CONSTRAINTS FOR INTRODUCING A "HADOPI" LAW: THE EXAMPLE OF GREECE

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1. HADOPI LAWS IN FRANCE

1.1. HADOPI-1

Even non-US cognoscenti are aware that in baseball games the batter has three chances to hit the ball thrown by the pitcher; if not, the batter goes out of the game and is replaced by another player ("*three strikes and he's out*"). The relevant French bill, inspired by this rule and following the guidelines of president Sarkozy, has been presented for the first time in November 2007. It has been based upon a report of a special task force headed by the managing director of French department stores FNAC Denis Olivenne. FNAC is one of the biggest proprietors of IP rights in France. The report has been endorsed by 40 media and entertainment representatives and has been presented as an agreement in order to foster the bill ("*Olivenne Agreement*" see http://www.edri.org and http://www.armt.fr).

The basic idea was simple: an independent administrative authority (*Haute Autorité pour la Diffusion des Œuvres et La Protection des Droits sur Internet* and hence the acronym HADOPI) is being established as the watchdog of intellectual property rights over the Internet. Ideally, HADOPI should handle complaints originating from the creators / proprietors of IP rights. In the next step the Authority should make research in order to verify the complaints upon information provided by internet Service Providers.

"Suspects" for illegal downloading would receive two warnings: In the first warning the "suspect" would be urged to thoroughly check whether third parties are using his / her internet connection (for example by tampering wireless networks). The user would be held exclusively liable to take necessary steps in order to reinforce the security of his / her network and could not claim later "wireless" taping as an excuse. If the "suspect" ignores the first warning and a second infringement takes place, within the six months following the first warning, the a second warning is being sent. If another infringement takes place within a year following second warning, then the Authority is entitled to decide the interruption of internet service access for a period varying between one month and one year; still the user-"suspect" must pay the fee to the Internet Service Provider, even for the periods of interrupted service. Furthermore, a system similar to the black list of bankers, is established in order to avoid the change of provider for the period of interruption.

1.2. The history of HADOPI bills in France

The draft bill had been presented to the French Senate (*Sénat* - http://www.senat.fr/-dossierleg/pjl07-405.html) by the government on 18th June 2008 under the name: Law to support the diffusion and the protection of the creation on the Internet (*Loi favorisant la diffusion et la protection de la création sur Internet*). On 23rd October 2008 the bill has been characterised as "urgent", having as a result only one reading per legislative chamber

(National Assembly and Senate). On 30th October 2008 the bill has been voted at a first reading by the French Senate following two days of discussions.

The bill was then presented to the French National Assembly (*Assemblée Nationale*) on 11th March 2009 and an amended version has been adopted on the 2nd April 2009. However, because of that amendment and the "urgency" of the bill, the matter was brought before a 14 member committee (7 from Senate and 7 from Assembly) in order to produce a common text. That finalised version has been voted by the Senate on 9th April 2009, unanimously by the present senators (voting by hand). For this instance, the government of François Fillon has been accused for bringing the bill for voting very late in the evening and before Easter holidays and "grabbing" the 16 votes of the 16 present senators. However, on the same day the bill has been defeated by the national Assembly by 21 votes against and 15 in favour.

Following the defeat, and on request of the Government, the bill has been forwarded again to the National Assembly for a new lecture and on 12th May 2009 it has been adopted with 296 votes in favour and 233 against. On the very next day (13th May) the bill has been voted by the French Senate with 189 votes in favour and 14 against causing an outcry of lawyers and citizens nationally (in France) and worldwide, as well as a response by the European Parliament.

Almost immediately, the socialist party has announced its intention to contest the constitutionality of the law and on 17th May 2009 socialist MPs have submitted a request for examination to the French Constitutional Council (*Conseil constitutionnel*).

It should be noted that a few days ago, on 6th May 2009, the European Parliament had accepted an amendment (407 in favour, 57 against, 171 abstentions, European Parliament Communiqué 20090505IPR55085) to the so called Telecommunications Package that "*...no restriction may be imposed on the fundamental rights and freedoms of end users, without a prior ruling by the judicial authorities (...) save when public security is threatened...*". It was actually the second reading of the amendment that had been rejected earlier in autumn 2008 initially proposed (and rejected) as amendment No.138 by French socialist MEP Guy Bono to the distress of the French music industry. The accepted amendment No. 46 had been introduced by socialist MEP Catherine Trautman. However, following a compromise on 4th November 2009 the final wording of art. 3A of Directive 2002/21 as amended by Directive 2009/140 has made only general references to the principle of proportionality and judicial review [Broumas, 2009, Serenidis 2010, p. 194].

