

2016 / 2017

# ACTIVITY REPORT

High authority for the dissemination  
of works and the protection  
of rights on the internet

Hadopi

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# 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.



**In addition to the impetus to educate the bulk of infringing internet users, the Commission is working towards targeting the most serious offenders.**

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 fulfill our present mission.



To allow Hadopi's organisational independence and potential in expertise and evaluation to come to fruition wherever it might serve to support cooperative efforts.

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.

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

## WARNING

Published at the end of 2017, this annual report in keeping with previous years' reports ever since the High Authority was established, a period of activity straddling two calendar years and only deals provisionally with the budgetary execution for the year ending.

Drawn up under the responsibility of the governance put in place in early 2016, it aims to reflect, in continuity with the previous annual report, the directions taken since then and their implementation conditions.

However, it should be taken into account that Law No. 2017-55 of 20 January 2017 on the general status of independent administrative and public authorities provides, in Article 21, that all independent authorities are required to transmit to Parliament and the Government, each year "before the 1st of June", an activity report giving an account of the performance of its missions and its resources.

In order to fulfill this information obligation for the whole of the past calendar year, a report for the calendar year 2017 will be produced before this legal deadline in order to update the figures given in this report and provide the final figures for the 2017 budgetary execution and the work carried out in the intervening period.



*N.B.: Denis Rapone was absent at the time the photo was taken.*



## THE HADOPI BOARD

| MEMBERS                          |           | DESIGNATION METHOD   | APPOINTMENT  |
|----------------------------------|-----------|--|--|
| <b>Christian PHÉLINE</b>         | Full      | Appointed by the First President of the Court of Auditors  | Decree of January 6, 2012 and Decree of January 11, 2013 |
| Sylvie TORAILLE                  | Alternate |  |  |
| <b>Denis RAPONE</b>              | Full      | Appointed by the Vice President of the State Council   | Decree of July 1, 2014                                   |
| Dominique CHELLE                 | Alternate |  |  |
| <b>Nicole PLANCHON</b>           | Full      | Appointed by the First President of the Court of Cassation   | Decree of February 4, 2016                               |
| Vincent VIGNEAU                  | Alternate |  |  |
| <b>Anne-Elisabeth CRÉDEVILLE</b> | Full      | Appointed on the joint proposal of the Ministers for Electronic Communications, Consumer Affairs and Culture | Decree of January 6, 2012                                |
| Jean-Pierre DARDAYROL            | Alternate |  | Decree of February 4, 2016                               |
| <b>Laurence FRANCESCHINI</b>     | Full      |  | Decree of July 1, 2014                                   |
| <b>Bernard TRANCHAND</b>         | Full      |  | Decree of July 1, 2014                                   |
| <b>Alain LEQUEUX</b>             | Full      |  | Decree of July 1, 2014                                   |
| <b>Marcel ROGEMONT</b>           | Full      | Appointed by the President of the National Assembly and the President of the Senate                          | Decree of February 4, 2016                               |
| <b>Didier MATHUS</b>             | Full      |  | Decree of January 6, 2012                                |

## THE RIGHTS PROTECTION GOVERNANCE



| MEMBERS                         |           | DESIGNATION METHOD   | APPOINTMENT                 |
|---------------------------------|-----------|--|-----------------------------|
| <b>Dominique GUIRIMAND</b>      | Full      | Appointed by the First President of the Court of Cassation | Decree of January 29, 2014  |
| Stéphanie GARGOULLAUD           | Alternate |  |                             |
| <b>Fabien RAYNAUD</b>           | Full      | Appointed by the Vice President of the State Council       | Decree of December 24, 2015 |
| Sophie-Justine LIEBER           | Alternate |  |                             |
| <b>Jean-Baptiste CARPENTIER</b> | Full      | Appointed by the First President of the Court of Auditors  | Decree of January 6, 2012   |
| Paul-Henri RAVIER               | Alternate |  |                             |

## MISSION IMPLEMENTATION IN 2017

In 2017, the gradual staff replenishment and lessons learned from the 2016 review enabled Hadopi to breathe new life into its activity.

Diversified observation methods produced brand-newdata on the practices of the youngest consumers, emerging uses and the risks presented by copyright-infringing sites.

Support for consumers has been significantly strengthened and the solutions for referencing online offers that appear to be respectful of copyright have been clarified.

Relying on the newly-consolidated awareness-raising mechanism with the widest outreach, the criminal aspect of the graduated response has been significantly strengthened and support for professionals has been developed.



# Observing copyright respecting & infringing consumer practices

The implementation by the institution of its mission to observe the uses of the Internet aims to guide public action in this field and to supply sector stakeholders with useful information. After a period of decreased production, due to lack of manpower and resources, Hadopi gives new breath of life into its research activity. This activity has since been deployed in two directions: usage observation and the analysis of copyright-infringing practices, particularly emerging ones.

The usage and legal offer survey meets the requirement set out by the legislator to monitor major indicators (rate of cultural practices being digitised, changes in copyright-infringing practices, subscriptions to legal offers, etc.) over time. During the exercise, Hadopi first studied the digital cultural practices of 8-14 year olds, who often act as precursors. This study also showed that several children had found themselves in delicate situations by browsing illegal sites (inappropriate content, fraudulent advertising, etc.) and Hadopi has devoted part of its work to the topic of own risks specific to copyright-infringing sites. Recent events - cyberattacks, data theft, confidential file leaks, etc. - underline the importance of security issues on the Internet. To find out the nature of these issues, Hadopi conducted a study on the risks specific to copyright-infringing sites, allowing for a correlation of users' perceptions. This was measured via a quantitative survey of Internet users, and by direct observation of clearly copyright-infringing sites.

The mobility of copyright-infringing uses requires a regular and rigorous monitoring of their development. Hadopi has produced a technical analysis of the practice of using a preconfigured multimedia box to access, from a television, copyright-infringing content available on the Internet, such as paid subscription channels, without being subscribed. Internal work also carried out allowed us to analyse the replication mechanism of a pirate site that has been shut down.



The launch in 2017 of a new publication format, « L'Essentiel », summarised in four pages the results of the published studies, reflecting the institution's willingness to contribute to the public debate through this publication and to ensure its dissemination to the widest audience possible.

## EVOLVING INTERNET USER'S PRACTICES

### Survey of consumer practices and the legal offer

In operation since 2011, the usage survey makes it possible to evaluate the weighting of practices and perceptions in Internet users on the subject of digital cultural goods. Its seventh edition is based on an online quantitative study of a sample of 1,543 Internet users aged 15 and over, conducted by Médiamétrie in April 2017. In existence since 2013, the offer survey examines the perception that Internet users have of the legal offer and their motivation to consume legally; its fifth edition is based on an online quantitative survey completed by Ifop and commissioned in January 2017 with a sample of 1,508 Internet users.

It emerges from these new editions that digital cultural consumption now involves nearly four in five Internet users, with 78% of Internet users stating that they have consumed digital cultural goods over the last 12 months, compared with 70% in 2016. This growth now affects all age groups, with 69% of individuals aged 40 and over now online consumers, up eight points.

The proportion of Internet users who report having mixed practices, both copyright respecting and infringing, is up eight points to 23% of Internet users, with mixed and exclusively copyright-infringing practices involving a total of 27% of Internet users aged 15 and over. The next surveys will determine whether this increase is cyclical (seasonal effect, expected releases of films or series, etc.) or is more sustained.

Copyright-infringing consumption is done in particular through series streaming. At the same time, subscriptions to legal audiovisual offers rose significantly from 5% in 2016 to 9% of Internet users in 2017.

Consumers report much less reliance on the use of copyright-infringing offers "out of habit": only 37% of respondents cite this reason, compared to 46% previously. In the case of movies, nearly one in two users prefers to use a search engine rather than resort to a "favourite" copyright-infringing site. The clear brakes for legal consumption then remain the price and the content on offer, sometimes deemed too limited in terms of diversity or recency of the catalogue.

The desire to be in compliance with the law remains the main motivation put forward for legal consumption, but Internet users do not always appear to be able to distinguish legal offers from

copyright-infringing offers. The legality of a site remains, wrongly, still strongly associated by many of them to its paying nature (60% of Internet users).

Finally, the platform *offrelegale.fr*, linking to sites that appear to be respectful of intellectual property rights, is known to more than a quarter of Internet users. The reporting service for unfindable works<sup>1</sup>, set up in 2013, is known to 71% of Internet users and, here too, with a little more conviction than in 2016 (33% are in complete agreement versus 29% in January 2016).

### 8-14 years old: the emergence of a generation of *smartphone natives*

In order to better adapt its activities to raise awareness of digital and creation issues among young audiences and to anticipate future uses, Hadopi has explored the digital cultural practices of 8-14 year olds and called on the MSM Institute to conduct a qualitative study, carried out in the Île-de-France region, in November and December 2016. It used a sample of 63 children aged 8 to 14 (from CE1 to 3e - equivalent to ages 7-15, or primary year 3 to secondary year 10 in the UK), through 28 interviews of two hours per group of two or three friends, grouped by gender (girls, boys).

Born between 2002 and 2008, these younger users, who have only ever known the mobile Internet and mobile phones, are a generation that can be described as "smartphone natives". The ease with which they use mobile devices, touch screens and applications, inspires in them with a new relationship to the Internet and its services. Phones are now the most common way to access digital cultural assets: music, videos and short-format games are with them throughout the day - while longer-format content is reserved for evenings and weekends.

For these young consumers, the YouTube platform is by far the main Internet entry point and its tutorials guide their practices. In using it they discover a new way of consuming that shapes their expectations in terms of access and their views on the success of artists ("the number of views"). The almost systematic use of unpaid streaming in general creates pragmatic expectations of immediacy, ease of access, freeness and very short formats, characteristic of what is sometimes called "*fast culture*".

The children surveyed did not wonder whether the sites used were legal and did not truly imagine that practices could be prohibited or infringe on the

<sup>1</sup> Part 2-2-a of the report.

rights of authors and performers. Some children are sensitive to the creative link between a work and its creator but most of them are unaware of the existence of property rights, and more generally of issues for the culture economy. On the other hand, they express strong fears about the dangers linked to the Internet (inappropriate content, cyber-bullying, viruses), some having already faced difficult situations.

It is therefore necessary to be both vigilant and pedagogical in order to help these children and pre-adolescents to understand the rules and issues related to the consumption of cultural goods online, whether in terms of legality or risks associated with the consultation of copyright-infringing sites.

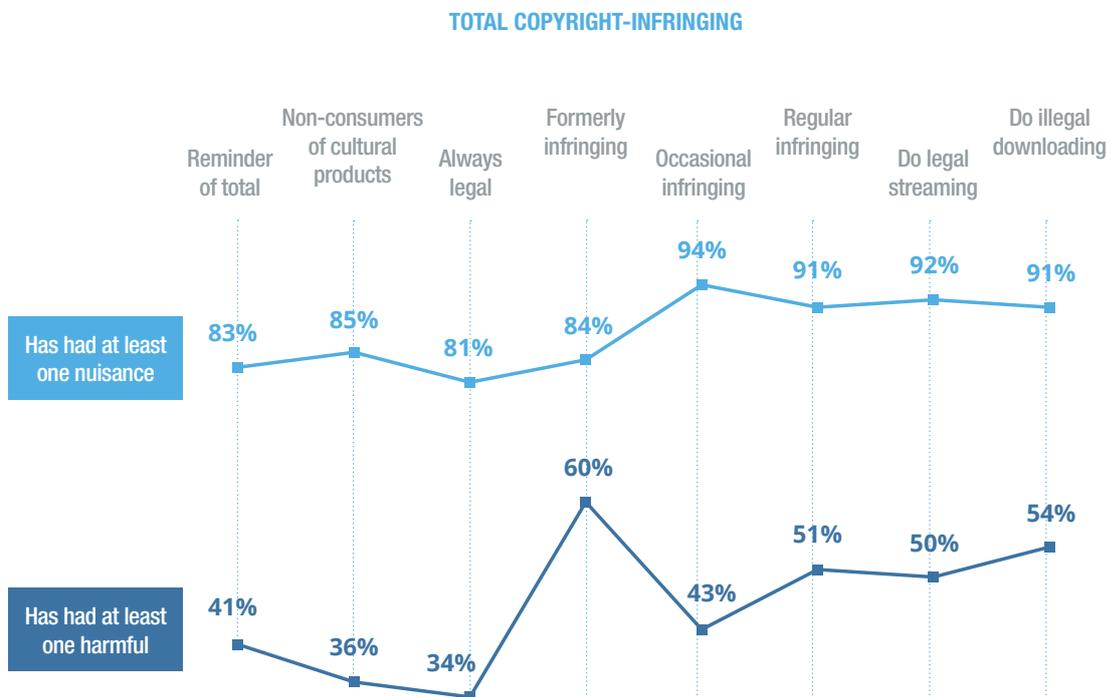
### Risks incurred by Internet users

The study on the "risks of copyright-infringing sites"<sup>2</sup> was carried out in two stages: a direct observation of 62 clearly copyright-infringing sites conducted by Hadopi between December 2016 and January 2017, followed by a quantitative study on the perceptions of Internet users, conducted online from January 25<sup>th</sup> to February 2<sup>nd</sup>, 2017 by the Ifop Institute.

It emerged from the web observation works carried out on the 62 evidently copyright-infringing sites that 49 of them (or 79%) were found to present a potential cyber security risk or had security alerts in tools used to identify potentially dangerous sites, while two-thirds incited users, through deceptive links, to install undesirable software.

In the perceptions of Internet users, the notion of risk is ever present. However, Internet users consider that the risk of harm (theft, scam, virus, etc.) is much more present on copyright-infringing sites than on legal sites (risk level of 7.3/10 on average versus 4.3/10). Regular copyright-infringing content consumers were generally the least sensitive to this danger. The younger and more technophile, the more likely to be better prepared.

Nuisance and harm effectively affects copyright-infringing users more often. Harms, those with more serious consequences, often with financial loss for the user, have been suffered in particular by former copyright-infringing content consumers at the rate of 60%, versus 41% on average.



+/-: difference significantly greater/less than 95% of the total

<sup>2</sup> <https://hadopi.fr/actualites/consommateurs-illicites-doeuvres-dematerialisees-un-public-davantage-expose-aux-risques>

Risk exposure online seems to have an impact on practices: 70% of current and former copyright-infringing consumers report having decreased or stopped their copyright-infringing consumption of cultural property to protect themselves from potential online risks. The progression of their legal uses seems to protect them from the risks since 70% of these users who have modified their practices declare having had fewer or no more problems. The legal offer thus appears to both legitimate and copyright-infringing consumers as a "safe bet", one that is less exposed to risks (viruses, scams, etc.).

The lessons of this study were debated at a round table organised by Hadopi last June, on the 29th at the Cinema l'Entrepôt, bringing together representatives from CNIL, Arjel, the Ministry of Education and the e-Enfance association. These results encourage the continuation of awareness-raising actions undertaken through partnerships, particularly with younger consumers.

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## REVIEW OF NEW KINDS OF COPYRIGHT-INFRINGEMENT SERVICES

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Various studies undertaken by Hadopi, and in particular the interviews conducted with younger consumers, have highlighted the risks associated with the use of copyright-infringing sites. These risks come in the form of nuisances and harms caused to their users with regard to computer security, protection of personal or banking data or exposure of the youngest users to inappropriate content.

In order to understand the risks associated with copyright-infringing sites and to better inform users, Hadopi has set up a research protocol around this topic, focusing on both the users and the copyright-infringing sites themselves. The risks incurred by users were evaluated by measurements taken directly on the sites and by a quantitative study conducted among Internet users. In addition, several studies conducted by stakeholders other than Hadopi have sought to assess the risks and impact of piracy on the economy of cultural industries. Finally, the institution analysed the replication process of a pirate site that has been shut down.

### Media players configured for pirating purposes and their ecosystem

Hadopi is concerned about the emergence of the use of software configured for pirating, in particular installed on boxes connected to the television and the Internet. These boxes, available for purchase on the Internet, are equipped by the seller or the user with software and various third-party applications (*add-ons*), some of which allow access to the illegal offers

on the Internet from their television (*streaming sites*), to pay-TV channels or to record certain streams as files in the form of user files (*stream ripping*).

This practice is already highly developed in the United Kingdom and North America and the information collected as part of the international monitoring that Hadopi conducts suggests that this pirating tool with high usage potential could develop rapidly in France. According to our study of the risks to users of copyright-infringing websites, 4% of Internet users aged 15 and over have already used this software for illegal purposes, which represents nearly two million users. This new service offering threatens the economics of pay-TV channels, exclusive sports broadcasting rights and, more generally, premium content. Legal action is developing against them in the United Kingdom, Canada, the United States and Portugal, and rights holders are coming together through an international IPTV task force. The Court of Justice of the European Union (CJEU), as submitted by the Netherlands, recently deemed that the marketing of such boxes configured as such constituted an act of communication to the public<sup>3</sup>.

In this context, a technical study was carried out to first understand the functionality of the software and its ecosystem. This allowed for further detail of its uses in access to digital cultural goods made available without authorisation. This technical document is a prerequisite for the completion of a socio-economic study and legal analysis that will allow for the adoption of a specific action plan. With this in mind, Hadopi has thus started to work more closely with those stakeholders likely to be affected by this issue, such as audiovisual publishers and online marketplaces.

<sup>3</sup> Judgment of 26 April 2017, *Stichting Brein/Jack Frederik Wullems, also acting under the name "Filmspeler"*, C 527/15.

## Lessons learned from a pirate site replication process

In its legal role of observing the copyright-infringing uses of protected works, Hadopi studied the reappearance process of pirate sites that had been shut down. The lessons of this study were presented on October 9<sup>th</sup>, 2017.

A few months after the operation that led to the closing of zone-telechargement.com, a new site appeared under the address zone-telechargement.ws. With a very similar appearance and functionality, it gained a large audience, making it one of the most highly visited copyright-infringing sites in France.

The entire zone-telechargement.ws site, a replica of the old site zone-telechargement.com was browsed in June 2017 to collect publicly available data from each page. These data were then processed to extract useful information for statistical purposes.

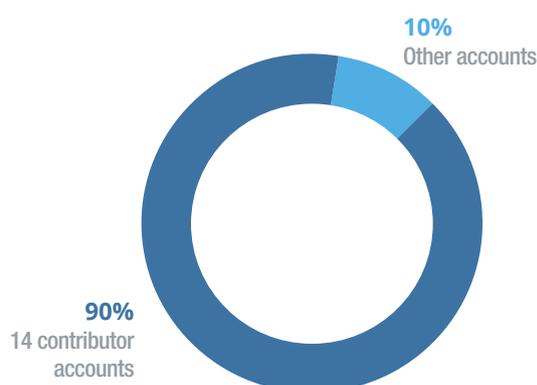
It appears that the usual name of "mirror site" is not adequate for this new site. It is rather a re-creation ex nihilo of the original site and not a simple alternative domain name. This new site stands out from the first in that it clearly focuses on movies and television series while previous key categories, such as music, have been discontinued. In addition, the files proposed by the new site have all been put online since December 2016, so these are not "recycled" links from the old site.

