

NEWSLETTER

TECH / DATA



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The European Commission, which had to comment on the sufficiency of the text, finally submitted it to the EDPB, who adopted and published his opinion on 28 February 2023.

The EDPB acknowledges the improvements introduced by the new text but lists remaining concerns.



LATEST NEWS - TECHNOLOGIES

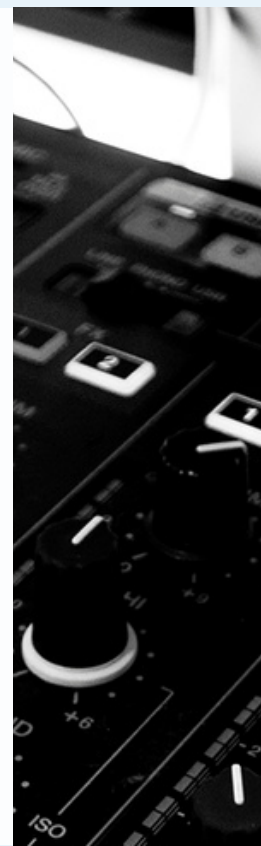
Apple - Update on the abuse of a dominant position investigation in the market for music streaming services

Apple is subject to an investigation carried out by the European Commission following a complaint by Spotify claiming that Apple distorted competition in the music streaming market by abusing its dominant position in the distribution of applications via its App Store. The Commission had communicated its claims in April 2021, covering in particular:

- The fact that Apple imposes on applications the use of their integrated purchase mechanism;
- Apple's introduction of App Store's rules that purposely limit choice and stifle innovation at the expense of the user experience, also known as "anti-steering obligations".

In a February 28, 2023 statement, the Commission indicated that it had decided to focus on the anti-steering obligations. For the Commission, these obligations are neither necessary nor proportionate, are harmful and have a negative impact on the interests of developers of streaming music applications because they limit the effective choice of consumers.

As a reminder, if the Commission considers that there is sufficient evidence of an infringement, a fine of up to 10% of Apple's worldwide annual revenue can be imposed.



Publication by the US Copyright Office of new guidelines for the registration of AI-generated works

US Copyright Office, "Copyright Registration Guidance: Works Containing Material Generated by Artificial Intelligence", March 16, 2023, Rules and Regulations

The US Copyright Office publishes unprecedented guidelines on the copyright protection of A.I. generated works:

- It reminds the "human authorship" requirement;
- However, it is possible that an A.I. is used in the creation process, provided that it is not the only one at the origin of the created work;
- A human being must have intervened in the process of creation of the work generated by the A.I. and in this case, only those specific portions of the work that are human-authored will be protected by the Copyright;
- In his application for registration, the applicant must identify which are the part of the work that have been created by humans and which haven't.

We invite you to read our last article on the compatibility of copyright and AI-generated works of art through the study of three recent international news.

Available online via this [link](#).



LATEST NEWS - TECHNOLOGIES

Seizure of allegedly illicit bitcoin digital assets by the investigating judge

French Court of Cassation, Criminal Division, February 15, 2023, No. 22-81.326

This decision is an example of the applicability of existing legal rules to new technologies, subject to their adaptation.

The French Court of Cassation had to rule on the validity of the seizure, by an investigating judge, of digital bitcoin assets worth USD 780,756, contained in a Coinbase account. The investigating judge noted that the account holder did not provide any explanation as to the origin of the funds used to create the digital assets. As a result, the judge had concluded that these bitcoins constituted the object or the direct or indirect product of the offence of laundering of any crime or misdemeanor likely to be charged to the person concerned.

The French Court of Cassation validates this reasoning and holds that the presumption of illicit origin of goods (Article 324-1-1 of the French Criminal Code) is indeed applicable in this case, to all digital assets. Moreover, it holds that the modalities of operation of crypto assets via the Sky ECC encryption solution allowing to guarantee anonymity, end-to-end encryption and the absence of cooperation with the authorities, make it a tool mainly used in the framework of organized crime activities.

BREAKING NEWS

Tech and entertainment leaders give up on the metaverse

After spending billions of euros in the development of the metaverse, Mark Zuckerberg says he finally wants to make artificial intelligence his priority. In a similar way, Walt Disney, in the midst of a reorganization, has announced that it will drop its metaverse projects by cutting about 7,000 jobs.

To be continued...

Responsibility of the editor of Abritel.fr despite the imprudence of the victims

Paris Judicial Court, February 21, 2023, No. 11-21-001343

67 users have sued the company HOMEAWAY UK for compensation for the damage they suffered due to scams on <Abritel.fr>. The victims had responded to fraudulent ads posted on the website via a contact email address external to the platform displayed in a roundabout way on a site reserved for a photo.

Despite the imprudence of the users, the Court held that the company publishing the site <Abritel.fr> should see its contractual responsibility under common law engaged.

Indeed, this company did not have the status of a purely passive host, but that of a content publisher with an active role in particular in the dissemination of ads, the control of ads, the

authorization of owners' registrations and in the establishment of the content of the ads.