On 10th June 2009 the Constitutional Council has declared (Décision n° 2009-580 DC du 10 juin 2009, published in the Official Journal on the same day) the main part of the bill unconstitutional on the grounds that freedom of communication and expression deriving from the French Declaration of the Rights of the Man and of the Citizen of 1789, applies both to "*general development of the Internet*" and the "*free access of the public to internet communication services*". The decision makes particular reference to [article 9] of the 1789 Declaration conerning the presumption of innocence and [article 11] concerning freedom of expression. Furthermore, the Council has declared that the interruption of internet access may only be decided by a judge and not by an administrative authority (such as HADOPI)

On 8th July 2009 another bill, nicknamed HADOPI 2, has been presented to the French legislative chambers for the third time It has been adopted by the Senate assembly with 189 votes in favour and 142 against and in September by the Assembly with 258 votes in favour and 131 against. The bill has been again challenged by the socialist MPs in front of the Constitutional Council. However. on 22nd October 2009 the Constitutional Council has approved this new version of the law and it came into force as Law relative to the criminal protection of intellectual and artistic property over the internet (*Loi n° 2009-1311 du 28 octobre 2009 relative à la protection pénale de la propriété littéraire et artistique sur internet*).

1.3. HADOPI 2

This "new" version of the bill characterises the interruption of internet access, up to a maximum of one year as a "supplementary sanction" (art. 7 inserting art. 335-7 to the French code of Intellectual Property) and as such it may only be imposed by a competent court according to the rules of criminal procedure; accordingly Art. 6 of HADOPI 2 modifies the French Code of Criminal Procedure to that effect. HADOPI is now limited to notify the competent criminal prosecution authorities while the main sanctions of art. 335-2 of the French Code of Intellectual Code still apply: up to 3 years imprisonment and up to €300.000 fine (5 years and €500.000 in case of organised actions). ISPs not complying with a decision to interrupt access face a fine of €5.000. Furthermore users cannot claim ignorance for third parties using their connection as the law introduces the term of characteristic negligence (*négligence caractérisée*). If, following one year after official notification, users fail to take measures to secure their connection, then they face interruption of service up to one month. Trying to subscribe to another ISP while "suspended" may lead to a maximum fine of €3.750. It should be noted that concerns have been expressed as regards the interpretation of the extension of the criminal provisions of arts 335-2, 335-3 and 335-4 of the French Code of Intellectual Property to all types of electronic communication after the wording of Art. 6 of Law 2009-1311 "*...lorsque' ils sont commis au moyen d' un service de communication au public en ligne...*". This phrase could be interpreted to include emails, sms messages etc. and not only P2P file sharing, as envisaged under HADOPI-1.

2. PRACTICAL CONSTRAINTS

The HADOPI bills have been widely criticised, as far as it concerns the violation of civil liberties, freedom of expression etc. However, before proceeding to the legal constraints in Greece, attention should be focused on the practical difficulties; the starting point is that technology should try to tackle problems caused by technology itself.

2.1. The number of users - the volume of data

It is estimated that only in France offenders may be as many as 50.000 (Torrentfreak and Googlenews as of March 2010). Any judicial system, no matter how efficient, will face enormous difficulties in handling 50.000 cases. Furthermore, recent studies (University of Rennes http://www.mediafuturist.com/2010/03/foolishness-of-hadopi-2.html) reveal that

between September and December 2009 (after HADOPI 2) illegal downloading of online music and video in France grew by 3%. The report shows that 30,3% of all Web users in France illegally downloaded content over the last quarter of 2009; for the period 1 July to 30 September it was 29,5%.

