

Guide to the cookie uSE

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INTRODUCTION

The Internet plays a fundamental role in society and is one of the few sectors of the economy that currently continues to grow, positioning itself as a pioneer in the local and European economy. The Internet currently contributes 3.8% of the European Union's GDP and, on a national level, it represented 7% in 2018, contributing 81.6 billion euros directly to the Spanish ^{GDP1}.

Much of the investment in the Internet is made by the online advertising sector. A study by the independent financial research company IHS Markit shows that digital advertising contributes to 526 billion of the EU's annual ^{GDP2}. As is well known, one of the ways in which advertising on the Internet is carried out is through cookies. Cookies are tools that play an essential role in the delivery of many information society services that account for the largest advertising spend, facilitate user navigation and deliver advertising based on browsing habits.

The importance of digital advertising is reflected in investment figures, which grew by 10.6% compared to last year (2021-2022). Since 2019, investment in the Internet has been consolidated, for above television, in the first position in terms of advertising investment. With a total investment in 2022 of 4,533 million euros, it accounts for 60% of all media ^{investment3}.

Beyond the direct and indirect contributions to the economy, digital advertising also brings significant added value to citizens in their role as consumers, as it provides them with content at a reduced price or free of charge. In other words, revenues from online advertising make possible the high value that consumers derive from the online services they use. This surplus is about 40 euros per month per household, more than what a family pays for broadband access at ^{home4}.

We should also bear in mind that advertising has a multiplier effect on the whole economy through direct and indirect employment, increased sales, etc.

According to the study *The economic contribution of advertising in Europe5*, carried out by Deloitte, in the employment field, it is also a fact that

The European economy benefits from this, as there are 5,762,573 advertising-supported jobs in the EU, accounting for 2.6% of EU employment (taking into account jobs directly impacted by advertising and jobs compatible with the chain of activity).

At the same time, it should be borne in mind that the use of data storage and retrieval devices on users' terminal equipment has important privacy implications. The cookie is one such device that is widely used, for example, to store and retrieve data.

¹ Annual report of the ICT and content sector in Spain 2018, available at: https://www.ontsi.red.es/ontsi/sites/ontsi/files/InformeAnualSectorTICC2018_0.pdf.

² The Economic Contributions of Digital Advertising, available at: https://datadrivenadvertising.eu/wp-content/uploads/2017/09/09/DigitalAdvertisingEconomicContribution_FINAL-1.pdf.

³ Digital Media Advertising Investment Study, available at: <https://iabspain.es/estudio/estudio-de-inversion-advertising-in-digital-media-2023>.

⁴ White paper "Consumers driving the digital uptake. The economic value of online advertising-based services for consumers". McKinsey & Company study for IAB Europe (2010).

⁵ Available at: http://www.iabeurope.eu/wp-content/uploads/2017/01/Value-of-Advertising_Economic-Contribution-of-Advertising-in-Europe.pdf.

We will hereinafter refer to these devices generically as cookies.

Citizens, politicians and consumer organisations, among others, have highlighted the need for effective privacy safeguards. This interest has also been reflected in various documents issued by data protection authorities, including the Opinions of the Article 29 Working Party (hereinafter **WG29**)⁶, now replaced by the European Data Protection Board (hereinafter **EDPB**). Industry, for its part, is also aware that digital development requires ensuring users' trust in the network and, therefore, in this area, ensuring that the use of cookies is always carried out in a way that respects users' privacy.

Gaining the trust of users implies that they are aware of the value to the Internet ecosystem of their browsing habits and that they are able to appreciate the benefits associated with the information they provide to Internet service providers, while also knowing how to manage the acceptance or rejection of such benefits.

By using cookies, service providers obtain user-related data that can subsequently be used to provide specific services, to serve advertising or as a basis for the development of improvements or new products and services, sometimes free of charge. This circumstance determines the need to implement a system in which the user is fully aware of the use of his or her data for the provision of specific services, for advertising or as a basis for the development of improvements or new products and services, sometimes free of charge.

of those devices and the purpose of their use, being ultimately aware of the destination of the data being used and the incidents that this system entails for their privacy. For this reason, community and national regulations require informed consent to be obtained for the use of certain data in order to ensure that users are aware of the destination of the data that are being used and the implications of this system for their privacy.



are aware of the use of their data and the purposes for which it is used.

When determining the level of detail in the information to be provided about cookies, as well as the way in which consent for their use should be obtained, there should be a clear reference to the level of understanding of users in relation to cookies. In this regard, while general knowledge of the internet is becoming more widespread and the average consumer is becoming more technically aware of how cookies work and the options available for managing them, a higher level of information is still required when it is directed at users who have lower technical knowledge or use the Internet less regularly.

⁶ The Article 29 Working Party was the EU's independent advisory body on data protection and privacy, established

In short, the digital industry and, in particular, the digital advertising sector and those who represent it are aware of the importance of privacy on the Internet and of the need to adopt information and consent formulas that meet the transparency and control requirements of the regulations, adapting them to the current level of user knowledge, while protecting the significant investment in this sector of activity, but expressing the industry's own interest in implementing a transparent system in this area.

In this sense, the industry and its representatives thank the Spanish Data Protection Agency for its willingness and the opportunity to cooperate in the design of solutions, and show their commitment to compliance with the regulations on cookies through a series of proposals. Solutions that are also aimed at fulfilling a task in the training and maturity of Internet users in the knowledge of these tools of the information society that encourages a responsible use of them, allowing a creative and transparent environment at the same time.

The solutions proposed in this guide are intended to provide guidance on how to comply with the obligations laid down in Article 22, paragraph 2 of Law 34/2002, of 11 July, on information society services and electronic commerce (hereinafter referred to as **LSSI**), in relation to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on General Data Protection (General Data Protection Regulation) Data Protection Act (hereinafter referred to as **GDPR**) and the Organic Law 3/2018 of 5 December on Data Protection and the guarantee of digital rights (hereinafter referred to as the "Data Protection Act"). hereinafter, **LOPDGDD**). In any case, it is necessary to highlight the special nature of the regulation established in the LSSI.

This is without prejudice to possible further developments to update these guidelines or to provide specific responses to more complex business models than those envisaged ^{here7}.

Given the many complexities involved in the use of cookies, the guidelines set out here are not intended to provide a general and uniform solution for compliance with the law, but should serve as a guide for the entities concerned to reflect and make decisions on the most appropriate solution for their interests and business model.

⁷ *In particular, it is necessary to be aware of the existence of a proposal for a Regulation on privacy and the protection of personal data in the electronic communications sector and repealing Directive 2002/58/EC (Regulation on privacy and electronic communications), which will regulate the protection of information stored in and relating to end-users' terminal equipment. However, at this stage it is merely a proposal for a provision, the final content of which cannot yet be known, so that until then it will have to be based on the rules currently in force.*

1. SCOPE OF THE RULES

The second paragraph of Article 22 of the LSSI establishes:

"Service providers may use data storage and retrieval devices on recipients' terminal equipment, provided that the recipients have given their consent after having been given clear and complete information on their use, in particular on the purposes of the data processing, in accordance with the provisions of Organic Law 15/1999 of 13 December 1999 on the Protection of Personal Data.

Where technically possible and effective, the consent of the recipient to accept the processing of the data may be provided through the use of appropriate browser settings or other applications.

This shall not prevent possible storage or access of a technical nature for the sole purpose of carrying out the transmission of a communication over an electronic communications network or, to the extent strictly necessary, for the provision of an information society service expressly requested by the recipient'.

Consequently, the guidelines in this guide will be useful for those cases to which the second paragraph of Article 22 of the LSSI is applicable in accordance with the provisions of Chapter II of the LSSI itself, entitled *"Scope of application"*.

In particular, it should be specified that, in accordance with the transcribed provision, it applies to any *"data storage and retrieval devices"* in any *"terminal equipment of the recipients"* and that the Annex to the LSSI defines *"recipient of the service or recipient"* as the *"natural or legal person who uses, whether or not for professional reasons, an information society service"*.

Thus, Article 22 of the LSSI and this guide refer to the use of cookies and similar technologies used (such as *local shared objects* or *flash cookies*⁸, *web beacons* or *bugs*⁹, etc.) to store and retrieve data from terminal equipment (e.g. a computer, mobile phone or tablet) of a natural or legal person using an information society service, whether or not for business purposes. The standard also applies to the use of *fingerprinting* techniques, i.e. techniques for taking the device's fingerprint.

This guide contains some practical guidance on how the information should be provided to meet the requirement of informed consent, as the aforementioned Article 22.2 of the LSSI links the obtaining of consent to the information provided to the user, so that the consent, if any, given by the user is informed. This article

22.2 refers to Organic Law 15/1999 of 13 December 1999 on the protection of personal data (Ley Orgánica 15/1999, de 13 de diciembre, de protección de datos de carácter personal). 22.2 refers to Organic Law 15/1999 of 13 December 1999 on the protection of personal data.

⁸ *Local shared objects or flash cookies: these are a type of cookie that can store much more information than traditional cookies. As they are independent of the browser used, they are more difficult to locate, view or delete and can be used, for example, to regenerate standard cookies.*

⁹ *Web beacons or bugs: these are images, invisible to the eye due to their size and colour, which are downloaded when visiting a website but which are stored on a second site and which allow the owner of the second site to record the user's visit by means of the information provided by the user's browser when downloading the image (IP address,*

operating system, browser version, etc.).

