Co tes

1. Introduction

The current legal requirements fo imilar technologies stem from the Privacy and Electronic Communic gulations 2003 and the UK GDPR.

Privacy online is of great importan the UK GDPR. Privacy in general is also increasingly an important is no are increasingly concerned that their data is being commodified l mission or knowledge. This is not only important from a legal standp siness one. By complying with the law, not only is your business saf s also likely to engender a greater degree of trust from its customers.

Central to the laws which govern nologies is the issue of consent. The law does not say that you ca rs, beacons and so on. Rather, it requires that, in many cases, you ers' permission. Current common practice is to simply inform users ookies with their continued use of the site being taken as consent. this is no longer sufficient. Users must be properly informed, must ice, and must give some kind of explicit indication of their consent.

1.1 Cookies and Similar Tec

While most guidance focuses on c s governing such technologies are commonly collectively referred to a rtant to note that the law does not only govern cookies. A number of ed in a similar way, such as local shared objects (also known as "fla ns, clear gifs, page tags, and web bugs. References to "cookies" in t ould be taken as also referring to these similar technologies. As tec y, the law could not keep up if it limited itself in scope to particular

1.2 The Law's Purpose

Simply put, the law aims to protec users. The UK GDPR extends this protection due to the far greater of "personal data". It may not be immediately obvious that a cookie alifies as personal data; however, where a cookie can identify an in even if identification can only be made by combining the data in q t will fall within the definition. The rule of thumb we would suggest, le of caution and treat all cookies and similar technologies in the sa

Those operating websites within site itself or its operator/owner is based outside of the UK) are requ wing:

1) Inform users about the pur their website places and stores on users' computers or device
2) Obtain users' consent befo ose cookies.

1.3 Why Have This Law?

It is an inescapable truth that the use of cookies and similar technologies get stricter, they bec ment to business. Indeed, tougher consent requirements stand to ne er of things including behavioural advertising and the ability to track e of your website.

A reasonable question to ask is v built into internet browsers cannot be relied upon for consent. Users ck cookies using browser settings or, for the more technically awa The problem with such settings, however, is that many users are u more, not all browsers are created equal and the sophistication of c gs varies considerably, often not providing sufficient levels of contr stop you from tracking their use of your website, for example, but no ils and shopping basket contents from being saved. Even a browse k from blocking third-party cookies or blocking all cookies would not l in this scenario of your tracking was done using first-party cookies

2. What Do I Need to Do?

The answer to this question depe cookies you use on your website and for what purpose or purposes of identifying cookies (and similar technologies, remember), their f heir importance, is to conduct a thorough cookie audit. This may a ortunity to re-evaluate your use of cookies and their real value to you

2.1 Know Your Cookies

Before we move on to lay out the , it important that you understand the different types of cookie.

2.1.1 Strictly Necessary Cookies

A cookie falls into this category peration of your website. Strictly necessary cookies may, for exam ctions such as logging in, storing items in a shopping basket, or ena ns.

2.1.2 Analytics Cookies

Understanding how users use yo emely valuable. Analytics cookies provide insights into many factor e navigating around the site and what features they are using. An n be set by third parties, but not always. To add to complications, ics cookies are set by you, if the data collected by them is process will be treated differently from a data protection perspective.

2.1.3 Functionality Cookies

Many websites offer some level c nctionality cookies play a key role here. For auditing purposes, how to confuse these with the strictly necessary variety. If the site ca thout the cookie, it isn't strictly necessary.

2.1.4 Targeting Cookies

It is important to know when and s your website, and which parts of it they have used (including wh sited and which links they have followed). As with analytics cooki ow you to better understand your users, enabling you to make you tantly, the advertising on it more relevant to those users' interests. ften be set by third parties.

2.1.5 First-Party Cookies

As the name suggests, these co by your website (as opposed to those placed by third-party servic). Most, if not all, of your strictly necessary and functionality cookie cookies.

