



PRESS CONFERENCE

Friday, 3 June 2005 at 11 a.m.

Maison de l'Europe
35, rue des Francs Bourgeois – 75004 Paris

PRESS KIT

Downloading and sharing files on the Internet
An alliance against legal proceedings
An alliance for a global licence

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I. REPORT

A large-scale social phenomenon

According to the Credoc, 31% of Internet surfers have downloaded music, films, images, photos and software from the Internet, this represents 8.5 million people, of whom 750,000 are regular users. If these figures are compared with those of previous years, it may be observed that the number of Internet surfers who are downloading material has not decreased¹.

In addition, the number of music files downloaded alone totalled 20 billion in 2004 through P2P exchange servers, compared to 310 million on paying websites of online music². Internet surfers have well and truly adopted P2P. Furthermore, Internet surfers increasingly use e-mail (and hence private correspondence) in attached files to exchange music, photographs, literature, etc.

Strong contrasts between players

Since the appearance of Napster in 1999, the contrast between Internet surfers, producers, singer-songwriters and distributors was crystallised and lack of understanding is persistent. This situation deteriorated due to shocking awareness-raising campaigns (threats of legal proceedings in secondary schools), unpopular trials and recourse to technical protection measures, implemented without dialogue, limiting usage by consumers.

Non-issue

Record companies held network users responsible for the decrease in record sales. Yet, this economic crisis attributable to numerous factors, is in the process of being reduced. Very positive indicators originate from the United States and the UK, among others³. In addition, numerous independent studies prove today that these exchanges have no immediate impact on record or music file sales (ex. F. Oberholzer, K. Strumpf, "The Effect of File Sharing on Record Sales - An

¹ These words are developed in point 5) "P2P exchanges do not harm the cultural industry". They are reconfirmed by OCDE and CAIDA figures.

² Gaëlle Macke, "Microsoft defies Apple and Sony in online music", Le Monde, 14 October 2004.

³ Guillaume Champeau, "When the record industry lies", Ratiatum, Thursday, 21 October 2004, <http://www.ratiatum.com/p2p.php?article=1795> ; "Sales record for the record industry in the UK", Bucheron.net, 27 November 2004, <http://www.bucheron.net/weblogs/index.php?2004/11/27/1330-record-de-vente-pour-lindustrie-du-disque-en-uk>.



Empirical Analysis", March 2004)⁴. In France, a study by the FNAC carried out in order to “understand the challenges posed by new music use and distribution methods in France”, concludes that the impact of downloading from P2P networks is limited and should even be insignificant in 2004. This study shows on the other hand that the drop in record sales for the year 2003 may be attributed to four other factors:

1. Wear and tear of the physical support, with the end of CD repurchase, the absence of de strong promotion of relay supports (SACD, DVD-audio, DVD single, etc.)
2. Breakdown of the market linked to incoherent management (for the public) of prices and “product” life cycle
3. Decrease in marketing investments
4. Shift of purchasing power due to increased competition by other “entertainment content”: DVD, books, video games, etc.⁵

False technical solutions

Implemented for several years on numerous digital works, technical protection measures⁶, teamed with DRM⁷ systems, are unable to contain the free and spontaneous exchange phenomenon observed on P2P networks. The same applies to other exchange methods, notably via e-mail.

Technical protection measures cannot be an efficient and reasonable remedy for private use by all private individuals. What is more, IT amateurs and professionals are always able to examine its flaws and to circumvent the implemented locks. That is how the famous secure SDMI format, supposed to provide the “solution” to the proliferation of counterfeit work in MP3 format and of the *Napster* phenomenon, was circumvented in three weeks, during a public challenge launched to Internet surfers to test the product, by a team of *Princeton* and *Xerox PARC & Rice* researchers⁸.

⁴ Study may be downloaded from the following address:

http://www.unc.edu/~cigar/papers/FileSharing_March2004.pdf; see also “P2P exempt from responsibilities in the drop in record sales?”, *Journal du Net*, 2 March 2004, <http://www.journaldunet.com/0404/040402peertopeer.shtml>.

⁵ Study by the FNAC “Décrypter les enjeux du marché”, June 2004,

http://www.fnac.com/Magazine/espace_presse/dp_pdf/DP_Fnac_en_musiques.pdf; see also Olivier Chicheportiche, “Une nouvelle étude blanchit le P2P”, *Silicon.fr*, 10 June 2004, <http://www.silicon.fr/getarticle.asp?ID=5329>.

⁶ These measures are aimed at protecting the work against unauthorised use by rightholders. They designate “any technology, product, appliance, device, component, method or service” that allows to efficiently protect the use of a work. Among these the following may be included: access code, encryption, scrambling, watermarking of the work. See article 6-3 of the directive 2001/29/EC of 22 May 2001.

⁷ DRM (Digital Rights Management) are systems that are supposed to allow rightholders to manage their rights on works distributed on digital supports (CD, DVD, etc.) or on the Internet.

⁸ See Janelle Brown, “Another crack in the SDMI wall”, *Salon.com*, 22 October 2000,

http://dir.salon.com/tech/log/2000/10/22/princeton_sdmi/index.html and Philippe Astor, “L’industrie du disque face à la 3^{ème} révolution industrielle”, *Grandlink Music News*, september 2002, p. 6, <http://www.grandlink.net>.

Yet, all it takes is a single person in the world, connected to the Internet, to succeed in circumventing the technical protection measure applied to a work sold in the stores, for it to circulate freely on all networks, including P2P networks, and to be reproduced in thousands of copies in a few days, even a few hours.

The crackdown on these acts of bypassing technical protection measures on such a scale cannot constitute a reasonable means of action if there is no legal system allowing the general public to consume works with sufficient freedom in the private domain.

In addition, these same technical protection measures present numerous inconveniences to consumers. In the first place, they are the source of many incompatibilities between the work itself and digital readers sold in stores (interoperability issue in space). Secondly, a digital reader bought today will not be able to read a work protected with a technical measure developed subsequently (interoperability issue in time). In addition, DRM systems make the comprehension of user rights very complex by allowing distributors to sell the work with various limitations on copies. Lastly, DRMs require that distributors be given the right to collect and manage the user's personal data, which constitutes major issues in terms of the protection of privacy.

False pirates

Calling Internet surfers who download material "pirates" is abusive. It creates true confusion and makes the field of private copying vague.

