Panel

To track and to get tracked: new innovative methods and advancements

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Definition: What is tracking?

• Tracking: the act or process of following something or someone

• Internet tracking:
  ▪ collecting, storing and possibly sharing information about visitors’ activities on the Internet
  ▪ from the analysis of the visitors’ behavior it may be derived:
    ▪ Location
    ▪ Preferences
    ▪ Information such as voucher usage, shopping cart drop outs
    ▪ Personal interests
  ▪ often the basis for (targeted) advertisements

• Tracing ≠ tracking:
  e.g. Corona contact tracing is not “following users” (no location)
Other kinds of tracking

Cross-device tracking
e.g. via ultrasound

Location services systematically track (mobile) access points

Not always used to identify persons

MAC addresses of mobile phones for controlling the visitor flow

Does European Data Protection Law Apply? Article 3 (2) GDPR + ePrivacy Law

Article 3
Territorial scope

1. This Regulation applies to the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union, regardless of whether the processing takes place in the Union or not.

2. This Regulation applies to the processing of personal data of data subjects who are in the Union by a controller or processor not established in the Union, where the processing activities are related to:

(a) the offering of goods or services, irrespective of whether a payment of the data subject is required, to such data subjects in the Union; or

(b) the monitoring of their behaviour as far as their behaviour takes place within the Union.
Cookies — a basic technology. And the law?

Court of Justice of the European Union
PRESS RELEASE No 125/19
Luxembourg, 1 October 2019

Judgment in Case C-673/17
Bundesverband der Verbraucherzentralen und Verbraucherverbände – Verbraucherzentrale Bundesverband eV v Planet49 GmbH

Storing cookies requires internet users’ active consent
A pre-ticked checkbox is therefore insufficient

The German Federation of Consumer Organisations has challenged before the German courts the use by the German company, Planet49, of a pre-ticked checkbox in connection with online promotional games, by which internet users wishing to participate consent to the storage of cookies. The cookies in question aim to collect information for the purposes of advertising Planet49’s partners’ products.

The Bundesgerichtshof (Federal Court of Justice, Germany) asked the Court of Justice to interpret the EU law on the protection of electronic communications privacy.3

In today’s judgment, the Court decides that the consent which a website user must give to the storage of and access to cookies on his or her equipment is not validly constituted by way of a pre-checked checkbox which that user must deselect to refuse his or her consent.

Looking into the real world: Pain of cookie consent 1/3

The EU is trying to fix its abysmal cookie consent policy

The pain of cookie consent mechanisms is an international problem
By Jamesoniert | May 7, 2020, 6:19am EDT

We use cookies and other tracking technologies to improve your browsing experience on our site, show personalized content and targeted ads, analyze site traffic, and understand where our audiences come from. To learn more or opt-out, read our Cookie Policy. Please also read our Privacy Notice and Terms of Use, which became effective December 20, 2019.

By choosing I Accept, you consent to our use of cookies and other tracking technologies.

Looking into the real world: Pain of cookie consent 2/3

1. Analytics and Performance Cookies
2. Essential Cookies
3. Functionality Cookies
4. Social Media Cookies
5. Targeted and Advertising Cookies

Which cookies are strictly necessary?

Looking into the real world: Pain of cookie consent 3/3

"Hey, user, we need your consent! 'Being informed' is overstated."
Tracking often a basis for targeting

... on the basis of
• observed data
• inferred data

Guidelines 8/2020 on the targeting of social media users
Version 1.0
Adopted on 2 September 2020


To track and to get tracked

To be tracked or not to be tracked ...

Source: Gerd Altmann via Pixabay

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