



FRANCE

	2012	2013
INTERNET FREEDOM STATUS	N/A	FREE
Obstacles to Access (0-25)	n/a	4
Limits on Content (0-35)	n/a	4
Violations of User Rights (0-40)	n/a	12
Total (0-100)	n/a	20

POPULATION: 63.6 million
INTERNET PENETRATION 2012: 83 percent
SOCIAL MEDIA/ICT APPS BLOCKED: No
POLITICAL/SOCIAL CONTENT BLOCKED: No
BLOGGERS/ICT USERS ARRESTED: No
PRESS FREEDOM 2013 STATUS: Free

* 0=most free, 100=least free

KEY DEVELOPMENTS: MAY 2012 – APRIL 2013

- Takedown requests received by Google have more than doubled over the past year, mainly over defamatory content (see **LIMITS ON CONTENT**).
- Controversial clauses within the HADOPI, LOPPSI 2, and LCEN laws provoked the ire of internet advocates in the country, mainly over fears of disproportionate punishments for copyright violators, overreaching administrative censorship, and threats to privacy (see **LIMITS ON CONTENT** and **VIOLATIONS OF USER RIGHTS**).
- French intelligence agents attempted to coerce a volunteer Wikipedia editor into deleting an entry on a French military installation, threatening him with arrest and prosecution if he failed to comply (see **VIOLATIONS OF USER RIGHTS**).

EDITOR'S NOTE ON RECENT DEVELOPMENTS

This report covers events between May 1, 2012 and April 30, 2013. On May 13, 2013, the government released a report on French cultural policy in the digital era drafted by the former media executive Pierre Lescure. Most significantly, the report has led to the abolishment of internet suspensions for users who are found guilty of violating copyright law.¹ Additional proposals, including the reduction of user fines from €1,500 to €60 (\$2,000 to \$80) and the transferring of many competencies away from the High Authority for the Distribution of Works and the Protection of Rights on the Internet (HADOPI), were approved by the Minister for Culture and Communications.²

In addition, in June 2013, French daily newspaper Le Monde released new information concerning the existence of a secret surveillance program operated by the Directorate-General for External Security (DGSE),³ a French intelligence agency.⁴ The DGSE program allegedly collects and stores metadata related to e-mails, phone calls, text messages, and online activity on servers based in central Paris and does not come under a legal framework, unlike the highly-regulated program of the Central Directorate of Interior Intelligence (DCRI). Given that this surveillance has been operational during the period covered by this report, Freedom House has decided to include it in this edition of Freedom on the Net (see Violations of User Rights).

INTRODUCTION

France has a highly developed telecommunications infrastructure and a history of innovation in information and communications technologies (ICTs).⁵ Starting in the 1970s, France began developing Teletex and Videotex technologies, leading to the introduction of the widely popular Videotex service Minitel in 1982, which was accessible through telephone lines. In many ways, Minitel predicted applications of the modern internet, such as travel reservations, online retail, mail, chat, and news. At its peak, Minitel had around nine million users, and hundreds of thousands continued to use the service, even after the World Wide Web was introduced in 1994. It was not until June 2012 that the Minitel service was discontinued, primarily due to the growth of the internet industry.⁶ France's current ICT market is open, highly competitive, and has benefitted from the privatization of the state-owned company France Telecom.

¹ Liberation, "Aurelie Filippetti announces the end of the Hadopi suspension", May 20, 2013, Accessed July 05, 2013, http://www.liberation.fr/medias/2013/05/20/hadopi-aurelie-filippetti-decrete-la-fin-de-la-coupure_904306.

² Guericc Poncet, "Vidéo. Rapport Lescure: la Hadopi est morte, vive la Hadopi! [Lescure Report: Hadopi is dead, long live Hadopi!]", LePoint.fr, May 15, 2013, http://www.lepoint.fr/chroniqueurs-du-point/guerric-poncet/rapport-lescore-l-hadopi-est-morte-vive-l-hadopi-13-05-2013-1666125_506.php.

³ Direction Générale de la Sécurité Extérieure, <http://www.defense.gouv.fr/english/dgse>.

⁴ "France 'has vast data surveillance' – Le Monde report," BBC News, July 4, 2013, <http://www.bbc.co.uk/news/world-europe-23178284>.

⁵ Jonathan Gregson, "French infrastructure takes some beating," Wall Street Journal, July 5, 2010, accessed April 23, 2013, <http://online.wsj.com/ad/article/france-infrastructure>.

⁶ John Lichfield, "How France fell out of love with Minitel," The Independent, June 9, 2012, <http://www.independent.co.uk/news/world/europe/how-france-fell-out-of-love-with-minitel-7831816.html>.

While France has traditionally maintained a relatively open and accessible internet, several actions on the part of successive administrations have raised concerns from internet freedom groups and free speech activists. Hate speech, defamation, copyright, and privacy are highly contentious issues relevant to French cyberspace. On several occasions over the past years, politicians have proposed highly restrictive measures, such as the imprisonment of frequent visitors to extremist websites and the mandatory registration of online news editors. Most recently, a government minister suggested that the state could seek to prosecute Twitter for allowing the hate speech to be posted on the site. A bill was also drafted that would ban the online sale of goods below market prices, thereby hurting e-commerce in a bid to protect brick and mortar shops.⁷ At the European Union level, the Anti-Counterfeiting Trade Agreement (ACTA) was rejected by members of the European Parliament in July 2012 in a move that was celebrated by internet freedom groups. While no users were sentenced to prison terms over the past year, French intelligence agents threatened a Wikipedia volunteer to delete a post that allegedly raised national security concerns. Nonetheless, the French government only blocks non-political content such as child pornography and hate speech, and a high percentage of French citizens have taken up online tools to receive their news, engage in social networking, and organize demonstrations.

In a positive development, the most controversial provision of the French anti-piracy law, referred to as the “HADOPI law” after the agency tasked with its implementation, was abolished in July 2013 and replaced with a series of automatic fines for the offenders. The law had been criticized by various civil society organizations and international bodies for its “three strikes” provision that required internet service providers (ISPs) to disconnect users from the internet for a period of two to twelve months when found to repeatedly engage in piracy. Nonetheless, doubts remain over the government’s policy to instigate legal proceedings against users for copyright infringement.

