Standardizing Consumers' Expectations in Digital Content

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1. Introduction

What level of performance, functionality and safety can consumers reasonably expect from an ebook, an online game, an MP3 file or apps? When applying consumer law, judges will use the benchmark of "reasonable consumer expectations" to determine whether contractual terms are fair, whether a product is in conformity with the contract or whether the consumer has been correctly and sufficiently informed. The application of the reasonable expectations test to digital content products, however, raises a fundamental problem: so far, there is hardly any agreement or default that would tell us what is "normal" in, for instance, ebooks. According to the Oxford dictionary of English, an ebook is "an electronic version of a printed book."[i] Does this mean that an ebook can be used the same way as an ordinary, printed book? Not necessarily. In order to be able to read an ebook, consumers must use a computer, ebook-reader, iPad or other form of electronic hardware. Not every ebook is compatible with all pieces of reading hardware. Unlike printed books, some ebooks are technically protected against printing, copying or lending to a friend. Some ebooks can be copied at least a few times, others cannot be copied at all. While a printed book can be "one of the few havens remaining where a man's mind can get both provocation and privacy",[ii] ebooks are at times of a less discreet disposition.

The legal and technical complexities of digital content products and the resulting lack of a clear notion of which product characteristics are still reasonable and normal in digital content can result in uncertainty for consumers and businesses. In the worst case, it can result in a lower level of protection for digital content consumers, as compared to consumers of more conventional products. This article will argue that in order to improve the protection of digital content consumers, there are situations in which some defaults for the main functionalities and characteristics of digital content products are needed. The article will then describe some possible routes to create such defaults, to conclude with a discussion of the different alternatives and suggestions for the way forward.

2. The reasonable expectations test and digital content products

Digital consumers are plunged into an exciting whirl of innovative applications, products and business models. The various digital content products blend more and more critically into the daily life of Europe's digital content consumers of all ages, professions and levels of experience. Sometimes, however, things go wrong. Digital content consumers also encounter a range of obstacles. High on the list of consumer concerns are the lack of transparency and poor quality of consumer information. Key information is often obscured in lengthy terms or is omitted altogether. Problems revolving around access are similarly urgent. These can be delivery issues, but also, and commonly, technical compatibility issues such as the ability to play, listen and watch digital content on different brands of consumer equipment. The use of Digital Rights Management or access control technologies limiting the ability to play, copy and forward digital content, but also the access and the use of content across national borders have more than once led quite literally to a "rise of consumers", like on the occasion of the French copyright law[iii] reform. Fundamental rights considerations

regarding privacy protection or the ability to access a diverse range of content also play an increasingly prominent role in consumers' perception and experience of digital content markets.

In such situations, it is consumer and contract law's task to assist consumers in their relation to businesses and to make sure that consumers are not treated unfairly. The debates preceding the pending "Consumer Rights Directive" have demonstrated the importance of consumer and contract law in digital markets.[iv] One characteristic of consumer and contract law is that it operates on the basis of standardized measures of reasonable consumer expectations. Notions of "reasonable expectations", "normal functioning" or "main characteristics" play a pivotal role in the application of the rules about pre-contractual information obligations, product liability, contractual fairness as well as product conformity in consumer sales (Schaub, 2005; Girot, 2001; Helberger and Hugenholtz, 2007).

What the main characteristics of digital content products are, and what consumers can normally expect from ebooks, MP3 files, apps or video streaming services is essentially the result of an intrinsic and complex interplay of technical architecture and design, licensing conditions, copyright and the usage entitlements consumers have paid for, as well as other obvious and less obvious interests that businesses and advertisers might pursue when selling digital content. While the immense choice in different means of distributing, selling and consuming digital content certainly offers fascinating possibilities for businesses as well as for consumers, from the perspective of consumer law, the degree of diversification especially means that no clear standard exists as to what characterizes digital content. So far it is simply quite unclear what is deemed "normal" in digital content, which level of functionality consumers should be entitled to expect, and under which conditions restrictions to access and use digital content are to be considered unfair.

