



# COOKIE FAQs

## MITIGATING RISK EXPOSURE UNDER EVOLVING GLOBAL COOKIES REGULATIONS

May 19, 2021

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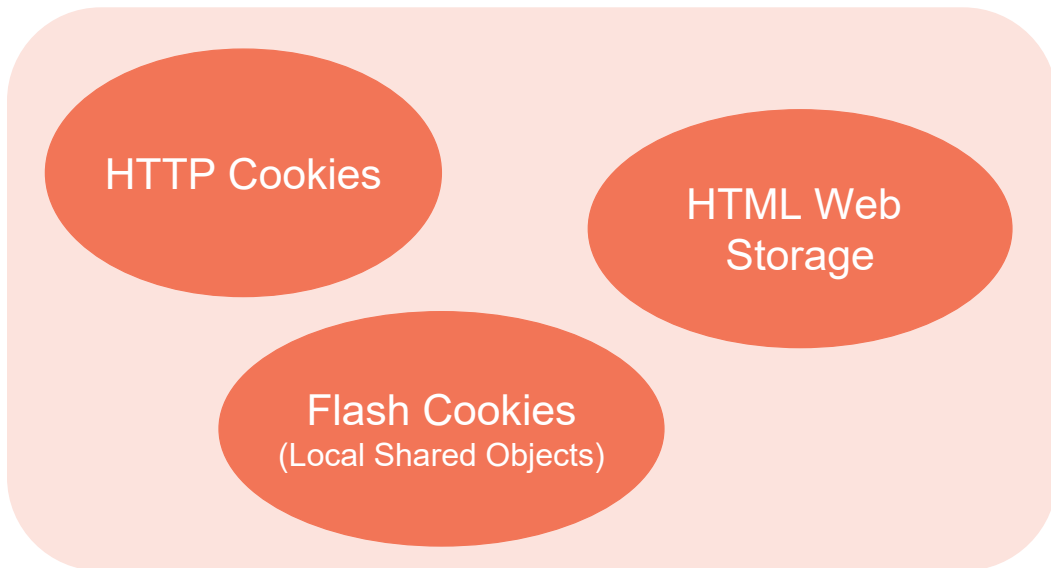
# AGENDA

- What are cookies?
- Are web beacons, pixels and other tracking technologies the same thing?
- What are cookies, web beacons & pixels (trackers) used for?
- How do I know what cookies I use?
- Generally, who and what are regulated?
- Does US law regulate the use of cookies?
- Does EU/UK law regulate the use of cookies?
- Why comply?
- What do EU/UK cookie laws require?
- What is at stake?
- How do I comply with EU/UK laws?
- How do I comply with US laws?
- What do I need to think about when engaging a cookie vendor?

# WHAT ARE COOKIES?

A cookie is a **small piece of information stored by a web server in the terminal** (computer, smartphone, etc.) **of an end-user** and associated with the web server's **domain name** (e.g., example.com; in most cases, this covers all pages of a single website).

