BERSAY

Newsletter BERSAY - 2025

Title: **LIMITATION OF META'S ABILITY TO PROCESS DATA FOR TARGETED ADVERTISING PURPOSES**

Brief Overview:
The CJEU issued a ruling providing practical guidance on implementing the data minimisation principle and defining the limits of processing sensitive data for advertising. Companies in the online advertising sector must restrict the data they process in line with the CJEU's decision to ensure compliance with the GDPR.

On October 4, 2024, the Court of Justice of the European Union (CJEU) handed down a ruling reiterating the obligation for Meta, when collecting personal data on and off the Facebook social network, to comply with the principle of data minimisation and the prohibition of processing sensitive personal data in the absence of the data subject's consent.

Meta collects data on the activities of its users both on its own services, such as Facebook, Instagram and WhatsApp, and through third-party websites and applications connected to Facebook, on which “social plug-ins” are “embedded” to record the personal data of their visitors, such as the URL of the page visited, the time of visit and the visitor's IP address. This data is processed by Meta for the purpose of targeted advertising on Facebook.

In the present case, Maximilien Schrems, known for his role in the CJEU's invalidation of the Safe Harbor in 2015 and the Privacy shield in 2020, received advertisements on Facebook related to his sexual and political orientation after he visited political party pages aimed at a homosexual audience that contained Meta’s plug-ins. However, he had never indicated his sexual orientation on his Facebook profile.

Subsequently, Maximilien Schrems filed a complaint against Meta, accusing it of having processed sensitive data without his consent. Meta, on the other hand, argued that it was entitled to process such data, as Maximilien Schrems had spoken publicly about his homosexuality in videos and podcasts accessible online, which constituted proof of his consent to the processing of such personal data.

The Court held that Meta’s collection of its users' personal data, both on and off the Facebook social network, without limitation as to the data retention period, the categories of data processed, and the purposes of the processing, violates the data minimisation principle, according to which only personal data that is adequate, relevant and limited to the purposes of the processing, may be processed. In addition, the Court ruled that a user's public declaration at a panel discussion of their sexual orientation did not constitute explicit consent allowing Meta to process other data relating to their sexual orientation

obtained from partner websites and apps for the purpose of sending personalized advertising to that user. This decision is a reminder that data minimisation, one of the five founding principles governing the implementation of data processing, must not be neglected, even when the processing is used for advertising purposes. Advertisers and other players in the online advertising sector will need to take into account this reminder, at a time when they are seeking to obtain as much data as possible on Internet users, in order to target them as accurately as possible.

Authors:

- Bradley Joslove, Partner, Bjoslove@bersay.com
- Frédéric Lecomte, Partner, Flecomte@bersay.com
- Léa Paravano, Associate, Lparavano@bersay.com
- Guka Otkhmezuri, Associate, Gotkhmezuri@bersay.com

Title: **A VIDEO GAME PUBLISHER CANNOT PROHIBIT THE USE OF CHEATING SOFTWARE ON THE BASIS OF SOFTWARE COPYRIGHT.**

Brief Overview:
According to the CJEU, copyright protection for software is not applicable to the modification of variables in a video game. Thus, such protection does not allow game producers to sue companies marketing cheating software that modifies data stored in RAM. However, a few legal options remain available for producers (modifying the general terms of use, invoking unfair competition …).

CJEU, 17 October 2024, Case C-159/23, Sony v. Datel

On October 17, 2024, the Court of Justice of the European Union issued a preliminary ruling on the scope of copyright protection for computer programs in the case of cheating software.

In this case, Sony filed a complaint in Germany against Datel, a company marketing software enabling PSP console users to “cheat” in Sony's multiplayer games, arguing that this software infringed its right to authorize the modification of its games. The particularity of this cheating software is that it does not reproduce or change the source code or the object code. Instead, it works with the game by temporarily modifying certain data stored in the console's RAM and used while the game is running, thus influencing its progress.

In response to the question of whether changing the variables of a video game constituted an unauthorized adaptation of the game, the Court held that copyright protection for software was not applicable in this case, because it only applies to the source code or object code of the program, i.e. the very structure of the software, which in this case was not impacted by the use of the cheat software. Cheat software publishers should not, however, rejoice too quickly over this decision, as video game publishers have other means to try to prevent cheat software from being marketed: beforehand, they can incorporate technical protection measures into their games to prevent cheating software from operating, and/or include a prohibition on players using cheating software in their games' general terms and conditions of use; afterwards, they can take action on the grounds of unfair competition against publishers of such cheating software.

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- Bradley Joslove, Partner, Bjoslove@bersay.com
- Frédéric Lecomte, Partner, Flecomte@bersay.com
- Léa Paravano, Associate, Lparavano@bersay.com
- Guka Otkhmezuri, Associate, Gotkhmezuri@bersay.com

Title: **AI AND COPYRIGHT: KEY INSIGHTS ON THE "PUBLICLY AVAILABLE DETAILED SUMMARY" REQUIREMENT**

Brief Overview:
The French High Council for Literary and Artistic Property released a non-binding detailed model summary of the copyright-protected content used for AI training, as required from providers under the AI Act, complementary to an internal compliance policy. This model sets an example for information that shall be disclosed on harvested content, acquired datasets, prompts and synthetic data.

The French High Council for Literary and Artistic Property (*CSPLA*) released its mission report[1] on December 11, 2024, concerning the implementation of the Artificial Intelligence Act (AIA) and its relationship with copyright compliance.

Transparency obligation under Article 53 of the AIA

Article 53 of the AIA establishes a transparency obligation that imposes distinct yet complementary requirements on AI system providers: the drafting of a sufficiently detailed summary (Art. 53(1)(d)) and the establishment of an internal compliance policy (Art. 53(1)(c)).

In this context, the CSPLA has been tasked with identifying the information that AI system providers must disclose, depending on the cultural sectors concerned, to ensure that authors and holders of related rights can effectively exercise their rights ("opt-out" mechanism).

Interdependence of transparency obligations

The report clarifies that the distinct obligations set out in Article 53 of the AIA are, in practice, inseparable. The publicly available summary must include the key elements of the internal compliance policy. However, the protection of trade secrets cannot justify withholding the list of protected elements used (though it may shield details on how they were used).

Proposed summary model

Pending the publication of a summary model by the European Commission's AI Office, the CSPLA has put forward its own model (p. 30). Regarding copyright-protected content, the CSPLA model requires AI system providers to disclose information on:

1. Harvested content, whether obtained from the internet directly or through an authorized third party;
2. Datasets acquired from third parties;
3. The use or non-use of prompts in training the AI system; and
4. Synthetic data, meaning artificially generated data derived from human-created content.

AI system providers must include specific details on the methodology used to ensure compliance with EU law for each of these categories.

AI system providers training their models on copyright-protected content must integrate these organizational measures in advance, prior to the full entry into force of the AIA. While the CSPLA's

[1] Alexandra Bensamoun and Lionel Ferreira, « Rapport de la mission relative à la mise en œuvre du règlement européen établissant des règles harmonisées sur l'intelligence artificielle », presented to the CSPLA on December 9 and published on December 11, 2024.

summary model is not legally binding, it serves as a practical reference point for initiating this sector-specific compliance process.

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