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**TENSIONS  
BETWEEN PRIVACY  
AND TARGETED  
ADVERTISING  
IS THE DATA  
PROTECTION  
REGULATION BEING  
VIOLATED?**

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**Abstract:** The problem of data privacy on the internet takes on a huge proportion, considering that personal databases are a source of economic value for companies, which gives rise to extensive discussion in ethical and legal terms. This article proposes an analysis of privacy, addressing the issue of Cookies, used to obtain personal information from users for targeted advertising, even if there is no user consent, or if this is compromised due to lack of information or understanding. The article questions whether the General Data Protection Regulation (GDPR) of the European Union (EU) is being violated through this increasingly common practice in the context of Digital Marketing. The methodology used was qualitative, descriptive and bibliographical, based on the law (GDPR) and on articles that deal with the subject.

**Keywords:** Digital Marketing; Cookies; Privacy; Targeted Advertising; GDPR

## INTRODUCTION

The General Data Protection Regulation (RGPD), put into practice in its entirety on May 25, 2018, is a set of European Union (EU) laws that regulate the handling of personal data, with the aim of strengthening the rights citizens in the digital age and facilitate business by clarifying the rules for organizations in the digital marketplace.

The RGPD defines that for the application of Cookies – a technological tool that allows profiling users in order to facilitate the targeting of advertising – there must be an explicit, specific and clear consent between the organization and the citizen.

However, studies show that there is not enough knowledge on the part of users about what cookies are, about the implications of accepting them and about how the data is used, and it is in this perspective of strengthening the rights of citizens that this theme requires

more investigation. The present study aims to understand whether the current GDPR serves its purpose of protecting citizens when it comes to Targeted Advertising, used in the context of Digital Marketing. Through a bibliographic review, this article intends to approach the key factors of this theme: (II) description and importance of Digital Marketing; (III) explanation of what Cookies are and their current use; (IV) Citizens' Privacy and Data Protection; (V) brief description of the General Data Protection Regime; and (VI) the implication of the RGPD in the use of Cookies by companies, and its ethical implication for consumers.

Cookies are small text files that are stored in web browsers when visiting a website. They were introduced in 1994 by NetScape to allow stateful browsing over HTTP (Hyper Text Transfer Protocol), which is a stateless protocol. Initially they were used to improve the user experience and provide additional functionality to websites [8].

## MARKETING DIGITAL

Digital Marketing is defined as "(...) the set of institutions and processes for creating, communicating, delivering and exchanging offerings that have value for consumers, clients, partners and society at large." [1], is used by for-profit organizations to attract and retain customers, as well as promote brands and products to consumers.

With the evolution of the world wide web and the Internet, Digital Marketing emerges, understood as an adaptation of Marketing to technological evolutions. This has the same objectives proposed by traditional Marketing, however, using different tools, such as online platforms and social networks [2].

There are practices in Marketing that do not change between the so-called Traditional and Digital Marketing. Any type of Marketing begins with the segmentation process, that is,

dividing the target audience into segments, homogeneous groups, according to their geographic, demographic, psychographic and behavioral profiles. As a rule, the direction follows, in which the previously defined segments that best fit the organization's objectives are chosen. These two processes allow the organization to avoid wasting resources and define its positioning more rigorously. [3].

Segmentation and targeting are greatly facilitated in Digital Marketing, by allowing organizations to follow these “steps” more easily. The ability to present personalized content to each consumer, at the desired moment and location, in real time, with possible interaction with each one, are key factors of attraction for Digital Marketing [4]. The level of advertising directed to the behavior of each person is reached, which, in addition to the variables described above, also encompasses the citizen's history while he was online: pages visited, clicks, searches, purchases, among others [5] . Targeted advertising, done continuously and insistently, is a form of psychological persuasion that is quite effective in achieving Marketing objectives [6].

In the segmentation task, data can come from different techniques, on websites the most common are: tracking/tracking, where tools such as WebGL are used, which, in addition to allowing the display of 2D and 3D graphics in the web browser, also records information about the user's browser; and Cookies [7], discussed in the next topic.

