

**Agreement for the development and protection of cultural works
and programmes on the new networks**

Friday 23 November 2007

Our country has one of the strongest content industries on the planet; it is an opportunity to preserve and develop the cultural identity and influence of both France and Europe. Our country also benefits from one of the most highly developed broadband Internet access industries in the world; this is a considerable advantage in the battle of the virtual economy. These advantages should not cancel each other out, but on the contrary should complement each other, in the best interests of consumers who will consequently have powerful distribution networks and rich and diversified content at their disposal.

It is with this ambition in mind that the parties to this agreement wish to take clear and concerted action in the fight against intellectual property rights infringements on digital networks and, to this end, both promote the availability of legitimate content on the Internet to the benefit of consumers and implement new measures to prevent pirating in accordance with personal freedoms in a pragmatic manner.

With this in mind the parties have agreed on the following principles:

1. The public authorities undertake:

– to put legislation before Parliament and adopt regulatory measures that will allow for a warning and sanction mechanism aimed at deterring infringements of intellectual property rights on digital networks. This mechanism would be based on the principle of subscribers being responsible for the fraudulent use of their subscriptions, currently found in Article L. 335-12 of the French Intellectual Property Code, and will be driven by a specialised public authority, placed under the control of a judge, in order to guarantee individual rights and freedoms. This authority will be provided with the human and technical resources necessary to warn and sanction. On the basis of a complaint made by rights holders, either directly or via organisations entitled by law to investigate infringements of rights, the authority will send out in its name, via Internet service providers, electronic messages warning the subscription holder. In the event of repeated infringements, it will either apply sanctions against the subscription holder or refer the matter to the judge with a view to applying sanctions. These sanctions will range from the suspension of Internet access to the termination of the Internet contract;

– this authority will have the powers to apply sanctions to access providers that do not respond, or that do not do so diligently, to its injunctions. It will publish monthly statistics on its activities;

– this authority will also have, under the control of the judge, the power to ask technical service providers (hosting services, service providers, etc.) to take any necessary measures to prevent or halt any prejudice that may be caused by the content of an online communication service;

> to constitute, following a ruling from the French Data Protection Authority (CNIL), a national directory of subscribers whose contracts have been cancelled for the reasons mentioned above;

> to publish on a monthly basis an indicator measuring, by sampling, the volume of illegal uploads and downloads of music files and audiovisual and cinematographic works and programmes;

> to apply to the European Union for an extension of the reduced rate of VAT to all cultural goods and services. This measure would, wholly or in part, benefit the consumer through a reduction in retail prices.

2. Audiovisual, cinema and music rights holders and television broadcasters undertake to:

> organise themselves in order to make use of the existing legal mechanisms and to collaborate in

good faith with the platforms that host and share content in order to evaluate, select and promote common fingerprinting and watermarking technologies. In addition they will also collaborate in making information available that will enable as broadly based as possible fingerprint reference catalogues to be established, not forgetting that the development of these techniques does not limit the platforms' obligation to introduce measures aimed at preventing protected content from being put online illegally;

> once the warning and sanction mechanism is effectively operating, align the opening of the video-on-demand window with the physical-video window;

> begin discussions that would lead, within a maximum period of one year from the effective operation of the warning and sanction mechanism, to the reorganisation of the media chronology, under the authority of the French Ministry of Culture and Communication. The objective will in particular be to provide for cinema works being made available online more speedily and indicate how to insert harmoniously the video-on-demand window into the traditional system that segments the chronology into exploitation windows;

> do their utmost to make cinematographic works systematically available via video on demand, in accordance with recognised rights and exclusivities;

> do their utmost to make audiovisual works and programmes available via video on demand and speed up their online exploitation after being broadcast, in accordance with recognised rights and exclusivities;

> to make available, within a maximum period of one year from the effective operation of the warning and sanction mechanism, catalogues of French musical productions for online sale by title, without technical protection measures while said measures do not allow interoperability and in accordance with recognised rights and exclusivities.

3. The technical service providers undertake:

> with regard to Internet service providers:

– in the framework of the warning and sanction mechanism, to send warning messages in the name of the authority and to implement any sanctions;

– within a period that may not exceed 24 months following the signature of this agreement, to collaborate with the rights holders on ways of experimenting with filtering technologies on networks that are available but which merit prior in-depth research, and to deploy them if the results are convincing and if their general application would be technically and financially realistic;

> With regard to hosting and content-sharing platforms, to collaborate in good faith with rights holders, without prejudice to the conclusion of agreements necessary for the legal use of protected content, in order to:

– in the short term, extend the use of efficient fingerprinting and watermarking technologies, in particular by establishing acceptable fingerprint technologies with them, in parallel to fingerprint catalogues that the rights holders will help to constitute;

– define the conditions within which these techniques will be systematically implemented.

Once implemented and one year after their introduction, these general principles will be discussed in a meeting of the signatories to this agreement under the auspices of the French Ministry of Culture and Communication and the French Ministry of the Economy, Finance and Employment. An evaluation report will be prepared and made public.