

ETHICAL RECOMMENDATIONS FOR TELEMATIC SERVICES

Telematic service providers shall undertake to comply with the present ethical recommendations. The said recommendations comprise commitments to the code of ethics and an appendix entitled *Review of the Main Texts Applicable to Telematics*.

Commitments to the Professional Code of Ethics

ARTICLE 1 – USER INFORMATION

A) The service provider shall undertake to supply the users with clear and unambiguous information on the price of the service at the beginning of the call or by any other appropriate method, subject to the general conditions of the contract.

B) The service provider shall undertake to:

- Make the following available directly via the service contents as soon as the call is established:

- * Information relating to Article 43-10 of the amended act of 30 September 1986
- * All the elements required for anyone to make a complaint and exercise his/her rights, particularly his/her right to reply
- * The maximum service duration as stipulated in Article 2 § A hereinafter

C) The service provider shall undertake to allow users to determine the rate at which the services are updated. When the date and time of the actual information are required for the user's full information, they shall be indicated in the message. This particularly applies to stock exchange prices.

D) Whenever a service is rerouted to a higher-rate service, the initial service provider shall undertake to give a clear and unambiguous indication of the new tariff before the action used by the user to activate the rerouting process and thereby accept the price.

ARTICLE 2 – SERVICE HONESTY

A) With Respect to the Users

The service provider shall undertake to:

- Offer an honest service. In this respect, the user must not be misled on the contents or possibilities of the products and services proposed by any means whatsoever. For electronic telephone directory services that use individuals or automatons, mention of this shall be given in the service description that can be accessed via the contents: any advertisement must be announced as such. A telematic service may not be promoted as a classified advertisement, irrespective of its type.

Advisory services (medical, legal, and so on) must provide a clear warning to users in the service contents or at the beginning of the call that the advice contained within the telematic service is given for information purposes only and should not be used in preference of consulting a qualified practitioner. Such services must indicate the identity of the specialist(s) taking responsibility for the advice provided or the method to access this information.

Service providers broadcasting advertisements, notably job offers, shall undertake to:

- Provide a tree-structured indication of the number of offers in every relevant category prior to consultation
- Check whether the offers are genuine
- Immediately delete those that are out of date or no longer relevant

The service provider must be able to justify the measures taken to this effect and consequently keep records of the offers broadcast and all related documentation for one month as from the date on which the offers are no longer made available to the public.

The service provider shall undertake to not use the telephone number of a private individual in its telematic service without the express consent of that individual.

The service provider shall undertake to immediately withdraw a private telephone number from its telematic service if the individual in question makes a complaint to the effect that the said telephone number was mentioned in the said service without his/her express consent.

For shared revenue voice services, where the cost for the user is completely or partially duration-related for an amount exceeding 0.15 euros inclusive of tax per minute, the length of the call shall be limited to thirty minutes.

B) With Respect to Rival Providers

The service provider shall undertake to:

- Adopt fair trading practices. Consequently, the service provider and server centre are specifically forbidden from taking action on a service with the intention of destroying it or turning away its users.
- Conduct prior research to ensure that the name and access code for its service cannot be confused with those that already exist.

C) With Respect to the Operator

The service provider shall undertake to abide by the purpose of its service as described when the contract or later endorsements to the said contract was/were signed.

ARTICLE 3 – SERVICE CONTENTS

A) All Services

The service provider shall undertake to not use or suggest the representation of activities that are against the laws in force and thereby undermine the image of the operator and telematic service providers.

The service provider shall undertake to avoid any risk of confusion between itself and the operator in the service offered. The service must be identified at the beginning of the message.

In particular, the service provider shall undertake to prevent the following from being made available to the public:

- Messages of a violent or pornographic nature, and messages whose content is likely to undermine respect for human dignity, equality between men and women and the protection of children and adolescents
- Messages encouraging the perpetration of crimes and/or offences or incitement to the consumption of illegal substances
- Messages encouraging discrimination, hatred or violence

The responsibility of the publishing manager, as stipulated in the appendix of the present recommendations, may be involved as a result of messages or information made available to the public at any given moment, particularly concerning messages, information, lists of classified advertisements, and so on.

Consequently, the service provider shall undertake to constantly monitor the information made available to the public, so that any messages likely to be against the laws and regulations in force can be removed prior to broadcasting.

