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# PRIVACY TICKER

## 1. Legislative Changes

### +++ EU COMMISSION PROPOSES REGULATION ON DATA GOVERNANCE +++

The EU Commission has published a proposal for a regulation on data governance. The intention is to facilitate and promote the exchange of data within the EU by creating a trustworthy framework to better exploit the ever-growing data pools and stimulate data sharing. In addition, a legal framework for so-called data intermediaries (neutral intermediaries for data sharing) is to be created. These must meet high standards of neutrality, transparency and security.

[To the EU Commission's proposal](#)

## 2. Case Law

### +++ GERMAN FEDERAL COURT OF JUSTICE (BGH): NO RIGHT TO INFORMATION UNDER COPYRIGHT LAW WITH REGARD TO E-MAIL AND IP ADDRESSES +++

The Federal Court of Justice has ruled that the copyright claim to information on "name and address" does not at the same time include information on e-mail addresses, IP addresses and telephone numbers. The term used in the relevant provision coincides with the term "addresses" used in the European Directive on the Enforcement of Intellectual Property Rights and, according to a ruling by the European Court of Justice, does not also include this specific data of users. There were no indications that the legislator intended to go beyond the EU regulation with the standard of the German Copyright Act.

[To the court's press release](#)

### +++ REGIONAL COURT OF LANDSHUT: NO COMPENSATION FOR DAMAGES MERELY ON ACCOUNT OF VIOLATIONS OF DATA PROTECTION LAW +++

The Regional Court of Landshut has ruled that the mere violation of data protection law is not sufficient for a claim for damages. Rather, material damage must be claimed and quantified. For non-

material damages, the violation must have led to a concrete, not just insignificant or perceived violation of the personal rights of the affected data subject. The court also rejected a claim for damages against the data protection officer because the latter was not a "controller" within the meaning of the GDPR.

[To the judgement \(of 6 November 2020, file ref. 51 O 513/20\)](#)

### +++ HIGHER ADMINISTRATIVE COURT OF LUENEBURG: UNLAWFULNESS OF POLICE VIDEO SURVEILLANCE DUE TO INSUFFICIENT DISCLOSURE +++

The Higher Administrative Court of Lüneburg has ruled that video surveillance is unlawful if it is not adequately disclosed. Admittedly, the infringement of the right to informational self-determination by the video surveillance was justified. Nonetheless, the court did not consider the requirements for the disclosure of the surveillance to be fulfilled. The information stickers attached to posts by the police for this purpose were not suitable. Due to the curvature of the posts and the multitude of other stickers and notes regularly affixed to these posts, the indications were not sufficiently perceptible to the average traffic participant.

[To the court's press release](#)

### +++ REGIONAL COURT OF ROSTOCK: PRE-SET COOKIE BANNER IS INADMISSIBLE +++

The Regional Court of Rostock has ruled that a cookie banner with pre-set permission that is only to be confirmed by clicking on "OK" is illegal. The user regularly does not take the effort to have details displayed and to deselect individual cookies. The court did not accept the option to limit the consent to technically necessary cookies by clicking on "Use only necessary cookies", as the button in question was not recognisable as a clickable button due to its discreet design next to the "Allow cookies" button. Moreover, the court considered the website operator and Google to be joint

controllers for the data processing of Google Analytics. The court thus follows the predominant opinion of the authorities (see [BB Privacy Ticker of June 2020](#)).

[To the judgement \(published by the Federation of German Consumer Organisations \(Verbraucherzentrale Bundesverband\)\)](#)

#### +++ AUSTRIAN POST ESCAPES GDPR FINE DUE TO FORMAL ERROR +++

In 2019, Austrian Post had actually collected a fine of EUR 18 million (see [BB Privacy Ticker of November 2019](#)). Now, the Austrian Federal Administrative Court has overturned the decision of the data protection authority due to a formal error because no specific person had been designated as ultimately responsible in the decision. The naming of several possible employees with key functions at Austrian Post is not sufficient, as the person acting must be specifically identified. The court had developed this case law only after the decision of the competent data protection authority in another case but applied it here, so that Austrian Post no longer has to pay the fine.

[To the ruling of the Austrian Federal Administrative Court \(W258 2227269-1/14E\)](#)

## 3. Regulatory Investigations and Enforcement Actions

#### +++ CNIL IMPOSES RECORD FINES ON GOOGLE AND AMAZON +++

The French data protection authority (CNIL) has imposed fines totalling EUR 100 million on Google and EUR 35 million on Amazon. The reason was that no prior consent was obtained for the use of cookies on the sites google.fr and amazon.fr. The existing cookie banners also did not provide sufficient information about which cookies would be stored on the users' end devices. CNIL justified the amount of the fine with the high number of affected users, the seriousness of the violation and the high profits that the companies make from advertising revenue generated by the advertising cookies.

