

# ePrivacy Rules

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## Enforcement in France: cookies and other tracking devices



# 1. Key elements of CNIL's guidelines and recommendation

# From guidelines to practical recommendations

Only aims at summarizing the applicable law



**GUIDELINES**

Practical recommendations on how to obtain a valid consent



**RECOMMANDATION**

# How to collect a valid consent ?

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- **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 certain cases, affect the freedom of consent (need for a case by case analysis).

# What about refusal?

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- 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?

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- 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.