

BLOCKING PRO-TERRORIST WEBSITES: A BALANCE BETWEEN INDIVIDUAL LIBERTY AND NATIONAL SECURITY IN FRANCE

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I. INTRODUCTION

France was “the first country to experience a new form of Islamic terrorism.”¹ In light of the recent “Charlie Hebdo” and “Kosher Market” terrorist attacks committed by French citizens in January 2015, and the November 13, 2015 terrorist attacks in Paris,² as well as the radicalization of French citizens who leave France to fight alongside ISIS in Syria, blocking pro-jihadist websites is necessary to curtail further radicalization in France. As technology and communication evolve, so must laws in response to the growing threat posed by online jihadist recruitment. Therefore, blocking terrorist websites (like blocking child pornography) is an appropriate legal response that will respect French citizens’ intellectual curiosity, while hampering the radicalization of French nationals. Although it is difficult for France to precisely define “terrorist website,” Decree n° 2015-125 could significantly reduce the online recruitment and radicalization of nationals, thus weakening the jihadist movement in France.

Section II of this article will present a historical overview of foreign terrorist acts in France to demonstrate France’s tumultuous history with Islamic terrorism. Section III will discuss previous legislation

1. Antoine Garapon, *The Oak and the Reed: Counter-Terrorism Mechanisms in France and the United States of America*, 27 *CARDOZO L. REV.* 2041, 2050 (2006); Antoine Garapon, *Is There a French Advantage in the Fight Against Terrorism?*, REAL INSTITUTO EL CANO DE ESTUDIOS INTERNACIONALES Y ESTRATEGICOS (Jan. 9, 2005), <http://www.realinstitutoelcano.org/analisis/807/garapon807.pdf>.

2. *Charlie Hebdo Attack: Three Days of Terror*, BBC NEWS (Jan. 14, 2015, 5:55 PM), <http://www.bbc.com/news/world-europe-30708237?print=true> [hereinafter *Charlie Hebdo*]; Marina Fang, *Timeline Of The Paris Attacks And Aftermath*, HUFFINGTON POST, http://www.huffingtonpost.com/entry/paris-attacks-timeline_56490a09e4b0603773499133 (last updated Nov. 18, 2015).

enacted as a result of the aforementioned terrorist acts. Section IV will analyze recent terrorist acts by French citizens and highlight a trend of radicalization that is currently being furthered by the Internet. Section V will discuss Decree n° 2015-125, the enacted legal measure to block terrorist websites, identify its obvious weaknesses and propose possible solutions.

II. A HISTORICAL OVERVIEW OF FOREIGN TERRORIST ACTS IN FRANCE

France encountered Islamic terrorism long before other Western nations.³ Beginning in 1982, suspected Palestinian terrorists threw a grenade into the Chez Goldenberg restaurant and fired machine guns, wounding twenty-two people and killing six.⁴ This Islamic terrorist act was different from former “internal” political and territorial acts committed by Basque and Corsican separatist groups in the mid-1970s.⁵ In the 1980s and 1990s, France was rocked by two waves of Islamic terrorism: one between 1985 and 1986, and another between 1995 and 1996.⁶

A. *The 1985-1986 Wave of Terror by Palestine Liberation Front, Abu Ibrahim, and Hezbollah*

On February 23, 1985, a bomb exploded in a Paris department store, Marks & Spencer, killing one person and wounding fourteen others.⁷ The attack was attributed to the Abu Ibrahim terrorist group, a pro-Palestinian, Islamic organization.⁸ On March 29, 1985, a bomb was detonated in the Rivoli Beaubourg movie theater, during the International Jewish Film Festival in Paris, wounding eighteen moviegoers.⁹ On December 7, 1985, bombs were detonated at two

3. Garapon, *supra* note 1, at 2050.

4. Joseph Strich, *Owner of Famous Paris Jewish Restaurant Dies*, JERUSALEM POST (May 12, 2014), <http://www.jpost.com/Jewish-World/Jewish-Features/Owner-of-famous-Paris-Jewish-restaurant-dies-351950>.

5. Garapon, *supra* note 1, at 2050; W. Jason Fisher, *Militant Islamicist Terrorism in Europe: Are France & the United Kingdom Legally Prepared for the Challenge?*, 6 WASH. U. GLOBAL STUD. L. REV. 255, 275-76 (2007).

6. COMMISSION DE LA DÉFENSE NATIONALE ET DES FORCES ARMÉES, ASSEMBLÉE NATIONALE, NO. 3460 at 48 (11TH LEG. 2001), <http://www.assemblee-nationale.fr/rap-info/i3460.asp> [hereinafter COMMISSION REPORT]; Didier Bigo, *Les attentats de 1986 en France : un cas de violence transnationale et ses implications (Partie 1)*, 4 CULTURES & CONFLITS 1, 2 (2007).

7. Bigo, *supra* note 6, at 2.

8. *Id.*; Judith Miller, *France Reports a Captive Arab Admits Attacks*, N.Y. TIMES, May 13, 1986, at A1.

9. Although no terrorist group took responsibility for this attack, it is presumed to have been orchestrated by an Islamist organization. Anissa Boumediene, *35 ans d'attaques antisémites*

Paris department stores, Galeries Lafayette, and Printemps Haussman, wounding forty-three shoppers.¹⁰

On February 3, 1986, a bomb exploded on the Champs-Élysées, which wounded eight people, and was attributed to the Committee of Solidarity with Arab and Middle Eastern Political Prisoners (Hezbollah).¹¹ On February 4, 1986, Hezbollah detonated a bomb in a bookstore in Paris' Latin Quarter, wounding five people.¹² The next day, February 5, 1986, Hezbollah placed a bomb in the Forum des Halles shopping center in Paris, which exploded and wounded twenty-two people.¹³ On March 17, 1986, a bomb exploded on a TGV train in Paris, injuring five people.¹⁴ On March 20, 1986, another bomb exploded on the Champs-Élysées, killing two people and wounding twenty-eight.¹⁵ On September 8, 1986, a bomb exploded in the post office of Paris' City Hall, killing one and wounding twenty-two people.¹⁶ On September 12, 1986, a bomb exploded in a cafeteria of the shopping mall at La Défense, in Paris, injuring fifty-four people.¹⁷ On September 14, 1986, a bomb exploded in a Paris pub, killing two police officers and a waiter, and injuring a second waiter.¹⁸ On September 15, 1986, a bomb exploded at a police station in Paris, killing one officer and injuring sixty.¹⁹ Finally, on September 17, 1986, a bomb was detonated on the Paris street, Rue de Rennes, killing seven people and injuring fifty-four individuals.²⁰ The September attacks were all attributed to Hezbollah.²¹

en France, 20 MINUTES (Fr.) (Mar. 6, 2014, 3:59 PM), <http://www.20minutes.fr/societe/1392273-20140603-35-ans-attaques-antisemites-france>.

10. These attacks were attributed to the terrorist group, Palestine Liberation Front. *12 Months of Terror: The Mideast Connection*, N.Y. TIMES, Apr. 8, 1986, at A8 [hereinafter *12 Months of Terror*]; Bigo, *supra* note 6, at 2.

11. *12 Months of Terror*, *supra* note 10, at A8.

12. Bigo, *supra* note 6, at 3.

13. *Id.*

14. This bomb was also attributed to the Committee of Solidarity with Arab and Middle Eastern Political Prisoners (Hezbollah). COMMISSION REPORT, *supra* note 6, at 48; *Projet de loi relatif à la lutte contre le terrorisme et portant dispositions diverses relatives à la sécurité et aux contrôles frontaliers* (Fr.), <http://www.senat.fr/rap/105-117/105-1171.html> [hereinafter *Projet de loi*].

15. COMMISSION REPORT, *supra* note 6, at 48.

16. *Id.*

17. *Id.*

18. Bigo, *supra* note 6, at 4.

19. COMMISSION REPORT, *supra* note 6, at 48.

20. *Id.*

21. Bigo, *supra* note 6, at 4.

B. *The 1995-1996 Wave of Terror by Groupe Islamique Armé*

On July 11, 1995, an imam and his assistant were murdered in a mosque in Paris.²² The Groupe Islamique Armé (GIA), an Algerian Islamic extremist group, took responsibility for this attack, those that followed later that year, and the attacks in 1996.²³ The GIA bombed the Paris Metro station, St. Michel, on July 25, 1995, killing seven and injuring eighty-five people.²⁴ The GIA also bombed Avenue de Friedland in Paris, on August 17, 1995, as well as a market on September 3, 1995, injuring three people.²⁵ The GIA detonated a car bomb parked in front of a Jewish school in Lyon on September 7, 1995, injuring thirty people.²⁶ On October 6, 1995, the GIA bombed another Paris Metro station, Maison Blanche, injuring ten.²⁷ On October 17, 1995, the GIA bombed a third Paris Metro station, Musée d'Orsay, killing four and injuring twenty-nine.²⁸ Lastly, and most notoriously, on December 3, 1996, the GIA bombed the Paris Metro station, Port-Royal, killing four people and injuring 170.²⁹

III. PAST COUNTER-TERRORISM LEGISLATION IN RESPONSE TO TERRORIST ATTACKS

As a result of the aforementioned attacks, France “was forced to sharpen its swords against terrorism before the other European countries did.”³⁰ The French government enacted terrorism prevention laws in 1986, 1991, and 1996, in response to these waves of Islamic terrorism.³¹ In 2001 and 2003, stricter counter-terrorism laws were passed, in response to 9/11.³² Additionally, France enacted anti-terror-

22. Azzeddine Ahmed-Chaouch, *Tension palpable rue Myrha à Paris*, LE PARISIEN (Fr.) (July 23, 2005, 12:00 AM), <http://www.leparisien.fr/une/tension-palpable-rue-myrha-a-paris-23-07-2005-2006150958.php>.

