

Cookie Compliance



Get started with our
First Response Pack



COOKIEREPORTS
RISK ASSESSMENT AND MONITORING

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a brief introduction

The privacy law, which applies to how you use cookies and similar technologies for storing information on a user's equipment such as their computer or mobile device, changed on 26 May 2011.

This guide is aimed at organisations that have started to think about how they will comply with the new rules. It is an excellent starting point on your journey to compliance.

We have developed a *First Response Pack* which will allow an organisation to quickly meet a significant level of compliance – without the need to invest a large amount of time and resource (could be as little as an hour per site!).

The *First Response Pack* ensures that any site visitor is provided with a detailed disclosure of the cookies in use across your site and, where a cookie could be considered 'intrusive', it provides them with the exact detail of what they need to do to opt out – ensuring that on any subsequent visit the cookies that they are not comfortable with will be refused.

In trying to setup up full 'opt-in/opt-out' policies, organizations face both technical and commercial challenges – some of which could have a significant impact on online operations and damage revenue streams, to the extent where they challenge the viability of setting up a policy.

A key issue around implementing 'opt-in/opt-out' policies is one of the burden of proof. If you are able to gain a visitors consent to the use of cookies as part of their visit, actually proving consent was given could be very difficult. Likewise, proving that consent was refused, and that you didn't set any cookies, could be near impossible – consider the issue of 'it's the device that's known and not necessarily the individual'.



And there are many other considerations such as meeting web accessibility standards through the use of assistive technology, and the challenges faced by those that operate across multi EU countries and how they manage the requirements around differing consent requirements and localized language.

All in all a very difficult issue to solve - commercial costs, time to gain consent, proof consent was given – and this around a subject that is somewhat enveloped in confusion and misinformation!

In order to offer some direction to organizations and to help cut through the confusion, we have put together a 3-stage solution.



our 3-stage solution

Our EU-wide solution is pragmatic and comprehensive and we will help you to fully understand what makes up your 'cookie landscape' – in terms of both site discovery and what's contained within each of those sites.

The solution offers a very timely way to ensure you are approaching the reporting of the detail of cookies on each website, whilst offering visitors every opportunity to opt out of cookies that they are uncomfortable with – balancing the commercial needs with the limitation of end-user technologies available today.

Education of the general public, by ensuring they are correctly informed so that they can make their own informed decisions, probably offers the greatest benefit of all – in both the short and long term.

Should there be a specific need to gain the users 'consent' within the jurisdiction you operate, the service can be simply expanded with no need to start again, or reproduce any of the initial work.

Our suggestion is to organise the journey towards compliance into the 3 following stages:

Stage 1

Audit sites and provide clear navigation to a 'visitor friendly policy'

Stage 2

Ongoing monitoring of sites and updates to policy, integrated into a dashboard reporting variances.

Stage 3

Start to plan how you are going to handle consent, on a site-by-site basis (taking into account suppliers, mobile and terms and conditions etc.)

This document concentrates on Stage 1 – your first step toward compliance. For more information about how to move forward to full compliance, please visit our website: www.cookiereports.com



consider the issues

Apart from the current confusion as to the exact need and legal position around gaining consent (*the common method being a tick box presented on a website*), there are a number of issues to be considered:

Many of these present significant technical challenges and some have no actual technical solution.

1. Time and cost of implementing a 'consent gathering' solution.
2. Ongoing management of a solution.
3. Impossibilities around proving 'gained' (or refused) consent – this would need a continual site sampling method to be in place.
4. 'Consent' proved either way is likely to be device based, not individual. This is not the focus of the privacy directive.
5. Differing methodologies, causing greater 'visitor' confusion.
6. Policing the requirements.
7. Enforcement that doesn't prejudice those that demonstrate a willingness to cooperate.
8. EU competition law – potential issue caused with differing rules and implementation offers some countries a potential advantage.

The worse case for the industry (and for the EU) is the potential attitude of "it's less of a risk to be fined and probably cheaper" or "lets move operations to a less-restricted location".

We believe a simplified pragmatic way of reporting cookies is the answer. ie: better informed web users, clearly informed of the cookies in use, with the option to make an informed decision to stay on the website rather than opt-out of cookies using browser settings.



Over time, the EU directive and local country implementation of the law will probably focus on the 'practical' and 'what's possible', while ensuring web user's privacy is protected.

The first and real focus (as described by a number of the enforcement bodies, including the UK's ICO) has been around 'getting your house in order' and clearly and comprehensively advising visitors of what's on your site – at the very least, any efforts spent educating the general public and ensuring they are correctly informed will build confidence and offer the greatest benefit to all.