In addition, the court qualified the fault of the company because there was no information about the potential existence of fraudulent ads, the ads were not presented properly, and the guarantee was formulated in an imprecise manner.

HOMEAWAY was thus condemned to repair the prejudice of the victims up to 40% of the sums paid to the false owners, a total of more than 107.000 euros. It has indicated its intention to appeal.

LATEST NEWS - TECHNOLOGIES

Twitter - legal obligation to disclose resources dedicated to the prevention of illegal activities

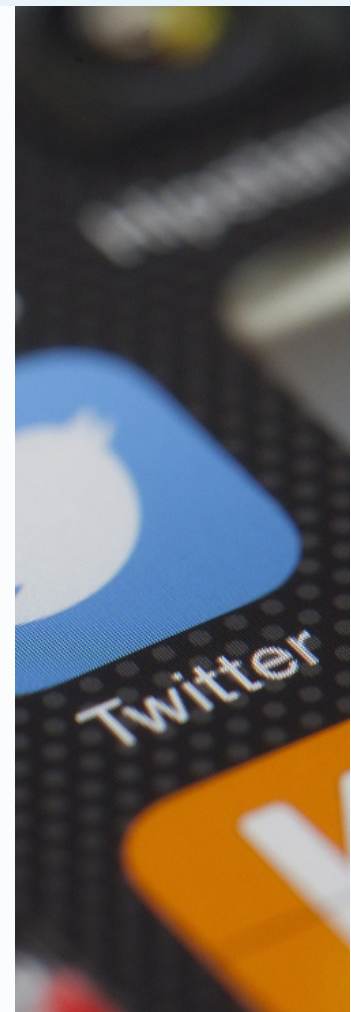
French Court of Cassation, First President's order, March 23, 2023

On March 23, 2023, the French Court of Cassation ruled on the content of the legal obligation for Twitter to disclose the resources allocated to the fight against illegal activities.

On January 20, 2022, the Court of Appeal had asked Twitter to communicate to anti-racism associations (UEJF, SOS Racisme, Licra, J'accuse, SOS Homophobie and Mrap), within a period of 2 months, any administrative, contractual, technical or commercial document relating to the material and human resources put in place to fight against illegal activities. Following this injunction, Twitter had shared a letter written by the company's counsel.

The French Court of Cassation concludes that this document is insufficient and dismissed the appeal filed by Twitter. It clarifies the information that must be transmitted by Twitter to comply with the requirements of the Court of Appeal:

- Number, location, nationality, language of the persons assigned to the processing of reports from users of the French platform;
- Number of alerts, criteria and number of subsequent removal;
- Number of information communicated to the competent public authorities, in particular to the Public Prosecutor.



Introduction of algorithmic mass surveillance in France

The bill relating to the 2024 Olympic and Paralympic Games under the accelerated procedure was adopted by the French Senate on 31 January 2023. The discussion of this text before the French National Assembly ended on March 23, 2023. The vote took place on March 28, 2023 and the bill has been adopted by the grand majority of the Parliament.

Article 7 of this law introduces into French law the algorithmic processing of images collected by video protection systems or cameras installed on drones. The objective is to detect, in real time, predetermined events likely to present or reveal security risks. This mass surveillance is planned on an experimental basis until June 30, 2025 for sports, recreational or cultural events of a certain size.

This article 7 has been strongly contested by international organizations and members of the European Parliament who, on March 17, 2023, addressed the National Assembly to point out the danger of such a text for our democracy and its incompatibility with European Union law.

CNIL has given its opinion and considered that the guarantees provided respected its recommendations. Indeed, this is an experimental deployment, limited in time and space. Moreover, the text defines a specific purpose corresponding to serious risks for individuals. Finally, the text does not present any processing of biometric data, in particular through facial recognition, nor any reconciliation with other files or any automatic decision.

LATEST NEWS - DATA



GDPR guides and guidelines from the CNIL (French Data Protection Authority)

Applications for authorization to process data in the health sector

February 6, 2023, the CNIL has published two practical information sheets intended for actors in the health sector (research and other areas). The purpose of these sheets is to:

- Draw up a list of information to be communicated when applying for authorization to process data;
- Facilitate the compliance in this field.

Recruitment - a toolkit

The CNIL published on January 30, 2023 a new guide for recruiters to help them comply with the GDPR. This guide is enriched by two summary sheets on the subject[2]. The CNIL also drawn up a practical sheet for candidates.



EU-US data transfer - EDPB expresses concerns about the Executive Order

EDPB's Opinion, "on the draft adequacy decision regarding the EU-US data protection framework", February 28, 2023, No. 5/2023

In the "Schrems II" judgment of July 16, 2020, the ECJ invalidated the data transfer regime established by the self-certification mechanism for companies established in the United States, known as the "Privacy Shield". In reaction to this decision, U.S. President Joe Biden adopted new legislation on October 7, 2022, the "Executive Order", establishing a more protective legal framework for the collect and use of European personal data by U.S. intelligence agencies.

