

# Nationalism vs Globalism: Regional and Transnational Legal Issues Reshaping the Entertainment Industry.

Edited by William Genereux & Marijn Kingma



# Message from the President: Jeff Liebenson



Welcome to our 2021 IAEL book. The topic of Nationalism vs Globalism has exceeded my expectations, even covering issues arising from working during a pandemic.

We can only hope that the devastation the pandemic has brought across the globe will subside and we will once again meet in France in next June for our annual IAEL meeting during Midem.

The ongoing relevancy of the topics in the book reflects the world we live in today as the rise of nationalism separates countries and globalization brings them together. While the book focuses on digital and other entertainment deals crossing borders, it also addresses what legal needs still should be considered on a national or country-by-country basis.

I want to thank Marijn Kingma from The Netherlands and William Genereux from Canada, our co-editors who have brought their experiences from where they live and their legal expertise to life in this book. Our contributors from around the world illuminate these developments from their own perspectives which inform their articles.

Thanks to Duncan Calow and Marcel Bunders for your continued support, guidance and humor with respect to the many adversities we have weathered these past two years.

Our hope is that exploring these legal trends will help us in guiding our clients to deal with our multicultural world of entertainment law, notwithstanding the nationalistic urges of our time. Perhaps this mirrors our IAEL meetings with members from around the world enjoying our different cultures and coordinating our common interests.

We hope this book furthers that spirit, our 35th annual book published by the IAEL, Nationalism vs Globalism: Regional and Transnational Legal Issues Reshaping the Entertainment Industry.

# Editors' Introduction: William Genereux & Marijn Kingma



When we had our last IAEL General Meeting in June 2019, we could not have foreseen we would not be able to come together in Cannes for the next two summers – or that as a result of a pandemic we would not be publishing the entire book until well into 2021. We also could not have foreseen how relevant the topic of our book would turn out to be. Over the last year and a half we have been on a global rollercoaster ride and it has become more clear than ever that we do not live in separated worlds, and that national borders do not mean anything when push comes to shove. We have also learned that global efforts are needed to solve global problems. Many countries came together to find the vaccines needed to get us out of this situation. The COVAX program is trying to provide global equitable access to vaccines so that not just some countries, but the whole world can hopefully return back to normal soon. Hopefully we will learn from this experience for that other, even more pressing, global emergency: climate change.

Although it was a difficult decision to postpone the release of our book last year, we believe it was the right decision. It gave us the opportunity to include additional contributions dealing with the impacts of the pandemic on the entertainment industry and take a look at how to move forward. The chapters that were written last year have been updated, resulting in a comprehensive publication that we believe was worth waiting for.

The chapters in this year's IAEL book explore the longstanding conflict between nationalism and globalism as it relates to the entertainment industry. Originally we had intended to use the term "globalization" in the title rather than globalism. That probably would have been more correct, insofar as

globalization is a word used by economists to describe a process by which businesses or other organizations develop international reach or increase the international scale of their operations. Globalism, on the other hand, tends to be more of a raw, emotional, political concept. It describes a potential threat that can be rallied-against. It's often rejected by nationalists, conspiracy theorists and indeed anyone who might be content to sit in their own backyard and let the rest of the world be damned. It's used often in a defensive way – to describe existential threats that are perceived to have been created by others, like having rules or market forces emanating from outside our own borders that nevertheless come to affect us.

We decided to go with the more difficult word, globalism, because it more accurately describes the zeitgeist of our times. Our entertainment industry already is global, and international trade, which is what globalization is all about, has been occurring and disrupting markets since at least the early days of spice trading thousands of years ago. Now of course the Internet allows us unprecedented new types of access to foreign markets and the promise of having our services and products seen, heard and used by countless millions of others. This development has moved up a gear due to the pandemic. But here's the thing, there are a lot of vested interests that get in the way. The forces of disruption invariably leave footprints across the backs of incumbents. There usually are winners and losers, and even the venue where this all happens – our planet Earth – becomes a stakeholder as we take environmental issues into consideration. The discussion about what's best for the entertainment industry moving forward becomes nuanced, because it's not simply about changes that make things cheaper, faster or most transparent. Folded into the discussion are issues about people, culture, autonomy, stability, flexibility, privacy, freedom and sexuality. The tension between all these forces is beguiling. It makes for interesting reading but leads to much deeper conclusions. One region or territory might want to defend its culture from being diluted by outside influences, yet might want that same culture to find an audience abroad. A territory or region might enact laws that purport to have transnational reach, yet this might directly encroach on the sovereignty of others. Our willingness to embrace change is tempered with fears of losing the status quo. Ultimately, these are

all political issues laced with policy considerations that demand to be understood.

