



DATE DOWNLOADED: Thu Sep 30 13:41:38 2021

SOURCE: Content Downloaded from [HeinOnline](https://heinonline.org)

Citations:

Bluebook 21st ed.

Zarine Kharazian, Yet Another French Exception: The Political Dimensions of France's Support for the Digital Right to Be Forgotten, 3 EUR. DATA PROT. L. REV. 452 (2017).

ALWD 6th ed.

Kharazian, Z. ., Yet another french exception: The political dimensions of france's support for the digital right to be forgotten, 3(4) Eur. Data Prot. L. Rev. 452 (2017).

APA 7th ed.

Kharazian, Z. (2017). Yet another french exception: The political dimensions of france's support for the digital right to be forgotten. European Data Protection Law Review (EDPL), 3(4), 452-462.

Chicago 17th ed.

Zarine Kharazian, "Yet Another French Exception: The Political Dimensions of France's Support for the Digital Right to Be Forgotten," European Data Protection Law Review (EDPL) 3, no. 4 (2017): 452-462

McGill Guide 9th ed.

Zarine Kharazian, "Yet Another French Exception: The Political Dimensions of France's Support for the Digital Right to Be Forgotten" (2017) 3:4 Eur Data Prot L Rev 452.

AGLC 4th ed.

Zarine Kharazian, 'Yet Another French Exception: The Political Dimensions of France's Support for the Digital Right to Be Forgotten' (2017) 3(4) European Data Protection Law Review (EDPL) 452.

MLA 8th ed.

Kharazian, Zarine. "Yet Another French Exception: The Political Dimensions of France's Support for the Digital Right to Be Forgotten." European Data Protection Law Review (EDPL), vol. 3, no. 4, 2017, p. 452-462. HeinOnline.

OSCOLA 4th ed.

Zarine Kharazian, 'Yet Another French Exception: The Political Dimensions of France's Support for the Digital Right to Be Forgotten' (2017) 3 Eur Data Prot L Rev 452

Provided by:

University of Washington Law Library

-- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at

<https://heinonline.org/HOL/License>

-- The search text of this PDF is generated from uncorrected OCR text.

-- To obtain permission to use this article beyond the scope of your license, please use:

[Copyright Information](#)

Yet Another French Exception:

The Political Dimensions of France's Support for the Digital Right to be Forgotten

Zarine Kharazian*

While the CJEU's decision to establish the right to be forgotten certainly ignited a debate among Western privacy scholars and policymakers hailing from both sides of the Atlantic, no country has participated in the debate with as much fervor as has France. This article addresses the following question: What explains France's unique sense of urgency with regard to digital right to be forgotten? I argue that extralegal factors rooted in France's enduring antagonism towards US digital hegemony bear most of the explanatory weight. Despite undergoing several shifts in national cybergovernance policy over the years, France has, from the 1970s onward, maintained two core political objectives: first, the rejection of American digital hegemony, and second, a demonstration of French exceptionalism in the cybersphere. Through its support for an extraterritorial right to be forgotten, the nation conveys a political message to its European counterparts and the United States: France is ready and willing to lead the Western resistance against American digital hegemony.

On 20 March 1998, France put the Internet on trial. In front of a public audience at the Paris *Palais de Justice*, the French chapter of the Internet Society (ISOC France), sponsored a two-day mock trial of the Internet. Approximately 70 people participated in the trial, including expert witnesses, lawyers, and a jury comprised of public and private sector technology professionals. The participants included Gérard Miller, a French psychiatrist, Arnaud Brunet, lead counsel for IBM Europe, and Bill Gates, President of Microsoft. A young actress in silver makeup portrayed the Internet ('Pseudonyms: Net, Network...'). ISOC organised the defendant's crimes under four main themes: disrupting 'Time' and 'Space;' assaulting the notion of individual liberty; accelerating social fragmentation; and propagating the diffusion of illicit content.¹

The mock trial, dubbed 'The Trial of the Internet' (*Procès de l'Internet: parole à la défense!*), was the main attraction at the 1998 *Fête de l'Internet*. During this national festival, cities and towns throughout France hosted 750 events promoting public deliberation on the Internet.² Originally conceived by a small cadre of public intellectuals and civil society organisations, and motivated in part by French politicians' growing concern over the nation's slow Internet adoption relative to its Western counter-

parts, the *Fête* has since become a fixture of French civic culture. It is now an annual event. Each year, the *Fête* features a different theme, garnering hundreds of civil society, governmental, and celebrity sponsors, as well as significant national media attention.

I. From the Trial of the Internet to the Right to be Forgotten

In March 2016, exactly 18 years after France staged its mock trial of the Internet, the French Data Protection Authority (*Commission nationale de l'informatique et des libertés*, CNIL), fined Google €100,000. What was the crime *this* time?

DOI: 10.21552/edpl/2017/4/7

* Zarine Kharazian, assistant editor of the *International Enforcement Law Reporter* journal, and legal assistant at the law firm Berliner, Corcoran & Rowe, Washington DC. For correspondence: <zkharazian@email.wm.edu>. All translations from French to English in this article are provided by the author.

1 'Procès de l'Internet: parole à la défense' <<http://www.culture.gouv.fr/culture/actual/fete-de-l%27internet/liste/proces.htm>> accessed 2 April 2017.

2 Michael F. Leruth, 'The French *Fête* de l'Internet' (2000) 73 *French Review* 921.

According to the CNIL, the tech giant had failed to respect hundreds of French citizens' requests to delist links that referenced their personal information. To justify its claim, the CNIL cited a decision by the Court of Justice of the European Union (CJEU) made earlier in the year that established an online 'right to be forgotten' in Europe.³ Under this right to be forgotten, individuals may request that search engines delist links that reference their personal information from search results. Search engines need not grant these requests, but they are now obligated to review them.⁴

France has embraced the right to be forgotten with significantly more zeal than its European counterparts. A Google Transparency Report reveals that, since the 2014 CJEU decision, France has reigned supreme in total right-to-be-forgotten removal requests. As of 1 July 2016, Google had received 95,768 delisting requests from France, a total of 321,028 URLs.⁵ The French not only submitted the most requests to be forgotten—they were also disproportionately successful in obtaining request approvals. According to the Transparency Report, Google removes 49.1% of France's requested URLs.⁶

It is clear, however, that France is unsatisfied with its relative success with regards to removal requests.

