[FR] Molotov TV: HADOPI delivers opinion on the private copying exception for television programmes reproduced by remote access

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On 29 October 2018, France's high authority for the broadcasting of works and the protection of rights on the Internet, the Haute Autorité pour la Diffusion des Œuvres et la Protection des Droits sur Internet (HADOPI), delivered its opinion on the effective implementation of the private copying exception with regard to television programmes received via the Molotov TV platform. It is HADOPI's mission to ensure that the technical restrictions implemented by online services do not have the effect of depriving anyone of the effective benefit of the private copying exception.

Molotov TV, which offers the distribution of audiovisual services on the Internet ("over-the-top" services), is the only television service distributor in France to provide a remote storage and copying service. The matter had been referred to HADOPI by a subscriber to the platform who drew attention to the restrictions placed on certain recording functions in respect of some of the programmes broadcast - including a limit on capacity for the recording of channels in the TF1 and M6 groups at 20 hours (aggregated by group), the limited possibility of scheduling recordings, and the impossibility of copying recorded files onto other media. The HADOPI therefore had to determine whether, despite these restrictions, the requirement that it be possible to make a private copy was met with regard to Article L. 3319 of France's Intellectual Property Code, which acknowledges the right to make a private copy of television programmes on digital media.

Meeting on 25 October 2018, the HADOPI's board held that the "private copying exception with regard to linear programmes assumed, a minima, the possibility of the beneficiary being able to copy the programmes received within the limit of the storage capacity acquired, against payment of a fee. It follows from all these elements that the threshold of 20 hours applied in limiting recording capacity in respect of the programmes of any one group of channels for Molotov's paying subscribers may be regarded as unjustified, as it is over-restrictive." The HADOPI felt that, provided that the copy made remained protected from unauthorised use, users should be able to dispose of them fully and freely. This also implied the possibility, as far as this was feasible, of viewing them at any time - including in the absence of an Internet connection and on any other medium. However, regarding the other restrictions referred to by the applicant (including the fact

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that it was not possible to schedule recordings more than two weeks ahead and the impossibility of recording more than one programme simultaneously), the HADOPI found that these limitations did not infringe the private copying exception. The HADOPI emphasised that its opinion referred exclusively to the service currently provided by Molotov TV and could not be held to reflect its position should any new services be introduced.

Avis n° 2018-01 relatif à l'exception de copie privée des programmes télévisés reproduits par voie d'accès à distance

https://hadopi.fr/sites/default/files/sites/default/files/ckeditor_files/CP%20avis/20181029_avis_exceptioncopieprivee_progtelevises_reproduitsadistance.pdf

Opinion no. 2018-01 on the private copying exception with regard to television programmes reproduced by remote access

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