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Cookies also require consent in Germany

With today's judgment on Planet49 (C-673/17), the European Court of Justice (ECJ) has fundamentally answered key questions that have led in recent years to diverging interpretations between website operators, tracking service providers and data protection supervisory authorities. The ECJ makes it clear that - also in Germany - the setting or retrieval of cookies or other information stored in the user's terminal device requires consent. The opt-out procedure provided on many websites is not sufficient. The statements of the court apply regardless of whether this concerns personal data or not.

The court also specifies the requirements that must be met for such consent. It presupposes an active behaviour of the user, which takes place unambiguously and voluntarily. This excludes, for example, implementations that are based purely on the continued use of the offer.

The duty to provide information applicable under the provisions of the General Data Protection Regulation (GDPR) is interpreted in such a way that the persons concerned must be fully informed in advance. Consent can only be given in full knowledge of the facts. Accordingly, the website operator must in any case inform the user about the duration of the function of cookies as well as about the access of third parties to them.

Johannes Caspar, Hamburg Commissioner for Data Protection and Freedom of Information, commented: "Today's ruling of the European Court of Justice confirms the long-standing legal view of data protection supervisory authorities that the setting of cookies in particular requires consent. This also applies to other forms of tracking such as browser fingerprinting. For web tracking not only in Germany, but throughout Europe, the ruling represents a wake-up call to align the widely illegal practice in this area to data protection law. We will base our supervisory practice on the standards of the ECJ."

The German supervisory authorities provide a guideline for providers of telemedia at <https://www.datenschutzkonferenz-online.de/media/oh/20190405>, which enables website operators to make adjustments to their offerings if necessary.

Press contact:

Martin Schemm

Phone: +49 40 428 54-4044

E-mail: presse@datenschutz.hamburg.de