

A Belgian solution to peer-to-peer: Scylla or Charybdis? The question is still pending...

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Please refer to his post as: Philippe Laurent, 'A Belgian solution to peer-to-peer: Scylla or Charybdis? The question is still pending...', Kluwer Copyright Blog, April 10 2011, <http://copyrightblog.kluweriplaw.com/2011/04/10/a-belgian-solution-to-peer-to-peer-scylla-or-charybdis-the-question-is-still-pending/>

Two contradictory legislative proposals have been quite recently submitted for discussion at the Belgian Parliament, which should implement solutions to the thorny file-sharing issue.

On the one hand, Senators Moraël and Piryneux proposed on 9 December 2010 [Doc 5-590/1] a law “aiming at adapting the perception of copyright to the technological evolution while preserving privacy rights of the Internet users”. This proposal aims at establishing a “global” licensing scheme that would authorize file sharing amongst internet users through peer-to-peer. Remunerations would be negotiated between stakeholders, and rendered compulsory by way of a royal decree (if negotiations fail, the King would intervene and set the tariffs himself). The remunerations would then be collected and shared by collecting societies. The system would take the form of a legal licence.

On the other hand, on 26 January 2011 [Doc 53-1120/1] other Senators, Clarinval & alii, reusing a previous proposal from the now retired Senator Monfils, proposed to introduce a HADOPI-like three strikes regime in the framework of a law proposal “in favour of the cultural creation on the Internet”.

In the preamble of this much more elaborated project, the Senators explain why they think the global licence is not a solution. They compare it to an expropriation

of copyrights, as the authors would lose their exclusive rights. A global licence would be particularly harmful for the audiovisual sector, where the financing methods rely on a specific model of multiple exploitations (media chronology): it would therefore deter financiers from investing further in the sector. Furthermore, the system would raise the price of the ISPs' services, which is already quite high in Belgium. Finally, morally speaking, it would give a wrong message to people: if a great number of people do not respect a rule, the rule is suppressed. This would be unfair towards the citizens who purchase content on legal websites.

This graduated response in case of unauthorized downloading would be set up as follows:

- Upon the first infringement, a letter would be sent by Ministry agents to the internet user through his ISP, enjoining him to abide by the law, and providing him with a copy of the legal provision. The letter would remind him that he cannot share copyright protected material beyond what has been negotiated between the collecting societies and the ISPs.
- Within the next six months, if the user commits another infringement, he would receive a reminder along with a "settlement" proposal consisting of the payment of a fine, the payment of which would stop the prosecution. The law would provide a possibility to appeal before the Minister.
- Within the two following years, if another infringement is noticed, the Ministry agents would forward the file to a public prosecutor, who would decide whether to sue or not. Higher fines could be imposed, and the internet connection of the user could be limited (curbing of the broadband). In case of further repeated infringement, fines could be doubled, and access to internet completely shut down.

One can appreciate in this proposal that the curbing of the connection, the fines and the ultimate blockage of the internet access could only be pronounced by a real judicial court. However, this second proposal has already been criticized by some citizens groups, and the debates have been suspended, given the current political crisis and the absence of Government... to be continued.