OBSTACLES TO ACCESS

Since 2009, the French government has been committed to providing widespread access to high-speed broadband and has promised to achieve universal coverage by 2025.⁸ As a part of this plan, in February 2013 Alcatel-Lucent and Orange (France Telecom) announced the deployment of the world’s most powerful broadband infrastructure, an optical-link, 400 Gbps line between Paris and Lyon.⁹ France had an internet penetration rate of 83 percent at the end of 2012, up from 66 percent in 2007.¹⁰ Fixed broadband use has also increased during this time, from 25.5 percent to 37.8 percent.¹¹ Regionally, internet use ranges from 84.4 percent in the Paris area to 65 percent in

⁷ Guillaume Champeau, “Sell cheaper on the web soon to be forbidden” (translated), April 05 2013, Accessed April 19 2013, <http://www.numerama.com/magazine/25593-vendre-ses-produits-moins-cher-sur-internet-bientot-interdit.html>.

⁸ Jonathan Gregson, “French infrastructure takes some beating,” Wall Street Journal, July 5, 2010, accessed April 23, 2013, <http://online.wsj.com/ad/article/france-infrastructure>.

⁹ Bernhard Warner, “Alcatel-Lucent Unveils World’s Most Powerful Broadband Infrastructure,” Business Week, February 15, 2013, accessed April 23, 2013, <http://www.businessweek.com/articles/2013-02-15/alcatel-lucent-unveils-worlds-most-powerful-broadband-infrastructure>.

¹⁰ “Percentage of Individuals Using the Internet – 2000-2012,” International Telecommunication Union, accessed June 29, 2013, <http://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx>.

¹¹ “Fixed (wired) broadband subscriptions,” 2000-2012,” International Telecommunication Union, accessed June 29, 2013, <http://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx>.

the northwest of France.¹² Most at-home users have access to broadband connections, while the remaining households are connected either through dial-up or satellite services, usually due to their rural locations.¹³ Nonetheless, some 9.5 million people did not use the internet in 2012, either due to obstacles to access, or simply out of personal choice.¹⁴ As French statisticians do not record information related to race, there is no government data relating to internet use according to ethnicity.¹⁵ On a positive note, there is little or no gender gap when it comes to internet access.¹⁶

The average monthly cost of broadband internet access in France is approximately €33 (\$45), for both ADSL¹⁷ and fiber-optic connections.¹⁸ Considering the average monthly income is €2,410 (\$3,257),¹⁹ this makes internet access fairly affordable for a large percentage of the population.²⁰ Companies such as Free Telecom also offer cheap internet access and mobile contracts through combination deals.

There were 70.9 million mobile contracts in use in France as of March 2013, representing a penetration rate of 108.2 percent.²¹ Over 23 million people use their mobile devices to access the internet,²² mostly in addition to a household connection.²³ The internet backbone consists of several interconnected networks run by ISPs and shared through peering or transit agreements. As such, there is no central internet backbone and internet service providers (ISPs) are not required to lease bandwidth from a monopoly holder.

There are no significant hurdles to prevent diverse business entities from providing access to digital technologies in France. The main ISPs are Orange, Free, SFR, Bouygues Telecom, and Numericable, with around 40 smaller private and non-profit ISPs. Apart from Numericable, these

¹² Frantz Grenier, "Internet in the Different Regions of France" (translated), March 21, 2013, accessed April 19 2013, <http://www.journaldunet.com/ebusiness/le-net/nombre-d-internautes-en-france-par-region.shtml>.

¹³ Ariase, "ADSL and Broadband Access in France" (translated), accessed April 19, 2013, <http://www.ariase.com/fr/haut-debit/index.html>.

¹⁴ Nil Sanyas, "the unplugged" (translated), September 12 2012, Accessed April 14 2013, <http://www.pcinpact.com/news/73774-la-france-compte-95-millions-deconnectes-et-17-million-assument.htm>.

¹⁵ Patrick Simon, "The Choice of Ignorance: The Debate on Ethnic and Racial Statistics in France," French Politics, Culture & Society, Vol. 26, No. 1, Spring 2008, accessed April 23, 2013, http://www.academia.edu/573214/The_choice_of_ignorance.The_debate_on_ethnic_and_racial_statistics_in_France.

¹⁶ "France," New Media Trend Watch, accessed April 23, 2013, <http://www.newmediatrendwatch.com/markets-by-country/10-europe/52-france?start=1>.

¹⁷ Ariase, "Comparatifs (Comparatives)", accessed April 23, 2013, <http://www.ariase.com/fr/comparatifs/adsl.html>.

¹⁸ Ariase, "Comparatifs (Comparatives)", accessed April 23, 2013, <http://www.ariase.com/fr/comparatifs/fibre-optique.html>.

¹⁹ Le Parisien, "Medium monthly income reaches 2410 euros" (translated), March 13 2013, Accessed April 13 2013, <http://www.leparisien.fr/economie/votre-argent/le-salaire-moyen-atteint-2-410-euros-bruts-mensuels-13-03-2013-2637973.php>.

²⁰ Similarly, the median monthly salary is €1,675.

²¹ ARCEP, "Mobile contracts in France in 2012," February 7, 2013, <http://www.arcep.fr/index.php?id=35>, accessed April 19, 2013.

²² Mediametrie, "Internet everywhere" (translated), February 27 2013, Accessed April 19, http://www.mediametrie.fr/internet/communiqués/l-annee-internet-2012-l-internet-sur-tous-les-ecrans-tous-les-reseaux-auplus-pres-de-l-internaute.php?id=818#_UXvC8MV8NNE, and Alexandra Bellamy, "French people loves their smartphones and tablets" (translated), LesNumeriques.fr, December 11 2012, Accessed April 19 2013, <http://www.lesnumeriques.com/france-amoureuse-smartphones-tablettes-n27347.html>.

