[FR] Draft Legislation on Creation and the Internet Finally Revealed

IRIS 2008-7:1/16

Amélie Blocman
Légipresse

Following the criticism and amendments expressed by the *Conseil d'Etat* during its examination provision of an opinion, the draft legislation on "promoting the diffusion and protection of creation on the Internet", called the Creation and the Internet Act (see IRIS 2008-3: 12), was presented at the meeting of the Council of Ministers on 18 June 2008 by Christine Albanel, Minister for Culture. The purpose of the text, the product of the agreements resulting from the Olivennes mission (see IRIS 2008-1: 12), is to prevent and combat piracy while guaranteeing the ownership rights and moral rights of creators on the one hand, and guaranteeing the privacy of Internet users on the other. The mechanism of "graduated penalties" that is intended as a passage from the present arrangement, which is strongly repressive, to a more education-oriented logic, has now been established. Under the DADVSI Act of 1 August 2006, unlawful downloading is now considered to be an infringement of copyright and carries a penal sanction. Anyone downloading in an illegal way currently faces a fine of up to EUR 300,000 and three years of imprisonment. This draft legislation proposes a more educational approach, via warnings issued by the newly created High Authority for the Circulation of Works and the Protection of Rights on the Internet (HADOPI), before any penalties are inflicted. The first warning will take the form of an e-mail, and the second a letter sent by registered mail. Should the infringement be repeated, the penalties that Internet users face – suspension of their access subscription for between three months and one year – would therefore be less repressive than at present. Internet pirates punished in this way would be able to negotiate a transaction to reduce the duration of the suspension of their subscription by one to three months. In the case of a company being penalised for the activities of one of its employees, the HADOPI could propose an alternative penalty in the form of an injunction compelling them to take steps to prevent their employees from downloading in an illegal way from the Internet. The Minister also stated that the HADOPI would not carry out any generalised supervision of digital networks, and neither would the IAPs. The data necessary for implementing the preventive mechanism is that already gathered by creators and cultural companies for the purposes of undertaking legal proceedings, using methods authorised by the CNIL. The judge will no longer be the only possible recipient of this information; the HADOPI will also be competent to deal with these matters. It will act exclusively when approached by economic beneficiaries, whose works have been pirated, or professional protection bodies, or the companies that

© European Audiovisual Observatory (Council of Europe) 2026

collect and redistribute royalties. The penalties may be appealed in the courts. Lastly, the draft legislation improves the present procedure, which enables the regional courts, on application from the rightsholders, to order measures for the suspension, withdrawal or filtering of on-line content that infringes creators' rights. These new methods, which include an urgent procedure, replace the procedure based on the seizure of counterfeit goods set up by the Act of 21 June 2004.

In response to the substantial criticism that the text has received, the Minister concluded her presentation by emphasising that it was obviously not a matter of policing or criminalisation, nor of curtailing fundamental freedoms, "unless anyone thinks that theft is a fundamental freedom". Despite her initial preference, the text will not go before the Senate before the autumn, but she hopes it will come into force "in the first few days" of 2009.

Projet de loi favorisant la diffusion et la protection de la création sur Internet

http://www.culture.gouv.fr/culture/actualites/dossiers/internet-creation08/6%20-%20Projet%20de%20loi.pdf

Draft legislation in favour of the circulation and protection of creation on the Internet

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026