

To :

Minister of Justice, Nicole Belloubet,
Secretary of State for Digital, Cédric O,
Deputy, Laetitia Avia,
Deputy, Fabienne Colboc,
Ladies and gentlemen Deputies,
Ladies and Gentlemen Senators,
Defender of Rights, Jacques Toubon,

President of the National Consultative Commission for Human Rights, Jean-Marie Delarue

Paris, July 2, 2019

Subject: Open Letter calling for the protection of our public liberties in the proposed Bill to combat hate online

Madam the Minister of Justice

Mr. Secretary of State,

Ladies Rapporteurs,

Ladies and gentlemen Deputies,

Ladies and Gentlemen Senators,

Mr Defender of Rights,

Mister President,

The spread of hateful content has particularly harmful consequences for our democracy and for citizens. It is more than ever necessary to fight against this phenomenon.

The proposed law to combat hate on the Internet, which was adopted by the National Assembly and will be discussed by the Senate, intends to address a part of the problem by strengthening the responsibility of content platform in the moderation of online content. This requirement is legitimate and necessary. However, this text raises concerns about its impact on our rights and freedoms, including the freedoms of expression and information or access to justice. Since the official introduction of the law on March 20, 2019 and its evolutions, several of our organizations have alerted about the risks. While the text will be debated very shortly in Parliament, we, associations for the defense of rights and freedom of information, representative bodies of the civil society of digital and legal professionals, initiate this collective approach to call for a profound revision of this text, and in particular its Article I.

The urgency is all the greater as other texts in the area of digital regulation or the fight against illegal content will be debated in the coming months, at the French and European levels. We must imperatively think the coherence of these texts to ensure an effective regulation of platforms. It can only be based on a systemic approach, that is to say, to look at the systems themselves, rather than the content. As recommended by the "Regulation of social media" mission in its report published on May 1, 2019, it is necessary to implement a regulation aimed at reinforcing the transparency and diligence obligations of private actors.

To date, two points in the current version of the proposed Bill jeopardize the delicate balance between human dignity and freedom of expression, to the detriment of the latter.

1. The lack of definition of the content covered by the law

The definition of online hateful content is complex, it is still the subject of legal and academic discussions. Given the scope and nature of intervention it entails, the purpose of the proposed bill must be clarified and must be based on clear definitions, in particular as regards the "manifestly" unlawful nature of incitement to hatred "or" discriminatory insult "on the basis of" race, religion, sex, sexual orientation or disability ". During the last review of the proposed Bill by Commission of laws in the National Assembly, the scope of the law was extended beyond the only obvious hate crimes that were previously covered by the text. The Bill now covers a whole series of offenses that must also be withdrawn within 24 hours. This is particularly worrisome, since it can be used to remove "violent" content for instance, which is even more complex to characterize than hate speech, without the decision of a judge.

2. The preservation of our fundamental freedoms, by strengthening the place of the judicial judge

If the position and behavior of major digital platforms raise the question of the preservation of our sovereignty, it is contradictory to weaken the latter by giving platforms prerogatives specific to the field of law and justice. Only a court decision, resulting from the power of the democratically instituted State, is acceptable when it comes to censoring an intention, a "particularly radical" act, as the *Conseil d'Etat (Editor's note: France's highest administrative Court)* wrote in its opinion on the proposed bill. The protection of our fundamental rights rests on the balance of democratic powers.

When it comes to regulating online content, as elsewhere, the role of justice must be preserved. The judge must be at the heart of both the content qualification procedure and the decision to withdraw or block it. The assessment of the illegal nature of hate content can not be entrusted to private platforms alone, at the risk of inducing the privatization of judicial functions and undermining the democratic safeguards for our citizens.

We warn against circumventing the powers of the judicial authorities for the benefit of independent administrative authorities. We advocate for strengthening the role of the judicial judge, guardian of fundamental freedoms, at all levels of the fight against illegal content, and strengthen the means of action of the judiciary. Platform operators must have the opportunity to cease the judge in case of doubt about the "manifestly illicit" nature of a content.

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As Citizens, associations, legal professionals, we believe that it is essential to protect our online public space and the quality of our democratic debate from content and strategies of actors who voluntarily or not weaken them. But this issue must not be at the expense of our rights and freedoms. It is in the name of defending these priorities that we call, collectively, for a **redefinition**

of the balance between the role of the judge and the responsibility of private actors. The said balance has not been reached in the current version of the proposed bill against cyber hate.

Hoping that these recommendations will be heard, we ask you to accept, ladies and gentlemen, the expression of our highest consideration.

Nicolas Chagny, President of Internet Society
France

Christiane Féral-Schuhl, President of the Conseil
National des Barreaux

Henri Isaac, President of Renaissance
Numérique

Jacques-François Marchandise, Delegate General of
the fing

Julie Owono, Executive Director of Internet Without
Borders

Malik Salemkour, President of the Ligue des droits de
l'homme

Salwa Toko, President of the Conseil national du
numérique