**Question B: What responsibility or obligations should online platforms assume when it comes to eliminating infringements committed by their users, in particular in the areas of intellectual property and unfair competition?**

Digital platforms have been developing more and more over the past twenty years, both in the European Union and in the rest of the world. The current digital giants are mainly American[[1]](#footnote-1) and Chinese[[2]](#footnote-2), even though French and European digital platforms[[3]](#footnote-3) are tending to develop[[4]](#footnote-4).

The heterogeneity of platforms was first enshrined in Article L. 111-5-1 paragraph 1of the Consumer Code, integrated by the law of 6 August 2015 on growth, activity and equal economic opportunities, which defined them as "any person whose activity consists of connecting, by electronic means, several parties with a view to the sale of a good, the supply of a service or the exchange or sharing of goods or services". The Law for a Digital Republic No. 2016-1321 of 7 October 2016 had taken up this definition which appeared in Article L. 111-7 I of the Consumer Code:

"An online platform operator is any natural or legal person offering, on a professional basis, whether remunerated or not, an online public communication service based on:

1° The classification or referencing, by means of computer algorithms, of content, goods or services offered or put online by third parties;

2° Or the connection of several parties with a view to the sale of a good, the provision of a service or the exchange or sharing of a content, good or service".

The definition was extremely broad, in particular because of the use of the term "content", and included almost all operators, except ISPs. However, Law No. 2024-449 of 21 May 2024 to secure and regulate the digital space (SREN Law) repealed this article to bring French law into line with the DSA by referring to the definition of online platform in the *Digital Service Act (DSA)*[[5]](#footnote-5) in 15° of the preliminary article of the Consumer Code. French law is thus brought into line with and directly dependent on the European regulation.

The DSA expressly links platforms to the notion of hosting. It is “a hosting service that, at the request of a recipient of the service, stores and disseminates information to the public, unless that activity is a minor and purely ancillary feature of another service or a minor functionality of the principal service and, for objective and technical reasons, cannot be used without that other service, and the integration of the feature or functionality into the other service is not a means to circumvent the applicability of this Regulation" (Art. 3i).

The Consumer Code reproduces this definition in point 15 of its introductory article.

A variety of platforms, the concept of *marketplace* entered the normative arsenal with Directive 2019/2161 of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards better application and modernisation of EU consumer protection rules. According to Article 4, it is "a service using software, including a website, part of a website or an application, operated by or on behalf of a professional that allows consumers to conclude distance contracts with other professionals or consumers". The concept has been integrated into the introductory article of the Consumer Code.

Professor Nikolaus Forgó's International Questionnaire invites us to question the **rules of liability applicable to the content of platforms (I) and also to the incurring of their liability for their activity (II).**

1. **Liability of platforms for hosted content**
2. **The absence of an obligation to supervise**
3. **No legal obligation to monitor**

There is no general monitoring obligation on hosting providers: "Providers of intermediary services are not subject to any general obligation to monitor the information they transmit or store or to actively search for facts or circumstances that reveal illegal activities" (Art. 8 of the DSA).

In domestic law, Article 6, I, 7 of the LCEN in its version prior to 2024 recognized that service providers were not subject to a general obligation to monitor the information they transmit or store, nor to a general obligation to search for facts or circumstances revealing illegal activities, but this "without prejudice to any targeted and temporary surveillance activity requested by the judicial authority". Some lower courts have tried to impose an obligation to stay down on the host. This was the case of the Paris Court of First Instance in the 2011 case of SPPF v. YouTube, which ruled that "admittedly, since the notification of May 7, 2008, YouTube was presumed to be aware of the illegal nature of the music videos and had not only to remove them from the links set out in the notification but also to implement the technical means at its disposal in order to make their access impossible". The Paris Court of Appeal, however, by substitution of grounds, reaffirmed "that it follows, on the other hand, from the combined provisions of Articles 6-1-2, 6-1-5 and 6-1-5 of the LCEN law that the host is not subject to a general obligation of monitoring and that the removal of content by a host, even if it has already been the subject of a notification, cannot take place without prior notification".

