



# The Essentials

#5 - November 2017

## ANNUAL REPORT 2016 - 2017

### A REVITALISED TEAM AND CONSOLIDATED BUDGET FOR THE INSTITUTION TO BREAK NEW GROUND

The annual report for 2016-2017 shall be presented both to the government and to Parliament, pursuant to Article L. 331-14 of the French Intellectual Property Code, in order to outline all of the efforts and actions undertaken by the High Authority: the implementation of the graduated response combined with the study of lawful and unlawful Internet use, promotion of the legal offer, support for consumers and regulation of technological protection measures. It establishes a range of proposals, some of which require regulatory or legislative change, to render the activity of Hadopi more effective, adapt to evolving lawful and unlawful practices and better contribute to the growing culture of responsibility online.

#### LETTER FROM THE CHAIRMAN: PASSING ON THE BATON



The publication of this annual report coincides with the coming to an end of my mandate as the head of the High Authority and the dawn of a new legislation. It is of particular

importance, therefore, to submit to Parliament and to the Government an account that is both accurate and comprehensive.

Last year, it was the intention of the College for the annual report for the 2015-2016 period to provide an objective and balanced overview of the conditions in which Hadopi was established, of the controversies and of its numerous unsuccessful proposals for reform during that time, and of the limitations as well as the significant achievements of its deployment over seven years of diverse legal duties.

In such a context, which remains of relevance today, this report for 2016-2017 takes account of the initiatives

that have marked the past year and details the proposals submitted to the public authorities and to the cultural stakeholders, which are able to be implemented expeditiously as part of a concerted drive against all forms of piracy.

In early 2017, the mobilisation of all staff of the Institution and the reopening of dialogue with its interlocutors enabled the High Authority, having a newly complete management team, to rebuild its potential in terms of expertise, intervention and service to users.

This has come to bear over recent months with prominent publications such as an international survey of anti-piracy tools and policies and studies highlighting new developments in the illegal offer, for example, preconfigured set-top boxes and the replication of illegal websites after their closure.

Other initiatives have helped draw attention to the methods by which the

youngest internet users access cultural material online and to the inherent risks and dangers posed by unauthorised websites. Hadopi's objective of educating users in these areas is widely shared and entails promising partnerships with the National education system, the French Data Protection Authority, rights-holding companies and various not-for-profit organizations.

In order to encourage cultural consumption that is fulfilling as well as responsible, the procedures and guarantees for the listing of offers that comply with legislation have at last been formalised. A new service for reporting user difficulties has recently come into operation, based on the model of the existing service designed for internet users to report works appearing to be unavailable.

The High Authority is also actively supporting the drive to provide e-books that are natively accessible to people

with a disability.

As part of the “graduated response”, implemented under the purview of the Rights Protection Commission, the identification techniques for peer-to-peer (P2P) offenders now extend to all reported subscribers of the major service providers, including cases of “multiple findings”, which were not previously incorporated into this process. The report underlines that, in addition to the impetus to educate the bulk of infringing internet users, the Commission is working towards targeting the most serious offenders both with issuance of its second notices and referral to the public prosecutor, of which we are seeing a significant increase. The most serious cases are referred on the both basis of minor and criminal offence, or even solely as a counterfeiting case, i.e copyright infringement.

Insofar as it is based on continually expanding knowledge of the most infringing practices and attaining an adequate body of effective criminal sanctions, such a strategy should serve to reassure those concerned that a sufficient deterrent effect of such proceedings has yet to be seen.

Moreover, a diversity of alternative solutions that have been suggested by rights holders’ representatives or that have originated from Parliament have been subject to recent debate, on account of the desire to punish infringements more systematically. As it is highlighted in this report, each of these proposals warrants proper scrutiny both in terms of the legal requirements and to strike a balance between the deterrent effect sought and what is acceptable to users.

In any case, such manner of reform cannot be undertaken independently of a comprehensive plan, prioritising not the practices of individuals but those massively infringing organised services.

The French Minister of Culture has specifically called for an open process of reflection about possible avenues to improve and intensify the fight against piracy and has publicly invited Hadopi to participate. Such a framework will best allow us to debate both how this Institution can contribute to the various contemplated measures as well as legislative adjustments, which, as experience has taught us, prove to be required to fulfil our present mission.

