

THE

Gökçe

Fine PRINT

January 2022

98

DRAFT GUIDELINE ON COOKIE POLICIES IS PUBLISHED



**Metaverse Fury
Continues at
Full Speed!**

**Frequently
Asked
Questions
About Digital
Legacy**

**Latest
Technology News**

*Is Microsoft Becoming
Macrosoft of the Gaming World?*

*A New Remote Identification Method and
Establishment of Contracts Electronically*

Draft Guideline on Cookie Policies is Published

Draft Guideline on Cookie Practices (**Guideline**) was published on Personal Data Protection Authority's (**Authority**) website on January 11, to create an advisory and guiding document. Guideline has a guiding feature especially for website operating data controllers. Guideline contains recommendations for the processing of personal data through cookies. Cookies used not only on websites, but also on other devices that can connect to the internet, such as smart phones and tablets, are also in the scope of Guideline.

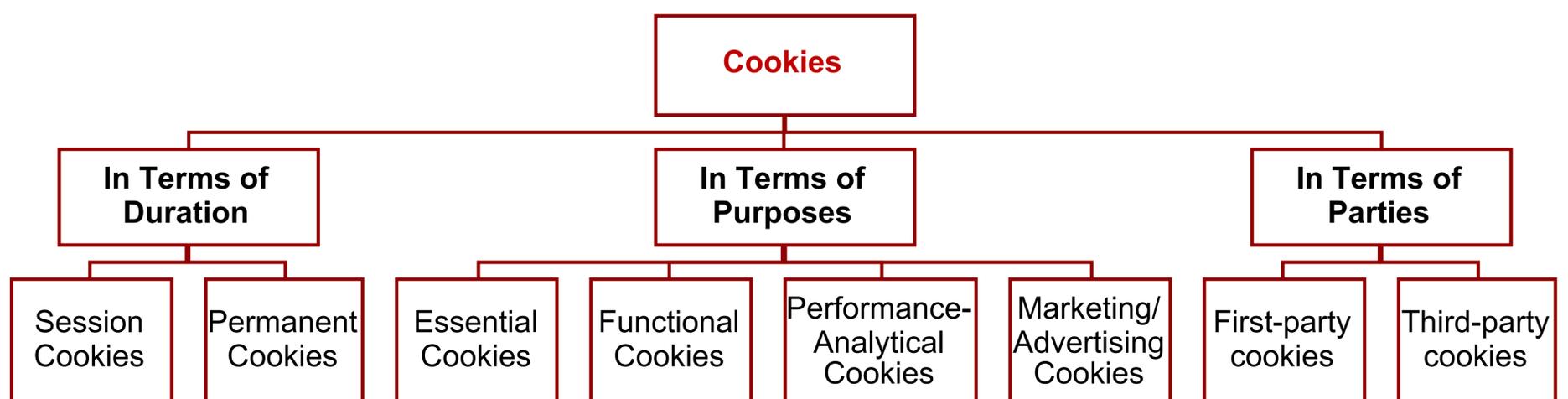
Why is Guideline important?

Turkey closely follows the European Union in terms of the protection of personal data and tries to keep things up to date. Although processing of personal data through cookies falls within the scope of Personal Data Protection Law (**Law**), there are no explicit regulations regarding cookies in Law. As for the Electronic Communications Law, there is only a general provision for the operators within its scope. The lack of an explicit regulation on cookies caused Turkey to fall behind the European Union, which regulates cookies through the General Data Protection Regulation (**GDPR**) and the e-Privacy Directive.

Along with all these, Guideline is a first in our country in terms of defining cookies, presenting examples for practice regarding cookies, and aiming at all data controllers.

What is a cookie?

