Public Conference on Law Enforcement Online

The Challenges of National Regulation

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Difficulties encountered for audiovisual regulation in an online and/or transfrontier environment: Case studies

French legislative framework for online content regulation

Perspectives
Les Recettes Pompettes

✓ Show provided on a French YouTube channel in 2016–2018
✓ Adapted from a Canadian TV show
### Les Recettes Pompettes: Qualification Issues

#### Questions

- **Service is a YouTube channel**
  - May services provided on video sharing platforms be OD-AVMS?
  - Is the audiovisual content TV-like?
  - Is it user generated contents? What is the role of the presenter/author?

- **Service provided for free**
  - Does it pursue an economic activity?

#### Analysis

- **Technological neutrality:** it makes no difference whether the service is on its provider's website or on another website

- Show adapted from a TV show, built and written as a TV show, produced with significant resources, guests from the TV

- The presenter/author is paid by the provider, which makes editorial choices and publishes contents online

- In 2016, sponsorship and ads; in 2017, no new sponsorship and no more ads → Economic activity to be ascertained
Les Recettes Pompettes: A long and complex process

- April 2016: First episode made available on line
- June 2016: First letter sent to the provider to inform it about qualification as On-Demand Audio-Visual Media Service
- November 2016: Warning letter sent to the provider
- June 2017: Decision to ask the provider questions on business model of the service, prior to issuing formal notice
- October 2017: CSA informed that service now edited by a British company
- November 2017 to March 2018: Requests sent to both companies to ascertain which one is the provider
- June 2018: Information to the French company that it is considered as the provider, prior to issuing formal notice
- July 2018: Videos withdrawn, YouTube channel closed
Satellite channels: AVMSD provisions & French law

• Non-EU channels accessible in one or more EU Member States via satellite have to comply with the AVMSD

• One Member State having jurisdiction:
  ▪ Use of a satellite up-link situated in that MS
  ▪ Or, if not, use of satellite capacity appertaining to that MS

• Hundreds of non-EU channels, especially from the Middle East area, carried by a Eutelsat satellite, fall/may fall under France’s jurisdiction

• The CSA may impose sanctions:
  ▪ Require Eutelsat to inform the TV service provider of the French law
  ▪ Require Eutelsat to stop broadcasting the TV service
  ▪ Request the Conseil d’Etat to order Eutelsat to stop broadcasting the service under an emergency procedure

• Eutelsat had to stop 6 TV services between 2004 & 2015
Satellite channels: Changes of situations

- Change name
  - The NRA’s decision is no longer valid
  - Need to prove that the two channels are the same or to investigate the "new" case

- Move the uplink to fall under jurisdiction of another Member State
  - Need for efficient cooperation between NRAs

- Go online
  - TV services, YouTube videos, Websites, Facebook pages...
  - Satellite criteria & "classical" regulation tools not relevant in the online world
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(1) Law of December 2018 against the manipulation of information

Perspectives
Law of December 2018 Against the Manipulation of Information

Legislative process

- **21 March 2018**: Draft law tabled at the National Assembly
- **3 July 2018**: Adoption by the National Assembly (first reading)
- **26 July 2018**: Rejection of the text by the Senate (first reading)
- **26 September 2018**: The Joint committee (National Assembly, Senate) does not find a compromise
- **9 October 2018**: Adoption by the National Assembly (second reading)
- **6 November 2018**: Rejection of the text by the Senate (second reading)
- **20 November 2018**: Final adoption by the National Assembly
- **20 December 2018**: Decision of the Constitutional Council
- **22 December 2018**: Publication of the law
Main provisions of the law

1. Transparency obligations for online platforms* during election periods
   • To provide information on amounts spent for contents to be sponsored, identity of the person paying to promote a content, use of users’ data, etc.

2. Reinforcing cooperation requirements for online platforms*
   • To take measures preventing the dissemination of disinformation
   • To communicate on these measures and their cost
   • To report to the CSA each year on their implementation

3. New judicial proceedings during election periods before the civil judge within 48 hours

4. New powers granted to the CSA on radio & TV services

5. Reinforcing media literacy

* Online platforms over 5 million unique visitors per month in France
Cooperation requirements for online platforms: Recommendation of the CSA to online platforms (15.5.19)

1. Accessible and visible reporting mechanism
2. Transparency of algorithms
3. Promotion of content from professional media providers
4. Combatting accounts disseminating “fake news”
5. Information on the origin of the content and how it is disseminated
6. Promotion of media and information literacy
7. Information to be provided to the CSA

Law of December 2018 Against the Manipulation of Information
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(2) Draft law against hateful content online

Perspectives
Origin of the proposal & legislative process

Report (National Assembly) to strengthen the fight against racism and antisemitism on the internet (September 2018)

- NetzDG often quoted as an inspiration by the drafter of the legislative proposal

20 March 2019
Draft law tabled at the National Assembly

9 July 2019
Adoption by the National Assembly (first reading)

End 2019
First reading foreseen at the Senate

Urgency procedure decided by the Government

First reading by the Senate foreseen in December 2019

Adoption & entry into force envisaged in the beginning of 2020
Scope of the legislative proposal

Online platforms operators having a role in the dissemination and propagation of publicly shared content

- By connecting parties sharing content
- Or by having an impact on the classification or referencing, by means of algorithms, of content offered by third parties

Having an activity in France above a threshold set by decree

4 main pillars

1. Withdrawal obligation
2. Notification mechanism
3. Transparency requirements
4. Strengthening the CSA’s powers
1. Withdrawal obligation

Obligation to withdraw or to make inaccessible in 24 hours contents “obviously” infringing the law:

• Apology for crimes against humanity
• Provocation or apology for terrorism
• Incitement to hatred, violence, discrimination or public insult toward a person or a group of people because of their origin, alleged race, religion, ethnic group, nationality, sex, sexual orientation, handicap
• Child pornography

Creation of a new criminal offense for cases where the notified content is not withdrawn

• One year imprisonment
• Fine of 250,000€ for a natural person (1,250,000€ for a legal person)
2. Notification mechanism

Platforms shall:

• Implement a notification system in French, easily accessible and easy to use

• Inform the users of the risks in case of abusive notifications

• Implement processes, human resources and technological means to guarantee the prompt handling of complaint

• Inform the users of the results of the notification and the reasons of the decision (within 24 hours in case of withdrawal, 7 days otherwise) with a possibility to appeal
3. Transparency requirement

Platforms shall ensure a “public, clear and detailed, easily accessible and visible information” concerning in particular:

- The possible sanctions in case of publication of a hateful content
- What a victim of hate speech can do
- The risks in case of abusive notifications
- The general modalities of the moderation of contents implemented by the platforms

Particular information should be provided to minors (-15 years old) when they get an account on the service.

Power for the CSA to issue recommendations in order to detail what information the platforms shall make public.
4. Strengthening the powers of the CSA

- Issue recommendations, guidelines and good practices to ensure the good application of the new rules by the platforms

- Make sure of the compliance by the platforms and collect all the necessary information from them

- Publish a yearly report on the implementation and the effectiveness of the obligations of the platforms

- Foster cooperation between the platforms

- Take sanctions in case of non-compliance to their administrative obligations (excluding the obligation to withdraw within 24 hours, which is a criminal offense)
  - Up to 4% of the global turnover of the platform
  - Only after a formal notice, and with a possibility to appeal before the Conseil d’État (usual procedure)
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Perspectives
THANK YOU FOR YOUR ATTENTION!