The replica site is based on a dual source of advertising revenue. The site features advertisements on its pages from partners who appear to be fraudulent themselves. In addition, *Zone Telechargement* imposes on its users a redirect via a dedicated website on which - unbeknownst to them - advertising banners are displayed for well-known advertisers. The link "obfuscator" allowing this user-redirect makes it more difficult for rights holders and companies specialised in the fight against piracy to access the copyright-infringing links. In addition, it avoids existing self-regulation mechanisms, such as the Best Practices in Online Advertising Charter.

The speed of implementation of this process allowed the replicated site to exploit the reputation of its predecessor and to quickly attract a large audience. We see two distinct phases in the online release of content: high levels of activity between December 2016 and February 2017 (up to 1,800 new titles added in one week, with an average of about 1,230 releases weekly), then a stabilisation from March 2017 (an average of 420 weekly releases, almost three times fewer than in the previous phase).

Finally, we note that the content supply of this new massively infringing site is based on a small number of contributing accounts. Fewer than 30 of these accounts are behind the content posted, 90% of the 22,000 titles available were made available by only fourteen of them.

Breakdown of titles posted by contributor account



Source: Hadopi

Thus, far from the idea of universal and altruistic sharing that this new site claims to defend, its profit-seeking purpose is clear and its content supply is based on a small number of contributors.

In the wake of legal action taken by right holders to close a site such as Zone Telechargement, the precise and continuous observation of the methods these offers use to relaunch will contribute to a more effective fight against piracy over time.

The reporting of these copyright-infringing replicas and their specific financing mechanisms as quickly as possible to the technical and financial intermediaries should make it more difficult to renew the massively infringing offers.

Following the publication of this study, several audiovisual organisations have requested the blocking and delisting of four sites considered to be illegal (including the replica zone-telechargement.ws). For the first time, these requests also concern the link obfuscators used by these sites.

# Promoting the legal offer and supporting consumers

Encouraging the development of the legal offer and assisting consumers covers three areas, meeting both the formal requirements of the legislator and the operational possibilities for their implementation by institution staff:

- identification and qualification of the legal offer, through labelling or indexing. Given the limited success of the labelling procedure, the institution

has set up a complementary system for indexing offers, based on an observation methodology;

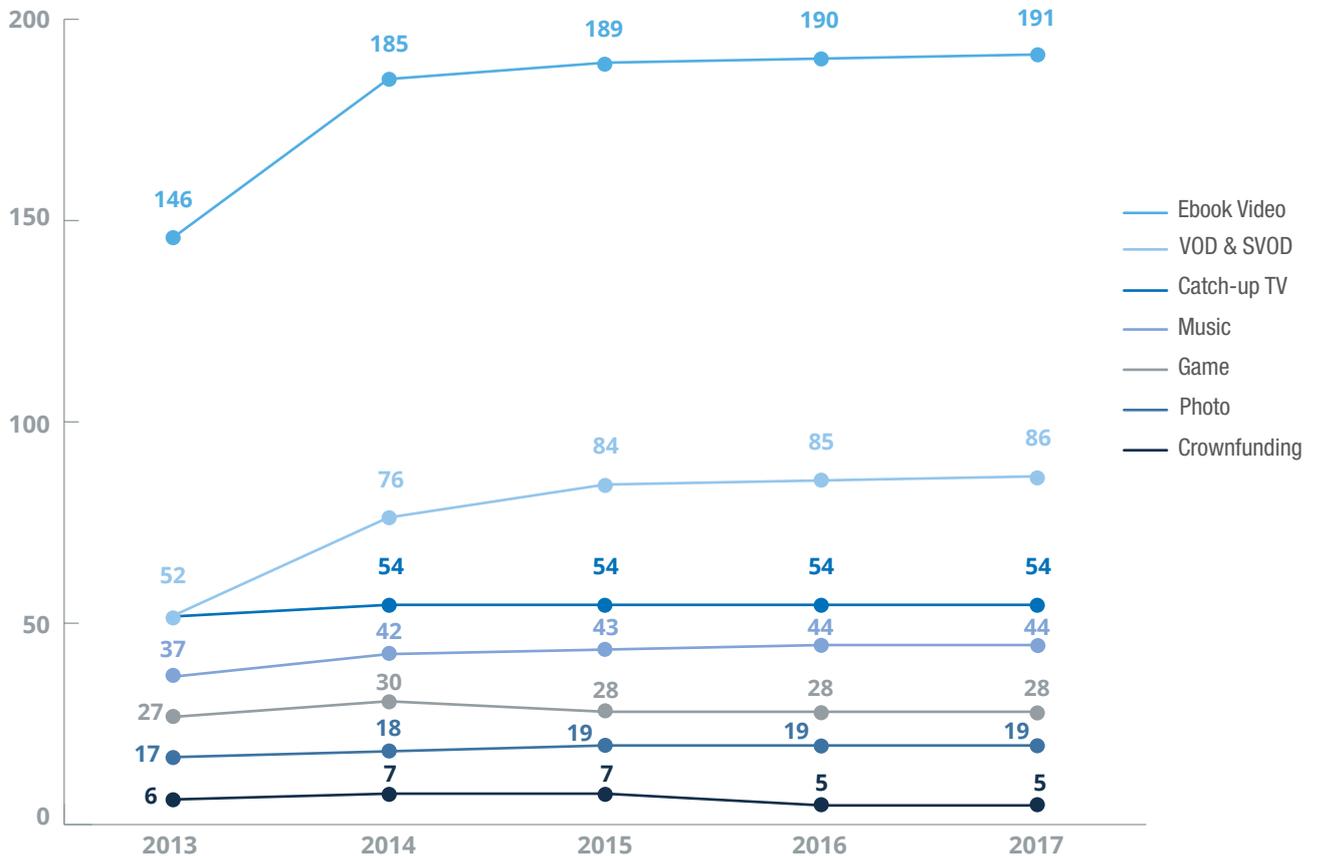
- provision of customer focused services, such as the reporting of unfindable works<sup>4</sup> ;
- Awareness-raising among the public, and more particularly among school audiences, on creativity and its distribution online.

## IDENTIFICATION AND QUALIFICATION OF THE LEGAL OFFER

The High Authority handles the applications for the labelling of the legal offers sent to it. The label-awarding procedure is very strictly laid down by secondary legislation (articles R. 331-47 and following). In practice, labels have proved unattractive, in part because of the absence of counterparts and the complexity of the procedure. This requires the platform to apply for the label and to accept the publication of its catalogue on the High Authority's site for a month. Between July 1<sup>st</sup>,

2016 and September 30<sup>th</sup>, 2017, Hadopi received two labelling applications<sup>5</sup>.

The High Authority has drawn up a catalogue of indexed offers that do not infringe intellectual property rights. It reports this on the [offrelegale.fr](http://offrelegale.fr) portal. This is a tool available to users to search for platforms based on their access (streaming/download) or consumption (pay-per-view/subscription) preferences.



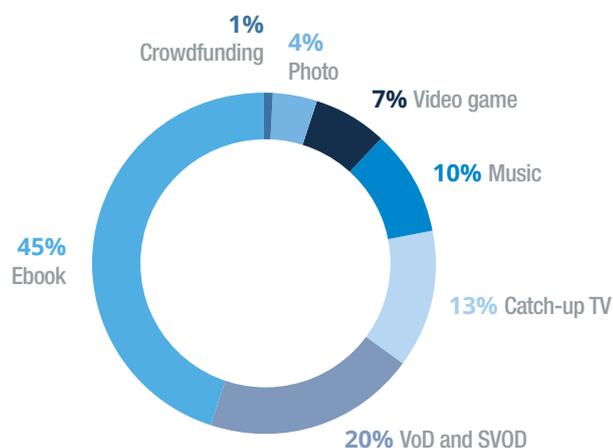
<sup>4</sup> Or for reporting usage difficulties, see the section on exceptions and interoperability

<sup>5</sup> Files submitted by: a) the online publisher Dépaysage and b) the music streaming platform Sonothèque

Since 2015, the number of indexed platforms has been relatively stable. As of September 30<sup>th</sup>, 2017, Hadopi has 427 cultural sites and services indexed on [offrelegale.fr](http://offrelegale.fr). Over the year, Hadopi has seen the

appearance of twelve new cultural services. Nine services, on the other hand, ceased their activity, and so being deindexed from [offrelegale.fr](http://offrelegale.fr).

Break-down of indexed services per cultural sector as of September 30<sup>th</sup>, 2017



The over-representation of ebook platforms might be explained by several factors. On the one hand, the use of ebooks remains relatively low compared to other digital cultural goods use. It is still an emerging market, one in which many offerers believe they can position themselves. On the other hand, it may be appropriate to note a French cultural specificity: the number of book shops is very high, which could also stimulate the creativity of entrepreneurs wanting to do the same online.

The [offrelegale.fr](http://offrelegale.fr) site and all the features it hosts have been transferred to the site [hadopi.fr](http://hadopi.fr), as part of the redesign of the latter and the indexing procedure provided for by the deliberation of July 13<sup>th</sup>, 2017.

Through an important deliberation dated July 13<sup>th</sup>, 2017, the Hadopi Board specified its indexing method for offers that do not infringe intellectual property rights, in addition to the labelled offers, and the guarantees they offer stakeholders. This deliberation takes into account the rules applicable to soft law and tends to improve the readability of online offers in addition to those formally “labelled” pursuant to the procedure provided for in Article L. 331-23 of the intellectual property code.

## SERVICES AVAILABLE TO CONSUMERS

Hadopi has carried out several actions to improve user support on the Internet, for consumers or professionals. As of 2014, a service has been put in place to allow them to report works that they can not find legally<sup>6</sup>. Based on this model, in the summer of 2017, a service was set up to report usage difficulties, specifically in terms of interoperability or the ability to copy, a service that is presented in part 4 of this

report. The institution’s website has been redesigned and now offers specialised spaces tailored to Hadopi’s various audiences. Lastly, Hadopi has stepped up its consulting and teaching efforts to better assist consumers and professionals with solutions that help them to secure their access to the Internet.

<sup>6</sup> A service for reporting usage difficulties was also set up in 2017, see part 4-1

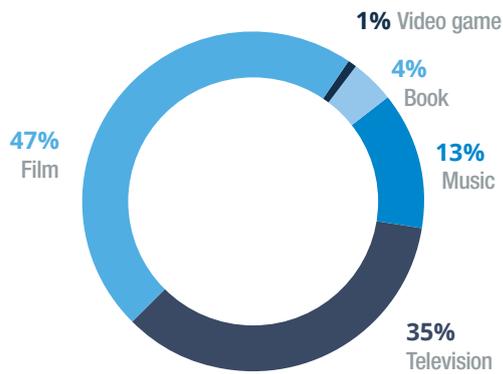
### Reporting works for which a legitimate source could not be found

Launched in 2014, this service allows consumers to submit to the Hadopi website any cultural work they wish to consume legally online, but can not find.

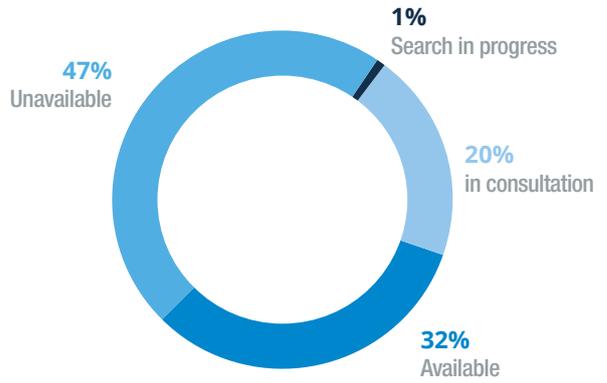
During the last fiscal year, 349 new reports were recorded, bringing the total to 1,454 works reported since the service launched.

The audiovisual sector continues to account for the vast majority of works reported by Internet users, up to 85% of this year, of which 48% for films and 36% for television works.

Breakdown of the 1,454 works shown by type of goods on September 30<sup>th</sup>, 2017

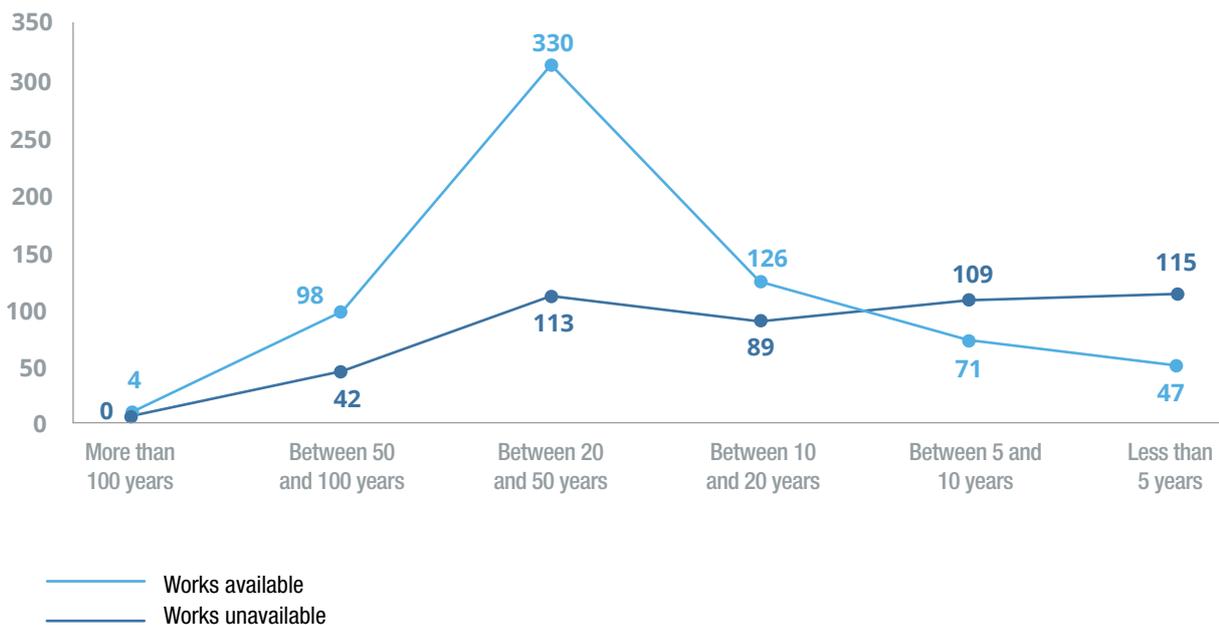


Breakdown of the 1,454 works reported by status as of September 30<sup>th</sup>, 2017



Of the 1,454 works reported, 32% of them are actually available on cultural services listed on [offrelegale.fr](http://offrelegale.fr).

Availability of the works reported by age



However, it is important to note that this availability varies significantly depending on the creation date of the cultural work. We noted that while recent works were more likely to be available (this is the case of 65% of those less than ten years old), unavailability increases sharply beyond the threshold of twenty years old: 74% of unavailable works fall into this category. However, more than half of the works sought by Internet users are prior to 1997, a sign that significant digitisation work remains to be done in this area.

Similarly, we observed that this availability increases with the recency of the work. As such, 38% of audiovisual works over twenty years old can not be found on DVD, compared to only 28% of those produced over the last two decades. Overall, 65% of the reported works are available in DVD/Blu-Ray format, compared to 32% availability for VoD<sup>7</sup>/SVoD<sup>8</sup>. This difference shows the importance to users of having a larger catalogue of works, especially on online platforms.

Lastly, the service for the reporting works not found is also a way for Internet users to find out the reasons for the unavailability of the works they wish to consult. The answers provided by the rights holders make it possible to answer these questions. Among the main reasons given, it is worth mentioning - in

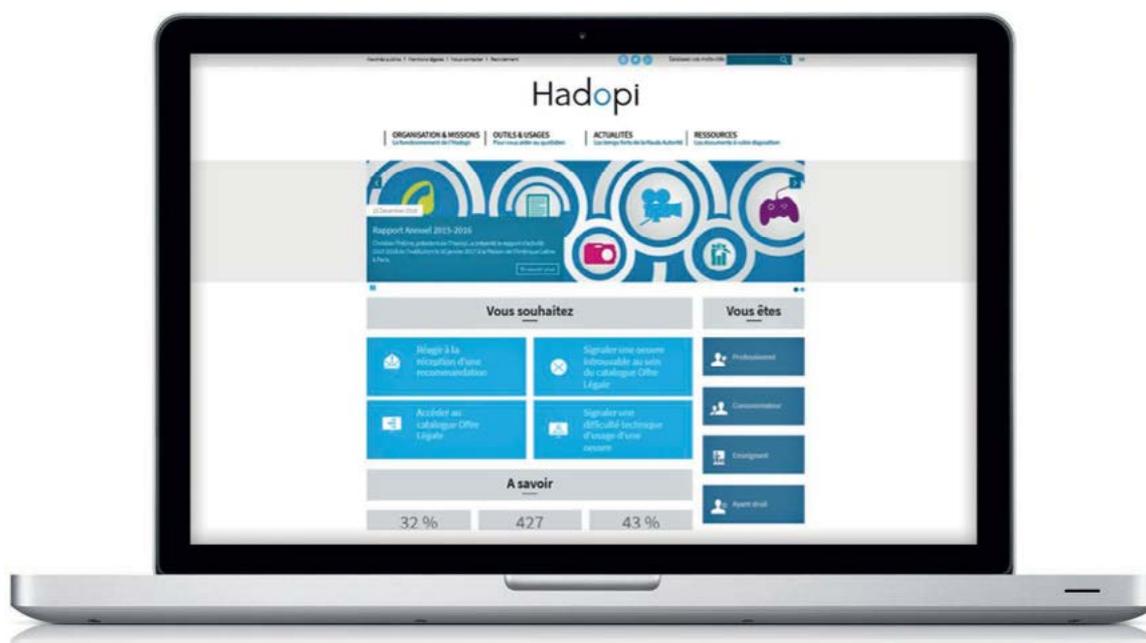
no order of importance - media chronology for cinematographic works, inability of producers to finance the digitisation of a work in VoD given the low level of sales or rentals forecast, and the inability to reach an agreement with the rights holder for the digitisation of a work.

## The redesign of the institution's website

Hadopi redesigned its website in 2017, commissioned in November 2017.