Fortunately, the decree of 10 March 2005 of the Court of Appeal of Montpellier has confirmed the acquittal pronounced by the county court of Rodez of an Internet surfer who had downloaded material. The Court simply stated: "*Given that the defendant has declared to have made copies for private use only; that no collective use has been demonstrated; (...) That it is for good reason that the first judge proceeded to acquittal (...)*". In addition, ruling on the issue of technical protection measures placed on DVDs, the Court of Appeal of Paris specified on 22 April 2005 that the exception for private copies benefiting users is not limited:

- by the nature of the support on which the copy is made (digital, analogue)
- by the source from which the copy is made: it is not necessary to own an original bought in stores to benefit from the exception for private copies.

Court of Appeal magistrates in charge thereby stress the obligation to stick to the letter of the law.

The fact remains that the legal rule needs to be reaffirmed in order to prevent other consumers from being wrongfully prosecuted and qualified as "pirates".

Unhealthy situation from an educational, political and forecasting point of view

Keeping fully illegal Internet surfers who use the range of technologies and digital equipment that allows them to access and share cultural works for non-commercial purposes on networks is the equivalent of guilt and potential condemnation, implicit and paradoxical in the youngest generations, future generations and the entire technical industrial and economic system on which information and communication society relies.

Furthermore, considering the ease with which everyone is "invited" by information and communication technologies and industries to have increasingly greater and more mobile individual capacities at one's disposal for the collection, processing and dissemination of information, the ban on private use for non-commercial purposes relative to cultural products of said leads to the blurring of educational and societal points of reference that tomorrow could result in the deployment of an "everything is free" culture, transgressive and which it will be difficult to fight without heavily and sustainably banking on technical and human, private and public, devices for the limitation, monitoring, control, penalisation and punishment of individual use. Under this hypothesis it is not sure that individual and public freedoms would not be seriously questioned tomorrow.

Lastly, considering the fact that during the last 20 years, the deployment of new technologies was the subject of rare and limited public or private investments aimed at on the one hand the collective understanding of their societal civic stakes and on the other hand at the education of the media, the risk is not negligible that maintaining the ban on non-commercial use by private individuals of cultural products thanks to new information and communication technologies, is translated into a "devalorisation" of the law because of its inapplicability, except of course to pursue an indictment policy for the example that politically and educationally is unworthy of an advanced democracy.

And still no remuneration for rightholders

In the meantime, every year rightholders record loss of earnings totalling several hundreds of millions of euros: **600 million euros could have come to rightholders whose works are used**⁹ considering that collection could have been imposed via

⁹ In order to proceed to the calculation, we use the following method: number of subscribers in a year X collection of an monthly amount X 12. The basis for our calculation is as follows:

1) Number of households with broadband Internet access:

. in 2002: 1 M 700 (source Afom, point Topic),

. in 2003: 3 M 400 (source Afom, point Topic),

. in 2004: 5 M 497 (source: ART)

2) Amount of the collection: fixed basic amount €5/month.

access providers on the basis of a monthly amount of €5 for high-speed Internet surfers for the past three years (from January 2002 to December 2004).

It is therefore necessary for the political powers to intervene in this matter and to adopt a **solution that is really adapted to the network**, without going against existing use.

The Alliance proposes and supports the solution of a global licence as described below.

II. GLOBAL LICENCE

To respond to the phenomenon of downloading and exchanging protected files on the Internet, the ALLIANCE proposes and supports a global licence solution.

Once adopted by law, the principle of this licence may allow Internet surfers to **freely proceed to the downloading of files as well as to making them available on the Internet**. This licence is granted in exchange for a remuneration collected via access providers and on the condition that the sharing of works is carried out without any commercial purpose.

This licence is called “global” for two reasons: since it covers downloading acts as well as those involving making them available on the Internet, and since it concerns most works and renderings circulating on the Internet: music, films, reportages, TV series, images and photographs.

Payment is collected by a collective management company from access providers based on two legal grounds: 1) payment for private copies (for acts of downloading) and 2) payment on the grounds of the exclusive making available rights to the public (for acts of sharing). Payments are then redistributed equally to collective management organisations that manage the rights of songwriters, singers and producers.

Internet surfers nonetheless will be able to accept or refuse to benefit from the right of making available to the public. In the event of refusal of said contract, they will be unable to proceed to the sharing of protected works on the Internet without being guilty of pirating.

III. ARGUMENTS

A. LEGAL DESCRIPTION

In detail, the global licence solution may be divided into two points:

1. Payment for private copies with respect to downloading carried out from online communication networks

Downloading, that is to say copying or reproducing from online communication, constitutes an act of private copying on digital recording support within the meaning of Articles L.122-5-2°, L.211-3-2° and L.311-1 paragraph 2 of the Intellectual Property Code, regardless of the source of the copy (non-interactive radio or television services, exchange between private individuals, etc.), as long as the copy is strictly reserved for the private use of the person downloading.

This type of private copy is currently not the subject of any levies for rightholders, whereas its very strong development represents a considerable source of losses for them. This deficiency is all the more serious since the public itself is not given a solution allowing it to pay rightholders, and that the logic of it being free of charge has slowly become established to the tune of several tens of millions of users.

Therefore we propose to complete the current provisions under Articles L.311-4 and L.311-5 of the Intellectual Property Code.

This reform is accompanied by the necessary adaptation of the public's exclusive making available right, as regards the specific case of exchanges between private individuals for non-commercial purposes, notably since new generation software requires that users who download also make their private copy available.

2. Legalisation of non-commercial exchanges on P2P with respect to making available to the public

The right of making available to the public is violated each time an Internet surfer makes protected files available to other Internet surfers, without the authorisation of the rightholders. In order to authorise this use and obtain a matching remuneration, the following solution is suggested:

1) Implementation of compulsory collective management (Art. 351-1 CPI new): in the image of the solution chosen in terms of illegal copying (law n°95-4 of 3

January 1995), the law may stipulate the designation of a collection company by means of government approval, to which the right is transferred with respect to the making available to the public by private individuals for non-commercial purposes of online communication services.

2) **Establishing scale of charges and remuneration payment methods** for authors, singers and producers (Art. 351-2 new of the CPI), as well as for the limits of what is authorised: This entire plan of action is freely negotiated and established by means of an agreement between representatives of the beneficiaries of the right to making available to the public, consumers and access providers. If no agreement is reached, a specialised commission will be called in.

3) **Obligation for access providers to communicate to their subscribers general terms analogous to a contractual offer** in the name and on behalf of rightholders; Internet surfers therefore have the option to accept said terms and consequently benefit from the authorisation to proceed to acts of making available to the public for non-commercial purposes between private parties.