23. *Id.*; Alan Riding, *French Court Sentences 2 for Role in 1995 Bombings That Killed 8*, N.Y. TIMES, Nov. 1, 2002, at A4.

24. COMMISSION REPORT, *supra* note 6, at 48.

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Projet de loi*, *supra* note 14.

30. Garapon, *supra* note 1, at 2050.

31. See Stella Burch Elias, *Rethinking “Preventive Detention” from a Comparative Perspective: Three Frameworks for Detaining Terrorist Suspects*, 41 COLUM. HUM. RTS. L. REV. 99, 152 (2009).

32. Fisher, *supra* note 5, at 259.

ism legislation in 2012, in response to Mohammed Merah's shooting spree.³³

A. *Power of Detention*

France developed a "criminal justice system-centered approach to the investigation of alleged terrorist offenses."³⁴ The following terrorist detention provisions are preventative measures created in response to the 1985-1986 wave of terror.³⁵

The 1986 Act defined "terrorism" as "an individual or collective enterprise intending to gravely trouble public order by means of intimidation or terror."³⁶ The Act permits French authorities to detain anyone suspected of carrying out a terrorist act for up to forty-eight hours without bringing charges against the suspect.³⁷ During that forty-eight hour time period, authorities can bring the detainee before a judge in the terrorist section of the Trial Court of Paris,³⁸ and authorities may be granted an additional forty-eight hours to hold the suspect without bringing charges against him or her.³⁹ While typical criminal suspects in France are entitled to consult a lawyer after twenty hours of detention,⁴⁰ the 1986 Act mandates that terrorist suspects are only entitled to consult lawyers after seventy-two hours of detention.⁴¹ Under France's Penal Code Article 145-2, once charges have been brought against a suspected terrorist, he or she may be held for up to four years in pre-trial detention.⁴² This "preventive detention" aids police investigations by allowing authorities to detain a suspect until more persuasive evidence can be gathered to convict the individual.⁴³ Such prolonged detention also aids authorities in

33. Merah's shooting spree will be detailed in Section IV. COMMISSION DES LOIS CONSTITUTIONNELLES, DE LA LÉGISLATION ET DE L'ADMINISTRATION GÉNÉRALE DE LA RÉPUBLIQUE, ASSEMBLÉE NATIONALE, NO. 2000 at 48 (14TH LEG. 2014), <http://www.assemblee-nationale.fr/14/rapports/r2000.asp#> [hereinafter Rapport n° 2000].

34. Elias, *supra* note 31, at 151-52.

35. *See id.* at 152.

36. CODE PÉNAL [C. PÉN.] art. 421-1 (Fr.); Calliope Makedon Sudborough, *The War Against Fundamental Rights: French Counterterrorism Policy and the Need to Integrate International Security and Human Rights Agreements*, 30 SUFFOLK TRANSNAT'L L. REV. 459, 464-66 (2007).

37. Elias, *supra* note 31, at 137.

38. CODE DE PROCÉDURE PÉNAL [C. PR. PÉN.] art. 706-23 (Fr.); Elias, *supra* note 31, at 137.

39. *Id.*

40. CODE DE PROCÉDURE PÉNAL [C. PR. PÉN.] art. 63-64 (Fr.).

41. Elias, *supra* note 31, at 142.

42. CODE DE PROCÉDURE PÉNAL [C. PR. PÉN.] art. 145-2 (Fr.).

43. Sudborough, *supra* note 36, at 466.

preventing flight.⁴⁴ Article 463-1 of the 1986 Act also exempts criminal punishment for a member of a terrorist group who informs authorities of a planned attack, and where that attack is avoided as a result.⁴⁵ Additionally, Article 463-2 of the 1986 Act allows a judge to reduce the punishment of a defendant when he or she aids authorities in identifying those responsible for a terrorist attack.⁴⁶

B. *Power to Collect Information and Intercept Private Communications*

The Law of July 10, 1991 gave French authorities the power to collect and share information about individuals and groups suspected of being linked to terrorism.⁴⁷ Specifically, the Prime Minister was given the power to intercept private communications that are “issued, transmitted, or received via telecommunication.”⁴⁸ The Prime Minister may only issue an interception order if he or she believes that the communications at issue “bear on national security or the prevention of terrorism or organized crime.”⁴⁹ In order for this interception to be granted, the Prime Minister, as well as the Interior Minister, the Minister of Defense, and the Minister of Economy, Finance and Industry must all agree and “present a reasoned decision to that end in writing.”⁵⁰

C. *Power to Restrict Association and Financing*

Article 421-2-1 of the 1996 Act created a new criminal offense: association with terrorists.⁵¹ This statute allows French authorities to conduct raids and arrest an unlimited number of people for questioning,⁵² without having to present evidence that any of the arrested individuals actually contributed to a terrorist plot.⁵³ Moreover, the burden

44. Jeremie J. Wattelier, *Comparative Legal Responses to Terrorism: Lessons from Europe*, 27 HASTINGS INT'L & COMP. L. REV. 397, 398 (2004).

45. CODE PÉNAL (ANCIEN) [C. PÉN.] art. 463-1 (Fr.); ANTONIO VERCHER, TERRORISM IN EUROPE: AN INTERNATIONAL COMPARATIVE LEGAL ANALYSIS 280 (1992).

46. CODE PÉNAL (ANCIEN) [C. PÉN.] art. 463-2 (Fr.); VERCHER, *supra* note 45.

47. Fisher, *supra* note 5, at 268-69.

48. *Id.*; Loi n° 91-646 du 10 juillet 1991 relative au secret des correspondances émises par la voie des communications électroniques [Law n° 91-646 of July 10, 1991 Concerning the Secrecy of Correspondences Transmitted Through Electronic Communications] JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], July 13, 1991, arts. 3, 4.

49. Loi n° 91-646; Fisher, *supra* note 5, at 269.

50. *Id.*

51. CODE PÉNAL [C. PÉN.] art. 421-2-1 (Fr.); Sudborough, *supra* note 36, at 464.

52. Sudborough, *supra* note 36, at 464.

53. *Id.* at 464-65.

of proof to convict a defendant of criminal association is lessened.⁵⁴ The prosecution must merely show that the defendant “interacted with, and was somehow linked to a terrorist.”⁵⁵ The prosecution need not prove that the defendant actually furthered a terrorist conspiracy to successfully convict him or her.⁵⁶ This crime is punishable by up to twenty years imprisonment and a fine of up to 500,000 euros.⁵⁷

Article 421-2-2 of the 1996 Act created a new criminal offense: financing a terrorist organization.⁵⁸ This statute criminalizes the act of “providing, gathering or managing funds, securities or property or by giving advice for this purpose, intending to see these funds, security or property used or knowing that they are intended to be used, in whole or in part, to commit any terrorist acts under this chapter, regardless of the possible occurrence of such an act.”⁵⁹ The crime is also punishable by up to twenty years imprisonment and a fine of up to 500,000 euros.⁶⁰

D. Power to Search

The November 15, 2001 Anti-Terrorism Law updated France’s Vigipirate state-of-emergency plan, which authorized bag and body searches at designated public places such as airports and train stations.⁶¹

E. Power to Conduct Internet Surveillance

The November 2001 Law further updated France’s Vigipirate plan by requiring Internet Providers to store and make available Internet users’ contact information and to disclose such information to

54. *Id.* at 465.

55. *Id.*

56. *Id.*

57. CODE PÉNAL [C. PÉN.] art. 421-5 (Fr.).

58. CODE PÉNAL [C. PÉN.] art. 421-2-2 (Fr.).

59. *Id.*

60. *Id.*

61. Fisher, *supra* note 5, at 267; Dirk Haubrich, *September 11, Anti-Terror Laws and Civil Liberties: Britain, France and Germany Compared*, 38 GOV'T & OPPOSITION 3, 13 (2003) (U.K.). A 2003 Law also gave police the power to search vehicles in public places if such searches aid in an investigation related to terrorism. Under this Law, police can search vehicles located in a public area without needing further authorization if “plausible grounds” exist to suspect persons inside the vehicle of attempting, having attempted, or having already carried out a criminal offense.” See Loi n° 2003-239 du 18 mars 2003 pour la sécurité intérieure [Law n° 2003-776 of March 18, 2003 on Homeland Security], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.][OFFICIAL GAZETTE OF FRANCE], Mar. 19, 2003, arts. 11, 12; Stephanie Dagrón, *Country Report on France, in TERRORISM AS A CHALLENGE FOR NATIONAL AND INTERNATIONAL LAW: SECURITY VERSUS LIBERTY?* 284 (Christian Walter et al. eds., 1st ed. 2004).

authorities upon request.⁶² The Law also authorizes the police to monitor Internet users' personal files located in data-processing systems.⁶³ These files may be considered when determining whether to grant French citizenship or extend French residency to such Internet users.⁶⁴

F. Power to Restrict Incitement to Terrorism

On December 21, 2012, French legislation added the offense: "incitement to terrorism."⁶⁵ This 2012-1432 Act criminalizes the "justification of or incitement to terrorism on the Internet,"⁶⁶ and allows for French citizens or residents to be prosecuted in French courts for terrorist acts committed in other countries.⁶⁷ As an example, French citizens or residents who attend terrorist training camps outside of France may be prosecuted even if they have not committed a crime on French soil.⁶⁸ The Act also allows for the freezing of assets of people who incite terrorism.⁶⁹

IV. RECENT TERRORIST ACTS BY FRENCH CITIZENS: A TREND OF RADICALIZATION PROMOTED BY THE INTERNET

A. The Toulouse Shootings and Brussels Jewish Museum Massacre

In 2012, twenty-three-year-old Mohammed Merah murdered seven people in Toulouse and its neighboring suburb, Montauban.⁷⁰ The victims were Jewish children and French soldiers.⁷¹ Merah, a

62. Loi n° 2001-1062 du 15 novembre 2001 relative à la sécurité quotidienne [Law n° 2001-1062 of November 15, 2001 on Community Safety], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.][OFFICIAL GAZETTE OF FRANCE], Nov. 16, 2001, art. 29; Fisher, *supra* note 5, at 268-69; Haubrich, *supra* note 61, at 11-12.

