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The International Comparative Legal Guide to: Telecommunication Laws and Regulations 2012

A practical cross-border insight into
telecommunication laws and regulations

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France



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1 Framework

1.1 Has France implemented the revised EU regulatory framework? Summarise the key changes.

France has proceeded to transpose the directives of the first “telecoms package” with the law no. 2004-669 of 9 July 2004, relating to electronic communications and audiovisual communication services and the law no. 2004-575 of 21 June 2004 (“LCEN” – Digital Economy Act).

To transpose the last telecoms package, i.e. EC directives no. 2009/140 and 2009/136 of 25 November 2009, a law dated 22 March 2011 authorises the government to legislate by decree (“*ordonnance*”) for a period of six months. At the date of writing (July 2011), a public consultation on the draft legislative decrees is ongoing, with the target date for adoption 21 September 2011 at the latest.

Once adopted the legislative decrees will specify the operators’ obligations on specific points such as number portability, the implementation of which will be reduced to one business day; the limitation of the cases where an administrative authorisation is required to use radio-electric frequencies to broadcast or receive signals; or the procedure applicable in the event of violation of the security of personal data, in order to improve their protection.

1.2 Has France fully implemented the original EU 2003 regulatory framework? Have any proceedings been brought against France by the European Commission and if so, for which contraventions?

The two 2004 acts cited above have completely transposed the previous telecoms package and no procedure is ongoing at the Commission on this topic. However, the above-mentioned 2009 directives had to be transposed by 25 May 2011. On 19 July 2011 the Commission formally notified France, along with 19 other Member States, of their obligation to complete this transposition within two months. This deadline should be able to be met thanks to the law of 25 March, which authorises the Government to legislate by order.

1.3 Please give an overview of the different laws and regulations governing the operation of electronic communications networks and the provision of electronic communication services.

The operation of electronic telecommunications networks and the provision of electronic communications services are governed by

the postal and electronic communications code (CPCE). This code contains the majority of the legislative and regulatory provisions applicable to these activities.

Most provisions of the act of 9 July 2004 relating to electronic communications and audiovisual communications services, cited above, are contained in the CPCE. This law reformed the overall legal framework applicable to telecommunications, to the Internet and audiovisual field and harmonised the legal regime applicable to the different types of networks.

The Digital Economy Act of 21 June 2004 (LCEN) transposed directive no. EC/2000/31 of 8 June 2000 on e-commerce and, in part, directive EC/2002/58, on the protection of privacy in the electronic communications sector. With a view to creating the conditions of confidence for Internet service providers and instigating effective protection for users, it deals with topics such as the fight against spamming, freedom of online communication to the public, the protection of exchanges and the amplification of means of fighting cybercrime.

Moreover, the law no. 78-17 of 6 January 1978 concerns liberties and data processing aims to guarantee the respect of privacy and public freedoms in relation to personal data. In the field of electronic communications, it has provided a framework for the gathering and processing of this type of data on networks by, notably, reinforcing information and the right of access of users to this data.

1.4 Please describe the regulatory framework, in terms of regulatory authorities and associated agencies, e.g. national regulatory authority, premium rate regulator, spectrum allocation body, privacy regulator and national competition authority.

The authority for the regulation of the electronic communications and postal sectors (ARCEP) is responsible for regulating the telecommunications and postal sectors in France. Within the framework of the CPCE, the mission of this independent regulatory authority is to ensure the development of effective and fair competition in the telecommunications sector, for the benefit of users, territories, employment and innovation.

The national commission on data processing and liberties (CNIL) is also an independent regulation authority. The data protection act of 6 January 1978 entrusts it with the mission of ensuring respect for personal privacy and individual and public liberties in the digital arena.

The national agency of frequencies (ANFR) is a government agency. It is responsible for coordinating the implantation of radio stations in France by way of planning, administration and

inspection missions on the use of frequencies.

