

NEWSLETTER

TECH / DATA



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The European Parliament adopted the first version of the AI Act on June 14, 2023, by a large majority

Creation of a classification based on the risks generated, strengthened obligations, new bans, opinion of the pilot National Digital Ethics Committee, preparation of a code of conduct, find out more in our article on the IA Act.



LATEST NEWS - TECHNOLOGIES

Adoption of the Artificial Intelligence Act by the European Parliament

Artificial Intelligence Act, adopted on June 14, 2023

After months of discussions, the European Parliament adopted the first version of the AI Act on June 14, 2023, by a large majority (499 for, 28 against, 93 abstentions).

AI systems will have to be analyzed and classified according to the risks they may generate. In a public notice of July 5, 2023, the National Pilot Committee for Digital Ethics (CNPEN) stated that generative AI systems must be considered "high-risk systems" according to the definition given by the AI Act. This explains why developers must have to respect an additional level of transparency and additional governance obligations, in the form of safeguards and restrictive procedures.

Euro-deputies also highlighted the need to create stronger obligations for generative AIs such as ChatGPT or Midjourney, as well as a ban of intrusive and discriminatory uses of AIs, notably for biometric identification in public places, without exception. The regulation also includes an obligation to declare whether the model training data used by generative AIs (texts, images, music) are protected by copyright. These models will also have to be registered in a European database.

Negotiations will now begin between member states within the Council by the end of the year in anticipation of the adoption of the final version of the text.

Pending the effective implementation of the AI Act, the EU and the USA have expressed their willingness to harmonize their AI regulation to stay ahead of China, which also wishes to impose its own regulation. The aim is to identify standards and tools for a "trustworthy" use of AI in a code of conduct that would be open to other global partners wishing to join.

This project once again illustrates the EU's desire to assert itself as a pioneer in the supervision of AI systems, along the same lines as it was able to do in 2016 with the GDPR. AI players, both industrial and independent, are invited to submit their observations and expertise to enable the development of a body of guidelines that companies in the sector can voluntarily adopt. According to European Commissioner Margrethe Vestager, a preliminary version should be available by the end of the year, leading to a final proposal.



LATEST NEWS - TECHNOLOGIES

Bill on biometric recognition in public spaces

Bill No. 128 of June 12, 2023, on biometric recognition in public spaces

In our [February- to March 2023 issue](#), we mentioned the bill relating to the 2024 Olympic Games on images collected by video surveillance systems in sports venues.

On June 12, 2023, the French Senate adopted a bill on biometric recognition in public spaces that extends beyond sports events. The text responds to the need to regulate the deployment of biometric recognition in public spaces. It states that biometric identification of individuals in public spaces without their consent will be prohibited, whether this identification is done in real time or retrospectively. Nevertheless, the text defines the exceptional cases in which biometric recognition may be used, in particular when it might be justified by a superior public interest (judicial investigations or spying operations, fight against terrorism and serious crime, etc.).

The bill has been submitted to the French National Assembly.

Parental control and fight against online hate

Law No. 2023-566 of July 7, 2023, aimed at establishing a digital majority and combating online hate

Decree no. 2023-588 of July 11, 2023, implementing article 1 of law no. 2022-300 of March 2, 2022, aimed at reinforcing parental control on connected devices

On July 8, 2023, the law aimed at establishing a digital majority and combating online hate was published. Platforms shall broadcast prevention messages and inform potential victims about support structures to deal with cyberbullying. The law also extends the scope of illicit content for which social media must enable reporting (domestic harassment, mobbing, blackmail, invasion of privacy, etc.). In addition, the age of digital majority has been set at 15 for the registration and use of social media, unless expressly authorized by a parent or legal guardian.

On July 31, the CNIL issued a [public notice](#) on decrees implementing the law aimed at reinforcing parental control on connected devices. The Commission Authority confirmed its support for the mandatory installation of parental control on connected devices sold in France. It also confirms the need to promote data protection tools to ensure privacy by design and by default, which are deemed necessary in view of the risks to which young people are exposed (cyberbullying, scams, violent content, etc.). The CNIL pointed out, however, that this protection must be implemented in respect of a balance between controlling access to illicit content and respecting the minors' privacy.

