

Joint statement of the conference of the independent data protection authorities of the Federal and State Governments of Germany and the German Association of the Automotive Industry (VDA)

Data protection aspects of using connected and non-connected vehicles

Preamble

Modern motor vehicles already require and generate significant amounts of data. Because of technological advances in information systems in vehicles and their connection to the internet, and the networking among road users, this trend is set to continue and will result in far-reaching changes in road traffic in the years to come. We are also seeing the emergence of a number of new vehicle functions and telematics applications, for example in the fields of servicing and multimedia. While digitization and, in particular, networking offer advantages in terms of road safety and convenience, they also entail a certain risk to the data protection rights of vehicle users. In light of these developments, the independent data protection authorities of the Federal and State Governments and the German Association of the Automotive Industry (VDA) consider the following aspects of data protection to be particularly relevant¹.

1. **Linking of data to individuals:** When modern motor vehicles are used, a significant amount of information is constantly being generated and processed. And, especially when further information is added, the data generated may be linked to the registered owner or even to the driver and passengers in the car and may contain information about the personal or material circumstances of an identifiable person. The data generated during use of a vehicle is deemed personal data within the meaning of the German Federal Data Protection Act (Bundesdatenschutzgesetz - BDSG) if there is a link to the vehicle identification number or the license plate.
2. The **point in time when the data is collected** by a controller as defined in the German Federal Data Protection Act is crucial. It is necessary to decide whether the motor vehicle is one in which data is stored within the vehicle ('offline'), or whether data is transmitted out of the vehicle ('online'), as is the case with the transmission and storage of vehicle data on back-end servers.

¹Data protection issues arising from the transfer of possession of a car, e.g. in connection with a service or employment contract or leasing agreement, do not form part of this paper.

In the case of 'offline' cars, the presumption is that data is recorded without having been previously collected. Since the requirements of section 3 (3) BDSG have not been met, there can be no collection; nonetheless, when the vehicle is used, data is generated which is then recorded by the vehicle. This data must be protected and – analogous to the provision of section 6c BDSG (mobile storage and processing media for personal data) – requires measures to be taken to safeguard the right to informational self-determination. It is only when the data stored by the car is read, e.g. by a workshop carrying out repairs, that the information is collected by a controller as defined in section 3 (3) BDSG.

With 'online' cars, as soon as data is transmitted out of the vehicle, it is collected by a controller within the meaning of section 3 (3) BDSG.

3. **Controller:** In order to identify the controller as defined by section 3 (7) BDSG, it also is necessary to differentiate between 'offline' and 'online' cars.

In the case of 'offline' cars, the person or entity who reads (i.e. collects) personal vehicle data from the car and subsequently processes it will be the controller. Generally, this will be the workshops.

With regard to 'offline' cars, even though manufacturers are not generally the controller at the time the data is 'created' because of the absence of collection, they nonetheless have a responsibility for data protection based on the principle of 'privacy by design'. This applies in particular because manufacturers influence the deferred collection and processing of data (analogous to section 6c BDSG) due to their control over the technical design of the car (type and number of interfaces, means of access, pursuing the principles of data avoidance and data economy laid down in section 3a BDSG). So far as the technical design options are concerned, manufacturers are to be regarded as the point of contact by the data protection authorities for this vehicle category as well.

In the case of 'online' cars those who receive personal data are deemed to be the controllers, i.e. usually the manufacturers and, in some cases, third-party service providers,. In particular, if manufacturers offer additional services for the car, and therefore store data on their back-end servers, they are deemed to be the controller for the processing of this data.

4. The **legitimacy of data collection and processing** can be derived in particular from section 28 (1) sentence 1 No. 1 or 2 BDSG, section 11 et seq. German Telemedia Act or from a declaration of consent that meets the requirements of section 4a BDSG.

The way in which information about data collection and processing operations must be handled in order to form part of the contract or form the basis for an informed declaration of consent (detailed information in the form of a directory of procedures or clearly laid-out, structured information), must be decided on a case-by-case basis. The first buyer can in any case obtain the necessary information from the seller (the manufacturer or its affiliated dealer).

In general, the most important information on data processing should always be available in an easy-to-understand form in the vehicle documentation, which is provided by the manufacturer.

5. Under section 34 BDSG the registered vehicle owner has a **right of information** against the manufacturer. Upon request the manufacturer must provide – free of charge – the personal data about the owner that is collected and stored by the manufacturer. Other than this, section 34 BDSG does not give the registered vehicle owner any right to information purely on the basis of the manufacturer's overall responsibility for the design of the data storage systems. The registered vehicle owners of 'offline' cars have the option of reading out the data – where applicable with the help of a technical expert – which does not necessarily have to be free of charge. Due to the requirement for transparency, the data subject must be able to obtain information from the manufacturer about the principles of the data processing operations, including – as a minimum – the categories of personal data being processed and must be able to do so free of charge and without specialist help.
6. With regard to **data sovereignty**, vehicle users should have various options that enable them to determine how their personal data is processed and used. Car makers aim to clearly show the current connectivity status of the vehicle by using standardized symbols on the instrument panel and providing options to activate or deactivate this status at any time. Restrictions on deleting data come into play if there are legal obligations or if the relevant data is important for guarantees or warranties or product liability, or the availability of the data is necessary for the safe operation of the vehicle. The users themselves must be able to change or reset the information that they have entered at any time (e.g. comfort settings such as seat adjustment, preferred radio stations, navigation data, email/SMS contact data, etc.).

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