



ONLINE PLATFORMS

France is ahead of the EU



France did not wait for the EU to control illegal content, imposing new obligations on online platforms and providing new means of intervention for publics and judicial authorities.

The advent of digital techniques such as IT and the development of the Internet network has led to what is known as the "digital revolution". Of this major change has resulted an explosion of sharing online content through multiple platforms that our leaders are trying - as best as one can - to regulate.

It is sometimes difficult for market players to see clearly in the face of such a legislative inflation: General Regulation on Data Protection (RGPD), Law for Confidence in the Digital Economy (LCEN), Law for a Digital Republic, Law against the manipulation of information, Law against hateful content on the Internet, Law against domestic violence, Law aiming at framing the commercial exploitation of the image of children under sixteen years old on online platforms, etc.

More recently, the Law to strengthen the respect of the principles of the Republic of August 24, 2021 (known as the Law against separatism) has integrated into French law a whole system to fight against so-called hateful content published on online platforms. This system requires important constraints from platforms as soon as they reach a critical size which has just been set by a decree of January 14, 2022.

All this in parallel with heated discussions within the European Union for a new and stricter regulation of platforms. And let's not forget the powers given to publics and judicial authorities that are constantly growing to better control online platforms.

If we understand why the topic is in the spirit of the times, it is - in fact - not easy to grasp, and for the right reasons: from marketplaces to pornographic sites, through social networks, who is affected by these new measures and what is their impact? How are online platforms evolving in view of the increasing powers of publics and judicial authorities, and what is their future at the dawn of the arrangements currently under discussion in the European Union? Here are our answers.

Who is concerned?

The online platform operator has been defined by the law for a digital Republic and codified under Article L. 111-7 of the Consumer Code as "*any natural or legal person offering, on a professional basis, whether or not for remuneration, an online communication service [...]*". Among these operators, we can distinguish (i) the Internet access provider¹ (Orange, Free, Bouygues, etc.), which is purely a technical service provider,

(ii) the content editor, which - in general - creates the content (creator or producer) or at least plays a certain role in the choice of the content, and (iii) the host who provides a service known as content storage.

Neither Internet service providers (commonly known as ISPs) nor hosts are subject to a general obligation to monitor the information they transmit or store², unlike editors.

The difference is important: according to the LCEN, if the editor³ is responsible for the published content, the host benefits from a so-called limited liability regime according to which he will only be responsible if he was aware of the manifestly illicit nature of a content that was published on the platform and that he did not "*promptly*" remove it⁴. In the absence of any precision other than a withdrawal that must be "*prompt*", the satisfactory or unsatisfactory period within which a content must be withdrawn is left - as it stands - to the appreciation of Courts. This matter is subject to lively debates, common to our neighbours.

In Germany, since the NetzDG Law of October 1, 2017, the responsibility of platforms has been strengthened by requiring, particularly, the removal of illegal content within 24 hours under penalty of heavy financial sanctions. [...]