Presently, France is the only country explicitly pressuring Google to implement the broadest possible interpretation of the right to be forgotten: a *global* delisting of the requested URLs across *all* of Google's domain names, rather than solely from the European extensions of Google Search. What explains France's unique sense of urgency with regards to the digital right to be forgotten?

Scholars studying the *Fête de l'Internet* have highlighted the event's political character.⁷ Scholars studying the right to be forgotten, in contrast, have thus far shied away from political explanations for France's support of the right, instead focusing on excavating its jurisprudential roots.⁸ In this article, however, I argue that the same political factors that motivated France to centre the mock trial of the Internet as the main attraction of a national festival in 1998 also shaped France's fervent present-day support for the right to be forgotten. Despite undergoing several shifts in national cybergovernance policy over the years, France has, from the 1970s onward, maintained two core political objectives: first, the rejection of American digital hegemony, and second, a demonstration of French exceptionalism in the cybersphere. Through France's 1998 tongue-in-cheek mock trial of the Internet, as well as through its contemporary support for an extraterritorial right to be forgotten, the nation conveys a political message to its European counterparts and the United States: France is ready and willing to lead the Western resistance against American digital hegemony.

II. A Qualitative Data Analysis of Political and Legal Documents

The analyses in this article are drawn from a set of organisational and institutional documents, legislative bills, transcripts of legislative debates, and public statements regarding cyber policy from the 1970s onward. In particular, I focus my analysis on three seminal documents, each related to an important moment in the history of French cyber policy:

- The 1978 Nora-Minc Report;
- Patrick Bloche's 1999 memo to the Prime Minister of France, 'France's Desire: The International Presence of France and the Francophone World in the Information Society' (*Le Désir de France: la présence internationale de la France et de la francophonie dans la société de l'information*);

3 Case C-131/12 *Google Spain SL, Google Inc v Agencia Española de Protección de Datos (AEPD), Mario Costeja González* (2014) ECLI:EU:C:2014:317.

4 Europe proposed the right to be forgotten as a solution to what privacy scholars have termed the "problem" of digital eternity. The problem of digital eternity arises from the Internet's near-infinite capacity to store personal data, as well as from its ability to render that data more widely and rapidly accessible. Michael Douglas, 'Questioning The Right To Be Forgotten' (2015) 40 *Alternative Law Journal*, 109.

5 Google, 'European Privacy Requests for Search Removals' (Transparency Report) <<https://www.google.com/transparencyreport/removals/europeprivacy/>> accessed 1 July 2016.

6 *ibid.*

7 See Michael F Leruth, 'The French Fête de l'Internet' and Michael F Leruth, 'Themes of the French Year 2000 Celebration' (2001) 9(4) *Modern & Contemporary France* 467-482.

8 See Jeffery Rosen, 'The Right to Be Forgotten' (2012) *Stanford Law Review Online* 88 <<http://www.stanfordlawreview.org/sites/default/files/online/topics/64-SLRO-88.pdf>> accessed 5 December 2017. While Rosen is the most prominent scholar to have made this claim in a scholarly article, it has been echoed in several law firm newsletters and publications. See Wiley Rein LLP, 'Remembering the Right to Be Forgotten' (News & Insights, June 2014) <https://www.wileyrein.com/resources/documents/WR_PIF_6%2012%2014_v%20final.pdf> accessed 5 December 2017; and 'The Right to be Forgotten' (*Griffin Law UK*, May 2014) <<http://www.griffinlaw.co.uk/right-forgotten/>> accessed 5 December 2017.

- The 2016 Digital Republic Bill, and the legislative discourse preceding official enactment of the Bill.

To construct my argument, I employ a method commonly applied in cultural studies and political science research: qualitative document analysis (QDA). Qualitative document analysis ‘yields data—excerpts, quotations, or entire passages—that the research then organizes ‘into major themes, categories, and case examples.’⁹ The primary advantage of qualitative document analysis is that the iterative process allows for thematic analysis, and thus, for ‘thick description’ of empirical phenomena, thereby yielding more comprehensive conclusion than would quantitative analysis.

The most common criticisms levied against this approach question its objectivity and its generalisability. The early phase of research emphasizes data *selection* rather than data *collection*, inspiring concerns about the objectivity of the researcher. The final phase of research lacks a test of statistical significance, fomenting concerns about the generalisability of the findings. It is therefore unclear exactly how readers should assess conclusions drawn from a qualitative data analysis.¹⁰

To address this legitimate concern, this article follows the standards set forth by Wesley for the systematic qualitative analysis of political documents. As Wesley states, ‘The results of a QDA study are confirmable if the inferences drawn are traceable to data contained in the documents, themselves, and if the preponderance of evidence corroborates those findings. This is the very essence of empirical inquiry.’¹¹

In order to empirically assess the results of a QDA study, the researcher and the reader must distribute the burden of proof as follows. First, the qualitative researcher must triangulate documentary evidence by integrating analyses of official policy memos with discourse on the production and reception of those memos—legislative debate transcripts, for example. Second, she must highlight discrepant evidence and weigh alternative hypotheses. If the qualitative analysis meets these standards, the reader may assess the results of the study by inquiring, ‘Would I have reached the same general conclusions, given the opportunity to read the same set of documents under similar conditions?’¹²

Having outlined this article’s methodology, I will now introduce France’s first foray into cybergovernance policy: the curious case of a best-selling administrative report.

