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Data Protection Commission

Summary of the report on the use of
cookies and other tracking technologies
from 6th April 2020

What is the report about


The data protection commission (DPC) conducted a desk audit of websites

Audit examined cookie banners, cookie notices and actual use of cookies on a selection of websites in August 2019


Report explains the process used, key findings and expectations for cookie banners, notices and cookie use on websites going forward

Why did the DPC audit websites

“The purpose...was to request information to allow us to examine the deployment of such technologies and to establish how, and whether, organisations are complying with the law. In particular, we wanted to examine how controllers obtain the consent of users for the use of cookies and other tracking technologies”



Consent – why is that important?

- The standard of consent that must be obtained from website users or subscribers for the use of cookies must meet the standard of consent as defined in the GDPR
 - It must be obtained by means of a clear, affirmative act
 - It must be freely given, specific, informed and unambiguous.
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What is expected of you as a website owner

- You must understand what cookies and other technologies are in use on your website
- You must correctly identify what are “strictly necessary cookies”
- You must provide clear information about the specific use of cookies on your website
- You must get opt-in consent from a website user prior to setting any cookies except “strictly necessary cookies”.
- You must have a mechanism where website users can change their mind (i.e. to opt-out if they have previously opt-ed in and vice versa).

What is expected of you as a website owner

- You must understand the purposes of the processing of any personal data collected
- You must gain consent for each purpose (not necessarily each cookie)
- Lifespan of cookies should be proportionate to the purpose of processing
- Privacy and cookies policies must always be available and visible to user and should be kept up to date
- Know and understand use of other technologies such as web pixels, tracking beacons and device fingerprinting technologies – these must be consented to

What is expected of you as a website owner

Using a template service to generate a privacy policy or cookie policy is a futile and cosmetic exercise.

Similarly, controllers who have multiple websites must ensure that each of them has their own privacy policy which reflects the underlying reality of the processing.

Cookie Notices



MUST BE WRITTEN SPECIFICALLY
FOR THE FUNCTIONING AND
COOKIE USE OF YOUR WEBSITE



MUST INCLUDE LIST OF COOKIES
USED, PURPOSE AND DURATION



MUST INCLUDE IF INFORMATION IS
TRANSFERRED OUTSIDE EU/EEA

Cookie Banners have to change

- Cannot use implied consent
- Cannot use pre-checked boxes
- Cannot have “nudging” in the banner
- Must be designed in an accessible manner considering issues like visuals, literary etc
- Should be written in plain text, and plain English (or language website is in).
- Good news: If you only use strictly necessary cookies, then you don't need a consent mechanism