The service provider shall undertake to not award bonuses to users according to the time that they have spent on the service, notably in the form of access rights to another telematic service that would not comply with the present recommendations.

Advertising messages broadcast by the service must be presented as such.

B) Services Intended for Young Users

Services intended for young users must specifically not contain any category or message condoning crime, lying, theft, laziness, cowardice, hatred, debauchery or any acts that can be classed as crimes or offences or likely to demoralise children or young people, or inspire or support ethnic prejudices.

These services must not contain any:

- Advertisement or announcement for publications or other audiovisual communication services likely to demoralise children or young people
- Messages encouraging children to consult other telematic services and inciting them to spend excessive time on the service in question

C) Games Services

The service provider shall undertake to mention within its telematic service that the rules governing the game are available on request, free of charge.

The service provider shall ensure that its service contains the name of the legal officer to whom the rules were submitted and the methods for accessing this information.

D) Stock Exchange Information Services

The service provider shall undertake to comply with the recommendations of the Securities and Investment Board, in particular:

- Recommendation no. 87-01, the aim of which is to allow the public to enjoy the range and reliability of the information accessed via a telematic service
- Recommendation no. 93-01, concerning the broadcasting of information over the French public access information system by listed companies, which is intended to supplement recommendation no. 87-01

E) Services Appealing to Public Generosity

Telematic services used for the purpose of appealing to the public's generosity must on no account use the information service function as an intrinsic way to make donations.

F) Sales Services

The information service as such must not be used to pay for material goods. Any bonus in any form whatsoever (such as a prize or credit voucher) and directly related in full or in part to the duration of use is forbidden.

G) Call Connection Services

For shared revenue voice services, the simultaneous or near simultaneous exchange of messages between specifically unidentified users is forbidden.

H) Shared Revenue Voice Services

For shared revenue voice services invoiced according to the duration, all those services whose content corresponds to the broadcasting of adult stories and advertisements for arranging dates shall be excluded.

Shared revenue voice services with invoicing based partly on the duration and partly on the call shall exclude all those services whose content corresponds to the broadcasting of adult stories and advertisements for arranging dates, and also all those services whose content fully or partly corresponds to one of the following:

- Offers (jobs, etc.)
- Services mainly intended for children
- All types of games, lotteries and betting
- Services based on astrology, clairvoyance, fortune-telling, horoscopes and biorhythms
- Any loan simulation service

ARTICLE 4 – SERVICE PROMOTION

Commitments Concerning Promotion of the Service

In all service promotion media, the service provider shall undertake to:

- Avoid any risk of confusion between itself and the operator
- Give the user explicit details on the price for using the service, expressed in euros inclusive of tax per minute, regardless of whether it is a fixed-price service or based on the duration
- Clearly indicate its access trademark
- Declare its identity to the public as specified in the specific conditions
- Specify the identity of the experts involved in any specialist advisory services

With this aim in view, the information above must be clear and unambiguous, and depending on the medium used, readable and/or audible.

In all service promotion media, the service provider shall undertake to not:

- Use degrading images of male or female bodies; it shall pay particular attention to the protection of minors
- Mislead users on the contents or possibilities of the products and services proposed

The service provider shall also undertake to not advertise either directly or indirectly:

- A service contrary to the present recommendations
- Products banned by legislation, such as tobacco (Articles 355-24 to 355-32 of the Public Health Act)
- Alcoholic drinks, particularly subject to the provisions of Articles L.17 and L.17.1 of the act governing drinking establishments

The service provider is forbidden from advertising high-rate services to children.

The service provider shall undertake to comply with the recommendations of the Advertising Standards Authority (ASA).

The service provider is forbidden from displaying advertisements outside advertising spaces or areas intended for this purpose. The service provider must be able to produce the invoices or any document certifying that the advertisement was displayed in a space intended for this purpose.

The service provider shall undertake to not directly canvass for business using emails and SMS messages, unless such steps have already received the express consent of the recipients.

ETHICAL RECOMMENDATIONS FOR TELEMATIC SERVICES

Appendix 1

Review of the Main Texts Applicable to Telematics

1. Acts Governing Audiovisual Communication

Telematic or audiovisual communication telephone information services are governed by amended Act no. 86-1067 of 30 September 1986, concerning the freedom of communication.

