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ECJ confirms joint controllership for integration of third-party content on websites

Today's ruling by the European Court of Justice in the Fashion ID case (C-40/17) confirms that operators of websites that integrate social plugins (in this case the Facebook Like Button) are joint controllers for the collection and disclosure of personal data that is transmitted to the providers when a page is called up. The court thus ties in with the judgement in the case of the Wirtschaftsakademie Schleswig-Holstein (C-210/16), which dealt with a joint controllership for Fanpages on Facebook. Here and there, the operators of websites can no longer hide behind the data protection responsibility of a platform like Facebook: they need a legal basis for the use of appropriate tools to generate reach or for advertising purposes. At the same time, they have a duty to inform the persons from whom the data is collected. The judgment relates to the interpretation of the provisions of the previous Data Protection Directive (EC 95/46/EC), but also applies to the scope of the new GDPR, which provides even greater protection for the rights and freedoms of data subjects.

In particular, a consent solution prior to data collection and transmission can be the legal basis for the processing of data for website operators. Especially with regard to page visitors who are not registered Facebook users themselves and whose data is transmitted through social plugins during a visit to the website, it must be assumed that the fundamental rights and freedoms of those concerned prevail, so that justification via a legitimate interest cannot be considered here.

Johannes Caspar, the Hamburg Commissioner for Data Protection and Freedom of Information, commented: "With today's ruling, the ECJ confirms its consistent line in the area of data and consumer protection by extending the judgements on joint controllership to a further case group. The impact of this decision is likely to be significant. Other methods of user tracking in which website operators use analysis tools provided by third-party providers must also be measured against these legal requirements. This applies in particular with regard to the obtaining of informed consent by site operators."

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