4) **Collection of the remuneration** of rightholders by access providers (Art. 351-3 al 2 CPI new) and transfer to official company.

The official company itself transfers the collected sums to the various collective management companies that will proceed to the distribution among their rightholders.

The development of new technologies and the collective management of the making available right to the public will allow to discover new information methods on the exchanges carried out and to develop new tools allowing to determine with the best possible precision—without the risk of violating the protection of privacy as could be the case in the framework of the constitution of offence files¹⁰—titles that were the subject of an exchange on the Internet, in order to allow for the distribution between concerned rightholders.

¹⁰ The analysis of the exchanged titles does not require intrusion on P2P users' hard discs or knowing their IP addresses.

B. ECONOMIC JUSTIFICATIONS

The Alliance wished to evaluate the economic impact of an alternative remuneration on top of Internet subscriptions.

The main aim of the study is to estimate the overall amount of the remuneration according to several scenarios. It is therefore possible to know if the estimated amount can be both acceptable to consumers and fair to rightholders (producers, authors, singers)¹¹

Overall, the study models the evolution of the musical and video distribution market between 2004 and 2010 and compares it with the amount of a levy at source fixed at different levels.

This version of the study presents a summary of the scenarios of the model as well as the principal results.

I. Modelling of the alternative remuneration

1. Basic estimations for the model

1.1. The evolution of Internet access

Internet access must be projected to the extent that the market shows strong high-speed growth in the beginning of the period, partially due to a penetration of the Internet and partially due to a migration of low-speed to high-speed access.

In addition, projections for Internet access penetration also allow to project revenues for access providers. It is, however, interesting to compare such revenues with collection scenarios with respect to the payment of rightholders.

Evolution of Internet access (1998-2010)

¹¹ Modelling achieves economic conformity deemed to be realistic between size of the market (total turnover for musical distribution) or losses observed or estimated on the market (drop in CD or DVD sales) and the implementation of an alternative remuneration on top of subscriptions concluded with ISPs. These estimates do not foresee the causality link between a decrease in market and the use of P2P exchanges (positively or negatively). On the other hand, the scenarios selected allow to test the economic viability of an alternative remuneration in function of various scenarios.

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
<i>base prospects</i>	24,5	24,5	24,5	24,5	24,5	24,5	24,5	24,5	24,5	24,5	24,5	24,5	24,5
<i>pénétration Internet</i>	13%	22%	28%	37%	43%	49%	51%	53%	55%	56%	57%	58%	58%
<i>total accès Internet</i>	3,08	5,453	6,98	9,07	10,6	12,0	12,5	13,0	13,5	13,7	14,0	14,0	14,2
<i>courbe croissance internet</i>		77%	28%	30%	17%	13%	5%	4%	4%	2%	2%	2%	2%
<i>Abonnés bas débit</i>	3,03	5,263	6,38	7,47	7,03	5,5	4,1	2,4	1,3	0,7	0,3	0,3	0,2
<i>courbe croissance bas débit</i>		74%	21%	17%	-6%	-22%	-30%	-40%	-45%	-50%	-50%	-50%	-50%
<i>part bas débit</i>	98%	97%	91%	82%	66%	46%	32%	19%	10%	5%	2%	1%	1%
<i>abonnés haut débit</i>	0,05	0,19	0,6	1,6	3,57	6,5	8,44	10,55	12,14	13,05	13,63	14,04	14,04
<i>courbe croissance haut débit</i>		280%	216%	167%	123%	82%	53%	25%	15%	8%	4%	3%	3%
<i>part haut débit</i>		2%	3%	9%	18%	34%	54%	68%	81%	90%	95%	98%	99%
<i>revenus totaux acces</i>	162	344	731	1119	1186	1326	2350	2969	3145	3332	3196	3140	3047
<i>Revenus bas débit</i>	162	344	600	815	670	589	750	438	234	129	64	32	14
<i>revenu moyen bas débit</i>			12,1	11,7	8,1	6,8	10,0	9	8	8	8	8	7
<i>revenus haut débit</i>			59	182	417	681	1600	2531	2912	3204	3132	3108	3033
<i>revenu moyen haut débit</i>			41,0	38,4	31,6	22,0	26,5	25	23	22	20	19	18
<i>autres services</i>			72	122	99	76							

Source : UFC-QC

From 2004 to 2010, Internet access will increase from 12 to more than 14 million; but the most striking phenomenon is the preponderance of high-speed for which subscribers will increase from 6.5 million to 14 million.

At the same time access revenues are undergoing a downward trend but should double in this period.

1.2. The evolution of the music distribution market

The model takes into account the evolution of the music distribution market in the three forms that may be apprehended in early 2005:

- Physical distribution of CDs corresponding to the current principal market on which all evaluations of the economy of the sector focus (including distribution through e-commerce).
- Distribution in the form of “legal” downloading via fixed Internet access, which has been organised in various countries, and in particular in France from 2004.
- Distribution in the form of downloading on mobile devices, which is possible with new 3 G services and which began being offered in France at the end of 2004.

a) Physical distribution (CD)

Projections are achieved in volume and by relying on estimations published concerning 2004. The single market is said to be doomed to disappear as on the American market, by taking into account the evolutions in fixed and mobile commercial downloading markets.

Evolution of the physical CD market in France

	2004	2005	2006	2007	2008	2009	2010
<i>UNITES VENDUES (en millions)</i>	127	115	105	95	86	78	70
<i>dont Singles</i>	27	23	18	14	10	6	3
<i>taux d'évolution</i>	-10%	-15%	-20%	-25%	-30%	-40%	-50%
<i>dont Albums</i>	100	92	87	81	76	72	68
<i>taux d'évolution</i>	-10%	-8%	-6%	-6%	-6%	-6%	-6%
<i>équivalents musiques</i>	1001	921	865	814	765	719	676
<i>Total équivalents singles</i>	1028	944	884	827	774	725	679
<i>prix moyen ht détail single</i>	4,4	4,2	4,0	3,8	3,6	3,4	3,2
<i>prix moyen ht détail cd</i>	13,3	12,6	12,0	11,4	10,8	10,3	9,8
<i>valeur marché single</i>	119	96	73	52	35	20	9
<i>valeur marché album</i>	1331	1163	1039	928	828	740	661
<i>valeur totale marché final</i>	1450	1259	1112	980	863	759	670

Source : UFC-QC

Projection includes a moderate joint drop in volume and prices for albums or a market equivalent to 670 million titles for €670 million by the end of 2010. This hypothesis includes the fact that the CD market continues to exist by slowing down the decrease in volume but also initiating a drop in price.

