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Three Strikes and You're... OUTTTT! (Of French Cyberspace)

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On October 22nd, France's highest court approved the "three strike law", which will deny Internet access to those people that illegally copy music and movies and are deemed repeat copyright infringers. The bill, known as Haute Autorité pour la Diffusion des Oeuvres et la Protection des droits sur Internet (High Authority for the Distribution of Works and the Protection of Rights on the Internet), authorizes the French courts to terminate an individual's Internet access and impose a fine of up to EU 300,000 (\$415,000) or two years in a French prison. The French law calls for the establishment of a new agency, which will issue warning notices to Internet users accused of piracy or infringing activity – such warnings will be sent out up to three times before fines and/or harsher penalties are imposed. Although in general the entertainment industry's position is that imposing responsibility on ISP's to monitor illegal activity is about educating users and responding to a higher standard of evidence for illegal activity via their networks, ISP's have consistently argued that it is not their job to police the Internet. Perhaps France's implementation of a separate agency to work with the ISP's in enforcing piracy policies will serve to alleviate some of the concerns of ISPs. The new French law, which initially empowered French ISPs to terminate user accounts, was first rejected back in April by the French Constitutional Council, which said that free access to public communication services online was a human right that only a judge should have the power to disconnect. Without this protection, the court said that the law would have violated free speech provisions. The latest version was approved due to the inclusion of an amendment that requires judicial review prior to any account suspensions. Critics of the new law argue that it denies the accused the right to due process, pointing out that Internet subscribers will be held liable if someone uses their Internet connection to illegally download copyright works, even if the computer was under someone else's control. The critics further argue that the discontinuance of Internet access is an unfair penalty because of the increasing importance of the Web as a channel for expression and commerce. It is believed that this new law could result in sanctions against 50,000 people per year. David El Sayegh, the director general of the French music industry association, Syndicat National de l'Edition Phonographique, counters those arguments by saying that the laws are not meant as a punishment against Internet users but instead hopes that the mandated warnings will have a strong deterrent effect, rendering termination of access a rarely invoked penalty. Many policy makers across Europe agree with the bill's critics and have been apprehensive toward France's adoption of the solution since they believe it is more important to increase broadband access, not deny citizens their rights to it. Despite such skepticism, it appears that Britain will

introduce similar legislation next month. Dan Glickman, Chairman and CEO of the Motion Picture Association of America (MPAA), applauded the French court's decision and said that it is an enormous victory for creators everywhere. In addition, Rick Cotton, Executive Vice President and General Counsel at NBC Universal and Chairman of the U.S. Chamber of Commerce-led Coalition Against Counterfeiting and Piracy (CACP), acknowledges that the new French law recognizes that jobs in the creative industries are under assault by digital theft. Copyright piracy has taken a huge toll on the U.S. movie and music industry due to the current global economic situation. The MPAA has determined that illegal downloads/streams are responsible for about 40 percent of the revenue the industry loses annually due to piracy. Although the U.S. entertainment industry has not been as aggressive as the French in lobbying for a "three-strikes" law, the music and film industries are proponents of instituting a graduated-response program, which encourages the implementation of a warning system similar to the warning notices that will be issued to potential copyright infringers under the French law. In addition, the CACP is currently seeking to change federal law enforcement emphasis so that intellectual property crimes are given priority over other kinds of crime. Although it seems unlikely that we will see a "three strikes" policy instituted in the U.S. anytime soon, the developments in this area of the law will inevitably influence the terms under which content providers distribute and protect their content as well as how consumers access such content.

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