

THE TECHNOLOGY,
MEDIA AND
TELECOMMUNICATIONS
REVIEW

TWELFTH EDITION

Editor
Matthew T Murchison

THE LAWREVIEWS

THE

TECHNOLOGY, MEDIA AND TELECOMMUNICATIONS REVIEW

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This article was first published in December 2021

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Published in the United Kingdom

by Law Business Research Ltd, London

Meridian House, 34–35 Farringdon Street, London, EC4A 4HL, UK

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Enquiries concerning editorial content should be directed
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ISBN 978-1-83862-834-5

Printed in Great Britain by

Encompass Print Solutions, Derbyshire

Tel: 0844 2480 112

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

ANANTLAW

BAGUS ENRICO AND PARTNERS

BAKER MCKENZIE

CEDAR WHITE BRADLEY

CLEARY GOTTlieb STEEN & HAMILTON LLP

CMS RUSSIA

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PREFACE

This volume marks the 12th edition of *The Technology, Media and Telecommunications Review*, which has been fully updated to provide an overview of evolving legal and policy activity in this arena across 25 jurisdictions around the world. This publication continues to occupy a unique space in the literature on TMT issues. Rather than serving a traditional legal treatise, this Review aims to provide a practical, business-focused survey of these issues, along with insights into how this legal and policy landscape in the TMT arena continues to evolve from year to year.

In 2021, the ongoing covid-19 pandemic has continued to loom large over legal and policy developments in this sector. As the threat of infection has continued to affect how we live, work and interact, the importance of connectivity has never been greater or more obvious. For many businesses, remote working has been the rule rather than the exception since March 2020, and may well persist in some form well after the pandemic is over. Many schools switched to distance learning formats during the pandemic. Tele-health is on the rise as doctors check in on patients via videoconference. Even tasks as mundane as grocery shopping have shifted online. And broadband connectivity, where available, has made it all possible.

The experience of covid-19 has, in turn, continued to reshape policymakers' understanding of the TMT arena. The shift to remote working and distance learning has stress-tested broadband networks across the world – providing a 'natural experiment' for determining whether existing policies have yielded robust systems capable of handling substantial increases in internet traffic. At the same time, the pandemic has prompted new initiatives to ensure, improve and expand broadband connectivity for consumers going forward. In various jurisdictions, policymakers are moving forward with subsidy programmes and other efforts to spur the deployment of advanced networks more deeply into unserved and underserved areas. Regulators also have taken steps to preserve internet access where it already exists, including by exploring mandates prohibiting disconnection of customers or requiring certain rates for low-income consumers – measures that, where adopted, sometimes have sparked fresh legal challenges and policy debates over the relative merits of government intervention and market-based solutions.

New technologies likewise have required new approaches and perspectives of policymakers. A notable example is the ongoing deployment of 5G wireless networks, as regulators continue to look for ways to facilitate such deployment. These initiatives take a variety of forms, and frequently include efforts to free up more spectrum resources, including by adopting new rules for sharing spectrum and by reallocating spectrum from one use to another. Multiple jurisdictions have continued to auction off wireless licences in bands newly designated for 5G deployment, capitalising on service providers' strong demand for

expanded access for spectrum. The planned deployment of new satellite broadband services, including multiple large satellite constellations in low-earth orbit, also continues to be a focus of regulatory interest across the world.

Meanwhile, long-running policy battles over the delivery of content over broadband networks continue to simmer in various jurisdictions, and new fronts have opened on related issues involving the content moderation policies of social media companies and other online platforms. Policymakers continue to grapple with questions about network neutrality, the principle being that consumers should benefit from an ‘open internet’ where bits are transmitted in a non-discriminatory manner, without regard for their source, ownership or destination. While the basic principle has been around for well over a decade, unresolved issues remain, including whether newer kinds of network management practices implicate such concerns, and whether efforts to promote a healthy internet ecosystem are best served by light-touch, market-based regimes or by more intrusive government interventions. In the United States, the light-touch approach reinstated in 2018 seems fairly certain to be revisited at the federal level, and certain states are continuing to claim an ability to impose their own restrictions on internet service providers. Regulators around the world have begun taking more aggressive enforcement action against internet service providers’ zero rating plans, which exempt certain data from counting against a customer’s usage allowance. Regulators in Asia are grappling with similar policy questions. In addition, these neutrality principles, usually debated in the context of broadband networks, are now spilling over to the content side, where social media companies are facing increased scrutiny over claims of discriminatory practices in moderating content appearing on their platforms. Indeed, some jurisdictions are considering measures that not only would rescind immunities these platforms have traditionally enjoyed for their content moderation practices, but also would require increased transparency and potentially even impose anti-discrimination mandates or other consumer protections. In short, while the balance of power between broadband network operators and online content providers historically has turned on the degree of regulation of the former, both sides’ practices are now very much in the spotlight.

The following country-specific chapters describe these and other developments in the TMT arena, including updates on privacy and data security, regulation of traditional video and voice services, and media ownership. On the issue of foreign ownership in particular, communications policymakers have increasingly incorporated national security considerations into their decision-making.

Thanks to all of our contributors for their insightful contributions to this publication. I hope readers will find this 12th edition of *The Technology, Media and Telecommunications Review* as helpful as I have found this publication each year.

Matthew T Murchison

Latham & Watkins LLP

Washington, DC

November 2021

FRANCE

*Myria Saarinen and Jean-Luc Juhan*¹

I OVERVIEW

The French regulatory framework is based on the historical distinction between telecoms and postal activities on the one hand, and radio and television activities on the other (the two sectors are still governed by separate legislation and by separate regulators). Amendments in the past 20 years reflect the progress and the convergence of electronic communications, media and technologies, and the privatisation of the TMT sectors caused by the de facto competition between fixed telephony (a monopoly until 1998) and new technologies of terrestrial, satellite and internet networks. French law also mirrors the EU regulatory framework through the transposition of the three EU Telecoms Packages from 1996, 2002 and 2009 into French law. The latest reform of the Telecoms Package in 2018, which resulted in the adoption of the European Electronic Communications Code (EECC) and which amended and replaced the main directives that made up the Telecom Package, was only transposed into national law on 26 May 2021.² As for the audiovisual sector, the Audiovisual Media Services Directive (AMSD) was finally transposed into national law on 21 December 2020.³

The TMT sectors in France have been fully open to competition since 1 January 1998, and are characterised by the interactions of mandatory provisions originating from various sources and the involvement of a diversity of actors (regulators, telecoms operators, and local,

1 Myria Saarinen and Jean-Luc Juhan are partners at Latham & Watkins. This chapter was written with contributions from associate Alex Park.

2 Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast) Text with EEA relevance; Law No. 2020-1508 of 3 December 2020 containing various provisions for the adaptation to the European Union law in economic and financial matters; Order No. 2021-650 of 26 May 2021 regarding the transposition of Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code and relating to the measures adapting the powers of the Electronic Communications, Postal and Print media distribution Regulatory Authority.

