

## Working Party issues guidance on EU cookie compliance

The Article 29 Data Protection Working Party (the “**Working Party**”) recently issued guidance which sets out the minimum standards required to obtain consent for cookies throughout Europe. The body, which represents all data protection authorities throughout the European Union, has published this guidance on cookie compliance which, amongst other suggestions, highlights the importance of allowing website users to exercise free choice when accepting cookies, the need to obtain active consent and the requirement for not setting cookie consent mechanisms on an entry page before active usage has occurred.

In its opinion, the Working party has said that:

- The website operator must provide precise information which properly states the accurate purpose of the processing. The operator must receive consent before setting the cookies and this consent must be unequivocal. This means that the procedure to seek and give consent must leave no doubt as to the data subject’s objective. Valid consent must be an active sign of the user’s wishes and needs to be freely given with the data subject exercising a real choice;
- The consent mechanism for cookies should provide a clear, comprehensive and visible notice on the use of the cookies, at the time and place where the consent is sought e.g. on the entry page. When they access the website, users should be able to access all necessary information about the different types or purposes of cookies being used by the website;
- Consent must be given before the data processing begins. To achieve compliance between all Member States consent should be sought before cookies are set or read;
- The website must provide clear information to the users on how they may indicate their consent, most likely on the entry page. Tools to obtain consent may include splash screens, banners, modal dialog boxes and browser settings. The process by which users

could signify their consent for cookies would be through a positive action or other active behaviour e.g. by ticking a box or clicking on a link; and

- The cookie mechanism must provide the user with a real choice regarding cookies on the entry page. They must freely choose between the option to accept all/some cookies or decline all/some cookies. They must maintain the ability to change the cookie settings if they so wish. The opinion from the Working Party also notes that users need a real choice with regards to tracking cookies as they believe that these tracking cookies collect personal data and thus need full permission from the user.

This opinion demonstrate the requirements (such as timing, real choice and active choice) when dealing with the matter of EU cookie compliance. As this guidance sets out the minimum standards with which to operate cookies in the EU, this is an issue that should be taken seriously and swift action should be taken to act accordingly. Should you need further guidance regarding satisfying cookie consent obligations throughout the EU, please contact the following people who will be able to further advise:

***Mark Prinsley***

Partner

T: +44 20 3130 3900

E: [mprinsley@mayerbrown.com](mailto:mprinsley@mayerbrown.com)

***Sarah Byrt***

Partner

T: +44 20 3130 3832

E: [sbyrt@mayerbrown.com](mailto:sbyrt@mayerbrown.com)

***Oliver Yaros***

Senior Associate

T: +44 20 3130 3698

E: [oyaros@mayerbrown.com](mailto:oyaros@mayerbrown.com)

To view the full Working Party document [click here](#)

---

Mayer Brown is a global legal services organisation advising many of the world's largest companies, including a significant portion of the Fortune 100, FTSE 100, DAX and Hang Seng Index companies and more than half of the world's largest banks. Our legal services include banking and finance; corporate and securities; litigation and dispute resolution; antitrust and competition; US Supreme Court and appellate matters; employment and benefits; environmental; financial services regulatory & enforcement; government and global trade; intellectual property; real estate; tax; restructuring, bankruptcy and insolvency; and wealth management.

OFFICE LOCATIONS AMERICAS: Charlotte, Chicago, Houston, Los Angeles, New York, Palo Alto, Washington DC  
ASIA: Bangkok, Beijing, Guangzhou, Hanoi, Ho Chi Minh City, Hong Kong, Shanghai, Singapore  
EUROPE: Brussels, Düsseldorf, Frankfurt, London, Paris  
TAUIL & CHEQUER ADVOGADOS in association with Mayer Brown LLP: São Paulo, Rio de Janeiro

Please visit our website for comprehensive contact information for all Mayer Brown offices. [www.mayerbrown.com](http://www.mayerbrown.com)

Mayer Brown is a global legal services provider comprising legal practices that are separate entities (the "Mayer Brown Practices"). The Mayer Brown Practices are: Mayer Brown LLP and Mayer Brown Europe-Brussels LLP, both limited liability partnerships established in Illinois USA; Mayer Brown International LLP, a limited liability partnership incorporated in England and Wales (authorised and regulated by the Solicitors Regulation Authority and registered in England and Wales number OC 303359); Mayer Brown, a SELAS established in France; Mayer Brown JSM, a Hong Kong partnership and its associated entities in Asia; and Tauil & Chequer Advogados, a Brazilian law partnership with which Mayer Brown is associated. "Mayer Brown" and the Mayer Brown logo are the trademarks of the Mayer Brown Practices in their respective jurisdictions.

© 2013. The Mayer Brown Practices. All rights reserved.