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Issued by the Article 29 Data Protection Working Party

Joint survey by European regulators on website cookie usage finds improvement in information but cookies still being set without consent.

A survey of 478 websites frequently used by European citizens has shown that many website operators inform their users about cookies but that 1. high numbers of cookies are being placed by websites, 2. expiry dates are often excessive and 3. the websites still have more work to do on providing information and gaining valid consent for their use of cookies.

A cookie is a small piece of information placed on a person's computer when they visit a website. They can be used to remember the users' preferences, record items placed in a shopping basket and carry out various other tasks based on how that person uses the site. Some cookies, known as third party cookies, can also be used for many purposes including to record information based on how the user is interacting with other websites.

The updated ePrivacy Directive, which came into force in 2011, requires website operators to gain consent for the use of cookies and similar technologies unless a valid exemption applies.

The survey by 6 European regulators from the Article 29 Working Party in partnership with 2 other European regulators who each have responsibility for enforcing the rules on cookies, reviewed the cookies set and consent mechanisms in place by visiting websites across the e-commerce, media and public sectors. The key findings from the research are:

- More than 16000 cookies were set across the sites with those in the media setting the highest average number of cookies (50);
- 22 sites set more than double this average (>100 cookies) when a user visited their home page;
- 70% of the cookies encountered were set by third-parties and more than half of these cookies were set by just 25 domains;
- The average expiry of cookies was found to be between 1 and 2 years, 20% of cookies observed had an expiry date of between 2 and 5 years and 374 were observed with an expiry date of greater than 10 years. However, 3 cookies seen in the sweep had been set with the expiry date of 31 December 9999, nearly 8000 years in the future. Given that the duration can be intentionally renewed by the website operator on each visit it is the case that many of these cookies would survive the lifetime of the device;
- 26% of sites provided no notification that cookies were being used. Of those that did provide a notification, visibility could be improved in 39% of cases and half (50%) merely informed users that cookies were in use without requesting consent;

- Only 16% of sites gave users a granular level of control to accept a subset of cookies with the majority relying on browser settings or a link to a third-party opt-out tool;
- Seven sites set no cookies on the first page.

The Working Party notices that some website operators have taken steps towards informing users about cookies and but also notices that website operators need to ensure that they gain valid consent from all their users for their use of cookies (unless a valid exemption applies). WP29 has previously published documents which address the topic of valid consent for cookies including Opinion 04/2012 on cookie consent exemption and Working Document 02/2013 providing guidance on obtaining consent for cookies. To recall, for consent to be considered valid it must be specific, freely given and unambiguous.

Whilst this sweep focused on the use of HTTP cookies WP29 reminds that other similar technologies are equally subject to the requirement of valid consent including so-called device fingerprinting as described in the recent Opinion 9/2014 on the application of Directive 2002/58/EC to device fingerprinting.

The results of the sweep will be considered at a national level for potential enforcement action.

About the cookie sweep:

The cookie sweep comprised of two stages. The first was a statistical review of cookies used by websites and their technical properties. The second was a more in-depth manual review of cookie information and consent mechanisms.

The purpose of the sweep was to assess the current state of compliance of Article 5(3) of 2002/58/EC, as amended by 2009/136/EC, in order to inform policy engagement, discussions with stakeholders and provide a basis for any coordinated enforcement activity that may be required.

Target sites

Target sectors were selected as those which were considered by the WP29 to present the greatest data protection and privacy risks to EU citizens. The target sectors chosen were media, e-commerce and the public sector.

Target web sites were selected as being amongst the 250 most frequently visited by individuals within each member state taking part in the sweep. In order to remove potential duplication of sweeping, websites of organisations which were not firmly established within a member state taking part in the sweep were suggested to be excluded.

Sweep participants

The following organisations took part in the cookie sweep:

- Czech Republic – Úřad pro ochranu osobních údajů
- Denmark – Erhvervsstyrelsen
- France – Commission nationale de l'informatique et des libertés
- Greece – Hellenic Data Protection Authority
- Netherlands – Authority for Consumers & Markets
- Slovenia – Informacijski pooblaščenec Republike Slovenije
- Spain – Agencia Española de Protección de Datos
- United Kingdom – Information Commissioner's Office

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