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## **GOOGLE STREET VIEW**

**A-7040/2009: judgment of the Swiss Federal Administrative Court in the case brought by the Federal Data Protection and Information Commissioner (FDPIC) against Google Inc. and Google Switzerland concerning the online service Google Street View.**

The Swiss Federal Administrative Court (BVGer), on 30 March 2011, partially allowed the claim by FDPIC against Google Inc. and Google Switzerland GmbH concerning Google Street View. According to the judgment of the BVGer, the defendants must make all faces and number plates unrecognisable before the pictures can be published on the Internet. In the vicinity of sensitive facilities, the anonymity of individuals must be ensured. The BVGer concludes that the interest of the public in having a visual record and the commercial interests of the defendants in no way outweigh the rights over one's own image, as the pictures can be made more or totally unrecognisable, and this is a proportionate measure. The judgment may be appealed against to the Swiss Supreme Federal Court.

The FDPIC, on 11 November 2009, brought a claim before the Federal Administrative Court, after its recommendation of 11 September 2009 was rejected. The chief elements of the claim were for faces and vehicle number plates to be made unrecognisable, for the anonymity of individuals in front of sensitive facilities to be ensured, for images of the private domain and of private streets to be removed from Google Street View, and for prior notification every time areas are due to be photographed or published on the Internet.

### **Data processing in breach of privacy**

Every person has a right of privacy with respect to his or her own image. In principle, therefore, no one may be photographed without his or her (prior or subsequent) consent. In the area of data protection, the constitutional right to self-determination in relation to information justifies the principle that the individual be accorded control of his or her personal data regardless of the actual sensitivity of the information in question. This applies also in the case of 'staffage', i.e. images in which individuals play, as it were, a cameo role in a landscape, environment, or event. In this case, also, the right to self-determination in relation to information must be respected, and interests must always be weighed up.

### **The right over one's own image takes priority**

When the interests are being weighed up between, on one hand, the right to have the private domain respected and the rights of the individuals in question over their own image and, on the other hand, the purely commercial interests presented by the defendants, it must not be forgotten that what is at stake here is ultimately not a blanket prohibition of Google Street View but

merely the publication on the Internet of images of individuals only where they have been made unrecognisable or, as the case may be, only where the consent of the individuals in question has been obtained. The defendants are chiefly asserting their own commercial interest in the operation of Google Street View, in particular the interest in expanding their position in the area of online map applications and in entering new markets with applications such as navigation systems. Linked to this is the sale of advertising space. Where the defendants are referring to the interest of numerous private individuals, firms, and public entities in the free use of its online service, this use is also in its own financial interest.

The claimants are discounting any breach of privacy rights of numerous individuals, in the interest of their commercial success. All privacy breaches could be avoided, but this would entail additional costs for the defendants, as they would have to make images (even more) unrecognisable in part manually. The additional costs would obviously not, however, jeopardise the commercial survival of the defendants. In addition, passing on the cost to the users of Google Street View would not be out of the question. The avoidance of additional costs and the free-of-charge and thus commercially attractive offering of Google Street View are, in principle, to be recognised as profit-oriented interests of the defendants and cannot outweigh the interests of the individuals in question.

### **The Swiss Federal Administrative Court**

The Swiss Federal Administrative Court deliberates in appeals against orders issued by federal authorities in Switzerland. In certain areas, the court is responsible also for the examination of decisions issued by cantons and furthermore issues judgments in cases where claims are brought. Where the Swiss Federal Administrative Court is not the highest court of the land, its judgments can be appealed against to the Federal Courts in Lausanne and Lucerne. The Swiss Federal Administrative Court, with sites in Berne and Zollikofen and, from 2012, St Gallen, has five divisions and a general secretariat. With 70 judges and 300 staff, the Swiss Federal Administrative Court is the largest court in Switzerland.

### Further information

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