

**THE “ÉLYSÉE AGREEMENT”  
for the development and protection  
of creative works and cultural programmes on the new networks  
– 23 November 2007 –**

1. **The goals: to put an end to the haemorrhage of creative works over the Internet; the saving and subsequent development of the copyright-dependent cultural industries.**

One French citizen in every two now has broadband Internet access, which is a world record. This is a radically new situation that offers a remarkable opportunity for the dissemination of culture, and is without precedent since the invention of the printing press.

But at the same time, never have the conditions in which such works are created been in such great peril. In 2006, a billion musical and audiovisual works were exchanged illegally in France. Over the last five years, **the market for discs has shrunk by nearly 50%** in volume and value terms, and this has had a major impact not only on employment, with **a cut of 30% in the workforce** of production companies, but also on creation and healthy artistic turnover with **the termination of 28% of talent contracts** by production companies and a cut of 40% in numbers of creative artists “signed up” every year. The film world is beginning to feel the first effects of this change in behaviour and book publishing will probably not be slow to follow.

The President of the Republic has therefore regularly expressed his firm determination to put in place a political and legal environment conducive to the expansion of legal downloads and their rapid displacement of illegal downloading, in order to ensure that creative artists and those who support them are able to **live from the proceeds of their work** and fund new productions, thus helping maintain cultural diversity. This determination was reflected in a letter sent on 1 August last, in conjunction with the Prime Minister, to the Minister of Culture and Communication, assigning to the latter the task of implementing a plan to “protect and promote the cultural industries covered by copyright and related rights”, taking as a basis two aspects: “expansion of an offer that is diverse, inexpensive and easy to access” and “prevention and punishment of digital piracy”.

This is so because **the combat against the availability of illegal downloads and improvement in the attractiveness of legal downloads** of music and films (in terms of price, variety of titles and flexibility of use) are absolutely inseparable if we wish to make piracy an activity not worth the risk involved.

2. **The method: concerted, far-reaching action to bring the actors of the Cultural and Internet worlds together.**

**The method adopted is based on the lessons of a past fraught with conflict:** it is founded on the idea that the solutions deployed must be **supported in advance by a very wide consensus between the actors** of the worlds of Culture and the Internet. On 5 September 2007, the Minister of Culture and Communication therefore entrusted Denis Olivennes, chairman and chief executive of the FNAC retail chain, with the task of driving a process of reflection and consultation aimed at arriving at an agreement between professionals in the music, film and audiovisual industries and Internet Service Providers.

This approach seeks to **take advantage of a favourable context in which the interests of all those involved are aligned**. This is so because Internet Service Providers are currently endeavouring to market cultural works legally by means of their most recent pricing offers. They are keen for this reason to discourage illegal downloading. Where consumers are concerned, they wish to be able to download films sooner, but the “media release window” in France imposes a gap of seven and a half months after the initial commercial release in cinemas. Consumers also wish to be able to play the music they download on any device, which is currently prevented by the “protective measures” incorporated in musical works. For their part, creative artists and the cultural industries have understood that they need to improve the variety, ease of access and pricing of the legal offering of works on the Internet.

The assignment accepted by Denis Olivennes involved numerous hearings in which he listened to the views of representatives of the music, film and audiovisual industries, in addition to those of Internet users and content distributors (Internet Service Providers, download platforms, content-sharing sites such as *YouTube* or *DailyMotion*, etc.). Representation was at a very high level in all cases. These hearings were followed by **a round of negotiations**.

**3. The outcome: an agreement of historical importance benefiting not only Internet users but also creative artists, and one that should make digital piracy an activity not worth the risk.**

**This agreement has historical importance** because it is the first time that the worlds of film and music have reached agreement on solutions to combat piracy and improve the legal download offering, and it is also the first time that a **consensus has been built between creative artists and Internet Service Providers**.

This agreement is very **fairly balanced** because all the effort has been shared by all parties and Internet users will find in it what they need, as will creative artists and Internet operators. It comprises two mutually complementary aspects:

- **Legal downloads will be easier to access, more varied and more flexible.**
- Record labels have undertaken to **remove the “protective measures”** locking French productions in their catalogues. This means that a piece of music bought legally can be played more easily on every type of device – on all mp3 players for example.
- In addition, **the downloading of films** – Video-On-Demand (VOD) – is currently possible only after a delay of seven and half months from a film’s initial cinema release. This “re-release window” was originally designed to encourage the public to go to cinemas to see films. But that is no longer in step with Internet realities: digital pirates can obtain a film in a matter of days after its cinema release. And even before in the case of foreign films. **This agreement therefore shortens the lead-times, doing so in two phases**. Firstly, immediately the anti-piracy mechanism is in place, the VOD lead-time will be shortened to the same period as that for DVDs, i.e. **six months**. Subsequently, discussions will commence with a view to arriving within a year at an agreement to shorten all “release windows”.

- **The combat against large-scale piracy is put on a new footing: it will now include a preventive phase and no longer necessarily involve the criminal courts.**

**Until now**, when companies defending the interests of creative artists detected a computer being used for illegal file-sharing, the only option open to them was **to lay the matter before the criminal courts, alleging infringement of copyright.**

However, criminal proceedings and the associated penalties (up to three years imprisonment and a €300,000 fine) are completely **disproportionate** when applied to mass illegal downloading. The agreement therefore provides for the setting up of an independent official authority charged with the task of preventing and punishing “piracy”.

Complaints will be submitted to this authority by creative artists whose works have been the target of piracy.

- It will begin by sending digital pirates **customised warning messages**: possible sanctions will in this way be preceded by a preventive phase, something the law has not hitherto permitted.
- If an individual continues to offend, the authority will then apply **sanctions appropriate** to the behaviour to which it is desired to put an end: **suspension** of the Internet subscription for a period between one month and one year. In order to avoid such individuals “migrating” from one Internet Service Provider to another, a “suspension register” will be set up along the same lines as the “*interdit bancaire*” database of banned individuals maintained by the *Banque de France*.
- **The preventive dimension of the combat is further emphasised** by the commitment of Internet Service Providers to **the testing of screening systems**. This is in fact ultimately the most promising solution and the technology in this field is beginning to be effective.

Legislation is necessary to implement several points contained in the Élysée Agreement. Given the time needed for review by the *Conseil d'État*, the bill should be tabled in the Senate in very early summer. Parliament will then have all the time it needs for considered debate with a view to the bill's adoption before the end of 2008.