The new Hadopi site is part of a wider simplification process, and brings together on a single site content that was previously distributed between hadopi.fr, offrelegale.fr and the High Authority's blog.

It aims to better meet the expectations of the various institution audiences (consumers, rights holders, notice recipients, professionals, teachers in particular), by proposing, beyond the institution's content and publications, online services such as the indexing of offers that appear to not infringe intellectual property rights, the reporting of unfindable works, the reporting of usage difficulties, practical fact sheets and educational modules.



<sup>7</sup> Video on Demand (aka: VOD)

<sup>8</sup> Subscription Video on Demand (aka: SVOD)

## Supporting private and business Internet subscribers towards a more secure connection

As part of its general task of protecting works, Article L. 331-26 of the CPI provides that Hadopi publicise the functional specifications of the security methods intended to prevent copyright-infringing usage of a person's access to a public communication service online, to obtain the Hadopi qualification or labelling in accordance with the procedure set out in Articles R. 331-85 and following of the IPC.

The reasoning behind the creation of this qualification or labelling during the parliamentary work for the Hadopi law is essentially based on the mechanism that was initially planned yet finally blocked by the Constitutional Council: in the administrative sanctions mechanism planned at the start, internet subscribers could use a labelled or qualified security method that would exempt them from their responsibility - this was to ensure that their Internet access had not been used by a third party at their expense. This is not the case today with the criminal offence of gross negligence.

As such, in the current state of the legislation, Article L. 331-26 of the CPI provides for the labelling of methods "intended to prevent copyright-infringing use of Internet access", which targets misuse of subscriptions by third-parties and not protection against the practices of piracy by normal users of the subscription.

In the new framework set out by law, in its final wording, the regulatory system currently in effect provides a relatively cumbersome and complex mechanism for the evaluation and labelling of security methods. The developer of a security method seeking to obtain the label must choose an evaluation centre approved by the ANSSI to start the evaluation of their tool (article R. 331-85). On completion of their task, this evaluation centre will give their report to the applicant. The latter must then file a label application with Hadopi, accompanied by this evaluation report (article R. 331-89). Hadopi then examines the label request.

The High Authority therefore viewed these security methods as a tool for supporting users as opposed to hidden tools for monitoring their Internet use, in a way that could be considered intrusive.

Two draft functional specifications were submitted for public consultation in 2010 and 2011. The "networks and technology" lab then undertook a new project in this area in collaboration with several IT and network stakeholders.

However, no finalised version of the functional specifications has been published nor any security method labelled by Hadopi to date. Indeed,

the exploratory work carried out by Hadopi has highlighted the difficulties in reconciling the implementation of this procedure and respecting certain essential balances such as:

- ensuring that the functional specifications guarantee the labelling of non-invasive methods that respect the rights of Internet users and do not put in place controls that can be likened to filtering measures;
- taking care not to favour certain existing stakeholders or creating barriers to entry into the market.

The context for securing Internet connections has changed considerably since 2010. The number of devices that connect to the Internet has exploded. As Internet threats have developed and diversified, all protection tools must themselves adapt on a very regular basis.

As such, from 2012, the High Authority highlighted in its activity report that the issues related to security methods "exceed the scope of the task entrusted to the High Authority and the means allocated to it". In addition, the publication of functional specifications and the labelling of security methods face technical and legal difficulties that have not yet appeared possible to overcome without risking weakening the balance between these procedures and the rights of the Internet users, or competition requirements.

For professionals, however, who sometimes share their connection with many other users, the situation is complex. The monitoring of professionals put in place by the Rights Protection Commission as part of the graduated response has also highlighted a real need for information in this area. Work has been undertaken to identify the existing security methods used by professionals sharing their connections, especially those using Wi-Fi hotspots. This is to identify the needs expressed by operators who provide this type of solution and to evaluate their expectations as to the possibility of a label issued by Hadopi, whose scope and arrangements merit review, in any case.

Regarding the domestic use of an Internet connection by an individual, various simple security measures nevertheless exist, such as:

- uninstalling peer-to-peer software or applications on a home computer;
- setting up parental controls on the shared family computer or creating separate user profiles;
- changing or strengthening the Wi-Fi key.

More generally, the connection boxes currently provided by Internet Service Providers offer a wide range of settings that are likely to effectively secure its connection and prevent it from being used to pirate protected works.

Hadopi, while reinforcing its advice and training

initiatives targeted at better supporting Internet users in securing their Internet access, proposes to carry out an expert review on the effectiveness of these devices with regard to the specific objective

of preventing copyright-infringing uses, and their proportionality, as well as proposing to the legislator the adjustments required to specify the purpose of a label and the conditions for its implementation.

## AWARENESS-RAISING OF THE EDUCATIONAL COMMUNITY AND YOUNG AUDIENCES

The usage studies conducted by Hadopi show that the 15-24 age group has both the highest consumption of digital cultural goods and the highest rate of copyright-infringing cultural practices in digital formats<sup>9</sup>. They are therefore the most targeted group in the rights protection mission. This is a population calling for a tailored educational discourse and an overall awareness-raising approach. Hadopi has implemented various actions to raise awareness among the younger public, such as the project "Pocket Documentary", or the holding of workshops in class, and is working on an agreement with the Ministry of National Education.

### The "Pocket Documentary" project

Since March 2016, Hadopi has, with the support of the Forum des Images and Scam [a copyright collective society] launched a new documentary project: "Pocket Documentary". The 2016-2017 school year saw this project renewed and extended to five schools in the Paris region.

"Pocket Documentary" proposes an educational scenario for middle and high school classes whose final objective is to create, from a smartphone or a tablet, which are everyday objects, a collective web documentary around an open theme. This work, both artistic and educational, enables students to discover new forms of storytelling, to approach notions of collective writing and to approach the various stages of production (scripting, filming, diffusion) while reflecting on their daily digital practices and their consequences (copyright in particular).

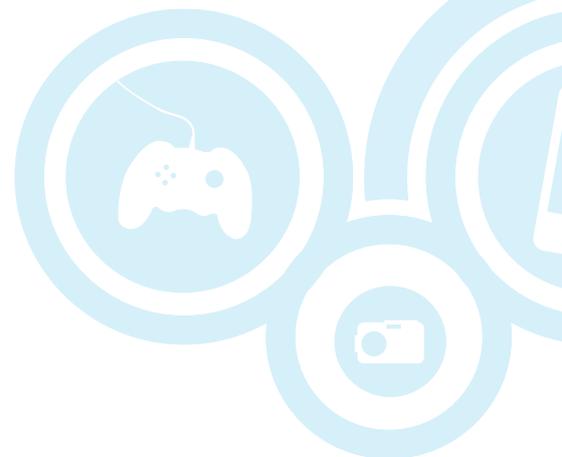
This edition started in November 2016 with two introductory sessions, on the one hand the workshop "Documentary, a question of point of view?" run by the Forum des Images in its collections room, and a private screening of a documentary followed by an exchange with its director in the Charles Brabant room at Scam. These first sessions allowed the students to become familiar with the documentary genre and the key terms of audiovisual production

before moving on to the implementation phase of the project.

Throughout the school year, the students and their supervisors were accompanied in their work by a documentary professional and by teams from Hadopi who participated in class in the form of workshops combining theory and practice.

In total, a hundred students from colleges and high schools took part in the project and a dozen films were made and screened on June 8<sup>th</sup>, 2017 at the Forum des Images during the closing session of this edition.

These first sessions allowed the students to become familiar with the documentary genre and the key terms of audiovisual production before moving on to the implementation phase of the project.



<sup>9</sup> 93% of 15-24 year olds have consumed at least one cultural property in a digital format (music, video/film, TV series, video game, book, software, photo) in the last 12 months (compared to 77% for all Internet users) and 33% of 15-24 year-old consumers of cultural goods report copyright-infringing practices (vs. 25% for all consumers) according to the latest Hadopi "Legal offer survey" - wave 5 (January 2017), conducted by Ifop [https://hadopi.fr/sites/default/files/HADOPI\\_Rapport-Barometre\\_Offre\\_Legale\\_Sept\\_2017.pdf](https://hadopi.fr/sites/default/files/HADOPI_Rapport-Barometre_Offre_Legale_Sept_2017.pdf)

## Classroom awareness-raising workshops

The educational goals of the High Authority have been firmed up since 2012 through information and awareness workshops for the younger public and educational community. These workshops aim to inform students and teachers about the main principles of copyright, to encourage responsible use of the Internet, to raise awareness of cultural wealth online and to introduce students, who are then put in a creative situation, to digital creation.

Some fifty workshops were conducted, which brought together more than 5,000 students. These two-hour workshops were very well received by the educational community, who had clearly expressed their expectation of support in this area.

At the end of this exploratory phase, Hadopi decided to generalise the approach which consists of:

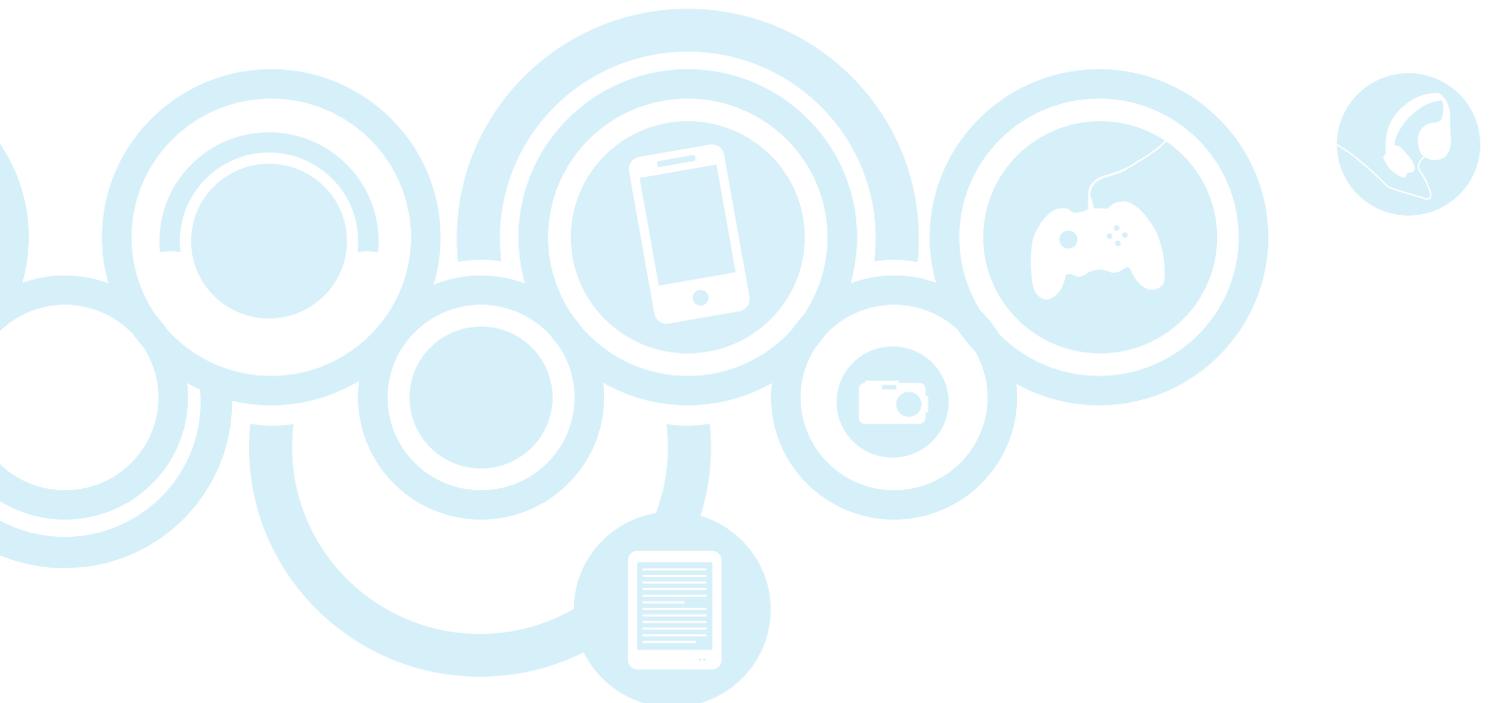
- the design of digital teaching modules for students, teachers and trainers. A steering committee has been set up to monitor this project. It includes representatives from the National Union of Family Associations (UNAF) and from the e-Childhood and Digital Generation associations, as well as a teacher. CNIL is associated with this project and one of its agents is also a member of the steering committee;
- the use of specialised speakers who can speak at any event. A dedicated team has already been selected and should be deployed in 2018.

## Draft agreement with the Ministry of national education

Hadopi and the Ministry of National Education have drawn up a joint agreement. As such, the parties undertake to jointly determine the most effective means of action for primary and secondary school students, teachers, trainers and parents to raise awareness of the issues raised by the digital world with regard to the distribution and use of copyright-infringing or non-infringing cultural works and, secondly, to promote responsible use of copyright and the fight against piracy.

The Department's Digital Education Branch and Hadopi have agreed to collaborate to develop appropriate educational tools and resources for their distribution:

- to primary and secondary students, discussing digital citizenship issues, school curricula and the preparation of national diplomas;
- to teachers, to enable them to prepare and run their course and assess students, but also as part of their initial and continuous training delivered in ESPEs or remotely via the M@gistère platform, thus offering them and their trainers in particular, training courses, tutored and interactive supports;
- to parents of students, students or even citizens, in particular through the PIX platform.

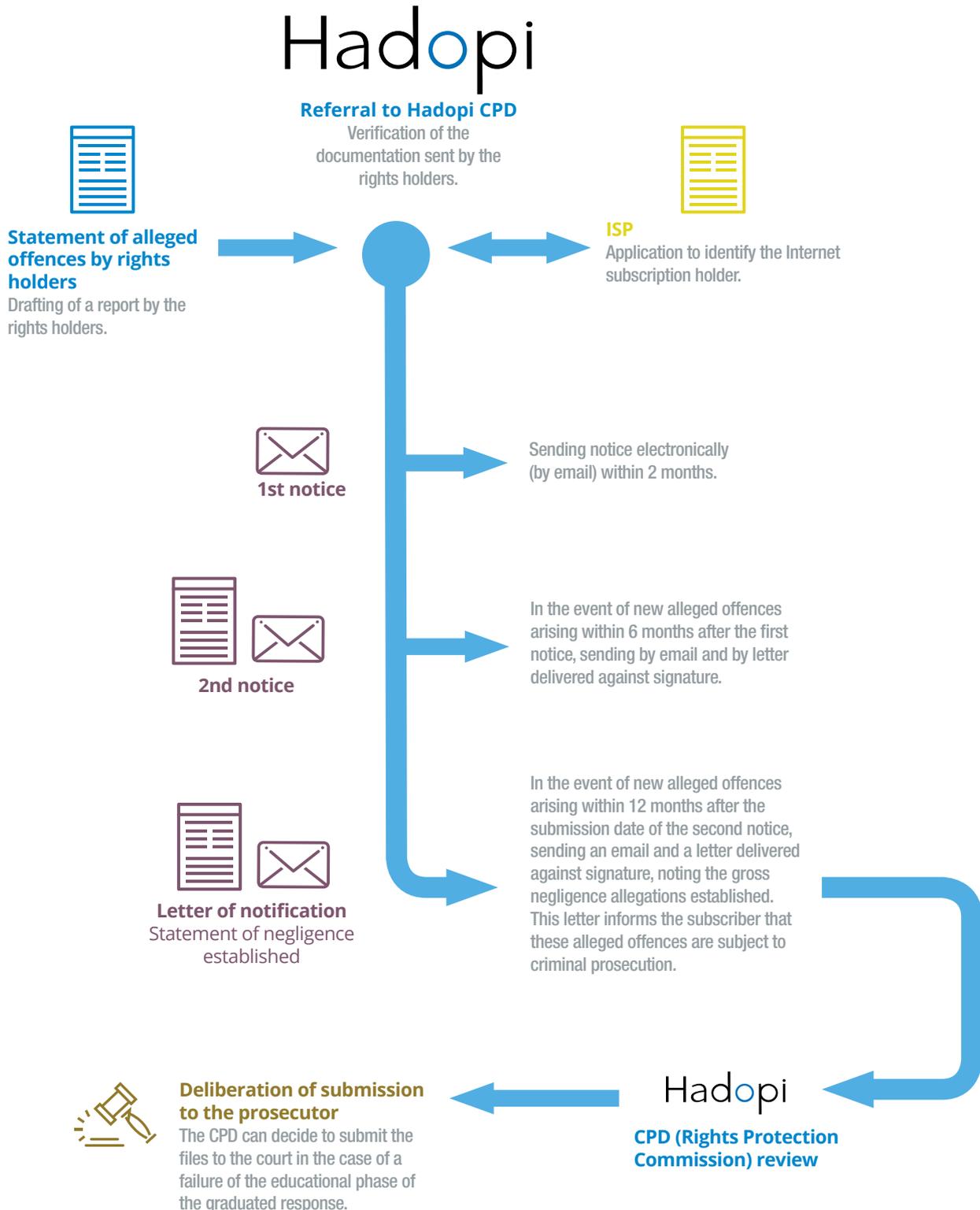


# I Implementing the graduated response

The graduated response, implemented in 2010, is a procedure aimed at stopping the practice of illegally supplying copyrighted works over peer-to-peer networks. It combines an educational component, with a view to deterring such practices, which is necessary given the large number of offences in

question, and a criminal law component with a repressive purpose. After sending several warnings, the latter requires referral to the public prosecutor with a view to exercising legal action and having criminal penalties imposed, where appropriate.

Diagram of the graduated response procedure



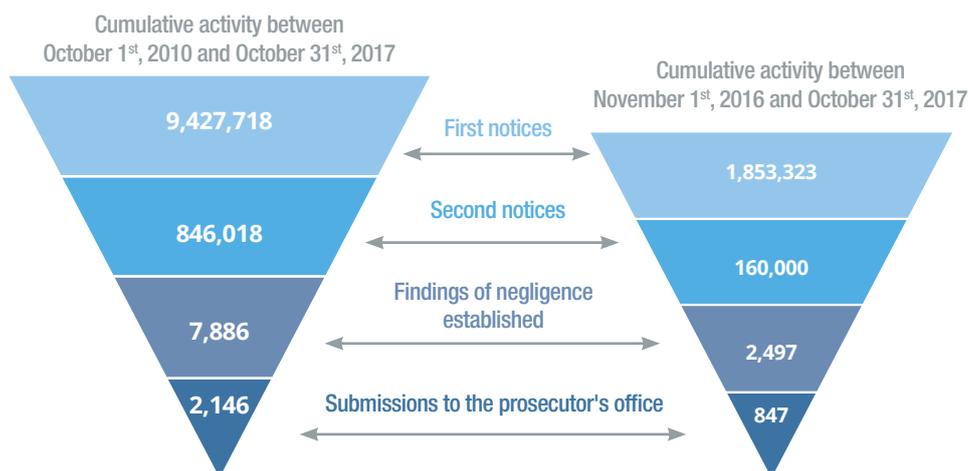
## THE GRADUATED RESPONSE: A LEGAL AND PRACTICAL TEACHING FRAMEWORK WITH DETERRENT PURPOSE

The purpose of the graduated response is firstly to remind Internet subscribers of their responsibility regarding their Internet connection which should not be used to make works protected by copyright (or related rights) available ("piracy").

