[FR] Fight against piracy: bill establishing plea agreement tabled

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Amélie Blocman
Légipresse

The French Parliament's examination of the audiovisual reform bill was due to begin at the end of March. On 28 April, following the indefinite postponement of this process on account of the health crisis, opposition MPs tabled a draft law "designed to strengthen instruments to combat piracy of copyrighted works and establish a plea agreement measure." Under the plea agreement system, a fine would be paid in order to avoid court proceedings for certain offences.

It is worth recalling that the government's audiovisual reform bill makes provision, in particular, for the *Conseil Supérieur de l'Audiovisuel* (the national audiovisual regulatory authority – CSA) to merge with the Hadopi (High Authority for the Dissemination of Works and the Protection of Rights on the Internet) to become the *Autorité de régulation de la communication audiovisuelle et numérique* (Regulatory Authority for Audiovisual and Digital Communication – ARCOM), and for the strengthening of the fight against sports piracy. At the end of February, several rightsholder organisations, including the *Association de Lutte contre la Piraterie Audiovisuelle* (Association to Combat Audiovisual Piracy – ALPA), the *Société des Auteurs et Compositeurs Dramatiques* (Society of Drama Authors and Composers – SACD), the *Société Civile des Auteurs Multimédias* (Civil Society of Multimedia Authors – SCAM) and the *Société des Auteurs, Compositeurs et Editeurs de Musique* (Society of Authors, Composers and Editors of Music – SACEM), had argued for the creation of a plea agreement system as part of the reforms, as well as the immediate blocking of pirate sites. However, the Minister of Culture, Franck Riester, had refused their request, saying, "The government does not want to alter the balance of the current graduated response, which focuses on prevention and education. It is true that the graduated response can lead to court proceedings, but these fall under a judge's authority. We don't want to punish Internet users any further in this part of our efforts to combat piracy through the graduated response."

According to the latest Hadopi survey, which was published on 29 April 2020, 89% of French Internet users have consumed cultural content digitally during the lockdown (up 5% over a two-week period). Of these, 28% do so illegally, compared with 21% at the start of the lockdown (up 7% in two weeks).

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The graduated response established under the 2009 law is the system currently used to ensure compliance with copyright on the Internet. Initially, the Hadopi issues warnings to users whose Internet connections have been used for the peer-to-peer sharing of cultural content in breach of copyright. If this has no effect, a file containing evidence of the offence is then sent to the court authorities. After three unsuccessful warnings, the Hadopi's rights protection committee can decide to refer the matter to the courts on the grounds of gross negligence, following which, the Internet account holder is punished for failing to prevent their Internet connection from being used for piracy in spite of the warnings received. A fine of up to EUR 1 500 can be imposed (or EUR 7 500 for corporate entities).

Despite the efforts that have been made, the bill's explanatory memorandum states that "around three million Internet users continue to use peer-to-peer services every month to watch protected works illegally." The limitations of the judicial phase of the graduated response are therefore clear: in more than 85% of cases, the offender goes unpunished.

With a view to significantly stepping up efforts to combat streaming and direct downloading, the bill's authors therefore think it is vital to make the graduated response procedure more effective. For example, depending on whether the current measures continue to be led by the Hadopi or are transferred to the ARCOM, the competent authority would, if the educational phase of the graduated response procedure failed, be able to offer the offender the option of bringing an end to the proceedings by paying a fine capped at one-third of the maximum penalty that currently applies (that is, a maximum of EUR 500 compared to the current maximum of EUR 1 500 for private individuals, and EUR 2 500 instead of EUR 7 500 for companies). If the Internet subscriber were to refuse the plea bargain offer made by the authority in charge of protecting copyrighted works and objects, the authority would be able to commence proceedings before the police court.

It remains to be seen whether these proposals will one day be examined by the French Parliament.

Proposition de loi « visant à renforcer les instruments de lutte contre le piratage des œuvres protégées par le droit d'auteur, et instituant un dispositif de transaction pénale »

http://www.assemblee-nationale.fr/dyn/15/dossiers/lutte_piratage_oeuvres_droit_auteur

Draft law "designed to strengthen instruments to combat piracy of copyrighted works and establish a plea agreement measure

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