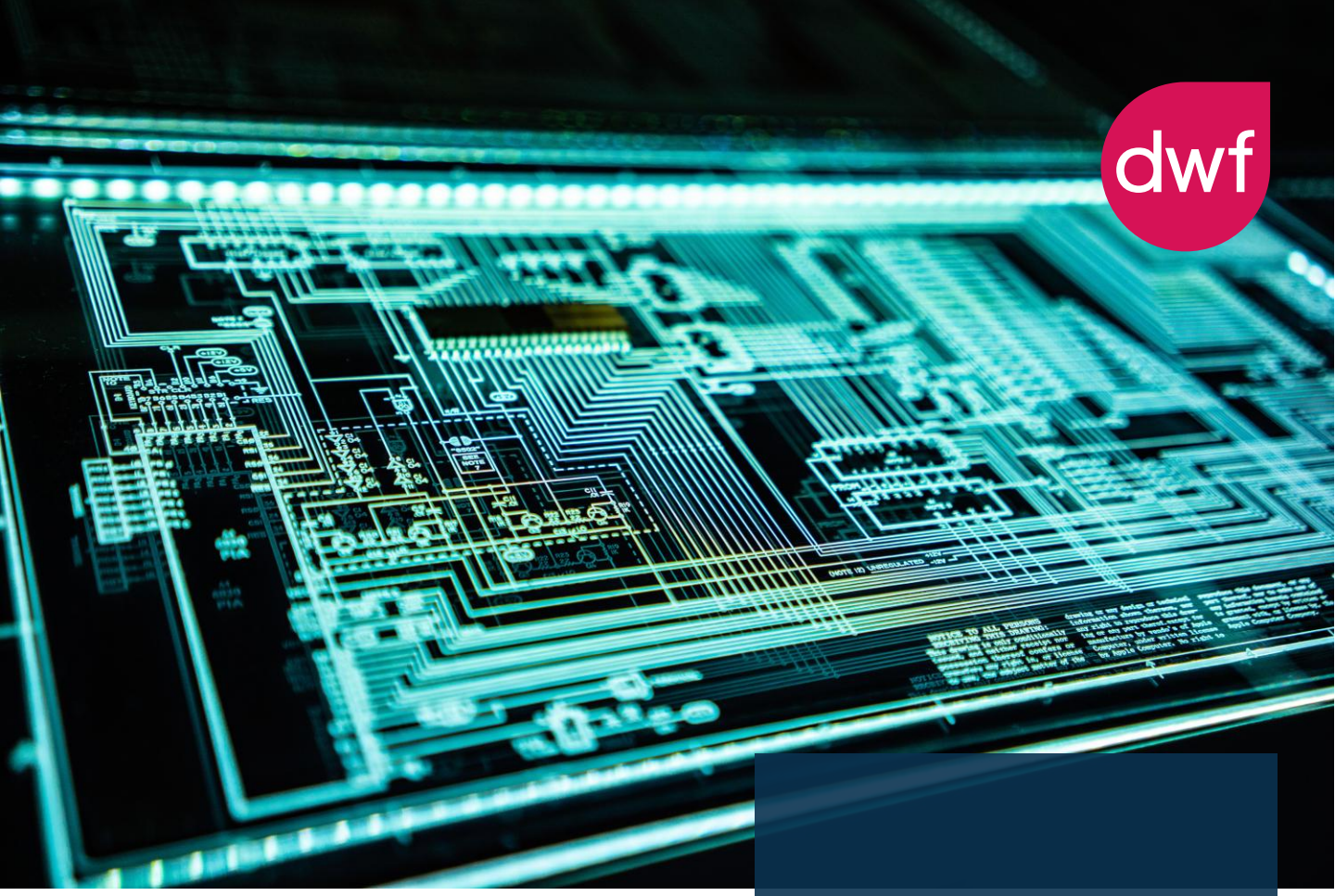

Newsletter

Tech / Data

November – December 2025

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The European Commission fines X 120 million euros for misleading practices and insufficient transparency on the platform.

