

Cookies, I like und Datenschutz - was ist noch erlaubt?

Dr. Peter Katko, Ernst & Young Law GmbH
Big Techday 6, 14 June 2013

Agenda

- ▶ Cookies and data privacy law
 - ▶ Use of Cookies in practice
 - ▶ “EU Cookie Directive”
 - ▶ Art. 29 Working Party
 - ▶ Divergent implementation by member states
- ▶ Social Plug-ins and data privacy law
- ▶ Upcoming data protection regulation

Use of Cookies in Practice

A long-exposure photograph of a city street at night. The foreground shows a road with light trails from cars, creating streaks of white and red. In the background, several tall buildings are illuminated, and a street lamp is visible on the left. The sky is a mix of blue and purple, suggesting dusk or dawn.

Giving the Web a Memory Personal Data

ERGO

versichern heißt verbinden.

**Wir reden Klartext.
In unserem neuen Kundenbericht.**

Mittwoch, 23. Mai 2012

Schlagzeilen | Hilfe | RSS | Newsletter | Mobil | Wetter | TV-Programme

SPIEGEL ONLINE

NACHRICHTEN VIDEO THEMEN FORUM ENGLISH DER SPIEGEL SPIEGEL TV ARD SHOP

Folgen   

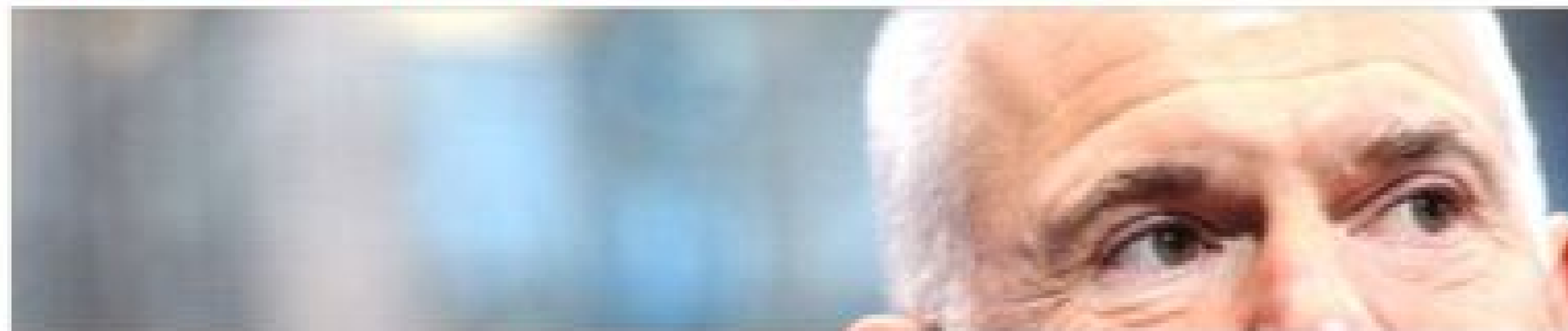
Home Politik Wirtschaft Panorama Sport Kultur Feuilleton Wissenschaft Gesundheit Lifestyle Karriere und Schule Reise Auto

Personen: [Thomas von Steiner](#) [Günter Kieser](#) [Klaus](#)