The 2020-2021 IAEL book examines an array of regional and transnational forces that currently are shaping the entertainment industry. Chapters have been subdivided into three major categories, as shown in the table of contents. The first category focuses on issues in specific jurisdictions and markets. The second attempts to map-out the expansion of regional forces into wider applications. The third seeks to bring a holistic view that reconciles many of the vital issues affecting the industry at large, and which are shaping our future world.

The first part of the book focuses on regional issues and differences. This part includes articles on sometimes underexposed but increasingly important markets: India and Nigeria. A contribution from Italy focuses on documentary films and cultural heritage, and the viability of specific Italian legislation in the light of Europe's DSM Directive. There are several articles about major legislative developments in the U.S. and the EU, including the U.S. Music Modernization Act and the EU Audiovisual Media Directive. A comparative contribution from three of our authors describes the limitations and exceptions to copyright in three major territories: the EU, the U.S. and Asia.

The second part of the book shows that regional developments can have global consequences. The GDPR, for example, has left its marks all around the world as countries are adapting their data protection legislation to keep up with Europe's strict rules. The infamous article 17 of the EU DSM Directive is bound to have an impact on the rest of the world. These global influences of regional legislation are discussed in this part of the book. This chapter also looks at the global impact of new technology and new industry economics. Important issues that are discussed include licensing in the age of globalization, how to deal with aggregators, and new types of platforms. And let's not forget something that we all have in common: paying taxes. A contribution from the Netherlands looks at the influence of globalization on international tax principles. Finally, we have an article that focuses on jurisdiction of U.S. courts. Under what circumstances can a non-U.S. entity be hauled into a

U.S. Court thousands of miles away to defend itself under United States law?

The third part of the book takes a look at some of the broader social and environmental issues of our current and future world. A contribution from Denmark discusses the changing expectations for artists as global role models. Another article looks at the (im)possibility to regulate fake news and political advertising on social media platforms. We also have a very helpful contribution on transgender music artists and the legal issues they encounter. We are also very pleased to have an article on what is no doubt the biggest challenge of our times: global warming. And then there are pandemic-related chapters that we never thought we'd be writing about. They are intended to provide useful information. There's information on data protection laws and privacy from the perspective of several different global regions, and there's information on how the pandemic has affected contractual relations. We also have chapters looking at the effect of the pandemic on future of the entertainment market, such as the acceleration of the shift to streaming and the changed relationship between brands and customers. As the global entertainment industry becomes more entwined, we believe these topics are instructive for everyone in all regions.

We would like to thank IAEL's president Jeff Liebenson for his time, effort and leadership as we've planned, changed our plans, planned again and finally executed on the making of our book. We would also like to thank Janneke Popma, associate at Höcker, for her indispensable organizational skills. Additionally, the authors all need to be recognized for their creativity, diligence and flexibility. A lot of energy that could have been directed toward remunerative, billable work instead has been gifted to us all, so that we can see the issues in their chapters through their specialists' eyes. Without the generosity of all the contributors this book could not have happened. Thank you everyone.

Finally, to quote Vera Lynn who passed away last summer at the respectable age of 103: we'll meet again.

William Genereux & Marijn Kingma

# Covid-19 in the EU, Health Without Borders: Health Data Processing Outside Hospitals



## **Author: Anne Marie Pecoraro**

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Nearly a year ago, during the first lockdown, in France, the journalist Augustin Trapenard proposed to a number of personalities of the French cultural landscape to lend themselves to an exercise of writing “letters from within”.

From the “letter from within” by the writer Michel Houellebecq, we will retain a sentence, which, according to us, very rightly analyses the crisis we are going through: “The coronavirus, [...], should have the principal result of accelerating certain mutations already in progress<sup>1</sup>.”

