

Instructions

COOKIES

Kit

Cookies

Policy Implementation

The **Measure Taken by the Italian DPA to protect personal data n. 229/2014** regarding the simplified form for notice and obtaining consent to the use of cookies becoming mandatory on **June 2, 2015**.

This Kit contains the various solutions discussed with the Authority in order to allow the various companies to apply the cookies regulation in the best possible way.

In order to guarantee conformity with the applicable regulation by June 2, 2015, it is important to proceed as soon as possible to the adoption of information models (short and long) that are clear for the users and that allow the user to express informed consent to cookie storage on his/her computer.

Where it is applied

The Measure applies to all sites, including responsive sites, and to their navigation from any device used.

Internal Preliminary Steps

In order to guarantee a correct application of the regulation, the owner/administrator of the internet site must take certain preliminary steps, including the writing of a **cookie policy**.

The owner/administrator of the site must:

- ✓ Identify all the types of cookies installed by the site and their purposes (first party cookies);
- ✓ identify the third parties who, by means of the owner's site, may send cookies;
- ✓ catalog the cookies based on the handling purposes;
- ✓ identify the links to the privacy policies and to the consent modules for third parties with whom the site administrator/owner has an agreement for sending cookies from such sites (where available).
In case the site owner/administrator does not have direct contact with third parties or in case it is particularly difficult to identify all the third parties, he or she must insert:
 - [links to the privacy policies of intermediaries](#) (usually the site advertisement sales house) where available,
 - [link to the site \[www.youonlinechoices.com\]\(http://www.youonlinechoices.com\)](#) (limited to the services allowed by such platform, that is, at the moment, those regarding advertising profiling);
- ✓ update the privacy policy.

With regards to the procedures that allow the fulfillment of the arrangement of the regulation there is the opportunity to **modify the code of the site**. In this case the first step is the necessity to create a script that manages consent within the site.

The owner must:

- ✓ isolate all of the blocks of code installed by third parties that might use cookies, using a specific identification;
- ✓ insert a code into all the pages to manage the visualization of banners/notices;
- ✓ ensure that such code interacts with the preferences expressed by means of the banner/notice, with a positive activity performed by the user on the page or within the cookie policy.

Alternatively, the owner may use other systems or procedures that allow for complete loading of the pages (including cookies) from the very first visit, thus avoiding empty spaces on the page, on condition that the cookies sent to the user's device are activated only after consent is granted.

In particular, in case of the first visit to the site, the cookie - though installed - is not active and if correct consent request procedures have been adopted, such cookie cannot enact any profiling of the user, given that the exchange of information in the reading and writing phase of the cookie happens only from the next site visit.

Any active utilization cannot help but to express either consent or refusal. In case of lack of active action by the user (that could be interpreted as acceptance or denial) there must be a technical cookie that recognizes the same user as a “first-time user” on the second visit, and requests consent again.

The user will be informed by two levels of follow-up:

a first, **short notice**, will be shown, appearing immediately on the page which the user accesses, and a **long notice**, available by means of a link in the short notice, as well as from a link at the bottom of every updated page of the site. The long notice can be a stand alone page or a section inside the privacy policy of the site.

The first short notice should be shown to the user by means of a **dynamic banner** (for example, a “self-expanding strip” that moves slightly from the top of the screen with a perception of movement that attracts the user’s attention).

Interaction with the user

- ✓ Visualization of the banner/notice;
- ✓ through the script:
 - release of technical cookies;
 - stoppage of third party cookies as well as parts of third party codes that might release cookies;
 - alternatively to the above mentioned stoppage, release of cookies that do not profile the user unless the user gives his/her consent;
 - check whether the user has previously expressed preferences, by analyzing whether the user is visiting the site for the first time or not;
- ✓ saving user preferences inside a cookie;
- ✓ cookie policy management and updating.

More in detail:

when a browser accesses the site for the first time, technical cookies can be released, whereas non technical cookies (profiling cookies) cannot be released (the latter will have to be stopped by intervening on the site code).

Some technological providers combine these interventions with a monitoring system and cookie preference management.

Alternatively to the above-mentioned preventive stoppage, as we have previously said, the site's owner/administrator might also release profiling cookies provided that every possible profiling occurs just after the user's consent.