2.1.6 Third-Party Cookies

These cookies are placed by t ervices such as advertising and analytics. Analytics and targeting pes of third-party cookie as such work is often not undertaken in-ho

2.1.7 Persistent Cookies

Any of the cookies listed above kie. Persistent cookies are those which remain active on a user's c predetermined period of time and are activated when that user visits

2.1.8 Session Cookies

Any of the cookies listed above r e. Session cookies are temporary and only remain on a user's co he point at which they visit your website until the web browser is c y are removed.

2.2 The Cookie Audit

A cookie audit will help you to ide used by your website, what those cookies are doing, what type o w long they remain on a user's computer or device, what persona whether or not they are being used in compliance with the law.

2.2.1 What Cookies Am I Using?

Begin by listing all of the cookie nologies) currently used on your website. If you don't know what co r web developer should be able to provide a list. Alternatively, a num herwise – are available online.

2.2.2 What Do My Cookies Do?

For each cookie in your list, mak ed for. It is important that you are clear about each cookie's function next step.

2.2.3 What Types of Cookies Am

Going through the list again, ident are at work on your website. Refer back to the list above for guida ach cookie is first or third-party; whether it is a persistent or a s ether it is strictly necessary, for analytics, functionality, or for targe

2.2.4 How Long Do My Persiste

If you use persistent cookies, it is f their duration. Persistent cookies are considered to be more privacy cookies, so for each one, consider whether its lifespan is truly neces oose and shorten that lifespan if it seems excessive.

2.2.5 What Data Do My Cookies

Not all cookies collect and store p o and in light of the UK GDPR it is more likely now that data used by as "personal data". In addition to the obvious – name, email addre and other seemingly anonymous identifiers qualify under the UK G ven an anonymised identifier that does not identify an individual on rsonal data if it can be combined with other data and used to identi ies do use personal data, you will be processing personal data a sure that you comply with the requirements of the UK GDPR.

2.2.6 Are My Cookies Legal?

Keeping your own first-party cook rtant, and in addition to obtaining the correct consent to use them (nal data is involved, it is crucial to comply fully with the UK GDPR. M d-party cookies, while control over them rests (at least to a point) wit them, they are still being used on your website. It is therefore impo third party or parties involved are also complying with the law.

2.3 Information and Consent

2.3.1 Informing Users

One of the most important princ focuses on transparency. Where personal data is concerned (an include cookies), it is vital that individuals know what data you h at you are doing with it. It is only after being provided with such info ive you their informed consent.

It is a good idea to start with a cle f what cookies are and what they actually do. Many users will have they may not know a great deal about them. Consider, for examp tion of the different cookie types similar to that included above in th

Even if you are only using *strict* is important that users are fully informed about what you are doin onsent to place strictly necessary cookies, but that does not mean g users about them. If you have reason to hide them, it is worth re are in fact *strictly necessary* after all. The general rule is, the more p n, the better. Another general rule is to keep things simple; the av s not possess a high degree of technical knowledge so using rward language in your cookie information is always advisable. S go a little overboard with friendly, fuzzy, humorous language, but thi f downplaying the perception that cookies are little more than spyw e useful, innocuous little files that they (usually) really are.

Your cookie information should er rstand the functions of the various cookies placed by your website, w on users, and in particular, what personal data is involved. In situa used to provide useful information to you, such as analytics cookies, plaining how they benefit the user. Your explanation should be pos ve. It is thus preferable to say something like:

> *"By seeing how you use cs cookies, we are better able to understand our cu improve our services."*

as opposed to:

> *"If you do not accept our not be able to improve our services as we will be vement and activity around our website."*

Put simply, tell your users why a s good for them, rather than why their refusal to accept them is bad

Another useful element to include table listing the cookies you use, what each one does, and what Again, try to use user-friendly terminology as much as possible.

2.3.2 Where Should I Put My Inf

The key word here is "prominence n of cookies in your privacy policy is not the best way to attract a id, the increased importance of transparency and consent under ns that your privacy policy should be similarly prominent.