3 Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 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; Law No. 2020-1508 of December 2020 supra; Order No. 2020-1642 of 21 December 2021 regarding the transposition of Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 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 in view of changing market realities, and amending Law of 30 September 1986 of Freedom to Communicate, the Code of Cinema and Moving Image, and the time limits related to the exploitation of cinematographic works.

regional and national authorities). France's TMT sectors are key to the French economy, and 2020 was once again an important year in many respects for these sectors, in particular due to the evolution of European regulatory regimes and their transposition into national law.

II REGULATION

i The regulators

The regulation of the TMT sectors in France is characterised by the large number of regulatory authorities:

The Electronic Communications, Postal and Print media distribution Regulatory Authority (Arcep) is an independent government agency that oversees the electronic communications and postal services sector. It ensures the implementation of universal services, imposes requirements on operators exerting a significant influence on the market, participates in defining the regulatory framework, allocates finite resources (radio spectrum and numbers), imposes sanctions, resolves disputes and delivers authorisations for postal activities.

The Superior Audiovisual Council (CSA) is the regulatory authority responsible for the audiovisual sector. The CSA sets rules on broadcasting content and allocates frequencies by granting licences to radio and television operators. It also settles disputes that may arise between TV channels and their distributors, and is empowered to impose sanctions on operators in cases of regulatory breach. The national implementation of the AMSD expanded the competence of the CSA to on-demand video platforms and endowed it with a mission to cooperate with other European Authorities, especially regarding competence over service providers.⁴

The High Authority for the Distribution of Works and the Protection of Copyright on the Internet (Hadopi) is in charge of protecting intellectual property rights over works of art and literature on the internet. An audiovisual reform including the merger of the CSA with the Hadopi is currently being debated before the Parliament.⁵

The Data Protection Authority (CNIL) and the French Competition Authority (FCA) also exert a significant influence on the sector.

These authorities may deliver opinions upon request by the government, Parliament or other independent administrative authorities and, with the exception of Hadopi, also publish recommendations or guidelines that may have a structural impact on these sectors. Finally, the National Frequency Agency (ANFR) is also an important agency in charge of spectrum management and allocation as well as supervision of radio frequency equipment (see Section IV). Unlike the other authorities in the TMT sectors, the ANFR does not have a consultative mission.

ii Main sources of law

The main pieces of legislation setting out the regulatory regimes for the TMT sectors are the following:

- a the prevailing regulatory regime in France regarding electronic communications, which is contained primarily in the Post and Electronic Communications Code (CPCE);

4 Order No. 2020-1642 of 21 December 2021 *supra*.

5 Bill MICE2106504L relating to the regulation and protection of access to cultural works in the digital age.

- b audiovisual communications are governed by Law No. 86-1067 of 30 September 1986 on Freedom to Communicate, as subsequently amended; and
- c the main legislation governing the law applicable to data protection is the EU General Data Protection Regulation (GDPR)⁶ and Law No. 78-17 of 6 January 1978 on Information Technology, Data Files and Civil Liberties (1978 Data Protection Law), as subsequently amended, which supplements or derogates from the GDPR.

Finally, intellectual property rights and related aspects are governed by the Intellectual Property Code.

iii Regulated activities

Telecoms

Telecoms activities and related authorisations and licences are regulated under the CPCE.

No specific licences or authorisations are required to become a telecoms operator. Public networks and electronic communication services to the public can be freely established and provided, as long as the operators comply with the relevant regulatory obligations regarding, for example, security, confidentiality, interconnection and interoperability.⁷ Prior requirements regarding declarations to Arcep have been abrogated with the national transposition of the EEC, although the substantive regulatory obligations remain for the most part unchanged.

The use of radio spectrum, however, requires a licence granted by Arcep.⁸ Such licences must be granted according to objective, transparent and non-discriminatory criteria, and may only be refused for an enumerated list of limited reasons such as national security, effective competition, and lack of technical or financial capacities of the requester.⁹

Media

Authorisations and licensing in the media sector are regulated under Law No. 86-1067 of 30 September 1986 on Freedom to Communicate.

Authorisations for terrestrial television and radio broadcasting are granted by the CSA following bid tenders and subject to the conclusion of an agreement with the CSA, at the exception of the public national providers, France Télévisions and Radio France.¹⁰ The term of authorisations cannot exceed 10 years in principle, but is subject to extensions and various derogations.¹¹ Broadcasting services that are not subject to the CSA's authorisation – namely, those that are broadcast or distributed through a network that does not use frequencies allocated by the CSA (cable, satellite, asymmetric digital subscriber line (ADSL), internet, telephony, etc.) – must nevertheless conclude a standard agreement or file a prior declaration with the CSA.¹²

6 Regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

7 Articles L32-1 and L33-1 of the French Post and Electronic Communications Code.

8 Article L42-1 of the French Post and Electronic Communications Code.

9 *ibid.*

10 Article 28 of Law No. 86-1067 of 30 September 1986.

11 See Articles 28 to 32 of Law No. 86-1067 of 30 September 1986, which determine the CSA's radio spectrum allocation procedures.

12 Articles 33 to 34-5 of Law No. 86-1067 of 30 September 1986.

iv Ownership and market access restrictions

General regulation of foreign investment

Since the entry into force of Law No. 2004-669 of 9 July 2004, discrimination of non-EU operators is prohibited, and they are subject to the same rights and obligations as EU and national operators.¹³ However, according to Article L151-1 et seq. of the French Monetary and Financial Code, foreign (EU or non-EU) investment in strategic sectors (such as security, public defence, cryptography or interception of correspondence)¹⁴ is subject to a prior authorisation by the French Ministry of Economy. Any transaction concluded without prior authorisation is null and void,¹⁵ and criminal sanctions including imprisonment of up to five years, and a fine of up to twice the amount of the transaction, 10 per cent of the annual turnover of the entity exercising the activities in said strategic sectors or €5 million – whichever is highest – are also applicable.¹⁶ Sectors subject to prior authorisation have been steadily expanding over the past few years and today include online general press services as well as the operation of electronic communications networks and services.¹⁷

Specific ownership restrictions applicable to the media sector

French regulations impose media ownership restrictions to preserve media pluralism and competition. Any single individual or legal entity cannot hold, directly or indirectly, more than 49 per cent of the capital or the voting rights of a company that has an authorisation to provide a national terrestrial television broadcasting service where the average audience for television services (either digital or analogue) exceeds 8 per cent of the total audience for television services.¹⁸ In addition, any single individual or legal entity that already holds an authorisation to provide a national terrestrial television service of which the average audience exceeds 8 per cent of the total audience for television services may not, directly or indirectly, hold more than 33 per cent of the capital or voting rights of a company that has an authorisation to provide a local terrestrial television service.¹⁹ Finally, no single individual or legal entity may hold two authorisations relating to national terrestrial television services.²⁰