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Currently, Cookies are no longer serving their basic purpose only. Organizations present on the internet began to register user data in Cookies, including their behavior while “surfing” on the internet. The registration of such data allows obtaining valuable information, in order to create profiles of each user, and thus expose them to personalized/targeted advertising. It is with this potentiality that Cookies become a preponderant Marketing tool for organizations [7].

The interest of organizations in Cookies has been growing, in view of their ability to follow all the “steps” of the user on the internet. This functionality is seen as extremely valuable, that is, it allows segmentation and targeting to be much more efficient, avoiding wasting resources on users who do not fit the profile intended by the organization. In addition, most websites have partners who also place their own Cookies, they are “third-party companies” that, being present on many websites, use unique cookie identifiers present in users' browsers, obtaining navigation data on different websites, and thus can better define their profile. They are usually advertising companies, which use or sell the collected data [7].

Cookies can also be advantageous for users. Some prefer targeted advertising, rather than being exposed to all kinds of advertising, which are sometimes irrelevant, as pointed out in the study: “71% Of Consumers Prefer Personalized Ads” [10].

However, often the user does not have enough knowledge about how their data is

## WOOKIES

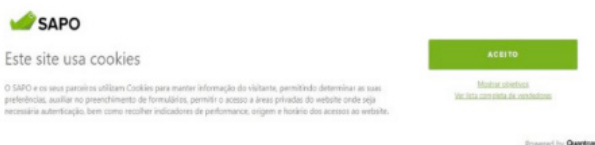


Figure 1. Sample Cookie Policy Notice

used by the organizations that collect them [11]. Within the scope of ethics, Cookies are in an area that is still little explored. Currently, it is common for the user to consent to the Cookies policy of a website without analyzing the consequences of this act. In addition to advertising, Cookies are also referred to as essential for all website features to be active.

Another important issue to be raised is the fact that the service provider often sells the data collected through Cookies to third-party companies. The information transmitted is generally not very explicit, in view of the consequences of accepting Cookies [12].

## **PRIVACY AND DADOS PERSONAL**

Information and Communication Technologies have made the invasion of privacy cheap, profitable and effective [13]. It is indisputable that robust legislation must exist to ensure privacy, but as politics and the economy change, so must legislation related to the subject change, in order to adapt and continue to protect society.

Privacy can be defined as “Condition of what is private, personal or intimate; private life” [14]. Each person can value and understand privacy in different ways, and there is no fully consensual definition, but several notions, which vary over time and according to different cultures [15].

The right to privacy is protected in the United States of America (USA), Canada and Germany by their constitutions and in other countries by legal statutes. In 1950, the Member States of the EU adopted the European Convention on Human Rights, which establishes, in paragraph 1 of its article 8, that [16]: “Everyone has the right to respect for his private and family life, for his your domicile and your correspondence.”

Privacy is often associated with Personal Data, and the protection of this data. The

OECD (Organization for Economic Co-operation and Development) defines Personal Data as “(...) any information related to the identified or identifiable individual (data subject)” [17]. In the current context, Privacy involves the right of citizens to control the personal information they provide and the use it may have [18].

In 2002, due to the introduction of the internet, new challenges arise for the protection of individual privacy. The OECD updated its guidelines with the fundamental principles of Personal Data protection that, even coming from a time with less data production than today, if applied on a global scale, are still current in the protection of citizens [17], being they: limitation of collection; data quality; definition of purpose; limitation of use; security backup; transparency; right of access, deletion and rectification; and accountability.

The privacy of users must be respected by organizations both from the design of new technologies to the management of the processing of Personal Data and this approach is called “Privacy by Design”. It is an approach that simultaneously protects users and maintains the functionalities and good performance of technologies [19].

## **PROTECTION OF DATA**

As explained above, the GDPR is a set of EU laws with the aim of strengthening the rights of citizens in the digital age and facilitating business by clarifying the rules for organizations in the digital market. The effects were felt beyond the EU, as the law applies to any offer of goods or services in the EU, even if the organization offering them is outside this space [7].