It is above all several judgments handed down by the Court of Cassation on the same day that have buried the desires of the first judges[[6]](#footnote-6). The Court of Cassation considers that the rights holder cannot impose filtering measures on a technical intermediary if they appear disproportionate to the aim pursued[[7]](#footnote-7). In the Aufeminin.com judgment, it quashed the appeal judgment, on the basis of Article 6 of Law No. 2004-575 of 21 June 2004 in its provisions I. 2, I. 5 and I. 7, which had ruled that "it is the responsibility of the hosting service provider who has received notification of the work to which it has been infringed and of the intellectual property rights that protect it to take the necessary measures to prevent it from being re-posted online". For the Court of Cassation, "by ruling in this way, when the prevention and prohibition imposed on the company Aufeminin.com, as host, and on the Google companies, as providers of referencing services, to prevent any re-posting of the infringing image, without them even having been notified by another regular notification that is required for them to be effectively aware of its illegal nature and then be required to act promptly in order to remove it or make access to it impossible, results in subjecting them, beyond the sole power to order a measure appropriate to prevent or put an end to the damage linked to the current content of the site in question, to a general obligation to monitor the images they store and to search for illegal reproductions and to prescribe them, disproportionately in relation to the aim pursued, the establishment of a blocking mechanism without a time limit, the Court of Appeal violated the above-mentioned provisions".

The Court of Cassation reaffirmed this exclusion from any permanent targeted surveillance in 2024 in its Le Bon Coin (LBC) decision: "It follows from these texts (Art. 6, I, 2; 6(I)(5) and (6)(I)(7) that while the judicial authority may prescribe, in summary proceedings or on request, any host or provider of access to online public communication services, any measures appropriate to prevent damage or to put an end to damage caused by the content of such a service, it may not subject that host or access provider to a general obligation to monitor the information it transmits, and stores or researches facts or circumstances revealing illegal activities, which would oblige it to make an independent assessment".[[8]](#footnote-8) In this case, a company was the victim of identity theft (company name and/or RCS number and/or IBAN) with the aim of drafting false quotes and false orders relating to the marketing of containers for maritime use. The Court of Appeal had ruled that the elements produced were sufficient to establish the existence of damage in terms of image and communication suffered by the victim company and caused by the online service managed by LBC, and that as fraudulent advertisements had continued to be published on the leboncoin.fr site, the publication of these advertisements constituted a manifestly unlawful disturbance that should be stopped. The Court of Cassation censured the analysis on the grounds that "by thus placing on LBC a device that is not only not limited in time but also which, relating to possible future announcements, results in it being subject to a general obligation to monitor the information stored, obliging it to make an autonomous assessment of the content of these announcements, the Court of Appeal violated the above-mentioned text".

1. **Possibility of a contractual obligation to monitor**

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In a decision dated January 15, 2025[[9]](#footnote-9), the Commercial Chamber of the Court of Cassation accepted that the parties could insert a contractual obligation of monitoring on the part of the hosting provider: "Article 6, I, of Law No. 2004-575 of June 21, 2004 on confidence in the digital economy, in its version prior to that resulting from Law No. 2014-873 of August 4, 2014, has neither the purpose nor the effect of depriving the signatories of an electronic payment contract to which a host is a party of the right to stipulate that the latter is bound by an obligation to monitor the information it stores or publishes, and to sanction the breach of this obligation by terminating the contract". The parties therefore have the freedom to contractually adjust the hosting provider's obligation to monitor and to impose stronger constraints on it than those provided for by law. In any event, this obligation is one of means and not of result.

Although the Court does not indicate it, this extension of the legal obligation must still be clearly stipulated in the contract, and the due diligence of the host must be specified, otherwise mentioning only that the host "refrains from any illegal activity" could be interpreted as a simple resumption of the principle of the law.

It is obvious that this extension of liability will never be inserted in the contracts of large platforms such as Google or Meta, but rather in contracts with small platforms. It is then necessary to ensure that the balance of the contract is guaranteed.

1. **The due diligence of digital platforms in the event of knowledge of illegal content**

The illegality or alleged illegality of the content may be brought to the attention of the platforms by a notifying applicant[[10]](#footnote-10) or by a trusted flagger.

The DSA has created the status of trusted flagger (Art. 22) which is granted, upon request by any entity, by the Digital Services Coordinator of the Member State in which the applicant is established, to the applicant entity that has demonstrated that it meets all of the following conditions:

• a) it has particular expertise and skills for the purpose of detecting, identifying and reporting illegal content;

• b) it is independent of any provider of online platforms;

• (c) it shall carry out its activities for the purpose of submitting notifications in a diligent, accurate and objective manner.