The Commission, which had to decide on the adequacy of the text, finally submitted it to the European Data Protection Board (EDPB) for opinion, which was adopted and published on February 28, 2023.

The EDPB welcomes the improvements introduced by this new framework but expresses remaining concerns, including the lack of specific and binding safeguards for data subjects. It also invites the Commission to clarify the safeguards imposed by the initial recipient on the importer in the third country, prior to an onward transfer, and hopes that written procedures will be adopted by the US intelligence agencies for the implementation of this Executive Order.

CNIL - Pension reform and GDPR

Several complaints have been received by the CNIL denouncing the sending, on January 26, 2023, of an e-mail to public agents by the Minister of Transformation and Public Service.

This message contained information on the contents of the recent pension reform. Many public officials have questioned the CNIL about the compliance of these communications with the GDPR.

The CNIL is currently carrying out verifications and has asked the minister to provide information on the file or files used for this communication.

To be continued...

PENALTIES FOR DATA PROTECTION BREACHES

CNIL (French Data Protection Authority) - 2022 review

The CNIL submitted on January 31, 2023 the results of its repressive action in 2022:

- 21 sanctions
- 19 fines for a total amount of 101,277,900 euros
- 7 fines with injunctions under penalty payment
- 2 decisions of liquidation of penalty payment
- Most frequent violations: failure to inform individuals, failure to respect their rights and failure to cooperate with the CNIL
- 147 formal notices on various issues: failure to appoint a DPO, commercial prospecting, transmission of data to commercial partners, transfer of data to the US, website security measures.

Since the entry into force of the GDPR, the CNIL has issued sanctions for a total amount of more than half a billion euros (relating to breaches of the GDPR and the ePrivacy Directive on cookies).



CNIL - CITYSCOOT sanctioned to pay 125,000 euros for failure to comply with GDPR policy

CNIL, Restricted Formation, March 16, 2023, No. SAN-2023-003

As part of its 2020 priority topics for investigations, CNIL focused on the verification of geolocation in proximity services and has controlled the company Cityscoot. This company provides short-term scooter rental services in French, Italian and Spanish cities.

CNIL found that Cityscoot geolocates its users every 30 seconds and systematically keeps a record of the trips made on scooters. It also found that the contracts concluded with its subcontractors do not contain all the necessary information regarding the GDPR. Finally, Cityscoot uses Google's reCAPTCHA system, which collects both hardware and software information, without ensuring the prior consent of users.

With the cooperation of the Spanish and Italian data protection authorities, CNIL issued the penalty of 125,000 euros due to the following failures:

- Failure to comply with the obligation to ensure data minimization (Articles 5.1.c GDPR);
- Failure to comply with the obligation to provide a contractual framework for the processing operations carried out by a subprocessor (Article 28.3 GDPR);
- Failure to inform the user and obtain his consent before registering and reading information on his personal equipment (Article 82 of the Data Processing and Freedoms Act).

LATEST NEWS - DATA

**BREAKING
NEWS**

UK - Facilitation of the data protection regime in the UK

On March 9, 2023, the UK government, through Michelle Donelan, Secretary of State for Digital, Culture, Media and Sport, announced a data protection reform, with more flexible and clear rules, which will make them easier to apply for small and medium-sized businesses. The GDPR will not be completely scrapped but reshaped to avoid "unnecessary bureaucracy" for businesses. Here are the main changes planned by the reform project:

- Removal of certain reporting obligations for companies;
- Authorization to collect certain data without user authorization (particularly R&D's data).

However, this reform only concerns the United Kingdom. Companies operating within the EU will have to continue to comply with the GDPR.

To be continued...

Italy - Authorities decide to ban ChatGPT

On March 20, ChatGPT suffered a loss of data. In addition, the authority criticizes the lack of information to users whose data is collected by OpenAI, and of a legal basis justifying the collection of personal data, as well as the lack of a filter to verify the age of users. Chat GPT has 20 days to correct these breaches.

To be continued...



Limited protection of employees' personal data

French Court of Cassation, Labor Division, March 8, 2023, No. 21-12.492

The French Court of Cassation has confirmed that the employer may be ordered to disclose pay slips of other employees under penalty for the exercise of the right to evidence.

In this case, a female employee who had been dismissed considered that she had suffered a salary inequality compared to male colleagues who had occupied functions of a similar level. She therefore asked judges, on the basis of Article 145 of the French Civil Procedure Code, to order the employer to communicate the other employees' pay slips.

The Court of Appeal authorized the communication of the pay slips on which personal data had been hidden, except for the names and surnames, the contractual classification, the detailed monthly remuneration and the total annual remuneration per calendar year.

The French Court of Cassation held that the communication of these elements was essential to the exercise of the right to evidence. Moreover, it was proportionate to the aim pursued, which was to defend the legitimate interest of an employee in equal treatment of men and women in employment.

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