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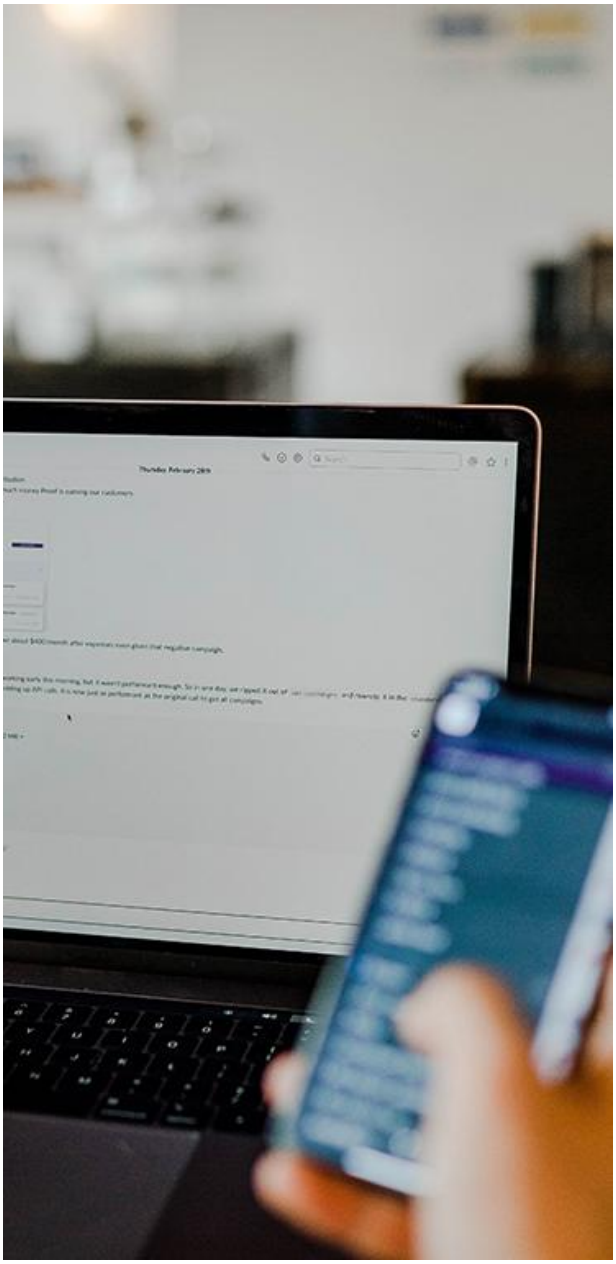
British courts issue major ruling in favour of AI in trademark and copyright enforcement

High Court of Justice, 4 November 2025, No. IL-2023-000007

On 4 November 2025, the British High Court handed down a major ruling on AI in the dispute between Getty Images and Stability AI, clarifying the interactions between artificial intelligence, trademark law and copyright law. Although Getty won a largely symbolic victory, it remains limited: a few cases of trademark infringement were upheld, but the AI model weights were not classified as illegal copies.



Getty Images, famous for its multimedia content protected by "Getty Images" or "iStock" watermarks, accused Stability AI, creator of the Stable Diffusion generative model that converts prompts into images, of allowing the generation of images containing these watermarks. Stable Diffusion, accessible via download or platforms such as DreamStudio, was trained on datasets including images from Getty's websites.

Initially broad in scope, the complaint was substantially reduced as the case progressed, with direct allegations of copyright infringement related to model training and the generation of infringing content, as well as those relating to a violation of database rights, being dropped along the way.

The decision therefore focuses on trademark infringement under the Trade Marks Act 1994. The watermarks in question are often distorted, which complicates the assessment. The judge analyses the "average consumer" according to three profiles:

1. Users who download the design (high technical skills).
2. Users via API (intermediate technical level).
3. DreamStudio user (low technical level).

