

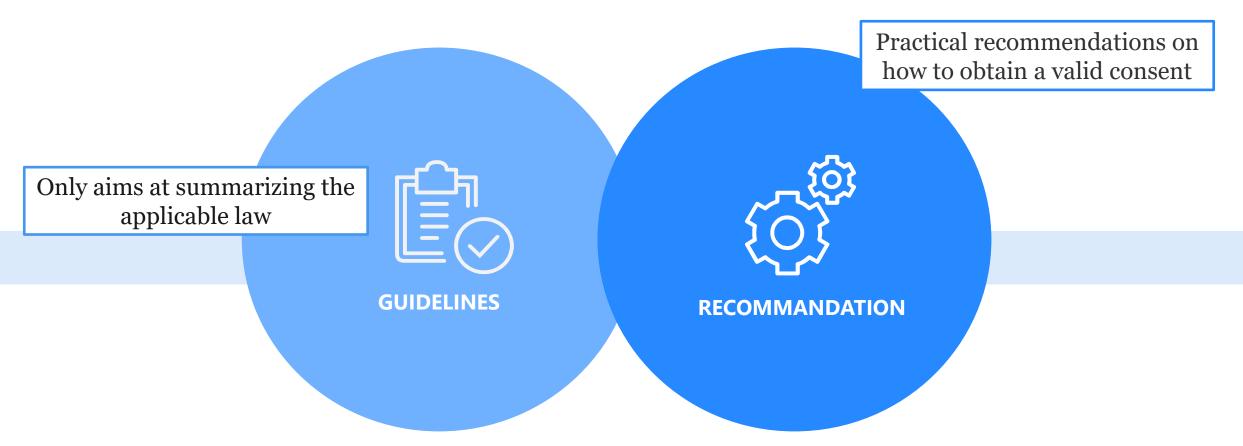
# ePrivacy Rules

Enforcement in France: cookies and other tracking devices



1. Key elements of CNIL's guidelines and recommendation

# From guidelines to practical recommendations



## How to collect a valid consent?

• **Consent need to be informed:** information about the identity of the controllers that set cookies on the user's device must be available for the users.

#### Consent need to be unambiguous:

- Merely continuing the ordinary use of a website can no longer be considered as a valid expression of consent.
- No pre-ticked boxes.

#### Consent must be freely given:

- The CNIL recommends to allow users to consent independently and specifically for each distinct purpose (granularity);
- « Cookie walls » may, in certains cases, affect the freedom of consent (need for a case by case analysis).

## What about refusal?

- Modalities are free subject to the fact that it must be as easy to accept as to refuse.
- The CNIL considers that the integration of a "refuse all" button, at the same level and in the same forms as the "accept all" button, constitutes a clear and simple way to allow users to express their choices.
- If other means are used (clicking the X to close the banner/window, continuing the ordinary use of a website, etc.), the **user must be clearly informed of the means at his/her disposal to refuse the tracking devices.**

## Audience measurement cookies: do I need consent?

- Subject to a number of conditions, cookies used for audience measurement are exempt from consent.
- These conditions, as specified in the guidelines on "cookies and other trackers" are:
  - Purpose strictly limited to the sole measurement of the audience on the site or the application;
  - These trackers must not in particular allow the overall tracking of the navigation of the person using different applications or browsing on different web sites;
  - These trackers must only be used to produce anonymous statistical data;
  - The personal data collected cannot be combined with other processing operations or transmitted to third parties.



2. CNIL's enforcement actions

# **Enforcement actions (1/2)**

- Deadline for adapting to the guidelines expired on march, 31th 2021: the CNIL now ensures that all public and private players comply with these rules.
- **Between 2020 and 2021**, the CNIL adopted around 70 corrective measures (orders and sanctions) in connection with non-compliance with the legislation on cookies.
- In 60% of the cases, they were organisations with a parent company outside France. These measures mainly concerned large private-sector players from a wide variety of economic sectors.
- 80% of the players concerned have brought themselves into compliance.



# **Enforcement actions (2/2)**

- Other targeted enforcement actions:
  - December 2020:
    - Financial penalties of 60 million euros against the company GOOGLE LLC and of 40 million euros against the company GOOGLE IRELAND LIMITED;
    - Financial penalty of 35 million euros imposed on the company AMAZON EUROPE CORE
  - 2021: administrative fine of 50,000 euros on a French publisher for using advertising cookies website without obtaining the prior consent of Internet users.