

Guidance from European Data Protection Board Requires Consent for Tracking

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by Dustin Berger

The European Data Protection Board (EDPB), a board comprised primarily of representatives of the data protection supervisory authorities of the European Union's member states, issued surprising new guidance in mid-November explaining how a key component of the European Union's ePrivacy Directive applies to variety of commonly used technologies used for tracking on the internet.

Article 5(3) of the ePrivacy Directive^[1] (EPD) has long been a cornerstone of internet and privacy law in the European Union (EU). Under the directive, EU member states were required to pass laws that limited "the storing of information, or the gaining of access to information already stored, in the terminal equipment of a subscriber or user" to situations where the subscriber or user has been provided "clear and comprehensive information" about the practice and, thus informed, provided consent. The sole exceptions to this requirement are as necessary to transmit the user's communication over a network or "as strictly necessary in order for the provider of [a service] explicitly requested by the subscriber or user to provide the service."

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