## COOKIES

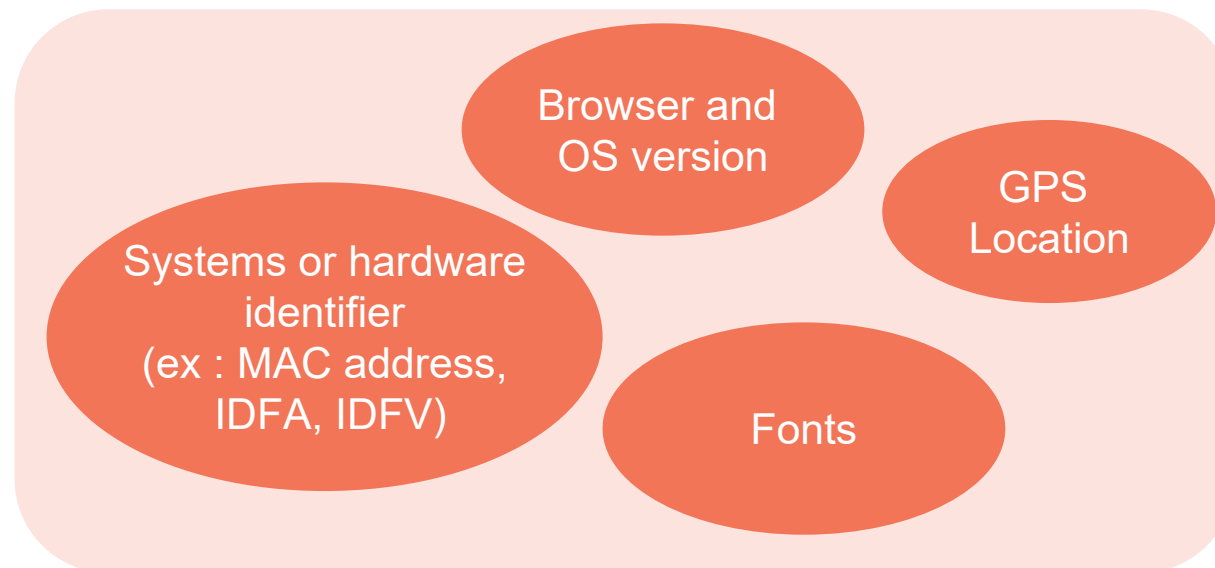


# WHAT ARE COOKIES?

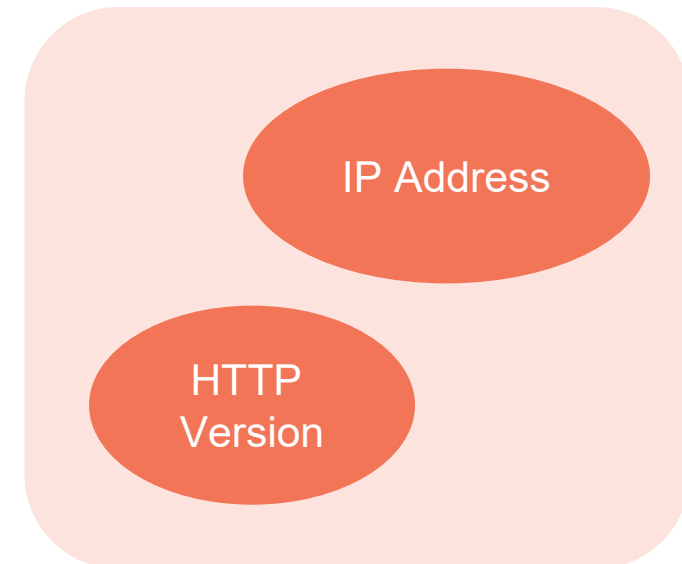
## What information in the terminal?

- Web servers also have access to information that is already present **in the terminal** (computer, smartphone, etc.) **of an end-user**.  
**Browser/terminal fingerprinting** refers to the use of a combination of multiple pieces of information present in the terminal and/or protocol information to uniquely identify a browser or terminal.

