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Newsletter

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DATA PROTECTION NEWS:

KENYA

Kenyan Firms on the spot for sharing Customer Data

A survey by Ernst & Young shows that 41% of Kenyan firms transferred their clients data to third-party service providers and more than half of these firms did not seek the approval of their customers before sharing their data. This is a direct violation

of the law that restricts the handling and sharing of personal data obtained by firms and government agencies. This survey featured various organisations that included top banks, asset managers, insurance companies, telcos, and retail and manufacturing compa-

nies. Their conduct has led to unregulated text messages to their clients, unsolicited emails or notifications of services and products which exposes the concerned individuals to cloning of their identities and bank fraud for customers.

RWANDA

Rwanda's Parliament votes Personal Data Protection Law

The virtual plenary sitting of the Chamber of Deputies on Thursday 12th August 2021 adopted the law relating to the protection of personal data and privacy. The law consists of the processing of personal data done by electronic or other means of processing. The chairperson of the committee on education, technology, culture and youth, Veneranda Uwamariya stated that the law will enable the protection of personal data and privacy as one of the factors regarded as the core of issues about the lives of people where personal data is moving at the same pace as the use of technology in providing or seeking services.

CHINA

Chinese Government asks for its automakers to strengthen Data Protection

Amidst steps to impose stricter measures to ensure the security of data generated by connected vehicles, China has asked automakers to strengthen data protection and to store locally generated key data in the country. A new policy published by the Ministry of Industry and Information Technology requires automakers to get regulatory approval for both when they need to export critical data and before updating i-car systems. The policy however does not give sanctions should companies fail to follow the rules.

Social Networking Service Tiktok ramping up Privacy Protection for Teenagers

Tiktok is set to announce tighter protections for teenagers using the app through a roll out of a number of new features in the coming months. This will include a default curb for 16 and 17 year olds on in-app messaging unless the same is switched to a different setting, the choice of who can view their videos when they first publish and who has the right to download. It will also stop sending push notifications to users aged 13-16 from 9pm and 10pm for users aged 16-17 in order to reduce screen time. These features are a quest to build on previous measures to protect young users from predators, ills and other online dangers.

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AFRICA

GIZ launches project to provide Legal Entity Identifiers (LEI's) to SME's across Africa to assist with financial inclusion

■ The Global Legal Identifier Foundation and German organisation GIZ have partnered to launch an international flagship project designed to expand financial inclusion among SMEs in Africa by equipping them with Legal Entity Identifiers. The program aims to strengthen Africa's SME base and increase the flow of inbound capital needed to fuel the continent's economic development.

KENYA

Dalberg partners with Omidyar Network to launch The Kenya Digital Economy: A People's Perspective Report

■ This week, Dalberg partnered with Omidyar Network to launch Kenya's Digital Economy: A People's Perspective Report. The report highlights the digital devices and services improving the lives of Kenyans and opportunities for deeper participation in the digital economy. It serves as a great tool for policy makers, investors and entrepreneurs looking to reference key data around Kenya's digital economy.

MALAWI



NM Malawi and Mastercard partner for the country's first virtual payment solution

■ TNM Mpamba, a virtual payments solution enabling virtual local and international e-commerce transactions is now live in Malawi. The product run by TNM Malawi in collaboration with Mastercard is the first of its kind in the country and a welcome move away from plastic card payments.

GHANA

Ghanaian startup Plendify launches B2B e-commerce marketplace

■ Ghanaian startup Plendify has launched a B2B e-commerce marketplace. The marketplace connects African wholesalers, manufacturers, exporters and importers with customers. The startup has additional plans to scale their operations across Africa to help connect more brands with consumers.

Bank of Ghana partners with Giesecke+Devrient to pilot first general purpose Central Bank Digital Currency in Africa

The Bank of Ghana this week partnered with Giesecke+Devrient to pilot Africa's first general purpose Central Bank Digital Currency.