For 2005, the drop in volume of 8% continues high drop in rates in the previous years. Then, the industry tries to control the drop notably by lowering prices. This corresponds to a cautious estimate insofar as the flexibility of CD prices in the short term is real.

As to the price evolution, the drop of 5% per year in the long term constitutes a low margin allowing to control the underlying drop in volume. It concerns a prudent attitude with respect to the drop already observed in the first quarter of 2005 but realistic in the medium term. At the end of the period, i.e., in 2010, the estimate brings CD prices to 9.80 on average.

b) Legal downloading through fixed access

For fixed downloading, the study is based on the estimate of downloading market share compared to the equivalent market in musical pieces as it is the only reference in 2004. The figure of 0.2% has since been confirmed by the SNEP. A catch-up effect has been taken into account compared to the volume of platforms on other markets such as the English market without, however, achieving the growth observed on those foreign markets.

Legal downloading represented a negligible part of the market in 2004. By applying a strong increase, downloading could represent 100 million singles by 2008.

Evolution of commercial downloading in France

	2004	2005	2006	2007	2008	2009	2010
part du marché du téléchargement commercial (évolution théorique)	0,2%	1,5%	5,0%	9,0%	13%	15%	16%
Croissance téléchargement commercial		750,0%	333,3%	180,0%	144,4%	115,4%	106,7%
volume téléchargement fixe	2	15	51	93	134	154	164
part du téléchargement par rapport au single	8%	67%	280%	672%	1386%	2666%	5687%
revenu moyen unitaire du téléchargement HT	0,83	0,83	0,79	0,75	0,71	0,68	0,64
Valeur marché téléchargement (millions €)	2	13	41	69	95	104	106

Source : UFC-QC

c) Mobile downloading

Mobile downloading is perceived by operators and producers as a strong force in the distribution market.

Projections based on downloading rated by age bracket take into account results obtained by various consultancies in the analysis of the application markets on mobile among the general public and the study in progress on the use of mobiles by teenagers. This various data allow to realistically define average downloading. If at the end of the period, the volumes concerned are not negligible, the market will not be able to represent an alternative to the weakening of the musical distribution market and cannot in any case represent a larger market.

What is more, it is evident that the mobile downloading market is in direct competition with fixed commercial downloading even when it will necessarily be invoiced at a higher rate taken into account the margin taken by mobile operators. It is, however, possible to anticipate a commercial dynamic that encourages impulse buying.

Evolution of mobile downloading in France

	2004	2005	2006	2007	2008	2009	2010
<i>Volume téléchargement par an</i>							
8-11 ans	-	27 822	84 300	221 373	435 994	450 421	750 626
12-15 ans	-	913 730	2 759 282	8 778 656	18 619 530	29 619 018	47 116 453
16-19 ans	-	1 144 540	3 502 636	10 719 116	19 814 114	30 318 567	46 391 955
20-34 ans	-	1 399 635	2 712 389	5 533 817	11 290 094	17 275 537	26 434 162
autres	-	1 534 322	1 889 395	2 308 754	2 820 271	3 220 808	3 677 111
TOTAL TELECHARGEMENT Millions	-	5	11	28	53	81	124
<i>prix du téléchargement</i>		1,25	1,25	1,13	1,02	0,91	0,82
<i>revenus téléchargement</i>		6	14	31	54	74	102

Source: UFC-Que Choisir

d) The new overall balance in the industry

A new balance is emerging between the losses of volume and revenue linked to CDs and the profit obtained through pay downloads, both fixed and mobile. Over the cumulated period 2005-2010, the balance in the market will be restored. In other words, losses linked to CDs will be offset by the moderate but constant growth of fixed and mobile downloads.

Thus, cumulated losses would amount to €620 m against cumulated gains of €720 m in 2010.

Evolution of music distribution in France

	2004	2005	2006	2007	2008	2009	2010	cumul 2005-10
volume perdu total	-24	-12	-10	-10	-9	-8	-7	-101
volume perdu single	-3	-4	-5	-5	-4	-4	-3	-36
volume perdu album	-11	-8	-6	-5	-5	-5	-4	-58
volume perdu équivalent single	-114	-84	-60	-57	-53	-50	-46	-618
équivalent valeur volume perdu total	-161	-118	-85	-77	-68	-60	-52	-620
équivalent valeur volume perdu single	-13	-17	-18	-17	-15	-13	-9	-103
équivalent valeur volume perdu album	-148	-101	-66	-59	-53	-47	-42	-517
volume gagné téléchargement	2	15	51	93	134	154	164	614
volume gagné téléchargement mobile	0	5	11	28	53	81	124	302
volume total gagné	2	20	62	120	187	235	289	915
valeur gagné téléchargement	2	13	41	69	95	104	106	429
valeur gagné téléchargement mobile	0	6	14	31	54	74	102	281
valeur total gagné	2	19	54	100	149	178	208	710

Source: UFC-Que Choisir

While such projections should be viewed with caution, even though they are reasonable given the annual progression rates, the results obtained tend to challenge the justification for a permanent financial compensation for Internet access. Implemented to compensate for the effect of downloading, it would appear in the medium term to be a new resource alongside the revenue derived directly from the market.

II. The results of the remuneration collection for the music distribution industry

1. Results on the basis of a single remuneration

The first scenario is built around a uniform monthly “compulsory” single remuneration of €5 for both high-speed and low-speed access.

Uniform remuneration scenario (€5 per month)

	2004	2005	2006	2007	2008	2009	2010
<i>revenus bas débit</i>	327	244	146	80	40	20	10
<i>revenus haut débit</i>	390	506	633	728	78	818	843
<i>rémunération compensatoire (r.c.)</i>	717	750	779	809	823	838	853

Source UFC-QC

The model also allows a remuneration for the “low-speed access” base to be taken into account or not. Although this differentiation will gradually disappear, it has some relevance today.

Such a solution, which is also the simplest, allows for financial stakes to be identified. The generated revenue is on the order of €750 m per year. The choice of whether or not to impose a remuneration on low speed subscribers is relevant for 2005 and 2006.

The remuneration on high-speed access only, will, from 2006 onwards, constitute a very substantial revenue that would have considerable economic repercussions for the industry (cf. infra).

