

THE CALIFORNIA INTERNATIONAL LAW Journal

VOL. 27, NO. 2

2019 WINTER

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Official Publication of the International Law Section

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THE FRENCH BILL ON HATEFUL CONTENT ONLINE

EXECUTIVE SUMMARY

Content regulation in Europe is on the rise and especially content pertaining to hate speech. The first legislation directly addressing content on social media is the German Network Enforcement Act which entered into effect on January 1, 2018.

The law which was originally dubbed “The Facebook Law” has since inspired other countries and the latest example is the French hate speech bill which introduces even stricter regulation and furthermore aims at a revision of the general accountability directive in the European Union (e-Commerce Directive).

This article describes the hate speech bill currently under discussion in France and some of its most practical consequences for social media and lawyers.

THE BILL: BACKGROUND, LEGISLATIVE PROCEDURE, AND OBJECTIVES

The long-awaited French hate speech bill (“the Bill”) was introduced in the National Assembly on March 20, 2019, and was passed on July 9, 2019. Its importance is evidenced by the fact that it was placed on a legislative fast track procedure on May 2, 2019.¹

While the Bill was under its review the National Assembly proposed no fewer than 284 amendments. The Bill has now been transferred to the Senate (on July 24, 2019, a “Senate Rapporteur” was appointed) where it is expected to generate further controversy and give rise to further amendments. President Macron’s party (“La République en Marche”) does not have a majority in the Senate as it does in the National Assembly (which is controlled by members of his party, “Les Marcheurs”). The subject matter is clearly dynamic and that dynamism is likely to give rise to legal disputes and controversies in the future.

The final vote and thus the timing of the Bill’s entry into force are unknown as of this writing. However, given the overwhelming majority vote in favor of the Bill before the National Assembly (434 votes in favor, 33 votes against, and 69 abstentions) it is expected that the Bill will ultimately pass.²



Dan Shefet*

The stated objective of the Bill is to oblige social media and search engines to take down:

internet-based content advocating³ crimes against humanity, leading to the commission of acts of or apology of terrorism..... or *incitement to hatred, violence, discrimination or abuse of a person or group of persons on account of origin, alleged race⁴* or offence against fundamental rights in particular human dignity (apology of crimes, sexual harassment, slavery, pimping, child pornography), religion, ethnicity, nationality, sexual orientation, gender identity or disability, true or supposed” within 24 hours from receipt of notice from one or more users.⁵

Of particular note is that the current delimitation of the Bill’s scope includes content directed at “a person” and not necessarily “a group of persons.”

The Bill has been in the making since an announcement made by President Macron in March, 2018, about his intention to regulate incitement and hate speech on the Internet. This announcement ultimately led to a general revision of the e-Commerce Directive of 2001.⁶ President Macron’s initiative was initially mainly directed against anti-Semitism but it quickly developed into a broad regulation of “hate speech.” In accordance with Article 39 of the French Constitution, the Council of State reviewed the Bill and handed down its decision and recommendations on May 16, 2019.⁷ The decision of the National Assembly’s Commission of Laws followed on June 19, 2019.⁸

The decisions of the Council of State and the Commission of Laws provide interesting insight into the legal aspects and the obvious technical challenges of defining “hate speech⁹” given in

particular its encroachment on free speech within the European Union. In this respect, the preparatory drafting of the Bill as summarized in the comprehensive Parliamentary Report of June 19, 2019,¹⁰ refers to the majority of European Union Member States' constitutions and the Charter of Fundamental Rights of the European Union,¹¹ which arguably, "consecrate principles justifying a determined action against online hatred like respect of Human Dignity, the prohibition against discrimination and equality between men and women."