Guideline has given two definitions of cookies, "a type of text file placed on a user's device by website operators part of an HTTP(S)3 (Hyper Text Transfer Protocol) request" and "text formats with low-size rich text format that allow certain information about users to be stored on users' terminal devices when a web page is visited". Cookies have been classified as such:



Main points to be considered while using cookies

Explicit consent or the processing conditions in Articles 5 and 6 of Law are required in order to process personal data through cookies, and in all circumstances, obligation to inform must be fulfilled.

Guideline includes two criteria, which are also announced by the European Union.

Criterion A: The use of cookies only for the sole purpose of carrying out or facilitating the transmission of a communication over an electronic communications network,

Criterion B: The use of cookies is strictly necessary for information society service explicitly requested by the subscriber or user.

In cases where the processing condition of *"Data processing is mandatory for the legitimate interests of the controller, provided that this processing shall not violate the fundamental rights and freedoms of the data subject"* in Article 5 of the Law is being based on, it is recommended to determine the legitimate interest by performing a balance test within the scope of Criteria A and B.

When is explicit consent required?

Some scenarios regarding use of cookies that require and do not require explicit consent are included in Guideline. It has been emphasized that the examples are not universal and that a separate evaluation should be made on a case-by-case basis.

- Load balancing session cookies (carrying out or facilitating the communication on the network) are examples of **cookies that can be used without explicit consent** within the scope of Criterion A.

- Within the scope of Criterion B, examples of **cookies that can be used without explicit consent** are (i) user-input cookies (such as filling out a form, adding a product to the basket), (ii) authentication cookies (such as account login), (iii) user-centric security cookies (detecting failed login attempts) (iv) multimedia player session cookies/flash cookies (such as video playback), (v) user interface customization cookies (such as language preferences), (vi) social plug-in content sharing cookies for users logged into their social network account (such as likes, sharing, comments), (vii) cookies used for the explicit consent management platform (viii) first-party analytical cookies (such as measuring the target audience of the site), and (ix) cookies used for the security of the website.

- Examples of **cookies that can only be used with explicit consent** are (i) social plug-in tracking cookies (cookies that can be used by social networks for purposes such as behavioral advertising, analytics, or market research), (ii) social plug-in content sharing cookies for users who are not logged in / do not have an account (such as likes, shares, comments), and (iii) online behavioral advertising cookies (such as financial record keeping, advertising partnership, click fraud detection, research and market analysis, product development and debugging). Here, the explicit consent obtained for the use of cookies must be an informed consent on a specific subject and expressed with free will. For

example, the consent collected by using cookie walls that prevent access to the website unless the consent is given, does not constitute a valid explicit consent. Both the owner of the website and the third party (*if third-party cookies are used*) are under the obligation to inform and to obtain explicit consent.

Previous Amazon decision regarding cookies

Guideline also includes the 2020 decision of the Personal Data Protection Board regarding Amazon Turkey (**Decision**). In Decision, it was stated that the processing of personal data through cookies may be based on a reason other than explicit consent and important issues regarding explicit consent and obligation to inform were included. Informing must only be made on the relevant subject and in a clear, simple, and understandable manner; if the explicit consent is required, informing and obtaining the explicit consent must be done through separate processes; explicit consent must not be imposed as a prerequisite for the service provided and a separate explicit consent must be obtained for each purpose; obligation to inform must be met before the data is processed or at the latest when the data is obtained (at the time of entering the website); and explicit consent must be obtained through an active action (using the opt-in method instead of the opt-out method).

Application examples

Various application examples regarding the general use of cookies are included in the Guideline. Here are some examples of good practice from Guideline:

Personal data is processed through cookies on our website. Essential cookies are being used to provide information society services. Other cookies will be used limited to the purposes of advertising/marketing activities directed to you, making our website more functional, and personalization (to ensure that your other preferences are remembered when you re-enter the site, except for your privacy preference) if you give your explicit consent. It is possible to manage your preferences regarding cookies via the panel and you can find the privacy notice at: <https://www.aaa.com.tr/cookieprivacy>