LATEST NEWS - TECHNOLOGIES

British courts issue major ruling in favour of AI in trademark and copyright enforcement

Infringement under section 10(1) (use for identical goods) is upheld for certain iStock watermarks reproduced via DreamStudio or API. The judge rejects Stability's argument that the user controls the output: Stability plays an active role in providing the template and its weights. The use of the signs creates the impression of a commercial link between Getty and Stability, which constitutes commercial communication. The identity of the signs is only recognised for iStock, and not for Getty Images, whose trademarks appear too distorted. With regard to section 10(2) (likelihood of confusion), a few isolated occurrences are noted. However, no infringement is established under section 10(3) (damage to reputation) due to insufficient evidence and the rarity of such cases.

The question was whether the Stable Diffusion model constitutes a "counterfeit copy" within the meaning of the Copyright, Designs and Patents Act 1988. An intangible electronic copy may be unlawful, but the model's weights do not store protected works: they are the result of statistical learning and do not contain any reproductions. The final model does not store or reproduce protected works, despite their use during training. The judge therefore concluded that Stable Diffusion is not an infringing copy.

Getty wins a limited victory on trademark law, with no major impact on copyright. Although handed down by a British court, this decision provides important clarification: the weights of an AI model are not unlawful copies. It leaves open the question of training, while other European decisions are beginning to emerge, not all of which are in the same direction.

LATEST NEWS - TECHNOLOGIES

German courts hand down a major ruling against AI in copyright enforcement

Munich Regional Court, 11 November 2025, No. 42 O 14139/24

On 11 November 2025, the Munich Regional Court handed down an important ruling in the case of Gema v. OpenAI, addressing the issue of copyright in relation to artificial intelligence systems. This ruling examines the reproduction of works in AI models, generated outputs and the applicability of text and data mining (TDM) exceptions.

Gema, a music rights collective, accused OpenAI of reproducing the lyrics of nine German songs in outputs generated by ChatGPT without authorisation or financial compensation. It argues that the lyrics were included in the training data used to train OpenAI's models, leading to their memorisation in the models, which constitutes reproduction within the meaning of copyright law. It also invokes regurgitation, i.e. the generation of identical or modified content in the output, which it equates with public disclosure (Section 19a UrhG) and adaptations (Section 23 UrhG) within the meaning of German copyright law. Finally, Gema asserts that these acts are not covered by the exceptions for text and data mining, in particular because of the opt-out that has been expressed.

The court recalls the broad and technologically neutral scope of the reproduction right provided for in Art. 16 UrhG, transposing the InfoSoc Directive. It distinguishes three technical phases:

1. Preparation of the corpus (phase 1)
2. Training and memorisation (phase 2)
3. Use of the model (phase 3)

The reproduction in question occurs in phase 2. Contrary to the British decision in Getty Images v Stability, the court considers that the memorisation of lyrics in models 4 and 4o constitutes a physical fixation, indirectly perceptible via prompts. This fixation is sufficient to characterise a reproduction, even if the data is broken down into abstract parameters.

The lyrics appear in the chatbot's responses, sometimes modified but still recognisable. These reproductions are stored in the memory of the devices and on cloud servers, constituting copyright infringements and adaptations. OpenAI is held liable because it controls the models and their architecture.

The court rejects the application of text and data mining exceptions (Sections 44b and 60d UrhG) for storage in phase 2. These exceptions only cover reproductions necessary for data mining in phase 1. Storage exceeds this purpose and infringes on the interests of the rights holders. The other exceptions (quotation, pastiche, insignificant accessory, private copying) are also rejected on the grounds that AI models cannot satisfy the necessary conditions, in particular artistic or intellectual intent.

This decision marks a victory for rights holders, recognising storage as unlawful reproduction. However, its contribution is limited to the storage mechanism, leaving open questions that may arise in the absence of storage. It is part of a European trend towards clarifying the relationship between AI and copyright, in line with international debates (USCO).