[To the press release of CNIL regarding Google \(French\)](#)

[To the press release of CNIL regarding Amazon \(French\)](#)

#### +++ FINE IN THE MILLIONS AGAINST NOTEBOOKSBILLIGER.DE IN LOWER SAXONY +++

The State Commissioner for Data Protection (Lfd) of Lower Saxony has imposed a fine of EUR 10.4 million on notebooksbilliger.de for unlawful video surveillance of its employees. The company had monitored its employees by video for at least two years without a legal basis for doing so. The fact that the video surveillance was intended to prevent and investigate criminal offences and to track the flow of goods in the warehouse was not sufficient justification

because it placed all employees under general suspicion. The unauthorised cameras had covered, among other things, workplaces, sales rooms, warehouses and common areas, and thus mainly affected employees, but also customers.

[To the press release of Lfd Lower Saxony of 8 January 2021](#)

#### +++ CNIL IMPOSES MILLION DOLLAR FINE ON CARREFOUR +++

The French data protection authority (CNIL) has imposed a fine of around EUR 3 million on the retail and wholesale group Carrefour for a number of breaches of data protection. Among other things, retention periods were not observed and customer data was stored for far too long. There were data of more than 28 million customers who had been inactive for five to ten years. In addition, the group also violated information obligations, did not comply with regulations on the use of cookies, did not guarantee the protection of data subjects' rights easily enough and violated other French data protection regulations.

[To the press release of CNIL \(French\)](#)

#### +++ SWEDISH DATA PROTECTION AGENCY FINES HEALTHCARE PROVIDERS +++

The Swedish Data Protection Authority has imposed several fines ranging from EUR 240,000 to 2.9 million for lack of a needs and risk analysis regarding staff access to electronic health records. Such analyses are necessary in order to be able to assign a correct authorisation level to staff so that in turn the patients' right to privacy can be ensured. It was criticised in particular that staff members' access authorisation to the respective system had not been limited to what was strictly necessary for the performance of their duties.

[To the press release of the supervisory authority \(English\)](#)

## 4. Opinions

#### +++ STATE COMMISSIONER FOR DATA PROTECTION (LFD) LOWER SAXONY PUBLISHES GUIDANCE FOR COOKIE BANNERS +++

The Lower Saxony data protection authority has published guidance for the design of consent banners on websites. Here, the requirements for an effective consent are presented for cookies as well as for the integration of third-party service providers. The authority also warns against the design of cookie banners and website designs that strongly manipulate behaviour and are intended to control user behaviour ("nudging"); these could also lead to the invalidity of consent. Another criticism is that it is often not sufficiently simple to revoke consent and that rejecting cookies is often too complicated.

[To the notes of Lfd](#)

**+++ 100TH DATA PROTECTION CONFERENCE ADDRESSES WINDOWS 10, SECURITY AUTHORITIES' ACCESS TO ENCRYPTED COMMUNICATIONS, PROCEDURE FOR OBTAINING SUBSCRIBER DATA AND EPRIVACY DIRECTIVE +++**

In its anniversary meeting, the Data Protection Conference (DSK) dealt, among other things, with telemetry functions and data protection in the use of Windows 10 and published an examination scheme for use in compliance with data protection laws.

The DSK rejects the demand for access by security authorities to encrypted communications. It views this as an undermining of the encryption solution, although this is an essential prerequisite for a resilient digitalisation in the economy and administration. The DSK also criticises the authorities' access powers in the current procedure for obtaining subscriber data as being too far-reaching and not in conformity with the constitution. The German Federal Constitutional Court has already issued guidelines in this regard, which the legislature has not yet implemented.

In addition, the DSK appealed to the legislator to implement the ePrivacy Directive in full and in accordance with the GDPR. In the DSK's view, there is currently legal uncertainty regarding the applicability of the German Telemedia Act in addition to the GDPR and the ePrivacy Directive.

[To the general press release of the DSK](#)

[To the resolution of the DSK regarding Windows 10](#)

[To the DSK's Windows 10 review scheme](#)

[To the resolution of the DSK regarding encrypted communication](#)

[To the DSK resolution on access to information on subscriber data](#)

[To the DSK resolution on the ePrivacy Directive](#)

**+++ STATEMENT OF THE EUROPEAN DATA PROTECTION BOARD (EDPB) ON THE EPRIVACY REGULATION +++**

The European Data Protection Board (EDPB) has published a statement on the planned ePrivacy Regulation. The regulation should in no way lower the level of protection provided by the current ePrivacy Directive, but should complement the GDPR by providing additional safeguards for the confidentiality and protection of all types of electronic communications. The EDPB also warns against fragmentation of supervision, procedural complexity and a lack of consistency and legal certainty for individuals and businesses.

[To the statement of the EDPB \(English\)](#)

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