Logon | Registrierung

Krach in Sozialistischer Internationalen

Papandreou wirft Gabriel Spaltung der Linken vor



Giving the Web a Memory Personal Data

THE WORLD'S BEST DRINKS START WITH SMIRNOFF.
TRY DRINKS FROM AROUND THE GLOBE

Mittwoch, 23. Mai 2012
SPIEGEL ONLINE
NACHRICHTEN

**Cookies store personal information:
your own input on a website
ad tracking**

IT'S ONLY A
GAMBLING PROBLEM
IF YOU'RE
LOSING

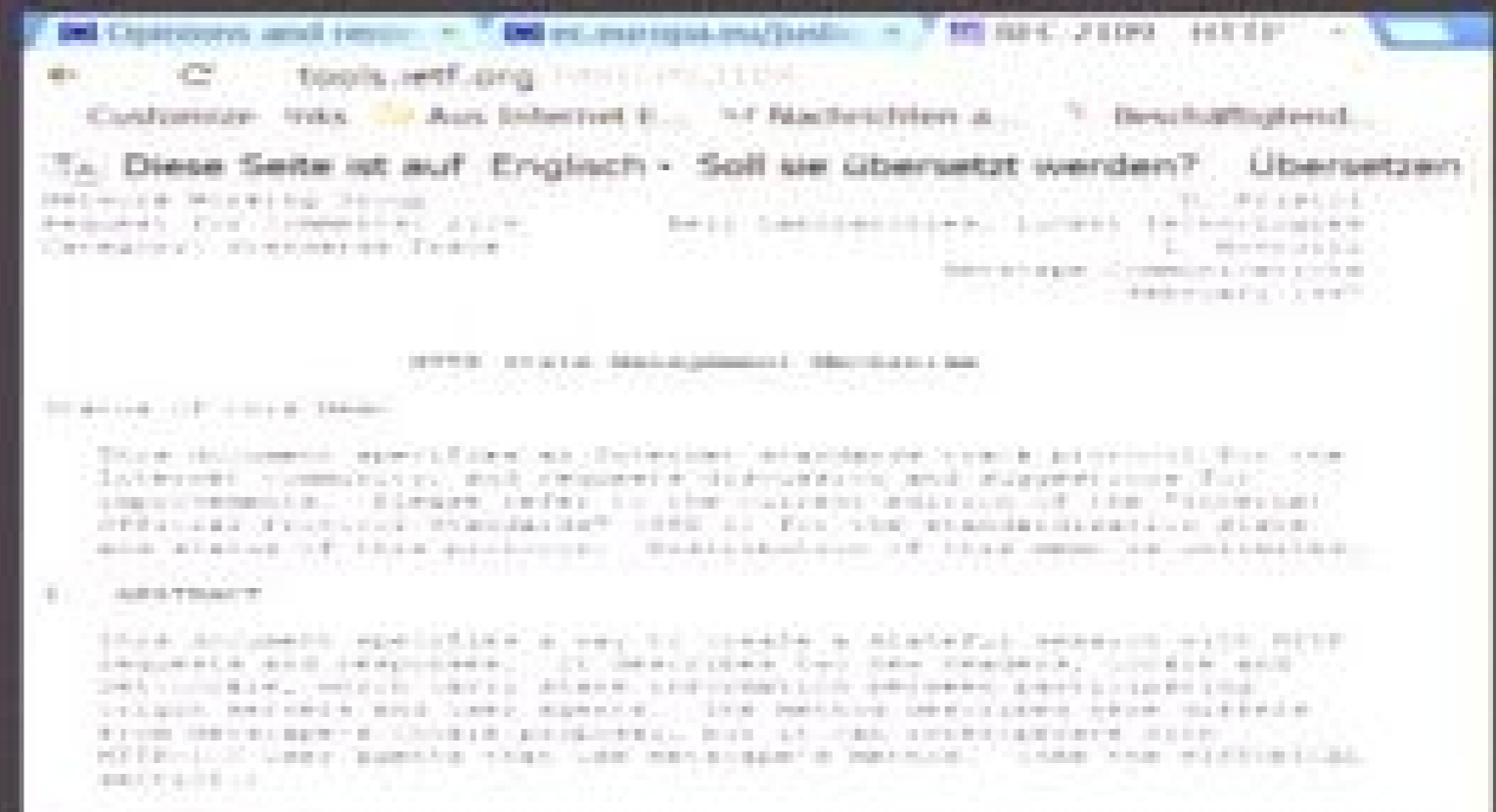
Definition of a cookie

Ein Cookie ist eine Textinformation, die die besuchte Website (hier „Server“) über den Browser im Rechner des Betrachters („Client“) platziert. Der Cookie wird entweder vom Webserver an den Browser gesendet oder von einem Skript (etwa JavaScript) in der Website erzeugt. Der Client sendet die Cookie-Information bei späteren, neuen Besuchen dieser Seite mit jeder Anforderung wieder an den Server.

Quelle: Wikipedia

Definition in RFC6265

<http://tools.ietf.org/html/rfc6265>



Every web-surfing triggers cookie use

The screenshot shows a browser's developer tools interface. At the top, it says 'Locally stored data' with a 'Remove all' button and a close icon. Below this, the site 'www.cnlf.fr' is listed with '5 cookies'. Five cookie names are shown in buttons: '_pk_d.1.3419', '_pk_d.1.3419_expiry', '_pk_ses.1.3419', '_pk_ses.1.3419_expiry' (highlighted in yellow), and 'acceptPwvk'. A detailed view of the selected cookie is shown below, listing its properties: Name, Content, Domain, Path, Send for, Accessible to script, Created, Expires, and a 'Remove' button.