Regulation of the media sector has been evolving in reaction to increased investment by large industrial and financial groups into the media sector. For example, Law No. 2016-1524 of 14 November 2016 introduced a requirement that media outlets provide yearly information on their capital ownership and governing bodies,²¹ and reinforced the powers of the CSA over French media governance through the imposition of an obligation

13 Article L33-1 III of the French Post and Electronic Communications Code.

14 Article R151-3 of the French Monetary and Financial Code.

15 Article L151-4 of the French Monetary and Financial Code.

16 Article L165-1 of the French Monetary and Financial Code.

17 Article R151-3 of the French Monetary and Financial Code.

18 Article 39-I of Law No. 86-1067 of 30 September 1986.

19 Article 39-III of Law No. 86-1067 of 30 September 1986.

20 Article 41 of Law No. 86-1067 of 30 September 1986.

21 Article 6 of Law No. 86-897 of 1 August 1986 as amended by Article 19 of Law No. 2016-1524 of 14 November 2016.

to create committees relating to the honesty, independence and pluralism of information and programmes to all entities responsible for generalised national radio services and terrestrial television broadcasters providing general press services.²²

Regarding the radio sector, a single person may not retain networks of which the coverage exceeds 150 million inhabitants or 20 per cent of the aggregated potential audience.²³

Unless otherwise agreed in international agreements to which France is a party, a foreign national may not acquire shares in a company holding a licence for a terrestrial radio or television service in France if this acquisition has the effect of directly or indirectly raising the share of capital or voting rights owned by foreign nationals to more than 20 per cent.²⁴ In addition, such licence may not be granted to a company of which more than 20 per cent of the share capital or voting rights is directly or indirectly owned by foreign nationals.²⁵ These provisions do not apply to service providers of which at least 80 per cent of the capital or voting rights is held by public radio broadcasters belonging to Council of Europe Member States, and of which at least 20 per cent is owned by either Radio France or France Télévisions.²⁶ Specific rules restricting cross-media ownership also apply, prohibiting the concentration of ownership across terrestrial radio, television broadcasting services and general printed press services.²⁷

v Transfers of control and assignments

The general French merger control framework applies to the TMT sectors, without prejudice to the above-mentioned ownership restrictions specific to the media sector. Merger control rules are enforced by the FCA.

Regarding the telecoms and post sectors, the FCA must provide Arcep with any referrals regarding merger control, and Arcep can issue a non-binding opinion.²⁸ Companies active in radio or TV are subject to merger control procedures before the FCA, in addition to a non-binding opinion from the CSA.²⁹

Finally, any modification of the capital of companies authorised by the CSA to broadcast TV or radio services on a frequency is subject to the approval of the CSA.³⁰

III TELECOMMUNICATIONS AND INTERNET ACCESS

i Internet and internet protocol regulation

Under the CPCE, electronic communications services (ECSs) other than public voice telephony may be provided freely.³¹

22 Article 30-8 of Law No. 86-1067 of 30 September 1986 as amended by Article 11 of Law No. 2016-1524 of 14 November 2016.

23 Article 41 of Law No. 86-1067 of 30 September 1986.

24 Article 40 of Law No. 86-1067 of 30 September 1986.

25 *ibid.*

26 *ibid.*

27 Articles 41-1 to 41-2-1 of Law No. 86-1067 of 30 September 1986.

28 Article L36-10 of the French Post and Electronic Communications Code.

29 Article 41-4 of Law No. 86-1067 of 30 September 1986.

30 Article 42-3 of Law No. 86-1067 of 30 September 1986.

31 Article L32-1 of the French Post and Electronic Communications Code.

Digital subscriber line networks are subject to asymmetrical regulation. Regarding ADSL networks, alternative operators must be provided with direct access to the copper pair infrastructure of France Télécom-Orange, the historical operator, following local loop unbundling.

Internet service providers (ISPs) can operate freely, but must file a prior declaration with Arcep.³² A failure to comply with this obligation constitutes a criminal offence.³³

More generally, ISPs must comply with the provisions of Law No. 2004-575 of 21 June 2004 on Confidence in the Digital Economy governing e-commerce, encryption and liability of technical service providers, as subsequently amended. A liability exemption regime for hosting service providers is also set out by the Law expressly excluding a general obligation to monitor the information they transmit or store or the obligation to look for facts or circumstances indicating illicit activity. Nevertheless, knowledge that obviously illicit content is stored will trigger the obligation to remove or render inaccessible such content. In that respect, the question of the qualification as a hosting service provider has been widely debated before French courts.³⁴ A hosting service provider will benefit from the liability exemption regime if its role is limited to a purely technical, neutral and passive service (e.g., structuring and classifying the content made available to the public to facilitate the use of its service). However, if it plays an active role providing it with knowledge or control of content (e.g., determining or verifying the content published, broadcast or uploaded), the provider will qualify as a website publisher and would be fully liable for any unlawful or harmful content

32 Article L33-1 of the French Post and Electronic Communications Code.

33 Article L39 of the French Post and Electronic Communications Code.

34 This issue now seems resolved regarding video-sharing sites: see, for instance, the judgment of the French Supreme Court (Cass., Civ. 1ère, 17 February 2011, No. 09-67896, *Joyeux Noël*) in which the Supreme Court recognised a simple hosting status for Dailymotion. The Supreme Court ruled that host websites did not have to control *a priori* the content they host but need to ensure the content is not accessible once it has been reported as illegal (Cass., Civ. 1ère, 12 July 2012, No. 11-15165 and No. 11-15188, *Google and Aufeminin.com*). This issue is still to be debated with respect to online marketplaces such as eBay from which it follows that French courts, which are favouring a very factual analysis of the role of the services provider, will give significant importance to judges' discretion. In that respect, see Cass., Com., 3 May 2012, No. 11-10.507, *Christian Dior Couture*, No. 11-10.505, *Louis Vuitton Malletier* and No. 11-10.508, *Parfums Christian Dior*, in which the Supreme Court confirmed an earlier decision of the Paris Court of Appeals that did not consider eBay as a host provider and therefore refused to apply the liability exemption regime. See, in contrast, *Brocanteurs v. eBay*, Paris Court of Appeals, Pôle 5, ch 1, 4 April 2012, No. 10-00.878, in which second-hand and antique dealers accused eBay of encouraging illegal practices by providing individuals with the means to compete unfairly against professionals, and in which the Paris Court of Appeals considered eBay as a host provider able to benefit from the liability exemption regime. The Court of Appeals based its decision on the fact that eBay had no knowledge of or control over the adverts stored on its site. If the seller was asked to provide certain information, it was for the purpose of ensuring a more secure relationship between its users. The issue is also debated in the context of online forums. The Supreme Court ruled on 3 November 2015 that publishing directors are responsible for 'personal contribution spaces' from the moment they become aware of their content and must be held criminally liable for failing to take down defamatory comments (Cass., Crim., 3 November 2015, No. 13-82645).

published, broadcast or uploaded on its website.³⁵ An exception to the regime of non-liability has been introduced by the national implementation of the AMSD, expanding the scope of liabilities of online content sharing platforms.³⁶

ii Universal service

The EU framework for universal services obligations, which defines universal services as the ‘minimum set of services of specified quality to which all end users have access, at an affordable price in the light of specific national conditions, without distorting competition’,³⁷ has been implemented by Law No. 96-659 of 26 July 1996 and further strengthened by Law No. 2008-3 of 3 January 2008. Universal service is one of the three components of public service in the telecoms sector in France (the other two being the supply of mandatory services for electronic communications and general interest missions).

