[FR] Liability of Hosts in the Act of 1 August 2000

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The Act of 1 August 2000 reforming the audiovisual sector (see report in this IRIS) inserts four articles concerning the Internet in the Act of 30 September 1986 (as amended) in Section 6 entitled "Provisions concerning on-line communication services other than private correspondence". The provisions were introduced during the parliamentary debate on the initiative of the member of parliament Patrick Bloche in reaction to recent case-law on the matter (cases involving Estelle Halliday and Lynda Lacoste; see IRIS 1999-5: 3 and IRIS 2000-1: 12), and have been much amended. The new Articles 43-9 and 43-10 of the Act of 30 September 1986 (as amended) introduce an obligation of identifying the originators of Internet sites, while Articles 43-7 and 43-8 deal with the liability of hosts.

Under Article 43-10, "persons whose activity consists of editing an on-line communication service other than private correspondence" must make known to the public their surname, first name and address if they are natural persons, or their title or company name and the address of their registered office if they are legal persons (companies). Professional editors must also give the name of the director of the publication and, if appropriate, the name of the person responsible for editorial content. In addition to this information, the name and address of the site host must also be given. Non-professional editors may preserve their anonymity by transferring all this information to the host, whose name and address will still be given on the site.

Article 43-9 of the Act extends this provision and requires hosts and access providers "to hold and retain data permitting the identification of any person who has contributed to the creation of the content of services that they provide". A decree, adopted in accordance with the opinion of the National Commission on Information Technology and Freedoms, will soon determine what data should be retained in this way, and for how long.

At the same time, the Act of 1 August 2000 defines the conditions that invoke the civil and criminal liability of hosts. Theoretically they cannot be held liable for the content of the sites they host, except "where, having been informed by the courts, they do not take prompt action to prevent access to such content". The text adopted by Parliament on 28 June originally included a second possible case of the liability of hosts, where "having been informed by a third party that the

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content they host is unlawful or prejudicial to that party, they do not take appropriate action". In its decision on 27 July, however, the Constitutional Council immediately removed this third sub-section from Article 43-8 of the new Act on the grounds that, by "omitting to state the form such notification should take and not stating the essential characteristics of the offending behaviour which would invoke, as appropriate, the criminal liability of those concerned", the legislator was failing to respect the principle of offences and punishments being strictly defined by law as required by Article 34 of the Constitution. In the end, only one ground for invoking the liability of hosts remains in the Act.

Although these provisions aim to address the growing amount of case-law on the question of the status and liability of Internet professionals, the question of the compatibility of this Act with the Directive on e-trading of 8 June nevertheless remains.

Loi n° 2000-719 du 1 août 2000 modifiant la loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication, JO du 2 août 2000, p. 11903 et suivantes.

Act no. 2000-719 of 1 August 2000 amending Act no. 86-1067 of 30 September 1986 on the freedom of communication, published in the Journal Officiel (official gazette) dated 2 August 2000, p. 11903 et seq.

Conseil constitutionnel, décision n° 2000-433 DC du 27 juillet 2000, JO du 2 août 2000, p. 11922 et suivantes.

Constitutional Council, Decision no. 2000-433 DC of 27 July 2000, published in the official gazette, dated 2 August 2000, p. 11922 et seq.

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