III. *Le Télématique*

1. Theorising *Le Télématique*

In 1976, the President of the Republic, Valéry Giscard d’Estaing, appointed Simon Nora to head a newly established commission on the ‘information society.’ The commission was established to address increasing anxiety regarding American domination of cyberspace and France’s waning influence. The commission aimed to provoke reflection on the ‘computerisation’ of society, as well as to determine the scope of future studies of the matter.¹³ Two years later, the commission produced its chief deliverable: a 162-page report titled, ‘*L’informatisation de la société: rapport à M. le Président de la République*,’ more commonly referred to as the Nora-Minc Report.

The Nora-Minc Report deems American domination of the cybersphere an existential threat to France. It begins with an ominous premonition: ‘If France does not find the correct response to these grave and novel threats, domestic tensions will engulf the nation’s destiny.’¹⁴ The commission later clarifies the primary ‘grave threat’ facing France in the information society: Taking into account the current geographical nodes and operating manner of the computing industry, it is likely that information transfers passing through the United States will remain most efficient. This risks creating a dependency of European users on their American providers.¹⁵

Here, the Nora-Minc Commission highlights the danger of increasing European dependence on American

9 Glenn A Bowen, ‘Document Analysis as a Qualitative Research Method’ (2009) 9(2) *Qualitative Research Journal* 29.

10 Kritia Samsi, ‘Critical Appraisal of Qualitative Research’ (Lecture, King’s College London, 2012) <<http://www.kcl.ac.uk/sspp/policy-institute/scwru/pubs/2012/conf/samsi26jul12.pdf>> accessed 5 December 2017.

11 Jared Wesley, ‘The Qualitative Analysis of Political Documents’ (2014) 55 *From Text to Political Positions: Text Analysis across Disciplines* 145.

12 *ibid* 145.

13 Andree Walliser, ‘Le Rapport “Nora-Minc”. Histoire D’un Best-Seller’ [1989] *Vingtième Siècle. Revue d’histoire* 36.

14 Simon Nora and Alain Minc, ‘Rapport Au Président De La République: L’Informatisation De La Société Française’ (La Documentation Française 1978) 9.

15 *ibid* 28: ‘Dans l’état actuel des implantations et des stratégies des sociétés informatiques, il est probable que les transferts vers les Etats-Unis resteront privilégiés. Ceci risque de créer une dépendance des utilisateurs européens à l’égard de leurs fournisseurs américains.’

technology companies. The report quickly narrows its focus to France's dependence on the American computer industry, citing the fact that IBM, an American company, provides 20% of office terminals in France. American domination of the computer industry poses risks to economic stability, social consensus, and national sovereignty.¹⁶ In other words, the dangers posed by American domination are all-encompassing for the country and its people; they threaten the economic, social, and political fabric of the French nation.

The Nora-Minc Report then declares that non-French national efforts to address the threat of American digital hegemony have been insufficient thus far. The report acknowledges that France is not alone in its concern over American hegemony in the cybersphere. On the contrary, several countries have deployed unique cybergovernance strategies in response to American domination of the computer industry. Japan, for example, adopted a protectionist attitude and worked to develop its technological information industry. The Germans, in contrast, acquiesced to American domination of the cybersphere, focusing instead on building an expertise in nuclear technology. Meanwhile, the UK attempted to remain competitive by diversifying its technological and communications sector.¹⁷ The Nora-Minc Report recognizes these efforts, but emphasizes its conclusion that the United States still dominates the computer industry in each of these countries.

Given these findings, the Nora-Minc Commission proposes that France exceed the efforts of any other country in the quest to counter the threat of American cyber-domination. The report theorises a novel cybergovernance paradigm—*le télématique*—considered by its authors to be uniquely capable of enabling France to counter American digital hegemony:

This interfacing of computers and telecommunications that we dub 'la télématique' unfurls a radically new horizon. It is not news that modes of communication form the backbone of communities: roads, railways, electricity underlie human organization, be it at the family, local, national or multinational level.¹⁸

Tellingly, however, the Report never defines the term *le télématique* in its own right. Rather, it explains the concept by juxtaposing it as a rival to an American term, 'compunication.' Couched in a footnote, the Report offers the definition of *le télématique* as a 'neologism' and 'cousin' of 'compunication.' The Report distinguishes conceptually between *le télématique* and 'compunication,' however, by arguing that the latter American term emphasizes informatics—mainly, the computer industry—while the former French term rests on telematics, the telecommunications industry.¹⁹ According to the Nora-Minc Commission, France should resist American digital hegemony not by increasing its competitiveness on American's own playing field of *informatics*, as other countries have done, but by building an alternate playing field altogether: a *telematics* network.

The trajectory of the Nora-Minc Report diverged sharply from the trajectories of other administrative reports, when, in 1978, Nora-Minc became a bestseller. Initially, the Report circulated among a select cadre of politicians and academics, but on 19 May 1978, *La Documentation Française* presented it to the press.²⁰ Grippled by its sheer rhetorical flair, topicality, and bold pronouncements regarding France's digital future, several publishing houses immediately began competing for exclusive rights to publication. Eventually, *Le Seuil* won the contract, and subsequently sold three separate editions within a year.²¹ Over the course of a decade, the French public purchased 125,000 copies of the Nora-Minc Report—an exceptional number for an administrative report—cementing the Report's status as a best seller.²² Following the Report's initial success, eight countries—West Germany, Italy, Hungary, the United States, Japan, Brazil, Portugal, and Mexico—obtained the right to publish translations of the Report.²³

Western academics—Americans, in particular—presented the Report as an exquisite snapshot of public opinion in France regarding the information society. In his introduction of the English translation of the Nora-Minc Report, 'The Computerization of Society,' sociologist Daniel Bell christened it 'a mirror of French society.' Similarly, the

16 *ibid* 10.

