

Beyond the Cookie Wall

Isa Nieuwstad | DDMA

4 november 2025 | Experimentation Heroes



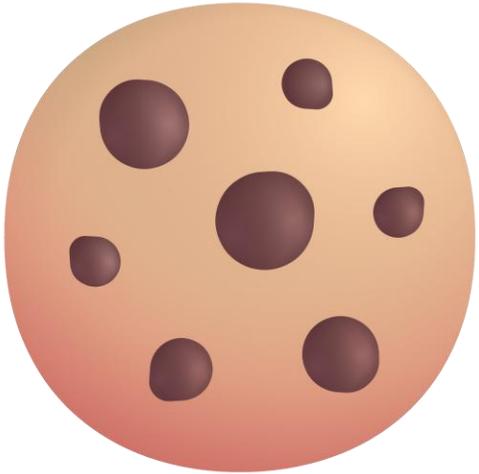
ISA NIEUWSTAD

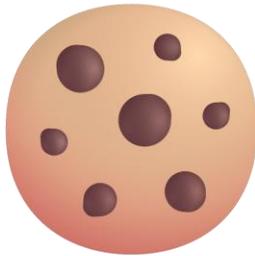
Legal Counsel
DDMA

Vision @ DDMA

DDMA stands for successful and responsible data-driven marketing. Marketing that moves people by bringing together the strengths of data, technology, and creativity.

Handling data and technology responsibly is essential – for consumer trust and for the future of the marketing industry.





Measurement

Analyzing

Useful data

Reliable data

Experimenting

Insights

Optimizing

Even remembering cookie settings...

Compliance starts at script load



AUTORITEIT
PERSOONSGEGEVENS

Autoriteit
Consument & Markt



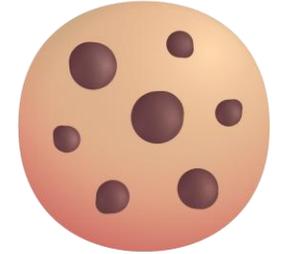
DUTCH RULES

GDPR
Privacy
Personal data

Cookie rules (11.7a)
Marketing Channels
Cookies & similar tracking techniques

MORE SPECIFIC

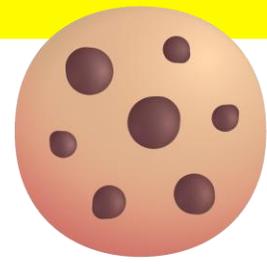




About 300 warnings
Non-compliant banners
NE-Cookies before consent

Cookierules

11.7a Tw / 5(3) ePrivacy



(and similar)

Consent

Inform



Device access

**Consent BEFORE device access means
consent BEFORE script execution**

**Cookiebot**
by Usercentrics

Consent	Details	About
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This website uses cookies

DDMA wants to make your visit to the website as easy and personalized as possible. To achieve this, we use cookies and similar technologies. This ensures that you see relevant DDMA advertisements on other websites, that we can create lookalikes on social media, and that we can map out behavior on our website. Prefer not to? In that case, we will only place essential and statistical cookies. These cookies do not collect any data about you as an individual. By clicking the 'clip' icon in the bottom left corner of the webpage you're visiting, it is possible to withdraw (or change) your consent. Want to know more? Then read our [Privacy Statement here](#).

Not every cookie needs consent

- ▶ Transmission: without data exchange, connection doesn't work
 - DNS requests, load balancing or route traffic between service
- ▶ Strictly necessary to provide a service: mostly functional cookies
 - Logging into an account, remembering items shopping cart, saving a language or region setting
 - Functionality must serve users convenience, not website owners: how functional the (analytics/marketing cookies) may seem to be

In NL: limited analytics

- ▶ Exception to the exception
- ▶ Solely used for internal measurement
- ▶ Cannot identify individual users
- ▶ Minimal privacy impact

Dont forget about...



