

Coping with the EU cookie laws

What is a cookie?

Cookies are small text files which websites place on visitors' computers.

They allow the website to identify that particular visitor and give them a better experience — for instance, by keeping them logged in or remembering what items they've placed in their shopping basket.

Cookies have many other uses. Most website tracking tools (such as Google Analytics) rely on them to track how visitors move through a website. They are also used to display targeted adverts.

The [EU's Privacy and Communications Directive](#) came into force on 26 May 2011. It requires websites to seek consent from visitors before storing cookies on their computers.

Most websites use cookies, so businesses were given a year to prepare for the new law. With the May 2012 deadline approaching, we asked leading UK experts including Dave Chaffey (e-business consultant and author of a series of critically acclaimed books on online marketing) to explain how to find out if the regulations affect you and what you need to do to comply with the law.

What the cookie law says

The new cookie law requires you to get consent from a website visitor if you want to store cookies on their computer.

- **Consent must be overt and informed.** It cannot be implied or buried in your website privacy policy.
- **Consent must be on an opt-in basis.** You cannot ask people to opt-out and assume you have their consent otherwise.
- **You must get consent before using any cookies.** Currently, many websites set cookies the moment visitors arrive.

When obtaining consent from website visitors, it is important to explain what cookies you use and what you use them for.

The [Information Commissioner's Office \(ICO\)](#) can fine businesses up to £500,000 if they do not comply. It says it will start enforcing the law from 26 May 2012.

Looking for loopholes?

There are no easy ways for businesses to avoid the cookie law.

It applies to all organisations based in the EU, even if their website is hosted elsewhere. It also applies to anyone with websites designed for the European market or providing products or services to customers in Europe.

Don't panic!

Although the law comes into force on 26 May 2012, the ICO has indicated that the most important thing is to take steps towards compliance.

This means that although you shouldn't ignore the law, you probably won't be prosecuted if you can show you're moving towards full compliance.

As a minimum, audit your cookies and plan out how to provide an opt-in.

Exceptions to the cookie law

The cookie law applies to nearly all cookies, regardless of where they are from or what information they contain.

The only exception is for 'strictly necessary' cookies. These are cookies that are required in order to provide a service visitors have requested.

Not many types of cookie are covered by this exception. The main examples are:

- Cookies used to remember the items a visitor has in their shopping basket.
- Cookies used to provide essential security – for instance, when banking online.

Cookies used for analytics or advertising are NOT covered by this exception.

Performing a cookie audit

The easiest way to determine if your website is affected by the new law is to perform a **cookie audit**. This will reveal exactly what cookies your website uses.

A cookie audit can be eye-opening. Many website owners are unaware of how many cookies their websites use.

These online tools can help you perform a cookie audit:

- [Optanon Audit](#)
- [Bitstorm View Cookies](#)
- [Attacat Cookie Audit](#)

All work in the same way: you must install the audit tool, then browse your website. The tool will generate a list of cookies it finds.

Interpreting your cookie audit

The results of a cookie audit can be confusing. Cookies often have obscure names, so it's hard to know what they do.

If you're having trouble making sense of your cookie audit results, speak to an expert. Your web designer or IT supplier may be able to help.

Alternatively, the makers of some cookie audit tools provide advice and consultancy to help you understand your obligations.

Creating an opt-in message

If – like most websites – yours uses cookies covered by the new rules, you need to implement an opt-in function on your site.

You will probably want to gain a visitor's consent to use cookies as soon as they arrive at your website. There are three main ways to do this:

No more cookies?

If you don't want to put an opt-in message on your website, you can try to stop using cookies altogether. This is difficult because in many situations there is no alternative.

However, you may wish to investigate [eVisit Analyst](#), one of the only website analytics tools which claims to function without requiring cookies.



Display the opt-in message in a 'sticky header' box which clings to the top of the page as visitors scroll.



Place the opt-in message at the top of the page.



Display an overlay on top of your web page when visitors first arrive.

Adding an opt-in will probably require technical knowledge. You will have to change your website code so cookies are only used once a visitor has given their consent.

It's a good idea to contact your **web designer** or **IT supplier** for assistance implementing an opt-in on your site.

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There's a low understanding of what cookies are, so you need to explain clearly and concisely what cookies you use and why you need them.

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Richard Beaumont,
The Cookie Collective;
www.cookie-law.org

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If you've completed an audit and have a plan, it's unlikely you'll be made an example of.

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Dave Chaffey,
Smart Insights;
www.smartinsights.com

Need more help?

For a list of local IT suppliers, visit the [IT support directory](#) on the IT Donut.

The IT
Donut

With thanks to Tony Hughes, founder of [Hughes Enterprise Law Practice](#) for his contribution.

Some companies offer ready-made solutions to add an opt-in:

- [The Cookie Collective's service](#) can be tailored to most websites.
- [Wolf Software](#) provides a free solution for websites using Google Analytics.

As awareness of the law grows, it's likely more companies will offer this sort of service.

Getting the message right

The wording of your opt-in message can have a big effect on how visitors respond. Make sure:

- The message explains how you use cookies and what they are for
- It's easy for people to opt-in - by clicking an 'agree' button or check-box

You can see example opt-in messages on these websites:

- [The Cookie Collective website](#)
- [The Information Commissioner's website](#)

Taking a pragmatic approach

The new cookie law's implications for online business could be far-reaching.

Many businesses are taking a 'wait and see' approach, holding off on creating an opt-in until we know more about how internet users respond to these new messages. Even with the deadline getting closer, very few websites have implemented the steps described in this document.

A good compromise may be to carry out a cookie audit and plan how your opt-in would work. You can put it into practice once it's clear how the law is being enforced.

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