The project which forms part of the 'Digital Ghana Agenda' will be tested in its trial phase with banks, payment service providers, merchants, consumers and other relevant stakeholders. The currency will promote digital payments while ensuring a secure and robust payment infrastructure.

Hacker returns almost half of stolen crypto assets

A hacker behind one of the largest cryptocurrency heists has returned half of the \$600m in stolen assets.

The hacker who claimed to have spent a night looking for vulnerabilities to exploit returned the coins stating that he was not very interested in the money.

This came in the form of a three page long Q and A where he further stated, "I know it hurts when people are attacked, but shouldn't they learn something from those hacks?"

The hack raises questions as to what happens next in such situations, given the unregulated and decentralised nature of blockchain and cryptocurrencies.

Will Wyoming become the next crypto capital of the United States?

Wyoming, a state in the Mountain West subregion of the Western United States, has passed more than 12 laws related to blockchain and cryptocurrency, with the latest being quick approval for new crypto banks.

The welcoming regulatory environment coupled with other tax incentives has made it a favourable jurisdiction for crypto mining companies looking to set up. The State is bringing in more revenue and employment in the tech space and could be a sandbox for this type of regulation.

Jack Dorsey claims that 32% of Nigerians own cryptocurrency in letter to US Senator

Twitter CEO, Jack Dorsey in a letter to US senator, Elizabeth Warren, claimed that 32% of Nigerians own cryptocurrency.

Nigeria currently has a population of 210 million with 67.2 million people making 32%. Reports indicate that the data is from a study with a sample size of 1,000 - 4,000 participants. Mr. Dorsey's remarks have sparked debate online with most faulting him for publishing false and misleading information.



11%

THE EXIT OF
MESSI COULD
SEE THE FC
BARCELONA'S
BRAND VALUE
FALL BY UP TO
11%.

The IP Implications of Footballer Lionel Messi FC Barcelona departure

Lionel Messi has recently confirmed the end of his 21-year association with FC Barcelona, a move which is a gigantic blow for the club.

The exit of Messi could see the FC Barcelona's brand value fall by up to 11%. Messi's personal brand rivals that of nearly all the world's biggest clubs with the size and breadth of his trademark portfolio being unprecedented in the football arena. The Footballer owns the most trademark registrations of any football player and will be a commercial boon for the next club that manages to secure his services.

A new analysis revealed that Messi has 136 registered trademarks with a majority being single class trademarks in his home country of Argentina, and other single marks in China, Brazil, EU, Malaysia, Canada, Chile and the US.

The African Regional Intellectual Property Organization (ARIPO) to hold Diplomatic Conference for the Adoption of the ARIPO Protocol on Voluntary Registration of Copyright and Related Rights

■ ARIPO will this month from the 20th to the 28th of August hold the Diplomatic Conference for the Adoption of the ARIPO Protocol on Voluntary Registration of Copyright and Related Rights in Kampala, Uganda.

The draft Protocol, upon its adoption, will establish a Regional Voluntary Registration of Copyright and Related Rights and create and maintain a Regional Database for Copyright and Related Rights for the ARIPO Member States.

Who is liable for infringing copyright? The YouTube case

The liability of online platforms in relation to the infringement of IP material that appears on their platform is an interesting discussion. Who is liable for the infringing material that appears on online platforms: the person posting the material or the online platform? This issue was considered by the Court of Justice of the European Union (CJEU) in two cases that involved YouTube and Cyando, the company behind the Uploaded platform, following complaints of unauthorised music uploads on YouTube and unauthorised textbook uploads on Uploaded. The court held that online platforms are generally not responsible for infringing content that users have uploaded but there are situations where the platform operator is liable for such infringing material. Some factors used to determine this include: whether the operator's business model encourages illegal sharing of copyright protected material, whether the operator participates in the selection of copyright protected material for illegal communication to the public and whether they implement technological protection measures that could be reasonably expected of a diligent operator.