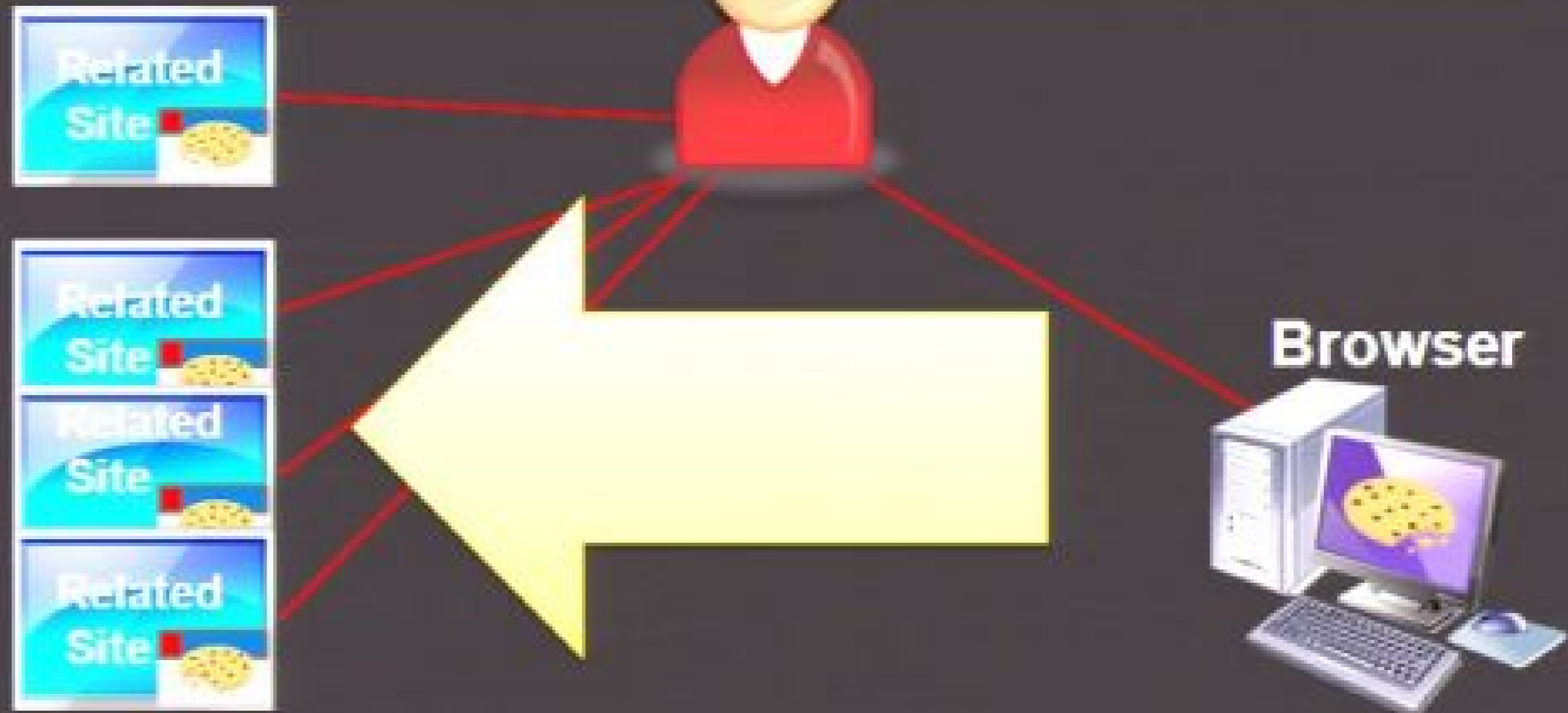
Property	Value
Name:	_pk_ses.1.3419_expiry
Content:	1369296020465
Domain:	www.cnlf.fr
Path:	/
Send for:	Any kind of connection
Accessible to script:	Yes
Created:	Thursday, May 23, 2013 9:30:20 AM
Expires:	Thursday, May 23, 2013 10:00:20 AM

Giving the Web a Memory

Virtual shopping cart



Giving the Web a Memory Track Users



- ▶ By agreement, place cookies across a network of related sites, track cross-server sessions
- ▶ “persistent cookie” provided by a 3rd party

Giving the Web a Memory

Use Case: Amazon

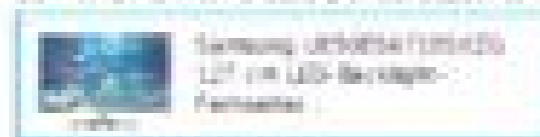
The image shows a screenshot of the WetterOnline website. The top navigation bar includes the logo 'WetterOnline', a search bar with the text 'Das Wetter in ...', and a 'Login' button. Below the navigation bar, there are several tabs for different weather-related services: 'Wetter', 'News', 'Messwerte', 'Prognose', 'Reise', 'Segel & Ski', 'Gesundheit', and 'Apps & Social'. The main content area displays the weather for Munich, with a current temperature of 14°C and rain. A horizontal timeline shows hourly weather icons and temperatures from 21:00 to 05:00. To the right, there are social media icons for Facebook, Google+, and Twitter, along with a 'Webcams' section. Below the weather forecast, there is a 'WetterMaps' section with a map showing cloud cover and rain intensity. A yellow circle highlights an Amazon.de advertisement for a Kindle Paperwhite, which is a 15 cm (6 Zoll) high-resolution e-reader priced at EUR 129.00. The advertisement also features a 'News Ticker' at the bottom.

