



ARI KAPLAN: THE HOT LINE

DO COOKIES MIX WITH MILK AND HONEY?

MANY E-BUSINESSES ARE HUNGRY FOR EUROPE TO LIFT THE cloud of recession that has hung over the virtual markets. But, in light of the European Parliament's revamped Communications Data Protection Directive, those businesses could be waiting longer than they expect to return to the land of economic milk and honey. With the recent proposal to ban

the unauthorized use of cookies in European Union-based online transactions, growing a business across the pond may require dietary changes.

The initiative probably will not be adopted until spring or become effective until the spring of 2003. But it might have immediate implications for those planning to expand operations or begin new projects overseas. In addition to prohibiting data tracking using cookies, Web bugs and oth-

er tools, the directive could affect targeted e-mail and similar unsolicited advertisements. The practice of collecting personal data would also change by requiring that users opt in to, rather than opt out of, information-gathering systems.

Though the projected changes are intended to protect consumers from invasion of privacy and eliminate the nuisance of spam, they may force the redesign of Web sites or the rewriting

of privacy policies and other agreements. E-businesses might even need to renegotiate arrangements with outsourced advertising and Web-hosting partners.

For now, this ruling is simply being sent to the E.U. Council of Ministers for further review. Even if it ultimately

data for use on any participating Web site with only a single entry of his or her e-mail address and password. The obvious advantage of this proposal is that it offers the ease and security that users want but do not have.

The short-term issue is how this program and many like it will work without existing tracking devices if they are forbidden in Europe. The longer-term issue is whether we need those cookies

THE PROJECTED CHANGES MAY FORCE THE REWRITING OF PRIVACY POLICIES AND OTHER AGREEMENTS.

passes, it may not directly impact U.S. businesses. That said, consider the impact this could have on those companies that are affected. For example, Microsoft's emerging .Net platform offers a cookie-supported Passport service that allows a user to access personal

for the milk and honey to return. **e**

Ari Kaplan is an attorney with McDermott, Will & Emery, in New York. E-mail him at alkaps@yahoo.com. This material is intended for reference only and should not be construed as legal advice.