

# NEWSLETTER

TECH / DATA



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## Adoption of the SREN law by the National Assembly

On October 17, 2023, the French National Assembly adopted the bill aimed at securing and regulating the digital space.

Banishment of cyber-stalkers from social networks, stronger online protection for minors, fight against disinformation, regulation of the cloud... Find out more on our article on the SREN bill.



## LATEST NEWS - TECHNOLOGIES

### Adoption of the bill to secure and regulate digital space by the National Assembly

Bill No. 1674 to secure and regulate digital space

In our [June to August 2023 issue](#), we mentioned the bill relating to secure and regulate digital space by the Senate. On October 17, 2023, the National Assembly adopted the bill.

The bill, which aims to protect users, particularly children, includes a new amendment, article 10 bis B, requiring that from July 1, 2024, French health data shall be hosted by operators with the SecNumCloud label, a certification issued by the French National Agency for Information Systems Security (ANSSI). The bill also strengthens cybersecurity measures against scams aimed at the general public, convictions for online hate and cyberbullying, and the fight against disinformation and foreign propaganda. MEPs and senators must now meet in a joint committee to agree on a final version of the text.

### ECJ rules on the right of withdrawal for online subscription

ECJ, October 5, 2023, No. C-565/22

In a decision issued on October 5, 2023, the Court of Justice of the European Union answered the prejudicial question as to whether the right of withdrawal from an online subscription, initially free of charge and automatically renewed, is guaranteed only once.

A consumer association claimed that in this situation, the right of withdrawal applied not only to the free trial period, during which the consumer could cancel the subscription at any time, but also after the free trial had been converted into a paid subscription and at each automatic renewal.

According to the ECJ, the consumer's right of withdrawal is guaranteed only once. However, consumers may benefit from a new right of withdrawal if they have not been informed in a clear, intelligible, and explicit manner of the switch to a paying subscription after the renewal date.



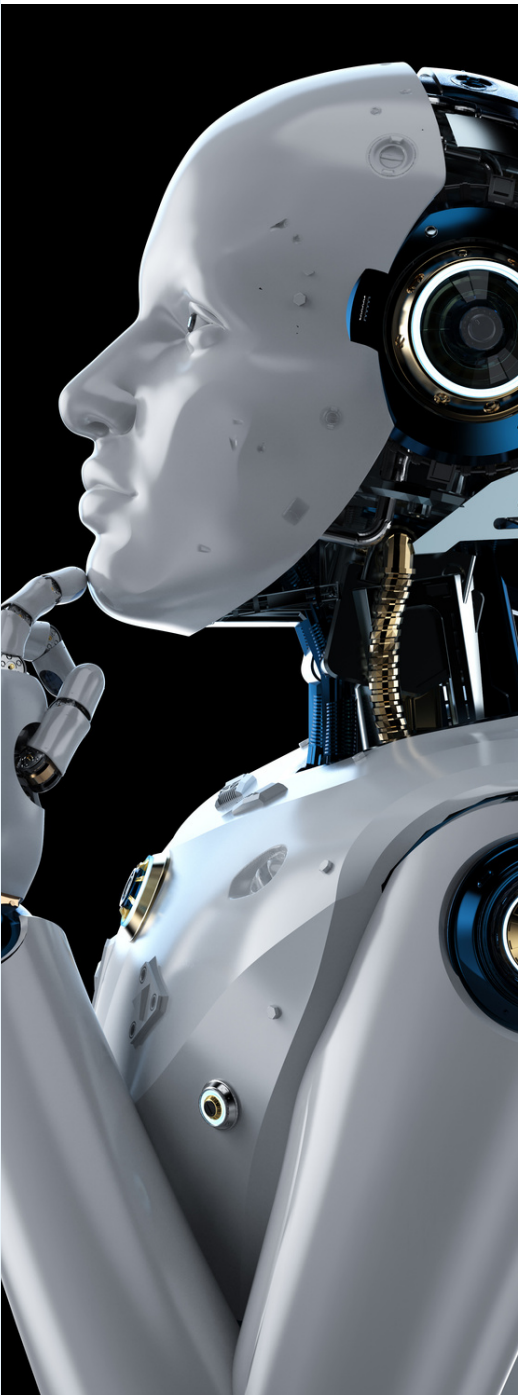
## LATEST NEWS - TECHNOLOGIES

### Recognition of Airbnb as a hosting service and not a publisher

Aix-en-Provence Court of Appeal, September 21, 2023, No. 21/14093

In a decision issued on September 21, 2023, the Court of Appeal of Aix-en-Provence overturned the first instance's judgment stating that Airbnb Ireland had the status of a publisher and could therefore be held liable for the content of the advertisements published on its platform.

This position is not upheld by the Court of Appeal, which rules that it results from the evidence submitted to the Court that Airbnb Ireland is unable to exercise a general control of the content beforehand; it simply moderates the content a posteriori and occasionally, in order to ensure compliance with the law and rights of third parties. The Court concludes that the platform could therefore be classified as a hosting service and could not be held liable for the lawfulness of the advertisements posted on its platform.



### Authors Guild of America accuses OpenAI of copyright violation

In a class-action filed by the Authors Guild of America against OpenAI in Manhattan federal court, 17 authors accused the creator of ChatGPT of infringing their copyright by using their literary works to train its generative AI model, without permission or due care. The union claims that the use of pirated versions of books to train AI represents a systematic theft on a massive scale. Several other companies developing generative AI tools, such as Meta Platforms and Stability AI, are also facing similar lawsuits from authors.

Similarly, American film and TV writers have also spoken out about the abuses of AI use in the audiovisual industry, and recently won their battle against production studios after nearly five months of striking. For more information, we invite to read our article on this subject in the IP/MEDIAS Newsletter of September-October 2023.