This report identifies the powers of intervention that the legislator could confer upon Hadopi, so that it may

have a significant and lasting impact in the reduction of illegal offers. Our proposals, in some cases drawing on the recognised prerogatives of other independent authorities, have been conceived with the intention that they shall never impinge on the responsibilities of rights holders and of avoiding needless competition between public bodies.

The aim is rather to allow Hadopi’s organisational independence and potential in expertise and evaluation to come to fruition wherever it might serve to support cooperative efforts such as to “Follow the money” approach, application of content recognition techniques or legal action against illegal services and their diverse replications.

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## « AN INDEPENDANT, EXPERT AUTHORITY, POISED TO TAKE ON NEW DUTIES IN THE SERVICE OF A RESPONSIBLE INTERNET CULTURE »

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In order to tailor our contribution to the above-mentioned collective reflection in the best manner possible, I established two workshops within the Institution, spearheaded by members of the College. The first one is focusing on fighting copyright infringing commercial offers and their evolving nature. The second one will focus on how to support users and help promoting legal offers.

Of course, a comprehensive plan to fight against piracy demands widely coordinated preparation, as well as immediate consolidation of voluntary cooperation between all contributors to cultural life online.

On the basis of our dynamic vision of a concerted effort by all parties, the forward-looking elements of the report successively present projects that, alone or most often as part of a collaboration, the High Authority can require regulatory adjustments and those requiring legislative amendments.

The most promising measures shall

without doubt benefit from periodic evaluation of their application, by an independent body that is free of any conflicting interests. Is this not what the legislator anticipated by asking that the High Authority report annually on “respect of the obligations and undertakings they have entered into by professional entities of the various sectors concerned”? I should stress that, in order for such a provision to come into full effect, all that is needed is a common determination.

As I hand over to those who shall continue the work already started, I would like to express my gratitude and best wishes to all Hadopi staff members. Their willingness, curiosity and motivation have enabled us, after having

weathered a number of storms, to begin to achieve greater recognition as an independent, expert Authority, poised to take on new duties in the service of an internet-based cultural economy.

My only parting wish is that, in this regard, what we together have fought to accomplish may soon bear fruit for the benefit of all.



Christian Phéline

# HADOPI ACTIVITY IN FIGURES

Figure 1 : Key figures of the graduated response

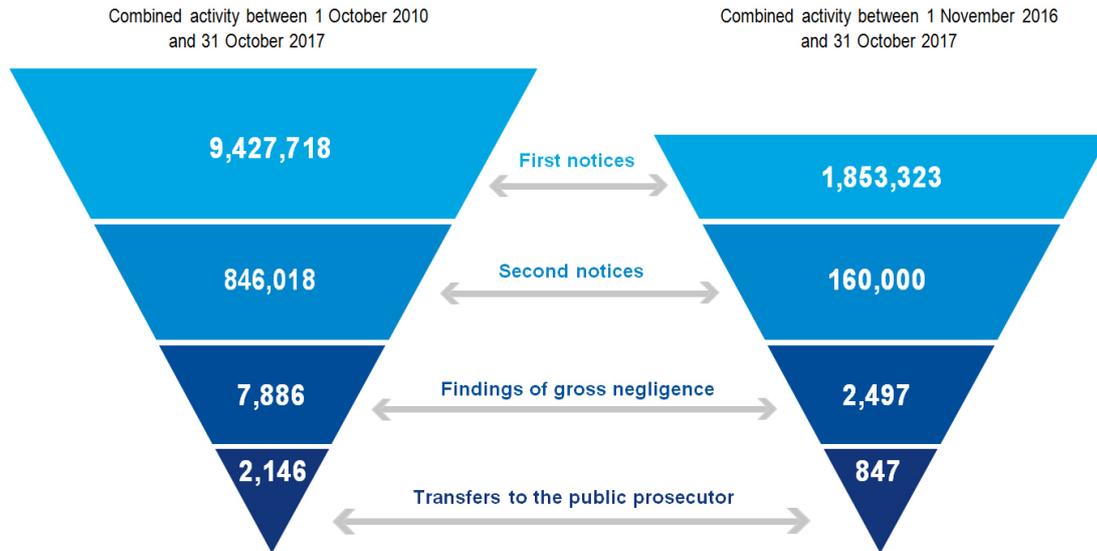
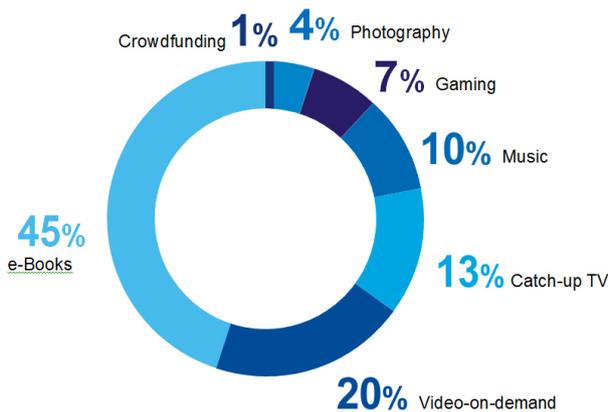