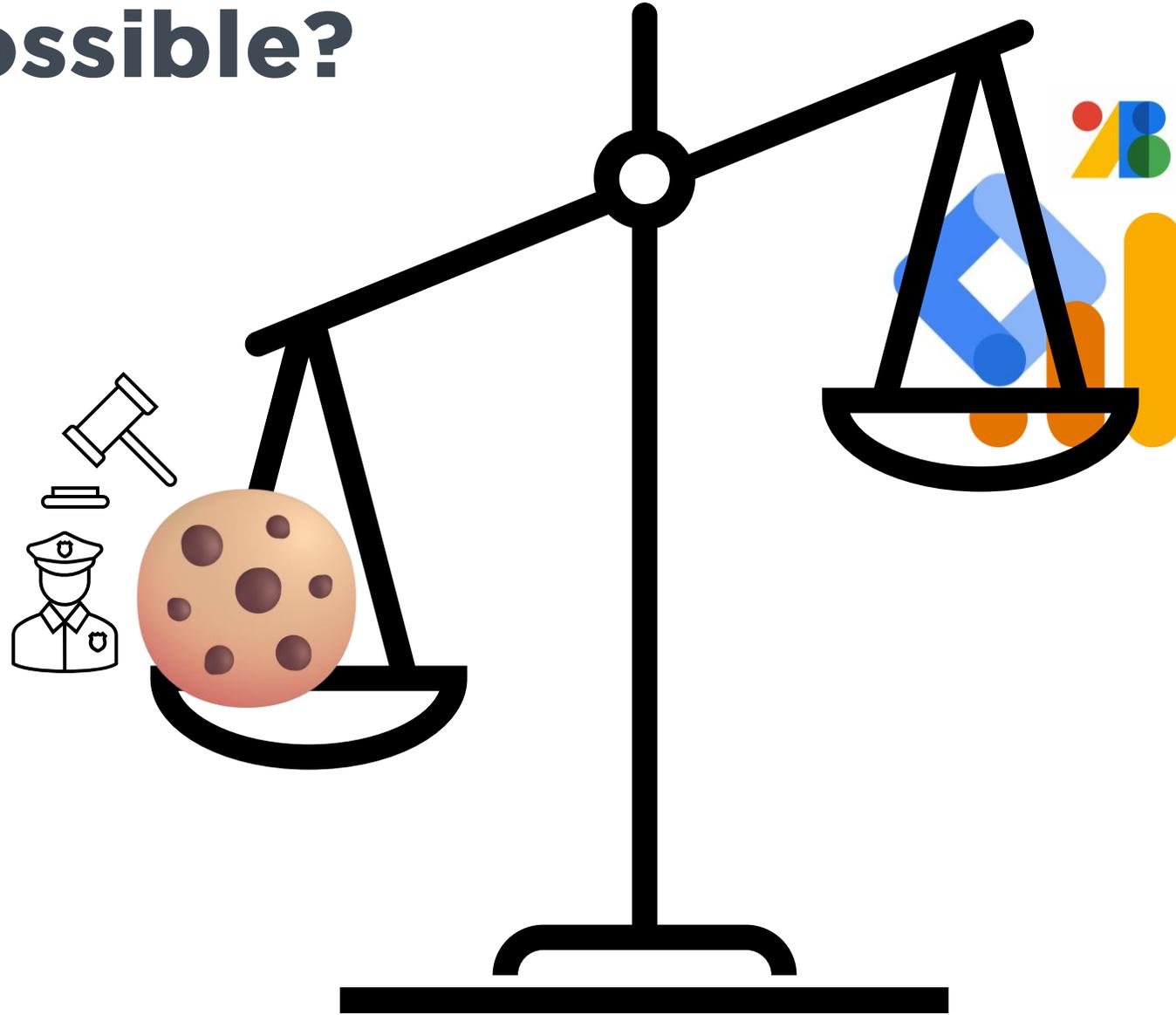
AVG

Art. 11.7a
Tw

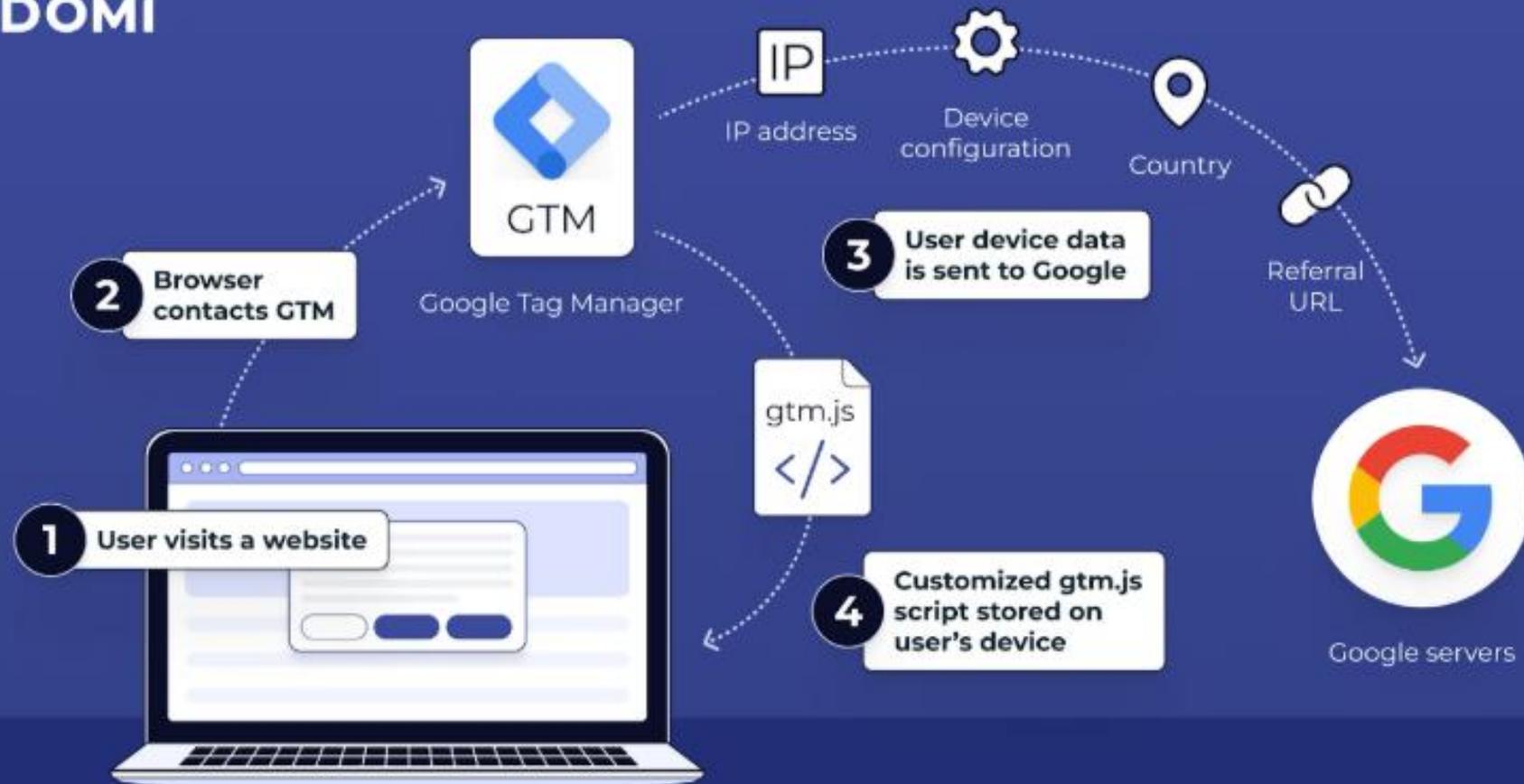
GDPR

- ▶ When a cookie processes personal data (IP address, device-ID etc) the GDPR also applies
- ▶ Besides cookierules...
 - GDPR consent or opt out (legitimate interest)
- ▶ This interplay of rules make modern marketing tools difficult to use lawfully

Experimentation and compliance: is it even possible?



DIDOMI



<https://www.didomi.io/blog/google-tag-manager-gtm-consent-2025-germany>

GTM, 2025



▪ Functionality must serve users convenience, not website owners: how functional the (analytics/marketing cookies) may seem to be

▾ German Court:

“GTM primarily serves the convenience of the website owner, not a service requested by the user. Moreover, the IP address and device data are transferred to the US. This requires consent under both the cookie provision and the GDPR.”

Consequence: GTM from Google-domain can only run after consent

Alternative: Server side GTM?

Germany?



Impracticalities

- ▶ Technical friction
- ▶ Every **external** tag, font, or pixel that loads *before* consent carries legal risk
 - Block assets until consent: delays in loading time, glitches in UX and tracking issues
 - While load immediately, risk violating cookie law and GDPR

- ▶ Storing Consent Without Consent
- ▶ Saving a simple “no, I don’t want cookies” only allowed when strictly functional: once it contains some sort of ID, you’ll need consent
- ▶ Consequence: Endless consent banner loop on every website or loss of advertising and consent data

The paradox is complete! Even tools designed to (partly) manage consent, need consent themselves



Last but not least...

Inconsistent supervision leads to...

More risk-based
rules?

Integrate ePrivacy
into GDPR?

Now what?

But also... give
room to
innovate

Key take aways

- ▶ Know your purpose **before** device access
- ▶ Know the rules
- ▶ Know your tools
- ▶ Combine expertise
- ▶ Keep yourself updated

Questions?



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