LATEST NEWS - TECHNOLOGIES



INTERNATIONAL FOCUS

Japan - No need for author approval during AI learning phase

The Japanese Agency for Cultural Affairs, in collaboration with the Japanese government, has ruled that copyright does not apply to the analysis and learning stage of AI.

The document underlines the need to distinguish between the "development and learning" phase and the "generation and use phase" of AI. For the "development and learning phase", it is accepted that acts of use not intended to profit from the ideas or emotions expressed in a work do not require authorization from the copyright owner, if they do not exceed the limit deemed necessary and do not unreasonably prejudice the interests of the right holders. It is only during the "generation and use" phase that the owner of copyright in creations generated, downloaded, published, or sold will be able to assert his copyright.

With this approach, which goes against what is generally accepted in other legal systems, Japan is opting for a copyright-free approach to promote its competitiveness, with the aim of becoming the world leader in the field of AI.

United-States - An American judge confirms that art generated by IA cannot be protected by copyright, as agreed with the U.S. Copyright Office's recommendations

US Court for the District of Columbia, August 18, 2023, No. 22-1564

On strike for nearly four months now, American screenwriters in the audiovisual industry are constantly demanding stronger protection from AI systems. In this context, an American court has ruled in their favor, pointing out that AI-generated creations cannot be protected by copyright.

A computer scientist had applied in 2018 for copyright protection for his computer-generated AI system only. The US Copyright Office rejected the application, which was afterwards confirmed by the US Court for the District of Columbia, which stated that human involvement in, and ultimate creative control over the work at issue were essential conditions for this new type of work to fall within the bounds of copyright protection.

While the judge was explicit in this case, questions relating to the level of human involvement required to qualify for copyright protection are still being debated in other litigations lawsuits in the United States and Europe.

LATEST NEWS - TECHNOLOGIES

Establishment of financial compensation for inventions and software produced by non-employees

Decree No. 2023-770 of August 11, 2023, relating to the devolution of industrial property rights on assets obtained by non-employees inventors or non-public officials hosted by a legal entity executing research

Decree No. 2023-772 of August 11, 2023, relating to profit-sharing for non-employees software authors or non-public officials hosted by a public legal entity executing research

Non-employees, in particular interns, may be involved in creating inventions or software protected by intellectual property law. In this context, the decrees of August 11, 2023, set out the financial compensation for the devolution of non-employees' rights hosted under an agreement by a public legal entity executing research, for inventions and software creations made after December 15, 2021. Those provisions do not apply to people hosted by a private legal entity.

For patentable inventions, the financial compensation depends on the number of permanent research staff in the host entity:

- If more than half of the permanent staff are private-sector employees of private companies, the financial compensation will be defined in the agreement setting out the terms and conditions of their employment.
- If more than half the permanent staff are public-sector employees, the financial compensation shall be composed of a patent registration bonus currently set at €3,000, and an annual profit-sharing bonus corresponding to 50% of the base defined above (within the limit of the gross annual pensionable salary corresponding to the second chevron of the group outside scale D, and, above this amount, to 25% of this base).

For software, the compensation ultimately paid to software authors is equal to 50% of the calculation base, made up of the sum, exclusive of tax, of the revenues provided by the exploitation of the software creation received each year by the legal entity, after deduction of all direct costs incurred by the entity, and multiplied by the coefficient representing the contribution of the non-employee author (up to the amount of the gross annual pensionable salary corresponding to the second chevron of group excluding scale D, and, above this amount, to 25% of this base).



