

NEWSLETTER

TECH / DATA



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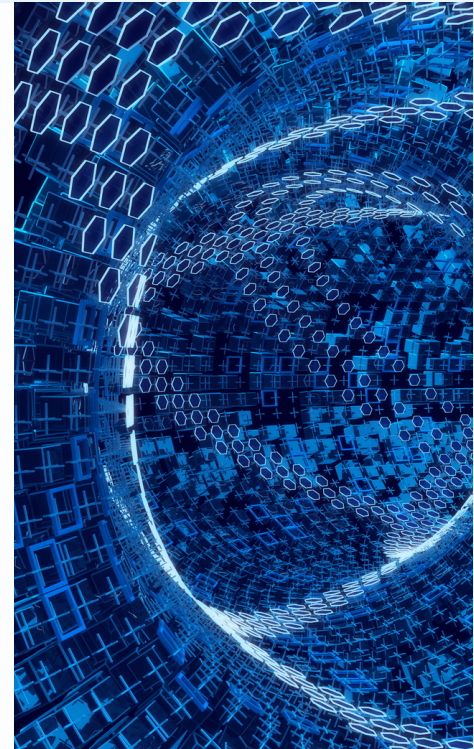
LATEST NEWS - TECHNOLOGIES

Meta fined a record 1.2 billion euros for illegal data transfer

Irish Data Protection Commission, May 12, 2023, No. IN-20-8-1

The Irish Data Protection Authority has ordered Meta to pay 1.2 billion euros for violating the GDPR. The Californian company in fact, maintained despite the invalidation of the Privacy Shield, a transfer of personal data of Facebook users in the EU to servers located in the USA. The Irish authority enjoins Meta, within 5 months to suspend any future transfer of personal data to the USA and within 6 months to comply with the GDPR (put an end to any unlawful processing including in particular the storage of data in the USA).

Meta has expressed its intention to appeal, calling the fine "unjustified and unnecessary". As a reminder, it had already been fined 390 million euros in January 2023 by the Irish authority (we refer you to our previous issue).



DSA - European Commission designates first list of search engines and platforms

On April 25, 2023, the European Commission designated a first series of seventeen very large online platforms and two very large search engines.

From now on, these companies will have to comply with all the obligations set out in the DSA within four months, and will be subject to stricter controls. For details of these obligations, see our article on the subject.

Platforms concerned:

Alibaba AliExpress, Amazon Marketplace, Apple AppStore, Booking.com, Facebook, Google Play, Google Maps, Google Shopping, Instagram, LinkedIn, Pinterest, Snapchat, TikTok, Twitter, Wikipedia, YouTube, Zalando

Search engines concerned:

Bing and Google Search



LATEST NEWS - TECHNOLOGIES



FOCUS INTERNATIONAL

Counterfeit Bored Ape Yacht Club (BAYC) NFT collection

US District Court, Central District of California, April 21, 2023 – Yuga Labs, Inc. V. Ripps, et al.

YUGA LABS, the company behind the famous "Bored Ape Yacht Club" (BAYC) collection of NFTs, has brought an infringement action against Jeremy Cahen and Ryder Ripps for creating a collection of NFTs called "Ryder Ripps Bored Ape Yacht Club" (RR/BAYC). The District Court of Central California found the latter guilty of trademark infringement, the artist having created NFTs identical to those of YUGA LABS, and used the initials BAYC, referring directly to the "Bored Ape Yacht Club" collection.

This decision is a reminder of the importance of targeting NFTs when filing trademarks with intellectual property offices.

**Reproducing artists' voices using AI**

The issues surrounding artificial intelligence are multiplying, raising questions about the violation of intellectual property rights. Indeed, an Internet user nicknamed Ghostwriter has composed and written a song entitled "Heart on my sleeve".

Some Internet users thought it was a featuring between singers Drake and The Weeknd, with the two artists' voices reproduced to near-perfection by an AI. The song was eventually withdrawn from streaming platforms due to a copyright claim by Universal Music Group, the record label of both artists.

LATEST NEWS - TECHNOLOGIES

Publication of ANSSI's 2022 activity report

Rapport d'activité de l'ANSSI 2022

The French national agency for information systems security (ANSSI) has published its 2022 activity report. Among the key facts, ANSSI recalls the vote by MEPs on the SRI 2 directive, aimed at harmonizing and strengthening cybersecurity in the European market, as well as the launch of "MonServiceSécurisé", ANSSI's cybersecurity solution to help public entities rapidly secure and approve all digital public services.

Cyber regulations section

Law no. 2023-22 of January 24, 2023 on the orientation and programming of the Ministry of the Interior: This law incorporates a new obligation for professionals who are victims of a cyber-attack into article L. 12-10-1 of the Insurance Code. As of April 24, 2023, they will have to file a claim within 72 hours of learning of the cyber-attack in order to hope for compensation from their insurer.

The Crypto-Asset Markets Regulation (MiCA): this is the first EU regulation adopted by the European Parliament on April 20, 2023, drawn up to regulate cryptocurrencies and enable greater transparency to protect consumers. The MiCA regulation makes it mandatory for crypto-asset service providers to obtain a license. This authorization, issued by the European Securities and Markets Authority (ESMA), entitles the holder to a European passport, enabling them to provide their services in all EU countries. However, the text raises a number of criticisms, and is already considered outdated by some. Indeed, crypto-loans, decentralized finance and NFTs are excluded from the scope of the MiCA regulation, and the first rules will only apply from July 2024.