One possible explanation, by the same report, is that HADOPI 2 only targets P2P file sharing networks and completely ignores streaming sites. The report claims that the number of people who watch and / or download video, film and music via streaming is growing rapidly, while the numbers who do so via P2P networks is in rapid decline (*Streaming media:* are multimedia that are constantly received by, and normally presented to, an end-user while being delivered by a streaming provider - www.wikipedia.org). The report shows that the percentage of French Internet users who favour streaming sites rose from 12,4% to 15,8% between September and December 2009. At the same time the percentage of those using P2P networks declined from 17,1% to 14,6% over the same period. The report also indicates that those who routinely and frequently buy and download content legally, also use illegal platforms, in that sense the suspension of a connection will lead to lower legal sales and other legal activities.

Furthermore, an enormous storage space is needed to store all users transactions and normally ISPs store data in a form convenient for internal purposes; not to be used for evidential purposes by third parties. It is estimated that the storage cost can be several million euros per year, while the volume may rise up to 10.000 mails, 3.000 letters and 1.000 interruptions of service per day. The costs imposed on the state budget, as well as ISPs, will be transferred to the users leading to further barriers to the right of internet access.

2.2. The IP address

It is a common understanding, that via the IP address it is very difficult to identify the actual person, which is an essential prerequisite for imposing criminal or administrative sanctions. However, even for the IP address, it is relatively easy for someone to conceal his / her identity or to impersonate another system / person either by tapping an unprotected wireless connection, or by the method of "IP *spoofing*" i.e. the creation of Internet Protocol (IP) packets with a forged source IP address, with the purpose of concealing the identity of the sender or impersonating another computing system (www.wikipedia.org). Similar problems may be born by prepaid cards for internet use, for which no contract with the ISP is required and the user may remain anonymous. Furthermore, public wi-fi hot spots allow everyone to get connected without identification i.e. user name and password. It is also common observation that many users are not accustomed with the wi-fi function of modern modem devices and do not take appropriate measures to protect their local networks. The problem becomes more complicated when members of the same group (e.g. family, workplace etc.) use the same local network via one IP address. In a manner not usual to legal texts, HADOPI bills try to sanction the owner of a connection rather than the offender him/herself.

Many commentators consider that HADOPI laws will be difficult to enforce and that there will always exist a way to circumvent the interruption of service. Finally, only "occasional"

(as opposed to persistent) pirates will be persuaded by these laws to stop unlawful downloading.

3. CONSTITUTIONAL CONSTRAINTS IN GREECE

3.1. Freedom of Information and Participation to the Information Society

According to [Article 5A] of the Greek Constitution 1) All persons are entitled to information, as specified by law and 2) all persons are entitled to participate in the Information Society. The first section refers to the "freedom of information" i.e. the right to be informed. Any restrictions may only be imposed by law and if a) they are absolutely necessary and b) justified for reasons of i) national security, of ii) combating crime or of iii) protecting rights and interests of third parties. The second section refers to the new right of participation in the information society, which is interpreted as an obligation of the state to facilitate access (not to raise barriers) for all citizens to the benefits associated with the electronic exchange of information. It has been argued that such minimal access to the Information Society has been defined by the concept of *universal service* [Broumas, 2009] and falls within the hard core of the right to be informed and to participate in Information Society. Consequently, we may not have restrictions beyond that minimal point of access to the service.

Under HADOPI laws, ISPs must continuously watch every transaction of the users in order to identify possible infringements. In a hypothetical Greek HADOPI law, such surveillance and consequent notification to the authorities automatically raises barriers for the satisfaction of both rights of art. 5A of the Greek Constitution: 1) Users knowing that they are under a "big brother" surveillance will reduce the use of the internet and will not feel free to visit any website they like, thus limiting the right to be informed and 2) the State does not only facilitate (as obliged) but rather raises barriers which would also contradict the principle of proportionality (see *infra*). Furthermore, it is uncertain whether the protection of IP rights may justify any of the allowed restrictions under above (i) - (iii). The brief conclusion is that such barring of users from internet use is not compatible with the Greek legal order and ECHR.

3.2. Data Protection And Privacy

In Greece both the right to privacy and protection of personal date are vested with constitutional power in [arts. 9] and [9A] of the Greek Constitution, also in line with art. 6 of the Treaty of European Union, art. 8 of the Charter of Fundamental Rights of the European Union and art. 8 of the European Convention for the Protection of Human Rights.

Again, under HADOPI laws, ISPs must record and examine all user transactions, while on-line. Still, for particular cases, following an accusation from the creators of IP works, the ISP must report to HADOPI every information and data collected form the user-"suspect".