LATEST NEWS - DATA PROTECTION

Data transfer to the United States - The European Commission adopts a new adequacy decision

Information note on data transfers under the GDPR to the United States after the adoption of the adequacy decision on 10 July 2023

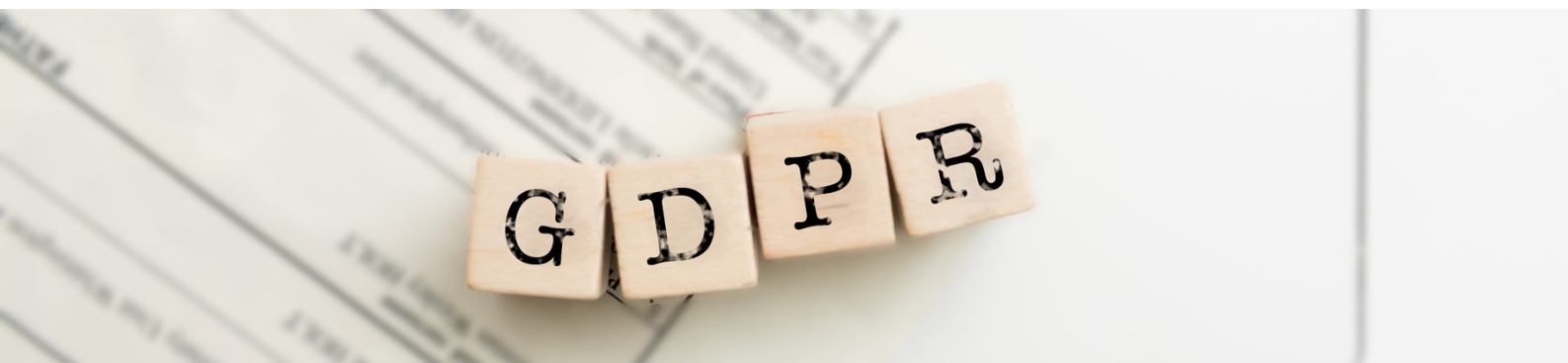
On July 10, 2023, the European Commission stated that the United States ensure an adequate level of protection for personal data equal to the European level of protection. As a result, the transfer of personal data from the EU to certain American entities - that provide sufficient binding guarantees and are on the public "[Data Privacy Framework List](#)" managed by the US Department of Commerce - can occur freely and without the need for standard contractual clauses or another transfer instrument.

For U.S. entities not on the list, the transfer cannot be based solely on the adequacy decision, and therefore requires appropriate safeguards respecting the level of protection applied within the EU (standard contractual clauses, implementation of binding rules for U.S. companies importing data, etc.).

The EDPB also clarified the implementation of this transfer, pointing out that all the safeguards established by the American government for American data in the field of national security (including redress mechanisms) also apply to all data transferred from the EU to the United States, regardless of the transfer tool used.

The CJEU states that Meta's GDPR approach is illicit

CJEU, July 4, 2023, No. C-252/21, Meta v. Bundeskartellamt



The Court of Justice of the European Union (CJEU) has ruled on Meta's use of personal data, stating that it must be strictly limited to what is necessary to provide the app's key services, such as messaging or content sharing. The Court recalls that all other processing, such as personalized advertising or the sharing of personal data, requires the freely given and informed consent of users.

Article 6.1 of the GDPR provides six legal bases for data processing, including the consent of the data subject. In this case, Meta had tried to get around the consent requirement by justifying its processing by the other five legal bases, arguing in particular that personalized advertising was justified by the performance of the contract as part of the service Meta is offering. The Court stated that, on the contrary, there was no legitimate interest, and that Meta could not broadcast personalized advertising other than on the basis of freely given consent.

LATEST NEWS - DATA PROTECTION

The data of 10 million people potentially stolen after a cyber-attack on Pôle Emploi

Pôle Emploi press release "Act of cyber-malveillance, be vigilant!", August 23, 2023

On August 23, 2023, Pôle Emploi indicated in a press release that Majorel, one of its service providers responsible for the digitization and processing of all documents sent by jobseekers, had been the victim of a breach of their information system resulting in a high risk of disclosure of jobseekers' personal data.

This could potentially be one of the largest cyber-attacks in France, affecting almost 10 million French people. Their surnames, first names and social security numbers are said to have been sold on the dark web for almost \$900. However, their e-mail addresses, telephone numbers, login passwords and bank details are not affected. With this type of cyberattack, the GDPR requires personal data controllers to notify affected jobseekers of breaches that present a risk.