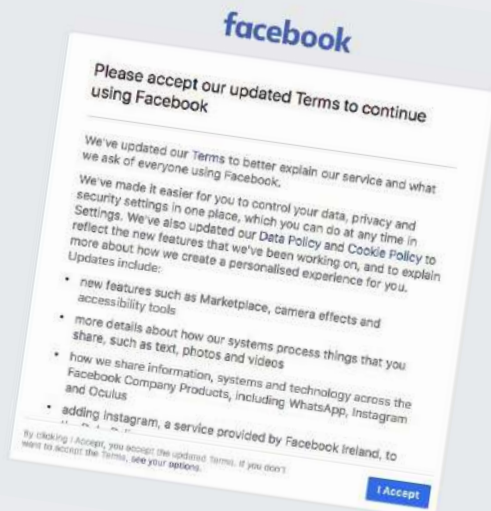
NIGERIA

Twitter set to open an office in Nigeria in 2022

Last week the Nigerian Minister for Information announced that Twitter has agreed to open an office in Nigeria in 2022. This follows the suspension of Twitter in June this year after the platform deleted a tweet by President Buhari that it deemed violated Twitter abusive behaviour rules.

Facebook weaponizes its Terms of Service to stifle public interest research on its Platform

Last week Algorithmic Watch disclosed that their research which monitors Instagram's newsfeed algorithm was shut down by Facebook under claims that the project automatically collected data in violation of Facebook's terms of service. Algorithmic watch insists that such research is necessary to know if Instagram's algorithms favour specific political opinions over others and that the researchers designed the project in compliance with GDPR and the terms of service.



Keeping up with Internet Shutdowns

Despite calls from civil society to #KeepItOn during the Zambian elections on 12/08/2021, the Zambian authorities restricted social media and messaging platforms such as Whatsapp, Twitter, Facebook and Messenger. However on 13/08/2021, the High Court of Zambia issued orders staying government directives to internet service providers to restrict access to these social media platforms. In addition, the court also granted leave for the applicants to proceed with Judicial review.

GLOBAL



Photo: Effective Healthcare

Shock as new algorithms created to improve healthcare can detect a person's race

A recent study reveals that Artificial Intelligence (AI) created to help in the diagnosis of diseases by reading X Rays and other medical scans often missed by doctors can also detect race. At its best the algorithms are 99% accurate. This spews new concerns of algorithms that can create inequality in the healthcare system.

KENYA

NGO sues government over failure to de-register Kenyan Citizens from the refugee database

Last week on 12/08/2021 Haki na sheria initiative filed a petition seeking orders to de-register about 40000 Kenyans registered as refugees and issue them with National Identity Cards. Majority are from the former North Eastern Province in Kenya, who registered to take advantage of the free amenities like rations, education and shelter at a time of prolonged drought in the region.

CAMEROON

Augentic improves access to biometric passports in Cameroon

A new project between Augentic and the Cameroon General Delegation for National Security has seen Cameroonians receive their biometric passports within 48 hours. The previous Cameroon passport system took 30 days but citizens report that this may cost more and take longer.

Data and Democracy: Gearing up for Kenya's 2022 Election

Information and Communications Technology (ICT) played a major role in the August 8 General elections and subsequent October 26 presidential elections of 2017. This was in the wake of Kenya's legal framework requiring a gradual introduction of ICTs in the voting process to ultimately increase transparency in the election process. While theoretically, such use of ICTs should result in improved voter identification, prevent double voting and facilitate fast and accurate results transmission and tabulation, the 2017 elections were marred by many controversies, some of which were a direct result of the use of technology.

The first deployment of technology in the election process had the government unable to access its own data from OT Morpho, a French IT company that supplied the software for the electronic results transmission system. The company was contracted to host and man the Independent Electoral and Boundaries Commission (IEBC) server and supply the Kenya Integrated Election Management System (KIEMS) which hosted the register of voters. Its credibility was however called to question when the Supreme Court nullified the presidential elections on finding fault with the technological malpractices that interfered with the transmission of votes by IEBC's server.