Obligations of the operator in charge of universal service are listed in Article L35-1 of the CPCE and fall into two main categories of services:

- a* telephone services: connection to an affordable public telephone network enabling end users to take charge of voice communications, facsimile communications and data communications at data rates that are sufficient to allow functional internet access and free emergency calls; and
- b* enquiry and directory services (either in printed or electronic versions).

The transposition of the EECC has extended the coverage of universal services to high-speed internet.³⁸

These services must be provided under strictly defined pricing and technical conditions taking into consideration difficulties faced by certain categories of users, such as low income populations, and provide equal access across geographical locations. Following calls for applications (one per category), the Minister in charge of electronic communications designates the operator or operators in charge of the universal service for a period of three years. France Télécom-Orange was designated as such until 2020.³⁹ Due to the significant changes brought by the implementation of the EECC into national law, the modalities for the provision of universal services are currently under consultation with the input of Arcep.⁴⁰

Arcep determines the cost of the universal service and the amount of the other operators’ contributions to the financing of universal service obligations (USOs) through a sectoral fund when the provision of USOs represents an excessive burden for the operator in charge. In principle, every operator contributes to the financing, with each contribution being calculated on the basis of the turnover achieved by the operator in its electronic communications activities.⁴¹

35 See judgment of the High Court of Paris, 4 December 2015, *Goyard St-Honoré v. LBC France*.

36 Order No. 2021-580 of 12 May 2021 transposing Articles 17 to 23 of the Directive on copyright and related rights in the digital age concerning the responsibility of large platforms for the content published by their users and the fair remuneration of authors and performers.

37 Article 1(2) of Directive No. 2002/22/EC.

38 Article L35-1 of the French Post and Electronic Communications Code.

39 See Ministerial Order of 27 November 2017 designating Orange (JORF No. 0282 of 3 December 2017).

40 Opinion No. 2020-1405 of Arcep of 1 December 2020 submitted according to the request of the government regarding universal service of electronic communications.

41 Article L35-3 of the French Post and Electronic Communications Code.

iii Restrictions on the provision of service

Net neutrality is a growing policy concern in France. From the electronic communications regulator's standpoint, which focuses on the technical and economic conditions of traffic conveyance on the internet, the key question is how much control internet stakeholders can rightfully exert over traffic. This implies examining operators' practices on their networks, as well as their relationships with some content and application providers.

The Digital Republic Law⁴² introduced the principle of net neutrality into the national legal framework and granted Arcep with new investigatory and sanctioning powers to ensure compliance.⁴³ In particular, Arcep is now in charge of implementing net neutrality in accordance with Regulation No. 2015/2120 of 25 November 2015 establishing measures concerning open internet access.⁴⁴ When Arcep identifies a risk of infringement by an operator, it can require said operator to comply ahead of time. The Digital Republic Law also reinforces the conditions under which the Minister in charge of electronic communications and Arcep can conduct an investigation.⁴⁵

Arcep has been taking a more active role regarding net neutrality since the adoption of the Digital Republic Law. For example, Arcep publishes an annual report on the state of the internet in France, identifying various threats that could undermine the internet's proper functioning and neutrality, and setting out the regulator's actions to contain these threats. The most recent issue addresses data interconnection, transition to internet protocol version 6 (IPv6),⁴⁶ the quality of fixed internet access, net neutrality, neutrality of terminals and the role of large digital platforms, and the environmental impact of networks.⁴⁷ The report for 2021 is yet to be published.

Pursuant to the Law of 21 June 2004, ISPs have a purely technical role regarding content and do not have a general obligation to review the content they transmit or store. Nevertheless, when informed of unlawful information or activity, they must take prompt action to withdraw the relevant content, failing which their civil liability may be sought.

Since 2009, Hadopi has been competent to address theft and piracy matters, intervening when requested to by regularly constituted bodies for professional defence that are entitled to institute legal proceedings to defend the interests entrusted to them under their statutes (e.g., Sacem, the Society of Authors, Composers and Publishers of Music) or by the public prosecutor. After several formal notices to an offender, the procedure may result in a €1,500 fine.⁴⁸

Finally, French e-consumers benefit from consumer law provisions and specific regulations. In particular, they are protected against certain unsolicited communications via email if their consent has not been obtained prior to the use of their personal data.⁴⁹ Moreover, consumers must be provided with effective means for requesting the cessation of

42 Law No. 2016-1321 of 7 October 2016 for a Digital Republic.

43 Articles 40 to 47 of Law No. 2016-1321 of 7 October 2016.

44 Article 40 of Law No. 2016-1321 of 7 October 2016.

45 Article 43 of Law No. 2016-1321 of 7 October 2016.

46 IPv6 is the most recent version of the Internet Protocol, the communications protocol that provides an identification and location system for computers on networks and routes traffic across the internet. IPv6 has been developed to deal with the issue of IPv4 address exhaustion, and is intended to replace IPv4.

47 2020 report: 'The state of internet in France', Arcep report, June 2020 (available at https://www.arcep.fr/uploads/tx_gspublication/rapport-etat-internet_edition-2020_250620.pdf).

48 See Articles L331-25, L336-3 and R335-5 of the French Intellectual Property Code.

49 See Article L34-5 of the French Post and Electronic Communications Code.

unsolicited communications.⁵⁰ In addition, Article L223-1 of the French Consumer Code provides for the implementation of an opposition list on which any consumer can add his or her name in order to refuse advertising material.⁵¹ All telephone operators also have the obligation to offer their users the possibility to register on an opposition list.⁵² With regard to phone-based advertising, the Bloctel service has been implemented since 1 June 2016 to prevent unsolicited communications to consumers registered on an opposition list.⁵³ A new prohibition regarding the blocking of access to online interface due to the user's geographic location or residence was adopted in December 2020.⁵⁴

iv Privacy and data security

Substantial changes to the legal framework regarding security in telecommunications have been made in the past few years.