Pointed attention to the subject of on-line hate speech was on display during the G7 Summit of Interior Ministers held in Biarritz, France, on April 4-5, 2019. A statement issued as a result of that Summit emphasized, "the need to improve the struggle against the use of the internet for terrorist or violent extremist purposes and demand takedowns within 1 hour from notification of terrorist content."¹² Further attention was directed at hate speech by the Christchurch Call to Action Summit in the aftermath of the shootings at a mosque in Christchurch, New Zealand, on March 15, 2019.¹³

The Council of State and the Commission of Laws recommended a number of amendments but the general conclusion was that the Bill did not violate the French Constitution or international treaties. In particular, it was determined that the Bill did not contravene the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950¹⁴ or the Declaration of the Rights of Men and Citizens of 1789. The Declaration contains explicit limitations of free speech in art 11.¹⁵

Indeed, this Bill is not the first in France to regulate speech. The most famous example is the Loi Gayssot (or "anti-denial" law) from 1990, which prohibits the disputing of the reality of crimes against humanity as defined by the International Military Tribunal of Nuremberg.¹⁶ This law was challenged before the United Nations Human Rights Committee in 1996 (pursuant to the Additional Protocol to the International Covenant on Civil and Political Rights)¹⁷ and was found to not violate Art. 9 of that Covenant.

The Bill now includes the recommendations from the Council of State and Commission of Laws and, crucially, it is noteworthy that search engines and social media are now treated alike. The Council of State had found that the original Bill violated the principle of equality – one of the foundational principles of the French Republic – by not including such search engines and hosts but by only applying legal obligations to only social media. The Bill in the Senate now addresses that finding by the Council of State.

From a legal mechanics standpoint, under French law the Bill modifies Law No. 2004-575 of June 21, 2004,¹⁸ which implements the European Union e-Commerce Directive into domestic French law.

MAIN PROVISIONS OF THE BILL

As previously noted, the Bill applies to social media, hosts, and search engines alike (collectively referred to as "Online Platforms"). Key elements of the Bill include the following:

- Online Platforms will be under an obligation to take down or make inaccessible/delink "manifest hate speech" ("*contenu manifestement haineux*") within 24 hours of receiving notice of the presence of such content. Actual knowledge (a key legal concept under the e-Commerce Directive) is assumed when notification is made by an individual submitting his/her name and email address or by a public agency (the formalistic reporting requirements in Article 6 of Law No. 2004-575 of June 21, 2004, transposing the e-Commerce Directive into French law is simplified as it is intended to allow users to actively contribute to identification and flagging of content). A simplified reporting/notification mechanism is mandated (i.e., a "direct notification button" function).
- Online Platforms must invest in adequate human and technical resources combatting online hate speech and they will be subject to oversight by and compliance with "Recommendations" from the *Conseil Supérieur de l'Audiovisuel* ("CSA"), or Superior Council of the Audiovisual.¹⁹ In the event such actions are not taken, the CSA may first put the Online Platform on notice and in case of continued non-compliance the CSA may impose a financial penalty taking into account the seriousness of the infringement and whether the infringement is a repeat or first-time offense.
- Financial penalties may reach 4% of total annual worldwide turnover for the previous year.²⁰
- A judge may order removal, blocking, or delinking of the hate speech. It should be noted that the administrative blocking prerogatives available to address terrorist sites that have been in force since the Bataclan attacks in Paris in November, 2015, are unaffected by the Bill.²¹
- Online Platforms must designate a legal representative within French territory. The representative is personally

responsible for the transfer to local law enforcement of data enabling identification of the author of hateful content (legal authority already provided by Law No.2004-575 of June 21, 2004, but now reinforced).²²

- This legal representative will be responsible for receiving complaints, requests from authorities, and court orders on behalf of the company.²³
- Online Platforms must publish compliance information annually and must also obtain identification data on their users. This user identification data must be made available to law enforcement. In the event an Online Platform does not lift anonymity it may incur a fine of €250,000, with an additional option to sentence the legal representative to up to one year of prison.
- The government will publish an annual report that will contain information on compliance with and enforcement of the law as well as the human and financial resources devoted by Online Platforms to combating illegal content, including education, prevention, and assistance of victims.
- An additional tax is levied by virtue of Articles 575 and 575(a) of the General Tax Code to cover the administrative costs of enforcing the law. This should not be confused with the so called “Google Tax” which was passed on July 24, 2019, and is now under severe challenge from the Trump Administration.²⁴
- A specialized tribunal and prosecutor will be created for the prosecution of all cyber- related crimes.
- A new penal offence has been created that punishes the refusal by Online Platforms to take down or delink manifestly hateful content.
- Online Platforms are required to advise the author of the impugned content and to explain the reasoning behind a decision made by the Online Platform within 24 hours from notification or 7 days of a decision is not to take down or delink (that is, in the event that the Online Platform does not agree that the impugned content is manifestly illicit). On this particular point a “Motion for Recommendation” is pending before the Parliamentary Assembly of the Council of Europe on the creation of an Internet Ombudsman who would ensure that collateral filtering (or overblocking) does not take place. This is especially a risk with smaller Online Platforms which may not have the necessary

legal staff enabling it to strike the appropriate balance between competing interests and obligations.²⁵

