

France

France continues to promote freedom of the press and speech online by allowing access to most content. France's Internet penetration rate is constantly increasing, and the French government has undertaken numerous measures to protect the rights of Internet users, including the passage of the *Loi pour la Confiance dans l'Économie Numérique* (LCEN, Law for Trust in the Digital Economy) in 2004. However, the passing of a new copyright law threatening to ban users from the Internet upon their third violation has drawn much criticism from privacy advocates as well as the European Union (EU) parliament.



Background

As one of the founding nations of European economic and political integration, France is seen as a key player on the European stage. However, the country sent shockwaves through the EU when its voters rejected the proposed EU constitution in a May 2005 referendum.¹ In May 2007, Nicolas Sarkozy won the presidential election with a 53 percent majority vote.² The current government is a center-right administration that

RESULTS AT A GLANCE

Filtering	No Evidence of Filtering	Suspected Filtering	Selective Filtering	Substantial Filtering	Pervasive Filtering
Political	•				
Social	•				
Conflict and security	•				
Internet tools	•				

Other Factors	Low	Medium	High	Not Applicable
Transparency				•
Consistency				•

KEY INDICATORS	
GDP per capita, PPP (constant 2005 international dollars)	31,625
Life expectancy at birth (years)	81
Literacy rate (percent of people age 15+)	99
Human development index (out of 179)	11
Rule of law (out of 211)	22
Voice and accountability (out of 209)	18
Democracy index (out of 167)	24 (Full democracy)
Digital opportunity index (out of 181)	26
Internet users (percent of population)	51

Source by indicator: World Bank 2009a, World Bank 2009a, World Bank 2009a, UNDP 2008, World Bank 2009b, World Bank 2009b, Economist Intelligence Unit 2008, ITU 2007, ITU 2008.

has sought to reform universities and special pension regimes and to modernize immigration and economic policies.³

The French government operates under a traditionally highly centralized decision-making process. Each of France's departments is headed by a prefect appointed by the central government. Although the process of decentralization began in the early 1980s, with regional councils directly elected for the first time in 1986, it has continued at a very slow pace.⁴

As established in the 1789 *Déclaration des Droits de l'Homme et du Citoyen* (Declaration of the Rights of Man and of the Citizen), France adheres to the principle of *laïcité*, or government secularism. Although approximately 85 percent of the French population is Roman Catholic, Europe's largest Muslim and Jewish populations reside in France, comprising 10 and 1 percent of the population, respectively.⁵ Notably, as a result of such staunch secularism, France has banned women and girls from wearing the Islamic headscarf in schools, an act which has resulted in criticism from some civil rights groups.⁶

France is a liberal democracy that guarantees freedom of the press and freedom of speech.⁷ Article 11 of the 1789 Declaration stipulates that "the free communication of thoughts and of opinions is one of the most precious rights of man: any citizen thus may speak, write, print freely, save [unless it is necessary] to respond to the abuse of this liberty, in the cases determined by the law."⁸ In addition, the European Convention on Human Rights, which France signed in 1950, promotes free speech in Article 10.⁹

Freedom of speech is recognized as a constitutional right to be respected by citizens as well as by the government during the process of passing new French legislation. Indeed, a distinctive feature of the French judicial system is that the Constitutional Council protects basic rights against potential violations by new laws, and the Council of State protects basic rights when they might be violated by actions of the state. The

Constitutional Council examines legislation and decides whether it conforms to the constitution. It considers only legislation that is referred to it by parliament, the prime minister, or the president.¹⁰

If upon examination basic rights are found to be in conflict with each other, the Constitutional Council maintains a balance between freedom of speech and such principles as maintaining law and order, proper administration of justice, and protection of individuals. French law prohibits public speech and writings that incite racial and religious hatred or hatred against people because of their sexual orientation.¹¹ In addition, amendments have been made to France's 1881 Press Law prohibiting denial of the Holocaust and the Armenian genocide.¹² Those who violate the law face imprisonment and/or a fine of up to EUR 45,000.¹³

