

Newsletter

INTELLECTUAL PROPERTY /
DIGITAL, TECH AND DATA

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**INTELLECTUAL
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**DIGITAL, TECH AND
DATA**

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Under What Conditions Can an Artificial Intelligence System Justify the Processing of Personal Data Voluntarily Provided by the User?

CNIL Press Release of 19 June 2025

Since the deployment of artificial intelligence ("AI") systems to the general public in 2022, many questions have arisen regarding the sharing of personal information willingly disclosed by users without any prior request from the software or its supplier. The communication of such personal data, as well as its analysis and subsequent use for machine learning purposes, constitutes "processing" within the meaning of the GDPR.

Indeed, as a reminder, Article 4.2 of the GDPR defines data processing as "any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means [...]". The lawfulness of such processing must be based on one of the six legal bases set out in Article 6 of the GDPR, namely: the data subject's consent, the performance of a contract, compliance with a legal obligation by the data controller, the protection of vital interests of the data subject or another natural person, the performance of a task carried out in the public interest, or the legitimate interests pursued by the data controller.

The user's proactive approach, as opposed to the traditional model of data collection initiated by the data controller, raised questions about the applicable legal basis for AI systems and their providers.

To address this issue, the French national supervisory authority "CNIL" (*Commission nationale de l'informatique et des libertés*) published two new recommendations on 19 June 2025, clarifying the conditions under which the use of users' personal data by AI systems may be lawful and compliant with European and French regulations.

As a preliminary point, these recommendations reiterate that the AI system provider, by processing such data and supporting the system's machine learning, assumes the role of data controller.

Through these recommendations, the CNIL emphasizes that, in the context of developing and training AI systems, the legal basis of legitimate interest may be relied upon under certain conditions. The processing must meet a genuine necessity, limit the use of data to only what is relevant for optimizing the algorithm, and implement strong safeguards such as reuse restrictions and measures facilitating the exercise of data subjects' rights. At the same time, the CNIL addresses the issue of automated data harvesting (web scraping), defined as the automated extraction of website content for the purpose of specialized processing. Its lawfulness must be assessed on a case-by-case basis, with particular attention paid to respecting the right to object prior to data collection.

From these elements, it can be concluded that the data controller may, in the context of AI, rely on legitimate interest as a legal basis for processing, as has been asserted by certain major platforms deploying AI systems.

» ARTICLES

Is Upcycling Compatible with Trademark Protection? A Glimpse into the First Infringement French Ruling

Paris First Instance Court, 10 April 2025, No. 22/10720

In a ruling dated 10 April 2025, the Paris Judicial Court ruled on claims brought by the renowned French manufacturer Hermès against the company Atelier R&C. The latter had showcased on social media and marketed denim jackets incorporating pieces of Hermès silk scarves, as part of an upcycling initiative aimed at giving existing products a second life.

Hermès notably invoked Copyright protection for 24 silk scarves, as well as various registered trademarks.



The defendants argued, among other things, the exhaustion of economic rights over the scarf designs, along with their freedom of artistic expression and the right to environmental protection.

The court first acknowledged the originality of the designs and confirmed the existence of copyright in favor of the plaintiffs. It then held that the commercial purpose pursued by the defendant outweighed the eco-responsible intent, thereby dismissing the environmental argument and qualifying the acts as copyright infringement.

The judges also found that the mention and use of the Hermès trademark by the defendants across various platforms, without prior authorization from the plaintiffs, contributed to the trademark infringement established in this decision.

In a social context where upcycling and second-hand markets are expanding, this decision sets an initial limit on the commercialization of derivative products incorporating elements of protected trademarks, reaffirming the value of intellectual property protection.

The Aesthetics of the Diving Mask: Validity of the Decathlon Model

General Court of the European Union, 4 June 2025, Case No. T-1061/23

After more than ten years of litigation, Decathlon was granted, on 4 June 2025, the recognition of the validity of two of its “EasyBreath” mask designs.

In this case brought before the General Court of the European Union, the applicant, Delta-Sport Handelskontor GmbH, had appealed the decision of the Cancellation Division of the European Union Intellectual Property Office (EUIPO), which had rejected its request for invalidity of the Community design filed on 28 August 2014 by the IP holder, Decathlon.



The applicant raised two grounds for invalidity. First, it argued that the essential features of the contested design were exclusively dictated by the technical function of the product, citing in particular the mask’s head-shaped form and the arrangement of the straps. Second, it challenged the Board of Appeal’s assessment that the design in question possessed individual character. In support of this, the applicant referred to earlier patents and utility models similar to the contested design, dating back to 1995.

In response, the intervener and the EUIPO relied on the principles established in the 2022 judgment (No. 2020/04831), which held that if at least one of the features of appearance of the product concerned by the contested design is not exclusively dictated by its technical function, then the design cannot be declared invalid.

To resolve the dispute, the Court conducted a three-step analysis. First, it examined the technical function of the mask. Second, it assessed the features of the mask’s appearance. Finally, it evaluated whether those features were exclusively dictated by technical function or whether other considerations had influenced the designer’s choices.

