10 years of confrontation between French Internet users and their successive governments

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Abstract: This paper is a testimony on the relations between the Internet users and their governments in France during the last decade. It shows the complexity of communication between two worlds that are strangers to each other. Since most of the confrontation occurred over law proposals, it analyses their impact on Internet users and focuses on two examples. These example show the failure of Internet as a political medium. French politicians do not seem to want an active participation of the citizens in decision-making processes. In order to end this paper on an optimistic note, the last section enumerates the achievements of e-government which contributed preparing for a better democracy by increasing transparency, accountability, and education. This might push citizens to ask for more.

1.Introduction

Internet changed the relations between the citizens and their government in France, like in all the countries with a majority of citizens connected to the Internet. In France these relations started in the mid-90s with the arrival of the first public Internet Service Providers (ISP). Their customers then got then the ability to publish their Web pages, to read information from all the world, to meet foreigners from their living room, to talk to a world wide audience in forums or more privately through chatrooms…, in short they learnt new ways of communication. Of course most were not aware of the press laws which requiered a registered editor for each publication, nor that surfing on the Web would display texts forbidden in France and if they knew about sex, drug, copyright or game laws, the temptation was high to use this discreet tool to circumvent these laws. At the same time, the traditional media tried to describe this new world but could not resist exposing the dark side. According to them, the Internet was the heaven of crackers (confused with hackers), paedophiles, Nazis…. It was also the time of the first lawsuits related to the Internet, most of them related to the press laws or copyright and trade mark laws. Therefore politicians had to join in.

Faced with these newcomers, the majority of the academics and other veterans of the Internet decided to ignore this buzz. However some decided to help transform the Internet for the better. They founded the first Internet user societies to enlighten and guide this evolution as much as they could. Soon the open source movement joined in to spread and defend the open spirit of the Internet.

Later, with the growth of the Internet and its impact on the economy, with the arrival of new technologies, like peer-to-peer or voice over IP, new players from the traditional economics joined in to protect their interests.

All these players, summarized in figure 1, pushed for a new society that would take full advantage of Internet with new concepts of democracy, economy…or slow down this (r)evolution as much as possible. In 10 years some players, like the administration or the Internet users, changed so much that any come back would be impossible. Just imagine how you would manage without Internet. On the other side, politicians but also the justice and the traditional economy have proven to be more reactive than proactive. For them, Internet seems to be more a source of trouble than luck.

In this paper we analyse the evolution of these players and their relations over this last decade. We also focus on the evolutions which made our democracy more democratic and propose some recommendations.
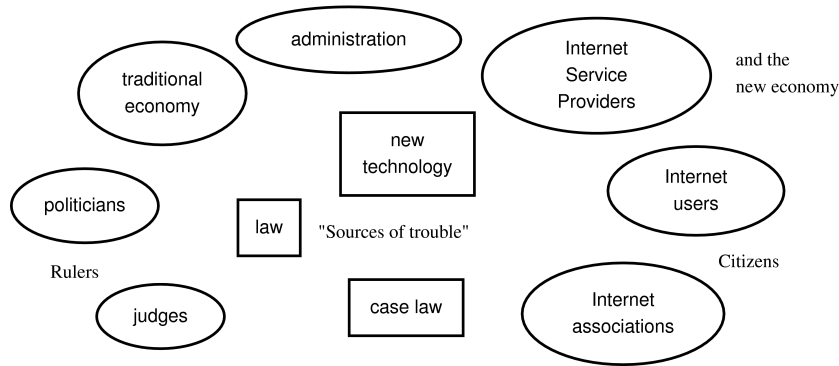
Figure 1: Players in the confrontation over the Internet.

Section 2 is a summary of the activity of the organizations related to the Internet. We will see that there is a "before year 2000" and "after", the first period being concerned by the promotion of the Internet and its protection from restrictive laws, the second one being the age of the defenders of Free Software. Section 3 focuses on the laws which built the French Internet legal framework and generated the most intense relations with the politicians. Two cases illustrate these relations, the law proposal to define the responsibility of ISP and the transcription of copyright law EUCD. Both cases show the difficulties of communication between the Internet users and the politicians. Since the conclusion of section 3 is the failure of e-democracy, at least as a political medium, section 4 analyses the achievements made in e-government, the technical base needed to achieve an efficient e-democracy. In this area, the work done in 10 years is impressive, however more can be done. According to the United Nations, France's e-government comes in the 15th place in Europe.