The French broadcasting authority (CSA), an independent regulation authority, is responsible for managing the attribution of the use of frequencies for use by radio and television services. Within the framework of the law no. 86-1067 of 30 September 1986 relating to freedom of communication, it plans the frequency bands used by radio stations and broadcasting channels used by television operators and grants broadcasting authorisations. With the AFNR, it participates in the international coordination of the frequencies. The CSA receives the declaration of audiovisual communication services broadcast by cable, satellite, Internet, ADSL and other means.

The Competition Authority, an independent regulation authority, analyses the functioning of competition on the markets to ensure compliance with economic public order. It acts to repress uncompetitive practices and intervenes, at its own initiative or at the request of plaintiffs, whenever competition comes under attack on a market, irrespective of the activity involved or the status of the parties involved (private or public). This authority is called upon to give opinions on certain analyses made by the ARCEP on the specific electronic communications market.

1.5 Which principal aspects of electronic communications regulation fall under the supervision of the national regulatory authority for electronic communications?

The ARCEP receives declarations from operators within the framework of a general authorisation. It oversees the development of effective and fair competition on the relevant markets identified by the European Commission, analysing these markets and identifying the operators with significant market power (SMP). It can impose justified and proportional obligations on the SMP operators in order to ensure pricing regulation. The ARCEP administers the attribution of frequency and numbering resources by applying objective, transparent and non-discriminatory conditions. It implements the principles of universal service and determines the amount of contributions paid by the operators in this respect. The ARCEP settles disputes between operators and has the power to sanction.

1.6 In order to be properly authorised to provide electronic communications networks and services, is a registration, declaration or notification required and if so to whom and for which purposes? What rules or conditions, if any, may be attached to a registration, declaration or notification?

The establishment and operation of networks open to the public and the provision of electronic communications services are free, subject to the proviso of a prior declaration to the ARCEP (CPCE, art. L.33-1). A receipt of this declaration is issued within three weeks.

Operators declared in this way are, then, bound by numerous rights and obligations, particularly in terms of standards and specifications for the networks and services offered, quality and availability, compliance with regulations in respect of health and the environment, occupation of the public domain, sharing of infrastructures and local roaming, interconnection and access, contribution to universal service and payment of taxes, public order and national defence, confidentiality and neutrality in respect of transmitted communications. Operators must pay an annual administration duty, the amount of which is 20,000 euros for operators whose turnover is above two million euros.

1.7 Are any network operators or service providers subject to rules governing their operations over and above rules and conditions governing authorisations and imposing SMP obligations, for example under competition law?

All regulations applicable to operators are derived from their status as a declared operator. Aside from significant market power obligations, certain rules apply specifically to certain operators only, for example the rules relating to the execution of public service obligations, such as the provision of the universal service.

1.8 Which (SMP) markets have been notified to the European Commission under Article 7 of the Framework Directive?

The ARCEP analysed the different relevant markets and, after notification to the European Commission, identified the SMP operators on these markets as follows:

- retail market for access by the public to the telephone service from a landline (France Télécom; decision no. 2011-0926 of 26 July 2011);
- landline call origination market (France Télécom; same decision);
- wholesale call termination markets for calls to each individual network (each landline operator on its network; same decision);
- wholesale call termination market for voice calls to mobile phones (Orange, SFR and Bouygues Télécom; decision no. 2011-0483 of 6 May 2011); and
- wholesale call termination market for SMS calls on mobile networks (metropolitan and overseas operators concerning their respective individual mobile networks; decision no. 2010-0892 of 27 July 2010).

The Authority notified the European Commission and is preparing to adopt the decisions concerning the high speed and very high speed fixed line markets:

- wholesale market for provision of access to the physical infrastructures making up the local loop (France Télécom); and
- wholesale market for provision of high speed and very high speed access delivered at an infra-national level (France Télécom).

2 Authorisation

2.1 What types of general and individual authorisations are used in France?

The postal and electronic communications code provides for a general authorisation for the establishment and operation of networks open to the public and for the provision of electronic communication services (telephone service, access to the Internet and others). This authorisation is not required if the network is entirely established on a single property.

The use of radio frequencies for the emission or reception of signals is subject to an individual authorisation of which the ARCEP may limit the number. With the transposition of the 2009 telecoms package the field of application of this requirement should be reduced in favour of a general authorisation (see question 1.1).

