites ask users if they agree with the storage of cookies and equivalent technologies on their devices, providing them with all relevant information (about how many, why and for what purposes are they used, whether are they essential or not and how can the consent be revoked) in a simple language, in order to obtain their prior, specific and informed consent.

Cookies are small pieces of data stored by a website on a device to collect data about its visitors, such as their login, searches on the web and preferences, helping them, for example, to repeat tasks. Furthermore, the information collected can be used for online behavioral target advertising (that is, online advertising will be displayed in accordance with each users' interests). So, although cookies are very important to improve websites, they also have a restrictive impact on individual's privacy and the EU Directive's

¹ DIRECTIVE 2009/136/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws.



Momentum

Intellectual Property and IT

main goal is precisely to allow users to take an informed decision about how they want to use the web.

Since the Directive wants to protect EU citizens privacy, the obligation to obtain users' consent applies not only across the EU – although it was implemented differently in each country –, but also to websites hosted and/or owned by an non-EU entity. For example, a US website serving Portuguese visitors must obtain their consent.

Taking into consideration that nearly all websites use cookies that require consent (since a few cookies are exempt, notably those that are strictly necessary, in the terms defined in the law), it is strongly advisable that websites' owners inventory cookies and analyze them in light of the law, taking afterwards the necessary measures to be compliant with it.

This assessment would be paramount, not only to avoid an enforcement action from the regulators – that in Portugal, can impose a fine up to EUR. 5.000.000, in case the offence is committed by a legal entity –, but also because consumers are becoming more attentive and concerned about privacy and the failure to comply with applicable requirements may be detrimental to the website's owner commercial reputation.

Marta Salgado Areias

mva@servulo.com

Sérvulo & Associados | Sociedade de Advogados, RL

This publication was prepared by Sérvulo & Associados exclusively for information purposes and its content does not imply any sort of legal advice nor establish a lawyer client relation. Total or partial copy of the content herein published depends on previous explicit authorization from Sérvulo & Associados.

Rua Garrett, n.º 64 1200-204 Lisboa - Portugal Tel: (+351) 21 093 30 00 Fax: (+351) 21 093 30 01/02
geral@servulo.com www.servulo.com