### INFORMATION PRESENT IN THE TERMINAL

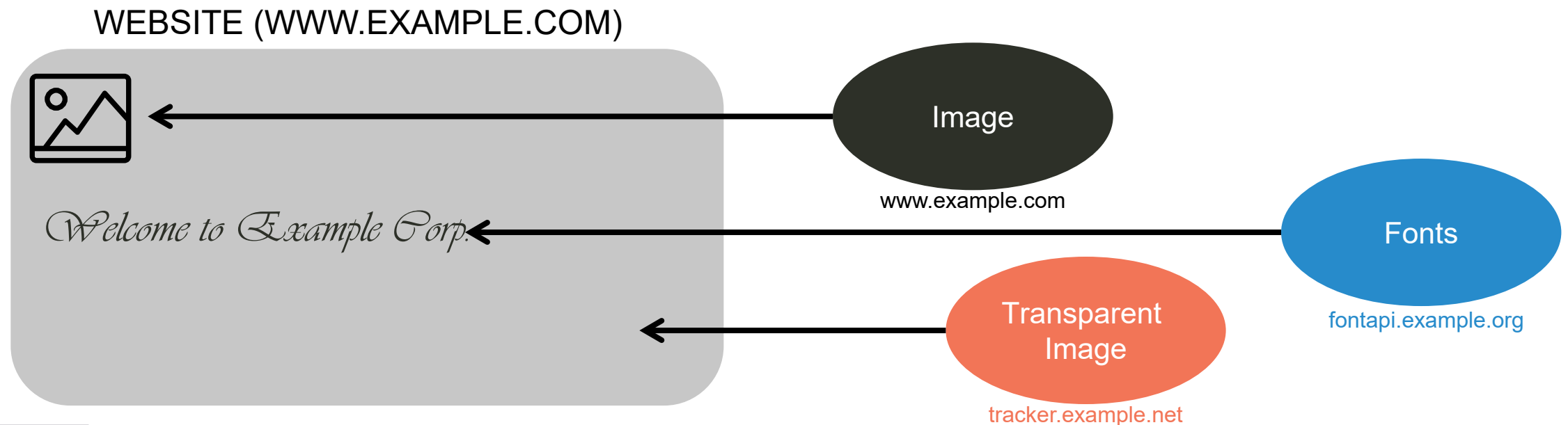


### PROTOCOL INFORMATION



# ARE WEB BEACONS, PIXELS AND OTHER TRACKING TECHNOLOGIES THE SAME THING?

Web beacons and tracking pixels are technologies that enable web servers outside the website's domain to [store or retrieve cookies and other information relating to a browser or a terminal](#) (computer, mobile phone, tablet, etc.). These technologies are generally used by websites but can also be included in emails, software or mobile applications.



# WHAT ARE COOKIES, WEB BEACONS & PIXELS (TRACKERS) USED FOR?

- Cookies provide enhanced functionality to improve the user experience.
  - **Strictly necessary** cookies are essential for running a website. Without the use of these cookies, you may not be able to use some website features.
  - **Performance** cookies monitor website performance and collect data on how visitors use a website. These cookies provide information to help improve how a website works.
  - **Functionality** cookies are used to remember user preferences so that the website can be customized for the user.
  - **Targeting or advertising** cookies are used to advertise to users, including sending advertisements that are targeted to the user's interests and previous web browsing activity.



Automated decision-making, profiling, and use of sensitive data for ads

- Web beacons and pixels can help profile user behavior, count online ad impressions, monitor file downloads, and manage ad campaign performance.

# HOW DO I KNOW WHAT COOKIES I USE?

## Inventory trackers

- Some tools allow to identify the trackers, their editor, their purposes and even the retention periods:



Ghostery



PrivacyBadger



CNIL-Cookies-List : <https://github.com/LINCnil/CNIL-Cookies-List>



Chrome Browse Console: (⌘+Option+I on Mac,  
Ctrl+Shift+I on PC)

- Tools also offered by Consent Management Platforms (CMP)