PERSONAL DATA NEWS

EDPS adopts opinion on draft adequacy decision for Brazil

EDPS, Opinion on the European Commission's draft adequacy decision for Brazil under the General Data Protection Regulation (GDPR), 4 November 2025, 28/2025

On 5 November, the EDPS adopted its Opinion 28/2025 on the draft adequacy decision for Brazil, a major trading partner. This opinion aims to secure data flows between the EU and Brazil in a context marked by the post-Schrems II paradigm.
The EDPS welcomes the high degree of convergence between Brazil's LGPD and the European GDPR: principles, individual rights, the role of the ANPD authority and redress mechanisms are considered to be "closely aligned". This provides legal certainty for day-to-day commercial operations.
The opinion is not a blank cheque. The EDPS is seeking clarification on several points:

- Access by authorities: the LGPD excludes processing related to public security, national defence or criminal investigations. The EDPS wants guarantees on the powers of the ANPD and the definition of "national security", in accordance with the requirements of Schrems II.
- Transparency vs. trade secrets: concern about the exception based on industrial secrecy, which could limit the right of access and supervisory powers.
- Onward transfers: clarification is needed on the rules governing data transfers from Brazil to third countries.

The European Commission presents its proposal for a "Digital Omnibus" regulation aimed at simplifying European digital regulation

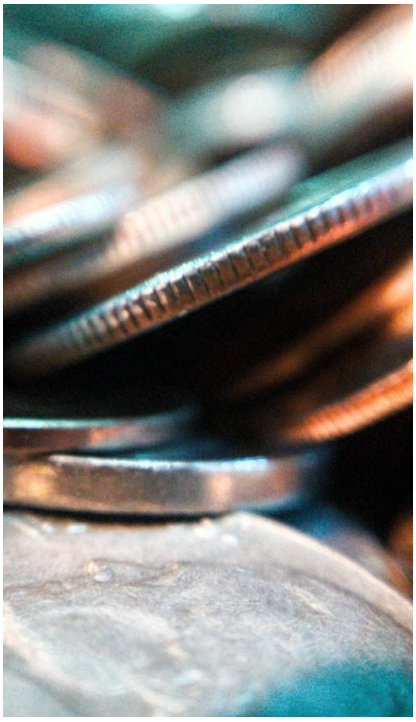
Proposition de règlement omnibus numérique | Bâtir l'avenir numérique de l'Europe

On 19 November 2025, the European Commission presented its proposal for a "Digital Omnibus" regulation. This text, with its stated objective of simplification, also represents a strategic reorientation to save the Union's digital competitiveness.

This proposal consolidates four texts – notably the GDPR and Regulation 2023/2854 on data (Data Act) – clarifies key definitions and reduces redundant obligations. In addition, the Commission is incorporating three texts into the Data Act: Regulation 2018/1807 on the free flow of non-personal data in the EU ("Free Flow"), Regulation 2022/868 on data governance (Data Governance Act), and Directive 2019/1024 on open data ("Open Data"). This will have the benefit of creating a single point of contact for incident reporting, as well as harmonisation at European level. In addition, the text proposes to centralise the management of cookie consent via browsers or operating systems. Finally, the text proposes a 16-month postponement of the obligations for high-risk AI systems (initially planned for August 2026). However, transparency obligations (labelling of AI content, copyright) will remain applicable from August 2026. Finally, the proposal introduces a legal basis of legitimate interest for training AI models, thereby amending Article 6 of the GDPR.

This text, which is currently only at the proposal stage, will be submitted to the European Parliament and the Council for adoption, before coming into force around 2027 or 2028, with a potential transitional period.

PERSONAL DATA NEWS



The CNIL fines American Express €1.5 million for non-compliance with cookie rules

CNIL, Deliberation of the restricted panel No. SAN-2025-011 concerning the company AMERICAN EXPRESS CARTE FRANCE, 27 November 2025

American Express, the world's third-largest payment card issuer, whose parent company is based in the United States, was subject to inspections by the CNIL in January 2023, both on its website and at its premises.