The enactment of the Data Protection Act has changed the trajectory. As of 2019, Kenya joined the global trend of reasserting territorial control by erecting borders for data, commonly known as data localisation. Through the enactment of the Act, we now have provisions for cross border data transfers by data controllers and processors. A barrier has been created to free data flow: this is a conditional cross-border data transfer whereby a data controller or processor can only transfer personal data outside Kenya if they have given proof to the Data Commissioner on the appropriate safeguards or given proof of the appropriate safeguards with regard to security and protection of personal data.

In specific instances, there is further restriction where the Cabinet Secretary may prescribe, based on grounds of strategic interests of the state or protection of revenue, that certain nature of processing shall only be effected through a server or a data centre located in Kenya. This position is expounded under the Regulations, which are yet to come into effect. If passed, the Regulations would mandate a data controller or data processor who processes personal data for the purpose of actualising a public good to ensure that such processing is effected through a server and data centre located in Kenya; and to have at least one serving copy of the concerned personal data stored in a data centre located in Kenya.

The conduct of elections in the country is one such purpose categorised as actualising a public good. The passing of these Regulations will mandate IEBC to have its election data and transmission servers hosted in Kenya. This position will also apply to any company contracted to handle election data being generated from Kenyan citizens. A recent TV in-

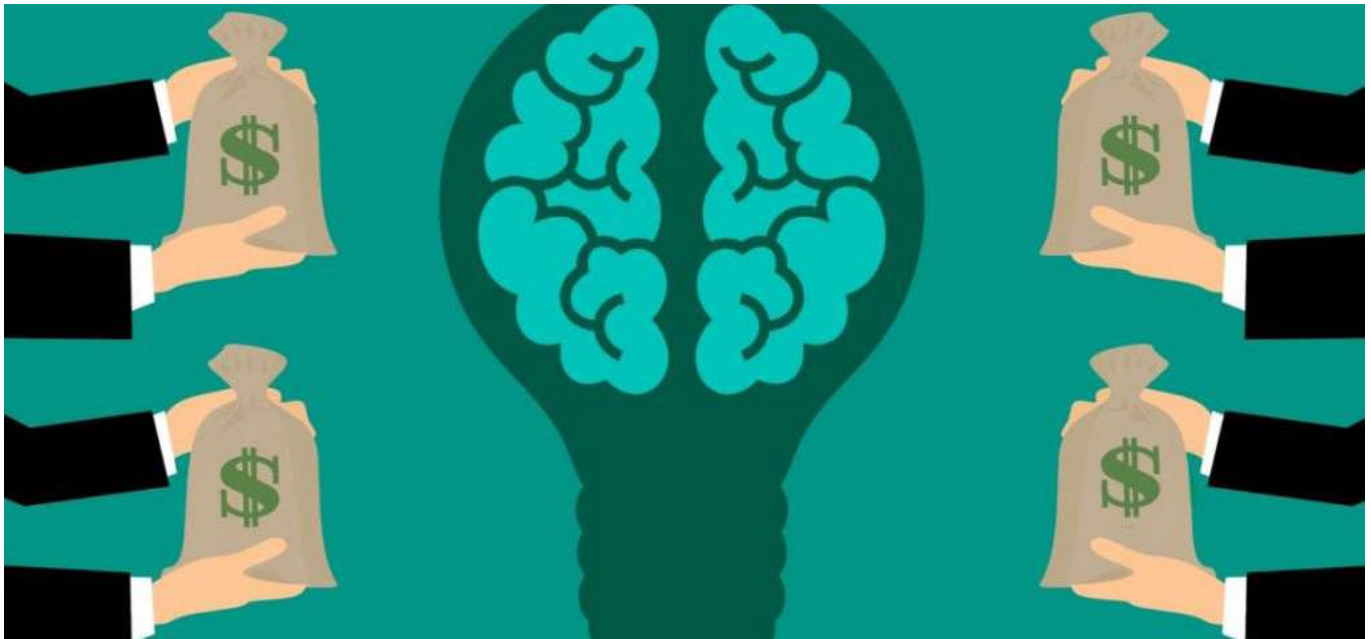


“ As of 2019, Kenya joined the global trend of reasserting territorial control by erecting borders for data, commonly known as data localisation. Through the enactment of the Act, we now have provisions for cross border data transfers by data controllers and processors.

