NEWSLETTER

TECH / DATA

STEERING LEGAL

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Publication of the SREN law

Law no. 2024-449 of May 21, 2024, securing and regulating the digital space was published in the Official Journal on May 22, 2024.

Find out more about the law's key mesures in our article.

LATEST NEWS - TECHNOLOGIES

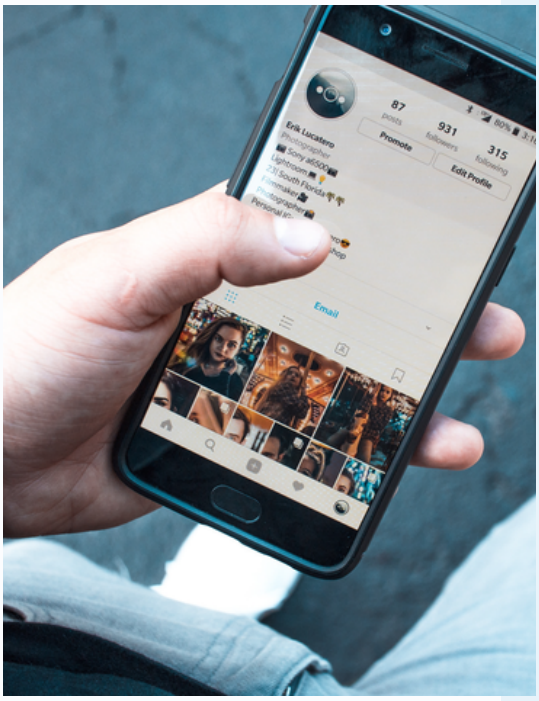
Publication of the SREN law

Law no. 2024-449 of May 21, 2024, securing and regulating the digital space

Law no. 2024-449 of May 21, 2024 aimed at securing and regulating the digital space (SREN) was published in the Official Journal of the French Republic on May 22, 2024.

One of the measures taken is to improve the online protection of minors by strengthening the powers of Arcom, designated as the "Digital Services Coordinator" in France under the Digital Services Act (DSA). Arcom will establish a reference framework for age verification, and will be able to block or delist pornographic sites that do not verify age. A criminal penalty has been introduced for hosting service providers failing to remove reported child pornography content within 24 hours, with a penalty of 1 year's imprisonment and a €250,000 fine.

It also aims to better protect citizens in the digital environment. An anti-scam filter with an alert message for malicious sites has been introduced, and an additional penalty of banishment from social networks for up to 1 year has been introduced in the event of cyberharassment or online hatred. Arcom will also be able to issue formal notices and block media that have been sanctioned by the EU for disinformation or foreign interference



The SREN Act also adapts French law to the new European regulations (DSA, DMA, Data Governance Act, Data Act) by giving new powers to the DGCCRF, Arcep and CNIL.

The DGCCRF becomes the authority responsible for monitoring compliance with the obligations of marketplace providers. The CNIL will be responsible for verifying that platforms comply with the restrictions on advertising profiling (prohibition for minors or using sensitive data), while the Arcep will be responsible for verifying that cloud services comply with their obligation to be interoperable.

Opinion of French Competition Authority on generative AI

BREAKING NEWS

French Competition Authority about AI, 28 June 2024

On 28 June 2024, the French Competition Authority (Autorité de la Concurrence) issued its opinion on the competitive functioning of the generative artificial intelligence sector. The ADLC made 10 recommendations to promote competition in this sector, relating in particular to the applicable regulatory framework, competition law tools and restrictive practices, computing power, remuneration of rights holders and equity investments by digital giants.

LATEST NEWS - TECHNOLOGIES

New obligations for software publishers

Decree no. 2024-421 of May 10, 2024

In response to growing cyberthreats, the French government adopted Decree no. 2024-421 on May 10, 2024, strengthening the security of information systems.

Since June 1st, 2024, all software publishers based in France or offering their products on French territory, and whatever their distribution mode (SaaS, on-premise, etc.), have the obligation to notify the Agence Nationale de la Sécurité des Systèmes d'Information (ANSSI) and their users (integrator, distributor and end-users) of security incidents and vulnerabilities deemed significant affecting their products, providing detailed information on the vulnerability and planned corrective measures. The significance of a vulnerability must be assessed by the publisher according to the following 6 criteria:

- The number of users affected by the vulnerability or incident affecting the product;
- The number of products integrating the affected product;
- The technical impact, potential or actual, of the vulnerability or incident on the product's expected operation. Depending on the product's functionalities, this impact is assessed in terms of security criteria such as availability, integrity, confidentiality or traceability;
- The type of product in terms of its uses and the environment in which it is deployed;
- The imminent or proven exploitation of the vulnerability;
- The existence of technical proof of exploitability or an exploit code.

It is important for software publishers to comply with these new directives in order to avoid any legal risk. Our firm remains at your disposal to support you in implementing these new obligations, and to advise you on the legal aspects of information systems security.

