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More and more cookie banners on the Internet - Kugelmann: Great success for data protection - a few more clicks, but also a lot more self-determination

More and more cookie banners are appearing on company websites, email services and news media; the users can give or refuse their consent to the use of cookies. The State Commissioner for Data Protection and Freedom of Information in Rhineland-Palatinate has received increased inquiries from citizens in recent weeks. The state data protection officer Professor Dieter Kugelmann emphasizes: "The Federal Court of Justice (BGH) recently made it clear in a judgment that cookies that are not required to provide the website or app always require the active consent of the website visitor. In the meantime, many operators seem to have implemented this judgment and switched to cookie banners. Some users find this annoying. From a data protection point of view, the cookie banners are a great success: every user can now find out which information is to be collected for use. Anyone can consent to this data collection or reject it. Internet users can thus decide for themselves what data is accumulated about them. When banners didn't exist, that didn't mean that cookies weren't stored on users' computers. It just meant that you weren't asked for permission." Cookies are small text files that are stored on computers and smartphones by the provider or a service with which the provider works when you visit websites and use apps can be read later. Cookies can serve different purposes: some cookies are necessary to display websites graphically correctly, other cookies serve the purpose of recognizing users and collecting further information about them. This often happens across many websites because large providers have their cookies embedded on many websites in order to build up comprehensive personality profiles of Internet users. This information can be used, for example, to show users individually tailored advertising, but also for other purposes, such as in election campaigns or for credit scoring. Kugelmann emphasizes: "Informational self-determination is an important right: everyone should be able to decide for themselves, which personal data he would like to disclose and who may use it. User behavior on the Internet allows deep insights into personal circumstances. The obligation to obtain user consent is therefore good and right. For users, this means: A few more clicks, but also a lot more self-determination." Internet site operators and data protection officials have long been concerned with the question of when consent is required for the processing of Internet user data using cookies and when data collection without consent is permissible. For technically necessary cookies, users do not have to be asked for their express permission. Such cookies can be cookies that ensure that the shopping cart remains assigned to the user in an online shop while the user continues

shopping or continues shopping later. Other cookies may only be used if the user has given so-called "informed consent". If this is not the case and cookies are used without effective consent, data processing is illegal and can be prohibited by the supervisory authorities and punished with fines. In 2019, the European Court of Justice decided that the consent of Internet users to the processing of their data, by cookies, is only effective if the user actively gives their consent. The Supreme Court has confirmed this. Effective consent is therefore not given if the fields of the declaration of consent have already been ticked in advance, for example in a cookie banner, or consent is simply assumed because "continue surfing". An "opt-out" solution, which requires users to actively object to processing, also fails and leads to unlawful processing.

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