Law No. 91-646 of 10 July 1991 concerning the secrecy of electronic communications, now codified in the Internal Security Code, provides that the Prime Minister may exceptionally authorise, for a maximum period of four months (renewable only upon a new decision), the interception of electronic communications in order to collect information relating to the defence of the nation or the safeguarding of elements that are key to France's scientific or economic capacity. In addition, pursuant to Law No. 2015-912 of 24 July 2015 (new Article L851-3 of the Internal Security Code) and only for the purpose of preventing terrorism, the Prime Minister may impose on providers of electronic communication services the obligation to implement an automated data-processing system for a maximum period of two months (renewable only upon a new decision) with the aim of detecting connections likely to reveal a terrorist threat. Article L851-2 of the Internal Security Code as amended by Law No. 2016-987 of 21 July 2016 provides that the administration is authorised, for prevention of terrorism, to collect real time connection data concerning pre-identified individuals likely to be connected to a terrorist threat.⁵⁵

Further, Law No. 2013-1168 on Military Programming introduced a new chapter in the Internal Security Code relating to administrative access to data connection, including real-time geolocation.⁵⁶ This regime, which entered into force on 1 January 2015,⁵⁷ authorises the collection of information or documents from operators as opposed to the collection of simply technical data without judicial control. Requests for implementing such measures are submitted by designated administrative agents to a 'chosen personality' appointed by the National Commission for the Control of Security Interceptions (CNCIS) upon the proposal

50 See Article L34-5 of the French Post and Electronic Communications Code.

51 See www.bloctel.gouv.fr.

52 The red list service ensures that contact information will not be mentioned on user lists. The orange list service ensures that contact information will not be communicated to corporate entities with the goal of advertisement. The contact information remains available on universal directories made available to the public.

53 See Ministerial Order of 25 February 2016 designating SA Opposetel (JORF No. 0050 of 28 February 2016).

54 Article L121-34 of the French Consumer Code.

55 Initially, this Article provided that the collection could be authorised against an individual's relatives. However, the Constitutional Council, in decision No. 2017-648 QPC of 4 August 2017, censored this provision because it infringes the balance between public security and right to privacy.

56 Article L246-1 et seq. of the French Internal Security Code introduced by Article 20 of Law No. 2013-1168.

57 Article 20 IV of Law No. 2013-1168.

of the Prime Minister. CNCIS is in charge of controlling (*a posteriori*) administrative agents' requests for using geolocation measures during the course of their investigations. The Minister for Internal Security, the Defence Minister and the Finance Minister can also issue direct requests for the implementation of real-time geolocation measures to the Prime Minister who, in this case, will directly grant authorisations.

Law No. 2014-1353 of 13 November 2014, implemented by Decree No. 2015-174 of 13 February 2015, also entitles the administrative authorities to request ISPs to prevent access to websites supporting terrorist ideologies or projects.⁵⁸ Additionally, laws linked to the state of emergency created extraordinary means of data search and seizure and expanded the provisions of Law No. 2014-1353.

In the context of the terrorism threat, the French legislator has amended the Criminal Proceedings Code to tackle organised crimes such as terrorism acts.⁵⁹ Law No. 2016-731 of 3 June 2016⁶⁰ allows police officers, with the authorisation and under the control of a judge, to access, remotely and without consent, correspondences stored in electronic communications available through identification.⁶¹ This Law and subsequent amendments also extended the existing investigating powers to include the real-time collection of computer data without consent, in the context of both preliminary investigations and investigations of flagrancy.⁶²

In addition to the general rules applicable to the protection of personal data laid down in the 1978 Data Protection Law, the CPCE provides specific rules pursuant to which operators must delete or preserve the anonymity of any traffic data relating to a communication as soon as it is complete.⁶³ Exceptions are provided, in particular for the prevention of terrorism and in the pursuit of criminal offences.

Unauthorised access to automated data-processing systems is prohibited by Articles 323-1 to 323-7 of the French Penal Code. In addition, with regard to cyberattacks, Law No. 2011-267 on Performance Guidance for the Police and Security Services (LOPPSI 2) introduced a new offence of online identity theft in Article 226-4-1 of the French Penal Code and empowers police officers, upon judicial authorisation and only for a limited period, to install software to observe, collect, record, save and transmit all the content displayed on a computer's screen. This facilitates the detection of infringements, the collection of evidence and the search for criminal activities by facilitating the creation of police files and

58 See Article 6-1 of Law No. 2004-575 of 21 June 2004 on Confidence in the Digital Economy as introduced by Article 12 of Law No. 2014-1353 of 13 November 2014 reinforcing regulations relating to the fight against terrorism.

59 However, the Constitutional Council has established boundaries in the fight against terrorism regarding infringements of the freedom of communication. In Decision No. 2016-611 QPC of 10 February 2017, the Council considered as unconstitutional Article 421-2-5-2 of the French Criminal Code introduced by Law No. 2016-731 of 3 June 2016, which punishes any person who frequently accesses online public communication services conveying messages, images or representations that directly encourage the commission of terrorist acts or defend these acts when this service has the purpose of showing images or representations of these acts that consist of voluntary harm to life.

60 Law No. 2016-731 of 3 June 2016 reinforcing the fight against organised crime and terrorism and their funding, and improving the efficiency and the protection of guarantees of criminal proceedings.

61 Articles 706-95-1 to 706-95-3 of the French Criminal Proceedings Code added by Article 2 of Law No. 2016-731 of 3 June 2016.

62 Article 706-102-1 of the French Criminal Proceedings Code.

63 See Articles L34-1 and D98-5 of the French Post and Electronic Communications Code.

coordination. The National Agency for the Security of Information Systems (ANSSI), a branch of the Secretariat-General for Defence and National Security created in 2009, is in charge of cybersecurity threats.⁶⁴

Moreover, LOPPSI 2 increases the instances where authorities may set up, transfer and record images on public roads, premises or facilities open to the public in order to protect the rights and freedom of individuals,⁶⁵ and recognises that the CNIL has jurisdiction over the control of video protection systems.⁶⁶

With regard to the detection of cyberattacks, Law No. 2018-607 of 13 July 2018⁶⁷ created Article L33-14 of the CPCE, which involves operators in the detection of cyberattacks. Pursuant to this Article, electronic communications operators are entitled to use technical markers such as IP addresses to detect or prevent any potential threat that may affect the security of information systems of their subscribers. If such a threat is detected, operators shall inform the ANSSI without delay.

With regard to the protection of children online, Article 45 of the 1978 Data Protection Law requires that clear information be provided to minors using terms that are adapted to their age. Adequate vigilance and warning systems shall also be implemented (e.g., awareness messages, age gates with reliable controls, possibility of parental supervision). Regarding consent, specific rules apply in France. The age of a child's consent in relation to the offer of information society services is 15 years old (whereas it is, by default, 16 years old under Article 8 of the GDPR). Children under 15 years old may only give their consent after being duly authorised to do so by the holder of parental rights. The lawfulness of the processing activity, therefore, requires a double consent: that of the minor as well as that of the holder of parental rights.⁶⁸ Additional protection regarding children's data has been added in relation to advertising: children's data collected through the technical processes put in place to ensure that harmful content does not reach children may never be used for advertising purposes, even after the concerned child reaches majority.⁶⁹

In terms of personal data protection, obligations were reinforced with the entry into application of the GDPR.⁷⁰ The CNIL published in 2018 a new guide on the security of personal data, recalling basic precautions to be implemented systematically and providing risk management methodologies.⁷¹

v The implementation of the Network and Information Security Directive

With regard to cybersecurity, the Network and Information Security Directive (NISD)⁷² was implemented into French law by Law No. 2018-133 of 26 February 2018 and Decree No. 2018-384 of 23 May 2018. This framework imposes an obligation in terms of security of network and information systems on two categories of entities: operators of essential services (OESs) and digital service providers (DSPs).