²³ Ipsos MediaCT, "PCs, smartphones, tablets: cumulative and complementary use" (translated), September 22, 2011, accessed April 23, 2013, <http://www.ipsos.fr/ipsos-mediact/actualites/2011-09-22-pc-smartphones-tablettes-usages-se-cumulent-et-se-complètent>.

ISPs are also the four main mobile phone operators and work in conjunction with some 40 mobile virtual network operators (MVNOs). France Telecom is the formerly state-owned company that has since been privatized and renamed “Orange.”²⁴ The government still directly owns 13.5 percent of shares in the company, with a further 13.5 percent owned by a sovereign wealth operated by the state.²⁵ “Free” is a newcomer in the mobile market—its 3G license was awarded by the French regulatory authority in December 2009—and has quickly picked up market share through an aggressive price war.

The telecommunications industry in France is regulated by the Regulatory Authority for Electronic and Postal Communication (ARCEP),²⁶ while competition is regulated by France’s Competition Authority and, more broadly, by the European Commission (EC).²⁷ The commissioner of ARCEP is appointed by the government, though as an EU member state, France must ensure the independence of its national telecommunications regulator. Given that the French state is a shareholder in Orange, the country’s leading telecommunications company, the EC stated that it would closely monitor the situation in France to ensure that European regulations were being met.²⁸ The EC has previously stepped in when the independence of national telecommunications regulators seemed under threat, notably in Romania, Latvia, Lithuania, and Slovenia.²⁹ Despite these warnings, ARCEP remains an independent and impartial body and decisions made by the regulator are usually seen as fair.

ARCEP agreed with the opinion of the Competition Authority when asked by the French government to consider the fairness of the terms governing mobile network sharing and national data roaming. The regulator concluded that “infrastructure-based competition is vital to ensuring a healthy state of competition and strong capital investment” and that these two issues are “not incompatible with this goal of a competitive marketplace.”³⁰ ARCEP also placed Free under investigation after the ISP released a firmware update that included an “ad-blocker” function to remove advertisements from appearing on websites.³¹ Executives at Free were reportedly attempting to force Google to compensate the ISP for the high levels of data traffic coming from YouTube and other Google sites, similar to an arrangement the American company had made with

²⁴ “France Telecom becomes Orange,” Orange, July 1, 2013, <http://www.orange.com/en/group/France-Telecom-becomes-Orange>.

²⁵ According to Cofisem, as of July 2013, the major shareholders in Orange were Fonds Stratégique d’Investissement (13.5%), French State (13.45%), Employees (4.81%), and company-owned shares (0.58%). 67.66% are owned by “other shareholders.” “Orange – European Equities,” NYSE Euronext, accessed July 29, 2013,

<https://europeanequities.nyx.com/en/products/equities/FR0000133308-XP/ARCEP/company-information>.

²⁶ “Autorité de Régulation des Communications Électroniques et des Poste,” <http://www.arcep.fr/index.php?id=1&L=1>.

²⁷ “Autorité de la concurrence,” <http://www.autoritedelaconcurrence.fr/user/index.php>.

²⁸ “ARCEP must remain independent vis-a-vis government – EC,” *Telecompaper*, January 14, 2011, accessed April 16th 2013, <http://www.telecompaper.com/news/arcep-must-remain-independent-vis-a-vis-government-ec--778936>.

²⁹ Arjan Geveke, “Improving Implementation by National Regulatory Authorities,” European Institute of Public Administration, 2003, accessed April 24, 2013, http://aei.pitt.edu/2592/1/scop_3_3.pdf.

³⁰ “ARCEP reviews the Competition Authority’s balanced opinion on the terms governing mobile network sharing and roaming,” ARCEP, March 11, 2013, accessed April 16th 2013, http://www.arcep.fr/index.php?id=8571&L=1&tx_gsactualite_pi1%5Buid%5D=1592&tx_gsactualite_pi1%5Bannee%5D=&tx_gsactualite_pi1%5Btheme%5D=&tx_gsactualite_pi1%5Bmotscle%5D=&tx_gsactualite_pi1%5BbackID%5D=26&cHash=b419a25d887293a12673299e88aaa3d4.

³¹ Cyrus Farivar, “France’s second-largest ISP deploys ad blocking via firmware update,” *Ars Technica*, January 3, 2013, <http://arstechnica.com/business/2013/01/frances-second-largest-isp-deploys-ad-blocking-via-firmware-update/>.

leading ISP Orange. Free backed down under government pressure and criticism that the ISP was harming net neutrality by failing to deliver content to users without any obstructions.³²

LIMITS ON CONTENT

Although France has a strong record of an open and accessible internet, over the past two years the country has come under criticism from online activists and free speech advocates. Article R645-1 of the French criminal code outlaws the display of the emblems, uniforms, or badges of criminal organizations, under penalty of a fine.³³ Websites that contravene this law have been requested to remove the content or face blocking.³⁴ Furthermore, child pornography and other illegal websites are blocked.³⁵ More controversially, French authorities have stepped up efforts to block or remove online content that is found to violate copyright protections or infringe on privacy. The most ardent defenders of free speech have been loath to see any sort of administrative filtering in France, fearing that laws such as LCEN, LOPPSI 2, and the HADOPI law may eventually lead to a spillover whereby controversial yet legal sites are censored by administrative agencies and without a court order.³⁶ (For more on these laws, please see the following section, “Violations on User Rights”)

French law recognizes “the right to be forgotten” (*le droit à l’oubli*), which has its roots in rehabilitated criminals who did not wish to see their past cases publicized, having already “paid their debt to society” through jail time. The issue has recently been taken up by Viviane Reding, European Commissioner for Justice, Fundamental Rights, and Citizenship, in relation to an individual’s right to request that their personal data be completely deleted from social networks or other websites, including from any hosting servers. The EU proposals have come under criticism as impossible to enforce,³⁷ or worse, threatening to free speech.³⁸ However, the EC has clarified that deletion requests would not pertain to matters of public interest, thereby calming some concerns over possible censorship of the press.³⁹ In France, individuals can already request that defamatory content related to them can be removed through a court order in line with Article 29 of the 1881

³² Chiponda Chimbelu, “French ISP revives debate on ‘free Internet’,” DW, January 9, 2013, <http://www.dw.de/french-isp-revives-debate-on-free-internet/a-16508222>.

