

Of cookies and paywalls

Measurements of cookie paywalls and legal implications on “pay-or-okay” business models
Largely based on our “Legitimate interest is the new consent” paper

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UNIVERSITY OF TECHNOLOGY

WASP | WALLENBERG AI,
AUTONOMOUS SYSTEMS
AND SOFTWARE PROGRAM

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Have you seen that before?

Willkommen bei DERSTANDARD

Mit Werbung weiterlesen

Nutzen Sie derStandard.at mit Ihrer Zustimmung zur Verwendung von Cookies für Webanalyse und personalisierte Werbemaßnahmen.

Details finden Sie in der Datenschutzerklärung.

EINVERSTANDEN

Die Zustimmung ist jederzeit widerrufbar.

Der STANDARD mit Werbung: Wir nutzen aus wirtschaftlichen Gründen die Möglichkeit, unsere Webseite Dritten als digitalen Werbeplatz zur Verfügung zu stellen. Wenn Dritte Ihre Daten via Cookies auf unserer Webseite zu Werbezwecken verarbeiten, liegt die Verantwortung für die datenschutzrechtliche Konformität bei den jeweiligen Dritten. Im Privacy Manager haben die auf unserer Website werbenden Dritten die Möglichkeit Sie über diese Verarbeitungstätigkeiten zu informieren, und somit eine informierte Zustimmung einzuholen. Die Verarbeitungen zu digitalen Werbezwecken erfolgen dabei zu den im **Privacy Manager** aufgezählten Zwecken. Über Verarbeitungen, die in der Verantwortung des STANDARD liegen, können Sie sich in unserer Datenschutzerklärung näher informieren.

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Das Abo für derStandard.at ganz ohne Werbung und Daten-Tracking auf allen Endgeräten. Jederzeit monatlich kündbar.

JETZT ABONNIEREN

Sie haben ein PUR-Abo? Hier anmelden.

Meta

You need to make a choice to continue using Facebook

Laws are changing in your region, so we're introducing a new choice about how we use your info for ads. You'll learn more about what each option means for you before you confirm your choice.

Your choice will apply to the [accounts in this Accounts Centre](#).

Subscribe to use without ads

Subscribe to use your Facebook and Instagram accounts without ads, starting at €12.99/month (inclusive of applicable taxes). Your info won't be used for ads.

Use for free with ads

Discover products and brands through personalised ads, while using your Facebook and Instagram accounts for free. Your info will be used for ads.

[Your current experience](#)

[Compare your choices](#) and how they affect your experience.

[Subscribe](#)

[Use for free](#)

A special kind of cookie banner

A new business model for Meta/Facebook?

Research questions

While the web is being researched, these 🍪 practices are still very obscure.

- How many? Where?
- How are they technically implemented?
- Are they compliant with EU law?

Two master theses on it:

- one for quantitative assessment (feat. Adam Thunberg)
- another one for tracking analysis (feat. Viktor Fredholm)

Plus joint work with Cristiana Santos for the legal analysis 🧑🏻💻.

Your Consent Is Worth 75 Euros A Year – Measurement and Lawfulness of Cookie Paywalls

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ABSTRACT

Most websites offer their content for free, though this gratuity often comes with a counterpart: personal data is collected to finance these websites by resorting, mostly, to tracking and thus targeted advertising. Cookie walls and paywalls, used to retrieve consent, recently generated interest from EU DPAs and seemed to have grown in popularity. However, they have been overlooked by scholars. We present in this paper 1) the results of an exploratory study conducted on 2800 Central European websites to measure the presence and practices of *cookie paywalls*, and 2) a framing of their lawfulness amidst the variety of legal decisions and guidelines.

who refuses to accept tracking is then obliged to provide a sum of money to access that website [6]. A paywall thus consists of “*various strategies that restrict content access until the user pay for them, possibly after allowing them to view some content for free*” [31].

Paywalls have been questioned from a legal point of view by several non-academic stakeholders [29][6] because consent to the processing of personal data must be given freely and unconditionally (Art. 7(4) GDPR), and consent is not “freely given” if users cannot refuse tracking without adverse consequences, e.g., by paying a subscription. European Data Protection Authorities (DPAs) [6, 8] recently consider paywalls legitimate, though there is some inconsistency in the positions taken on whether a paywall is legally

Main findings from this previous work

Hard paywall requires a one-time or a standing payment with money (*i.e.* subscription or enrolment) before any online content can be accessed (as defined by [31]). **Soft paywall** presents the beginning of the content to generate interest, but the full content is restricted to payment. **Metered paywall** provides users with a certain contingent of articles free of charge that is time bounded. **Registration wall** provides users with only one option of creating an account on the website (otherwise users will have denied access). **Cookie wall** denies users access if they do not consent to all trackers present on that website, regardless of payment. **Cookie paywall** provides users with two choices: either 1) consent to tracking, and 2) payment/subscription (by money) to use the website tracking-free.

