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**PRIVACY & INFORMATION  
SECURITY UPDATE****European Union Tightens Rules on Internet Tracking****NEW DIRECTIVE REQUIRES INFORMED CONSENT TO USE COOKIES**

Web site operators face new restrictions on their ability to track users' online activities. The Council of the European Union (EU) recently approved a Directive that prohibits the use of internet "cookies" absent the informed consent of the user. While the change sounds highly technical, it will have a major impact on web sites that follow users' activities to, for example, promote additional goods and services and tailor users' web experiences to their personal preferences.

An internet cookie is a piece of code that web servers store on the user's hard drive that allows the site to store and later retrieve information from the user's computer. Cookies are considered virtually indispensable by site owners for online advertising and traffic monitoring. In 2002, the EU issued a Privacy Directive stating that web site operators could use internet cookies only if users are notified of their use and given the right to refuse them. The impact of the 2002 Directive was, however, minimal following a statement by the Information Commissioner advising that the right to refuse could be offered *after* the cookie was already in place and the requisite notification provisions could be buried in the text of the web site's privacy policy.

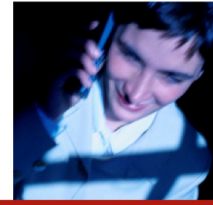
The new Directive rejects the Commissioner's interpretation and provides that a cookie may only be stored on a user's hard drive if the user "has given his or her consent, having been provided with clear and comprehensive information." EU member states have until April 26, 2011 to implement the new Directive in their national laws.

**DIRECTIVE MIGHT HAVE FAR-REACHING CONSEQUENCES**

It is important to note that the new Directive reaches beyond EU borders. All web sites used by EU citizens likely will have to comply with the new rules. In order to comply with the new Directive, web sites may be required to utilize pop-up ads requesting permission to proceed with the cookie download several times during a user's normal internet operations. Consequently, users may find their normal internet activities becoming cumbersome and may avoid sites that prominently feature cookies.

**EXCEPTIONS**

Businesses that utilize internet cookies are provided with two exceptions to compliance with the new Directive. First, a web site may continue to use cookies without the user's affirmative consent if the cookies are "strictly necessary" for the provision of a service "explicitly requested" by the user. This exception will allow a web site to direct a user from a product page to a checkout page



without the need for affirmative consent. It is unlikely, however, that online advertising or traffic monitoring cookies will fall under this exception.

Second, Recital 66 to the Directive provides that “the user’s consent to processing may be expressed by using the appropriate settings of a browser.” The Recitals are provided only as a guide to interpret the text of the Directive and it is unclear whether this Recital will have any force when it appears to directly contradict the plain language of the Directive. The Interactive Advertising Bureau has issued a statement that Recital 66 “clarifies that websites can rely on browser controls and similar applications to define the acceptance of cookies.” It remains to be seen whether this optimistic interpretation of the new Directive will prove to be correct.

#### **FOR MORE INFORMATION**

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