

Privacy & Data Protection

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Headlines

- Facebook agrees to pay Cambridge Analytica fine to UK, p.18
- Third Privacy Shield Report released, p.19
- Mastercard institutes criteria for data privacy, p.20

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CJEU rules on cookie consent

The Court of Justice of the European Union (the 'CJEU') has delivered its judgment in Planet49, a case analysing the standard of transparency and consent for the use of cookies and similar technologies. Although it doesn't refer to them specifically, the judgment confirms the positions of national regulators on cookies.

Planet49 ran a promotional lottery on its website. As part of entering the lottery, users were presented with two tick-boxes. The first box, which users needed to tick in order to enter the competition, was an unchecked tick-box to receive

third party advertising. The second was a pre-ticked box allowing Planet49 to set cookies to track the user's behaviour online.

The German Federation of Consumer Organisations claimed that these two check-boxes did not satisfy German legal requirements, and sought an injunction requiring Planet49 to cease using them. The case reached the German Federal Court of Justice (the 'Bundesgerichtshof'), which referred it to the CJEU for preliminary ruling.

The Court found that pre-ticked check-boxes

authorising the use of cookies and similar technologies do not constitute valid consent under the e-Privacy Directive. Where consent is required for cookies under the e-Privacy Directive, the GDPR standard of consent applies.

The Court said that it did not matter whether the cookies constituted personal data — Article 5(3) of the e-Privacy Directive (i.e. the cookie consent rule) applies to any information installed or accessed from an individual's device.

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Floodgates on data breach class action suits may have just been opened in UK

In a groundbreaking decision that sets the scene for the first UK class action for misuse of data, the UK Court of Appeal has granted permission for a US-style, opt-out 'class action' to be brought on behalf of 4.4 million unidentified iPhone users against Google.

Claimant representative Richard Lloyd's claim seeks uniform damages

for unlawful use of browsing data without proof of damage for each individual. To get the action started, the former director of humans rights group *Which?* needed to make an application to serve out of the jurisdiction against Google, based in the US, for allegedly collecting and selling browser generated information without the users' consent for a period be-

tween 2011 and 2012. The application was dismissed in October 2018 by the High Court on the grounds that Mr Lloyd failed to establish that the users suffered 'damage' (under section 13 of the Data Protection Act 1998), and the members of the class do not have the 'same interest' in the action under the Civil Procedure Rules 19.6(1)

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