It is a good idea to bring cookies rs' attention, along with a request for consent to use cookies (where s something we'll go into in more detail below. Because your inform anisms (also see below for more information) should be presented that it is available at all times. A prominent link on every page of yo the preferable route.

While it is a matter of taste to a of cookie information from your privacy policy is also important. ased importance of consent and controls plays a part here. It is a ut your privacy policy and cookie information (or at least the links ctly to the cookie section of your privacy policy, for example). Not prominence, but it also makes it easier for non-technical users to fi for.

2.3.3 Consent

Consent is one of the key features n area in which stricter standards have been applied. Implied cons time, been a popular method of obtaining users' permission to use thod prior to the UK GDPR was to provide users with information ab em that their continued use of the website will be taken as consen ookies. Controls have also been decidedly inconsistent.

This does not necessarily mean t n control over every single cookie that you wish to use. Strictly nece cceptable. The UK GDPR itself in reality says very little about cook gies. The Privacy and Electronic Communications (EC Directive) R e focused on such matters.

Can I Rely on Implied Consent?

Implied consent is no longer a se DPR world. Users must now take some affirmative action in order t over, this must take place before any cookies are placed.

Can I Rely on Browser Settings?

This is a difficult question at prese as long been that relying solely on users' browser settings is not a s eady been noted, many users do not possess sufficient technical kn This, therefore, makes relying on browser settings for genuine cons od.

There is nothing, of course, to st dditional advice to your users on adjusting their browser's privacy s ce on those settings alone is not recommended.

This is a position that may ch er the EU's proposed ePrivacy Regulation which may impose ne ers of web browsers to the extent that, eventually, browser setting Post-Brexit regulatory alignment between the UK and EU could al opts legislation very similar to the

ePrivacy Regulation when it come portant, however, to note that this is not currently the law and that b currently sufficient. Do not rely on them!

What About Affirmative Consen

This, if it is not already clear by way. It leaves no room for doubt, either on your part, on your users' on Commissioner's part, meaning that it is safest for everyone.

It is important that users are giver lready been noted, it is no longer acceptable to simply tell users tha our website, they are agreeing to accept your cookies. An importa UK GDPR is known as "granular consent". In practice, this means g ontrol over what their data is used for. You are not expected to enab website from letting them log in, store items in an online shoppin re expected to allow them to be selective. If, for example, your we rsonalisation features that are not essential to its functionality, but user experience, it is not in your interests, or your users' interes ongside, say, analytics cookies. Consider, therefore, breaking you gories and providing separate opt-in and opt-out controls for each c ant to keep in mind that it should remain possible for users to use ay, even if they do not consent to your use of cookies.

It must also be easy for users to c ater on. A popup that appears the first time a user visits your site, ne unlikely to deliver here. A first-visit popup is still a good idea for cat owever the settings must remain easy to find on subsequent visits.

