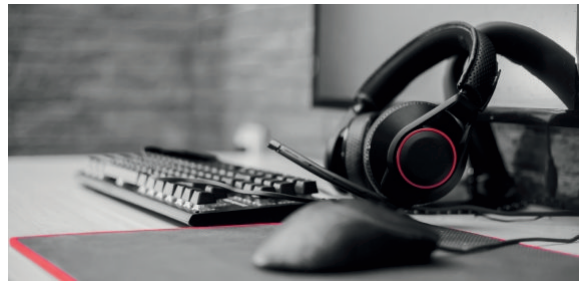


Privacy Ticker

June 2022



+++ USA: BILL FOR FEDERAL DATA PROTECTION LAW +++ BGH ON PRECONDITIONS FOR DELISTING FROM GOOGLE SEARCH +++ CONSULTATION LETTER TO FEDERAL PRESS OFFICE FOR OPERATING A FANPAGE +++ HB DI HESSE ALLOWS ZOOM AT UNIVERSITIES +++

1. Changes in Legislation

+++ USA: FEDERAL DATA PROTECTION ACT UNDER DISCUSSION +++

In the USA, the bill for a federal data protection law (so-called "American Data Privacy and Protection Act") was introduced in Congress. The bill is supported by politicians from both political camps (Republicans and Democrats) and features parallels to the GDPR. Basically, all data processing is to be prohibited unless it is permitted by a legal basis (so-called prohibition with reservation of permission). There are special requirements for the processing of certain categories of data (e.g., biometric data, health data, social security number). The bill also provides for principles such as data economy, privacy by design or data subject rights (e.g., right of access, deletion or rectification of data) as well as the obligation to appoint a data protection officer. Currently, only individual US states each have their own data protection laws. A federal data protection law would end this patchwork.

[To the report on heise.de \(dated 5 June 2022, in German\)](#)

+++ EU COMMISSION: PLANNED CHAT CONTROL CRITICISED +++

The draft regulation on fighting child abuse published by the EU Commission in May has been criticised by the German Federal

Government. Among other things, the draft provides that operators of platforms and encrypted messenger services (e.g., WhatsApp, Signal, iMessage) can be obliged by order to locate and report photos and videos of child abuse, for instance in the message history. It is feared that operators will have to soften the cryptographic protection of their services (e.g., end-to-end encryption) and automatically scan communication content in order to implement this so-called "chat control". The German Federal Government has now addressed a catalogue of questions to the EU Commission, in which the Commission is to explain, among other things, how the planned measures can be reconciled with the encryption of communication content.

[To the draft regulation \(dated 11 May 2022\)](#)

[To the questionnaire of the Federal Government \(dated 10 June 2022\)](#)

[To the article on golem.de \(dated 20 June 2022, in German\)](#)

2. Case Law

+++ GERMAN FEDERAL SUPREME COURT ON THE ENTITLEMENT TO BE DELISTED FROM GOOGLE SEARCH +++

The Federal Supreme Court (*BGH*) has ruled that Article 17 GDPR can entitle a person to have a result link removed from a search engine. The plaintiff, who had been convicted of murder, requested Google to delete a link to an article in which the plaintiff's crime, which took place about 30 years ago, was reported, using the plaintiff's real name. In the lower court instances, the action was dismissed on the grounds that the plaintiff had to proceed primarily against the press organ responsible for the article. The German Federal Supreme Court took a different view. In principle, the plaintiff did not have to direct his request for deletion primarily or in parallel against the content providers, since the liability of the search engine operator was not subordinate ("subsidiary") according to Art. 17 GDPR. The display of the link in the search result was a separate act of data processing. Thus, only a comprehensive consideration of fundamental rights was decisive for the claim for deletion. In particular, due to the long time that had passed since the publication of the article, the plaintiff's right to protection outweighed the public's right to information.

[To the ruling of the Federal Supreme Court \(dated 3 May 2022, VI ZR 832/20, in German\)](#)

+++ HIGHER ADMINISTRATIVE COURT OF NORTH RHINE-WESTPHALIA: APPLICATIONS AGAINST POLICE VIDEO SURVEILLANCE IN CENTRAL PLACES IN COLOGNE LARGELY UNSUCCESSFUL +++

The Higher Administrative Court for the State of North Rhine-Westphalia has ruled in several summary proceedings that the permanently installed video surveillance on three public squares in Cologne's city centre is (for the most part) lawful. Although the video surveillance significantly interfered with the right to informational self-determination of passers-by, it was (presumably) covered by the North Rhine-Westphalian Police Act, which allows video surveillance at crime hotspots under certain conditions. However, residential and business premises and meetings taking place in the squares, including a certain time before and after the meetings, were not to be covered by video surveillance.

[To the press release of the Higher Administrative Court of North Rhine-Westphalia \(dated 19 May 2022, in German\)](#)

+++ COLOGNE REGIONAL COURT: GDPR DAMAGES FOR FAILURE TO DELETE ACCESS DATA TO IT SYSTEM +++

The Regional Court of Cologne ordered a financial services provider to pay damages of EUR 1,200 for unauthorised access to customer data. The defendant financial service provider collects numerous personal data (e.g., name, address, date and place of birth, contact details, marital status, tax ID, bank details, ID number) when setting up a user account and within the scope of the Post-Ident procedure. To provide its financial services, the defendant cooperated with an IT service provider (as a processor). After the companies had already terminated the cooperation, the IT service provider was attacked by hackers. Hackers were able to capture the (still stored) access data to the financial service provider's systems and gained access to its customer data. The Court found that the financial service provider's failure to check the deletion of the access data constituted a violation of Articles 5 and 32 GDPR (integrity and confidentiality and the obligation to implement appropriate TOMs). In view of the sensitive data, the financial service provider could not merely rely on the fact that the processor would automatically delete the access data upon termination of the contractual relationship.

