[DE] Study Finds Planned Broadcasting Licence Fee Complies with Data Protection Rules

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A study commissioned by ARD and ZDF has concluded that the planned licence fee to fund public service broadcasting is compatible with the constitutional rules on data protection (see IRIS 2010-6/21). The report, published on 20 September 2010, primarily examines the extent to which data concerning members of the public contained on population registers can be communicated to the *Gebühreneinzugszentrale* (licence fee collecting agency - GEZ) for public service broadcasters. It also investigates the information obligations of individuals who owe the licence fee and broadcasters' right to obtain information from public and private bodies. The activities of the organisations responsible for collecting the fees are also critically examined.

The author considers the collection of population register data concerning German citizens to be compatible with the basic right to informational self-determination. According to the draft *Rundfunkbeitragsstaatsvertrag* (Inter-State Agreement on the broadcasting licence fee), the data collected is subject to clear rules on limitation of use and deletion. The one-off comparison with data held by the registration authorities does not create a national population register. There is no less intrusive way of achieving this objective; the interests of the people concerned, which are only "harmed in a very small way", must come second to the objective of a fair licence fee system. The report also considers regular comparisons of register data to be proportionate and necessary for the integrity of the system.

There is also no problem with the collection of personal data from other public and private bodies without the knowledge of the person concerned, since the objective of a fair licence fee system can only be met if the majority of people who owe the fee can be identified. Broadcasters' rights to obtain information are also admissible under constitutional law because the data collected is protected by strict rules limiting its use. Finally, neither letters to people who may owe the licence fee nor individual inquiries by the relevant officials give rise to legal reservations, although the role of the latter should, in future, be reduced, since they would no longer need to check whether viewers owned a receiver.

The report was commissioned because of objections raised by the *Land* data protection officers concerning the data protection implications of the licence fee.

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They had particularly raised questions about the planned regulation's compliance with the principles of data reduction and data economy. The author of the report countered these arguments by asserting that these principles were only enshrined in sub-constitutional law (in Article 3a of the *Bundesdatenschutzgesetz* - federal data protection act) and seemed "more or less paradoxical in a society that uses information technology in all areas of life". Rather, data storage is often actually in the interests of the people concerned. The collection of data without the knowledge of the person concerned is also necessary and admissible under national and regional data protection laws, since the people who might owe the licence fee are not yet known and this is the only way of identifying them.

Finally, the planned licence fee will not increase the amount of data held. In fact, the amount will be smaller, since only one person in each household will need to be identified. In addition, data protection is an individual right, so the number of people concerned is irrelevant. The alternative proposal - that the household fee should be collected by the tax offices - does not meet the requirement for broadcasting to be independent of the State.

According to reports, while representatives of ARD and ZDF welcomed the results of the study, members of the opposition parties have been very critical of the planned fee: they believe that the comparison with population registers will in fact create a central population register. They are demanding that data be deleted immediately and claim that secret access to data held by public and private bodies is unnecessary and promotes hidden address trading.

Datenschutzrechtliche Fragen im Zusammenhang mit der Einführung eines Rundfunkbeitrags - Rechtsgutachten im Auftrag der ARD und des ZDF, erstattet von Dr. jur. Hans Peter Bull, 20. September 2010

http://www.ard.de/intern/standpunkte/-/id=1604680/property=download/nid=8236/137nkg1/Gutachten+zu+datenschutzrechtlichen+Fragen.pdf

Data protection law issues related to the introduction of a broadcasting licence fee - legal report commissioned by ARD and ZDF, written by Dr Hans Peter Bull, 20 September 2010

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