63. Loi n° 2003-239 du 18 mars 2003 pour la sécurité intérieure [Law n° 2003-776 of March 18, 2003 on Homeland Security], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.][OFFICIAL GAZETTE OF FRANCE], Mar. 19, 2003, arts. 21, 24; Fisher, *supra* note 5, at 268-69; Dagon, *supra* note 61, at 287-88.

64. *Id.*

65. *French Cyber-jihadist Jailed for Glorifying Terrorism*, FRANCE 24 (Fr.), <http://www.france24.com/en/20140304-cyber-jihadist-starts-trial-landmark-french-case-paris/> (last updated Mar. 4, 2014).

66. *Counter-terrorism in France*, FRANCE DIPLOMATIE, <http://www.diplomatie.gouv.fr/en/france-priorities/defence-security/terrorism/> (last updated Mar. 2013).

67. *Id.*

68. *Id.*

69. *Id.*

70. *Mohamed Merah's Sister May be Fighting in Syria*, THE TELEGRAPH (U.K.) (May 23, 2014, 6:11 PM), <http://www.telegraph.co.uk/news/worldnews/europe/france/10852855/France-says-Toulouse-gunman-Mohamed-Merahs-sister-may-be-fighting-in-Syria.html>.

71. *Id.*

French citizen of Algerian descent, began his killing spree on March 11, 2012, when he posed as someone interested in buying a motorcycle from a French Army officer of Moroccan origin, Imad Ibn-Ziaten.⁷² When Merah met Ibn-Ziaten in Toulouse to purportedly buy the motorcycle, Merah shot his victim in the head, and fled on a black scooter.⁷³ Four days later, on March 15, 2012, Merah approached three more French soldiers who were withdrawing money from an ATM in Montauban.⁷⁴ The soldiers, Abel Chennouf, a Catholic of Algerian decent, Mohamed Legouad, a Muslim, and Loic Liber, were shot thirteen times by Merah.⁷⁵ The ATM's surveillance camera photographed Merah, fleeing once again on a black scooter.⁷⁶ While Chennouf and Legouad were killed, Liber survived the attack but was paralyzed.⁷⁷

On March 19, 2012, Merah parked in front of the gate at a Jewish school, Ozar Hatorah, in Toulouse, and opened fire.⁷⁸ He filmed his attack using a GoPro camera attached to his chest.⁷⁹ Merah killed a rabbi, and the rabbi's two sons: ages three, and six-years-old.⁸⁰ He chased a young girl, Myriam Monsonego, into the school's courtyard, grabbed her by the hair and shot her in the head.⁸¹ Merah also shot a fifteen-year-old intern who ran to help the girl.⁸² He fled on his black scooter, leaving three dead children and the dead rabbi in his wake.⁸³

Two days later, Merah was cornered by French police at his apartment in Toulouse, the city where he was born and raised.⁸⁴ Authorities declared a siege, and gave Merah a walkie-talkie in exchange for one

72. Marc Weitzmann, 'In the Beginning, the Brothers, They Told Me to Kill', TABLET (July 29, 2014), <http://tabletmag.com/jewish-news-and-politics/180009/france-toxic-hate-3-toulouse/2>.

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.* It is likely that the GoPro footage that Merah compiled would eventually be uploaded to the Internet, and used to recruit and radicalize more French youth. Although Merah told French police negotiators that he had already "posted the footage on the [I]nternet," French authorities remain unsure if this uploading actually occurred. See Henry Samuel, *Toulouse Siege: Mohamed Merah Claimed He Posted Footage of All the Attacks Online*, THE TELEGRAPH (U.K.) (Mar. 22, 2012, 5:46 PM), <http://www.telegraph.co.uk/news/worldnews/europe/france/9161157/Toulouse-siege-Mohamed-Merah-claimed-he-posted-footage-of-all-the-attacks-online.html>.

80. Weitzmann, *supra* note 72.

81. *Id.*

82. Fortunately, the intern survived the attack. *Id.*

83. *Id.*

84. *Id.*

of his guns.⁸⁵ During a four-hour-long conversation between Merah and a police negotiator, Merah explained that he radicalized himself in prison between 2007 and 2009.⁸⁶ In July 2010, Merah traveled to Lebanon, Turkey, Jordan, Egypt, Tajikistan, and Afghanistan, “waiting ‘to be kidnapped by [the Taliban] so [he] could convince them that [he was] sincere and they could train [him]’” to be a terrorist.⁸⁷ To his dismay, his initial solicitation was unsuccessful.⁸⁸ It was not until August 2011 that he was finally contacted by Al-Qaeda in Afghanistan and Pakistan.⁸⁹ He recounted his terrorist initiation to the police negotiator,

In the beginning, the brothers, they told me to kill. [They] said I should kill everything—everything that is civilian and miscreant, everything. The gays, the homosexuals, the ones that kiss each other in public. [They] said, ‘Shoot them down,’ see? But me, I had a message to carry. I knew that by killing only militaries and Jews, the message, it would be carried better. [Because] if I were to kill just civilians, the French population [would] say, ‘Oh, he’s just another crazy terrorist.’ Even if I had the right. But now the message’s different. Now I just kill militaries and Jews, see?⁹⁰

Merah refused to surrender to police after the thirty-hour siege,⁹¹ and jumped out of his apartment window with a gun in his hand, firing at police.⁹² He was shot in the head by a French commando.⁹³

Two years later, on May 24, 2014, twenty-nine-year-old Mehdi Nemmouche, a French citizen, killed four people at the Jewish Museum in Brussels, Belgium.⁹⁴ He opened fire on museum visitors: killing an Israeli couple, a French woman, and a Belgian Jewish staff member of the museum.⁹⁵ Nemmouche was captured by French au-

85. *Id.*

86. Weitzmann, *supra* note 72; *Parallel Lives: The Brussels Suspect and the Toulouse Shooter*, FRANCE 24 (Fr.), <http://www.france24.com/en/20140602-parallel-lives-brussels-suspect-toulouse-shooter/> (last updated June 3, 2014) [hereinafter *Parallel Lives*].

87. Weitzmann, *supra* note 72.

88. *Id.*

89. *Id.*

90. *Id.*

91. *Obituary: Toulouse Gunman Mohamed Merah*, BBC NEWS EUR. (Mar. 22, 2012), <http://www.bbc.com/news/world-europe-17456541> [hereinafter *Obituary*].

92. *Id.*

93. *Id.*

94. Christopher Dickey, *French Jihadi Mehdi Nemmouche is the Shape of Terror to Come*, DAILY BEAST (Sept. 9, 2014, 5:52 AM), <http://www.thedailybeast.com/articles/2014/09/09/the-face-of-isis-terror-to-come.html>.

95. David Chazan, *Brussels Museum Shooting Suspect ‘Beheaded Baby’*, THE TELEGRAPH (U.K.) (Sept. 7, 2014), <http://www.telegraph.co.uk/news/worldnews/middleeast/syria/11080079/Brussels-museum-shooting-suspect-beheaded-baby.html>.

thorities during a routine drug search by customs officials in Marseille and was extradited to Brussels to await trial after his arrest.⁹⁶ When French police searched Nemmouche's bag, they found a Kalashnikov assault rifle with 261 bullets; a .38 revolver with fifty-seven bullets; a black hood; a pair of black gloves; a gas mask; a white bed sheet on which he wrote in Arabic, "Islamic State in Iraq and al-Sham;" and a GoPro camera, similar to the one Merah used to film his terrorist attacks.⁹⁷

Like Merah, Nemmouche was also radicalized in a French prison; he then traveled to Syria and joined ISIS before his attack in Brussels.⁹⁸ While in Syria, Nemmouche acted as a guard for French hostages captured by ISIS.⁹⁹ He boasted to the hostages, such as French journalist Nicolas Hénin, that he enjoyed raping and killing a mother before beheading her baby.¹⁰⁰

B. Merah and Nemmouche's Attacks Foreshadowed the Rapid Increase of Radicalization Among French Youth

Europol reported that in the European Union during 2013, 535 people were arrested for crimes related to terrorism; most of these arrests, approximately 225, occurred in France.¹⁰¹ These statistics reflect a "continuous increase in the number of arrests for religiously inspired terrorism [that] has been observed since 2011."¹⁰² Specifically, in the EU during 2013, there was a marked increase in arrests for preparation and execution of terrorist attacks; financing of terrorism; and traveling, facilitating travel or sending fighters to conflict zones, most often to Syria.¹⁰³ In comparison, before 2013, arrests in the EU were mostly related to mere membership in terrorist organizations.¹⁰⁴

France had good reason to fear that Nemmouche would not be the last French citizen to become radicalized, join ISIS, and wreck terroristic havoc in Europe. French media first made note of French citi-

96. Dickey, *supra* note 94.

97. *Id.*

98. *Parallel Lives*, *supra* note 86.

99. Chazan, *supra* note 95.

100. *Id.*

101. See generally Michael Plachta, *Europol Releases Its Report on Terrorism*, 30 No. 9 INT'L ENFORCEMENT L. REP. 337 (2014).