If we reduce this observation to purely economic concerns, among the changes that were already underway and have accelerated during the pandemic is e-health - which consists of “the combined use of the Internet and information technologies for clinical, educational and administrative

purposes, both locally and remotely”<sup>2</sup> and its corollary, the processing of health data.

E-Health, which has accompanied the evolution of health systems over the last twenty years, is often the result of partnerships between public authorities and<sup>3</sup> GAFAM<sup>4</sup> or of autonomous initiatives<sup>5</sup>. It has the particularity of being translated into various applications. These include, but are not limited to: software, techniques for improving the practices of healthcare professionals, digital tools for monitoring<sup>6</sup> and improving the care process, support applications, remote medicine or telemedicine.

Healthcare professionals were the first collectors of health data, within the framework of telemedicine programs (such as Push Doctor in the United States and Doctolib in France). They were followed by GAFAM, taking advantage of the phenomenon of quantified self, which is based on the fact that the user enters his own health data using connected objects such as a connected watch or a pedometer.

This digital explosion is generating a mass of personal data that has never been equalled and whose legal regime is not homogenous: on the one hand, health data do have a strict protection regime, on the other hand, welfare data have no legal definition and therefore no specific legal status - although it is still necessary to be able to analyse and qualify the data in question.

Within the framework of Covid-19, the development of contact tracing applications is significant of this acceleration of digital health. These applications appeared as a means to fight effectively against the pandemic and have been adopted in a multitude of European countries: for example Tous anti Covid in France, Corona-Warn App in Germany<sup>7</sup> and NHS Covid-19 in England<sup>8</sup>. This type of application has also been a means of ensuring the monitoring of patients in quarantine, and to offer users the possibility of generating travel certificates. In all cases, they generated significant data processing. They have therefore been placed under the close control of the supervisory authorities responsible for processing personal data<sup>9</sup>.

“The global pandemic has blurred the boundaries between the medical sector and others”

In addition, another phenomenon has been observed, and it is on this one that we would like to focus our attention.

Outside the public health framework *stricto sensu*, the crisis has required, that actors far from the medical sector process personal data<sup>10</sup>. In this respect, restaurants<sup>11</sup> have been forced to set up registers to collect personal data before authorizing access<sup>12</sup>. Airlines have also been involved in the processing of such data.

In the summer of 2021, to ensure the management of festivals and concerts, it is envisaged that the organizers should be next to make access to their event conditional on the presentation of a vaccination passport<sup>13</sup> or a PCR test, thanks to digital solutions such as the QR Code<sup>14</sup>.

In any case, the global pandemic has blurred the boundaries between the medical sector and others. It has demanded that health data issues go beyond the patient-physician relationship and has ultimately broadened the spectrum of “patients” to include all citizens.

In this context, the potential for invasion of privacy and the right to protection of personal data is particularly important<sup>15</sup>, especially as the risks of cyberattacks<sup>16</sup> are increasing, as revealed by the French daily *Libération*, which reported the case of a hacked computer file on 500,000 French patients identifiable by their surname, first name, social security number, prescribing physician, cell phone number and state of health. This data is believed to come from medical biology laboratories and alerts those who are already supposed to be aware of the challenges of processing their data to ensure that they comply with the Data Protection and Privacy Protection Act. In the Netherlands, the Municipal Health Services reported an unprecedentedly large data breach of their IT systems containing test results of millions of citizens, including their social security numbers.

It is therefore a real challenge for some stakeholders to comply with the requirements of

“Data that does not directly concern the health of individuals such as gender, age, geographical location can be transformed into health data”

the relevant legislation when, obviously, they felt little or no concern about these issues.

### What is the framework for processing health data outside a medical structure?

First of all, it will be necessary to come back to the notion of health data, a notion that is likely to evolve over time (i); to better target the protection to be implemented (ii).

#### (i) The qualification of the data may change over time

Depending on the timing, data that does not directly concern the health of individuals such as gender, age, geographical location can be transformed into health data.

For show organizers, the whole issue is to determine when personal data becomes health data, which is sensitive data.

This requires a good knowledge of the definitions laid down in European regulations, which we would like to remind our non-European readers about.

#### From raw information to personal data

In principle, for access to any event conditional on the purchase of a ticket, any entity will collect at least the surnames, first names, telephone number, and bank details of the participants in order to ensure their registration and participation in the event.