- Abusive notifications carry both civil (a fine of €15,000) and penal sanctions (up to one year in prison). A tort cause of action may also be instituted but it is not clear how damages would be assessed. This is an area that will be developed and clarified to some extent by actual cases once the Bill becomes enforceable law.
- Online Platforms are required to establish grievance and appeal procedures that must be clearly communicated to all users. Online Platforms must also clearly state the remedies that are available to victims.
- Hate speech awareness will be included in school curricula together with enhanced education of teachers in the fight against hate speech.
- No additional criminalization of authors.²⁶

OVERSIGHT BODY

As noted above, the Bill designates the CSA²⁷ as the oversight body which will also have enforcement privileges.²⁸

A natural alternative would have been the CNIL (*la Commission Nationale de l'Informatique et des Libertés*, or the Data Protection Agency), but the decision to designate the CSA (which is likewise the designated enforcement agency for the Fake News law passed on November 20, 2018)²⁹ is consistent with the underlying philosophy of treating social media and similar platforms as media in a more traditional sense. This articulation gives additional credibility to the stated intention to have the e-Commerce Directive “modernized.”³⁰

ACCOUNTABILITY STANDARD

Perhaps the most significant feature of the Bill is its recognition of the “outdated binary distinction” made in the e-Commerce Directive between Internet Service Providers and hosts. The Bill raises several other concerns regarding the e-Commerce Directive, most importantly its country of origin principle (pertaining to conflict of laws questions), its failure to specify clear time limits for takedowns, and its failure to include the notion of “manifestly illicit content.”

With respect to the last concern, it should be pointed out that the e-Commerce Directive is the European Union equivalent of Section 230 C of the CDA. The main difference is that while the CDA provides “absolute immunity” (apart from distinct legislative exceptions) the e-Commerce Directive allows for

“intermediary accountability” based on “actual knowledge” in principle pursuant to notice (hence it may be described as instituting a regime of “relative immunity”). In such case sanctions may be both of a penal and civil nature. Given the difficulty often encountered when qualifying content as licit or illicit, case law has developed a distinction between “manifestly and not manifestly illicit content” and provided that sanctions may only be applied if the host or ISP has not taken down “manifestly illicit” content which was notified or ordered taken down by a judge as confirmed by the Constitutional Court and the European Court of Human Rights.³¹ The Bill employs the distinction but applies it to “manifestly hateful” (not “manifestly illicit”) content.

The stated intention of the French Government is to broaden Online Platform accountability given that “the function, curating and ranking of content performed by Online Platforms will ultimately be a prelude to a more general vision of the regulatory framework” (i.e., the e-Commerce Directive).³²

It may be argued that the German Network Enforcement Act (Netzwerkdurchsetzungsgesetz; “NetzDG”),³³ which came into effect on January 1, 2018, and which is the first example of specific and enhanced accountability has already challenged the e-Commerce Directive.

Regarding the concern about the country of origin principle, it should be pointed out that the theory of “country of origin” as opposed to “country of destination” is embedded in Article 28 of the Audiovisual Directive 2010/13/ EU (modified by Directive 1808/2018 of November 14, 2018).³⁴

The Bill implicitly replaces the country of origin principle with the country of destination principle. This modification shifts jurisdiction to individual European Union Member States irrespective of whether the content was first placed online in another Member State. It also does so do so irrespective of the country of incorporation of the Online Platform or its effective seat of management in the European Union (“an increasingly artificial distinction”).