Accept all

Reject all

Configure cookie
settings

AAA Privacy Preference Platform

Essential Cookies	These cookies are the cookies necessary for the operation of our website. These cookies are session cookies that are processing personal data during the session and are automatically deleted when the session is over (except for the cookies used to measure the performance and improve our website, and the cookies used to remember privacy preferences). These cookies are used necessarily to fulfill the information society services (login, filling out a form, counting the visitors and measuring the traffic) you have requested. These cookies enable counting the visitors on our website and measuring the traffic. Through these cookies, we can measure and improve the performance of our website. These cookies are first-party cookies that help us understand which pages on our website are the most popular and which are the least popular. They are kept on your device for a period of 180 days.	
Advertising/ Marketing Cookies	These cookies are third-party cookies of our advertising partners that are placed through our website. These cookies will be kept on your device for a period of 365 days. These cookies are used by our business partners to profile your interests and to show you relevant advertisements.	On Off
Functional Cookies	These types of cookies are used to make our website more functional and to personalize it (to ensure that your preferences are remembered when you re-enter the website). These are first-party cookies, and they are kept on your device for a period of 90 days.	On Off
Other Information	Link of the privacy notice: https://www.aaa.com.tr/cookieprivacy	
<div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div style="background-color: #c08060; color: white; padding: 10px 20px; border-radius: 5px;">Accept all</div> <div style="background-color: #c08060; color: white; padding: 10px 20px; border-radius: 5px;">Reject All</div> <div style="background-color: #c08060; color: white; padding: 10px 20px; border-radius: 5px;">Save settings</div> </div>		

**Images are obtained from the Guideline by translating into English.*

The Guideline will shed a good light on the practice, and it will be beneficial for those concerned to speed up their work in order to harmonize the setup and design of the platforms where cookies are used. Opinions and evaluations on Guide can be sent to Authority in writing or by e-mail at cerez@kvkk.gov.tr until 10 February.

You can find the full text of Guideline [here](#) and the full text of Decision [here](#) (only available in Turkish).

For further information please contact us at info@gokce.av.tr

Metaverse Fury Continues at Full Speed!

The concept of Metaverse has entered our lives relatively recently, but it is almost talked about every day! The number of technology giants investing in Metaverse, which can be defined as “a shared virtual universe which can be experienced simultaneously and in integration with the physical world, through the use of technologies such as augmented reality, virtual reality and blockchain”, has increased even more.

We had evaluated the impact of Metaverse in detail in our [TFP November 2021](#) issue. We've compiled below some of the recent developments on Metaverse since then.

Augmented reality. Following Mark Zuckerberg's announcement that Facebook's name was changed to “Meta” and that it would focus on Metaverse projects, other technology giants accelerated their work on Metaverse. Google has also been on the agenda recently with the “Iris Project”. Augmented reality (AR) technologies are one of the essential elements of Metaverse, and Google seems to be trying to catch up with competitors such as Meta and Apple to gain a foothold in the Metaverse market.

Retail sector. Another recent Metaverse initiative is the trademark registration applications of retail giant Walmart. Walmart's filings with the US Patent and Trademark Office at the end of 2021 indicate that the company intends to create its own collection of cryptocurrencies and NFTs. Many issues that are currently under discussion following the increase of retail sales over Metaverse, such as the property rights on virtual assets, and the protection of consumer rights in Metaverse, remain on the agenda.

Real estate. One of the areas where Metaverse projects are most widespread is the real estate sector; many land purchases have already been made on Metaverse. In Turkey, we have recently seen lands in Metaverse being sold via platforms such as sahibinden.com. According to the latest analysis, Turkey was one of the countries that bought the most land through the OVR platform. Naturally, land purchases and sales on Metaverse bring along legal problems that have not yet been resolved, such as the property rights of people with regards to these virtual lands, and how to register and protect land ownership.

