# Editorial

by **Miquel Peguera Poch**



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**1** In the midst of rapid evolution in the field of law and technology, the contributions to this new issue of JIPITEC address a range of sensitive topics in the areas of data governance, AI regulation, online speech, data protection, digital sovereignty, and copyright.

**2** The first two articles refer to different aspects of **data governance**. The contribution by **Pelin Turan** and **Caterina Sganga**, "**Common European Data Space for Cultural Heritage: Is the EU Taking the 'High Road' from 'A Single Access Point' to 'A Single Market for Data' for Digital Cultural Content?**", explores the legal challenges for the successful deployment of the Common European Data Space for Cultural Heritage (CHDS), launched in 2021 as one of the fourteen sector-specific data spaces within the European Strategy for Data. The authors argue that the CHDS risks becoming a mere 'single access point' rather than a true single market for data. This results, on the one hand, from the lack of adjustment of the legal framework supporting the CHDS, which lies at the intersection of cultural heritage law, data law, and copyright law; and, on the other hand, from the significant influence of the *Europeana* project, which was in fact conceived as a single access point for cultural content. The authors put forward normative proposals to remove the obstacles to a proper deployment and operationalisation of the CHDS as an interoperable and federated infrastructure for the free flow and reuse of cultural heritage data. Also in the field of data governance, **Leonie Ott** and **Yifeng Dong** contribute an article titled "**Clouds Connecting Europe: Interoperability in the EU Data Act**", which focuses on the interpretative challenges arising from ambiguities in the Data Act, for instance in relation to the meaning of "data space" or "data processing service." The authors propose an effects-oriented method to address these challenges and offer an interpretation of the Act's interoperability provisions aligned with the Data Act's goal of enhancing data interoperability in the EU, thus fostering access to and use of data.

**3** A second group of articles addresses **legal aspects of AI**, namely, copyright and data protection issues related to the use of synthetic content to train AI models; the status of General-Purpose Generative AI and its role in the production of users' creative content; and the reach of the transparency obligations for some AI systems set forth in Art. 50 of the AI Act.

**4** The first of those articles, by **Kalpana Tyagi**, "**Synthetic Data, Data Protection and Copyright in an Era of Generative AI**", considers the increasing use of synthetic data – data generated by AI systems – to continue training AI models. She notes that while such use can help satisfy the need for data for AI training, relying on synthetic data may eventually deteriorate the quality of the models, and that, therefore, human-generated data will also be necessary to guarantee the quality of the training. The author explores legal aspects related to the use of synthetic data in AI training, in particular how it may affect data protection as well as copyright, including the *sui generis* database right. She underscores how the use of synthetic data favours compliance with the GDPR when data are fully anonymised. The author notes, however, the risk of infringing copyright when using AI-generated data based on original copyright-protected data. She calls for 'an innovation-driven synthetic data paradigm' that facilitates a proper balancing of the

rights and interests involved.

5 The next article in this group is authored by **Gabriel Ernesto Melian Pérez**, under the title of **"From Curators to Creators: Navigating Regulatory Challenges for General-Purpose Generative AI in Europe"**. The author examines relevant issues regarding the legal framework for General-Purpose Generative AI (GPGAI). He first explores the use of AI tools in social network platforms, distinguishing between the AI tools used by the platform to curate and recommend content to its users, and the General-Purpose Generative AI (GPGAI) tools made available to users to produce and share creative content. With respect to the latter, the author raises the question of whether a platform that provides a GPGAI tool may rely on the hosting safe harbour – currently set forth in the Digital Services Act (originally in the E-Commerce Directive) – to avoid liability for content that users create using the GPGAI tool. The author concludes that, generally speaking, the social network operator cannot benefit from the hosting safe harbour in this case, since the GPGAI tool is so involved in the creation of the content that the result can no longer be regarded as purely third-party content. In addition, the author delves into the rules applicable to General-Purpose Generative AI, both in the AI Act and in the revised Product Liability Directive, offering insights and proposals to improve its legal treatment.

