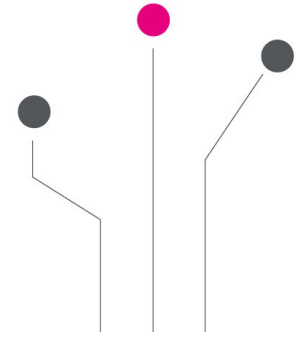


# to the point technology & digitalisation



## Preface

### Inventions created by AI

Artificial intelligence (AI) is evolving at an ever-faster pace. New use cases such as autonomous driving, facial recognition or credit rating assessment are naturally giving rise to new questions about the legal use of such AI. The legal discussions are increasingly centred around a phenomenon so far encountered only in science fiction: What if the AI itself invents new technical solutions? Who will enjoy the rights to such an invention? Who is to be regarded as the inventor (considering that "human inventorship" is an underlying principle of patent protection in many parts of the world)? And how will we create a balance between incentivising AI research (by granting exclusive rights to AI inventions via patents) and avoiding too many exclusive rights (possibly even to unused inventions) that may end up blocking further innovation?

Last year the International Association for the Protection of Intellectual Property (AIPPI) dedicated a study question to "Inventorship of inventions made using Artificial Intelligence". At its 2020 World Congress (held online) it adopted a resolution on this topic (the full resolution can be found [here](#)), pushing lawmakers to consider these issues sooner rather than later. So, the legal issues of AI-based inventions are already here in "real life" and we must come up with solutions to deal with them. Or will we just wait for AI to provide the solution?



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### Top patent grants in the US in 2020

Rank	Organisation	#of US patents granted
1	IBM	9,130
2	Samsung	6,415
3	Canon	3,225
4	Microsoft	2,905
5	Intel	2,867
6	TSMC	2,833
7	LG	2,831
8	Apple	2,791
9	Huawei	2,761
10	Qualcomm	2,276

Source: [IFI CLAIMS Patent Services](#)

### To the Point:

- **New paper by UK competition authority on algorithms**

The UK Competition and Markets Authority ("**CMA**") published a [paper](#) in January setting out how algorithms are believed to harm consumers. The CMA distinguishes between **direct harm** to consumers ("personalisation" measures to unduly discriminate) and **potentially harmful foreclosure of competitors** (e.g. self-preferencing to the detriment of other providers). It is especially noteworthy that the CMA expects players in digital markets to have appropriate documentation as to how their algorithms function in order to refute allegations of harmful behaviour. This includes having accessible "*communications and internal documents about the business context, objectives, design, architectural diagrams, training (including relevant function(s) that has been maximised during an algorithm's training stage), key performance indicators (KPIs), and monitoring of algorithmic systems.*" Players in digital markets are expected to be able to explain how their algorithms function. Besides recordkeeping, this entails being able to demonstrate an understanding of how their algorithms operate. [The UK Financial Conduct Authority](#) and the [Information Commissioner's Office](#) have therefore published guidelines. [Christoph Haid](#)

- **When will the digital euro arrive?**

Not too long ago (in October 2020) the European Central Bank (ECB) published a report exploring the risks and opportunities that would come from the introduction of a digital euro. Together with the publication of the report, the ECB also launched its public consultation phase on the digital euro, allowing citizens, firms and industry associations to submit responses to an online questionnaire. This consultation phase ended in early January 2021 with a record level of public feedback (over 8,000 responses).

According to the ECB, the initial analysis of raw data shows that privacy of payments is ranked highest amongst the requested features of a potential digital euro (41 % of responses), followed by security (17 %), and pan-European reach (10 %). A detailed analysis of the public consultation is expected to be published in early spring and shall serve as valuable input for the ECB's decision whether to launch the digital euro project later this year or not.

According to the ECB's Fabio Panetta (Chair of the task force on a digital euro), the high number of responses to the questionnaire shows that there is great interest from Europe's citizens and firms in shaping the vision of a digital euro. It remains to be seen how this will further unfold. We will keep you updated, meanwhile you can also view [the report on the digital euro](#) if you haven't had a chance yet.