Notifications sent by trusted flaggers must be treated as a matter of priority and give rise to decisions as soon as possible (Art. 22-1 DSA, Art. 6-4-2 LCEN).

In France, they are appointed by Arcom. As of May 13, 2025, the following entities were listed:

* e-Enfance (protection of minors)
* ALPA (prevention and fight against audiovisual piracy)
* IFAW (Wildlife Conservation and Combating Wildlife Cybercrime)
* INDECOSA-CGT (information and protection of salaried consumers)
* Contact point (combating cyberviolence and protecting victims in the digital space)
* Addictions France (prevention, training, care and risk reduction of addictions and their consequences)
* Crif (fight against anti-Semitism and racism)

Following the report that identifies the illegal nature of the content, the host may take one of the following restrictions (art. 17-1 DSA), including withdrawal, imposed on the grounds that the information provided by the recipient of the service constitutes illegal content or is incompatible with their general terms and conditions:

(a) any restriction on the visibility of specific pieces of information provided by the recipient of the service, including the removal of content, the denying of access to content or the downgrading of content;

(b) the suspension, termination or other restriction of monetary payments;

(c) the suspension or termination, in whole or in part, of the provision of the service;

d) the suspension or deletion of the account of the recipient of the service.

As long as it is based on the legal obligation to remove or suspend, the hosting provider's decision cannot be challenged on the basis of unfair terms: "a contractual clause allowing it to promptly suspend the use of its referencing services for legal reasons, then applying it when it is informed of the misleading nature of a site to which it gives access, a hosting provider does not create a significant imbalance within the meaning of Article L. 442-6, I, 2°, now Article L. 442-1, 2° of the Commercial Code".[[11]](#footnote-11)

Otherwise, the platforms will turn into censors, the illegality must be apparent or manifestly established for the disputed content to be removed without the intervention of the judge. This point was raised when the LCEN was adopted. The Constitutional Council had considered that "2 and 3 of I of Article 6 of the contested law have the sole scope of excluding the civil and criminal liability of hosting providers in the two hypotheses they envisage; that these provisions cannot have the effect of engaging the liability of a host who has not removed information denounced as illegal by a third party if it is not manifestly of such a nature or if its removal has not been ordered by a judge". The Constitutional Council thus validated the notification procedure put in place by the legislator but confirmed that knowledge can only be acquired by the host in two alternative cases: either when a judge has ruled on the illegality of the content or, without any judicial intervention, if the content is in itself manifestly illegal. Consequently, according to the Constitutional Council, the notification procedure will only oblige the host to remove the content without the intervention of the judge when it is illegal.

1. Illegal content

Until the entry into force of the law of 21 May 2024 aimed at securing and regulating the digital space, paragraphs 2 and 3 of Article 6, I of the Law on Confidence in the Digital Economy, limited the possibility of engaging the liability of the host to cases of "manifestly" illegal content. The adverb "manifestly" had been added to the provisions of the LCEN to take into account the safeguard set by the Constitutional Council, in order to avoid too great an obstacle to freedom of expression. Indeed, hosting providers could have been tempted to remove any disputed or potentially problematic content in order to avoid incurring liability. This condition was rigorously verified by the judges[[12]](#footnote-12).

As the provisions relating to the liability of hosting providers have been removed from the SREN law, the requirement is no longer included in French law.

The DSA has not used the adverb either, but it should be noted that Article 16, 3 of this text, relating to the notification procedure, states:

'The notifications referred to in this Article shall be deemed to give rise to the actual knowledge or awareness for the purposes of Article 6 of the specific piece of information concerned where they enable a diligent hosting service provider to identify the illegality of the activity or information concerned without a detailed legal examination'.

Thus, the presumption of knowledge of the illegal nature of online content therefore only applies if the notification allows the "diligent" provider to identify the illegality of the activity or information concerned without a "detailed legal" examination. The elements contained in the notification are sufficiently precise to make it obvious that the content is illegal.

