

Fighting Internet Piracy: The French Experience With The Hadopi Law

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ABSTRACT

With the ever-increasing speed of the Internet and the ever-increasing power of personal computers and mobile devices, illegal downloading affects not only recorded music, but also movies and other medias. To stem the loss of revenues caused by copyright holders, France passed the Hadopi Law in September 2009 to be enforced by a new agency - the Hadopi Authority.

The Hadopi Authority's mission includes three major objectives. 1) to enforce the copyright law on the Internet through legal actions against violators, 2) to educate Internet users about illegal versus legal activities with respect to the copyright law, and 3) to facilitate the development of Internet services providing legal access to copyrighted works.

To deter piracy and, at the same time, to serve as a pedagogical tool, Hadopi uses the "graduated response system". Users who participate in illegal downloading are first warned two times. After a third violation, their file is forwarded to a court for possible prosecution. Between October 2010 and March 2012, the Hadopi Authority performed several surveys of Internet use to measure the effectiveness of the Law. The resulting reports show some modest positive changes in the behavior of French Internet users.

Keywords: Illegal Downloading; Peer-to-Peer File-sharing; Hadopi; Legal Downloading; Internet Piracy

INTRODUCTION: THE FUTILE VICTORIES OF THE MUSIC INDUSTRY

In its fight against Internet piracy, the recording music industry was able to score many legal victories against companies that facilitated illegal file sharing. A limited list of those legal victories in the USA include court decisions or settlements against mp3.com, the pioneer of file-sharing (Robertson & Simpson, 1999); Napster, recognized by many as the main actor in the popularization of peer-to-peer file-sharing (Knopper, 2009); the providers of popular decentralized file-sharing software - Sharman Networks, Grokster, and SteamCast - the last two of which fought all the way to the Supreme Court and lost (Reuters, 2005). Similar legal victories against companies providing file-sharing website or file-sharing software took place in France and other European countries.

The recording music industry also took to court individual users and obtained many judgments against them. However, the industry lost an important battle when a court decided that it may not directly subpoena Internet Service Providers to get personal data about violators of the copyright laws (Schwartz, 2003). The industry has to get individual subpoenas from a court for each alleged violator.

In the legislative arena, the initially successful effort of the music industry and other content providers to pass stringent laws against illegal internet file-sharing has, of late, fizzled in the USA. The SOPA ("Stop OnLine Piracy" Act) and PIPA ("Protect IP" Act) bills, which were to be voted on by the U.S. Senate and the House, had the strong support of the industries providing content, in particular the music and movies industries (Magid, 2012). They were shelved under political pressure (Thier, 2012) as well as for constitutional reasons. For the same reasons, Europe saw popular protests against ACTA, a treaty signed by the USA, Japan and six European countries. This treaty seeks to stop online piracy (Reuters, 2012).

In spite of those many legal victories, the sales of CDs in the USA since 2001 show an accelerating decline of more than 74% through 2010 (RIAA, 2011). Figures abroad are fairly similar or worse. So far, technology and Internet culture, coupled with political pressure, have made it hard to prevent Internet piracy (Koster, 2008; La Roche, Flanigan & Marks, 2004).

On the brighter side, digital sales through legal downloading have been increasing since 2008 (when the Recording Industry Association of America started providing digital sales figures). From 2008 to 2010, the digital sales increase was less than the physical sales decrease. Between 2010 and 2011, the digital sales increase was larger than the physical sales decrease (Gaillard, 2012) and the same results are expected in France and other European countries in 2012.

THE FRENCH APPROACH: THE HADOPI LAW

The recording music industry was the first victim of illegal downloading on the Internet as the mp3 compression format made it feasible to download relatively small music files. With the increasing bandwidth of the Internet and the increasing storage capacity and processing power of computer systems, Internet users have been able to download much larger video files of movies and process them. After the losses suffered by its music industry, France's movie industry was in danger. For example, in 2008, the number of pirated movie copies was estimated to be the same as the number of movie theater entries; the DVD sales had decreased by 30% in four years (Assemblée Nationale, 2011). To stem the huge loss of revenues caused to copyright holders, in September 2009, France passed the Hadopi law to fight Internet piracy. "Hadopi" is an acronym that, when translated to English, stands for "High Authority for the Dissemination of Works and Protection of Copyright on the Internet."

Passing the Hadopi Law was not easy. There was strong opposition from Internet users, many political parties, and many newspapers. It took four years for France to pass the Hadopi Law. Some of the strongest measures it initially contained were deemed unconstitutional by the Constitutional Council (partly the French equivalent of the U.S. Supreme Court) and the law had to be modified. In particular, the power to suspend access to the Internet for violators and to fine them was taken away from the Hadopi Authority and given to the courts.

The new government agency created by the law has an annual budget of 12 million Euros and has a staff of roughly 60 people. It is supervised by a steering committee of nine members, chosen for a set tenure by various French courts and elected officials. The Hadopi Authority sees its mission in much broader objectives than simply enforcing the copyright law on the Internet. One objective is pedagogical - make the Internet users understand what are legal activities with respect to the copyright law. Another objective is to facilitate the development of Internet services that provide legal access to copyrighted works.

