

Press release

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Major changes in Google's data processing required – Data protection commissioner issues administrative order

The Hamburg Commissioner of Data Protection and Freedom of Information (HmbBfDI) issued last week an administrative order against Google Inc to remediate violations against the Federal Telemedia Act (Telemediengesetz, TMG) and the Federal Data Protection Act (Bundesdatenschutzgesetz, BDSG). The US based company is thereby compelled to collect and combine user data only in accordance with the existing legal framework. According to the view of the data protection authority the ongoing practice of user profiling affects the privacy of Google users far beyond the admissible degree. Google is ordered to take the necessary technical and organisational measures to guarantee that their users can decide on their own if and to what extent their data is used for profiling.

Google Inc collects substantial information about the habits of their users. Many use the various services provided by the company in their daily life on a regular and extensive basis. This includes those registered with Google (e.g. users of Gmail and most owners of Android phones) as well as those that use Google services (like the search engine) without being logged on.

The content and usage data collected thereby reveal a lot about the individual and his or her interests, habits and ways of life.

For example it may be possible

- to compile detailed travel profiles by evaluating location data,
- to detect specific interests and preferences by evaluating search engine use,
- to assess the user's social and financial status, their whereabouts and many other of their habits by analysing the collected data and
- to infer information such as friend relationships, sexual orientation and relationship status.

In its privacy policy Google excludes the association of especially sensitive data with other usage data for the purpose of presenting users tailored ads. Nevertheless the combination of all the collected data from the different single services used allows the creation of meaningful and nearly and comprehensive personal records.

Such profiling across their various services is subject of Google's privacy policy enacted in March 2012. For such an extensive profiling that combines all data there is no justification in either German national

or European law. Therefore, such processing is only lawful given an explicit and informed consent of the respective user or, in so far the laws provide for that, the possibility for the user to object.

Johannes Caspar, the Hamburg Commissioner of Data Protection and Freedom of Information states: "In various meetings with Google we could achieve some improvements concerning the information of users. Nevertheless on the substantial issue of combining user data across services Google has not been willing to abide to the legally binding rules and refused to substantially improve the user's controls. So we had to compel Google to do so by an administrative order. Our requirements aim at a fair balance between the concerns of the company and its users. The issue is up to Google now. The company must treat the data of its millions of users in a way that respects their privacy adequately while they use the various services of the company."

The Hamburg Commissioner of Data Protection and Freedom of Information evaluated Google's privacy policy within a European task force as representative of Germany. The six EU-member states involved had extensive discussions to guarantee a common European stance. The enforcement of the privacy requirements is now being done autonomously and solely based on grounds of the respective national law. While other countries already went forward with fines based on their national law a formal order was now issued according to German data protection law.

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