[DE] Users must be informed by manufacturers about data transfer in the case of smart TVs

IRIS 2016-8:1/14

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According to the Landgericht Frankfurt (Frankfurt Regional Court) in a judgment of 10 June 2016 (Case 2-03 O 364/15), manufacturers of smart TVs must provide consumers with better information about the gathering of personal data and must not issue any unreasonably long terms and conditions or privacy policy.

The defendant was a manufacturer of internet-enabled smart TVs that operate on the HbbTV standard, which is usually activated by pressing the “red button”. The HbbTV function was installed and switched on when the smart TVs were delivered. The defendant’s smart TVs also feature a user interface called “Smart Hub”, which enables various items of information to be called up on the TV set, contains a kind of digital video library, and possesses an App structure. After being set up, the smart TVs in issue establish a connection to a Samsung server via the IP address in order to check that the installed firmware is up to date and carry out updates if necessary. The region in which the user is located is identified in order to produce the correct language version of the terms and conditions. The installation instructions for the smart TV contain no information on the conditions of use or a privacy statement. The terms and conditions and privacy statement later used by the defendant are very extensive (covering more than 50 screen pages in each case). The plaintiff, the North Rhine-Westphalia Verbraucherzentrale (consumer advice centre) demanded that the defendant cease gathering and using consumers’ personal data when a device is put into operation before the Smart Hub Terms and Conditions and Privacy Policy are agreed to, and before the Smart Hub function is activated. It also demanded that the company cease providing terms and conditions and details of its privacy policy that are so long that a consumer cannot reasonably be expected to comprehend them.

The Court partly allowed the consumer advice centre’s complaint, stating that the defendant had to draw the attention of the purchaser of a smart TV to the fact that personal data was gathered and used when the device was connected to the internet. Some consumers, it went on, were not aware that after a smart TV had been connected personal data in the form of IP addresses could also be gathered when the device’s internet function was not in use. Similarly, the consumer was generally not aware that personal data in the form of IP addresses could be gathered via the HbbTV function. Furthermore, the Court agreed with the

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consumer advice centre that the Terms and Conditions and Privacy Policy, comprising more than 50 screen pages in each case, were unreasonably long and difficult to read. Owing to the inadequate transparency with regard to the extent of the data transfer, the defendant was prohibited from using numerous clauses in the terms and conditions.

However, the Court dismissed the action in respect of the plaintiff's demand that it prohibit the gathering of personal data in connection with the use of the HbbTV service and the installation of the smart TV if no agreement has been given for this to be done, pointing out that this data was not passed on to the defendant German company but, rather, to the operator of the HbbTV services and the foreign parent company, which was not a party to the legal action. As the action was therefore not directed against the correct defendant, the Court held that it did not have to decide whether the data transfer met the legal requirements.

This decision can be appealed.

Urteil des LG Frankfurt vom 10. Juni 2016 (Az 2-03 O 364/15)

http://www.verbraucherzentrale.nrw/mediabig/241624A.pdf

Judgment of the Frankfurt Regional Court of 10 June 2016 (Case 2-03 O 364/15)

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