Cookie guide

The current reference to the GDPR, applicable since 25 May 2018, and to the LOPDGDD, applicable since 7 December 2018, must be interpreted as being made to the GDPR. In fact, it is these recent regulatory changes that motivated, in 2019, the review and update of this guide, which was again updated and revised following the clarifications made by the ECDC, on conditionality of consent and unambiguous consent, in its Guidelines 05/2020 on consent under Regulation 2016/679, adopted on 4 May 2020, which revise and update those approved by WG29 on 10 April 2018. The most recent update of this document has also taken into account the report adopted by the working group set up within the ECDC to analyse cookie ^{banners}¹⁰.

In this regard, the GDPR itself, in its consent 30, mentions these technologies and their impact on data protection:



"Natural persons can be associated with online identifiers provided by their devices, applications, tools, and products, such as Internet protocol addresses, session identifiers in the form of "cookies or other identifiers, such as radio frequency identification tags. This may leave traces which, in particular, when combined with unique identifiers and other data received by servers, can be used to profile and identify natural persons".

Therefore, where the use of a cookie involves the processing of personal data, data controllers must ensure that they comply with the additional requirements of personal data protection law, in particular with regard to special categories of data. Processing of personal data shall be deemed to take place when the user is identified by a name or email address that identifies the user (e.g. as a registered user) or when unique identifiers are used to distinguish and track individual users (e.g. an advertising ID).

However, in relation to the enforcement of data subjects' data protection rights, if the controller is not in a position to identify the data subject, the controller may refuse the request in accordance with the terms of Article 12.2 of the GDPR (except where additional information is provided by the data subject in the exercise of his or her right of access) by which the controller was able to identify them).

Moreover, in order to determine the scope of the regulations and of this guide, it is necessary to point out that the following are exempted from compliance with the established obligations

¹⁰ Available at: https://edpb.europa.eu/our-work-tools/our-documents/report/report-work-undertaken-cookie-banner-taskforce_en.

in article 22.2 of the LSSI, cookies used for any of the following purposes:

- Allow only communication between the user equipment and the network.

Strictly to provide a service expressly requested by the user.

In this regard, WG29, in its Opinion ^{4/2012¹¹}, interpreted the exempted cookies to include those that are intended to:

User input" ^{cookies¹²}.

- Authentication or identification cookies for user (session only).

User security ^{cookies¹³}.

Media player session cookies.

Session cookies for load balancing.

User interface customisation cookies.

- Certain cookies from add-on (plug-in) for exchange content ^{social¹⁴}.

It can therefore be understood that these cookies are excluded from the scope of application of article 22.2 of the LSSI and, therefore, it would not be necessary to inform or obtain consent for their use. On the contrary, it will be necessary to inform and obtain consent for the use of any other type of cookies, whether first-party or third-party, session or persistent,

which do not fall outside the scope of Article 22.2 of the LSSI and for which the guidance in this guide will be useful.

That said, for reasons of transparency, it is recommended to inform, at least generically, of those cookies excluded from the scope of application of article 22.2 of the LSSI, either in the cookies policy or in the privacy policy itself (example: "This website uses cookies that enable the operation and provision of the services offered on it").

In any case, it should be borne in mind that the same cookie can have more than one purpose (multi-purpose cookies), so there is a possibility that a cookie may be exempted from the scope of application of Article 22.2 of the LSSI for one or more of its purposes and not for others, the latter being subject to the scope of application of the aforementioned provision. This should, in the words of WG29, "*encourage website owners to use a different cookie for each purpose*"¹⁵.

In relation to the cookie management or configuration systems referred to below in this guide, when multi-purpose cookies are used for two or more different purposes that are not exempted from the scope of application of article 22.2 of the LSSI, it must be ensured that these cookies are only used if all the purposes they group together are accepted, i.e. if a cookie serves two purposes, but the user only accepts one of them, the cookie should not be used, unless the management system used allows the different purposes of these multi-purpose cookies to be treated differently, so that if the user accepts one of its purposes and not others, the cookie only operates with the accepted purpose.

¹¹ Available at: https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2012/wp194_en.pdf.

¹² Session and user input cookies are typically used to track user actions when filling in online forms on various pages, or as a shopping basket to track the items the user has selected by clicking a button.

¹³ For example, cookies used to detect repeated and erroneous attempts to connect to a website.

¹⁴ The exception only applies to users who have chosen to keep the session open.

¹⁵ Opinion 4/2012 on the exemption from the cookie consent requirement.

2. TERMINOLOGY AND DEFINITIONS

For the purposes of this guide, it is useful to first define a number of concepts.

2.1 COOKIES AND SIMILAR TECHNOLOGIES

The LSSI is applicable to cookies in the sense indicated at the beginning of this guide, i.e. as any type of data storage and retrieval device used on a user's terminal equipment for the purpose of storing information and retrieving information already stored, as established in article 22.2 of the LSSI.

Cookies allow the storage on the user's terminal of amounts of data ranging from a few kilobytes to several megabytes.

Below, cookies are classified according to a series of categories. However, it is necessary to bear in mind that the same cookie may be included in more than one category.

2.1.1. Types of cookies according to the entity that manages them

Depending on the entity that manages the equipment or domain from which the cookies are sent and processes the data obtained, we can distinguish:

a) Own cookies: these are those for which the publisher itself is responsible and which, in general, are sent to the user's terminal equipment from a computer or domain managed by the publisher itself and from which the service requested by the user is provided.

b) Third-party cookies: these are those for which an entity other than the publisher is responsible and which are generally sent to the user's terminal equipment from a computer or domain that is not managed by the publisher, but by another entity that processes the data obtained through the cookies.

In the event that the cookies are served from a computer or domain managed by the publisher itself, but the information collected through these is managed by a third party, they cannot be considered as own cookies if the third party uses them for its own purposes (for example, to improve the services it provides or to provide advertising services for other entities).

2.1.2. Types of cookies according to their purpose

There are many purposes for the use of cookies. Depending on the purpose for which the data obtained through cookies is processed, some of the purposes may include:

a) Technical cookies: are those that allow the user to navigate through a website, platform or application and the use of the different options or services that exist on it, including those that the publisher uses to enable the management and operation of the website and to enable its functions and services, such as, for example, controlling traffic and data communication, identify the session, access restricted areas, remember the elements that make up an order, carry out the purchase process of an order, manage payment, control fraud linked to the security of the service, carry out the application for registration or participation in an event, count visits for the purposes of the licensing of the software with which the user has access to the website.

The use of the service (website, platform or application), the use of security features during browsing, the storage of content for the broadcasting of videos or sound, the enabling of dynamic content (e.g. animated loading of text or images) or the sharing of content via social networks.

Also belonging to this category, due to their technical nature, are those cookies that enable the management, in the most effective way possible, of the advertising spaces that, as another element of the design or "layout" of the service offered to the user, the publisher has included on a website, application or platform based on criteria such as the edited content, without collecting user information for other purposes, such as personalising that advertising content or other content.

Technical cookies shall be exempt from compliance with the obligations established in article 22.2 of the LSSI when they enable the service requested by the user to be provided, as in the case of the cookies listed in the previous paragraphs. However, if these cookies are also used for non-exempt purposes (for example, for behavioural advertising purposes), they will be subject to these obligations.

b) Preference or personalisation cookies: these are cookies that allow information to be remembered so that the user can access the service with certain characteristics that may differentiate their experience from that of other users, such as, for example, the language, the number of results to be shown when the user performs a search, the appearance or content of the service depending on the type of browser through which the user accesses the service or the region from which they access the service, etc.

If the user chooses these features himself (e.g. if he selects the language of a website by clicking on the icon of the relevant country's bank, the currency to be used for transactions, the font size or the colour contrast between the background and the text), he can choose the language of the website (e.g.

if he selects the language of the website by clicking on the icon of the relevant country's bank).

and content to improve readability), cookies will be exempted from the obligations of article 22.2 of the LSSI as they are considered a service expressly requested by the user, provided that the cookies are exclusively for the purpose specified. These preference cookies that affect the user interface do not necessarily have to be session cookies, as requiring the user to set their preferences for this purpose every time they visit a website or access an application can be annoying and can cause user fatigue. However, for these cookies to be exempted, their use must be limited to what is necessary for their purpose, and the information that may be derived from the user's selection may not be used for other purposes (e.g. for personalisation of advertising content) or for user profiling.

c) Analysis or measurement cookies: these are cookies that allow the party responsible for them to monitor and analyse the behaviour of the users of the websites to which they are linked, including the quantification of the impact of advertisements. The information collected through this type of cookies is used to measure the activity of the websites, application or platform, in order to introduce improvements based on the analysis of the data on the use made by users of the service.

Regarding the processing of data collected through analytics cookies, the WG29 stated that, although they are not exempt from the duty to obtain informed consent for their use, they are unlikely to present a risk to users' privacy as long as they are first-party cookies, process aggregated data for strictly statistical purposes, provide information on their uses and include the possibility for users to express their refusal on their use.

d) Behavioural advertising cookies: these are cookies that store information on user behaviour obtained by

through the continuous observation of your browsing habits, which allows a specific profile to be developed to display advertising based on it.

In any case, it should be borne in mind that these typologies are offered as a guideline as they are the most common. Publishers and third parties may make the categorisations they consider to be best suited to the nature of the cookies they use, in such a way as to respect the principle of transparency vis-à-vis users.