This type of data, because it allows the identification of natural persons, meets the definition of personal data set out in the GDPR<sup>17</sup>. As a result, their collection and processing must comply with the GDPR. This requires in particular that show organizers and their subcontractors guarantee that data processing is based on a legal basis<sup>18</sup>.

Before collecting such consent, the entity must provide adequate, relevant and timely information, in particular on the identity of the controller, the purpose of the processing, and the rights of the person concerned by data proceedings<sup>19</sup>.

“The choice of which method to use to combat the spread of the virus will depend on compliance with personal data regulations and the level of acceptability of such measures by the public.”

Since the coming into force of the GDPR, most entities are familiar with the GDPR, it has indeed become a vector of competition and could justify that one subcontractor is preferred to another on the grounds that it is in compliance with the GDPR.

#### From personal data to sensitive data

Currently, the scenarios being considered to allow festivals to be held this summer - such as the “Safe project”<sup>20</sup>- could involve the processing of sensitive data because they concern health.

For all intents and purposes, it may be interesting to note that some definitions such as “sensitive data” may vary significantly from one set of rules to another. For example, “sensitive data” in the GDPR are those in Article 9 and include health data, whereas in the context of banking regulation, sensitive data is data related to the risk of fraud.

Under the GDPR, the qualification of health data is based on two criteria: they are

*“personal data relating to the physical or mental health of a natural person, including the provision of health care services, which reveal information about his or her health status”.*

Furthermore, according to Recital 35 of the GDPR, health data covers an extremely broad scope which includes information on the natural person collected when registering that natural person for health care services, or when providing those services within the meaning of Directive 2011/24/EU of the European Parliament and of the Council for the benefit of that natural person; a specific number, symbol or element assigned to a natural person to uniquely identify him or her for health purposes; information obtained in the course of testing or examination of a body part or a body substance, including from genetic data and biological samples; and any information concerning, for example, a disease, a disability, a risk of disease, medical history, clinical treatment or physiological or biomedical condition of the data subject, irrespective of its source, whether it comes from, for example, a doctor or

other health professional, a hospital, a medical device or an in vitro diagnostic test.

Among the methods that could be deployed to ensure optimal conditions for cultural events, the CEO of the start-up SenseDetect HealthCare explains that antigen and saliva tests could be carried out before and at the entrance to the event. Thus, the classic information collected for participation in the event could be combined with information on health status - which is part of the definition of health data.

Other methods are also being considered:

- The implementation of Bluetooth digital tools for social distancing,
- Contact tracing before and after the festival,
- Face mask detection software<sup>21</sup>,
- Vaccination certificates.
- They all involve the collection and processing of personal data and most solutions will also involve the processing of health data.

In any event, the choice of which method to use to combat the spread of the virus will depend on compliance with personal data regulations and the level of acceptability of such measures by the public.

Moreover, it should be noticed that, in principle, the processing of health data, since it falls within the category of sensitive data, is in principle prohibited unless an exception<sup>22</sup> is applicable.

In the period that we know, at least 3 grounds could justify such a treatment, and this is what has been observed during the implementation of registers in restaurants:

- The person may have consented to the processing of his or her health data, in which case the consent must be explicit and freely given<sup>23</sup>,
- Such processing is necessary to safeguard the vital interests of the person<sup>24</sup>

- in this respect – can the fight against the spread of Covid 19 be considered as safeguarding the vital interests of the person concerned or of another natural person?

- It is necessary on grounds of overriding public interest on the basis of European Union law or the law of a Member State which must be proportionate to the objective pursued, respect the essence of the right to data protection and provide for appropriate and specific measures to safeguard fundamental rights and the interests of the data subject<sup>25</sup>

In addition, the purpose of the processing must be specifically indicated. In other words, in addition to the classic purpose of processing for registration purposes, it will be necessary to indicate that the data may be processed for the purpose of fighting the spread of the virus. The data may not be processed for purposes other than those defined at the time the participants gave their consent to the collection of their data. In other words, it may not be processed for commercial and advertising purposes<sup>26</sup>. It will also have to be indicated that the data will be kept for a limited period of time - for restaurants, the duration had been set at 15 days, the incubation time of the virus.

