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## Decisions from the Advertising Board on the Memberships of Internet Shopping Sites

- Personal Data Protection Authority Released the 2024-2028 Strategic Plan
- European Commission Violated EU Data Protection Rules via Using Microsoft 365
- Copyright Dispute between Open AI and the New York Times

## Decisions from the Advertising Board on the Memberships of Internet Shopping Sites

Recent developments in digitalization processes have increased consumers' orientation towards online environments, leading them to encounter more digital advertisements and applications. As a matter of fact, this situation also attracted the attention of the Advertising Board (**Board**) and was reflected in the files regarding the advertisements and promotions examined by the Board. In this context, 79% of the files discussed and decided on the Board's agenda in 2023 consisted of advertisements and applications published in digital media.

Regarding the impact of digitalization processes on consumers, the "Digital Consumer Protection Project/Phase I: Advertisement and Unfair Commercial Practices" project was carried out. In the announcement made by the Ministry on 15 January 2024, it was revealed that the first phase of the project was completed with the finalization of the Advertising and Unfair Commercial Practices in Digital Media Research Report (**Report**).

In the Report, it is stated that one out of every two consumers are concerned about sharing their personal data in digital media. Another noteworthy data point in the Report is that seven out of every ten consumers tend to accept the "membership" and "electronic message approval" offered as a "condition to continue" while shopping online, while four out of every ten consumers tend to reject cookies.

Taking into account the results of the Report, the Board also scrutinized the websites that offer membership conditions to consumers at the purchase stage. In this context, in the bulletin numbered 343 published by the Board on 12 March 2024, the decisions made regarding 12 websites are quite remarkable.

In these decisions, the Board evaluates whether more personal data is requested from the consumer than the information that is mandatory and necessary for the purchase process, whether it is made difficult to unsubscribe by stipulating more severe conditions for unsubscribing from the membership than the methods stipulated for membership entry, whether cookie and commercial message approval are offered to consumer preference with the membership agreement, and whether personal data is shared with third parties for targeted advertising and marketing purposes.

In this context, the Board identified the following situations as unfair and/or deceptive commercial practices in the relevant decisions:

- Presentation of the "Continue Without Being a Member" option in different colors and in small font size, which is presented together with the "Become a Member" and "Log In" options,
- Mandatory request for personal data that is not required in the account creation and purchase process,
- The box for explicit consent to advertisements/promotions being pre-checked during the account creation process,
- Attempting to obtain commercial electronic message approval from consumers without active consent by adding conditions for advertisements/promotions to the membership contract,
- Failure to provide consumers with the same ease of refusal as acceptance of the targeted advertising condition,
- Consumers not being provided with any information, guidance, explanation, or option for cancellation of the membership; and
- Cancellation of membership not being as easy as during the membership registration phase.

The common denominator among the aforementioned practices is that they are deemed unfair and deceptive commercial practices according to consumer legislation. Unfair commercial practices encompass any commercial activity that deceives or misleads consumers, violating the principles of honesty and fair trade, while deceptive advertisements are defined as practices that significantly distort or are likely to distort the economic behavior of the average consumer (such as practices causing confusion with competitors' goods, services, brands, or other distinctive features).

The Board's assessments underscored that the aforementioned practices negatively impact consumers' decision-making processes or choices. These instances, where consumers are not adequately informed, often result in outcomes favoring companies over consumers.

Furthermore, the Board also concluded that preventing consumers from leaving no trace on the platform after purchasing a product falls within the same scope. Such situations were deemed misleading to consumers and contrary to the principles of fair competition.

The sanctions imposed on the 12 files evaluated by the Board include administrative fines, suspension, and corrective measures.

You can access the bulletin containing the relevant decisions of the Advertising Board here (*only available in Turkish*).

### **Personal Data Protection Authority Released the 2024-2028 Strategic Plan**

Personal Data Protection Authority (**Authority**) has released its second strategic plan. The Authority has emphasized the crucial need to raise awareness among institutions, organizations, and citizens for a better understanding and effective implementation of the Personal Data Protection Law (**KVKK**). They underscored the necessity of conducting institutional activities with a clear strategy, highlighting their unwavering commitment to this cause.

In their relevant strategic plan, the Authority meticulously assessed the 2019-2023 Strategic Plan, elaborating on its objectives and goals in detail, along with a comprehensive disclosure of the activities carried out during the previous period. They shared information on various aspects, including the types of requests and complaints received, the educational background of staff members, and an inventory of the software and hardware infrastructure.

Moreover, the Authority presented its current situation analysis, expectations, and roadmap to guide its development and activities. Especially within the scope of PEST and SWOT analyses, they emphasized various political, economic, technological, and social factors, highlighting the rationale for correct and effective management of legislation and its implementation. Additionally, the Authority shared both strengths and areas open for improvement with the public.

