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This article tracks developments at the national level in key European countries in the area of IT and communications and provides a concise alerting service of important national developments. It is co-ordinated by Herbert Smith Freehills LLP and contributed to by firms across Europe. This column provides a concise alerting service of important national developments in key European countries. Part of its purpose is to complement the Journal's feature articles and briefing notes by keeping readers abreast of what is currently happening "on the ground" at a national level in implementing EU level legislation and international conventions and treaties. Where an item of European National News is of particular significance, CLSR may also cover it in more detail in the current or a subsequent edition.

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The Italian Parliament approves the Anti-cyberbullying Act

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Passed on 17 May 2017, the Act has been approved to protect minors and their families from cyberbullies. The Act is intended to protect specifically minors (and not adults) who are vexed using electronic means of any sort by other adults. The Act is both aimed to punish cyberbullying – especially through civil remedies – and to prevent cyberbullying by increasing the level of education both in schools and families through the adoption of a national plan and guidelines to be used in schools.

In the final reading, the Italian Parliament has opted to scratch any reference to the criminal nature of – and relevant penalties against – cyberbullying, instead preferring to provide civil remedies to block the harassment and limiting the sanctions against the bully to only formal reprimands by the Questore (i.e. local chief of police). Of course, the fact that cyberbullying is not punished per se as a criminal offence does not preclude other offences from being punished under the Criminal Code, such as where crimes are committed through cyberbullying (e.g. identity theft, illicit treatment of personal data, libel and defamation).

Article 2 of the Act provides that any minor who is 14 years old or younger and/or the parents of any minor can demand ISPs to: remove content which is prejudicial to the dignity of the minor; to block access to or black out webpages on which such prejudicial content has been uploaded; and/or delete any personal data of the bullied minor. If the ISP does not comply within 48 hours the interested minor and/or their parents can file a complaint with the Italian Data Protection Authority which must intervene in the next 48 hours.

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Advertising signs with inbuilt camera technology

The Norwegian Data Protection Authority has just issued a statement on advertising signs with inbuilt camera technology. Such advertising signs can nowadays analyse the sex, age and facial expression of passers-by. The sign is then able to adapt its advertising to each individual passer-by. Customised advertising through such signs is already known from the use of so-called “beacons”, although in such cases the users would have previously downloaded an app and received some information beforehand. The Data Protection Commissioner stated that where passers-by cannot influence or correct the result nor refuse to be analysed, such signs can be deemed to be intrusive. The consequences for data protection must therefore be thoroughly evaluated if such signs are to be adopted.

Norway’s Personal Data Act applies to video surveillance. The country has strict rules on video surveillance which, inter alia, provide that such surveillance must principally only be used to protect life or health, or to prevent repeated or serious criminal acts. If photos or a video of an individual are digitally analysed, the Personal Data Act applies even if the pictures are not stored. Even if pictures are filtered or manipulated such that a person is no longer recognisable, where the resultant picture nevertheless is unique for the same individual such that an individual will always generate the same result, that is deemed to be personal data.

The Data Protection Commissioner stated that the Data Protection Authority has so far not carried out any inspection or dealt with specific cases on advertising signs which use camera technology. The Authority has thus not taken a final position as to whether such use of cameras is legal. However, the Data Protection Commissioner showed strong scepticism that cameras which analyse people in this way could be deemed to be legal.

Signs which analyse people on the basis of algorithms can, moreover, strengthen existing stereotypes, for example, such that men are only shown adverts for products which are deemed to be masculine. This means that such signs also affect values other than privacy, such as equality of opportunities and freedom of information.

8. Spain

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Spanish authorities sanctioned a piracy web for breaching cookies regulations

For the first time, the Spanish Data Protection Agency (“SPDA”) has fined the owners of a piracy website for breaching Spanish law on ecommerce and particularly for using cookies without providing the basic information required by law.

The website in question was owned by the Cyprian company Abelhas.pt Limited, which offered users the possibility to upload their files and subsequently share them with other third parties, but often widely infringed intellectual property rights. In order to provide its services, Abelhas.pt Limited used several cookies, but no information at all was provided to users about the data processing carried out.

In particular, Abelhas.pt Limited was found to be breaching Article 22 of the Spanish Act 34/2002, on information society service and ecommerce, according to which cookies and similar technologies can only be used as long as two conditions are met:

- (i) First, users must be informed in advance, in a clear and complete way, about which cookies are going to be installed and used and, particularly, the purpose of this processing of data made by means of such cookies. The SDPA recommends the information is provided by means of the so-called “double layer” system, which relies on

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