In fact, the recommendation in the preparatory drafting of the Bill decisively calls for a comprehensive change of the e-Commerce directive and its liability rules. The Bill proposes a new accountability regime in the European Union to be based on country of destination criterion even in situations where the content in question does not disturb public order (which is already an exception in the country of origin model).³⁵

As this extended accountability standard is likely to be adopted by the European Union Commission, its ramifications will be

challenging for all but particularly for companies based outside of the European Union. This is so because it will require constant and detailed monitoring of legislative, regulatory, and policy developments in each individual European Union Member State. Counsel advising such companies will need to bolster their monitoring practices to adequately anticipate these developments.

OTHER INITIATIVES TO REVISIT THE E-COMMERCE DIRECTIVE

In parallel with the proposed revision of the e-Commerce Directive, the European Parliament is reviewing a proposal for a regulation on terrorist content.³⁶

In France, the law of August 30, 2018, on Cyber Harassment and Discrimination³⁷ is also part of a consolidated approach leading to a European-wide revision of the Directive and of Online Platform accountability (most prominently by replacing the “binary distinction” between Internet Service Providers and hosts mentioned above). For example, in the United Kingdom the Interior Minister and Culture, Media, and Sports has recommended that Online Platforms which do not contain dissemination of terrorist or child pornography should face sanctions of up to 4% of global turn over. Outside of the European Union, Australia and New Zealand are taking steps in the same direction; Australian law, for example, provides for penalties up to 10% of global turnover and prison sentences.

CODES OF CONDUCT

Part of the debate at the National Assembly focused on voluntary measures like the “Code of Conduct on Countering Illegal Hate Speech Online” (May 2016)³⁸ between the European Commission, Facebook, YouTube, Microsoft, and Twitter.³⁹

This voluntary cooperation model is, however, deemed inadequate⁴⁰ notwithstanding the European Commission’s complimentary attitude.

EXTRATERRITORIAL REACH

It may be argued that the Bill has extraterritorial reach since it applies to social media and search engines having their activities on the French territory even when not domiciled in France. This is compounded by an obligation for these companies to designate a representative in French territory (very much like the General Data Protection Regulation; “GDPR”) as seen above.⁴¹

The question of extraterritorial reach under the GDPR (in particular “The Right to be Forgotten”) in the famous case Google vs. CNIL was decided on September 24, 2019, by the European Court of Justice.⁴²

In its holding the European Court of Justice did not follow the Advocate General’s recommendation entirely. In its recommendation of January 10, 2019, the Advocate General had recommended limiting the reach of decisions passed by European Union Data Protection Agencies and Member State courts to European Union versions of search engines when accessed from the European Union (that is, following Internet protocol geo localization principles).

The European Court of Justice has followed that recommendation to a large extent but not on two important point. First, the European Court of Justice has emphasized that European Union law does not prohibit the application of decisions extra-territorially, a conclusion that implicitly rests on public international law. Second, the European Court of Justice has held that it is up to each Date Protection Agency or Members State court to decide whether the protection of the fundamental rights of EU data subject requires extraterritorial application.

This promises to be a very important decision that will take time to fully understand in all of its details.

With reference to the controversial subject of extra-territoriality, the French government commissioned a study on the enforcement of United States laws extraterritorially, known as the “Gauvain Report.”⁴³ This study was released on June 26, 2019, and demonstrates a strategic and increased deployment of such extraterritorial enforcement on the part of the American administration that may be contrary to the a holding of the United States Supreme Court.⁴⁴

It is clear that the question of hate speech, its regulation, and enforcement actions against it are all becoming increasingly thorny and may seriously impact international relations, World Trade Organizations commitments, and even the principle of national sovereignty as embedded in the UN Charter [Chapter 1 - Purposes and principles, Article 2(1)–(5)].

From a French perspective, neither the GDPR (which has not chosen a data localization model but rather a nexus approach based on the location of the data subject) nor the hate speech Bill reach beyond its territory in violation of international law by virtue of the “effect theory” and personal jurisdiction based on the territorial attachment of the victim.

