

EU Framework on Electronic Communications: Impact on Commercial Emailers

*These materials have been prepared for information purposes only.
They do not constitute legal advice.*

ePrivacy Directive Changes



ΕΒΡΟΠΕΪΚΟ ΠΑΡΛΑΜΕΝΤ PARLAMENTO EUROPEO EVROPSKÝ PARLAMENT EUROPA-PARLAMENTET
EUROPÄISCHES PARLAMENT EUROOPA PARLAMENT ΕΥΡΩΠΑΪΚΟ ΚΟΙΝΟΒΟΥΛΙΟ EUROPEAN PARLIAMENT
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Member States shall ensure that the ~~use of electronic communications networks to storing of information, or to gain or the gaining of access to information already stored, in the terminal equipment of a subscriber or user is only allowed on condition that the subscriber or user concerned has given his or her consent, having been ~~is~~ provided with clear and comprehensive information, in accordance with Directive 95/46/EC, inter alia about the purposes of the processing, and is offered the right to refuse such processing by the data controller.~~ This shall not prevent any technical storage or access for the sole purpose of carrying out ~~or facilitating~~ the transmission of a communication over an electronic communications network, or as strictly necessary in order for the provider of ~~to provide an information society service explicitly requested by the subscriber or user to provide the service.~~"

ePrivacy Directive Changes



Recital 66 to the amended Directive:

“where it is technically possible and effective... the users consent to processing may be expressed by using the appropriate settings of a browser or other application”

Cookie Consent



" We now know that consent has to be real consent - we cannot assume consent from inaction. The fact the browser settings are just used by a website visitor without thinking to go and check what the setting is - that is seen as inaction, not active consent."

Commissioner Christopher Graham, October 17, 2011



With respect to IAB self-regulation, Graham states *"principles themselves are not sufficient to comply with the law."*



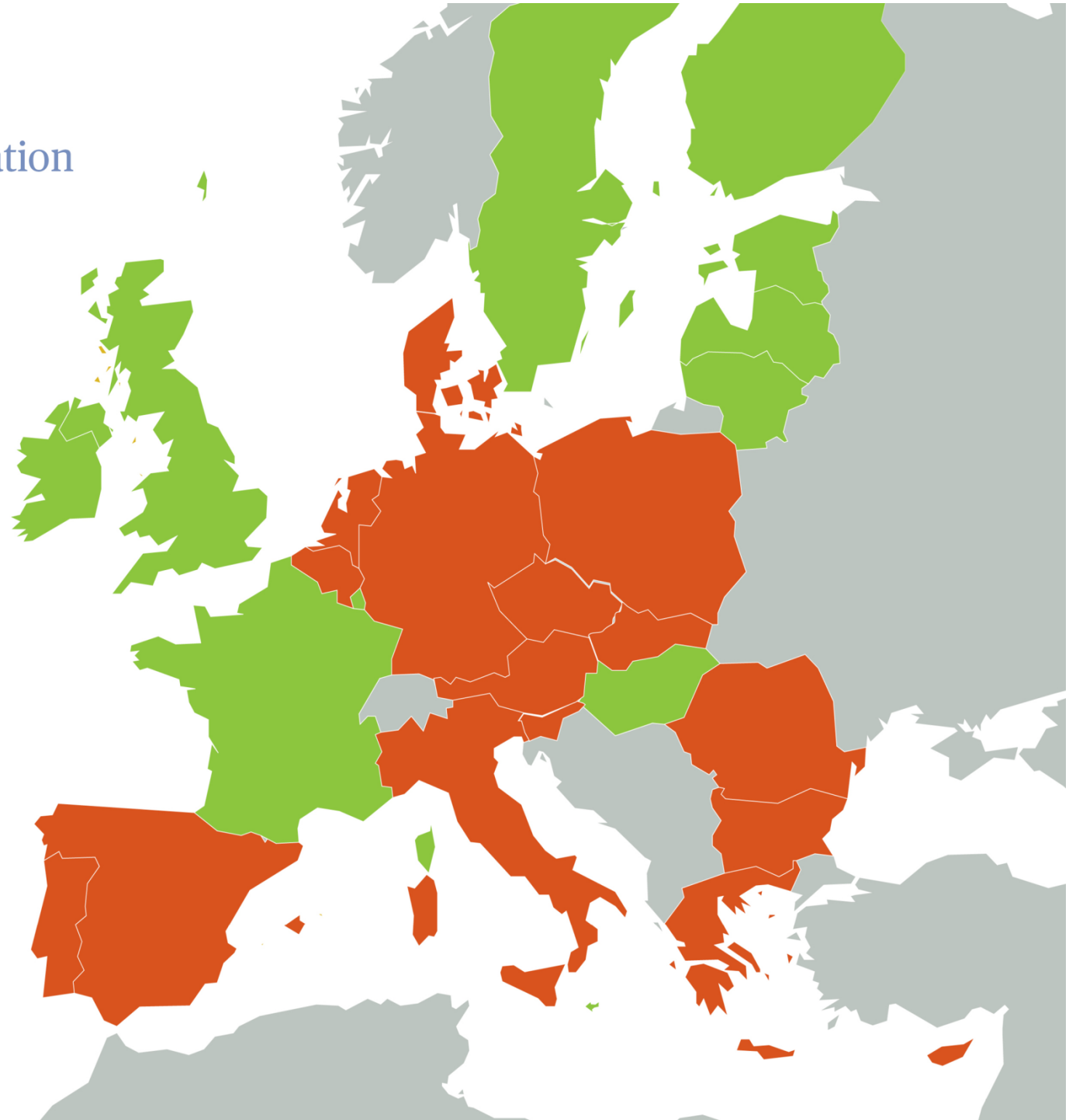
"Advertising network providers need to create prior opt-in mechanisms through an affirmative action by the data subjects indicating their willingness to receive cookies or similar devices and the subsequent monitoring of their surfing behaviour for the purposes of serving tailored advertising."