2.1.3. Types of cookies By the length of time they remain active

Depending on the length of time they remain activated in the terminal equipment, we can distinguish:

a) Session cookies: these are designed to collect and store data while the user accesses a website. They are usually used to store information that is only of interest for the provision of the service requested by the user on a single occasion (for example, a list of products ordered) and disappear at the end of the session.

b) Persistent cookies: these are cookies in which the data remain stored in the terminal and can be accessed and processed for a period of time defined by the party responsible for the cookie, which can range from a few minutes to several years.

In this respect, it should be specifically assessed whether the use of persistent cookies is necessary, as privacy risks could be reduced by the use of session cookies. In any case, when persistent cookies are installed, it is recommended to reduce their time duration to the minimum necessary, taking into account the purpose of their use.

To this end, WG29 Opinion 4/2012 indicated that for a cookie to be exempt from the duty of informed consent, its expiry must be related to its purpose. As a result, session cookies are much more likely to be exempted than persistent cookies.

2.2 DATO

It is the information obtained by means of the user's terminal equipment through the data storage and retrieval device (cookies or other).

Data will be personal when it concerns information on identified or identifiable natural persons, in the terms established in Article 4 of the GDPR.

2.3 TERMINAL EQUIPMENT

The device from which the user accesses the service, such as a personal computer, mobile phone, *tablet*, etc., and from which the information is obtained.

2.4 SERVICE OF THE INFORMATION SOCIETY

Any service provided at the individual request of a user, whether or not for consideration, remotely and electronically, provided that, for the purposes of this guide, it constitutes an economic activity for the publisher, the provision of which gives rise to the use of cookies. For example: the provision of a service of access to information through a website or a mobile application created by a magazine or newspaper, a financial service, an entertainment service, an e-commerce service of an *online* shop, etc.

2.5 WEBSITE

Information society services may be provided by the publisher through a platform, a computer application or a website accessed by the user from his terminal equipment.

Cookies or storage devices have traditionally been associated with websites. However, they are currently used on websites as well as on other platforms and applications (e.g. apps for smartphones and *tablets*). Throughout this text, the term website will be used to encompass all these possible media.

2.6 ADVERTISING SPACE

It is a place where the publisher foresees, when programming the website, that the advertising of the advertisers' products, image or services will appear. There is a wide variety of advertising spaces or formats; from those that are integrated into the application itself, such as *banners*¹⁶, *skyscrapers*¹⁷, *page stealers*¹⁸, buttons and text links, to those known as floating, such as *pop-ups*¹⁹, *layers*²⁰, banners or transit *interstitials*²¹, etc.



This is the sum of all advertising space in which the publisher expects the advertising of the advertisers' products, image or services to appear. It is the total advertising space offered by a publisher.

2.8 INTERVENING PARTIES

A description of the actors involved in programmatic advertising as of the date of publication of this document is included in the Annex to this guide for a better understanding of this environment.

¹⁶ *Banner: a horizontal rectangle-shaped advertisement placed at the top of web pages that can use gif, animated, flash or jpeg technology.*

¹⁷ *Skyscraper: this is a vertical rectangle-shaped advertisement placed on the sides of web pages and can use gif, flash or jpeg technology.*

¹⁸ *Robapages: a square-shaped advertisement usually integrated into a fixed location on a page.*

¹⁹ *Pop-up: a format that appears as a pop-up window on top of an open browser window.*

²⁰ *Layers: a floating format that overlays the page content and moves around the screen.*

²¹ *Transit banners or interstitials: These are ads that appear between two pages within a website. They are also known as "splash pages" and "transition ads".*

3. OBLIGATIONS

The legal obligations imposed by the law are twofold, namely: the obligation of transparency and the obligation to obtain consent.

Prior to the study by the entities involved of the most appropriate solutions for complying with the aforementioned obligations (in accordance with the nature of their activity, the business model they develop and the scope of their responsibility), it is recommended that they carry out a review of the cookies used, either internally or with the advice of associations or specialised entities. This review will aim to identify the cookies being used, analysing whether they are own or third-party, session or persistent cookies, and specifying their function in order to be able to decide whether or not they fall within the scope of application of Article 22.2.

Taking into account the possible changes that may occur in the management and use of cookies, it is advisable to periodically carry out this review in order to update the information available on cookies.

In any case, it is important to remember that the solutions implemented to comply with the obligations of art. 22.2 of the LSSI must be technologically neutral and, therefore, must be solutions that most browsers recognise.

3.1 TRANSPARENCY

3.1.1. What information must be provided

Article 22(2) of the LSSI provides that users must be provided with clear and complete information on the use of data storage and retrieval devices and, in particular, on the purposes of the data processing. This information must be provided, as indicated above, in accordance with the provisions of the GDPR, which requires that the processing of users' data be carried out in a way that is transparent to them.

Therefore, the information on cookies provided at the time of requesting consent should be sufficiently comprehensive to enable users to understand their purpose and the use to which they will be put.

The following information²² should be included in the cookie policy:

a) Definition and generic function of the cookies.

EXAMPLE:

What are cookies?

This website uses cookies and/or similar technologies that store and retrieve information when you browse. In general, these technologies can be used for a variety of purposes, such as recognising you as a user, obtaining information about your browsing habits, or customising the way content is displayed. The specific uses we make of these technologies are described below.

²² If the information is provided in layers, this information shall be included in the second layer, while the first layer shall contain the basic information as described in section 3.1.2.2.

b) Information on the type of cookies that are used and their purpose.

EXAMPLE:

What types of cookies are used in this website?

- **Analysis cookies:** these are cookies which, processed by us or by third parties, allow us to quantify the number of users and thus carry out the measurement and statistical analysis of the use made by users of the service offered. To do this, your browsing on our website is analysed in order to improve the range of products or services that we offer.
- **Behavioural advertising cookies:** these are cookies which, processed by us or by third parties, allow us to analyse your browsing habits on the Internet so that we can show you advertising related to your browsing profile.

If it is not possible for the publisher to provide a sufficient explanation of the purpose of the cookies used by third parties or how to delete them, it can provide this information by including a link to the third party's website. Consent management platforms (*consent management platforms* or CMPs) that meet the requirements and safeguards set out in section v.d) of the Annex may be a solution.

c) Identification of who uses the cookies, i.e. whether the information obtained by the cookies is processed only by the publisher and/or also by third parties with whom the publisher has contracted to provide a service for which the use of cookies is required, with identification of the latter.

In line with the requirement of conciseness set out in the GDPR, the specific information about the third parties (i.e. their name or brand name by which the public can identify them and, where appropriate, the link to the information) does not need to be provided in a clear and concise manner.

The information provided by the website about its cookies) is directly visible in the cookie policy, but mechanisms such as buttons that display this more specific information or pop-up text that appears on mouse-over can be used, provided that the user can easily access the information if they wish to do so.

EXAMPLE:

Third party cookies

Analysis cookies: these enable us to quantify the number of users and thus carry out the measurement and statistical analysis of the use made by users of the service offered. To do this, your browsing on our website is analysed in order to improve the range of products or services that we offer. + [Meet the third parties.](#)

d) Information on how to accept, refuse or revoke consent for the use of the cookies listed through the functions provided by the editor (the cookie management or configuration system that has been enabled) or through the common platforms that may exist for this purpose.

If the editor's cookie management or configuration system does not allow the use of third-party cookies to be prevented once they have been accepted by the user, information will be provided on the tools provided by the browser and the third parties and it should be noted that, if the user accepts third-party cookies and subsequently wishes to delete them, this must be done from their own browser or the system enabled by the third parties for this purpose. For these purposes, and without prejudice to having to have the corresponding cookie management or configuration system as indicated in the previous paragraph, the following additional information may be provided: *"Please note that, if you accept third-party cookies, you must delete them from the browser options or from the system offered by the third party itself"*.

e) Where appropriate, information on transfers of data to third countries made by the publisher.

The view of WG29 on this point, as endorsed by the ECDC, is that the article of the GDPR allowing the transfer should be specified, the third countries identified and information provided on where and how the adequacy decision or adequate or appropriate safeguards, including binding corporate rules, which, where applicable, allow the transfer, can be complied with. In the absence of these, the user should be informed of the risk of transfer without adequacy or appropriate safeguards if explicit consent is to be obtained.

In the case of transfers made by third parties, where applicable, a reference to the information provided by those third parties shall be valid.

EXAMPLE:

You can find out about any transfers to third countries made by the third parties identified in this cookie policy in their corresponding policies (see the links provided in the "Third-party cookies" section).

f) Where profiling involves automated decisions with legal effects for the user or which significantly affect the user in a similar way, it is necessary to provide information on the logic used and the significance and expected consequences of such processing for the user in the terms set out in Article 13(2) f) of the ^{GDPR}²³.

g) Data retention period for the different purposes under the terms established in article 13.2 a) of the GDPR.

h) For other information required by Article 13 of the GDPR that is not specific to cookies (e.g. data subjects' rights), the publisher may refer to the privacy policy.

3.1.2. How this information should be displayed

3.1.2.1. Information requirements

Among the transparency requirements, the following rules, applicable to the provision of information to users regarding the use of cookies, deserve to be highlighted:

a) The information or communication must be concise, transparent and intelligible.

Information should be succinct to avoid information fatigue and should use clear and simple language so that it can be understood by the average user.

WG29, in its Opinion 15/2011, recommended taking into account the type of average user targeted by the website and adapting the language and content of the messages to their technical level. In the same vein, in its guidelines on transparency, WG29 states that information "*should be understandable to the average member of the target audience*". The lower the technical level of the average user of the website, the simpler the language used should be (avoiding technical terminology that is difficult to understand) and the more complete the information provided, starting with the most basic aspects of what cookies are.