Following this analysis, the Court confirmed that several elements — including the oval shape of the mask frame and the strap attachment structure — were arbitrary and reflected aesthetic choices made by the designer. As a result, the design was deemed valid.

Cybersecurity: Publication of Various Implementation Instruments for the “DORA” Regulation and the “NIS II” Directive

ENISA Press Release – 26 June 2025

Technical Implementation Guide for the NIS II Directive for Digital Infrastructure Providers

Commission Delegated Regulation (EU) 2025/1190 of 13 February 2025 supplementing Regulation (EU) 2022/2554 “DORA”

Delegated Regulation (EU) 2025/532 of 24 March 2025 supplementing DORA with regulatory technical standards specifying the elements a financial entity must determine and assess when outsourcing ICT services supporting critical or important functions

While the transposition of Directive (EU) 2022/2555 of 14 December 2022 (“NIS II”) is still underway—following the adoption of the draft law by the French Senate on 12 March 2025—European institutions continue to publish instruments aimed at guiding entities subject to EU cybersecurity regulations in their implementation.

In a technical guide published on 26 June 2025, the European Union Agency for Cybersecurity (ENISA) provided support to entities supplying digital and network infrastructure, subject to Implementing Regulation (EU) 2024/2690 of 17 October 2024.

The guide identifies six priority action areas: governance, risk management, system security, incident management, business continuity, and supply chain security. It outlines technical and organizational measures, along with examples of compliance evidence aligned with major international standards (ISO/IEC 27001, NIST CSF, CIS Controls). The guide also emphasizes the importance of governance involving executive management in defining security policies, overseeing internal audits, validating incident response plans, and more broadly, managing personnel and digital tools.

From a technical standpoint, the guide highlights network segmentation, multi-factor authentication for critical access, centralized log management (SIEM), regular patching of security vulnerabilities, and the implementation of detection, analysis, and notification procedures (including a 24-hour window for initial reporting).

In parallel, a delegated act supplementing Regulation (EU) 2022/2554 “DORA” was published in the Official Journal of the EU on 18 June 2025. Delegated Regulation (EU) 2025/1190 introduces additional rules and technical standards for certain categories of entities in the banking, financial, or insurance sectors, whose service characteristics and criticality require enhanced security measures, including threat-led penetration testing. The identification of such entities is based on numerous criteria set out in Article 2 of the Delegated Regulation, requiring a thorough assessment of the entity’s national role.

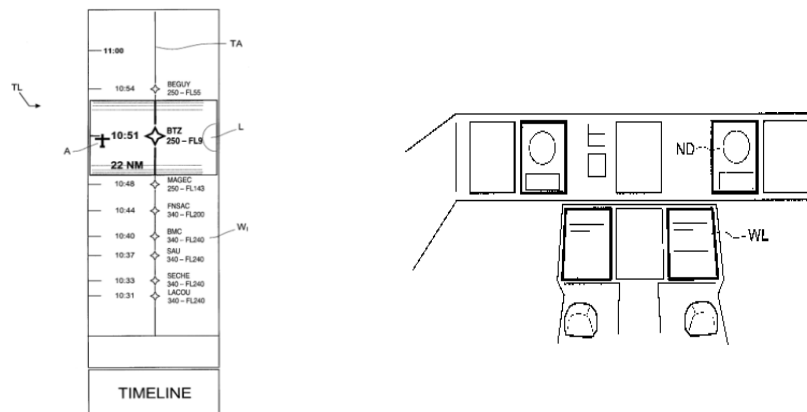
The regulation also details the key stages of conducting such penetration tests: appointing a dedicated cybersecurity team, preparing a project charter and communication channels with the supervisory authority, executing the testing phases, and drafting a corrective action plan. This regulation entered into force on 8 July 2025.

Finally, another Delegated Regulation (EU) 2025/532 implementing DORA was published in the OJEU on 2 July 2025. This text focuses specifically on the contractual hygiene required by DORA from entities and their subcontractors providing digital or network infrastructure supporting critical or important functions. Any such contract must comply with over 12 requirements listed in the regulation, including data localization, subcontracting chain monitoring, and service continuity planning.

Displaying Information During a Flight: No Patent Protection for Software or Information Presentation

Paris Court of Appeal, 26 March 2025, No. 23/07392

In December 2010, Thales filed patent application No. FR 10 04947, entitled “Method for the Temporal Display of the Mission of an Aircraft.” The application concerned improvements to the display of information in aircraft cockpits, aiming to replace the traditional tabular format with a graphical interface showing the various stages of a mission in a first graphical window associated with a map view of the flight plan, featuring a time scale or “timeline.”



However, on 17 July 2018, the French National Institute of Industrial Property (INPI) rejected the patent application pursuant to Article L. 611-10 of the French Intellectual Property Code, which explicitly excludes computer programs and presentations of information from the scope of patentability.

To assess the patentability of an invention, it must be determined whether the means described in the claims provide a technical solution to a technical problem.

In the case of Thales’ patent application, the INPI concluded that the invention did not offer a technical solution to a distinct technical problem, but merely constituted a presentation of information.