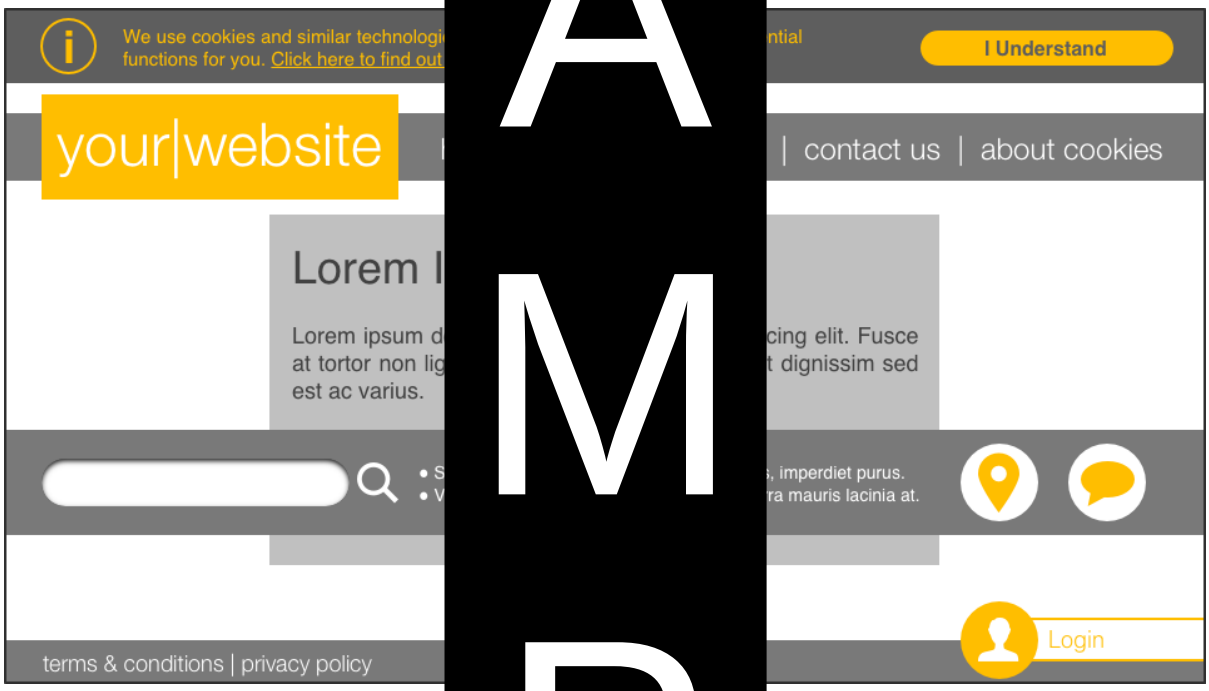
A further important point is keepin rivacy settings. It is good practice to apply this not only to cookies, ata such as personal information stored, for example, in a user's ac website, and with respect to direct marketing preferences. Consider, il or other message to each user (where possible) reminding them t cluding cookies.

It is undeniable that stricter conse ore onerous; not only for you as a business, but also for your users. rmation and asking for controls to be adjusted can often be annoyin etheless important to comply with your obligations under the law a ers' rights, even if they might be unaware of them. The key, theref le experience as unobtrusive and efficient as possible, while also ma inence to avoid it being missed.

2.4 How Should I Do It?

Depending upon the types of cook poses you use them for, you have various options that will assist i w. Some methods will be more suitable than others, and it is alw ber that if you use anything more than strictly necessary cookies, yo s a genuine choice and the ability to opt-in or opt-out not only before y cookies on the user's computer or device, but also at any time afte

