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Legal requirements for the use of dashcams

The distribution and use of so-called dashcams in road traffic has recently increased significantly. The cameras are used by citizens in their vehicles in order to be able to document accidents, but also other situations such as cases of coercion or damage to the vehicle by video material. In many cases, the recordings are handed over to the police as evidence. There is a need for clarification in view of the lack of a uniform nationwide data protection enforcement practice and open legal questions. With regard to the requirements for the lawful operation of a dashcam, the data protection supervisory authorities of the federal and state governments are currently working on a corresponding orientation aid. Until the supervisory authorities have reached a final agreement, some fundamental aspects should be taken into account when using dashcams.

The Federal Supreme Court (BGH) has confirmed in a decision of last year (judgement of 15.5.2018, VI ZR 233/17) that the operation of a Dashcam, which permanently records the public road space without concrete reason, violates applicable law. Nevertheless, he considers such records to be admissible for evidentiary purposes. Insofar as almost without exception road users who are never involved in an accident or other dangerous situation are recorded in this type of operation, this is not necessary to safeguard the interests of the vehicle drivers in preserving evidence and for this reason alone is not lawful under the requirements of the General Data Protection Regulation. In the case of continuous operation of a dashcam without a reason, the right of uninvolved road users to the protection of their personal data pursuant to Art. 8 of the Charter of Fundamental Rights of the European Union prevails. The data protection supervisory authorities may impose substantial fines in the event of a breach of the General Data Protection Regulation.

Instead of permanent, inanimate dashcam recordings, camera systems can be considered which permanently overwrite the recordings made and only in the event of an accident, by means of special motion sensors, make it possible to permanently store short video sequences before and after an accident that are related to the specific occasion. Data protection through technical design can then be guaranteed by the pixelation of persons and by automated deletion that is removed from the user's intervention. In this way, these so-called crashcams do not store personal data of uninvolved persons permanently and without cause and protect their interest with appropriate data protection precautions. At the same time, the vehicle owner can use the technology to protect himself in the event of damage.

Johannes Caspar, the Hamburg Commissioner for Data Protection and Freedom of Information, commented: "In terms of data protection, technical solutions must be used which safeguard the right to the protection of personal data, as is the case with the use of crashcams which only store data for specific occasions. The legitimate interests of vehicle owners do not necessarily conflict with data protection law".

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