The GDPR applies to Personal Data, which in this law is described as any information that can identify a person, including pseudonymous data that can be assigned to a person by using additional information. That

is, it is enough that identification is possible for it to be considered “Personal Data”. In this legislation Cookies are explicitly mentioned as one of the online identifiers, along with IP (Internet Protocol) addresses, which especially when combined with various sources that the user makes available, can be used to create profiles of real people and identify them [ 7].

According to the RGPD, the user’s consent to the use of Cookies must be explicit, specific and clear, with indications of the agreement between the organization and the citizen. The legislation also states that the user cannot be denied access to a website if he refuses the suggested cookies (except those that are essential for its functioning) [7].

## **COOKIES AND DATA**

The introduction of the RGPD brought about major changes in the way Personal Data is collected, fines for those who do not respect the law can reach twenty million euros, or four percent of the company’s annual turnover (the greater of the two). But recent studies show that the law is not always applied, and that there is also a lack of information for citizens to know how to decide [7].

In July 2018, a study was carried out that evaluated the tracking through Cookies of 2000 websites accessed through IPs located in the EU [7]. The study showed that most websites carry out tracking through at least one Cookie, even before the user’s consent or when he rejects the Cookies in full. It also showed that nine out of ten websites store Cookies for more than twelve months (maximum limit provided for in the RGPD).

In addition, the study points out that the text presented in the Privacy Policies/Legal Notices is too complex, outside the standards required to be understood by the general public. In the study “This Website Uses Cookies: Users Perceptions and Reactions to the Cookie Disclaimer”, 150 online

surveys were carried out and the majority of respondents consider the Cookies Legal Notice to be a nuisance. Respondents stated that the text displayed is not preponderant in the decision to accept or reject Cookies, but the reputation of the website and the type of services it offers [8].

Another relevant study on the subject [20] carried out approximately three thousand surveys, where participants were explained what targeted advertising based on online behavior is and how organizations use this advertising. The study found that less than 1% of respondents were willing to share their personal data. And they highlight that participants would be more willing to share information if they had greater control over what personal information would be collected and by whom. The study also points out that the word “Cookie” is mentioned only once throughout the GDPR, which will allow different interpretations in certain paragraphs of it.

It is important to question the right to privacy online [21], as the current model is based on user choice. The aforementioned studies prove that the common user is not fully aware of the implications of Cookies, the text of Legal Notices is too complex, and often, the decision between accepting or rejecting Cookies is related to the reputation or service provided by the website. It is in this lack of clarity, knowledge and also in psychological persuasion that the main questions of ethics reside.

As Hannah Fry [22] points out, the citizen feels anonymous on the internet, where he knows that millions of people do the same as him, which demonstrates, once again, lack of knowledge. It is up to the State to regulate the use of data, analyze the so-called “algorithms” used to define profiles and target content, and ensure that they work without prejudice to citizens. Hannah Fry raises the issue of

the fortunes that many organizations make with the data they collect, and argues that there should be a “data banker” figure, who would be someone responsible for personal data that would monetize them, just as when the manager of the bank account monetizes customers’ money.

## CONCLUSIONS

The present study aimed to understand how Targeted Advertising is applied in the context of Digital Marketing, and whether the RGPD is fulfilling its obligation to protect users. It is believed to have contributed to a reflection on how targeted advertising can be unduly reach citizens, who, because they have little, or even no knowledge about new technologies and tools used by organizations, hand over their personal data to these, when they should be deciding their fate and how they should be used . The fact that Cookies persist even when rejected or even before the user decides, also proves the need for

more supervision. It is necessary to pay attention to the ability of companies to create algorithms to process thousands of user data in a few minutes, managing to identify the user himself, which should not happen, in addition to transforming apparently insignificant data into valuable information capable of predicting future actions of the user. Advertising makes it possible to obtain free services, which in essence are not, using private data as a bargaining chip, whose value is still unknown.

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