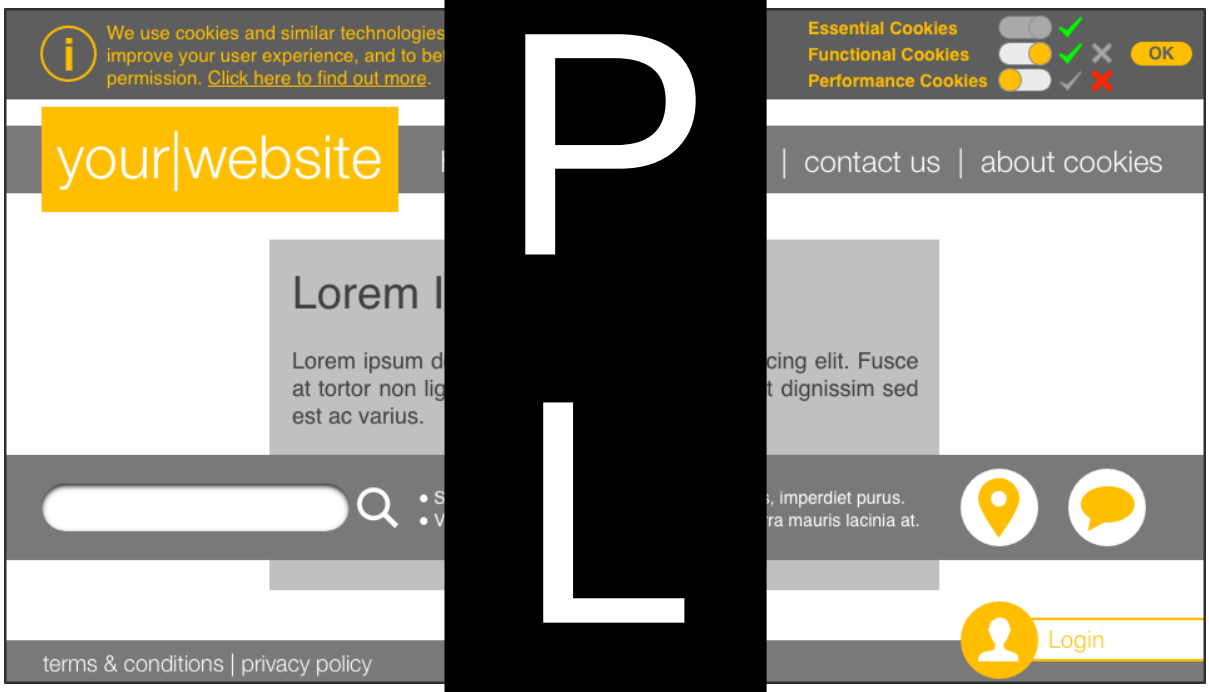
Option 1: Information Banner



This has been one of the most p iding cookie information to users thus far. A simple banner at the sible) web page provides a brief outline of your use of cookies ar long with a link to more detailed information. Note also the "about c ation.

This option has the benefit of sim s not provide any form of control, only information. It is therefore tes which use strictly necessary cookies alone — those without wh t function correctly for users.

This version of the banner adds s ntrols. This may be suitable where only a few cookies are used, pa the same category. Care should nevertheless be taken with simple cing users to disable functions that are still useful to them in order t y do not like; and forcing you to forego useful functions such as ote the presence of the “about cookies” link, helping to provide cookies as users continue to use your website.



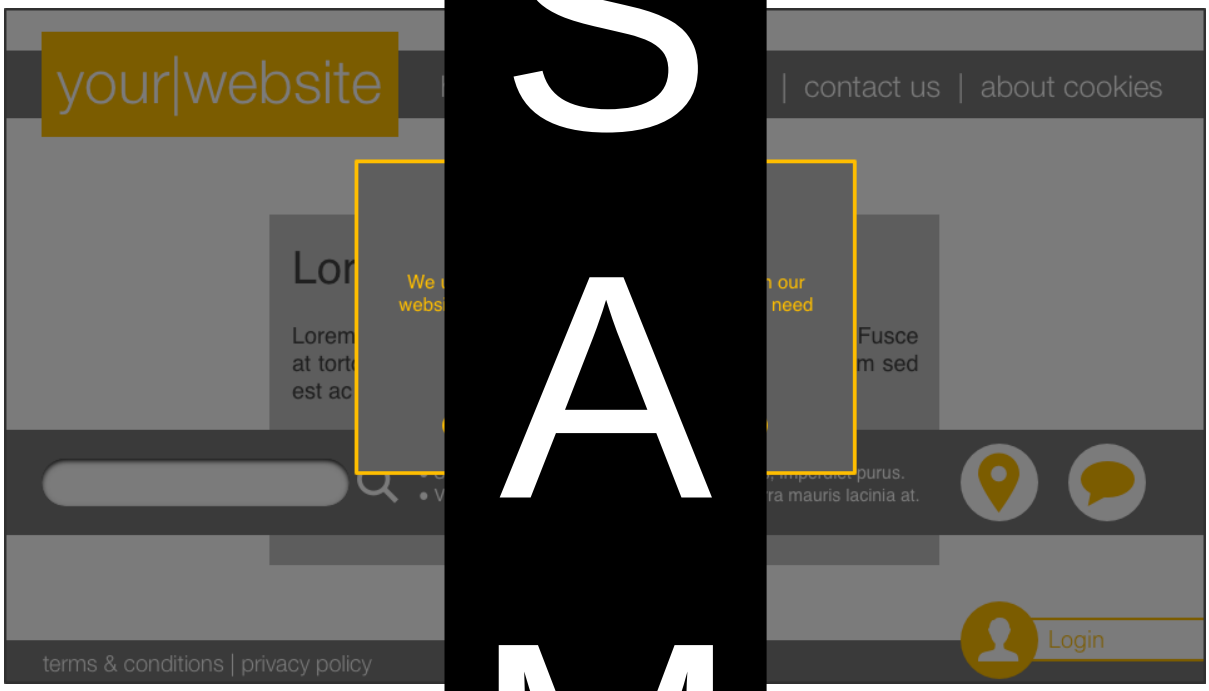
The approach taken here in this anner incorporates the so-called *granular approach* referred to ab sential information about cookies, with a link to more details, alo ach category of cookie. Strictly necessary cookies are noted, but ional cookies can be turned on or off; and performance cookies (a tics, in most cases) can also be