Given the seriousness of certain offences, the host must be able to immediately remove and de-reference illegal content without waiting for a judicial decision. This should be the case for the offences listed today in Article 6, IV, A of the LCEN: "Persons whose activity consists in providing hosting services shall contribute to the fight against the dissemination of content constituting the offences mentioned in Articles 211-2, 222-33, 222-33-1-1, 222-33-2 to 222-33-2-3, 222-39, 223-13, 225-4-13, 225-5, 225-6, 227-18 to 227-21, 227-22 to 227-24, 412-8, 413-13, 413-14, 421-2-5, 431-6, 433-3, 433-3-1, 521-1-2 and 521-1-3 and the second paragraph of Article 222-33-3 of the Criminal Code as well as the fifth, seventh and eighth paragraphs of Article 24 and Article 24 bis of the Law of 29 July 1881 on the freedom of the press". These references concern, in essence, the punishment of the glorification of crimes against humanity, incitement to the commission of terrorist acts and their apology, incitement to racial hatred, hatred against persons on the basis of their sex, sexual orientation or identity or disability, child pornography, incitement to violence, in particular incitement to sexual and gender-based violence or attacks on human dignity.

The illegality must be obvious and leave no room for doubt, failing which the host can maintain the hosting without fear of incurring liability. This rule has allowed case law to most often exclude the responsibility of the host in the event of a refusal to remove allegedly defamatory content. However, it is not excluded that a recent judgment will make this approach more flexible[[13]](#footnote-13). The Court of Cassation confirmed that the mere allegation of the defamatory nature of the disputed remarks does not justify ordering their withdrawal, but it may be ordered if no adversarial debate has taken place due to the lack of identification of the authors of the remarks.

1. Waiting for a court decision

The applicant may refer the matter to the judge immediately or after the service provider has refused to withdraw. It is then up to the judge to determine whether the content was manifestly illegal, in which case the supplier may be held liable.

In terms of intellectual property, Law No. 2009-669 of June 12, 2009 promoting the dissemination and protection of creation on the Internet (known as the HADOPI Law) introduced in Article 336-2 of the Intellectual Property Code, a "summary copyright procedure":

"In the event of an infringement of copyright or related rights caused by the content of an online public communication service, the President of the Judicial Court, ruling if necessary in the form of summary proceedings, may order, at the request of the holders of rights in the protected works and subject-matter, their successors in title, societies for the collection and distribution of rights referred to in Article L. 321-1 or professional defence organisations referred to in Article L. 331-1, all appropriate measures to prevent or put an end to such an infringement of a copyright or a related right, against any person likely to contribute to remedying it".

The Allostreaming case is the first application of the "copyright" summary procedure in order to obtain the blocking and de-referencing of websites. The Paris Court of First Instance ordered, in summary proceedings, the blocking and de-referencing of sixteen streaming sites on the basis of Article L. 336-2 of the Intellectual Property Code[[14]](#footnote-14). However, the duration of the blocking and de-referencing has been limited to twelve months from the implementation of the measures. By the same token, the French judge is very reasonably inspired by the principles identified by the European judge in the SABAM judgments, which advocates the proportionality of measures[[15]](#footnote-15).

In the absence of a prompt removal of the illegal content that has been notified to it, it is on the basis of Article 1240 of the Civil Code that the host may incur liability, without prejudice to a possible infringement action[[16]](#footnote-16). On the other hand, the failure to promptly remove illegal content should no longer in itself give rise to its criminal liability. The law of 21 June 2024 amended by Law No. 2024-449 of 21 May 2024 on securing and regulating the digital space (SREN law) no longer provides for this possibility.

1. **Platforms' responsibility for their own activity**

The civil liability of platforms can be incurred on the basis of unfair competition. Several examples can be recall:

1. **Unfair competition for violation of the law**

**Doctrine case:**

**CA Paris, May 7, 2025,**

Doctrine (owned by Forseti) is a legal AI platform offering lawyers and legal experts access to court decisions, codes and laws, directives and regulations... The traditional legal publishers (Dalloz, Lexbase, LexisNexis, Lextenso and Lamy Liaisons (formerly Wolters Kluwer France) considered that the platform had committed acts of unfair competition for having, between 2016 and 2019, built up its database of 10 million court decisions by means of misleading, unfair and parasitic procedures. While at the time, Law No. 2016-1321 of 7 October 2016 for a Digital Republic governing the opening of judicial data had not yet come into force, these methods have enabled the platform to quickly establish itself on the market.