To deter piracy and, at the same time, serve as a pedagogical tool, Hadopi uses the "graduated response system". The traffic generated by customers of the Internet providers in France is monitored. Users who are identified as illegally downloading copyrighted material receive an email warning followed by a certified letter, if necessary, telling them that they risk losing their Internet access. Finally, their case may be forwarded to a court.

Within the Hadopi Authority, a Committee of Copyright Protection (CPD), consisting of three judges, is tasked with applying that graduated response system. By the end of the year 2010, it had sent 100,000 email messages. By Fall 2011, it had sent more than half a million "first warnings", 60,000 "second warnings", and is poised to initiate the prosecution of 60 violators (Beuth, 2011). As discussed above, the Authority does not have the legal right to suspend Internet access. If after two warnings an Internet user continues to violate the copyright law, the CPD may forward the violator's file to a court, which has the sole legal authority to suspend the violator's access to the Internet and fine that person.

To encourage websites to provide Internet users legal access to copyrighted digital files and to encourage Internet users to take advantage of those websites, the Hadopi Authority grants its own official label. It has named this part of its mission with the French word "labellisation", which derives from the English word "label". The name of the awarded label is "PUR" - an acronym standing (in French) for "Encouragement of Responsible Usage". Almost 50 websites have received the PUR label to date, including some large ones like Amazon, Fnac (the largest

French retailer of CDs and DVDs), and Deezer, a site providing music in streaming mode (Gevaudan, 2012). Note that websites offering legal access to movies, books, and photographs may also get this label. Applications by websites to the PUR label are published during four weeks on the Hadopi website, giving copyright holders the opportunity to approve or oppose the award of the label.

AN ASSESSMENT OF HADOPI RESULTS

In its two and half years of activities, the Hadopi Authority has gathered data, performed two studies, and published its findings. The first study involved the surveying of Internet users five months apart, analyzing the data and publishing them. The Hadopi Authority performed two surveys to measure the effectiveness of the graduated response system - one in October 2010 when the “first warnings” started being emailed to violators and the other one at the end of March 2011 (Hadopi, 2011). The samples surveyed each consisted of 1,500 Internet users. The findings of the surveys seem to indicate the effectiveness of the Hadopi Law, in particular: 1) the number of respondents approving of Hadopi has gone from 41% to 50%; 2) the number of respondents who decreased their use of illegal downloading, or stopped it, went from 25% to 41%; and 3) of the 100 respondents who received a warning or knew somebody who did, 50% completely ceased illegal downloading. On the negative side, Hadopi did not change the illegal downloading habits of 23% of respondents.

The second study (Ferran, 2012) collected Internet traffic data involving illegal sites, as well as legal sites, in 2009, 2010, and 2011. The main results of that study were:

1. Internet traffic data were collected for four popular P2P software programs providing illegal downloading to French Internet users. The data show a steady decrease in the number of users of those programs between December 2010 and December 2011, from 4.5 million to about 3 million - a 29% decrease. However, critics of the Hadopi findings note that illegal streaming was increasing as P2P downloading was decreasing and that looking at the aggregate of both types of illegal downloading, no progress is noticeable.
2. The data show an increase of legal downloading traffic between December 2010 and 2011 for several sites, such as iTunes (from 7.5 million visitors to 7.9 million visitors), Beezik (from 1 million to 2 million), and Spotify (jumping in two years from 0.15 million to 0.65 million.). Overall, the number of visitors remained the same - about 13.7 millions. Here, the critics of Hadopi point out that the increase due to iTunes - the Apple online music service - often masks the decrease of several smaller sites.

CONCLUSIONS

The findings published by the Hadopi Authority show, at best, modest gains and, at times, results that are subject to contradictory interpretations. In favor of Hadopi, one can argue that more time is needed to demonstrate its effectiveness. Other countries, in particular Great Britain and Spain, have passed laws similar to the Hadopi Law. It will be interesting to look at the results in those countries.

The fact that the overall revenues from recorded music have increased in the USA in 2011 (for the first time since 2001) due to the increase of revenues from digital sales, and that the same is predicted for France and the rest of Europe in 2012, indeed shows that it takes times for Internet users to accept to pay for music and other media downloaded over the Internet. At the same time, a large number of Internet users strongly feel that they are entitled to free access to music and other copyrighted works over the Internet, and those users have recently shown their political strength. Finally, recent elections in France brought to power a president and representatives who were opponents of the “punitive” clauses of the Hadopi Law when it was passed. At the time of this writing, it is not known whether they will weaken or eliminate those clauses.

AUTHOR INFORMATION

Alexis Koster has been on the Faculty of the MIS Department at SDSU since 1983, teaching mostly database systems and application development with Java. His current research interest focuses on the role of the Internet in the legal and illegal downloading of music and on the impact of the Internet on the music industry. E-mail: akoster@mail.sdsu.edu

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