

[FR] Act on Confidence in the Digital Economy Adopted

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Article 1 of the Act on confidence in the digital economy, adopted by the Senate at its second reading on 8 April and examined by the Joint Committee on 27 April, creates a separate legal scheme applicable to Internet (see IRIS 2004-3: 8). The text lays down a number of definitions that establish Internet's place in French law relating to audiovisual communication. More particularly, the Act creates the notion of "communication to the public by electronic means", which refers to the making of signs, signals, documents, images, sounds or messages of any kind that do not have the characteristic features of private correspondence available to the public or to categories of the public by means of electronic communication. This notion is divided into two sub-groups

"audiovisual communication", covering any communication to the public of a radio or television service, and "on-line communication to the public", covering any transmission of digital data that does not have the characteristic features of private correspondence in response to an individual request, by means of a process of electronic communication allowing the mutual exchange of information between the sender and the receiver. These definitions indicate that the overall provisions covering audiovisual communication no longer apply to Internet.

Article 2 IV (a) of the Act, in the terms of an amendment included by a member of the Senate prior to the second reading, also creates a specific scheme for the prescription of infringements by the on-line press. Both public and civil action would now be out of time "after three full months, starting on the date on which the message likely to give rise to an action ceases to be available to the public", whereas previously, by virtue of Article 65 of the Act of 29 July 1881 and case-law of the Court of Cassation, the time period for prescription started on the date of publication, whatever the medium of the disputed message. However, the three-month prescription period starting from the date of publication "shall remain applicable (...) if the content is the same on the computerised medium and on paper". This provision has been severely criticised, as it discriminates against the on-line press and indeed has the result of virtually removing any time limit on prescription for on-line press offences. This is because disputed content may still remain on-line through search engines, masks, archive sites, etc even if its editor has deleted it on its own initiative.

Furthermore, any person referred to or named on an Internet site will now have the possibility of obtaining the inclusion of a right to reply by contacting the person responsible for the publication or in the case of editors of non-professional sites the host, for forwarding to the site's administrator within a period of three months starting on the date on which "the message justifying the application was made available to the public".

Lastly, concerning the responsibility of providers of technical Internet services, and in order to transpose the directive on e-commerce into national law as faithfully as possible, the bill as adopted by the Senate defines the host as the party ensuring storage of data at the request of the party for whom the service is intended. In Article 6, the text also provides that the host may incur civil and criminal liability as a result of the activities or the information stored at the request of a user of these services if the host was indeed aware of their unlawful nature or of facts and circumstances pointing to this or if, as soon as the host became aware of this, it did not take prompt action to withdraw the data or make it impossible to access. The service provider is deemed to be aware of the unlawful nature of content if it has been sent notification in accordance with procedure and in the form specified by law. This is not a new problem it is at the heart of much of the thinking on reconciling the right to freedom of communication with the protection of other rights and freedoms of equal constitutional value. On two occasions in 1996 and in 2000 the Constitutional Court banned the arrangements drawn up for this, on the grounds of violation of Article 34 of the Constitution, which empowers the legislator to lay down the rules concerning the fundamental guarantees granted to citizens for the exercise of public freedoms. Again on 18 May, 60 members of the lower house and 60 members of the upper house sent the entire Act on confidence in the digital economy, and more particularly its Articles 1, 2 and 6, to the Constitutional Council for examination.