³³ Elissa A. Okoniewski, “Yahoo!, Inc. v. Licra: The French Challenge to Free Expression on the Internet,” 2002, accessed April 24, 2013, <http://www.auilr.org/pdf/18/18-1-6.pdf>

³⁴ Roger Darlington, “Should the Internet be Regulated?” no publication date, accessed April 17, 2013, <http://www.rogerdarlington.me.uk/regulation.html>

³⁵ “French Law Loppsi 2 Adopted by the General Assembly,” Digital Civil Rights in Europe, January 12, 2011, accessed April 25, 2013, <http://www.edri.org/edriagram/number9.1/loppi-2-adopted-assembly>

³⁶ Olivier Dumons, “After DADVSI and HADOPI, LOPPSI 2 To Be Released” (translated), May 18 2009, Accessed April 18 2013, http://www.lemonde.fr/technologies/article/2009/05/18/apres-la-dadvisi-et-hadopi-bientot-la-loppi-2_1187141_651865.html, and La Quadrature du Net, “Administrative Net Censorship adopted in France” (translated), December 15 2010, Accessed April 18 2013, <http://www.laquadrature.net/fr/loppi-censure-administrative-du-net-adoptee-les-pedophiles-sont-tranquilles>.

³⁷ Mike Masnick, “EU Report: The ‘Right To Be Forgotten’ Is Technically Impossible... So Let’s Do It Anyway,” TechDirt, December 6, 2012, accessed June 19, 2013, <http://www.techdirt.com/articles/20121205/08425221239/eu-report-right-to-be-forgotten-is-technically-impossible-so-lets-do-it-anyway.shtml>.

³⁸ Jeffrey Rosen, “The Right to be Forgotten,” Stanford Law Review, February 13 2012, <http://www.stanfordlawreview.org/online/privacy-paradox/right-to-be-forgotten>.

³⁹ Michael Venables, “The EU’s ‘Right To Be Forgotten’: What Data Protections Are We Missing in the US?” Forbes, March 8, 2013, accessed June 19, 2013, <http://www.forbes.com/sites/michaelvenables/2013/03/08/the-ecs-right-to-be-forgotten-proposal-in-the-u-s/>.

Law on Press Infractions—related to insult, defamation, or denigration—and the 2004 Law for Trust in the Digital Economy (LCEN), which holds hosting providers liable if they fail to cooperate with a court decision.⁴⁰ The passage of LCEN was met with criticism from many in France, including members of parliament (MPs) from the Socialist Party. The MPs submitted a brief to the Constitutional Court to review several clauses of LCEN that failed to define e-mail as private correspondence (and thus subject to greater surveillance), “privatized justice” through administrative notices and extralegal take down procedures, and set a longer statute of limitations for online content versus traditional media. The grounds under which authorities could restrict access to communications were also criticized as overly broad and open to abuse.⁴¹

Intermediaries are coming under increasing pressure to cooperate with French authorities against defamation, copyright, and hate speech. In 2011, a draft executive order to implement Article 18 of LCEN suggested new means by which various government agencies could force content owners to remove content or instruct ISPs to block webpages. The proposal sought to outline the procedures for blocking or removing online content “in case of violation, or where there is a serious risk of violation, of the maintenance of public order, the protection of minors, the protection of public health, the preservation of interests of the national defense, or the protection of physical persons.”⁴² However, the order came under fire from internet freedom activists and the e-commerce community who pointed out that intermediaries could face an unfair responsibility to police content.⁴³ There were also fears that, under the proposal’s vague wording, the law would be applicable to most websites rather than only those engaged in e-commerce, as originally intended.⁴⁴ This would have opened up the possibility that any website could be blocked arbitrarily and without due process under the proposal’s emergency clause. The draft law was eventually rejected at the end of June 2013.⁴⁵

French authorities are highly active in pursuing the removal of content online. As an indication, Google’s Transparency Report noted that the total number of content removal requests it received from the French government from January to June 2012 increased by 128 percent, compared to the previous six month period. Google also removed 992 search results which allegedly violated the privacy of an individual, though it did not remove a blog post about a former politician that “allegedly defame[d] him by explaining his connections with the pharmaceutical lobby.”⁴⁶ In the

⁴⁰ Loi pour la Confiance dans l’Économie Numérique

⁴¹ “French E-Commerce Law Tested in Constitutional Court,” Digital Civil Rights in Europe (EDRI), June 2, 2004, <http://www.edri.org/edriagram/number2.11/len>.

⁴² Simon Columbus, “French Government Plans to Extend Internet Censorship,” Open Net, June 2011, <https://opennet.net/blog/2011/06/french-government-plans-extend-internet-censorship>

⁴³ French National Digital Council, “Review of the LCEN Decree” (translated), June 17 2011, Accessed April 12 2013, http://static.pcnipact.com/media/2011-06-17_avis_cnn_decretart18lcn_vf.pdf

⁴⁴ Andréa Fradin, “Administrative filtering” (translated), Owni.fr, June 16 2011, Accessed April 17 2013, <http://owni.fr/2011/06/16/filtrage-par-decret/>

⁴⁵ Olivier Robillart, “Article 18 finally rejected by French Assembly” (translated), June 28, 2013, <http://pro.clubic.com/legislation-loi-internet/actualite-568770-lcen-blocage-administratif.html>.

