

FRANCE				
QUESTION	ANSWER	SOURCE OF LAW\SOURCE OF INFORMATION	ADDITIONAL INFORMATION / DEFINITIONS	COURT RULINGS
<i>Where is online hate speech established as a criminal offence?</i>	French Penal Code  Law on Press Freedom	Article 226–19 of the Penal Code <sup>A</sup> .  Articles 23, 24 and 24bis of the Law on Press Freedom <sup>C</sup>		
<i>What is the punishment for online hate speech?</i>	According to the Penal Code, hate speech is punished by five years' imprisonment and a fine of €300,000.  According to the Law on Press Freedom hate speech is punished with five year imprisonment and a fine of 45 000 euros, or one of both punishments only, if the incitement was not followed by effective actions.	Article 226–19 of the Penal Code <sup>A</sup>  Articles 24 and 24bis of the Law on Press Freedom <sup>C</sup>		
<i>Is there a law-based obligation for intermediaries to monitor hate speech?</i>	Internet service providers are obligated to contribute to the fight against hate speech.  However, hosting services and the ISPs are not obligated to monitor the information they transmit or stock, nor to actively seek out unlawful activities. They can be engaged by the court into targeted and temporary monitoring.	Article 6-I-7 of the Law for Confidence in the Digital Economy <sup>D</sup>  (Source: Comparative Study on Blocking, Filtering and Take-Down of Illegal Internet Content, 2015. Available at: <a href="https://www.coe.int/en/web/freedom-expression/country-reports">https://www.coe.int/en/web/freedom-expression/country-reports</a> .)	In early 2015, the Government announced that it intends to establish a special “cyber patrol” unit against hatred on Internet. The unit would search the Internet for racist and antisemitic content and initiate criminal prosecution against offenders.  (Source: <a href="http://www.gouvernement.fr/en/anti-terrorism-the-prime-minister-announces-">http://www.gouvernement.fr/en/anti-terrorism-the-prime-minister-announces-</a>	In its decision from 12 July 2012, the Court of Cassation held that “obliging Internet stakeholders to prevent any reposting of unlawful content which they have removed following due notification by users would be tantamount to subjecting them to a general duty to monitor the images they stock and to look for unlawful reproductions. This could not be accepted”. (Source: Comparative Study on Blocking,

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			exceptional-measures)	Filtering and Take-Down of Illegal Internet Content, 2015. Available at: <a href="https://www.coe.int/en/web/freedom-expression/country-reports">https://www.coe.int/en/web/freedom-expression/country-reports</a> . French Court of Cassation, Civil Division, 12 July 2012, Nos. 11-15.165, 11-13.669 and 11-13.666. French text is available at <a href="http://www.legalis.net">www.legalis.net</a> .)
Who is responsible to remove hate speech?	<p>There are two procedures: administrative blocking and court order blocking.</p> <p>Judicial and administrative authorities (Directorate General of the National Police, Central Office for Combating the ITC related crimes) may order the blocking or filtering of certain sites and removing content from those sites.</p> <p>The authorities first contact the hosting service or the editor of the content, and inform the internet service provider about the blocking measures. If the administrative authority does not have the details of the offender, it can contact the internet service provider directly.</p> <p>Courts may obligate the hosting service or the online public communications access provider to prevent the violation resulting from the content. The measures are first directed at the hosting service. If it</p>	Articles 6-I-7 and 6-I-8 of the Law for Confidence in the Digital Economy <sup>D</sup>		

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	does not comply, then to the internet service provider requesting to block the access.			
<i>What is the required time frame, if any, for removing hate speech?</i>	The content must be removed by the hosting service providers in 24 hours, otherwise the official authorities may take measures and address the Internet Service Provider directly. The Internet Service Providers also have 24 hours since the notification to prevent access to the address and the links referred to by the authorities. If there is no information about the editor of the website, the authorities can contact the Internet Service Providers directly.	Article 6-I-1 of the Law for Confidence in the Digital Economy <sup>D</sup>		