A critical section of the plan focuses on the strategies to be developed for the upcoming period. Here, the Authority outlined its objectives for the future, evaluated the current status of these objectives, and detailed the steps planned to achieve them in the next period. Objectives such as ensuring the processing of personal data in compliance with the law, increasing societal awareness of legislation, establishing the Authority as a leading organization in the international arena, developing the institutional structure, and enhancing capacity were evaluated from multiple perspectives, with necessary steps detailed. The plan also includes breakdowns such as responsible units for each step, sub-strategies, performance indicators, the expected distribution percentage of the plan by year, and the impact of the objectives.

Given the significant details contained within the plan, particularly regarding the Authority's institutionalization efforts and increasing awareness of KVKK in the country, it has generated excitement among the public. Considering the importance of personal data, which touches upon various topics ranging from international trade to privacy, the Authority's plans are critical for every institution, organization, and individual in the country.

You can access the Authority's 2024-2028 Strategic Plan from here (*only available in Turkish*).

### **ICO Published Data Protection Fining Guidance**

The Information Commissioner's Office (**ICO**) regulates the implementation of the Data Protection Act in the UK. The ICO also oversees activities under the Data Protection Act and the European Union General Data Protection Regulation (**GDPR**).

On 18 March 2024, the ICO published its guidance on fines to be imposed under the data protection regulations (**Guidance / Data Protection Fining Guidance**). The Guidance sets out whether the ICO will impose fines under the GDPR and Data Protection Act for data breaches in the UK, and its current approach to calculating the amount of the fine.

The Guidance emphasizes that the ICO will assess each case individually and decide whether to impose a fine for the data breach. However, the Guidance also emphasizes that ICO, in parallel with Article 83 of the GDPR, will take into account many criteria such as the nature, gravity and duration of the breach, whether the breach was intentional or negligent, what measures were taken by the data controller or processor to mitigate the damage suffered by data subjects, the degree of responsibility of the data controller or processor, how the breach was discovered by ICO.

The Guidance also states that if ICO imposes a fine, the amount of the fine will be calculated in the following five steps:

- Step 1: Assessment of the seriousness of the breach.
- Step 2: Calculation of the turnover of the company causing the breach.
- Step 3: Calculation of the starting point (according to the result of steps 1 and 2).
- Step 4: Determine the existence of aggravating and mitigating factors.
- Step 5: Determine the steps to be taken to ensure that the fine is effective, proportionate and dissuasive.

The Guidance also sets out the minimum and maximum fine amounts that the ICO may impose. Accordingly, the maximum fine amount will be determined according to the breached law provision. The standard maximum will be the higher of 8.7 million pounds sterling or 2% of worldwide turnover in the previous financial year. The maximum will be the higher of 17.5 million pounds sterling or 4 per cent of worldwide turnover in the previous financial year.

The Guidance provides practical certainty in the application of data protection regulatory penalties, particularly for data controllers and processors operating or to operate in the UK.

You can reach the link to the Guidance published by the ICO here.

### **Copyright Dispute between Open AI and the New York Times**

ChatGPT, which has captured global attention, poses a significant challenge in terms of copyright. Global public attention, particularly in the USA, is focused on the lawsuit filed by the New York Times against OpenAI and Microsoft. In the relevant case, the New York Times had claimed copyright infringement by stating that ChatGPT had obtained millions of articles belonging to them by scraping data over the internet,

and that it had created its knowledge base by copying and using the articles in question. Accordingly, the New York Times also claimed that both OpenAI and Microsoft were now in direct competition with its own content.

In addition, the New York Times also claimed that ChatGPT was able to produce outputs that read its own content verbatim, summarize the content closely, and mimic the Times' style of expression.

The current development in response to this is by OpenAI. Recently, OpenAI made an official statement on the subject and denied the allegations that the New York Times uses its content verbatim. However, OpenAI made a remarkable claim in its statement and argued that the New York Times forced ChatGPT to quote by manipulating artificial intelligence prompts, and even in this case, since ChatGPT usually does not quote verbatim, the Times made many attempts and selected some of them.

OpenAI also claimed that they were working to avoid such problems in the large language model, but that the Times refused to share the examples they had before filing the lawsuit. Stating that the verbatim citation examples belong to articles from a year ago, OpenAI also stated that the content mentioned since then has been used on many other sites.

While revolutionary developments in artificial intelligence continue to take place, many disputes, mainly copyrights, are also on the agenda. One of the most striking examples of this is the lawsuit between the New York Times and OpenAI and Microsoft. What will happen next in the case in subject is also a matter of curiosity.

# Answers. Not theories.

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