⁴⁶ “France,” Google Transparency Report, accessed April 25, 2013, <http://www.google.com/transparencyreport/removals/government/FR/?p=2012-06>.

following six month period ending December 2012, takedown requests from court orders and executive bodies remained high, with the vast majority of cases related to defamation.⁴⁷

In January 2013, the French Minister for Woman's Rights and a government spokesperson, Najat Vallaud-Belkacem, called for Twitter to take greater responsibility in preventing the posting of hate speech on the site.⁴⁸ However, the proposal was criticized as a danger to free speech, potentially allowing the government to classify unfavorable opinions under the vague term of hate speech.⁴⁹ The move would also place an unfair burden on intermediaries, forcing them to use their discretion to prescreen content that could be deemed as offensive.⁵⁰ When it comes to the curtailing of illegal content, ISPs and mobile telephone companies who provide internet access currently have no obligation to preemptively review any of the content they transmit or store. Nevertheless, according to LCEN, they must take prompt action to withdraw the relevant content when informed of unlawful information or activity, or face the possibility of civil liability. Similarly, cyber cafes and other public places which provide internet access have no responsibility to review the content which can be viewed by their customers but are liable in cases of illegal activities; as a result, cybercafes must log the activities of their customers (see "Violations of User Rights").

French authorities are fairly transparent about what websites are blocked and why content must be taken down. Incitement of hatred, racism, Holocaust denial, child pornography, copyright infringement, and defamation are illegal. Requests to block or remove content can emanate from individuals, copyright holders, or government bodies. These requests must be reviewed by a court, which then instructs ISPs, content holders, or other intermediaries to implement its decision.

Traditionally, the French state has been criticized as being a "Web 1.0" government.⁵¹ More recently, public figures and politicians have opened up social media accounts and blogs to establish a web presence.⁵² Presidential candidates have taken to the web to promote their campaigns, though with mixed results. For example, while all candidates in the 2007 elections created virtual campaign headquarters on the online community known as "Second Life," the headquarters of the far-right candidate Jean-Marie Le Pen was attacked and destroyed when dissenters launched "pig grenades" at the virtual building.⁵³

⁴⁷ "France," Google Transparency Report, accessed July 29, 2013,

<http://www.google.com/transparencyreport/removals/government/FR/?p=2012-12>.

⁴⁸ Najat Vallaud-Belkacem, "Twitter must respect the values of the Republic" (translated), *Le Monde*, December 28 2012, accessed June 20 2013, http://www.lemonde.fr/idees/article/2012/12/28/twitter-doit-respecter-les-valeurs-de-la-republique_1811161_3232.html.

⁴⁹ Glenn Greenwald, "France's censorship demands to Twitter are more dangerous than 'hate speech'," *The Guardian*, January 2, 2013, accessed April 24, 2013, <http://www.guardian.co.uk/commentisfree/2013/jan/02/free-speech-twitter-france>.

⁵⁰ Mike Masnick, "French Politician Wants Twitter To Help Censor Speech," *Techdirt*, January 04 2013, accessed June 20 2013, <http://www.techdirt.com/articles/20130103/03195521559/french-politicians-wants-twitter-to-help-censor-speech.shtml>.

⁵¹ Yaron Gamburg, "Web 2.0 is a 'fait accompli' in France. But what about the French version of Gov 2.0?" *GovLoop* blog, July 23 2011, accessed April 23, 2013, <http://www.govloop.com/profiles/blogs/web-2-0-is-a-fait-accompli-in>.

⁵² Rodolphe Baron, "Twitter changes political marketing", *owni.fr*, March 29, 2012, accessed July 04, 2013, <http://owni.fr/2012/03/29/twitter-change-le-marketing-politique/>.

⁵³ Molly Moore, "French Politics in 3-D on Fantasy Web Site", March 30 2007, Accessed April 16 2013, <http://www.washingtonpost.com/wp-dyn/content/article/2007/03/29/AR2007032902540.html>.

France is home to a highly diverse online media environment. In recent years, several French protests have been organized online, including demonstrations against cuts in government-supported programs such as education or changes to labor laws proposed in 2006.⁵⁴ More recently, from January to April 2013, online campaigns such as those organized by the controversial figure Frigide Barjot and others were able to mobilize large groups of demonstrators using social media networks in an effort to oppose legislation surrounding same-sex marriages.⁵⁵ Protests have continued, even after the legislation proposed by the government of François Hollande was passed in April 2013.⁵⁶

French digital rights and online freedom advocacy groups are very active and play a significant role in the country. For example, the group “La Quadrature du Net” successfully lobbied the European Parliament for an amendment to the EU Telecoms Package to ensure that no restrictions on internet access could be imposed without prior judicial approval.⁵⁷ After the European Parliament rejected ACTA in July 2012, the group also published a proposal for a new regulatory framework on reforming copyright issues.⁵⁸

VIOLATIONS OF USER RIGHTS

The European Convention on Human Rights, of which France is a signatory, provides for freedom of expression, subject to certain restrictions which are “necessary in a democratic society.”⁵⁹ France’s constitution guarantees freedom of speech⁶⁰ in accordance with the 1789 Declaration of the Rights of Man.⁶¹ However, the French government has also enacted several laws which, while seeking to protect the rights of internet users and copyright holders, also threaten the rights of citizens online. For example, in 2012, then-President Nicolas Sarkozy announced his intention to

⁵⁴ Le Monde, “CPE protests in France” (translation), March 28 2006, accessed April 16 2013, http://www.lemonde.fr/societe/infographie/2006/03/28/les-manifestations-anti-cpe-du-28-mars-en-france_755523_3224.html, and Flickr, February 2006, Accessed April 16 2013, <http://www.flickr.com/groups/71873699@N00/pool/>.

⁵⁵ Andrew Cusack, “France Marches for Marriage,” January 13, 2013, accessed April 17 2013, <http://www.andrewcusack.com/2013/01/13/le-manif-pour-tous/>, and Stéphane Kovacs, “Protests Over Gay Marriage and Guerilla” (translated), Le Figaro, April 17 2013, Accessed April 19 2013, <http://www.lefigaro.fr/actualite-france/2013/04/16/01016-20130416ARTFIG00433-manif-pour-tous-dans-les-coulisses-de-la-guerilla.php>.

⁵⁶ Laura Smith-Spark, “French lawmakers approve same-sex marriage bill,” CNN, April 24, 2013, <http://www.cnn.com/2013/04/23/world/europe/france-same-sex-vote>.