This system offers a flexibility of execution that allows the Rights Protection Commission (CPD) to adjust, on a case-by-case basis, the necessary balance between education and repression. The criminal penalty is to be used when warnings did not make it possible to prevent a repeat of the copyright-infringement.

This mechanism combines education, which dissuades the vast majority of offenders from repeating illegal downloads, and the referral of prosecutor's offices when education proves to be powerless. It is an original response that allows for legal disputes to be faced that are both massive and for which a solution is found most often without having to call on the Judicial Authority. It allows both to deal with the masses (the CPD addresses several hundred warnings per day) without drowning the prosecution offices under a deluge of offences. It refers to the public prosecutor's office only the most serious cases (the CPD calls on prosecution for around five cases per day on average), either through the extent of the offences or their repetition, despite warnings.

Key figures for the graduated response<sup>10</sup>



### How does the graduated response work in practice?

It is the rights holders who, as victims of the criminal offence, gather the alleged offences for protected works being made available on peer-to-peer networks. They draw up a report and then refer this to the Hadopi Rights Protection Commission<sup>11</sup> so that it can initiate the graduated response procedure. Hadopi can also be referred to by the public prosecutor<sup>12</sup>.

On the basis of the information contained in the referral report, Hadopi questions the Internet Service Provider (ISP) in order to obtain the identity of the subscriber, whose Internet access was used to commit the counterfeiting acts.

The regulatory framework setting out the arrangements for offsetting the ISPs' incremental costs for identification requests addressed to them

was adopted in the spring of 2017. Order n° 2017-313 of March 9<sup>th</sup>, 2017 inserted into the intellectual property code a new article, R. 331-37-1 which provides that "the identifiable and specific additional costs borne by the operators (...) to make available to the High Authority the data retained pursuant to III of Article L. 34-1 of the Post and Electronic Communications Code are subject to financial compensation paid by the High Authority". An order of March 23<sup>rd</sup>, 2017 specified the compensation structure. It distinguishes between operators processing less than 10,000 requests per year and those processing more than 10,000 requests per year, for which the text assumes that the request for identification is automated:

- for operators who process more than 10,000 identification requests per year, the order provides, in addition to an annual fee of €80,000 (excl. tax) per ISP, a rate of € 160 (excl. tax) per request sent, which must include a maximum of 40,000 IPs to identify.

<sup>10</sup> Cumulative activity 2010-2017.

<sup>11</sup> Articles L. 331-2 and L. 331-24 of the intellectual property code.

<sup>12</sup> Article L. 331-24 paragraph 2 of the intellectual property code.

- for operators who process less than 10,000 identification requests per year, the order provides a rate of €12 (excl. tax) for each IP processed.

Regarding additional requests to verify and specify the identification elements relating to a subscriber, the rate per request processed was set by the order to 18 (excl. tax).

The Rights Protection Commission is the only one to hold both information about alleged offences that may constitute criminal offences and the identity of the subscription holder, provided by the ISP. This mechanism was designed by the legislator and approved by the Constitutional Council. It guarantees a high level of protection of personal data, through the creation of an independent public authority tasked with implementing the system. The legislator has further limited the data that may be communicated to the Rights Protection Commission solely to the contact details of the subscription holder involved and has provided for the creation of automated data processing with strong safeguards, limiting access to these sensitive data to authorised and sworn agents of Hadopi only.

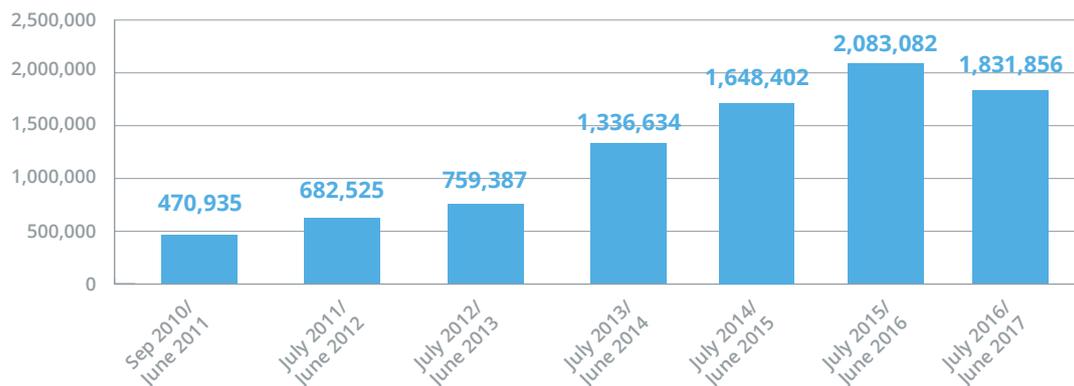
## First notice letters

The first step in the graduated response procedure is to send an electronic notice to the holder of an Internet subscription whose access has been used to commit acts of copyright infringement. In application of Article L. 331-25 of the CPI, this first notice is sent to the subscriber's email address, as provided by their ISP.

It indicates to the subscriber that their access has been used for the purpose of making protected works available on peer-to-peer networks and includes an educational video explaining the reasons for receiving this notice.

It reminds them of the penalties incurred, invites them to take all necessary measures so that their connection is no longer used for such purposes and also directs them to the legal cultural offer, as listed on the Hadopi website.

First notices sent since 2010



In addition, between July 1<sup>st</sup>, 2017 and August 31<sup>st</sup>, 2017, the 316,546 first notices were sent, at a rate comparable to that observed in 2016/2017.

Since the end of 2016, Hadopi has been able to request the identification of all IP addresses from the main operators, including for "multiple findings", that is to say referrals for the alleged offences of sharing several copyright-infringing works from the same Internet access connection over a limited period of time (24 hours).

We now observe a decline in the number of emails sent, even though the number of referrals received from rights holders has not decreased in recent years and remains constant. This decline can be explained by two main factors:

- a change in practices that can be explained at least in part by the fact that, in seven years of Hadopi's

operation, with nearly ten million first notices sent, a significant number of Internet subscribers, over the entire national territory, have been made aware or even dissuaded from illegal downloading;

- the Commission also observes that a significant number of referrals focus on certain subscribers who have demonstrated a pattern of disregard for previous educational notices, with cases referred to the judicial authority becoming ever more voluminous in terms of infringement over time.

If no repeat offence is made known to Hadopi within six months of sending the first notice, the ongoing graduated response procedure is terminated. In practice, it is noted that after sending a first notice, the Rights Protection Commission does not have new allegations referred to it in nearly 60% of the cases<sup>13</sup>.

<sup>13</sup> In 2016, a study conducted on a sample of 600,000 cases that received a first notice. In 2017, the same study carried out on 1,251,119 cases that received a first notice.

In an Omnibus survey conducted by IFOP for Hadopi, about two-thirds of the interviewees (65%) exposed to a graduated response procedure, personally or in their entourage, report having decreased their copyright-infringing consumption following receipt of a notice, which is an upward trend compared to 2016 when this rate reached 59%.

### Second notice letters

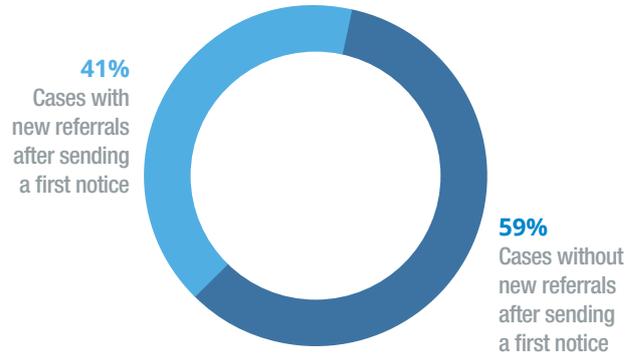
In the event of renewal of the alleged offences within six months after the first notice was sent, the Commission may send a second notice to the subscriber, both by email and by letter delivered against signature.

Although the sending of the first notices, which is largely automated because of their electronic transmission, is inexpensive, it should be emphasised that this is not the case for the sending of the second notices, which must be sent by letter delivered against signature to the holder of the Internet subscription, for procedural reasons.

The Rights Protection Commission was able to point out that the sending of postal mail reaches the addressee with more certainty: second notices lead to a higher contact rate with Hadopi, and reached their recipients more certainly than emails (due to different factors: anti-spam filters, obsolete email addresses, etc.).

As a result, since 2015, the Rights Protection Commission has developed a strategy to send a simple reminder letter to the repeat offence subscriber, after the first notice and before a possible second notice. This so-called "reminder" letter aims to put an end to the offences found by explaining to the subscriber the operation of peer-to-peer software programmes and the method to uninstall them and to stop the sharing of unauthorised files. Sent by simple letter, this allowed in many cases and at a lower cost,

Percentage of cases without new referrals after first notice being sent



Source: Hadopi

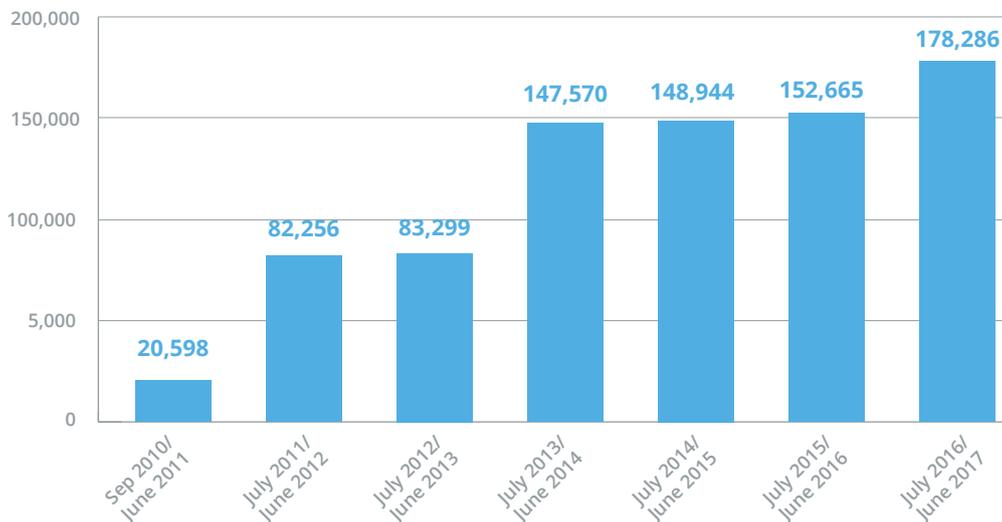
to stop the offences committed by subscribers who had not read or who had misunderstood the first notice received by email.

After two years of implementation and the sending of nearly 200,000 so-called "reminder" letters, the Commission found that, in 67% of the cases, it did not receive new alleged offences concerning these persons.

This rate of non-repeating<sup>14</sup> is sharply higher in 2017, even though there was a larger sample of cases than the previous year<sup>15</sup>. It went from 53% in 2016 to 67% in 2017, which tends to show that the reminder letter is really effective, in that it allows, in two thirds of the cases, to stop repeat offences without having to send a letter delivered against signature.

Encouraged by these very positive results, the Rights Protection Commission recently decided to expand the sending of reminder letters for all cases eligible for a second notice.

Second notices sent since 2010



Source: Hadopi

<sup>14</sup> By repeat offence, we mean the receipt, by Hadopi, of a new referral from rights holders in the graduated response file of the same person.

<sup>15</sup> In 2016, a study conducted over a sample of 27,000 cases that received a reminder letter. In 2017, the same study carried out over 44,101 cases that received a reminder letter.

In a general way, the optimisation of allocated resources allows Hadopi today to:

- send all possible first notices by email to reach a maximum of subscription holders;
- to extend the sending of the educational reminder letters to all the cases eligible for the sending of a second notice, by simple letter;
- to concentrate the sending of second notices by letter delivered against signature for the most serious cases.

Seven years after the first warning was sent, Hadopi is now able to implement its educational actions with regard to a very large number of subscription holders and also to increase, in the cases where education is not enough to stop offences, the number of cases referred to the judicial Authority with a view to sanctions.

## TRANSMISSION TO THE JUDICIAL AUTHORITY AS A TOOL FOR CRIMINAL DETERRENCE

The offence established following the graduated response procedure is a gross negligence offence<sup>16</sup>, falling within the fifth class of offences and punishable by a fine of up to EUR 1,500 for natural persons (EUR 7,500 for legal persons)<sup>17</sup>. It is attributable to the holder of the subscription and consists, for the latter, where Hadopi has warned them at least twice, of not taking effective measures to stop the unlawful sharing of protected works, by themselves or by a third party, from their Internet connection. The person behind the supply is not sought for legal action in the context of this contravention, even if ultimately the possibility is not excluded that their responsibility will be sought by the judicial Authority for the offence of counterfeiting.

### The referral policy of the judicial Authority by the Commission for the Protection of Rights

#### Findings of negligence established

In case of repeat offences within one year from the date of submission of a second notice letter, the Commission may send to the subscription holder a letter (notification letter), by email and by letter delivered against signature. This letter, which opens the third stage of the graduated response procedure, informs them that the alleged offences of downloading or sharing protected works have once again been observed from their connection and that they are therefore liable to penal sanctions on the basis of the offence of "gross negligence" provided for in Article R. 335-5 of the CPI.

The subscription holders receiving such a letter of notification are, in general, those whose files show, despite the two warnings previously sent, a substantial number of works being made available, a significant number of referrals, or even use of several

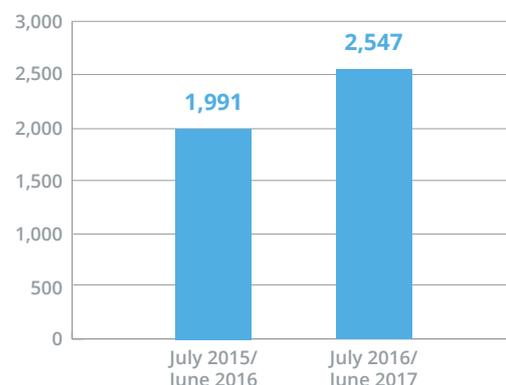
software programmes, or a large total number of warnings received, i.e. several successive graduated response procedures.

Ultimately, the third phase of the proceedings remains reserved for cases in which the copyright infringement is "established" and an educational approach seems to have reached its limits.

This increase is the result of the strategy, initiated by the Rights Protection Commission in 2015, to strengthen the dissuasive part of the graduated response for the most serious cases, which are now "targeted" as soon as they enter the second stage.

In practice, in two-thirds of the cases observed<sup>18</sup>, the consequence of the notification letter is to stop the offences.

Findings of gross negligence established



Source: Hadopi

The number of cases notified in the third stage of the procedure has increased significantly over the most recent period (21%)<sup>19</sup>.

<sup>16</sup> Article R. 335-5 of the CPI

<sup>17</sup> Initially, a complementary penalty of suspension of the Internet connection was planned, but this sanction, very controversial in public opinion, was suppressed in 2013

<sup>18</sup> Of the 2,727 cases notified in the third phase between July 1st, 2016 and August 31st, 2017, 946 were submitted to the judicial Authority as they involved a referral after the notification letter was sent.

<sup>19</sup> 180 additional established cases of negligence were sent during the period July-August 2017

### Transmission to the judicial Authority

At the end of the third stage of the procedure, the Hadopi Rights Protection Commission deliberates on the files to send or not to send to the relevant public prosecutor, with a view to possible criminal prosecution.

Since the launch of the graduated response, more than 2,000 files have been sent by Hadopi to the public prosecutor for possible legal action as of August 31<sup>st</sup>, 2017. The number of files sent to the prosecutor's office has increased each year, with a significant rise in the last two years, where three quarters of the files have been transferred since July 2015. This increase is due both to the optimisation of processing referrals received upstream, the increase in notification letter sending and the CPD strategy of targeting those files considered to be the most serious. There was a 23% increase in transmissions to the judicial Authority in 2017, which corresponds to a maximum deployment with regard to the human and financial resources currently allocated to the Rights Protection Commission.

### A specific counterfeiting strategy in the field of counterfeiting

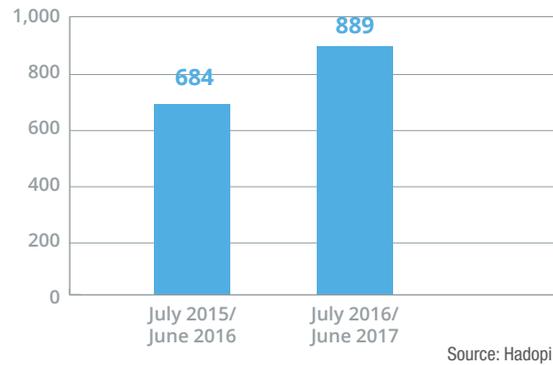
In the vast majority of cases, when the Hadopi Rights Protection Commission decides to refer cases to the Public Prosecutor's Office, it does so on the basis of the offence of gross negligence. In some cases, in view of the specific circumstances of the case and depending on the seriousness of the alleged offences brought to its attention, the Commission proposes in its transmissions to opt for either the offence of gross negligence or the crime of counterfeiting, or for counterfeiting alone. If this last option is retained by the public prosecutor's office, the legal action is directed against the person who has unlawfully made available copyrighted works over peer-to-peer networks and, where appropriate, against the co-perpetrators, accomplices or receivers of the counterfeiting.

Of the 84 cases submitted to the prosecutor's office on the double basis of both offence and crime as of August 31<sup>st</sup>, 2017, 79 were in the last year.

Two files were referred to the prosecutor's office solely on the basis of the infringement offence between July 1<sup>st</sup>, 2016 and August 31<sup>st</sup>, 2017.

As a reminder, the counterfeiting offence is punishable by three years' imprisonment and a fine of 300,000 euros for a natural person (the maximum fine is 1,500,000 euros for a legal person). Even though the primary task entrusted to the Rights Protection Commission is not focused on infringement, the fact remains that pursuant to Article R. 331-42 of the CPI, the Commission has the power to act on this basis, when it deems it necessary.