2.2 Please summarise the main requirements of France's general authorisation.

The general authorisation to establish and operate networks open to the public and to provide electronic communications to the public is

subject to a prior declaration to the ARCEP. The requirements associated with this general authorisation are summarised in question 1.6 above.

2.3 In relation to individual authorisations please identify their subject matter, duration and ability to be transferred or traded.

Individual authorisations relate to the use of radio frequencies managed by the ARCEP (CPCE, art.L.42-1). These authorisations define the conditions of use of the frequencies. Their duration cannot exceed twenty years. Certain authorisations may be transferred (see question 8.7).

3 Public and Private Works

3.1 Are there specific legal or administrative provisions dealing with access and/or securing or enforcing rights to public and private land in order to install telecommunications infrastructure?

In accordance with the CPCE operators of open networks benefit from a right of passage on the public road system and the public networks within the public domain (for example underground pipe work), except for electronic and communications networks and infrastructures (CPCE, art.L.45-9). The concessionary or managing authorities of the non-road public domain can authorise the operators of open networks to occupy this domain, such an occupation possibly giving rise to a licence fee.

Network operators benefit from easements on private properties. These easements are intended to permit the installation and operation of equipment, including equipment for very high speed landline and mobile networks. Use of these rights is subject to an authorisation issued in the name of the state by the mayor. They can be exercised in the common areas of buildings and housing developments, on the ground or under the ground of private property not built on, as well as above properties in the framework of existing installations.

3.2 Is there a specific planning or zoning regime that applies to the installation of telecommunications infrastructure?

Telecoms infrastructures must comply with the general town planning regulations and, where applicable, local town planning regulations. Certain infrastructures are subject to formalities, such as a prior declaration or building permission issued by the municipal authorities.

The national agency of frequencies (ANFR) coordinates the setting up of radio stations of all kinds and gives its agreement or its opinion as the case may be.

On the national level coordination measures have been taken to better organise investments in high speed networks between the operators, local authorities and the state (for example law no. 2009-1572 of 17 December 2009 on combating the digital divide). Local development plans have been put in place in order to better link up public and private initiatives and avoid infrastructure duplication.

3.3 Are there any rules requiring established operators to share their infrastructure, e.g. masts, sites, ducts or cables (i.e. dark fibre)? Are there any proposals to mandate 'passive access' to such basic infrastructure?

Besides the infrastructure-sharing possibly associated with their

interconnection obligations, established operators which operate very high speed networks in residential buildings must, in accordance with the CPCE, allow the use of their host infrastructure in these buildings by other operators.

Without imposing it, the CPCE also encourages the sharing of passive infrastructures for radio sites (sites, control rooms and easements, pylons, power supply). Moreover, the ARCEP can accompany its individual authorisation decisions with the obligation for the mobile operators concerned to allow the use of their infrastructures by other operators.

4 Access and Interconnection

4.1 How is network-to-network interconnection and access mandated?

Every operator of a network open to the public must accept the requests for interconnection of other operators of networks open to the public, including those established in other Member States of the European Union when such requests are made with a view to providing electronic communication services to the public. A request for interconnection cannot be refused if justified with regard to the needs of the requester and the ability of the operator to meet it. Any refusal of access must be justified. Interconnection or access is the subject of a private agreement between the operators concerned, which must be communicated to the ARCEP at its request.

4.2 How are interconnection or access disputes resolved?

The ARCEP may be referred to by any operator for any dispute concerning their interconnection or access to their networks. The authority gives its judgment within four months of the closure of proceedings. Its decision is justified and it states the fair, technical and financial conditions under which the interconnection or access must be ensured. In certain urgent cases the authority may prescribe interim measures to ensure the continued functioning of the networks. The authority's decisions are public and can be subject to appeal before the Paris appeal court. The appeal is not suspensive.

4.3 Which operators are required to publish their standard interconnection contracts and/or prices?

Only operators identified by the ARCEP as having significant power on the market (see question 1.8) can be required to publish their interconnection conditions or charges.