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<i>Is the intermediary liable for hate speech posted on website?</i>	<p>If the intermediary (Hosting Service Provider or Internet Service Provider) fail to comply with the requests to remove/block access to the information – they are punished by a fine of 375,000 euro and a prohibition either permanent or for a maximum of 5 years from directly or indirectly carrying out professional or social activities.<sup>41</sup></p> <p>If the intermediary will not have civil liability if they not have actual knowledge of the unlawful nature of the activity or the information stored at the request of the recipient of the service, or are unaware of facts or circumstances from which the unlawful nature is apparent, or if upon obtaining such knowledge or awareness they have acted promptly to remove or disable access to that information.</p>	Article 6.I.2 of the Law for Confidence in the Digital Economy <sup>D</sup>	<p>The law determines a presumption of knowledge by the hosting service provider after it receives notification.</p> <p>"Manifestly unlawful content" – child pornography, incitement to racial hatred, condoning crimes against humanity, copyright infringement, defamation.<sup>42</sup></p>	According to Constitutional Council decision of 10 June 2004, no. 2004-496 DC the hosting service provider as well has a margin or appreciation: it is free to remove the content notified as unlawful, but is not obliged to do so in particular circumstances. For example, if this information is not manifestly unlawful or if its removal has not been ordered by a court. <sup>43</sup> If the content is not manifestly unlawful and there is no court order the hosting service provider is not obligated to disable access to the content, and will thus not be liable for not removing such content.
<i>What are the online reporting mechanisms?</i>	Hosting Providers are obligated to provide a mechanism for reporting on hate speech. They are obligated to promptly inform authorities of any	"PHAROS" is a platform hosted by the French police for receiving, processing and referring hate speech notifications.		

<sup>41</sup> Source: Comparative Study on Blocking, Filtering and Take-Down of Illegal Internet Content, 2015. Available at: <https://www.coe.int/en/web/freedom-expression/country-reports>.

<sup>42</sup> Ibid.

<sup>43</sup> Constitutional Council Decision of 10 June 2004, no. 2004-496 DC . Source: Comparative Study on Blocking, Filtering and Take-Down of Illegal Internet Content, 2015. Available at <https://www.coe.int/en/web/freedom-expression/country-reports>.

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	illegal activities reported which originated from their users or hosted on their servers.			
<i>When is the offence considered to have been committed within the territory\under the country's jurisdiction?</i>	According to an official opinion by the Commission of Human Rights (CNCDH) on hate speech on the internet <sup>44</sup> , if the information online is available on the territory of France then the crime is considered to be committed on French territory. However, most sites with hate speech content are hosted by US registered companies which claim legal foreignness. Therefore, large US companies such as Facebook, Twitter or YouTube do not consider the Law on Confidence in the Digital Economy as applicable on them.	Article 113-2 of the Penal Code: "French criminal law is applicable to offenses committed on the territory of the Republic. The offense is committed in the territory of the Republic where one of its constituent facts took place in this territory." <sup>A</sup>		

<sup>44</sup> French Official Gazette No. 0158 of July 10, 2015 Source: <http://www.legifrance.gouv.fr/>

## FRANCE APPENDIX

### A. Penal Code of 1791, as Amended up to 2016<sup>45</sup>

#### Article 226–19

“Except in cases provided for by law, the computerized recording or preserving, without the express agreement of the persons concerned, of personal data which directly or indirectly reveals their racial origins, political, philosophical or religious opinions, or trade union affiliations, or their health or sexual orientation, shall be punished by five years’ imprisonment and a fine of €300,000.

The same penalty applies to the recording or preserving in a computerized memory of name-bearing information relating to offences, convictions or supervision measures outside the cases provided for by law. (...).”

### B. The Code of Criminal Procedure<sup>46</sup>

In accordance with the Criminal Procedure Code, any natural or legal person active in the field of monitoring hate speech can report a crime. If there is no report by a victim, the Public prosecutor can also initiate proceedings.<sup>47</sup> Hate speech/hate crime incidents may be reported to the Public Prosecutor or to judicial police officers.<sup>48</sup> There are specialized bodies that may intervene during hate speech criminal proceedings. The French Equality Body, in the field of discrimination, can advise victims and help them collect proof it can organize mediation between the victim and the offender, it can impose a fine on a person committing discrimination, and it can file a complaint. Moreover, the Higher Audiovisual Council<sup>49</sup> is responsible for guaranteeing the freedom of broadcasting communication, and may impose administrative sanctions against public or private TV or radio programs in case where they broadcast hate speech.<sup>50</sup>

### C. Law on Press Freedom of 1881, as Amended up to 2014<sup>51</sup>

#### Article 23

“Whoever by speeches, calls or threats made public in public places or meetings, or by writings, printed matters, drawings, engravings, pictures, emblems, images or any other kind of printed materials, by word or by images, sold or distributed, put to sale or exposed in public places or meetings, or by posters or notices exposed to public view, or by any electronic means of communication, directly incite a person or persons to commit an act qualified as crime or offense, are to be punished as its accomplices, if their incitement was followed by an action. This disposition applies also to cases when incitement was not followed by a criminal attempt, as provided by Article 2 of Penal Code.”

#### Article 24<sup>52</sup>

“Whosoever directly incites through one of the means listed in the previous article, shall be punished with five year imprisonment and a fine of 45 000 euros, or one of both punishments only, if the incitement was not followed by effective actions, regarding the following offenses:

1. – 5. (...)