Internet in France

The number of Internet users in France increased dramatically from 8.5 million users in 2000¹⁴ to almost 32 million in 2007, with a 51.2 percent Internet penetration rate.¹⁵ Since 2000, France has adopted Internet technology at a furious pace and has had some of the fastest growth rates for Internet usage, PC shipments, and overall information technology spending by businesses, consumers, government, and education throughout Europe.¹⁶ Although global Internet adoption and PC sales have shown some signs of slowing in recent years, France still witnessed significant yearly gains in Internet adoption: in 2005, over 60 percent of adults age 18 or older in France used the Internet regularly, representing more than a 12-point increase from 2004 (when the figure was 48 percent).¹⁷ In addition, the usage of VoIP telephony has risen steadily in recent years, and wireless Internet access by handset/cell phone is expected to continue to grow.¹⁸

Although the French ISP market has begun to expand since privatization, the market leader remains France Telecom, a publicly traded company that is the main communication access provider in France.¹⁹ Because of the well-developed information and communication technology (ICT) infrastructure, home access is affordable to most of the French population at competitive costs. Since high-speed Internet services were implemented in France in 2001, access has increased significantly, with more than one in five residents having access to high-speed Internet.²⁰ Public libraries and Internet cafés, prevalent throughout the country, also provide high-speed Internet access.

Studies have shown that, in comparison with other European Internet users, the French spend a considerable amount of time online. A recent ComScore study revealed that French Internet users spent 932 million hours online in February 2009, averaging approximately 27 hours per person.²¹ According to one report, the most popular online activities of French Internet users include social networking, watching television, shopping, blogging, and checking the news.

Legal and Regulatory Frameworks

The French media are regulated under the supervision of the *Conseil Supérieur de l'Audiovisuel* (CSA, Higher Audiovisual Council). This independent administrative authority guarantees freedom of communication and checks whether television programs comply with French laws. Special attention is paid to the protection of young audiences, and equal air time is allocated to political candidates during election periods.²² In response to market pressures on media pluralism, the government established *La Direction du Développement des Médias* (DDM, Department of Media Development) to encourage plurality of the press and to prevent excessive concentrations of ownership.²³

Illegal content and activity on the Internet are mainly regulated by the LCEN 2004–575 of June 21, 2004, which supersedes European Directive 2000/31/CE.²⁴ Article 2 of the LCEN relieves ISPs of civil and criminal responsibility if they had “no knowledge of illegal activity or material” or if they “acted promptly to remove or block access to it as soon as they discovered it.”²⁵ Providers are also exempt from civil responsibility if they “have no knowledge of how the illegal activity or material arose.” However, once a judicial order has been issued and proper notice given to the hosting Web site, the site is liable for any further reposting of the illegal material. Moreover, a Web site can be held liable for redirecting Internet users to another Web site containing unlawful information.²⁶ This decision has recently been subject to controversy in France—discussions mainly focus on the definition of “illegal activity or material” and on the need for a clear distinction between editing and hosting activities.²⁷

In 2000, a French judge ruled that U.S.-based Yahoo! Inc. had to prevent French users from accessing Web sites auctioning racial hate memorabilia. Yahoo complied by prohibiting users from accessing English-language Web sites selling Nazi memorabilia on its localized French site, yahoo.fr, but claimed that it was technically impossible to ban French users from accessing such content through its U.S. site.²⁸ In 2001, a U.S. district court ruled that the First Amendment of the Constitution protects content generated in the United States by American companies from being regulated by authorities in countries that have more restrictive laws on freedom of expression.²⁹

In 2008, France signed an agreement to block access to child pornography, as well as Web sites promoting racial violence or terrorism.³⁰

Surveillance

Although the French Constitution does not expressly include the right to privacy, the French Constitutional Council held in 1995,³¹ and confirmed in 1999,³² that the right to privacy is recognized as a constitutional right implicitly included in Article 2 of the 1789 Declaration.³³ The civil and penal codes expressly recognize the tort of privacy and a penal protection of the right to privacy, respectively.³⁴ The 1978 Data Protection

