

NEWSLETTER

TECH / DATA



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LATEST NEWS - TECHNOLOGIES

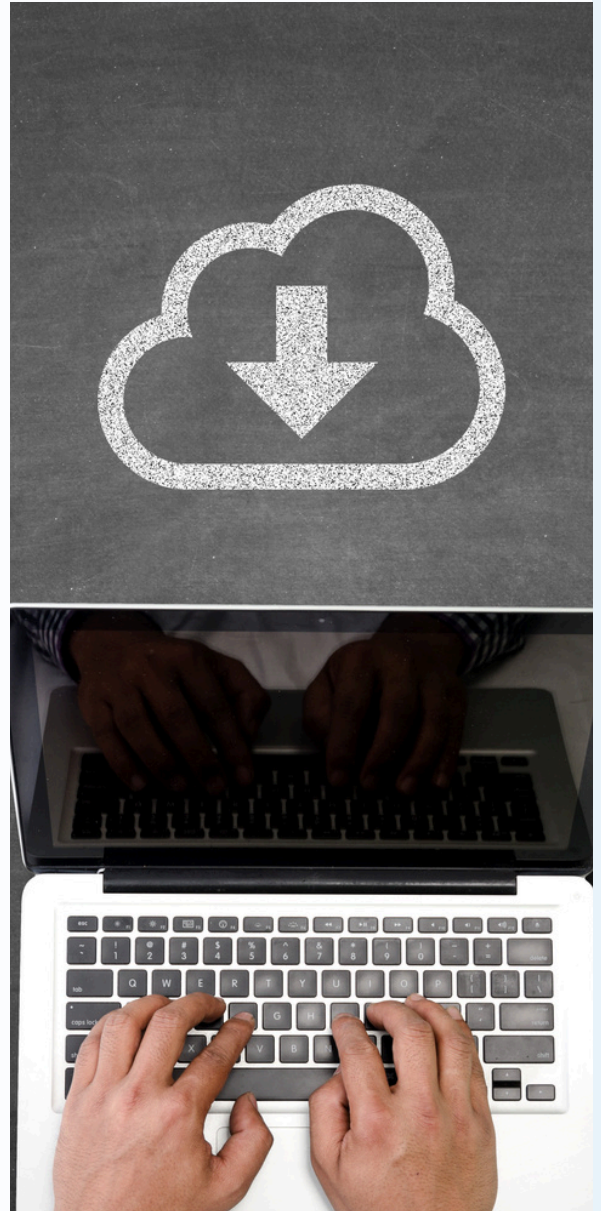
Provision of software by download and user license

French Supreme Court, com., March 6, 2024, no. 22-23.657

In this ruling, the French Supreme Court ruled that, under article L. 122-6, 3°, of the French Intellectual Property Code, subject to the provisions of article L. 122-6-1, the exploitation right belonging to the author of a software program includes the right to market and authorize the sales, against payment or free of charge, including rental, of one or more copies of a software program by any process. However, the first sale of a copy of software in the territory of a Member State of the European Community or of a State party to the Agreement on the European Economic Area by the author or with his consent exhausts the right to market that copy in all Member States, except for the right to authorize the subsequent rental of a copy.

It points out that the Court of Justice of the European Union has held that the making available of a copy of computer software, by means of a download, and the conclusion of a related user license agreement, aimed at making that copy usable by customers, on a permanent basis, and in return for payment of a price intended to enable the copyright holder to obtain remuneration corresponding to the economic value of the copy of the work he owns, imply the transfer of the right of ownership of that copy.

Consequently, according to the French Supreme Court, article L. 122-6, 3°, of the French Intellectual Property Code must be interpreted as meaning that the provision of a copy of software by download and the conclusion of a related user license agreement under these conditions must be qualified as a sale.



European Parliament adopts IA Act

**BREAKING
NEWS**

IA Act corrigendum, April 19, 2024

On March 13, 2024, Members of the European Parliament approved the text with 523 votes in favor, 46 against and 49 abstentions. A corrigendum was published by the European Parliament on April 19, 2024. The draft regulation is currently undergoing final verification by a lawyer-linguist and is due to be formally adopted by the Council.

