

Cross-national examination: Consents on websites of media companies are mostly ineffective - improvements are necessary

The data protection supervisory authorities of several German states have examined the websites of media companies with regard to the use of cookies and the integration of third-party services. A total of 49 websites in 11 countries were tested on the basis of a joint test catalogue. The focus was on user tracking for advertising purposes. Most of the websites checked do not meet the legal requirements for the use of cookies and other tracking technologies. The media companies are thus violating the right of their users to protect their personal data. Even the first adjustments made by some of those responsible have not yet been able to completely eliminate the legal deficits.

The practice of the media companies poses a considerable risk for users. The personal data collected as part of user tracking is used in particular to create and enrich comprehensive personality profiles across all websites. These are used for online marketing, in particular in the real-time bidding process (real-time auction of advertising space).

The state data protection authorities involved influence the companies in their area of responsibility in order to establish data protection-compliant conditions. If necessary, they will take regulatory action.

For the coordinated investigation, the authorities from Baden-Württemberg, Brandenburg, Bremen, Hamburg, Hesse, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Saarland, Saxony and Schleswig-Holstein sent out a jointly developed questionnaire to media companies in their area from mid-August 2020 respective jurisdiction. Not all of the company's websites were checked, but rather the offers with the greatest reach. The selected websites had already been technically secured and analyzed before the questionnaires were sent out. This made it possible to compare the responses from the media companies and the actual technical design of the pages. In addition to the bodies already mentioned, the supervisory authority in Bavaria also participated in the evaluation of the content of the test results.

A very large number of cookies and third-party services are used on the examined media websites, which are mainly used for user tracking and advertising financing.

The websites usually ask for differentiated consent from users for the use of cookies and third-party services.

In the majority of cases, however, these consents are not effective. The main deficiencies identified during the audit were:

Incorrect order: Third-party services that require consent are often integrated when the website is opened and cookies are set - i.e. before the consent request.

Missing information: On the first level of the consent banner, only insufficient or incorrect information about user tracking is given.

Insufficient Consent Scope: Even if the user chooses to opt-out at the first level of the consent banner, many cookies and third-party services that require consent remain active.

No simple refusal: While all consent banners have a button on the first level with which consent can be given for all cookies and third-party services, there is often an equally simple option at this level to reject user tracking that requires consent in its entirety or the banner without to close the decision.

Manipulation of users: The design of the consent banner shows numerous forms of nudging. This means that users are subliminally urged to give their consent, for example by highlighting the button for consent in a much more conspicuous way than the button for rejecting it, or by making the refusal of consent unnecessarily complicated.

ID number 06/2021

Date 30.06.2021

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