[FR] Illegal Downloading: Penalty of Refusing Internet Access Abolished

IRIS 2013-8:1/16

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By a decree issued on 8 July 2013, in accordance with the recommendations of the Lescure report submitted to the Government in May (see IRIS 2013-6/19), the Minister for Culture abrogated Article R. 335-5-III of the Intellectual Property Code (Code de la Propriété Intellectuelle - CPI), thereby abolishing the penalty of refusing Internet access to anyone failing to secure their access to the network and as a result having allowed illegal downloading (see IRIS 2010-10/30, IRIS 2010-9/24, IRIS 2010-1/23, IRIS 2009-7/20, IRIS 2008-10/15 and IRIS 2008-7/16).

The offence of “gross negligence” and the corresponding penalty were instituted by the Act of 12 June 2009, which set up the high authority for the broadcasting of works and the protection of rights on the Internet (Haute Autorité pour la Diffusion des Works and la Protection des Droits sur Internet - HADOPI). The first stage of the “graduated response” instituted by the Act involves sending an e-mail warning the Internet user that his/her Internet access has been used for illegal downloading or sharing of works. If a further occurrence is noted after this initial warning, HADOPI’s committee for the protection of rights is allowed to send the subscriber a further warning by e-mail and also a letter by registered mail (200,000 such e-mails have been despatched since October 2010). If a further occurrence comes to the committee’s notice, it may decide to pass the matter on to the Public Prosecutor, who may in turn decide to bring legal proceedings against the Internet user, and may pass the matter on to the courts accordingly. Whereas the HADOPI has sent more than two million messages to Internet users carrying out illegal downloading since October 2010, the sanction of cutting off Internet access has only been implemented once: on 3 June 2013, the magistrates court in Montreuil found against an Internet user who had “failed to secure access to on-line services of communication to the public without legitimate reason, and committed gross negligence” (covered and punished by Articles R. 335-5, L. 335-7-1(2), L. 331-25, and L. 335-7-1(1) and (3) of the CPI). The Internet user was ordered to pay a fine of EUR 600 as the principal penalty, and his access to the Internet was also suspended for 15 days as an additional penalty; he was also banned from subscribing to a contract of the same type during that period.

Under the terms of the Decree of 8 July 2013, in future it will only be possible to issue a fine in the fifth category (EUR 1,500) in the event of an Internet user committing gross negligence by failing to secure his/her Internet access. A sanction of one year’s suspension may nevertheless still be imposed, as an

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additional penalty, on anyone prosecuted for infringing copyright, punishable by three years' imprisonment and a fine of up to EUR 300,000 under Article L. 335-7 of the CPI. The Decree of 8 July 2013 "is part of a much wider movement to shut down the HADOPI," emphasised Minister for Culture Aurélie Filipetti; she announced that there would be a legislative text by "the end of 2013 or early 2014 (...) that would incorporate the HADOPI in the audiovisual regulatory authority (Conseil Supérieur de l'Audiovisuel - CSA), which would then be responsible for applying these new measures. The CSA will also aim to combat commercial sites carrying out illegal downloading and providing the public with access to files which may or may not be protected by copyright".

Décret n° 2013-596 du 8 juillet 2013 supprimant la peine contraventionnelle complémentaire de suspension de l'accès à un service de communication au public en ligne et relatif aux modalités de transmission des informations prévue à l'article L. 331-21 du code de la propriété intellectuelle

http://legifrance.gouv.fr/affichTexte.do;jsessionid=8BBA36F35CC415408EF7C7594153708D.tpdjo06v_2?cidTexte=JORFTEXT000027678782&dateTexte=20130826

Decree No. 2013-596 of 8 July 2013 abolishing the additional penalty of suspending access to an on-line service of communication to the public in connection with the information transmission methods provided for in Article L. 331-21 of the Intellectual Property Code

Tribunal de Police de Montreuil, 3 juin 2013 - Min. public et la Hadopi c. M.X.

Montreuil magistrates court, 3 June 2013 - Public Prosecutor and HADOPI v. Mr X.

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