In France, the Government has asked, through the Ministry of Culture and Communication, for the opinion of CNIL (the French Data Protection and Secrecy of Communications Authority). The Committee, initially, had underlined several weak points of the HADOPI bill

arguing that data surveillance should not exceed the necessary measure; that the criteria of any arbitration should be defined by presidential decree; that enforcing the law in workplaces may prove cumbersome; that private entities should not interfere with personal data for identification purposes; that freedom of expression is limited by the ISP intervention who "filters" the content; that initiating a criminal procedure by criteria defined by private entities (the creators) may contravene the principle of proportionality; that the limits of liability between internet piracy and the control of the local private network by the user are vague; that HADOPI employees do guarantee, like the judiciary, the handling of personal data. Nevertheless, recently CNIL has given a green line for the automatic processing of IP addresses of users of P2P networks (see decision of 10-6-2010: www.pcinpact.com/actu/news/57597-orange-tmg-surveillance-cnil-p2p).

It is doubtful, following recent case law like Decisions 39/2006 and 57/2006 related to the introduction of police CCTV (see www.dpa.gr), whether the Greek Data Protection Authority, endorsed constitutionally, will consent to such general surveillance of all internet transactions by private entities such as ISPs. Still, even if we stand in front of a conflict with another right, which could justify the need to lift any protection of privacy and personal data, it is accepted, both in theory and in practice, that such conflict shall be resolved exceptionally by an *ad hoc* judgement. The end result should not affect the core of the right, leading to its annulment.

3.3. Freedom of expression

Apart from other communication uses, it is well known that the Internet serves as a medium of expression; the expansion of blogs, chatrooms, messengers and social networks such as facebook, has led to an increase of the informational power of the Internet. Freedom of expression is protected under [art. 14 par. 1] of the Greek Constitution, in line with art 10 of ECHR and art. 19 of the International Covenant on Civil and Political Rights. Although art. 14 refers to expression "*...in writing and through the press...*" it is beyond doubt that such freedom also covers the Internet. In Greece this has also been verified by recent case law (see decisions 44/2008 of Court of the First Instance of Rodopi and 27/2009 of the Multimember Court of First Instance of Piraeus). The concept of "expression" covers any ideas, facts or opinions through which someone may convey and externalise his / her thoughts. In that sense any kind of message transferred over the Internet enjoys the protection provided by art. 14 of the Greek Constitution and everyone may freely form his / her opinion and communicate via any available means in written form, sounds, images etc. without any time or space restrictions. Freedom of expression may only be limited by law; however such law should not make impossible or encumber in a disproportional manner the exercise of the right i.e. should not affect the hard core of the right.

HADOPI laws are typical examples of hindrance to freedom of expression of every citizen. As a defensive right, the citizen is entitled to ask any state or private entity to abstain from any action that encumbers the exercise of the right; third parties such as ISPs are not entitled to limit the expression of ideas, the propagation of thoughts and generally the exchange of messages. Under Greek law users would be entitled to ask ISPs not to record and supervise their actions.

3.4. Judicial protection - Presumption of innocence

The right of judicial protection assigns the fundamental procedural right of any person to a fair trial [arts. 8 & 20.1 of the Greek Constitution]. The principle of the "assigned" judge guarantees that justice functions independently and appoints the competent court according to institutionally established rules. Among other, the right of judicial protection covers the right of recourse to a court of law and the right to freely express in front of the court his / her opinion concerning his / her rights and interests. HADOPI -1 has been widely criticised and declared unconstitutional by the Constitutional Council, for the lack of any provision for recourse to Justice. However, HADOPI-2 has also been criticised for adopting a simplified criminal procedure in which the accused has limited rights to present his / her views (*procédure simplifiée*, see art. 6 of Law 2009-1311 inserting a new article 495-6-1 to the French Code of Criminal Procedure). It is not yet clear how [art. 3A] of Directive 2002/21 as amended by Directive 2009/1, will be interpreted in guaranteeing "*...the right to effective and timely judicial review...*", but under Greek law, any such procedure affecting fundamental rights should require a final verification through the eyes of a competent judge.

