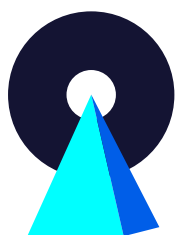


# Key points



## Protecting sports content and creation: promising first results

French Law of October 25, 2021 has introduced provisions into French Intellectual Property Code (IPC) and Sports Code with the view to strengthening the fight against piracy within the fields of culture and sport.

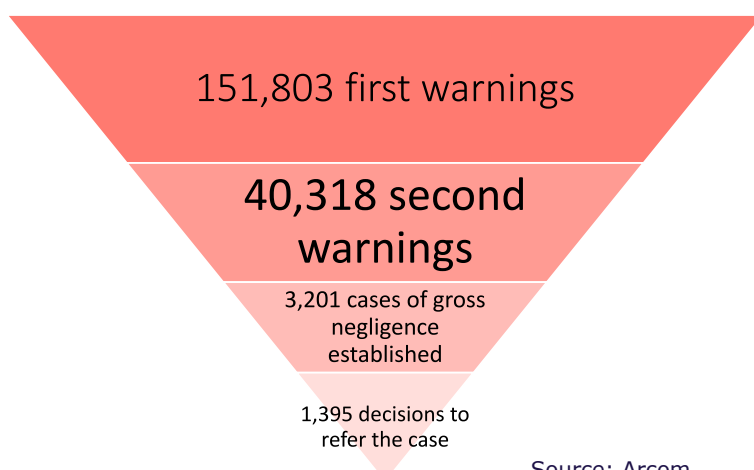
Until then, two main mechanisms were used: first, the graduated response implemented back in 2011 by Hadopi - and subsequently by Arcom - to fight illegal peer-to-peer practices, and second, the option for rights holders to take legal action in an attempt to block illegal services, procedure foreseen under Article L. 336-2 of the IPC.

The provisions laid down in the law offer new prospects for rights holders by allowing Arcom to intervene and thereby reinforce their scope for action.

The objective behind all these measures is to ensure even greater efficiency in tackling online piracy, but agility is required when it comes to implementing their different provisions, since they rely on additional actions by the public authority and the judge, to which voluntary private initiatives can be added.

## The graduated response: real effects on Internet users' practices

**Figure 1: Activity in 2022 of the graduated response procedure**

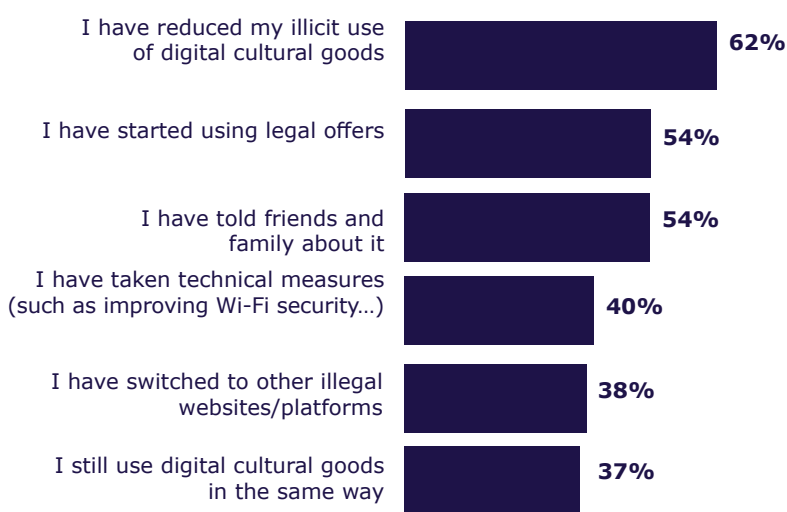


Since Hadopi was created in 2009 and until the end of 2022, over 13.5 million warnings had been issued to raise large-scale awareness of web users on the infringements caused by illegally sharing digital cultural goods over peer-to-peer networks.

During the educational phase where Arcom issues an initial and then a second warning to remind Internet access subscribers of the sanctions incurred for continued infringements, almost 75% of Internet access subscribers receiving either the first or the second warning refrain from repeating the offence.

In 2022, 20% of French Internet access subscribers aged 15 and above had already received a warning from Hadopi or Arcom (personally or someone close, for 10% and 13% of respondents respectively). Warnings have a real impact on practices: 62% of the Internet users concerned have reduced their illicit use and over half (54%) have started using legal offers.