17 *ibid* 64.

18 *ibid* 11: 'Cette imbrication croissante des ordinateurs et des télécommunications que nous appellerons "la télématique" ouvre un horizon radicalement neuf. Ce n'est certes pas d'hier que les moyens de communications structurent les communautés: routes, chemins de fer, électricité, autant d'étapes d'une organisation familiale, locale, nationale, multinationale.'

19 *ibid* 11.

20 Walliser (n 13) 35.

21 *ibid* 36.

22 *ibid*.

23 *ibid*.

May 1981 issue of the *Sociological Review*, described it as 'typically French: elegant, enigmatic, remarkably philosophical, magisterial and just occasionally absurd.'²⁴ American commentators oversimplified the matter, implying that an administrative report, even one that enjoyed unusual popularity in French media, represented a monolithic French opinion on cyber policy.

While the Nora-Minc Report may not have comprehensively communicated French public opinion, political discourse on the Report revealed that its message resonated with government representatives across the political spectrum. News channels broadcast several debates on the Report. Channel *Antenne 2* televised a particularly important debate titled, 'The Computer and Our Future.' The debate featured Simon Nora himself, in addition to participants from a variety of political backgrounds: Alain Devaquet of the Rally for the Republic, Michel Pinton of the Union for French Democracy, Laurent Fabius of the Socialist Party, and Anicet Le Pors of the Communist Party. Curiously, neither centre-left nor centre-right politicians offered criticism of the report during the debate. The Nora-Minc Report was sufficiently centrist, and information policy did not constitute a cardinal component of any party's platform in the 1970s.²⁵

Criticism of the Report came primarily from the far-left socialist and communist parties. Even these criticisms were limited in scope, however, as the far-left politicians were primarily concerned with advocating the inclusion of their pet issues. For example, leftist party leaders criticised the Nora-Minc Report for the inadequate attention paid to employment issues in the information society.²⁶ Later, environmentalist politicians formed a commission on 'Ecology and Information Processing' (*Ecologie et informatique*). The commission held public debates and published articles critiquing the Nora-Minc Report's negligence of potential environmental implications of the information society.²⁷

The Nora-Minc Report constitutes the theoretical foundation of France's nascent cyber policy. Because the Report was so well received by the French public and the political class, it had enormous impact on the development of France's cyber policy. The negligible debate that the Report engendered was superficial; no French politician publicly questioned the Report's fundamental claims: first, that American digital hegemony poses an existential threat to the economic, social, and political fabric of the French

nation, and second, that France must develop an alternate French model of cybergovernance to rival the domineering American computer industry.

In the section that follows, I outline the implementation of *le télématique*, in which French policymakers attempt to address the central problems identified in the Nora-Minc Report through the development and distribution of Minitel, a novel telematics network.

2. Realising *Le Télématique*

Following the success of the Nora-Minc Report, the French Government dutifully heeded the Commission's primary suggestion, and set about strengthening and leveraging its telecommunications infrastructure. Within a year, the Government asked the Directorate General of Telecommunications (DGT), the country's national telecommunications department, to lead the effort.²⁸ After releasing a research report outlining its approach, the DGT began to implement the *plan télématique*. According to the plan, France would adapt its existing telecommunications infrastructure to accommodate new services. The primary project was the creation of an electronic phone directory, called the *annuaire électronique*.

Early attempts to deploy the *annuaire électronique* inspired the development of a more ambitious project: an interactive, online public videotex system. The system was officially called *l'Acquisition Numérique et Télévisualisation d'Images Organisées en Pages d'Écriture* (ANTIOPE), but more commonly referred to by its trade name, Minitel. The Minitel network proved extraordinarily successful within France. By 1990, it had reached a peak of 1.5 billion connections, and had facilitated 100 million hours of communication. Roughly a quarter to a third of French households—an estimated 14 million individual users—regularly connected to Minitel.²⁹

24 *ibid* 46.

25 *ibid* 44.

26 *ibid*.

27 *ibid*.

28 Lyombe Eko, 'New Media, Old Regimes: Case Studies In Comparative Communication Law And Policy' (Lexington Books 2012) 216.

29 Hugh Dauncey, 'A Cultural Battle: French Minitel, The Internet And The Superhighway' (1997) 3 *Convergence: The International Journal of Research into New Media Technologies* 5.

On its face, Minitel is indistinguishable from any other pre-World Wide Web online service, although it was particularly successful. The network provided its users with many of the same services that the Internet does now: an online phonebook, information on weather and transportation schedules, banking and ordering services, and message boards.³⁰ Users accessed these services through a personal terminal that looked much like the early computing machines made by IBM.

However, to cast Minitel as a French proto-Internet obscures the politically charged nature of the technology. In the development stage, the French Government took great pains to identify Minitel as a decidedly *French* technology. Even the adoption of the underlying transmission protocol—something that would ordinarily constitute a highly technical determination—was politically motivated. France decided to adopt a packet-switching technology called X.25 rather than Transfer Control Protocol/Internet Protocol (TCP/IP) precisely *because* the latter was undergirded by ARPA-NET, an early American proto-Internet network.³¹

30 *ibid.*

31 Eko (n 28) 218. Eko writes, ‘French telecommunications policy makers opted for and developed X.25, a version of packet-switching technology that was different from the Transfer Control Protocol/Internet Protocol (TCP/IP), the transmission protocol of ARPA-NET that ultimately adopted for the Internet. This French decision to adopt X.25 rather than TCP/IP was a political rather than technological decision. Though it would prove to be a fatal policy option for the Minitel, the choice was consistent with French preoccupation with questions of national sovereignty and technological independence... The country also wanted to display its mastery of information and communication technologies, and to promote the *rayonnance* (brilliance) of French technology in the world.’