Following these checks, the CNIL's restricted panel fined American Express Carte France €1.5 million for non-compliance with the rules on trackers, in violation of Article 82 of the Data Protection Act. This sanction condemns the placement of trackers without consent, the placement of trackers despite a refusal, the placement of trackers after withdrawal of consent, as well as the persistent reading of trackers already installed despite the withdrawal of the internet user's consent.

The amount reflects the seriousness of the breaches, the notoriety of the rules widely disseminated by the CNIL and their age, while taking into account the compliance that occurred during the proceedings.

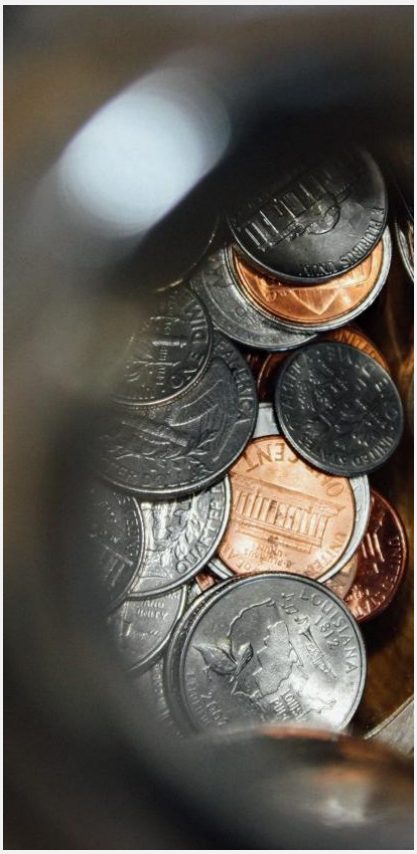
The CNIL fines the publisher of the website "vanityfair.fr" €750,000 for non-compliance with cookie rules

CNIL, Deliberation of the restricted panel No. SAN-2025-010 concerning the company LES PUBLICATIONS CONDE NAST, 20 November 2025

Les Publications Conde Nast, publisher of print and online magazines including Vanity Fair, has been sanctioned by the CNIL for non-compliance with cookie rules, in violation of Article 82 of the French Data Protection Act. Following a complaint filed in 2019 and a formal notice in 2021, the CNIL found during further inspections in 2023 and 2025 that the vanityfair.fr website continued to violate the regulations. The restricted panel imposed a fine of €750,000, taking into account the repeat offence, the number of users affected and the seriousness of the breaches.

The breaches identified by the CNIL include:

- The storage of cookies subject to consent upon arrival on the website without prior agreement;
- Insufficient information, with certain cookies being presented as "strictly necessary" without specifying their purposes;
- Faulty mechanisms for refusing or withdrawing consent, as cookies continued to be stored or read despite the user's refusal.



PERSONAL DATA NEWS

The Commission imposes a fine of €120 million on X for non-compliance with the DSA

European Commission, Commission fines X €120 million under the Digital Services Act, 5 December 2025

As part of proceedings initiated on 18 December 2023 against X, on 5 December 2025 the Commission imposed a fine of €120 million on the social network for non-compliance with the transparency obligations imposed by the Digital Services Act (DSA). The breaches identified concern:

- The misleading presentation of the blue badge: identifying 'verified accounts' misleads users. This is a violation of the DSA's requirement for online platforms to prohibit misleading design practices on their services. On X, anyone can pay to obtain "verified" status without the company seriously verifying who is behind the account, making it difficult for users to judge the authenticity of the accounts they follow and their content.
- Lack of transparency in its advertising register: X incorporates design features and barriers to access, such as excessive processing delays, that undermine the purpose of advertising registers. Certain essential information is also missing from X's advertising register.
- Refusal to grant researchers access to public data: X is not complying with the DSA's requirement to allow researchers access to the platform's public data.

This is the first decision finding a breach of the provisions of the DSA.

X has between 60 and 90 days to communicate the measures it intends to implement in order to comply with European regulations. Failure to do so could result in additional fines.