²³However, the WG29 guidelines on automated individual decisions and profiling, adopted on 3 October 2017, and last revised and adopted on 6 February 2018, recognise that, for example, behavioural advertising does not generally fall within the scope of Article 22(2) of the GDPR, as "[i]n many typical cases, the decision to present targeted advertising based on profiling will not have a significantly similar effect on individuals".



and how they work. In any case, this lower technical level should not prevent the information provided from being as clear as possible, avoiding overloading the information with unnecessary details that make it difficult to read.

On the other hand, if the target users of the website have a high level of Internet literacy, it may not be necessary to provide basic information about what cookies are and how they work, but they should still include detailed information about what kind of cookies are used on the website and for what purposes.

At all times, the average user's knowledge of cookies and their management should be taken as a starting point, without prejudice to requiring additional information when the web pages are especially aimed at users who, due to their profile, may be considered to have a lower level of knowledge.

b) Clear and simple language should be used, avoiding the use of confusing phrases or phrases that detract from the clarity of the message.

For example, phrases such as "we use cookies to personalise your content and create a better experience for you" or "to improve your browsing experience", or phrases such as "we may use your personal data to deliver personalised services" to refer to behavioural advertising cookies would not be valid. Terms such as "may", "could", "some", "often", and "possible" should also be avoided.

c) Information should be easily accessible.

The user should not have to search for the information, but it should be obvious to the user where and how to access it, such as when a clearly visible link is provided that leads directly to the information under a commonly used term such as "cookie policy" or "cookies".

Informing users is nothing new on the Internet. Most website publishers know what methods to use to draw users' attention to those features they wish to highlight, such as promotions, offers or satisfaction surveys, and to obtain their users' consent, albeit in other contexts (e.g. changes to terms and conditions of use, confirmation of purchases or minimum age verifications). The way in which users are informed should build on the experience gained through these methods.

In addition, in the event that a user consents to the use of cookies, the information should remain easily accessible on the page or in the application (no more than two clicks away, as recommended by WG29 in its guidelines on transparency). On a website, for example, the accessibility and visibility of the cookie policy can be enhanced in the following ways:

- ▶ Through the format of the link: e.g. by increasing the size of the link to the information or by using a different font to distinguish the link from the normal text on the web page.

- Through link positioning: Locating the link in areas that catch the attention of users or in areas where the average user expects to find them because it is a common and widespread practice can help ensure its accessibility and visibility.

Through the use of a descriptive and intuitive name for the link: The use of an explanatory term such as "Cookie policy" instead of a more general term such as "Privacy policy" to improve the accessibility and visibility of the message.

Through other techniques that help to highlight the importance of that informative link, such as framing or underlining the link, displaying a warning when the mouse pointer passes over the link, or using a clickable image that encourages further information.

In particular, it is advisable that information on how to manage cookies (including how to revoke consent and delete cookies) is accessible and permanently available to you at all times through the website, application or online service concerned. For these purposes, and without prejudice to other solutions that may be adopted, this requirement shall be deemed to be met when the cookie management system (configuration panel, CMP, etc.) is integrated into the cookie policy itself or when a link leading directly to the management system is included in this policy.

In any case, the mandatory information may be provided by multiple means. As will be seen below, these means will generally not only provide the necessary information, but may also seek the user's consent to the use of the devices.

3.1.2.2. Layered information

In its guidelines on transparency, WG29 recommends the use of layered privacy statements or notices, i.e. containing information in layers, allowing the user to go to those aspects of the statement or notice that are of most interest to him or her, thus avoiding information fatigue, without prejudice to the availability of the full information in a single place or in a complete document that can be easily accessed if the data subject wishes to consult it in its entirety.

This can be done by displaying the essential information in a first layer, when accessing the page or application, and supplementing it in a second layer with a page providing more detailed and specific information about the cookies.

The **first layer**, which for clarity may be identified by a commonly used term (e.g. "cookies"), would include the following information:

- Identification of the editor responsible for the website. The company name is not necessary, provided that its full identifying data are contained in other sections of the website (legal notice, privacy policy, etc.) and its identity is clearly identifiable from the website itself (e.g. when the domain itself corresponds to the name of the publisher or the brand by which it is identified to the public or such name or brand is clearly visible on the website).
- Identification of the purposes of the cookies to be used.

c) Information as to whether the cookies are own cookies (from the website operator) or also from third parties associated with the website operator, without it being necessary to identify the third parties in this first layer.

d) Generic information on the type of data to be collected and used in case of user profiling (e.g. when using behavioural advertising cookies).

e) Mode in which the user can accept, configure and reject the use of cookies.

f) A clearly visible link to a second layer of information including more detailed information, e.g. using the term 'Cookies', 'Cookie policy' or 'More information, click here'. The cookie settings panel may be integrated in this second layer, provided that, by providing access to it (e.g. from a button or link included in the first layer), such access is direct, i.e. the user does not have to navigate within this second layer to locate the settings panel.

This information shall be provided prior to the use of cookies, including, where appropriate, the setting of cookies, in a format that is visible to the user and shall be maintained until the user takes the action required for consent or refusal.

In connection with point e) above of this first information layer, it shall contain:

a) An easily visible button or equivalent mechanism with the words "Accept cookies", "Accept", "Consent" or similar text to **consent to** the use of all cookies.

b) A button or equivalent mechanism, similar to the above (if an "Accept" button is used, a "Reject" button should be used), with the words "Reject cookies", "Reject" or similar text, to **refuse** the use of cookies (except those exempted from the obligation to obtain an informed consent).

c) A button or equivalent mechanism, clearly visible, but not necessarily similar to the above, that displays or leads to a **settings panel** that allows cookies to be accepted or rejected in a granular way, at least depending on their purpose.

As a matter of good practice, this settings panel should not be included in cases where cookies are only used for one purpose and therefore the user can only choose to accept or reject cookies for that purpose. However, as the cookies being used may change over time (for example, cookies may initially be used only for analytics purposes, but then also for personalisation purposes, and then only analytics cookies are used again), the settings panel and the mechanism for accessing it can be maintained even when they are not strictly necessary, so as to avoid recurring changes to the cookie notice and the costs that this may entail.



In any case, taking into account the text of the notice and the mechanisms used, the function fulfilled by each of these mechanisms should be obvious to the user. In addition:

The user shall not be given the impression that he/she is obliged to accept cookies in order to browse the website.

▶ The user may not be clearly prompted to accept cookies.

The colour or contrast of text and buttons (or equivalent mechanisms) shall not be obviously misleading to users, so as to lead to unintended consent. It shall not be valid, for example, for the option to reject cookies to be a button with text that does not contrast sufficiently with the colour of the button and therefore cannot be read.

The following are two examples of a first layer of information on the same site where own and third party cookies are used for analytics and behavioural ^{advertising}²⁴:

EXAMPLE 1:

Use of cookies

We use our own and third-party cookies to analyse the use of the website and to show you advertising related to your preferences based on a profile of your browsing habits (e.g. pages visited).

[Cookie policy.](#)



EXAMPLE 2:
Cookies

[> Configure without accepting](#)

We use our own and third-party cookies to analyse your use of the website and to show you advertising related to your preferences based on a profile of your browsing habits (e.g. pages visited).

[Read more: Do you accept cookies?](#)



As can be seen, these examples provide information on the use of analytical and behavioural advertising cookies by the publisher and third parties, and explicit consent is obtained from users who accept the use of cookies by clicking on the button. If the "Accept cookies" or "Yes" button is not clicked, the user is not consenting to the use of cookies (therefore, the use of cookies is not legitimate if the user does not click the button to accept cookies and simply continues browsing).

The button or mechanism for setting cookies, i.e. managing user preferences, should take the user directly to the settings panel, without the user having to scroll through large amounts of text looking for the information, which should remain permanently accessible. As indicated above, the panel may be integrated into the second layer of information.

In the configuration panel, it must be clear how to save the user's settings. For this purpose, for example, a button with the

²⁴ In these and future examples of cookie notices, it is assumed that the publisher's full identifying details are contained elsewhere on the website and that its identity is obvious from the site itself. If this is not the case, the publisher should be identified in this first layer in the terms indicated above in this section.

text "Save selection", "Save configuration" or similar texts.

To facilitate the selection, two buttons may also be implemented on the panel, one to select all categories of cookies and one to reject all cookies if the user has previously selected them, this option being recommended the greater the different number of categories into which the cookies have been classified. If the user saves his choice without having selected any cookies, this will be equivalent to rejecting all cookies. It should be remembered that in no case are pre-marked choices in favour of accepting cookies admissible to obtain valid consent.

With regard to the configuration panel, the degree of granularity when displaying the selection of cookies should be assessed by the website editor, although it is advisable to take the following rules into account:

Cookies should at least be grouped by purpose, so that the user can accept cookies for one or more purposes and not for one or more others (e.g. the user could choose to accept analytical cookies and not behavioural advertising cookies). Please note that the list of purposes provided in this guide is not closed and, provided that the distinction between one purpose and another is clear, there may be many different ways of grouping cookies according to their purpose.

Within each purpose, and at the choice of the website publisher, cookies may also be grouped according to the third party responsible for them (for example, the user may choose to accept analytical cookies from one third party and not those from another).

In relation to third party cookies it is sufficient to identify third parties by their name or by the brand name under which they are identified to the public, without including the full company name.