The resulting uncertainty has ramifications for the legal standing of digital consumers as the following example demonstrates. In situations where consumers purchased digital content that does not function or does not perform as expected, consumers might invoke the rules in consumer sales law regarding conformity with consumers' reasonable expectations. Consumers have a right to expect that goods "show the quality and performance which are normal in goods of the same type and which the consumer can reasonably expect, given the nature of the goods."[v] The reasonable consumer expectation benchmark leaves room for considering the individual circumstances of a particular case, such as a product's intended use, as well as external and more objective factors, such as price, state of market and technology, shared social values, voluntary industry guidelines as instruments of self-regulation and industry practice (Girot 2001, Helberger and Hugenholtz, 2007). A limiting element is the reasonableness of consumer expectations – not all consumers expectations merit protection; consumers must have reasonable grounds to expect a certain quality from a product.

There seems to be a growing consensus among judges and legal experts that consumers can legitimately expect digital content to be compatible with common consumer hardware and software (Loos, Helberger, Guibault, Mak *et al*., 2011). Although existing case law has so far mainly concentrated on CDs and DVDs (e.g. tangible items), it is not unlikely that judges will arrive at similar conclusions should

they decide to apply consumer sales law to intangible items of digital content (Rott, 2004). In some countries, such as France, the law even explicitly states that consumers are entitled to expect that the application of technical protection measures will not affect the compatibility of the content with consumer equipment.[vi] In other countries, however, judges could also decide to e.g. differentiate according to the different types of content. While at present, compatibility of e.g. digital music and video files seems to be increasingly acknowledged, in the gaming sector, the existence of several incompatible hard- and software requirements (e.g. xBox, PlayStation, iPad, etc.) is the rule rather the exception.

More controversial is the question as to the level of functionality digital content consumers are entitled to expect. European consumer surveys have demonstrated that the making of copies for private use – be it for social purposes (sharing with close family, friends), making back-up copies, or time-shifting – is an important element of how consumers have grown accustomed to using digital content (Dufft *et al*., 2006). Consequently, a court might conclude that the making of private copies constitutes "normal use." However, the mere fact that consumers have grown accustomed to certain forms of use is no guarantee that such uses will remain "normal" in the future. Especially not in markets that are as quick in adapting to new technological developments and new business models as digital markets are. For example, if music or software on a CD are sold at a considerably lower price than other, comparable products, one could argue that consumers must also expect the CD to be of a lower quality or to have more limited functionality. Here, the ability to make private copies might arguably not be a reasonable consumer expectation. In the (unlikely) scenario that all digital content were subject to technological copy control protection, consumers would no longer have good reason to believe that the making of private copies is still "normal." This might e.g. be the case for DVDs and software, which both have a long tradition of being copy-protected. Even then, however, consumers might still be entitled to expect being able to make private copies in situations where levies are imposed on blank carriers, which is still the case in most Member States of the EU. In countries that have a private copying limitation allowing the copying of digital content, the existence of such a provision in law can be another valid reason for consumers to expect that private copying remain possible, even in a world ruled by Digital Rights Management (DRM). However, to this author's knowledge, France is the only European country which has adopted a clarifying rule stating that the "authorized use[s]" a consumer is entitled to make constitute an essential characteristic of a digital content product,[vii] and failure to inform consumers about this could accordingly constitute a case of non-conformity.

For similar reasons, the extent to which consumers can expect digital content goods or services respect their privacy is questionable. Although the European Court of Human Rights has referred, albeit in the context of a fundamental rights analysis, to a 'reasonable expectation of privacy',[viii] it is still unclear how this influences the interpretation of general consumer and contract law (Mak, 2008). Commonly, judges, when applying consumer law, will adopt a functional perspective (does the item in question function or not) which leaves no or only little room for more abstract considerations, such as privacy, but also diversity and freedom of expression (Loos, Helberger, Guibault, Mak *et. al*, 2011).

It is important to realize that both consumers and, particularly, sellers themselves can influence the "reasonable expectations" consumers are entitled to have. If a consumer is notified in advance that a product or service does not permit private copying, or that it collects and shares personal data for the purpose of targeted advertising, the consumer cannot later claim that her/his expectations in the functionality or privacy of the product have not been met. The lack of a clear standard or objective benchmark that would tell judges what is "normal" in digital content or what the reasonable expectations of consumers are, further adds to a situation in which suppliers can avoid being held accountable for non-conformity.