terview hosting the IEBC Chair, Mr. Chebukati, saw him express confidence to deliver a fairer election in 2022 and further confirm that both the primary and secondary servers are hosted locally. This move to promote data localisation gives the government, through IEBC, more control over the management and handling of all election data, prevents foreign surveillance and better enforces data protection laws.

On the inverse, there have been concerns raised to have data stored in another country for backup purposes. Section 25 of the Elections (Technology) Regulations 2017 mandates the IEBC to maintain an external data recovery site for all electoral information systems. In light of the provisions of the Data Protection Act, clarification is needed on whether this external site is hosted within or outside of the country. Further, there is the pertinent issue of a lack of critical data infrastructure regulations which would govern the setting up of data centers where the country's data is to be stored. The Computer Misuse and Cybercrimes Act mandates the Cabinet Secretary to develop critical infrastructure regulations to control the setting up of data centers, but these are yet to be published or presented to the National Assembly for approval. It is a recurring concern that governments are always willing to undertake and implement projects that collect a lot of personal data with little consideration for securing the data generated.[8] It thus seems counter-productive to have Data Protection Regulations but lack Data Infrastructure Regulations.

Is data localisation the answer to achieving election integrity in Kenya? This remains to be seen as the government strives to protect its data.



Kenya's Proposed Investment Based Crowdfunding Regulations: A Brief Overview

A large percentage of Kenya Startups and MSMEs struggle with fundraising through traditional models such as loans. This is attributed to lack of adequate and quality information on SME lending, and the lack of collateral to access such loans.

These young businesses have turned to alternative methods of financing, with non-bank financial institutions and other sources making up 54% of all financing for MSMEs.

In 2020, Kenyan startups raised \$305m in equity funding, ranking as the country with the highest venture capital investment, GDP ratio in Africa at 0,32%.

Most investors, majority foreign, cited ease of operating as the main factor influencing their choice of Kenya compared to jurisdictions such as Nigeria; the country which raised the most in equity funding.

The report is not only proof of Kenya's place in Africa's digital economy, but also the potential that exists to leverage regulatory models that encourage additional funding initiatives by both foreign and local investors.

The Consultative Group to Assist the Poor (CGAP) defines crowdfunding as an Alternative Finance (AltFi) mechanism of sourcing capital by soliciting a pool of individuals or organizations through an online platform or mobile phone.

According to Financial Sector Deepening (FSD) Africa, Kenyan crowdfunding amounted to \$22.0m in 2015. Out of the stated amount, only 1% was raised by native Kenyan crowdfunding platforms.

It is estimated that equity crowdfunding platforms represented a mere 1% (\$220,000) of Kenya's crowdfunding model with regulatory challenges cited as the main barrier to entry.

Crowdfunding Models Explained

There are three main crowdfunding models; reward crowdfunding, debt crowdfunding and equity crowdfunding.

Rewards crowdfunding

This type of crowdfunding is common with early stage ventures still in the startup stage looking to improve their minimum viable product (MVP) or estimate demand. This is by trading funding in exchange for a product or service.

Debt crowdfunding

Also referred to as lending-based crowdfunding, debt crowdfunding is built on the traditional concept of lending where a relationship is created between the funder and the fundraiser, with online platforms being the only novel element.

Equity crowdfunding

Equity crowdfunding allows individual and institutional investors to invest in unlisted entities in exchange for shares in the entity.

This model is suitable for startups in the growth stage as they are financially healthy and have achieved product and market valuation, hence have a low risk of failure.

Also known as investment-based crowdfunding, this model is the subject of the draft regulations.