Maximum granularity (cookie-by-cookie selection, even within the same purpose) should be avoided, as too much information makes decision-making difficult.

The **second layer**, which should be permanently available on the website or in the application, would include the information listed in section 3.1.1 above.

3.1.2.3. Other ways of displaying information

Apart from the possibility of layered reporting, there are other common ways to provide information on cookies. For example:

a) The provision of the information (see section 3.1.1) by means of a sufficiently visible notice.

b) When registering for a service, or before downloading a service or application, this information may be provided together with the privacy policy, or with the terms and conditions of use of the service, provided that there is a link or direct access to the section on cookies within the relevant document.

In order to maintain the visibility of information about cookies, this information should be prominent and separate (e.g. by a separate hyperlink) from the rest of the information about terms and conditions of use or privacy policy.

In these cases it will also be possible to provide the information and obtain consent through conventional (off-line) means, provided that there is evidence that users have been individually informed and have given their consent (e.g. loyalty cards).

3.2 CONSENT

3.2.1. ConSentiment as a basis for regulatory compliance

For the use of non-expected cookies, it will in any case be necessary to obtain the user's consent. This consent may be obtained by express formulas, such as by clicking on a section indicating "I consent", "I accept", or other similar terms. It may also be obtained by inferring it from an unequivocal action taken by the user, in a context in which the user has been provided with clear and accessible information on the purposes of the cookies and whether they are to be used by the publisher itself and/or by third parties, in such a way that the user may be understood to consent to the installation of cookies. In no case does the mere in-activity of the user imply the provision of consent in itself.

In order for such consent to be valid, it is necessary that the consent has been given in a free and informed manner. It is therefore necessary to take into account:

- That the manner in which consent may be given may be varied. Obtaining consent through user click-through or similar conduct will undoubtedly make it easier to prove that consent has been obtained. This may be most appropriate for registered users.
- That the user must have carried out a clear affirmative action.
- That it must be clear to the user by what specific action he/she accepts the use of cookies. In this respect, the use

The use of an "Accept" button will be considered as sufficient information, without the need to make it clear that by clicking "Accept" the cookies are accepted. On the other hand, complex or less obvious actions than the use of acceptance buttons or saving the chosen settings will need to be explained to the user.

The ECDC has established that further browsing is not a valid way of providing the service. Similarly, the consultation of the second layer of information if the information is presented in layers, as well as the navigation necessary for the user to manage his preferences in relation to cookies is not an active behaviour from which the acceptance of cookies can be derived.

- That the user may in any case refuse to accept cookies. The option to refuse cookies shall be offered at the same layer and at the same level as the option to accept cookies and the mechanism used for this purpose (button or other) shall be similar.
- That the information given to the user to enable him to consent to the use of cookies is separate from the information given to him on other matters.

That acceptance of the terms or conditions of use of the website or service is separate from acceptance of the privacy or cookies policy.

- That, although cookies are not generally used in scenarios where the GDPR requires the explicit consent of data subjects, where explicit consent is required (Articles 9(2)(a), 22(2)(c) and 49(1)(a) of the GDPR), consent can only be obtained by means of opt-in buttons, provided that it includes a specific 'I consent' legend and that the consent is given in the form of an opt-in button.

²⁵ As noted above, the WG29 guidelines on automated individual decisions and profiling recognise that, for example, behavioural advertising generally does not fall within the scope of Article 22(2) of the GDPR.

provide full information on the special categories of data for which consent is ^{given²⁶}, automated individual decisions or transfers to third countries, as the case may be.

3.2.2. Who should present the consent

Pursuant to Article 22(2) of the LSSI, consent must be given by the "recipients" of the information society services.

In accordance with section d) of the Annex to the LSSI, "recipient of the service or target" should be understood as "the natural or legal person who uses an information society service, whether for professional or non-professional reasons". And in accordance with the definitions given in the corresponding section, the term recipient coincides with the term user, which is the term used in this guide.

Therefore, the information should be addressed directly to the user so that he/she can express his/her consent or refusal.

3.2.3. Modalities for obtaining consent

The determination of which method will be appropriate for obtaining consent to use cookies will depend on the type of cookies to be used, their purpose and whether they are proprietary or third party cookies. One aspect to consider is whether the relationship with the user is with the publisher or with third parties.

In this regard, it must be indicated whether the consent is given only for the website on which it is being requested or whether it is also given for other websites of the same publisher or even for third parties associated with the publisher within the framework of the purposes of the cookies about which information has been provided.

Regardless of how consent is obtained, the option to refuse cookies must be offered to the user at the same time, at the same level and with the same visibility as the option to accept them, without referring the user to a different layer or location to perform this action.

The following mechanisms for obtaining consent, among others, are possible:

a) When applying for a service

It is possible to request consent to the use of cookies when the user applies to register for a service, provided that this consent is separate and is not grouped with the acceptance of the terms and conditions of use of the website, its privacy policy or the general conditions of the service.

b) During the process of configuring the operation of the website or application.

Many websites and mobile applications allow the user to configure the service, enabling the user to configure features such as language, font, background colour, etc. Due to the specific characteristics of the applications, they also usually ask the user if they can access information from their terminal (such as address book, to suggest friends or photo albums).

²⁶ In this regard it should be noted that Article 26.3 of the Digital Services Regulation (Regulation EU 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a single market for digital services and amending Directive 2000/31/EC) prohibits online platform providers from presenting to recipients of the service "advertisements based on profiling, as defined in Article 4(4) of Regulation (EU) 2016/679, using the special categories of personal data referred to in Article 9(1) of Regulation (EU) 2016/679". This rule shall apply generally from 17 February 2024.

Thus, the provision of consent to the use of cookies can be configured during the process of user choice or specification of features, with consent being integrated into the user's choice and remembering the settings chosen by the user.

c) Through consent management platforms (CMPs).

To the extent that PMCs meet the requirements and safeguards set out in paragraph (v)(a) of the Annex, they are appropriate as methods of obtaining consent.

d) Before the moment when a service or application offered, e.g. on the website, is to be downloaded.

Another possibility to obtain the consent is before the moment when a service included on the website or in the application (e.g. a video, an image or a game) is to be downloaded.

In such cases, if the cookies intended to be used are not necessary for the operation of the service or application, users should be allowed to give their consent before downloading the service or application. It should be remembered that in the event that a website offers audiovisual content, this is part of the service expressly requested by the user, who is therefore exempted from the duty to require such consent to display such content.

If the user wishes to exercise a legally recognised right (e.g. to unsubscribe from a telephone, Internet access or other service) and the application or service is the only means provided to the user to exercise that right, access to the application or service cannot be made conditional on the acceptance of cookies that are not required.

e) Through the reporting format by layers.

In the above-mentioned layered information format, the first layer, which contains the essential information, should also include the request for consent to the use of cookies.

In these cases, the user indicates whether or not he/she accepts the use of cookies by taking the clear affirmative action or the action to reject them of which he/she has been adequately informed, and is also permanently informed on the second layer about the use of cookies and how to configure and/or reject them.

For this purpose, and by way of example, it may constitute consent if the user, after having been informed about the use of cookies, clicks on an acceptance button, provided that, in this case, a rejection button has also been enabled, as explained above.

The information provided in this first layer may be displayed through a format that is visible to the user, such as a banner, a bar or through similar techniques or devices, bearing in mind that location at the top of the page usually captures the attention of users better.

In terminals with small screens, the size and content of the first layer can be adapted to the dimensions of the screen.

f) Through the browser settings.

Both the Privacy Directive and the LSSI suggest that browser settings could be one of the ways to obtain consent. For this option to be valid, browser settings should be able to be used in a way that allows users to consent to the use of cookies in accordance with the provisions of the GDPR and taking into account the provisions of the Directive.

The consent should be separate for each of the intended purposes and the information provided should identify the data controllers. For the purposes of this identification, the full company name will not be necessary, but it will be sufficient to include the brand or name by which the controller is identified to the public.

In these terms, the browser settings would be a valid option for obtaining consent, but would not serve as the sole mechanism for the user to refuse or revoke consent to the use of cookies. The publisher should, in any case, offer the user a way to withdraw or revoke consent to the use of cookies through its own website or, where appropriate, provide information on the tools provided by third parties using cookies to withdraw consent, so that the user can exercise his right to withdraw consent as easily as he gave it.

3.2.4. Consent of children under 14 years of age

Also, in the case of websites or online services specifically aimed at minors, it is useful to remember the need to adopt additional precautions such as greater simplicity and clarity in the language used.

In the case of children under 14 years of age, the controller shall make reasonable efforts to verify that consent for the processing of personal data was given by the holder of parental authority or guardianship, taking into account the available technology and the

circumstances of the processing. Thus, among other factors, when establishing measures to verify that consent was given or authorised by the parental or guardian, the level of risk associated with the use of cookies should be considered (e.g., taking into account the nature of the data being collected) and particular attention should be paid to the principle of harm ^{minimisation}²⁷. The lower the risk, the simpler the verification system implemented can be.

For example, in the case of unregistered users of a website directed at minors, if their device and navigation data are used only for analytical purposes, the parental authority's consent to the use of such data is required. or guardianship could be obtained after prior warning or a call addressed to the minor indicating in the first informative layer that, if he/she is under 14 years of age, before continuing to browse, he/she should notify his/her father, mother or guardian to accept or re-accept the cookies, thus avoiding requesting additional data from the minor or the holder of parental authority or guardianship.

