[FR] Preventing and Combating Counterfeiting On-Line - Report Advocates Four Operational Tools

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Amélie Blocman
Légipresse

Completely in line with the “Report on ways to combat streaming and illegal downloading” published by the HADOPI on 15 February 2013 and the conclusions of the Lescure report (see IRIS 2013-6/19), the Minister for Culture gave in July 2013 Ms Imbert-Quaretta, President of the HADOPI Committee for the Protection of Rights, the task of compiling a number of “operational tools for the effective involvement of the technical and financial intermediaries in preventing and combating commercial counterfeiting on-line”. The reports had highlighted the value of attempting to dry up the financial resources of the “massively counterfeiting” sites by involving the stakeholders in on-line advertising and payment (the ‘follow the money’ approach). Drawn up after hearing from around 50 stakeholders, both French and foreign, and submitted to the Minister for Culture on 12 May 2014, the new 25-page report recommends setting up a range of complementary, coordinated actions involving all the stakeholders. Current regulations are already substantial and the search for innovative solutions is necessarily modest, according to the preamble to the report. It proposes four operational tools, which would evolve, in keeping with the Directive on e-commerce. Firstly, the report advocates the signature of sector charters involving the stakeholders in advertising and on-line payment (Visa, MasterCard, PayPal), which have a major role to play in protecting copyright and neighbouring rights on the Internet. Charters of this type already exist, for example in the United Kingdom and in the United States, where agreements have been reached between beneficiaries and stakeholders in the sector in order to define good practices. This self-regulatory approach would be supplemented in a second stage by public information on the websites that were massively infringing copyright and neighbouring rights. A public authority would be instructed to draw up a list of the sites concerned, and this list would be used as a reference to make self-regulatory action secure and to inform all the technical and financial intermediaries on the sites at issue. As a third stage, the report proposes the creation of an order for prolonged removal, pronounced by a public authority and targeting specific counterfeit content. Lastly, the report recommends setting up arrangements for monitoring, over a period of time, legal decisions concerning websites hosting counterfeit items to a massive extent. The purpose of this would be to combat the reappearance, via a mirror site for example, of pirated content even though it had been suppressed, and to make sure that legal decisions were not circumvented. In both its introduction and its conclusion, the report stresses

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that rightsholders (and their representatives) should remain at the heart of the arrangements: it was for them alone to decide whether or not to instigate action, either private or public, administrative or legal, in order to defend their rights. This is not to say that the public authority would not be involved. The role proposed for it in the report is deemed “innovative, in that it accompanies, by means of mediation and incentive, the regulations set up on the initiative of the various players”. All these proposals will be examined by the draft legislation on ‘creation’, although its presentation seems to keep being postponed.

Outils opérationnels de prévention et de lutte contre la contrefaçon en ligne, Rapport à la ministre de la culture et de la communication,12 mai 2014

http://www.culturecommunication.gouv.fr/Actualites/Missions-et-rapports/Outils-operationnels-de-prevention-et-de-lutte-contre-la-contrefacon-en-ligne

Operational tools for preventing and combating counterfeiting on-line; report to the Minister for Culture and Communication, 12 May 2014

http://www.culturecommunication.gouv.fr/Actualites/Missions-et-rapports/Outils-operationnels-de-prevention-et-de-lutte-contre-la-contrefacon-en-ligne

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