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Data protection officer asks website operators to check the use of analysis services

Website operators require effective consent from visitors if they integrate third-party services that also process personal data for their own purposes or reserve the right to do so. In many cases, this fact is already evident from their terms of use.

Those responsible should immediately check their websites for the admissibility of the third-party services used - in particular analysis tools and tracking mechanisms. Anyone who uses functions that require consent must either obtain it or remove the functions. Consent is only effective if the users agree to the data processing in a clear and informed manner. A so-called cookie banner, which assumes that simply continuing to surf the web represents consent, is not sufficient. The same applies to pre-checked boxes for declarations of consent. The European Court of Justice expressly confirmed this evaluation of the General Data Protection Regulation in its judgment of October 1, 2019 (C-673/17 – Planet49). The requirements that consent must meet are also explained in the "Guidelines of the European Data Protection Board in relation to consent under Regulation 2016/679" (working paper WP 259) and in the aforementioned judgment of the European Court of Justice.

As early as spring, the data protection supervisory authorities of the federal and state governments published the "Orientation Guide for Providers of Telemedia" and worked out in detail the conditions under which the use of analysis services is permissible. Legal opinions that were published taking into account the legal situation before May 25, 2018, such as B. the instructions of the Hamburg Commissioner for Data Protection and Freedom of Information on the use of Google Analytics are also due to the fact that the processing of the analysis services have been continuously adapted, outdated.

According to the General Data Protection Regulation, website operators are obliged to prove the legality of the processing of personal data for which they are responsible through the integration of third-party services in their offers. The Brandenburg data protection officer has received numerous complaints about and indications of the inadmissible integration of analysis services. We will review them and pursue violations of the General Data Protection Regulation at our discretion.

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