2.The rise and the fall of the Internet societies

1996 is the year of associations in France. The two main Internet user societies and the first Free Software association were founded then. The arrival of public users on the net, around 20,000 at the end of the year, the first lawsuits, the "advertising" of the newspapers and the first moves of politicians, urged the old users to protect the spirit of the Internet and to build a better world on it. For many, one of the goals was to make the Internet users e-citizens and not e-consumers, as were the Minitel users.

The two main players, l'Association des Utilisateurs d'Internet (AUI) and the French chapter of the Internet Society (ISOC-Fr) followed two different paths. The first one, more political, reacted to the lawsuits, the law proposals and the governance of the Internet while the second was more concerned with promoting the Internet. When the first one succeeded in repealing the first law related to the Internet, the second one founded "the days of Autrans", the largest French event on the Internet with the Hourtin Summer University, see figure 2.

Whatever the direction chosen by the Internet user societies, their evolution during this decade has been similar. During the first period of 5 years, the activity was high. The Internet users were passionate, some politicians were curious and the Internet was trendy. Figure 2 shows the success of Hourtin Summer University during this period with up to 5 Ministers, including a Prime Minister in 1999. "The days of Autrans" had the same success. However we can see that by 2000 the activity of the Internet societies had already started to slow down.

In 1996 another organization was born, the APRIL, joined two years later by the AFUL, both dedicated to the promotion and defence of Open Source software, known also as Free Software. During this first period their main work was promotion, the major achievement being the recognition of the AFUL as an official partner of the Ministry of Education for the development of the new information technologies grounded on Free Software.
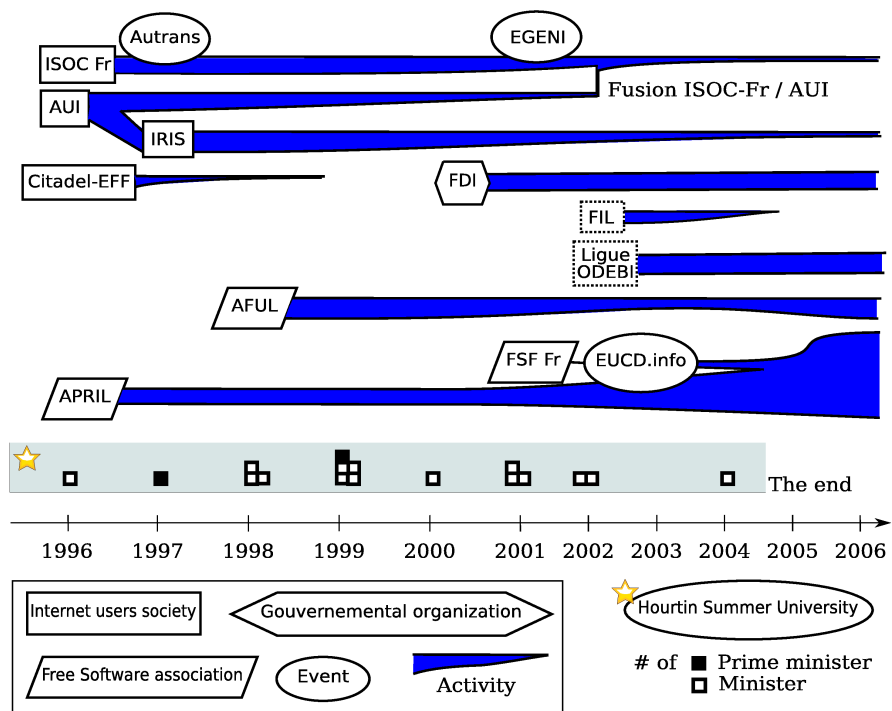
Figure 2: Evolution of the activity of the main French Internet organizations

The activity of each organization is a rough evaluation based on web site activity, number of members, activity of the forums and publications. The information comes from main members of the organizations except for Citadel-EFF, IRIS, FDI and the Ligue ODEBI where the measure is mainly based on web site activity.

