



TERMS OF REFERENCE FOR THE PREPARATION OF AN INTERNET SOCIETY (ISOC) POLICY PAPER ON THE FRENCH “HADOPI” LAW AND SIMILAR LAWS CONCERNING PUNITIVE MEASURES FOR COPYRIGHT INFRINGEMENT VIA THE INTERNET

Background

European Parliament

On 6 May 2009, the European Parliament reviewed ‘... a political agreement reached with the Council of Ministers on the reform of the regulatory framework for electronic communications ..’, and ‘... reinstated ... a first-reading amendment saying that "no restriction may be imposed on the fundamental rights and freedoms of end users, without a prior ruling by the judicial authorities (...) save when public security is threatened".’¹

The next meeting of the Council of Ministers is scheduled for 12 June 2009.²

French law

The National Assembly and Senate of the French Parliament passed the ‘Projet de loi favorisant la diffusion et la protection de la création sur Internet’ on 12 and 13 May 2009 respectively.

This law will create an agency entitled ‘Haute Autorité pour la Diffusion des Œuvres et la Protection des Droits sur Internet’ (HADOPI) which will be responsible for the controversial ‘three-strikes’ procedure for copyright infringement.

The last step of that procedure involves suspension of Internet access for a period between one month and one year.³

On 10 June 2009, the French Constitutional Council declared part of the law unconstitutional, specifically the part authorising HADOPI to suspend citizens’ access to the Internet because such powers must be exercised by the judiciary.⁴

New Zealand

Last year, the New Zealand government proposed an amendment to the *Copyright Act* 1994 (NZ) to require ISPs to have a policy for terminating customers who were repeat

¹ 407 votes in favour, 57 votes against, and 171 abstentions;
http://www.europarl.europa.eu/news/expert/infopress_page/058-55086-124-05-19-909-20090505IPR55085-04-05-2009-2009-true/default_en.htm

² http://www.nytimes.com/2009/05/07/technology/07iht-telecoms.html?_r=1&pagewan

³ http://74.125.39.132/translate_c?hl=en&ie=UTF-8&sl=fr&tl=en&u=http://www.assemblee-nationale.fr/13/projets/pl1240.asp&prev=_t&rurl=translate.google.com&usq=ALkJrhQaCposP03ZU4-r-fqYYgXAnvJQ

⁴ <http://www.technewsreview.com.au/article.php?article=8372>

copyright infringers. However, before the amendment was due to come into force, it was abandoned.

The proposed new section provided as follows:

92A Internet service provider must have policy for terminating accounts of repeat infringers

(1) An Internet service provider must adopt and reasonably implement a policy that provides for termination, in appropriate circumstances, of the account with that Internet service provider of a repeat infringer.

(2) In subsection (1), repeat infringer means a person who repeatedly infringes the copyright in a work by using 1 or more of the Internet services of the Internet service provider to do a restricted act without the consent of the copyright owner.⁵

Taiwan

In April 2009, the Taiwanese parliament also introduced a copyright infringement law which could affect users' access to the Internet. A description of the law appears on the Taiwanese Intellectual Property Office website (www.tipo.gov.tw).⁶

ISOC European Chapters Coordinating Council and ISOC France

On 4 August 2008, the ISOC European Chapters Coordinating Council issued an Aide Memoire entitled:

Subject: Internet – creative content and “graduated responses”.

A copy of this paper is attached.

ISOC ECC and ISOC France issued a press release on 5 September 2008. A copy of this press release is also attached.

Project details:

1. This Project will use the proposed Sphere Project consultation process currently under discussion in the Sphere-Consult Group, applying the proposed Consultation Fundamentals.⁷
2. The planned output of the Project is an ISOC Policy Paper regarding the French 'HADOPI' law and similar laws concerning punitive measures for copyright infringement via the Internet.
3. The Policy Paper will be prepared by a Drafting Group comprising:
 - a. Charles Simon (ISOC French Chapter);
 - b. Keith Davidson (ISOC Global Member);
 - c. Frederic Donck (ISOC);
 - d. Christine Runnegar (ISOC);

⁵ S.92A of the *Copyright (New Technologies) Amendment Act 2008* (NZ)

⁶ http://www.tipo.gov.tw/en/News_NewsContent.aspx?NewsID=3675 and http://billboard.biz/bbbiz/content_display/industry/e3ib20649ac4d6059c2ff7b95023c51cbe6

⁷ http://wiki.chapters.isoc.org/tiki-download_file.php?fileId=54 (english), http://wiki.chapters.isoc.org/tiki-download_file.php?fileId=55 (french), http://wiki.chapters.isoc.org/tiki-download_file.php?fileId=56 (spanish)

assisted by a Working Group. The Working Group will comprise the Drafting Group members and other ISOC global, chapter and organisational members who are interested in contributing to the Project.

4. The Project will be managed by Christine Runnegar, Public Policy Manager (ISOC) . Her contact details are:

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 +41 76 497 0510 (mobile)

5. Proposed timetable:

Terms of reference circulated to ISOC global, chapter and organisational members inviting persons to nominate themselves for the Working Group	12.06.2009
Nominations for Working Group due	17.06.2009
Working Group announced	18.06.2009
First meeting of Working Group – allocation of tasks	23.06.2009
Second meeting of Working Group – progress report	30.06.2009
Third meeting of Working Group – submission of work	07.07.2009
Fourth meeting of Working Group – discussion of work and allocation of additional tasks (if any)	14.07.2009
Fifth meeting of Working Group – submission of initial draft Policy Paper	21.07.2009
Sixth meeting of Working Group – finalising draft Policy Paper	28.07.2009
Completion of draft Policy Paper	07.08.2009
Circulation of draft Policy Paper to global, organisational and chapter members for comment	14.08.2009
Comments from global, organisational and chapter members due	07.09.2009
Completion of Policy Paper	21.09.2009