

[FR] ARCOM warns three pornographic websites to improve age verification mechanisms

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While a system for checking the age of users of public online communication services that provide access to pornographic content is currently being trialled in France, the *Autorité de régulation de la communication audiovisuelle et numérique* (French audiovisual regulator – ARCOM) noted on 3 April 2023 that the websites Heureporno and xHamsterLive simply required users to state that they were adults with a single click in order to access such content, while no age checks at all were carried out by the website Folieporno. The regulator pointed out that simply requiring users to state that they were adults did not prevent minors from accessing pornographic content on the sites concerned, as provided in the final paragraph of Article 227-24 of the Penal Code, according to which “the manufacture, transport, distribution by whatever means and however supported, of a message bearing a pornographic (...) character (...), or the trafficking in such a message, is punished by three years’ imprisonment and a fine of €75,000, where the message may be seen or perceived by a minor (...). The offences mentioned in this article are committed if a minor can access the messages described in the first paragraph by simply declaring that they are aged 18 years or over.”

Pursuant to Article 23 of the Law of 30 July 2020, since the pornographic content of the three sites could be accessed by minors, the ARCOM president, on 6 April 2023, sent a formal notice to the sites’ operators, ordering them to take all possible steps to comply with Article 227-24 of the Penal Code within 15 days. The recipients had 15 days in which to present their observations. If they failed to respond in time, ARCOM would be able to refer the matter to the president of the Paris judicial court with the request that, under the accelerated procedure, it should order Internet access providers to block access to the services concerned. It took this step in July 2022 with regard to the Pornhub, Tukif, Xhamster, Xnxx and Xvideos websites. The procedure is pending.

Rejecting a question regarding the constitutionality of the relevant law, the Court of Cassation recently ruled that the use of a system to verify the age of someone accessing online pornographic content that requires more than a simple age declaration conforms with the Constitution (Court of Cassation (1st civil chamber), 5 January 2023). Meanwhile, the *Conseil d’Etat* (Council of State) declared itself powerless to annul such a formal notice sent by ARCOM to the provider of a pornographic website asking it to make its content inaccessible to minors (Council

of State, 29 November 2022, no. 463163, Société MG Freesites Ltd).

Décision n° 2023-P-04 du 6 avril 2023 mettant en demeure la société Techpump Solutions S.L. en ce qui concerne le service de communication au public en ligne « Heureporno »

<https://www.legifrance.gouv.fr/download/pdf?id=EO8F3naMvkC4MEBDMjnuwo6UDiemeBPdGRbm-zc6GpM=>

Decision no. 2023-P-04 of 6 April 2023 to issue a formal notice to Techpump Solutions S.L. regarding the "Heureporno" online public communication service

Décision n° 2023-P-05 du 6 avril 2023 mettant en demeure la société Techpump Solutions S.L. en ce qui concerne le service de communication au public en ligne « Folieporno »

<https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000047428959>

Decision no. 2023-P-05 of 6 April 2023 to issue a formal notice to Techpump Solutions S.L. regarding the "Folieporno" online public communication service

Decision no. 2023-P-06 of 6 April 2023 to issue a formal notice to Technius Ltd regarding the "xHamsterLive" online public communication service