2. Results on the basis of a modulated remuneration

In this scenario, the remuneration is modulated as a function of the supposedly different activity of Internet surfers as regards downloading.

Remuneration distribution hypotheses (case N°1)

	montant de la r.c	répartition des abonnés
<i>SCENARIO PRIX/NIVEAU 1</i>	10	25%
<i>SCENARIO PRIX/NIVEAU 2</i>	5	50%
<i>SCENARIO PRIX/NIVEAU 3</i>	2	25%
TOTAL		100%

Source: UFC-Que Choisir

The total results vary little from those of the preceding scenario. Therefore, the advantage of a remuneration segmentation, which would entail costs for managing the segmentation without bringing in any new resources, can be questioned.

Revenue from the remuneration

	2004	2005	2006	2007	2008	2009	2010
revenus haut débit NIVEAU 1	195	253	316	364	392	409	421
revenus haut débit NIVEAU 2	195	253	316	364	392	409	421
revenus haut débit NIVEAU 3	39	51	63	73	78	82	84
revenus haut débit	429	557	696	801	861	900	927

Source: UFC-Que Choisir

The use of another modularity (based on the 80/20% rule) does not allow for different financial stakes to be identified.

Modulated remuneration distribution hypothesis (case N°2)

	montant de la r.c	répartition des abonnés
SCENARIO PRIX/NIVEAU 1	10	20%
SCENARIO PRIX/NIVEAU 2	4	40%
SCENARIO PRIX/NIVEAU 3	2	40%
TOTAL		100%

Source: UFC-Que Choisir

Revenue from the remuneration (case N°2)

	2004	2005	2006	2007	2008	2009	2010
revenus haut débit NIVEAU 1	156	202	253	291	313	327	337
revenus haut débit NIVEAU 2	125	162	203	233	251	262	270
revenus haut débit NIVEAU 3	62	81	101	116	125	131	135
revenus haut débit	343	445	557	641	689	720	741

Source: UFC-Que Choisir

The results obtained with a single remuneration (in this case fixed at €5) allow the impact of the remuneration to be determined (on the order of €400 to 500 m at the start of the period and around €800 m at the end of the period). Introducing a modularity does not seem to significantly affect the collected remuneration amount but only generates specific management costs.

III. The impact of the remuneration collection on the music distribution business

1. Amount of the remuneration and values of the music distribution market

The collected revenue is compared with the economic values of the music distribution industry by incorporating the revenue expected from new forms of distribution (fixed and mobile downloads).

The default scenario adopted for the remuneration is that of a compulsory uniform remuneration fixed at €5, which yields a reference value as analysed above.

Generally speaking, the level adopted for the remuneration represents a value that is equivalent to the activity of the music distribution industry itself. Thus, the remuneration collection represents 40% of the physical CD market in 2005 and will exceed it in 2008 under the combined effect of the declining physical CD market and the increasing penetration of high-speed access. In other words, the alternative remuneration would represent a “second market” in terms of value.

Revenue from the remuneration and economic values of the music distribution industry

	2004	2005	2006	2007	2008	2009	2010
<i>part r.c. hd sur marché CD</i>	27%	40%	57%	74%	91%	108%	126%
<i>part r.c. hd sur marché CD éditeur</i>	34%	52%	73%	95%	116%	138%	161%
<i>part r.c. hd sur marché final de la distribution</i>	27%	40%	54%	67%	77%	87%	96%
<i>part r.c. tout accès sur marché final de la distribution</i>	49%	59%	67%	75%	81%	89%	97%
<i>part r.c. hd sur marché éditeur</i>	34%	51%	71%	90%	106%	122%	137%
<i>part r.c. total tout accès sur marché éditeur</i>	63%	76%	88%	100%	112%	125%	138%

Source: UFC-Que Choisir

2. The remuneration as compensatory effect for the loss of CD markets

Economically perceived as a compensatory effect for the loss of revenue linked to the CD market, the remuneration is compared here with the predictable losses of the CD market and the gains expected from new downloading markets.

With respect to the projections for all markets, the remuneration largely overcompensates the losses, which moreover only appear during the first part of the period.

When looking only at the physical CD market, the remuneration largely overcompensates the loss of market.

Revenue from the remuneration with respect to the major balances in the sector

	2004	2005	2006	2007	2008	2009	2010
<i>compensations</i>	- 159	- 99	- 30	24	81	118	156
<i>projections rémunération compensatoire</i>	390	506	633	728	783	818	843
<i>écart compensation/r.c</i>	231	407	603	752	864	936	999
<i>écart compensation/r.c uniquement CD</i>	229	388	548	652	715	757	791

Source: UFC-Que Choisir

Note: the compensation (losses/gains) is that of the music distribution market (difference between revenue from declining markets and revenue from expanding markets)

3. The level as compensatory effect for the loss of CD markets with respect to a reference year

Another approach is to consider the remuneration as a means to compensate for the loss of CD markets from a certain date onwards (level of March 2003). In a simulation, the cumulated loss of markets over the relevant period was compared with the revenue from the remuneration collection.

According to this logic, the remuneration is considered to represent compensation at least over the period of the loss of revenue calculated with reference to the revenue in 2003 (based on the decline in the 2004 revenue). In this case, the cumulated remuneration over the period (excluding 2004 as the date may in no case have a retroactive effect) largely exceeds the cumulated loss of revenue.

The remuneration still overcompensates the cumulated loss of market and thus provides the actors in the industry with new resources.

Revenue from the remuneration versus the cumulated loss of the CD market with respect to a reference year (2003)

	2004	2005	2006	2007	2008	2009	2010
<i>équivalent valeur volume perdu total</i>	-161	-118	-85	-77	-68	-60	-52
<i>cumul équivalent valeur perdu total</i>	-161	-279	-364	-440	-508	-568	-620
<i>cumul équivalent perdu s années passées</i>	-161	-440	-804	-1244	-1752	-2320	-2940
<i>projections r.c. haut débit</i>	390	506	633	728	783	818	843
<i>cumul de la r;c.</i>		506	1139	1867	2650	3468	4311

Source: UFC-Que Choisir

4. The impact of the collected remuneration on the IAP industry

Comparing the remuneration collection with the revenue generated from Internet access additionally allows the financial impact of the mechanism to be assessed.

The collected remuneration represents 25 to 30% of the revenue from high-speed access, which would not be neutral in the tariff policy of the IAPs, even if the remuneration had to be implemented in a general way without it being the source of competitive distortions.

