



## **A soft stick and a bitter carrot? Assessing France's two-pronged strategy against copyright piracy**

**Nicolas Jondet, University of Edinburgh**

Like other countries, France has been struggling to find a solution to the problem of copyright piracy. Over the last decade it has devised a two-pronged strategy to curb digital piracy. The first, and most well-known, prong of the strategy consisted in the adaptation of its legal arsenal in order to deter and punish copyright infringement. The other prong is a series of measures taken by the state to improve the marketplace for legal digital content in order to incentivise consumers to go for legal rather than illegal products. This paper will assess this carrot and stick approach.

The modification of French copyright law to better combat mass scale piracy has received a lot of attention. France was one of the first countries to adapt its copyright and criminal laws to better target the individual infringer. Alongside strong criminal laws, best suited for commercial scale operations, France introduced, back in 2009-2010, a so-called "graduated response" system, targeted at end-users.

Under the graduated response scheme, suspected copyright infringers receive warnings urging them to stop their illegal activities. If they remain undeterred after three warnings, they can face prosecution before a criminal court. The warning phase of the graduated response is administered by a dedicated independent administrative authority, the "High Authority for the dissemination of works and the protection of rights on the internet" (in French: "Haute Autorité pour la Diffusion des Oeuvres et la Protection des droits sur Internet") or HADOPI. The HADOPI, upon receiving a complaint from copyright holders, assesses it, decides whether to send a warning to the alleged infringer, and whether to forward the case to the courts if the internet user remains oblivious to its warnings.

The French system of graduated response has inspired many other similar systems the world over and is one of the most significant innovations of the past decade in the adaptation of the criminal response to piracy. Much has been said about the French system and its progeny, most of it negative. This paper will revisit the discussion about the rationale of the system and assess its efficiency and proportionality, concluding that this worthwhile experiment is neither as dangerous nor game-changing as often claimed.

The paper will also explain and assess the less well known "carrot approach" taken in parallel by the French government. France has launched a series of measures, notably via the HADOPI, to make legal content more attractive to consumers. Measures such as free music vouchers, the streamlining of media windowing or the creation of an official accreditation for legal content providers have been introduced or mandated by the government. This paper will ask whether this prong of the strategy is an example of successful state-intervention or an example of failed dirigisme.