## (ii) The qualification of the data in question triggering the application of a special regime?

Once the qualification of health data has been retained, a special legal regime justified by the sensitivity of the data applies.

In France, for example, the processing of health data is subject to an extremely protective regime based on several texts, including:

- The GDPR<sup>27</sup>,
- Secrecy provisions<sup>28</sup>;
- The provisions relating to security and

- interoperability repositories for health data<sup>29</sup>,
- Health data hosting arrangements<sup>30</sup>,
- The provisions on the availability of health data<sup>31</sup>;
- The prohibition to transfer or commercially exploit health data<sup>32</sup>.

It remains to be seen whether such provisions will have to be applied by the show organizers.

### For the collection device in question

To begin with, any device that collects health data is not subject to the regulations for medical collection devices, which implies a more protective regime.

To benefit from the enhanced protection regime, the device must gather the two criteria for defining a medical device set out in European legislation:

- (i) An instrument that is intended to be used for medical purposes, including “*diagnosis, prevention, control, treatment or mitigation of a disease*”<sup>33</sup>;
- (ii) The action of which is not obtained by pharmacological or immunological means.

Connected objects offered in the health field may qualify as medical devices. However, the manufacturer must give it a medical purpose<sup>34</sup>.

If this is the case, they are subject to strict rules regarding the certification of their performance “as well as their compliance with essential requirements concerning the safety and health of patients, users and third parties”.

In the hypothesis evoked in the introduction and in our field of specialization, namely entertainment, it seems unlikely to us that the actors in question will be subject to reinforced obligations. However,



case-by-case verification will be necessary in this sensitive area.

However, the regulation on personal data will be applied and in this respect, with the guarantees offered by the GDPR, the question of the security and performance of the device will remain decisive.

#### **For the security of networks and information systems**

The collection of health data is dependent on networks and information systems. The *Network Information Security Directive*<sup>35</sup> was adopted precisely to enshrine a set of rules designed to guarantee their security.

Its scope covers essential service operators, i.e. entities that provide a service that is essential to maintaining critical societal or economic activities, including healthcare institutions and digital infrastructure (IXPs, DNS service providers, TLD name registries).

In practice, the stakeholders involved must identify security risks and implement technical or organizational measures to prevent incidents and notify them when they occur.

It seems, that cultural event organizers and their subcontractors would not fall within the definition of an essential service operator. At the very least, they will remain subject to the GDPR<sup>36</sup>.

#### **For the hosting of health data**

In France, the hosting of health data requires the obtaining of a certificate, or even an approval for their archiving, which depends, on the one hand, on the respect of conditions set by a certification referential: the hosts can only use these data within the framework of the hosting service (*i*), they are bound by professional secrecy (*ii*); and are prohibited from transferring these data (*iii*) and, on the other hand, on the respect of contractual requirements on the availability, security or

restitution of the data or the respect of the rights of the persons concerned<sup>37</sup>.

It should be noted that it is the health, social or medico-social context that leads to the application of the health data hosting regime, and not the nature of the data hosted.

It must therefore be understood that health data that are collected without intervening in the course of medical care would not require the application of the legal framework for hosting health data.

Thus, according to those rules, show organizers and their subcontractors, because they do not process data in a health, social or medico-social context, would not have to set up the binding regime of health data hosting.

Nevertheless, they will have to choose a host that can guarantee the hosting of the data according to the GDPR and according to duly defined contractual requirements to avoid that people who do not have the right to access the collected data, access it.

## GDPR

To show the stakes related to the choice of a GDPR -compliant hosting provider, let's evoke the case of the CNAM, the French national health care insurance fund, that opposed *Microsoft's* choice to host the *Health Data Hub*<sup>38's</sup> health data. It considers that "*the legal conditions necessary for the protection of these data do not seem to be met*"<sup>39</sup>. It points to the fact that the company is "*not subject exclusively*" to the GDPR, regardless of any additional contractual guarantees that may be provided. And it is calling for the choice of a "*sovereign and trusted operator*".

It refers to a recovery plan, a "*tremendous opportunity to finance and support the digital ecosystem*" and an "*opportunity to study other technical options*". In the meantime, the CNAM proposes making data from the National Health Data System (SNDS) available "*on a case-by-case basis*" as part of the fight against Covid.