Giving the Web a Memory Use Case: Amazon (2)

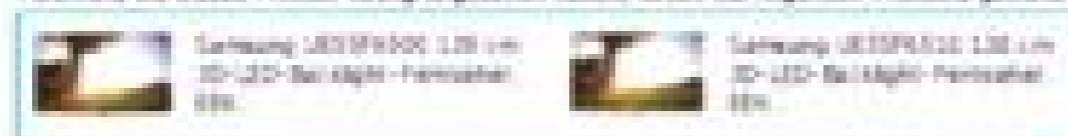
Amazon Einstellungen für Werbung

Warum wird Ihnen diese Anzeige gezeigt? Ihnen wurde wegen einer Anzeige gezeigt, die von Amazon.de personalisiert war. Das funktioniert folgendermaßen:

Der von Ihnen verwendete Browser besuchte kürzlich die Seite dieses Produkts auf Amazon.de



Personen, die dieses Produkt häufig angesehen haben, haben die folgenden Produkte gewählt



Mit der Website, die Sie betrachten haben oder einer sonstigen Drittpartei wurden keine persönlichen Informationen geteilt.

Ihre derzeitigen Einstellungen für Werbung für Amazon gezeigte Werbung personalisieren

Was ist personalisierte Werbung? Personalisierte Werbung (ist auch als verhaltenbasierte oder interessenbasierte Werbung bezeichnet) beruht auf Informationen über Sie, wie z.B. Informationen zu den Produkten, die Sie auf der Amazon Website angesehen haben, zu Ihren Einkäufen auf der Amazon Website, zu Ihren Besuchen auf anderen Websites, denen wir Werbung oder Inhalte zur Verfügung stellen oder Informationen zu Ihrer Nutzung von Zahlungsvorgängen wie z.B. Checkout by Amazon auf anderen Websites. Sie können Ihre Einstellungen für die Personalisierung von Werbung durch Amazon hier festlegen.

Wählen Sie Ihre Einstellungen

- von Amazon gezeigte Werbung personalisieren
- von Amazon gezeigte Werbung für diesen Internet-Browser nicht personalisieren



Wir beachten Sie: Auch wenn Sie über die Auswahl getroffen haben, keine personalisierte Werbung zu sehen, können Sie dennoch personalisierte Produkt-Empfehlungen und ähnliche Inhalte auf der Amazon Website und anderen verbundenen Websites sehen, wenn Sie nicht zusätzlich die Einstellungen zu Ihren Persönlichen Empfehlungen angepasst haben. Um mehr darüber zu erfahren, wie Sie Ihre Persönlichen Empfehlungen weiter verbessern können, klicken Sie bitte [hier](#). Sie werden möglicherweise auch auf anderen Websites von Amazon gezeigte Werbung sehen. Diese wird aber nicht personalisiert sein. Mehr Informationen finden Sie in unserer [Datenschutzerklärung](#). Um mehr darüber zu erfahren, wie Sie Ihren Browserverlauf löschen, klicken Sie bitte [hier](#).

Sollten Sie die Auswahl treffen, keine personalisierte Werbung zu sehen, sollten Sie die Einstellungen zu Ihren Persönlichen Empfehlungen verändern und Ihren Browserverlauf löschen, so hat dies keine Auswirkung auf andere Services, die dieselbe Technologie nutzen, wie z.B. Cookies, und Informationen können weiterhin für andere Zwecke gesammelt werden. Über die Einstellungen Ihres Webrowsers zur Privatsphäre können Sie die Verwendung von Cookies steuern. Weitere Einzelheiten zum Umgang mit Cookies finden Sie unter [www.amazon.de/datenschutzerklaerung](#) und in unserer Datenschutzerklärung unter dem Punkt "[Was tun, um die Cookies auf zu löschen](#)".

Ihre oben beschriebene Auswahl wird durch HTTP Cookies verwaltet. Sollten Sie daher diese Cookies löschen oder sollten Sie einen anderen Webbrowser benutzen, müssen Sie Ihre Auswahl erneut treffen.