Furthermore, alleged infringers would still be convicted on the sole basis of IP addresses (see *supra*) that cannot be considered as valid evidence, and which are collected by private entities. Currently, there is no material way of opposing the validity of such "evidence", which clearly violates the presumption of innocence, a well known principle in most European legal systems (see art. 6 par. 2 ECHR), though not explicitly written in the Greek Constitution. Guiltiness of an accused must be proved by solid evidence, suspicions or doubts are not enough to convict someone in front of a court (as per known legal motto *in dubio pro reo*). Additionally, according to the HADOPI laws, the users must secure their private network and take all necessary steps to safeguard the integrity of their connection line once notified by the ISPs. Under Greek law, such action especially at the stage of initial notifications, apart from the right to judicial protection, would contravene the right to get "*a written and reasoned reply*" following a petition (art. 10 par. 1 and 3 of the Greek Constitution) and the right of a person to a prior hearing before any administrative action or measure (art. 20 par. 2 of the Greek Constitution). Applying justice by an administrative authority (under HADOPI 1) but also initiating sanctions and criminal procedure (under HADOPI 2), by the same authority or by private entities, could also raise a question of division of powers.

3.5. Secrecy of Communications

According to [Art. 19 par. 1] of the Greek Constitution: "*Secrecy of letters and all other forms of free correspondence or communication shall be absolutely inviolable*". The right of secrecy does not have as a subject the message, already protected under art. 14 (freedom of expression), but secrecy of communications and correspondence, no matter if it is a private or professional message. The concept of "message" covers not only written letters, but any form of communication such as phone calls, telegrams, facsimile, telex, e-mails etc., so the right of secrecy is extended to all possible means of communication. A particular independent authority has been established (Hellenic Authority for Communication Security and Privacy

known as ADAE) by article 1 of the law 3115/2003, following the guidelines set in art. 19 par. 2 of the Greek Constitution; ADAE is entrusted to safeguard the right of art.19 par. 1.

There is an ongoing discussion in Greece concerning the protection of external elements of communication under secrecy (otherwise known as traffic data). Opinion 1/2005 of ADAE and Decision 79/2002 of the Greek Data Protection Authority favour protection of such data under secrecy, in line with art. 4 par. 1 of presidential Decree 47/2007, Law 3471/2006 (implementing Directive 2002/58) and law 3674/08. Directive 2006/24 for data retention, imposing stricter obligations to ISPs for the retention of traffic data, has not yet been implemented in Greece. However, opinions 7/2009 and 9/2009 issued by the Public Prosecutor of the Supreme Court argue to the contrary, claiming that traffic data are not being protected under secrecy. If we follow the Opinion of the competent authority which is ADAE, it can be argued that under Greek Law the right of secrecy covers apart from the content, also the external elements of communication, which in the case of internet include the identity and the IP of the user, the speed of connection, the place and time of connection, the duration of communication etc. Furthermore, under art. 19 par. 1 section 2, only a judicial authority shall not be bound by this secrecy and only for reasons of national security or for the purpose of investigating especially serious crimes. Law 2225/1994 has established a closed catalogue of the serious crimes for which judicial authorities may limit or cancel the right of secrecy, while investigating such crimes. It should be noted that after the *Promusicae* case (C-275/06) [detailed description in Stavridou, 2009, p. 582], recent case law of the Court of Justice of the European Union (C-557/07 *SF Gesellschaft zur Wahrnehmung von Leistungsschutzrechten v. Tele2*), takes the view that community law does not forbid member states to introduce legislation obliging holders of traffic data to reveal them to third parties (normally victims of infringement of copyright) in order to instigate civil actions based on creator's rights. Nevertheless, legislators should avoid conflicts with fundamental rights and always observe the principle of proportionality [Serenidis, 2009, p. 186].

Accordingly, it is not possible to reveal, under current Greek Law, the external elements of communication (including the IP address of the offender) unless a judicial investigation takes place for the specific crimes prescribed by law. Following the wording of the Greek Constitution (*absolute inviolable*), permission cannot be granted for a simple police search or to facilitate other administrative authorities to investigate crimes or other punishable actions that are not found in the catalogue of serious crimes of Law 2225/94. Under the Greek Constitution we cannot have a general and preventive abolition of secrecy of communications on the Internet and in that sense, a HADOPI law would render itself in Greece obsolete, since it imposes a constant and detailed surveillance of private life and communication connected with the Internet, for actions that are not punishable as serious crimes.

