

W3C workshop on web tracking and user privacy
Deutsche Telekom AG, Group Privacy

Position paper

a) Background

Web tracking and data privacy are two closely related issues for Deutsche Telekom. Mechanisms enabling acquisition and use of context-based information for enhancing our diverse connected life and work offerings are becoming increasingly significant. We aim to bring transparency into this process of acquiring and utilizing user-specific information and open it up to influence by the user within the scope of the law.

Individual and user-specific profiles that enable personal addressing of users, e.g. by e-mail, can only be created if the user in question opts in to the process.

In addition, current German data privacy law permits the creation of usage profiles under pseudonyms for online content offerings. This situation must be made clear to users and they must be given the option of opting out of profile creation.

On the technology side, such creation of usage profiles under pseudonyms is carried out using cookies. The German data privacy authorities have published a guide to teleservices and media services which recommends the use of opt-out cookies to enable users to object to profile creation.

At European Union level, the July 2002 cookie directive was updated in November 2009. The updated version must be implemented in national law by the end of May 2011 and brings with it changes to several aspects of the previous cookie directive.

The revised version of Article 5(3) 2009/136/EC states that website operators can only use cookies in future if the user gives his or her consent, having been provided with clear and comprehensive information. The directive does not specify how such consent can be obtained. It was, however, mentioned in comments on the directive that this legal requirement could also be implemented using the relevant settings options of browsers.

b) Known problems

With respect to the data privacy law situation, Directive 2009/136/EC is yet to be implemented in national law. There is uncertainty as to which mechanisms or processes to use in order to implement the requirements.

Current legal provisions for data privacy in Germany are relatively new in comparison to other laws, but it is doubtful that they take sufficient account of technical and social developments.

Technical implementation of the opt-out function using relevant cookies, which is required for creating usage profiles with pseudonyms under German law, reaches its limits when users delete their cookies.

In addition, users are forced to indicate their desire to opt out for each portal; from a user point of view, a comprehensive opt-out can only be achieved if users make changes to the general settings that determine how their browser handles cookies, for example, through deletion of all cookies at the end of a session.

In addition, ad server operators carry out separate tracking of users. Cookies are also used for this process. In the vast majority of cases, the function of these cookies is not made clear to portal managers or users.

C) Expectations and requirements

From a data privacy perspective, preference is to be given to solutions that meet the following requirements:

Legal conformity

The current requirements of German data privacy law, opt-out for tracking / profiling under pseudonyms and the requirements of EU Directive 2009/136/EC must be comprehensively supported by a technical solution.

Transparency

Users must be given clear indication of the type of profile created and how it is used. Settings and opt-out options must be presented as clearly as the specific potential benefit to users of creating and using profiles.

Ease of use

There must be one point where users can influence and, if relevant, manage the tracking of their usage data and the creation of profiles.

Deleting data

Users must be given the option of deleting the profile data assigned to them.

HYPERLINK "http://www.sachsen-anhalt.de/fileadmin/Elementbibliothek/Bibliothek_Politik_und_Verwaltung/Bibliothek_LFD/PDF/binary/Service/orientierungshilfen/oh-tele-medien-dienste.pdf" http://www.sachsen-anhalt.de/fileadmin/Elementbibliothek/Bibliothek_Politik_und_Verwaltung/Bibliothek_LFD/PDF/binary/Service/orientierungshilfen/oh-tele-medien-dienste.pdf