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Google Analytics and similar services can only be used with consent©

Tumisu / pixabay.com 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, as Prof. Dr. Dieter Kugelmann, the State Commissioner for Data Protection and Freedom of Information in Rhineland-Palatinate (LfDI).

As early as spring 2019, the data protection supervisory authorities published the "Guide for providers of telemedia" and worked out in detail the conditions under which tracking of website visitors is permissible. Despite this, the LfDI continues to receive a large number of complaints about websites that disregard the guidance.

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. The same applies if the behavior of website visitors can be traced and recorded in detail, for example if keystrokes, mouse or swipe movements are recorded. On the other hand, it can be classified as permissible if a website operator carries out a range measurement and collects the number of visitors per page, the devices and the language settings, even if a processor does this. However, a processor may not use the data for their own purposes, as the provider of Google Analytics now reserves the right to do.

LfDI Prof. Dr. Kugelmann: "When integrating Google Analytics, many website operators refer to old, long outdated and withdrawn publications such as the information for website operators based in Hamburg who use Google Analytics. The Google Analytics product has been developed in such a way in recent years that it no longer represents order processing in its current form.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, the provider grants itself the right to use the data of the website visitor 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 that we see in practice do not meet the legal requirements."

The LfDI calls on website operators in Rhineland-Palatinate to immediately check their website for third-party content and tracking mechanisms. Anyone who uses functions that require consent must either obtain consent or remove the function. Consent is only effective if the user agrees to the data processing in a clear and informed manner. A so-called cookie banner, which assumes that simply continuing to surf the website or similar should mean consent, is insufficient. The same applies to

pre-checked boxes for 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 General Data Protection Regulation (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 reads: "Silence, ticked boxes or inaction by the data subject should therefore not constitute consent."

LfDI Prof. Dr. Kugelmann points out that his authority has already received a large number of complaints and information about the inadmissible integration of third-party content. In particular, there is an indication that Google Analytics is being used illegally on around 15,000 websites by those responsible based in Rhineland-Palatinate. The LfDI examines these and has already initiated proceedings against companies. This number will increase significantly in the future, as the LfDI will in future specifically check the websites of those responsible based in Rhineland-Palatinate. Website operators who illegally integrate third-party content must not only expect orders under data protection law, but should also take into account that the GDPR threatens high fines for such violations.

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