This is where our capability offers the best of all worlds – cost effectiveness, simplified policing and increased confidence with a better informed public.



the problem with tick boxes

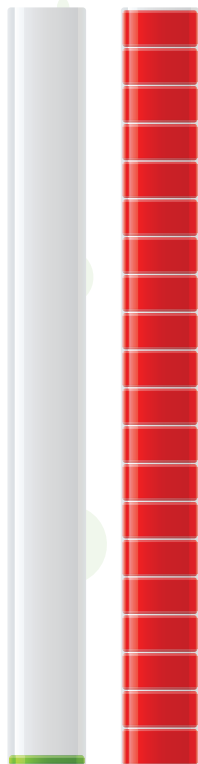
It's clear that organisations are worried about the disruption they feel a 'tick-box' solution will bring to the user experience, thereby damaging the user journey.

This has been demonstrated nowhere so clearly than with the ICO's own website. They experienced an 89% drop in reported visitor traffic after the introduction of their 'tick-box' solution¹. Would you 'tick the box'? . . . probably not.

In addition to the disruption to the user's journey, another (and more serious) problem faced with the 'tick-box' solution is that it increases the website owner's exposure to litigation should they fail to correctly act upon the user's choice.

To explain further: if a user visits a website and doesn't tick the 'accept listed cookies' box, they've told you that they do not want any cookies set. If you have then gone ahead and set ANY cookies, intentionally or not (and it's easy to prove cookies were set) this places you in a very black and white position with regard to the law. You may find you then have a serious problem.

A tick in the box
Is it opening the door to litigation?



Only about 3% of sites would benefit from a tick in the box solution

For the rest, you could be opening up a huge can of legislative worms.

¹ The ICO published data regarding recorded visitor numbers to its website, following a freedom of information (FOI) request



can you do this yourself?

Manually site auditing is time consuming

Our audit looks at every page on your site and every element contained therein (whether it's delivered locally or via a third party). While all of this is accurately carried out at many 1000s of pages per minute, it's easy to see the time and cost benefits when compared to doing this manually – which typically takes around 3-5 minutes to check a single page.

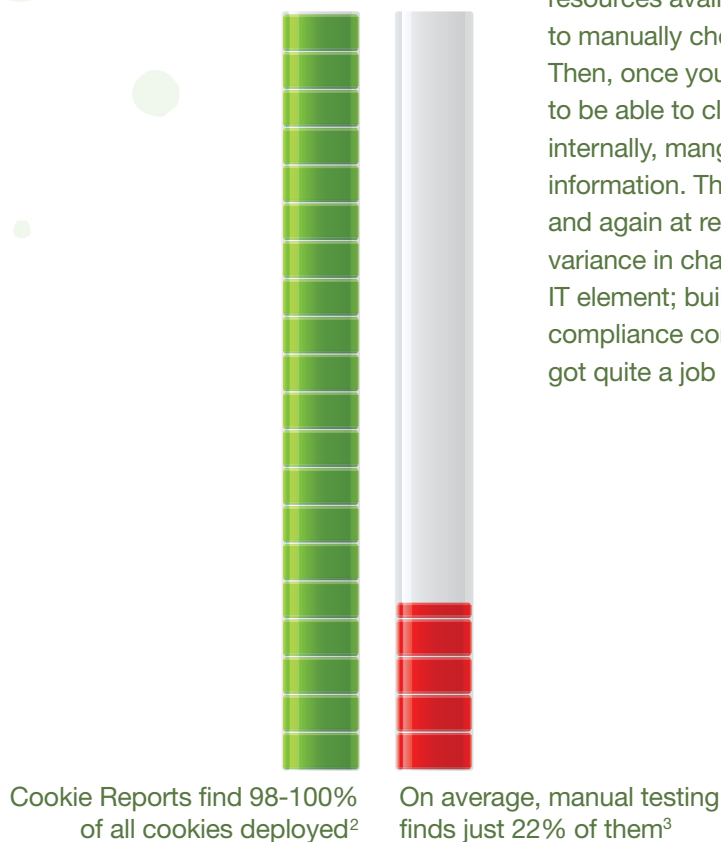
22% accuracy just isn't good enough

Manual audits are limited to the competence of the person doing the checking – and what they can ultimately see. Finding every combination of every page can be a challenge, further complicated if the site has redirected you through 3 or 4 pages already.

Do you have skills and are they available?

To run an audit in house, you will need the skills and resources available to create the necessary processes to manually check a site or automate those checks. Then, once you've gathered the information, you need to be able to clearly communicate that information internally, manage the change and publish the information. Then, when all of that is done, do it again and again at regular intervals, and track and report the variance in change. No small task! And that's just the IT element; build in the legal, marketing and compliance considerations and you'll soon see you've got quite a job on your hands!

Accuracy comparisons Cookie Reports vs manual checking



² Automated audits can only find what's available, forms, functions or areas that are unavailable (broken links etc.) will not be reported.

³ Based on data collected during Jul-Sep 2011. Review of sites within local gov, what's reported against what was found by our service.



stage one what's involved?