On May 7, 2025, the Paris Court of Appeal ruled in favor of traditional legal publishers.

It acknowledged that Forseti had committed acts of unfair competition with publishers, resulting from the unlawful collection of court decisions and ordered it to pay €40,000 to each of the appellants, as well as an additional €10,000 to Éditions Dalloz and LexisNexis, victims of comparative advertising.

It also ordered Forseti to publish, for 60 days and subject to a penalty payment, the following excerpt on the homepage of its website: "In a decision dated May 7, 2025, the Paris Court of Appeal ruled that Forseti committed acts of unfair competition to the detriment of Éditions Dalloz, Lexbase, LexisNexis, Lextenso and Lamy Liaisons, and ordered Forseti to compensate them for the damage suffered as a result. »

On the question of the collection of court decisions, the court held that there were serious, precise and consistent presumptions that led to the conclusion that Forseti had unlawfully obtained hundreds of thousands of decisions from the courts of first instance, as well as from the administrative courts, in violation of the research agreement concluded with the Council of State. As Forseti refused to produce the partnership agreement with the GIE Infogreffe, it does not justify having collected in a lawful and fair manner the 3 million decisions of the commercial courts published on the doctrine.fr website. In doing so, the company has thus gained an undue competitive advantage over its competitors.

On the other hand, the court rejected the request for the deletion of all the illegally collected decisions, considering that this measure would raise significant enforcement difficulties due to the volume of data concerned, and that it would not be proportionate to the objectives pursued, in view of the interests at stake — in particular the controls carried out by the CNIL and the spirit of the law for a Digital Republic which establishes a principle of wide dissemination of court decisions.

1. **Unfair competition for denigration**

**Yuka Cases**

Several courts of first instance had accused Yuka of unfair and misleading commercial practices and acts of denigration against ham producers[[17]](#footnote-17). As far as denigration is concerned, it has been known for several years now that a situation of competition between the protagonists is not required,[[18]](#footnote-18) so that the manufacturers implicated by the platform can act in unfair competition against it. But, according to a now well-established case law, this criticism does not constitute a culpable denigration if it is part of a debate of general interest, if it is based on a sufficient factual basis and if its remarks are moderate. The Court of Cassation has indeed laid down in very clear terms, in the terms of Articles 1240 of the Civil Code and Article 10 of the ECtHR, the following principle: "even in the absence of a situation of direct and effective competition between the persons concerned, the disclosure, by one of them, of information likely to discredit a product marketed by the other constitutes an act of disparagement, unless the information in question relates to a matter of general interest and is based on a sufficient factual basis, and provided that it is expressed to a certain extent".[[19]](#footnote-19) As a result, the judgments convicting Yuka for denigration have all been overturned[[20]](#footnote-20).

Finally, the comments must be moderated: "when the information in question relates to a subject of general interest and is based on a sufficient factual basis, this disclosure (by a person of information likely to discredit a product marketed by another person) falls within the scope of the right to freedom of expression, which includes the right to free criticism, and cannot, therefore, be regarded as wrongful, provided that it is expressed with a certain measure".[[21]](#footnote-21) It is a question of alerting but not of incriminating. For the Court of Appeal of Aix-en-Provence, "the use of the term 'high risk' and the mention of the presence of genotoxic and carcinogenic agents, terms used in particular by the National Agency for Food Safety, cannot be considered as exceeding the measure required in the context of the dissemination of information". However, it acknowledges that "these terms can be challenged scientifically, in particular by taking into account the doses of additives used, the actual consumption of food or any other scientific data", but that "they cannot be considered excessive and even less misleading in view of the documents produced at the hearings; they could only be so if YUKA claimed to have an official and recognized scientific authority, while it presents itself as a company disseminating information for consumers and with an activist vocation." Militant action – the contours of which should be clarified – makes it possible to be affirmative or even to erase doubt about the scientific data, which is nevertheless disputed.

1. **Unfair competition for illegal activity**

***Uber Pop case: Court of Cassation, April 9, 2025, n°23-22.122***

The Court of Cassation recently ruled on unfair competition resulting from the activity of the Uber France platform, which had developed an application allowing individuals to transport people without complying with national regulations in this area.

