

Deliberation 2019-135 of November 12, 2019 National Commission for Computing and Liberties Nature of the deliberation:  
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November 12, 2019 providing an opinion on a draft law relating to audiovisual communication and cultural sovereignty in the  
digital age

(request for opinion no. 19018612)

The National Commission for Computing and Liberties, Seizure by the Ministry of Culture of a request for an opinion concerning  
a bill relating to audiovisual communication and cultural sovereignty in the digital age; Having regard to the regulations ( EU)  
2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the  
processing of personal data and on the free movement of such data, and repealing Directive 95/46/ CE; Having regard to law  
n° 78-17 of 6 January 1978 as amended relating to data processing, files and freedoms, in particular its article 8.I 4° a); Having  
regard to law n° 86-1067 of 30 September 1986 relating to the freedom of communication; Considering the decree n °  
2018-687 of August 1, 2018 taken for the application of the law n ° 78-17 of January 6, 1978 relating to data processing, files  
and freedoms, modified by Law No. 2018-493 of June 20, 2018 relating to the protection of personal data; After hearing Mr.  
Christian KERT, commissioner, in his report, and Ms. Nacima BELKACEM, government commissioner, in her observations,  
Issues the following opinion: 1986 on freedom of communication. On the one hand, it provides for measures to support the  
development and creation of audiovisual communication; several provisions of the text thus aim to modernize and simplify the  
contribution regime of television service providers and on-demand audiovisual media services (SMAD) to the production of  
works. On the other hand, measures are aimed at adapting regulation and the role of the regulators responsible for it, in  
particular through the merger of the Conseil Supérieur de l'Audiovisuel (CSA) and the High Authority for the Broadcasting of  
works and the protection of rights on the Internet (HADOPI) within a single authority, the Audiovisual and Digital  
Communication Regulatory Authority (ARCOM). Finally, the bill provides for measures relating to the transformation of public  
broadcasting in the digital age. The articles of the bill which contain provisions relating to the processing of personal data  
concerning users of television services and of audiovisual media services call for the following observations. With regard to  
article 6 (modernization and simplification of the contribution regime of television service providers and SMADs to the  
production of works) The bill provides that SMADs referred to in Article 6 will have to conclude an agreement with ARCOM  
which provides in particular that rights holders have access to data relating to the exploitation of their works and in particular

their viewing. Indeed, the elements relating to the audience generated by the works broadcast, such as the number of viewings attached to viewers, and therefore likely to contain personal data, can be taken into consideration to determine the remuneration of rights holders. The Commission considers that the objective pursued by the agreement should not lead SMADs to transmit their users' personal data to rightsholders, and can be satisfied by means of anonymous and statistical data. With regard to Articles 23 and 24 (transposition of the provisions of Directive 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the digital single market, by introducing new provisions in the Intellectual Property Code) The Commission observes that these provisions exclude any identification of individual users, which calls for no comments on its part. As regards Article 36 (repeal of Article 3 of the law of September 30, 1986 relating to the secrecy of choices) Article 3 of the law of September 30, 1986 states that: The secrecy of the choices made by the persons among the electronic communications services and among the programs offered by these may be lifted without their consent. The protective regime currently in force is the consequence of the particular nature of the information relating to the programs viewed, which may prove to be particularly revealing. the habits or lifestyles of the persons concerned. to all other processing of personal data implemented in this context - processing of audience measurement and statistical analysis, advertising targeting or content recommendation. Such processing must indeed, in any case, comply with all the provisions relating to the protection of personal data as well as any specific texts that may apply (article 82 of the Data Protection Act concerning read access and writing of terminals from an online communication service open to the public, Article L. 34-1 of the Postal and Electronic Communications Code concerning data processed in the context of the provision of electronic communications services to the public, etc.) .With regard to article 43 (possibility given to independent administrative or public authorities involved in the regulation of online platform operators to have recourse to the expertise and support of a State administrative service designated by decree in Council of State) The Commission welcomes with interest the possibility of using the expertise and support of a State administrative service in the cadre of its regulatory action for online platform operators, while emphasizing that the specificities of its powers, in particular of control and sanction, require it to have internal resources enabling it to carry out its activities in a satisfactory and autonomous manner. missions. As regards Articles 58 and 63 (strengthening of measures for the protection of minors on all audiovisual media services) Article 58 transposes the provisions of Directive 2010/13/EU on audiovisual media services ( Audiovisual Media Services Directive) applying to video-sharing services and provides in particular for age verification and parental control systems for video-sharing platform services. It

establishes the principle that the personal data of minors collected or generated by the providers within the framework of these devices must not be used for commercial purposes, such as direct marketing, profiling and behavioral advertising. 63 specifies that ARCOM ensures in particular the implementation of a technical access control process adapted to the nature of on-demand audiovisual media services. It also states that the personal data of minors processed by the publishers of audiovisual communication services on the occasion of the implementation of the preceding paragraphs must not be used for commercial purposes, in particular advertising. The Commission takes note the implementation of age verification and parental control systems aimed at protecting minors, which should lead to the processing of personal data relating to minors. In accordance with the principle of purpose laid down by the General Regulation (EU) 2016/649 on data protection (RGPD) and the Data Protection Act, the personal data of minors thus collected cannot be used outside the purpose of the devices. verification of age and parental control, which thus excludes any use in particular for commercial purposes. freedoms falls within its remit. More broadly, the Commission recalls that the subject of age verification raises questions, particularly with regard to the principle of data minimization, as provided for by the GDPR. She specifies that she is currently reflecting on this topic. The other provisions of the bill do not call for comments from the Commission. President Marie-Laure DENIS