102. See generally *id.*

103. See generally *id.*

104. See generally *id.*

zens departing for Syria in 2013.¹⁰⁵ By April 2014, the French Interior Ministry estimated that over 700 French citizens or residents had left France to fight alongside ISIS in Syria.¹⁰⁶ At least two or three citizens leave for Syria each day.¹⁰⁷ Interior Minister Bernard Cazeneuve believes that Mohammed Merah's sister, Souad Merah, is currently fighting in Syria.¹⁰⁸ In September 2014, the French government estimated that approximately 930 French citizens had left France to join ISIS in Syria.¹⁰⁹ Two months later, in November 2014, the French government estimated that at least 1132 French citizens had left France for Syria.¹¹⁰ In other words, an additional 202 French citizens joined ISIS in Syria in merely two months.¹¹¹ According to Interior Minister Bernard Cazeneuve, there was suddenly an 82% increase in departures for Syria in 2014.¹¹² During that year, France had more citizens fighting in Syria than any other EU member state.¹¹³ Most of these French citizens, many of whom are minors, were recruited and radicalized via the Internet, and risk later attacking France.¹¹⁴

Pierre de Bousquet, the Head of the Direction de la Surveillance du Territoire (DST) in France, previously stated that “[t]he French jihadist is less cultivated, younger and more radicalised,” concluding that the recruiting force is no more dangerous than the candidates,

105. See generally Stephanie Mantoux, *Cachez ces djihadistes que je ne saurais pas voir. . les volontaires français en Syrie*, ALLIANCE GEO. STRATEGIQUE (Fr.) (Feb. 14, 2014), <http://alliancegeostrategique.org/2014/02/24/cachez-ces-djihadistes-que-je-ne-suarais-pas-voir-les-volontaires-francais-en-syrie/>.

106. *French Police Stop 'Teenage Jihadist' from Flying to Syria*, FRANCE 24 (Fr.) (Sept. 1, 2014), <http://www.france24.com/en/20140831-jihadist-recruiter-arrested-france-nice-syria-police/> [hereinafter *French Police*].

107. “*Deux ou trois*” Français par jour partent faire le djihad en Syrie, VALEURS ACTUELLES (Fr.) (June 20, 2014), <http://www.valeursactuelles.com/monde/deux-ou-trois-francais-par-jour-partent-faire-le-djihad-en-syrie-46377>.

108. *Toulouse Gunman's Sister Believed to be in Syria*, FRANCE 24 (Fr.) (May 23, 2014), <http://www.france24.com/en/20140523-france-toulouse-gunman-mohamed-merah-sister-souad-syria>.

109. *Paris répond aux menaces des jihadistes de l'El: "La France n'a pas peur"*, LE DAUPHINE (Fr.) (Sept. 22, 2014), <http://www.ledauphine.com/france-monde/2014/09/22/l-etat-islamique-menace-la-france> [hereinafter *Paris répond aux menaces*].

110. *Les chiffres du jihad en France: plus de mille personnes impliquées en Syrie*, HUFFINGTON POST (Fr.) (Nov. 17, 2014), http://www.huffingtonpost.fr/2014/11/17/chiffres-jihad-france-_n_6173192.html [hereinafter *Les chiffres*].

111. *Id.*; see *Paris répond aux menaces*, *supra* note 109.

112. *Les chiffres*, *supra* note 110.

113. John Beck, *France Tries to Cut Down on the Jihadists it Exports to Syria*, VICE NEWS (Apr. 23, 2014, 3:21 PM), <https://news.vice.com/article/france-tries-to-cut-down-on-the-jihadists-it-exports-to-syria>.

114. Frédéric Abéla, *Les lycéens jihadistes croyaient cumuler des points pour le paradis*, LA DEPECHE (Fr.) (Jan. 19, 2014), <http://www.ladepeche.fr/article/2014/01/19/1798029-les-lyceens-jihadistes-croyaient-cumuler-des-points-pour-le-paradis.html>.

i.e., young hotheads,” but now, he is being proven wrong.¹¹⁵ Current terrorist recruiting forces come from the Internet, particularly social networking sites like Facebook, Instagram, and Twitter.¹¹⁶ These media-savvy recruiters are extremely influential upon French minors.¹¹⁷ Reinforcing this point, French Prime Minister Manuel Valls remarked that “many French youths are being recruited through the Internet rather than the local mosque.”¹¹⁸

One ISIS supporter told VICE News that “[s]ocial media is good for building a network of connections and recruitment. Fighters talk about experiences in battle and encourage people to rise, and supporters defend and translate ISIS statements.”¹¹⁹ ISIS has also created its own Twitter-connected application called The Dawn of Glad Tidings, which is available for all Android phones.¹²⁰ Users who download the application receive tweets from ISIS through their Twitter accounts.¹²¹ Clearly, ISIS has created its own successful “PR campaign” through the use of this widespread application, which disseminates up to 40,000 tweets in a single day.¹²²

Cyber-recruiters, especially on social networks, pray upon the naiveté of French youth, promising them the prospect of going to “paradise” by engaging in Holy War.¹²³ Early in 2014, two French fifteen-year-old boys left for Syria via Turkey.¹²⁴ The father of Hakim, one of these two boys, found a goodbye note from his son, explaining that he left France to wage Holy War against Syrian President Assad.¹²⁵ Hakim’s father told French media, “[My son] has been brainwashed on the Internet.”¹²⁶ Hakim and his friend later posted an Islamist propaganda video on YouTube from Syria, holding Kalashnikovs and the

115. Garapon, *supra* note 1, at 2050-51.

116. See Alice Speri, *ISIS Fighters and Their Friends Are Total Social Media Pros*, VICE NEWS (June 17, 2014, 1:50 PM), <https://news.vice.com/article/isis-fighters-and-their-friends-are-total-social-media-pros>; *ISIS Launches Twitter App for Android Phones*, CBS NEWS (June 17, 2014, 8:12 PM), <http://washington.cbslocal.com/2014/06/17/isis-launches-twitter-app-for-android-phones/> [hereinafter *Twitter App*].

117. Soren Kern, *European Jihadists in Syria*, GATESTONE INST. (Jan. 23, 2014, 5:00 AM), <http://www.gatestoneinstitute.org/4139/european-jihadists-syria>.

118. *Id.*

119. Speri, *supra* note 116.

120. *Twitter App*, *supra* note 116.

121. *Id.*

122. *Id.*

123. Abéla, *supra* note 114.

124. Julie Rimbart & John Irish, *French 15-year-olds Travel to Syria for Jihad*, DAILY STAR (Leb.) (Jan. 17, 2014, 9:17 PM), <http://www.dailystar.com.lb/News/Middle-East/2014/Jan-17/244407-french-15-year-olds-travel-to-syria-for-jihad-father.ashx#axzz2ziuGvjRW>.

125. *Id.*

126. *Id.*

Quran, while urging French President Francois Hollande to convert to Islam.¹²⁷

In August 2014, two French girls, a fifteen-year-old and a seventeen-year-old, were arrested in Lyon for criminal association with terrorists, after trying to leave France to join ISIS and commit jihad.¹²⁸ A family member of one of the girls alerted authorities after the girls “met” on social media and concocted their jihadist plan.¹²⁹ In September 2014, French police arrested a sixteen-year-old girl in Nice who attempted to board a flight to Turkey in order to join ISIS in Syria.¹³⁰ A man was also arrested in connection with the girl’s flight, when authorities discovered that he paid for her airline ticket.¹³¹

A toll-free anti-terrorism crisis hotline was created in 2014,¹³² and Interior Minister Bernard Cazeneuve urged parents to call it if their children exhibited “‘a disturbing trend of violent radicalization.’”¹³³ In September 2014, according to the Interior Ministry, the hotline had received almost 300 calls.¹³⁴

Interior Minister Bernard Cazeneuve stated in a televised interview, “You have surely seen through the testimony of parents that when youths, juveniles and adolescents, who may be weak, may be subject to the influence of seemingly partisan speech by promoters of hatred, preachers, recruiters; it is essential to immediately mobilize the means that may permit us to avoid further inculcation. That plan includes preventative measures.”¹³⁵ Clearly, the French government’s hotline was not effective enough to prevent two coordinated terrorist attacks from occurring in January 2015, and six coordinated terrorists attacks from occurring in November 2015.¹³⁶

127. Kern, *supra* note 117.

128. *Sur le départ pour faire le djihad, les deux ados arrêtées en France*, VALEURS ACTUELLES (Fr.) (Aug. 20, 2014), <http://www.valeursactuelles.com/societe/sur-le-depart-pour-faire-le-djihad-les-deux-ados-arretees-en-france-47415>.

129. *Id.*

130. *French Police*, *supra* note 106.

131. *Id.*

132. *Id.*

133. Meghan Keneally, *Western Governments Step Up Efforts to Block ISIS Recruits*, ABC 7 CHICAGO (Sept. 1, 2014), <http://abc7chicago.com/news/western-governments-step-up-efforts-to-block-isis-recruits/289569/>.

134. *Id.*

135. *Intervention au journal télévisé de France 2 à 20h00 le 22 avril 2014*, MINISTÈRE DE L’INTÉRIEUR (Fr.) (Apr. 22, 2014), <http://www.interieur.gouv.fr/Le-ministre/Bernard-Cazeneuve/Interventions-du-ministre/Intervention-au-journal-televisé-de-France-2-a-20h00-le-22-avril-2014>.