The DGCCRF fines Google for failure to provide clear, fair and transparent information

After a two-year investigation, the French General Directorate for Competition, Consumer Affairs and Fraud Control (DGCCRF) sentenced Google with an administrative fine of over 2 million euros for failing to provide clear, fair and transparent information to consumers using its digital platform. Google was accused of failing to provide consumers with information on the pricing conditions of offers available on its tourist accommodation comparison app.

The company was also fined for failing to inform the author of a Google review of the reasons why the app refused to publish it.

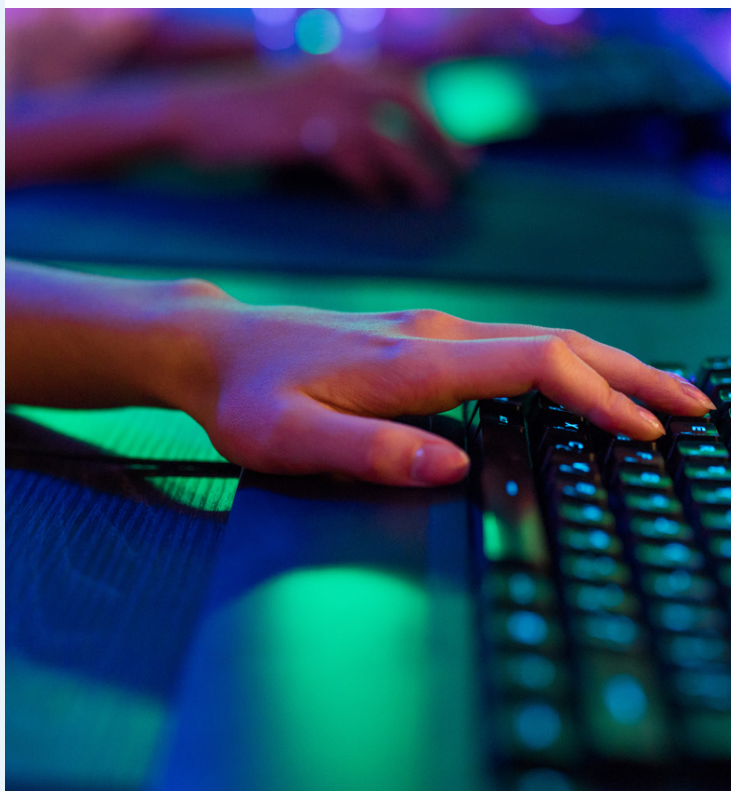
Following this penalty, Google stated that the necessary changes had been made and have been effective for several months.

LATEST NEWS - DATA PROTECTION

Adoption of the bill to secure and regulate the digital space

Bill n°156 of July 5, 2023, to secure and regulate the digital space

Many digital services today use the cloud to host and process data. In some cases, it can hinder competition through the practice of cloud credits or exit fees. In this context, the "Securing and Regulating the Digital Space" bill was passed by the Senate on July 5, 2023, providing for the improvement of users' ability to freely choose the cloud providers that best meet their needs to combat the unfair practices of digital giants. There are also plans to ban imposed data transfer fees (data egress fees) and to make cloud services interoperable to make the right to data portability a reality.



Advertising

Personalized advertising - CRITEO fined 40 million euros for failing to actively obtain the consent of data subjects

CRITEO, a company specializing in "ad retargeting", offers personalized advertising based on the browsing data of Internet users, based on cookies stored on their terminals each time they visit CRITEO partner sites. The company then participates in real time bidding to win the opportunity to display personalized advertising.

Following a series of complaints submitted by associations for the protection of personal data, the CNIL identified several breaches including a failure to obtain the consent to the processing of personal data, and a lack of information and transparency.

To sentence the company with a fine of 40 million euros, the CNIL took into consideration the very large number of data subjects - over 370 million usernames across the EU - and the data collected relating to users' consumption habits.

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