On the other hand, this share approaches the estimate made by IDATE, which, in a study on peer-to-peer networks, found that subscription prices of IAPs already include a 35% share as increased value of the content they offer.

A comparison is made with the cable broadcasting sector. In this case, the IAPs would have to pass on part of their margins directly to the music industry. The theory is that the IAP has appropriated the contents and that it commercialises its service without remunerating the rightholders, invoking the richness of his “illegal” offer vis-à-vis Internet surfers. The proposition of the alternative remuneration is completely reversed: it is up to the IAPs to pass on the compensation, leaving them the choice of either passing it on again to their subscribers or accepting to incorporate it into their cost by reducing their margins. However, this reversal is not neutral from a commercial viewpoint as it could be used for competitive differentiation purposes.

Certain IAPs could effectively decide to shoulder the compensation without increasing their access tariffs; this would be possible if compensation did not have to be individualised in offers and bills. In this way, the theory of incorporating the value of the content into the subscription would be preserved from an economic viewpoint, or could at the very least be verified in the market if possible tariff differentiations were to be found that would or would not reveal this form of capturing “the work of others” on the part of the IAPs.

Moreover, this method introduces competition for subscription prices as certain IAPs might be inclined to maintain their prices – prior to the introduction of compensation – by reducing their margins. Conversely, a remuneration that must obligatorily be reflected in the prices is tantamount to a systematic increase in subscription prices.

The opposition of the IAPs to a general remuneration thus goes beyond the sole psychological aspect of a general tariff increase, which would curb access subscriptions because of the price elasticity. It can be explained by a fundamental reconsideration of the positioning of the IAPs in the value chain. The charters signed with rightholders then appear to be nothing more than facade politics intended to cover up the true impact of the IAPs’ commercial policy in respect of the distribution of content, in this case music content.

Revenue from compensation and revenue of the IAPs

	2004	2005	2006	2007	2008	2009	2010
% accès bas débit	44%	56%	63%	63%	63%	63%	71%
% accès haut débit	24%	20%	22%	23%	25%	26%	28%
% total accès	31%	25%	25%	24%	26%	27%	28%

Source: UFC-Que Choisir

5. Reconsideration of the scenarios

The impact of the amount of compensation becomes considerable with reference to the above simulations. The €5 level would correspond to the virtual disappearance of the physical CD market, which does not seem credible. The evolution scenario for the CD market in France sees the market shift from an equivalent of 1,020 m titles to 680 m with a value shift from €1,450 m to €670 m. Even a more pessimistic scenario would not justify the compensation, short of admitting that the complementarity/substitution markets will only develop marginally. It seems that the reconsideration rather has to be based on the amount of compensation. Scenarios with €1 and €1.5 per month and per high-speed connection have been tried out. To avoid having to redo the entire demonstration, the results of these scenarios are presented with respect to the phenomenon of loss/gain compensation for the sector.

Scenario of a €1 remuneration

	2004	2005	2006	2007	2008	2009	2010
<i>compensations pertes/gains</i>	- 158	- 99	-30	24	81	118	156
<i>projections r.c.haut débit</i>	78	101	127	146	157	164	169
<i>écart compensation/r.c.</i>	- 80	2	97	170	238	282	325

Source: UFC-Que Choisir

Scenario of a €1.5 remuneration

	2004	2005	2006	2007	2008	2009	2010
<i>compensations pertes/gains</i>	- 159	- 99	- 30	24	81	118	156
<i>projections rémunération compensatoire haut débit</i>	117	152	190	218	235	245	253
<i>écart compensation/r.c.</i>	- 42	53	160	242	316	363	409
<i>écart compensation/r.c.uniquement CD</i>	- 44	34	105	142	167	185	201

It appears that the collected remuneration does not compensate the sector's losses in 2005 but will do so from 2006 onwards. In addition, the remuneration collection allows to contribute to the remuneration of the sector, even if it remains economically positive according to the projections used. Even with these minimal scenarios, the remuneration collection contributes to compensating the sector for the losses it has suffered during the previous years!

Finally, another approach has been used. It is possible to start from an estimate of "unauthorised" downloading in France, as produced by ICD, a Canadian organisation, by valuing all downloads at a commercial downloading value, which prevents the loss of market to be counted twice (decrease in CD sales and downloading). This makes it possible to demonstrate the economic impact of a €5 remuneration. This would in fact correspond to total compensation of the loss of market that is held to be attributable to downloading.

Obviously, this equivalence has no economic reality to the extent that, on the one hand, it is not possible to maintain that all unauthorised downloads represent pay downloads and, on the other hand, the levy is supposed to compensate the loss of value for the rightholders, whereas here it is compared to a supposed loss of market including all the costs and the margins of the entire industry.

IV. Modelling of the alternative remuneration for the audiovisual industry

Given the existence of the media chronology and the values specific to the audiovisual market, it immediately became clear it would not be possible to bring the “loss” of market into correspondence with an alternative remuneration unless the amount of the latter were to be set at a very high level.

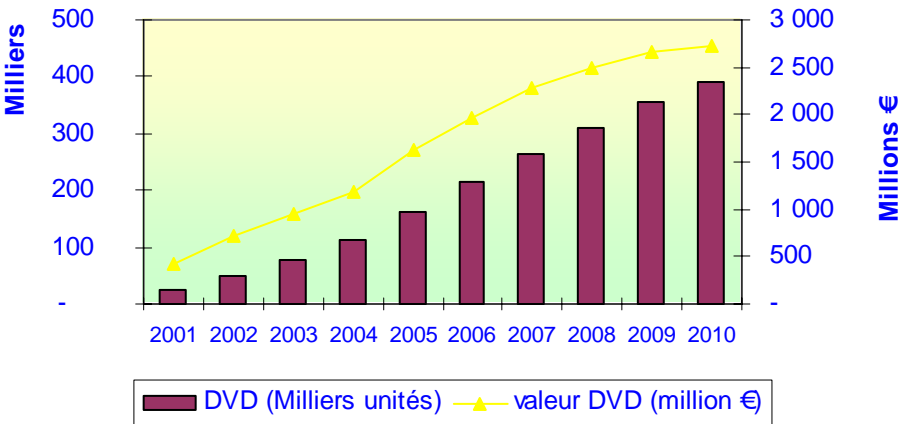
The model also introduces the hypothesis of a 4-year latency period during which peer-to-peer exchanges are not legalised.