This act has kept in force Articles 93-2 and 93-3 inserted in the Act of 29 July 1982 by Act no. 85-1317 of 13 December 1985.

Every service must therefore have a publishing manager: the president of the board, the manager or legal representative if the service is provided by an entity, or the individual if the service is provided by the same.

Action shall be taken against the publishing manager, or joint manager if the manager is entitled to French parliamentary or community immunity, as the main author in the event of an offence, as stipulated in Chapter IV of the Act of 29 July 1881, committed by a service where the message in question had been identified prior to sending to the public. Action shall also be taken against the author of the message as the accomplice. The main infractions mentioned in Chapter IV of the act include the incitement to crimes and offences, libel against the President of the French Republic and the publication of false and libellous reports.

The service provider is compelled by Article 43-10 of the Act of 30 September 1986 to hold the following information at the public's disposal:

- Surname, first name and registered address in the case of individuals
- Name or business name and head office in the case of entities
- Name of the publishing manager or joint manager, and if necessary, the name of the editor in accordance with Article 93-2 of Act 82-652 of 29 July 1982 governing audiovisual communication
- Name, designation or business name and the address of the service provider mentioned in Article 43-8 (in other words, the server centre)

The interdepartmental circular of 17 February 1988 published in the gazette of 9 March 1988 specifies the type of services subject to the audiovisual communication regulations.

The methods for exercising the right to reply for the services are fixed by Decree no. 87-296 of 6 April 1987. According to the terms of this decree (Article 8), the publishing manager or joint manager are responsible for keeping the messages and all other documents required, when producing evidence of any imputations likely to undermine the reputation or honour of the applicant, for one week as from the date on which they were removed from public circulation.

2. Protection of Minors

Article 227-23 of the Code of Civil Law carries a three-year prison sentence and a fine of € 45 000:

The act of fixing, recording or transmitting the image or representation of a minor with a view to its broadcasting, where this image or representation is pornographic in nature (...).

The act of broadcasting such an image or representation by any means whatsoever, importing it or exporting it, having it imported or exported, carries the same penalties.

These penalties are increased to five years' imprisonment and a fine of € 75 000 if a telecommunications network was used to broadcast the image or representation of the minor to an undetermined public.

Article 227-24 of the Code of Civil Law carries a three-year prison sentence and a fine of € 75 000 for either creating, transporting or broadcasting a message of a violent or pornographic nature or likely to gravely undermine respect for human dignity by any means whatsoever and irrespective of the medium, or trading with such a message if the said message is likely to be seen or noticed by a minor.

If the offences stipulated in the present article are committed by the press or radio and television, the specific provisions of the laws governing these media shall apply in determining those responsible.

3. Procuring

Article 225-5 of the Code of Civil Law punishes *the act by whomever, in any way whatsoever, of:*

- 1) Helping, assisting or protecting the prostitution of others
- 2) Profiting from the prostitution of others, taking a share in the resulting income or receiving subsidies from people regularly prostituting themselves
- 3) Recruiting, training or diverting someone with a view to prostitution or putting pressure on that person to prostitute himself/herself or continue to do so

Procuring carries a seven-year prison sentence and a fine of € 150 000.

Article 225-6 of the Code of Civil Law compares *procuring to the act by whomever, in any way whatsoever, of serving as an intermediary between two people, one of whom prostituting himself/herself and the other exploiting or paying for the prostitution of that person.*

4. Protection of Individuals' Rights

Articles 226-1 to 226-2 of the Code of Civil Law carry a one-year prison sentence and a fine of € 4 500 for:

the act, by any process whatsoever, of intentionally undermining the intimacy of an individual's private life:

- 1) *By capturing, recording or transmitting words spoken on a private or confidential basis without the individual's consent*
- 2) *By fixing, recording or transmitting the image of someone in a private place without that person's consent*

The act of keeping any recording or document obtained via one of the acts stipulated in Article 226-1 or bringing it or having it brought to the public's or a third party's attention or using it in any way whatsoever. If the offence is committed by the press or radio and television, the specific provisions of the laws governing these media shall apply in determining those responsible.