32 Jacques Chirac, as cited in Eko (n 28) 87.

33 ‘La boulangère d’Aubervilliers sait parfaitement interroger sa banque par Minitel, alors que la boulangère de New York en est incapable.’

34 Marie Marchand, as cited in Brent D Ruben and Jorge Reina Schement, *Between Communication And Information* (Transaction Publishers 1993) 457.

35 For a thorough analysis of how the idea of the French cultural exception manifests in the cybersphere, see Lyombe S Eko, *American Exceptionalism, The French Exception, And Digital Media Law* (Lexington Books 2017). On page 83, Eko writes: ‘By emphasizing its civilizational, linguistic, and cultural distinctness from an undifferentiated “Western culture,” while being a full-fledged member of the major institutions of the Western World, the French exception creates a paradoxical situation where France is of the “West,” and yet she is different from the rest of the West... This dilemma is especially acute in the field of mass mediated culture where France seeks to protect its culture from the American cultural, technological, and media juggernaut, while at the same time transposing European Union Directives into French law, and opening itself to legal and policy transfers from the international human rights regime... The French exception thus demands an emphasis on French difference within a European sameness.’

Nearly every subsequent design decision involving the Minitel network adhered to a calculated political logic. The primary aim was to position Minitel as a bulwark against American domination of the computer industry. To achieve this aim, France Telecom, France’s public telecommunications company, managed the entire Minitel network, while the French government subsidised personal household terminals. Minitel terminals connected to external networks and databases through dial-up landline telephone networks. This design choice meant that the only manner in which one could use Minitel was to go through the French national telecommunications infrastructure. Access to the network necessarily excluded those who did not subscribe to France Telecom, ie individuals outside of France.³²

The rhetoric surrounding the development and marketing of Minitel further reveals the extent of French angst concerning American domination of cyber space. On 10 March 1997, France’s President, Jacques Chirac, proudly declared the following during an interview on the public national television channel *France 2*: ‘The baker in Aubervilliers is perfectly capable of checking his bank account through Minitel, while the banker in New York is incapable’³³ In her ‘Authorised Biography of Minitel,’ chief Minitel publicist Marie Marchand commented the following on the deployment of the electronic directory:

There we go again: ‘a world’s first.’ France was back at it, showing that it could outdo the rest of the world; that come hell or high water it could come up with the boldest technological strategy, that France could go it alone, with no international help... Once the electronic directory was extended throughout France... The American press devoted considerable space to this French success story.³⁴

Even at the height of its domestic success, French politicians and policymakers alike went out of their way to define Minitel not on its own terms, but in contrast to American corporate dominance. The development and diffusion of Minitel thus represented a methodical effort on behalf of the French Government to transform *le télématique*, derived from the Nora-Minc Report, from abstract cyber theory to actionable cybergovernance policy. Minitel, in essence, is an embodiment of France’s rejection of American digital hegemony and its quest for French exceptionalism in the cybersphere.³⁵

IV. *Le Modèle Républicain*

3. Theorising *Le Modèle Républicain*

Heartened by the domestic success of the Minitel network, French policymakers considered exporting the technology abroad. By the mid-1990s, the French Government and France Telecom began laying the groundwork to set up telematics networks in other European countries, and even as far away as Brazil.³⁶

But in 1991, the United States finally went public with the Internet. France's implementation of the *plan télématique* came to a screeching halt. The Internet was a better product than Minitel. It resolved many of Minitel's technical limitations, such as low-quality graphics, and it possessed superior data transmission protocols. Minitel was 'a supply-led, top-down-imposed technology which took little account of social demand,' while the Internet was decentralised. The Internet was thus better equipped to respond to consumer demand and penetrate foreign markets.³⁷ Unsurprisingly, the American-developed Internet became a global phenomenon, while the French-developed Minitel suffocated within France's borders.

Initially, French Government officials and academics expressed open hostility to the Internet.³⁸ Fifteen years earlier, the Nora-Minc Report had cast American domination of the computer industry as an existential threat to the political, economic, and social fabric of the French nation, an idea that still resonated with the political elite. Furthermore, the French Government, via France Telecom, had invested enormous sums of money and vast public resources in the development and deployment of Minitel. They were, therefore, reluctant to abandon the telematics network.

In the early 1990s, a government memo marked a turning point in French cyber policy. In the memo, which was drafted for the president, politician Patrick Bloche boldly encouraged France to embrace the Internet, albeit with a decidedly French twist. Bloche's memo, entitled 'The Desire of France: The International Presence of France and the Francophone World in the Information Society' (*Le Désir de France : la présence internationale de la France et de la francophonie dans la société de l'information*), constituted the first major revision of France's information policy since the Nora-Minc Report. Much like that Report, 'The Desire of France' expressed concern

over American digital hegemony from the outset. However, Bloche declares:

France, if it wants it, has an opportunity. It is not necessary to 'run' after the Americans, to measure, day after day, the percentage of French content on the Web, but instead to measure interest in a novel tool, that we can make our own, and repurpose for our own use.³⁹

Here, Bloche encourages France to make Internet policy a political priority. But Bloche frames the French embrace of the Internet not as acquiescence to American cultural hegemony, but rather, as an opportunity for France. He states: 'Merely being present does not suffice; we must have something to say. France should attempt to propose a republican model of the information society.'⁴⁰ Bloche suggests that, rather than impose its outdated concept of *le télématique* on the rest of the world, France should use the phenomenon of the global Internet to develop a republican model of the information society.

Not only would this republican model resist American cultural hegemony and preserve the French cultural exception even as the Internet disseminated across the globe, but it would also serve France's geopolitical objectives. Bloche writes, 'For the first time, the concept of "la francophonie" can become a reality, thanks to virtual tools.'⁴¹ Bloche sees the emerging diffusion of information technology as an

36 Hugh Schofield, 'Minitel: The Rise And Fall Of The France-Wide Web' (*BBC News*, 2012) <<http://www.bbc.com/news/magazine-18610692>> accessed 26 November 2017.