LATEST NEWS - TECHNOLOGIES

SREN bill passed

Legislative dossier, Securing and regulating the digital space

The bill to secure and regulate the digital space (SREN) was definitively adopted by the French National Assembly on April 10, 2024. It provides for several measures:

- The protection of citizens and minors, with increased powers for the French Regulatory Authority for Audiovisual and Digital Communication (ARCOM) to supervise age verification on pornographic sites and block non-compliant sites, as well as penalizing hosts for failing to remove child pornography content within 24 hours.
- The fight against scams, hate and disinformation, with the creation of a new offence of online contempt, punishing the dissemination of offensive, discriminatory or harassing content.
- European economic and digital sovereignty by reducing companies' dependence on cloud providers, regulating commercial practices and strengthening the interoperability and compliance of cloud services.
- The adaptation of national law to European regulations, with the designation of ARCOM as coordinator for digital services in France, a division of powers between authorities (CNIL, DGCCRF, etc.) for the application of the DSA and DMA, and the amendment of the Intellectual Property Code to ensure "appropriate" remuneration of authors.

On April 17, 2024, at least sixty deputies referred the matter to the French Conseil constitutionnel, which will have to rule on the text.

Best effort provision deemed unwritten in a telecom & Internet professional contract

French Supreme Court, 1 Civ., March 13, 2024, no. 22-12.345

A framework contract was signed between the ADAPEI-ARIA de Vendée association and SFR. Article 7.1 of the General Terms and Conditions of Sale provided that SFR had an obligation of best effort, and specified that the telecom operator could only be held liable in the event of a proven fault, and that no legal action or claim by the customer could be brought or made against SFR more than one year after the occurrence of the event giving rise to the liability.

Pursuant to the provisions of articles 14, paragraphs 1 and 2, and 15, I, of law no. 2004-575 of June 21, 2004 on confidence in the digital economy, an electronic communications service provider is liable to its customer for the proper performance of its contractual obligations, unless it can prove that the failure to perform or improper performance of the contract is attributable to its customer, to a third party unrelated to the contractual service, or to a case of force majeure.

There can be no derogation from the provisions of the above-mentioned article 15, I, which are a matter of public policy. Consequently, the Court upheld the appellate court's ruling that the clause provided for in article 7.1 subjected SFR to a mere best effort obligation and stated that its effect was to contractually reduce the limitation period for legal actions brought by a customer against the supplier below the limit set by article 2254 of the French Civil Code. For these reasons, the clause should be deemed unwritten.

LATEST NEWS - TECHNOLOGIES

New CSPLA mission on the remuneration of cultural content used by AI systems

Superior Council of Literary and Artistic Property (CSPLA)'s press release, March 17, 2024

Faced with the growing use of copyright-protected works in artificial intelligence (AI) systems, the French Ministry of Culture has entrusted a mission to the Superior Council of Literary and Artistic Property (CSPLA). This mission aims to:

- Analyze the economic issues involved in accessing and using copyrighted cultural data in AI systems.
- Examine possible legal mechanisms for each sector, to ensure fair remuneration of rights holders when their works are used by AI model providers.

The aim is to strike a balance between fair remuneration for rights holders and the economic feasibility of the proposed solutions for AI providers. This is in line with the European legal framework and aims to legally secure the use of protected cultural content in artificial intelligence systems.

CAI unveils its first draft framework convention

Draft framework convention on AI, human rights, democracy and the rule of law

The Committee on Artificial Intelligence (CAI), established under the AI Act, is actively working on a binding framework for the development, design and application of AI systems. A convention will therefore be drafted, considering the Council of Europe's standards on human rights, democracy and the rule of law.

At its 8th meeting, the CAI made public the Draft Framework Convention, which contains the results of the second reading. This document will serve as the basis for the third and final reading, but it is important to note that it does not allow to anticipate the outcome of negotiations within the CAI.



INTERNATIONAL FOCUS

NSO Group forced to release source code for Pegasus software

US District court, Northern District of California, Whatsapp v NSO, Case No. 19-cv-07123-PJH

WhatsApp recently claimed that NSO Group's spyware had been used to target 1,400 of its users, and legal proceedings are currently underway. Despite NSO Group's attempts to disclaim liability, its arguments have all been rejected. The U.S. District Court for the Northern District of California has ordered the company to provide WhatsApp with documents and source code relating to its spyware, Pegasus.



LATEST NEWS - DATA PROTECTION

Publication of the CNIL's first recommendations for responsible AI

Practical IA factsheets

Following a public consultation, the CNIL has published its first recommendations in the form of factsheets to help professionals reconcile innovation and respect for people's rights in the development of their AI systems. These recommendations take into account the AI Act and the following synthesis has also been published:

- Define a purpose for the AI system;
- Determine the responsibilities of the players;
- Define a legal basis;
- Perform tests and verifications in the event of data reuse;
- Minimize the use of personal data;
- Define a retention period;
- Carry out an impact analysis if necessary.