Examples of Non-Compliant Banners

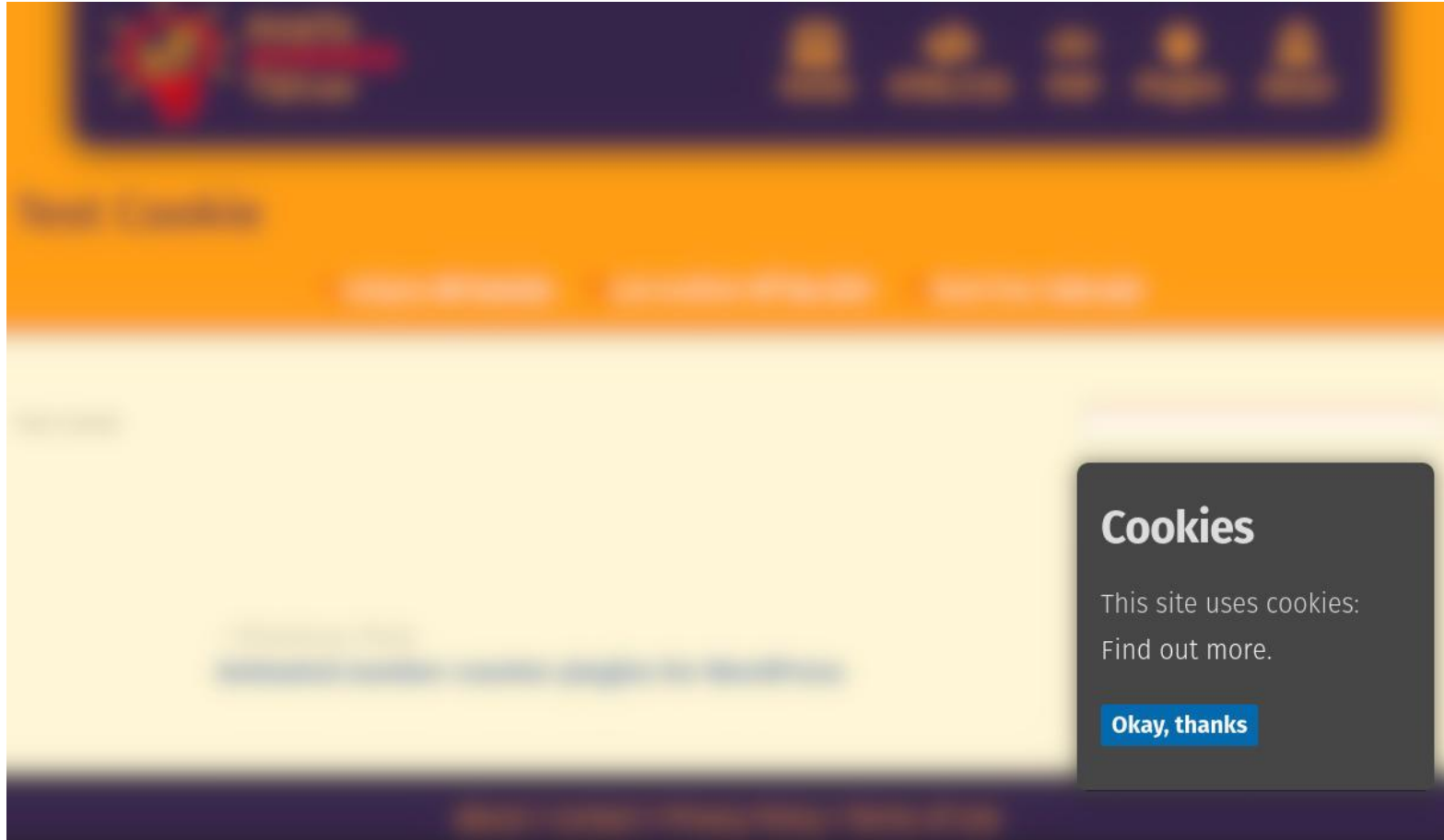


No consent options

This website uses cookies to improve your experience. If you continue, we'll assume you're ok with this.

OK

No consent options



Pre-ticked Boxes

This website uses cookies

We use cookies 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 Statistics Marketing [Show details](#) ▼ [OK](#)

Another cookie banner from Cookiebot, implemented non-compliantly.

Nudging

We use cookies 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.[Cookie Policy](#)

[› Cookie Settings](#)

[✓ Accept Cookies](#)




Examples of compliant cookie banners

This website uses cookies to improve your experience. We'll assume you're ok with this, but you can opt-out if you wish. [Read More](#)

Accept

Settings

Reject



THIS WEBSITE USES COOKIES

We use cookies 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

Use only necessary cookies **Allow selection** **Allow all cookies**

Necessary Preferences Statistics Marketing [Show details](#) ▼

Cookies & Privacy

We use cookies to make your experience on the site better. To comply with applicable regulation, we ask for your consent to set the cookies.

[Accept](#) [Decline](#)

[Cookies Preferences](#)

Website Functionality

- There must be functionality on website to properly record and action website users consent choices
- If you are using a Consent Management Platform, ensure it is properly configured and works properly
- Balance provision of adequate information and minimal intrusion to user experience – “Consent Fatigue”

Enforcement from 6th October 2020

- 6 months grace period for website owners to audit and update cookie banners, policies and functionality
- Audit begins on 6th October 2020
- Not receive additional notice that website is being audited
- Violations will be acted upon, up to and including Enforcement Notices, i.e. your website will be instructed to be taken down

Final Thoughts

Audit	Audit cookies on your website
Use	Only use cookies and technologies that are absolutely necessary for the purpose of your business
Ensure	Ensure both your banner and policy are compliant
Confirm	Confirm the functionality of your consent mechanism works