[FR] Setting up of the Regulatory Authority on Technical Protection Measures

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The new Regulatory Authority on technical protection measures (*Autorité de régulation des mesures techniques de protection* - ARMTP) created by the Act on copyright and neighbouring rights in the information society (the "DADVSI" Act) of 1 August 2006 (see IRIS 2006-8: 13 and IRIS 2006-7: 11), was launched by the Minister for Culture on 6 April 2007. The decree on the functioning of this new independent administrative authority (submission of cases, investigation of applications, powers, means of appeal, etc.), which is composed of six members appointed by decree for a period of six years, was published the previous day. In accordance with Article L. 331-17 of the Intellectual Property Code, interoperability and private copying form the core of the balancing mission entrusted to the Authority by the new legislation. The ARMTP's mission is to determine the practicalities of exercising the possibility of making a private copy, to ensure that these possibilities may be taken up, and of exercising the new exceptions to copyright legislation for the handicapped, for teaching and research, and for conservation in libraries, as instituted by the DADVSI Act. The decree gives the authority the power to determine the minimum number of private copies that may be made, depending on the type of medium. In the absence of voluntary action on the part of a rightsholder, cases may be submitted to the ARMTP by consumers, the beneficiaries of exceptions, or the approved associations who represent them, and the Authority may enjoin rightsholders to take all the necessary steps, applying the "three-step test" for evaluating the exercise of exceptions. To encourage interoperability, the new Act gives the Authority the power to order any software editor, manufacturer of a technical system, or service operator to provide access to the information necessary for the interoperability of the technical protection measures so that consumers are able to play the works on the medium of their choice. As the Constitutional Council stated in its decision of 27 July 2006, there would be fair advance payment for providing such access. In order to be able to carry out its mission, the Authority has a power of conciliation between the parties, but it may also issue injunctions to have its decisions enforced, carrying a financial penalty in the event of default. As far as interoperability is concerned, it will also have the possibility to impose severe financial fines (up to 5% of the operator's turnover) on anyone failing to respect their undertakings or the Authority's injunctions. Its decisions may be appealed before the court of appeal of Paris.

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The ARMTP was set up in the same week as the court of appeal of Paris issued a further decision in the “Mulholland Drive” case (see above), and in the same week as Apple and EMI offered on-line music without protection measures. This last development did not, however, imply that technical devices would now cease to exist, according to the Minister for Culture, who pointed out that “these have been in existence for a long time, particularly in respect to pay television, and will continue to exist”, in particular for VoD or certain rental offers.

Décret n° 2007-510 du 4 avril 2007 relatif à l'Autorité de régulation des mesures techniques instituée par l'article L. 331-17 du Code de la propriété intellectuelle, Journal Officiel du 5 avril 2007

http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=MCCB0700270D

Decree No. 2007-510 of 4 April 2007 concerning the Regulatory Authority on technical protective devices created by Article L. 331-17 of the Intellectual Property Code, published in the Journal Officiel of 5 April 2007

Discours du ministre de la Culture et de la Communication du 6 avril 2007

http://www.culture.gouv.fr/culture/actualites/conferen/donnedieu/armt07.html

Address by the Minister of Culture and Communication on 6 April 2007

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