37 Dauncey (n 29) 6.

38 For these early 1990s French critiques of the Internet, see Paul Virilio, *Politics Of The Very Worst: An Interview With Philippe Petit* (Semiotext(e) 1999); and *The Information Bomb*, trans. Chris Turner (Verso 2000), as well as Philippe Breton, *The Culture of the Internet and the Internet as Cult: Social Fears and Religious Fantasies* (Litwin Books 2010).

39 Patrick Bloche, 'Rapport Au Premier Ministre: Le Désir De France' *La Présence Internationale De La France Et La Francophonie Dans La Société De L'Information* (2000) 5: 'La France, si elle le veut, a toutes ses chances. Il ne s'agit pas de "courir" après les Américains, de mesurer jour après jour le pourcentage des contenus en français sur le Web, mais bien de mesurer l'intérêt d'un outil nouveau, profondément innovant, que nous pouvons faire nôtre en inventant nos propres usages.'

40 Bloche (n 39) 8: 'Il ne suffit pas d'être présent, encore faut-il avoir quelque chose à dire. La France peut essayer de proposer le modèle d'une société de l'information républicaine.'

41 Bloche (n 39) 14: 'Pour la première fois, le concept de francophonie peut prendre une réalité grâce aux outils virtuels.'

opportunity to finally define ‘*la francophonie*,’ and subsequently to reach ‘pockets’ of *la francophonie* that were previously inaccessible.

Bloche also asserted the relevance of the French jurisprudential model to the European debate on cybergovernance policy. According to Bloche,

France must find, amid the diffusion of its laws on the Internet, a means of strengthening its international presence and influence. Indeed, the renown of our scholarly faculties and of some of our specialists bestow upon our country a lauded legal reputation. France has also exported much of its law, first of all to its former colonies, but also through the international influence of our civil code ... At the time of the enlargement of the European Union, French law also served as a source of inspiration for the future Member States.⁴²

Here, Bloche evokes the French exception. He writes that France’s renowned legal academic institutions and specialists, as well as its famed civil code, have imparted upon the nation a reputation as a legal powerhouse. Bloche implies that France has a duty to export its legal tradition to other countries, as it did to its former colonies. Then, the political ambition to nurture the French exception resurfaces, as Bloche implores France to take the lead among its fellow European countries on crafting cybergovernance policy in order to reinforce its international presence and influence.

Bloche’s memo introduced the conception of France as a republican model for the information society to official French cyber policy. This idea was reinforced by French citizens, politicians, and public intellectuals alike. In 1997, Jacques Attali, a promi-

nent French social theorist and political advisor, published an editorial in *Le Monde* on the future of France’s Internet policy. The editorial was perhaps the most explicit reinforcement of Bloche’s recommendations. Tellingly, the article was titled ‘The Seventh Continent’ (*Le septième continent*).

Attali explained that scholars and policymakers had analogised the Internet to a network, when it really was more like a continent—the seventh continent, to be precise.⁴³ He continued:

The Internet has thus become in the present, in the world imagination, what America was in 1492 for the Europeans: a place unbridled by our pasts, a paradise for free trade, where we can finally invent a new, clean, man, liberated from his insomniac consumption and infatigable work ethic.⁴⁴

This article demonstrates the late 20th century French conception of the Internet as a continent ripe for colonisation. Attali goes so far as to make the analogy that the Internet is to Europe now what America was to Europe in 1492. Bloche’s argument illustrates the development of the notion that the Internet is a tool for France to perform its cultural exceptionalism and to exhibit its republican model of governance, vis-à-vis American cultural and political domination.

4. Realising The Republican Model

France transformed Bloche’s theoretical cyber paradigm into policy with the introduction of the omnibus Digital Republic Bill, as well as with the national endorsement of the extraterritorial right to be forgotten. These implementations of Bloche’s cybergovernance paradigm, while representing a shift from *le télématique* of the 1970s and 1980s, are ultimately manifestations of France’s core cybergovernance objectives: rejection of American digital hegemony, and the establishment of French exceptionalism in the cybersphere.

V. The Digital Republic Bill

After years of public forums and an online consultation, the French National Assembly passed the Digital Republic Bill on 26 January 2016. The Bill is uncharacteristically comprehensive for a data protec-

42 Bloche (n 39) 61: ‘La France doit trouver dans la diffusion de son droit sur l’Internet un moyen de renforcer sa présence internationale et son influence. En effet, la notoriété de nos facultés et de certains de nos spécialistes donne à notre pays une réputation juridique. La France a également beaucoup exporté son droit, en premier lieu vers ses anciennes colonies, mais on connaît également le rayonnement international qu’a connu notre code civil... À l’heure de l’élargissement de l’Union européenne, le droit français peut également constituer une source d’inspiration pour les futurs États membres.’

43 Presumably, Attali combined Europe and Asia into Eurasia.

44 Jacques Attali, ‘Le Septième Continent’ *Le Monde* (1997): ‘L’Internet devient donc aujourd’hui, dans l’imaginaire du monde, ce qu’était l’Amérique en 1492 pour les Européens : un lieu indenné de nos carences, un espace libre de nos héritages, un paradis du libre-échange, où on pourra enfin construire un homme neuf, propre, débarrassé de ce qui le salit et le limite, un consommateur insomniaque et un travailleur infatigable.’

tion bill, proposing not only a set of regulations on the digital sphere, but also declaring a set of digital rights for data subjects. These rights include the data subject's right to information of the retention period that applies to their data, as well as the right to provide instructions to a data controller regarding the erasure or communication of personal data after death.⁴⁵

In addition to espousing the general principle that primary control over personal data should belong to individual data subjects, rather than data controllers, the Digital Republic Bill explicitly enshrines a distinct form of the right to be forgotten – a right to erasure for minors. Under this right to erasure, a data subject has a right to request and obtain the erasure of personal data if that data were collected while the data subject was a minor.