6 Also regarding AI, **Nicolaj Feltes** contributes an article titled "**Article 50 AI Act: Do the Transparency Provisions Improve Upon the Commission's Draft?**" In his article, the author examines the transparency provisions laid down in Article 50 of the AI Act, designed to strengthen user awareness of, among other things, the use of chatbots, emotion recognition systems, biometric categorisation, deep fakes, and other AI-generated content. The final wording of these obligations departs from the European Commission's 2021 proposal, reflecting both amendments introduced during the legislative process to address identified shortcomings, and the need to respond to the rapid rise of generative AI tools available to the public. The author offers a critical assessment of whether the final text successfully overcomes the flaws of the initial draft. He also analyses the enacted measures, drawing attention to their potential challenges of interpretation and practical implementation. He also considers the interplay of some of these measures with the Digital Services Act, particularly regarding the removal of unlabelled deep fake content.

7 A third group of articles considers different issues related to **online speech**. First, **Agustina Del Campo, Nicolas Zara**, and **Ramiro Álvarez Ugarte** examine the Digital Services Act approach to speech regulation in their article titled "**Are Risks the New Rights? The Perils of Risk-based Approaches to Speech Regulation**". The authors critically analyse the DSA risk approach from the perspective of the human rights standards of freedom of expression, and argue that it generates problematic incentives in relation to content moderation. Furthermore, they contend that the risk approach causes rights to fade in the background, and underscore the risk of symbolic compliance. The other article in this group, by **Laura Herrerías Castro**, "**The duty of care of online platforms in defamation cases**", also considers platforms' duties with regard to online speech. She explores in particular defamatory speech on online platforms, analyses the application of DSA hosting safe harbour for third-party defamatory content and how this regime has been impacted by the development of AI. The article deals with the standards of care for platforms regarding defamatory content, paying attention not only to the DSA but also to soft law instruments such as the Principles of European Tort Law and the Draft Common Frame of Reference, and analyses platforms' practices of content moderation. It also explores the remedies in cases of lack of fulfilment of the required duties of diligence, and particularly the right to compensation provided for in **Art.** 54 DSA.

8 Also regarding speech, now specifically from the lenses of **data protection**, we include an article by **Stephanie Rossello**, "**The Rectification of Opinions in Dutch Data Protection Law: A Brief Historical Inquiry**". The author considers the right of rectification under EU data protection law and its application to opinions rather than facts. She examines particularly how the issue is dealt with by the Dutch data protection law, tracing the origins of the facts/opinions dichotomy in the drafting of the first Dutch data protection act and showing how it shaped subsequent interpretations by courts and the Dutch DPA. The author notes that this distinction reflects deeper uncertainties: first, around the meaning of accuracy and the standard of proof needed to establish inaccuracy, and second, around how data protection law interacts with other national legal regimes, such as administrative and tort law.

9 Last but not least, this issue includes an article reflecting on the EU's role and purpose in digital regulation, by **Lukas v. Ditfurth**: "**The European Union's Pursuit of Digital Sovereignty through Legislation**". The article examines how digital sovereignty has become the overarching goal of the EU's digital legislation, from the AI Act to the Services Act and Digital Markets Act. He notes that while digital sovereignty enables the EU to chart a course distinct from the US and China by safeguarding rights, democracy, and competition, it also carries risks of regulatory overreach and international conflict. The author concludes that the

EU should pursue digital sovereignty with caution, combining multilateral cooperation with defensive measures to protect its core interests and values.

**10** Finally, the issue includes a recent **Opinion** issued by the **European Copyright Society**: "**An EU Copyright Framework for Research**". The Opinion argues that the current EU copyright framework undermines the EU's research ambitions and calls for urgent reform to better balance intellectual property rights with the freedom of art and science as well as with the 'right to research'. It identifies shortcomings in key exceptions, such as the InfoSoc Directive general research exception and the CDSM Directive text and data mining exception, as well as in national secondary publication rights. To address these gaps, it proposes concrete policy measures, including a mandatory EU-wide secondary publication right and the creation of a general mandatory research exception.

**11** I would not like to conclude this editorial without announcing that a new editor has joined the journal: Professor Dr. Thomas Margoni, who is Research Professor of Intellectual Property Law at the Faculty of Law and Criminology, KU Leuven, where he is also a member of the Board of Directors of the Centre for IT & IP Law (CiTiP) and the director of the IP & IT Law programme. We warmly welcome him to the Editorial Board.

We hope you enjoy the reading.

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