

**CITY OF LONDON LAW SOCIETY DATA LAW COMMITTEE
(THE "COMMITTEE")**

Date:	28/11/2024
Location:	The offices of Osborne Clarke LLP at One London Wall, London
Present:	Jonathan McDonald, Osborne Clarke LLP Jon Bartley, RPC (" Chair ") Rebecca Cousin, Slaughter and May Luke Dixon, Freeths LLP Tim Hickman, White & Case LLP Miriam Everett, Herbert Smith Freehills Ross McKean, DLA Piper LLP Kevin Hart, City of London Law Society Rhiannon Webster, Ashurst LLP Cynthia O'Donoghue, Reed Smith LLP Emma Burnett, CMS Oliver Yaros, Mayer Brown International LLP
In attendance:	Marie-Claire Day, Osborne Clarke LLP (Associate Director) Lucy O'Dair, Osborne Clarke LLP, as guest minute taker

1. Welcome

The Chair welcomed all those in attendance at the meeting of the Committee including guest Associate Director, Marie-Claire Day, from Osborne Clarke LLP who attended as observer.

2. Apologies

Jonathan Kirsop (Pinsent Masons LLP), Giles Pratt (Freshfields Bruckhaus Deringer), Kate Brimsted (Bryan Cave Leighton Paisner LLP) and Jade Kowalski (DAC Beachcroft) sent apologies ahead of the meeting.

3. Previous minutes

It was reported that draft minutes from the previous meeting held on 12 September 2024 had been circulated. The draft minutes had been reviewed by the Chair and any comments from other Committee

members were requested to be provided promptly after the meeting. Subject to that, the approved minutes would be anonymised and uploaded to the CLLS website.

4. Specific issues discussed

The City of London Law Society's IP and AI Committees

The Committee discussed the recently formed City of London Law Society Intellectual Property Law Committee, whose first meeting is to be held on 4 December 2024, and its possible overlap with the Committee and the Artificial Intelligence Law Committee ("**AI Committee**"). The Committee were informed that a member of the AI Committee would be attending meetings of the Committee in the future. The Committee further discussed whether to contribute via a shared link to the AI Committee's input into the consultation on the AI Management Essentials tool, which closes on 29 January 2025.

Reflections on the IAPP Europe Data Protection Congress 2024

The Committee noted that many of the talks from the conference focussed on AI and commented that the scope of their practice more broadly is extending to include topics such as data governance, digital ethics and AI. The Committee also discussed upcoming events including the IAPP's conferences in Washington and San Diego and the RSA Conference in San Francisco.

*Hamburg Data Protection Authority ("**DPA**")'s discussion paper on large language models ("**LLMs**")*

The Committee discussed the July 2024 paper by the Hamburg DPA which concluded that LLMs do not store data in a way which is capable of it being personal data and that, within the machine itself, the LLM is not processing personal data. The Committee reflected that there is limited guidance on tokenisation and whether it meets the anonymisation threshold under the GDPR, but noted that guidance from the European Data Protection Board ("**EDPB**") is expected at the end of December 2024. The Digital Regulation Cooperation Forum's paper on synthetic media was also briefly discussed.

*Data (Use and Access) Bill ("**DUA Bill**")*

The Committee discussed the complaints procedure required by the DUA Bill and commented that requiring data subjects to complain to the data controller before going to the Information Commissioner's Office ("**ICO**") might help the ICO from a resourcing perspective, and would be useful for data subject access requests and spam provisions in particular. The Committee also discussed the ICO's request that data controllers facing investigations produce technical or forensic reports for use by the ICO. The Committee noted that some organisations have previously tried to claim legal privilege over the content of such reports to prevent disclosure to the ICO. The Committee also reflected on varying attitudes towards enforcement within the ICO.

*Privacy-enhancing technologies ("**PETs**")*

The Committee noted that some clients have been considering the use of PETs, such as advanced consent modes, but that there is very little guidance on the lawfulness of such technologies. The Committee commented that many clients also consider that PETs are currently too expensive, immature and unsophisticated to be utilised effectively. The Committee further discussed PETs including whether regulators will more closely scrutinise data protection impact assessments and increasingly expect organisations to actively consider PETs in assessing data sharing and collaboration projects.

EDPB's opinion on processing and sub-processing

The Committee discussed the EDPB's October 2024 opinion on processing and sub-processing. The Committee noted that the EDPB's comments around supply chain governance will be difficult for processors and controllers to comply with in practice, given the extent of oversight required over due diligence done by other parties in the supply chain.

UK Upper Tribunal Decision in DSG Retail and recent EU case law

The Committee noted that the DSG Retail decision creates confusion around security and data breaches. However, the Committee reflected that as the decision was based on the former regime's '*in the hands of*' test, under the UK GDPR the decision may be of minimal relevance although it may impact enforcement and definitions of personal data. The Committee also briefly discussed Clearview's request for permission to appeal its case against the ICO.

The Committee discussed a recent German Federal Court decision which suggested that loss of control of personal data is sufficient to constitute non-material damage. The Committee noted that this case may end up in the Court of Justice of the European Union which might bring clarity on the issue. The Committee briefly discussed other EU cases including the Dutch DPA's fine against Uber for the transfer of drivers' personal data to the US.

Recent work on AI

The Committee noted that recent work in relation to AI has included looking at comparative AI regulatory regimes around the world, questions around AI governance and reviewing contractual terms. The Committee also reflected on the increasing inclusion of questions on AI regulatory compliance in legal due diligence questionnaires, particularly in procurement deals. The Committee also discussed the take-up of Harvey AI.

LinkedIn page

The Committee noted that a Committee member will update the LinkedIn page early in 2025.

6. Upcoming meetings

The Committee noted that the meeting dates for 2025 had been circulated to Committee members and that unless there were any objections, these dates will be confirmed.