3.6. Principle of Proportionality

The principle of proportionality has been recognised as "generally accepted rule of law" and as a "a general rule of community law" having supranational power. In the Greek Constitution all kind of restrictions of rights "...*should respect the principle of proportionality*..." (Art. 25 par. 1 sec. c). The principle entails that between the legal purpose of a restriction and the particular restriction, there has to be a reasonable proportion. Applying the principle requires

a three stage approach that of: a) appropriateness, b) necessity and c) *stricto sensu* proportionality:

a) The criterion of *appropriateness* tries to examine whether the particular measure is appropriate for the purpose. In the HADOPI scenario: Is three-strike-legislation and consequent interruption of internet access capable to fight piracy of literary works and protect intellectual property and creators? The answer is evident: Offenders could easily find other ways to communicate possibly through ISPs residing outside France. It has also been argued that through encryption methods, ISPs may not be able to recognize whether traffic of data violates IP rights.

b) If the first criterion is fulfilled the second prerequisite examines whether the particular measure is necessary i.e. if it is the mildest method between different options; otherwise it violates the principle of proportionality. Interrupting the service while the user must still pay the fee (see art. 7 of HADOPI 2) is definitely a non-necessary measure to achieve the endeavoured purpose. The purpose is to protect IP rights over the Internet; a number of milder solutions exist that lead to the same results, including technological solutions such as filtering, digital watermarks etc. Under that interpretation, the particular measure violates the principle of proportionality.

c) The third criterion is *stricto sensu* proportionality, i.e. there must be a reasonable proportion between the measure and the purpose. We have seen that a HADOPI regime in Greece would violate fundamental human rights (under 3.1 to 3.5 above); no matter how appropriate or necessary such law would finally detriment the rights of citizens in comparison to the doubtful benefits of public or private interests it is trying unsuccessfully to protect.

4. PRIVATE LAW

A few considerations regarding private law: Under HADOPI 2 the user must still pay the monthly fee to the ISP pending the interruption of service. Furthermore, HADOPI 2 cancels the application of the French Code of Consumers to that purpose. Under Greek Law such choice would face the following problems:

a) Taking into consideration the Greek Civil Code (arts. 380-382) in connection with the legislation for consumer protection and the contract between the ISP and the user such term should not be valid: For the period of time that the user was connected the fee has been paid and there are no further claims; for the period between the interruption of service and the end of the contract (given a limited time contract) we must establish whether the decision (judicial or administrative) to interrupt the service renders the user liable for the incapacity of the ISP to provide the service (impossibility of performance). It could be argued under art. 381 par. 1 sec. 1 of the Greek Civil Code in connection with consumer protection legislation (art. 2 of Law 2251/94), then the user may only pay compensation to the ISP, because the ISP has not yet provided the service (after the interruption) and he only has an expectation right for the duration of the contract. Any contractual term to pay the whole amount until the end of the contract would be abusive.

b) It can be argued that such provision in a Greek law would contradict the fundamental principle of freedom of contracts (Art. 361 of the Greek civil Code).

5. CONCLUSIONS

Legislative proposals such as the "Sarkozy" three-strike-rule, as well as other methods for policing the Internet, raise the question whether legislators have the right to intervene to such serious restrictions concerning free access to the new universal good of communication, the Internet.

Apart from the practical constraints, we have noted that such law in Greece would be challenged by a large number of non-negligible problems related to fundamental constitutional rights, as well as by private law considerations.

HADOPI and similar laws, already introduced [Serenidis, 2010, p. 200] in New Zealand (currently withdrawn), Ireland (contractual compromise between ISP and creators), South Korea and the United Kingdom (Digital Economy Act 2010, imposing limitation or suspension of Internet Access) are the modern Circe in the Odyssey of the Internet; they try to transpose ISPs to cyberpolicemen and they try to lead the music or other IP industry to take revenge of its own audience. It looks like the only industry that believes in spying and punishing of its own clientele.

It has been supported that the IP industry should change its business model e.g. by introducing a system of remuneration, or a digital rights management system etc. and should not try to change the technology or the law. Nonetheless, before exhausting these alternatives, they should be very cautious when laying a finger on (our) fundamental rights. In our legal civilisation, law-making still lies with legislatures and not with the industry. In the long effort to find an equilibrium between conflicting fundamental rights the players must, definitely, take into account the distinctive idiosyncrasy of Information Society.

