



**MENOLD
BEZLER**



**CONVERSATIONAL
BUSINESS
SUMMIT**

**CONVERSATIONAL BUSINESS - THE LEGAL PERSPECTIVE:
THREATS, RUMORS AND SOLUTIONS**

**FRANKFURT
01.12.2022**



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Profile

Dr. Carsten Ulbricht completed his law studies at the Universities of Mannheim and Adelaide (Australia). He joined Menold Bezler as a partner in 2019.

THE SPEAKER

Competence:

- IT Law / Intellectual Property and Data Protection
- Specialization in Internet, E-Commerce, Mobile and Social Media
- Blog " Internet, Social Media & Law"

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PART 1
THREATS AND RUMORS

Since May 2018 every company can be warned for data protection violations and must expect penalties of 20 million euros or 4% of their own annual turnover.



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PART 2
RUMORS VS REALITY

präsentiert von

wbs

WhatsApp illegal!

REALITY

- Strict interpretation in Guidelines of Data Protection Authorities
- Enforcement deficit
- Very few and inconsistent fines
- Judicial reviews regularly lead to reduction or annulment of fines
- Waiting for „legal certainty“ leads to competitive disadvantages

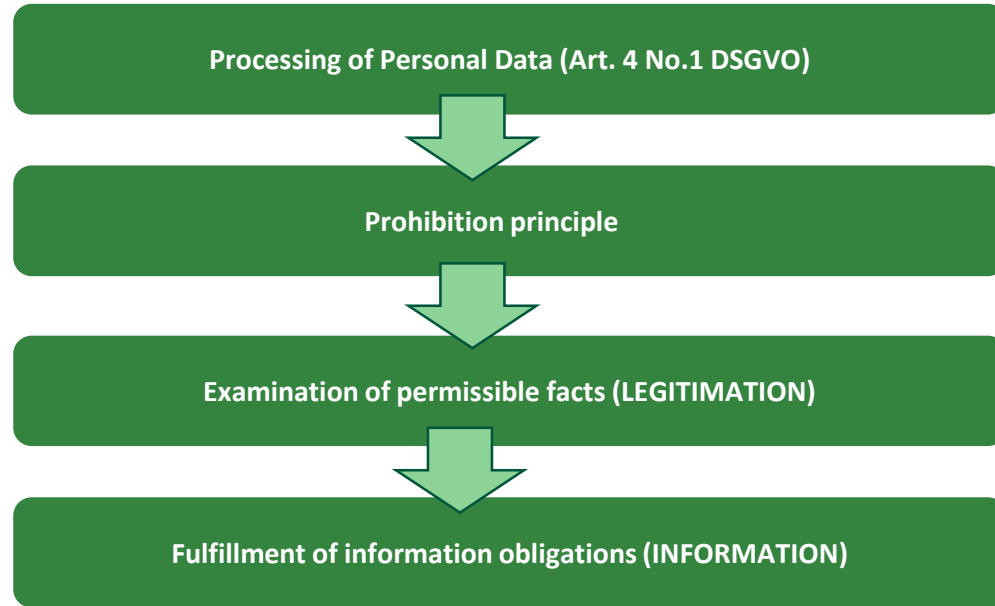


PART 3
SOLUTIONS

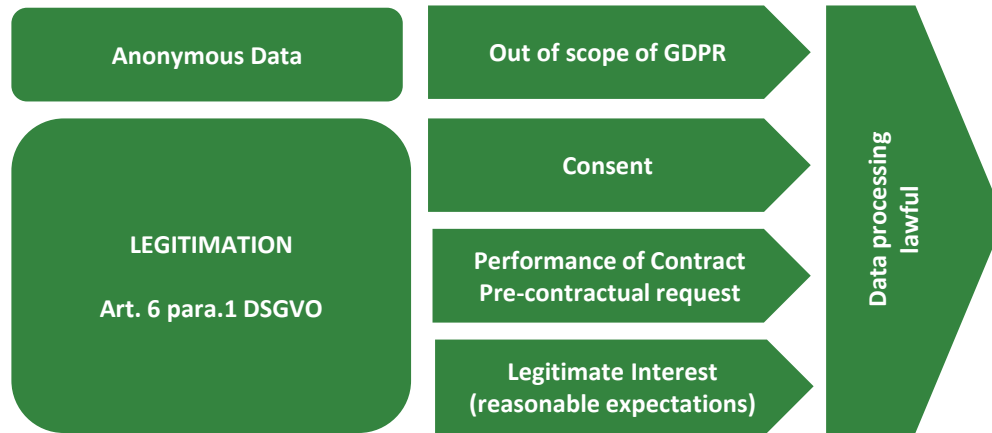


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A. BASICS



C. LEGITIMACY FACTS

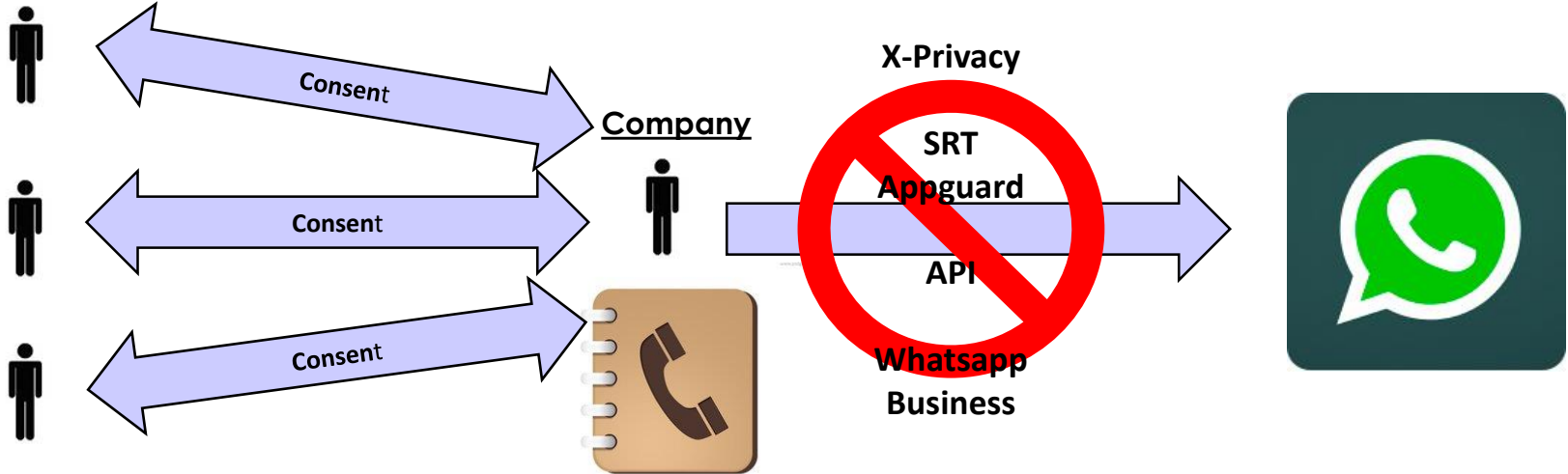




PART 4 **USE OF WHATSAPP**

POSSIBLE IMPLEMENTATION

Customers



- Confirmation or „toleration“ by German Data Protection authorities (e.g. Merkblatt für die Nutzung von „WhatsApp“ in Öffentliche Stellen des LfD Niedersachsen, Stand November 2018; Pressemeldung des LfDI Saarland vom 16.01.2020).