136. See *Charlie Hebdo*, *supra* note 2; Fang, *supra* note 2; *French Police*, *supra* note 106.

C. *Charlie Hebdo and Kosher Market Shootings of January 2015, and the November 2015 Paris Attacks*

On the morning of January 7, 2015, two masked gunmen named Cherif and Said Kouachi, stormed the offices of French satirical magazine Charlie Hebdo in Paris, armed with Kalashnikov rifles.¹³⁷ The magazine was notorious for its less-than-flattering depictions of the Prophet Mohammed.¹³⁸ The French-born brothers Kouachi called out the names of Charlie Hebdo cartoonists and shouted, “God is Great!” and “We have avenged the Prophet Mohammed!” before murdering the building’s custodian, the magazine’s editor-in-chief, Stephane Charbonnier, Charbonnier’s bodyguard, four other cartoonists, three other editors, and a guest of the magazine.¹³⁹ While the gunmen exited the building, they shot and killed a police officer, Ahmed Merabet, who arrived on the scene.¹⁴⁰ In all, twelve victims were killed at the Charlie Hebdo offices.¹⁴¹

After later robbing a gas station, the two brothers led the police on a high-speed chase to a printing press on January 9, 2015, where hundreds of French police officers, snipers and helicopters surrounded the building during an eight-hour stand-off.¹⁴² As the brothers exited the building, firing shots at police, the suspects were killed by responding officers.¹⁴³ While the Charlie Hebdo rampage was occurring, a third French-born gunman named Amedy Coulibaly held fifteen shoppers hostage at a Parisian Kosher supermarket.¹⁴⁴ Coulibaly threatened to kill his hostages “unless the Kouachi brothers were allowed to go free.”¹⁴⁵ His threats were not empty, as he quickly murdered four Jewish men inside of the market.¹⁴⁶ Soon after, French Special Forces stormed the market, killing Coulibaly and freeing the

137. *Charlie Hebdo*, *supra* note 2.

138. Catherine Taibi, *These are the Charlie Hebdo Cartoons That Terrorists Thought Were Worth Killing Over*, HUFFINGTON POST (Jan. 7, 2015, 11:17 AM), http://www.huffingtonpost.com/2015/01/07/charlie-hebdo-cartoons-paris-french-newspaper-shooting_n_6429552.html.

139. *Charlie Hebdo*, *supra* note 2.

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. *Paris Attacks: Coulibaly Siege Video Transcript Emerges*, BBC NEWS (Eur.) (Feb. 26, 2015), <http://www.bbc.com/news/world-europe-31637717> [hereinafter *Paris Attacks*].

remaining hostages.¹⁴⁷ French intelligence discovered that the two attacks were coordinated by all three men.¹⁴⁸

The narratives of these three French terrorists mirror those of Mohammed Merah and Mehdi Nemmouche.¹⁴⁹ For instance, Cherif Kouachi was radicalized in prison, where he served time “‘with other [extremist] hard-liners, including a central figure in the al Qaeda networks in Europe.’”¹⁵⁰ In prison, Cherif Kouachi met Amedy Coulibaly, who was incarcerated for armed robbery.¹⁵¹ Coulibaly, like his predecessors-in-terrorism, Mohammed Merah and Mehdi Nemmouche, also used a GoPro camera to film seven minutes of his attack on the Koshersupermarket.¹⁵² In his video, he shouts anti-Semitic remarks and shoots one of his hostages in the head after inquiring about the man’s religion, and receiving the response, “Jewish.”¹⁵³ In the footage, Coulibaly asks another hostage to help him upload his GoPro video to the Internet for immediate dissemination.¹⁵⁴

Despite France’s lengthy and tumultuous history with Islamic terrorism,¹⁵⁵ the terrorist attacks of January 2015 finally prompted the first worldwide outpouring of support for France’s long fight against terrorism, particularly on social media. The use of the anti-terrorism hashtag, #JESUISCHARLIE, was promoted by not only French citizens, but also many Twitter, Facebook, Instagram and Tumblr users, globally.¹⁵⁶ Nevertheless, there were, and continue to be, pro-terrorist hashtags circulating throughout the Internet, in direct opposition to #JESUISCHARLIE. For example, #JESUISKOUACHI and #JESUISCOULIBALY are hashtags showing sympathy for, and identification with, the assailants of the Charlie Hebdo and Koshersupermarket

147. *Charlie Hebdo*, *supra* note 2.

148. *Charlie Hebdo Shooting: Koshersupermarket Gunman Amedy Coulibaly ‘Coordinated’ with Suspected Newspaper Attackers*, ABC NEWS (Jan. 9, 2015, 1:30 PM), <http://www.abc.net.au/news/2015-01-10/paris-gunman-coordinated-with-suspected-charlie-hebdo-attackers/6010002>.

149. See *Obituary*, *supra* note 91; Scott Bronstein, *Cherif and Said Kouachi: Their Path to Terror*, CNN INVESTIGATIONS (Jan. 14, 2015, 3:33 PM), <http://www.cnn.com/2015/01/13/world/kouachi-brothers-radicalization/>; *Brussels Jewish Museum Killings: Suspect ‘Admitted Attack’*, BBC NEWS (June 1, 2014), <http://www.bbc.com/news/world-europe-27654505>.

150. Bronstein, *supra* note 149.

151. *Id.*

152. *Paris Attacks*, *supra* note 146.

153. *Id.*

154. *Id.*

155. Garapon, *supra* note 1, at 2050.

156. See, e.g., Monica Sarkar, *#JeSuisCharlie: France’s March of Unity*, CNN (Jan. 12, 2015, 7:38 AM), <http://www.cnn.com/2015/01/11/europe/paris-march-social>.

terrorist attacks, which appear across social media platforms.¹⁵⁷ This phenomenon reflects terrorists' and extremists' growing use of the Internet to further their cause and spread their message of hate. The Charlie Hebdo attack, and its close coordination with the Kosher Market attack, demonstrates terrorists' consistent use of technology to plan attacks and connect with one another, and highlights the trend in Internet recruitment, as well as the online glorification of terrorism.

Tragically, merely ten months after the Charlie Hebdo and Kosher Market attacks, six coordinated terrorist attacks occurred in Paris on the evening of November 13, 2015.¹⁵⁸ The first attack occurred when suicide bombers detonated three bombs during a France-Germany soccer game at Stade de France.¹⁵⁹ The second attack occurred when gunmen armed with Kalashnikov rifles opened fire at two restaurants, Le Petit Cambodge and Le Carillon, killing fifteen people.¹⁶⁰ The third attack occurred when a gunman shot and killed five people inside of a bar, La Bonne Bière.¹⁶¹ The fourth attack occurred when another gunman shot and killed nineteen people inside of a restaurant, La Belle Équipe.¹⁶² The fifth attack occurred when a suicide bomb exploded inside of a café, Comptoir Voltaire.¹⁶³ The sixth attack occurred when three gunmen opened fire on audience members who were attending a concert at the Bataclan concert hall; attendees were rounded up and executed methodically.¹⁶⁴ Eighty-nine people were killed during this final attack.¹⁶⁵ In total, 129 people were killed, and 350 were injured in the six attacks.¹⁶⁶ These attacks are now "the deadliest assault on Paris since World War II."¹⁶⁷

Of the seven attackers who carried out the November 2015 terrorist plot, four were French citizens: Ibrahim Abdeslam, Omar Ismail

157. See Jim Hoft, *Islamists Tweet Out #JeSuisKouachi in Support of Charlie Hebdo Killers*, GATEWAY PUNDIT (Jan. 13, 2015), <http://www.thegatewaypundit.com/2015/01/radical-muslims-tweet-out-jesuiskouachi-in-support-of-charlie-hebdo-killers/>; #jesuiscoulibaly hashtag on Twitter, TWITTER, <https://twitter.com/hashtag/jesuiscoulibaly> (last visited Jan. 8, 2016).

158. Fang, *supra* note 2.

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

166. *France Identifies Victims of Paris Attacks*, HUFFINGTON POST, http://www.huffingtonpost.com/entry/paris-attacks-victims-identified_564c683ce4b045bf3df1bbf9 (last updated Nov. 18, 2015).

167. Andrew Higgins & Kimiko De Freytas-Tamura, *Suspect Killed in Shootout Had Plotted Terror for 11 Months*, N.Y. TIMES, Nov. 20, 2015, at A16 [hereinafter *Suspect Killed*].

Mostefai, Samy Amimour, and Bilal Hadfi.¹⁶⁸ Bilal Hadfi is a leader of a “branch of the Islamic State in Syria called Katibat al-Battar al Libal, which has its origins in Libya.”¹⁶⁹ Hadfi used Facebook to contact members of ISIS in preparation for the terrorist attack.¹⁷⁰

Abdelhamid Abaaoud, a twenty-seven-year-old former drug dealer from Brussels, Belgium, organized and led the terrorist plot in Paris.¹⁷¹ Abaaoud was no stranger to Western security forces; he attracted the attention of intelligence officials in 2014, “when he moved [from Belgium] to Syria, [] and began starring in ghoulish propaganda videos¹⁷² filmed by the Islamic State” that were disseminated online.¹⁷³ In fact, “[I]ike Abaaoud, at least three of the [November 13, 2015] attackers had traveled to Syria to join militant groups” before returning to France.¹⁷⁴ After a nationwide manhunt, Abaaoud was killed on November 18, 2015, during an hour-long shootout with police, who employed snipers and grenades, and fired 5,000 rounds into a Saint-Denis apartment where the terrorist was hiding.¹⁷⁵

A second worldwide outpouring of support for France came immediately after the November 13, 2015 terrorist attacks in the form of the hashtag, #PrayForParis, used across social media platforms.¹⁷⁶ Furthermore, French President Francois Holland declared a national state of emergency in France within hours of the attacks, closing the country’s borders and giving French “security services broad powers to go after suspected extremists.”¹⁷⁷ As a result, French “police have been breaking down doors, interrogating residents, detaining suspects or placing them under house arrest – all without a warrant or orders

168. Aurelien Breeden, Kimiko De Freytas-Tamura & Katrin Bennhold, *Call to Arms in France Amid Raids and a Manhunt*, N.Y. TIMES, Nov. 17, 2015, at A8.

169. Katrin Bennhold, *Assaults Highlight Jihadists’ Easy Path To Syria and Back*, N.Y. TIMES, Nov. 19, 2015, at A14.

170. *See id.*

171. *Suspect Killed*, *supra* note 167, at A16.