²⁷ In the guidelines on consent within the meaning of Regulation (EU) 2016/679, the ECDC puts it in the following terms: 'the European Data Protection Board recommends the adoption of a proportionate approach, in line with Articles 8(2) and 5(1)(c) of the GDPR (data minimisation). A proportionate approach may be to focus on obtaining a limited amount of information.'

EXAMPLE 1:

If you are under 14, ask your parent or guardian to read this message.

We use our own and third-party cookies to understand how you use our website and to compile statistics. [More information.](#)

Your parent or guardian can accept or decline cookies by clicking on the buttons in this message.



Where the intended use of the data is intended to recall certain information from the user or his or her terminal in order to automatically alter certain aspects of the navigation and personalise his or her experience (e.g. the way content is presented)²⁸, without however profiling the child, additional safeguards should generally be taken to verify that the consent was given or authorised by the holder of parental authority or guardianship, in the absence of an appropriate risk analysis according to the specific circumstances of the case.

For example, the user could first be asked if he/she is 14 years old or older and, in case of a negative answer, the following message could be included:

EXAMPLE 2:

Call your parent or guardian to read this message and enter the year you were born: [FIELD TO INCLUDE YEAR].

(this data will not be stored, it will only be used to check consent) We use our own and third party cookies to understand how you use our website and to compile statistics, and also to personalise your visit (for example, by changing the look and feel of our web pages or games based on how you use them²⁹).

[More information.](#)

Your parent or guardian can accept or decline cookies by clicking the buttons in this message or by setting them [HERE](#).



The system in the example should be able to detect incidences that lead to the conclusion that the data entered are not correct and, in this case, prevent the use of cookies until the consent of the parental or guardianship holder is obtained. Such events could include dates that have not yet arrived, or which imply that the parental or guardianship holder is not of legal age or is of such advanced age that it is unreasonable for the person to still be alive or has children under the age of 14.

²⁸ This scenario refers to cases where the publisher adapts the content of the website or application based on the information it obtains from the cookies and should be distinguished from the scenario where the user makes a decision, within pre-determined parameters, that affects how the website or application is displayed to the user, and where the user is the one who, within pre-determined parameters, makes a decision that affects how the website or application is displayed to the user.

displays the content (e.g. when selecting a specific language from those offered by the publisher). As indicated in section 2.1.2(b) above, only in this second case, i.e. when personalisation is in response to a specific user request, cookies are exempt from informed consent.

²⁹ In line with what is indicated above with regard to personalisation cookies, these modifications to the content independently of the user's choices could be, for example, that, if the publisher observes that a user frequently chooses the same character from among those selectable in a game, the character that is chosen most often is shown by default. Under no circumstances may this information be used for other purposes such as personalisation of advertising content or to create a user profile.

Publishers may use any reasonable verification formulas to verify that the consent is given by the holder of parental or guardianship rights and not by the child under 14 (e.g. questions or captchas).

If consent to the use of cookies is obtained during the registration process for a service, or in the context of another process in which personal data is requested from minors, such as their first and last name, an email address or other contact data, additional information about the parents or guardians may be requested for verification purposes (e.g. first and last name, an email address for the purpose described above, or a copy of a national identity document), in such cases, additional information about the parents or guardians (e.g. first and last name, an email address for the purpose described above, or a copy of a national identity card or equivalent document) may be requested for verification purposes, or they may be asked to sign a declaration of consent.

accordance with the procedures laid down in the law.

3.2.5. When can cookies be used and, if so, when can they be installed?

With regard to the time at which consent must be obtained for the use and, where appropriate, installation of cookies, it should be noted that Article 22 of the LSSI states that:

"Service providers may use data storage and retrieval devices on recipients' terminal equipment, provided that the recipients have given their consent after having been provided with clear and complete information on their use, in particular on the purposes of the data processing, in accordance with the provisions of Organic Law 15/1999 of 13 December 1999 on the Protection of Personal Data.

Consequently, the use of the cookie can only take place when the user has the necessary information about cookies and how to obtain consent, and when consent is given in

The use of cookies should be accompanied by an informed consent of the users to such use. In this regard, the use of cookies should be accompanied by the informed consent of users to their use, so that recipients have the opportunity to examine the information and decide whether or not to accept the use of these devices.

time a user revisits the same website from which the service is provided.

3.2.6. Obtaining the consent for the use of cookies when a publisher provides services via different sites

The same publisher who provides different services through different domains may, through a single web page, inform and obtain consent for the use of cookies sent from the rest of the domains they own and which offer similar content or have similar characteristics, for the purpose of providing the services requested by the user, provided that, in addition to what is indicated above in the section on information, information is provided on the web pages or domains owned by the company from which the cookies are to be sent, the type of cookies and the purposes for which they are processed, and the user's consent is obtained.

In the event that the sites through which a publisher provides services offer content or have features that are not similar (e.g. some of the sites contain adult content), additional precautions are necessary.

3.2.7. changes in the use of cookies

As a general rule, as long as a consent has been validly obtained, it is not necessary to obtain it each

In any case, it is clear that if the purposes for which cookies are used or the third parties that make use of cookies change after consent has been obtained, it will be necessary to update the cookie policy and allow users to make a new decision.

3.2.8. Updating the consent

The ECDC, in its consent guidelines, recommends as best practice the renewal of consent at appropriate intervals. The Agency considers it good practice that the validity of the consent given by a user for the use of a particular cookie should not exceed 24 months and that during this time the user's choice of preferences should be retained, without the user being asked for a new consent each time he or she visits the site in question.

3.2.9. Withdrawal of consent to use cookies

Users should be able to withdraw previously granted consent at any time. To this end, the publisher shall ensure that it provides information to users in its cookie policy on how they can withdraw consent and delete cookies.

The user should be able to revoke consent easily. The system provided for withdrawing consent should be as easy as the one used when consent was given. Such a facility shall be deemed to exist, for example, when the user has easy and permanent access to the system for managing or setting cookies.

3.2.10. Possibility of denial of access to the Service in case of cookie rejection

In line with the ECDC guidelines on consent, in order for consent to be freely given, access to services and functionalities should not be made conditional on the user's acceptance of the use of cookies. Therefore, so-called "cookie walls" that do not offer an alternative to consent, as explained below, may not be used. This criterion is particularly important in cases where refusal of access would prevent the user from exercising a legally recognised right, for example, because access to a website is the only means provided to the user to exercise that right.

There may be certain cases in which not accepting the use of cookies prevents access to the website or the total or partial use of the service, provided that the user is adequately informed and an alternative, not necessarily free of charge, of access to the service is offered without the need to accept the use of cookies. In accordance with Guidelines 05/2020 on the consent of the ECDC, the services of the two alternatives must be genuinely equivalent, and it is not valid if the equivalent service is offered by an entity outside the publisher.

On free access to internet services, the question has been raised as to under what circumstances and conditions 'consent or remuneration' models (also popularly called '*pay or okay*') relating to behavioural advertising can be applied by large online platforms in a way that constitutes valid and, in particular, freely given consent, so as to legitimise the processing by these large online platforms of the personal data of data subjects (users).

In this respect, the [European Data Protection Committee \(EDPC\) has adopted Opinion 8/2024](#), which exclusively concerns the offer by large online platforms of access to the service without advertising for a fee. The large online platforms covered by the opinion include, for example, the major social networks. In addition, the ECDC is expected to publish a generally applicable Guide on the validity of consent in "*pay or okay*" models in the first half of 2025.

Opinion 8/2024 notes that, in most cases, it will not be possible for large online platforms to meet the requirements for consent to be deemed to have been validly given by data subjects if they only offer users a binary choice between consenting to the processing of personal data for behavioural advertising purposes and paying a fee to avoid such processing of personal data.

The ECDC adds that offering (only) a paid alternative to the service that includes processing for behavioural advertising purposes should not be the default path for data controllers, stating that, when developing the alternative to the version of the service with processing of personal data to deliver behavioural advertising, large online platforms should consider providing data subjects with an 'equivalent alternative' that does not involve the payment of a fee.

If data controllers choose to charge a fee for access to the 'equivalent alternative', they should also consider offering a free alternative, without behavioural advertising, which can in principle be considered equivalent.

This alternative, the ECDC adds, could consist of general or contextual advertising. In other words, advertising that requires the processing of less or no personal data of the recipient, such as, for example, advertising based on a selection of subjects chosen by the subject from a list of subjects of interest provided by the platform (cf. paragraph 75 of Opinion 8/2024).

This option derives from the principle of data minimisation, which obliges data controllers to ensure that only data necessary for the advertising activity are processed. The offer of this free alternative is a particularly important factor in assessing whether the consent given for behavioural advertising would be considered valid and no detriment to the data subject has occurred.

4. LIABILITY OF THE PARTIES IN THE USE OF COOKIES

The LSSI does not define who is responsible for complying with the obligation to provide information about cookies and to obtain consent for their use.

It is necessary for the parties involved in the use of cookies to cooperate in order to ensure compliance with the established legal requirements.

Basically, in the management of cookies and the processing of the data obtained, the two situations described below are distinguished according to the purpose for which the data obtained through the use of cookies is processed.

4.1 THE PUBLISHER OR THIRD PARTIES USE COOKIES FOR PURPOSES EXEMPTED FROM THE OBLIGATIONS TO INFORM AND OBTAIN CONSENT

In those cases where a publisher offers users a service and all cookies used from its website are used exclusively for the purposes for which consent is not required as described above, whether they are its own or those of third parties, it will not be necessary to report their use or obtain consent.