On its face, the right to erasure for minors enshrined in the Digital Republic Bill is narrower in scope than the right to be forgotten afforded by the CJEU. After all, the latter is afforded to any citizen, while the former applies only to a particular subset of citizens – those who were minors at the time of data collection. It can also be argued, however, that the right to erasure put forth in the French bill is a more expansive legal concept than the European-level right to be forgotten. Voss has proposed the following taxonomy to distinguish between different forms of the right to be forgotten:

- *Right to rehabilitation*: the right to oblivion of the judicial past, as established by a particular jurisdiction's criminal code;
- *Right to erasure*: the right to oblivion of personal information published publicly, as established by national data protection legislation;
- *Right to delisting*: the right to have search results linking to personal information online delisted in certain circumstances;
- *Right to obscurity*: the right to have personal data not deleted, but at least made less easy to find (usually through a combination of design-based privacy measures);
- *Right to digital oblivion*: the right of an individual to request the suppression, removal, or other form of digital obliteration of personal data collected by information society services, such as social networks, browsers, or search engines.⁴⁶

According to the above taxonomy, the European right to be forgotten is more accurately a *right to*

delisting, a narrow subset of the right to be forgotten that applies only to personal data appearing in search results. In contrast, the Digital Republic Bill's version of the right is a *right to erasure*, a broader and vaguer legal concept that applies beyond search results.

In public communications about the Digital Republic Bill, the French Government signalled that the Bill was drafted to fulfil primarily political functions. The official government website expressly ties the Internet to French republican tenets: 'As Internet access for all epitomizes the Republican notions of solidarity and the inclusion of citizens, it will be one of the mainstays of the Digital Republic Bill.'⁴⁷ Furthermore, the fact that the bill was open-source and open for public comment during the draft period emphasized the commitment to a republican model of the Internet, built on social cohesion and solidarity. At a press conference promoting the launch of the open forum, Prime Minister Valls characterised the initiative as 'the first time in France, or indeed in any European country, that a proposed law has been opened to citizens in this way.'⁴⁸ When considered in isolation, French policymakers' celebration of the Digital Republic Bill as a model for other Western countries—particularly in Europe—does not seem particularly noteworthy. However, when considered within the cultural and historical context of French cybergovernance policy, it becomes evident that France's Digital Republic Bill represents a continuation of the republican model, as it was most recently articulated in Bloche's 1999 memo.

During the legislative debate on the Digital Republic Bill, policymakers devoted significant time to the title of the Bill itself. Axelle Lemaire, a Secretary of State in the French Government and the minister responsible for Digital Affairs in the French Finance

45 'French National Assembly Adopts "Digital Republic" Bill - Data Protection Report' (Data Protection Report, 2016) <<http://www.dataprotectionreport.com/2016/03/french-national-assembly-adopts-digital-republic-bill/>> accessed 26 November 2017.

46 Gregory W Voss and Céline Castets-Renard, 'Proposal for an International Taxonomy on the Various Forms of the Right to Be Forgotten: A Study on the Convergence of Norms' (2016) 14 *Journal on Telecommunications & High Tech Law* 298.

47 'The Digital Republic Bill: Overview' <<http://www.republique-numerique.fr/pages/in-english>> accessed 2 April 2017.

48 'French Digital Rights Bill Published In "Open Democracy" First' (*France 24*, 2015) <<http://www.france24.com/en/20150928-french-digital-rights-bill-published-open-democracy-first>> accessed 26 November 2017.

Ministry, begins her case for the Bill by speaking to the essence of the 'Digital Republic': 'This text speaks to liberty, fraternity, and equality: liberty of access to knowledge and information, equal access to the network, and solidarity among territories.'⁴⁹ The legislative transcript shows that the national assembly senators immediately seized on the concept of the 'Digital Republic,' as both the title of the bill, and as an actionable goal in and of itself. First, Bernard Gerard from the Union for a Popular Movement responds:

Madame Secretary of State, I am not entirely convinced by the title of the bill, but that is not essential. Let us just say that I consider realizing a 'Digital Republic' an immense challenge. This is a challenge not just for our society, but for Europe and the rest of the world as well: there are no borders.⁵⁰

Then, Delphine Batho from the Socialist Party interjects: 'I approve of the choice for the title; I would also like to discuss its relation to the end goal of the project. This project, in essence, does not fully address a fundamental question: how does sovereignty manifest in cyberspace?'⁵¹

I highlight this line of questioning because it is unusual in legislative debate. Normally, French policymakers in the National Assembly would be first and foremost concerned with the 'nitty-gritty' of the law—how exactly does it intend to carry out its provisions? But in the legislative discourse over the Digital Republic Bill, we see a legislative debate not on

specific policy questions, but rather on fundamental questions of Republican philosophy. We see many of France's anxieties about the cybersphere, as previously outlined in this article, articulated by French policymakers: *Does the Internet have borders? Can we really transpose France's republican model and frontiers onto cyberspace?*

The second legislative debate on the Bill took place in the Senate. Jean-Claude Requier, a Radical Party of the Left member, notes the following:

The historic monopoly of American institutions that currently maintain and govern the technical architecture of information networks must also be challenged. It follows that the determination of an alternate model of cybergovernance is critical during this discourse.⁵²

Here, Requier explicitly mentions the need for France to pose an alternative to the American model that has dominated the cybersphere. Furthermore, he notes that the Digital Republic Bill fulfils that need. This commentary further confirms the ideological continuity in France's policy toward the cyberspace; the Digital Republic Bill is France's ultimate realisation of Bloche's proposals articulated in 'The Desire of France.'

VI. The Extraterritorial Right to Be Forgotten

France's fervent endorsement of an extraterritorial right to be forgotten, like the Digital Republic Bill, is a manifestation of France's desire to construct a particularly *French* republican model for cybergovernance. To support this claim, I offer analyses from two primary sources.