172. Abaaoud’s penchant for disseminating terrifying videos on the Internet reflects terrorists’ continued “use [of] video of their atrocities and reports of repression of Muslims in Europe, Southeast Asia, and Russia’s Caucasus regions to recruit new fighters and fan the flames of hatred for the West.” Carol J. Williams, *Terrorists Demonstrate Wider Range*, L.A. TIMES, Nov. 22, 2015, at A6.

173. *Suspect Killed*, *supra* note 167, at A16.

174. Patrick J. McDonnell, *After Paris, Security Lapses are All Too Clear*, L.A. TIMES, Nov. 22, 2015, at A3.

175. *See* Lilia Blaise, Liz Alderman & Aurelien Breeden, *Paris Is on Edge as Fate Of Attackers’ Organizer Is Still a Question Mark*, N.Y. TIMES, Nov. 19, 2015, at A1.

176. Olivier Laurent, *70 Million People Shared Their Prayers for Paris on Instagram This Weekend*, TIME (Nov. 16, 2015), <http://time.com/4114288/paris-instagram/>.

177. Alexandra Zavis, *French Police Flexing Their New Powers*, L.A. TIMES, Dec. 4, 2015, at A4.

from a judge.”¹⁷⁸ France’s emergency powers were expanded through a Parliamentary vote one week after the attacks, and the emergency state will continue for three months, until February 26, 2016.¹⁷⁹ It is possible that this state of emergency “could be extended or become permanent,” after the expiration of these three months.¹⁸⁰ This would be made possible by “enshrining the state of emergency law in France’s Constitution, making it easier to declare such a state for longer periods of time without resorting to the more drastic options currently available in the Constitution.”¹⁸¹ In addition, President Hollande “called during a rare joint session of Parliament for a constitutional amendment to allow the government to revoke the citizenship of ‘a [dual national] person convicted [of] threatening the nation’s interest or for terrorist acts.’ The constitution currently allows revocation only of citizenship conferred through naturalization, not of French-born citizens.”¹⁸² Although the majority of National Assembly members did not initially support this amendment during their meeting on January 8, 2016,¹⁸³ the proposed constitutional amendment will be further debated in front of Parliament in February 2016.¹⁸⁴

V. THE LONG OVERDUE ENACTMENT OF DECREE N° 2015-125 TO BLOCK PRO-TERRORIST WEBSITES

Today, “the Internet has become the primary vehicle of jihadist propaganda and the principal medium of terrorist recruitment.”¹⁸⁵ In response to the growing threat of domestic terrorism posed by France’s own citizens, Interior Minister Bernard Cazeneuve presented an anti-terrorist bill on July 9, 2014, which sought to modify the child pornography ban found in Article 6 of The Law For Trust in the Digital Economy, No. 2004-575, originally codified on June 21, 2004.¹⁸⁶

178. *Id.*

179. *See id.*

180. *Id.*

181. Steven Erlanger & Kimiko De Freytas-Tamura, *A Rattled Europe Tilts Toward Bolder Security, Starting a Rights Debate*, N.Y. TIMES, Nov. 20, 2015, at A14 [hereinafter *A Rattled Europe*].

182. Carol J. Williams, *Extremists Risk Citizenship*, L.A. TIMES, Nov. 24, 2015, at A2.

183. Emmanuel Berretta, *Déchéance de nationalité: Hollande subit un premier camouflet à l'Assemblée*, LE POINT (FR.) (Jan. 8, 2016 7:06 PM), http://www.lepoint.fr/politique/emmanuel-berretta/decheance-de-la-nationalite-hollande-subit-un-premier-camouflet-a-l-assemblee-08-01-2016-2008254_1897.php.

184. *France's Diminished Liberties*, N.Y. TIMES, Jan. 4, 2016, at A18.

185. Rapport n° 2000, *supra* note 33, at 10.

186. Commission des lois Constitutionnelles, de la Législation et de L'administration Générale de la République, ASSEMBLÉE NATIONALE, NO. 2110 at 9 (14TH LEG. 2014), <http://www.assemblee-nationale.fr/14/projets/pl2110.asp>; Loi n° 2004-575 du 21 juin 2004 pour la confi-

The bill mandated that Internet Providers block pro-jihadist websites, in light of the rise in French terrorism.¹⁸⁷ The bill aimed to quell the online recruitment and radicalization of French citizens.¹⁸⁸ The French Parliament approved the bill in November 2014.¹⁸⁹

That bill became codified as Decree n° 2015-125 on February 5, 2015,¹⁹⁰ less than one month after the Charlie Hebdo and Kasher Market shootings.¹⁹¹ The decree defines pro-jihadist websites as those that “provoke or praise acts of terrorism.”¹⁹² Decree n° 2015-125 permits the Interior Minister, without oversight from a judge, to create a “black list” of pro-terrorist websites or web pages, including pages on social networks like Facebook, Twitter, or Instagram, whose access must be blocked by Internet Service Providers (ISPs) such as Orange, Free, Bouygues Telecom, SFR, and Numericable.¹⁹³ If Internet Providers do not comply with the government’s mandate to remove a webpage within twenty-four-hours of being flagged by the Interior Ministry, they risk being sanctioned, and the website will be automatically blocked by the Interior Ministry.¹⁹⁴ Of course, this decree cannot ensure the removal of websites hosted outside of France; however, it can at least block access to those websites by French Internet users.¹⁹⁵ Interior Minister Bernard Cazeneuve stated that he hopes to work

ance dans l'économie numérique (1) [Law n° 2004-575 of June 21, 2004 on Trust in the Digital Economy], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], June 21, 2004, p. 11168.

187. Joshua Melvin, *France Unveils Tough New Anti-Jihadist Laws*, LOCAL (Fr.) (July 9, 2014), <http://www.thelocal.fr/20140709/france-plans-to-get-tough-on-jihadists>.

188. Scott Sayare, *France Aims to Curb Potential Jihadis from Leaving Country*, N.Y. TIMES (Eur.) (July 9, 2014), http://www.nytimes.com/2014/07/10/world/europe/france-aims-to-curb-potential-jihadis-from-leaving-country.html?_r=2.

189. Loi n° 2014-1353 du 13 novembre 2014 renforçant les dispositions relatives à la lutte contre le terrorisme [Law n° 2014-1353 of November 13, 2014 on Strengthening the Provisions Relating to the Fight against Terrorism], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Nov. 14, 2014, p. 19162. France’s Internet blocking mechanisms were finally put into place in March 2015; unfortunately, the January 2015 Charlie Hebdo and Kasher Market terrorist attacks occurred two months before the blocking decree actually took effect.

190. Décret n° 2015-125 du 5 février 2015 relatif au blocage des sites provoquant à des actes de terrorisme ou en faisant l’apologie et des sites diffusant des images et représentations de mineurs à caractère pornographique [Decree n° 2015-125 of February 5, 2015 Relating to the Protection of Internet Users from Websites Inciting or Condoning Acts of Terrorism and Websites Disseminating Pornographic Images or Representations of Minors], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Feb. 6, 2015, p. 01811.

191. See *Charlie Hebdo*, *supra* note 2; see also *Paris Attacks*, *supra* note 146.

192. Rapport n° 2000, *supra* note 33, at 9; Décret 2015-125, *supra* note 190.

193. These providers are analogous to American ISPs like Charter Communications or AT&T. See Décret 2015-125, *supra* note 190; Rapport n° 2000, *supra* note 33, at 20.

194. Décret n° 2015-125, *supra* note 190.

195. See *id.*

with Internet Providers to “cut off” pro-jihadist discussions, videos and images that aid in the indoctrination of French citizens.¹⁹⁶

Internet terrorist recruitment has drastically increased in recent years with the advent of more and more social media websites.¹⁹⁷ According to research conducted by Valerie Maldonado, Director of the Central Office for the Fight Against Crime Linked to Information Technology and Communication (OCLCTIC), thirteen new pro-jihadist websites triggered alerts for the “condoning of terrorism” in 2011; 120 alerts occurred in 2012; and 360 alerts occurred in 2013.¹⁹⁸ In other words, almost one new pro-jihadist website was found by the OCLCTIC per day in 2013.¹⁹⁹ According to the OCLCTIC, the primary web pages that triggered these alerts were on Facebook and Twitter, which accounted for 54% of the alerts.²⁰⁰ This was followed by blogs (14%); thematic websites (13%); YouTube (6%); forums (6%); and other sites (7%).²⁰¹ French Interior Minister, Bernard Cazeneuve, stated,

We must stop online access to these videos, to these instruments of propaganda, to these photos that inspire French youth to become indoctrinated, because many of these youths are lured into violence due to their relationship with the Internet, which is unlike anything else. We hope to ensure the blockage of access to online images or videos that may aid in these youths’ radicalization.²⁰²

Cazeneuve believes that this online blockage will greatly reduce the visibility of websites advocating terrorism, stressing that there has been no effective action previously taken against these websites, and that beheading videos are regularly viewed by tens of thousands of Internet users in France.²⁰³

Guillaume Larrivé, a member of the French National Assembly, emphasizes that this selective online censorship is justified by the French constitutional objective of safeguarding public order.²⁰⁴ This is the same policy underlying the ban on Internet child pornography,²⁰⁵ which justifies the de facto limitation on “freedom of communication” of French citizens by disallowing them from viewing child pornogra-

196. Rapport n° 2000, *supra* note 33, at 6.

197. *See id.* at 6, 10-11.

198. *Id.* at 11.

199. *See id.*

200. *Id.*

201. *Id.* at 11-12.

202. *Id.* at 20.

203. *Id.*

204. *Id.* at 20-21.

