[FR] State ordered to refund 900 000 euros to an IAP for cost of identifying subscribers for the graduated response procedure

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Bouygues Telecom made a referral to the Conseil d'État on an issue concerning the non-payment of the allowances claimed by the IAP in return for the assistance provided to HADOPI in seeking out Internet users engaging in illegal downloading. Starting in September 2010, HADOPI's Commission for the Protection of Rights (Commission de Protection des Droits) had called on the electronic communication operators for assistance in seeking out, noting, and prosecuting failures to fulfil the obligation set forth in Article L. 336-3 of the intellectual property code (Code de la Propriété Intellectuelle).

In December 2015 Bouygues Telecom obtained the cancellation of the decision implicit in the Prime Minister's refusal to adopt the decree required for implementation of the HADOPI Act of 12 June 2009 on compensation for the additional identifiable and specific cost of the services carried out at HADOPI's instructions. This was on the grounds that the reasonable period of time within which the text should have been adopted had been exceeded. In the present proceedings, the IAP was claiming compensation for the resulting prejudice, for the period from September 2010 to November 2015.

The Conseil d'Etat confirmed that the reasonable period of time for adopting the decree necessary for application of the third paragraph of Article L. 34-1 of the Post and Electronic Communications Code (Code des Postes et des Communications Electroniques) had been exceeded, under wrongful conditions. In the case at issue, HADOPI had refused to pay the invoices sent to it by Bouygues Telecom, on the grounds that no decree had been adopted. The applicant company claimed that setting up specific processing procedures and using technical and human resources had resulted in specific additional cost. As part of the services provided, the company had processed more than 2 400 000 requests for the identification of IP addresses between September 2010 and November 2015. As justification of the reality and extent of the cost, which it estimated at 1.2 million euros, the company submitted documents including elements extracted from its internal management control system. The Conseil d'Etat ordered the State to pay Bouygues Telecom 900 000 euros in respect of the services provided for the period at issue, pending the future adoption of the expected decree.

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Conseil d'Etat, (2e et 7e sous-sect.réunies), 4 avril 2016, Bouygues Telecom

Conseil d'Etat, (2nd and 7th sub-sections combined), 4 April 2016, Bouygues Telecom

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