Different types of walls

Also

- Divergent positions in the EU
- Mostly news websites
- Prices range from 36 to 75€ a year
- ALL websites were using the TCF
- No tracking prior to consent
- (Consent was the legal ground used at the time)

Legal landscape

Consent is the legal ground for tracking

It must be: prior, freely given, specific, informed, unambiguous, readable, accessible, and revocable (Art. 4(11) and 7 GDPR)

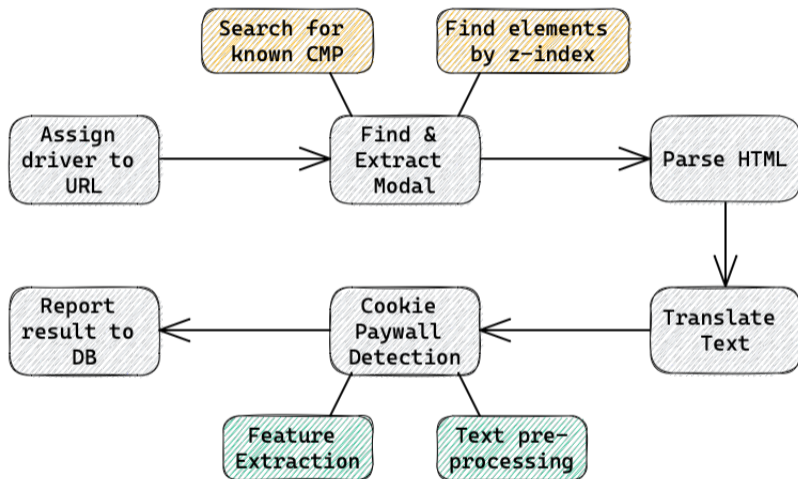
Legitimate interest is another ground for data collection

But not for advertising purposes, and *must not* be conflated with consent.
Need to specify which ground *before* collection happens (⊕).

The Transparency and Consent Framework

- The standard behind (a lot of) cookie banners
- Brought in front of the CJEU by the Belgian DPA in 2022
- Update v2.2 rolled at the end of November 2023 to better comply
- Update includes removal of advertising purposes under LI

Crawler



Distributed crawler using NLP over the 1 000 000 top websites.

TCF analysis

	Before interaction	After consenting	When logged in
Automated approach	✓	✓	✓
Semi-automated approach	✓	✓	✗
Manual approach	✓	✓	✓

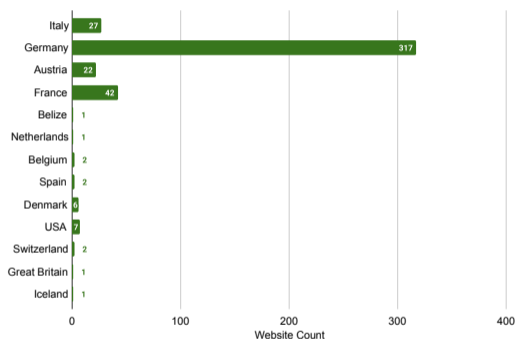
The **automated approach** was performed on 220 websites using Contentpass thanks to one subscription.

The **semi-automated approach** was performed on all other websites, but without assessing once logged in.

The **manual approach** was conducted on a small random subset of websites *not* using Contentpass.

Findings I - Geography

Distribution of geographical website basis



DPAs	Positioning on cookie paywalls
German DPA 22	Recent case in which "Pay or Okay" approach was ruled illegal for an online newspaper
Spanish DPA 1	Guidelines state that access cannot be conditioned to consent to cookies, but exception if alternative offered (not necessarily free) and users informed
French DPA 6	Case by case assessment. Websites need to show there is a real and fair alternative way to access other websites without tracking; reasonable price; fair remuneration
Austrian DPA 11	Dual position: Recent decision: paywalls are generally permissible, but users must have the possibility to say "yes" or "no" to any specific data processing.

Table 1: DPAs positioning regarding cookie paywalls.

Geographic distribution of cookie paywalls.
Total amounts to 431 ALL using the TCF.

Findings II - Consent and tracking

Guess which proportion of people click on consent?

Between 94 and 99.9% ^a

Consent only works if freely given (i.e., choice is balanced).

Whereas people can be tracked by up to 365 vendors including big names such as:

- Oracle Advertising (legal troubles for buying data from Facebook)
- Criteo SA (just got a 40M€ fine by the CNIL)
- Acxiom (who won the Big Brother Awards).

^ahttps://iabeurope.eu/wp-content/uploads/PUR-Modelle-bvdw_20231004-en.pdf

Findings III - The TCF and the law, a complicated relationship

The TCF conflates legitimate interest and consent

All websites communicate your data for both grounds if you “consent”.

Some cookie paywalls track subscribers under LI

- 14 websites collect data under LI by default
- Whereas people pay NOT to be tracked
- It includes vague purposes such “Develop and improve products”

Custom storage

- 12 websites store your decision in a custom string
- Can it be a way to circumvent the TCF update? 🤔

Recommendations

Ban custom storage


It might include ad-related purposes on unlawful grounds, plus it makes it hard to audit. Although we received feedback that it won't happen ...

