

PRESS RELEASE

ON THE USE OF COOKIES AND COOKIE BANNERS - WHAT DOES IT APPLY TO CONSENT (ECJ JUDGMENT "PLANET49")?

The European Court of Justice (ECJ) has decided that consent with which Internet users save and read information (e.g. cookies) on their devices should allow, is only effective if the user actively declares their consent.

On the other hand, there is no effective consent if fields are already ticked or the consent is simply assumed because of "continuing surfing" (judgment of October 1, 2019 (Az. C-673/17 – Planet49 GmbH).

If consent is required but not effectively granted, data processing (e.g. setting or reading a cookie) is unlawful. Here both threaten the prohibition of data processing and fines.

Many website operators are now wondering how this judgment will be implemented in practice got to. The LfDI, Dr. Stefan Brink, is happy to provide assistance here.

A consent for the storage in or reading of information from the end devices of the User is always necessary if one of the two following exceptions does not apply (Art. 5 Para. 3 Directive 2002/58/EG):

1. the sole purpose is to carry out or facilitate the transmission of a message over an electronic communications network
or
2. It is strictly necessary to express a request from the subscriber or user to provide the desired information society service

As a rule, users do not want profiles about their personal usage behavior are created and evaluated or this can be made available to third parties (e.g. through the integration of external Elements such as tools for range analysis or social media plugins) is made possible.

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When is consent not required?

examples

for consent-free cookies

those who use the "shopping cart" function

enable or save settings (such as font sizes or similar) if they are really only for

be used for this purpose. It should be noted, however, that the data processing

(whether with or without the help of cookies) are presented in the privacy policy.

When is consent necessary in each case?

For example, anyone who uses cookies to analyze user behavior for advertising purposes

to be tracked or analyzed by third parties requires the informed,

voluntary, prior, active, separate and revocable consent of the user.

"Consent banners" must be used if the consent of the

user is necessary, i.e. in particular data is passed on to third parties or third parties who

opportunity to collect data. Examples are analysis tools, social media

Plugins, external map services and other third-party elements.

In such a case, the following requirements for consent must be observed:

☐ Clear, not misleading headline – mere expressions of respect for the

Privacy is not enough. Headings that point to the scope are recommended

of the decision, such as "passing on your user data to

Third". Links must be clearly and unambiguously described - essential

Elements/content, in particular of a data protection declaration, may not be replaced by links to be veiled.

☐ The object of the consent must be made clear – clear answer

the following questions: What personal data is affected? What is happening with you? Who gets access to the data? Will the personal data be linked to other data? What purpose does this serve?

☐ The consent must not be preset - an opt-in in the sense of an informed, voluntary, prior, active and separately declared consent is necessary (cf. page 5 of guidance).

☐ No data may be passed on before consent has been given by the user was granted.

☐ Access to the imprint and data protection declaration must not be prevented or be restricted before consent has been given by the user.

☐ The voluntary nature of the declaration of consent must be made clear and a Notice of the right to one revocation at any time must be included;

For example, "This consent is voluntary, but not for the use of this website necessary and can be revoked at any time by [...]".

☐ How the revocation is to be explained is clear in the information on the declaration of consent to describe clearly. The declaration of revocation must be as simple as the declaration of consent itself.

The most frequently asked questions with the corresponding answers on the topics of tracking, plug-ins, The LfDI has summarized cookies, consent banners and the like on an FAQ website. Further information can also be found in the guidance provided by the supervisory authorities for telemedia providers.

If you have any questions, you can reach us on the telephone number 0711/615541-716.

Further information on data protection can be found on the Internet at

www.baden-wuerttemberg.datenschutz.de or at www.datenschutz.de.