First, I examine the Charter of the Right to be Forgotten on Collaborative Sites and Search Engines (*Charte du droit à l'oubli dans les sites collaboratifs et les moteurs de recherche*). Initially launched in November 2009 by France's Secretary of State, Nathalie Kosciusko-Morizet, the project spawned two charters, each of which was voluntarily signed by representatives from several media companies and search engines. The project aimed to establish a national norm among the signatories regarding respect for the right to be forgotten in France. The document is revelatory not as much in its content as in its gaps. French companies, among them E-Enfance, Action

49 Luc Belot, 'Rapport Sur Le Projet De Loi (N 3318) Pour Une République Numérique' (Rapport Législatif N 3399, 2016) <<http://www.assemblee-nationale.fr/14/rapports/r3399.asp>> accessed 26 November 2017 : 'Ce texte parle de liberté, de fraternité et d'égalité: liberté d'accès au savoir et aux données, accès égal au réseau, solidarité entre les territoires.'

50 *ibid*: 'Madame la secrétaire d'État, je ne suis pas entièrement convaincu par le titre du projet de loi, mais là n'est pas l'essentiel. Disons que je prends la République numérique comme un immense défi. C'est un défi qui concerne notre société, mais aussi l'Europe et le monde : il n'a pas de frontières.'

51 *ibid*: 'J'approuve le choix de son titre; je souhaite même que l'on aille jusqu'au bout de la logique qui y préside. Le projet, en effet, ne répond pas entièrement à cette question fondamentale : comment la souveraineté s'exerce-t-elle dans le cyberespace?'

52 'Séance du 28 septembre 2016 (compte rendu intégral des débats)' (2016) <<https://www.senat.fr/seances/s201609/s20160928/s20160928002.html#int2>> accessed 5 December 2017: 'Le monopole historique des institutions américaines qui entretiennent et gouvernent actuellement l'architecture technique du réseau ou encore l'attribution et l'archivage des noms de domaines doit être également remis en cause. Dans cette logique, la détermination d'un modèle alternatif est un préalable nécessaire à ces négociations.'

Innocence, and CNAFC, dominate the list of signatories. The only American-based signatory is Microsoft France, which likely signed on to leverage its position as a competitor to Google in the European market. The two American technology giants most affected by and expected to comply with the European right to be forgotten—Google and Facebook—are notably absent from the list of signatories.⁵³ When situated in the historical and political context of French cyber policy development, the charter assumes a uniquely political and strategic meaning; it is a symbol of French corporate solidarity against American hegemony in cyberspace.

Second, I analyse an editorial written by CNIL President, Isabelle Falque-Pierrotin, and published by *Le Monde* on 29 December 2016. In the article, Falque-Pierrotin describes the refusal of American companies—namely, Wikipedia and Google—to recognize an extraterritorial version of the right to be forgotten. Falque-Pierrotin declares the following:

This constitutes a basic question of sovereignty; in other words, the efficient protection of rights. This right to delisting as currently conceived benefits solely European residents; it does not apply to a Chinese person in China or an American in Nevada.⁵⁴

Here, Falque-Pierrotin frames France's push for a global right to delisting not as a question of extraterritoriality, but rather, of national sovereignty. She continues to emphasize the importance of safeguarding national sovereignty in the cybersphere, and reiterates the idea that France, and Europe more broadly, can serve as models for the rest of the world in this respect. In doing so, Falque-Pierrotin echoes Bloche's 1999 call for France to serve as a jurisprudential model for Europe and the broader international community as it attempts to safeguard its national sovereignty from encroaching American digital hegemony.⁵⁵ CNIL's call for an extraterritorial right to be forgotten thus constitutes a political realisation of the republican model that was first conceived in Bloche's memo.

VII. Conclusion

Throughout its developments in cybergovernance policy, France's fundamental mission in cyberspace has remained strikingly stable and transparent. From the 1970s to the present day, France has nurtured twin cyber policy ambitions: to resist American digital hegemony and to fortify the French exception in cyber space. France's advocacy for the extraterritorial right to be forgotten, then, represents France's explicit attempt to construct and realize the republican model of the information society that Bloche and other public intellectuals first proposed in the 1990s. Together, these political actions represent, at least in part, France's 'last stand' against US digital hegemony. They also comprise France's most recent and most explicit attempt to demonstrate its exceptionalist technology policy in the cybersphere.

This research should prompt further inquiry—qualitative, as well as quantitative in nature—into American, European, and Asian attitudes towards digital information policy in general, and the right to be forgotten in particular. It is likely that jurisprudential, cultural, and political differences will persist. This inquiry, however, will help identify the foundations and characteristics of national and regional attitudes towards cybergovernance, and will thus facilitate transatlantic cooperation on the development of necessary and proportionate digital privacy standards.

53 Laurent Checola, "'Droit À L'oubli' Sur Internet": Une Charte Signée Sans Google Ni Facebook' *Le Monde* (2010) <http://www.lemonde.fr/technologies/article/2010/10/13/droit-a-l-oubli-sur-internet-une-charte-signee-sans-google-ni-facebook_1425667_651865.html> accessed 26 November 2017.

54 Isabelle Falque-Pierrotin, 'Pour un droit au déréférencement mondial' *Le Monde* (2016) <http://www.lemonde.fr/idees/article/2016/12/29/isabelle-falque-pierrotin-pour-un-droit-au-dereferencement-mondial_5055111_3232.html> accessed 26 November 2017: 'C'est une question basique de souveraineté, c'est-à-dire d'effectivité de la protection des droits. Ce droit au déréférencement n'est d'ailleurs ouvert qu'au bénéfice des seuls résidents européens ; il ne concerne pas un Chinois en Chine ou un Américain au Nevada.'

55 *ibid.*