These recommendations aim to secure the legal framework for AI, particularly in the context of the emergence of generative AI systems. The CNIL plans to supplement these initial recommendations with further publications in the coming months, to support the responsible development of AI.



Leboncoin - Disclosure of personal data following a security breach

The Leboncoin platform recently suffered a security and data confidentiality breach. Following a technical bug, some users' personal information was accidentally shared with other users with whom they were in contact. The data concerned would include buyers' surnames, first names, e-mail addresses and telephone numbers, which, according to the platform, were displayed in a notification e-mail sent to sellers after an initial exchange via the site's messaging system or mobile application. Leboncoin has confirmed that the problem has now been resolved.

LATEST NEWS - DATA PROTECTION

EmC2 - The French State Council dismisses appeal against CNIL decision to authorize Microsoft to host healthcare data

French State Council, March 22, 2024, no. 492369

On January 31, 2024, the French Data Protection Authority (CNIL) authorized the hosting of French healthcare data on Microsoft's cloud, in the absence of French solutions meeting the requirements of the European EMC2 project.

This EMC2 project, launched in 2021 by the European Medicines Agency (EMA), aims to create a European health data warehouse to facilitate research. The Ministry of Health launched a call for tenders to find a secure cloud provider, but none of the French suppliers evaluated - OVH Cloud, Numspot and Cloud Temple - seemed to meet the requirements of the Health Data Hub (HDH), the organization in charge of the project.

In this context, the French Data Protection Authority (CNIL) authorized Microsoft to host health data in its centers in France for a period of 3 years, by default. The Internet Society France association challenged this decision before the Conseil d'État. Although the action for annulment is still pending, the interim relief judge rejected the request for suspension of the decision, considering that the condition of urgency had not been met.

In addition, on April 10, 2024, the European Parliament imposed the use of a SecNumCloud-certified hosting solution by the Agence Nationale de la Sécurité des Systèmes d'Information (ANSSI) for the Health Data Hub. This security qualification aims to protect healthcare data against access by foreign powers. The HDH will therefore eventually have to turn to a SecNumCloud-certified French cloud provider.



The EDPB's opinion on the "pay or okay" system

EDPB opinion, April 17, 2024, no. 08/2024

The EDPB (European Data Protection Board) has published its first opinion on the "pay or okay" model, which obliges users to pay to refuse the processing of their data, used by major online platforms such as Meta (Facebook, Instagram). The EDPB was asked by the data protection authorities of the Netherlands, Norway and Germany (Hamburg) to determine whether this practice could constitute valid consent.

The EDPB believes that by charging users a subscription fee if they refuse the processing of their data for behavioral advertising purposes, this system does not provide valid consent within the meaning of the GDPR, as the consent given is not completely free. However, this opinion is limited to data collected for behavioral advertising purposes by major online platforms. It is expected that the EDPB will publish further, more general guidelines on this system.

LATEST NEWS - DATA PROTECTION



INTERNATIONAL FOCUS

The ECJ authorizes data deletion without prior request

ECJ, March 14, 2024, C-46/23

In this case, the Hungarian administration had set up financial aid and collected personal data from the Hungarian State Treasury and the Government Office to check whether the people concerned were eligible for this aid. It was following a report that the Hungarian supervisory authority found this to be a breach of the GDPR, a decision that was challenged. The Budapest-Capital Court then decided to stay the proceedings and refer the case to the CJEU.

According to the CJEU, the supervisory authority of a Member State is empowered to order the controller or processor to erase personal data that has been unlawfully processed, even though no request to this effect has been made by the data subject with a view to exercising his or her rights. Furthermore, the order to erase the data in question may concern both data collected from the data subject and data from another source.

Joe Biden signs executive order to protect Americans' sensitive data

President Biden signed an executive order on February 28 calling on the Justice Department to create rules to protect Americans' sensitive personal data from exploitation by hostile countries: Venezuela, Cuba, Iran, North Korea, Russia, and China, including Hong Kong and Macau. The text will prevent the sale and transfer of sensitive information to companies based in these six countries.

The text will be put in place to protect Americans' sensitive data, including genomic, biometric, health, geolocation, financial and certain types of personally identifiable information, as well as sensitive government-related data, including GPS information about government sites and information about the military.



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