



European Union “Cookies Law”

Position Paper 4/24/12

What is It?

This is a European Union Directive that was adopted by all EU countries, and which required member countries to adapt their own individual laws to conform with the direction. Simply put, it **forces websites to be more transparent about how they use cookies, and to give site visitors control over whether or not they agree to be subject to cookies.**

A cookie, of course, is a text file that a web browser places on your computer’s hard drive on behalf of the website being served. At the most basic level, most sites deploy a cookie that contains information, such as a user or session ID, that allows the website to remember who you are across multiple page views or browsing sessions. Most websites have 10 or more cookies. There are much more complicated cookies that facilitate very sophisticated data tracking and can compromise a user’s privacy and support intrusive marketing, fraud, or other criminal behavior. This type of cookie usage is what the EU intends to combat.

Who is Affected?

The law applies to all Member States of the European Union so it most obviously applies to any company within an EU country. However, **even websites outside the EU are required to comply with the law if they are targeting Member States.** For example, a site based in the USA that sells products to consumers in the UK, or that has a French-language version of its site aimed at users in France, will still have to comply.

Any site that uses cookies will need to explain how it uses cookies, what kind of data it collects, and provide an opt-in mechanism for every visitor. There are technically two classes of cookies under this directive:

- **Strictly necessary:** cookies that are required for a website or functionality to operate properly, and which the user can be assumed to know are in effect. For example, an ecommerce application and shopping cart will not function without a cookie. Explicit user opt-in is not required in that case.
- **Not strictly necessary:** just about any other kind of cookie, including those used with Google Analytics. In these cases, formal opt-in is required.

The Privacy Policy is also required to be more prominent.



Why Does It Matter?

It is the law, and Member States have indicated that (although some of them have reservations about the practicality of implementation) they will not tolerate flagrant disobedience. Many speculate that the law will be hard to enforce, but for companies that do business in the EU it could be an unacceptable risk: sites that do not comply could be liable for major fines, up to 500,000 pounds in the UK, probably only in situations where deliberate contravention leads to substantial damage or distress. There are less severe penalties for minor contraventions.

When Does It Start?

The law was passed in May of 2011 so technically it is already in place. However most countries, notably the UK, gave a one year grace period so that the law will take full effect on May 26, 2012.

How Does a Website Comply With the Law?

The law is not precise about how, specifically, compliance should be attained, documented, or reported. Nor does it describe any methods that would be considered either appropriate or not-compliant. Thus the execution of compliance is very open to interpretation and could vary from client to client. The UK has given some helpful suggestions about technical implementation that could be used to comply:

- JavaScript pop-up box – explaining cookie use and offering ‘yes’ and ‘no’ options for consent
- Splash page – at first site entrance, with the same sort of copy
- Banner – shown along the top of the page to first time visitors with a tick box to allow users to consent, with cookies disabled until the visitor ticks to indicate consent
- Footer bar – similar to the banner concept, this would be displayed along the bottom

All of these solutions require the interruption of the user website experience, and shutting down cookies will also negatively impact the user experience.

The one positive point is that a user is only required to opt in once (per site visit) and not required to do so for every page.

How Should Symmetri Respond?

There are several steps that need to be taken for all web properties belonging to all our clients:

1. Determine whether the law applies (i.e., does our client have a business location within an EU Member State?)
 - a. May need to ask our clients to have their legal team review and issue a decision about whether they need to conform
2. Determine what our compliance solution would be. This might vary from site to site, but in general we would probably recommend an approach organized around the footer and a general opt-in. A good example of compliance is found at www.bt.com (look in the lower right).
3. Provide a cost estimate to client to cover the work.



4. Implement solution on a site-by-site basis. This will require an audit of all site cookie use, design and copywriting of new pages/screens detailing the required information, and programming to implement the solution and accomplish any cookie disabling or documentation that is deemed necessary.

Bottom Line?

We cannot advise our clients to break the law. The law is not precise in its requirements so can be open to any interpretations that can be deemed legally defensible, or that include a good-faith effort to comply with the law's intent. We have to be very careful about implementing solutions that will so negatively affect the user's visit that he or she abandons the site or does not return. This has to be balanced with cost of implementation contrasted with the risk of non-implementation.

Further Information

Full text of the EU Directive: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:337:0011:0036:En:PDF>

The Cookie Law Explained: <http://www.cookie-law.org/the-cookie-law-explained.aspx>

Google Analytics and the Cookie Law: <http://www.cookie-law.org/google-analytics-eu-cookie-law.aspx>

A less formal summary of what you need to know: <http://www.enchiladadigital.com/services/cookie-audits/eu-cookie-law-what-you-need-to-know/>