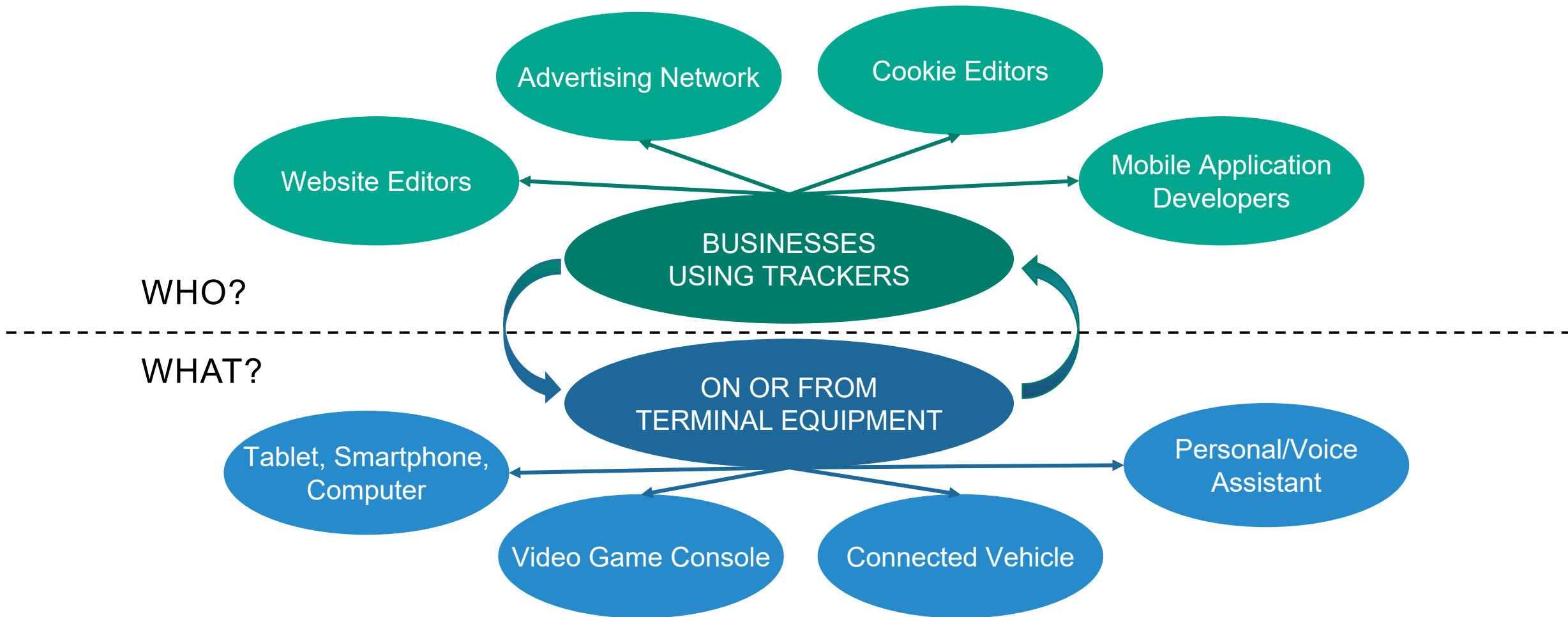
## Identify the impact of trackers on browsing



CookieViz <https://linc.cnil.fr/fr/cookieviz-une-dataviz-en-temps-reel-du-tracking-de-votre-navigation>



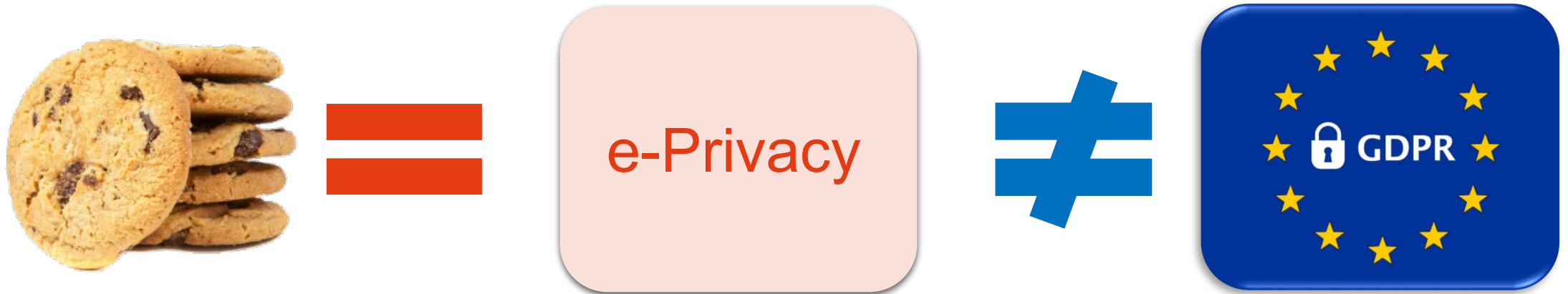
# GENERALLY, WHO AND WHAT ARE REGULATED?