The Paris Court of Appeal[[22]](#footnote-22) had upheld the action of the taxis and ordered Uber France to compensate the moral damage of the 149 taxi plaintiffs as well as their economic damage assessed on the basis of the costs saved by the service providers benefiting from the platform, i.e. a total of 1,116,484 euros in total. The Court of Cassation[[23]](#footnote-23) confirmed the principle of compensation based on the undue advantage obtained by the Platform: "*By modulating in proportion to the respective volumes of cases of the parties affected by such acts, this method of assessing damages cannot have the effect of leading to an assessment of the damages due to the victim that would exceed the undue advantage that the perpetrator of these acts has granted himself.*

*It aims to facilitate the effective compensation of victims of certain acts of unfair or parasitic competition when they encounter difficulties in proving their damage*.

*It follows that this method is not intended to place the victim in the situation in which he would have found himself if he had resorted to the same unfair methods*."

Nevertheless, the Court brought a major limit for the platform by considering that Uber France having argued the absence of any material damage borne by the taxis, compensation charged to the platform would violate the principle of civil liability requiring compensation for all the damage but nothing but only the damage. The ground based on the damage caused to the market cannot justify compensation for competing operators.

The subjects of liability are therefore numerous and will most certainly give rise to many cases of involvement!

***Affaire Transopco Cass. Com 25 June 2025 n° 23-22.430***

Transopco a VTC driver center offered its services to connect ride-hailing drivers to customers, through a website and a smartphone application. Arguing that Transopco, by failing to comply with various laws and regulations in the field of transport law and labour law, was committing acts constituting unfair competition, Viacab, which operates a taxi site and a VTC site, sued it for the purpose of putting an end to these practices and compensating it for its damage.

The Court of Cassation approves the judges of the Paris Court of Appeal who analyzed in detail the operation of the platform to find that Transopco allowed VTCs to carry out an electronic "patrol" (parking and traffic on the public highway in search of customers) prohibited to VTCs. Transopco criticised the judges for not having checked whether the platform made it possible to select drivers. This argument is rejected, the Court retaining the electronic device allowing to know, before the order and in real time, the supply of vehicles was reserved for taxis. The activity is therefore unfair and the competitor is entitled to seek compensation for its damage.

The analysis for non-compliance with labour law was based on the contractual conditions with VTCs and conferred a power of subordination of the platform on the drivers. To reach this conclusion, the Supreme Court validated the Court of Appeal's analysis, which noted that the platform :

* require immediate availability of drivers once connected;
* send a ride order to the drivers using the geolocation system;
* set rates unilaterally set by the platform;
* provide a financial incentive to run on time slots defined by the platform;
* forbid the drivers to enter into personal and direct relations with customers;
* allow an early and unilateral termination of the collaboration with the drivers.

Thus, the ride-hailing platform did not comply with labor law and was also held liable because of unfair competition with its competitor Viacab.

**Doctipharma case**

**CJEU 29 February 2024, aff. C-606/21, Doctipharma SAS v. UDGPO and Pictime Coreyre:**

The Paris Court of Appeal, [[24]](#footnote-24) after referral from the Court of Cassation[[25]](#footnote-25), asked the CJEU about the conditions under which the www.doctipharma.fr website, hosted by Pictime Coreyre, on which Internet users could buy, from pharmacy websites, pharmaceutical products and medicines not subject to compulsory medical prescription, constituted an e-commerce activity for medicinal products, whereas the platform was not a pharmacist,

In a judgment of 29 February 2024, the Court clarified the interpretation to be made of the concept *of "information society service",* in order to assess the compliance with EU law of a prohibition by a Member State of a service provided by means of a website and consisting of connecting pharmacists and customers, for the online sale of non-prescription medicines.

The Paris Court of Appeal wished to shed light on the interpretation of Directive 98/34/EC to determine whether the service provided by the platform falls within the concept of "information society service" and on that of Article 85c of Directive 2001/83/EC in order to determine whether Member States may, on the basis of that provision, prohibit the provision of the service in question.

The Court recalls that the provisions of Directive 98/34/EC and Directive 2015/1535/EC define the concept of 'information society service' as meeting four conditions. This is any service normally provided:

• For a fee;

• Remotely;

• Electronically;

• And at the individual request of a recipient of services.

The Court concludes, by carrying out a careful examination of the platform's offer, that a service such as that provided by Doctipharma must, subject to the verifications to be carried out by the referring court, be classified as an 'information society service'.

