

**Online Cultural and Creative Contents:
Development of Legal Offers, Copyright Protection, Remuneration of artists**

The French Approach

Summary

Digital technology and the increasingly large access to broadband Internet are a great opportunity for the dissemination of cultural and creative works – be it music, audiovisual works, cinema or literature.

However, the transition of these cultural industries to the digital era should proceed in a way which makes it possible for authors, artists and the entire value chain to earn sufficient remuneration. If this is not the case, instead of being an opportunity for culture, this development will on the contrary lead to a drain of cultural works and to a decrease in cultural diversity.

After a broad consultation of all parties, the French Government has initiated a two-fold action plan: on the one hand a set of laws has been adopted, which provide a framework allowing the fight against online piracy of cultural contents to be led more efficiently, by seeking to deter illegal conduct; on the other, a set of effective measures has been elaborated, which shall enable more attractive online legal offers to develop and open new sources of remuneration and financing for artists and the companies supporting them.

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I. Main legislative measures: the “HADOPI” laws

Law n°2009-669, which was adopted on June 12, 2009, whose purpose is “promoting the dissemination and protection of creative works on the Internet”, creates a High Authority for the Dissemination of Works and the Protection of Rights on the Internet (Haute autorité pour la diffusion des oeuvres et la protection des droits sur Internet – HADOPI).

This law, which follows the European Union Copyright Directive (“EUCD” 2001/29/CE Directive), which was implemented as French legislation by law n°2006-961, which was adopted on August 1st 2006 and pertains to “copyright and neighbouring rights on the Internet”, has been supplemented by a new “HADOPI 2” law, which was adopted by the Senate on 21 September 2009 and validated by the Constitutional Council on 22 October 2009.

This whole legislative framework aims at fighting the illegal downloading of music and/or films by setting up a graduated response mechanism. Its main features are:

a) The institution of a public, independent high authority, the HADOPI. The members of the High Authority were nominated in December 2009 and the HADOPI was officially put in place on January 8, 2010. It should send the first warning messages in the first half of the year.

b) The graduated response: whenever a musical or audiovisual work is illegally downloaded, the pirate is to receive a reminder of applicable legislation, first via an e-mail, then via an official letter sent by the HADOPI with proof of reception. If, after these warnings, the counterfeiter downloads illegally again, his Internet subscription may ultimately be suspended for one to several months.

c) The penalties are decided by a judge following a rapid form of due process. They may consist of fines or of Internet access suspension. They punish online piracy as a form of “counterfeiting”, which is punished by a fine of up to 300.000 euros and 3 years of imprisonment. A new penalty punishing “negligence” is put in place: an Internet access subscriber may be fined or his Internet access may be suspended if he/she has not sufficiently protected his Internet connection after being warned that it has been used for the purpose of piracy by an official letter sent by the HADOPI with proof of reception.

II. Perspectives: developing online legal offers of cultural works

a) These new French provisions are being closely studied by a number of European countries, which are considering setting up measures aimed at fighting illegal downloading of works.

France now has an innovative legal framework protecting the rights of authors, artists and their partners on the Internet, which seeks primarily to instruct and to deter, in order to prevent cultural works’ piracy on the Internet.

b) The HADOPI, which only deals with deterring and punishing Internet piracy, has to be supplemented however, by an adequate framework promoting the development of legal online cultural offers and the remuneration of authors and rights holders.

For this reason, the French Minister for Culture and Communication has asked three experts to make proposals on these issues. They have handed in their report to the Minister on January 6, 2010, in which they make **22 positive recommendations** to the Government, in order that consumers and artists be enabled to reap all the benefits of the new legislative framework, thanks to the development of diverse and attractive online cultural legal offers and to new sources of remuneration and financing for artists and cultural industries (music, television and cinema, literature).

Among these proposals, several deal with copyright related-issues, including the proposals to reform the system of licence negotiation, in order to satisfy the need for collective management mechanisms, including associated rights held by producers and performers and to extend the equitable remuneration regime currently applied to analogue broadcasting to online linear music broadcasting (webcasting) : the administrative body that is empowered to set the terms of this remuneration should have its powers extended to cover these services, and the law should allow for compulsory availability of musical files and associated metadata.

For more information on the HADOPI laws:

<http://www.culture.gouv.fr/mcc/Actualites/Dossiers/Projet-de-loi-Creation-et-internet-dossier-complet>