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<sup>45</sup> Official version available at [http://www.legifrance.gouv.fr/affichCode.do?sessionId=BD0B90F486586FA3961EE102994D1FFB.tpdila10v\\_1?cidTexte=LEGITEXT000006070719&dateTexte=20160203](http://www.legifrance.gouv.fr/affichCode.do?sessionId=BD0B90F486586FA3961EE102994D1FFB.tpdila10v_1?cidTexte=LEGITEXT000006070719&dateTexte=20160203) .

<sup>46</sup> Code of Criminal Procedure (*Code de Procédure Pénale*), available at <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006071154>.

<sup>47</sup> Article 2, Article 2-1 to 2-5 of the Criminal Procedure Code, available at [http://www.legifrance.gouv.fr/affichCode.do?sessionId=D3362482E882BA684D9CD49757F4F69A.tpdila07v\\_1?cidTexte=LEGITEXT000006071154&dateTexte=20150706](http://www.legifrance.gouv.fr/affichCode.do?sessionId=D3362482E882BA684D9CD49757F4F69A.tpdila07v_1?cidTexte=LEGITEXT000006071154&dateTexte=20150706).

<sup>48</sup> Article 15-3 and 40 of the Criminal Procedure Code, available at [http://www.legifrance.gouv.fr/affichCode.do?sessionId=D3362482E882BA684D9CD49757F4F69A.tpdila07v\\_1?cidTexte=LEGITEXT000006071154&dateTexte=20150706](http://www.legifrance.gouv.fr/affichCode.do?sessionId=D3362482E882BA684D9CD49757F4F69A.tpdila07v_1?cidTexte=LEGITEXT000006071154&dateTexte=20150706).

<sup>49</sup> ‘Higher Audiovisual Council’ (Le Conseil Supérieur de l’Audiovisuel, CSA), <http://www.csa.fr/>.

<sup>50</sup> Source: European Parliamentary Framework on Hate Speech, p. 233.

<sup>51</sup> The Law on Freedom of Press of 29 July 1981, as amended up to 15 November 2014, Official version available at <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006070722>.

<sup>52</sup> Article 24 and 24a were amended in 2014. English Text is not available.

#### **D. Confidence in Digital Economy Act of 2004, as Amended up to 2015<sup>53</sup>**

*Under this Law the Internet access and hosting providers are bound by the obligation to:*

- (1) *“ Provide an accessible and visible mechanism allowing anyone to draw their attention to content included in one of the categories of Article 6 I 7, paragraph 3 of the Confidence in the Digital Economy Act; promptly inform the competent authorities of any illegal activities mentioned in paragraph 3 of Article 6 I 7 that are reported to them, when originating from a user of their services, i.e. when hosted on their servers; make public the means dedicated to fighting these illegal activities”.*
- (2) *“In the name of suppression of public incitement to violence, and notably violence against women, Internet service providers are required to contribute to the fight against the diffusion of content inciting to voluntary attacks on life, voluntary attacks on the integrity of a person, and sexual assault (article 6-I-7 of the Law for Confidence in the Digital Economy)”.*
- (3) *“In the name of suppression of public praise of crimes against humanity, Internet service providers are required to contribute to the fight against the diffusion of content glorifying crimes against humanity, war crimes, crimes of collaboration with the enemy and the contesting of crimes against humanity (article 6-I-7 of the Law for Confidence in the Digital Economy)”.*

*The content need to be removed in 24 hours, otherwise the official authorities take measures. The administrative authority may notify the persons referred to on the list of electronic addresses of communication services to the public online offender. They must then immediately prevent access to these addresses. The administrative authority may make the notification without requesting the removal of content. The administrative authority transmits withdrawal requests to a qualified person designated by national Commission on Informatics and Liberties. The qualified person ensures the regularity of withdrawal applications and conditions of establishment, updating, communication and use of the list. If it finds an irregularity, it may recommend to end it. If the administrative authority does not follow this recommendation, the qualified person may apply to the competent administrative court. According to Article 6.I.8 of Law “the judicial authorities may require upon summary of ex parte application, that hosting service or, by default, the online public communication access provider take any appropriate measures to prevent or halt harm or damage resulting from the content of an online public communication service”.<sup>54</sup>*

#### **E. The Law On Freedom of Communication of 1986<sup>55</sup>**

*Provisions of this act also apply to online service providers.*

##### **Article 15**

*“The Higher Audiovisual Council shall ensure that the programs do not contain any incitement to hatred or violence for reasons of race, sex, morality, religion or nationality.”*