Similarly, a group of health professionals has filed a request for summary

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proceedings in which it asks for the suspension of the partnership between the government and the platform for making appointments, *Doctolib*, in the context of the vaccination campaign against Covid-19.<sup>40</sup> The group accuses Doctolib of endangering patients' personal data by entrusting their hosting to Amazon Web Services (AWS), a company subject to U.S. law.

### Conclusion

To conclude, the various stakeholders involved will always remain subject to the GDPR at a minimum, and the processing of personal data when qualified as health data will always require a particular vigilance.

It is from this new angle that data protection has just crossed paths with the world of culture.

- [1] See: M. Houellebecq, "I don't believe in statements like 'nothing will ever be the same again'", *Lettres d'intérieur*, France inter, 04/05/2020, <https://www.franceinter.fr/emissions/lettres-d-interieur/lettres-d-interieur-04-mai-2020>.
- [2] See: CNOM, *Connected Healthcare White Paper*, January 2015
- [3] See: *Partnership between the British National Health System and Alphabet which aims to detect kidney damage*.
- [4] Google, Apple, Facebook, Amazon and Microsoft
- [5] See : *Alphabet is developing health data processing projects, while Facebook, Apple and insurance companies are developing tools for monitoring physical activity using connected objects*.
- [6] See, CNIL, "Le corps, nouvel objet connecté, Cahier IP n°2", [https://www.cnil.fr/sites/default/files/typo/document/CNIL\\_CAHIERS\\_IP2\\_WEB.pdf](https://www.cnil.fr/sites/default/files/typo/document/CNIL_CAHIERS_IP2_WEB.pdf)
- [7] See, T. Wieder, "En Allemagne, le succès en trompe l'oeil de l'appli Corona-Warn-App", *Le Monde*, 15/09/2020, [https://www.lemonde.fr/pixels/article/2020/09/15/en-allemand-le-succes-en-trompe-l-il-de-l-appli-corona-warn-app-contre-le-covid-19\\_6052317\\_4408996.html](https://www.lemonde.fr/pixels/article/2020/09/15/en-allemand-le-succes-en-trompe-l-il-de-l-appli-corona-warn-app-contre-le-covid-19_6052317_4408996.html)
- [8] See, A. Coutures, *NHS Covid-19, the British StopCovid is a hit, what's different about it?*, *Huffington Post*, 29/09/2020, [https://www.huffingtonpost.fr/entry/nhs-covid-19-le-stopcovid-britannique-cartonne-quest-ce-qui-a-de-different-du-notre\\_fr\\_5f733ff4c5b6117cd104d150#:~:text=Un%20syst%C3%A8me%20d%C3%A9centralis%C3%A9%20au%20Royaume%2DUni&text=Le%20mod%C3%A8le%20anglais%2C%20qui%20repose,pour%20utiliser%20NHS%20Covid%2D19](https://www.huffingtonpost.fr/entry/nhs-covid-19-le-stopcovid-britannique-cartonne-quest-ce-qui-a-de-different-du-notre_fr_5f733ff4c5b6117cd104d150#:~:text=Un%20syst%C3%A8me%20d%C3%A9centralis%C3%A9%20au%20Royaume%2DUni&text=Le%20mod%C3%A8le%20anglais%2C%20qui%20repose,pour%20utiliser%20NHS%20Covid%2D19).
- [9] See, CNIL "Data collection in the context of vaccination against Covid-19: what guarantees for individuals?" December 30, 2020, <https://www.cnil.fr/fr/la-collecte-de-donnees-dans-le-cadre-de-la-vaccination-contre-la-covid-19-queelles-garanties-pour-les>
- [10] See: Council of Europe, "Digital solutions against the Covid-19 pandemic: data protection report 2020", October 2020, <https://rm.coe.int/prems-131720-fra-2051-digital-solutions-to-fight-covid-19-text-a4-web/16809fed18>
- [11] See: B. Hasse, "Paris : Monsieur, where is your customer recall log?", *Le Parisien*, 06/10/2020, <https://www.leparisien.fr/paris-75/monsieur-ou-est-votre-registre-de-rappel-des-clients-06-10-2020-8398092.php> See also: M. Vandeveld, "Covid-19 : la Cnil publie des recommandations sur la tenue des cahiers de rappel par les restaurateurs", *Editions Francis Lefebvre*, 09/10/2020, <https://www.efl.fr/actualites/affaires/details.html?ref=ff9584c6f-d763-4ad9-99f1-70cd53883fe9>