Adoption of the IA Act by the EU Council

IA Act Corrigendum of April 19, 2024

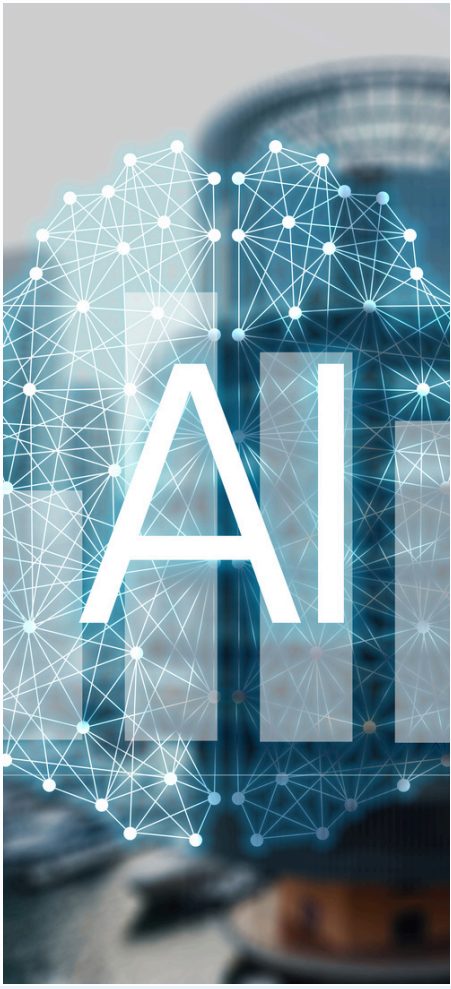
On May 21, the Council of the European Union unanimously adopted the AI Act, aimed at harmonizing rules on artificial intelligence in the EU. Following approval by the European Parliament on March 13, this is the final stage in the European decision-making process.

The text will shortly be published in the EU's Official Journal, entering into force 20 days later, and will be fully applicable 24 months later, with a few exceptions for certain provisions.

LATEST NEWS - TECHNOLOGIES

Adoption of the first international treaty on AI

Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law, May 17, 2024



On May 17, 2024, the Council of Europe adopted the first Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law, aimed at ensuring that AI systems respect human rights, the rule of law and democratic norms.

This international treaty, which is compatible with the AI Act, lays down rules that the 46 member states of the Council of Europe, as well as eleven influential non-member countries such as the USA, Japan and Canada, will have to transpose into their national legislation. The provisions cover the entire lifecycle of AI systems, from design to implementation, and aim to prevent major AI-related risks, including:

- Discrimination and algorithmic bias
- Violations of privacy and personal data
- Undermining the democratic processes
- Misuse by certain States for repressive purposes

The convention sets out transparency and control requirements tailored to the different contexts and levels of risk associated with the use of AI systems. These include mandatory identification of the content generated by AI systems, as well as risk assessment throughout the lifecycle of AI systems (design, development, use, decommissioning).

Voice reproduction by AI

In May 2024, the LOVO company was sued by two actors lending their voices for advertisements since 2019; Paul Lehrman and Linnea Sage, as their voices had been cloned without their consent by the company's text-to-speech tool. The actors allege a violation of their rights and privacy induced by the use and illicit commercialization of their voices, the latter having according to them only previously consented to use for internal testing and research purposes.

As the actors have filed a class action suit, it is possible that others will join this action to defend their rights.

To be continued...

LATEST NEWS - DATA PROTECTION

Update of ANS guidelines for the of hosting health data

The Agence du Numérique en Santé (ANS) recently updated its health data hosting repository and included an important new requirement enabling ANS to comply with the GDPR.

From now on, already HDS-certified hosting providers will have to localize health data within the European Union to maintain their HDS certification in accordance with this new HDS repository, within 24 months, i.e. by May 16, 2026, at the latest. This potentially involves relocating their hosting infrastructures or opting for European cloud solutions. New applicants for HDS certification after November 16, 2024, will be assessed against this new version of the HDS standard.

This update follows a process launched in early 2022 by the Délégation au Numérique en Santé and the Agence du Numérique en Santé, in consultation with industry players. It aims to guarantee a higher level of security and sovereignty for the hosting of sensitive healthcare data.

Prohibition to collect information on employees without prior notice

French Supreme Court, Criminal chamber, April 30, 2024, no. 23-80.962

The French Supreme Court has handed down an important ruling concerning the collect of personal information on employees from public online sources, without their consent.

In this case, an employer had commissioned a private investigator to carry out research on its employees, job applicants, customers or service providers. Through Internet searches, the investigator collected information on the personal lives and trade union activities of certain employees, without informing them or obtaining their consent.

The Court ruled that this collection of information, even though it came from sources accessible to the public, was unfair because it was carried out without the knowledge of the persons concerned and without complying with the obligation to provide prior information. Any collection of such data without prior information to the persons concerned, even if freely accessible, is therefore prohibited.

LATEST NEWS - DATA PROTECTION

Publication of the annual selection of major ECJ judgments

Selection of major ECJ judgments 2023

The ECJ has published its annual selection of major rulings for 2023. Each year, the Court of Justice and the General Court of the European Union publish a selection of the main judgments handed down in the previous year. This “Selection of major judgments” provides legal professionals with an overview of the major case law developments of the past year.

This year, the selection includes a section dedicated to judgments handed down in the field of personal data protection, including seven selected judgments in this area.

New CNIL sanctions under its simplified procedure

Since March 2024, the CNIL has imposed nine new financial penalties on public and private organizations for non-compliance with the GDPR via the new simplified procedure, totaling 235,000 euros.

The fines range from 5,000 to 60,000 euros, depending on the seriousness of the breaches and the size of the organizations concerned. Among the organizations sanctioned are service companies, associations, a property management company and a commune. The main breaches observed concern:

- No register of processing activities
- Failure to inform individuals
- Lack of appropriate security measures
- Excessive data retention

As a reminder, the simplified sanction procedure is a new procedure introduced by the CNIL in 2022. It enables it to sanction minor breaches of the GDPR and the Loi Informatique et Libertés quickly and effectively, without going through a lengthy and complex investigation.

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