### Submissions to the prosecutor's office



To prosecute on the basis of the counterfeiting offence, the public prosecutor must carry out an investigation in order to identify the person behind making the protected works available and possibly all those who, in one manner or another, took part in the offence. The perpetrator of the alleged offences may be the subscription holder who received the notices, or a third party identified during the investigation.

It is also common for the public prosecutor, who has the choice of which option to take, to decide, whatever the Commission's proposals were, to reclassify the alleged offences as counterfeiting based on evidence revealed by the investigation.

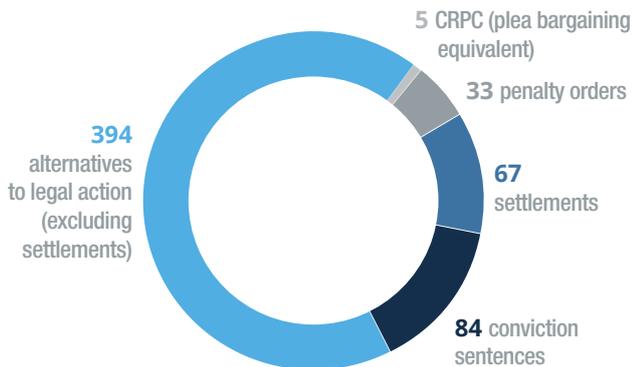
### Legal proceedings

The judicial responses seen so far are encouraging. There is indeed a penal response rate of 80% for files forwarded by Hadopi.

The penal responses observed are of a varied nature. It may be, in particular in the case of a referral to the court by the public prosecutor, the imposition of a fine. Taking into account the individual situation of the persons implicated, the prosecutor's office also frequently resorts to measures alternative to prosecution, which also usually results in the payment of a fine (in the context of settlement). It can also result in decisions of a conditional classification with no continuation (request to correct the situation from the prosecutor, victim compensation, etc.). Some people have also been offered a citizenship course as part of a criminal settlement.

The number of proceedings transmitted to the judicial Authority is increasing: of the 2,146 files transmitted between December 1<sup>st</sup>, 2011 and October 31<sup>st</sup>, 2017, Hadopi has so far been informed by the prosecution of 583 criminal responses, but it should be emphasised that many proceedings are still being processed. The criminal decisions taken by the judicial Authority are made on average a little less than a year after the transmission of the files by Hadopi, considering the deadlines for investigation, processing proceedings and summons before the courts.

## 583 criminal responses, including 189 convictions



The proportion of alternative measures to legal action observed in the procedures transmitted to the judicial Authority by Hadopi is in line with the trend observed more generally, in criminal matters. Indeed, since the law of 23<sup>rd</sup> June 1999<sup>20</sup>, recourse to alternative measures to prosecution has become considerably more frequent, in order to ensure the reparation of the damage, to put an end to the disturbance resulting from the offence, or to contribute to reclassifying its perpetrator, without referral to the court.

Penal penalties of a fine usually range from 50 to 1,000 and may or may not be suspended, depending on the situation of the convicted person and the discussion at the hearing. The perpetrator of the offence may also be ordered to repair damages suffered by rights holders, victims of the offence, when they have applied in proceedings as a civil party. In this case, the amount of damages and interest is most often in the order of one hundred euros per work made available.

Whatever the outcome of Hadopi's referrals, the transfer of proceedings to the judicial Authority is usually followed by the summons and then the hearing of the persons implicated by the police or gendarmerie services. This hearing is likely to promote awareness among those heard of the need to protect copyright and the risks incurred in case of ignorance of this right.

The Rights Protection Commission is very frequently contacted by police or gendarmerie investigators who are responsible for investigating graduated response procedures on instructions from the public prosecutor's office. These exchanges are an opportunity for the sworn agents of Hadopi to provide a useful insight into the conduct of the investigation and the preparation of hearings.

When the Commission is notified of a hearing being held before the Police or Criminal Court, it shall ensure, as far as possible, that the rights holders behind the graduated response procedure - the bodies that referred to Hadopi the reports of copyright-infringing supply - are also informed of the hearing date, as victims, and that they are able to assert their rights.

These regular contacts make it possible to ensure the monitoring and efficiency of the penal treatment of graduated response procedures.

Constructive exchanges with prosecutors have been carried out since the first transmissions of graduated response procedures. Whether they were telephone interviews with these magistrates or the presence at hearings of the sworn agents from Hadopi, these exchanges made it possible to present the specificities of the established offence of qualified negligence.

In accordance with the provisions of Article R. 331-44 of the Intellectual Property Code, the public prosecutor is obliged to inform the Commission of the follow-up given to the procedure that it has transmitted.

In practice, the Commission, as it is not systematically informed of the legal action results, sets up exchanges with public prosecutor's offices to ensure better follow-up. Thus, a judicial follow-up form to return to Hadopi is systematically attached to files. Reminders, by letter or electronically, are regularly sent when Hadopi has had no information within the six-month period following the transmission of the file. In addition to these ad hoc exchanges with the magistrates in charge of the procedures transmitted by Hadopi, and also with of police or gendarmerie investigators, a regular analysis of the legal actions brought to the knowledge of the Commission shows the necessity to organise reciprocal and constant information between Hadopi and prosecutors.

This approach is in line with the Hadopi 2015-2016 activity report, which provided for the development of exchanges with public prosecutors. With this in mind, a rapprochement between the Commission and the Chancellery has exposed certain areas for improvement, and in particular the possibility for the Rights Protection Commission to schedule, at the General Prosecutor's Office level, meetings or interventions dedicated to the presentation of the graduated response. In order to optimise travel efficiency and to reach public prosecutor's offices more broadly, it appears appropriate to organise these interventions at the court of appeal level.

An action plan to raise awareness of copyright protection in General Prosecutor's Offices is therefore being rolled out. The first interventions with three General Public Prosecutors will be organised in the last quarter of 2017. This approach aims to:

- raise awareness among prosecution authorities on the role of Hadopi in the implementation of pre-criminal proceedings;
- highlight the specificities of the offence of gross negligence;
- provide analytical evidence relating to economic harm resulting from online infringement;
- inform the prosecution of the diversity of criminal responses observed over the national territory;

<sup>20</sup> Law 99-515 of 23 June 1999 reinforcing the efficiency of the criminal procedure

- improve and guarantee the information of victims after transmission of the files to the judicial Authority;
- to improve the information shared with Hadopi concerning the legal action taken based on the

graduated response procedures, in order to enable the institution to provide more representative figures.

## THE IMPLEMENTATION OF THE GRADUATED RESPONSE IN EVERYDAY LIFE: CONTACT WITH THE PUBLIC

The graduated response gives rise to numerous exchanges between Hadopi and those who receive the warnings. These contacts are an opportunity for the Rights Protection Commission to supplement the awareness initiated in the notices through

practical and concrete advice given to subscription holders. This awareness is reinforced with regard to professionals who make their internet connection available to the public.

Exchange methods used by subscription holders to contact the Rights Protection Commission<sup>21</sup>



**149,699**  
emails received

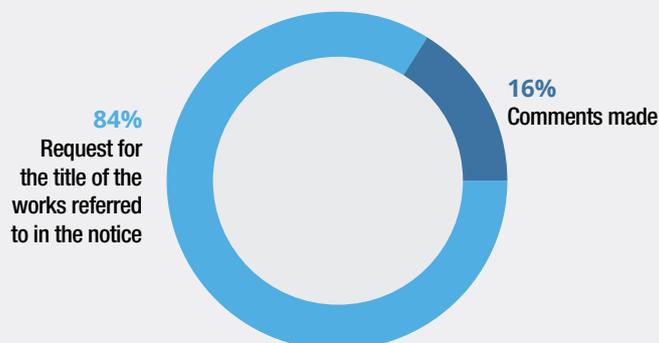


**38,872**  
calls



**4,727**  
letters

Type of requests received by the Rights Protection Commission



Source: Hadopi

<sup>21</sup> Period from July 1st, 2016 to August 31, 2017

The vast majority of requests received by Hadopi involve queries about the titles of the works that have been downloaded or made available from the person who has received the notice. As has already been pointed out, the legislator has provided that this information should not be included in the first and second notices, and that it should be communicated only to the addressee of the notice when they make the request<sup>22</sup>. The number of people making real observations or asking other questions is very small and represents only about 16% of the total.

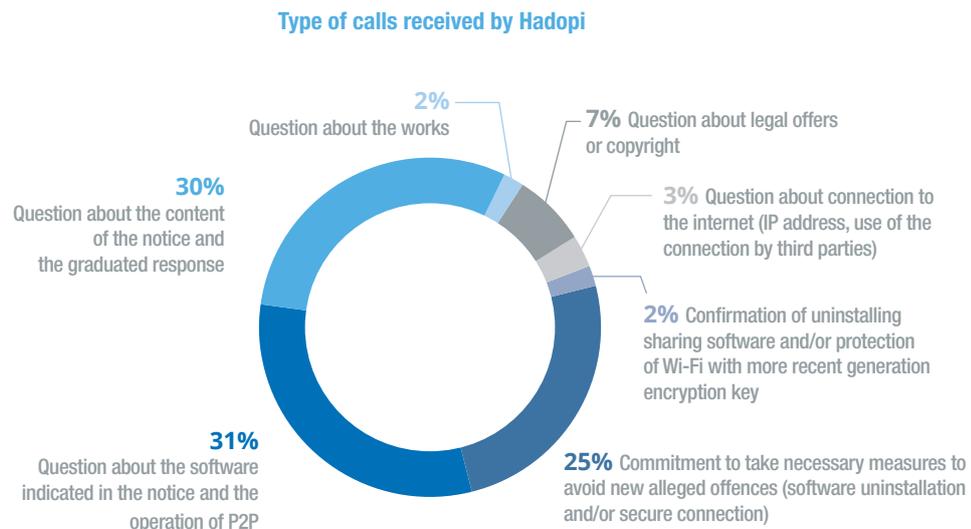
In addition to the titles of the works concerned, the Hadopi Rights Protection Commission provides explanations on copyright and the dangers of infringement, on the existing legal offers and on the measures to be taken to avoid having the subscriber's Internet access used again to download or make available protected works.

People who contact Hadopi are informed of the measures they can take to prevent third parties, mostly friends or relatives, from connecting to their Internet access without their permission. In particular, they are advised to protect their Wi-Fi connection by

setting up a more complex encryption key (changing from a WEP key to a WPA2 key for example). They are also advised to be vigilant in cases where they communicate this key to third parties (friends or neighbours), because the subsequent use of their connection by these third parties is then likely to be beyond their control.

The details given on the sharing software used allows them to better understand the origin of the alleged offences and to purely and simply uninstall this software, when it was used only to download works protected by copyright or related rights. Finally, the recipients of notices are invited to consult the Hadopi website, which lists platforms for listening to music, watching movies or series lawfully.

As a result of the calls with the Hadopi call centre, between July 1<sup>st</sup> 2016 and August 31<sup>st</sup> 2017, subscription holders, anxious to avoid repeat offences, spontaneously call, either to explain the measures that they commit to taking to avoid the renewal of unlawful sharing, or to obtain information relating to the content of the notice, particularly the nature of the alleged offences and the software used.



Source: Hadopi

Finally, at each stage of the procedure, subscription holders contact the president of the Rights Protection Commission, who is responsible for the processing of their personal data under the law of 6 January 1978 relating to information technology and freedoms, to ask for the rectification of their data in the graduated response IT system.

The majority of these requests concern email addresses provided by Internet Service Providers (ISPs) that are no longer used by subscribers. In this case, the Commission advises the subscriber to contact their ISP directly to update their information.

In some rarer cases, a request is made to the ISP to verify the information originally provided by the ISP to the Commission.

Between July 1<sup>st</sup>, 2016 and August 31<sup>st</sup>, 2017, 417 requests for additional verifications were sent to ISPs, either at the request of a subscriber or at the initiative of the Commission, in the course of examining case files.

<sup>22</sup> Article L. 331-25 of the intellectual property code. As a reminder, a legislative amendment to include the content of works in the notice was proposed in 2013 (see the Hadopi annual report 2012-2013, p.73)

## Enhanced awareness-raising for professionals

### Specific context, specific treatment of professionals

Unlike individuals, who are most often the targets of the graduated response procedure, professionals who receive notices from Hadopi are in a more complex situation to manage as they share their Internet connections with multiple users (employees, customers or others). Taking effective measures to prevent their access being used for infringement is sometimes complex.

That is why the Hadopi Rights Protection Commission has been offering, since the implementation of the graduated response procedure, specific support for professionals, provided by a pool of sworn agents dedicated to this task.

This specific support has two main objectives:

- to avoid the risk of repeat offences;
- to make professionals awareness relays among their users by developing “education squared”. For example, when a local association receives a notice, the monitoring of this structure is aimed at itself, but also at the national headquarters of the association, which will in turn disseminate best practices to all the entities of the network and to all users: employees, managers, members, the general public.

In order to achieve these objectives, the monitoring of professionals consists firstly of analysing the network architecture of each structure, as well as the issues related to digital and the use of the Internet within the entity concerned.

After this review, the Rights Protection Commission is able to provide the professional with tools of a technical nature on the one hand, and to raise the awareness among their network on the other hand. It can also develop new materials in collaboration with the professional structure concerned (e.g. a customised display, a newsletter, etc.).

Over time, and with the experience gained, the Rights Protection Commission has developed many tools, particularly those for awareness, for the various audiences targeted. End-user awareness is indeed a priority, as no single technical measure can be completely effective in preventing a person from connecting to a peer-to-peer network and downloading a protected work.

The fact remains that securing professional networks can be effective, provided, however, that several actions are combined, namely:

- the execution of technical measures: for example, auditing computers made available to the public

and uninstallation of peer-to-peer software, network filtering measures, installation of a captive portal for Wi-Fi access;

- the creation of public awareness materials: for example, in the case of a university residence, teaching kits are distributed to each newcomer and preventive actions are repeated several times in the same school year.

These measures are only really effective if they are regularly reviewed (updated, refreshed, adapted) and renewed, especially when it comes to educating users.

Professionals can be supported at each stage of the procedure. The support can be very succinct in the case where the structure has already implemented measures by itself and the repeat offences have ceased. In this case, Hadopi proposes educational tools adapted to the type of structure and the problem in question.

Sometimes, professional monitoring becomes a long term affair, for several months, during which meetings, conference calls, trips or hearings can take place. This monitoring is for example set up with IT service companies (Wi-Fi operators for example), helping to support the measures taken, which can sometimes be spread out over time and which necessarily evolve according to the clientele of the professional concerned.

### Keywords, key figures of professional monitoring

#### Informing

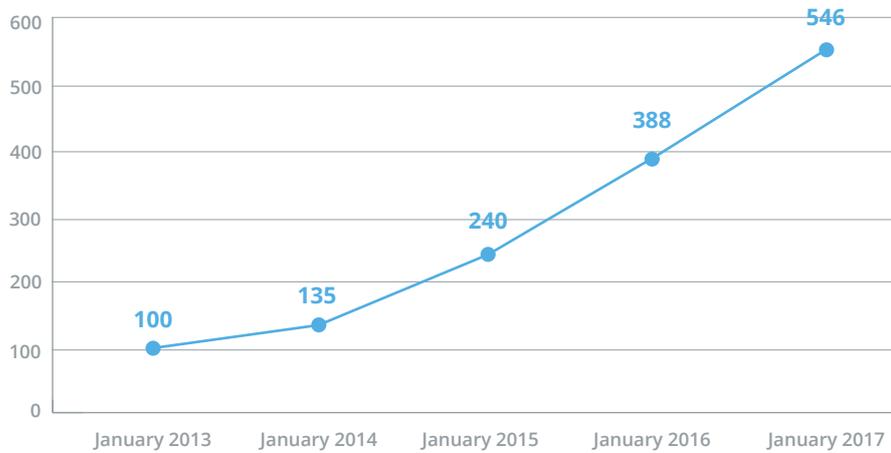
Between July 1<sup>st</sup>, 2016 and August 31<sup>st</sup>, 2017, nearly 5,000 professionals contacted Hadopi (electronically, by email or telephone) to obtain information on their case file and to ask questions about the graduated response procedure. Most of these contacts are one-offs and lead to a response adapted to each type of structure with, if necessary, the transmission of awareness-raising documentation. On the other hand, in some cases, monitoring over time will be proposed.

#### Supporting

As of September 1<sup>st</sup>, 2017, a total of 570 companies from a wide range of sectors benefited from specific monitoring. 182 new professional monitoring cases were initiated between July 1<sup>st</sup>, 2016 and August 31<sup>st</sup>, 2017.

This personalised support can be initiated at any stage of the procedure. While most of them start in the first and second phases, about 20% of this support is initiated in the third phase of the procedure.

Evolution of the total number of professional monitoring cases since 2013



Source: Hadopi

While at first look the number of professional follow-ups may seem low, it is essential to remember that the support provided by Hadopi actually makes it possible to “raise awareness” among a very large number of users. This is what the Rights Protection

Commission describes as “education squared”: when a professional entity is supported, its entire network is made aware along with it. Some examples detailed in the table below illustrate this reality.



| ORGANISATION  | SCHEME BASIS  | COST SHARING   |
|---|---|--|
| Federation of landlords   | <ul style="list-style-type: none"> <li>• Development of a clause to be included in the leases given to all owners</li> <li>• Setting up awareness-raising workshops on the University of Rennes' technical day to present the graduated response procedure and measures to avoid repeat offences</li> <li>• Dissemination of the best practices document</li> <li>• Interview on the key points of Hadopi's intervention and the graduated response procedure for the federation website</li> </ul>   | <p><b>Direct target:</b><br/>40 departmental directors and technicians, relays to all national structures</p> <p><b>Indirect target:</b> 47,000 members of the federation</p>  |
| Public institution serving students   | <ul style="list-style-type: none"> <li>• Personalisation of the identification portal for all students from the 2015/2016 school year</li> <li>• Development of an educational "Kit" with: <ul style="list-style-type: none"> <li>- a clause for an IT charter to be signed by students</li> <li>- an awareness message on copyright and legal offers</li> <li>- educational sheets on legal offers</li> </ul> </li> <li>• Creation of a "Serious Game" on copyright to raise students' awareness</li> <li>• Participation in new school year forums as an institutional partner</li> </ul> | <p><b>Direct target:</b><br/>6000 students in residences managed by the institution (70 student residences)</p> <p><b>Indirect target:</b> 300,000 students from the academy over many different sites. 700 administrative and technical staff</p> |
| "Compagnonic Federation" of the Tour de France                              | <ul style="list-style-type: none"> <li>• Intervention and prevention workshop for all regional directors</li> <li>• Dissemination of best practice documents to all structures in the federation</li> </ul>   | <p><b>Direct target:</b><br/>25 regional directors</p> <p><b>Indirect target:</b><br/>Around 4,000 users in the entire federation</p>  |
| Accommodation professionals dedicated to the employees of an administration | <ul style="list-style-type: none"> <li>• Insertion of a specific clause in the IT charter</li> <li>• Displaying an awareness message in common areas</li> <li>• Insertion of a prevention charter for residents in the internal regulations</li> <li>• Implementation of a dynamic display on the screens of the accommodation structures in reception areas</li> </ul>   | <p><b>Direct target:</b><br/>89 accommodation sites under management including 52 equipped with Wi-Fi</p> <p><b>Indirect target:</b><br/>All persons accommodated (600,000 over-nights per year over all structures)</p>                           |
| Chain of restaurants  | <ul style="list-style-type: none"> <li>• Establishment of an awareness campaign for all restaurants through the captive portal and prevention message</li> </ul>  | <p><b>Direct target:</b><br/>341 restaurants in France and 6,790 employees</p> <p><b>Indirect target:</b><br/>All customers in the restaurants (30 million meals served per year)</p>  |
| Insurance company   | <ul style="list-style-type: none"> <li>• Establishment of best practices in all structures</li> <li>• Dissemination of a staff awareness letter</li> <li>• Amendments to the IT usage charter to add a specific clause on copyright</li> <li>• Specific insert in the company newsletter</li> </ul>   | <p><b>Direct target:</b><br/>6 structures involved in the graduated response procedure</p> <p><b>Indirect target:</b><br/>33,000 employees in all sectors of the company</p>   |

**Hearing**

Between July 1<sup>st</sup>, 2016 and August 31<sup>st</sup>, 2017, 63 legal entities received a letter notifying them that their alleged offences were subject to criminal prosecution, which had the effect of bringing them into the third phase of the graduated response

procedure. 59 of them were summoned to a hearing. Of all these structures, 44 contacted Hadopi to ask about best measures to be implemented within their organisation and 24 travelled to be present at the hearing.



