

Google Analytics and similar services can only be used with consent

14.11.2019 • HmbBfDI

Website operators require the consent of the website visitor if they want to integrate third-party services in which the provider also uses personal data for their own purposes. This also includes the product Google Analytics.

In the spring, the data protection supervisory authorities published the guidelines for providers of telemedia (PDF) and worked out in detail the conditions under which tracking of website visitors is permissible. Nevertheless, the Hamburg Commissioner for Data Protection and Freedom of Information (HmbBfDI) continues to receive a large number of complaints about websites that do not meet the requirements of the guide. Analysis tools that pass on data about user behavior to third parties may only be used with consent if these third parties also use the data for their own purposes. In principle, the same applies if the behavior of the website visitor can be traced in detail, for example if keystrokes, mouse or swiping movements are recorded. On the other hand, it can be classified as permissible if website operators carry out a range measurement and collect the number of visitors per page, the devices and the language settings, even if a processor does this. The requirements of Art. 28 General Data Protection Regulation (GDPR) may have to be observed. However, a processor may not use the data for their own purposes, as Google, the provider of Google Analytics, reserves the right to do.

When integrating Google Analytics, many website operators refer to old, long outdated and withdrawn publications such as the "Notes from the HmbBfDI on the use of Google Analytics". The Google Analytics product has been developed in such a way in recent years that it no longer represents order processing in its current form. Rather, as the provider, Google grants itself the right to use the data for its own purposes. The integration of Google Analytics therefore requires consent that meets the requirements of the General Data Protection Regulation. Most of the so-called cookie banners currently do not meet the legal requirements.

Website operators in Hamburg should immediately check their websites for third-party content and tracking mechanisms.

Those who use services that require consent must obtain or remove consent. Consent is only effective if the website visitor gives their clear and informed consent to the data processing. In addition, data processing that requires consent may only be started after consent has been given. Merely continuing to surf, e.g. in the context of a cookie banner, does not constitute effective consent. The same applies to pre-activated boxes in 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

(ECJ, judgment of October 1, 2019 - C-673/17 - "Planet49").

Article 4 number 11 of the GDPR defines consent. According to this, "'consent' of the data subject is any voluntarily given, informed and unequivocal expression of will in the form of a declaration or other clear confirmatory action with which the data subject indicates that they agree to the processing of their data concerned personal data agrees". Recital 32 GDPR states: "Silence, ticked boxes or inaction on the part of the data subject should therefore not constitute consent."

Johannes Caspar, Hamburg's representative for data protection and freedom of information: "We have received a large number of complaints and information about the inadmissible integration of third-party content on websites in Hamburg. We are examining these and have already initiated proceedings against those responsible. Website operators who illegally integrate third-party content must not only expect orders under data protection law, but should also take into account that fines can be imposed for such violations under the GDPR."

press contact

rot13("Znegva Fpurzz", "acmnfvopxtzkbhsg");mmehcS nitraM

Phone:

+49 40 428 54-4044

Email: rot13("cerffr@qngrafpuhgm.unzohet.qr", "gexaiqrsvmpwkyft");ed.grubmah.ztuhcsnetad@esserp