The Court recalls that:

* the Member States shall have sole competence to determine the natural or legal persons authorised or authorised to supply, at a distance, by means of information society services, medicinal products to the public;
* Member States may impose conditions for the retail supply in their territory of medicinal products offered for distance sale to the public by means of information society services, provided that they *are 'justified by the protection of public health'.*

The judgment invites the referring court to ascertain whether the supplier of the service in question must be regarded as confining itself, by means of a supply of its own and distinct from the sale, to putting sellers in contact with customers, or whether that supplier must itself be regarded as a supplier of the sale.

This judgment forces France to re-examine the framework for platforms selling medicines. Indeed, the Member States alone are competent to define the persons authorised or entitled to sell medicinal products not subject to medical prescription at a distance to the public by means of information society services, they must also ensure that medicinal products are offered for sale at a distance to the public by means of information society services and cannot therefore prohibit such a service for the purpose of selling medicinal products at a distance. non-prescription medicines[[26]](#footnote-26).

Retail pharmacists have taken the opportunity and the entire profession[[27]](#footnote-27), in association with La Poste Santé, will launch an intermediation site "Ma Pharmacie en France" at the end of the year. This portal will be open to all pharmacies in France, to sell medicines without a prescription, organise the delivery of medicines or make appointments available. Alain Grollaud, President of Federgy, who initiated the project, commented on this response from French pharmacists: *"We are delighted! Pharmacies must take their destiny into their own hands and this could not be done without convincing the entire profession."* [[28]](#footnote-28)

1. the "MAMAA" for Microsoft, Amazon, Meta, Apple and Alphabet [↑](#footnote-ref-1)
2. the "BATX" for Baidu, Alibaba, Tencent, and Xiaomi [↑](#footnote-ref-2)
3. Doctolib, Deezer, Blablacar, Leboncoin [↑](#footnote-ref-3)
4. Doctolib becomes the most valuable unicorn in French tech, Les Echos, March 15, 2022 [↑](#footnote-ref-4)
5. Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a single market for digital services and amending Directive 2000/31/EC (Digital Services Act) [↑](#footnote-ref-5)
6. The Paris Court of Appeal thus considered that the aid offered to owners for the management of real estate ads posted on the platform could make it possible to engage their liability on the basis of common law (CA Paris 12 December 2024 RG 23/09809). It is therefore in the assessment of the neutral, purely technical and automatic role or, by contrast, "if it plays an active role such as to entrust it with knowledge or control of these data" that the border could be discerned (§51 Conc AG Szpunar, 6 February 2025 in case C-492/23 Russmedia digital) [↑](#footnote-ref-6)
7. Cass. 1st civ., 12 July 2012, Nos. 11-15165 and 11-15188. [↑](#footnote-ref-7)
8. Cass. com., March 27, 2024, No. 22-21586. [↑](#footnote-ref-8)
9. Cass. com., 15 January 2025, n° 23-14625, Sté Dstorage c/ Sté Générale. [↑](#footnote-ref-9)
10. The notification must be sufficiently precise and substantiated. Knowledge of the disputed facts is presumed to have been acquired by the host provider when it is notified of the following elements listed in Article 16-2 of the DSA:

• (a) a sufficiently substantiated explanation of why the individual or entity alleges that the information in question is illegal content;

• b) a clear indication of the exact electronic location of this information, such as the exact URL(s), and, where applicable, additional information to identify the illegal content according to the type of content and the specific type of hosting service;

• (c) the name and email address of the individual or entity submitting the notification, except in the case of information considered to involve one of the offences referred to in Articles 3 to 7 of Directive 2011/93/EU;

• (d) a statement confirming that the individual or entity submitting the notification believes, in good faith, that the information and allegations contained therein are accurate and complete.

An acknowledgement of receipt is sent to the notifying person or entity (Art. 16-4 DSA).

