

BVDW: Clarifying notes on the use of web analysis services

On November 14, 2019, a number of state data protection authorities issued press releases on requirements for the legally compliant use of analysis services such as Google Analytics. Some statements on the responsibility under the current data protection law as well as the relevant legal basis - in particular the consent requirement - have led to misunderstandings and uncertainty among website operators regarding the possible uses of web analysis tools.

In the view of the BVDW, basic web analytics tools offered to the market today can still be provided by third parties acting as processors. The fact that website publishers can (theoretically) also add other products and services provided by the analytics provider does not change this. Only where website publishers make actual use of additional products and services, deviating responsibility scenarios - usually described in the terms and conditions of the analytics provider – may arise. Further data processing may require a different legal basis, but the combined use of different products or services does not automatically lead to overall different responsibilities under data protection law.

With this overview and concrete examples of relevant analytics services, BVDW aims to provide website operators with relevant information to help them make the correct assessment.

The overview will continuously be supplemented with information on other analytics providers.

	Product/Service	Controllership	Legal Basis
1.		The notes on data protection responsibility refer to the processing scenarios shown in the respective lines. The combination of products does not lead to different responsibilities for the respective product. Individual processing scenarios and corresponding responsibilities may therefore be relevant in parallel.	Legal basis applicable to individual controller
2.	„Local“-Processing (Inhouse) <ul style="list-style-type: none"> e.g. Matomo Host On-Premise 	Publisher: always controller	Depending on individual processing Art. 6 (1) f GDPR Art. 6 (1) a GDPR
3.	Third Party Processing (Cloud-based) <ul style="list-style-type: none"> e.g. Matomo Cloud Host 	Publisher: Controller Service-Provider: Processor	Depending on individual processing Art. 6 (1) f GDPR Art. 6 (1) a GDPR
4.	Basic functionalities for publishers <ul style="list-style-type: none"> e.g. Basic Google Analytics (without activation of further features) 	Publisher: Controller Service-Provider: Processor	Depending on individual processing Art. 6 (1) f GDPR Art. 6 (1) a GDPR
5.	Basic functionalities for publishers <ul style="list-style-type: none"> e.g. Adobe Analytics (Cloud based) • z.B. Adobe Target (Cloud based) 	Publisher: Controller Service-Provider: Processor	Depending on individual processing Art. 6 (1) f GDPR Art. 6 (1) a GDPR
6.	Data sharing for own products of the analysis provider <ul style="list-style-type: none"> e.g. Google Products & Services 	Publisher: Controller for Analytics Data Service-Provider: Processor for Publishers Analytics-Data Controller for own processing of Analytics Data	Art. 6 (1) a GDPR <ul style="list-style-type: none"> Note: Consent for e.g. Google products required under EU ECP via the measurement controller/controller terms

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