# [FR] Graduated Response according to the Bill on "Creation and the Internet"

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The French Government has presented a bill entitled "Creation and the Internet" as a solution to the threat to creation posed by unlawful downloading. Proposing the setting up of a system of "graduated response" which is intended to be dissuasive rather than repressive, the bill has given rise to considerable debate both in France and in Europe. Amendment 138 adopted by the European Parliament catalysed the fears expressed by the bill's detractors (see IRIS 2008-10: 4).

"Graduated response" refers to the method for warning and sanction that the new High Authority for the Broadcasting 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) would apply to holders of Internet subscriptions used for unlawful downloading (see IRIS 2008-7: 10). The holder, identified by a sworn HADOPI agent, would be sent in the first instance an ordinary letter, and possibly a second letter by registered post with request for acknowledgement of receipt, before being sanctioned by the HADOPI if he/she failed to mend his/her ways or those of the users for which he/she was responsible. The authority may then propose a transaction or suspend the Internet subscription, which would not release him/her from the obligation of paying the subscription. Those opposed to the bill object that it would be counter to freedom and would not provide any solution to the loss of earnings suffered by content originators. Those in favour of the bill feel, on the contrary, that this system gives Internet users an opportunity to change their behaviour once they become aware that what they are doing is illegal, thereby preserving the freedom of all parties concerned. The Creation and Internet bill highlights the fundamental opposition between two concepts of the Internet. The European Parliament's adoption of Amendment 138 during the discussions on the Telecoms Package in the autumn has highlighted the contentions and given MEPs an opportunity to express their disagreement with the French solution. The Amendment provides for application of "the principle that no restriction may be imposed on the rights and freedoms of end-users, notably in accordance with Article 11 of the Charter of Fundamental Rights of the European Union on freedom of expression and information, without a prior ruling by the judicial authorities, save when public security is threatened". The text, presented as a flat refusal of the French bill, has so far only been adopted by the Parliament – it still has to go through the Council and the Commission and, if it is successful, may be transposed into national law within two years. Nicolas Sarkozy, the French President, sent a letter to José Manuel Barroso requesting his "personal

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undertaking to have the Amendment set aside". By way of reply, the Commission merely recalled that the European procedure for adopting texts made no allowance for the discretionary withdrawal of an Amendment adopted by the European Parliament. Whatever happens, the date for the Senate examining the bill remains the 29 and 30 October 2008.

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

http://www.senat.fr/leg/pjl07-405.pdf

*Bill in favour of the circulation and protection of creation on the Internet*

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