

[Company]	Title: Internal Guideline Implementation of Cookies and Tracking Tools for Websites		
Date of Issue:	[DATE]	Executive Sponsor:	[Group General Counsel]
Version No.:	[1.0]	Policy Owner:	[Focuslight Technology inc.]
Supersedes:	[n/a]	Functional Expert:	[Data Protection Officer]
Valid until:	[indefinite]	Material Scope:	[GDPR Compliance]
Approved by:	[Focuslight group CEO]	Scope:	[group wide]
Connected Policies: [n/a]			

## 1. DEFINITIONS

- (a) Data Subject: Means an identified or identifiable natural person.
- (b) GDPR: General Data Protection Regulation (EU) 2016/679.
- (c) Personal Data: any information relating to a Data Subject; such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of a Data Subject.

## 2. DIFFERENTIATION OF COOKIES / TRACKING TOOLS

### Cookies and tracking tools can be classified in three types:

- Necessary for operation (those cookies are absolutely necessary for a proper functioning of the website): classified as “**Type A**” for the purposes of this guideline;
- Performance, marketing and similar (those cookies and tracking tools are used to analyse the performance of the website, direct marketing purposes etc.), which do not transfer any personal data or behaviour tracking data to third parties, do not create pseudonymized profiles of users and do not process other personal data than the IP-address or similar technical data: classified as “**Type B**” for the purposes of this guideline;
- Under certain circumstances: tools used to measure performance, to enable direct marketing and similar (the way data are processed by such tools, strengthens the interest of Data Subjects that their data are not processed in this way) and which transfer personal data or behaviour tracking data to third parties, create pseudonymized profiles of users and/or process other personal data than the IP-address or similar technical data: classified as “**Type C**” for the purposes of this guideline.

## 3. APPLICABLE LEGAL BASIS FOR USE OF COOKIES / TRACKING TOOLS

### 3.1 Contract – Art. 6 (1) lit. b) and f) GDPR:

This legal basis can be used for Type A cookies and tracking tools, as the user expects the website to function properly. Therefore, any technical effort, which is necessary for such proper functioning, can be considered as a service, which was requested by the user. However, very narrow interpretation of the term “necessary”.

In such cases, where a user only visits the website, without aiming to request a service or a product, the legal basis for the operation of Type A cookies will be Art. 6 (1) lit. f) GDPR (justified interest: proper functioning of the website).

### 3.2 Justified interests – Art. 6 (1) lit. f) GDPR:

This legal basis can be used for Type B cookies and tracking tools. “Justified interests” can be any legal interest of the website provider. However, this legal basis requires an outweighing of interests. The justified interests of the website provider can be overridden by the interests or fundamental rights and freedoms of the Data Subject, which require protection of Personal Data, in particular where the Data Subject is a child. The outweighing of interests has to be undertaken very carefully in every individual case and one has to bear in mind that the respective data protection authority can take a different point of view, when it comes to an investigation.

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### 3.3 Consent – Art. 6 (1) lit. a) GDPR:

Consent must be collected prior to the activation of consent-based cookies and tracking tools, it must be freely given and an opt-in consent. A valid consent requires further a specific information of the Data Subject about the type of the cookie or tracking tool, the functions and other details of the processing.

## 4. “TYPE A” COOKIES AND TRACKING TOOLS

- Can be activated from the beginning of the session / users’ entrance to the website
- Only information in the cookie information notice
- Any wording informing about these cookies / tracking tools may not be phrased as a consent request, but just as “for your information” wording.

## 5. “TYPE B” COOKIES AND TRACKING TOOLS

### 5.1 Assumption: the legal basis of “justified interests” applies

- Can be activated from the beginning of the session / users’ entrance to the website
- Only information in the cookie information notice
- Any wording informing about these cookies / tracking tools may not be phrased as a consent request, but just as “for your information” wording.

### 5.2 Criteria for assessment of the interest balancing

When assessing whether the use of a cookie or tracking tool can be based on Art. 6 (1) lit. f) of the GDPR (justified interests), the following criteria can be taken into account:

- Is there a justified interest? (Advertising, memory of language settings, session-identifier, use of content delivery networks, social-plugins, statistical analysis, denial of service-attacks etc.).
- Is the processing via this cookie or tracking tool necessary to safeguard such interests? Necessity means that the processing is suitable to protect the interest (motive/benefit of the processing) of the website provider (controller) and that no milder, equally effective measure is available. The controller must limit the processing to the minimum necessary.
- Is this a third party tool? (If yes, high risk, there should be no transfer of any data to the third party, which provided the tool)
- Is there any transfer of Personal Data to a third party? (If yes, high risk as the user does not expect his data being transferred to a third party, especially if such third parties are processing the data for their own purposes).
- Is your cookie information notice sufficiently transparent about what Personal Data are collected, where are they going, who is having access to them, what is the purpose of use etc. (Art. 13 of the GDPR has to be considered)?

