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P r e s s e release

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Data protection officer: Google Analytics and similar services only with consent
usable

Website operators require the consent of the visitors to their website

Websites, if third-party services are to be integrated into them, where the provider
personal data obtained in this way for its own purposes. This also includes
the product Google Analytics, as the Berlin Commissioner for Data Protection and
Freedom of information, Maja Smoltczyk, emphasizes.

As early as spring, the data protection supervisory authorities published the "Guide for
Providers of telemedia"¹ published and worked out in detail under which
conditions tracking of website visitors is permitted.

Nevertheless, the Berlin data protection officer continues to receive a large number of complaints
about websites that disregard the guidance.

Analysis tools that pass on data about usage behavior to third parties may then
at least in cases in which these third parties also use the data for their own purposes
use only with consent. The same applies if the behavior of

Website visitors are tracked and recorded in detail
can, for example, when keystrokes, mouse or swipe movements are recorded. as

On the other hand, it can be considered permissible if a website operator
carries out reach detection and counts the number of visitors per

Page that collects devices and language settings, even if a processor does so
done. However, a processor may not use the data for its own purposes
use, as the provider of Google Analytics now reserves the right to do.

Maja Smoltczyk:

"When integrating Google Analytics, many website operators refer to old, long outdated and withdrawn due to ongoing product changes Publications such as the information for Berlin website operators, the Google Analytics deploy. The Google Analytics product has been further developed in recent years that it no longer represents order processing in its current form. Rather concedes the provider agrees to the right to own the data of the website visitors purposes to use. The integration of Google Analytics therefore requires a Consent that meets the requirements of the General Data Protection Regulation. Most of the so-called cookie banners that we see in practice meet the legal requirements requirements not.

1 https://www.datenschutzkonferenz-online.de/media/oh/20190405_oh_tmg.pdf

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- 2 -

Website operators in Berlin should immediately check their website for third-party content and tracking check mechanisms. Anyone who uses functions that require consent must either obtain consent or remove the feature. Consent is only then effective if the user of the specific data processing is clear and informed agrees. A so-called cookie banner, which assumes that pure Continued surfing on the website or similar should mean consent

insufficient. The same applies to pre-checked boxes for declarations of consent. This

Evaluation of the General Data Protection Regulation is clear, and the European Court of Justice expressly confirmed it in its judgment of October 1, 2019.²

What constitutes effective consent is set out in Article 4(11) of the Data Protection

Basic Regulation (GDPR) defined. After that, a "'consent' of the data subject

each voluntarily for the specific case, in an informed manner and unequivocally

given declaration of intent in the form of a declaration or another clear one

affirmative action by which the person concerned indicates that they are with the

processing of the personal data concerning you". To

Recital 32 GDPR are silence, already ticked boxes or

Inactivity on the part of the data subject should therefore not be regarded as consent.

Maja Smolczyk:

"We already have numerous complaints and tips about the impermissible integration

of third-party content. We are examining these and have already had many cases against companies

initiated. This number will increase significantly in the future. website operators

and operators who inadmissibly integrate third-party content not only have to

data protection regulations, but should also take into account that the

DSGVO threatens high fines for such violations."

² ECJ, judgment of October 1, 2019, C-673/17 – "Planet49", available at:

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=218462&pageIndex=0&doclang=DE&mode=Is&dire=&occ=first&part=1&cid=497860>