

The new copyright French law; a personal viewpoint.

Pierre BARUCH
Professor (ret.)

Physics Department
Université PARIS 7 –Denis Diderot
pierre.baruch@wanadoo.fr

Summary: The law on Copyright and Related Rights in the Information Society (French acronym DADVSI) was finally promulgated on Aug. 1st¹, after a long course of events, sometimes dormant, sometimes tumultuous, sometimes ludicrous. It updates the Intellectual Property Code, last revised in 2001, transposing the European Directive of May 2001.

I present here a brief report of the debates and of the content of the law, focussing on the issues of interest for Science and Education. The opinions presented here are personal, but I am sure they are shared by many².

The story

The EU Directive 2001/29/CE of May 2001 (EU-CD)³, on "the harmonisation of certain aspects of copyright and related rights in the information society" mandated governments to transpose it into national laws before 22 December 2002. In France, the draft for the new law was submitted only in October 2003 to the "Assemblée Nationale" and put on its agenda in Dec 2004. France was alone with Spain, Czech Republic and Finland to show such a delay ; the reasons are obscure : conflict of vested interests, political motives, general disinterest for European affairs? One reason to finally decide for the debate was the risk of financial penalties by the EU Commission.

The discussions, both in the Parliament and in the media, were dominated by issues relevant to reproduction of audiovisual (mostly musical) works ; other matters, such as the rights of literature writers or music composers, education, research, open-source software were not in the forefront. An intense lobbying, at the limit of decency, was led by the entertainment industries, as it happened also in Brussels for the Directive.

The core of the debate turned around controlling access to music, preventing illegal loading and copying, all subjects which made the front news in media. The new bill had a repressive trend. Some MP's found with surprise that, according to these measures, their children would be delinquents. Great attention was given to technical protection measures (MTP), and none to the noxious effects on research and development of open software.

The debate at the Assemblée was heated and full of surprises: against the government will, an amendment introduced the "global license" for allowing private copy without restriction, subject to payment of a yearly fee ; it was voted by an improbable alliance of some members of right (majority) and left (opposition) parties, but the split went through each party. The proponents of the French law – industry, societies of authors- were infuriated and led the government to use procedural tricks, previously unseen, such as withdrawing an article through an amendment, and reintroducing it through a new amendment, to have it voted by a now obedient majority.

Similarly, almost no attention was given to the exceptions to copyright, although written in the Directive. The only exceptions provided for by the governmental text related to facilitating access for disabled persons (e.g. transcriptions of texts into Braille), "as a humanitarian measure". Following its own, long standing policy, the Ministry of Culture refused granting exceptions for education and research purposes, making researchers and educators liable to prosecutions, against the common

¹ Journal Officiel de la République Française, Aug. 3 2006,
<http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=MCCX0300082L>

² A website is maintained and updated by the "Interassociation Archives-Bibliothèques-Documentation" : <http://www.droitauteur.levillage.org/spip/>. See also Philippe Aigrain' Blog at <http://paigrain.debatpublic.net/> and the website <http://euclid.info/> of the French association for OpenSoftware (its German partner is <http://www.privatkopie.net/>).

³ <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0029:EN:HTML>>

usages; a protocol was unveiled on the day of discussion of this point, through which a general permission would be granted to libraries, schools, universities and laboratories, in exchange of a heavy levy on their budget. It may look odd that the global license, refused to the general public, would come back, with another name, in the non commercial sector.

Such restrictions roused considerable anxieties among the education and research communities; the University presidents conference, and associations of librarians issued statements requesting legislators and the government to reconsider their positions⁴. About research issues, we, with Euroscience, took the same stand and approached MP's to explain the needs, for science, to have open communication between researchers, without success with the Assemblée; however, we continued the fight after the first vote, contacting the Senate. The Senate Cultural Affairs Commission chair listened favourably to these requests and the Senate restored the exceptions for education and research, and for libraries, albeit in a quite convoluted formulation.

The final text was voted by the Assemblée on June 30 and approved by the government. The last coup de théâtre occurred on July 27, when the Conseil Constitutionnel abrogated, as unconstitutional, some articles of the new text, including the one providing a gradation of penalties for illegal copying. This article was indeed the backbone of the project. The published text reverts, on these matters, to the previous, much more stringent, regulations.

The main features of the law

As mentioned above, most attention was given to the protection of audiovisual works : some eight million people, in France, download illegally music or movies, using P2P. The primitive version of the law provided a gradation of penalties, ranging from 38 € for a single copy to 30.000 € for supplying illegal decrypting software. The consolidated version reverts to the former system, where illegal loading was assimilated to a counterfeit offence, liable to jail and/or to fines up to 300.000€. However, no provision is given for enforcing these penalties, and it is dubious they can be implemented, unless inquisitorial methods are used. The Culture Minister himself addressed the Courts, asking for indulgence!

Special attention was given to restricting technological advances allowing to circumvent the protection of works. Providers of such software are heavily sanctioned, with a risk of extension of the repression to open software. On the other hand, the principle of interoperability between different types of audio and video devices (Apple, Microsoft, ...) was adopted, but voided of practical value by the Conseil Constitutionnel

A special authority will be in charge of monitoring technological protection measures –no details yet, implementation will come later.

The right for private copies is confirmed, as recommended by the Directive, but, at the same time, an article allows media providers to technically limit the number of copies ; the allowed number is not defined, according to some commentators, it could be zero or more (sic).

The positive side is, against the government will and against the pressure of the publishing business, the recognition of exceptions for education and research, now written into law. France now rejoins most of Europe on this point, although the texts are a bit obscure ; the notion of fair compensation to right holders is translated into a heavy lump payment by Universities and research institutions. Nevertheless, many potential pitfalls were avoided

But, as quoted above, the law addresses most to the issues related to protection of audiovisual rights, and all the debates showed the power of the entertainment industries, which succeeded in imposing a repressive character, but to the point that the law cannot be really enforced. The political management was also quite poor. Most probably, a revision should occur in the near future.

⁴ <http://www.cpu.fr/ActU/Actu.asp?Id=1081&Inst=CPU>