

Bavarian State Office for
data protection supervision

11/20/2018

press release

Bavarian Administrative Court decides:

BayLDA rightly prohibits the use of Facebook Custom Audience

As early as 2017, the Bavarian State Office for Data Protection Supervision prohibited

(BayLDA) an online shop the use of "Facebook Custom Audience", a

Facebook marketing tool. The administrative court of Bayreuth confirmed that

opinion of the BayLDA and decided in an expedited procedure that the order was

is moderate. The Bavarian Administrative Court also came to the same conclusion:

The use of "Facebook Custom Audience" without the consent of the user

violates data protection law.

The "Facebook Custom Audience" process enables companies to target their customers who are also users of

Facebook are to have targeted advertising on the social network. To advertise on Facebook,

an online shop provides a list of its customers and prospects with name, place of residence, e-mail address and telephone

phone number. This customer list is then uploaded to Facebook in the online store's Facebook account.

Beforehand, the customer data is converted into fixed character strings (e.g.

Max Mustermann = dddfab9b5b8a360150547065daff114ff218b39c8b0986b761075977aeeca3c3).

Facebook then compares the customer list with all Facebook users and can thus determine which customer

of the online shop is also a member of Facebook. The online shop can then use one or more advertising

start page(s) on Facebook for its customers. He selects a specific target group that receives the advertising

should hold. The online shop can specify that, for example, women between 20 and 30 years of age who do a lot of sport

drive, have an average income, advertise on their Facebook account from the online

shop received.

The BayLDA issued an order against a Bavarian online shop and asked the company to

no longer use the marketing tool "Facebook Custom Audience via the customer list". Reason for that was that the online shop did not obtain the user's consent. From the perspective of the BayLDA, however, this was necessary, since customer data was transmitted directly to Facebook. The online shop sued against this order before the administrative court of Bayreuth. The administrative court of Bayreuth shared the view of the BayLDA and decided in summary proceedings that the order had been issued lawfully. The online shop opposed this decision.

Finally, the Bavarian Administrative Court ruled that the BayLDA's order was lawful and explained, among other things, the following reasons:

address

Bavarian State Office for Data Protection Supervision

boardwalk 27

91522 Ansbach

Telephone +49 (0) 981 53 1300

Fax +49 (0) 981 53 98 1300

e-mail

Website www.lda.bayern.de

presse@lda.bayern.de

Public transportation

Schlossplatz bus stops

or train station of the city and

regional lines

- 2 -

-

The question of whether there is a relationship via order processing does not arise from the contractual agreements of the parties, but on the actual processes of the data processing.

-

In the specific case, Facebook is not a contractual partner in the context of the "Custom Audience" service.

workers, but third parties.

- The use of the marketing tool "Facebook Custom Audience via the customer list" is only

lawful with the prior consent of the user.

- Although the advertiser has a legitimate interest in targeted advertising, this

Interest, however, are the overriding interests of the data subjects that are worthy of protection

to those who, in particular, do not expect their e-mail address to be passed on to Facebook

is averaged.

In their settings, Facebook users can check for themselves which companies have customer lists with their

have transmitted data to Facebook. Instructions for this are available [here](#).

Further information on the procedure can be found in the press release of 06/15/2018 and the activity

set up the BayLDA.

"The current decision of the VGH Bayern is not a surprise. We have several times about the requirements

Permissible use of marketing tools in our activity reports, press releases and others

publications informed. Controllers have had more than ample opportunity to demonstrate their data processing

to review and ensure that all requirements are met. We will make this decision

Let's take it and expand our check to other sectors and violations of the new fine framework

sanction the GDPR," says Thomas Kranig.

Thomas Kranig

president

VGH Bayern, decision of the 5th Senate of September 26, 2018, Az.: 5 CS 18.1157

VG Bayreuth, decision of May 8, 2018, Az.: B 1 S 18.105