In 2000 the economic crash of the Internet reduced its trendiness. The Internet became more and more something common. Soon, in 2002, ADSL, a new connection technology, offered to the users an unlimited fast connection cheap enough to be, today, the most used type of connection to Internet. At this time the lawsuits related to the Internet had produced the case law needed and soon some usual type of lawsuit became more unusual, like the ones on cybersquatting (see table 1, figures show a drop in the number of lawsuits which might be more a lack of interest for such lawsuits than a real drop. The publisher of these judgements, Legalis.net, says having more difficulties to be informed of judgements related to Internet. According to him, less than 1% of all the judgements in France are published.).

year	94	95	96	97	98	99	00	01	02	03	04	05	06
number	2	1	3	11	16	33	63	69	90	76	36	49	66

Table 1: Number of referenced judgements related to the Internet (legalis.net 2007)

The second period, the last 5 years leaves less to be enthusiastic about. The Internet is commonplace, the Internet users do not feel the need to defend it anymore, the Internet user societies are tired, tired of fighting for nothing. Some tried to react by founding association of associations without real success: the FIL died in two years and if the Ligue ODEBI is still active, it is no longer an association, just a web site controlled by few activists. The ones who did increased

their activity during this period were the free software organizations who had to react to the proposal of the European Commission to allow software patents, a direct threat to Free Softwares.

3.Law proposals feed e-contestation

The main political activity over the Internet of this decade has been the contestation of law proposals. In his paper "E-democracy, E-Contestation and the Monitorial Citizen", Jeroen van den Hoven (2005) makes his Pettit's conception of "contestatory democracy". He believes that it "*provides an interesting alternative conception of democracy to guide our thinking about designing E-democracy*". The two other alternatives of democracy, the direct democracy and the deliberative democracy, ask respectively not enough and too much of the citizen. Our experience during this decade can be compared to a contestatory democracy with the government making law proposals on one side and the Internet organizations and others reacting on the other side. However it can just be a comparison since the French democracy is definitively direct, with elected representatives ruling without referring to the citizens between two elections, unless massive demonstrations force them to do so.

Three categories of laws have proven to be a good catalyst for citizen contestation: copyright, privacy and freedom of speech. From the last category, the definition of who is responsible for publication on the Web and how it should be controlled led to 4 law proposals and 8 years of confrontation with 3 governments (see figure 3). Two of the law proposals had articles being unconstitutional, one has been cancel by the change of government and the last one succeeded to be voted but with a warning of the Constitutional Court on how this law should be understood. The story of these proposals says a great deal about the chances of success of e-democracy, deliberative or constestatory, in France today, see (Chemla 2002) for a general picture.
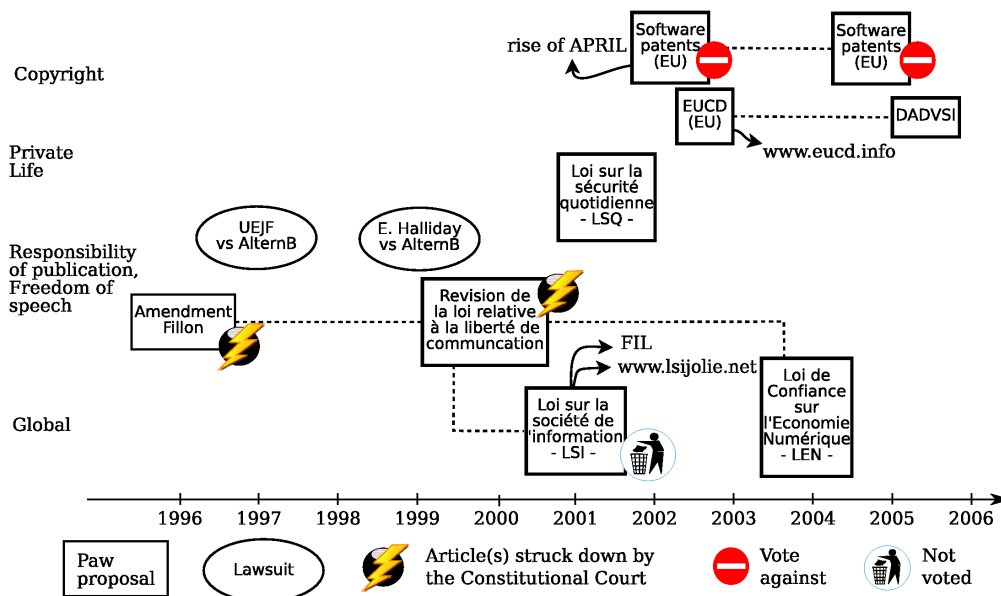

Figure 3: Main lawsuits and law proposals which raised reactions.

