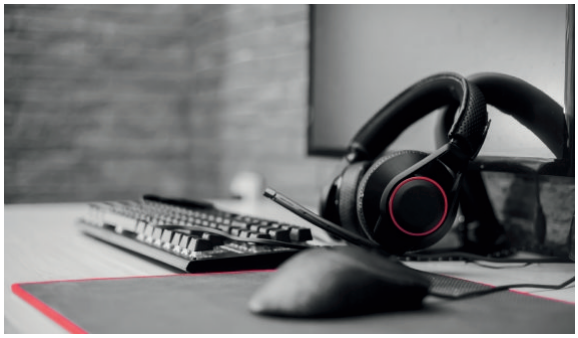
ADVANT Beiten

Privacy Ticker

November 2024



+++ FEDERAL COURT OF JUSTICE: LOSS OF CONTROL FROM FACEBOOK SCRAPING CAN BE DAMAGE +++ SPAIN: FINE OF EUR 6.5 MILLION AGAINST TELECOMMUNICATIONS PROVIDER DUE TO RANSOMWARE ATTACK +++ EDPB: FIRST REPORT ON THE EU-US DATA PRIVACY FRAMEWORK +++ GERMAN DATA PROTECTION CONFERENCE: UPDATED GUIDELINES FOR PROVIDERS OF DIGITAL SERVICES +++

1. Case Law

+++ FEDERAL COURT OF JUSTICE: LOSS OF CONTROL FROM FACEBOOK SCRAPING CAN BE DAMAGE +++

In its first leading decision procedure, the Federal Court of Justice ruled that even the mere and temporary loss of control over one's own personal data can constitute immaterial damage. Neither a specific misuse of the data nor other additional noticeable negative consequences are required. The background to the case is the so-called scraping complex, in which unknown persons publicly disseminated data from around 533 million Facebook users on the Internet in 2021 (see Privacy Ticker December 2022). The Federal Court of Justice also found that the plaintiff had a legitimate interest in establishing liability for future damages and that the default settings made by Facebook to make profiles discoverable did not comply with the principle of data minimisation. In the event of a mere loss of control, the court assumes damages of around EUR 100. Despite this leading decision, the final decision on specific cases remains with the competent courts of lower instances.

To the press release of the Federal Court of Justice (dated 18 November 2024, VI ZR 10/24, in German)

+++ HIGHER REGIONAL COURT OF FRANKFURT: SELF-SERVICE TOOL ON X FULFILS RIGHT TO INFORMATION UNDER ART. 15 GDPR +++

The Higher Regional Court of Frankfurt am Main has ruled that the right to information under data protection law can be fulfilled by providing a self-service tool on the website of the social media platform X. The court stated that the right to information, in particular the right to be provided with a copy of the personal data, can also be properly fulfilled by means of remote access. Recital 63 of the GDPR does not state at any point that the user must consent to the provision of the data via remote access, in this case via the self-service tool. In individual cases, remote access could lead to a data subject "living in analogue mode" being denied information. However, anyone who registers with platform X does not live an analogue life by definition and can be expected to use IT-supported portals.

To the judgement of the Higher Regional Court of Frankfurt a. M. (dated 2 July 2024, 6 U 41/24, in German)

+++ REGIONAL LABOUR COURT OF DÜSSELDORF: EMPLOYER MUST INFORM APPLICANTS THAT IT GOOGLES THEM +++

The Regional Labour Court of Düsseldorf has ruled that the breach of an information obligation under Art. 14 GDPR justifies a claim for damages of EUR 1,000. The plaintiff had unsuccessfully applied for a position as a lawyer at a university. During the selection process, the university carried out a Google search and discovered that the applicant had already been convicted of fraud. For this reason, among others, the plaintiff was not hired. The university had not informed the plaintiff about the internet search as part of a right to information. The court found that the employer in this case was authorised to conduct the Google search on the basis of suspicion. The knowledge gained was also not subject to a ban on the utilisation of evidence. However, the defendant should have provided information about the search. This breach of data protection had caused damage to the plaintiff, as he had lost control over his data and had become a mere object of data processing. The appeal to the Federal Labour Court is pending.