64 See Decree No. 2009-834 of 7 July 2009 as modified by Decree No. 2011-170 of 11 February 2011.

65 See Article L251-2 of the French Internal Security Code.

66 See Articles L253-2 and L. 253-3 of the French Internal Security Code.

67 Law No. 2018-607 of 13 July 2018, Military Planning Law 2019–2025.

68 Article 45 of Law 78-17 of 6 January 1978.

69 Article 15 of Law No. 86-1067 of 30 September 1986.

70 See Article 32 of the GDPR.

71 Available at <https://www.cnil.fr/en/new-guide-regarding-security-personal-data>.

72 Directive No. 2016/1148 of 6 July 2016.

The categories of services considered as essential services are listed in the appendix of Decree No. 2018-384 (e.g., payment services, insurance, services involving preventive medicine, diagnosis and healthcare, distribution of electricity and gas). The Prime Minister can designate operators as an OES if they provide at least one of the enumerated services.⁷³ The operator is notified of the Prime Minister's intent to designate it as an OES and can formulate observations.⁷⁴

DSPs are providers of cloud, online marketplace and search engine services normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services.⁷⁵

Nevertheless, the French implementing law excludes from its scope certain types of entities already subject to information system security regulations, such as operators for their activities related to the operation of electronic communications networks or the provision of ECSs and providers of trust services for electronic transactions subject to Article 19 of Regulation 910/2014 dated 23 July 2014.⁷⁶

Both OESs and DSPs shall appoint a representative in charge of the contact with the ANSSI.⁷⁷ For DSPs, this representative acts in the name of the provider regarding compliance with its obligations set forth in the NSID framework.⁷⁸ DSPs shall keep an updated list of all networks and information systems necessary for the provision of their services within the European Union.⁷⁹

OESs must comply with security measures defined in the Order of 14 September 2018 adopted for its implementation.⁸⁰ DSPs shall ensure, based on the state of the art, a level of security for all networks and information systems necessary for the provision of their services within the European Union appropriate to the existing risks.⁸¹ DSPs shall refer to Article 2 of the Commission Implementing Regulation of 30 January 2018 for the security measures that should be implemented.⁸² Documents attesting to this implementation should be made available to the ANSSI in cases of control.⁸³

Both OESs and DSPs shall report to the ANSSI, without delay, if they become aware of any incident affecting networks and information systems that has or is likely to have a significant impact on the continuity of services.⁸⁴

Non-compliance with the obligations set forth in the NSID framework may be sanctioned with criminal fines ranging from €75,000 to €125,000 for OESs⁸⁵ and from €50,000 to €100,000 for DSPs.⁸⁶

73 Article 3 of Decree No. 2018-384 of 23 May 2018.

74 Article 3 of Decree No. 2018-384 of 23 May 2018.

75 Article 10 of Law No. 2018-133 of 26 February 2018.

76 Article 2 of Law No. 2018-133 of 26 February 2018.

77 Articles 5 and 16 of Decree No. 2018-384 of 23 May 2018.

78 Article 16 of Decree No. 2018-384 of 23 May 2018.

79 Article 17 of Decree No. 2018-384 of 23 May 2018.

80 Article 10 of Decree No. 2018-384 of 23 May 2018.

81 Article 12 of Law No. 2018-133 of 26 February 2018.

82 Article 18 of Decree No. 2018-384 of 23 May 2018.

83 Article 19 of Decree No. 2018-384 of 23 May 2018.

84 Articles 7 and 13 of Law No. 2018-133; Articles 11, 12, 20 and 21 of Decree No. 2018-384 of 23 May 2018.

85 Article 9 of Law No. 2018-133 of 26 February 2018.

86 Article 15 of Law No. 2018-133 of 26 February 2018.

IV SPECTRUM POLICY

i Development

The management of the entire French radio frequency (RF) spectrum is entrusted to a state agency, the National Frequencies Agency. It apportions the available radio spectrum, the allocation of which is administered by governmental administrations (e.g., those of civil aviation, defence, space, the interior) and independent authorities (Arcep and the CSA) (see Section II).

ii Flexible spectrum use

The trend towards greater flexibility in spectrum use is facilitated in France by the ability of operators to trade frequency licences, as introduced by Law No. 2004-669 of 9 July 2004.⁸⁷

The general terms of spectrum licence trading are defined by Decree No. 2006-1016 of 11 August 2006, and the list of frequency bands the licences of which could be traded are laid down by a Ministerial Order of 11 August 2006. A frequency database that provides information regarding the terms for spectrum trading in the different frequency bands open in the secondary market is publicly accessible. A spectrum licence holder may transfer all of its rights and obligations to a third party for the entire remainder of the licence (full transfer) or only a portion of its rights and obligations contained in the licence (e.g., geographical region or frequencies). The transfer of frequency licences is subject either to the prior approval of or notification to Arcep, which may refuse such assignment.⁸⁸ Another option available for operators is spectrum leasing, whereby the licence holder makes frequencies fully or partially available for a third party to operate. Unlike in a sale, the original licence holder remains entirely responsible for complying with the obligations attached to the frequency licence. All frequency-leasing operations require the prior approval of Arcep.

iii Broadband and next-generation mobile spectrum use

Spectrum in the 800MHz and 2.6GHz bands was allocated for the deployment of the ultra-high-speed 4G mobile network: in that respect, licences for the 2.6GHz frequency were awarded to Bouygues Telecom, Free Mobile, Orange France and SFR in September 2011,⁸⁹ and in December 2011, licences for the 800MHz were awarded to the same operators, except Free Mobile,⁹⁰ which has instead been granted roaming rights in priority roll-out areas. New spectrum in the 700MHz and 800MHz bands was transferred in December 2015 to promote better network capacities in areas with low population density. The government launched a call for applications, to be sent before 2 October 2018, in order to reassign the 900MHz, 1,800MHz and 2.1GHz bands, which authorisations will expire between 2021 and 2024.⁹¹ As a result of an agreement reached between Arcep, the government and operators on 14 January 2018, the reassignment procedure will take into account operators' stated commitments to improve voice and data coverage in all territories, making regional development targets a priority.