### Suspension of Amazon "very large online platform" status under DSA

General Court of the European Union, Order T-367/23 R, September 27, 2023, Amazon Services Europe / Commission

In an interim order of September 27, 2023, the General Court of the European Union suspended Amazon's "very large online platform" status and the obligations associated. The platform argued that the obligation to keep an advertising register imposed by the DSA was causing irreversible damage to its advertising activities and market share because of the confidential information that could be contained therein. The Court ruled that keeping an advertising register accessible to competing third parties was likely to reveal significant trade secrets regarding the advertising strategies of its advertiser clients. The suspension was ordered for a limited period, as yet unspecified.

**To be continued...**



## LATEST NEWS - TECHNOLOGIES

### Bill on AI regulation through copyright law

Bill No. 1630 of September 12, 2023, on AI regulation through copyright law

Members of the French National Assembly proposed a bill to encourage AI systems to respect copyright law and promote creation. The text proposes to amend the provisions of the French Intellectual Property Code in order to take into consideration the issues surrounding generative AI. In particular, the bill states that in the event of a work created by AI without direct human intervention, the only right-holders will be the authors or assignees of the original work used to conceive the generated work, a provision that will be included in the Code at article L321-2. Generated works will also have to be mentioned as "works generated by AI". A tax, the rate of which will be set by decree by the French Council of State, will be imposed on the company exploiting the AI system that contributed to the creation of the artificial work.

To be continued...

### DMA - Designation of 6 gatekeepers

On September 6, 2023, the European Commission published for the first time a list designating 6 gatekeepers concerned by the Digital Markets Act (DMA) and identifying 22 core platforms services.

From now on, Alphabet, Amazon, Apple, ByteDance, Meta et Microsoft have 6 months to comply with the obligations and prohibitions of the DMA and submit a detailed report justifying their compliance with their obligations. However, certain obligations must be implemented as soon as they are designated. For more information, we invite you to read [our article on this subject](#).



### CNIL - Practical information sheets to ensure the compliance of AI users with the GDPR

CNIL, Practical information sheets on building learning databases for AI systems, October 11, 2023

On October 11, 2023, the CNIL published seven practical information sheets aimed at helping professionals using AI tools to comply with personal data protection legislation during the development phase of their solutions.

In particular, these documents provide details on determining the legal basis and purpose of data processing, the design choices for AI systems and the lawfulness of data processing.

## LATEST NEWS - DATA PROTECTION



## Ireland – Tiktok fined 345 million euros

TikTok has been fined €345 million by the Irish CNIL - the Data Protection Commission (DPC) - which criticized TikTok for making the accounts of minors under the age of 13 visible to the public by default and allowing a parent to pair up with their child's account via "Family Pairing", without first checking that the account is actually held by their legal guardian.

TikTok has claimed that it disagrees with several points of the ruling and is developing a new procedure for the creation of minors' accounts.



## LATEST NEWS - DATA PROTECTION

### GDPR violation in human resources management

In a decision issued on October 2, 2023, the Brive-la-Gaillarde Judicial Court sentenced a former Human Resources Director (HRD) of Vinci Autoroutes to a six-month suspended prison sentence for compiling an Excel file containing demeaning comments about 180 of the company's employees.

This unsecured processing did not comply with the principles of transparency and data minimization set out in the GDPR.



### Amazon fined 170 million euros by the CNIL



For the past four years, the CNIL has been investigating the collection and use of employee productivity data by Amazon France Logistics, Amazon's French subsidiary specialized in logistics and transport. The CNIL's rapporteur has requested a fine of €170 million against the company, corresponding to almost 23% of the data controller's turnover.

The CNIL ruled that those practices were violating the provisions of the GDPR by massively collecting and analyzing its employees' data.

Amazon denied that it was using this data to calculate productivity, claiming that it simply enabled better task planning, better support for employees and that their warehouse management system respected the standard practices in the sector.

## LATEST NEWS - DATA PROTECTION

### Prohibition of personal data storage to fight against corruption in the public sector

ECJ, September 7, 2023, Case No. 162/22

In a ruling issued on September 7, 2023, the Court of Justice of the European Union recalled its position on the prohibition of storage and general and indiscriminate access to connection data, provided for in article 15 of the Directive on privacy in the electronic communications sector (2002/58/EC). The text states that personal data relating to electronic communications stored by electronic communications service providers and subsequently made available to the authorities responsible for fighting against serious crime shall not be transmitted to other authorities and used in the context of investigations into corruption in the public sector, as the fight against corruption is of lesser importance than the fight against serious crime.

According to the Court, in accordance with the principle of proportionality, only the fight against serious crime and the prevention of serious threats to public security should justify serious interference with fundamental rights.



### Law cyberscore informing platforms' user of data security online

Law No. 2022-309 of March 3, 2022, for the introduction of cybersecurity certification for digital platforms aimed at the general public

The law of March 3, 2022, requiring online platforms to carry out a cybersecurity audit and display a Cyberscore for consumers came into effect on October 1, 2023. This colorful indicative system will inform users on the level of protection of their personal data, the level of outsourcing or security of their connection, and measures to raise awareness of cyber risks and the fight against fraud. The scope of this law is particularly broad, since it applies to online platform operators as defined in article L.111-7 of the French Consumer Code as soon as they host data directly or via a third party and reach 25 million unique visitors per month from France for the year 2024.

While the conditions under which this law will be applied are still unclear, the platform operators concerned by these obligations will probably be those that the European Commission recently described as "gatekeepers" that provide essential services such as social networks, marketplaces, or video-sharing platforms. For more information, we invite you to read our article on this subject in the September-October 2023 TECH/DATA Newsletter.



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