

## Panel

# To track and to get tracked: new innovative methods and advancements

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[www.datenschutzzentrum.de](http://www.datenschutzzentrum.de)

## ***Definition: What is tracking?***

- Tracking: the act or process of following something or someone
- Internet tracking:
  - collecting, storing and possibly sharing information about visitors' activities on the Internet
  - from the analysis of the visitors' behavior it may be derived:
    - Location
    - Preferences
    - Information such as voucher usage, shopping cart drop outs
    - Personal interests
  - often the basis for (targeted) advertisements
- Tracing ≠ tracking:  
e.g. Corona contact tracing is not "following users" (no location)

## Other kinds of tracking



Cross-device tracking  
e.g. via ultrasound

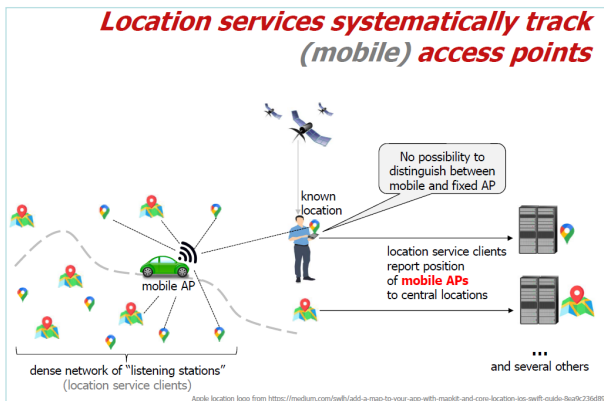


 Source: Anthony Cheung via Pixabay



 Source: Alexandra Koch via Pixabay

MAC addresses of mobile phones  
for controlling the visitor flow



WiFi Access Point tracking

To track and to get tracked

Not always used to  
identify persons

## Does European Data Protection Law Apply? Article 3 (2) GDPR + ePrivacy Law

### Article 3

#### Territorial scope

1. This Regulation applies to the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union, regardless of whether the processing takes place in the Union or not.
2. This Regulation applies to the processing of personal data of data subjects who are in the Union by a controller or processor not established in the Union, where the processing activities are related to:
  - (a) the offering of goods or services, irrespective of whether a payment of the data subject is required, to such data subjects in the Union; or
  - (b) the **monitoring of their behaviour** as far as their behaviour takes place within the Union.

Consent for cookies that are not strictly necessary

# Cookies – a basic technology. And the law?



Press and Information

Court of Justice of the European Union

**PRESS RELEASE No 125/19**

Luxembourg, 1 October 2019

Judgment in Case C-673/17

Bundesverband der Verbraucherzentralen und Verbraucherverbände – Verbraucherzentrale Bundesverband eV v Planet49 GmbH

## Storing cookies requires internet users' active consent

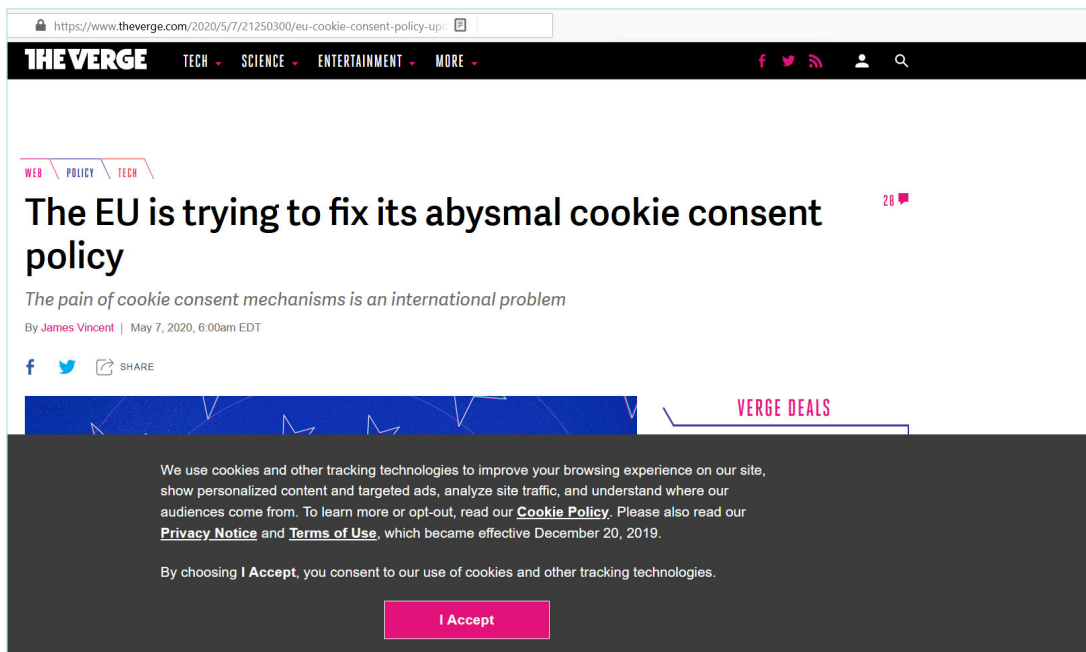
*A pre-ticked checkbox is therefore insufficient*

The German Federation of Consumer Organisations has challenged before the German courts the use by the German company, Planet49, of a pre-ticked checkbox in connection with online promotional games, by which internet users wishing to participate consent to the storage of cookies.<sup>1</sup> The cookies in question aim to collect information for the purposes of advertising Planet49's partners' products.