# DOES US LAW REGULATE THE USE OF COOKIES?

- There are no US laws that explicitly regulate cookies, but certain privacy laws require notice of data collection:
  - California Consumer Privacy Act (CCPA): Notice of the personal information collected and the purposes for collection must be given at or prior to the point of collection
    - Notice at the point of collection can mean a cookie banner
  - Nevada Ch 603A: Notice of data collection practices must be made available to users of an internet website or online service
  - FTC and state AG guidance require notice of data collection
- The US does not currently require consent for cookies, except in special circumstances:
  - Children's Online Privacy and Protection Act (COPPA): Requires notice and parental consent when collecting personal information (including IP address) from children under 13

# DOES EU/UK LAW REGULATE THE USE OF COOKIES?



# DOES EU/UK LAW REGULATE THE USE OF COOKIES?

## BREXIT Impact

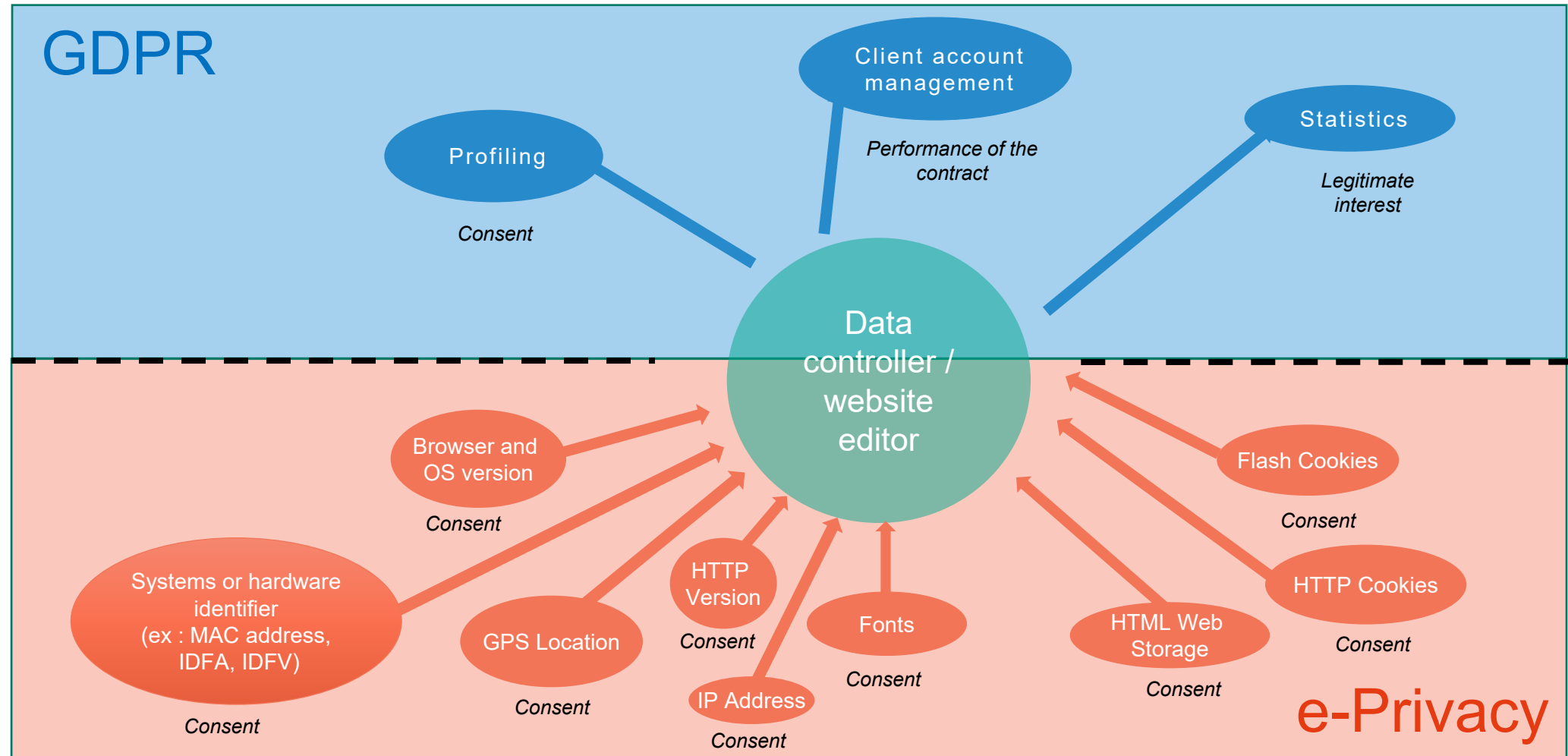


- The rules remain the same (for now):
  - The UK derives its cookie rules from the EU e-Privacy Directive.
  - This is implemented into national UK legislation via the Privacy and Electronic Communications Regulations 2002.
- However, there is scope for divergence as the EU is replacing the current e-Privacy law with a new e-Privacy Regulation.

