

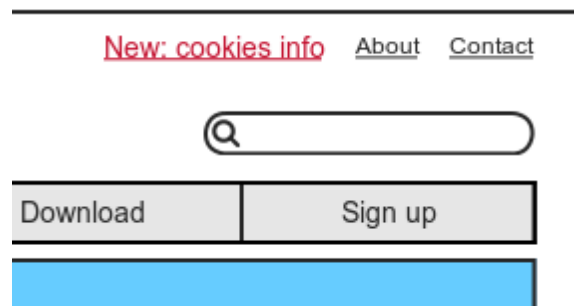


## New EU cookie legislation 2011

On the 26<sup>th</sup> May 2011 a new law, which is an amendment to the 2003 Privacy and Ecommunications Directive, came into force which will require UK businesses and other organisations to obtain consent from visitors to their websites in order to store on and retrieve usage information from users' computers. A 12 month lead in period was agreed where website owners were allowed to put in place the measure to comply.

At the midway point of this lead in period the following summary of the updated advice has been provided from the ICO<sup>1</sup>;

1. Consent for cookie opt-in must be a positive action such as ticking a box and wherever possible the setting of cookies should be delayed until consent has been gained.
2. User awareness of cookies and what they are intended to be used for is currently low, a clear concise and obviously positioned explanation of the use of cookies is recommended as a separate website link rather than an addition to the privacy policy as per the example below.



3. Cookie information displayed clearly and concisely on your website should include (allaboutcookies is an excellent resources<sup>2</sup>) ;
  - a. Detail on which cookies are in place
  - b. Detail on what the cookies are doing
  - c. The facility to obtain a users consent to store a cookie on their device
4. Consent can be gained online using the terms and conditions to which a user agrees when they sign up or register. Consent has to be specific to the use of cookies and a 'catch all' term within the small print will not be acceptable for compliance with the law.

<sup>1</sup>

[http://www.ico.gov.uk/news/latest\\_news/2011/~media/documents/library/Privacy\\_and\\_electronic/Practical\\_application/guidance\\_on\\_the\\_new\\_cookies\\_regulations.ashx](http://www.ico.gov.uk/news/latest_news/2011/~media/documents/library/Privacy_and_electronic/Practical_application/guidance_on_the_new_cookies_regulations.ashx)

<sup>2</sup> <http://www.allaboutcookies.org/>



5. Pop ups or website overlays are not the recommended approach to obtain consent and there compliance with the regulations. Pop ups or overlays can be implemented if you feel this will make the position absolutely clear for the user.
6. Functional and analytical cookie usage should be clearly explained and displayed in a prominent position on the website. Consent should be gained for functional and analytical cookies in the appropriate manner for your web offering, at the point of web login or via 'remember me' opt in consent is acceptable if clearly explained at that point.
7. 'Strictly necessary' cookies which do not require consent are limited to those which are vital to the functionality of the website such as storing a product as it is passed from the checkout to the basket. Cookies used for web analytics in the process of capacity planning for example are not currently deemed 'Strictly necessary' by the ICO.
8. For cookies which involve the processing of personal data you will need to comply with the separate requirements of the DPA.
9. Organisations based in the UK whose websites are technically outside of the UK are subject to the new cookie legislation. Organisations who are based outside of Europe but are doing business in the UK and Europe should follow this legislation also.
10. Users should be provided via the website with the functionality to withdraw cookie consent at any time.

The primary next steps recommended by the ICO remain valid for all online businesses working towards compliance with the new regulations;

1. Check what type of cookies and similar technologies you use and how you use them.
2. Assess how intrusive your use of cookies is.
3. Decide what solution to obtain consent will be best in your circumstances.

RedEye is working with the DMA and other appropriate bodies to agree the best practice moving forward in the use of cookies and gaining the appropriate consent.

Please contact Andy Stockwell [andrew.stockwell@redeye.com](mailto:andrew.stockwell@redeye.com) if you would like to discuss anything relating to this topic.