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European Commissioner for Digital Agenda is in favor of a survey launched by France's Online Anti-Piracy Agency Hadopi

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The French online anti-piracy law took effect in 2009 and provides for a graduated response as a means to combat online piracy. The law created an administrative agency, Hadopi, that may — at the request of sworn agents designated by professional syndicates, rights collecting societies and the French Cinematographic Center — send warnings to alleged freeloaders which, if unsuccessful in stopping the activity, can lead to criminal prosecution based on the agency's findings.

The Hadopi agency was also created to encourage and promote the legal use of copyrighted materials online. In this context, it launched a survey in October 2011 on whether France's copyright law itself needs to be amended. The survey particularly focuses on the exceptions to copyright. It allows any citizen to give their opinions on what exceptions should exist under French copyright law.

Neelie Kroes is the European Commissioner for Digital Agenda. She is known to be in favor of a revision of copyright laws. She has just published on her blog an invitation to respond to this French survey. This is a rare occurrence since senior European officials ordinarily communicate about initiatives at a European level and not about national initiatives.

Neelie Kroes considers the survey a "pioneering work", and says on her blog:

"Combating piracy is not only about enforcement. Indeed, you all know that I am not a fan of copyright enforcement which punishes individuals or families by cutting their internet access. The best way to beat piracy is by favoring legal distribution in ways that meet consumers' expectations. So we have to be extremely ambitious in creating a legal framework that promotes the development of legal offers online".

Kroes also states that:

"The European Commission also has a positive agenda and will soon come with a proposal on collective rights management, and this year will also review the 2001 Copyright directive on copyright. So the exercise done by Hadopi is very timely."

In a nutshell, French copyright law includes a number of exceptions to the monopoly an author possesses on his or her work, once the latter has been disclosed, such as:

- representations within the family circle;
- private copies;
- on condition that the name of the author and the source are clearly stated:
 - analyses and short quotes;
 - press reviews;
 - dissemination of certain speeches intended for the public;
 - reproductions of works or graphic or visual art intended to appear in a judicial sale's catalogue;
 - representations or reproductions of excerpts of works for teaching purposes;
- parody, pastiche and caricature, observing the rules of the genre;
- acts necessary to access the contents of an electronic database;
- provisional, transient or incidental reproduction;
- exception for the benefit of the disabled;
- exception for the benefit of the libraries; museums or archive services;
- the reproduction or representation, in full or in part of works of graphic or visual or architectural art for information purposes;
- exceptions with respect to software;
- exceptions with respect to databases; and
- exception provided for with respect to the French Heritage Code, concerning legal deposit.

Hadopi's survey mainly focuses on whether certain re-uses of content should be exempted from claims of copyright breach. For example, the survey notably requests the contributors' opinion on the introduction of the common law doctrine of fair-use, which does not exist under French copyright law. The survey also encompasses reflections on a possible harmonization of copyright exceptions at a European level.

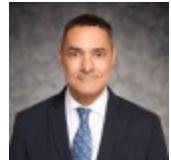
Some French organizations protecting and defending the authors' rights have been challenging this initiative. In an open letter to Hadopi, Authors and Composers French Syndicate (SNAC) and National Union of Authors and Composers (UNAC) complained that they had not been informed about the survey prior to its release. They also challenged Hadopi's authority in launching such a project. They further wrote that "the philosophy of this questionnaire already shows a willingness to put into question one of the foundations of copyright by suggesting the possibility of creating and recognizing a genuine exception right to the exclusive property of the creator", and refused momentarily to participate to the survey.

Such disagreements may explain why Neelie Kroes is urging interested French citizens to participate in the survey, initially scheduled to end on May 15 and now extended to July 15, stating that "any French citizen in France – and not just the artists or companies – can give their opinions on what exceptions should exist under French copyright law to take account of the ongoing digital revolution."

Interestingly, Neelie Kroes directs her appeal specifically to French citizens, whereas the Hadopi agency states on its website that "the questionnaire [...] is addressed to all parties wishing to contribute" and that "it is left to the contributor's choice to answer all or part of the questionnaire, in particular when the questions addressed are

strictly focused on French law". In addition, [Hadopi has posted an English language version of its questionnaire](#). It thus seems to imply that the survey would not in fact be limited to French nationals or the public in France only.

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