[FR] The "HADOPI 2" Act Comes into Force

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On 10 June 2009, the Constitutional Council found that the power to suspend access to the Internet as punishment for the illegal downloading of works, as voted in the context of the "HADOPI" Act, could not be conferred on an independent administrative authority, in this case the high authority for the circulation 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) (see IRIS 2008-10: 10 and IRIS 2009-7: 12). The powers of the Hadopi, according to the original legislation, would lead to a restriction to a person's exercise of his/her right to self-expression and freedom of communication. The penalty of cutting off access to the Internet could only be imposed by a judge, according to the "Wise Men", thereby obliging the Government to supplement the text with a new provision on repression. The text (referred to as "Hadopi 1"), without its section on penalties, was promulgated on 13 June 2009.

A new bill on the penal protection of literary and artistic property on the Internet was therefore discussed and voted on in September, and submitted to the Constitutional Council by the opposition for examination. On 22 October 2009, the Council validated the essential part of the arrangements. The texts create a criminal sentence of suspending access to the Internet for unlawful downloading, that the courts may impose for a maximum period of one year on anyone guilty of infringing copyright and for one month for the person with access to the Internet. The sentence also carries a ban on subscribing another Internet access contract; a subscriber failing to observe the ban would be further penalised (two years' imprisonment and a fine of EUR 30,000). The subscriber would also be required to continue paying his/her subscription, despite access being cut off. This suspension penalty may be in addition to or replace the main penalty of three years' imprisonment and a fine of EUR 300,000 incurred in the event of infringement of copyright (Article L. 335-2 and L. 335-3 of the CPI). The new Act also makes the judgment of copyright infringement offences committed on the Internet subject to specific rules of criminal procedure. Thus the public prosecutor may choose to use the simplified procedures of the criminal ruling, which enables a single judge to deliver a judgment without a hearing in the presence of the parties. Although the Constitutional Council has validated this procedure, it declared Article 6.II of the Act unconstitutional; this enabled the victim, in the case of the simplified procedure being applied, to claim damages and to appeal against any criminal ruling. All the other contested articles, concerning the powers of the Hadopi's agents, the specific criminal procedure, and the introduction of an additional

penalty suspending access to the Internet, have therefore been validated. The regulatory authorities will nevertheless have to define the elements that constitute the offence punished by the additional penalty of suspending access to the Internet. Although this brings the Hadopi saga to an end, Patrick Zelnik, who has been given responsibility by the Minister for Culture to consider the legal offer of music and films on line, has already intimated that the recommendations of his working party, expected by 15 December 2009, could give rise to a new bill.

Loi n° 2009-1311 du 28 octobre 2009 relative à la protection pénale de la propriété littéraire et artistique, JO du 29 octobre 2009

http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=60577AEA91721873BD020197460B501F.tpdjo14v_1?cidTexte=JORFTEXT000021208046&dateTexte=20100128

Act No. 2009-1311 of 28 October 2009 on the penal protection of literary and artistic property, published in the Journal Officiel of 29 October 2009