[To the judgement of the Court \(dated 18 May 2022, 28 O 328/21, in German\)](#)

+++ USA: TWITTER PAYS EUR 150 MILLION FINE FOR PROCESSING CONTACT DATA FOR ADVERTISING PURPOSES +++

Short messaging service Twitter has agreed to pay a fine of EUR 150 million to settle a lawsuit filed by the US Federal Trade Commission (FTC). In the complaint, Twitter was accused of processing users' telephone numbers and e-mail addresses, which were collected to better secure the user account, (also) for the purpose of playing personalised advertising. The contact data was thus processed for a purpose other than that for which it was intended.

[To the article on handelsblatt.com \(dated 26 May 2022, in German\)](#)

3. Regulatory Investigations and Enforcement Actions

+++ FEDERAL COMMISSIONER FOR DATA PROTECTION AND FREEDOM OF INFORMATION: CONSULTATION LETTER TO THE BPA ON THE OPERATION OF FACEBOOK FAN PAGES +++

The Federal Commissioner for Data Protection and Freedom of Information (*BfDI*) has sent a consultation letter to the Federal Press Office (*BPA*) on the use of the Facebook fan page "Federal Government". The reason for this is that, according to the data protection authorities, fan pages on Facebook, a platform of the US company Meta, at present cannot be operated in conformity with the law. This was most recently confirmed by a short expert opinion of the Data Protection Conference (see [AB Privacy Ticker April 2022](#)). Since discussions with the Federal Press Office and Facebook have so far not led to a solution, the consultation letter has now been sent.

[To the BfDI press release \(dated 3 June 2022, in German\)](#)

+++ SPANISH DATA PROTECTION AUTHORITY: EUR 10 MILLION FINE AGAINST GOOGLE +++

The Spanish data protection authority Agencia Española de Protección de Datos (AEPD) has imposed a fine in the amount of EUR 10 million on Google. Google provided contact and complaint forms in various products with which users could report violations of the law (e.g., offensive content), which would then be deleted by Google. However, Google reserved the right to transmit copies of the submitted complaints to the so-called Lumen Project of Harvard University for research purposes and

to publish them there after removing the contact data. In the opinion of the authority, this data transfer took place without a legal basis under the GDPR. Data subjects could not object to the transfer and could not exercise their right to have the data deleted.

[To the administrative fine notice of the AEPD \(in Spanish\)](#)

[To the AEPD press release \(dated 18 May 2022\)](#)

4. Opinions

+++ EU COMMISSION PUBLISHES Q&A ON THE APPLICATION OF STANDARD DATA PROTECTION CLAUSES +++

In a "Questions & Answers", the EU Commission provides practical guidance and assistance on the application of the "new" standard data protection clauses ("SCCs") published in June 2021, see [BB Privacy Ticker June 2021](#)). The Q&A is intended to answer the most frequently asked questions on the application of the new SCCs and will be continuously updated. For companies, the Q&A can be a valuable source of assistance, especially for individual questions (e.g., "May the SCCs be changed?"; "How do the various modules differ?").

[To the Q&A of the EU Commission \(dated 25 May 2022\)](#)

+++ HESSIAN COMMISSIONER FOR DATA PROTECTION AND FREEDOM OF INFORMATION: UNIVERSITIES MAY USE ZOOM FOR LECTURES +++

The Hessian Commissioner for Data Protection and Freedom of Information (*HBDI*) has announced that Hessian universities may use the video conferencing service "Zoom" for lectures under certain conditions. According to this so-called "Hessian model", it must be ensured, among other things, that Zoom is operated by an independent European processor and on EU servers and that end-to-end encryption is provided for all content data. This should prevent the outflow of personal data in light of the Schrems II ruling of the ECJ (see [BB Privacy Ticker July 2020](#)). In addition, an alternative video conferencing system that complies with data protection regulations was to be provided.

[To the HBDI press release \(dated 17 June 2022, in German\)](#)

[Further information on the requirements of the "Hessian Model", in German](#)

+++ FRENCH DATA PROTECTION AUTHORITY: HANDOUT ON THE USE OF GOOGLE ANALYTICS +++

The French data protection authority Commission Nationale de l'Informatique et des Libertés (CNIL), like the Austrian data protection authority (*DSB*), is of the opinion that Google Analytics cannot, in principle, be used in a GDPR-compliant manner. Most recently, the Austrian Data Protection Authority stated that Google's so-called "IP anonymisation function" was also insufficient. According to CNIL, however, a legally compliant use of Google Analytics is possible if, among other things, a so-called proxy server is connected between the user's terminal device and the Google service, so that no direct connection is established between the user's terminal device and the Google server and the user's IP address is thus not transmitted to Google. Yet, as CNIL itself admits, it is likely to be extremely complex to implement Google Analytics on a website in this way.

[To the resolution of the DSB \(dated 22 April 2022, in German\)](#)

[To the CNIL handout \(dated 7 June 2022, in French\)](#)

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