PART 5
USE OF THIRD PARTY TOOLS

DATA PROCESSING ON BEHALF OF CONTROLLER

Art 28 GDPR Data processing „on behalf“ of Controller

Company remains Controller of personal data

- Data Processing Agreement (DPA) with Service Provider
- DPA fulfills (minimum) requirements of Art. 28 para 3 GDPR
- Exculpation possible

Problem: Data processing outside European Economic Area (EEA)

Solution: Standard Contractual Clauses (SCC) offered by Service Provider



PART 4
SUMMARY

SUMMARY

- Messenger Marketing still associated with legal uncertainties
- Compliance with minimum legal standards reduces risks
 - Risk reduction through consent
 - Privacy Policies fulfill Art. 13 GDPR
 - Opt-Out possible
 - Documentation in own Records of Processing Activities (ROPA)
- Risks acceptable with above measures
- Service Provider should fulfill specific legal requirements (sufficient DPA, SSC in cases of data transfer to third countries outside EEA)

QUESTION LIST

- Which data is collected?
- Which data should be used ?
- Who collects and/or processes the data?
- For what purposes should the data be processed?
- How is the data is processed (e.g. evaluated, merged)?
- Can the data be anonymized/pseudonymized at any stage?
- Shall the data be transferred or disclosed to third parties?
- Are any Service Providers involved in the data processing?
- Is the data transferred to any third countries outside the European?
- ➔ Check potential legitimation
- ➔ Draft privacy policy
- ➔ Identify Touchpoints
- ➔ Implement data security and documentation

Dr. Carsten Ulbricht M.C.L.
Rechtsanwalt

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