- [12] *ie.collection of customer's name/ first name/ cell phone*
- [13] See: E. Hirsh, "Vaccination Passport: Tomorrow's Health Stateless?", *Libération*, 21/02/2021, [https://www.liberation.fr/idees-et-debats/tribunes/passeport-vaccinal-demain-des-apatrides-sanitaires-20210221\\_BABZVJ5PPNDVNM5PIPMHOSMSOY/](https://www.liberation.fr/idees-et-debats/tribunes/passeport-vaccinal-demain-des-apatrides-sanitaires-20210221_BABZVJ5PPNDVNM5PIPMHOSMSOY/)
- [14] See, "TousAntiCovid : la CNIL favorable au QR code dans les lieux recevant du public", *Vie publique*, 17/02/2021, <https://www.vie-publique.fr/en-bref/278601-tousanticovid-la-cnil-favorable-au-qr-code-dans-les-lieux-publics>
- [15] See, T. Douville, "Les dangers de la collecte des données de santé par les tiers-intéressés (GAFAM, assureurs...)", *Journal du Droit de la Santé et de l'Assurance - Maladie (JDSAM)*, 2018/3 No. 20, P. 12-16.
- [16] See, N. Martin, "Données de santé : avez-vous activé votre antivirus", *La Méthode scientifique*, 20/01/2021, <https://www.franceculture.fr/emissions/la-methode-scientifique/la-methode-scientifique-emission-du-mercredi-20-janvier-2021>
- [17] See: Article 4 of the GDPR
- [18] See: Article 6 of the GDPR
- [19] See: Article 13 of the GDPR
- [20] See, M. Robert, "Le "Safe project", le plan des festivaliers de musique pour une solution sanitaire européenne", 02/03/2021, *Les Echos*
- [21] See the French decree n°2021-269 allowing automatic face mask detection in public transport : <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043235679>
- [22] See: Article 9 of the GPDR
- [23] See: Article 9-2 (a) of the GDPR
- [24] See: Article 9-2 (c) of the GDPR
- [25] See: Article 9 2 (g) of the GDPR
- [26] See: Article 5-1 c of the GDPR
- [27] See Article 9 of the GDPR
- [28] See: Article L. 1110-4 of the Public Health Code
- [29] See: Article L. 1110-4-1 of the Public Health Code
- [30] See: Article L. 1111-8 and R. 1111-8-8 et seq. of the Public Health Code
- [31] See: Article L. 1460-1 et seq. of the Public Health Code
- [32] See: Article L. 1111-8 and art. L 4113-7 of the Public Health Code
- [33] See: Article 1-2 a) of Council Directive 93/42/EEC of 14 June 1993 concerning medical devices.
- [34] See: CJEU, 22/11/2012, *aff./C-219/11*
- [35] See: Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 on measures to ensure a common high level of network and information system security within the Union
- [36] See Article 32 of the GDPR

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- [37] See: Article L.1111-8 of the Public Health Code
- [38] See, CNIL, “ La plate-forme des données de santé (“ Health data hub “) “, 09/02/2021, <https://www.cnil.fr/fr/la-plateforme-des-donnees-de-sante-health-data-hub>
- [39] See, E. Trujillo with AFP, “Health data hub: health insurance is against Microsoft hosting health data”, 22/02/2021, BFMTV, [https://www.bfmtv.com/tech/health-data-hub-l-assurance-maladie-se-prononce-contre-l-hebergement-des-donnees-de-sante-par-microsoft\\_AD-202102220235.html](https://www.bfmtv.com/tech/health-data-hub-l-assurance-maladie-se-prononce-contre-l-hebergement-des-donnees-de-sante-par-microsoft_AD-202102220235.html)
- [40] See, J. Hourdeaux, “Vaccination: the partnership with Doctolib challenged before the Council of State,” 26/02/2021, Mediapart, <https://www.mediapart.fr/journal/france/260221/vaccination-le-partenariat-avec-doctolib-conteste-devant-le-conseil-d-etat?onglet=full>.