For this purpose, the subject who releases cookies will have to use special technical session cookies to ensure that the possible users who have surfed on the site without expressing either their consent or denial (for instance in case of "cross site" navigation without performing any positive action - such as the click to a link inside the site -, but with only a sequential opening of pages to various sites) on the next access to the same site are considered as new users (and also the possible third parties that have released cookies will have to keep track of consent).

Whenever the site only uses technical cookies, it is not necessary to provide the user with a short notice, however a long notice must always be available, providing information about the use and purposes of the cookies available on the site.

Whenever the site also uses profiling cookies, a **short notice** must be shown on any page on first access to the site through a dynamic banner that will have to represent a perceivable discontinuity in the use of content. In particular the banner must have the following features:

- ✓ such dimensions to make the banner easily visible, or alternatively, pop up (for instance self-expanding strip or Pushbar);
- ✓ more highlighted fonts as against the ones of the site;
- ✓ a contrasting colour as against the site's background and the banner's text.

Hypothesis of text for short notice for sites that release first party profiling cookies and do not release third party profiling cookies (X and OK keys are alternative):

NoticeX

This site uses cookies to send you advertising and services in line with your preferences. If you want either to know more or to refuse consent to all or just some cookies, please click here. By closing this banner, scrolling down this page or clicking on any element on the page you accept the use of cookies.

OK

Hypothesis of text for short notice for sites that release also or only third party profiling cookies (X and OK keys are alternative):

NoticeX

This site uses cookies, also of third parties, to send you advertising and services in line with your preferences. If you want either to know more or to refuse consent to all or just some cookies, please click here. By closing this banner, scrolling down this page or clicking on any element on the page you accept the use of cookies.

OK

For instance: link to the UPA site <http://www.upa.it/eng/cookie.html>

The user can give his/her consent to the cookie making a positive action, i.e.:

- ✓ performing a scrolling action (scroll down);
- ✓ clicking on one of the internal links of the page;
- ✓ clicking (preferably) on the OK or X key, that can be placed either below or top right.

NB: on the user's second visit, provided he/she has given his/her positive/negative preference with reference to cookie installation, the script will no more show the short notice/banner to the user. Whenever the user has expressed no preferences, the script must show again the banner/notice.

From the short notice, as well as from a link available on every page, it must be possible to access the site's long notice.

In case the user decides to access the **long notice**, the owner will have to provide all of the pieces of information required to make the user understand the use of different cookies.

Long notice can be integrated either into the privacy policy or be stand alone.

Long notice must necessarily contain:

- ✓ elements referred to in the Article 13 Legislative Decree 196/2003 (“Privacy Code”);
- ✓ a general explanation about cookies and their management through the browser settings;
- ✓ explanations focusing on how consent is given (i.e. scroll, OK and X keys and links);
- ✓ description of categories of technical cookies divided by purposes;
- ✓ description of first party profiling cookies with the relating consent form;
- ✓ description of third party cookies’ purposes. For every third party that installs cookies (to be identified also through the brand name) for which preference management falls back on the third party, cookies’ purposes description must be provided as well as:
 - the link to the notice and consent form of the third party with whom the site owner/administrator has signed agreements for the installation of cookies on his/her own site, wherever available; or
 - the link to the site of the intermediaries (usually the site’s sales house), wherever they are present.

Whenever the site's owner/administrator has no direct contact with third parties or in case it is quite hard to identify all of the third parties (for instance: hypothesis of redirect advertising chains), the link to the site www.youronlinechoices.com can be inserted.

Let's point out that the site www.youronlinechoices.com presently works only for advertising profiling cookies (in the future it is likely to be extended to analytics) and it detects just the cookies of those who have joined www.youronlinechoices.com. That is why such a tool cannot be decisive for all third parties cookies.

If the user does not interact with consent modules and goes out from the notice by closing it or he/she goes on with site navigation, he/she gives his/her consent to all of the cookies, provided that the notice indicates this clearly.

Whenever the third party either does not join www.youronlinechoices.com or has no notice and consent form, we recommend not to use the profiling cookies of such a third party on the site (it being understood that the responsibility for the user's preference management related to these cookies falls on the third party that has released them).

Technical and profiling cookies

In order to apply this measure, the Authority has identified two macro-categories of cookies and has exempted the technical ones from the user's prior consent (but not from the need to supply the user with a notice).