1a – Audit your site(s)

The guidance notes from the Information Commissioners Office (ICO) in the UK expressly advise you to check what type of cookies and similar technologies you use throughout your web estate, and report exactly how you use them.

Across the EU, the very clear (and perhaps only) message is to review your sites and find out exactly what cookies you have.

As part of this first stage, you may wish to remove unwanted or unrequired sites and cookies – this can only benefit your web estate, by perhaps improving performance and/or protecting you from data leakage, and reduce your operational requirements to maintain those elements.

1b – Create/update your Cookies Privacy Policy

We create your Cookies Privacy Policy based on our standard templates, include details of your current cookie landscape and publish the information in a clear and easy to understand format.

This can be upgraded to an active policy through our ongoing monitoring services which will dynamically update your cookies policy and enable you to manage and report the exact content of your cookie landscape in a controlled and regular way.

Our standard Cookies Privacy Policy is based on discussions with legal partners, marketers and privacy professionals to offer you the right balance and tone of wording – providing your visitors with the clear and comprehensive information they need to make informed decisions.

1c – Add the icon and link from your site

Adding an easily recognizable icon and link from your pages is a simple solution to ensure your visitors are offered the detail they require to build the confidence they need. From a regulatory point of view, clear direction for visitors demonstrates your commitment towards compliance.



stage 1a audit your site

We offer an automated audit of your site(s) that will look at every combination of every page and check every element on those pages to see if they are involved in the setting of cookies.

This 'spidering' of your pages is carried out in the same way a search engine such as Google would operate – so there should be little or no impact to other site users.

We simulate a single user looking at the pages and use a range of browsers enabling us to find as many as cookies as can be found – some cookies can be set differently depending on the web browser in use.

We locate JavaScript code that could be setting cookies and report the detail so you can investigate further.

We also report areas of the site that we cannot access due to broken links – an invaluable service as broken links can seriously disrupt the user experience and potentially result in a loss of business.



stage 1b policy templates

We have created a standard Cookies Privacy Policy template ready to be populated with the results of your audit.

The policy covers both the technology aspects of cookie reporting (cookies, flash, scripts etc.) and the necessary detail – created with input from legal, privacy and marketing experts to inform the site user in clear, friendly and appropriate language.

A totally unique capability of our service is the ability to take the results of the audit and feed them directly into the policy.

This technology completes the sections of the policy with the relevant detail and, by using our Cookie Calculator™ to rate the cookies red, orange or green accordingly⁴, it offers visitors an initial assessment of the likely impact on their privacy and the detail of how to opt out of cookies with their browser settings.

Once you have reviewed the initial policy, it's your final decision on it's content and when it goes live. This is all hosted by us and changeable as often as you like. As an option, the policy can be made available in multiple languages, either with automatic language detection or visitor choice.

In managing your journey towards compliance, and where there is a need to gain 'explicit' consent, we will work with you to deliver additional capability around cookie opt-in/opt-out functionality which can also be set on a country by country basis as required.



⁴ Based on cookies we can access and interpret – JavaScript cookies may require manual review and additional content additions



stage 1c

cookie indicator

Based on the cookies found, this stage is about providing visitors with an indication of the cookies in use across your site.

You need to make it clear that you are using cookies, and by providing a link to your cookies privacy policy you give the user the information they need to make an informed decision to continue to use your site. 9 times out of 10, they will carry on as they did before but now better informed and more confident.

In terms of 'icon' design there are many options and this is really about increasing visitor confidence and ensuring your local regulator can see you taking steps to advise and inform. Our Cookie Indicator icon is a far better solution than a 'tick box', and tests show that 89% of users have simply refused all cookies. We believe this is due to lack of information and understanding.

As part of the response pack, we provide a number of icon design options.



ordering your first response pack

In order to help as many organisations as possible during the run up to the May deadline, we are making our First Response Pack as accessible as possible.

This product is the most complete first step solution towards compliance available anywhere in Europe. Our simple staged approach will work for any organisation – however complex or however small.

All you need to do is sign up to the service. There is nothing to set up and nothing install. the service is remote and fully supported.

First Response Packs from Cookie Reports start from £1500 and can 'go live' within one week. This is a much faster solution compared to in-house audits or creation of a cookie privacy policies.

For more information please telephone or email us:

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Email: 1st.response@cookiereports.com



we're keeping good company

Cookie Reports have been involved with some of the world's largest brands.

Over the last 12 months we have been consulted by, and have acted on behalf of, many large corporate organisations. We have worked with international agencies and lawyers, representing many EU legislative bodies.

We think you'll be impressed with the company we have been keeping.



Control • Compliance • Confidence

Disclaimer

This document is offered as an overview and a starting point only – it should not be used as a single, sole authoritative guide. You should not consider this as legal guidance.

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