

*This draft has been provisionally adopted by the organizations and companies that participated in the self-regulatory project initiated by IAB Sweden. The draft is now subject to consultation and may be revised in response to comments received. The final version of the recommendation is expected to be adopted during 3Q 2011.*

# **Recommendation on the use of cookies and comparable technology**

## **1. Introduction**

### **1.1. Purpose**

1.1.1. The purpose of this Recommendation is to articulate good practice in the use of cookies and other such storage and retrieval of information in the user's equipment that is regulated in Chapter 6 § 18 of the Electronic Communications Act (2003:389) ("ECA").

1.1.2. The Recommendation provides guidance to how information to users about the use of cookies can be presented and expressed, and for the assessment of when the user has consented to the use. It also aims to promote the development of user opportunity to easily prevent the use of cookies, where desired.

### **1.2. Scope**

1.2.1. The guidance regarding the use of cookies in this Recommendation shall also govern, as applicable, the use of such other actions as falls under the referred to ECA regulation. For convenience, only the term "cookies" will be used in this Recommendation for all the activities covered.

1.2.2. The Recommendation does not apply to such storage or access to information that is needed to transmit an electronic message via an electronic communications network or which is necessary to provide a service a subscriber or user has expressly requested, as these are not covered by the ECA regulation.

1.2.3. The Recommendation covers only the use of cookies for marketing purposes and in other commercial activities. Anyone is however free to observe the Recommendation for other use of cookies. Public authority and non-profit undertakings' use of cookies are examples of such other usage of cookies.

### **1.3. OBA Framework**

- 1.3.1. In applying this Recommendation, the Framework for Online Behavioural Advertising (OBA) adopted in April 2011 by the EASA and IAB Europe should also be considered.

## **2. Use of Cookies**

2.1 Any use of cookies must comply with applicable law.

2.2 Use of cookies in connection with marketing or otherwise in the course of commercial activity shall comply with this Recommendation in order to constitute good practice and thereby meet good marketing ethics.

2.3 Reasonable measures shall be taken to counteract any IT security risks that may ensue from the use of cookies. These measures shall be appropriate to ensuring a level of security, taking into account available technology and costs of implementing measures, proportionate to the risk of IT security incidents.

## **3. Information**

### **3.1. Posting**

- 3.1.1. A site that uses cookies shall post that fact prominently. The sign post designating that cookies are used shall be designed and presented so that it is clear that the site uses cookies.
- 3.1.2. The sign post may consist of wording or illustrations such as an ikon. The sign shall be clickable and link to more detailed information on the site's use of cookies.
- 3.1.3. The more detailed information about cookies may be made available on the same website that sets the cookie, or on another website. In-depth information about cookies can be compiled on websites constructed for this purpose such as [www.minacookies.se](http://www.minacookies.se).

### **3.2. Content of information**

- 3.2.1. All information should be given in words or pictures that are clear and easy to understand.
- 3.2.2. The information about the use of cookies shall provide a basic review about what cookies are and how the technology works, in addition to providing information about the specific cookies used and the purpose for which it is used.

- 3.2.3. The information should make it clear how the user may act to deny or withdraw consent to the use of cookies.
- 3.2.4. The purpose for which the cookie is used should be described enough so that the user is given a reasonable basis to decide whether or not to grant consent.
- 3.2.5. It should be stated in the information if third-party cookies are used on the website.

### **3.3. Contact information**

Each site must provide contact information that users can turn to for questions regarding the cookies used by the site.

## **4. Consent**

### **4.1. Communicating consent**

4.1.1. In accordance with LEK cookies may only be used with the user's consent.

4.1.2. Users can grant their consent in ways that fit the circumstances, such as using the appropriate browser settings or by other means. In the event that the browser or such other device used to access a site lacks the option to adjust the setting for certain types of cookies, consent must be expressed by other means.

### **4.2. Granting consent**

Where the user's browser or other similar equipment is set to accept cookies when accessing a site, the user is considered thereby to have granted consent to such use. However, this applies only where the site has provided information about cookies in accordance with Section 3 above.

### **4.3. Denying consent**

4.3.1. The primary means for the user to deny consent to the use of cookies is through the appropriate settings of the browser or such other device used to access a site.

4.3.2. Users have the opportunity to use a service on the site [www.minacookies.se](http://www.minacookies.se) to opt-out by individual preference of certain types of cookies.

4.3.3. Where the user's browser or such other device is set to deny the use of cookies, this must be respected. If a user has deleted a cookie, the information from the deleted cookie may not be associated with a new cookie without the user's explicit consent.

