

WE RECOMMEND



Annex 5: Data Privacy Information Regarding Usage Of The Recommender Engine

The Recommender Engine facilitates the output of personalized recommendations for Internet application users. To calculate these recommendations, user profiles must be generated. In doing so, the Recommender Engine collects data on the user's actions during usage in the Internet application and links them with information on his or her context (e.g. end device, Internet browser). The user profiles are employed as the basis for recommendations to the user and for a design of the Internet applications that is oriented on the user's interests.

The generation of user profiles interferes with the users' right to informational self-determination and is only legal within the limits of data privacy legislation, specifically the German Telemedia Act and the German Federal Data Protection Act.

1 Data processing by YOOCHOOSE

When the Recommender Engine is operated on the servers of YOOCHOOSE (e.g. based on ASP operation), YOOCHOOSE will generate user profiles on the basis of anonymous identifiers on your behalf. These anonymous identifiers facilitate clear identification of a user or end device over a longer time period and multiple sessions. Typically, such identifiers are generated and managed through a user administration in the customer's Internet application. If the use of the Internet application is also possible without authentication of the user's identity via a login procedure, browser-based identification systems such as cookies are typically used.

YOOCHOOSE receives from you neither the name nor the IP address or other information that allows the identification of individual users. YOOCHOOSE is unable to assign the identifiers established for the user profiles to individual users. This is exclusively possible for you due to your existing reference tables, e.g. through user administration or a cookie.

Despite this wide-ranging anonymization, YOOCHOOSE cannot exclude that operation of the Recommender Engine is viewed as the processing of personal information by the data protection supervisory authorities. According to the opinion of some data protection supervisory authorities, a piece of information is already considered person-related, if attribution to a certain individual is possible with the help of third-party information. As a result, in reference to the Recommender Engine, it can suffice if you have a reference table that allows assignment of user profiles.

In light of this situation, YOOCHOOSE insists on concluding an agreement for contract data processing pursuant to Section 11 of the German Federal Data Protection Act (BDSG), if YOOCHOOSE operates the Recommender Engine for you.

2 Legality of the generation of user profiles with the Recommender Engine

The generation of user profiles by the operators of Internet applications is governed in Section 15 para. 3 of the German Telemedia Act (TMG). According to this section, profile generation without the user's consent is only permitted if made based on the use of pseudonyms (see Section 1 a). The user has the right to object to the generation of the profile and must be informed of this right at the start of usage (see Section 1 b). If the user profile is to be combined with person-related information of the user, prior consent by the user is required (see Section 2).

1. Profile generation without consent

a) Use of pseudonyms

According to Section 15 para. 3 of the German Telemedia Act (TMG), providers of telemedia may employ usage data for purposes of advertising, market research or the appropriate design of telemedia to generate user profiles, if this occurs through the use of pseudonyms and if the user does not object.

Usage data in this context are specifically:

1. Characteristics for identification of the user;
2. Information on the beginning and end as well as the extent of the usage in question; and
3. Information on the telemedia used by the user.

Pursuant to Section 1 para. 1 of the German Telemedia Act (TMG), telemedia are all electronic information and communications services that do not constitute telecommunications services or broadcasts. This especially includes applications in the field of e-commerce, data services or opinion forums. Internet applications that use the Recommender Engine are typically telemedia in terms of the law.

Accordingly, the generation of user profiles as facilitated by the Recommender Engine is only possible, if it occurs through the use of pseudonyms. As a result, you must not link the user profile to information that allows identification of the user. According to the opinion of the data protection supervisory authorities, apart from the user's name and address, dynamic IP addresses are also included in the information that allows identification. Assignment of the user profile to the IP address of a user is therefore illegal without the consent of the user. This also applies, if the user has not registered with you and you therefore do not know the user's name and address.

Therefore, identification of the user profiles provided by the Recommender Engine may only be made through pseudonym identifiers. The circumstance that you can assign the pseudonyms to person-related data of the user through a reference file does not run counter to the legality of profile generation pursuant to Section 15 para. 3 of the German Telemedia Act (TMG). However, such an assignment must not actually occur. You must ensure this separation through appropriate technical and organizational measures, so that such a link can not occur by accident either (comp. Section 13 para. 4 no. 6 of the German Telemedia Act (TMG)). We would be happy to make suggestions as to how this can be accomplished with relatively small technical effort.