Information containing people's names must be handled in compliance with the provisions of Act no. 78-17 of 6 January 1978 governing data processing, data files and individual liberties, some of the articles of which are coded as Articles 226-16 to 226-24 of the Code of Civil Law. In particular, Article 226-22 stipulates that *the act of anyone bringing information containing names to the attention of a third party with no authority to receive it, where the said information was collected when the data was recorded, classified, transmitted or subjected to another form of processing and where the disclosure of the said information would effectively undermine the respect for the individual concerned or the intimacy of his/her private life, carries a one-year prison sentence and a fine of € 15 000. The disclosure stipulated in the previous paragraph carries a fine of € 7 500 if it is committed through carelessness or negligence.*

5. Decency

Article R.624-2 of the Code of Civil Law punishes the *act of broadcasting offensive messages in public highways and places and the act of sending or broadcasting such messages to people's homes without their prior consent.*

6. Attacks on Automated Data Processing Systems

Articles 323-1 and onwards of the Code of Civil Law punish attacks on data processing systems; they particularly stipulate that:

- The act of fraudulently accessing or remaining within all or part of an automated data processing system carries a one-year prison sentence and a fine of € 15 000
If this act results in either the deletion or modification of the system data or a change in system operations, the offender shall receive a two-year prison sentence and a fine of € 30 000.

- The act of preventing or corrupting the operations of such an automated data processing system carries a three-year prison sentence and a fine of € 45 000

- The act of fraudulently adding data to such an automated data processing system or fraudulently deleting or modifying the data contained carries a three-year prison sentence and a fine of € 45 000

7. Games and Lotteries

The amended act of 21 May 1836, concerning the prohibition of lotteries, stipulates that *the sale of property, furniture or goods performed by chance or involving bonuses or other benefits payable, even partially, on a luck basis, and generally all deals offered to the public, irrespective of their designation, used to raise hopes of a win, which is acquired by chance, are reputed lotteries (and prohibited as such)*. Acting in violation of these bans is punishable by the penalties stipulated in the first paragraph of Articles 2 and 3 of Act no. 83-628 of 12 July 1983 governing games of chance.

Furthermore, articles L.121-36 to L.121-41 of the Consumer Act, relating to advertising lotteries, regulate letter-based advertising campaigns, which aim at raising hopes of a win. In particular, they stipulate the following:

Article L.121-36 - letter-based advertising campaigns, which attempt to raise hopes of a win attributed to each participant, irrespective of the way in which the lots are drawn, may only be conducted if they do not require any financial outlay or expense from the participants in any form whatsoever.

The entry form for such campaigns must be distinct from any purchase order for goods or services.

Article L. 124-37 – the documents presenting the advertising campaign must not be confusable with an administrative or bank document made out in the recipient's name or with a newspaper publication.

They shall contain a readable inventory of the prizes at stake and specify their type, exact number and commercial value.

They must also include the following notice: the rules for the advertising campaign are available on request, free of charge. They shall also specify the address to which the request is to be sent and the name of the legal officer to whom the rules were submitted in pursuance of Article L. 121-38.

Article L. 121-38 – the rules for the advertising campaign and a copy of the documents addressed to the public must be submitted to a legal officer, who ensures that they are in order. The above-mentioned rules are available on request, free of charge.

8. Stock Exchange Information

The broadcasting of stock exchange information is governed by the order of 28 September 1967, which institutes a securities and investment board and relates to shareholder information and the advertising of specific stock exchange transactions, by the Act of 24 July 1966 on trading companies and its implementation decree of 23 March 1967, and by the Act of 3 January 1972 concerning canvassing and investment and insurance operations.

Furthermore, the Securities and Investment Board has published the following recommendations:

- Recommendation no. 87-01, which contains the following provisions:

1) As with press publications, where the information and opinions are broadcast under the responsibility of the relevant authors, the service provider must consider itself responsible for everything that is broadcast on its server, in the same conditions as a publishing manager.

2) Service providers shall clearly show the items stipulated by Article 37 of the Act of 30 September 1986 and especially indicate the identity and contact details of the publishing director, whose responsibility is involved, within a banner on the homepage.

3) They shall undertake to check the information provided and not broadcast misleading information, particularly due to its partial nature, and rectify any errors within the shortest time span.

4) The source of any communiqués broadcast at the request of a third party must be shown.

