Nudging for bad? The case of cookie consent banners

Headlines

- Websites must obtain consent when storing cookies on their users' devices.
- They do so by making it difficult to reject cookies.
- This is not necessarily in the best interest of the user.
- We propose three solutions to improve the way consent is requested.

Exploiting the power of inertia

Many websites exploit inertia to get explicit consent from users when storing cookies on their devices. People tend to follow the path of least resistance when making decisions. Website providers know this and design cookie consent banners so people "accept all" cookies. People would not necessarily do so if the choice was presented in a more neutral way.

There is a fine line between promoting a choice and purposefully manipulating consumers. We outline some of the relevant behavioural issues, as well as three **possible ways to improve the way to request consent** and to set cookie preferences.

Nudging consent in privacy choices

Cookies are data stored by a website on the devices of their users. Some of them are necessary for the operation of the website, and cannot be rejected. Others allow websites to track the activity of their users over repeated visits and collect a variety of information about them. They allow websites to make more profit by targeting their users with ads or tailored offers.

Cookies store personal data, so they raise privacy issues. A large majority of EU citizens think that collection of personal data should require their explicit consent. This is indeed what EU regulations demand.

However, many websites currently request consent **in ways that makes it difficult for users to reject cookies**.

- They **present** the option to **"accept all" cookies saliently** (i.e., in a visually prominent way).

- They require **additional steps** for users who want to reject all or accept only some types of cookies.
- They present long lists of different types of cookies, with the most **privacy sensitive cookies** at the end.

Those strategies can lead people to accept all cookies even though this does not correspond to their real preferences. Indeed, many users would reject all cookies if this was as convenient as accepting all. Yet, they accept all because it is too difficult and time consuming to reject all. Their consent is therefore affected by websites in a non-transparent and potentially unfair way.

Policy implications

Policy-makers should **anticipate** that **firms exploit behavioural biases** to obtain consent. There is currently no prohibition on using small, apparently innocuous behavioural nudges to guide users' choices. We identify three options to improve the way consent is requested and cookie preferences are set.

1. **Set "reject all" as the default**. Websites currently must ask for cookie preferences. An alternative would be that users do not have to make a choice, and not making a choice would mean rejecting all cookies. That would be the default, and it would protect users against divulging information they may have preferred to keep private. Users would still be free to let websites collect more information. Many websites might also be happy not having to ask for cookie preferences.

2. **Set a standard for asking users' preferences**. Websites currently ask for preferences and categorize cookies in a variety of ways. Users must therefore set preferences on a site by site basis. Setting a standard would make it easy for users to set their preferences only once in their browser. The browser would then inform websites of those preferences. This saves time and effort but still allows for fine-grained settings to correspond to different users' preferences. Users would still have to make a decision once but that decision would then be applied automatically for all websites.

3. **A "neutral" request**. This would present the option to "reject all" cookies at the same level and in the same way

as the option to "accept all". This makes it equally easy to accept, as to reject cookies. It prevents websites from making one option more salient than the other by requiring them to present both options in an identical way. This is the way websites of the European Commission ask for cookie preferences.

More background

Behavioural evidence

We outline **three types of behavioural factors that are used by websites** to encourage users to consent with the use of all types of cookies:

1. **Inertia**;
2. **Salience**;
3. **Order** and **choice overload**.

The power of these strategies is backed by empirical evidence. First, people tend to go with the easy, convenient option, even if the cost to deviate is apparently small. This is due to **inertia**, and this means accepting all cookies all the time in our case. People may perceive this as the recommended option, or they may not realize other options are available, or they may simply be tired of repeating the process of setting their preferences for every websites they visit.

Second, options that stand out in relation to other options attract attention. Showing "accept all" in a **salient way** increases the likelihood this option will be chosen.

Third, the **ordering** of options in a list impacts choice. The primacy effect suggests that early options are considered more prominently, while the recency effect predicts the opposite, that options at the end are more likely to be taken into account. This combines with **choice overload**, whereby having many options discourages people from making a choice.

Our goal here is not to dive deeper into the fine-grained experimental literature underlying these effects. Rather, we make the argument that small and apparently irrelevant behavioural factors impact choices. **Policymakers should be aware of them and take them into account** when designing policies.

Further reading

Akerlof GA, Shiller RJ (2015) Phishing for Phools: The Economics of Manipulation and Deception. Princeton University Press, Princeton.

Sunstein CR (2016) The ethics of influence: Government in the age of behavioral science. Cambridge University Press, New York, NY.

van Bavel R, Rodríguez-Priego N (2016) Testing the Effect of Cookie Banners on Behaviour. JRC Technical Reports.

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An example

Figures below show how cookie consent is frequently acquired on websites. The example contains the previously discussed behaviourally informed concepts.

1. "Accept all" can be chosen with one click (Figure 1), while it costs an additional click to deviate, i.e., to make a more fine-grained selection of which cookies to accept, or to reject all.
2. The option to "accept all" is more salient and convenient to choose due to its top location. It has a darker background, and the alternative option is vaguely worded (Figure 1).
3. The ordering of the different types of cookies is such that users are less likely to notice the most intrusive cookies (Figure 2). Those cookies are at the end of the list, making it less likely that a user will be informed about them. The user might thus be more likely to accept all.
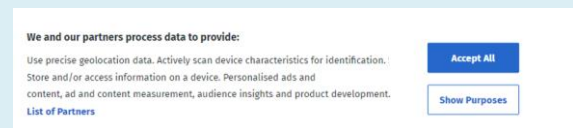

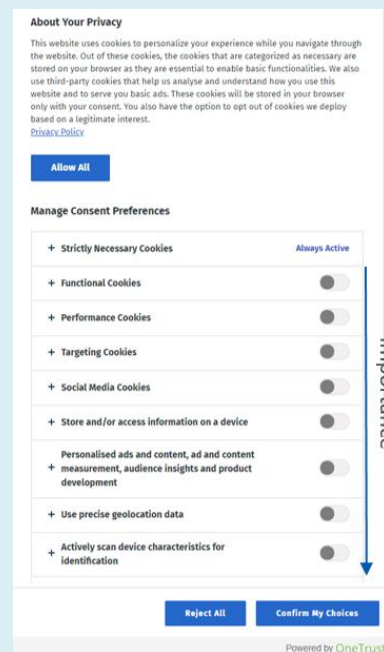*Figure 1: Example of how websites ask for cookie consent (adapted).*

Figure 2: Example of how websites show additional cookie types.

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