The Commission accepts TikTok's commitments on transparency under the DSA

European Commission, Commission accepts TikTok's commitments on advertising transparency under the Digital Services Act, 5 December 2025

The European Commission has secured binding commitments from TikTok to ensure full transparency on advertising on the platform, in line with the Digital Services Act (DSA). This decision follows extensive dialogue and an investigation launched in February 2024, whose preliminary findings published in May 2025 revealed non-compliance with advertising transparency obligations.

The commitments made by TikTok address all the concerns raised by the Commission. They include several key measures:

- Full access to advertising content as it appears in users' feeds, including the URLs of links in advertisements.
- Faster updating of the advertising register, with a maximum delay of 24 hours for making information available.
- Disclosure of the targeting criteria chosen by advertisers, as well as aggregated user data (gender, age group, Member State), to enable researchers to analyse targeting and delivery practices.
- Introduction of filters and advanced search options to make it easier for users to view advertisements.

These advertising registers imposed by the DSA are essential for detecting fraudulent advertisements, illegal or inappropriate products, false advertisements and disinformation campaigns, particularly during election periods. They strengthen the ability of regulators, researchers and civil society actors to monitor online advertising practices.

TikTok must now implement these commitments within a period of 2 to 12 months, depending on the measures. The Commission will closely monitor their implementation, in particular with regard to Article 71 of the DSA.

PERSONAL DATA NEWS

The Court of Justice clarifies the definition of a sale of services within the meaning of the ePrivacy Directive

CJEU, Inteligo Media SA v Autoritatea Naţională de Supraveghere a Prelucrării Datelor cu Caracter Personal (ANSPDCP), 13 November, C-654/23

This week, the CJEU confirmed that a service offered "free of charge" in exchange for personal data does indeed constitute a sale of a service within the meaning of the ePrivacy Directive.

This ruling, which appears technical in nature, represents a strategic advance for the AdTech sector. By classifying this relationship as a "sale", it paves the way for the application of the soft opt-in exception for electronic prospecting (advertising for similar products), which allows the strict requirement of prior consent (opt-in) to be circumvented for certain communications depending on their purpose.

In addition, the CJEU also clarifies whether a company relying on the "soft opt-in" provided for in Article 13(2) of the ePrivacy Directive must also demonstrate the existence of a legal basis under Article 6 of the GDPR, for example legitimate interests within the meaning of Article 6(1)(f) of the GDPR. The Court expressly confirms the "lex specialis" effect of the ePrivacy Directive provided for in Article 95 of the GDPR, according to which the provisions of the ePrivacy Directive establishing specific obligations and conditions for the processing of personal data prevail over the general rules of the GDPR in the area of application concerned.

PERSONAL DATA NEWS

Arcom designates Point de Contact as a trusted flagger

Digital Services Act (DSA): list of trusted flaggers designated by Arcom

In March 2025, Arcom designated Point de Contact, a platform providing internet users with various tools for reporting potentially illegal content, as a trusted flagger, thus joining the list of French organisations recognised for their role in combating illegal content online. This status, established by the Digital Services Act (DSA), gives these organisations a strategic role in cooperation between platforms and civil society.

Trusted flaggers are entities, often associations, authorised to identify, classify and report content that is contrary to the law: child sexual abuse, non-consensual distribution of intimate images, cyberbullying, hate speech and incitement to violence. Their reports are given priority treatment by platforms, unlike traditional notifications, which are often automated and delayed. This mechanism strengthens responsiveness to cyberviolence.

The DSA, which came into force in 2024, aims to make the digital space safer and more transparent. It imposes increased obligations on platforms: enhanced moderation, transparency of algorithms and mandatory cooperation with trusted flaggers. This status promotes smooth coordination between private actors and expert organisations, enabling the rapid removal of dangerous content and better protection for internet users.

Being a trusted flagger involves high standards: legal rigour, impartiality and transparency. Point de Contact is committed to publishing an annual report detailing its reports and results. Beyond speed, the association prioritises human support: legal analysis, practical advice (filing complaints, preserving evidence) and personalised support. This approach contrasts with the automated responses of platforms.

