

Bavarian State Office for
data protection supervision

Ansbach, June 15, 2018

press release

Bayreuth Administrative Court confirms:

Facebook Custom Audience not allowed without consent

The Bavarian State Office for Data Protection Supervision (BayLDA) prohibited a Bavarian
ric online retailers the use of "Facebook Custom Audience", a brand
ting tool from Facebook. The Bavarian online retailer sued against this
Arrangement. Now the Bayreuth Administrative Court decided in summary proceedings and
shared the opinion of the BayLDA: Whoever "Facebook Custom Audience" without consent
of the user violates data protection law.

As early as 2016, the BayLDA carried out a major audit at over 40 companies in Bavaria to determine whether and in
how the marketing tool "Facebook Custom Audience" was used. The result was
Extremely unsatisfactory: Most of the companies had violated data protection obligations.

In many cases, after appropriate instruction from the BayLDA, the companies have
use of this marketing tool. One company refused the BayLDA's requests
to comply The BayLDA then issued an order and asked the company to "Facebook
Custom Audience" without the consent of the user and declared this order to be effective immediately
enforceable. The company defended itself against the order and finally complained to the administrative
dir.

The Administrative Court of Bayreuth confirmed the opinion of the BayLDA in summary proceedings and justified this in the
Essentially as follows:

- The SHA-256 hash method used is not suitable for anonymizing personal data
ate.

-

Facebook is not a contractor of the company, but its own responsible body.

- Uploading the customer list represents a transfer of personal data.

- This transfer cannot be based on any legal basis.

-

In particular, the transmission cannot be based on a balancing of interests.

- Therefore, the use is only permitted with the prior informed consent of the user.

Although the order of the BayLDA and the decision of the Bayreuth Administrative Court were made before April 25,

May 2018, i.e. before the General Data Protection Regulation came into force. The order of the BayLDA takes

However, as a precautionary measure, the new legal situation applies. "We assume that our order will remain in force after the

General Data Protection Regulation withstands a judicial review. After all, the GDPR contains stricter requirements

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.lida.bayern.de

presse@lida.bayern.de

Public transportation

Schlossplatz bus stops

or train station of the city and

regional lines

- 2 -

Demands on processing and data subjects have enjoyed even more protection since May 25, 2018," says Thomas

Kranig, President of the BayLDA.

The subject of the proceedings was the marketing tool "Facebook Custom Audience via the customer list".

An online shop creates a list of its customers and prospects in which, among other things, their name, place of residence, e-mail

Address and telephone number can be entered (in this specific case, the online retailer had one

Customer list created with email addresses only). This customer list is then stored in the Facebook account of the online

Store uploaded to Facebook. Before that, the customer data is processed using a so-called hash

Procedure in fixed character strings (e.g. John Doe = dddfab9b5b8a360150547065daff114ff218b39c8b

0986b761075977aeeca3c3) converted. After that, Facebook matches the customer list with all Facebook users

and can thus determine which customer of the online shop is also a member of Facebook. After matching

the uploaded customer lists will be deleted again. However, Facebook remembers which Facebook users are in

were on the customer list. The online shop can then run one or more advertising campaigns on Facebook for

his customers start. He selects a specific target group that should receive the advertising. This is how the online

ne shop stipulate that, for example, women between the ages of 20 and 30 who do a lot of sport have an average

have a decent income, but are more than willing to spend it on fashionable clothing, advertising

in their Facebook account from the online shop. The disclosure of the above list of customers of the online

ne shops to Facebook, regardless of whether these customers are a member of Facebook or not, may

BayLDA only with the express and informed consent of the customers of the online

shops take place. The online shop in the present case, on the other hand, was of the opinion that the data could

of our own customers to Facebook without their consent. The VG Bayreuth is of the opinion

followed by the BayLDA.

The company has now lodged an appeal against the Bayreuth Administrative Court's decision. The BayLDA expects

now either the appeal decision in summary proceedings by the Bavarian Administrative Court or

the decision of the Bayreuth Administrative Court in the main matter (claims). companies should

take the decision as an opportunity and check the use of marketing tools in terms of data protection.

Since May 25, 2018, a violation has threatened fines in the millions.

“Companies are often unsure which obligations have to be met. Just lately we're getting a lot

many requests for advice. However, some companies do not follow our advice. For that we have to
Partly also understanding, after all, this is also about economic decisions. It is all the more important that
Courts create clarity. Administrative court decisions on data protection are rare. We hope through
this convincing decision by the VG Bayreuth provides more clarity and legal certainty for companies",
according to Thomas Kranig.

Thomas Kranig

president

The file number of the decision of the Bayreuth Administrative Court of May 8, 2018 is: B 1 S 18.105