Mehr Informationen finden Sie in unserer [Datenschutzerklärung](#).

Wir sind interessiert an Ihrem Feedback

Sagen Sie uns, was Sie über Werbung von Amazon denken und lassen Sie uns Email an ad-feedback@amazon.de.

**Legal Framework by Cookie Directive
Art. 5 (3) of Directive 2002/58/EC
as amended by Directive 2009/136/EC**

A long-exposure photograph of a road at night, showing light trails from cars. The road is dark, and the light trails are bright yellow and orange, curving along the road. A white arrow is overlaid on the road, pointing to the right. The text is overlaid in the top left corner.

Legal Framework

Art. 5 (3) of Directive 2002/58/EC

(3) Die Mitgliedstaaten stellen sicher, dass die Speicherung von Informationen oder der Zugriff auf Informationen, die bereits im Endgerät eines Teilnehmers oder Nutzers gespeichert sind, nur gestattet ist, wenn der betreffende Teilnehmer oder Nutzer auf der Grundlage von klaren und umfassenden Informationen, die er gemäß der Richtlinie 95/46/EG u. a. über die Zwecke der Verarbeitung erhält, seine Einwilligung gegeben hat. Dies steht einer technischen Speicherung oder dem Zugang nicht entgegen, wenn der alleinige Zweck die Durchführung der Übertragung einer Nachricht über ein elektronisches Kommunikationsnetz ist oder wenn dies unbedingt erforderlich ist, damit der Anbieter eines Dienstes der Informationsgesellschaft, der vom Teilnehmer oder Nutzer ausdrücklich gewünscht wurde, diesen Dienst zur Verfügung stellen kann.

Legal Framework

No personal data required

- ▶ The storing of information (in the terminal equipment of a subscriber or user)



- ▶ or the gaining of access to information already stored



Legal Framework Consent Exemption

**Informed
Consent**

OR

strictly
necessary for
a service
explicitly
requested by
the user

for sole
purpose of the
transmission

**Consent
Exemption**

Interpretation of the Art. 29 Working Party Consent exemption



Art. 29 Working Party Consent exemption, but information duty

As strictly necessary in order for the provider of an information society service explicitly requested by the subscriber or user to provide the service

For the sole purpose of carrying out the transmission of a communication over an electronic communications network

User input cookies (**session-id**), for the duration of a session or persistent cookies limited to a few hours in some cases.

Authentication cookies, used for authenticated services, for the duration of a session.

User centric **security cookies**, used to detect authentication abuses, for a limited persistent duration.

Multimedia content player session cookies, such as flash player cookies, for the duration of a session.

User interface **customization persistent cookies**, for the duration of a session (or slightly more).

Third party social plug-in content sharing cookies, for logged in members of a social network.

Load balancing session cookies, for the duration of session.

Cookies in use
[more details](#)



Interpretation of the Art. 29 Working Party NO Consent Exemption





Informed consent

Opt in / opt out

We would like to place cookies on your computer to enhance your navigation of the site and improve site usage.

I accept cookies from this site. [Continue](#)

This website wants to use cookies.

[OK](#)

[No way](#)

- Use a cookie to remember me. Only check this box if you are not using a shared computer.

By entering this website you agree to Smirnoff's Terms and conditions and Privacy & Cookies Notice

[ENTER SITE](#)

Some cookies are essential for you to use the site and we cannot provide you without them. These cookies are set when you submit a form, login or interact with the site by doing something that goes beyond clicking on simple links.

[I am happy with this](#)

[about this tool](#)

The cookies on this site are used to enhance your navigation of the site and improve site usage. If you continue without changing these settings, you consent to this, but if you want, you can change your settings at any time at the bottom of this page.

[Change settings](#)

[No, thanks](#)

[Find out more about Cookies >](#)

We've updated our privacy policy, not that you care. You can read it or click to get rid of this annoying box and carry on as before.

[Whatever](#)

Opt in / opt out

The CEO would like to place cookies on your computer

I accept cookies from this site.

This website wants to use cookies.

Use a cookie to remember me. Only check this box if you are not using a shared computer.

By entering this website you agree to Smirnoff's Terms and conditions and Privacy & Cookies Notice

...without them. These cookies are set when you submit a form, login or interact with the site by doing something that goes beyond clicking on simple links.

[about this tool](#)

The cookie information is stored on your device. If you continue without changing these settings, you consent to this - but if you want, you can change your settings at any time at the bottom of this page.