In other words, the Bill does not include personal jurisdiction based on nationality.⁴⁵

MIRROR EFFECT

The Bill also includes new rules on so-called “mirror effects,”⁴⁶ namely content which is reproduced (or is similar to) the original illicit content. Online Platforms must ensure that such “mirror content” is intercepted and taken down. On this particular question it is noteworthy that the Advocate General of the European Court of Justice in the recent Eva Austrian Party AG⁴⁷ case opined in a defamation context that Facebook was under an obligation to take down such similar content at least when it is posted by the same author.⁴⁸

NATURE OF THE OBLIGATIONS

The Commission of Laws made a very important distinction between the so-called “obligation of results” and an “obligation of means.” An obligation of results requires that the promisor has an obligation to deliver specific results and guarantees that the result will be attained. Displaying a duty of care and best efforts do not suffice, whereas they would suffice in an obligation of means framework.

Adhering to an obligations of results model, the Bill features an obligation to take down content within 24 hours. Failure to do so can be sanctioned with penalties up to 4% of global turnover (similar to violations of the GDPR) irrespective of intent and efforts.

STANDING

The Bill allows “any user” to make a complaint and also to take civil action (damages).⁴⁹

This is different from the law on Fake News⁵⁰ which does not include a private cause of action. For standing, the Fake News law first requires “a request of the public prosecutor, any candidate, political party or group or any person with an interest in acting.”⁵¹

NO THRESHOLD ON THE NUMBER OF USERS

The Bill does not apply the threshold of 2 million users found in the German NetzDG⁵² (it may however fix such a threshold by decree). Instead, the Bill does not provide for a minimum number of users before its applicability is triggered. Another difference between the Bill and the German NetzDG is that the Bill does not include the reference to “systemic” (“organisatorish”) failure (*i.e.*, algorithmic virality) as a basis for legal liability.

It will be interesting to follow the different but comparative models chosen by the Bill on the one hand and the German NetzDG on the other. The German NetzDG is arguably a pioneer on the issue of social media accountability for failure to monitor illicit content (namely anti-Semitic speech, hate speech, and speech inciting hatred). It notably provides for an obligation to remove illicit content within 24 hours of receiving notification.

Finally, the Bill is part of a general legislative initiative (of March 23, 2019) on the “Modernization of Justice”⁵³ which, among many other changes, allows online complaints based on pseudonyms.

CONCLUSION

It may be expected that the Bill upon entry into effect will face challenges before the Constitutional Court, the European Court of Human Rights, and the UN Human Rights Committee. There is no doubt that the law will have a very powerful impact both at the European Union level (Member States and the European Union Commission) and beyond. It may well become the standard on hate speech regulation and may ultimately also be applied to other illicit/toxic content.⁵⁴

ENDNOTES

- 1 Known in French as “procédure accélérée.”
- 2 In France, every bill is examined successively by the two chambers of Parliament (first by the National Assembly and then by the Senate) with the view of passing an identical text. A bill passed in identical terms by both chambers becomes law. However, in the event the bill is amended by the Senate, such amendments must be discussed by the National Assembly. The procedure is called a shuttle. The shuttles come to an end when the bill is passed without modification.
- 3 Article 20(2) of the ICCPR contains the same wording: “2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”
- 4 Changed from “race” in accordance with constitutional reform abolishing such use of the term “race.” This reform came about when the National Assembly adopted an amendment striking the word “race” from the Constitution (Art. 1) given its “historically outdated and scientifically invalid nature.”
- 5 This definition of the objectives and the term “hate speech” was significantly amended as a result of the debate before the National Assembly and will most probably be further amended in the course of the debate before the Senate. The

Bill is available at <http://www.assemblee-nationale.fr/15/ta/ta0310> (accessed on July 18, 2019).

Article 1. I. 1° of the Bill defines hate speech as “*contenus publiés sur internet faisant l’apologie des crimes contre l’humanité, provoquant à la commission d’actes de terrorisme, faisant l’apologie de tels actes ou comportant une incitation à la haine, à la violence, à la discrimination ou une injure envers une personne ou un groupe de personnes à raison de l’origine, d’une prétendue race, de la religion, de l’ethnie, de la nationalité, du sexe, de l’orientation sexuelle, de l’identité de genre ou du handicap, vrais ou supposés...*” The objectives of the Bill have been included in the above scope since it with no doubt play an important role in the interpretation of the definition. The Bill does not provide a direct legal qualification of « Speech Crimes » and in particular it does not address the inchoate nature of such crimes despite the practical importance of this classification as we have seen it from for instance the Seselj case before the International Criminal Tribunal for the Former Yugoslavia. See <http://www.icty.org/en/press/trial-judgement-in-the-case-of-vojislav-seselj-delivered> (Accessed on July 30, 2019).