4.4 Looking at fixed, mobile and other services, are charges for interconnection (e.g. switched services) and/or network access (e.g. wholesale leased lines) subject to price or cost regulation and, if so, how?

Only the charges for interconnection or access of operators exercising significant power on the market can be subjected to a price regulation. This regulation is carried out by the ARCEP in the context of its analysis of the markets and the means necessary for establishing effective and fair competition on each relevant market. For example, the ARCEP can impose on the operators concerned the obligation to relate their charges to their costs.

4.5 Are any operators subject to: (a) accounting separation; (b) functional separation; and/or (c) legal separation?

In a decision no. 06-1007 of 7 December 2006, the ARCEP decided on the accounting separation of France Télécom. The functional separation of France Télécom was envisaged by the competition authority in March 2011 and it is currently being studied by the ARCEP (30 July 2011). The splitting up of the operator is not on the agenda.

4.6 How are existing interconnection and access regulatory conditions to be applied to next generation (IP-based) networks?

The ARCEP considers that the activated high-speed and very high-speed wholesale offerings delivered at infra-national level, whether they are intended to provide wholesale or retail services for individuals or professionals, belong to the same market. It considers that it is not necessary to distinguish between those based on DSL or fibre optic, in IP, ATM or Ethernet. The ARCEP considers that France Télécom has significant market power over this market and imposes upon it certain obligations relating to this, such as the proposal of a wholesale offering for access to local loop civil engineering infrastructure, that the ARCEP considers essential. Within the framework of the CPCE, the ARCEP has also been able to establish a principle of mutualisation applicable to all operators for the fibre network terminal part.

4.7 Are owners of existing copper local loop access infrastructure required to unbundle their facilities and if so, on what terms and subject to what regulatory controls? Are cable TV operators also so required?

Only the historical operator holds, throughout the national territory, the copper local loop giving access to subscribers. The unbundling of this loop is proposed in compliance with European provisions ("Access" directive). It may be total or partial, in compliance with the reference offer published by France Télécom. The ARCEP controls this offering, which it has had modified on several occasions. Cable operators are not obligated to propose unbundling on their own networks.

4.8 Are there any regulations or proposals for regulations relating to next-generation access (fibre to the home, or fibre to the cabinet)? Are any 'regulatory holidays' or other incentives to build fibre access networks proposed? Are there any requirements to share passive infrastructure such as ducts or poles?

The conditions of mutualisation of infrastructure in residential buildings, for fibre to the home have now been laid down in law (see CPCE, art.34.8.3). The operator which lays the last mile is obligated to accede to reasonable access requests, under transparent and non-discriminatory conditions. This does not give rise to regulatory holidays.

5 Price and Consumer Regulation

5.1 Are retail price controls imposed on any operator in relation to fixed, mobile, or other services?

The ARCEP may only impose retail price controls on the universal service operator and on the operators designated as exercising SMP

over a relevant market. Following a call for bids, France Télécom was renewed in its role of universal service operator on 1 December 2009. The pricing framework of France Télécom relates to the interpersonal communications of those having signed up to the universal service. Since 2008 the pricing obligations imposed on France Télécom as an operator exercising significant influence over the retail markets have been lifted. Moreover, regulation no. 717/2007 of the European Parliament and Council dated 27 June 2007 establishes a framework for retail prices of intra-Community roaming services (voice, SMS, data). This regulation is currently being renewed.

5.2 Is the provision of electronic communications services to consumers subject to any special rules and if so, in what principal respects?

The Consumer Code establishes a certain number of rules specific to the provision of electronic communication services to consumers. In short, these rules relate to the general information obligation incumbent on operators, the minimum commitment period required, the reimbursement of advances and deposits, and they also provide the framing of cancellation fees and notice periods.

The CPCE also contains provisions on this topic, relating, for example, to the right to keep a number, the right to be listed or not in subscriber directories and the right to a detailed invoice. Within the framework of the CPCE, it is the duty of the minister responsible for electronic communications and the ARCEP to ensure a high level of consumer protection, thanks notably to the provision of clear information on prices and conditions of use of electronic communications services accessible to the public. In this respect, the ARCEP insists on the necessary transparency of offers and the facility for consumers to change supplier.

