DATA TRANSFER FROM GERMANY OR SPAIN TO THIRD COUNTRIES – QUESTIONS OF CIVIL LIABILITY FOR PRIVACY RIGHTS INFRINGEMENT

Philipp E. Fischer
Rafael Ferraz Vazquez

Abstract

In the present welfare and economy the digital information plays a prominent role. Every data flow has become steadily faster as well as broader because of

- new technological measures,
- quantity and information power of data controllers and -storage units,
- expanding networks of international affiliated groups who increasingly depend on the availability of new technologies to exchange data,
- new business models such as Cloud Computing, highly frequented and worldwide shared internet-based applications, and
- politicians’ polarised and partisan debates between net neutrality and tight regulation of IT business practices through international standardisation.

Thus, quotidian business processes suffer a challenging level of technological, commercial and political complexity and interdependencies of international data transfers.

Deep in this whirlpool of data flow, personal data, any information which concerns personal and objective relations of the respective person, can be included. Data transfers third (non-EU and non-EEA) countries created higher risk potentials for the affected person(s) as the Web 2.0 processes personal data across national borders “at the click of a mouse”, borders have practically lost their meaning.

Important cases of data breaches in German and Spanish companies have startled today's “Information Society”. If data leaves a secured area, an unintended flow of information is provoked which is, already demonstrated by the occurrence of “WikiLeaks”, afterwards not only technically hardly controllable. This has heated up the public discussion, calls have become louder to improve the different legal frameworks regarding civil liability of data sender (controller) and data receiver (processor).

Authors’ bio

Philipp E. Fischer, a commercial lawyer, based in Munich, Germany, completed his LL.M. at the School of Law of Queen Mary University of London and the Technical University Dresden. Along with attending courses in Computer-, Cyberspace-, e-Commerce and Privacy & Information Law at the chairs of Prof. Ian Walden and Prof. Christopher Millard, he completed his dissertation: "Will Privacy Law in the 21st Century be American, European or International?". After working for mmm&m law firm in Madrid and Amazon.de, he founded a consultancy firm in 2005 in the areas of E-Commerce and Privacy Impact Assessment. In 2010 he worked as a research assistant at the Max-Planck-Institute for Intellectual Property and Competition Law in Munich on the CLIP-Project and was rewarded a scholarship of the German Association for Law and Informatics (DGRi). Mr. Fischer is officially certified as Internal- and External Data Protection Officer and Data Protection Auditor (TÜV). Mr. Fischer is currently working at “S-S-H Rechtsanwälte” Law Firm in Munich, department for Data Protection Services.

Rafael Ferraz Vazquez is a Brazilian lawyer specialised in Intellectual Property Laws. Besides attending several courses and seminars related to this field of law he also completed his Master on Intellectual Property and Information Society at the University of Alicante (Magister Lucentinus). He is experienced in IP litigation and consulting after working for specialised and reputed Brazilian law firms. He also collaborated in international non-government organisations such as the IPR-Helpdesk project (FP6 of the European Commission) and ultimately with the World Intellectual Property Organization (WIPO).