[Dominik Tyrybon](#)

- **The 2021 European Capital Report**

i5invest and the WU Entrepreneurship Centre have published the 2021 European Capital Report. The report summarises the PE and VCs scene in Europe and ranks the most powerful investment funds by region. The full report includes detailed information on all featured VCs & PEs as well as portraits on the newcomer funds 2019 & 2020, and includes a search index clustered by stage and investment focus. You can download the full report [here](#).

[Thomas Kulnigg](#)

- **Found/Her podcast by Calm/Storm**

Our friends at Calm/Storm ventures have published a new podcast under the title "Found/Her". The podcast sets the stage for aspiring start-ups. Female founders pitch their business idea to the Calm/Storm team and a female co-investor. In the end, it will be revealed if Calm/Storm decided to invest or not and of course why... check it out [here](#).

[Thomas Kulnigg](#)

- **New drone regulations in Hungary**

2021 ushered in a new era for drone users as new regulations introduced a more detailed and stricter regime. The main points of the new framework are outlined below, and the topic is discussed in more detail in our article [here](#):

- **Drones and drone operators must be registered:** All types of drones must be registered in Hungary except toy drones. In addition, drone operators and drone owners are obliged to be registered, too.
- **Drone operators must take an exam:** To legally operate a drone, all drone operators must undergo a state-certified training programme and take an exam. Nevertheless, the details of the training programme, the certification of training centres and the exam requirements are still unclear.
- **Use of airspace:** Drones may be used above inhabited areas solely with a permit issued by the Ministry of Defence, in which a certain airspace is designated for the drone user temporarily. Drone operators must avoid no-fly and no-drone zones by using a government-maintained mobile application. However, the government decree regulating the mobile application and its usage has not been published yet.
- **New fines and criminal consequences:** An aviation fine of up to HUF 100,000,000 (approx. EUR 280,000) may be imposed for violations of drone usage rules. Unauthorised recording of sound or images from dwellings and other premises qualifies as a misdemeanor leading to confinement. If the

unauthorised recording occurs repeatedly, the punishment may include imprisonment of up to one year.

[Dániel Varga and Ákos Kovács](#)

- **How does data affect competition? – Market study by the Hungarian Competition Authority**

The Hungarian Competition Authority (HCA) has initiated a market study to understand (i) the data online retailers collect on consumers; (ii) how and for what purposes online retailers use this data; and (iii) what consumers know and think of these practices. The HCA also aims to understand (iv) the nature of competitive advantages the data confers; and (v) what barriers to entry these practices create, especially for Hungarian SMEs. The HCA has a dual role in Hungary, it is the competition enforcer, but it also has consumer protection powers. The market study is relevant in both areas. The HCA's interest in digitalisation and online retail is long-standing, but the study itself was prompted by the growing popularity of online retail amidst the pandemic. The HCA expects that this popularity is here to stay and intends to prepare accordingly. The market study is focused on three product categories: technology, clothing and food-retail, chosen on the basis of their impact: more info in Hungarian on the [HCA's website](#).

[András Nagy](#)

- **A victory for innovation in Austrian passenger transportation? Next joint step by Austrian FCA and RTR in monitoring digital platforms**

The Austrian Federal Competition Authority and the Austrian Regulatory Authority for Broadcasting and Telecommunications have been working together on the development of a monitoring system for digital platforms since November 2019. They have now published a [report](#) on instant messaging applications and their relevance for competition in Austria.

**Main take-aways**

- Many Austrian customers engage in multi-homing, having installed several messaging apps.
- WhatsApp, acquired by Facebook some time ago, is the market leader in messaging apps, followed by Facebook Messenger, while Snapchat, Skype, iMessage and Telegram are not used widely (any longer) in Austria. WhatsApp is considered a must-have for many users, and has the greatest market power.
- There is currently no indication that WhatsApp is exploiting its market power in relation to other market participants.
- Transfer of market power to other markets possible: WhatsApp's extensive coverage and widespread usage can lead to market power being shifted, for instance when various services are bundled together to establish a new service more quickly. One such example is new apps for payment systems on smartphones.

As a side note, Facebook's acquisition of WhatsApp would not have required merger control clearance in Austria at that time as WhatsApp did not generate turnover so that

turnover based jurisdictional thresholds would not have been met. This has meanwhile been remedied by introducing transaction value based thresholds in Austria (and Germany). In future transactions in the digital services sector, the Austrian competition authority has made clear, also by means of the report, that a focus of the review will be on the strategic rationale of acquisitions to avoid a situation where a transaction impedes innovation and consumer choice.