## 5. Interpretation of the Recommendation

The Advertising Ombudsman<sup>1</sup> (“Reklamombudsmannen”, RO) and the Advertising Ombudsman Jury (“Reklamombudsmannens Opinionsnämnd”, RON) reviews and examines complaints regarding whether use of cookies for marketing purposes complies with this Recommendation.

## 6. Undertakings responsible for the Recommendation

This Recommendation has been developed in collaboration between the following organizations and companies:

### Organizations

IAB Sweden, The Confederation of Swedish Enterprise Delegation for Market Law (NDM), The Association of Swedish Advertisers, The Swedish Association of Communication Agencies, The Swedish Association of Media Agencies and The Swedish Media Publishers' Association.

### Companies

Adform, Eniro, Google, Microsoft, Specific Media, TradeDoubler and Vendemore.

In the course of the collaboration there have been discussions on the Recommendation content with public authorities such as the Swedish Post and Telecom Agency, the Data Inspection Board and the Swedish Consumer Agency, and organizations such as ICC Sweden, the Advertising Ombudsman and the Stockholm Consumer's Association.<sup>2</sup>

## 7. Future development

The scope of the Recommendation is in continuous development. The Recommendation wording will thus be updated and amended from time to time in order to reflect changes in technology and business models in Sweden and within the European Union.

Stockholm, \_ July 2011.

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<sup>1</sup> <http://www.reklamombudsmannen.org/eng/default.aspx>

<sup>2</sup> Some of these discussions have not yet taken place at the time this draft is published.

# Appendix to the Recommendation

## Information on cookies and similar technologies

### 1. Cookies

#### 1.1. What are cookies?

A cookie is a text file which, when a user access a website, is stored on and in subsequent visits, retrieved from, the user's computer or computer-like devices such as smart phones. The cookie is stored in connection to the files used by the computer's web browser or similar program. Computer users can easily access, block and delete stored cookies, when desired.

It is very common for websites use cookies because they are often used for basic functions.

Cookies are used as tools e.g.to:

- store settings for a website display (resolution, language, etc.)
- turn on encryption for Internet transmission of sensitive information
- allow observation of how users understand the site and thus collect data on how the site in general can be developed
- connect the user's exposure to advertising on websites to their transactions in electronic commerce as a basis for calculating payments to the site and ad networks
- gather information about users' interests to adapt and limit the content and advertising on popular websites to these interests.

The interest-based adjustments that are made is very valuable to the user's experience of the Internet. The user gets exposed to advertising that typically is more relevant to him or her. The increased value of the interest-based advertising is a significant contributor when attractive services can be funded by advertising rather than by fees.

#### 1.2. First-party and third party cookies

A distinction is made between first-party cookies and third party cookies.

First-party cookies are set by the site that is directly invoked by users through entering the site address by typing text, or by clicking a link.

Third-party cookies often come from ads on the site the user has accessed. The ads, in turn, are retrieved from an external web site. Third-party cookies are also used by Web analytics and traffic measurement providers that the site uses to permit independent companies to measure and evaluate visitors. This measuring is used to validate the site data to advertisers on the number of visitors, the amount of traffic, audiences reached and of campaign outcomes.

Third-party cookies are normally set and retrieved by agreement with the accessed site. Such agreements may take the form of a chain of mutually independent agreements where the

accessed site does not have a direct relationship with the company that sets or retrieves the third-party cookies.

### **1.3. Other technologies covered by the recommendation**

Examples of other technologies besides cookies to which this Recommendation applies are Local Shared Objects, Silverlight Isolated Storage, Google Gears and Internet Explorer UserData to name a few. These have in common is that they save and later use the information in the user's equipment, but with other technical tools than the usual cookie.

## **2. Regulatory background**

The use of cookies is governed by Chapter 6 § 18 of the Electronic Communications Act (2003:389) (“ECA”). As of 1 July 2011 the statutory provisions have changed in such a way that cookies may hence be used only if the user has access to information on the purpose for which cookies are used and consents to the use to it. As was the case before the changes of 1 July 2011, cookies may always be used when it is necessary to transmit electronic messages via an electronic communications network or to provide a service that the user has explicitly requested.

The change in the ECA of the regulation on cookies is made to implement the EU Directive 2009/136/EC. In Section 66 of Preamble to the Directive, cookies are mentioned as an example of a legitimate case of saving and later retrieving information in users' computers.

The preparatory works to the ECA amendment state that as far as possible it should be left to market actors and users to develop best practise in the use of cookie that is adapted to the conditions at hand. This Recommendation is an expression of such best practise.