3.1How to rule against the wind

In May 1996, the managers of the two main ISP were arrested for paedophilia. The computers of these ISP provided paedophile pictures, as did all the ISP that allowed users to read USENET, the Internet forums. Immediately the AUI spoke out against this arrest and asked the authorities to consider ISP as neutral technicians, obedient to the justice and nothing else. The same year l'Union des Etudiants Juifs de France (UEJF), sued 9 ISP for giving access to revisionist texts and the next year it sued the ISP AlternB for hosting a racist Web site. Before any of these lawsuits were judged, the Minister in charge of the Telecommunications, M. Fillon, reacted with a proposal. He proposed

to move the responsibility from the ISP to an administrative council responsible for checking the legality of the Web sites. This law proposal was far from the suggestions of the Internet societies asking to move this responsibility from the ISP to the authors of the writings. The proposal became an amendment to the law in question, therefore the AUI asked MPs of the opposition to refer to the Constitutional Court to strike it down, which it did.

Some could have expected that this confrontation between the users and the Minister would start new relations. On the contrary the Minister, with the help of Minitel professionals but without the Internet users, tried to introduce his proposal in a contract ISP customer would have to sign. (Un)fortunately the legislative elections decided to end this story.

The new legislature started with a lawsuit from model Estelle Halliday against the usual ISP, AlternB. This time the complaint was for diffusion of nude pictures of the plaintiff on one of the 45,000 Web sites hosted for free by AlternB. The complaint could have been against the known author of the Web site but it was only against the provider, even if the Web site was closed as soon the provider knew about the diffusion of the pictures. The judgement declared AlternB guilty, see (Chemla 1999) for the full story.

This judgement was a shock. The Internet user societies condemned it and the services of the Prime Minister called AlternB's manager to write a law proposal such that it could not happen again. But this proposal was reversed during the talks at the parliament. It was not anymore a protection for the providers but a new burden: they had to close any illegal Web site as soon they were informed of its existence by anybody. Once again the Internet user societies spoke out against this law arguing that only judges can decide what is illegal. And once again the Constitutional Court declared this part of the law non valid and repealed it, see (IRIS 1999).

Why the initial proposal has been reversed? The main article, the one struck down, asked the ISP to do what should be done against illegal web sites as soon someone asked for it. The initial proposal had no such article, the idea was to refer to the justice in case of "illegal" web site. With Internet anyone has access to a mass media which allows to compete against companies, politicians and all those who have access to the traditional media. One can understand how unpleasant such a new situation can be for them. In 2001, the company Danone forced a registrar to shut down a web site against the company and suited another registrar who refused to comply with the injunction, see (Ricou 2005, section 9.3). A year before La Poste suited an ISP for the same reason, see (Laurent Pelé 2000). None of these lawsuits succeeded but it was not the goal, the goal was to put under pressure the ISP (or registrars) so they will shut down any web site as soon someone powerful enough will ask them to do so. It seems that the best way to limit the freedom of speech is to control the tubes i.e. the ISP.

Since the law have been struck down, since the next proposal, named LSI, could not be voted because of new legislative elections, a new law proposal, the LEN, was voted in 2004 by the new majority. The law was almost the same so once again the Constitutional Court had to decide whether to invalidate it or not. This time, it validated it with only a slight change: the provider must close a Web site if its contents is *obviously* illegal, the slight change being the addition of the word *obviously*.

So it took 8 years to get a law with no Internet user organization to support it. During all this time there was no real communication between the governments and the Internet users. The only democratic relations were fights through judgements and struck down of laws.

3.2 170,000 signatures? What for?

Van den Hoven ends its paper on e-contestation with an example from the Netherlands:

> *In February 2001 40,000 e-mail messages were sent to parliament which was preparing for the auction of radio frequencies. Via websites, which discussed advantages and disadvantages of the auction, people were mobilized to protest against the auction. Although parliament first wanted to accept the proposal, under pressure of the E-protest, it retracted.*

In December 2006, just before Christmas, the French parliament had to vote the transposition of EUCD. The law proposal was named DADVSI. This time the main players, except MPs, were the

music majors on one side and almost all the Internet organizations on the other side. Since this law was a transposition, the Free Software associations had time to learn the European directive and to prepare a dedicated web site, `www.eucd.info`. Therefore they could send on December 2006 their argument and thousands of signature against the proposal to the MPs soon enough to convince a majority to vote an amendment against the law proposal of the government. This has been such a surprise for the government that it cancelled the vote and delayed the study of the proposal for 3 months. On the second reading the proposal was voted without the amendment voted the first time.

170,000 signatures have been collected on `eucd.info` against this proposal including 1,000 associations and companies, but France is not the Netherlands.

