

USE OF COOKIES IN ADVERTISING : PRE-CHECKED BOXES INSUFFICIENT TO PROVE CONSENT OF USERS

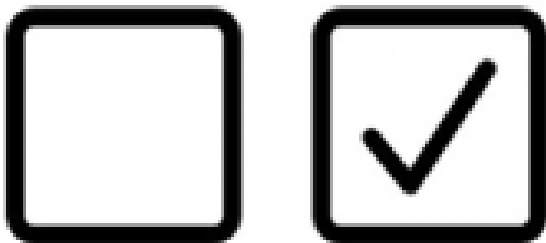
Categories : News

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In a recent decision dated 1st October 2019 of the Court of Justice of the European Union^[1] (CJEU), the Court addressed the issue of Cookie Consent and the Bundling of Consent.

A German company (Planet49) organised a promotional lottery on a website. The conditions to enter the lottery were to provide some personal data and to tick at least one of two checkboxes.

- The first checkbox - **without a pre-selected tick** – related to marketing emails and had to be ticked in order to participate in the lottery; and
- The second checkbox – **with a pre-selected tick** – was for obtaining consent to cookies, which users could opt out of at any time.



The Court considered 2 main questions in particular:

1. Does it constitute a valid consent^[2] if the storage of information, or access to information already stored in the user's terminal equipment, is permitted by way of a pre-checked checkbox which the user must deselect to refuse his or her consent? Does it make a difference whether the information stored or accessed constitutes personal data?

2. How is the provision by the service provider of "clear and comprehensive information" to the user to be defined^[3]? Does this include:

- the duration of the operation of the cookies; and
- whether third parties are given access to the cookies?

Experts :



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COUNSEL

Avocat à la Cour, Member of Luxembourg Bar, 2008