

Press release

March 4, 2016

Facebook's real-name policy remains in force for the time being

The order of the Hamburg Commissioner for Data Protection and Freedom of Information (HmbBfDi) to implement the right to use Facebook with a pseudonym cannot be enforced for the time being

In its provisional decision from March 3, 2016, the Hamburg administrative court ruled that German national law is not applicable regarding the pseudonymous use of Facebook. The court thus confirms the suspensive effect of an objection by Facebook against the order of the Hamburg Commissioner for Data Protection and Freedom of Information to cancel the blocking of a Facebook account of a female user who used a pseudonym. To justify the decision, the Hamburg administrative court stated, that despite the existence of a German subsidiary, which is mainly working in the marketing sector, German Law is not applicable and therefore Facebook must only comply with Irish law. However, such a corresponding right for pseudonymous or anonymous use does not exist in Irish law.

The European Court of Justice (ECJ) had previously presented a broad interpretation of the application of Member State's data protection rules in two decisions in the cases of Google Spain and Weltimmo in 2014 and 2015. In its view a connection to the subsidiary shall also be possible without the processing of user data by the subsidiary. It is sufficient, that the subsidiary only contributes to the profitability of the internet services or supports the controller with lobbying activities. This economical inseparability between advertising revenues, lobbying and data processing was also confirmed by the Brussels Court of First Instance in November 2015 and by the Article 29 Working Party, the panel of Data Protection Supervisors of the EU-Member States and the European Data Protection Supervisor subsequent to the decision of the ECJ. A few days ago, the Federal Administrative Court of Germany stayed the proceedings on the issue of admissibility of Facebook fan-pages and submitted to the European Court of Justice the question regarding the applicable law for data processing with respect to Facebook.

Hamburg's Commissioner for Data Protection and Freedom of Information, Johannes Caspar notes: "The argument, that the legislation of that Member State of the European Union is applicable where the subsidiary is located, that is most closely connected with the operation of the disputed data processing, is unconvincing. The aim of the EU Data Protection Directive to offer a comprehensive and effective protection of fundamental rights, particular the right to respect for privacy and for data protection, is thus missed because of the narrow interpretation in this decision. We will continue our efforts to ensure the right for using pseudonyms and will consider the necessary steps to be taken."

Further information and links can be found here: www.datenschutz-hamburg.de

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