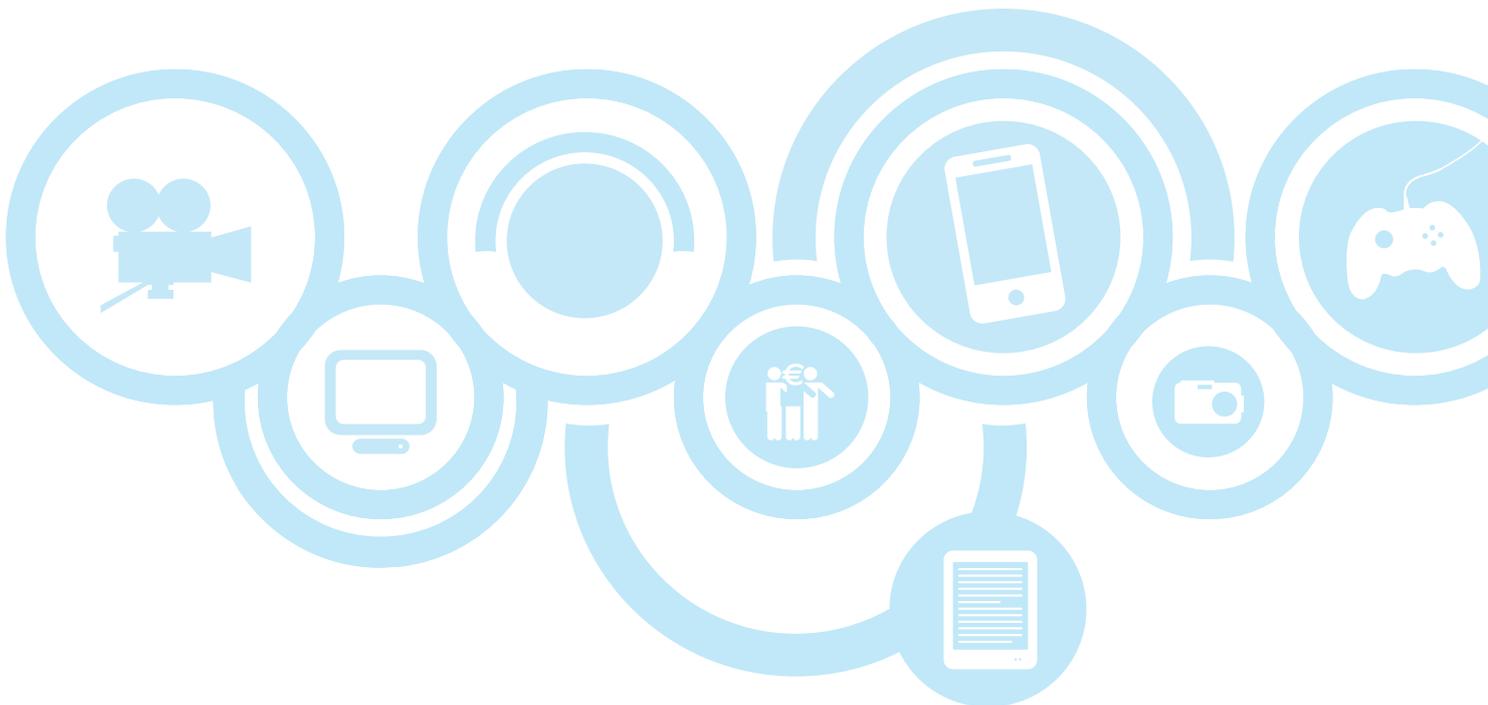
**Sanctioning**

For the Hadopi Rights Protection Commission, the main objective of supporting professionals remains, as for individuals under the graduated response procedure, to put an end to any offences observed.

observed. The professionals concerned thus avoid being referred to the judicial Authority.

As far as professionals are concerned, in almost all cases in the third phase of the procedure, the education and monitoring put in place work satisfactorily to the extent that no repeat offence is

Since the beginning of professional monitoring activity in the third phase (April 2015), only six files out of 117 have been referred to the public prosecutor. These are cases in which the professional either did not contact Hadopi after receiving the notification letter, or did not actually implement any measures, and as such Hadopi had new alleged offences referred to it.



# Facilitating the benefit of exceptions and interoperability

Given the procedure's admissibility conditions requirement, the institution still receives few referrals. Various works are nevertheless carried out to reinforce this regulatory mission.

A tool for reporting usage difficulties has been set up to enable users encountering difficulties for legitimate uses of a work to get help from Hadopi. At the same time, a qualitative study of the practice of

copying or consuming cultural goods from different media, which requires a certain interoperability of systems, has been conducted. Finally, further work has been done in the book sector: to promote the development of an ebook offer that is accessible to people with disabilities and to list all TPMs (Technical Protection Measures) used in this sector, as well as their effects.

## A NEW SERVICE FOR REPORTING INTERNET USAGE DIFFICULTIES

Hadopi wanted to better identify the difficulties of use encountered by consumers of digital cultural goods: inability to make a copy for private use, to consult the works through different media or materials.

A new online service was launched on June 16<sup>th</sup>, 2017, allowing users to report their usage difficulties through a form available on the hadopi.fr website.

**As of September 30<sup>th</sup>, 2017, 448 reports had been recorded**

The lessons learned from this initial user feedback are interesting in a multitude of ways, although it should be borne in mind that this study is not conducted with a statistically representative sample of individuals who have experienced usage difficulties. Indeed, since the respondents are voluntary (and not invited to contribute, as is usually the case in quantitative surveys), they are only representative

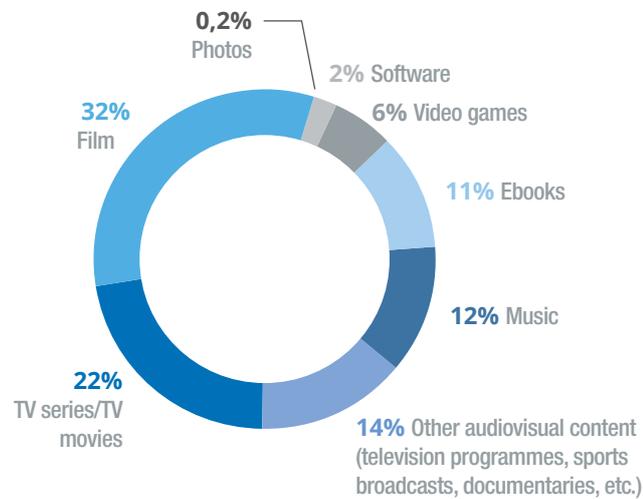
of the population of individuals who have encountered a usage difficulty and who wish to inform Hadopi. Notwithstanding this reservation, the analysis of these reported usage difficulties reveals several trends.

Firstly, the difficulties reported mainly concern audiovisual digital goods, accounting for 54% (32% for films and 22% for series and TV films), or 67% if we add other audiovisual content, ahead of music (12%) and ebooks (11%).

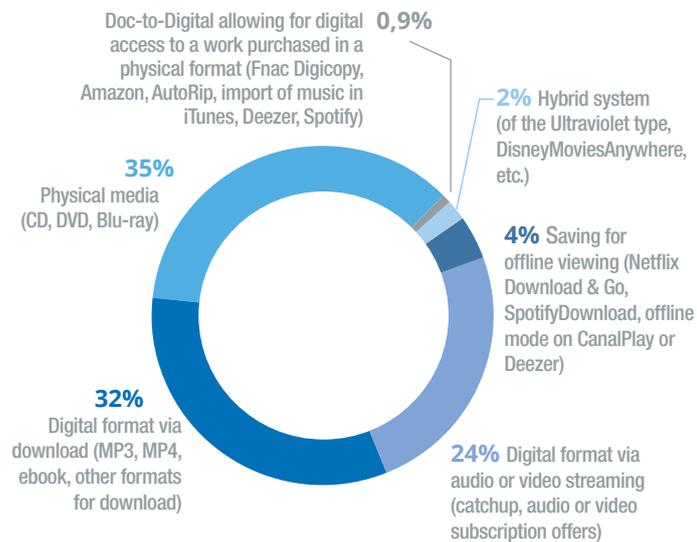
Secondly, physical media accounts for about one-third of the reported usage difficulties - a result reaching up to 43% when only films, series and TV movies are considered. This is an important key to reading the results: depending on the type of media, physical or digital, the problems encountered are not the same.



### Categories of works reported

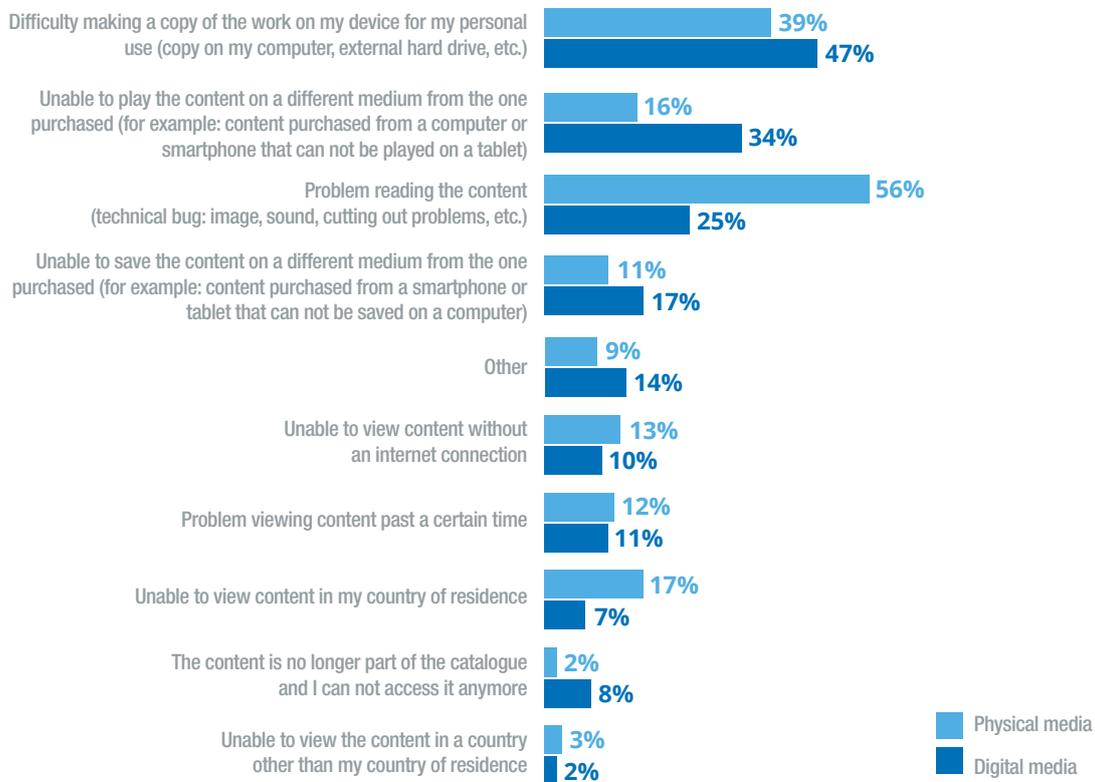


### Format of original works reported (all works reported)



The reported usage difficulties concern in particular the inability to make a copy of the work, the inability to read the content on a medium different from the purchased medium of the work, or even the most classic reading problems (25%), such as technical bugs, sound issues, etc.

Difficulties encountered based on the format of the work



Users’ first instinct is often to use forums and tutorials to identify these solutions. Logically, digital goods consumers are more likely to contact after-sales service departments of the works’ purchase or access platform than users of physical media.

These first reports provide information to the institution on the nature, severity, referral opportunity and frequency of difficulties encountered by users.

## DISABILITY EXCEPTION: DEVELOPING A NATIVELY ACCESSIBLE DIGITAL BOOK OFFERING

As part of its monitoring and observation task, the Hadopi Board has entrusted one of its members, Alain Lequeux, with an early research task on the question of conditions for improving the ebook legal offer for people with disabilities.

The Law of August 1<sup>st</sup> 2006 on Copyright and Related Rights in the Information Society introduced to the intellectual property code the copyright exception for persons with disabilities. The law of 7 July 2016 on the freedom of creation, architecture and heritage<sup>23</sup> revised the conditions for the implementation of this exception by widening, in particular, the

field of beneficiaries. However, the resources and means available to the authorised associations remain limited so that currently less than 10% of the physical works published under the exception are made available for the visually impaired (between 3000 and 4000 titles are made accessible each year, while published titles number around 50 000).

Given the technological developments, these difficulties should be overcome in the future and the number of accessible books significantly increased, if the publishers directly produce their ebooks in a natively accessible format such as the Epub 3 format.

<sup>23</sup> Articles L. 122-5, L.122-5-1, L.122-5-2 and R.122-13 to R.122.22 of the CPI.

In this context, a series of interviews with public and private stakeholders (publishers, platforms, etc.) in the book sector was organised by Hadopi during which they were asked about their accessibility practices and the actions that could be taken in favour of the development of a legally accessible ebook offering. This work is nearing completion and will be fully reported by the end of 2017.

## Heterogeneous consideration of accessibility and limited quality control

The ebook offer is based on the EPUB (Electronic PUBLication) format. It is a free and open standard designed by the International Digital Publishing Forum (IDPF) in collaboration with DAISY consortium<sup>24</sup>.

The current version is version 3, based on the open web standard HTML 5, which can incorporate accessibility features as advanced as the DAISY format for people with disabilities.

The EPUB 3 format offers numerous navigation features, font changes, backgrounds, text layout and code generation capabilities for reading with voice synthesis and thus makes possible the development of a natively accessible ebook offering that can benefit all disabled audiences. Nevertheless, not all publishers use the EPUB 3 version, some still using version 2 which does not offer all features.

However, if EPUB 3 can meet the needs of people who are unable to read, the accessibility criterion must be integrated by the publisher at each stage of the production chain to make the content of the EPUB effectively accessible. This is why, even if EPUB 3 is used, true accessibility in the works is not always ensured.

Some of the stakeholders met pay particular attention to the quality of their EPUB files: for example, the structuring of the text (opening pages, body of the text, end pages), the organisation (chapter, section, subsection, etc.), footnotes and lists are identified and access to the content facilitated by a navigable table of contents at the beginning of the text or by page numbers in the book. At each stage of production, they perform two types of verification. Upstream of the production, automatic verification of the XML file tags is performed: alerts are then raised (missing title, missing description for non-text content etc.). Downstream, a manual sample check is performed. It is then verified that the structure of the EPUB follows that of the original work, sometimes the file is technically sound but not consistent for reading.

One of the publishers interviewed drafted a set of specifications that introduced accessibility "ingredients" for their service providers in charge of catalogue digitisation. They also developed an internal control tool to check around ten accessibility

rules and to rule out non-compliant EPUB 3s. Others use only the Pipeline software, developed by the DAISY consortium, to convert their catalogue into an accessible EPUB format without systematically checking the actual accessibility of the works at the end of the production line. In addition, there are other obstacles, such as the frequent use of TPMs, which tends to restrict interoperability by making it more difficult to transfer works to suitable readers.

## Frequent use of technical protection measures

In the case of an EPUB with a TPM, the files in the archive are encrypted. In order to make reading possible, this EPUB also contains additional XML files defining the EPUB rules of use to be followed by the reader to decrypt the contents.

The mission of Hadopi is to ensure that technical protection measures (TPMs) do not result, due to their mutual incompatibility or inability to interoperate<sup>25</sup>, in limitations in the use of a work that are not desired by the rights holder, nor to deprive consumers of the benefit of certain exceptions provided for by law.

However, Hadopi's attention was drawn to the work access difficulties that are sometimes faced by people with disabilities. It appears in particular that the rules of use imposed by some TPMs, widely used by publishers, are complex and restrictive or even blocking for users prevented from reading.

However, it is essential that the legal offer that is natively accessible to disabled people is effectively and efficiently encouraged. EDRIlab in France has developed the LCP (Lightweight Content Protection) TPM. This TPM is simple and "light" in use and allows the user to read the content of the EPUB on any device with a simple password. This flexible system ensures interoperability between different operating systems.

LCP's specifications are open source and have allowed private stakeholders to develop their own TPM solutions based, for example, on double encryption: once on the file delivered, then again for a user key managed directly on the user's device. This method requires no additional procedures, a simple registration for a client account ensures the automatic synchronisation of the file on their device.

At the end of these interviews, Hadopi was able to see that the stakeholders involved in this mission are ready to engage in a collaborative approach to developing book accessibility and sharing experiences, particularly within the "Norms and Standards" group of the SNE. In addition, this working group has made EPUB book accessibility its main theme for 2017. On June 15, the SNE presented the conclusions of the interviews conducted over the past year.

<sup>24</sup> DAISY (Digital Accessible Information System)

<sup>25</sup> Interoperability is understood as the ability for two or more systems to exchange information and to mutually use the information exchanged.

