[FR] Adoption of the Act on Copyright and Neighbouring Rights in the Information Society

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Amélie Blocman
Légipresse

On 30 June, after a legislative marathon and on the last day of the parliamentary session, the members of both chambers of parliament finally adopted the Act “on copyright and neighbouring rights in the information society” (referred to as the “DADVSI Act”), thereby transposing into national legislation the Directive of 22 May 2001 (see IRIS 2001-5: 3). Despite the Government having made the text subject to the urgent procedure (with a single reading in each chamber), the parliamentary debate, begun last December, has been lengthy, stormy and affected by a number of new developments and protests (see IRIS 2006-2: 11). Pressure groups have been very much in evidence, and both chambers have made extensive changes to the bill originally tabled by the Government, which was severely criticised by the opposition and even by some of its own supporters, mainly because the urgent procedure was not lifted despite a number of requests.

Firstly, the new Act complements Article L. 122-5 of the [French] Intellectual Property Code, introducing a further five exceptions to pecuniary copyright - the exception of provisional or accessory “technical” reproduction on line, an exception in favour of the handicapped, an exception to cover the conservation or preservation for the purpose of on-the-spot consultation for libraries, museums and archives, an exception in the context of education and research, and an exception for the written, audiovisual or on-line press concerning news only. The Act also sets up a “three-step test”, stating that “the exceptions listed in the present Article may not infringe the normal exploitation of the work or cause unjustified prejudice to the legitimate interests of the author”. The Minister for Culture was particularly concerned with combating peer-to-peer activities. Having abandoned the legal licence system that was being considered at one point, the text sets up a coercive system of a “graduated response”. Thus a software editor or anyone else knowingly encouraging, including by advertising, the use of software “manifestly intended to make protected works or objects available to the public without authorisation” risks a sentence of three years in prison and a fine of EUR 30,000. The Act makes an offence rather than a crime of counterfeiting resulting from the unauthorised reproduction, for personal use, of a work protected by copyright or a neighbouring right accessed using peer-to-peer software; the arrangements for sanctions will need to be defined by decree. The Government has already let it be understood that an Internet user downloading works in this way would risk paying a EUR 38 fine, and the person making works

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available in this way would risk a fine of EUR 150.

The new Act also includes a definition of the technical means for protecting works and sanctions their circumvention (ranging from a fine of EUR 750 for an individual to a six-month prison sentence and a fine of EUR 30,000 for an editor, distributor or other person promoting means of circumvention). Furthermore, “the technical means must not have the effect of preventing the effective implementation of interoperability, while respecting copyright. Suppliers of technical means shall provide access to the information essential for interoperability”; there was debate on the conditions for this. After the lower chamber had included the possibility of anyone requesting such information before the regional courts, the upper chamber and the mixed joint committee responsible for drawing up the final text changed their minds about it; in the end, a “regulatory authority for technical means” was entrusted with “ensuring that the technical means do not, by their mutual incompatibility or their inability to interoperate, result in further limitations on the use of a work in addition to those decided on by the right-holder”. Matters may be referred to this independent administrative authority, comprising six members (magistrates and qualified individuals), by “any software editor, technical system manufacturer or service operator” to obtain the guarantee and the information necessary for interoperability that may have been refused through a conciliation procedure and, as appropriate, sanctions (injunction and/or fine). This authority is also responsible for determining the minimum number of copies authorised for private copying, according to the type of work or object that is protected. Similarly, it is to ensure that the implementation of technical protective measures does not have the effect of depriving the beneficiaries of certain exceptions (including private copying). These are the main innovations contained in the Act transposing Community Directive 2001/29 into national legislation. The provisions of new Act also cover, *inter alia*, copyright entitlement on the part of public officials, the formal deposit of a work with the appropriate institution, and the entitlement to produce a sequel. The text still has to be examined by the Constitutional Council, as opposition MPs have announced their intention to refer the text to the Council.

Loi relative au droit d'auteur et aux droits voisins dans la société de l'information

http://www.assemblee-nationale.fr/12/rapports/r3185.asp

Act on copyright and neighbouring rights in the information society

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