1. Medium-term market trends¹²

The video market is projected in volume and in value. The growth in volume of the DVD market regularly decreases over the period. From 110 m copies in 2004, the natural market trend would go to 390 m in 2010, all things remaining equal.

To the extent that it is not possible to make a circular reference between the projected total DVD market and the representative portion of the loss of market due to the levy, the market equivalent to the levy is defined as being an integral part of this market trend. This means that the actual DVD market will decrease accordingly.

Evolution of the DVD market

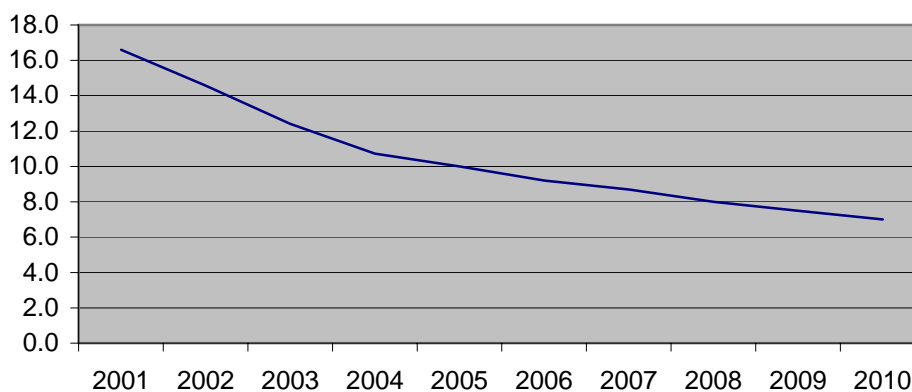


Source: Modèle UFC-QC

¹² The details on the elements taken into account for determining the evolution of the variables can be found in the complete version of the study

The value of the market is based on the publisher's unit price. The price is expected to fall from €12.4 in 2003 to €7 in 2010.

Evolution of the DVD price



Source: modèle UFC-QC

2. The case of complementary markets

The video rental market has been the subject of an evaluation. It appears to be directly under threat of video on demand. Pay per view is yet another form of distributing content. What these markets would nevertheless have in common is that they are substitute markets for the rental market or at least look set to take over from this form of commercial distribution for which the holding of a permanent right of use is not acquired.

In any case, for the films released over the last four years, these present and future markets are not under any more threat from a levy than from today's downloading.

As regards the years before that period, the levy would contribute to reducing the potential of these markets. However, they appear a priori to be less impacted on this market than the sales market as such. According to an analysis of the VOD market in the USA, 70 to 80% of sales are related to recent films¹³.

In any case, these complementary markets are difficult to evaluate to the extent that, on the one hand, the traditional rental market appears to shrink inexorably under the influence of household appliances and falling video prices. On the other hand, the pay-per-view but above all the video on-demand markets appear to be in search of a viable business model; the impact of the levy appears to be negligible compared with the major issues of these complementary markets.

¹³ *La distribution des films en ligne*, Louis Guillou, Observatoire de l'Audiovisuel, January 2004

3. Market-related hypotheses according to the year of release of the films

The CNC does not regularly publish statistics on the video market in terms of release date of the films concerned. The latest available data are based on the 2002 market, yet it may be assumed that these ratios vary only slightly in time.

The analysis of video sales volumes for the releases over the last three years yields a portion of 55% revalorised at 60% to make allowance for a fourth year of protection (in the sense of the levy on downloading). This volume portion is overvalorised with a portion that represents nearly 70% of the annual market.

Breakdown of annual sales according to the year of release of the films (reference 2002)

<i>répartition date de sortie en salle (volume)</i>	<i>volume</i>	<i>valeur</i>
2002	14%	18,60%
2001	34,40%	41,30%
2000	7,20%	4,90%
<i>part protégé du marché 3ans</i>	55,50%	64,80%
<i>part protégé du marché 4 ans estimation</i>	60,50%	69,80%
90/99	23,80%	17%
80/89	6,60%	6,50%
70/79	4,20%	3,90%
60/69	4,90%	3,60%
Avant 1960	5%	4,30%

Source: Modèle UFC-QC after CNC

V. The results of the modelling for the audiovisual industry

1. Hypothesis where the DVD market (after the latency period) disappears completely

In the first hypothesis, sales of DVDs are considered to disappear completely after the guarantee period. Two quantification scenarios are proposed, the first of which is based on the “lost” volume quota, to which the unit price projections are applied.

In the first case, two options are defined with respect to the section of the market to which the films belong. This may, in effect, modify the results in that the average price of a “film” DVD will differ from the average price of a “series or documentary” DVD, etc.”. The amount of the “loss” may thus vary according to the hypothesis used.

Compensation model (volume scenario)

	2004	2005	2006	2007	2008	2009	2010
marchés potentiels perdus sur la vente (volume Milliers)	43 845	64 037	84 529	103 970	122 685	139 861	153 847
marchés potentiels perdus sur la vente toute video (€ Milliers)	470 050	640 368	777 663	904 540	981 478	1 048 954	1 076 927
marchés potentiels perdus sur la vente film (€ Milliers)	300 832	409 835	497 704	578 906	628 146	671 331	689 233
équivalent r.c.mensuelle par internaute haut débit toute vidéo	6,03	6,33	6,14	6,21	6,27	6,41	6,39
équivalent r.c.mensuelle par internaute haut débit film	3,86	4,05	3,93	3,98	4,01	4,10	4,09

Source: Modèle UFC-QC

Note: the volume scenario means that the estimate is made with an average DVD price that remains constant in time. Only the volumes change.

2. Hypothesis where (after the latency period) 30% of the DVD market continues to exist

Under these conditions, the levy amounts to over €6 if all video productions are covered, and only to €4 for film related video productions.

If the hypothesis of a credible alternative for maintaining a commercial activity in parallel to the levy with a 30% rate is proposed, the equivalent of the compensatory levy is situated between €4.5 and €2.7.