In addition, an engineer has been recruited by EdrLab and acts as an interface between the various national and European actors involved in this process.

Finally, on September 20<sup>th</sup>, 2017, the Prime Minister announced the establishment of an interministerial culture/disability steering committee in connection with the publishers' union to develop natively accessible digital book publishing.

Thus, it is expected that digital works brought to the market will start to present, for the simplest works, ever more accessibility features. In addition, the recent legislative amendments to the disability exception have reinforced this hypothesis, in particular since they extend the benefit of the exception to new audiences that were previously excluded from its scope, in particular the so-called DYS group.

These first lessons help to identify three priority areas for improvements in the natively accessible legal offer:

- disseminate to French and European publishers a single repository of rules and best practices to adopt in terms of accessibility. In order to allow them to be widely distributed, publishers should relay them to their technical service providers in charge of EPUB production;
- validate accessibility rules according to users' needs. Using the "EPUB Check" tool, it would be possible to enrich digital books with new specifications adapted to the particular needs of each type of disability;
- develop a common database to improve accessible works indexing. This presupposes that both publishers and broadcasters report the accessibility features in their books.



## DIGITAL BOOKS: A FIRST MAPPING OF TECHNICAL PROTECTION MEASURES

As part of its mission to regulate TPMs, Hadopi has initiated a study and research project to draw up an inventory of the existing measures in the digital and audio book sector in France. This is to identify the usage restrictions caused by them, and more particularly the technical issues related to implementing interoperability. These restrictions must be considered in relation to the aims sought for the protection of copyrights, requests and the economic issues of rights holders.

On May 22<sup>nd</sup>, 2017, the Higher Council for Literary and Artistic Property (CSPLA) released a report on the interoperability of digital content<sup>26</sup> that provides an analysis of the expectations and challenges of interoperability in the ebook sector, and formulates different proposals to improve interoperability in this sector. The situation and issues related to format and TPM interoperability as described in this report confirm the intermediate results of the internal study that Hadopi conducted on this subject. Two types of user restrictions can be distinguished:

- limited choice of reading devices (readers) for ebooks they have already acquired;
- limitation of the choice of ebook suppliers for reading devices (readers) at their disposal.

In addition to these usage restrictions related to the lack of interoperability, Hadopi has identified limitations due to TPM functionality, some of which may potentially affect the enjoyment of exceptions for private copying or disability. These limitations relate to:

- the ability to copy the file that contains the work;
- the number of devices on which the work can be viewed simultaneously;

- the ability to copy all or part of the content (copy/paste);
- the ability to print all or part of the content;
- use over time;
- access for people with visual disabilities.

To this list can be added the restriction of lending or resale possibilities and, in the long term, a problem of durability of access to a work in the event of the disappearance or cessation of activity of a TPM supplier.

It should be noted that the restrictions mentioned are not systematically implemented in all cases, and that many rights holders make efforts to best meet the expectations of users while trying to protect the works against unauthorised uses.

The intermediate results of this first phase of the study project, which are based on internal research as well as interviews with a dozen stakeholders in the ecosystem concerned, will be completed in a second phase.

More specifically, it will be necessary to determine what essential information a developer or manufacturer must have to be able to ensure effective interoperability with a TPM, to evaluate the technical feasibility of the report's findings, and to analyse the technical adaptations of a TPM that may be necessary to implement the report's recommendations, as well as their economic impact.

This second phase of the project will potentially be followed by a third phase. This would involve socio-economic work aimed at measuring the reasons for the existence of TPMs, particularly in terms of economic issues and the aims pursued in terms of copyright protection.

<sup>26</sup> <http://www.culturecommunication.gouv.fr/Thematiques/Propriete-litteraire-et-artistique/Conseil-superieur-de-la-pro-priete-litteraire-et-artistique/Travaux/Missions/Mission-du-CSPLA-sur-l-interoperabilite-des-contenus-numeriques>

# PROTECTION AND DISSEMINATION OF WORKS ON THE INTERNET: EUROPEAN AND INTERNATIONAL DYNAMICS

The work started on copyright in 2016 by the European Commission to take account of changes in digital habits, such as recent decisions by the European Court of Justice (ECJ), could have significant effects in the medium term on French arrangements for

the protection and dissemination of creative works. These systems could also be inspired by certain actions taken abroad to combat infringement and to promote legal offers, all identified and analysed by Hadopi's international overview.



## Perspectives opened up by European negotiation

In its publication titled "Promoting a European economy based on fair, efficient and competitive copyright in the digital single market" the European Commission proposes new rules to better understand new habits and to improve cross-border access to services.

The European Commission's work under its "Digital Strategy" <sup>27</sup>, presented on September 14<sup>th</sup>, 2016 includes:

- the draft directive on copyright. Hadopi has paid particular attention to the discussions on Article 13 of the draft Copyright Directive, which provides for the obligation to implement content recognition systems by information service providers, as well as the issue of exceptions;
- the Regulation and Directive on cross-border exchanges, between the Union and third countries, for accessible copies of works and other protected objects for the benefit of the blind, visually impaired and persons with other difficulties in reading printed texts.

- the draft regulation setting out the rules on the exercise of copyright and related rights as applicable to certain online transmissions of broadcasting organisations and the re-broadcasting of television and radio programmes. In addition, the European Parliament adopted on May 18<sup>th</sup>, 2017, the regulation on cross-border portability of online subscription services <sup>28</sup>.

Finally, Hadopi has focused on initiatives at the European level to encourage self-regulatory mechanisms, such as the Memorandum of Understanding (MoU) draft drawn up with advertising stakeholders with a view to drying up pirate website revenues. From 2016, the Commission has stressed that in case of failure of this initiative, it would reserve the right to explore other arrangements in order to strengthen the responsibility of service intermediaries.

The following developments focused on the three main leads advanced by the European Commission that concern Hadopi, namely the question of the status of platforms, exceptions to copyright and portability

<sup>27</sup> Regulation that aims to ensure cross-border portability in online content services within the internal market, from December 9th, 2015, also known as portability, <https://ec.europa.eu/transparency/regdoc/rep/1/2015/EN/1-2015-627-EN-F1-1.PDF>

<sup>28</sup> Draft Directive on Copyright in the Digital Single Market (Directive 2016/0280), European Commission, 14 September 2016, <https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-593-EN-F1-1.PDF>

## EMPOWERING STAKEHOLDERS, RESPECTING THE STATUS OF PLATFORMS

The draft Copyright Directive provides that Member States should facilitate dialogue between rights holders and information society services so that they are able to enter into voluntary agreements to prevent the appearance of infringing content.

In order to combat the spread of copyright-infringing content on the Internet and to allow rights holders to be in a better position to obtain fair remuneration for their rights, the European Commission's project consists, via Article 13 (and recital 38) of the draft Copyright Directive<sup>29</sup>, of requiring certain platforms to enter into licensing agreements with rights holders and to take "measures to prevent their services making available works or other protected items as identified by rights holders in cooperation with service providers", in particular the use of content recognition technologies.

This requirement is based in particular on the following two observations:

- platforms hosting cultural content posted by their users are now one of the main sources of content access for Internet users. Much of this content is however made available without the authorisation of rights holders, even though it greatly contributes to the attractiveness of these platforms;
- in this context, with regard to the status of hosting services provided for by the e-commerce directive<sup>30</sup>, the only solution available to rightholders is to repeatedly request the removal of the content that was made available without their authorisation.

In practice, despite the absence of legal obligation, some platforms have entered into agreements with rights holders, which in general make it possible and simple for the latter to optionally monetise the content posted online or to have it removed. The European Commission intends to overcome the difficulties associated with the definition of the status of hosting providers resulting from the directive on e-commerce, which is not intended to be modified in the short term, and the Copyright Directive<sup>31</sup>. The risk remains, however, that the platforms whose content is generated by users (UGC)<sup>32</sup>, and who most often have the status of host, are exempt from this constraint.

This is one of the most debated European Commission proposals. The discussions swing from the issue of compatibility with the limited liability regime text as envisaged by the directive on e-commerce, to the nature of the platforms subject to this obligation and their classification.

On September 28<sup>th</sup>, 2017, the European Commission presented guidelines proposing to generalise a common toolset for platforms, aimed at quickly and preventively detecting and removing illegal content, as well as preventing it from reappearing.

<sup>29</sup> Directive 2000/31/EC of the European Parliament and of the Council of June 8, 2000 on certain legal aspects of information society services, and in particular electronic commerce, in the internal market.

<sup>30</sup> Although the directive certainly prohibits imposing a general surveillance obligation on hosting providers (Article 15), it also leaves room for the effective use of content recognition technologies:

- Recital 40 states that "[...] The provisions of this Directive relating to liability should not preclude the development and effective operation, by the different interested parties, of technical systems of protection and identification and of technical surveillance instruments made possible by digital technology within the limits laid down by Directives 95/46/EC and 97/66/EC."

- Recital 48 adds that: "This Directive does not affect the possibility for Member States of requiring service providers, who host information provided by recipients of their service, to apply duties of care, which can reasonably be expected from them and which are specified by national law, in order to detect and prevent certain types of illegal activities."

<sup>31</sup> UGC: User Generated Content.

<sup>32</sup> Regulation that aims to ensure cross-border portability in online content services within the internal market, from December 9th, 2015, also known as portability, <https://ec.europa.eu/transparency/regdoc/rep/1/2015/EN/1-2015-627-EN-F1-1.PDF>

## TOWARDS NEW EXCEPTIONS

The Commission's proposals are aimed at broadening the exceptions to copyright in the areas of research, education and the inclusion of people with disabilities. For example, the draft copyright directive proposes to introduce:

- an exception known as text and data mining;
- an adaptation of the educational exception in the digital world;
- an exception for preserving cultural heritage.

At the European Parliament level, the Culture Committee has proposed the addition of a new mandatory exception for digital use of citations or excerpts of works and other protected items used in user-generated content, particularly for purposes such as critiquing, information, entertainment, illustration, caricature, parody or satire. This new exception would be justified by the absence of

significant economic harm to the right holders concerned who could even promote the works used in the user-generated content.

The Regulation and Directive on cross-border exchanges, between the Union and third countries, for accessible copies of works and other protected objects for the benefit of the blind, visually impaired and persons with other difficulties in reading printed texts introduced the provisions of the Marrakesh Treaty.

They introduce a mandatory exception to facilitate the availability of works in an accessible format. It also provides for the possibility for accredited bodies who benefit from the disability exception to share a work in an accessible format with an organisation of a third country, party to the treaty.

## THE CHALLENGES OF PORTABILITY

Numerous measures, likely to enhance the legal offer, are proposed in order to smooth out the circulation of works within the framework of a digital single market.

The Regulation on Cross-Border Portability of Online Subscription Services<sup>33</sup> was adopted in the European Parliament on May 18, 2017. It aims to enable subscribers to online content services, subscribed in their Member State of residence, to access and use these services without incurring additional charges, when they are temporarily present in another Member State. Its purpose is to counter geographical blocking and other forms of "discrimination" based on the nationality, place of residence or domicile of customers in the internal market. This text allows a European citizen subscribing to paid online content services (music, games, movies, entertainment programmes or sporting events) to temporarily access (while on holiday or business trips) these services in the other countries of the European Union. The project also

introduces a "permanent residence check for users to avoid copyright infringement". This check, put in place by the content access providers, will have to be done by "reasonable and proportionate measures" (checking identity cards, details about the payment, public tax information, details of the postal address, checks via the IP address).

The proposal for a Regulation setting out the rules on the exercise of copyright and related rights as applicable to certain online transmissions of broadcasting organisations and the re-broadcasting of television and radio programmes, known as cab/sat2 (Regulation 2016/0284)<sup>34</sup>, still under discussion, plans to extend to ancillary online services (programmes that broadcasters broadcast online at the same time as their programme) and to re-broadcasts, the application of the so-called "country of origin" principle provided for in Directive 93/83 satellite and cable.

<sup>33</sup> A draft Regulation proposal for a Regulation setting out the rules on the exercise of copyright and related rights as applicable to certain online transmissions of broadcasting organisations and the re-broadcasting of television and radio programmes, known as cab/sat2 (Regulation 2016/0284): <https://ec.europa.eu/transparency/regdoc/rep/1/2015/EN/1-2015-626-EN-F1-1.PDF>

<sup>34</sup> Law Mission on Online Public Communication, Report and Proposals, Pierre Sirinelli, Josée-Anna Benazeraf, Alexandra Bensamoun, December 2016.

# Review of recent European case law

The years 2016 and 2017 were marked by important decisions at the European Court of Justice (ECJ) on the regime applicable to the digital society, in particular:

- a description of the concepts of hypertext links and public communication;
- the user's role in streaming;
- rules for the storage and transmission to public authorities of personal data.

## CASE LAW DEVELOPMENTS BROUGHT TO THE CONCEPT OF ONLINE COMMUNICATION TO THE PUBLIC

In the absence of a definition for the act of online communication to the public in European texts, the ECJ has been particularly interested over the years in introducing a plurality of criteria establishing the act of online communication to the public. The aim was to preserve the balance between the communication freedoms of Internet users on the one hand, and to facilitate the fight against commercial infringement on the other hand. The debate over the definition of hypertext links or acts of online communication to the public has become complex. A recent report by the Higher Council for Literary and Artistic Property (CSPLA)<sup>35</sup> highlights the proliferation of criteria proposed by the ECJ to describe an act of communication to the public, which is itself a source of complexity.

### The presumption of unlawfulness of professional sites with links to pirated content

The ECJ has built its case law on hypertext links, mainly since the so-called *Svensson*<sup>36</sup> judgment of 2014, according to which - when the content is initially distributed with the agreement of the rights holder - it is necessary to determine whether the link pointing to that content was also subject to authorisation or not, to check if this content was already freely available or if it was reserved for subscribers. If the content was already accessible, the link is free and does not constitute a communication to the public that would require authorisation. On the other hand, if the content was reserved for subscribers, it must be checked whether this link is such as to make this

content available to a "new public" in which case a new authorisation should be obtained.

The case law *GS Media*<sup>37</sup> from the end of 2016 specified that if it relates to content that is initially pirated, it is necessary to distinguish the case of the professional from that of the individual, to determine if the link pointing towards this content is legal or not. For the professional, the Court presumes that they act "in full knowledge of the consequences of their behaviour, to give their customers access to a protected work, and in particular when, in the absence of this procedure, these customers could not, in principle, enjoy the shared work". They "knew or ought to have known" that the content to which they referred was made available unlawfully or that the link circumvents restriction measures. On the other hand, the ECJ considers that hypertext links are legal for individuals in good faith who were not aware of the illegality of sharing the content.

This decision establishes the principle of a presumption of illegality of (professional) links sites pointing to pirate sites, which facilitate the possible description of massively infringing websites as well as preliminary work in the courts. The condemnation of a site offering counterfeit content would more easily lead to the finding of the illegality of the link sites pointing to the content of this site.

Two other judgments apply these criteria and include in particular the specific role played by the multimedia player or the platform *The Pirate Bay* to provide access to the works to users.

<sup>35</sup> Judgment of the Court of 13 February 2014, *Svensson e.a.*, C-466/12.

<sup>36</sup> Judgment of the Court of 8 September 2016, *GS Media*, C 160/15.

<sup>37</sup> Judgment of 26 April 2017, *Stichting Brein/Jack Frederik Willems, also acting under the name "Filmspeler"*, C 527/15.

The broad concept of communication to the public that emerges from the recent decisions of the ECJ may in particular facilitate the fight against commercial infringement and the procedures aimed at blocking illegal sites as well as the fight against the sale of boxes configured to facilitate piracy, even though this phenomenon is still emerging in France.

## Application to configured media players

Applying these criteria, on April 26<sup>th</sup>, 2017, the ECJ issued a decision in the so-called *Filmspeler* case<sup>38</sup>, which raised the question of illegality with regard to copyright in the sale of multimedia players configured with software and additional modules that include hyperlinks to copyright-infringing content made available on massively infringing sites managed by third parties.

The sale of such players must be regarded as constituting a copyright-infringing communication to the public and thus a violation of copyright. Without the player, its acquirers "could only benefit from the protected works with difficulty", in so far as the multimedia player searches for the content that its owner wishes to view over several streaming sites, whereas these sites "are not easily identifiable by public and the majority of them change frequently".

In addition, the seller "proceeds, in full knowledge of the consequences of their behaviour, to the pre-installation [...] of additional modules that specifically allow the purchasers to have access to protected works published on sharing sites without the permission of the copyright owners and to allow these purchasers to view these works on their television screen."

With regard to these boxes, the decision also notes that these players were very popular and were acquired by a large number of people; and that the advertisements relating to these multimedia players specifically mention that it makes it possible

in particular to view, free of charge and easily, on a television screen, audio-visual content available on the Internet without the authorisation of the rights holders.

## Application to peer-to-peer software

In a similar vein, the ECJ issued a judgment on June 14<sup>th</sup>, 2017, stating that The Pirate Bay links site is illegal, considering that the provision and management of an online sharing platform for protected works constitutes a violation of copyright, even though the works concerned are posted online by the users of the platform and not by the platform itself. The Court emphasises, to this end, the central role played by the administrators of the platform and the deliberate nature of their work.

Indeed, the platform carries out an act of communication when it works, in full knowledge of the consequences of its behaviour, to give its customers access to a protected work, especially since in the absence of this work, these customers could not, or not without difficulty, enjoy the broadcast works.

It is now recognised that by providing and managing an online sharing platform, administrators of a dedicated peer-to-peer link directory are fully aware of the consequences of their behaviour, to provide access to protected works, by indexing and listing on the said platform the torrent files that allow platform users to locate these works and to share them as part of a peer-to-peer network. As such, they can not be regarded as performing a "mere supply" of facilities intended to enable or carry out a communication, within the meaning of recital 27 of Directive 2001/29.

This judicial advance allows, with regard to link sites (peer-to-peer), for a comprehension of the liability of site administrators beyond the question of the role played by Internet users.



<sup>38</sup> Strictly interpreted by the ECJ judgment of 16 July 2009, *Infopaq International*, C 5/08, EU:C:2009:465.

## DETERMINING THE LEGAL REGIME APPLICABLE TO INTERNET USERS AS THEY ACCESS CONTENT VIA A MEDIA PLAYER DEDICATED TO ILLEGAL STREAMING

In the context of the *Filmspeler* case, the ECJ also had the question referred to it on the regime applicable to viewing unauthorised streaming content via a dedicated multimedia player. The question asked was to determine whether it was possible to apply to the Internet user, in this context, the benefit of the provisional copy exception. This exception would then be applicable to allow for a temporary copy that is made on the user's computer when it reads streaming content.