Bird & Bird

Cookies: Implementation of the new Directive

As of August 26, 2011

- Implementation completed
- Implementation in progress or not started yet



EU Member Country Cookie Changes Variations

Country	In Effect	Informed Consent (browser controls)	Express Consent
Estonia		X	
Finland	X	X	
France	X	X *(Rules TBD)	
Hungary	X		X
Netherlands			X
Poland		X	
Slovakia		X	
Spain		X* (Rules TBD)	
Sweden	X	X* (Rules TBD)	
United Kingdom	X	X * (Rules TBD)	

Source; Bird & Bird

http://www.twobirds.com/English/Documents/ImplementationofthenewPrivacyDirective_14October2011_BirdBird.pdf

Types of Email-Related Cookies

Transactional

Shopping
Cart
Tracking

Confirmation
Tracking

Marketing

Open-Click

Re-
Marketing

Display
Advertising

Unclear

Web
Analytics

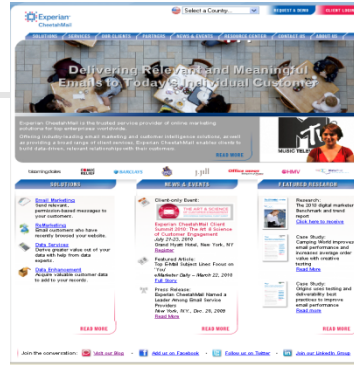
Referral
Tracking

Research

Behavioral Ad



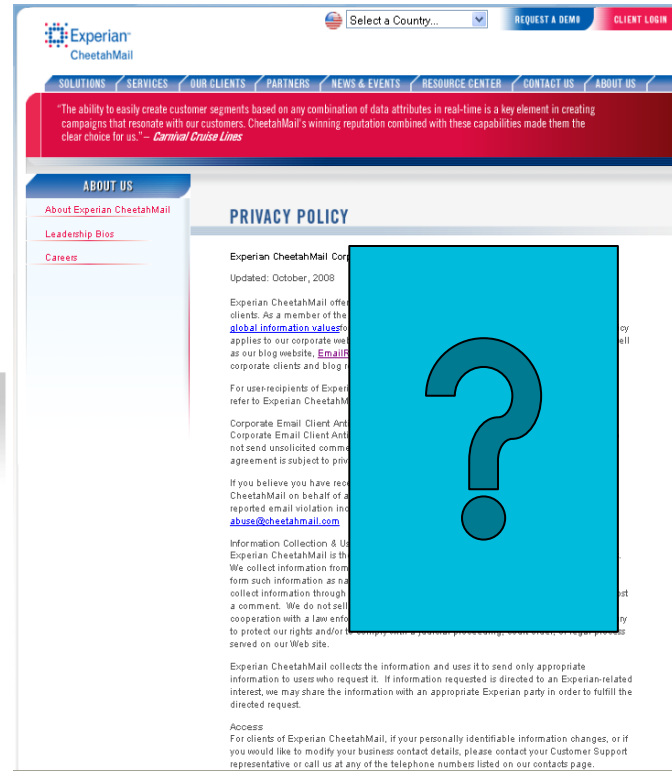
Web visit



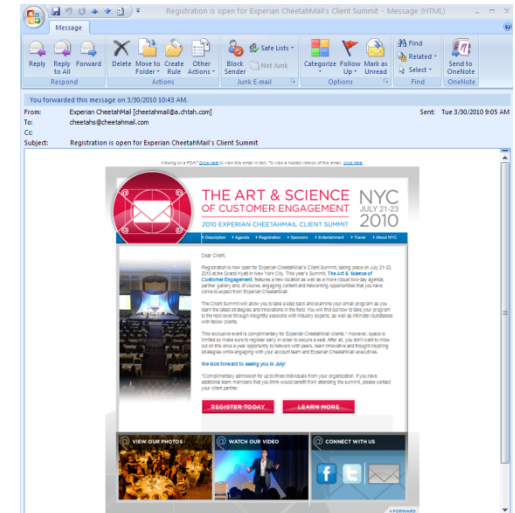
Website optimization



Re-marketing Ad



Re-marketing Email



Cookie Consent Methods

Privacy Notice	Pop-Ups	Browser Settings	Other Options
<ul style="list-style-type: none">• Prominent placement on home/landing pages• References to default/necessary browser control changes• Eliminating ambiguous uses (audit)	<ul style="list-style-type: none">• Consent upon initial visit (<i>expiration?</i>)• Unambiguous options• Premium content/other incentives provided• Privacy notice content• Preferences options	<ul style="list-style-type: none">• Do-Not-Track header• Default settings recognitions (TBD)	<ul style="list-style-type: none">• Login request• Registration/transaction• OpenID/ FB Connect/ Other social connections• Preferences management

Enhanced Targeting Consent

** Dramatization**



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Lenny Donnarumma
Manager of
Creative Services - Web
BJ's Wholesale Club



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Title*	<input type="text"/>	Company*	<input type="text"/>
Email*	<input type="text"/>	Phone*	<input type="text"/>
Address*	<input type="text"/>	Address 2	<input type="text"/>
City*	<input type="text"/>	State*	<input type="text"/>
Zip*	<input type="text"/>	Country*	<input type="text"/>

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