The generation of user profiles and therefore usage of the Recommender Engine must not occur with regard to users who have objected to profile generation. The users must be advised of this right to object. This can be achieved as part of the required advisory on data processing (see b) below).

b) Advisory

According to Section 13 para. 1 of the German Telemedia Act (TMG), you are obligated to notify the user at the start of the usage process on the type, extent and purposes of the collection and use of his or her personal information in a generally understandable form, unless such instruction has already been made. For an automated procedure that facilitates the later

identification of the user and prepares the collection or use of personal information, the user must be informed at the start of this procedure.

In practice, this notification is usually made in the form of a data privacy declaration that can be accessed from the start page of the website and all subsequent pages via an easily recognizable link. For example, for the use of the Recommender Engine in the manner described in a) the following information can be included:

“We capture and store various pieces of information that you transmit to us on our website or in a different way. This includes in particular

- Information on the end device or Internet browser you use;
- The services you used, the content you accessed and the orders you entered, including the corresponding usage frequency.

We use cookies to identify your computer and to assign the information we have stored. Cookies are small files that we store on your computer and that our website reads with every visit. In part, cookies are stored over the course of multiple sessions. This way, we can recognize your computer if you revisit our website after the termination of one session.

You can prevent the storage of cookies on your computer through the corresponding settings in your Internet browser. It is also possible to accept or refuse the use of cookies in individual cases. For details, please consult the user instructions of your Internet browser.

We use these data and cookies in order to better gear the Internet services used by you to your interests and to recommend to you products or services that could interest you. These data are stored and used exclusively through the use of pseudonyms. The cookies we stored do not contain any personal information either. No link with data facilitating your identification, especially with your IP address, is made.

You can object to the storage and use of your information for these purposes anytime and free of charge. Your objection must be addressed to:

[Contacting options for the user. In practice, frequently a link is offered through which the user can automatically switch off any additional profile generation].“

2. Profile generation with consent

If the prerequisites of Section 15 para. 3 of the German Telemedia Act (TMG) represented in Section 1 are not met, the generation of user profiles as facilitated by the Recommender Engine is only legal with the user's consent. This applies especially if the user profiles are to be assigned to a user account that contains information on the user, e.g. his or her name, address or IP address. Even if your Internet application does not provide for a user account, consent is required if the user profile is linked to the user's IP address.

The consent must meet the requirements in terms of data privacy and general civil law. It must effectively be included in the contractual relationship with the user. A comprehensive representation of all requirements to be observed in this respect can not be provided.

You can integrate the user's declaration of consent for the Recommender Engine into the legal data privacy declarations that are required of your users anyway. For example, the consent clause with regard to the Recommender Engine can be phrased as follows:

"The user consents to provider data generated during the use of the Internet services being used for the design of the Internet services based on the needs of the user and for the personalized recommendation of products and services. These usage data include specifically

- Information on the end device and Internet browser used by the user;
- Services used, content accessed and orders entered by the user, including the corresponding usage frequency.

The user also consents to [provider] storing these usage data together with additional personal information for the above-mentioned purposes.

The details of data processing are explained in the data protection declaration.

The user can revoke this consent anytime and free of charge. The revocation must be addressed to:

[Contacting options for the user. In practice, frequently a link is offered through which the user can automatically switch off any additional profile generation]."

If cookies are also used apart from user identification through the login process, this should also be incorporated in the consent wording, since cookies represent personal information to you, if you are able to assign it to a specific user. We would be happy to discuss the details with you during concrete project implementation.

Even if the user gives his or her consent, he or she must be informed on the type, extent and purposes of data processing. This must be done before he or she gives his or her consent. For this purpose, it makes sense to refer to the data protection declaration in the consent clause. The required information in the data protection declaration depends on the specific design of your Internet application, specifically which personal information you link to the user profile. In any case, the sample wording provided in 1. b) will not suffice. The final wording should be phrased with the involvement of a corporate data protection officer and an attorney experienced in data privacy law. If you need additional information in this respect, we would be happy to assist you.

We would like to point out that the information provided in this document merely represents initial guidance on the classification of the Recommender Engine in terms of data privacy law. An exact assessment in terms of data privacy law must be performed in each individual case based on the specific technical circumstances. We would like to point out that the information in this document can not replace sound legal advice by an attorney.