Better technical distinction

Consent and legitimate interest are conflated at a technical level. It can lead to wrongful implementations.

Level the legal field

Call for a join effort to harmonize decisions about cookie paywalls in the EU, isolated DPA decisions might not be enough (see Germany).

Meta  might very well be taking this legal uncertainty as an opportunity. See also ^a

^ahttps://victor-morel.net/post/meta_paywalls/

Conclusion

The paper in a nutshell

- Cookie paywalls are not restricted to newspapers anymore
- They extensively use legitimate interest (in addition to consent)
- National legal decisions do not seem to halt their proliferation (cf Germany)

The story is not over yet

Impact

We contacted the EDPB

- Actually, many DPAs in addition to the EDPB
- Plus we recently provided an evidence-based feedback ^a

^ahttps://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14054-Report-on-the-General-Data-Protection-Regulation/F3454132_en

noyb filed a complaint against Meta

- Notably because: 1) Price is unacceptable (especially if combined with other services), and 2) No one pay anyway (consent may not be freely given) ^a

^a<https://noyb.eu/en/noyb-files-gdpr-complaint-against-meta-over-pay-or-okay>

ICO opened a call for participation

Call for views on “consent or pay” business models ^a

^a<https://ico.org.uk/cookies-call-for-views-202403>

Pursuing the effort

Two additional theses at Chalmers

- Assessing discrepancies across regions/browsers *etc*
- Evaluating the role of Subscription Management Platforms (SMPs) ^a

^aIn charge of the payment mechanism, such as Contentpass.

And one supervised by Cristiana Santos as well

On the lawfulness of cookie paywalls and a related business model

Upcoming user study

- Are visitors willing to pay for cookie paywalls?
- If yes, how much?
- How would the category of website (news, social media, etc) impact this choice?

But that's not all!

Have you heard of double paywalls?

Refuser et s'abonner pour 1€

Liberation

Vous voulez soutenir le travail de nos 200 journalistes professionnels et engagés ? Vous avez les possibilités suivantes :

- **Accepter les cookies pour parcourir gratuitement le site de Libération**

Votre consentement à l'utilisation des cookies publicitaires est nécessaire pour accéder aux contenus gratuits. Vous pourrez le retirer à tout moment. Cliquez ci-dessous sur le bouton « Accepter et continuer » pour consentir à ces utilisations sur ce site. Voir la liste de [nos partenaires](#).

- **Ou vous abonner et profiter de l'intégralité des contenus sans publicité**

Vous pourrez accéder à l'ensemble des contenus du site et de l'application grâce à votre abonnement payant mais sans cookies publicitaires (Seuls les cookies nécessaires à la sécurité et au fonctionnement du site ou de l'application seront exploités par Libération). Cliquez ci-dessus sur « Refuser et s'abonner pour 1€ » pour vous abonner à Libération.

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Vous pouvez à tout moment revenir sur vos choix en utilisant le lien « Paramétrages » disponible dans notre page de gestion des cookies.

Education
En Seine-Saint-Denis, les profs défilent devant les écoles

Collège A de Lavoisier Pantin

document
Alexei Navalny, l'entretien
S'ils me tuaient, ça ne
mars 2024 abonnés

Extême droite
Un meeting néofasciste prévu en plein

CheckNews
«Massacre de la farine»
témoignage de...

Example from liberation.fr

Even if you consent, you still cannot access all of the website



Montreuil. Elle évoque les instructions, qui recommandent de laisser couler l'eau quelques instants, et qu'ensuite on peut la boire. «*On s'habitue à beaucoup de choses*», songe-t-elle. Quand elle voit toutes ces images, elle pense que l'inhabituel ailleurs est monnaie courante par ici : la définition

Il vous reste 71% de l'article à lire.

Libération réserve cet article à ses abonnés.
Vous êtes abonné(e) ? [Connectez-vous](#)

Pour lire la suite, abonnez-vous

1 mois pour 1 €
Sans engagement

[S'abonner pour lire l'article](#)

ou

Offre exclusive : 1 an pour 36 €

[S'abonner avec Google](#)

En choisissant ce parcours d'abonnement promotionnel, vous acceptez le dépôt d'un cookie d'analyse par Google

Wait, I thought I just consented *not* to have to pay

We know very little about this new practice

From a legal perspective

- Two bodies of law: data protection and consumer protection (hard to evaluate)
- German data protection conference states in a recent evaluation that service through payment and consent **must** be equivalent

From a technical perspective

- We have 0 numbers: How many? Where?
- Are you free of tracking if you pay on the second layer? etc

From a UX perspective

- Would people be willing to pay for these double paywalls?
- Is it a new deceptive design?

The final world on the “final challenge of the GDPR”

Towards harmonization?

- The EDPB recently held a panel discussion on the “pay-or-okay” model
- Guidelines are expected soon
- Don't expect groundbreaking news

The EDPB decision on “pay-or-okay” business models may also impact double paywalls