

Facebook's Business Model Challenged Following EU Regulator Ruling



Earlier today, February 7, 2019, the Bundeskartellamt (Germany's national competition regulator) issued a monumental ruling which prohibits Facebook from combining user data from different sources. The decision concerns all private users of Facebook based in Germany, however it is likely to be followed by similar rulings worldwide, and specifically throughout the EU.

Until this ruling use of Facebook's social network has been contingent upon agreeing to the terms of service stipulating that Facebook can collect many data outside of Facebook and assign these data to the respective Facebook user account. Not only the data collected on Facebook's website, but also those collected on Facebook-owned websites and apps as well as on third party websites and apps could be combined and assigned to the user's Facebook account.

The third party sources are data generated on the one hand by the use of services owned by Facebook, such as e.g. WhatsApp and Instagram. On the other hand, the data are generated by the use of third party websites and apps. If a third party website has embedded so-called "Facebook Business Tools" such as the "Like" button, "Facebook login" or analytical services such as "Facebook Analytics", data will be transmitted to Facebook via APIs the moment the user calls up that third party web-site for the first time.

Facebook also receives detailed data on the user behavior of Facebook users from third-party providers which use the developer interfaces offered by Facebook. Via the integration of Facebook interfaces (APIs), Facebook can track the users' behavior on these websites, even if they are not logged into or registered with Facebook.

The changes based on the decision are:

In future, Facebook may only combine user data from services such as WhatsApp or Instagram and assign them to a Facebook user account if the user voluntarily consents to this practice. If the user does not consent, Facebook may no longer combine data in the comprehensive manner described above.

What exactly must Facebook do?

Essentially the Bundeskartellamt has prohibited Facebook from stipulating in its terms of service that the use of the social network Facebook.com is subject to Facebook being able to collect and use data generated by the use of Facebook-owned services such as WhatsApp and Instagram and assign them to the user accounts of the social network without the consent of the user. Facebook was also prohibited from using terms and conditions allowing the company to collect user data generated by calling up third party websites or using mobile apps via interfaces (Facebook Business Tools), and to use and assign them to Facebook user accounts. The Bundeskartellamt not only prohibited the relevant parts of the terms of service and the explanatory data and cookie policies, but also the actual processing of data carried out by Facebook on the basis of these terms.

This document provides a general summary and is for information purposes only. It is not intended to be comprehensive nor does it constitute legal advice. If you are interested in obtaining further information please contact our office at:

Schuman & Co. Law Offices
9 Hartom Street, P.O.Box 45392
Har Hotzvim, Jerusalem 97774 Israel
Tel: +972-2-581-3760, Fax: +972-2-581-5432
Shalev@schumanlaw.co.il
<http://www.schumanlaw.co.il/>