To the judgement of the Regional Labour Court of Düsseldorf (dated 10 April 2024, 12 Sa 1007/23, in German)

2. Regulatory Investigations and Enforcement Actions

+++ SPAIN: FINE OF EUR 6.5 MILLION AGAINST TELECOMMUNICATIONS PROVIDER DUE TO RANSOMWARE ATTACK +++

The Spanish data protection authority Agencia Española de Protección de Datos (AEPD) has imposed a fine totalling EUR 6.5 million on The Phone House Spain after the telecommunications company fell victim to a ransomware attack in 2021. Inadequate and outdated technical and organisational measures had enabled the attackers to penetrate the company's systems and access the data of around 13 million people and publish it on the Internet. The fine is made up of EUR 4 million for the breach of the data protection principle of integrity and confidentiality and EUR 2.5 million for the breach of the requirements of Art. 32 GDPR regarding the security of processing. An appeal lodged by The Phone House Spain was rejected by AEPD.

To the AEPD's fine notice (dated 27 December 2023, in Spanish)

To the rejection of the appeal by the AEPD (dated 5 November 2024, in Spanish)

+++ HAMBURG DATA PROTECTION AUTHORITY: FINE OF EUR 900,000 FOR BREACH OF DELETION OBLIGATIONS +++

The Hamburg Commissioner for Data Protection and Freedom of Information has imposed a fine of EUR 900,000 on a company in the debt management sector. As part of an audit of dept collection management carried out in Hamburg, the authority discovered during an on-site visit that the company was processing personal data of debtors in the six-figure range without a legal basis. Some of the data had been stored for five years despite deletion periods having expired. The company admitted the offence and accepted the fine. The data protection authority also praised the cooperation with the company, which was taken into account in the assessment of the fine.

To the press release of the Hamburg data protection authority (dated 12 November 2024)

+++ FINLAND: FINE OF EUR 2.4 MILLION FOR SETTING UP AN E-MAIL INBOX +++

The Finnish data protection authority (Tietosuojavaltuutetun Toimisto) imposed a fine of EUR 2.4 million on the company Posti following a complaint from a private individual. The company had created an e-mail inbox for the customer without the customer's instruction or consent, to which the complainant also received mail. The mailbox was linked to a number of other services, whereby the customer could not choose whether or not to use the mailbox. The mailbox could also not be closed without other services also being cancelled. The authority considered this to be unlawful and called on Posti to take data protection into account when developing the services. In addition, customers had not been sufficiently informed about the service and the processing of their data.

To the press release of the Finnish data protection authority (dated 15 November 2024, in Finnish)

To the fine notice of the Finnish data protection authority (dated 13 November 2024, in Finnish)

3. Opinions

+++ EDPB: FIRST REPORT ON THE EU-US DATA PRIVACY FRAMEWORK +++

In its report on the EU-US Data Privacy Framework (DPF), the European Data Protection Board (EDPB) has made an initial assessment. Overall, the EDPB welcomes the measures implemented as part of the adequacy decision, such as the development of a certification process or the introduction of the multi-level redress system. With regard to official access from the USA, the EDPB criticises the lack of evidence for the interpretation of the principles of necessity and proportionality. Finally, the EDPB recommends that the EU Commission monitors the further development of US legislation and legal practice, particularly in view of the US election a few weeks ago.

To the report of the EDPB (dated 4 November 2024)

+++ GERMAN DATA PROTECTION CONFERENCE: UPDATED GUIDELINES FOR PROVIDERS OF DIGITAL SERVICES +++

The German Data Protection Conference has revised its guidelines for providers of digital services, previously known as "OH Telemedien". The focus is still on the provision of Section 25 German Telemedia Data Protection Act (TDDDG), which generally requires consent for the storage of or access to information on an end user's device. The most important amendment is the deletion of the passage according to which access to information does not apply if, for example, this information is inevitably retrieved when visiting a website or due to default settings in the end device. Apart from that, these are mainly editorial adjustments to the digital services and the TDDDG.

To the authorities' guidelines (dated November 2024, in German)

+++ GERMAN DATA PROTECTION CONFERENCE: GUIDELINES ON SELECTED ISSUES OF THE NEW ONLINE ACCESS ACT +++

In a further guideline, the German Data Protection Conference provides assistance for public organisations that operate or use (transnational) online services in accordance with the German Online Access Act (OZG). This law serves to digitalise and standardise a wide range of administrative services, such as online applications for residents' parking permits or student grants. With the guidelines, the authorities clarify, among other things, the data protection responsibilities of the various public bodies, which legal bases apply to the processing of personal data and how data can be transferred between the individual administrative bodies in accordance with the German E-Government Act.

To the authorities' guidelines (dated November 2024, in German)

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