REFERENCES

Greek Constitution

Art. 5A: ***1.*** *All persons are entitled to information, as specified by law. Restrictions to this right may be imposed by law only insofar as they are absolutely necessary and justified for reasons of national security, of combating crime or of protecting rights and interests of third parties.* ***2.*** *All persons are entitled to participate in the Information Society. Facilitation of access to electronically handled information, as well as of the production, exchange and diffusion thereof constitutes an obligation of the State, always in observance of the guarantees of articles 9, 9A and 19.*

Art. 8: "*No person shall be deprived of the judge assigned to him by law against his will. Judicial committees or extraordinary courts, under any name whatsoever, shall not be constituted*"

Art. 9.1.: "*Every person's home is a sanctuary. The private and family life of the individual is inviolable. No home search shall be made, except when and as specified by law and always in the presence of representatives of the judicial power. 2. Violators of the preceding provision shall be punished for violating the home's asylum and for abuse of power, and shall be liable for full damages to the sufferer, as specified by law*".

Art. 9A: *"All persons have the right to be protected from the collection, processing and use, especially by electronic means, of their personal data, as specified by law. The protection of personal data is ensured by an independent authority, which is established and operates as specified by law"*

Art. 14.1: "*Every person may express and propagate his thoughts orally, in writing and through the press in compliance with the laws of the State*".

Art. 19: "***1.*** *Secrecy of letters and all other forms of free correspondence or communication shall be absolutely inviolable. The guaranties under which the judicial authority shall not be bound by this secrecy for reasons of national security or for the purpose of investigating especially serious crimes, shall be specified by law.* ***2.*** *The matters relating to the establishment, operation and powers of the independent authority ensuring the secrecy of paragraph 1 shall be specified by law.* ***3.*** *Use of evidence acquired in violation of the present article and of articles 9 and 9A is prohibited*".

Art. 20.1 "*Every person shall be entitled to receive legal protection by the courts and may plead before them his views concerning his rights or interests, as specified by law* ". ***2.*** *The right of a person to a prior hearing also applies in any administrative action or measure adopted at the expense of his rights or interests*".

GREEK CIVIL CODE (Translation by C. Taliadoros, 1982)

381 par. 1, sec. 1: *Impossibility of performance due to the fault of the other party. If the performance of one of the parties to a contract has become impossible due to the fault of the other party the latter shall not be freed from its obligation to furnish a counter-performance.*

Directive 2002/21 as amended by Directive 2009/140

art. 3A: "*Measures taken by Member States regarding end-users access to, or use of, services and applications through electronic communications networks shall respect the fundamental rights and freedoms of natural persons, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and general principles of Community law. Any of these measures regarding end-users access to, or use of, services and applications through electronic communications networks liable to restrict those fundamental rights or freedoms may only be imposed if they are appropriate, proportionate and necessary within a democratic society, and their implementation shall be subject to adequate procedural safeguards in conformity with the European Convention for the Protection of Human Rights and Fundamental Freedoms and with general principles of Community law, including effective judicial protection and due process. Accordingly, these measures may only be taken with due respect for the principle of the presumption of innocence and the right to privacy. A prior, fair and impartial procedure shall be guaranteed, including the right to be heard of the person or persons concerned, subject to the need for appropriate conditions and procedural arrangements in duly substantiated cases of urgency in conformity with the European Convention for the Protection of Human Rights and Fundamental Freedoms. The right to effective and timely judicial review shall be guaranteed.*

French Declaration of the Rights of the Man and of the Citizen of 1789:

Article 9: «*tout homme est présumé innocent jusqu'à ce qu'il ait été déclaré coupable ; qu'il en résulte qu'en principe le législateur ne saurait instituer de présomption de culpabilité en matière repressive*»

Article 11 : «*La libre communication des pensées et des opinions est un des droits les plus précieux de l'homme: tout citoyen peut donc parler, écrire, imprimer librement, sauf à répondre de l'abus de cette liberté dans les cas déterminés par la loi*».

Broumas A.(2009), *The role of ISPs in comnnection with the application of Intellectual property Law*, (in Greek), in Dikeo Meson Enimerosis & Epikinonias, 2009, p. 491

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