

# Non-neutrality to promote the Social Contract

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Practice area / Region



# Remarks on Professor Bambauer's paper

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- The First Amendment ignores listeners
  - Not so in Europe: Yildirim v. Turkey, ECHR March 18, 2013
- Access providers claim they're speakers
  - In Europe, this claim could jeopardize liability safe harbor under E-Commerce Directive
- Judge difference between declared objective and actual results
  - European data protection law: legitimacy of processing + proportionality test (Google Streetview case)
  - Regulation as "unfair and deceptive practice?"
  - Case of ad blocking
- State action restricting open Internet
  - ECHR balances fundamental rights
  - Site blocking can create harmful side effects

# Non-neutrality to promote the social contract

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What policy issue?

Spam/anti-virus

E911, legal  
intercept

Child porn

Online gambling

Copyright  
infringement

Hate speech

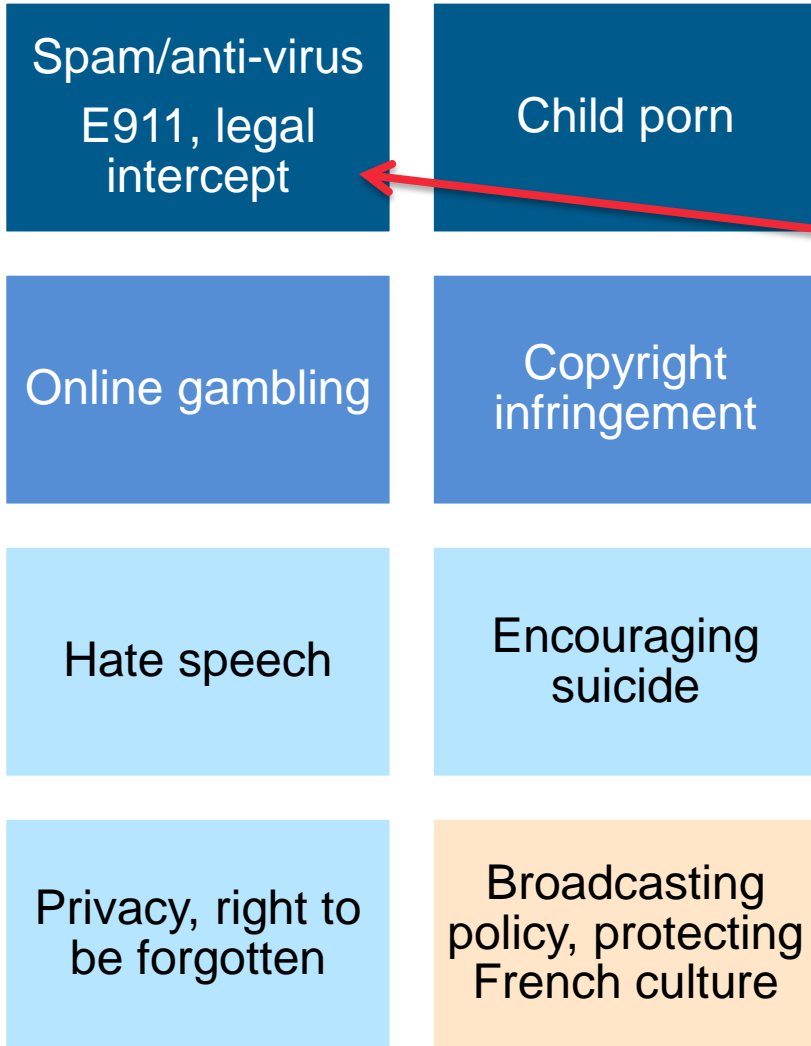
Encouraging  
suicide

Privacy, right to  
be forgotten

Broadcasting  
policy, protecting  
French culture

# Non-neutrality to promote the social contract

What policy issue?



French  
"LOPPSI" law

French telecoms  
code

# Non-neutrality to promote the social contract

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Online gambling	Copyright infringement
Hate speech	Encouraging suicide
Privacy, right to be forgotten	Broadcasting policy, protecting French culture

French  
"ARJEL" law

French  
"HADOPI" law,  
Kino.to case



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Yahoo, AAARGH, Twitter cases

Privacy, right to be forgotten

Broadcasting policy, protecting French culture

Google v. AEPD case

Proposal in "Lescure report"

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What institutional framework?

Liability & prop. rules + court enforcement

Unilateral self-regulation

Multilateral self-regulation

Administrative regulation

Co-regulation

Terms of use



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Notice and takedown

ISP blocking

Search engine

Domain name seizure

Payment providers

User education

Ad networks

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