[Change settings](#)

[No, thanks](#)

[Find out more about Cookies >](#)

We've updated our privacy policy, not that you care. You can read it or click to get rid of this annoying box and carry on as before.

Explicit / implied Consent



uses cookies to optimise your user experience. [Click here](#) to

Cookie preferences.

If you continue to access this website without changing your preferences we will consider that you consent to the use of cookies as set out [here](#)

We have placed cookies on your computer to help make this website better. You can [change your cookie settings](#) at any time. Otherwise, we'll assume you're OK to continue.



- ▶ the more privacy intrusive your activity, the more priority you will need to give to getting meaningful consent

Opt-In: How to?

Opinion of the Art. 29 Working Party on behavioral targeting (Opinion 16/2011)



Consent and Third Party Cookies

- ▶ Both parties will have a responsibility for ensuring users are clearly informed about cookies and for obtaining consent.
- ▶ “Where third-party cookies are involved, chains of responsibility can become complicated...”
(ICC UK Cookie Guide)



 Only show to EU visitors

Hide the banner from visitors outside the EU



Countries of the EU

Cookie Consent in Europe



Implied consent

Great Britain

Belgium

Sweden

Denmark

Spain

Explicit consent

France

Netherlands

Czech Republic

Finland

Browser consent

Luxembourg

Greece

Poland

Slovakia

Spain

Cookie Consent in Europe



Opt-In

Great Britain

France

Netherlands

Sweden

Denmark

Spain

Italy

Poland



Opt-Out

Luxembourg

Bulgaria

Czech Republic

Finland

Slovakia

Estonia



Open

Ireland

Hungary





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Cookies

Use of cookies by the ICO

Cookies are small text files that are placed on your computer by websites that you visit. They are widely used to make websites work, or work more efficiently, as well as to provide information to the makers of the site.

The table below explains the cookies we use and why.

Cookie	Name	Purpose
Cookie banner	ICO_CookieBanner	This cookie is used to control the display and the location of the cookie information banner. The cookie is set on arrival to the site by default. It expires after a set time and is not set again unless a user changes their cookie settings.
Cookie preference	ICO_CookiePrefs	This cookie is used to remember a user's choice about cookies on the ICO website. The cookie is set by default, but on arrival to the site with a value of 'true'. It is set manually to either 'no-cookies' or 'cookies'. The cookie value is updated to a value of 'true'.
Google Analytics	_ga _gat _gid	These cookies are used to collect information about how a website is used and how the user interacts with the website (e.g. to help us improve the site). The cookies collect information in an anonymous form, including the number of visitors to the site, where visitors have come to the site from and the pages they visit. View details of all systems of personal data held

We have placed cookies on your computer to help us enhance this website better. You can [change your cookie settings](#) at any time. Otherwise, we'll assume you're OK to continue.



- ▶ No transposition into German Law
- ▶ Consent required for cookies collecting personal data?
- ▶ Information only on cookies collecting personal data?