⁵⁷ Danny O'Brien, “Blogging ACTA across the globe: the view from France,” Electronic Frontier Foundation, January 2010, accessed April 25, 2013, <https://www.eff.org/deeplinks/2010/01/acta-and-france>.

⁵⁸ Philippe Aigrain, “Elements for the reform of copyright and related cultural policies”, Accessed July 04, 2013, http://www.laquadrature.net/files/Elements_for_the_reform_of_copyright_and_related_cultural_policies.pdf.

⁵⁹ “European Convention on Human Rights,” accessed April 25, 2013, http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/Convention_ENG.pdf.

⁶⁰ Guy Carcassonne, “The Principles of the French Constitution,” written for the French Embassy in the U.K., May 2002, accessed April 26, 2013, http://www.unc.edu/depts/europe/francophone/principles_en.pdf.

⁶¹ “The free communication of ideas and opinions is one of the most precious of the rights of man. Every citizen may, accordingly, speak, write, and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law,” Declaration of the Rights of Man, 17 89, accessed April 26, 2013, http://avalon.law.yale.edu/18th_century/rightsof.asp.

create criminal penalties for habitually visiting websites that advocate terrorism or hate crimes.⁶² The proposal raised many concerns and, while it was not pursued,⁶³ laws such as LOPSSI 2, LCEN, and the HADOPI have been highlighted by online activists and internet companies over concerns that they may overreach in their aims. In mid-2013, reports surfaced that French intelligence agencies may possess secret surveillance capabilities beyond the scope that is currently permitted in French law. In a separate case, intelligence agents were also found to have intimidated a Wikipedia volunteer with no legal basis, threatening to detain him if he did not delete a dated entry that allegedly raised national security concerns.

In a bid to promote the distribution and protection of creative works on the internet, the government introduced the controversial HADOPI laws in 2009.⁶⁴ However, the HADOPI law's "three-strikes" rule, which banned users access to the internet for a certain period of time after they have violated copyright laws three times, was largely denounced as a violation of the fundamental right of freedom of access to information on the internet.⁶⁵ The "three-strikes" rule was altered in May 2013 to reduce the level of fines and abolish the cutting of internet service. In the past, the website of HADOPI was targeted with distributed denial of service (DDoS) attacks by hackers.⁶⁶ Independent government agencies, such as the National Commission for Informatics and Liberties (CNIL),⁶⁷ also criticized elements of the HADOPI law and highlighted the risks it represents for freedom of speech and privacy.⁶⁸ Private companies, like the ISP "Free," refused to send out copyright infringement notices to users, citing the extra costs that it would entail.⁶⁹

Punishments under the HADOPI law were outlined as a "graduated response" in three steps. At first, users downloading illegal content received a warning e-mail or a notice of infringement, of which 1.15 million have been sent in the past three years. If illegal activity persisted, a letter was then sent to the user and his or her ISP, which has occurred some 10,000 times. Finally, the case was then submitted to the Public Prosecutor, which could result in a fine of up to €1,500 (\$2,000) and denial of internet access. Fourteen such cases have been launched, with only two resulting in a criminal prosecution. In one case from September 2012, the accused was forced to pay a fine of €150 (\$200) for "allowing his Wi-Fi connection to be used to download songs without obtaining prior permission from the copyright owners."⁷⁰ In the other case, from June 2013, the defendant

⁶² Jean-Loup Richet, "Internet Censorship in France: should we criminalize viewers?", Herdict, April 24, 2012, Accessed April 25, 2013, <http://www.herdict.org/blog/2012/04/24/internet-censorship-in-france-should-we-criminalize-viewers/>.

⁶³ National Digital Council, "Letter to President Sarkozy", March 23, 2012, Accessed April 25, 2013, http://www.cnumerique.fr/wp-content/uploads/2012/03/2012-03-23_LettreCNN-PR-mesureterrorisme_VF.pdf.

⁶⁴ Haute Autorité pour la diffusion des œuvres et la protection des droits sur internet

⁶⁵ Frank La Rue, UN Report, May 16 2011, Accessed April 17 2013, <http://documents.latimes.com/un-report-internet-rights/>.

⁶⁶ Eduard Kovacs, "Hacktivists DDOS Hadopi and Others in Anti-ACTA Protest", February 06, 2012, Accessed July 05, 2013, <http://news.softpedia.com/news/Hacktivists-DDOS-Hadopi-and-Others-in-Anti-ACTA-Protest-250987.shtml>.

⁶⁷ Commission Nationale de l'Informatique et des Libertés

⁶⁸ Alex Turk, "The Internet Policy in France and the Role of the Independent Administrative Authority CNIL," 2011, accessed April 17, 2013, http://www.kas.de/wf/doc/kas_22806-544-2-30.pdf?110516131251.

⁶⁹ Drew Wilson, "French ISPs and French Government Locking Horns Over HADOPI Costs", September 2, 2010, Accessed July 05, 2013, <http://www.zeropaaid.com/news/90536/french-isps-and-french-government-locking-horns-over-hadopi-costs/>.

⁷⁰ Rainey Reitman, "French Anti-Piracy Law Claims First Victim, Convicted of Failing to Secure His Internet Connection," Electronic Frontier Foundation, September 2012, accessed April 23, 2013, <https://www.eff.org/deeplinks/2012/09/french-anti-piracy-law-claims-first-victim-convicted-failing-secure-his-internet>.

was made to pay €600 (\$800) and the court ordered the suspension of his internet connection for 15 days.⁷¹

However, there were doubts as to whether the termination of service can technically be applied by the ISP, since the law maintains that any cut in internet access must not affect the individual's access to private communications services, such as e-mail or even private messages on social networks.⁷² Indeed, questions remain surrounding the fate of HADOPI itself, particularly since the publication of the government's Lescure report in May 2013. The former media executive recommended the transfer of many competencies from HADOPI to the Supreme Audiovisual Council (CSA),⁷³ the reduction of fines from €1,500 to €60 (\$2,000 to \$80), and the abolishment of internet suspensions.⁷⁴ Many of these proposals seem to be underway, particularly after signals from the French Minister for Culture and Communications, Aurélie Filippetti, indicated that suspensions would be halted immediately.⁷⁵