If this formalism is not complied with, the irregular notification does not have effect and the platform is not liable for not having removed the disputed information. The Court of Cassation, ruling under the LCEN before the adoption of the DSA, was firm on this point in its 2011 Dailymotion decision:

"The notification issued under the Law of 21 June 2004 must include all the information prescribed by this text; that the Court of Appeal, which found that the information set out in the formal notice was insufficient within the meaning of Article 6-I-5 of that law to satisfy the notifier's obligation to describe and locate the facts in dispute and that the notifier had not attached to his registered letter the bailiff's reports which he had had drawn up and which would have enabled the operator to have all the necessary information to the identification of the offending content, was able to deduce from this, without incurring the complaint of the plea, that no breach of the obligation of promptness to remove the illegal content or to prohibit access to it could be reproached to the company Dailymotion, which had only been effectively aware of the disputed content with the summons for a fixed day and the annexed documents". [↑](#footnote-ref-10)
11. Cass. com., September 4, 2024, No. 22-12321. [↑](#footnote-ref-11)
12. See, for example, Cass. 1st civ., Nov. 23, 2022, No. 21-10.220. [↑](#footnote-ref-12)
13. Cass. 1st civ., February 26, 2025, No. 23-16.762. [↑](#footnote-ref-13)
14. TGI Paris, ord. Ref. 8 November 2013, No. 11/60013. [↑](#footnote-ref-14)
15. CJEU, 24 November 2011, aff. C-70/10, Scarlet v. SABAM. – CJEU, 16 February 2012, case No. C-360/10, SABAM v. Netlog. [↑](#footnote-ref-15)
16. CA Paris, April 12, 2023, No. 21/10585. [↑](#footnote-ref-16)
17. T. com. Versailles, ord. ref. 5 March 2020, FIAC c/ Yuka, Contrats, conc. consum. 2020, comm. n° 81, obs. M. Malaurie-Vignal. "T. com. Paris, May 5, 2021; T. com. Aix-en-Provence, 13 Sept. 2021, No. 2021004507, ABC c/ Yuka: Dalloz, IP/IT 2022, p. 163, note L. Watrin; T. com. Brive, 24 Sep 2021. [↑](#footnote-ref-17)
18. [↑](#footnote-ref-18)
19. Cass. com., 9 Jan. 2019, No. 17-18350, published in the Bulletin, Comm. com. électr. 2019, comm. No. 15, obs. C. Caron; D. 2019, p. 872, note J.-M. Bruguère and A. Bregou; Prop. ind. 2019, comm. no. 21, obs. J. Larrieu. – Cass. com., 11 July 1919. 2018, No. 17-21457, Contracts, conc. consum. 2018, comm. no. 191, obs. M. Malaurie-Vigna; D. 2018, p. 2010, note C. Bigot; RTD civ. 2018, p. 913, obs. P. jourdain. – Cass. com., 4 March 2020, n° 18-15651, published in the Bulletin, Contrats, conc. consum. 2020, comm. no. 96, obs. M. Malaurie-Vignal; Comm. com. électr. 2020, comm. n° 41, obs. G. Loiseau. [↑](#footnote-ref-19)
20. CA Aix, 8 Dec. 2022, No. 21/14555, Dalloz IP/IT 2023, p. 315, note L. Watrin; Dalloz News, 17 March 2023, note V. Giovannini; CA Limoges, 13 April 2023, RG n° 21/00929; CA Paris, 7 June 2023, RG n° 21/11775. [↑](#footnote-ref-20)
21. CA Paris, June 7, 2023, op. cit. cit. [↑](#footnote-ref-21)
22. Paris Court of Appeal, October 4, 2023 No. 21/22383 [↑](#footnote-ref-22)
23. Cass. Com. 9 April 2025 n° 23-22.122 [↑](#footnote-ref-23)
24. Paris Court of Appeal, Pole 5, 11th Chamber, Chamber 11, 17 September 2021, No. 21/00416 [↑](#footnote-ref-24)
25. Cas. Com. 19 June 2019, n° 18-12.292 [↑](#footnote-ref-25)
26. Linda. Arcelin and Jean-Louis Fourgoux, Digital Market Law LGDJ 2024 § 393 et seq. [↑](#footnote-ref-26)
27. Federgy – which represents 19 groups and 11,000 pharmacies – the profession's unions (FSPF, USPO, CNGPO, UDGPO) [↑](#footnote-ref-27)
28. laRevuePharma .fr 25 May 2025 <https://www.revuepharma.fr/2025/05/vente-en-ligne-de-medicaments-la-profession-contre-attaque-et-lancera-ma-pharmacie-en-france-en-octobre/> [↑](#footnote-ref-28)