6 Numbering

6.1 How are telephone numbers and network identifying codes allocated and by whom?

The telephone numbers or blocks of numbers and prefixes are attributed by the ARCEP to operators according to a national telephone numbering plan established and administered by the authority. This attribution must be done under objective, transparent and non-discriminatory conditions. In exchange, operators must pay an annual duty.

6.2 Are there any special rules which govern the use of telephone numbers?

The ARCEP ensures the effective use of the telephone numbering resources. It may withdraw resources that are not used within the year in which they are made available. The CPCE also determines the rules allowing for the provision and transfer of numbers between operators.

6.3 How are telephone numbers made available for network use and how are such numbers activated for use by customers?

In compliance with the "authorisation" directive, the attribution of a numbering resource is subject to the individual decision of the ARCEP for the benefit of operators making such a request for this.

The requests are processed according to the administration regulations of the national numbering plan.

6.4 What are the basic rules applicable to the 'porting' (i.e. transfer) of telephone numbers (fixed and mobile)?

Subscriptions which allow for a change in landline or mobile operator without changing either telephone number or installation area or geographical installation area, as the case may be, must be offered at a reasonable rate. The change must be made within ten days of the client's request addressed to the new operator (see question 1.1, however).

7 Submarine Cables

7.1 What are the main rules governing the bringing into France's territorial waters, and the landing, of submarine cables? Are there any special authorisations required or fees to be paid with respect to submarine cables?

The installation and connection of submarine cables in territorial waters may only be done by or for operators registered with the ARCEP (see question 2.1). These actions require the authorisation to use the public domain, which involves the payment of occupation fees.

8 Radio Frequency Spectrum

8.1 Is the use of radio frequency spectrum specifically regulated and if so, by which authority?

The use of radio frequencies constitutes an exclusive mode of occupation of the state public domain. The Prime Minister determines the frequency bands which he himself administers (for the purposes of national defence and public security), the administration of which he entrusts to the ARCEP (to enable either the emission or both emission and reception of signals) or the French broadcasting authority (CSA) for televised programmes). These authorities have recourse, in certain cases, to the national agency of frequencies (ANFR) for the administration and supervision of the frequencies under their responsibility.

8.2 How is the use of radio frequency spectrum authorised in France? What procedures are used to allocate spectrum between candidates - i.e. spectrum auctions, comparative 'beauty parades', etc.?

Frequencies are attributed over time in reply to requests provided that the bands are available. For rare frequencies, selection procedures are used, i.e. comparative submission and auctioning (CPCE, art.L.42-2) (see also question 8.5).

8.3 Are distinctions made between mobile, fixed and satellite usage in the grant of spectrum rights?

For each frequency or radio frequency bands, the attribution of which has been entrusted with it, the ARCEP determines the type of equipment, network or service to which the use of the frequency or the frequency band is reserved. For rare frequencies, the conditions and the procedure of attribution are stipulated by the minister for telecommunications at the proposal of the ARCEP in compliance with the CPCE (see question 8.2).

8.4 How is the installation of satellite earth stations and their use for up-linking and down-linking regulated?

The authorisation to use satellite frequencies is subordinated to the justification, by the requesting party, of its capacity to control broadcasting from all radio stations, including terrestrial stations, and specifies the conditions of connection to the network's stations. Moreover, the installation of terrestrial stations may be subject to a prior declaration or to a building permit from the municipal authorities (see question 3.2).

8.5 Can the use of spectrum be made licence-exempt? If so, under what conditions?

For low power, small range systems a general authorisation regime allows for free utilisation of the frequencies but with no guarantee against interference (e.g. for WiFi).

8.6 If licence or other authorisation fees are payable for the use of radio frequency spectrum, how are these applied and calculated?

The use of frequencies requires payment of an annual domain licence fee for the provision of radio frequencies and an annual administration fee intended to cover the administration costs of the radio frequency spectrum and the utilisation authorisations. The provision fee is calculated on the basis, notably, of the width of the band attributed and the surface area of the territory covered. The administration fee is calculated by reference to the surface area of the territory covered as a ratio of the surface area of the metropolitan territory.