The draft law on military programming, which has been examined by the National Assembly in May and the formal vote on the bill will take place on June 7. This text provides for several measures, including the possibility for the French national agency for information systems security (ANSSI), under article 32, to administratively block domain names in the event of a cyberattack.

When the cyberattack occurs without the knowledge of the domain name holder, ANSSI will be able to ask the latter to take appropriate measures to neutralize the threat within a given timeframe. On the other hand, when domain names have been directly registered by the holder with the aim of carrying out a cyberattack, ANSSI will be able to redirect these domain names to a neutral or secure and controlled server, ask ISPs to block them or have them seized. These new prerogatives will be subject to a posteriori control by French regulatory authority for electronic communications, post and press distribution (ARCEP), and may be appealed to the Administrative Court.

The draft regulation on cyber solidarity ("CyberSolidarityAct"): adopted by the European Commission on April 18, 2023, this draft regulation aims to strengthen the EU's ability to detect, prepare for and combat massive threats and cyber attacks. In particular, it proposes the creation of a Europe-wide infrastructure, the European Cyber Shield, made up of national and cross-border Security Operations Centers (SOCs) across the EU, which will aim to detect and react to cyber threats and cyber attacks. The regulation also provides for the creation of an emergency response mechanism in the field of cybersecurity.

LATEST NEWS - DATA PROTECTION

MEPs call for renegotiation of EU-US data transfer framework

European Parliament resolution of May 11, 2023

As reported in our previous issue, on February 28, 2023, the EDPS issued a mixed opinion on the EU-US data protection framework. In turn, MEPs, members of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE), had, on April 14, 2023, adopted a resolution calling on the European Commission not to adopt the adequacy decision until the EDPS's recommendations had been implemented. The plenary vote took place on May 11, 2023. While MEPs recognized the improvements in the new data transfer framework, they considered them insufficient in the face of legal challenges.



EDPS creates a task force specifically for ChatGPT

EDPS press release, April 13, 2023

The European Data Protection Board (EDPS), which brings together the National Data Protection Authorities in the EU, has announced the creation of a working group dedicated to ChatGPT, following the blocking of the application by the Italian data protection authority mentioned in our previous issue.

The aim of this working group is to improve cooperation and exchange information on any measures taken by national data protection authorities.

Clearview AI - CNIL settles penalty payment of over 5 million euros

French Data Protection Authority (CNIL), Deliberation SAN-2023-005 of April 17, 2023

In our [previous issue](#), we reported on the 20 million euro fine imposed by the CNIL on Clearview AI on October 17, 2022, for the bulk collection of data for its facial recognition service.

The CNIL had also enjoined Clearview AI not to collect and process data on individuals in France without a legal basis, to respond to requests for access and to delete such data within two months, subject to a penalty of 100,000 euros per day of delay.

As Clearview AI had not provided proof of its compliance by December 19, 2022, the CNIL liquidated the fine in the amount of 5,200,000 euros.

LATEST NEWS - DATA PROTECTION



INTERNATIONAL NEWS

Belgium - Data protection authority describes ex-employee's 8-year access request as excessive

APD/GBA (Belgium) – No. 40/2023 (German)

The Belgian data protection authority has ruled that an ex-employee's request for 8 years' worth of e-mails is excessive. The employee had worked for an organization for 13 years and used a "functional" e-mail address, i.e. not personalized with her name, which was also used by other employees.

The controller was obliged to search for eight years' worth of e-mails in a professional mailbox, used by several employees and in which there was no evidence that private e-mails were stored.

The mailbox also contained a great deal of sensitive information concerning third parties.

The Belgian authority considered that the employer's refusal to respond to the request for access was therefore justified. However, the latter failed to provide a statement of reasons and consequently violated Article 12(5) of the GDPR.



UK - TikTok fined £12.7 millions

ICO press release, April 4, 2023

This condemnation was pronounced on April 4 by the British digital regulator, the ICO, for violating children's privacy. In 2020,

TikTok allegedly allowed children under the age of 13 in the UK to create an account on its platform, and therefore collected and processed the personal data of 1.4 million children without first obtaining their parents' consent.

LATEST NEWS - DATA PROTECTION

Fiches pratiques, guides et lignes directrices

CNIL

- **CNIL - Infosheet - Illegitimate access to a personal online space: how to react?** Dated April 19, 2023, this fact sheet aims to help professionals understand the risks of accidental access to data by non-legitimate third parties, and the ways to prevent them.
- **CNIL - Guide - Personal data security:** Published on April 3, 2023, this is a new version, incorporating the latest recommendations on passwords and logging.

EDPS

- **EDPS - Guidelines on the right of access:** This update provides clarifications and examples on the scope of the right of access, on the information that the controller must provide to the person making the request, on the format and methods of providing information, and on the notion of manifestly unfounded or excessive requests.
- **EDPS - Guidelines on lead supervisory authority:** These updated guidelines clarify the designation of the lead supervisory authority in the case of joint data controllers. They specify that the agreement concluded by the joint controllers will only be taken into account if it adequately reflects the respective roles of the controllers. The agreement alone cannot therefore determine who will be designated as the lead authority. It is specified that each joint data controller has its own principal place of business, and they cannot therefore designate a common principal place of business.
- **EDPS - Guidelines on data breach notification:** The revision of these guidelines clarifies the notion of data breach and sets out the procedure for notifying the authorities concerned, as well as the procedure for informing data subjects.



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