3. Standardizing consumer expectations as a form of digital consumer protection

The previous section has demonstrated that the lack of a default of what to expect from digital content can result in a lower level of protection for digital consumers as well as a considerable lack of legal certainty for all parties involved. Defining a minimum baseline of expectations as to accessibility, functionality and safety which consumers of digital content are entitled to harbor could be one way to improve the situation of both consumers and businesses. Note that the notion of default or standard is used in this context broadly in the sense of a reference point against which the information provision, accessibility, functionality and safety can be evaluated.

Standardization has been described as one of the earliest forms of consumer protection (Winn, 2006). In the telecommunications sector, broadcasting markets, but also for food markets, cars, toys, etc, standards are shaping consumers' reasonable expectations in products and services. Such standards provide judges and regulators with a benchmark of how to measure quality and conformity. Similarly, defaults of digital content characteristics could lift some of the uncertainties for both consumers and businesses as to a digital content product's conformity with the contract. Businesses, too, are still grappling with the level of functionality and accessibility that digital content should have to survive judiciary scrutiny. Thus, a certain level of coordination could have economic advantages, for both consumers and enterprises.

In addition, a default of reasonable consumer expectations in digital content might reduce some of the information burden resting on both consumers and businesses. Consumers could trust that digital content is conform with the default, and only in the case of deviations would they have to inform themselves and be informed more thoroughly. Next to an increase in transparency and comparability, defining certain minimum standards as to digital content functionality, accessibility and safety can prevent consumer information from being (ab)used to gradually lower the general standards of what consumers should be allowed to expect.

Obviously, there are also important and very relevant arguments against standardization or the setting of defaults. Much will depend on whether industry and consumers are prepared to accept a particular standard, particularly if it can be anticipated to be overtaken by current technical and market situations very soon. Setting a certain default thus bears the risk of freezing solutions that are not technically, legally or ethically optimal, but merely the result of a consensus or political decision. Moreover, the default approach bears the risk of discouraging

important incentives to invest and innovate in ever more advanced technologies and new applications. To be enforceable, standards or defaults rely on broad acceptance, which might be an argument for more industry-driven approaches. However, situations in which a solution depends on prior negotiations and co-operation between several, and possibly heterogeneous market participants, the number of possible practical problems, strategic decisions, disputes and uncertainties is virtually unlimited. This could lead to (undesirable) de facto standards rather than a process of balanced standardization. These are all considerations that must be taken into account when exploring the possibilities of creating defaults of minimum consumer expectations in digital content.

4. Possible routes to be taken

Early attempts have been made or initiatives taken to create defaults of reasonable digital consumer expectations. The following section will map out some of them. More generally, it will set out and compare the different possible approaches (industry-driven, stipulated by law, mandated by an independent authority) before presenting its own suggestion.

4.1 Industry-driven

In the context of digital content, standardization through industry consortia already does play a role with regard to e.g. the transmission infrastructure and consumer equipment. Examples of successful industry standardization are the DVB video standard or the GSM standard for mobile telephony. Other standards still have to prove their usefulness, such as the planned inter-industry, cloud-based Digital Entertainment Content Ecosystem UltraViolet.[ix] At the heart of UltraViolet's ecosystem is an online rights locker architecture to store and manage consumer usage rights. The "ecosystem" could also be used to standardize user expectations with regard to e.g. the number of devices on which any UltraViolet labeled content can play, compatibility and portability, the border-free usage of digital content, but also the number of private copies consumers will be able to make.

Then there are (de facto) standards as the result of individual industry initiatives. One well-known example is the standardized usage rules and functionality of all content sold through iTunes. Such content can be used on five Apple-authorized devices, burned as audio playlists up to seven times, except video or ringtone products, which cannot be copied at all.[x] This way, it is again possible to standardize consumer expectations regarding the functionality of content.

4.2 Stipulated by Law

Copyright law concedes certain possibilities for users to use protected content even without the right holder's authorization, however it neither specifies this possibility as a default, nor does it indicate the number of copies a user should be able to make. One exception is the right to make back-up copies of software, which has, unlike e.g. the private copying exemption, the status of an unwaivable right.[xi] It has been suggested

to follow the example of the Software Directive and define minimum standards of what consumers should be able to do with digital content under copyright law. In other words, various suggestions have been made to grant consumers concrete and enforceable rights, such as a right to make private copies, a right to personal format shifting, or a right to making copies for creative uses (Davies and Withers, 2006; TACD, 2005; Patterson and Lindberg, 1991; Cohen, 2005; Elkin-Koren, 2007; Geiger, 2008; Schovsbo, 2008; Rijs and Schovsbo, 2007).

