[FR] HADOPI: Beneficiaries Will Be Able to Claim Damages as Part of Criminal Proceedings

IRIS 2011-8:1/27

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At long last the repressive part of the HADOPI legislation has now been finalised. The arrangements, set up by the Act of 12 June 2009 and supplemented by the Act of 28 October 2009, attempt to combat the illegal downloading of works by introducing 'a graduated response". The first stage is in the hands of the HADOPI, an independent administrative authority with responsibility for sending warning messages to Internet users using peer-to-peer systems whose IP addresses have been collected by the authorised rights management societies. For the second stage, the Constitutional Court censured the HADOPI's capacity to impose the penalty of suspending Internet access, and requires this to be ordered by a criminal court, thereby obliging the legislator to rework the corresponding legislation. The Act of 28 October 2009, referred to as "HADOPI 2", now requires the criminal courts to order the suspension of Internet access, if this is necessary, as a supplementary penalty. To reduce the courts' workload and to speed up proceedings, the Act also provides for cases to be dealt with by a single judge, under the penal order procedure - a simplified procedure not requiring the presence of both parties or justification. In its decision of 22 October 2009, the Constitutional Council validated most of this second HADOPI Act, but would not allow the provision enabling the judge to deliberate by means of a penal order in response to the application for damages entered by the victim of the offence, i.e., the beneficiaries. The Council found that although there was nothing against this possibility, it was nevertheless for the legislator to lay down the applicable rules in the Act and not to have them dependent on a decree, as provided for in the Act; the provision was therefore axed. This meant that a third HADOPI Act was needed. The axed Act has now been corrected, with the adoption on 12 July 2011 of the bill "on the distribution of disputes and the simplification of certain court procedures". Article 20 of the Bill provides that "The simplified procedure of the penal order shall apply to the following offences: (…) 11. Offences of infringement of copyright provided for in Articles L. 335-2, L. 335-3 and L. 335-4 of the Intellectual Property Code if they are committed using an on-line service of communication to the public".

The Act has not yet been gazetted because of some disagreement between the two Chambers on quite a different matter, and the text should therefore be voted on again in early October. The HADOPI recently announced that it had summoned about a dozen Internet users who had already received three warning messages, although there is as yet no news as to whether it has decided to pass these first

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cases on to the public prosecutor. It is no doubt waiting for this final procedural part of the Act to be promulgated.

Projet de loi « sur la répartition des contentieux et l'allègement de certaines procédures juridictionnelles »

http://www.assemblee-nationale.fr/13/dossiers/repartition_contentieux.asp

Bill "on the distribution of disputes and the simplification of certain court procedures"

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