

Brussels, 12 June 2012

## **ARTICLE 29 DATA PROTECTION WORKING PARTY**

### **European Data Protection Authorities adopt opinion on cookie consent exemption**

*Opinion Article 29 Working Party analyses revised cookie-rule*

**The European data Protection authorities, assembled in the Article 29 Working Party, adopted an opinion on cookie consent exemption during its plenary meeting on 6 and 7 June 2012 in Brussels. The opinion explains how the revised e-Privacy Directive impacts on the usage of cookies and similar technologies. More specifically, in its opinion the European Data Protection Authorities have analysed the exemptions to the requirement of informed consent in this context. The opinion discusses cookies that under certain conditions can be placed without the requirement of informed consent. It furthermore gives guidelines for deciding whether a cookie is exempt from the principle of informed consent.**

The revised Article 5.3 (the so-called "cookie-rule") of the e-Privacy Directive has reinforced the protection of users of electronic communication networks and services by requiring informed consent before information is stored or accessed in the user's (or subscriber's) terminal device. The requirement applies to all types of information stored or accessed in the user's terminal device although the majority of discussion has centred on the usage of cookies.

Article 5.3 allows some cookies to be exempted from the requirement of informed consent, if they satisfy one of the following criteria:

- the cookie is used "*for the sole purpose of carrying out the transmission of a communication over an electronic communications network*";
- the cookie is "*strictly necessary in order for the provider of an information society service explicitly requested by the subscriber or user to provide the service*".

In its opinion the Article 29 Working Party has concentrated on these exemptions to this principle of informed consent in the context of cookies and related technologies. The European Data Protection Authorities earlier examined the requirements for informed consent in detail in its opinions on [Online Behavioural Advertising \(WP 171\)](#) and on the [Easa/IAB Europe Best Practice Recommendation on Online Behavioural Advertising \(WP 188\)](#).

The analysis in the current opinion shows that some cookies can be exempted from informed consent under certain conditions if they are not used for additional purposes. These cookies include for example "user-input" cookies (*used to keep track of the user's input when filling online forms or as a shopping cart*), also known as session-id cookies, multimedia player session cookies and user interface customization cookies (*for example language preference cookies to remember the language selected by a user*).

First party analytics cookies are not likely to create a privacy risk when they are strictly limited to first party aggregated statistical purposes and when they are used by websites that already provide clear information about these cookies in their privacy policy as well as adequate privacy safeguards. Such safeguards are expected to include a user friendly mechanism to opt-out from any data collection and comprehensive anonymization mechanisms that are applied to other collected identifiable information such as IP addresses.

The European Data Protection Authorities would like to stress that in order to decide if a cookie is exempted from the principle of informed consent it is important to verify carefully if it fulfils one of the two exemption criteria defined in Article 5.3 the e-Privacy Directive. In case of doubt website operators can of course always ask the user's consent, thus avoiding any legal uncertainty.

### **Background information**

The Article 29 Working Party on the Protection of Individuals with regard to the Processing of Personal Data is an independent advisory body on data protection and privacy, set up under Article 29 of the Data Protection Directive 95/46/EC. It is composed of representatives from the national data protection authorities of the EU Member States, the European Data Protection Supervisor and the European Commission. Its tasks are described in Article 30 of Directive 95/46/EC and Article 15 of Directive 2002/58/EC. The Article 29 Working Party is competent to examine any question covering the application of the data protection directives in order to contribute to the uniform application of the directives. It carries out this task by issuing recommendations, opinions and working documents.

[http://ec.europa.eu/justice/data-protection/index\\_en.htm](http://ec.europa.eu/justice/data-protection/index_en.htm)