##### **Article 43-8**

*The Higher Audiovisual Council may provisionally suspend the re-transmissions of television services under the jurisdiction of another Member State of the European Community or party to the Agreement on the European Economic Area, if the following conditions are met:*

1. *The service has distributed more than twice during the previous 12 months broadcasts that may manifestly, seriously and gravely impair the physical, mental or moral development of minors, or which may incite to hatred on grounds of origin, sex, religion or nationality;*
2. *After notification of grievances and proposed measures to the service and to the European Commission and consultation of the transmitting Member State and the European Commission, the alleged infringement persists.*

*The Higher Audiovisual Council may provisionally suspend re-transmissions of television services under the jurisdiction of another State party.”*

*Until 2004 the notion of audiovisual communication as defined in this Law did not cover information provided by electronic channels, i.e., the Internet. However, such provision is in place since the adoption of the Law on Confidence in Digital Economy in 2004. The provisions of its articles 1 and 6 should be read in parallel with those set out in Article 43-8 of the Law of 30 September 1986 on Freedom of Communication. Therefore, some provisions of the Freedom of Communication Act also apply to online service providers.*

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<sup>53</sup> French Official Gazette No. 0143 of 22 June 2004 Act No. 2004-575 of 21 June 2004 on Confidence in the Digital Economy, as amended up to 8 August 2015. Available at <http://www.legifrance.gouv.fr/>.

<sup>54</sup> Source: Comparative Study on Blocking, Filtering and Take-Down of Illegal Internet Content, 2015. Available at: <https://www.coe.int/en/web/freedom-expression/country-reports>.

<sup>55</sup> Law No. 86-1067 of 1986 on the Freedom of Communication, available at [www.legifrance.gouv.fr/](http://www.legifrance.gouv.fr/).

**F. The Intelligence Act of 2015<sup>56</sup>**

The Act governs the activities of the intelligence services concerning their fight against terrorism, while maintaining the secrecy of correspondence. The Act authorizes the automatic analysis of data with the goal of detecting online patterns of behavior typically displayed by terrorists. Telecommunication operators are involved in the process and will be reported to the Prime Minister under the control of the National Commission for the Control of Intelligence Techniques. The act clarifies the concept of “national security” and the limits of usage of the surveillance measures. It prohibits monitoring of political parties, trade unions and peaceful protest. The Act provides that intrusion into privacy may be deemed necessary “in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”.<sup>57</sup> Under this law, internet providers are required to install “black boxes” to track a suspect’s online behavior. The Constitutional Council deemed the law a fair balance between public safety requirements and fundamental rights guarantees.<sup>58</sup>

**G. Code of Internal Security of 2012, as Amended up to 2016<sup>59</sup>**

According to Article L212-1 of the Code Associations and groups are dissolved by Order of the Council of Ministers if they among other reasons cause armed demonstrations in the streets, lead to discrimination, hatred or violence against a person or a group of persons because of their origin, membership (non-membership) in an ethnic group, nation, race, religion; or propagate ideas or theories tending to justify or encourage such discrimination, hatred or violence.<sup>60</sup>

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Where is online hate speech established as a criminal offence?	The Criminal Code prohibits incitement to hatred, which may be carried out via “written materials” which is defined as including media storage and audiovisual media. Therefore, hate speech committed online is punishable.	Sections 11, 130, 130a, 131 of the Federal Criminal Code <sup>A</sup>		
What is the punishment for online hate speech?	For inciting to hatred - Imprisonment from three months to	Sections 11, 130, 130a, 131 of the Federal Criminal Code <sup>A</sup>		

<sup>56</sup> French Official Gazette No. 0171 of July 26, 2015 Page 12735, ION 2015-912 of 24 July 2015 on Intelligence, as amended up to 3 October 2015, available at <http://www.legifrance.gouv.fr/>.

<sup>57</sup> <http://www.gouvernement.fr/en/parliament-adopts-the-intelligence-bill>

<sup>58</sup> <http://www.constitutionnet.org/news/france-under-mass-surveillance-french-constitutional-council-and-limits-intelligence-services>

<sup>59</sup> French Official Gazette No. 0062 of 13 March 2012, Page 4533, Ordinance No. 2012-351 of March 12, 2012 on the legislative part of the code of internal security, as amended up to 1 October 2016. Official version available at <http://www.legifrance.gouv.fr/>

<sup>60</sup> **By a Presidential Decree of 14 January 2016 three associations, “Back to Basics”, “Returning to Muslim sources” and “Muslim Associations of Lagny-sur -Marne”, were dissolved in accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms, in particular Articles 10 and 11 and Article L. 212-1 of Code of Internal Security. The Decree is available at <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000025498645&categorieLien=id>.**