87 Article L42-3 of the French Post and Electronic Communications Code.

88 Article R20-44-9-2 et seq. of the French Post and Electronic Communications Code.

89 Arcep, decision No. 2011-1080 of 22 September 2011.

90 Arcep, decision No. 2011-1510 of 22 December 2011.

91 See Arcep press release of 2 August 2018.

On 16 June 2017, Arcep authorised Bouygues Telecom and SFR to deploy 4G networks in the 2.1GHz band, historically used by French mobile operators' 3G networks, to improve 4G speeds.⁹²

Additionally, under Arcep supervision, 5G deployment began in November 2020. On 15 July 2019, Arcep launched a public consultation in connection with its draft procedure for awarding licences to use frequencies in the 3.5–3.8 GHz band, followed by the launch of the allocation procedure in late 2019.⁹³ As of April 2020, Bouygues Telecom, Free Mobile, Orange and SFR had qualified to participate in the auction for allocation of frequencies.⁹⁴ The auction for the award of 3.5–3.8 GHz band closed on 1 October 2020, and the band was allocated to the above-mentioned operators on 12 November 2020.⁹⁵ Commercial offers were launched starting in late November 2020, and 5G was available in more than 7,000 sites in France as of 15 December 2020.⁹⁶

iv Spectrum auctions and fees

Spectrum auctions in the case of scarce resources

Pursuant to Article L42-2 of the CPCE, when scarce resources such as RF are at stake, Arcep may decide to limit the number of licences, either through a call for applications or by auction. The government sets the terms and conditions governing the selection procedures, which to date have always been in the form of calls for applications.

Fees

Pursuant to Articles R20-31 to R20-44 of the CPCE, licensed operators contribute to the financing of the universal services.

V MEDIA

Media are, in particular, subject to certain content requirements and restrictions.

i Content requirements

At least 60 per cent of the audiovisual works and films broadcast by licensed television broadcasters must have been produced in the EU, and 40 per cent must have been produced originally in French.⁹⁷

Private radio broadcasters must, in principle, dedicate at least 40 per cent of their musical programmes to French music.⁹⁸

92 Arcep, decisions No. 2017-0734 (*Bouygues Telecom*) and No. 2017-0735 (*SFR*) of 13 June 2017.

93 See Arcep, press release of 2 April 2020.

94 See Arcep, press release of October 2020.

95 Arcep, 5G Frequencies: Procedure for the allocation of the 3,4 - 3,8GHz band in the metropole.

96 Arcep, Observatory of 5G deployment, 16 December 2020.

97 Articles 7 and 13 of Decree No. 90-66 of 17 January 1990.

98 Article 28 2° bis of Law No. 86-1067 of 30 September 1986.

In addition, pursuant to Law No. 2014-873 of 4 August 2014 for genuine equality between women and men, audiovisual programmes have the duty to ensure fair representation of both women and men. Furthermore, audiovisual programmes and radio broadcasters must combat sexism by broadcasting specific programmes in this respect.⁹⁹

Law No. 2018-1202 of 22 December 2018¹⁰⁰ with regard to fake news suggests several measures to limit the impact of false information during the public election process. For instance, Article 11 of the Law provides that certain operators of online platforms – in the context of public elections – should implement measures to combat the broadcasting of false information likely to disturb public order or alter polls' reliability. Operators must implement easily accessible and visible systems that will allow users to report such false information, including when they are financed by third parties. The CSA has been endowed with powers to control fake news, and its mission now includes controlling the diffusion of false information likely to impact public order or the reliability of public elections.¹⁰¹

Decree No. 2020-984 dated 5 August 2020 relaxed certain rules regarding the broadcast of films, increasing the maximum number of hours allotted per year.

ii Advertising

Advertising in television broadcasting is subject to strict regulations in France.¹⁰² In particular, advertising must not disrupt the integrity of a film or programme, with at least 20 minutes between two advertising slots. Films may not be interrupted by advertising that lasts more than six minutes.

Rules governing advertisements are stricter on public channels. In particular, since 2009, advertising is banned on public service broadcasting channels from 8pm to 6am. This prohibition does not, however, concern general interest messages, generic advertising (for the consumption of fruits, dairy products, etc.) or sponsorships.

In addition, some products are prohibited from being advertised, such as alcoholic beverages above a certain level of alcohol or tobacco products.

Media owners are also subject to transparency requirements in order to protect advertisers of digital advertisement. According to Article 2 of the Decree No. 2017-159 dated 9 February 2017, media owners have to provide advertisers with the date and place of diffusion of advertisements, the global price of advertising campaigns and the unitary price charged for each advertising space.

Decree No. 2020-983 dated 5 August 2020 introduced a relaxation of certain rules regarding publicity by authorising segmented advertisements and advertisements for the film industry on television.

Advertising on on-demand platforms is now officially under the control of the CSA, which can prohibit the modification of content for advertising purposes or the display of a publicity banner without the consent of users of services provided on such platforms.¹⁰³

99 Article 56 of Law No. 2014-873 of 4 August 2014.

100 Law No. 2018-1202 of 22 December 2018 regarding the fight against the manipulation of information.

101 Article 17-2 of Law No. 86-1067 of 30 September 1986.

102 Decree No. 92-280 of 27 March 1992.

103 Article 20-5 of Law No. 86-1067 of 30 September 1986.

iii Online representation of content

The Copyright Directive 2019/790 came into force on 7 June 2019. The Directive is part of a wider strategy to reform the laws relating to digital marketing, e-commerce and telecommunications to bring the EU into the digital age and achieve greater harmonisation of the laws governing these areas.

France became the first Member State to transpose Article 15 of the Copyright Directive through the Law of 24 July 2019, creating a neighbouring right to the benefit of press publishers and news agencies for the online reproduction and representation of their publications by an online communications service provider.¹⁰⁴ Under the new regime, online communications service providers must obtain an authorisation from publishers of online news services or news agencies before any reproduction or communication to the public of all or part of their press publications in a digital form.¹⁰⁵

Press publishers and news agencies shall be granted compensation by online communications service providers using all or part of a press publication based on the exploitation revenues of any kind, direct or indirect, of the said communications service provider and, if not possible, on a flat-rate basis.¹⁰⁶ The Law specifies that such compensation shall take into account quantitative and qualitative elements such as ‘human, material and financial investments made by publishers and news agencies’, as well as ‘the contribution of press publications to political and general information and the importance of the use of press publications by an online communication service to the public’.¹⁰⁷

A second round of national transposition of the Copyright Directive 2019/790 has extended the obligations applicable to online content providers.¹⁰⁸ Online content-sharing service providers¹⁰⁹ can now be held liable for content shared by their users without obtaining the authorisation of the author, and must exert best efforts to obtain the authorisation of the rights holders.¹¹⁰ Similar to the rights granted to press publishers and news agencies, authors and performers must now receive appropriate and proportionate compensation for the use of their works on such online content-sharing services.¹¹¹

iv On-demand services and video-sharing platforms

With the national implementation of the AMSD, on-demand audiovisual media services are now further regulated through national law. An Order dated 23 June 2021 specifies additional rules applicable to on-demand services.¹¹² New obligations imposed on on-demand video services now include, among others, the obligation to devote at least 20 per cent of their

104 Law No. 2019-775 of 24 July 2019.

105 Article L219-2 of the Intellectual Property Code.

106 Article L218-4 of the Intellectual Property Code.

107 *ibid.*

108 Order No. 2021-580 of 12 May 2021 transposing Articles 17 to 23 of the Directive on copyright and related rights in the digital age concerning the responsibility of large platforms for the content published by their users and the fair remuneration of authors and performers.

