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# Making people want to download legally

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After some heated debates on the political scene and a great deal of conflicting public opinion, the Constitutional Council of France finally invalidated a portion of the Hadopi law, believing that the terms of the sanctions were incompatible with freedom of expression and communication. A new version has been passed on its first reading by the Senate and is under consideration by the Assembly. This new version still threatens Internet users, who are downloading illegally, with cuts to their Internet access and possible fines.

While the importance of illegal downloading and the need for a deterrent seem obvious, the links between warning messages, sanctions and the user's behavior are difficult to clarify and have not yet been sufficiently studied. Here lies the challenge. If the “High Authority with Regards to the Dissemination of Works and Protection of Rights on the Internet” (Hadopi) succeeds in encouraging a significant number of users to opt for the legal offers, the Hadopi law will be a success. However, if after two years of the graduated response regime, the use of legal offers in France is lagging behind our neighbors, the law will have failed because we will only remember its repressive side.

The debate has, up until now, been too focused on how to implement the sanctions in order to deter piracy. The debate should now move beyond sections, and focus on how to reconfigure content and distribution industries as well as redefine business models enabling innovation in content and creation.

The real challenge of Hadopi will be to establish conditions for the development of legal access to Internet content, better adapted to the tastes of consumers and their purchasing habits. To succeed, the High Authority will use all the tools at its disposal to convince the average Internet user to opt for a rich legal offer that is user friendly. Hardcore pirates will remain outside the law anyway, and one of the priorities of the new authority will be to avoid pushing the average Internet user towards illegal internet behavior.

The consumer is not solely responsible for the current situation. The content providers have failed to make legal offers sufficiently attractive, and some telecom operators and technical platforms, under the pretext of promoting broadband or increasing traffic on their sites, provided the consumers with the tools to commit fraud on a silver platter. The High Authority will have several tools at its disposal. First, the system of warnings and sanctions must be defined more subtly so as not to cause the average Internet user to commit fraud. Additionally, the attribution of labels or seals of approval will enable the Authority to ensure that the technical tools available to the user to prevent illegal downloading will be designed to encourage their adoption by the greatest possible number of users. Finally, the Authority has a general mission to observe and encourage legal offers which will enable it to carry out studies, to look at international benchmarks, to conduct experiments, or even lead multi-stakeholder working groups, similar to the broadband working groups lead by ARCEP (the French telecom regulator).

One of the priorities of the new Authority will be to launch serious economic studies on the behavior of Internet users faced with various pedagogical warning scenarios and legal offers and evaluate the impacts on business models of content providers. Some U.S. universities have shown, for example,

that sending a warning during the act of illegal downloading is more effective than sending an email a few weeks later. It is thus necessary to draw from the experiences of other countries, and also other sectors.

The High Authority shall certainly learn from these different experiences in order to define the tools that are most suited to the problem of illegal downloading all the while ensuring, in cooperation with intermediaries and technical content editors, the development of innovative content.

Finally, it is important to highlight the point that illegal downloading is not always motivated by the desire to escape the system of traditional market based on prices. In other words, all downloads are not intended to substitute for the purchase of the original works. A great deal of illegally downloaded content is to test the quality of the goods, that is to say, goods whose quality can be revealed only during the act of consumption. The consumers can resort to downloading in order to test the content and then procure lawfully the product that matches their tastes exactly. This type of download has a positive effect on content providers as it reduces their marketing and promotion costs. The Authority could look more closely at the solutions deployed on certain social networking or video sharing sites, where content publishers have made a deliberate choice to allow the free use of their works under well defined conditions.

In any event, the use of graduated response alone will not lead to the virtuous behavior of all actors. It must coincide with many other actions. By acting on several levers at once, taking an international viewpoint and adjusting their aim continuously, the government and ARCEP have allowed France to become a leader in broadband penetration. The new High Authority should try to replicate this success in terms of building innovative legal offers. It is now imperative that the debate move beyond the sole problem of sanctions to turn resolutely towards the future by concentrating resources on developing innovative content offers.