

France

Digital Republic Bill Brings Material Changes to the Framework Regulating the French Telecommunications Industry

The [Digital Republic Bill](#) (the Bill), published on 7 October 2016, brings a number of notable changes to regulation in the digital sphere, such as open data, the online cooperative economy, revenge porn and access to the internet.

Key measures in the Bill relating to stakeholders in the telecommunications sector include:

- Increased investigatory powers for the French Telecommunications Authority (ARCEP), including the seizure of documents
- Implementation of the Net Neutrality principle to ensure continuous and non-discriminatory access to the internet
- Introduction of an obligation on ARCEP to publish the coverage maps provided by electronic communications providers
- Introduction of incentives to foster superfast network rollouts, including the introduction of “fibre zone” status
- Introduction of incentives to encourage experimentation, including the temporary suspension of certain legal obligations on companies engaged in the development of innovative technologies
- Introduction of requirements for the development of the IPV6 standard to ensure all new terminal equipment on the market in France is compliant with IPV6 by 1 January 2018

CNIL Publishes Guidelines on Password Protection

The *Commission nationale de l’informatique et des libertés* (CNIL) has published guidelines on password protection in [decision number 2017-012](#), made on 19 January 2017. A summary of the guidelines is available on [CNIL’s website](#). The guidelines address:

- Password robustness including guidance on length, complexity and complementary measures
- Security of the authentication process
- Security for password storage
- Security in the process of password renewal
- What to do if there is a risk that the password could be compromised

UK

ICO Warns Against Taking Clients’ Personal Information to a New Company

A former recruitment consultant has been prosecuted for the offence of unlawfully obtaining/disclosing the personal data of clients under section 55 of the Data Protection Act 1998. The defendant emailed the details of over 100 clients to her personal email account before moving to a new job at a rival recruitment company. The now-former recruitment consultant was fined £200 and ordered to pay £214 in prosecution costs, in addition to a £30 victim surcharge. The Information Commissioner’s Office has subsequently [issued a warning](#) that it is against the law to take clients’ personal information when moving to a new company, whether it is for your own benefit or for the benefit of your new employer.

High Court Rules on Legal Professional Privilege Exemption to Subject Access Request

In the case of [Holyoake v. Candy and another](#), the High Court refused an application to order a data controller to comply with a subject access request, clarifying the scope of such requests in the process. In the context of ongoing civil proceedings between the parties, Mr Holyoake made a subject access request pursuant to the Data Protection Act 1998 (DPA). In its attempts to comply with the request, the corporate data controller undertook a search of company emails and other company documents. Mr Holyoake submitted that the defendants had not complied with the request on the grounds that the corporate defendant had failed to undertake a search of the directors’ personal email accounts. The Court stated that the defendants’ obligation was to carry out a search that was reasonable and proportionate. In the absence of compelling evidence that company business was carried out using personal email addresses, there was no obligation on the corporate data controller to undertake a search of personal emails.

Separately, Mr Holyoake submitted that the defendants had wrongfully claimed the legal professional privilege exemption to the disclosure of documents, on the grounds that the documents in question would reveal an iniquitous purpose. The DPA provides that, where appropriate, a data controller can rely on privilege in response to a subject access request and thus avoid providing privileged documents to the data subject. The claimant pleaded for the Court to inspect the documents to assess whether privilege was correctly claimed. The judge held that a strong prima facie case of iniquity was required for the Court to find that the iniquity exception to privilege should apply and such a case was not made out on the facts.

A Claim Under the Data Protection Act May Be Brought Alongside a Defamation Claim

In [HH Prince Moulay Hicham Ben Abdallah Al Alaoui v. Elaph Publishing Limited](#), the Court of Appeal ruled unanimously that the claimant was entitled to bring a claim under the Data Protection Act 1998 (DPA) in addition to a claim for defamation. The Court held that there was “no good reason of principle why a claim under the DPA cannot be linked to a defamation claim”. In his judgment, Lord Justice Simon accepted concerns about the “necessity and proportionality of advancing parallel claims and remedies”, but found that the “different causes of action are directed to protecting different aspects of the right to private life.” The ruling provides clarity on possible alternative causes of action available to claimants when considering a claim for defamation.

Minister for Digital and Culture Clarifies the UK’s Approach to the GDPR

On 1 February 2017, the Minister for Digital and Culture, Matt Hancock MP, was [questioned by the House of Lords’ EU Home Affairs Sub-Committee](#) on the UK’s response to the General Data Protection Regulation (GDPR) and other EU measures on data protection. Mr Hancock stated that “parts of the Data Protection Act will need to be repealed for data processing to be in the scope of the GDPR” and to avoid duplicative or inconsistent provisions. According to Mr Hancock, the government intends to fully implement the GDPR, in part because it is a “good piece of legislation”. Mr Hancock told the committee that the government was focused on ensuring “unhindered data flows” when the UK does eventually leave the EU, although he declined to set out how the government would seek to achieve this in its negotiations with the EU.

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