Social Plug-ins

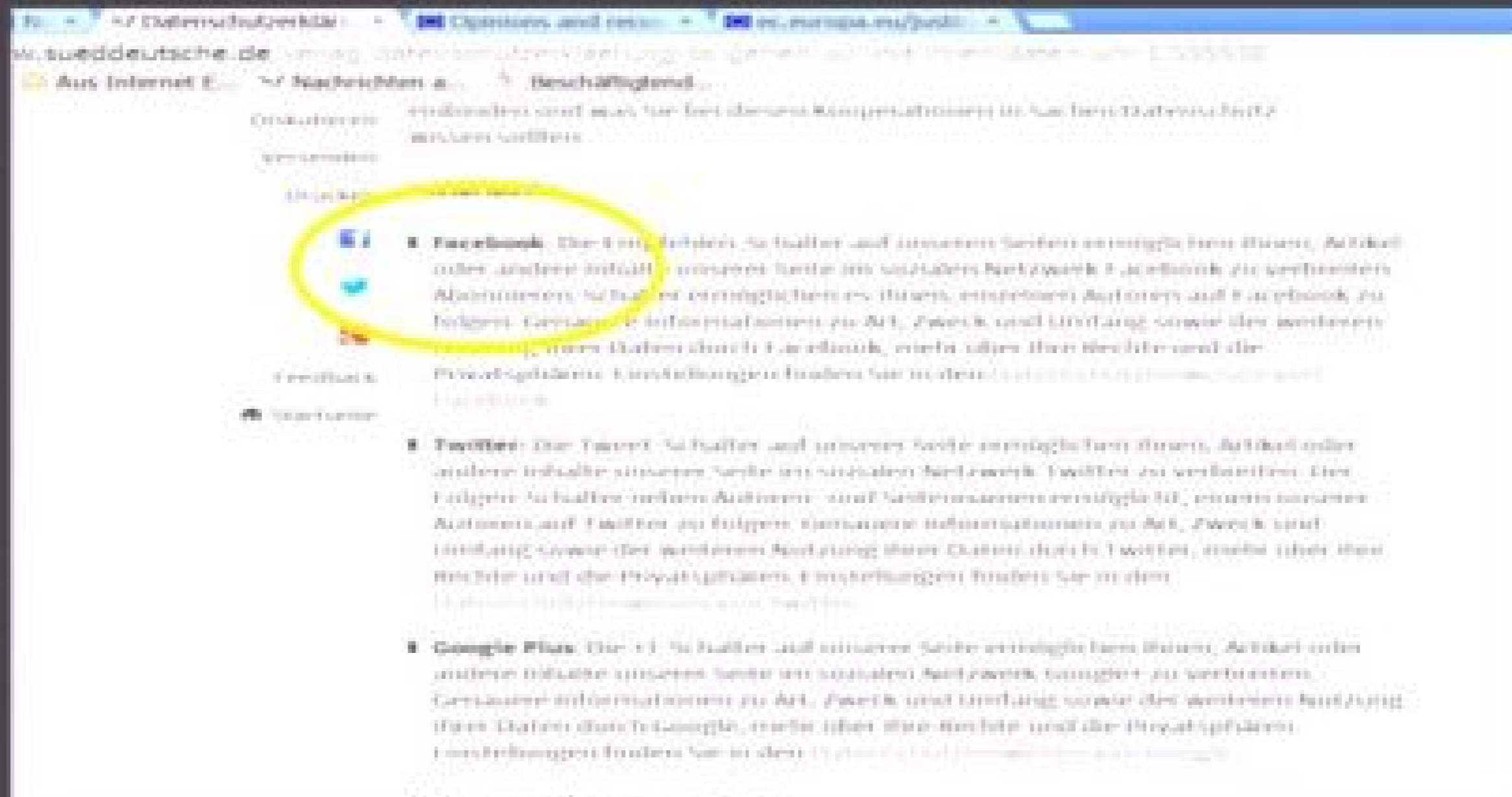
Facebooks „I like“ – (hidden) webtracking – not liked by privacy officers

- ▶ Third party social plug-in content sharing cookies
- ▶ Consent required
- ▶ Consent exemption for logged in members of a social network.



Information by reference to privacy setting of the social network

- ▶ Both parties will have a responsibility for ensuring users are clearly informed about cookies and for obtaining consent.