The Law on Guidelines and Programming for the Performance of Internal Security (LOPPSI 2),⁷⁶ first presented in May 2009 amid intense debate,⁷⁷ was adopted in March 2011 by the National Assembly and the Senate. LOPSSI 2 relates primarily to cybersecurity and the fight against child pornography. There were concerns from online activists, however, that if administrative agencies were allowed to demand ISPs to filter content without first acting on a court order, this may open the door for the administrative filtering of other, more legitimate sites without the need for judicial approval.⁷⁸ In July 2012, Fleur Pellerin, Minister for the Digital Economy, announced that Article 4 relating to the administrative filtering of child pornography would not be implemented without a court order.⁷⁹ Article 23 grants the police with the authority to install malware—such as keyloggers and Trojan horses—on a suspect's computer in the course of counterterrorism investigations, though authorization must come from a court order.⁸⁰

⁷¹ La Tribune, "first internet denial for Hadopi" (translated), June 13, 2013, Accessed July 04, 2013,

<http://www.latribune.fr/technos-medias/internet/20130613trib000770121/hadopi-la-premiere-et-surement-la-derniere-coupure-internet-a-ete-prononcee.html>.

⁷² Marc Rees, "Hadopi suspension is impossible to implement" (translated), June 5, 2013, Accessed July 05, 2013,

<http://www.pcinpact.com/news/80261-les-petites-hypocrisies-d-aurelie-filippetti-sur-hadopi.htm>.

⁷³ Conseil superior de l'audiovisuel, <http://www.csa.fr/>.

⁷⁴ Guerric Poncet, "Vidéo. Rapport Lescure: la Hadopi est morte, vive la Hadopi! [Lescure Report: Hadopi is dead, long live Hadopi!]," LePoint.fr, May 15, 2013, http://www.lepoint.fr/chroniqueurs-du-point/guerric-poncet/rapport-lescore-l-hadopi-est-morte-vive-l-hadopi-13-05-2013-1666125_506.php.

⁷⁵ Liberation, "Aurelie Filippetti announces the end of the Hadopi suspension", May 20, 2013, Accessed July 05, 2013, http://www.liberation.fr/medias/2013/05/20/hadopi-aurelie-filippetti-decrete-la-fin-de-la-coupure_904306.

⁷⁶ Loi d'orientation et de programmation pour la performance de la sécurité intérieure

⁷⁷ Corentin Chauvel, "the debate on LOPPSI 2" (translated), 20 Minutes.fr, January 7 2011, Accessed April 17 2013, <http://www.20minutes.fr/societe/649278-societe-loppsi-2-retour-points-contestes>.

⁷⁸ LOPPSI law project, Accessed July 04, 2013,

<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023707312&fastPos=1&fastReqId=1447818568&categorieLien=id&oldAction=rechTextel>.

⁷⁹ Numerama, "LOPPSI Article 4 decree finally abandoned", July 25, 2012, Accessed July 05, 2013,

<http://www.numerama.com/magazine/23260-loppsi-le-decret-sur-le-blocage-des-sites-sans-juge-est-abandonne.html>.

⁸⁰ Emilien Ercolani, "LOPPSI: Who could install spywares?" (translated), L'informaticien, November 7 2011, Accessed April 17 2013, <http://www.linformaticien.com/actualites/id/22101/loppsi-qui-pourra-installer-les-mouchards-informatiques-la-liste-publiee-au-jo.aspx>.

The French government does not place hefty restrictions on anonymous communication for online users, although individuals are required to register their real names when purchasing new SIM cards or using cybercafés. In 2010, a law was briefly floated to require anyone who edits “a non-professional communication service online” to register their name, location, and phone number as part of a push to apply existing press regulations on to the blogosphere.⁸¹ However, numerous online advocates condemned the proposal in an online petition and the law was never enacted.

In June 2013, French daily newspaper *Le Monde* revealed the alleged existence of an extralegal surveillance program operated by the Directorate-General for External Security (DGSE),⁸² a French foreign intelligence agency.⁸³ The DGSE maintains the capacity to intercept communications between France and external countries in a plan that was ostensibly designed for counter-terrorism purposes. In early July, additional reports surfaced from *Le Monde* indicating that metadata from telephone and computer activity—even within France—was systematically collected and stored at the DGSE facility in central Paris.⁸⁴ This runs counter to existing French law, which only allows for counterterrorism agents within the Central Directorate of Interior Intelligence (DCRI)⁸⁵ to make a request to obtain metadata related to a user’s telephone and internet activities.⁸⁶ These limited requests must also be reviewed by the National Commission of Control for Security Interceptions (CNCIS), an independent administrative authority.⁸⁷ In the case of the DGSE program, by contrast, seven different government agencies have access to this large body of user data without any legal basis or judicial oversight. Furthermore, the mandates and scope of operations of some of these agencies are also not strictly limited to counterterrorism.⁸⁸ As of August 2013, more details had yet to come out surrounding the allegations.

As previously mentioned, the LCEN maintains that ISPs and hosting providers must retain data on their users and customers for a period of one year.⁸⁹ Furthermore, under a decree issued in 2011,

⁸¹ Draft Proposal “facilitate the identification of bloggers” (translated), Senat.fr, May 3, 2010, Accessed April 19 2013, <http://www.senat.fr/leg/ppl09-423.html>, Xavier Ternisien, *Le Monde*, “Could we Outlaw Anonymous Bloggers?”, May 27 2010, Accessed April 19 2013, http://www.lemonde.fr/technologies/article/2010/05/27/un-blogueur-doit-il-rester-anonyme_1363856_651865.html

⁸² Direction Générale de la Sécurité Extérieure, <http://www.defense.gouv.fr/english/dgse>.