- 6 Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market. *Dîner du CRIF : Macron veut lutter contre la cyberhaine* (2018) Le Monde. See https://www.lemonde.fr/emmanuel-macron/article/2018/03/08/diner-du-crif-macron-veut-lutter-contre-la-cyberhaine_5267299_5008430.html (accessed on July 18, 2019).
- 7 See « *Avis sur la proposition de loi visant à lutter contre la haine sur Internet* (2019) Conseil d’Etat. » Available at: <https://www.conseil-etat.fr/ressources/avis-aux-pouvoirs-publics/derniers-avis-publies/avis-sur-la-proposition-de-loi-visant-a-lutter-contre-la-haine-sur-internet> (accessed on July 18, 2019).
- 8 See « *Rapport fait au nom de la commission des lois constitutionnelles, de la législation et de l’administration générale de la république sur la proposition de loi, après engagement de la procédure accélérée, visant à lutter contre la haine sur internet* (2019). » Available at: <http://www.assemblee-nationale.fr/15/pdf/rapports/r2062.pdf> (accessed July 18, 2019).
- 9 In accordance with The Principle of Legality enshrined in Art. 7 of the European Convention of Human Rights (November 4, 1950).
- 10 See <http://www.assemblee-nationale.fr/15/pdf/rapports/r2062.pdf> (accessed on July 30, 2019).
- 11 See <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT&from=EN> (Accessed on July 30, 2019).
- 12 See <https://www.elysee.fr/en/g7/2019/04/06/g7-interior-ministers-meeting-what-are-the-outcomes> (accessed on July 30, 2019).
- 13 See <https://www.christchurchcall.com> (accessed on July 30, 2019).