In conclusion, while the popularity of Metaverse is increasing day by day, the current regulation is insufficient to meet the anticipated innovations. However, it should be noted that Metaverse currently remains on a theoretical level and covers many different technologies and business models that either currently exist or will be developed in the future, so it is not possible to place it in a clear legal framework. In this context, we can predict that as the scope and application of Metaverse takes shape, regulatory studies on the subject will be given priority by the competent authorities.

Frequently Asked Questions About Digital Legacy

Apple released the highly anticipated iOS 15.2 on 13 December 2021. With “legacy contact” feature, people you previously specify can access all data in your AppleID following the death. The concept of “digital legacy” has become one of the most debated topics with these recent developments.

For further information please contact us at info@gokce.av.tr

Due to technological developments being at breakneck pace, our digital assets are diversifying. Email and social media accounts, domain names, online game accounts, photos and videos we store digitally are examples of our digital assets. The concept of digital legacy refers to the digital assets that people can leave to their heirs.

We have compiled frequently asked questions about digital legacy below:

Which digital assets are inherited?

The doctrine tries to resolve the issue by interpreting the provisions of the current legislation, since there is not any regulation regarding transfer of digital assets to heirs enacted yet. In Turkish law, the property of the legator will be transferred to the heirs as a whole. However, under the legislation, there is no precise definition of what these assets are. As per the general consensus, the rights arising from the law of persons and family law are not transferred to the heirs. In line with this consensus, it is stipulated that a distinction will be made according to the nature of the digital asset and the digital assets from which income is obtained will be transferred. Different answers are given to the question of the transfer of digital assets that do not generate income. One argues that non-commercial digital assets, particularly social media accounts, should be considered as letters or diaries and be transferred to the heirs whereas other argues that unless a law is brought as *lex specialis*, social media accounts, which are not constitute “goods” and used in accordance with the special agreements concluded between social media platforms and the legator, should not be transferred.

What are the main legal problems we encounter related to the transfer of digital legacy?

Various legal problems may arise on transfer of digital legacy to heirs depending on the virtual acquisitions in the digital asset. For example, if a social media account is passed on to the heirs, the communication of the legator with third parties will also be accessible to the heirs. At this point, it can be considered that the privacy of personal data is violated in terms of third parties., Whether the confidentiality obligations in the texts of the platforms will be violated is another issue to consider. Finally, how the digital assets will be distributed to the heirs can be added to the legal problems we mentioned. Many similar legal problems will be on agenda as the concept of digital legacy is discussed.

Are there any relevant judicial decisions?

Even though there not any regulation on digital legacy enacted, judicial authorities started to make decisions on the matter. Presumably the most important one is the 2018 decision of the German Federal Court of Justice, which it thoroughly analyzed the concept. Federal Court concluded that social media account will pass on to the heirs, just like the diary of the legator.

This issue has also been a subject of consideration by Turkish courts. In its current decision, Antalya Regional Court of Justice by rejecting the reasoning of the court of first instance stating that the privacy of private life would be violated, decided that a cloud storage account, including gift certificates and coupons, is included in the estate.

As a result, we see that tech companies, such as Apple, are currently implementing various applications on digital heritage. What will be the approach of legal systems to the issue is a matter of curiosity.

For further information please contact us at info@gokce.av.tr

Is Microsoft Becoming Macrosoft of the Gaming World?

On 18 January, Microsoft announced on their website their plans to acquire Activision Blizzard (**Activision**) for 68.7 billion American Dollars (**USD**), 95 USD per share (**Announcement**). If this acquisition goes through, Microsoft will become the third largest gaming company of the world by revenue.

Activision has around 400 million monthly active players and is the owner of franchises worth 3 billion USD such as Warcraft, Diablo, Overwatch, Call of Duty and Candy Crush. This acquisition will help the launch of Activision games into Microsoft's Game Pass, a gaming subscription service Microsoft offers.