Compensation model with maintenance of a parallel market (volume scenario)

	2004	2005	2006	2007	2008	2009	2010
hypothèse sur le maintien d'une activité achat VOD location haute qualité	30%	30%	30%	30%	30%	30%	30%
marchés potentiels perdus sur la vente (volume) toute video	30 692	44 826	59 170	72 779	85 879	97 902	107 693
marchés potentiels perdus sur la vente (volume) film	19 643	28 688	37 869	46 579	54 963	62 658	68 923
marchés potentiels perdus sur la vente (valeur) toute video	329 035	448 257	544 364	633 178	687 034	734 268	753 849
marchés potentiels perdus sur la vente (valeur) film	210 582	286 885	348 393	405 234	439 702	469 932	482 463
équivalent r.c. mensuelle par internaute haut débit toute vidéo	4.22	4.43	4.30	4.35	4.39	4.49	4.47
équivalent r.c. mensuelle par internaute haut débit film	2.70	2.83	2.75	2.78	2.81	2.87	2.86

Source: Modèle UFC-QC

Note: for estimating the "loss", the value scenario takes into account the evolution of the price of DVDs in time.

3. Same scenarios in terms of value

In the case of a value scenario, the amount of “the loss” is overall less important to the extent that the first years of distribution are logically the most valorised with a higher average price. The levy is then situated between €4.9 and €3.

Compensation model (value scenario)

	2004	2005	2006	2007	2008	2009	2010
<i>marchés potentiels perdus sur la vente (équivalent valeur marché total)</i>	359 380	489 598	594 567	691 572	750 396	801 985	823 372
<i>marchés potentiels perdus sur la vente (équivalent valeur marché) film</i>	230 003	313 342	380 523	442 606	480 253	513 271	526 958
<i>équivalent r.c. mensuelle par internaut haut débit toute video</i>	4.61	4.84	4.70	4.75	4.79	4.90	4.89
<i>équivalent r.c. mensuelle par internaut haut débit film</i>	2.95	3.10	3.01	3.04	3.07	3.14	3.13

Source: Modèle UFC-QC

With the maintenance of a parallel market, the levy is situated between €3.5 and €2.

Compensation model (value scenario)
Impact of the maintenance of a parallel market

	2004	2005	2006	2007	2008	2009	2010
<i>hypothèse sur le maintien d'une activité Achat VOD location haute qualité</i>	30%	30%	30%	30%	30%	30%	30%
<i>marchés potentiels perdus sur la vente (valeur) toute video</i>	251 566	342 718	416 197	484 101	525 277	561 390	576 360
<i>marchés potentiels perdus sur la vente (valeur) film</i>	161 002	219 340	266 366	309 824	336 177	359 289	368 871
<i>équivalent r.c. mensuelle par internaut haut débit toute video</i>	3.2	3.4	3.3	3.3	3.4	3.4	3.4
<i>Equivalent r.c. mensuelle par internaut haut débit film</i>	2.1	2.2	2.1	2.1	2.1	2.2	2.2

Source: Modèle UFC-QC

Conclusions drawn from the results of the modelling

The orders of magnitude obtained for the video model appear to be far more significant than those obtained for the CD model. When cumulating the results for music and video downloads (including the 4-year latency condition), the reference value of €5 per month and per Internet surfer effectively constitutes an economically justified value. The analysis thus shows that a remuneration for “free” peer-to-peer exchanges can generate quite a substantial revenue as regards market quantities as they can be observed today.

This is why an alternative remuneration on top of the IAP subscription represents an economically realistic solution.

...

IV. QUESTIONS AND ANSWERS

What is the Alliance?

The Alliance brings together organisations representing the public (consumer associations, popular education associations) and the artists (singer/songwriters), whose common objective is to ensure the implementation of a suitable legal framework for the circulation of cultural works in the digital universe, while respecting the rights, freedoms and interests of the artists and the public.

What advantages does the global licence proposed by the Alliance hold for the exchange of works on peer-to-peer networks?

The solution proposed by the Alliance ensures the legal security of Internet surfers who use the exchange networks on the Internet for downloading cultural works and/or exchanging such works for non-commercial purposes, while at the same allowing the rightholders to receive a remuneration for those exchanges, thereby putting an end to the free-of-charge principle that has prevailed until today.

Is the proposed solution legally compatible with France's commitments under the existing international treaties on intellectual property?

Yes, the implementation of a system of compulsory collective management, as the one already implemented in the field of reprography, allows to deal with today's infringements on the making available to the public right, without infringing on the exclusive rights of the rightholders as recognised by the international treaties.

What amount will be levied on Internet subscriptions?

It is still too early to give a definitive figure, as the amount will have to be determined in consultation with the various player involved. However, as a concrete basis for these discussions, the Alliance proposes that the solution it presents be examined by taking into consideration a remuneration varying from €4 to €7.



Is the legislation on the exchange of works on peer-to-peer networks compatible with the development of licensed downloading offers (commercial downloading sites)?

These two methods for access to cultural works can co-exist complementarily, provided the licensed downloading platforms manage to provide consumers with added value or additional services that entice them to subscribe to such services.

What is the difference between the global licence and a legal licence?

The global licence is not a legal licence from a legal point of view. Today it is very important to distinguish these two concepts. A legal licence is an authorisation that is granted from the outset by the law. The global licence, by contrast, is based on the exception for reproduction for private use for downloading purposes and on an authorisation granted by the rightholders for making works available to the public. In practice, this authorisation will be issued by a collective management organisation approved by the Culture Minister who represents the rightholders.

Does the global licence cover the downloading of software?

This global licence only covers the downloading of software insofar as the reproduction for private use does not apply to this category of works.

Does the global licence cover all films?

Conditions and limitations for the licence can be negotiated between the representatives of the rightholders and those of the consumers with regard to films released in cinema halls, in order to observe the so-called "chronology of the media". This chronology determines the time when the film may be rented and broadcast on TV channels to ensure the profitability of the various broadcasting and distribution methods.

How can the global licence serve as a foundation on which the new pact between artists/public for information society is to be implemented?

Its implementation would have a powerful symbolic, political and educational value. It would put an end to the risks of the growing deployment of a "transgressive I-want-it-all-for-nothing culture" and by correlation to the policing and repressive strategies, both private and public, leading to the relationship between public and artists becoming even more litigious. It would cause all actors in

the cultural socialisation process, i.e. creators, authors, artists, producers, distributors, but also the people's representatives, educators, parents, associations, Internet surfers, etc., as well as new entrants such as Internet access providers and online service providers, etc., to reflect on their own responsibility in the cultural value chain. By providing the rightholders with new resources, it would entice them, along with producers and distributors, to innovate, to do things differently and better to re-establish a durable commercial relationship with their public. Apart from the fact that it would constitute an unprecedented action of providing all parties with a pedagogic explanation of the strategic character and the operation of the cultural value chain, it would oblige all the actors involved and the consumers to enter into a situation of collective intelligence of the stakes of the knowledge society.