More broadly and beyond the sphere of copyright, it has been suggested to grant consumers specific digital rights to serve consumptive as well as social and democratic interests. In BEUC's Campaign for Digital Rights, BEUC suggested for instance an extensive catalogue of consumer rights including: a right to choice, knowledge and cultural diversity; a right to the principle of technical neutrality; a right to benefit from technical innovations without abusive restrictions; a right of interoperability to content and devices; a right to protection of privacy and a right not to be criminalized (Kutterer, 2005). Farther reaching still are the suggestions the Charter for Consumer Rights in the Digital World by the Transatlantic Consumer Dialogue (TACD), which include, inter alia, a right to barrier-free access to digital media and information as well as a right to pluralistic media (TACD, 2008, see also German Federal Ministry of Food, Agriculture and Consumer Protection, 2007). These suggestions reflect the social and democratic component of digital content use and consumption.

For the time being, many of these "rights" are still institutionally, rather than legally protected, if at all. For example, while media and cultural diversity is one of the key considerations in media law, so far, no directly enforceable consumer right to media diversity or access to (diverse) media content has been acknowledged in Europe or its Member States. Similarly, while the consumptive, societal and economic value of interoperability and compatibility is well-acknowledged, only few mandatory provisions in European or national law actually mandate it. One notable exception is Art. 24 of the so called Citizen Rights Directive (regarding the compatibility of consumer equipment to receive and process digital television signals).[xii] Another, and for the given context probably even more relevant example is the aforementioned rule in French copyright law stating that technical protection measures are allowed provided they do not affect interoperability or the free use of the work. In addition, businesses have to inform consumers about usage and interoperability restrictions as the result of the implementation of DRM technology.[xiii] A somewhat different route was followed by Belgium and Portugal. [xiv] Both countries declared existing exemptions and limitations in copyright law imperative, with the result that they cannot be waived by law Guibault, 2008; critically Kretschmer, Derclaye, Favale and Watt, 2010).

While most suggestions for 'digital consumer rights' were made in the broader context of copyright law and policy, some commentators also considered possible solutions in consumer law. One noteworthy suggestion is to complement the existing grey and/or blacklists that are annexed to the Unfair Terms Directive with a rule indicating that a term in a non-negotiated contract would be deemed unfair if it departed from the provision of the copyright act (Guibault, 2008). Another suggestion that has been made is the following proposal: a clarification that consumers may,

under certain circumstances, reasonably expect to be able to make private copies under consumer sales law (Loos, Helberger, Guibault, Mak *et al*., 2011).

Similarly, in the data protection debate, initiatives exist to at least standardize the criteria for consent, like in the case of spam for example, as well as more recently, the placing of cookies in users' equipment.[xv] Arguably, the principles of "opt-in" and "opt-out" are also a way of standardizing, at a very general level, the level of functionality and privacy-friendliness consumers can expect from digital content. Others point to the weakness of an "informed consent" approach in an environment of information overload and debate the desirability and feasibility of more imperative rules (Gutwirth and de Hert, 2006).

4.3 Defined by an independent regulatory authority

A third approach to default setting is through an independent body or responsible authority. A range of standard-setting bodies at international, regional and national level are already active in defining standards and defaults, mostly in the technological sphere. However, to the knowledge of the author, few initiatives seeking to set a default or minimum baseline of reasonable expectations exist at the usage and entitlement level (i.e. not the technical level). One of the most notable examples is probably that of the independent bodies or institutional arrangements created to deal with possible conflicts between technical copy protection measures and legitimate consumer expectations in e.g. Denmark, Greece, Italia, Lithuania, Norway, the United Kingdom and France (Guibault *et. al*., 2007). Of these, the French Haute Autorité pour la Diffusion des Œuvres et la Protection des Droits sur Internet" (High Authority of Diffusion of the Art Works and Protection of the (Copy)Rights on Internet - Hadopi) is probably the most well-known as well as the most controversial. The tasks of the Hadopi include, among others, making sure that the application of technical protection measures does not result in a lack of interoperability, or hinder the exercise of certain exemptions in copyright law, including the exception for libraries, museums and archives, the exception for persons with disabilities as well as the private copying exception.[xvi]

To the knowledge of the author, no cases have been brought before the authority yet. This might partly be explained by the fact that consumers and consumers groups are excluded from the possibility of bringing interoperability cases before the authority. As Winn and Jondet argued, this could prove to become an important shortcoming for the authority to protect consumers effectively, as technology companies might enter into a "tacit pact of non-aggression" (Winn and Jondet, 2009). There are also concerns about a possible bias towards the industry, since one of the other tasks of the authority is to discourage, and if need be, also punish unauthorized filesharing.