The checks to determine whether the exception conditions are met is carried out at the same time as the checks concerning the conditions of the three-step test.

This specific temporary copy exception was created by the 2001 Directive on Copyright and Related Rights in the Information Society to facilitate the functioning of the Internet. The purpose was to govern the case of a reproduction respecting several cumulative conditions<sup>39</sup>, namely:

- a temporary reproduction;
- which is transient or incidental;
- is an integral and essential part of a technical process;

- for the sole purpose of permitting the lawful use of a protected work or object or its transmission between third parties by means of a network using an intermediary;
- and has no independent economic significance.

In this specific case of the purchase of a box with configured media players it is particularly apparent, according to the Court, that the user is aware that "the main attraction of the player [...] lies in the pre-installation of the additional modules concerned". It is for this reason that the Court has held that it is "deliberately and knowingly that the purchaser of such a player has access to a free and unauthorised offer of protected works".

While this judgment remains circumstantial to the hypothesis of the deliberate installation and use of a preconfigured multimedia player for copyright-infringing uses, it must however be noted that the Court concludes that such a viewing is illegal while it has the opportunity for the first time to decide on the status of the user who consults copyright-infringing content made available through streaming.

## DATA RETENTION BY ELECTRONIC COMMUNICATIONS OPERATORS

On December 21<sup>st</sup>, 2016, the European Court of Justice delivered a judgment known as *Tele2 Sverige*<sup>40</sup>, in which it examines two national laws, Swedish and British, regarding, on the one hand, the rules governing the conditions of data retention by ISPs, and on the other hand, access conditions to these data by public authorities in the context of search for information or infringements.

This judgment deals with national regulations providing, in order to combat crime, the widespread and undifferentiated retention of all traffic and location

data, requiring ISPs to keep such data in a systematic and continuous manner, without exception. It follows the *Digital Rights Ireland* judgment of 8 April 2014<sup>41</sup> in which the Court invalidated the Data Retention Directive which provided for the retention of connection data by telecommunications operators or ISPs, and allowed national authorities to use them.

As regards domestic legislation, the *Tele2* judgment reiterates that limitations to the principles of confidentiality of communications and the protection of personal data are possible under Article 15 of

<sup>39</sup> Judgment of the Court of 21 December 2016, in the cases of *Tele2 Sverige AB* (C 203/15) and *Secretary of State for the Home Department* (C 698/15).

<sup>40</sup> Judgment of the Court of 8 April 2014, *Digital Rights Ireland and Seitlinger e.a.* (C-293/12 and C-594/12).

<sup>41</sup> EU Member States may, however, put in place, as a precautionary measure, "targeted retention" rules which involve an indication of "under what circumstances and conditions a data retention measure" may be taken. With regard to the regulation giving access to these data to the public authorities, the Court states that "the objective pursued by this regulation must be related to the seriousness of interference with fundamental rights entailed by this access. (...) In this respect access in principle, in relation to the objective of combatting crime, can only be granted to the data of persons suspected of planning, committing or having committed a serious offence or to be involved in one way or another in such an offence."

Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector, if they are "strictly proportionate" and necessary for the protection of public interest objectives in a democratic society<sup>42</sup>. The judgment states that the operators' obligation to retain data and transmit it to public authorities must not be based on the principle but on an exception, in particular one justified by the existence of a serious

criminal offence. Beyond the two cases targeted, this last criterion remains subject to interpretation.

Formally referred to for an opinion on ISP retention regimes for connection data provided for by the law of June 12<sup>th</sup>, 2009 with regard to this jurisprudence, on January 26<sup>th</sup>, 2017, after consulting the Rights Protection Commission, the Board deliberated, as appended.

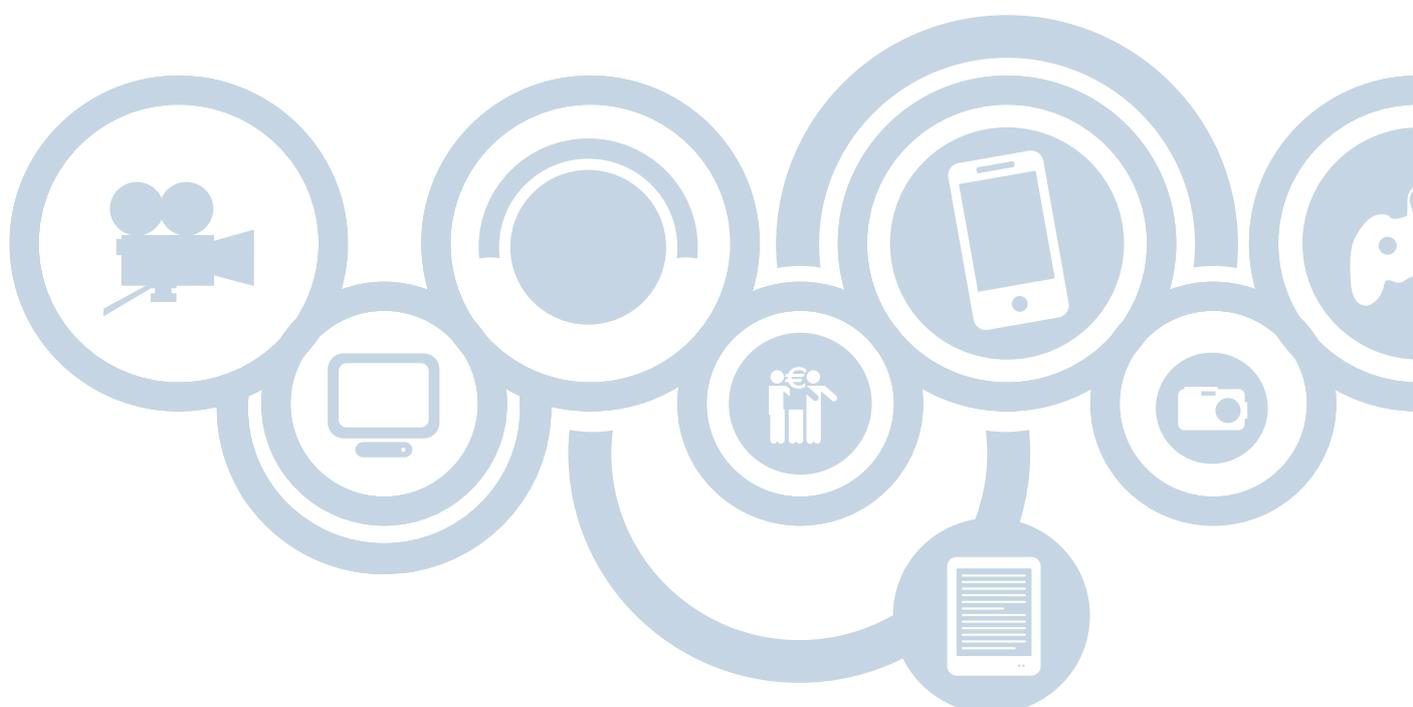
## Main developments observed abroad and lessons learned for France

Hadopi updated the review of anti-piracy schemes implemented in 18 countries<sup>43</sup> selected because of their originality, exemplarity and relative effectiveness of the measures adopted<sup>44</sup>.

The High Authority highlighted the foreign experience feedback on warning or fine warning systems for Internet users. It also describes the actions for the development of the legal offer and of general public

communication implemented in the countries studied, as well as the diversification of actions taken against copyright-infringing sites. These reflections finally make it possible to draw the main lessons for our country.

The full international overview can be found on the website of the High Authority.



<sup>42</sup> Notice No. 144 (2016-2017) by Mrs Colette Mélot, done on behalf of the Committee on Culture, Education and Communication, tabled on 24 November 2016, attached to this report.

<sup>43</sup> European Union Intellectual Property Office.

<sup>44</sup> World Intellectual Property Organization.

# MAKING BETTER USE OF THE INSTITUTION'S ACQUIRED KNOWLEDGE

The creation of Hadopi as an independent public authority has allowed it to mobilise certain knowledge assets on which it can base its task developments. Hadopi has recently made proposals, some of which require regulatory or legislative changes. These proposals were sent to the new government as soon as they took office and are based on recent parliamentary reports.

To fully develop these ideas, the institution has carried out many exchanges with its partners. During the exercise, the Hadopi Board heard from representatives of rights holders (Alpa and Sacem) and Google as well as personalities in charge of missions that may call on the institution's skills: Jean-Philippe Mochon, president of the CSPLA mission for the interoperability of digital content and Olivier Japiot, to whom has been entrusted the CSPLA mission for tools for the recognition of works on online platforms. Hadopi also took part in various events, in particular a round table organised by the Motion Picture Association, which hosted a Russian delegation in October 2016 at the IP Summit organised by the EUIPO<sup>45</sup> in Berlin in June 2017 as well as a WIPO<sup>46</sup> meeting in Geneva in September 2017 to explore the possibility of creating a

global list of pirate sites. In France, Hadopi agents also presented the lessons from their research at a round table discussion at the Think Culture Forum and at MaMa 2017.

The observations made in France and abroad through the international Hadopi overview highlight the diversification of forms of piracy (streaming, stream ripping, preconfigured boxes, etc.). Hadopi therefore intends to develop its activity to be able to fight against all of these forms of piracy by reinforcing the implementation of the graduated response procedure targeted at peer-to-peer practices, and also by recommending public regulations for the use of content recognition technologies and by further engaging the Authority in the fight against massively infringing sites.

The effectiveness of this strengthened fight remains conditioned by the development of the legal offer and the use made of this by Internet users. As such, Hadopi proposes to improve the development of the legal offer by making users aware of responsible cultural practices. The aim is to encourage the emergence of new offers and to raise awareness among consumers, particularly younger ones, to facilitate access to works.

<sup>45</sup> European Union Intellectual Property Office.

<sup>46</sup> World Intellectual Property Organization.

| PROJECTS BASED ON EXISTING LAW  | REGULATORY ADJUSTMENTS  | CHOICE FOR LEGISLATORS   |
|---|---|--|
| <b>Strengthen the deterrence of individual peer-to-peer practices</b>   |   |  |
| <p>Consolidate large-scale actions to stop copyright-infringing supply.<br/>Significantly develop the criminalisation component of Hadopi's activity in cases of repeat offences despite warnings.</p>  | <p>Allow Hadopi to process the source port and destination port to allow identification of the NAT'd IPs.<br/>Simplify the graduated response procedure (repeat offence timescale, ISP processing, harmonisation of hearing rules).</p> | <p>Mention the title of works shared illegally in the recommendations addressed to subscription holders.<br/>Extend the period during which the public prosecutor can refer to Hadopi for alleged infringement offences.</p>   |
| <b>Establish public regulations for the use of content recognition technologies</b>   |   |  |
| <p>Observe and evaluate the implementation of agreements between platforms and rights holders.<br/>Make recommendations on the effectiveness of these agreements.<br/>Proceed where appropriate to discussions on application difficulties.</p>   |   | <p>Entrust Hadopi with a role of regulator of agreements between platforms and rights holders to ensure in particular:</p> <ul style="list-style-type: none"> <li>• the definition of transitional arrangements or application thresholds;</li> <li>• the monitoring and evaluation of their implementation, in terms of the effectiveness and proportionality of the measures;</li> <li>• the organisation of an alert procedure for stakeholders in breach;</li> <li>• adversarial principle compliance in dispute cases (ownership of rights, benefit of exceptions, re-appropriation of works).</li> </ul> |
| <b>Engage the Authority in the fight against massively infringing sites</b>   |   |  |
| <p>Early detection of emerging copyright-infringing practices.<br/>Study the latest copyright-infringing site business models.<br/>Intervene as a third-party authority for better involvement of intermediaries.</p>   |   | <p>Entrust Hadopi with a general competence to characterise "massively infringing" sites within the framework of both soft law and litigation mechanisms (with the power to participate in legal proceedings).<br/>Entrust Hadopi with the monitoring, evaluation, mediation and extension of the best practice charters.<br/>Mobilise the Authority against "mirror sites" by instructing Hadopi to characterise them and promote the use of agreements to update court decisions.</p>  |
| <b>Raise awareness among consumers, particularly the youngest</b>   |   |  |
| <p>To generalise awareness-raising workshops in class and throughout academies, with the creation of educational modules underway.<br/>Encourage activities for students, young professionals and young creators.<br/>Raise awareness among and support young Internet users towards responsible digital practices through social networks.</p> | <p>Introduce quality benchmarks for the legal offer.</p>  | <p>Set general public information and awareness goals by referring to soft law tools.<br/>Grant the High Authority enhanced means of observation and access to data in order to identify obstacles and levers in the development of the legal offer.</p>   |
| <b>Facilitate access to works</b>   |   |  |
| <p>Contribute to interoperability by first addressing the case of ebooks for the disabled and the development of digital works loaning in libraries.<br/>Assist in the full implementation of the disability exception.</p>   |   | <p>Strengthen the effectiveness of the "disability" exception by allowing Hadopi to issue recommendations on best practices and, where appropriate, to send formal notice letters to publishers.<br/>To stimulate a new dynamic in favour of interoperability by granting a power to Hadopi for investigation, notice and summons or injunction and allowing consumer associations to refer matters to the institution.</p>  |

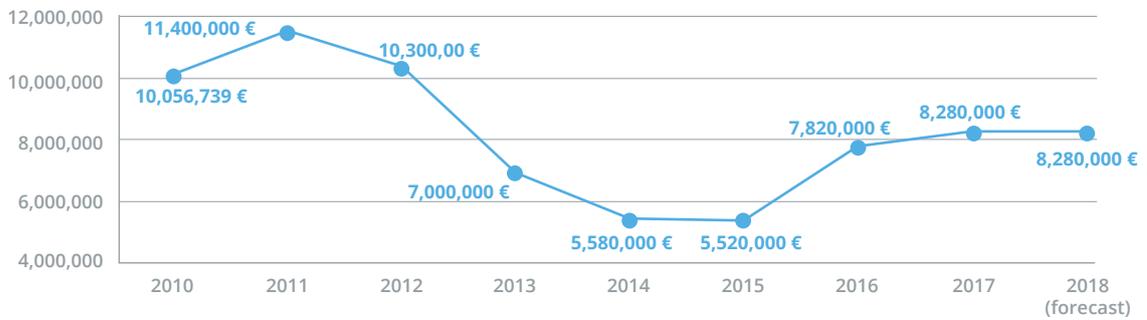
# BUDGET

The year 2017 was marked by a reconstruction of Hadopi's staff, after a significant reduction in 2016, as well as by an adjustment of its budget allowing it to face up to the compensation owed to ISPs with regards

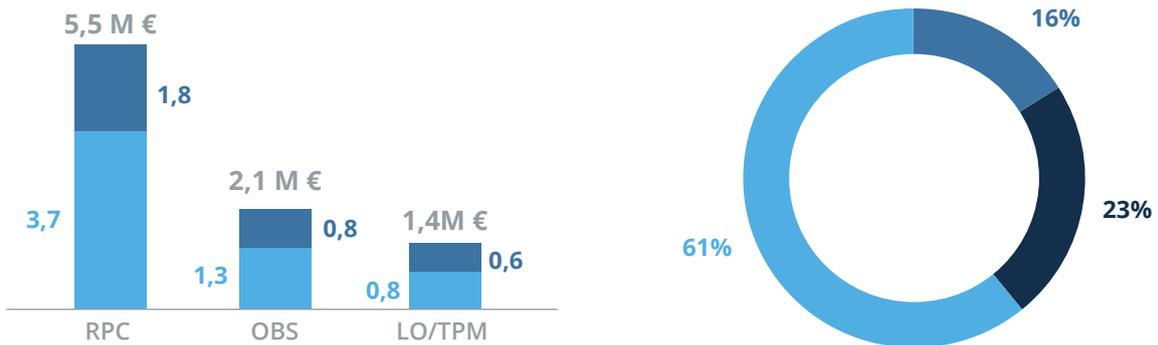
to the graduated response, as well as for new activities.

By the end of 2017, the Authority's staff numbers reached 55.

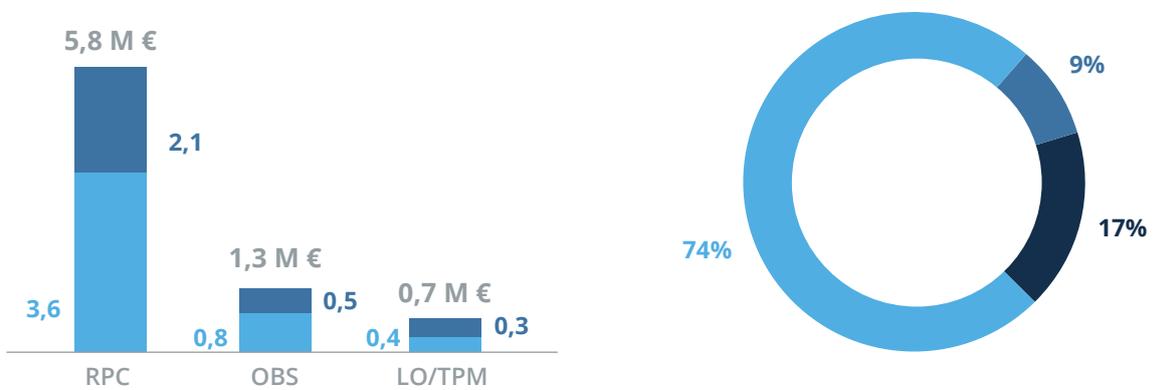
**Annual Financial Resources (2010-2018)**



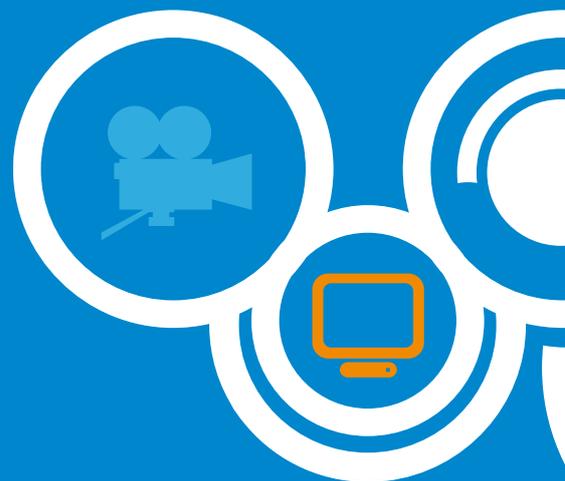
**2017 Original approved budget**



**2017 Budget forecast**



■ Direct costs     
 ■ Indirect costs     
 ■ RPC (Rights Protection Commission)     
 ■ OBS (Observation)     
 ■ LO/TPM (Legal Offer and Technical Protection Measures)



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