Act was amended in 2004 to create the *Commission Nationale de l'Informatique et des Libertés* (CNIL, National Commission for Information and Liberties), an independent administrative authority designed to ensure the protection of privacy and personal data.³⁵ With a mission of control and investigation, the CNIL can warn and impose financial sanctions in case of Data Protection Act violations. It issues an annual report based on its observations.³⁶

Since the September 11, 2001 attacks on the United States, privacy and data protection rights in France have been undermined by two laws: the *Loi sur la Sécurité Quotidienne* (LSQ, Daily Safety Law) that was urgently approved, almost unanimously, by parliament on November 15, 2001, and the *Loi sur la Sécurité Intérieure* (LSI, Internet Safety Law) that was enacted on February 13, 2003.³⁷ The laws extend to a year the minimum period for which ISPs must keep a record of their customers' Internet activity and e-mail traffic. The LSI authorizes immediate access to the computer data of telecommunications operators, as well as those of almost any public or private institution; it also allows judges to order that "secret methods that cannot be revealed for reasons of national defense" be used to decode encrypted e-mail messages. In addition, authorities can require encryption firms to hand over their codes so that they can read encrypted online messages.³⁸ These provisions have been considered as a threat to the principle of confidentiality of professional and private communications in France.³⁹

As a result of a campaign strongly focused on security issues, closed-circuit television (CCTV) is used in France for surveillance in public places so as to prevent criminal behavior. In 2007, the French Interior Minister announced that the number of CCTV cameras in France would triple by 2009. This policy has been designed and pursued to fight terrorism and street crime.⁴⁰

On May 4, 2008, the French government ordered the creation of biometric passports for its citizens, citing the need to comply with post-9/11 U.S. security demands. French citizens will now be issued biometric passports that will include eight fingerprints and a digital picture; the data are then collected in a national database.⁴¹ On December 11, 2007, the CNIL published an unfavorable opinion concerning this project, fearing serious damage to private life and individual liberties.⁴²

On April 9, 2009, the *Projet de loi Favorisant la Diffusion et la Protection de la Création sur Internet* (Bill promoting the dissemination and protection of creation on the Internet), intended to deny Internet access to users who repeatedly downloaded copyrighted content without paying, was rejected by the French National Assembly.⁴³ The proposed law (widely referred to as HADOPI, an acronym for *Haute Autorité pour la Diffusion des Oeuvres et la Protection des Droits sur Internet* [High Authority for Copyright Protection and Dissemination of Works on the Internet], the agency the bill would create), backed by President Sarkozy and by France's film and record industries, was brought to the National Assembly a second time on May 13, 2009, and approved,

pending appeal.⁴⁴ The European Parliament, however, voted overwhelmingly to add to a telecoms reform bill a stipulation that agencies such as HADOPI must first obtain permission from French courts before disconnecting violators.⁴⁵

The HADOPI law has faced strong opposition throughout France by various groups, and an employee of French television broadcaster TF1 was even fired for his opposition to the law after a private e-mail sent to his member of parliament was forwarded back to his employer.⁴⁶

ONI Testing Results

The OpenNet Initiative tested two ISPs (Orange and Neuf Cegetel) in France and found no signs of filtering; however, manual testing found one Web site, www.aaargh.com.mx, to be blocked. The Web site, which promotes Holocaust revisionism as well as a boycott of Israel, was blocked by a French court; the court, in turn, has been brought into question for not contacting the Web site's hosts before ordering the filtering.⁴⁷

Conclusion

In France, as in other Western countries, concerns over intellectual property guide on-line regulatory efforts. However, access to the Internet remains relatively free, apart from limited filtering of child pornography and Web sites that promote terrorism or racial hatred.

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Access Controlled

The Shaping of Power, Rights, and Rule in Cyberspace

**Edited by: Ronald Deibert, John Palfrey, Rafal Rohozinski,
Jonathan L. Zittrain**

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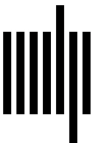
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