8.7 Are spectrum licences able to be traded or sub-licensed and if so on what conditions?

The list of frequencies or frequency bands, the utilisation authorisations of which may be transferred, is decided by the minister in charge of electronic communications. If a project relates to a frequency used for the exercising of public service missions or granted within the framework of a call for bids, the transfer is subject to the approval of the authority. The other transfer projects are notified to the authority which may oppose it. The ARCEP has a period of six weeks in which to give its opinion on the transfer project and three months in the event of an approval request.

9 Data Retention and Interception

9.1 Are operators obliged to retain any call data? If so who is obliged to retain what and for how long? How are data protection (privacy rules) applicable specifically to telecommunications implemented in France?

Electronic communications operators may hold, process and retain call data and other personal data relating to the users, provided they comply with the provisions of the law of 6 January 1978, relating to the protection of personal data. Consequently, they must destroy or render anonymous all data relating to the traffic. By way of exception, in order to allow for the pursuit of criminal offences or the protection of intellectual property rights, these actions may be postponed by one year for certain technical data. They may also be postponed for reasons of invoicing and payment of electronic communications services. Under certain conditions operators may also process data relating to traffic to commercialise their own

services or value-added services or process location data. However, under no circumstances may they relate to the content of correspondence exchanged or information consulted within the framework of electronic communications.

9.2 Are operators obliged to maintain call interception (wire-tap) capabilities?

Operators must use the means necessary to intercept calls in compliance with law no. 91-646 of 10 July 1991 on correspondence confidentiality (CPCE, art.D.98-7). In this respect, they must designate qualified agents to carry out the material interception operations. The government grants remuneration in exchange for these obligations.

9.3 What is the process for authorities obtaining access to retained call data and/or intercepting calls? Who can obtain access and what controls are in place?

The law of 10 July 1991, on the confidentiality of correspondence emitted by way of electronic communications, lays down the conditions under which the authorities may access this type of data. For so-called “administrative” interceptions an authorisation must be granted by a written, justified decision made by the Prime Minister or his authorised representative, in reply to a written and justified proposal by the defence minister, the minister of the interior or the minister for customs, or their authorised representatives. The authorisation must not last more than four months. The recording must be destroyed within a period of ten days. The material interception operations are placed under the authority of the minister for electronic communications and the supervision control of a national security interceptions supervisory commission. An annual limit is placed on the number of administrative authorisations.

In the penal area, the examining magistrate (“*juge d’instruction*”) may, with respect to crimes subject to an imprisonment sentence of two or more years, call for the interception, recording and transcription of correspondence made by way of electronic communications. These operations shall be carried out under the magistrate’s authority and control. This decision is written but is not subject to any right of review.

10 The Internet

10.1 Are conveyance services over the internet regulated in any different way to other electronic communications services? Which rules, if any, govern access to the internet at a wholesale (i.e. peering or transit) and/or retail (i.e. broadband access) level? Are internet service providers subject to telecommunications regulation?

The electronic communications services governed by the CPCE include access to the Internet in the same way that they include access to other types of data transmission networks. Internet access and IP transmission are not, however, subject to separate regimes. However, regulation of the sector seeks to promote the development of landline and mobile networks towards high speed and very high speed (FTTH) throughout the entire territory and this relates, first and foremost, to Internet usage.

As they intervene in the emission, receipt and transmission of signals constituting electronic communications, Internet access providers (ISP) are considered to be operators. They must thus be registered (see question 2.1) and benefit from access and interconnection rights

to networks open to the public and other operators.

Telecommunications legislation does not affect the content of communications or, therefore, the content of services provided over the Internet. These services, known as “online public communication services”, are, for the most part, governed by the LCEN (see question 1.3).

10.2 How have the courts interpreted and applied any defences (e.g. ‘mere conduit’ or ‘common carrier’) available to protect telecommunications operators and/or internet service providers from liability for content carried over their networks?