In July 2019, the Capital Markets Authority admitted the first three firms into its regulatory sandbox. The sandbox,

one of three in Africa, was launched to allow for live testing of new products and services with the potential to deepen Kenya's capital markets.

Pezesha, a debt crowdfunding platform, was one of the fin-techs in the first cohort of the sandbox.

The CMA has since partnered with the Central Bank allowing Pezesha to operate in the absence of platform specific legislation after its successful exit from the sandbox.

In July 2021, the CMA sought to bring the regulation of equity based crowdfunding platforms under its jurisdiction through the Capital Markets (Investment Based Crowdfunding) Regulations, 2021.

The Regulations

The draft law is set to regulate the equity crowdfunding process for Kenyans ventures looking to financing or refinancing their activities.

The three key players in this type of funding; investors, issuers and platforms are catered for, with more emphasis placed on the crowdfunding platform operators as the facilitator of these transactions.

Risk warnings

The law recognises both retail and sophisticated investors. This is a welcome move, noting that the majority of investment based crowdfunding investments are made by individuals with no professional affiliation to investing. By allowing retail investors to fund ventures via these platforms, the CMA contributes significantly towards encouraging citizens to invest in local businesses. This is supported by the risk mitigation factors under the draft law. The Authority requires platforms to set out the risks associated with investing via the platform by issuing a risk warning that investors must acknowledge in order to gain access.

However, given that sophisticated investors tend to be more familiar with such risks and are less likely to suffer loss, platforms must ensure that the risks involved are clearly stated and understood by retail investors as well.

Investment Limits

The draft regulations impose a limit of KSH. 100,000 in a bid to protect retail investors.

Best practice dictates that crowdfunding platforms assess the sophistication of investors, paying attention to their knowledge and experience by considering factors such as their previous investments, and whether they are a director of a company with a reasonable turnover. This allows the platform to accurately classify an investor and impose limits as to how much they can put into a venture.

The United States imposes a limit of 10% of the greater of annual income or net worth of an investor with the same rule being applied in the United Kingdom.

Noting this, and the presence of risk mitigation provisions under the proposed law, a limit of 10% of their net investable portfolio upon assessment by the crowdfunding platform is more appropriate. This will encourage the acceptance of crowdfunding as an alternative form of investment while protecting investor interests.



Licensing

The crowdfunding platform and operators play the most important role as the facilitator of these transactions. The platform operators will be required to obtain licenses in order to operate. The licensing requirements are accompanied by an elaborate set of duties obliging operators to share relevant information around, user rights and responsibilities, complaint handling mechanisms and related fees.

The cost of compliance is relatively low with an application fee of KSH. 10,000 and an annual licensing and regulatory fee of KSH. 200,000.

Data Protection

The most commendable provision under the law is the dedicated data protection regulation that sets out specific obligations relating to privacy. The provisions require platforms to put in place appropriate safeguards to ensure integrity, security and confidentiality of information.

Additional requirements on platform insurance and storage limitation help build trust in these platforms' ability to operate while observing users' right to privacy.

The Regulations are a move in the right direction towards encouraging alternative methods of financing and local investment in homegrown solutions.

Note: none of the content in this article is intended as legal advice.



Absa Bank Kenya launches WhatsApp banking service.

Absa Bank Kenya has launched a chatbot, known as Abby, powered by artificial intelligence (AI), that allows their customers to access their accounts and transact via whatsapp. By chatting with Abby on WhatsApp, Absa Bank customers will be able to make payments, buy airtime, access account information as well make enquiries and receive feedback on general queries.

TikTok adds more safety features for teens



TikTok is adding more features aimed at protecting the privacy and safety of teenagers who use the short-form video app, amid growing concerns about the impact of technology on young people.

TikTok will now automatically switch off direct messaging for new users aged between 16 to 17. Teens can still easily switch their DMs on via the settings menu, but it will have to be an active choice. The video sharing app will also prompt current users in this age range who haven't used DMs before to review and confirm their privacy settings when they eventually do try to use it.

