

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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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.

derStandard.at PUR

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](#).

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.

A special kind of cookie banner

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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 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?

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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

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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)

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

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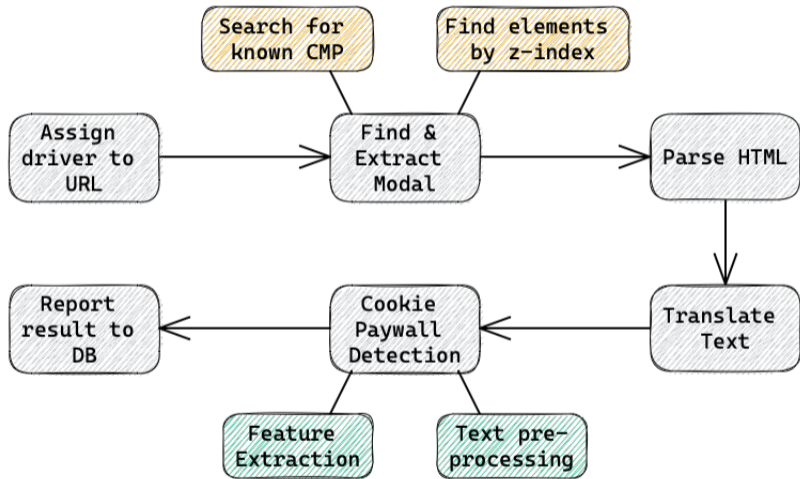
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The Transparency and Consent Framework

- › 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 | ✓ | ✓ | ✓ |

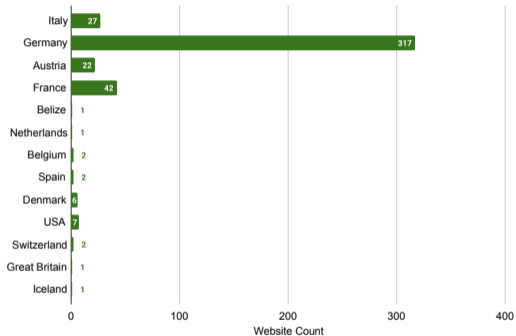
The **automated approach** was performed on 220 websites using Contentpass thanks to one subscription.

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

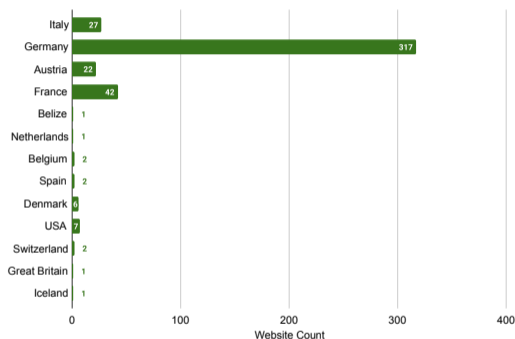
Distribution of geographical website basis



Geographic distribution of cookie paywalls.
Total amounts to 431 ALL using the TCF.
Spread across various types of websites.

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| 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.
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Findings II - Consent and tracking

Guess which proportion of people click on consent?

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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”.

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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”

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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.
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Better technical distinction

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

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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)

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The story is not over yet

Pursuing the effort - theses

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Evaluating the role of Subscription Management Platforms (SMPs)

- › SMPs are in charge of the payment mechanism, such as Contentpass
- › Contentpass gave us access to their infrastructure (to act as SMPs)
- › No blatant privacy violation, unlike previous studies
- › Our results point to a will of these actors to appear as legitimate as possible

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Assessing discrepancies across regions/browsers

- › Sweden/USA vantage points ; Firefox/Chrome/Edge/Safari
- › Linux/Windows/macOS/iOS/Android
- › We found discrepancies, but no clear patterns
- › The most impacting factor is the location (inside/outside GDPR)
- › New dataset for cookie paywalls (804), and the first dataset of *double paywalls* (93):
- › They present a cookie paywall, followed by a paywall if the visitor picks the *cookie* option

Pursuing the effort - user study

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Pilot focus group

› Qualitative method on attitudinal data for the first insights on a topic

RQ1 How do users perceive and understand the purpose and trade-offs of cookie paywalls, including the reasons for data collection and the option to pay for access?

RQ2 What factors influence users' willingness to pay for content or services as an alternative to consenting to cookie usage, and how do these factors shape their decision-making?

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First results

- › No matter the factor, users **do not** want to pay
 - › They feel deceived “it feels wrong that I have to pay to access a website”
 - › Or even manipulated “a subscription is like a dark pattern”
- Need to pivot: *Why do publishers offer cookie paywalls?*

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Questions?