205. *Id.* at 21.

phy.²⁰⁶ Larrivé analogizes that the blockage of pro-jihadist websites will be equally justified by the French policy of safeguarding public order.²⁰⁷ He also stresses that this administrative blockage will not lead to a “general ban” on all websites that diffuse or relay terrorist ideas.²⁰⁸ Instead, it provides the French government with a “flexible” and reasonable tool to fight terrorism, by blocking access to “particularly sensitive or especially dangerous” websites.²⁰⁹

A. *But. . . What is a “Terrorist” Website?*

The French terrorist attacks of January and November 2015 are recent, tragic examples of France’s desperate need to prevent home-grown terrorism, before an attack occurs again. However, defining and blocking “terrorist” websites is not as simple as defining and blocking child pornography, and may risk over-broad censorship of innocent material.²¹⁰ Critics of the new decree complained, even before the legislation was enacted, that the measure could mislead antiterrorist investigations by unnecessarily blocking legitimate websites and therefore waste the French government’s resources.²¹¹ Legal critics, like Lionel Tardy of the French National Assembly, have consistently pointed out that there are numerous ways to circumvent the blockage of websites, like creating mirror sites, especially when the websites are hosted outside of France.²¹² Undoubtedly, Internet blocking mechanisms are sometimes ineffective because encryption software can be used to bypass the blockage, like VPN, TOR or proxy servers.²¹³ Tardy argues that it would be more efficient to simply coordinate with American authorities when attempting to regulate American-based social networks (which include Facebook, Instagram, Twitter, and YouTube).²¹⁴

206. *Id.*

207. *See id.* at 20-21.

208. *Id.* at 21.

209. *Id.*

210. *See* Kumaran Ira, *French Anti-Terrorism Law Tramples Fundamental Democratic Rights*, WORLD SOCIALIST WEB SITE (July 15, 2014), <https://www.wsws.org/en/articles/2014/07/15/terr-j15.html>.

211. Alexis Kraland, *Loi antiterroriste: menace sur la liberté d’expression!*, HUFFINGTON POST (Fr.) (July 14, 2014, 11:17 AM), http://www.huffingtonpost.fr/alexis-kraland/loi-antiterrorisme-menace-liberte-dexpression_b_5578271.html.

212. Rapport n° 2000, *supra* note 33, at 42.

213. *Freedom of Information Under Threat from New Anti-Terrorism Bill*, REPS. WITHOUT BORDERS (July 23, 2014), <http://en.rsf.org/freedom-of-information-under-23-07-2014,46688.html>.

214. *See* Rapport n° 2000, *supra* note 33, at 42.

Outcry over the loss of freedom of expression and individual liberty in France as a result of the legislation is still prevalent, even after the 2015 attacks.²¹⁵ In fact, three French Internet associations, La Quadrature du Net, French Data Network, and Fédération des Fournisseurs d'accès à Internet associatifs, have appealed to the French Conseil d'État requesting that the decree should be quashed.²¹⁶ Another freedom of expression advocacy group called ARTICLE 19, which has offices in Bangladesh, Brazil, Kenya, Mexico, Tunisia, Senegal and the United Kingdom, also filed an amicus curiae brief in support of this motion to quash.²¹⁷ Critics call the decree "antidemocratic"²¹⁸ because it would result in administrative censorship directed by the Interior Ministry, instead of by judges.²¹⁹ Critics also contend that only judges should be given the power to create such a "black list,"²²⁰ especially in light of the threat that such blockage would hamper individuals' or organizations' freedom of expression who are not inciting terrorism.²²¹ Skeptics like Guillaume Champeau, the founder of Numerama, a French news website, caution that such immense power should not be left in the hands of the Interior Ministry, who may have its own political agenda.²²²

In 2014, Champeau criticized the original format of the bill for being unclear; specifically, that the entire concept of "terrorism" within the bill was too vaguely written.²²³ He noted that the Interior Ministry hoped to simply "[b]lock sites that [it] know[s] about," – a rather circular idea, indeed.²²⁴ Champeau also noted that the bill did not give innocent websites the ability to defend themselves against accusations of glorifying terrorism.²²⁵ To be sure, the subsequently en-

215. See Kraland, *supra* note 211.

216. Benjamin Bayart, *Le blocage des sites web attaqué devant le Conseil d'État*, FRENCH DATA NETWORK: BLOG NDF (Apr. 15, 2015, 8:05 PM), <http://blog.fdn.fr/?post/2015/04/15/Le-blocage-des-sites-web-attaque-devant-le-Conseil-d-Etat>.

217. *France: ARTICLE 19 Supports Claim Challenging Lawfulness of Administrative Website Blocking*, ARTICLE 19 (July 30, 2015), <https://www.article19.org/resources.php/resource/38071/en/france:-article-19-supports-claim-challenging-lawfulness-of-administrative-website-blocking> [hereinafter *ARTICLE 19*].

218. See Kraland, *supra* note 211.

219. See *id.*; see also *Anti-Terror Censorship: France Blocks Site Without Court Order*, RT NEWS (Mar. 17, 2015, 4:02 AM), <http://www.rt.com/news/241333-france-blocks-terror-sites>.

220. See *ARTICLE 19*, *supra* note 217.

221. See Kraland, *supra* note 211.

222. Guillaume Champeau, *Le blocage sans juge des sites terroristes, un réflexe anti-démocratique*, NUMERAMA (Fr.) (July 9, 2014), <http://www.numerama.com/magazine/29956-le-blocage-sans-juge-des-sites-terroristes-un-reflexe-anti-democratique.html>.

223. See *id.*

224. *Id.*

225. See *id.*

acted decree did not resolve the bill's clarity problem; in fact, Decree n° 2015-125 is even less detailed than the original 2014 format of the bill.²²⁶

B. Nevertheless, a Content-Based, Multi-Faceted Solution is Possible

Internet blocking can be a proportionate response, so long as “terrorist websites” are properly defined, which they currently are not.²²⁷ The language of Decree n° 2015-125 could be amended to include clearer language. A multi-faceted, automated solution to Decree n° 2015-125's problems may quell some of the French public's concerns, such as including simple administrative contesting measures to undo the blocking of innocent content.

A prime example of the successful removal of terrorist content is Twitter's “policy against threatening posts.”²²⁸ Through its clear guidelines for flagging and removal, Twitter has promptly removed many ISIS-affiliated Twitter accounts.²²⁹ YouTube has also successfully shut down accounts of users who have posted ISIS' beheading videos.²³⁰ Both YouTube and Twitter's terms of service establish that violent content is “cause for suspension” of user accounts.²³¹ The British Government has been granted “‘super flagger’ status” by YouTube, meaning that the videos it requests to be removed, which contain “grisly content or that encourage terrorism,” are fast-tracked for removal.²³² In recent years, the London Metropolitan Police's counter-terror unit that focuses on Internet-based terrorism has prompted the removal of 45,000 videos from YouTube alone.²³³ If Bernard Cazeneuve develops a similar relationship with American-based social networking sites like YouTube, France will be far more successful in its blockage attempts; mirror sites will be less likely to appear if the original content has already been permanently removed

226. See generally Décret n° 2015-125, *supra* note 190.

227. See *id.*

228. See Speri, *supra* note 116.

229. See Adam Chandler, *Should Twitter Have Suspended the Violent ISIS Twitter Account?*, THE WIRE (June 15, 2014, 10:22 AM), www.thewire.com/global/2014/06/should-twitter-have-suspended-the-violent-isis-twitter-account/372805.

230. Lori Hinnant & Raphael Satter, *Countries Launch Global Effort to Halt Islamic State's Recruitment of Foreign Fighters*, HUFFINGTON POST (Sept. 3, 2014, 7:25 PM), http://www.huffingtonpost.com/2014/09/03/islamic-state-foreign-fighter-recruitment-_n_5761626.html.

231. *Id.*

232. *Id.*

233. *Id.*

by the social networking host.²³⁴ Cazeneuve appears to be taking steps toward strengthening this relationship with the Silicon Valley; in 2015, he visited the headquarters of Google, Facebook, and Twitter, asking the social media platforms to “work directly with French officials during investigations and to immediately remove terrorist propaganda when [French] authorities alert them to it.”²³⁵ In response to this request, “Twitter and Facebook spokespeople said [that] they do everything they can to stop material that incites violence but didn’t say whether they would heed the minister’s request for direct cooperation with French authorities.”²³⁶

Unfortunately, Facebook’s response regarding the removal of terrorist content is not a promise that the French government should rely upon, because unlike YouTube and Twitter, Facebook does not have a policy against threatening posts, *per se*.²³⁷ Instead, it has its own “Community Standards,” which state, “We don’t allow any organizations that are engaged in the following to have a presence on Facebook: [] Terrorist activity, or [] Organized criminal activity.”²³⁸ If that is true, then how are members of ISIS regularly posting beheading videos and using Facebook to recruit and radicalize French youth?²³⁹ In fact, Facebook has stated that it will actually allow beheading videos to be posted on its social networking platform, so long as those videos are “condemned” instead of “celebrated.”²⁴⁰ This poorly-written rule creates a giant loophole, which members of ISIS and other terrorist organizations are clearly exploiting, in order to spread their message of hate.²⁴¹ Furthermore, Facebook’s moderators

234. See *Policies for Google+, Hangouts & Photos*, GOOGLE+, <https://www.google.com/intl/en-US/+policy/content.html> (last visited Jan. 8, 2016) (Google+’s User Content and Conduct Policy mandates that users “not distribute depictions of graphic or gratuitous violence”); see also *Community Guidelines*, INSTAGRAM, <https://help.instagram.com/477434105621119> (last visited Jan. 8, 2016) (Instagram similarly mandates in its Community Guidelines that its users not post “graphic images for sadistic pleasure or to glorify violence”).

235. *French Minister Meets with Google, Facebook, Twitter*, N.Y. TIMES (Feb. 21, 2015, 4:21 AM), <http://www.nytimes.com/aponline/2015/02/21/us/ap-us-french-minister-social-media.html>.

