[FR] HADOPI Delivers Opinion on Interoperability of Blu Ray Protection

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Amélie Blocman
Légipresse

On 8 April 2013, the high authority for the broadcasting of works and the protection of rights on the Internet (Haute Autorité pour la Diffusion des Œuvres et la Protection des Droits sur Internet - HADOPI) delivered its opinion on a question on the interoperability of the technical protection measures applied to "Blu Ray" DVDs. The association VideoLAN, the editor of the freeware (i.e., software with a source code that may be accessed and modified by its users under the terms of their licence) entitled "VLC Media Player", the purpose of which is to read media files in the largest possible number of formats, referred to HADOPI under Article L. 331-36 of the French Intellectual Property Code (Code de la Propriété Intellectuelle - CPI). The editor wanted to know how it could provide users with a version of its software that made it possible to read all DVDs currently called "Blu Ray" which incorporated technical protection measures. The denomination "Blu Ray" designates a digital disk format and a technique allowing the storage and restitution of audiovisual content in high definition. The protection of works distributed in Blu Ray format relies on technical protection measures that are mainly intended to prevent the making of unauthorised copies of the content of the Blu Ray disks.

In its opinion, HADOPI recalls that Article L. 331-5 of the CPI provides that "the technical measures used may not have the effect of preventing the effective implementation of interoperability, while respecting copyright protection". Although the notion of interoperability has not been defined by the legislator, HADOPI recalls that it was the intention of the legislators to allow users to read the works they acquire on the reader of their choosing. Seen in this light, interoperability appears to be a condition for users' free use of the works. The referral to HADOPI therefore raises the question of knowing to what extent a software editor is able to benefit from exceptions to copyright protection in developing a freeware reader allowing the legal circumvention of technical protection measures. After careful examination, HADOPI concluded that VideoLAN could not claim the exceptions of either "reverse engineering" or "decompilation" provided for in Article L. 122-6-1 of the CPI in order to provide users with software for circumventing all the technical protection measures protecting Blu Ray DVDs without the authorisation of the corresponding rightsholders. VideoLAN is therefore invited to ask the rightsholders to supply the information on the technical measures that is essential for the interoperability of the measures (via a

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licence). Should they refuse, HADOPI invites the association to instigate arbitration proceedings, for which it is competent on the basis of Article L. 331-32 of the CPI. In this context, and in order to allow effective interoperability, guaranteeing access to works protected by technical devices, HADOPI considered the association ought to be able to obtain communication - subject to appropriate compensation - of all the information necessary for interoperability, including the trade secrets involved in the technical protection measures. There could be no hindrance to the publication, by transposition into the source code of the VLC freeware, of the information obtained in this way unless the holders of the rights in respect of the technical protection measures used provided proof that doing so would seriously affect the security and effectiveness of the measures.

In the light of the criticism levelled at the opinion by VideoLAN's CEO, who feels that HADOPI is "dodging the issue", Jacques Toubon, a member of HADOPI's college, commented that the opinion "could never exceed the law". He therefore called for "an evolution in the law by creating a regulator capable of taking action". The report of the Lescure mission (see IRIS 2013-2/25), expected in May, will perhaps go some way towards providing an answer.

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http://hadopi.fr/actualites/actualites/avis-de-lhadopi-suite-la-saisine-videolan

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