The company is also limiting when teens receive push notifications that could entice them to spend more time on TikTok.

TikTok is also introducing new pop-ups meant to make teenagers more aware of the app's privacy settings. When teens under 16 are about to publish their first video, they'll also see a pop-up that asks who they want to let watch the video.

Teens 16 to 17 will also see a pop-up if they turn on video downloads. The prompt will tell the users that enabling this option means other people will be able to download their videos and share them on other platforms.

Sony's PS5 trademark dispute in India resolved

Sony's trademark dispute in India, believed to be one of the reasons for the delay in the launch of PS5 in the country, has now been resolved.

A man named Hitesh Aswani from Delhi had filed for the PS5 trademark in India last year, according to a report by The Mako Reactor. While Sony had filed for the trademark in February this year.

Aswani has now withdrawn his application, first reported by Detective Gaming. The details are also available on the Government of India's Public Search of Trade Marks website. Aswani's PS5 trademark application had been filed under application number 4332863.

Sony had opposed Aswani's filing under the Trade Marks Act of 1999, according to the order included in the report.

Sony Interactive Media is moving to register their PS5 trademark as early as possible, according to the report.

Moove raises \$23M to create flexible options for drivers to own cars in Africa

Moove Africa, an embedded vehicle financing marketplace, has raised \$23 million in a Series A round debt.

Headquartered in the Netherlands, it's operational in Nigeria, Ghana and South Africa. Moove is tapping into Africa's growing urbanisation and shared economy trends. It uses alternative data to provide easier financing access to new vehicles, while exploring various scale paths.

Moove's business model connects with three core players – drivers (looking to secure new or fairly used vehicles on one of its plans), vehicle suppliers (providing vehicles at discounted prices in bulk), and service providers (financial services, technical services, among others).

Google is starting to tell you how it found Search results

Google is updating its "about this result" feature for search results with an interesting new addition: context about how and why the company's algorithm landed on the specific results for the links that it surfaces when you search for things.

The company added the "about this result" information box earlier this year as a way to help users properly vet sources that they weren't familiar with using data sourced from Wikipedia. The menu — accessed by clicking the triple dots at the corner of a search result— pops up and tries to provide additional background information about a website.

Google has now updated the feature to help shine a light inward on Google's algorithm and how it links search terms to specific sites.

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1. CODING FOR LAWYERS

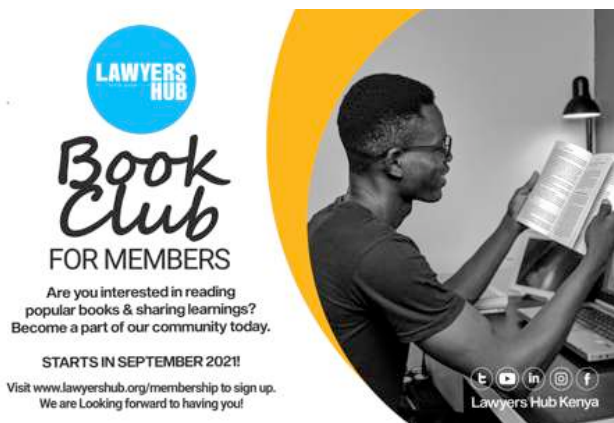
It is important for lawyers to learn the fundamentals of coding as the legal industry becomes more tech and data driven. The Lawyers Hub has taken the initiative to ensure that its members develop these skills by curating a coding course that is set to start on the 1st of October 2021.



2. BOOK CLUB

The aim of our book club is to bring together like minded individuals through shared learning in books, to understand diverse perspectives and increase our members' systematic reading habits, fostering growth by creating a safe environment to share or debate ideas.

Applications to join are open as we prepare for the official launch in September 2021.



3. DANCE CLASS

We care about our members' mental health and fitness as these are crucial to everyone’s wellbeing. The Lawyers Hub hosts two choreographed dance classes every week that will tick all your mental health boxes in Upper Hill at Ack Garden House. You also get to network with working groups.