Technical cookies, for which the user's consent is not required are:

- ✓ cookies relating with strictly necessary activities to make the service work and be provided;
- ✓ cookies relating with preferences "save" activities and optimisation activities (for instance: flash players cookie if they do not exceed the session length, "save" cookies about language/currency preferences);
- ✓ statistics cookies, wherever directly used by the site's administrator to collect information in aggregate form.

The Authority has explained that **cookies that on the contrary need user's prior consent are all non-technical cookies**, including:

- ✓ first or third party's advertising profiling cookies;
- ✓ retargeting cookies;
- ✓ social network cookies;
- ✓ statistics cookies fully managed by third parties.

There are two analytics tools that are exempt from consent:

- ✓ analytics cookies directly installed on either the first party's server or on a server farm, without interaction by third parties (just to make an example, tools like Piwik);
- ✓ third party-managed cookies, but anonymized, i.e. in relation to which the third party cannot access the analytics disaggregated data on a IP level.

Within the long notice, the links to the options to eliminate cookies from the various browsers must be present.

Proof of consent format

According to the Authority, trace of the user's occurred consent must be kept, for example through a technical cookie. A "perfect" technical system relating with consent recording by a browser is not yet available (some operators are presently evaluating whether real alternatives are available) and the Authority has not shown a specific technological solution.

In any case, we recommend to adopt:

- ✓ regardless of whether the site's owner/administrator highlights that the user has validly given his/her consent, a reply system for the user, who, in case of complaint, will have to receive asap an answer about how to exercise his/her consent/selective denial or about how to delete cookies from his/her browser, foreseeing, if necessary, special information pages;
- ✓ internal policies that ensure appropriate procedures are adopted in compliance with the present guidelines.

Further considerations

Let's not forget that the use of profiling cookies is subject to the obligation of prior notification to the Authority, under Article 37, paragraph 1/d of the Privacy Code. Therefore, in case the site's owner/administrator wants to use these instruments, he/she will have to give prior notice of such a use by filling and sending the special form, available at the link: <https://web.garanteprivacy.it/rgt>.

Of course, in case the site's owner/administrator only uses third parties' profiling cookies, it won't be necessary to resort to prior notice, because the purposes of the processing that have been really pursued by using cookies are not included in the site's owner/administrator control, who does not know the deep meaning of such data processing. Yet when the site's owner/administrator can actually access (after specific agreements with third parties) the information collected by cookies in a disaggregated form, then it will be necessary to assess possible cases of co-ownership or autonomous ownership of the treatment for the service.

Be careful! As highlighted by the Authority, violating cookie-related rules might involve very costly fines! In particular, in case of omitted notice as well as non suitable notice, i.e. a notice that does not feature the shown elements, as well as in the measures of article 13 in the Privacy Code, the Authority can apply a sanction ranging from six thousands to thirty-six thousands euros (article 161 of Privacy Code).

Cookie installation on users' devices without their prior consent, on the other hand, involves a sanction ranging from ten thousands to one hundred and twenty thousands euros (article 162, paragraph 2-bis of Privacy Code). Moreover the omitted or incomplete notification to the Authority (article 37, paragraph 1 of Privacy Code) is punished with a twenty to one hundred and twenty thousands euros sanction (article 163 of Privacy Code). In compliance with what is foreseen by article 5, paragraph 1 of Privacy Code, cookie - related rules - and thus also the present guidelines - can be applied to all of the subjects living in Italy. Let's point out that in line with the clarifications of European Authorities*, "facility" stands for the place where data processing is really carried on through a stable organization, though not detecting, for such a purpose, the legal form of facility (it is actually indifferent whether it is a company's registered office or a branch with a legal identity).

As to the subjects of the European Union and of the Economic European Space, the laws of the territory where they are settled are applied, i.e. of the State where they have a presence that tends to be permanent (neither temporary nor occasional). In compliance with article 5, paragraph 2 of Privacy Code, cookie-related regulations, and thus also the above-mentioned fines, can be applied as well to extra-European subjects that use tools placed on the Italian State's territory.

* Article 29 WP Working document 56 (30.05.2002) on determining the International application of EU data protection law for personal data processing on the Internet by non-EU based web sites and Opinion 8/2010 on Applicable Law

Let's also point out that, consistently with what shown by the Authority in terms of storage of personal data for profiling purposes, profiling cookies cannot remain stored on the user's device for more than 12 months.