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- Likewise, techniques that track the behaviour of the users and document their interaction with an information society service, such as the recording of keyboard, mouse and wipe movements on touch screens, are beyond the user's expectations (high risk).
- Does the user have the possibility of intervention / objection? (Providing an opt-out solution usually lowers the risk)
- How many data are processed? (The more, the higher the risk)
- What categories of data are processed? (tracking which files were accessed, recording of typing history, recording of scrolling, collection of texts from forms that have been started and not sent, search queries etc. constitute a high risk; pseudonymization may lower the risk)
- Building of user profiles (high risk)
- Duration of the time period, where the user is recognized (the longer, the higher the risk)
- Etc.

### 5.3 Special issue: marketing cookies

Direct marketing can be a justified interest, but above criteria must be considered for every marketing cookie or tracking tool.

If the implementation of direct marketing cookies and tracking tools is based on Art. 6 (1) lit. f) of the GDPR (justified interests), an opt-out solution (right to object) **must** be granted pursuant to Art. 21 (2) of the GDPR.

## 6. TYPE C COOKIES AND TRACKING TOOLS

Only Type C cookies and tracking tools require an **opt-in** consent. If Type C cookies and tracking tools are identified, they should be switched off at the beginning of the session and the banner should only ask for consent for these types of cookies or tracking tools.

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## 7. PRACTICAL IMPLEMENTATION

### 7.1 Cookie Information Notice

Insert all types of cookies and tracking tools in your Cookie Information Notice as follows:

Name of the cookie / tool	Description of function	Third party cookie / tool or website provider's own software	Third party transfer of personal data Yes / No	Categories of personal data processed	Usual duration of storage of personal data	Legal basis for processing
<b>Cookies and tracking tools necessary for the operation of the website</b>						
						Art. 6 (1) lit. b) of the GDPR (cookie / tool necessary for the operation of the website)
<b>Performance / direct marketing / other cookies and tracking tools based on justified interests, without any transfer of data to third parties</b>						
Google Web Fonts Offline version						Art. 6 (1) lit. f) of the GDPR (cookie / tool used for performance tracking, direct marketing and other justified interests of the

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Name of the cookie / tool	Description of function	Third party cookie / tool or website provider's own software	Third party transfer of personal data Yes / No	Categories of personal data processed	Usual duration of storage of personal data	Legal basis for processing
						website provider, considering the interests of the data subjects)
Leadfeeder	A lead generation tool for B2B companies	Third-party tool	No	<p>No personal data but the following:</p> <ul style="list-style-type: none"> <li>• Pages accessed</li> <li>• Time of visit</li> <li>• Time of last visit</li> <li>• Name of the owner of the IP address</li> <li>• Reverse domain of the IP address</li> <li>• Referring site, application, or service, including the relevant search queries that led you to Leadfeeder's website</li> </ul>	See <a href="https://www.leadfeeder.com/cookies-and-tracking/">https://www.leadfeeder.com/cookies-and-tracking/</a>	Art. 6 (1) lit. f) of the GDPR (cookie / tool used for performance tracking, direct marketing and other justified interests of the website provider, considering the interests of the data subjects)

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Name of the cookie / tool	Description of function	Third party cookie / tool or website provider's own software	Third party transfer of personal data Yes / No	Categories of personal data processed	Usual duration of storage of personal data	Legal basis for processing
				<ul style="list-style-type: none"> <li>• Browser information</li> <li>• Operating system and device information</li> <li>• IP address (from users signing in to the service, for security purposes)</li> </ul>		
<b>Performance / direct marketing / other cookies and tracking tools based, which transfer data to a third party, create profiles of the users and/or process other personal data than IP-address or technical data</b>						
Google Web Fonts online version						Art. 6 (1) lit. a) of the GDPR (opt-in consent based)

## 7.2 Link to the Cookie Information Notice

Provide the link to your Cookie Notice in the banner appearing on the website.

## 7.3 Interactive overview over the types of cookies and tracking tools and opt-out solutions

Provide a link to a sub-site in the banner, where the users can set their opt-out (or opt-in) preferences:

TYPE A cookies and tracking tools [tick-in box set to "green", no option to change it]

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TYPE B cookies and tracking tools [tick-in box set to "green", opt-out option to "red"]

TYPE C cookies and tracking tools [tick-in box set to "red", opt-in option to "green"]

#### 7.4 Banner wording if no "consent-based" cookies and tracking tools are used

This website uses cookies and tracking tools to maintain and improve website operation as well as for performance tracking, direct marketing etc.

#### 7.5 Banner wording if "consent-based" cookies and tracking tools are used

This website uses cookies and tracking tools to maintain and improve website operation as well as for performance tracking, direct marketing etc. With regard to optional cookies and tracking tools we give you the possibility to set your **opt-out** preferences and exercise your **right to object** and ask you for your consent to the use of additional cookies and tracking tools as stated in the Cookie Notice. Please click here to set your opt-out preferences and provide opt-in consent.

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