

Divisional Cookie Notice and Template

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Revision History

Rev No	Rev Date	Significant Changes
01	08-12-2020	Initial Document

1. Why are Cookie Notices Important?

Your users should be able to accept or decline the use of cookies on your website through a cookie notice or banner. You should also provide your users with a link to your cookie policy in your notice. The EU Privacy and Electronic Communications Regulation (PECR) has long required you to inform visitors to your website if you use cookies, and to gain their consent before you allow your website to put cookies on their devices. For many years, websites regarded 'implied consent' as sufficient – a user could be deemed to have consented to accepting cookies if they could see a notice letting them know that cookies were used on the website, and they continued to browse the website anyway. On 4 May 2020 however, the EDPB adopted new guidelines on consent and they have now ruled that a user merely scrolling on the website does not amount to informed consent.

With the advent of the General Data Protection Regulation (GDPR), the requirement for consent has become narrower. Under the GDPR, where you require a data subject's consent, this consent must be informed consent which is given by an affirmative action. In the context of cookies:

- **informed consent** means that you must describe to visitors what cookies are, that your website uses them, and what you are using them for. Your cookie notice and policy must be easy to find, read and understand.
- **an affirmative action** means that the data subject must give a positive action indicating that they accept the cookies. Your cookie notice cannot have boxes that are pre-checked by default, as this is not a positive action. **Only** essential or necessary cookies do not need consent.

While this seems clear in theory, it does raise some questions as to how much information you should provide to your visitors. Do you let your users:

- **accept all cookies together** – by giving the user a simple option to accept or deny cookies from your website;
- **accept each cookie type** – by describing the number and type of cookies appearing on your website, and giving them the option to accept or deny each type as a group; or
- **accept each cookie individually** – by describing the cookie, it's function, and giving the user the option to click to accept each one.

In South Africa the Protection of Personal Information Act (POPIA), defines personal information to include an online identifier, which we believe will include cookies in the future. Section 18 of POPIA also requires the responsible party to notify a data subject when personal information is collected. However, a ruling from the information regulator is still needed in this regard. We believe that consent will be needed from the user for any direct marketing cookies that you may use on your website.

Unfortunately, the law has not yet clarified this issue, and until it does, websites will have to decide for themselves what the most reasonable path to choose will be. This decision will largely depend on the type of personal data that your cookies process.

The golden rule is: the more sensitive the data, the more detailed your Cookie Notice will be.

In the recent Planet 49 judgement, the EU court ruled that a pre-ticked consent box does not qualify as valid consent. A user must actively consent to the cookies, such as checking the tick box or clicking "I accept". Only cookies which are strictly necessary (essential) for the operation

of your website can be pre-checked. The more privacy intrusive your cookies are, the higher degree of informed consent is needed - such as with direct marketing cookies.

This Cookie Notice Guide and Template offers you three main options for your Cookie Notice, depending on the kind of personal data that you collect through your cookies.

KAP has decided to accept each cookie by type.

2. Your Cookie Notice

Place the text from one of the following Cookie Notice versions as a pop-up on your organisation's website. Remember to insert a link to your Cookie Policy in this Cookie Notice. You should also prevent your website from serving cookies on the user's device until they have actually given consent in one of the ways described in the Cookie Notice. There is still a debate around how long does consent last and the GDPR doesn't specify a time period. We recommend the notice appears every few months at what you would deem user-friendly intervals which should not detract from the user experience. If your purpose for using the cookies changes or you introduce new types of cookies, then you would need to get the users consent again. Another recommended route would be to add to the bottom of your page "Cookie Preferences" where users can easily update their cookie preferences after they have accepted/declined their use initially.

2.1 Version 2 – Accept by type.

This version is useful where your cookies collect standard personal data. You should use this where you want the user to specifically agree to the different types of cookies that you use. Any essential cookies will be pre-checked; all other cookies should be unchecked and inactive until a user checks them.

This is becoming more common on websites, particularly in the EU. This will assist in proving informed consent as defined under the GDPR, and under POPIA:

Welcome to Insert Legal Entity Name. This website uses cookies, which help to run the website in various ways, including providing essential services, advertising and analytics. By accepting or rejecting this notice, or continuing to use this website, you consent to us using essential cookies. You can find out more information about how we manage cookies in our [Cookie Policy](#).

Cookie type	No. of cookies of this type	Accept
Essential	1 cookie	<input checked="" type="checkbox"/>
Analytics	3 cookies	<input type="checkbox"/>
Advertising	6 cookies	<input type="checkbox"/>