However, in the event that it uses third-party cookies to provide the service requested by the user, it must contractually establish with those entities with which it works.

directly that these entities do not process the data for any purpose other than the provision of the service to the user, since otherwise it would be necessary to inform of these other purposes and obtain consent.

4.2 THE PUBLISHER OR THIRD PARTIES USE COOKIES FOR PURPOSES NOT EXEMPTED FROM THE OBLIGATIONS TO PROVIDE INFORMATION AND TO OBTAIN CONSENT

In this case it is possible to differentiate whether own or third-party cookies are used.

In cases in which the publisher, through the use of its own cookies, processes data for any of the purposes that are not exempted from the obligation to inform and obtain consent, it will be necessary to inform about the purposes for which the data will be processed and obtain the user's consent, by means of one of the methods established in this guide.

Likewise, when third-party cookies are used for one or more of the non-exempt purposes, both the publisher and the other entities involved in the management of cookies shall be responsible for ensuring that users are clearly informed about the cookies and the purposes for which they will be used and for obtaining the required consent.

In this regard, where the publisher employs a PMC that creates an environment in which third parties participating in the PMC can fulfil the duties to inform and obtain the consent of the publisher, the publisher must be able to provide the information and obtain the consent of the third parties involved in the

In the case of a third party, the third party shall be individually and directly responsible for its compliance.

Third-party cookies generally store information on the user's terminal equipment or use such information because the publisher, when designing the website, platform or application, foresaw the possibility of including third-party content that uses them or because it uses third-party software that requires them.

Therefore, publishers, where they are not the owners of the cookies being used, should ensure that data subjects receive the necessary information and that mechanisms are in place to enable their consent, for example, through contractual obligations or guarantees binding the third party owner of the cookies or through the installation of platforms for managing consent.

Thus, when information on third-party cookies is provided through a link to the third party's website, the publisher will have to ensure that the links are not broken, and it is the third party's obligation to ensure that the information is not outdated and that it is also provided in Spanish or in the co-official language used on the publisher's website.

Thus, in such cases and in order to facilitate and guarantee compliance with the obligations established in this area, when third-party cookies are used, contracts between publishers and third parties should include one or more clauses ensuring that users will be provided with the required information and that the form in which this information will be provided will be articulated, contracts concluded between publishers and third parties should include one or more clauses ensuring that users are provided with the required information and articulating the way in which valid consent to the use of cookies and its revocation can be obtained, as well as the consequences of the revocation of consent for the publisher and, especially, for the third parties who obtained it through the publisher.

It should be borne in mind that in practice,

when a CMP is not used, it is more difficult for entities using third party cookies, than it is for those entities using third-party cookies, to

The Committee is of the view that the above requirements are not directly related to the user, and that users will tend to address their concerns to the entity that they can identify and with which they have a relationship, i.e. the publisher.

It should also be borne in mind that cookie owners, insofar as they determine the purposes and means of processing, are responsible for the personal information collected by cookies and for the further processing of data that takes place.

Thus, advertisers, publishers, agencies, advertising networks and other actors involved will be data controllers when they use their own cookies and when, by using third-party cookies, they are involved in determining the purposes and means of processing, even if the processing is carried out through a processor, such as when an advertiser hires a media agency to carry out processing under its direction and according to its instructions.

Those agents who limit their actions to following the instructions of the controller shall be considered processors. The figure of the processor is defined in Article 4.8 of the GDPR and is regulated in Article 28.

In principle, each controller is responsible for the specific processing it carries out. Even in cases where different controllers are involved, each controller shall assume its respective responsibility.

However, where the entities referred to in the previous paragraphs (advertisers, agencies, advertising networks, publishers and other actors) jointly determine the purposes and means of the processing, they will be considered jointly responsible for the processing and must comply with

of the different entities involved in the processing of personal data, but that the responsibility of each entity will depend on its involvement in the actual processing. Therefore, the level of responsibility of each entity should be assessed on a case-by-case basis and taking into account all relevant circumstances in the light of their respective responsibilities assumed in the determination of the means and purposes of the processing.

In this regard, the scope of the publisher's obligations to inform and obtain consent for third-party cookies is limited to the processing for which it is responsible, including, where appropriate, joint responsibility for the user's knowledge of and consent to the use by identified third parties of their cookies and the purposes of the data processing associated with them. These obligations do not extend, however, to the subsequent stages of processing in which the publisher is not involved, which are the sole responsibility of the third party.

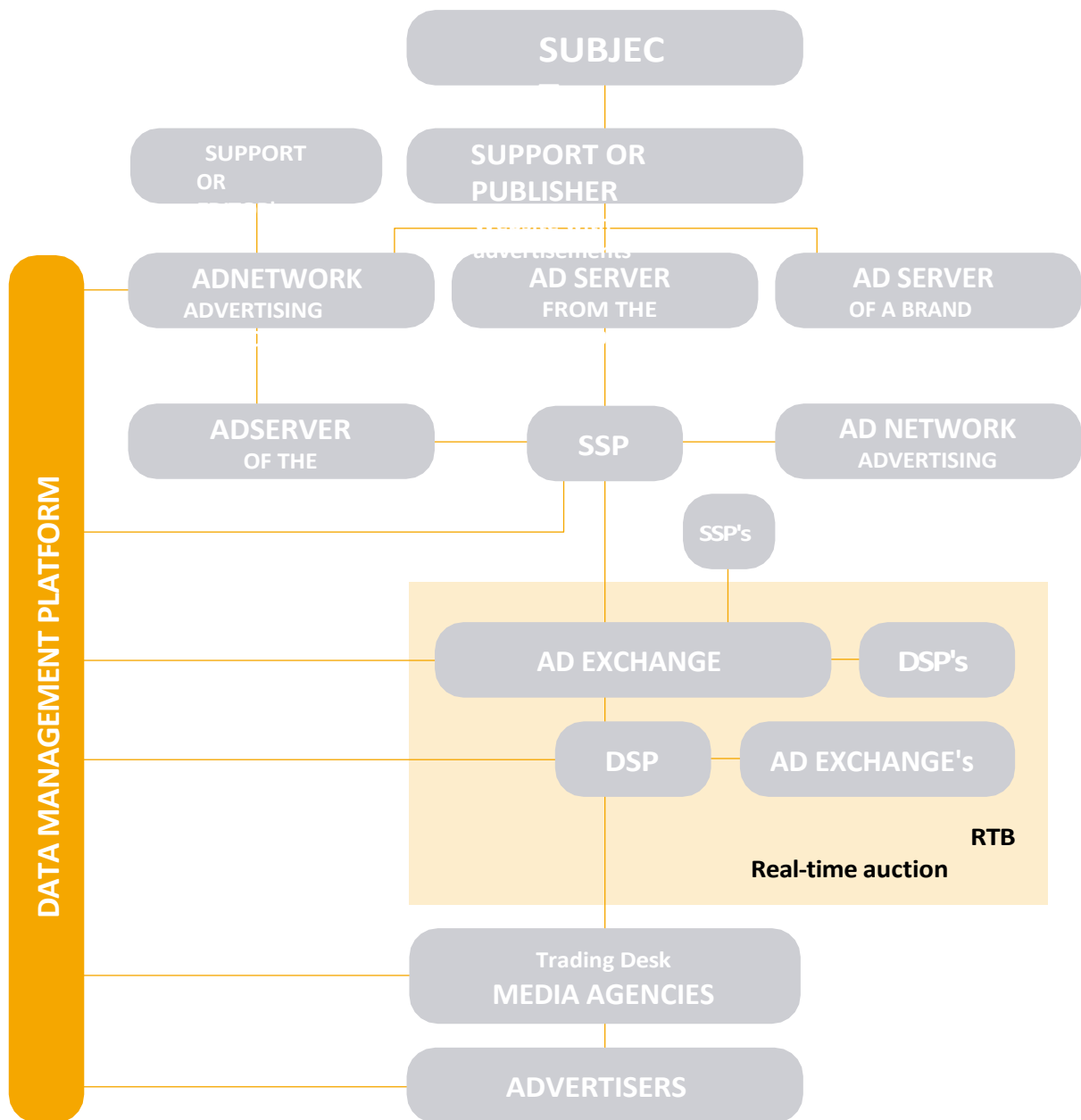
For example, liability would not extend to data processing carried out subsequently by third parties for the purpose of enabling them to offer audience building, profiling or similar services (developed from the processing of data obtained through cookies), nor can liability for the development of such audiences or profiles be presumed by virtue of the fact that they are used.

In any case, the administrative liability to the supervisory authorities for compliance with the obligations arising from the use of cookies lies with each obligated party and cannot be contractually shifted.

ANNEX: PARTIES INVOLVED

Programmatic advertising processes involve a multiplicity of actors or agents, including some technological tools, such as ad exchanges or demand side platforms (DSPs).

The following figure contains a graph with the main players involved in digital programmatic ad buying (although not all of them necessarily need to be present):



I. USER

This is the recipient, a natural person, who accesses the service provided by a publisher, with a distinction being made between registered and unregistered users. Although the term recipient of the service is used in legal regulations, the term user is used in this guide, as it is more commonly used.

II. SELLING AGENT: PUBLISHER OR PUBLISHER'S SUPPORT

This is any entity providing information society services that owns a website that can be accessed by a user and for the provision of which cookies are used.

For example, this would be the case of the owner of a carpentry or fishmonger's shop who has a website through which he simply offers information related to the services he provides or has an on-line shop through which commercial transactions can be carried out or has created a mobile application for the operation of which the use of cookies may be necessary.