In Announcement, it is stated that "This acquisition will accelerate the growth in Microsoft's gaming business across mobile, PC, console and cloud and will provide building blocks for the metaverse". Throughout Announcement, the terms metaverse and virtual gaming has been repeated and stressed. These point to Microsoft's metaverse plans. Microsoft has already been working on these and introduced their virtual meeting platform Microsoft Mesh in April 2021.

The plan is to close the deal in fiscal year 2023. However, there are some risks that needs to be evaluated. With Microsoft's current power in gaming world with Xbox and gaming companies already acquired, Activision's acquisition raises questions regarding competition regulations. Apart from that, further to the Announcement allegations Activision has faced regarding harassments and misconduct has been pointed out by media and by Microsoft's employees. Microsoft Gaming CEO, Phil Spencer stated in his blog post that Microsoft and Activision will have independent operations until the finalization of acquisition; by this, it can be a way to suppress these problems.

You can find the Announcement [here](#) and blog post [here](#).

A New Remote Identification Method and Establishment of Contracts Electronically

We have encountered various regulations enacted on identity verification lately. Regulation on Remote Identification Methods to be used by Leasing, Factoring, Financing and Savings Financing Companies and the Establishment of Contractual Relationships through Electronic Media (**Regulation**) is the newest one.

Regulation sets out the procedure and principles for remote identification methods that leasing, factoring, financing and savings financing companies use for the acquisition of new clients. Regulation sets forth rules on minimizing the risk in the remote identification method to be applied, taking adequate security measures, authorizations for the initiation of the transaction, documentation of the records and criteria used in identification and the verification process. The method to be applied in identification is divided into video conference stage and other stages. The procedure to be applied is generally regulated in parallel with other legislations.

Following the identification, the conditions for the establishment of the contracts concluded in the electronic environment in a way to replace the written form are also set forth in the Regulation. Except transactions that do not have financial consequences, such as viewing customer information, an identity verification mechanism consisting of at least two components is required for services provided electronically. Use of the ID card with the card PIN or biometric data or the use of an electronic signature is deemed sufficient to meet these requirements.

Regulation also emphasizes the requirement to protect the information confidentiality and ensure transaction security during the identity verification process. Hence, it includes measures to be taken in this regard.

With the developing technology, it is now possible to carry out customer acquisition and contract processes digitally remotely in many sectors. These processes inevitably require identity verification. It is possible to say that the Regulation will not be the last regulation regarding identity verification.

Regulation will enter into force on 11 February 2022. You can reach the full text [here](#) (only available in Turkish).

Answers. Not theories.

Gokce Attorney Partnership

Editors:



Prof. Dr. Ali Paslı
ali.pasli@gokce.av.tr



Dr. Mehmet Bedii Kaya
bedii.kaya@gokce.av.tr



Elif Aksöz
elif.aksoz@gokce.av.tr



Yağmur Yollu
yagmur.yollu@gokce.av.tr

About our firm

Gokce Attorney Partnership is an Istanbul-based law firm offering legal services across a broad range of practice areas including mergers and acquisitions, joint ventures, private equity and venture capital transactions, banking and finance, capital markets, insurance, technology, media, telecoms and internet, e-commerce, data protection, intellectual property, regulatory, debt recovery, real property, and commercial litigation. Please visit our web site at www.gokce.av.tr for further information on our legal staff and expertise.

Please contact us at
info@gokce.av.tr
0 212 352 88 33

The Fine Print is prepared and published for general informative purposes only and does not constitute legal advice or create an attorney-client relationship. Should you wish to receive further information, please contact Gokce Attorney Partnership. No content provided in The Fine Print can be reproduced or re-published without proper attribution or the express written permission of Gokce Attorney Partnership. While all efforts have been made to ensure the accuracy of the content, Gokce Attorney Partnership does not guarantee such accuracy and cannot be held liable for any errors in or reliance upon this information. The Fine Print was created for clients of Gokce Attorney Partnership and the possibility of circulation beyond the firm's clientele should not be construed as advertisement.