The Hadopi and fellow-institutions in Member States share a rather narrow focus. It is limited to the case-by-case mediation of conflicts deriving from the application of technological measures to protect copyrights. Its potential role in creating more broadly accepted defaults is therefore, probably limited as is its power to address concerns outside copyright law (Guibault *et al.,* 2007). It can be instructive to look to another field of regulation for a comparison: the regulations governing the communications sector. Among the possible tasks of the National Regulatory

Authorities (NRAs) for the communications sector, is the standardization of certain reasonable consumer expectations. Communications law acknowledges that under certain circumstances the market will not satisfy the concerns and demands of consumer. Further initiatives could thus be necessary to safeguard the quality of communications services, but also to make quality transparent. In response, NRAs can define certain quality of service parameters, and subsequently monitor compliance. Originally, this mandate was limited to the definition of quality requirements for universal services. With the latest amendment to the European Regulatory Framework, NRAs are now more broadly entitled to define baselines of minimum expectations that consumers of communications services should be entitled to harbor.[xvii] This way, NRAs can also prevent degrading of quality and safeguard reasonable consumer expectations in quality, a concern explicitly acknowledged in this latest amendment of communications law. Interestingly, NRAs can also define the "form and manner of the information to be published",[xviii] thereby facilitating comparison. The fact that NRAs are entitled to collect and compare service quality information, moreover enables them to identify areas in need of further regulatory intervention.

5. Weighing the options

Granting consumers a certain set of concrete rights in the accessibility, functionality and safety of digital content, may well result in legal solutions raising the level of consumer protection in digital content markets. The fact, however, that only few such rights have so far made their way into the law, already demonstrates how difficult, controversial and time-consuming such a process can be. The process is further hindered by a range of conceptual problems that are far from resolved, such as the question if consumers rights are best integrated into consumer or copyright law (see for an overview of the discussion Van Hoboken and Helberger, 2009). Considering the high level of innovation in business models and digital content products it is advisable to tread with caution before mandating a fixed number of copies, standards for portability and accessibility, user-friendliness or restrictions to the processing of personal data in an instrument as inflexible as is the law. This is not to say that legal solutions are principally unsuitable to serve the interests of digital consumers. It is important, however, to be realistic about their potential value and the practical and constitutional limitations.

Arguments can and should be made in favor of encouraging and promoting forms of industry standardization. Arguably, the provision of digital content products that respond to the expectations and needs of consumers is the most effective form of consumer protection, and one that is also in the interest of the digital content industry. The history of DRM implementation – from enthusiastic and sometimes reckless adoption, through skepticism and termination of DRM by major players in the market, up to the search for new and potentially more consumer-friendly solutions - may be evidence of a will and ability to learn from earlier mistakes. And, yes, in future such a process may even lead to the creation of a reasonable and fair default of consumer expectations.

There may be situations, however, in which industry standardization is not the suitable response to concerns of digital content consumers. The never-ending attacks

on the private copying exception and the radical fight against any form of downloading (legitimate or not) in some countries, for example, demonstrate that there are situations in which the gap between the digital content industries and consumer expectations may not easily be bridged by good will alone. The diversity of stakeholders with different, sometimes even conflicting interests further underlines the importance of procedural guaranties as well for balance and adequate representation of all interests involved.

In the light of these considerations, the idea of an independent regulatory body with the authority to define certain minimum defaults regarding the quality, functionality, accessibility and safety of digital content has its merits. Lessons could be learned from NRAs in the communications sector, and provide useful guidance when determining the further details and competencies of such a “Digital Content Authority”. The authority could, for example, decide to specify the minimum level of permitted uses and compatibility issues, but also details regarding the use of region coding, tracking software, the accessibility for disabled consumers or best practices with regard to the protection of underage consumers.

