[FR] HADOPI Sends Out the First Warning E-Mails

IRIS 2010-10:1/30

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On 4 October 2010, following the rejection by the Conseil d'État on 14 September of the appeal brought by the access provider FDN against the Decree on HADOPI's sanctions procedure (see IRIS 2010-9: 1/24), the HADOPI sent out its first warning e-mails to people who had downloaded works from the Internet illegally.

The e-mails inform their addressees that they have "failed in their obligation of supervision" (Article 336-3 of the Intellectual Property Code introduced by the HADOPI Act) and remind them of their obligation to ensure that their access to Internet is secure so that it cannot be used fraudulently. The HADOPI has taken the opportunity to divulge a number of elements for recognising an authentic message sent out in the framework of the graduated response: it contains the address details of the Internet user and does not include any link to click on, invitation to purchase software, request for a sum of money, or invitation to connect to a personal space on an Internet site. If the Internet user repeats the offence within six months, this first message is followed by a second, sent by registered letter. If there is a further failure in the obligation of supervision, the fine for "gross negligence" (EUR 1,500) may then be imposed. The HADOPI then refers the matter to the courts, which may then order the user's Internet subscription to be suspended for up to one year. Although the main Internet access providers have had no difficulty in passing on the HADOPI's warning e-mails, the operator Free has refused to do so, pending "receipt of guarantees on the method for applying the arrangements, particularly as regards data confidentiality". In doing do, Free has taken advantage of a loophole in the Act, which does not provide for any obligation on the part of operators to send on the HADOPI's warning e-mails, or for any sanctions against them if they fail to do so.

However, the Government has been quick to respond - a decree gazetted on 13 October 2010 has amended the Intellectual Property Code (Art. R. 331-37), which now requires operators to send HADOPI's warning e-mails on to subscribers by electronic means within twenty-four hours, on pain of a fine of EUR 1,500. The IAPs are currently in discussion with the Government regarding compensation for the cost of identifying the IP addresses of Internet users who are at fault. To be continued ...

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Décret n° 2010-1202 du 12 octobre 2010 modifiant l'article R. 331-37 du Code de la propriété intellectuelle, JO du 13 octobre

http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=A6CF170EB92395DB7BE3A8E643290E41.tpdjo03v_1?cidTexte=JORFTEXT000022913572&dateTexte=&oldAction=rechJO&categorieLien=id

Decree No. 2010-1202 of 12 October 2010 amending Article R. 331-37 of the Intellectual Property Code, published in the Journal Officiel on 13 October

Recommandation de la Commission de la Protection des Droits de la Haute autorité pour la diffusion des œuvres et la protection des droits sur Internet (Hadopi)

http://www.hadopi.fr/download/sites/default/files/page/pdf/Hadopi-recommandation.pdf

Recommendation by the Commission for the Protection of Rights of the High Authority for the broadcasting of works and the protection of rights on the Internet (HADOPI)

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