236. *Id.*

237. See *Community Standards*, FACEBOOK, <https://touch.facebook.com/communitystandards/?section=0> (last visited Jan. 8, 2016).

238. *Id.*

239. Guilaine Chenu & Françoise Joly, *Des européens sur la route du djihad*, FRANCE TV INFO (Sept. 27, 2014), http://www.francetvinfo.fr/replay-magazine/france-2/mon-envoye-special/monenvoyespecial-du-samedi-27-septembre-2014_698907.html.

240. Bianca Bosker, *Beheadings Belong on Facebook*, HUFFINGTON POST (Oct. 23, 2014), http://www.huffingtonpost.com/2013/10/22/facebook-beheading-videos_n_4144886.html; *Community Standards*, *supra* note 237.

241. Scott Higham & Ellen Nakashima, *Why the Islamic State Leaves Tech Companies Torn Between Free Speech and Security*, WASH. POST (July 15, 2015), <https://www.washingtonpost.com>

who oversee violations of the Community Guidelines “often lack the knowledge of a region’s politics that is necessary to arbitrate, or may be lacking the language skills to determine the context for a graphic video,” which explains why terrorist content remains on this social network.²⁴²

In a French National Assembly Report presented on June 4, 2014, Interior Minister Bernard Cazeneuve took the opportunity to answer the rhetorical question, “What websites are we talking about?”²⁴³ He stated that France’s Internet blockage decree could be applicable to all public communication services on the Internet, but especially applicable to social networks.²⁴⁴ He elaborated that the decree would apply to: “classic” websites; blogs; video platforms like Dailymotion or YouTube; social networks like Facebook or Twitter; chatrooms and forums; and peer-to-peer file sharing websites.²⁴⁵ He has emphasized that the decree would aid in “blocking all content that justifies terrorism or inspires acts of terrorism, regardless of the form of the message: it may be video, but also still images, sounds, or writings.”²⁴⁶ Cazeneuve also acknowledged how difficult it would be to block certain pages on social networking websites because today, the line between public communication and private correspondence has become blurred, given the public style of digital communication, especially among youth.²⁴⁷

1. The Current Application of Decree n° 2015-125

The first application of Decree n° 2015-125 began in March 2015, when only five “terrorist” websites were blocked by the Interior Ministry.²⁴⁸ The Interior Ministry announced that when a website condoning terrorism is blocked, Internet users who attempt to access the page will be greeted by a symbol of a red hand, and the French translation of the following message, “You are being redirected to this official website since your computer was about to connect with a page that

/world/national-security/islamic-states-embrace-of-social-media-puts-tech-companies-in-a-bind/2015/07/15/0e5624c4-169c-11e5-89f3-61410da94eb1_story.html; Andrea Chang, *Terror Posts Censored on Social Media*, L.A. TIMES, Aug. 21, 2014, at B1.

242. Bosker, *supra* note 240.

243. Rapport n° 2000, *supra* note 33, at 29.

244. *Id.* at 53.

245. *Id.* at 54.

246. *Id.* at 29.

247. *Id.* at 54.

248. Pierre Longeray, *France is Trying – and Mostly Failing – to Block Websites Accused of Promoting Terrorism*, VICE NEWS (Mar. 17, 2015), <https://news.vice.com/article/france-is-trying-and-mostly-failing-to-block-websites-accused-of-promoting-terrorism>.

provokes terrorist acts or condones terrorism publicly.”²⁴⁹ There is no other explanation or elaboration upon why the website has been blocked, beside this official symbol and message.²⁵⁰ The first of the five websites blocked was “Islamic-news.info,” a pro-jihad website of “very little influence” in the extremist world.²⁵¹ The director of the website’s hosting company stated that he had not been notified by the Interior Ministry that the website would be removed, as is proscribed in Decree n° 2015-125.²⁵² This notice requirement gives web hosts a twenty-four-hour window during which they must remove content or risk it being removed by the Interior Ministry.²⁵³ This director’s complaint that he never received notice suggests that the Interior Ministry may not even be complying with its own regulations.²⁵⁴ The remaining four websites included “Jihad Zone,” “al-Hayat Media Center,” “Jihadmin,” and “Islamic State in Iraq and the Levant.”²⁵⁵ Ironically, French Internet users were still able to access four of these “blocked” websites on the day that the Interior Ministry announced their purported removal.²⁵⁶ The red hand symbol, which is supposed to appear in lieu of a webpage once it has been successfully blocked, did not appear at all.²⁵⁷

2. Possible Solutions to Decree n° 2015-125’s Shortcomings

The June 4, 2014 National Assembly Report’s list of potentially blocked websites is not exhaustive or comprehensive.²⁵⁸ Interior Minister Bernard Cazeneuve failed to mention many other prominent social networking sites like Google+, Tumblr, Pinterest, and DeviantART, which are host to pro-terrorist content.²⁵⁹ Additionally, Cazeneuve must compile a comprehensive list of what will be considered “terrorist” content on such websites. For instance, I propose that all beheading videos; the utilization of pro-terrorist hashtags such as

249. Glen Greenwald, *What’s Scarier: Terrorism, or Governments Blocking Websites in Its Name?*, THE INTERCEPT (Mar. 17, 2015, 6:57 AM), <https://theintercept.com/2015/03/17/whats-scarier-terrorism-governments-unilaterally-blocking-websites-name/>.

250. *Id.*

251. Longeray, *supra* note 248.

252. *Id.*; Décret n° 2015-125, *supra* note 190.

253. Décret n° 2015-125, *supra* note 190.

254. Longeray, *supra* note 248.

255. *Id.*

256. *Id.*

257. See *France’s Crackdown on Terrorism Sites Isn’t Going So Well*, NBC NEWS (Mar. 17, 2015, 4:11 AM), <http://www.nbcnews.com/news/world/frances-crackdown-terror-sites-isnt-going-so-well-n324761>.

258. Rapport n° 2000, *supra* note 33, at 29-30.

259. *Id.* at 54.

#JESUISKOUACHI and #JESUISCOULIBALY; instructions on how to join ISIS in France or abroad; and propaganda that encourages harming yourself or others in the name of “Allah” or “Holy War” or “Jihad” be automatically flagged for removal.

Furthermore, in light of the automated red-hand symbol’s lack of precise justification for why a website has been removed by the Interior Ministry, I propose that the French government utilize a more detailed official image than the red-hand symbol and vaguely-worded one-sentence explanation for a webpage’s blockage. As I suggested above, if the Interior Ministry compiles a more comprehensive list of what will be automatically considered “terrorist” content, such as all beheading videos, then the Ministry may detail which category of illicit material the blocked website contains. This improvement would individually tailor the red-hand symbol’s message, instead of using a one-size-fits-all approach to blockage.

I additionally propose that the Interior Ministry utilize a reporting mechanism for French citizens built directly into French Internet users’ browsers of choice, provided by French Internet Providers. For example, Internet Providers can create a banner at the top of every webpage, which appears when a citizen opens his or her Internet browser. That banner could contain a button for self-reporting of pro-jihadist websites, or a button to click if a website has been erroneously removed. With this tool, the Interior Ministry’s attention may be alerted toward more influential terrorist content on the Internet, as well as any innocent content that has been erroneously removed and should be reinstated. This feature may dispel some public concern over the lack of judicial oversight for the removal of alleged terrorist content on the Internet.²⁶⁰

VI. CONCLUSION

Terrorists’ power stems from their reliance on others watching their heinous acts and being either terrorized or radicalized by the sights and sounds of murder and mayhem (such as the beheading of James Foley, Steve Sotloff, David Haines, and French citizen Hervé Gourdel, among many others).²⁶¹ By blocking such sights found on offending websites, there will be less of an incentive for terrorists to continue their pervasive online presence if their audience is diminished. In other words, “[t]he idea is you’re giving the terrorists extra

260. See Longeray, *supra* note 248.

261. See Rukmini Callimachi, *French Hostage in Algeria is Beheaded in Video Released by Militants*, N.Y. TIMES, Sept. 25, 2014, at A4.

clicks. Somebody's counting how many people have watched it, and they're successful if they get more people watching, and if you watch, you're adding to it. That is an inflated sense of the importance of your watching."²⁶² In turn, fewer susceptible people will be inculcated by jihadist propaganda. To be sure, "with each video that ricochets around social networks, the militants gain new recruits."²⁶³

With any Internet blockage that is enacted, terrorists will look for ways to circumvent it.²⁶⁴ Nevertheless, as technology improves, blocking mechanisms will similarly improve. Less innocent content will be removed, and more culpable content will be successfully blocked. Some terrorists will be deterred altogether from continuing their efforts, and others' efforts will be lessened.²⁶⁵ While Decree n° 2015-125 is not perfect in its current form, it is a reasonable and necessary action by the French government to fight its war on terror and protect its citizens, and certainly should not be quashed by appeal. Surely, blocking pro-jihadist websites is a much less drastic method of curtailing the recruitment of potential terrorists than the possible constitutional amendments that may occur in France's very near future.²⁶⁶

262. Joseph Brean, *ISIS Beheading Videos, Creepy Snuff Films and Stolen Celebrity Nudes: Should We look—or Look Away?*, NAT'L POST (Sept. 5, 2014), http://news.nationalpost.com/2014/09/05/barbaric-beheading-videos-creepy-snuff-films-and-stolen-celebrity-nudes-should-we-look-or-look-away/?__federated=1#__federated=1.

263. Hinnant & Satter, *supra* note 230.

264. ISIS militants are already switching to a "decentralized" social networking site, Diaspora, to communicate with one another and spread their propaganda. Higham & Nakashima, *supra* note 241.

265. See Rapport n° 2000, *supra* note 33, at 11.

266. *A Rattled Europe*, *supra* note 181, at A14.