

Bugs & Wish list

Gender information not conforming to the law in Germany | Tiki Wiki CMS Groupware :: Development
Gender information not conforming to the law in Germany

Status

● Open

Subject

Gender information not conforming to the law in Germany

Version

18.x

Category

- Legislative Compliance

Feature

User Preferences

Resolution status

Needs discussion

Submitted by

hman

Lastmod by

hman

Rating

★★★★★ (0) ?

Description

TikiWiki stores personal data about it's users. Besides (!) the GDPR issues, there ia a VERY vulnerable situation for Tiki site admins:

The user preferences only know these three settings:

Male

Female

Hidden

According to a ruling of Germany's supreme court from last year, that constitutes discrimination, and entitles every user to sue the administrator (and win).

The German supreme court has ruled, that the law that defines the standards of record keeping by the government collides with the German constitution and therefore MUST be changed, so that every German citizen may be either

Male

Female

Diverse

Diverse is a bracket that includes all of the LGBT etc. in one label. This means that if any German citizen so chooses, he or she will be issued a new ID card or passport, where D will be written under gender.

If someone operating an IT system that forces users to enter either M or F, and does not have a selection D, this constitutes discrimination, and entitles the discriminated person to sue. And winning the suit would be a piece of cake.

Now the question arises "is this relevant"? People can choose "hide". Yes. Well, if a citizen opts to change his or her official record (they have to officially file a request to do so) in the German administration and request to get new ID card or passport, how likely will it be that such a person does not care if an IT system forces him or her to be labelled M or F? Highly unlikely, I think.

So to protect TikiWiki admins, you should as soon as possible introduce Diverse as third gender. And in the long run, because other countries supreme courts might not choose "diverse" as a bracket and include the full LGBT etc. list, gender should become a configurable and expandable entity. The number of legally correct gender entries may vary from country to country, so do not stick to 2 or 3...

Thanks

Hman

And just before anyone asks this: It's not about me. I do not need a D in the database, but I want my users to make such a choice for themselves (and be protected if anyone might want to make a case on this).

P.S: I believe there is no need to demo this, it's plain to see that TikiWiki only knows M, F and hidden.

Importance

8

Easy to solve?

5

Priority

40

Demonstrate Bug (Tiki 19+)

Please demonstrate your bug on show2.tiki.org

Version: trunk ▼

Demonstrate Bug (older Tiki versions)

Ticket ID

7243

Created

Sunday 19 January, 2020 15:07:08 GMT-0000

by hman

LastModif

Monday 24 February, 2020 09:25:32 GMT-0000

Comments



luciash d' being 20 Jan 20 12:49 GMT-0000

Hi hman,

thank you for your suggestion. As the gender setting is completely optional in Tiki I do not consider this a "bug" which "forces users to enter either M or F" but we might add "diverse" or "other" in the list pretty easily I guess.

luci



hman 20 Jan 20 13:24 GMT-0000

Well, it is a supreme court decision. This means it is immediately in force, in the status of a federal law. There is nothing we CAN discuss about it. IT systems that do not allow users to correctly enter their gender, which now can also be D, are against the law. Yes, this means ALL of those customer relationship databases, from online shopping sites to car rental agencies and of course the government on all levels must now upgrade their databases. And world-wide!

Imagine an officer of US border control or immigration and naturalization. What does he or she enter into the border system as gender, when a person with a D in the passport enters the United States?

Yes, technically this is not the fault of Tiki and its developers. But all people RUNNING a TikiWiki in Germany, or that is accessible from Germany, run the risk of getting sued if one user thinks he or she cannot enter correct gender. This is not going to happen overnight or in large quantities. But it is foreseeable that some lawyers might be tempted to make money out of this opportunity...

For the moment being I would suggest that you advise all TikiWiki admins in Germany to disable the gender feature, to be on the safe side. As you rightly said, it's optional. But activating it carries a legal risk, that the admin has to bear. And this applies to all systems, it does not matter whether they are governmental, privately run, or free of charge or charge based. Not being able to correctly enter gender, when the feature is activated, violates the constitutional rights of citizens.

Also, although I also believe change is easy, it might not be THAT easy. I would assume that on SQL level this entity is defined as an ENUM data type, so the database model needs a (small) update but just changing the GUI might not be enough. If it's ENUM, I would suggest moving to entity that's not so strict, like VARCHAR.

And as I wrote in my bug report: This ruling of Germany's supreme court might just be the start of several such rulings elsewhere, so from a database point of view my advice would be to make this as open as possible, giving it into the hands of the admins to introduce new genders, whatever they may be called in the future. Maybe in the future they cannot even be abbreviated into a single character anymore. And perhaps you display a little advice of caution.



Jean-Marc Libs 04 Feb 20 20:44 GMT-0000

Thanks for the education about German law. Apparently, ISO should also be informed:

https://en.wikipedia.org/wiki/ISO/IEC_5218 😊

The ISO link is not meant as an excuse or an argument, more for fun and curiosity: Tiki probably doesn't follow it either.

There are obviously ways of dealing with this issue using User Trackers for gender but there is the issue of the German admins using Tiki not being aware of the issue. And we really try to avoid using user emails for purposes different from the purpose they entered it for (aka "spamming").

So yes, adding Diverse and Other by default would be nice if someone has time.



hman 06 Feb 20 09:14 GMT-0000

Thanks for providing the ISO, that was news for me. But ISOs homepage says that this ISO standard is from 2004, add such standards shall undergo a revision every 5 years. That happened in 2015 for the last time, leaving the standard unchanged. But this year the next revision would take place. Let us hope that the people in Geneva heard from this ruling. As it was the supreme court, I believe the probability is not too small that they took notice.



hman 24 Jul 22 12:49 GMT-0000

ISO issues standards (norms). They are not laws, and have no binding power by themselves, and certainly they cannot overrule laws (and of course not constitutions). Also, the 2004 version is withdrawn and superseded by a 2022 version.



hman 05 Jul 20 16:40 GMT-0000

Media reports: Beginning 2024 the Netherlands will start to issue official ID documents without gender information. Therefore, all IT systems (worldwide...) must be prepared that gender information must be optional, and systems must not (!) reject a user registration without gender information as "incomplete".



hman 24 Jul 22 12:21 GMT-0000

The Federal Minister of Justice of Germany, Buschmann, has presented the draft of the new law that regulates the official record-keeping for citizens of Germany. This will replace the current law on transsexuality. In essence, every German citizen will then be able to change their gender at will, by a mere formalized request (which can be made online), without the current necessity to answer a long questionnaire and a medical examination. Gender can be male, female or diverse.

It is expected that this will create a stream of new ID cards, as you can also switch between male and female, which will pose the problem that wherever such persons apply for anything, from cell phone contracts to car rentals, having forms that only contain male and female will force the one filling in the form (which might not be the applicant himself/herself, but some salesperson or agent) to decide upon the two.

Forcing such a decision because of a technical restriction by the form will then constitute an illegal act of discrimination by the one filling in the form, if that is not the applicant. In case of databases, the discrimination is done by the operator of that database, i.e. owner and/or admin. So it is highly advisable that ALL forms have male, female and diverse as options, in order to avoid prosecution.

In case a citizen switches gender between male and female, such a change (and, if applicable, the change in first name) must be editable in databases. In order not to have to re-enter all rights and permissions of a user account, it should be possible to edit these data without deleting and recreating an account (thus keeping an internal ID, if it exists).

Attachments

filename	created	hits	comment	version	filetype
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No attachments for this item

The original document is available at

<https://dev.tiki.org/item7243-Gender-information-not-conforming-to-the-law-in-Germany>