

Activity report – Cookies

On 26 May 2011, the law changed on how websites use cookies and similar technology to store information on users' equipment such as computers and mobile devices.

Before considering enforcement action over breaches of the law, we gave businesses and other organisations 12 months to 'put their house in order'.

This report summarises the concerns reported to us, the current picture and the action we are taking.

Concerns reported to us

Since May 2012 we have invited individuals to report their concerns about cookies via our website. Between 25 May and 21 November 2012 we received 550 reports.

In the same period, individuals used our website to report over 53,000 concerns about unwanted marketing communications. This suggests consumers' level of awareness and concern about cookies is relatively low, so we have decided to focus on sites that are doing nothing to raise awareness of cookies or get their users' consent.

Any action we take will be proportionate to the risk to consumers. We have given cookies a low consumer-threat rating compared to marketing via live calls, automated calls and text messages.

Consumers' concerns vary significantly, but two themes are that they:

- are unhappy with implied consent mechanisms, especially where cookies are placed immediately on entry to the site;
- have not been given enough information generally, and specifically not enough information about how to decline cookies or manage them later.

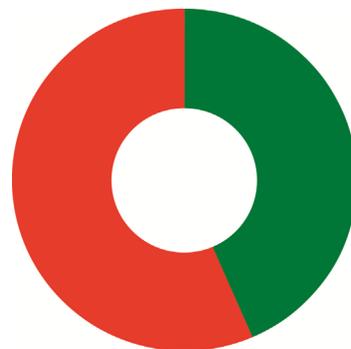
A significant number of people also raised concerns about the new rules themselves and the effect on the usability of websites.

We asked people who reported concerns whether the websites provided information about cookies or sought their consent to use them.

Does the website provide any information about the use of cookies?

Yes 249

No 301



Did the website ask permission to place cookies?

Yes 88

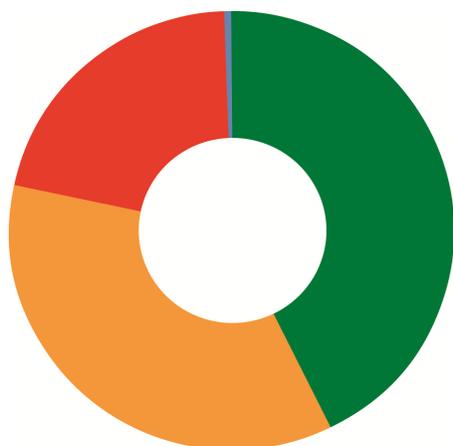
No 462



Concerns raised about all sites

Between 25 May and 6 September 2012 we received 388 concerns raised about 207 websites. We have looked at all these sites (a basic visual audit)¹, and the results are below.

Between October and December we wrote to 106 of these websites informing them we had received concerns and asking them to ensure they are compliant where they had not already taken steps to comply. We will continue to write to websites we receive concerns about.



90 have taken steps to make users aware cookies are in use and obtain consent.

68 appear to have taken limited steps to make users aware cookies are in use and obtain consent.

48 appear to have taken no steps to comply.

1 could not be reviewed.

Concerns raised about the 200 most-visited sites

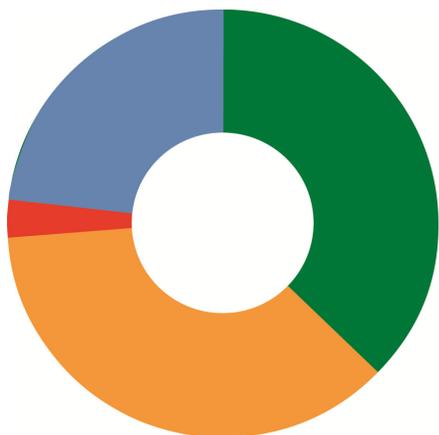
¹ Some of the sites we receive concerns about will not be based in the UK.

We have focused our efforts on:

- sites ranked in the 200 most visited in the UK², as these will have the greatest impact on consumers; and
- those about which we received at least one report of concern.

We have looked at all these sites (a basic visual audit), and our findings are below. We have also looked at the types of cookie in use.

We have contacted all the sites within our jurisdiction, requiring further action of those that are not compliant.



13 sites have taken significant steps to make users aware cookies are in use and obtain consent.

12 sites have taken steps but these are more limited and the sites are likely not to be fully compliant.

1 site does not appear to have taken any steps.

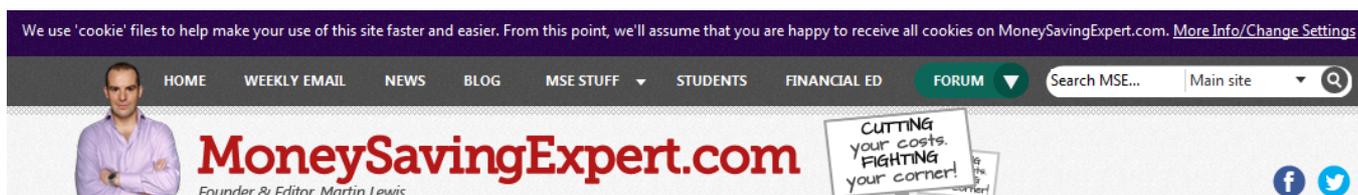
8 sites are based outside the UK.