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- 14 Art. 10 on Freedom of Expression, which contains explicit limitations in section 10,2.
- 15 See https://www.lexilogos.com/declaration/droits_homme_1789.htm (accessed on July 30, 2019).
- 16 Law 90-615 of 13 July 1990.
- 17 See <https://web.archive.org/web/20081220175814/http://www2.ohchr.org/english/law/ccpr-one.htm> (accessed on July 30, 2019) and <http://hrlibrary.umn.edu/undocs/html/VWS55058.htm> (accessed on July 30, 2019). The United States has famously made reservations to Art. 19 and Art. 20.2 (pertaining to “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”) by referring to its First Amendment free speech protections (see <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx> and <http://indicators.ohchr.org>) (accessed on July 30, 2019).
- 18 See <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000801164> (accessed July 18, 2019).
- 19 See <https://www.csa.fr> (accessed on July 30, 2019).
- 20 This is the same as in the REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 April 2016 (“GDPR”) Art 83,5. See <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=EN> (accessed on July 30, 2019).
- 21 Emergency Decree of 14 November 2015 (Décret n° 2015-1475) ; see <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000031473404&categorieLien=id> (accessed on July 30, 2019).
- 22 This obligation of sharing identifying data of authors of Hate Speech should be seen in conjunction with the agreement reached by the French Government and Facebook on June 25 on sharing of IP addresses which are only accessible to Facebook in the US and therefore subject to a formalistic and lengthy Mutual Legal Assistance Request since France and the EU have not enacted e-evidence regulations similar to the Cloud Act (https://www.congress.gov/bill/115th-congress/senate-bill/2383/t_ext). The agreement with Facebook requires a court order, but it does not apply to other platforms/search engines and is not legally binding. Furthermore, it only applies to Facebook and only in France. It is not clear what the precise obligations are in terms of proof of identity. It may be argued that the concept of “Inextricably linked” entities as developed by the European Court of Justice in its famous ruling on the Right to be Forgotten (13.5.2014, C-131/12) (https://eur-lex.europa.eu/legal-content/fr/TXT/PDF/?uri=uriserv%3A0J.C_.2014.212.01.0004.01.FRA already allows a members state to enjoin under daily penalties local subsidiaries or branches to submit such evidence. In the Right to be Forgotten case Google Spain was deemed to be inextricably linked to Google, Inc. in such a way that processing took place on EU territory. This led to the judgment of September 16, 2014 before the TGI in Paris, where daily penalties were levied against the local French Google subsidiary until the impugned content was dereferenced by Google Inc. A European version of the Cloud Act might in other words already be available.
- 23 This function should not to be confused with the “Data Protection Officer” created by the GDPR, Art 37.
- 24 See http://www.assemblee-nationale.fr/dyn/15/dossiers/creation_taxe_services_numeriques . Loi n° 2019-759 du 24 juillet 2019 portant création d’une taxe sur les services numériques et modification de la trajectoire de baisse de l’impôt sur les sociétés (accessed on July 30, 2019).
- 25 PACA Session 2017 <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=23373&lang=EN>. This is based on the author’s report for UNESCO on Online Radicalization link and its “Content Qualification Assessment;” see https://en.unesco.org/sites/default/files/rapport_dan_shefet.pdf (see accessed on July 30, 2019).
- 26 The Bill does not in itself criminalize authors. It is deemed that there is already adequate legislation in place to that effect: Law of 29th of July, 1881 on Press Freedom and articles 222-33, 225-4-1, 225-5, 225-6, 227-23, 227-24 and 421-2-5 of the Penal Code. See <https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070719> (accessed on July 30, 2019).
- 27 The CSA is an independent public authority created by the law of January 17, 1989 to guarantee the exercise of broadcasting freedom. Its role is to regulate the various electronic media in France. It has broad responsibilities including monitoring compliance of pluralism of information, the allocation of frequencies to different operators as well as monitoring and ensuring that the content is lawful and child appropriate depending on the program.
- 28 Article 4. I. of the Bill. See <http://www.assemblee-nationale.fr/15/ta/ta0310.asp> (accessed July 18, 2019).
- 29 See <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000037847559&dateTexte=&categorieLien=id> (accessed on July 30, 2019).
- 30 See, « *Rapport fait au nom de la commission des lois constitutionnelles, de la législation et de l’administration générale de la république sur la proposition de loi, après engagement de la procédure accélérée, visant à lutter contre la haine sur internet* (2019), » at <http://www.assemblee-nationale.fr/15/pdf/rapports/r2062.pdf> (accessed July 18, 2019).
- 31 Judgement *n° 2004-496 DC of 10 June 2004*, *Loi pour la confiance dans l’économie numérique, cons. 9 and ECHR, 16 June 2015*, *Delfi AS v. Estonie n° 64569/09 and 2 February 2016*, *Index.hu vs. Hungaria*, n° 22947/13 and The German Federal Court (Bundesgerichtshof) which has delivered several rulings since 2004 under the Art 10 of the TMG (Telemedia Act), which implements the e-Commerce Directive. The German Federal Court does not apply Art. 14 I e-Commerce-Directive / § 10 TMG to court rulings regarding the take down or prevention of content (argument is Art. 14 III e-Commerce-Directive), that’s why, at practical level, Art. 14 I never really plays a decisive role in German decisions (except if plaintiffs demand damages). The German Federal Court reasoning is interesting because it is not based on Art. 14 I of the e-Commerce Directive, but on general principles of tort law).
- 32 See « *Rapport fait au nom de la commission des lois constitutionnelles, de la législation et de l’administration générale de la république sur la proposition de loi, après engagement de la procédure accélérée, visant à lutter contre la haine sur internet* (2019), » at <http://www.assemblee-nationale.fr/15/pdf/rapports/r2062.pdf> (accessed on July 18, 2019).
- 33 *Netzwerkdurchsetzungsgesetz (Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken – NetzDG) Gesetz vom 01.09.2017 - Bundesgesetzblatt Teil I 2017 Nr. 61 07.09.2017 S. 3352*