5) The stock exchange prices retransmitted must be identical to those sent by the company's services from the stockbrokers without any additions or comments, and with an indication of the exact moment at which the data was extracted (extraction time of the prices with the date indicated on the computer media given to the publishers).

6) The broadcasting of stock exchange prices must always indicate the source, time of recording and date for each price, in case they could not all be entered at exactly the same time for technical reasons.

7) In all cases, stock exchange comments or advice must be kept separate from the stock exchange price indication and specify their origin using a note that is clearly visible on the screen.

8) Service providers that take the risk of proposing a category for free and anonymous messages in their Minitel (French public access information system) magazine shall display a permanent message that such broadcastings do not have any professional, informative or advisory value. They must allow anyone implicated to reply and insert a right to reply free of charge.

9) Service providers shall keep all the messages broadcast on a magnetic or paper medium for a period of six months as from the moment they are no longer broadcast.

If the publishers are made aware of a dispute, they must keep all elements of evidence beyond this period.

- Recommendation no. 93-01 supplements the previous recommendation by specifically stipulating the following.

Recommendation 1: information dating

To prevent the public from being misled when consulting old information, the date on which the information service was last updated shall be displayed on the first consultation screen. The last update shall also be indicated on the menu screen for each individual category proposed. Dating must be automated to avoid updates from being forgotten and minimise the risk of any mistakes.

Recommendation 2: information updates

Any company choosing to open a financial information service is obliged to update the information, which is effectively a commitment relating to the results. This implies that:

- Any information concerning a current financial transaction shall indicate the reference numbers of the document signed by the Securities and Investment Board and advise how to obtain the said document without incurring any costs (refer to Regulations no. 88-04, 91-02 and 92-02)

- Any sensitive information that has been taken from a communiqué must be shown on the Minitel; if the information has been summarised, the reference numbers for the full versions of the communiqués must be given

- Any sensitive information must not be made available on the Minitel, unless it has already been broadcast to the public as a communiqué

Recommendation 3: authenticity of information

The source of the information must be specified. The board advises that the source be indicated in plain text format if the information is extracted from a public source (annual report, accounting publications) or the name of the author in the case of a comment.

Recommendation 4: broadcasting of stock exchange data

The company may allow users to consult a history of stock exchange prices, on condition that the information is time-stamped and the source indicated. In the case of re-transmitting prices broadcast by the SBF server, the prices shall be presented without any comments. If an incomplete list of prices is shown, the company shall clearly indicate the type of extract presented (average prices, any weighting for volumes, and so on).

The company may not offer stock exchange advice on its shares or those of the group to which it belongs. It may, however, refer to the existence of an outside financial analysis. More generally, the company may not use its financial information service to provide purchasing or selling advice on securities that it holds in portfolio.

Recommendation 5: exclusion of anonymous messaging

An anonymous messaging feature in the company's information service is unacceptable due to the risk of misuse, such as inserting purchasing or selling advice on the company's securities.

9. Consumer Protection

- The Act of 6 January 1988 concerning tele-advertising with sales offers, or *tele-shopping* as it is known, and amended by the provisions of Act no. 93-949 of 26 July 1993 relating to the consumer act. Articles L.121-16 and onwards of the consumer act particularly specify for all telesales operations that an individual purchasing a product has seven days as from the delivery date of the order to return the product to the vendor for a replacement or reimbursement without any penalties, except for the cost of returning the product.

- Act no. 92-60 of 18 January 1992 reinforced consumer protection and specifically supplemented the provisions of Article 7 of Act no. 72-1137 of 22 December 1972, concerning consumer protection in terms of canvassing and door-to-door selling, by stipulating that any commitments obtained by telephone and fax-based canvassing are also subject to these provisions. This provision is also referred to in Article L.112-9 of Section 4, relating to the abuse of any weak points in the consumer act. Article L.121-18 of the consumer act also specifies that for *every distance sales or service offer proposed to the customer, the sales company is bound to indicate its name, its telephone number, the address of the head office and, if different, that of the company responsible for the offer.*

- Article L.121-1 of the consumer act prohibits any advertising, in any form whatsoever, that contains allegations, indications and presentations that are incorrect or likely to mislead when one or more of the following elements are concerned: existence, nature, composition, substantial qualities, contains useful principles, type, origin, quantity, method and date of manufacture, property, price and terms of sale for goods or services being advertised, conditions for use, expected results in use, reasons and procedures for the sale or service, scope of commitments taken by the advertiser, identity, qualities or abilities of the manufacturer, retailer, promoter or service provider.