According to the CPCE, a provider of access to an electronic network (including the Internet) or a person providing a content transmission activity on such a network may not be held liable, before the courts, for this content, except for cases where it is the originator of the disputed transmission request, it selects the addressee of the transmission, or it selects or modifies the content subject to the transmission (CPCE, art.L.32-3-3). The courts have, on several occasions, exonerated access providers of all liability in respect of content. ISP activity does not, in other words, give rise to judicial debate on this point.

Yet, the legislator tends to enlarge the scope of responsibility of Internet Access Providers. For a short while now, they have been under the obligation to restrain access to certain websites without being bound to rely on a judicial decision (e.g. with respect to websites disclosing child pornography).

10.3 Are telecommunications operators and/or internet service providers under any obligations (i.e. provide information, inform customers, disconnect customers) to assist content owners whose rights may be infringed by means of file-sharing or other activities?

Since law no. 2009-669 of 12 June 2009, aiming to promote broadcasting and protection on the Internet, Internet access providers are obligated to inform their clients, within the framework of contracts signed with them, of various aspects such as the obligation of vigilance which is incumbent on clients, the existence of a legal cultural content offering and the means of securing connections. The information also relates to the legal sanctions that may apply in the event of violation of copyright and performing rights.

To implement these provisions an independent administrative authority has been created, the Supreme Authority for the Broadcasting of Works and the Protection of Rights on the Internet (“*Haute Autorité pour la Diffusion des Œuvres et la Protection des Droits sur Internet*” or “HADOPI”). In conjunction with the ISPs and in a graduated approach, this authority identifies those responsible for offences and, firstly, sends them an initial recommendation; if the failing reoccurs within six months, it sends them a new recommendation, possibly with acknowledgement of receipt; if the failing reoccurs within twelve months, the HADOPI may refer the matter to the courts to order the ISP to suspend the client’s access to the Internet for a period of between one month and one year.

10.4 Are telecommunications operators and/or internet service providers able to differentially charge and/or block different types of traffic over their networks? Are there any ‘net neutrality’ requirements?

The CPCE does not prohibit differential processing of

communications, notably in terms of charging, if it is based, for example, on the geographic location or the operator of the party called, provided that this processing does not involve any appreciation of either the nature or the content of the communications in question. As regards the contents of communications, the LCEN (see question 1.3) states as a principle that Internet service providers are not subject to a general obligation to monitor the information that they transmit or store nor to a general obligation to research the facts or circumstances revealing illegal activities. On the contrary, these providers may not take action to suspend an online communication service until a court orders them to do so, in order to put an end to the harm caused by content made available online. This reflects the principle of independence of content (online public communications services), as opposed to the vehicle (electronic communications services).

With respect to content, website hosts assume a broader liability (unlike access providers) since, within the framework of the LCEN, they may be held liable if they were actually aware of the illegal character of content and did not, accordingly, act promptly to withdraw this content or make access impossible.

10.5 How are 'voice over IP' services regulated?

In compliance with the principle of the technological neutrality of legislation, VoIP services are not regulated as such by the CPCE: they come under the broader definition of electronic communications services. In this respect, VoIP providers must register as operators (see question 2.1) and comply with the associated obligations, such as the contribution to the financing of the universal service, the quality of service or correspondence confidentiality. According to certain sources, the ARCEP brought proceedings in 2007 against Skype in order to oblige it to comply with these obligations.

Within the framework of its analysis of the relevant markets, the ARCEP reported that the telephone service provided over a broadband Internet connection can be seen as a substitute for the traditional telephone service and refused any *ex ante* regulation, considering that the controls exercised over wholesale offerings were sufficient (decision no. 05-0571 of 27 September 2005). It excludes from this analysis, however, VoIP services provided using software to be used on a computer, which is not comparable to traditional telephony insofar as the providers of these services do not have control over the broadband infrastructure over which the signal is emitted.

10.6 Are there any rules to prevent, restrict or otherwise govern internet or email communications, in particular, marketing and advertising communications?

The CPCE prohibits direct canvassing by e-mail addressed to any physical person who has not given his agreement prior to receiving such mail ("opt-in").