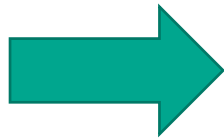
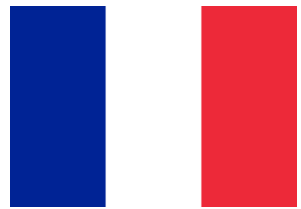


- The rules remain the same:
  - The provisions of the EU GDPR were incorporated directly into UK legislation (UK GDPR).
  - The UK GDPR is substantially the same as the EU GDPR but contains technical amendments so that it works in a UK-only context.

# DOES EU/UK LAW REGULATE THE USE OF COOKIES?



# WHY COMPLY?



€60,000,000

Google

€40,000,000

€35,000,000

amazon



Since mid-April, the CNIL has launched a large enforcement plan with numerous investigations on cookies compliance in several industries.

# WHAT DO EU/UK COOKIE LAWS REQUIRE?

- e-Privacy Directive requires information service providers (such as websites) or their representative to:

1 Provide **clear & complete** information in advance



2 Collect **valid and prior consent** from users, *i.e.* consent **as defined in GDPR**

Trackers used for operations relating to **personalised ads**

**Social media** trackers, esp. generated by share buttons

# WHAT DO EU/UK COOKIE LAWS REQUIRE?

























	GDPR			
	Freely Given	Specific	Informed	Unambiguous
	Freely Given	Specific	Informed	Unambiguous
e-PRIVACY	<ul style="list-style-type: none"> <li>✓ Independent consent for each purpose <i>via</i> cookie banner</li> <li>✓ "Reject" button <b>identical</b> and located on the <b>same screen</b> as the one to consent to turn trackers on</li> <li>✓ Refusal by <b>closing the</b> cookie banner <b>window</b> or by <b>not interacting for a period of time</b> <u>if this option is clearly indicated to users</u></li> <li>✗ Different font and font size between the buttons to accept or refuse to turn trackers on</li> </ul>	<ul style="list-style-type: none"> <li>✓ <b>Separate consent for each purpose</b></li> <li>✓ <b>Global consent to trackers with the same purposes</b>, provided that all of these purposes are displayed to users in advance</li> <li>✗ Consent <i>via</i> global acceptance of general terms and conditions of use</li> </ul>	<ul style="list-style-type: none"> <li>✓ Consent after all required information has been provided in a clear/comprehensible manner</li> <li>✗ Simple reference to the GTC</li> </ul>	<ul style="list-style-type: none"> <li>✓ Clear positive act</li> <li>✗ Browsing, scrolling, pre-ticked boxes*</li> </ul>

\* ECJ, Case C-673-17, Planet49, Oct. 1<sup>st</sup>, 2019



# WHAT IS AT STAKE?

## Comparative analysis of exemptions

	INFORMATION	CONSENT
Technical cookies	  *	
Audience measurement cookies	   	   
Targeted advertising cookies	   	   
Social network cookies	   **	   **

\* Only if technical cookies are used to process personal data


\*\* Only if social network cookies are used for advertisement, market research and web audience measurement

Advantage to follow the strictest position for each of these cookie categories because of:

- Strong divergence between authorities on technical cookies and audience measurement cookies;
- No notion of main establishment under e-Privacy;
- Violation of safeguards for the users;
- Situation in Germany is unclear.

# HOW DO I COMPLY WITH EU/UK LAWS?

## COOKIE BANNER

Continue without accepting 

### OUR USE OF COOKIES

We use technical cookies necessary for the proper functioning of the website. If you consent, we and [our partners](#) will also use cookies and other tracking devices for audience measurement, advertising and social media. The details of purposes can be accessed from the "Manage Your Settings" button.

You can configure the setting of these cookies and other trackers via this cookie banner. For more information, please consult our [cookie management policy](#).