- Article L.311-4 of the consumer act stipulates that any advertisement made, received or seen in France, irrespective of its medium, and concerning one of the loans referred to in Article L. 311-2 must:

1) Specify the identity of the lender, the type, purpose and duration of the loan proposed and the total cost, and if applicable, the overall effective rate of the loan and fixed repayments

2) Indicate the amount in euros of the repayments, or if impossible, the way to determine the cost of the repayments. This amount shall include the cost of any compulsory insurance when taking out the loan and, if applicable, the cost of the fixed repayments

3) Indicate the number of repayments for fixed-period loans

- Articles L. 111-1 and L. 113-3 of the consumer act stipulate that any goods vendor or service provider must enable the consumer to find out about the main characteristics of the good or service before the contract is concluded, and use displays or any other appropriate method to inform the consumer of the prices, any limitations in contractual responsibility and the specific terms of sale, according to the conditions fixed by decrees issued by the Finance Minister following consultation with the national consumer committee.

10. Other Texts

The following must also be mentioned:

- The provisions of Articles L.49, L.52-1 and L.52-2 of the electoral code
- Act no. 92-597 of 1 July 1992, concerning the intellectual property code
- Article 223-14 of the Code of Civil Law, which suppresses propaganda or advertising, regardless of the means, concerning products, objects or methods recommended as ways of committing suicide
- Article 225-1 of the Code of Civil Law, which stipulates that discrimination can be considered to be any distinction made between individuals on account of their origin, sex, marital status, state of health, disability, principles, political opinions, trade union activities, membership or non-membership, whether true or supposed, to a specific ethnic group, nation, race or religion.
- Discrimination may also be considered to be any distinction made between entities on account of the origin, sex, marital status, state of health, disability, principles, political opinions, trade union activities, membership or non-membership, whether true or supposed, to a specific ethnic group, nation, race or religion by members or certain members belonging to the entities.
- Article 226-8 of the Code of Civil Law, which punishes the act of publishing, by any means whatsoever, a montage where the words or image of an individual have been used without consent and if it is not obvious that it is a montage or no mention has expressly been made.
- Article 322-14 of the Code of Civil Law, which punishes the act of sending or disclosing false information for the purpose of insinuating that an act of destruction, vandalism or damage endangering people's lives will be or has been committed, or sending or disclosing false information for the purpose of insinuating that an accident has occurred and needlessly causing the emergency services to be alerted.
- Act no. 49-956 of 16 July 1949 on publications intended for young readerships
- Article L. 3421-4 of the Public Health Act, which specifically stipulates the following in relation to the use of one of the substances or plants classed as drugs:

The act of incitement to the offence stipulated in Article L. 3421-1 of the present code or one of the offences stipulated in Articles 222-34 to 222-39 of the Code of Civil Law, even if such incitement has not had any effect, or the act of condoning such offences carries a five-year prison sentence and a fine of FF 50 000. The same penalties apply to the act of incitement to use substances shown as having the same effects as substances or plants classed as drugs, even if such incitement does not have any effect. If the offence stipulated in the present article is committed by the press or radio and television, the specific provisions of the laws governing these media shall apply in determining those responsible.

- The Ethical Recommendations of the Advertising Standards Authority, which specifically stipulates the following:

Concerning telematic and telephone information services

In addition to the legislative and statutory measures in force, advertising for a Minitel service or a shared revenue voice service, in any form whatsoever, must comply with the following code of ethics:

The advertisement must proscribe any declaration or visual presentation deemed to be improper by the standards currently accepted

The advertisement must not suggest the idea of inferiority or subordination, even accepted, between one person and another; any representation of human beings must be used in conditions, so as not to be considered as an offence against decency.

Advertisements that are likely to influence children or adolescents must not contain any declaration or visual presentation that might cause them mental, moral or physical harm.

The advertisement must respect women's dignity and avoid any direct or indirect denigration towards women and any text or representation likely to leave them open to scorn, ridicule or discredit.