Figure 2 : Distribution of services by relevant cultural sector as at 30 september 2017

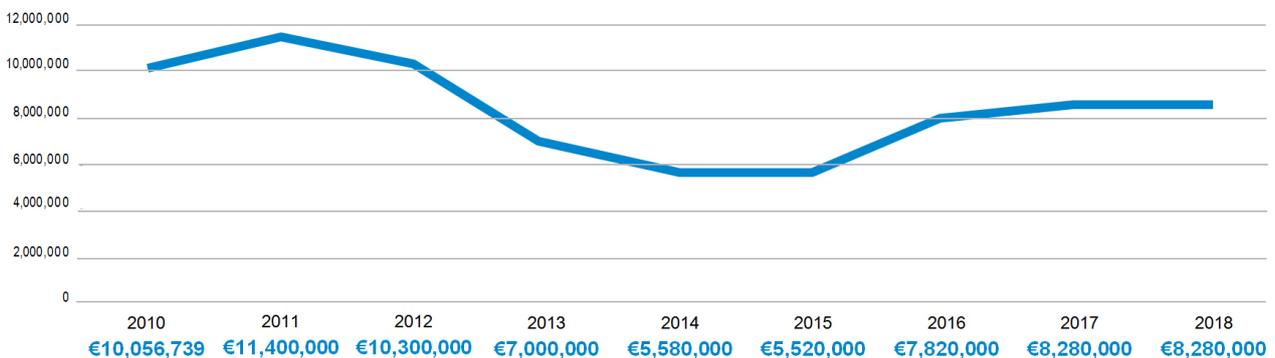


**427** WEBSITES AND CULTURAL SERVICES ARE LISTED BY HADOPI AS OFFERS THAT APPEAR COMPLIANT WITH INTELLECTUAL PROPERTY LAW AS AT 30 SEPTEMBER 2017

APPROXIMATELY THREE QUARTERS OF INTERNET USERS ARE AWARE OF HADOPI:

**72%** OF FRENCH PEOPLE SURVEYED CLAIM TO KNOW HADOPI NOT SIMPLY BY NAME<sup>1</sup>

Figure 3 : Changes in the amount of public funding since 2010



Approximately one in five French people surveyed has been made aware, by their own account or by their social circle, of the graduated response procedure, with a proven educational effect: three quarters of people affected directly claim to have reduced their consumption of illegal content<sup>2</sup>.

In the order of ten studies were published in 2017 and have gained considerable public attention. In particular, they relate to the digital cultural practices of eight- to 14-year-olds, online risks, systems abroad for combatting piracy, the process of replicating a pirate website, the key figures of the graduated response, etc.

1 - Omnibus Ifop [Institut français d'opinion publique – French Institute of Public Opinion] – September 2017: quantitative online study of 1049 individuals carried out between 13 and 16 September 2017. Sample representative of the French population of 15 years old and over.

2 - Fourth round of the survey of the perception and impact of the graduated response (Ifop): online study carried out between 13 and 16 September 2017, on a sample of 1049 respondents representing the French population of 15 years old and over; representation was ensured using the quota method (INSEE [Institut national de la statistique et des études économiques – French National Institute for Statistics and Economic Research] Employment Survey data).