The Bundesgerichtshof (Federal Court of Justice, Germany) asked the Court of Justice to interpret the EU law on the protection of electronic communications privacy.<sup>2</sup>

In today's judgment, the Court decides that the consent which a website user must give to the storage of and access to cookies on his or her equipment is not validly constituted by way of a pre-checked checkbox which that user must deselect to refuse his or her consent.

# Looking into the real world: Pain of cookie consent 1/3



## Looking into the real world: Pain of cookie consent 2/3

1. Analytics and Performance Cookies
2. Essential Cookies
3. Functionality Cookies
4. Social Media Cookies
5. Targeted and Advertising Cookies

https://www.voxmedia.com/legal/cookie-...

Essential Cookies	These cookies are essential to provide you with services available through our Services and to enable you to use its features. For example, they allow you to log in to secure areas of our Services and help the content of the pages you request load quickly. Without these cookies, the services that you have asked for cannot be provided, and we only use these cookies to provide you with those services.
Functionality Cookies	These cookies allow our Services to remember choices you make when you use our Services, such as remembering your language preferences, remembering your login details, remembering which polls you have voted in and in some cases, to show you poll results, and remembering the changes you make to other parts of our Services which you can customize. The purpose of these cookies is to provide you with a more personal experience and to avoid you having to re-enter your preferences every time you visit our Services.
Social Media Cookies	These cookies are used when you share information using a social media sharing button or "like" button on our Services or you link your account or engage with our content on or through a social networking website such as Facebook, Twitter or Google+. The social network will record that you have done this and collect information from you which may be your personal information.
Targeted and advertising cookies	These cookies track your browsing habits to enable us to show advertising which is more likely to be of interest to you. These cookies use information about your browsing history to group you with other users who have similar interests. Based on that information, and with our permission, third-party advertisers can place cookies to enable them to show ads which we think will be relevant to your

We use cookies and other tracking technologies to improve your browsing experience on our site, show personalized content and targeted ads, analyze site traffic, and understand where our audiences come from. To learn more or opt-out, read our **Cookie Policy**. Please also read our **Privacy Notice** and **Terms of Use**, which became effective December 20, 2019.

By choosing **I Accept**, you consent to our use of cookies and other tracking technologies.

**I Accept**

Which cookies are strictly necessary?

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## Looking into the real world: Pain of cookie consent 3/3

### Datenschutz und Nutzungserlebnis auf [redacted]

Wir übermitteln Daten an Drittanbieter, die uns helfen, unser Webangebot zu verbessern und zu finanzieren. In diesem Zusammenhang werden auch Nutzungsprofile gebildet und angereichert, auch außerhalb des EWR. Hierfür und um bestimmte Dienste zu nachfolgend aufgeführten Zwecken verwenden zu dürfen, benötigen wir Ihre Einwilligung. Indem Sie "Alle akzeptieren" klicken, stimmen Sie diesen (jederzeit widerruflich) zu. Dies umfasst auch Ihre Einwilligung nach Art. 49 (1) (a) DSGVO. Unter "Einstellungen oder ablehnen" können Sie Ihre Einstellungen ändern oder die Datenverarbeitung ablehnen. Sie können Ihre Auswahl jederzeit unter "Privatsphäre" am Seitenende ändern.

Informationen auf einem Gerät speichern und/oder abrufen

Personalisierte Anzeigen und Inhalte, Anzeigen- und Inhaltsmessungen, Erkenntnisse über Zielgruppen und Produktentwicklungen

Fremdinhalte anzeigen (Soziale Netzwerke, Videos)

Einstellungen oder ablehnen

Alle akzeptieren

Widerspruchsrechte zu Datenverarbeitungen auf Grundlage von berechtigten Interessen können Sie ebenfalls unter „Einstellungen oder ablehnen“ ausüben.

[Datenschutzerklärung](#) | [Impressum](#)

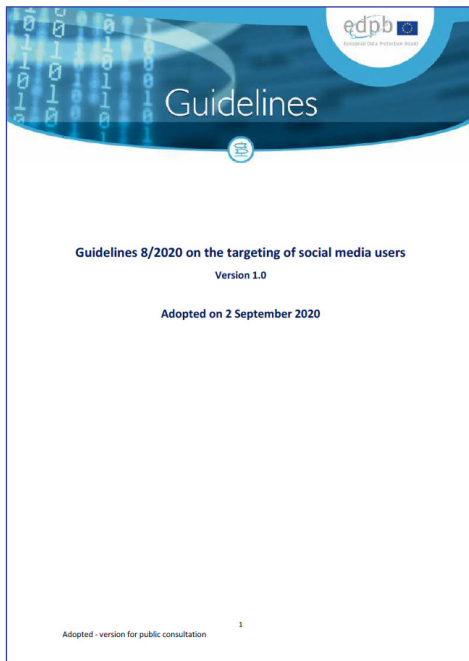
"Hey, user, we need your consent!  
'Being informed' is overstated."

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## Tracking often a basis for targeting



... on the basis of

- observed data
- inferred data



 Source: Gerd Altmann via Pixabay

[https://edpb.europa.eu/sites/edpb/files/consultation/edpb\\_guidelines\\_202008\\_onthetargetingofsocialmediausers\\_en.pdf](https://edpb.europa.eu/sites/edpb/files/consultation/edpb_guidelines_202008_onthetargetingofsocialmediausers_en.pdf)



To be tracked  
or not to be  
tracked ...

 Source: Szilárd Szabó via Pixabay