

Press Release

Judgment: Facebook Must Comply with German Privacy Laws

Berlin Court of Appeal Rejects an Appeal by Facebook and Confirms a Judgment in Favor of vzbv

Berlin, 2/17/2014 – The Federation of German Consumer Organizations (vzbv) has asserted itself versus Facebook before the Berlin Court of Appeal. The Court of Appeal rejected an appeal by Facebook and confirmed a judgment by the Berlin Regional Court in favor of vzbv. vzbv had filed a lawsuit because some clauses in Facebook's general terms and conditions and data protection rules violated German law. The Friend Finder offered by Facebook some time ago, the address book import function and invitation emails generated from it are also a subject matter of the action. After Berlin's Regional Court, the Berlin Court of Appeal now also ruled: Facebook Ireland, the European subsidiary of Facebook, must comply with German privacy laws.

“This judgment is a milestone for data protection in the Facebook era. The Berlin Court of Appeal has clearly ruled in the matter as to what law applies to Facebook,” said Carola Elbrecht, manager of the Consumer Rights in the Digital World project at vzbv. It is not Irish but German privacy laws that apply to Facebook Ireland. This is the conclusion that results from the German Federal Data Protection Act if the responsibility for data processing does not lie with a European subsidiary but with a parent company in the United States that wholly owns it. And this exactly is the case with Facebook.

Data protection is consumer protection

The judgment is also a success with respect to data and consumer protection. Accordingly, privacy laws must be defined as consumer protection laws in the meaning of the German Act of Injunctive Relief. This strengthens the competence of the associations of vzbv and the consumer centers to take legal action. The court stated in the grounds for the judgment that the German Federal Data Protection Act (BDSG) and the EU Data Protection Directive did not just protect the consumers' rights of personality. Protection of consumers in conjunction with data processing by companies was a part of the general right to privacy as well. After all, the BDSG and the EU Data Protection Directive regulate data processing in the people's personal lives as well as with respect to their economic activity as consumers.

vzbv feels encouraged in its fight for a reliable high privacy level throughout Europe by the Court of Appeal's ruling. "It must no longer be worthwhile for globally active companies to establish subsidiaries in countries in which they can expect the least resistance from the local data protection authorities," said Elbrecht. The vzbv once again calls on the German federal government to work for a rapid implementation of the General Data Protection Regulation to "ensure a uniform level of data protection throughout Europe" as promised in the coalition agreement. Without such a uniform legal framework, consumers cannot be confident that U.S. companies like Facebook and Apple will comply with European law.

Effects of the judgment

The judgment of the Berlin Court of Appeal is not yet final. Over time, Facebook has modified not only its Friend Finder, but also a major portion of its general terms and conditions. Still, the principles of this ruling can be applied to the current Friend Finder and the partially modified general terms and conditions. As soon as the judgment will be final, vzbv will look into where it immediately affects Facebook's current business operations.

Judgment by the Berlin Court of Appeal of 01/24/2014, Ref. No. 5 U 42/12 - not yet final and binding

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