



# PRIVACY TICKER

## 1. Case Law

### **+++ HIGHER REGIONAL COURT OF FRANKFURT ON CONSENT TO ADVERTISEMENT NECESSARY FOR PARTICIPATION IN PRIZE DRAW +++**

The Higher Regional Court of Frankfurt has ruled on the validity of the consent to receiving advertisements which a provider requires for a participation in a prize draw (file ref. 6 U 6/19). The court considers consent to receiving advertisement by eight different advertisers valid. However, the consent may be invalid if it includes advertisement by too many different advertisers, so that the consenting person is likely not going to give attention to all companies and their business areas.

The ruling (in German) can be found [here](#).

### **+++ ADMINISTRATIVE COURT OF BAVARIA ISSUES ORDER ON THE RESTRICTIONS OF A POLICE REQUEST FOR INFORMATION FROM AN ONLINE SERVICE PROVIDER +++**

The Administrative Court of Bavaria dealt with a case on the legality of a police request to the operator of an online platform to disclose data on the platform users (file ref. 12 ZB 19.333). Such a request for information cannot be made without any tangible reason or occasion, but must be based on an adequate factual basis of the individual case and a relevant legal basis. The platform operator must and may only disclose information if the authority can refer to such a relevant basis.

The order (in German) has been published [here](#).

### **+++ HIGHER REGIONAL COURT OF DUSSELDORF SUSPENDS FEDERAL CARTEL OFFICE'S ORDER IMPOSED ON FACEBOOK FOR DATA PROTECTION INFRINGEMENTS +++**

The Higher Regional Court of Dusseldorf questioned the lawfulness of German Cartel Office's decision imposing on Facebook to merge user data – collected through different services of the Facebook group as well as through services of third parties – only

with the user's consent. Because of these doubts, the court has ordered that Facebook's appeal against the decision shall have the effect of suspending the decision (file ref. VI-Kart 1/19 (V)).

The court order (in German) can be downloaded [here](#).

### **+++ DECISION OF THE FEDERAL ADMINISTRATIVE COURT ON RESPONSIBILITY OF OPERATORS OF A FACEBOOK FANPAGE IN TERMS OF DATA PRIVACY +++**

The Federal Administrative Court has recently ruled on an official decision to prohibit the operation of a Facebook fan page due to the unlawful processing of user data (file ref. 6 C 15.18). Previously, the court had submitted several questions related to the case to the European Court of Justice, who decided that the operator of a fan page is in principle (together with Facebook) responsible for the data processing relating to the Facebook fan page (Case C-210/16 – "Wirtschaftsakademie Schleswig-Holstein"). Based hereupon, the Federal Administrative Court ruled that the operator of the fan page is responsible for unlawful data processing which takes place during the initial accessing of the fan page and that the supervisory authorities may take measures against the operator if such data processing is indeed unlawful. Whether this data processing is unlawful, is to be determined by the lower courts.

The official press release of the Federal Administrative Court (in German) can be found [here](#).

The preceding decision of the European Court of Justice in this matter is available [here](#).

## 2. Regulatory investigations and enforcement actions

### +++ QUESTIONNAIRE BY THE DATA PROTECTION AUTHORITY OF LOWER SAXONY TO MONITOR THE IMPLEMENTATION OF THE GDPR, AND SIMILAR CHECKS BY THE SUPERVISORY AUTHORITY OF BAVARIA +++

The data protection authority of the State of Lower Saxony currently verifies whether the GDPR has been duly implemented in 50 companies with headquarters in Lower Saxony, based on a questionnaire filled out by the companies. The authority has published the questionnaire including the key criteria based on which it is going to examine the information provided.

Also, the supervisory authority of Bavaria initiated checks monitoring the implementation of the GDPR at the end of 2018, especially in small and medium-sized enterprises, having sent a questionnaire to 15 small and medium-sized enterprises (SMEs). As of now, the Bavarian data protection authority has not yet fully evaluated the information provided, and has not yet determined further steps such as on-the-spot inspections.

You will find the press release (in German) of the Lower Saxony data protection authority [here](#).

[Here](#) you can download the questionnaire (in German), including the criteria the Lower Saxony data protection authority uses for the checks.

The questionnaire of the Bavarian data protection authority can be downloaded [here](#) (in German).

## 3. Opinions

### +++ FRENCH SUPERVISORY AUTHORITY PUBLISHES GUIDELINES ON THE USE OF COOKIES +++

The French data protection authority, CNIL, has updated its 2013 guidelines on the use of cookies and other tracking technologies, especially with regards to the conditions under which the use of tracking tools (including cookies for statistical analyses) is lawful and to the requirements which consent of the user must meet to comply with the GDPR.

The press release can be downloaded [here](#).

[Here](#) you can read the complete guidelines (in French).

## 4. Upcoming Events

### +++ BREAKFAST SEMINARS ON DATA PROTECTION +++

As you and we are aware, with the GDPR the challenges for data protection have increased. Even more than one year after the GDPR came into force, the implementation of its numerous provisions remains challenging for many companies. Constantly new recommendations by authorities and new court rulings mean that companies need to adjust again and again. Privacy breaches may be punished severely - many fines have already been imposed.

We help you keep track. For this purpose we would like to regularly bring current developments to your attention, discuss them with you and recommend action plans.

Further details will soon be available in the respective date entry.

### DATES

[Berlin, 6. November 2019](#)

[Dusseldorf, 10. October 2019](#)

[Frankfurt am Main, 31. October 2019](#)

[Hamburg, 22. October 2019](#)

[Munich, 15. October 2019](#)

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

## MUNICH



### Dr. Axel von Walter

Partner | CIPP/E | CIPM | Licensed Specialist for Copyright and Media Law | Licensed Specialist for Information Technology Law  
Axel.Walter@bblaw.com  
Tel.: +49 89 35065-1321



### Gudrun Hausner

Lawyer  
Gudrun.Hausner@bblaw.com  
Tel.: +49 89 35065-1307



### Dr. Johannes Baumann

Lawyer  
Johannes.Baumann@bblaw.com  
Tel.: +49 89 35065-1307



### Lauren Lee

Lawyer | LL.M.  
Lauren.Lee@bblaw.com  
Tel.: +49 89 35065-1307

## FRANKFURT AM MAIN



### Dr. Andreas Lober

Lawyer  
Andreas.Lober@bblaw.com  
Tel.: +49 69 756095-582



### Susanne Klein

Lawyer | LL.M.  
Licensed Specialist for Information Technology Law  
Susanne.Klein@bblaw.com  
Tel.: +49 69 756095-582



### Peter Tzschentke

Lawyer  
Peter.Tzschentke@bblaw.com  
Tel.: +49 69 756095-582

## BERLIN



### Dr. Matthias Schote

Lawyer | Licensed Specialist for Copyright and Media Law  
Mattias.Schote@bblaw.com  
Tel.: +49 30 26471-211

## DUSSELDORF



### Mathias Zimmer-Goertz

Lawyer  
Mathias.Zimmer-Goertz@bblaw.com  
Tel.: +49 211 518989-144

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### EDITOR IN CHARGE

Dr. Andreas Lober | Lawyer | Partner

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