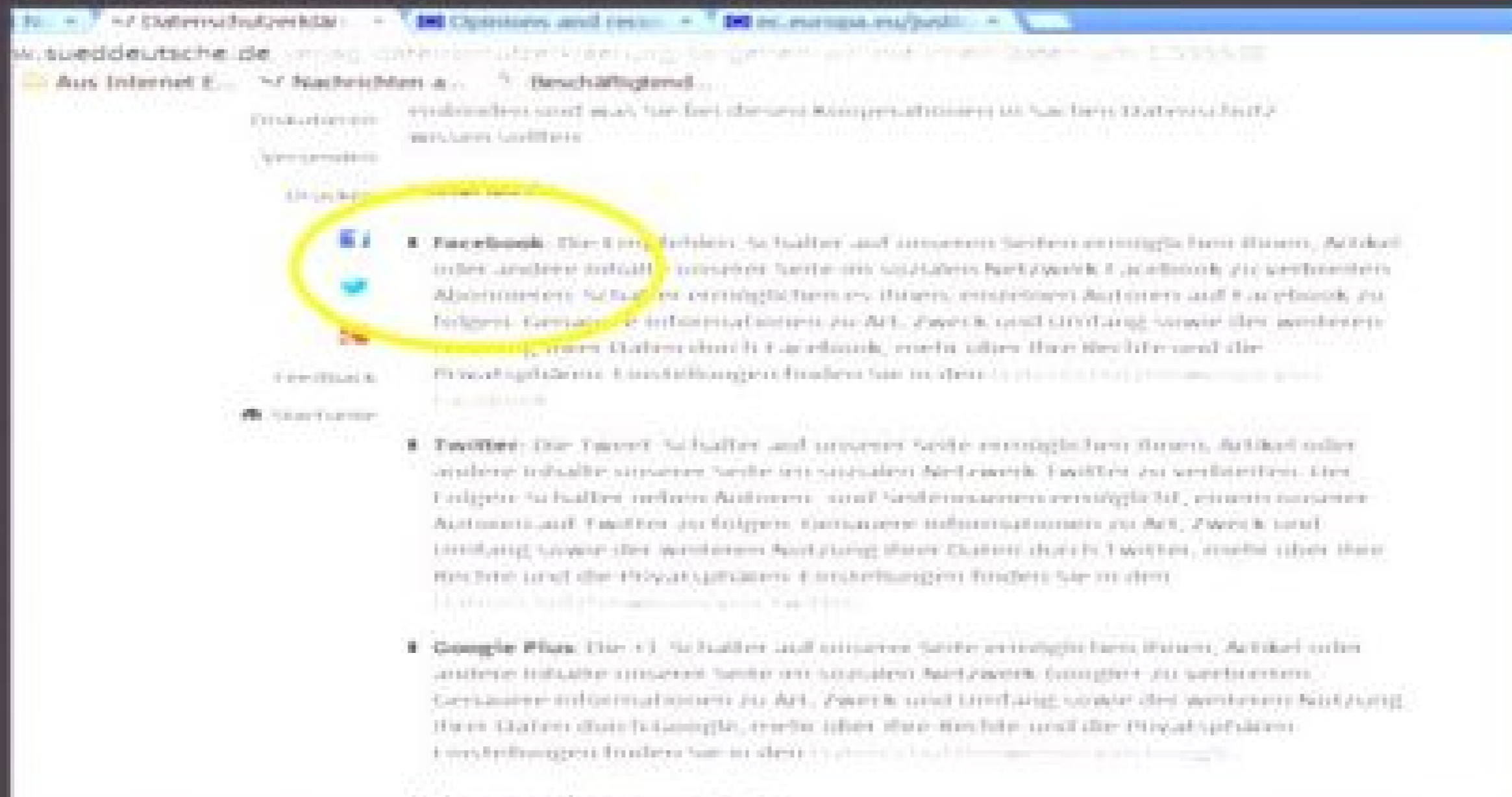
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The future of data protection

EU Data Protection Regulation: Full harmonization – new duties – higher fines

Expected to enter into force in 2014

Penalties for Breaches

- ▶ A breach of the new data protection rules could result in a fine of up to € 1 million or 2% of the global annual turnover. Fines will be imposed by the DPA.

Duties for non-EU Companies

- ▶ The new data protection rules will apply to non-EU based businesses who offer their goods or services to EU customers based in the EU (or monitor their behavior).
- ▶ For example a US company with a subsidiary in the EU will be required to comply with EU data protection law as well as their own local US laws.

Obligation to appoint a Data Protection Officer

- ▶ An independent data protection officer must be appointed by public authorities and businesses with 250 or more employees or businesses whose core activities involve processing operations which require regular and systematic monitoring.

Right to be forgotten and to data portability



Viviane Roding

EU Regulation: Principle of accountability

Accountability

- The 'principle of accountability' requires data controllers to demonstrate that they have technical, legal and operational control of the data they process (Art. 5f), and that internal policies and mechanisms have been implemented to ensure compliance with existing laws and regulations (Art. 22).
- The protection of the data subjects with regard to the processing of personal data require that appropriate technical and organisational measures are taken, both at the time of the design of the processing and at the time of the processing itself (Art. 30).
- The burden of proof lies with the data processor. This results in considerable documentation requirements (Art. 28).
- The data processor must hold available transparent policies regarding the processing of personal data and the perception of the right of data subjects (Art. 11).
- Where the information of the subject regarding the collection or processing of its personal data is legally required, this information must be provided by the processor in a comprehensible way (Art. 14).
- Moreover, the controller must implement mechanisms to ensure the verification of the effectiveness of these measures. If proportionate, this verification shall be carried out by independent internal or external auditors (Art. 22 Sec. 3).

Privacy Impact Assessment (PIA)

- A PIA (Art. 33) is an assessment of the impact of the envisaged processing operations on the protection of personal data. It aims to prevent problems arising, and hence avoid subsequent expense and disruption.
- PIA focuses on identifying the impacts on privacy of any new project, technology, service or program and, in consultation with stakeholders, taking remedial actions to avoid or mitigate any risk.
- PIA requires following procedures:
 - a threshold analysis,
 - the identification of a team with detailed terms of reference to perform the PIA,
 - a general description of the envisaged processing operations,
 - an identification of impacted stakeholders,
 - the relevant legal and regulatory requirements at stake,
 - the level of risks (likelihood and magnitude),
 - possible solutions to mitigate the risks as well as security measures and mechanisms to ensure the protection of personal data

Contact



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