



PRIVACY TICKER

1. Case Law

+++ FEDERAL COURT OF JUSTICE PRELIMINARILY REINSTATES ORDER OF THE FEDERAL CARTEL OFFICE AGAINST COMBINING USER DATA BY FACEBOOK +++

In a preliminary assessment the German Federal Court of Justice (BGH) confirmed the prohibition orders of Germany's Federal Cartel Office (Bundeskartellamt) against Facebook's practice of combining user data cross-platform without any choice for the users (decision of 23 June 2020 – file ref. KVR 69/19).

The Court considers the terms of use for the social network to be an abuse of Facebook's market power, according to which users have no choice but to accept that their data is collected from sources outside the network and merged with their user profiles. Combined with high barriers to switching from the Facebook network, this constitutes an abusive exploitation of users. Yet, the Court did not rule on whether this processing of user data is compliant with the GDPR.

Thereby, the Court rejected doubts of the previous instance as to the legality of the orders (for the previous instance's decision see the [BB Privacy Ticker of September 2019](#)). However, a final assessment of the orders against Facebook is still pending.

[To the press release of the Federal Court \(in German\)](#)

+++ LABOUR COURT DUSSELDORF: COMPENSATION DUE TO DELAYED ACCESS TO INFORMATION FOR DATA SUBJECT +++

The Labour Court Dusseldorf has ordered an employer to pay damages for pain and suffering in the amount of EUR 5,000 because they have been several months late with providing information to a former employee on the data processed relating to him and the processing operations (judgement of 5 March 2020 – file ref. 9 Ca 6557/18). The court explicitly took into account the high turnover of the employer, in order to ensure sufficient deterrent effect of the compensation. In contrast, the employee had demanded a much higher amount.

[To the court's decision \(in German\)](#)

+++ REGIONAL COURT OF ITZEHOE: NO RIGHT THAT PROPERTY IS PIXELATED IN GOOGLE EARTH +++

The Regional Court of Itzehoe has rejected a claim which aimed to have a property inhabited by the plaintiff be blurred in Google Earth (judgement of 11 June 2020 – file ref. 10 O 84/20). There is

no valid entitlement for this as the property can only be seen from above, similar to the view from an airplane. Neither the plaintiff, nor other people or windows and doors were visible. Since the service also does not link any other data of the plaintiff to the recordings, the public's interest for information prevails.

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

+++ FRENCH COURT CONFIRMS FINE AGAINST GOOGLE FOR NON-TRANSPARENCY OF PRIVACY POLICY AND CONSENT TO ADVERTISING PURPOSES +++

The French Supreme Administrative Court (Conseil d'Etat) has confirmed the fine of more than EUR 50 million imposed on Google by the French data protection authority CNIL in January 2019 (judgment of 19 June 2010 – N° 430810). The court followed the assessment of the CNIL that Google's privacy policy for the set-up of a Google account on Android devices is too vague and excessively scattered across different pages, making the processing not transparent for the user as required. Furthermore, the user's consent to all processing described in Google's privacy policy, as requested by Google, is too general and thus invalid.

[To the judgment of the Administrative Court \(in French\)](#)

[To the underlying CNIL decision](#)

2. Regulatory investigations and enforcement actions

+++ OFFICIAL CORONA TRACING APP AVAILABLE +++

The Robert Koch Institute has published the tracing app for Germany which is intended to prevent further spread of the corona virus. Similar solutions are already in use in other countries, including France, Italy, Spain and Austria.

[To the app's download page in the Google Play Store](#)

[To the app's download page in Apple's App Store](#)

+++ EUROPEAN SUPERVISORY AUTHORITIES INVESTIGATE DATA PROTECTION AT TIKTOK +++

The European Data Protection Board (EDPB) has announced to examine the social media app TikTok regarding data protection via a special task force, with particular focus on the transfer of data to China. This step takes up the EDPB's internal discussions about the app in February 2020, which have only now been continued due to the corona pandemic. In May 2020, the Dutch supervisory authority had already initiated an investigation of TikTok into the processing of data about minor users, which is still ongoing.

[To the EDPB's message](#)

+++ FINES IMPOSED BY THE FINNISH DPA FOR FAILURE TO INFORM ON THE RIGHT TO OBJECT TO THE DISCLOSURE OF ADDRESSES +++

For the first time, the Finnish data protection authority has imposed fines for GDPR violations. The Finnish Postal Service has to pay a fine of EUR 100,000 for passing on to companies address data of customers which have been updated due to the persons moving house, without informing customers of their right to object to the transfer. More than 161,000 customers were affected.

Other fines in the five-digit range sanctioned the lack of a data protection impact assessment on the collection of location data about employees and inadmissible questions on the health and pregnancy of job applicants.

[To the press release of the authority](#)

+++ CNIL PROVIDES PROSPECTS ON UPCOMING INVESTIGATIONS FOCUSING ON HEALTH DATA AND COOKIES +++

The French CNIL has published its further strategy for controls this year. The authority intends to focus more on the protection of health data (including in telemedicine and health-related IoT solutions) which includes in particular the proper use of cookies and similar technologies. However, controlling the cookies usage in particular is not to begin until autumn 2020.

[To the announcement of the authority \(in French\)](#)

3. Opinions

+++ DSK WARNS: USING THE CORONA TRACING APP MUST NOT BE CONDITION FOR ACCESS TO FACILITIES +++

The Data Protection Conference, the body of the German supervisory authorities (DSK), emphasises in a press release that the installation and use of the tracing app must remain on the individual's free will. Factual coercion must be excluded as well, for instance if access to the workplace, shops or other facilities is tied to presenting the app.

[To the press release of the DSK \(in German\)](#)

+++ GERMAN SUPERVISORY AUTHORITIES DEFINE REQUIREMENTS FOR USING GOOGLE ANALYTICS ANEW +++

The Data Protection Conference (DSK) has published detailed notes on Google Analytics, according to which the analysis service is generally only permitted with the consent of the user. This confirms and standardises once again the coordinated statements of the individual German supervisory authorities from November/December 2019 (for details please see the [BB Privacy Ticker of December 2019](#)).

The notes provide an in-depth reasoning for the assessment as well as further requirements for using the service in a lawful manner.

[To the notes of the DSK \(in German\)](#)

+++ GUIDANCE BY DSK ON THE APPROPRIATE SECURING OF E-MAIL TRAFFIC +++

The Data Protection Conference (DSK) provides guidance on data security and integrity measures to be observed when sending and receiving e-mails. In particular, the DSK addresses the transport and end-to-end encryption of e-mails which may be relevant, for instance, to e-mails containing sensitive data and communication that is subject to professional secrecy.

[To the guidance of the DSK \(in German\)](#)

+++ PRACTICAL ASSISTANCE OF CNIL FOR DEVELOPERS +++

The CNIL has compiled a comprehensive practical guide for developers. Therein the French authority provides a more detailed breakdown of the main principles of the GDPR and the implementation in the development and design of websites, apps and software. The authority focuses on security measures and data protection by design and default in the software.

[To the practical assistance of the CNIL](#)

If you have any questions, please address the BEITEN BURKHARDT lawyer of your choice or contact the BEITEN BURKHARDT Privacy Team directly:

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DUSSELDORF

Imprint

This publication is issued by
BEITEN BURKHARDT
Rechtsanwaltsgesellschaft mbH
Ganghoferstrasse 33 | D-80339 Munich
Registered under HR B 155350 at the Regional Court
Munich/VAT Reg. No.: DE811218811

For more information see:
<https://www.beiten-burkhardt.com/en/imprint>

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