[FR] HADOPI Looks at Media Chronology and the Rights of On-line Editors

IRIS 2009-7:1/21

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Apart from the high-profile “graduated response” it contains, the Act of 12 June 2009 “promoting the circulation and protection of creation on the Internet” also institutes the status of the on-line press editor, reforms journalists’ copyright protection, and makes changes to media chronology. Article 27 of the Act supplements Article 1 of the Act of 1 August 1986 reforming the legal scheme applicable to the press, creating the status of the on-line press editor and details this person’s responsibility.

“On-line press service” refers to any on-line service of communication to the public edited professionally by a natural or legal person with editorial control over its original content of general interest, which is renewed regularly and comprises information connected with current affairs treated in a journalistic fashion and does not constitute a promotion tool or accessory for an industrial or commercial activity.

A decree would lay down the conditions under which an on-line press service could have access to the tax scheme applicable to printed press companies (business tax, provision for investment). The new Act also institutes a scheme of attenuated responsibility for the director of the publication of these services, whose criminal responsibility may not be invoked if an illegal message is published in a space for personal participation calling for contributions from Internet users, as long as he/she did not have knowledge of the disputed message before it went on-line or if, having had knowledge of it, it took prompt action to withdraw it. This waived Article 93-3 of the Act of 29 July 1982.

The new Act also introduces a new section in the Intellectual Property Code (CPI) entitled “Right to make use of journalists’ work”, which is intended to replace a right in respect of a medium by a right in respect of a period of time for using a work. Until now, and under Articles L. 121-8 of the CPI and L. 7713-2 of the Employment Code, employment contracts between journalists and the press companies involving the transfer of copyright in respect of first publication and any further use of an article in a medium other than the original medium (and more particularly on the Internet) had to be explicitly authorised by the journalist, who was entitled to claim additional remuneration.

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The HADOPI Act lays down the principle of an automatic and exclusive transfer to the editor of the rights to exploit the journalist's work carried out in the context of a "press title" for all the media utilised by the title. The only recompense for this is the journalist's salary, for the period of time laid down in the company agreement. Beyond this period, exploitation of the journalist's work in the press title will be remunerated in the form of royalties or salary, subject to the conditions set out in the collectively negotiated agreement. Lastly, any exploitation other than by the press title or its "coherent press family" would need to be specifically agreed by the journalist in advance, subject to remuneration to be negotiated between the editor and the journalist.

Lastly, the HADOPI Act includes a section designed to promote development of the offer of on-line programmes. As the professionals in the audiovisual sector did not manage to conclude the agreements defining the rules applicable to media chronology (period of time to be observed between a film being shown in a cinema for the first time and its exploitation using various media), before the Act was voted on, the legislator included the principle of professional agreements defining the periods of time applicable to each mode of exploitation, and more particularly television broadcasting and VoD (Article 17 of the Act amending Articles 30-34 et seq. of the Cinematographic Industry Code). The Act cuts from six to four months the period of exploitation of video works intended for sale or rental. This could even be further reduced by means of a waiver granted by the CNC in the light of the film's operating results, although it could not be for less than one month. The four-month period would be extended to pay-per-view VoD if no professional agreement has been reached by 12 July 2009. Similarly, as there was no agreement, a decree would lay down the conditions for making other types of VoD services available (subscriptions and free offers financed by advertising).

Loi n° 2009-669 du 12 juin 2009 favorisant la diffusion et la protection de la création sur Internet

http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000020735432&dateTexte=&categorieLien=id

Act No. 2009-669 of 12 June 2009 promoting the circulation and protection of creation on the Internet

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