⁸³ “France ‘has vast data surveillance’ – *Le Monde* report,” BBC News, July 4, 2013, <http://www.bbc.co.uk/news/world-europe-23178284>.

⁸⁴ Edward Moyer, “Eye on surveillance: France’s PRISM, EU’s concerns,” CNET, July 4, 2013, http://news.cnet.com/8301-13578_3-57592372-38/eye-on-surveillance-frances-prism-eus-concerns/.

⁸⁵ Direction centrale du renseignement intérieur, <http://www.police-nationale.interieur.gouv.fr/Organisation/Direction-Centrale-du-Renseignement-Interieur>

⁸⁶ Laurent Borredon and Jacques Follorou, “En France, la DGSE au Coeur d’un programme de surveillance d’Internet [In France, the DGSE at the heart of a program for internet surveillance],” *Le Monde*.fr, June 11, 2013, http://www.lemonde.fr/international/article/2013/06/11/en-france-la-dgse-est-au-c-ur-d-un-vaste-programme-de-surveillance-d-internet_3427837_3210.html.

⁸⁷ Commission nationale de contrôle des interceptions de sécurité. http://lannuaire.service-public.fr/services_nationaux/autorite-administrative-independante_172128.html.

⁸⁸ “Comment la France intercepte les communications [How France intercepts communications],” *Le Monde*.fr, July 4, 2013, http://www.lemonde.fr/societe/infographie/2013/07/04/comment-la-dgse-collecte-et-stocke-l-ensemble-des-communications-electromagnetiques_3441931_3224.html.

⁸⁹ Anne-Laure-Hélène des Ylouses, « Application of article 6 II of the LCEN », *Juris Initiative*, March 2011, Accessed April 17 2013, <http://www.juris-initiative.net/en/legal-areas/telecom/decre-relating-to-retention-and-communication-of-data.html>, and Guillaume Champeau, « LCEN will retain data on user », *Numerama*, March 01, 2011,

data retention responsibilities were extended in duration and scope in order to bring France in line with the EU Data Retention Directive. Under the decree, a wide array of online companies, websites, and e-commerce outlets must, for a period of two years, store user data such as log-in credentials, phone numbers, data on financial transactions, and web browsing history. An association of online companies representing the likes of eBay, Facebook, Google, Microsoft, Wikipedia, and Yahoo challenged the decision and called for a court review, since under EU law, any new measures related to data retention must be reviewed by the European Commission.⁹⁰ As of mid-2013, the decree remains in place.

The EU Data Detention Directive itself has been criticized by European rights groups, such as the European Data Protection Supervisor (EDPS). In a non-binding opinion to the Commission, the EDPS concluded that “the directive has failed to meet its main purpose, namely, to harmonize national legislation concerning data retention” and “does not meet the requirements set out by the rights to privacy and data protection.”⁹¹

While these laws outline under what legal conditions authorities can block a site or fine a user, there were also reports that the government has used more opaque methods to practice censorship. On April 4, 2013, French secret service agents working in the DCRI reportedly threatened a French Wikipedia volunteer, calling upon him to delete an article on a sensitive military installation or face being detained and prosecuted.⁹² Representatives from Wikipedia France criticized the incident and called for French authorities to present them with a legal takedown notice. The entry, which relates to a military radio relay station in the region outside of Lyon, has existed since 2009 and remains online.

As is the case with many countries around the world, France’s government agencies, websites, and private companies are occasionally subject to cyberattacks and hacking. In January 2013, the French Ministry of Defense’s website was hacked and defaced, while information from its database was leaked by a member of the hacker group “XL3gi0n Hackers,” supposedly to demonstrate to France that they need to improve their cyber-security measures and to protest against the recent French attack on Mali.⁹³ In May 2012, after the second round of the presidential election, a piece of malware known as “Flame” was discovered on the computers of the presidential staff.⁹⁴ While a French news magazine suggested the US government could be to blame, the US Embassy in Paris

<http://www.numerama.com/magazine/18191-la-lcen-a-enfin-son-decret-sur-les-donnees-a-conserver-par-les-hebergeurs.html>, accessed April 19, 2013.

⁹⁰ Matthew J. Schwartz, “Tech Giants Challenge French Data Retention Law,” *Information Week*, April 8, 2011, <http://www.informationweek.com/security/privacy/tech-giants-challenge-french-data-retent/229401245>.

⁹¹ “Opinion of the European Data Protection Supervisor on the Evaluation report from the Commission to the Council and the European Parliament on the Data Retention Directive (Directive 2006/24/EC),” *European Data Protection Supervisor*, 2011, accessed April 18, 2013, https://www.eff.org/sites/default/files/filenode/dataretention/11-05-30_Evaluation_Report_DRD_EN.pdf.

⁹² Kim Willsher, “French secret service accused of censorship over Wikipedia page,” *The Guardian*, April 7, 2013, accessed April 24, 2013, <http://www.guardian.co.uk/world/2013/apr/07/french-secret-service-wikipedia-page>.

⁹³ Sabari Selvan, “French Ministry of Defense hacked and database leaked by XtnR3v0LT,” *E Hacking News*, January 16, 2013, accessed April 18, 2013, <http://www.ehackingnews.com/2013/01/france-ministry-of-defense-hacked.html>.

⁹⁴ BBC News Europe, “US ‘launched Flame cyber attack on Sarkozy’s office’,” November 21, 2012, accessed April 18, 2013, <http://www.bbc.co.uk/news/world-europe-20429704>.

has vehemently denied any part in the attack.⁹⁵ Overall, technical violence does not appear to be a serious problem in France. The delicate balance between freedom of speech and protection of information has come to the forefront in the digital age. While France has thus far maintained an openness appreciated by its 48 million internet users, policies will be put to the test as the dark sides of digital capabilities surface.

⁹⁵ Sébastien Seibt, "France victim of a cyber attack from the US?" (translated), November 21 2012, Accessed April 13 2013, <http://www.france24.com/fr/20121121-cyberattaque-elysee-express-flame-virus-sarkozy-etats-unis-piratage-hacking-revelation>.