Your 1st dance class is on the house. Join us!

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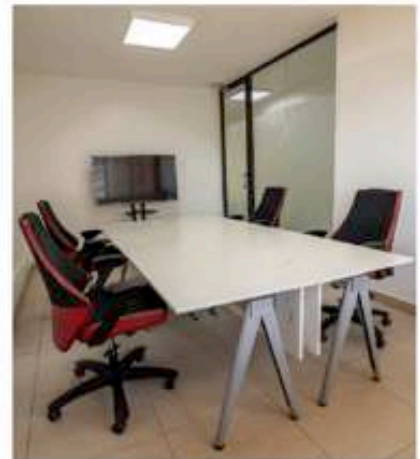
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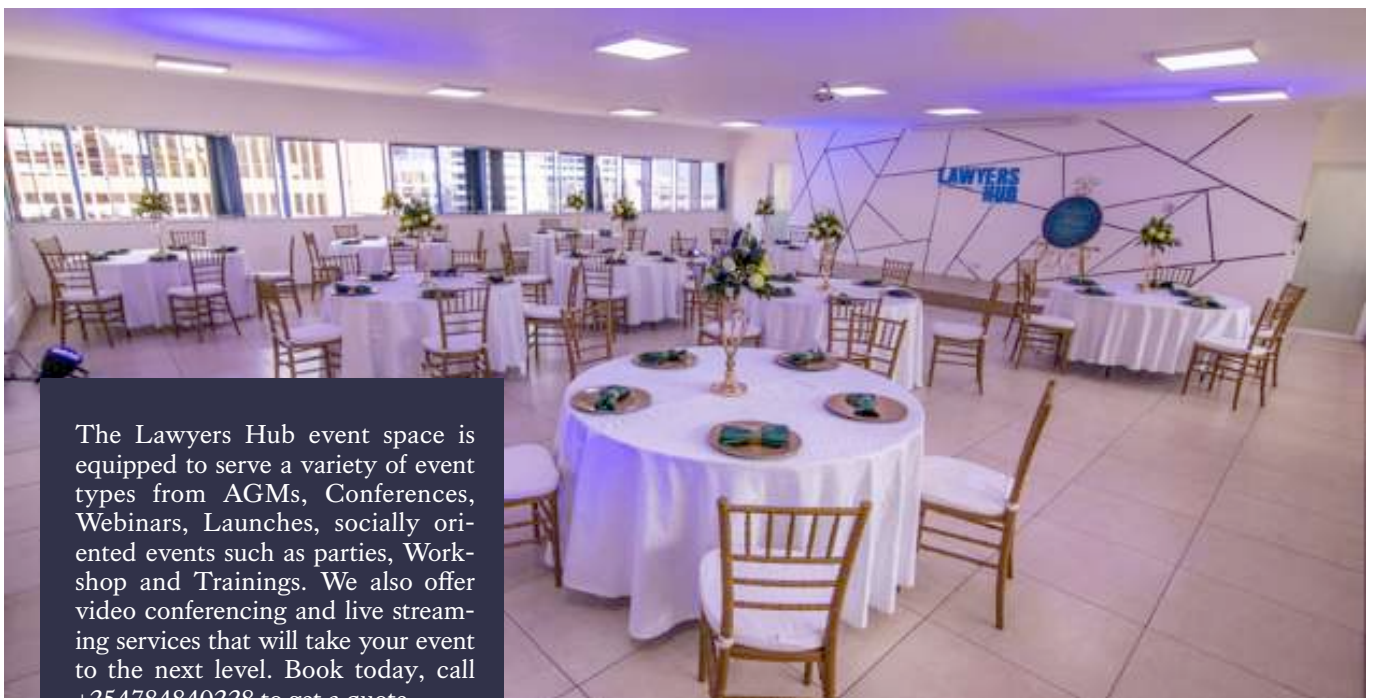


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