# [FR] Constitutional Council Makes Alterations to New Copyright Act

**IRIS 2006-8:1/20**

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Act No. 2006-961 of 1 August 2006 on copyright and neighbouring rights in the information society (see IRIS 2006-7: 11) has now been gazetted, after alterations by the Constitutional Council on three points. These covered firstly provisions to take the circumvention of technical devices preventing copying in the context of "interoperability" out of the scope of criminal prosecution, as the Council found the notion too vague and it imposes conditions upon the scope of application of the criminal aspects of the Act (Articles 22 and 23 of the Act). In a similar vein, the Council amended the final paragraph of Article 21 of the Act which, under conditions that were also deemed vague and discriminatory, instituted an exemption in respect of software "intended for collaborative work, for research, or for the exchange of files or objects not subject to payment of copyright royalties" from the legal action provided for by the remainder of this Article in respect of the publishing of software manifestly intended for the unauthorised exchange of works. The Council also reworked the provisions concerning "graduated sanctions", which made provision for lighter sentences for users of peer-to-peer software downloading of protected works for their personal use (Article 24). The members of the Council held that it was not possible to differentiate between piracy using e-mail, a blog, or any other means of on-line communication (which constituted infringement of copyright) and piracy carried out using peer-to-peer software. The specific features of these exchange networks did not make it possible to justify the difference in treatment introduced by the contested provision, which was therefore dropped as being contrary to the principle of equality before criminal law. Despite this amendment, the Minister for Culture upheld his support for "graduated sanctions" for Internet users occasionally downloading illegally, and announced that he would be referring the matter to the Minister for Justice so that public prosecutors would be instructed that only the most serious offences should be brought to court.

Lastly, the Council issued a series of reservations concerning interpretation of the text, referring to copying for private use and to interoperability, and stressed the importance of the "three-stage test". More specifically with reference to the cohabitation of technical devices for protection against copying and copying for private use, the Constitutional Council stated clearly that the provisions adopted "should be understood as not preventing rightsholders making use of technical devices to protect against copying that limit the exception to a single copy or

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even prevent any copying whatsoever" if observance of the three-stage test required this. The members of the Council gave their interpretation of the requirement of the lawful nature of the access to the source of the disputed copy as being able to have the benefit of the exception for making a private copy, a point that has been disputed bitterly before the courts (see IRIS 2006-7: 11). It is only "insofar as this is technically possible" that the benefit of exceptions may be made subordinate to lawful access.

The bill's rapporteur deplored the fact that the most important "advances" obtained for consumers and Internet users "consisted mainly (...) of the three points that the Constitutional Council has partly challenged".

### *Décision du Conseil constitutionnel n° 2006-540 DC du 27 juillet 2006*

http://www.conseil-constitutionnel.fr/decision/2006/2006540/index.htm

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