REFUSE  
ALL


ACCEPT  
ALL

CUSTOMIZE  
SETTINGS

# HOW DO I COMPLY WITH EU/UK LAWS?


## COOKIE BANNER

**CUSTOMIZE SETTINGS**Continue without accepting



**Technique**


Technical cookies used on the website are necessary for the proper functioning of the website. You can disable these cookies by [configuring your browser](#), but you may no longer be able to benefit from all the website's features.



**Audience measurement**

Audience measurement cookies (analytical cookies) used on the website allow us to improve the website and the services available here by collecting information on how you use it.


☐



**Advertising**

Advertising cookies used on the website allow us to place advertisements, to measure their effectiveness and to adapt their content according to your browsing and your profile.

☐



**Social networks**

Social media cookies used on the website allow you to interact with the social media on the website and to share contents.

☐

For more information and to change each cookie setting separately, you can consult our [cookie management policy](#) listing our partners.

REFUSE ALL

ACCEPT ALL

CONFIRM MY PREFERENCES

# HOW DO I COMPLY WITH EU/UK LAWS?

## COOKIE BANNER

X

### Our use of cookies

We use technical cookies necessary for the proper functioning of the website. If you consent, we and [our partners](#) will also use cookies and other trackers for the purposes described below. You can configure the setting of these cookies and other trackers via this cookie banner. For more information, please consult our [cookie policy](#).

Technical cookies ☒ Analytical cookies ☐ Social media cookies ☐ Advertising cookies

ACCEPT ALL COOKIES

REFUSE COOKIES  
EXCEPT THOSE NECESSARY

SETTINGS

Technical cookies

Analytical cookies

Social media cookies

Advertising cookies

X

### Our use of cookies

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Technical cookies ☒ Analytical cookies ☐ Social media cookies ☐ Advertising cookies

ACCEPT ALL COOKIES

REFUSE COOKIES  
EXCEPT THOSE NECESSARY

SETTINGS

Technical cookies

Analytical cookies

Social media cookies

Advertising cookies

We use analytical cookies (or audience measurement cookies) to improve the ergonomics of our website and the services we offer by collecting information on how you use it. For more information, please consult our [cookie policy](#).

# HOW DO I COMPLY WITH EU/UK LAWS?

## TWO-CLICK SOLUTION (FOR SOCIAL MEDIA)

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### Recommended External Content

With your consent, we will show a video from Example.

☐ Always show external content from Example.

Show Video

I agree that I will be shown content from an external source. This means that personal data may be transferred to the aforementioned third-party provider. I can find further information in the [Privacy Notice](#).

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# HOW DO I COMPLY WITH EU/UK LAWS?

## USE CASES

By continuing to browse the site, you agree to the use of cookies to personalise your visit and ensure a better experience on our site. For more information, [click here](#)



Non-compliant ✖

### This website uses cookies

By continuing to browse this site, you agree that we may use cookies to enable us to personalise content and ads, to provide social media features and to analyse our traffic. We also share information about your use of our site with our social media, advertising and analytics partners who may combine it with other information that you've provided to them or that they've collected from your use of their services.

☒ Necessary ☒ Preferences ☒ Analytics ☒ Marketing [Hide details](#) [détails](#)

OK

Non-compliant ✖

We use cookies and similar technologies to improve the customer experience and personalise content, by understanding your use of our site. By using our website without changing your cookie settings, you accept our [cookie policy](#). To disable cookies, please use our [cookie management tool](#) and to manage third party cookies, please see the section [about our advertising](#).