turned on or off. Of the three … your website only uses strictly necessary cookies, this should be … egal compliance.

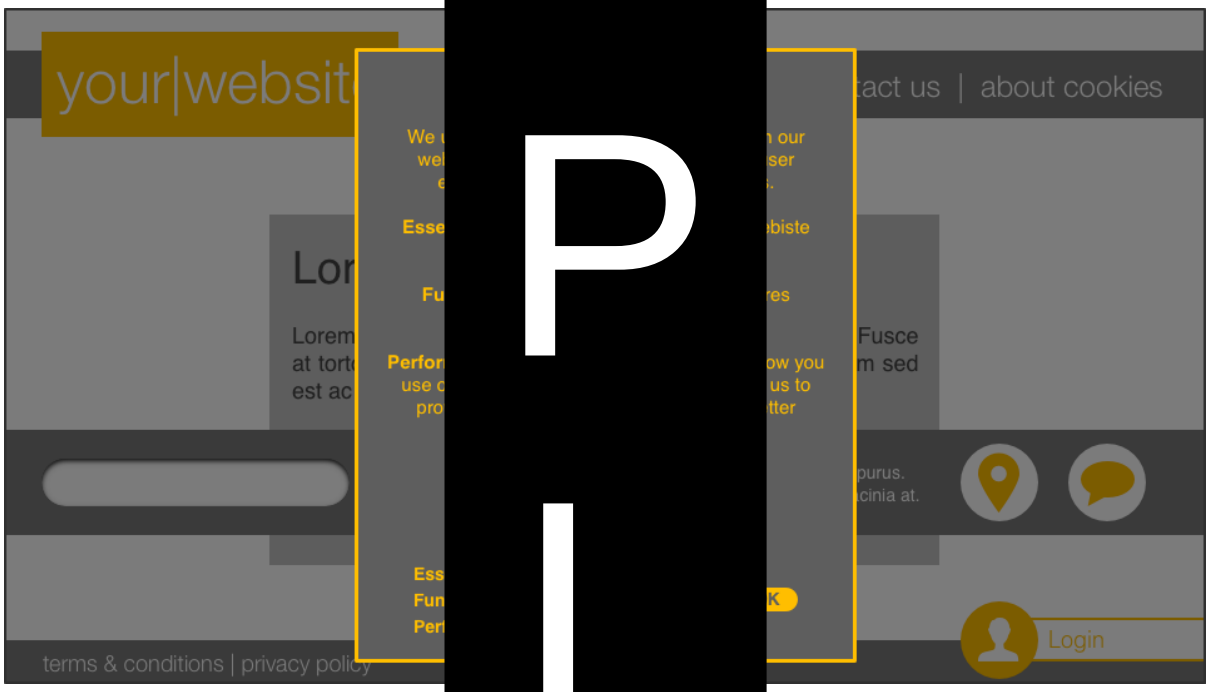
Option 2: Information Popup

In this scenario, a popup takes … rovides the same details as the information banner. Popups can b… anners when it comes to grabbing users' attention as they require at … ction from the user in order to get past them and return to the main… , even if this is only clicking on a button or on an area of the scre… 's border. In extreme cases, the website behind the popup could … until the user acknowledges the popup.