- 34 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1808&from=EN> and <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02010L0013-20181218&from=EN>) [Accessed on 30 July 2019].
Directive (EU) 2018/1808 of the European Parliament and of the Council of November 14, 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities, article 28. See <https://eur-lex.europa.eu/eli/dir/2018/1808/oj> (accessed July 18, 2019).
- 35 Under the country of destination model, blocking is only permitted for reasons of national security or public order.
- 36 Proposal for a Regulation of the European Parliament and the Council on preventing the dissemination of terrorist content online (2018/0331 (COD)).
- 37 See <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000037284450&categorieLien=id> (accessed July 18, 2019).
- 38 See *Facebook, YouTube, Twitter and Microsoft sign EU hate speech code* (2016) The Guardian, at <https://www.theguardian.com/technology/2016/may/31/facebook-youtube-twitter-microsoft-eu-hate-speech-code> (accessed July 18, 2019).
- 39 See https://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=54300 (accessed on July 30, 2019).
- 40 See « *Rapport fait au nom de la commission des lois constitutionnelles, de la législation et de l'administration générale de la république sur la proposition de loi, après engagement de la procédure accélérée, visant à lutter contre la haine sur internet* (2019), » at: <http://www.assemblee-nationale.fr/15/pdf/rapports/r2062.pdf> (accessed July 18, 2019).
- 41 Article 3 of the Bill. See <http://www.assemblee-nationale.fr/15/ta/ta0310.asp> (accessed July 18, 2019).
- 42 See the recommendation of the Advocate General at : http://curia.europa.eu/juris/document/document_print.jsf?docid=209688&text=&doclang=FR&pageIndex=0&cid=142441; see the European Court of Justice judgment at: (http://curia.europa.eu/juris/document/document_print.jsf?docid=218105&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=142643)
- 43 See <https://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/194000532.pdf> (accessed July 18, 2019).
- 44 MORRISON et al. vs. NATIONAL AUSTRALIA BANK LTD. et al. No. 08–1191. Argued March 29, 2010—Decided June 24, 2010; see <https://www.supremecourt.gov/opinions/09pdf/08-1191.pdf> (accessed on July 30, 2019).
- 45 In accordance with The Lotus case (1927/09/07) ; see https://web.archive.org/web/20101210073754/http://www.worldcourts.com/pcij/eng/decisions/1927/1927.09.07_lotus.htm (accessed on July 30, 2019).
- 46 See Article 6 of the Bill at <http://www.assemblee-nationale.fr/15/ta/ta0310.asp> (accessed July 18, 2019).
- 47 See <http://curia.europa.eu/juris/document/document.jsf?text=&docid=214686&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=3836854> (accessed on July 30, 2019).
- 48 See *Facebook may be ordered to remove duplicates of illegal posts worldwide: EU court adviser* (2019) Reuters, at <https://www.reuters.com/article/us-eu-facebook-court/facebook-may-be-ordered-to-remove-duplicates-of-illegal-posts-worldwide-eu-court-adviser-idUSKCN1T50TU> (accessed July 18, 2019).
- 49 See Article 1. I. 1° of the Bill at <http://www.assemblee-nationale.fr/15/ta/ta0310.asp> (accessed July 18, 2019).
- 50 See <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000037847559&fastPos=7&fastReqId=1212770195&categorieLien=id&oldAction=rechTexte> (accessed July 18, 2019).
- 51 Article 1(2) amending Article 163-2 of the Electoral Code.
- 52 See *Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken* (2017), at <https://germanlawarchive.iuscomp.org/?p=1245> (accessed July 18, 2019).
- 53 See *Loi n° 2019-222 du 23 mars 2019 de programmation 2018-2022 et de réforme pour la justice* (2019), at https://www.legifrance.gouv.fr/affichTexte.do?sessionid=5D4DC92D68EBFEE5013FF212C0D36CD.tplgfr30s_2?cidTexte=JORFTEXT000038261631&categorieLien=id (accessed July 18, 2019).
- 54 “Creating a French Framework to Make Social Media Platforms More Accountable: Acting in France with a European Vision,” Interim Mission Report submitted to the French Secretary of State for Digital Affairs (May 2019). See https://www.numerique.gouv.fr/uploads/Regulation-of-social-networks_Mission-report_ENG.pdf (accessed on July 30, 2019).