[Christoph Haid](#)

- **Monitoring people in Covid times: a necessity or nuisance?**

To help prevent the spread of the virus, many states, employers and other organisations have come up with creative ideas and technologies for monitoring their citizens, employees or clients. Although some of the collected data is sensitive, Czech public authorities have adopted a flexible approach.

The Office for Personal Data Protection approved the temperature monitoring of individuals entering certain premises (by cameras or no touch thermometers) as legitimate and even necessary in order to fulfil the employer's legal obligation to maintain a safe work-place. The Office even agreed that it is in the public interest of the state to order telco operators and banks to monitor the location of individuals and their use of payment cards. Even authorities that are usually cautious about unwarranted "spying", such as the Labour Inspectorate, have indicated that the boundaries of what is permissible may be extended in these extraordinary times.

Nevertheless, you should always double check before rolling out a super-smart (but also super-invasive) new gadget or service that could invade other people's privacy.

[Stanislav Bednář](#)

- **Digital Services Act – the EU proposal to manage digital services**

Within the framework of its endeavor to ensure a fair and innovative "Digital EU", the European Commission (EC) has published its proposed Digital Services Act (DSA). The DSA envisages a new system of EU-wide obligations for digital service providers. The proposed list of obligations is designed to ensure a high level of consumer protection and transparency. Not all obligations will apply to all market players: the number and complexity of the obligations a specific provider must meet will depend on the impact and position it has within the EU's online ecosystem. There are four distinct categories with a cumulatively growing number of obligations. The least burdened will be "providers of intermediary services". These entities must ensure transparency and full cooperation with the EC. "Providers of hosting services" must also establish mechanisms to notice and manage illegal content. "Online platforms" must (in addition) establish safety measures to prevent misuse. Finally, "very large online platforms" must comply with all the above and – among others – conduct risk assessments and allow external audits. Specific powers to enforce these (and other) obligations will be allocated to

national Digital Services Coordinators and the EC. More details: [European Commission](#).

[András Nagy](#)

- **The Digital Markets Act – keeping "gatekeepers" at bay**

With the proposed Digital Markets Act (DMA), the European Commission aims to ensure that large systemic online platforms, which are entrenched in their market position, provide fair and competitive conditions to businesses and consumers. Gatekeepers are identified based on a set of qualitative criteria (significant impact, core platform service, entrenched and durable position), however the proposal also sets out an objective presumption based on, among others, turnover. The DMA imposes a set of obligations on gatekeepers. Notably, their services must interoperate with third party services, businesses must be able to access the data they generate on the gatekeeper's platform, and they will be prevented from ranking their own products and services at will on their own platform. Moreover, any intended concentration with another provider of digital services will have to be noted with the European Commission. These, and a variety of other obligations will be enforced by the European Commission, which will have the possibility to impose fines up to 10 % of net turnover. The European Commission will be assisted by the Digital Markets Advisory Committee, composed of the Member States. More details: [European Commission](#).

[András Nagy](#)

- **Bitcoin regulation imminent?**

Whenever Bitcoin starts an upward rally, discussion about its regulation and warnings from regulatory authorities about the risky nature of crypto-assets in general starts again. And this is what the ECB's Christine Lagarde recently did in an interview stating that Bitcoin is a "speculative" asset that has conducted some "funny business" and needs global regulation.

Against this background the central question remains as to how this shall be done. Bitcoin's code is publicly available on the web and is not controlled by anyone. In other words, there is no issuer of Bitcoin where regulations can usually be linked to.

U.S. congressmen already admitted during last year's hearings on Libra before the U.S. Congress, that Bitcoin can neither be banned nor stopped by the state.









In our opinion Lagarde's statement is purely based on the recent regulatory warnings and is a result of the price spike and subsequent price drop in Bitcoin in late 2020/early 2021.

Nevertheless, it will be interesting to see how the coming year will develop from a regulatory perspective for the crypto market as a whole. Stay tuned for more.

[Dominik Tyrybon](#)

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