

ISOC France calls for the withdrawal of the HADOPI draft law

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Detailed presentation of position

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Just a little blackmail between friends: the *measured response* of the HADOPI draft law

The **HADOPI** (High Authority for the distribution of works and the protection of rights with respect to the Internet) law is to be discussed by the French Parliament before the summer. Its goal is to "make consumers understand that the Internet is now, in parallel to being a means of communication and exchange, an efficient and modern tool for commercial distribution." In order to do so, we must first help Internet users find the right path again, thanks to a magical concept called the "**measured response**."

Warnings will give way to sanctions, all in order to make "delinquents" understand their wrongdoings, without, however, bringing them before the courts.

In fact, for the industrialists of the sector, this means:

- *industrializing repression by bypassing all of the security measures guaranteed by a real trial;*
- *a reversal of the logic behind the punishment. First, the alleged pirate's Internet access is cut off and then we question whether we did the right thing.*

The final nail in the coffin is that, if the "pirate" shows good faith and acknowledges the facts, the cutting of his/her Internet access may be shortened. In such a case, the majors, etc., may also directly hit his/her wallet.

Proof in three parts

1- the *measured response* or zero protection

Currently, it is very difficult to take action against a "pirate" in France. First, one must identify the people carrying out suspicious activities and therefore go through a judge. Then, there is a real trial during which one must prove that the Internet user in question did indeed exchange files illegally. A trial is long and costly, facing lawyers worried about protecting "personal freedom," "the right to a defense," etc., thus making it impossible to lead lambs to a slaughter.

Thanks to the measured response, industrialists save time and money! But not the taxpayers...

They will only need to denounce the Internet user to the *Haute autorité pour la diffusion des œuvres et la protection des droits sur Internet* (HADOPI) that the law wishes to create. This good daughter, financed by the government, will take care of everything: without involving a judge, it will identify suspicious Internet users by simply asking their ISPs; and then they will contact the Internet users in question, again through their ISPs, in order to reprimand them.

A deaf or recalcitrant Internet user can expect to have his/her Internet access cut off for one year, without warning! But he/she will not be punished for transferring files – that would have to be proven before a judge – it will be **for not securing his/her connection**. Therefore, forget illegal transfers – we are no longer fighting infringement, we are fighting Internet users who failed to prevent it on his/her connection!

In short, no more judge, no more lawyer, no more infringement and no more discussion; and no more wasted time or money for the majors and their cohorts. The Internet user has only one right left: to be quiet and suffer digital isolation.

2- **the *measured response*: "cut first, think later"**

With his/her connection being cut off for one year for "delinquents," and for one or six months for "repentants" who have acknowledged the error of their ways, the internet user may wonder at this odd way of reacting: cutting Internet access without asking a judge, and without the help of a lawyer, Internet-users association or consumer-protection association. In fact, without any monitoring for a punishment that is expedited, to say the least.

What if the Internet user thinks this is a bit heavy-handed? The law has foreseen this. In order to be heard, the prejudged delinquent may "take action against such administrative act before the competent administrative court." Such action before a judge is aimed at having administrative decisions cancelled.

But be forewarned of the timeframe! It takes an average of 21 months to obtain a decision according to the French Ministry of Justice! In order to obtain the cancellation of a decision cutting one's Internet access for one year, one must therefore wait more than one and a half years.

The judge can also award a small amount as compensation. Here again, though, we are faced with the absurd. Imagine that a very stubborn Internet user has made it through the 21 months of trial. He/she (finally) obtains a decision against the HADOPI. However, it is highly unlikely that the compensation will exceed the cost of the Internet subscription for the period during which the service was denied. **Indeed, during the period without service, the law provides that the Internet user who is deprived of Internet access must continue to pay his/her subscription as if nothing had changed.**

3- **the "measured response," i.e., the jackpot for industrialists**

After depriving Internet users of any protection and offering them fake solutions, the HADOPI law has one more little surprise in store for them: the *settlement*.

It is accepted that a wrong confessed is a wrong half pardoned. The HADOPI will therefore be able to "half pardon" Internet users who acknowledged that they have not secured their connection. It will only sentence them to one or six months of digital prison. The sanction is supposed to be "educational." However, education and justice do not go hand in hand. HADOPI's pardon does not affect the majors that could force Internet users to open their wallets once they have "confessed" to their wrongdoing.

The "measured response" is therefore a little like speed radars: we do not always know when or why we have been caught but we are sure to pay.

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For all of these reasons, Isoc France requests the withdrawal of the HADOPI law, which:

- violates the most basic rights of every citizen;
- is in the interests of a small group of people who, after 10 years, still have not understood the strengths of the Internet and thinks it needs to be turned into an "*efficient and modern tool for commercial distribution.*"

Supervisor: Arnaud GARRIGUES – agarrigues@gmail.com

Press relations: France MIREMONT – france.miremont@isoc.fr

Isoc France – Declared association governed by the French law of 1 July 1901
164 rue du Faubourg Saint-Honoré – 75008 Paris – <http://www.isoc.fr>