Nevertheless, direct e-mail canvassing is authorised if the details of the addressee have been gathered directly from the addressee, in compliance with the provisions of the data protection act no. 78-17 of 6 January 1978, in respect of the sale or provision of a service. In this case, direct canvassing should involve only products or services similar to those already supplied by the same person, and the addressee must be offered, expressly and in a manner devoid of any ambiguity, the possibility of refusing, at no cost and simply, the use of his details. In all cases, illegal direct canvassing activities may be sanctioned by the courts.

11 USO

11.1 Is there a concept of universal service obligation; if so how is this defined, regulated and funded?

The universal service is defined as a minimal set of services of a specified quality, accessible to all end users, at an affordable price on the basis of the specific national conditions, without distorting competition (EC directive no. 2002/22 of 7 March 2002, known as the "Universal Service" directive). In France this comprises: a telephone service of quality at an affordable price; a directory enquiries service and the universal directory; access to public telephone boxes; and specific measures for the benefit of handicapped end users. The telephone service in question must include the communication of data transmission "at speeds sufficient to allow for Internet access", i.e. currently low speed (CPCE, art.L.35-1). France Télécom is the universal service operator for this telephone service.

The operators selected to supply one or more components of the universal service must, by virtue of the requirements made of them, comply with various obligations in terms of service quality, publication of their prices and user information, and separation of their offers between that covered by the universal service and that covered by their other commercial services.

The ARCEP determines the amount of contributions by the other operators in the financing of the universal service obligations and supervises this financing.

12 Foreign Ownership Rules

12.1 Are there any rules restricting direct or indirect foreign ownership interests in electronic communications companies whether in fixed, mobile, satellite or other wireless operations?

The General Agreement on Tariffs and Trade (GATT), in its appendix on telecommunications, obliges the parties to grant the same treatment to their own service providers and to foreign service providers. French legislation, which integrates the international treaties such as the GATT, thus eliminates all limitations concerning the direct or indirect participation of foreign capital in electronic communications enterprises.

13 Future Plans

13.1 Are there any imminent and significant changes to the legal and regulatory regime for electronic communications?

The main change currently under way at the time of writing (July 2011) is the modification by legislative order ("ordonnance") of the CPCE, with a view to transposing the 2009 telecoms directives (see questions 1.1 and 1.2). Also worthy of note is the adoption by the Senate on its second reading of a draft bill relating to apportionment of litigation and the simplification of certain judicial proceedings; this draft bill would enable victims of illegal down/uploads to seek damages before the court referred to and by way of "ordonnance" following the "flexible response" process implemented by the Hadopi (see question 10.3). Finally, it is worth underlining the involvement of the state in the financing of high- and very high speed networks, notably in the less densely populated areas, with the intervention of the "National fund for the digital society", which has an investment budget of 4.25 billion euros.

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Ms. Feral-Schuhl notably practices in the following domains:

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- Telecommunications law
- Intellectual Property law

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Ms. Feral-Schuhl is the author of two books:

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- *L'Entreprise, l'Informatique et le Droit* (1986; 2nd edition 1992 Nathan).

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Olivier de Courcel, a partner in the firm, has been working in the area of technologies for about twenty years, both in-house and abroad. He regularly works on transactions concerning information technologies and involving commercial and corporate law as well as intellectual property, for foreign clients as well as French ones.

Olivier's recent experience includes:

- drafting and negotiation of data transmission services agreements for the various affiliates of a major French banking group;
- audit of a group of mobile telecommunications operators in the framework of an international acquisition project;
- assistance to a Korean manufacturer against piracy of pay TV conditional access systems;
- negotiation of outsourcing modalities for the distribution centre of a worldwide record company; Implementation of DSL interconnect services; and
- multijurisdictional lawsuit regarding a defective component affecting a line of computers distributed worldwide.

Prior to joining private practice, Olivier de Courcel was legal counsel for four years for one of the world's leading telecommunications operators, providing legal and regulatory assistance to the company's development outside France.

Olivier de Courcel is admitted to the Paris and New York Bars.

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