Continue

[Login First](#)

[Cookie Settings](#)

Non-compliant ✖

# HOW DO I COMPLY WITH EU/UK LAWS?

## SUMMARY OF PRACTICAL STEPS

### COOKIE BANNER

- Visibility of the cookie banner **from any page of the website.**
- The cookie banner must provide:
  1. the **purposes of the cookies/trackers used on the website**
  2. the **list of third party companies** that use cookies/trackers on the website
  3. the **scope of the users' consent**
  4. a space to collect the user's **global consent**
  5. a space to collect the user's **blanket refusal**
  6. a **checkbox** enabling the user to leave the cookie banner without making a choice
  7. a link to the **cookie policy**



### SETTING BUTTON IN THE COOKIE BANNER

Users must have access to :

1. a **more detailed description of the purposes**
2. the **Cookie policy** itself



Users must be able to **consent to turn cookies/trackers on** used on the website for **each purpose.**



### COOKIE POLICY

- Access to the cookie policy **whenever** the User browse the website
- *Via* cookie policy, users must be informed of :
  1. the **detailed purposes** of the cookies/trackers
  2. **third party companies** using cookies/trackers on the website
  3. cookies/trackers **retention periods**
  4. **how to setup their browser** to refuse the placing of cookies/trackers
  5. **their rights**



Users must be able to **consent separately** to the use of each cookie/tracer.

Sources :

- CNIL, Deliberation No. 2020-091 of September 17<sup>th</sup>, 2020 adopting guidelines relating to the application of Article of the Law of January 6<sup>th</sup>, 1978 as amended to reading and writing operations in a user's terminal (in particular "cookies and other trackers") and repealing Deliberation No. 2019-093 of July 4<sup>th</sup>, 2019
- CNIL, Deliberation No. 2020-092 of September 17<sup>th</sup>, 2020 adopting a recommendation proposing practical methods for compliance in event that "cookies and other trackers" are used

# HOW DO I COMPLY WITH EU/UK LAWS?

## PRACTICAL RECOMMENDATIONS\* TO PROVE CONSENT

- Data controllers must be able **to prove, at any time**, that users have given **their consent** to the placing or reading of connection trackers on their terminal.

Store in **third party escrow** the different versions of the code

Publish the **condensate** of the code with a time stamp on a public platform

Preserve **screenshots of the visual** rendering displayed on a mobile or desktop terminal, with a **time stamp**

Preserve **information relating to the tools** implemented and their successive configurations with a **time-stamp**

Implement **regular audits**, by third parties of the **consent collection mechanisms**

\*CNIL, Deliberation No. 2020-092 of September 17<sup>th</sup>, 2020 adopting a recommendation proposing practical methods for compliance in event that “cookies and other trackers” are used



# HOW DO I COMPLY WITH EU/UK LAWS?

## PRACTICAL RECOMMENDATIONS\* TO PROVE CONSENT

- What about actors who do not place cookies themselves on their site or application (case of third party cookies)?



**Mere presence of a contractual clause**



**Contractual commitment**



**Audit**

\*CNIL, Deliberation No. 2020-092 of September 17<sup>th</sup>, 2020 adopting a recommendation proposing practical methods for compliance in event that “cookies and other trackers” are used

# HOW DO I COMPLY WITH US LAWS?

- When collecting information online, consider whether:
  1. The use of cookies amounts to collection of personal information.
  2. A "just-in-time" notice is required to satisfy the notice at collection requirement.
  3. Your current method notice (e.g., your Privacy Policy) is sufficient
- Be careful with cookie banners that ask for consent:
  - In most circumstances, consent is not required in the US
  - In some circumstances, consent could be implied by the user continuing to use the site
  - If collecting consent, ensure that no data collection takes place prior to obtaining consent

# WHAT DO I NEED TO THINK ABOUT WHEN ENGAGING A COOKIE VENDOR?

## Under EU laws:

- The Website/App publisher disclosing cookies is a **controller** (including when he/she subcontracts the management of these cookies to third parties as far as it is for its own purposes).
- The Website/App publisher and the third party (advertising agency or other service providers) are presumed to be **joint controllers** when they have a **common or mutual interests** (e.g., respective reuse of cookies for retargeting purposes or social network plug-in on any websites).
- Third parties (advertising agency or other service providers) are **processors** as soon as they only perform technical services (e.g., installation of cookies), but do not reuse data for their own purposes.

## Under the CCPA

- The definition of “sale” can be interpreted to include the disclosure of cookie data for advertising purposes
- Whether the use of cookies constitutes a “sale” depends, in part, on whether the vendor is a “service provider” under the CCPA (*i.e.*, can the vendor use the data outside of the business relationship or for their own purposes?)

# THANK YOU!

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