The need for such an initiative may well be greater in some areas than in others. For example, research has demonstrated that consumer information presented on small screens such as mobile phones or MP3 players is less likely to be read than consumer information presented on a PC (Europe Economics, 2011). One could infer from this that consumers of mobile services might be in more need of some level of minimum baseline protection. Also, one could imagine that some consumer segments might benefit more than others from a certain minimum level of reasonable expectations. Examples could be consumers with disabilities or consumers in rural areas or areas that are less easily connected to (competitive) digital content markets. In other words, the idea is not to create defaults for all possible aspects of digital content, but to create the possibility of defining such where really needed in a flexible and timely way.

6. Conclusion

Consumer protection law normally presupposes offers of standardized goods or services. The lack of experience or a common understanding of the minimum standard of functionality, safety and user-friendliness consumers of digital content products are entitled to expect weakens their legal standing, as compared to consumers of more conventional and established products. The complex interplay between technology, (copyright) law and a diversity of business models makes it even more difficult for judges to decide what the main characteristics or normal functions of digital content products are, or which “reasonable expectations” digital consumers are entitled to harbor and invoke, using consumer and contract law.

One way to improve the legal position of digital consumers, and to create more legal certainty for both consumers and industry, is to define certain minimum baselines or defaults of what these “main characteristics” and the “normal functioning” are. This is an attractive option particularly for situations in which digital content markets are not sufficiently competitive or otherwise unable to respond to consumers’ concerns and demands. Standardization is one of the oldest forms of consumer protection, and could be the answer to many concerns consumers have regarding the functionality,

accessibility, interoperability and safety of digital content.

Among the different possible approaches to define such defaults or benchmarks, the creation of a designated Digital Content Authority is probably the most promising, though also the most challenging course of action. More concrete questions regarding the optimal design, competencies, institutional safeguards but also limitations of such an authority in the European regulatory landscape and the Internal Market merit further exploration. Apart from providing a flexible though binding mandate to bring more legal certainty and transparency into digital content markets, such an authority could help reduce the information burdens weighing on consumers and businesses. More than mainstream industry-driven initiatives would do, it could guarantee the consideration of not only economic but also public interest and fundamental rights with respect to the accessibility, functionality and safety of digital content.

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[ii] Quote by Edward P. Morgan.
[iii] http://www.heise.de/newsticker/meldung/Franzoesische-Praesidentschaftsanwaerterin-macht-sich-fuer-Privatkopie-stark-123588.html
[iv] European Parliament legislative resolution of 23 June 2011 on the proposal for a directive of the European Parliament and of the Council on consumer rights (COM(2008)0614 – C6-0349/2008 – 2008/0196(COD)).
[v] Arts. 3(1), 2(2)(d) of the Directive 99/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (Consumer Sales Directive), 1999 O.J. (L 171) 12, 15, 14 (EC).
[vi] Article L. 331-5 of the French Intellectual Property Code.
[vii] Article L. 336-4 of the French Intellectual Property Code.
[viii] European Court of Human Rights, *Case of Halford v United Kingdom*, 25 June 1997, Reports of Judgments and Decisions 1997-III paragraph 45; European Court of Human Rights, *Case of P.G. & J.H v. United Kingdom*, 25 September 2001, Reports of Judgments and Decisions 2001-IX, paragraph 57.
[ix] For more information visit http://www.uvvu.com/what-is-uv.php (last visited on 5 July 2011).
[x] See the Terms of Use at: http://www.apple.com/legal/itunes/us/terms.html#GIFTS (last visited at 1 March 2011).
[xi] Article 5 (2) of Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs (Software Directive), *OJ* L 122/42, 17 May 1991.
[xii] Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws (Citizen Rights Directive), OJ L 337/11, 18 December 2009.
[xiii] Article L. 331-10 of the French Intellectual Property Code.
[xiv] Art. 23bis of the Belgian Copyright Act 1994 and Art. 75(5) of the Portuguese Act No. 50/2004.
[xv] Articles 5(3) and 13 of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), *OJ* L 201/37, 31 July 2002.
[xvi] For more information visit http://www.hadopi.fr/ (last visited on 5 July 2011).
[xvii] Art. 22 (2) of the Citizen Rights Directive.
[xviii] Art. 22 (1) and (2) of Directive 2009/136/EC Citizen Rights Directive.