109 Defined under Article L. 137-1 of the Intellectual Property Code as ‘a person who provides an online public communication service, of which the main purpose or one of the main purposes is to store and provide public access to a significant quantity of works or other protected subject matter uploaded by its users, which the service provider organizes and promotes for direct or indirect profit’.

110 Articles 1-3, Order No. 2021-580 of 12 May 2021 *supra*.

111 Article 18, Order No. 2021-580 of 12 May 2021 *supra*.

112 Decree No. 2021-793, 22 June 2021.

revenue generated in France to the financing of European or French works, of which a certain proportion must be reserved for European, French and independent works; the obligation to include in their offers at least 60 per cent of European works, of which at least 40 per cent must be of French origin; and obligations regarding advertising which were formerly only applicable to television media.¹¹³

VI THE YEAR IN REVIEW

i The transposition of the EECC and the AMSD

The long-awaited national transposition of both the EECC and the AMSD has finally been completed.¹¹⁴ Major revisions required under the EECC, such as the regulation of over-the-top (OTT) services, new consumer protection obligations to be imposed on electronic communications providers, as well as those required under the AMSD, such as the regulation of online video platforms and the investigatory powers of the CSA, were adopted through orders rather than laws, with the exception of new obligations regarding the expansion of universal services to cover high-speed internet access and voice services according to the EECC. With the national transposition of the EECC and the AMSD into national law, on-demand services and video platforms are now further subject to media regulations under French law, as are OTT services through the French telecom regime.

ii Protection of online commercial exploitation of minors' images

On 19 October 2020, a new law regarding the commercial exploitation of the image of children under the age of 16 on online platforms was adopted.¹¹⁵ This law was adopted with the aim of protecting, in particular, 'child influencers' present on video platforms such as YouTube, TikTok and Instagram. The law extends the protections under the French Labour Code to children's activities on online platforms, and imposes an obligation on platforms to adopt a charter regarding the protection of minors. Children under the age of 16 will also be able to exercise the right to be forgotten without the consent of their parents.¹¹⁶

113 *ibid.*

114 Law No. 2020-1508 of 3 December 2020 containing various provisions for the adaptation to the European Union law in economic and financial matters; Order No. 2021-650 of 26 May 2021 regarding the transposition of Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code and relating to the measures adapting the powers of the Electronic Communications, Postal and Print Media Distribution Regulatory Authority; Order No. 2020-1642 of 21 December 2021 regarding the transposition of Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 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 in view of changing market realities, and amending Law of 30 September 1986 of Freedom to Communicate, the Code of Cinema and Moving Image, and the time limits related to the exploitation of cinematographic works.

115 Law No. 2020-1266 of 19 October 2020 aiming to regulate the commercial exploitation of the image of children under the age of 16 on online platforms.

116 *ibid.*, Articles 1, 5 and 6.

iii Additional data protection sanctions

The CNIL continues to act as an active regulatory authority. Following the publication of its new guidance and recommendations on cookies issued in September 2020, the CNIL has announced that compliance with cookie rules will be a focus area in 2021. In December 2020, The CNIL imposed fines on Google LLC and Google Ireland Limited that amounted to €100 million combined, and a €35 million fine on Amazon for non-compliance with cookie rules.¹¹⁷ The French retail giant Carrefour and its financial services arm, Carrefour Banque, were also hit by €2.25 million and €800,000 fines, respectively, for breach of various obligations under the GDPR as well as the cookie rules.¹¹⁸ Finally, *Le Figaro*, one of the leading French newspaper outlets, was also subject to a €50,000 fine for the placing of advertising cookies without the consent of users.¹¹⁹

v The implementation of Article 15 of the Copyright Directive under French law

The saga surrounding the implementation of Article 15 of the Copyright Directive under French law continues. As the national law did not prohibit the assignment of a licence free of cost, Google decided to withdraw longer displays of copyrighted content unless the rights holders agreed to give free authorisation. In April 2020, the FCA ordered Google to enter into good faith negotiations with publishers to decide on remuneration for the display of copyrighted content in Google News or Search.¹²⁰ Google lodged an appeal before the Paris Court of Appeal, which confirmed the FCA's order in a decision dated 8 October 2020.¹²¹ In July 2021, the FCA imposed a €500 million fine on Google for violation of the injunctions imposed by the FCA in April 2020, including the failure to negotiate in good faith with the publishers.¹²² As Google has announced that it will appeal the new fine imposed by the FCA, which it deems disproportionate, the Google/FCA saga appears to be far from over.¹²³

VII CONCLUSIONS AND OUTLOOK

With the national transposition of the EEC Directive and the AMSD finally adopted, and the unsettled questions surrounding the Digital Markets Act and the Digital Services Act remaining at the European Parliament, additional structural changes are expected in the French TMT regulatory framework in the year to come. How the new regulations will actually be enforced

117 CNIL decision No. SAN – 2020-012 of 7 December 2020 regarding Google LLC and Google Ireland Limited; CNIL decision No. SAN – 2020-013 of 7 December 2020 regarding Amazon Europe Core.

118 CNIL decision No. SAN – 2020-008 of 18 November 2020 regarding Carrefour France; CNIL decision No. SAN – 2020-009 of 18 November 2020 regarding Carrefour Banque.

119 CNIL decision No. SAN – 2021-013 of 27 July 2021 *Société du Figaro*.

120 FCA decision 20-MC-01 of 9 April 2020 on requests for interim measures by the *Syndicat des éditeurs de la presse magazine*, the Alliance de la presse d'information générale and others and Agence France-Presse.

121 Court of Appeal of Paris, RG20/08071, 8 October 2020.

122 FCA decision 21-D-17 of 12 July 2021 regarding the respect of injunctions issued against Google in its decision 20-MC-01 of 9 April 2020.

123 Reuters, 'Google appeals France's 'disproportionate' \$591 million fine in copyright row', 1 September 2021.

in practice, additional regulations regarding platforms and still-pending questions before the European Court of Justice regarding Article 17 of the Copyright Directive are only a few of the moving pieces that could have a considerable impact on the legal landscape. The reshuffling of regulatory authorities such as the CSA and the Hadopi and their expanding powers are other areas that should also be closely monitored.

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Myria Saarinen leads all data privacy matters for the French market, with specific expertise in data protection, including advising clients on their transborder data flows and complex negotiations with the French Data Protection Authority.

Myria Saarinen is also an active member of various data privacy working groups within the firm. She is a key member of the Latham data privacy global team, a member of the data privacy committee and former global co-chair of the technology industry group within the firm, and aims at unlocking the global platform around data protection issues globally.

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Mr Juhan is cited in *Chambers Europe* and *The Legal 500 Paris* as an 'exceptional' practitioner 'whose negotiating skills and expertise are remarkable', as 'very sharp and down-to-earth' and as having 'very good knowledge of the industry'. He advises high-profile French and international groups on large outsourcing, telecommunication and system integration projects.

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ISBN 978-1-83862-834-5