The involved associations have required the Authority to open a technical table to check periodically the compliance with regulations, also considering the technological evolution.

“The present kit cannot be used as a legal opinion as regards the adoption of cookie-related regulation. It does not replace the Authority's guidelines, that we suggest to check carefully”.

DMA

Founded in 2010, DMA Italia gathers companies and not-for-profit organisations which use direct and data-driven marketing tools and techniques. DMA Italy's mission is to facilitate the practice of data-driven marketing throughout all media available (offline and online) to support its members' business growth. DMA Italia is member of FEDMA and of GlobalDMA.

For further information: www.dmaitalia.it

FEDOWEB

is the Italian online publishers' and web operators' association founded in year 2000 to meet the online market needs and provide data regarding online audiences through Audiweb services. Audiweb provides objective quantitative and qualitative information on the use of the Internet and online systems in Italy, using appropriate measurement tools then representing a reliable reference for all Internet operators. Fedoweb's associates represent more than 80% of Italian publishers and main web operators. Fedoweb associates are:

AlFemminile.com - Banzai - Class Editore - Condé Nast - Gruppo L'Espresso - Il Messaggero - Il Sole 24 Ore - Italiaonline - Leonardo Adv - Mediaset - Microsoft - Mondadori - Rainet (Gruppo Rai) - RCS - Seat Pagine Gialle - Sport Network - La Stampa (Itedispa) - Vevisible

For further information: www.fedoweb.it

IAB ITALY

is the Italian Association that represents the market players for digital interactive communication in our Country. It is also the Italian charter for the Interactive Advertising Bureau, the most important global Association for digital advertising.

Contributing in a significant way to the diffusion of a digital and internet culture and promoting, on one hand the entire industry, and on the other the knowledge of the potential opportunities that the online offers our country on all levels, represent the Association's mission.

IAB Italy counts 175 members among the main national and international providers active in Italy in the interactive communication market and it is open to the adhesion of editors, sales houses, media agencies, creative agencies, web agencies, research institutes, companies, consulting organizations and associations that operate or intend to operate on the internet professionally and consciously.

For further information: www.iab.it

NETCOMM

is the Italian Consortium of Electronic Commerce with almost 200 associates, created in 2005 for contributing to the diffusion of e-commerce among companies and consumers. In fact, notwithstanding the strategic role that e-commerce plays in the economic context and its steady growth year by year, online players still have to face some critical issues for what concerns legal/tax, communication/promotion, logistics and educational contexts. Consorzio Netcomm aims at sharpening cooperation among companies and entrepreneurs, acting for them at national and international levels. The Consortium aims also at supporting all the initiatives designed to promote themes, services and technologies related to e-commerce and interacts with the media for a correct communication about the subject. Finally, it defines the routes necessary to identify the high-quality outcomes among all the e-commerce players.

At this regard, Consorzio Netcom has designed the trustmark "Sigillo Netcomm", to identify online merchants that offer a high quality, transparent and reliable service to final consumers and to give Italian e-shoppers safety, clarity and transparency.

For further information: www.consozionetcomm.it/

UPA

Utenti Pubblicità Associati is the Italian association that represents and advocates the interests of industrial, commercial and service companies investing advertising budgets in the Italian market. The interests of its members - over 400, Italian and multinational companies - account for 85% of the marketing communication spending on the Italian market. UPA's activity is promoted and driven by the companies, that act proactively to tackle and solve common problems related to advertising and commercial communication.

UPA represents members' interests in a unique, independent and powerful way in political, legislative and regulatory bodies, as well as in industry committees, towards consumers' organisations and other stakeholders interested in commercial communication.

All the activities, positions and behaviours of the Association aim at transparency and responsibility, with constant focus on continuous innovation of the market. UPA is the founding member of the Italian advertising self regulatory organisation, IAP (Istituto dell'Autodisciplina Pubblicitaria), in order to promote and develop responsible advertising as a means of information for consumers, competition

in the market as well as the welfare for the entire society. UPA is also the founding member of Pubblicità Progresso, a Foundation whose purpose is to contribute to solving moral, civil and educational issues found within society. Pubblicità Progresso puts communication at the service of the common good through the creation and implementation of public interest communication campaigns.

For further information: www.upa.it

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Thanks for the technical cooperation to:



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