Some publishers, also known as *publishers*, in addition to providing a service to users, offer, acting as publishers, themselves or with the help of one or more third parties, advertising space to advertisers for the management of which the use of cookies is necessary.

This would be the case, for example, of a magazine or a media outlet that provides users with an information service by means of

a website or a mobile application and, in turn, offers, alongside this information, advertising about the services, products or image of one or more advertisers.

In the light of this definition, it is possible to see the dual role or function that a publisher can perform. It acts as a provider of a service to the user, for the provision of which the use of cookies may be necessary. When it acts as a medium, it can also offer advertisers advertising space that will be managed either by itself or by one or more entities simultaneously, through the use of technologies that may require the use of cookies for their operation.

In this way, it is the medium that presents the advertising to the user (interested party) through the advertising space it has available, the whole of which is known as the "advertising inventory".

The publisher markets the advertising inventory through the following agents:

- ▶ Advertising networks.
- ▶ *Supply side platform (SSP)*³⁰.

Agencies and/or advertisers through direct agreements by accessing their *ad servers*³¹ (or ad server - computer that stores the advertisements and serves them to the publisher).

Advertising cookies that are installed in the user's browser may come from the following agents:

³⁰ *Supply side platforms or advertising technology platforms that allow an inventory to be connected to a variety of ad exchanges*

³¹ *Ad server: Ad servers are management programmes or platforms used to manage a publisher's ad inventory. Third-party cookies are often used for this purpose, so that these cookies are sent to the user's terminal equipment not from a domain managed and controlled by the publisher itself, but from one managed by the ad server.*

➤ *Supply side platform (SSP).*

Advertisers, agencies and their ad servers or ad servers or their DMPs.

Ad exchanges (a place where supply and demand come together for commercial buying and selling transactions, where advertisers and publishers/publishers meet).

III. ADVERTISER

It is the entity whose products, services or images are advertised through the advertising space available to publishers on their websites or other applications from which they provide services to users. In this sense, it acts as a demander of advertising space.

Frequently, the publisher also acts as an advertiser. In these cases, the publisher acts as an advertiser from the moment it uses advertising space made available by other publishers to advertise the service it provides to users.

This would be the case, for example, where the owner of a carpentry or fish shop, in addition to acting as the publisher of his own website from which he provides the service, acts as an advertiser by contracting the advertising of his products or services directly with another publisher, publishers or, indirectly, with an advertising network.

IV. BUYING AGENTS

They are the stakeholders in the dissemination of advertising. They are the ones who determine the total budget they will spend on an advertising campaign, define the target audience and provide the creative materials. In terms of programmatic buying, they are the ones who stipulate the minimum bid price they are willing to pay per impression.

Your intervention can be:

- through a media agency
- dealing directly with SSPs
- directly dealing with publishers via ad servers
- this function can be carried out by different actors

V. INTERMEDIARIES IN THE MODEL

a) **Consent management platform** (*consent management platform* or **CMP**)

A CMP is a tool that is installed on the publisher's media, website or application, and allows any party responsible for the use of cookies to fulfil its duties to inform and collect consent.

For a PMC to be valid, it must enable the entities that use it, both publishers and other actors, to meet the regulatory requirements as set out in this guide.

In particular, a coordinated and coherent environment should be created in which, through the articulation of contractual agreements or frameworks, publishers and third parties are obliged to:

- Comply with the requirements of transparency vis-à-vis users.
- Obtain valid consent from users.
- To further respect users' consent choices and to allow for the management of such consents, including their revocation.

These platforms shall be subject to audits or reviews to validate compliance with these requirements.

b) Advertising agencies and media agencies

These are entities that are responsible for the design and execution of advertising, as well as the creation, preparation or programming of advertisers' advertising campaigns, acting in the name and on behalf of advertisers in the purchase of advertising space. In this sense, they can also be considered as buyers of advertising space for advertisers.

c) Ad networks

They are a set of entities that, acting on behalf of and representing directly or indirectly one or more publishers, also offer, directly to advertisers or, indirectly through other applicants, such as advertising agencies, the possibility of obtaining advertising space or some type of specific result such as clicks, sales or registrations, through the management and processing of the data obtained from the use of the cookies that are downloaded or uploaded, or through the use of cookies, the possibility of obtaining advertising space or some type of specific result such as clicks, sales or registrations, through the management and processing of data obtained from the use of cookies downloaded or stored on users' terminal equipment when they access the services provided by the publisher.

The purpose of the work of these entities is to manage, in the best possible way, the inventory of advertising space, which is owned by the publishers, in such a way that it converges with the demand of advertisers (they sell the publishers' advertising space).

It is up to the publisher to decide whether all or part of the inventory at its disposal is managed by one entity exclusively or by several entities simultaneously, depending on the criteria it establishes.

Such entities usually aggregate the supply of advertising space and inventory from several

publishers. They may also purchase inventory from different publishers.

The main purpose of the project is to provide a basis for advertising campaigns carried out by advertising agencies.

Some of these entities collect, through the cookies they manage, information on the browsing habits of users who access the services or pages offered by any of the publishers they represent. The data are collected with the aim of making the dissemination of advertisers' advertising pieces as efficient as possible. To this end, they analyse the habits of users on the Internet in order to offer them advertising that is most appropriate to the interests associated with their browsing profile. This type of entity acts on the supply side, as a space provider, on behalf of and representing, directly or indirectly, one or more publishers.

Although this type of entity shows its customers the data obtained as a result of the use of cookies in aggregate form, it will be necessary to inform and obtain the consent of the users for the collection of such data and its aggregation and subsequent processing for the purpose of managing the offer of the publishers' spaces. This will generally be done from the website of the publishers that use this type of own or third-party cookies.

In order to manage these advertising spaces as efficiently as possible, different types of equipment, technologies, programmes or management applications are used, such as *ad servers*, *ad exchanges*, etc., which process the data obtained in real time, so that advertisers' advertising pieces are automatically included in the publishers' advertising spaces according to the criteria established in each case.

Finally, it is also necessary to point

out that this management work is often sub-contracted in whole or in part to other companies specialised in the development of the necessary actions for the management of advertising space.

d) Trading desk

It is the technical team of people inside (or outside, it can be independent) a media agency that through the connection with multiple DSPs (bidding technology that allows advertisers and/or media agencies to buy inventory in different *ad exchanges* -places where supply and demand meet-), optimise programmatic buying for advertisers.

Advertisers also have a *trading desk*.

Generally, the *trading desk* is focused on the intelligent buying of audiences using optimisation technologies across multiple platforms (*ad exchanges, networks, DSPs, so-ports*) in such a way that it will buy that impression most efficiently for the objectives of its clients/advertisers.

VI. THE AUCTION MODEL

a) Supply side platform (SSP)

These are advertising technology platforms that allow an inventory to be connected to various *ad exchanges*.

b) Ad exchange

Ad exchange is the place where supply and demand come together to make commercial transactions of buying and selling, where advertisers and publishers meet.

Publishers offer and manage their advertising space and advertisers create and manage their campaigns.

Ad exchanges provide a technological platform that facilitates the automation of price-based auctions and real-time bidding, known as RTB (*real time bidding*). Thus, the operating principle of an *ad exchange* is real-time bidding.

Some, for example, connect advertising networks, agencies and third-party demand-driven platforms to a vast global inventory in real time.

Ad exchanges set cookies on the user, and some encrypt or *hash* them when sending them to the DSPs associated with them to prevent cookies set by ad networks from being leaked to third parties.

b) Demand side platform (DSP)

A DSP is a bidding technology that allows advertisers and/or media agencies to buy inventory on different *ad exchanges*.

DSPs also known as *bidders*:

- ▀ They assess the value of each print.
- ▀ Optimise the bid price using audience data.
- ▀ They bid for the inventory.

In this way, buying is done on a print-by-print basis, known as "*real-time bidding*". A DSP has a unique interface that allows bidding, optimisation and reporting.

The DSP cannot access the user's cookies until it contacts the user, and it cannot do so without winning the auction for the space, which is why *ad exchanges* and advertisers use *cookie matching* or *cookie syncing*.

VII. ANALYSIS AND MEASUREMENT COMPANIES

These are entities that measure and/or analyse users' browsing on a publisher's website and their behaviour with any of its elements or with advertising, by analysing the data obtained through the use of cookies.

Generally, in order to provide this type of service, what are known as "third-party cookies" are used, i.e. cookies that are sent to the user's terminal equipment not from a computer or domain managed and controlled by the editor, but from a computer or domain managed by the entity that carries out the data analysis.

Given the multiplicity of entities involved, it will be up to each one to analyse the work it carries out in order to position itself in one or other role with a view to determining the liability it incurs and compliance with the obligations established in the regulations and developed in this guide.

VIII. INFORMATION PROVIDERS: DATA MANAGEMENT PLATFORM (DMP)

A *data management platform* (DMP) is a technology platform that collects, stores and packages or aggregates and transfers consumer and user data that it receives from different data sources or providers. The DMP can categorise consumer and user data through an external data source based on demographics and interests according to their browsing (*3rd party data*). The DMP can be agency, client or outsourced.

There are occasions where the DMP may take decisions on personal data.

ANNEX II: PARTIES INVOLVED

The AEPD has published a guide on the "Use of cookies for audience measurement tools" which can be consulted at the following link <https://www.aepd.es/guias/guia-cookies-analitic-as-externas.pdf>



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