E-contestation seems to fit well with Internet features. It is more realistic than asking each citizen to vote or to give his feeling on each law proposal, it offers a better participation than our current direct democracy. However it needs a legal framework to be efficient in a country used to the "tyranny of the majority".

4.What about e-democracy in France?

The question could be "what about democracy?" since both go together, at least concerning the participation of citizens in decision-making processes. Of course Internet is a wonderful tool for a better democracy. It allows to connect people, to fetch information, to build project, to think together in a way and at a scale never achieved before. But it is not enough to build an e-democracy different than the current direct democracy. Li (2005) concluded its paper about e-Government in China by reminding that "*implementing e-government …requires changing how officials think and act*". A substitution leads to the French case, and maybe the Chinese one: implementing e-democracy requires changing how politicians think and act. Mahrer & Krimmer (2005) ended their paper on their Austrian experience with the same conclusion:

> the "middleman paradox" introduced in our study describes that the very same politicians who would be responsible for introducing new forms of citizens' participation for political decision-making are afraid of a displacement of political representation and are therefore opposing more civic engagement.

The paper "Mind the gap: e-Government and e-Democracy", (Ailsa Kolsaker 2006), summarize in its title this problem. As its authors Kolsaker and Lee-Kelley noticed: "*There is little sign of Web being used to invite citizens to become more proactive partners in the process of democracy*". Therefore it may take time to build an e-democracy more participative than our democracy. Or politicians will have to get used to Internet and its open spirit, or we will have to wait for a new generation. It might be both since some already built a local e-democracy in their town.

4.1Information, accountability and transparency

The second leg of e-democracy is called e-government, it includes all the uses of Internet technologies to exchange information and services with citizens and businesses. It gives the bases for a better participation of the citizens, it also leads to a better accountability and transparency

According to the United Nations report "E-Government Readiness Knowledge Base", see (United Nations 2005), France comes in the 23rd place for e-government. In Europe it comes in the 15th place. This ranking is based on the infrastructure, human capital, web measure and e-participation. Web measure, the state's online presence, ranks France in the 33rd position. E-participation, indexing how state web sites promote participatory decision making, ranks it at the 25th position. Thus France position is due to its good places for infrastructure and human capital, nothing in relation with any government ITC choices since the infrastructure is private and human capital is related to education. Therefore France just need more engagement from the state to have a better e-government.

However, even if France could have a better e-government, changes in 10 years are amazing. Here are some examples: all the laws, decrees and legal texts are published on `www.legifrance.gouv.fr`. The lower and upper houses of the parliament have opened their doors, first by displaying the working texts, law proposals, amendments…and now by feeding live stream of the sessions. Requests for proposal of most towns and regions are published on the

Web. Many towns and regions publish the reports of their councils. All this information was very difficult to fetch before the Internet. For citizens and associations, these achievements mean a lot. They make possible to write counter proposals knowing what is going on. They allow to check the work of the MPs in real time or later, see (de Solan 2007) to know all the past votes of a MP. They are also frustrating by bringing citizens closer to decision process without opportunity to contribute. In the end this frustration might force politicians to accept more civic engagement.

The next steps could be educating citizen about Information Technologies not only to use them but also to produce content, see (François-Xavier Hussherr 2006, part 3, chapter 3), generalising the parliament services at the regional and town level, creating open forums at least in towns (for regions or the state, forums may be overcrowded and therefore inefficient), certifying at state level the electronic signature of citizens so they can use it to officially, giving to citizens an access through the Internet to theirs administrative records, etc… But we should not restrict these efforts to politics. Justice is at ground level, everything has to be done. A good start could be to copy parliament achievements: Webcasting the public hearings, see (Osborn 2005), publishing the court reports, displaying oral arguments calendars, etc…

5.Conclusion

In 10 years Internet opened the doors of e-government, pushing information about administration, government and parliament activity down to the citizens. Internet made also much easier collaborative work and communication between organizations and toward Internet users. However e-democracy did not work as expected. The Internet societies did not succeeded to become political partners of the elected representatives. Today they almost survive leaving an empty space on the Internet political scene. The behaviour of politicians, illustrated by the successive votes of law proposals against Internet organizations proposals, is not stranger to this decline. On the other hand, the successful fights of the Free Software organizations against the European proposals of Software patent increased their audience. Today French politicians are the main obstacle to build a more participative e-democracy, therefore such an e-democracy, inviting citizens to participate in decision-making processes, should to be build on a legal framework… that only politicians can make.

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