With more than twenty years of experience and 100,000 pieces of illegal content identified in five years, Point de Contact is part of a European network actively fighting against child abuse, hate speech and misinformation. This status strengthens its ability to work towards a safer internet based on cooperation, education and collective responsibility.

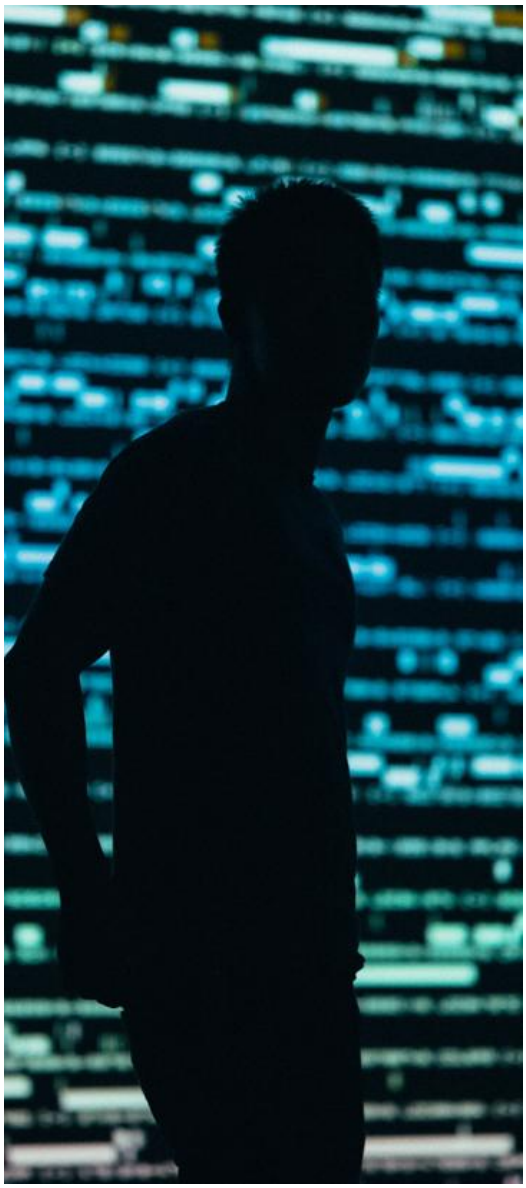
PERSONAL DATA NEWS

The CJEU sanctions an advertising platform as responsible for content published by a user due to sensitive data

CJEU, X v Russmedia Digital SRL & Informa Media Press SRL, 2 December 2025, C-492/23

On 2 December 2025, the Court of Justice of the European Union (CJEU) handed down a major ruling on the liability of online advertising platforms under the GDPR. It enshrines a broad interpretation of the concept of data controller, imposing proactive obligations on operators when sensitive data is likely to be published.

A Romanian platform operated by Russmedia allowed anonymous users to publish advertisements. One of these advertisements was defamatory, claiming that the applicant offered sexual services and disclosing sensitive personal data. The question put to the CJEU was therefore: can the platform be classified as a data controller despite the user origin of the content? Can it invoke the exemption regime for hosting providers provided for in the e-Commerce Directive?



The Court points out that the controller is the person who determines the purposes and means of the processing. Even if the content is created by the user, the platform sets the essential terms and conditions: hosting, public accessibility, storage and deletion conditions, and exploitation rights. This control over the means of dissemination is sufficient to qualify the operator as the controller.

The advertisement contained data relating to sexual life, falling within the scope of Article 9(1) of the GDPR. As such, the CJEU imposes ex ante filtering and technical measures to prevent the publication of sensitive data, in accordance with the principle of privacy by design laid down in Article 25 of the GDPR. It thus rules out any logic of ex post removal.

The Court rejects the application of the exemption regime for hosting providers and gives precedence to the provisions of the GDPR on the basis of the protection of fundamental rights and the need to prevent serious infringements of privacy.

This ruling imposes proactive responsibility and generalised prior control on platforms for user-generated content.

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