In an initial appeal, the Court of Appeal overturned the INPI’s decision, finding that the second feature of claim 1 represented a technical means distinct from the content of the information itself. This led the court to conduct a detailed analysis of the invention and its claims, beyond the formal exclusions set out in the Intellectual Property Code.

In January 2023, the Court of Cassation annulled the Court of Appeal’s decision, criticizing it for failing to establish how the contested patent provided a “technical contribution.”

In its ruling of March 2025, the Court of Appeal sought a balanced approach between the Court of Cassation’s reasoning and the requirements of the Intellectual Property Code. The court found that the applicant had not sufficiently demonstrated how the technical solution of partially displaying the “timeline” addressed a technical problem distinct from the mere presentation of information to the pilot. Consequently, the Court of Appeal declared the patent application invalid.

Emails Sent from a Professional Mailbox Must Be Treated as Personal Data by Employers

French Court of Cassation, Social Chamber, 18 June 2025, No. 23-19.022

Companies' legitimate concerns about protecting strategic information and trade secrets must be balanced with compliance with personal data legislation—even when such personal data concerns an employee dismissed for criminally sanctioned behavior.

In a ruling issued by the Social Chamber of the Court of Cassation on 18 June 2025, an employee challenged his dismissal, which was based on allegations of sexual harassment.

To support his defense, the employee requested that his former employer provide access to emails sent from his professional mailbox, along with the associated metadata. This specific request was based on the "right of access" under Article 15 of the GDPR, which allows any data subject to obtain communication of personal data processed by the data controller.

The employer argued that "emails sent or received by an employee in the course of their duties cannot constitute personal data."

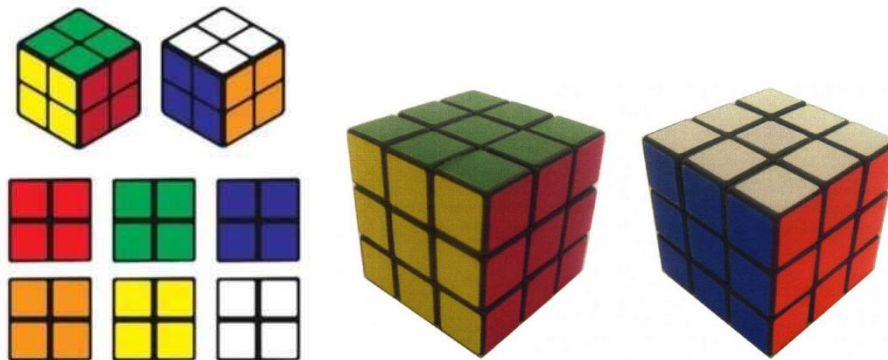
This argument was rejected by the Court of Appeal and upheld by the Court of Cassation, which stated: "Emails sent or received by the employee using their professional email account are personal data within the meaning of Article 4 of the GDPR," and therefore the employee "has the right to access these emails, with the employer required to provide both the metadata (timestamps, recipients, etc.) and the content, unless the requested information would infringe the rights and freedoms of others."

As a result, employers are required to retain and archive emails sent by employees and make this information available to the data subject upon request, in a reasonably accessible file format. However, employers must ensure that the information provided is sufficiently complete while protecting the personal data of other individuals (employees or third parties) who are not connected to the alleged misconduct.

Rubik's Cube: the Product Shape Functionality and the Trademark Registration Puzzle

General Court of the European Union, 9 July 2025, Case No. T-1170/23

In four rulings, issued on 9 July 2025, the General Court of the European Union ("GCEU") cancelled several three-dimensional trademarks representing the iconic "Rubik's Cube," registered by Spin Master Toys UK.



The EUIPO had previously invalidated the trademarks in response to four applications for cancellation, on the grounds that their essential features were functional—an assessment contested by the trademark holder.

To reach this conclusion, the GCEU recalled that Article 7(1)(e)(ii) of Regulation (EU) 2017/1001 on the EU trademark prohibits the registration of signs consisting "exclusively of the shape of goods which is necessary to obtain a technical result." The assessment must focus solely on the essential features of the sign—those that play a major role in how the relevant public perceives it.

Interestingly, this analysis resembles the method used to assess the validity of designs, as the case law of the Court of Justice has proposed either evaluating the "overall impression" conveyed by the sign or examining each of its constituent elements individually. In the latter case, if even one feature is deemed "arbitrary"—that is, non-functional (for example, aesthetic or fanciful)—then the trademark must be considered valid.

However, the Court rejected the argument that the six colors of the cube's faces constituted an essential feature. The judges held that while the colors may attract attention, they serve no technical function in the puzzle's operation. They are perceived as incidental, merely helping to distinguish the faces for gameplay purposes.

Conversely, the Court found that the cube shape, grid structure, and arrangement of segments are essential features enabling the rotation of the cube's parts and are thus indispensable to its mechanism. Their presence is dictated by the technical necessity of making the puzzle work.

The Court concluded that these identified essential features are purely functional. As a result, the contested signs cannot benefit from trademark protection.

These decisions reaffirm the Court's strict approach to three-dimensional trademarks and underscore that trademark law cannot be used to monopolize technical solutions.



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