PROJECTS BASED ON EXISTING LEGISLATION	REGULATORY ADJUSTMENTS	CHOICES FOR THE LEGISLATOR
<b>Reinforcing the deterrence of individual peer-to-peer (P2P) practices</b>		
<ul style="list-style-type: none"> <li>➤ Consolidating the large-scale measures aimed at bringing an end to illegal sharing.</li> <li>➤ Developing significantly Hadopi's recourse to criminal law in cases of repeat offences in spite of warnings.</li> </ul>	<ul style="list-style-type: none"> <li>➤ Authorising Hadopi to process port sources and destination sources to identify NATed IPs.</li> <li>➤ Simplifying the graduated response procedure (timescale of repeat offences, processing by ISPs, harmonisation of the rules for hearings).</li> </ul>	<ul style="list-style-type: none"> <li>➤ Listing titles of illegally shared works in the notices issued to subscribers.</li> <li>➤ Extending the time limit within which the public prosecutor can refer cases of copyright infringement to Hadopi.</li> </ul>
<b>Introducing Government regulations for the use of content recognition technology</b>		
<ul style="list-style-type: none"> <li>➤ Studying and assessing the implementation of agreements between platforms and rights holders.</li> <li>➤ Providing recommendations for the effectiveness of these agreements.</li> <li>➤ Where necessary, using mediation in the event of hindrances to their application.</li> </ul>		<ul style="list-style-type: none"> <li>➤ Conferring on Hadopi a regulatory role in respect of agreements between platforms and rights holders, in particular, to: <ul style="list-style-type: none"> <li>• define transitional measures or thresholds for their application;</li> <li>• monitor and assess their implementation, in terms of their effectiveness and proportionality;</li> <li>• organise a flagging system for non-compliant operators;</li> <li>• have recourse to adversarial proceedings in the event of disputes (rights ownership, exceptions, reappropriation of works).</li> </ul> </li> </ul>
<b>Engaging the Authority in the fight against massively infringing websites</b>		
<ul style="list-style-type: none"> <li>➤ Detecting emergent uses of illegal practices early.</li> <li>➤ Studying the latest economic models of illegal websites</li> <li>➤ Intervening as an independent authority for a greater involvement of intermediaries.</li> </ul>		<ul style="list-style-type: none"> <li>➤ Granting Hadopi general powers to characterise "massively infringing" websites within the framework of the instruments of soft law, such as in litigation proceedings (with recourse to the courts).</li> <li>➤ Appointing Hadopi to monitor, evaluate, facilitate and expand upon good practice MoUs.</li> <li>➤ Involving the Authority in the fight against "mirror websites" by granting Hadopi the task of setting criteria, characterizing such websites, and thus facilitating the eventual extension of court decisions to these websites.</li> </ul>
<b>Raising awareness among consumers, especially the youngest</b>		
<ul style="list-style-type: none"> <li>➤ Multiplying class awareness workshops, based on educational courses currently under development.</li> <li>➤ Encouraging initiatives targeted at students, young professionals and young content creators.</li> <li>➤ Raising awareness and supporting young internet users with regard to the responsible use of social media.</li> </ul>	<ul style="list-style-type: none"> <li>➤ Introducing a reference system for the quality of the legal offer.</li> </ul>	<ul style="list-style-type: none"> <li>➤ Setting general objectives to raise awareness and inform the public, with reference to the instruments of soft law.</li> <li>➤ Granting the High Authority a greater capacity to monitor and access data, in order to identify the incentives and obstacles for the development of the legal offer.</li> </ul>
<b>Facilitating access to works</b>		
<ul style="list-style-type: none"> <li>➤ Helping to provide means of interoperability, firstly in the case of e-books for members of the public with a disability and the development of the lending of digital works in libraries.</li> <li>➤ Working towards full implementation of the "disability" exception.</li> </ul>		<ul style="list-style-type: none"> <li>➤ Increasing the effectiveness of the "disability" exception by allowing Hadopi to issue good practice guidelines and, where necessary, serve notice on publishers.</li> <li>➤ Creating a new impetus to encourage interoperability by granting Hadopi powers to investigate, set guidelines and serve notices and injunctions, and by allowing consumer groups to refer cases to the Authority.</li> </ul>

**THE COMPLETE 2016-2017 ANNUAL REPORT IS AVAILABLE ON THE HADOPI WEBSITE [WWW.HADOPI.FR](http://WWW.HADOPI.FR)**

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