As with the information banner, h… hat this option is only suitable for strictly necessary cookies where y… ovide controls.



Once again, the popup approac of catching users' attention. In addition, as with the information b rovides a simple opt-in or opt-out choice. However, also as with the ng such basic binary controls may often be undesirable.



As with the information banner v ls, this choice has the benefit of granularity. Users are given more control over how cookies and, by extension, their data, are used. A a banner, this option also has the advantage of more space in which Of the popup options, unless your website only uses strictly necess be the preferred option for legal compliance.

Option 3: Settings or Feature-le

This approach may be attractive use cookies from the outset, but instead only uses them when a us features — personalisation, in this case. Information can be provide at the time that a user wishes to use the relevant features. Despite es may not work without cookies, unless they can be reasonably ca essary, users must remain free to refuse them, even though that ma ertain features.

Which Option for Me?

There is not necessarily a right is question, however it remains important to emphasise that un some basic, strictly necessary cookies that underpin the vital fun is essential to get users' express consent to cookies before placi ve, the UK GDPR expands the definition of "personal data" consi that under the old Data Protection Act 1998 regime. Instead of atte plex decision-making exercise to determine whether or not a parti es not fall under the UK GDPR's remit, it is, we would argue, prefe alike and get users' prior express permission to use them. Even if s letter of the law may not appear necessary, compliance with the sp sh for improved transparency and user-led consent can surely only s od stead.

3. A Word On Advertising and A

Many analytics and advertising se ird parties and many use cookies and similar technologies in orde cases, advertising is often now provided with its own privacy con AdChoices, for example, is a self-regulatory programme with hundre ing major advertisers. Ads served up by AdChoices include controls related cookies.

The online advertising and trackin state of flux and it is expected by some that the UK GDPR, and th sis on consent and transparency, could herald a significant shift in l work, not least because asking for someone's permission to "track" th tising is unlikely to go down well.

Wherever possible, the importanc be remembered. Placing cookies when a user first arrives on your s n after the fact is not true consent at all. At the very least, a detailed n should be provided. If you track users' activity around your site ses using, for example, Google Analytics, explain the benefits to f your site serves up advertising, explain the benefits of allowing be too — namely that users see ads that are more relevant to their inte annoying and intrusive.

4. Conclusion

The collective bundle of requirem Law" represents something of a thorn in the side for website ope so called "EU Cookie Law" first came into force in 2011, many e unhappy, arguing that nobody particularly complained about c t, however, is that the lack of complaint was more down to a la nderstanding among users than it was down to users being happ that many still do not know or understand a great deal about th clicking the close button or the "I agree" button and continuing to us n. Meanwhile, at the other end of the scale, with the rise in the ava f pro-privacy browser extensions and steps by companies like App ng technologies in their browsers by default, many users are quite c or your cookies into their system or their personal data to any deg olutely necessary for them to use your website. Some try to fight a ser-centric controls, but we would argue that it is perhaps prefera d address the reasons for their existence rather than trying to di rse of action which is unlikely to meet with success for long any quently update them to address workarounds).

The current state of play, it must deed, the increased emphasis on consent alone is set to make thing site operators and for users. More interruptions will be necessary to d users will need to read and do more before getting on with the b ebsite. Things are set to change again in the future, but for now, t should be taken. These rules do, despite such annoyances, have seeking to increase and protect individuals' rights to privacy and u ed, there is more to be gained by complying than by resisting.