Sites taking significant steps to make users aware that cookies are in use and obtain consent

Almost all the sites we visited that had taken significant steps were relying on a cookie consent banner to gain implied consent. The majority of concerns from consumers about these sites related to their use of implied consent.

To give a snapshot of the current situation, we give some examples of the consent-seeking methods below.

Moneysavingexpert.com



This site seeks consent through a banner on entry to the site. The banner provides a link to further information about the cookies in use (with clear descriptions of what they do), and how to stop them.

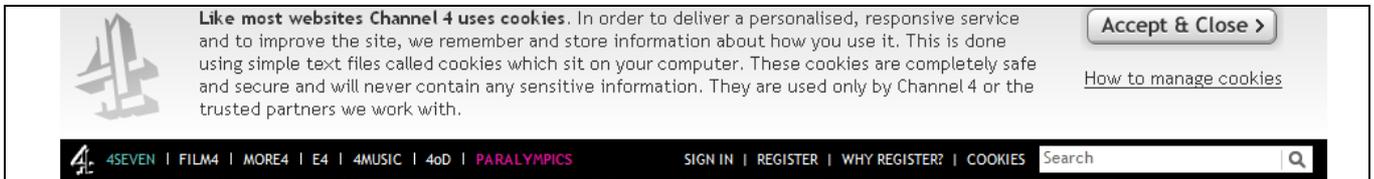
Nationwide.co.uk

²Ranking based on traffic figures as at 7 September 2012. Source: © 2012 Alexa Internet (www.alexa.com).



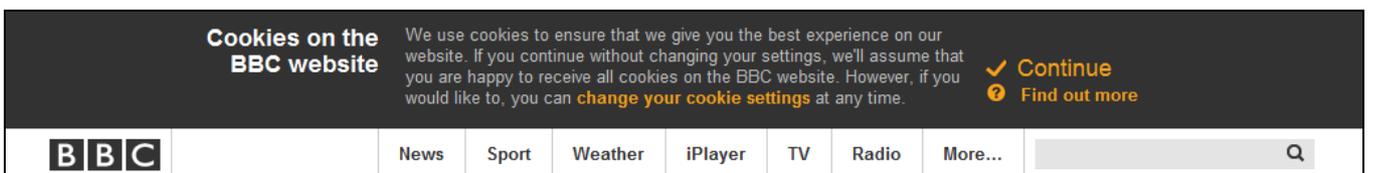
This site provides similar information to the above, and seeks consent through a banner on entry.

Channel4.com



This site also seeks consent through a banner on entry. It provides more detailed information, which itself has a link to further information about how to manage cookies.

BBC.co.uk



This site provides a clear consent banner on entry, with links to further information and details of how to manage cookies (eg by changing browser settings).

Sites that have taken more limited steps and are likely not to be fully compliant.

As stated previously, the majority of sites rely on implied consent. As our guidance states, it is important that the person seeking consent can satisfy themselves that:

- the user's actions are both an explicit request for content or services, and
- an indirect expression of the user's agreement that the provider may store or access information on the user's device.

To be confident about this, the provider must ensure that users can see clear and relevant information explaining what is likely to happen while they are accessing the site, and their choices as regards controlling what happens.

Sites in this category give information about cookies to varying levels of detail; but they may not have phrased it in a way that seeks consent or we may regard it as difficult to find. So these sites could do better, but they often feature clear information about the use of cookies and how to manage them.

Sites that have not taken any steps

It is encouraging that only one site fell into this category, but we are contacting the site to set a deadline for compliance. Failure to comply will result in formal action to ensure compliance, and we may decide to name the site in order to make consumers aware of its use of cookies.

Sites based outside the UK

Most EU countries have implemented the changes to Article 5(3) of the E-Privacy Directive requiring consent for the storage of, or access to, information on a subscriber or user's terminal equipment. Therefore, where sites are based in another EU country, we have told the relevant authorities about the concerns we have received.

Activity to date

To date we have written to:

- 68 organisations in May 2012 (a cross-section of popular websites); and
- 106 organisations between October and December 2012 (primarily those we received concerns about).

[See appendix for the list of organisations written to.](#)

We are considering 14 websites for further investigation. In these cases we will contact them to discuss their compliance, and require them to take steps as necessary. We have passed details of five websites to our International team, who have told the relevant European authorities about the concerns we received. We will continue to contact every site we receive a concern about to ensure they know what steps they need to take.

As set out in our guidance, the Information Commissioner will take a practical and proportionate approach to enforcing the rules on cookies. We have sought to identify organisations that have not taken sensible, measured action to move towards compliance.

We are pleased that few popular sites appear to fall into the category of not seeking consent to use cookies. For them, though, we will now set a compliance deadline.

If an organisation refuses to take steps to comply, or has been involved in a particularly privacy-intrusive use of cookies without telling individuals or obtaining consent, we will consider using formal regulatory powers in line with our criteria set out in the Data Protection Regulatory Action Policy and Guidance on the issue of monetary penalties, available from: www.ico.gov.uk.