**Table 2: reactions after receiving a warning (basis: Internet users who have already received a warning from Arcom)**



Source: Ifop for Arcom, 2022

**Intense pre-prosecution activity marked by a diversified judicial response**

In case of new sharing of protected works despite the first two warnings, an offence of gross negligence may be established. Therefore, the pre-prosecution phase is continuing at a good pace. In 2022, some 3,201 "notification" letters were sent out to Internet access subscribers to inform them of the risk of prosecution, and **1,395 cases were referred to the public prosecutor.**

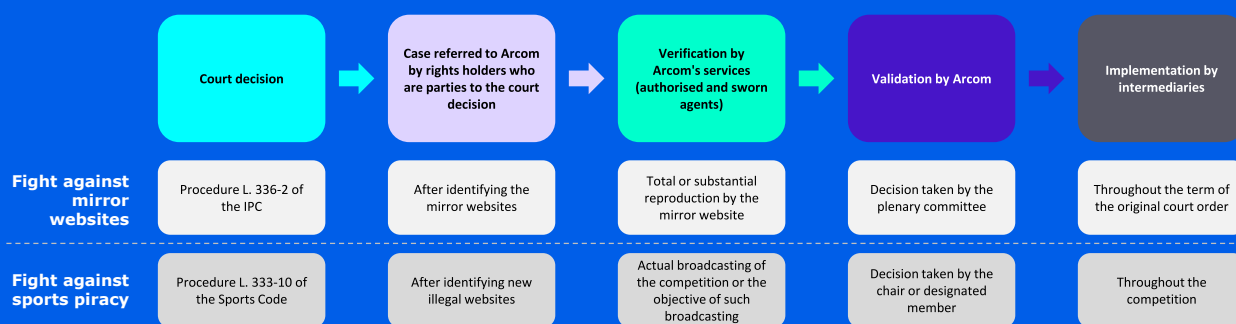
In 2022, Arcom acknowledged several judicial consequences of the legal action taken against such offenders. Among those, nearly a third resulted in a financial penalty.

**Insight: Arcom's involvement in updating anti-piracy measures for sport and culture to guarantee protection of fundamental rights**

The legislator has provided for several safeguards in an effort to uphold the associated fundamental rights and ensure proportionate measures in the fight against mirror websites and sports piracy.

Both missions have been implemented according to the same process, and the decision to block websites is taken by Arcom's board (mirror websites) or a member of the board designated by Arcom's President (sports websites).

**Figure 3: Arcom's involvement process - tackling mirror websites and sports piracy**



Until now, the technical intermediaries targeted by the original court decisions have been Internet service providers (ISPs), and the action taken includes DNS blocking for the services concerned.

## Fight against mirror websites

On January 1st, 2022, Article L. 331-27 of the IPC created a mechanism allowing holders of copyrights or related rights, who are parties to a court decision ordering the blocking or dereferencing of an online public communication service, to bring it before Arcom to update the said court decision if a new service "*wholly or substantially*" reproduces the content of the service that was initially held to be infringing.

Previously, court decisions based on Article L. 336-2 of the IPC did not allow for such "dynamic" updates. The only solution available to rights holders at the time was to bring a new claim before the interim relief judge with the aim of updating the blocking measures for the remaining duration of the injunction.

The idea of appointing Arcom to address requests from rights holders to update their court decisions is to offer greater flexibility, speed and efficiency than judicial channels, but also target a larger number of services.

### Ongoing experiment since October 2022

The first referrals were submitted early October 2022 as part of a six-month experiment lasting until the end of March 2023. Only requests from rights holders in the audiovisual and film sector have been received to date. The first results will be published at the end of this experiment.

## Insight: actions to raise greater awareness of digital citizenship

In addition to its anti-piracy resources, Arcom is also spearheading an array of initiatives to educate Internet users about digital citizenship practices:

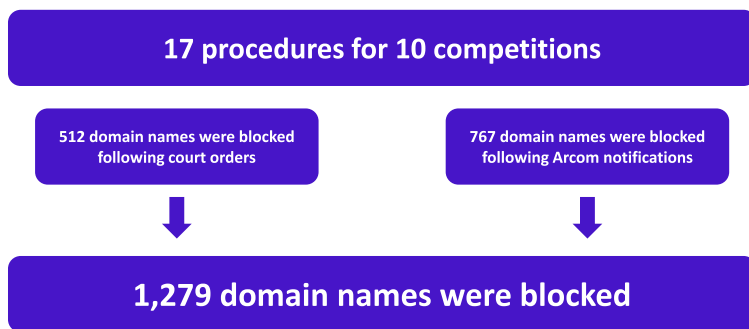
- The 8th edition of the "Pocket Documentary" was held in 2022/2023 with six high schools, including two regional schools. This project offers an educational course for students that involves producing collective documentaries on a given theme using a smartphone.
- Since 2018, online learning modules have been available to students and teachers in Years 5/6, Years 8-10 and high schools, reaching more than 41,000 students. In 2022, two training sessions were added for teachers.
- In partnership with Playbac, two special editions of daily newspapers for children and teenagers were broadcasted in 2021: l'Actu découvertes for 13 to 18-year-olds, and Mon quotidien découvertes for 10 to 14-year-olds.
- Finally, in collaboration with the European Union Intellectual Property Office (EUIPO), a FAQ on copyright issues for teachers was published in May 2022.

## Fight against illegal broadcasting of sports events and competitions: 1,279 domain names blocked in 2022

Since January 1st, 2022, the law has incorporated a new mechanism in Articles L. 333-10 and L. 333-11 of the Sports Code for holders of sports rights (sports federations and organisers of sports events, professional sports leagues, broadcasters, etc.) to prevent France-based access to services illegally streaming sports competitions and events, or services whose main objective or one of the main objectives is to stream such competitions or events.

As of December 31st, 2022, Arcom has been involved in cases concerning **10 sports competitions, with a total of 1,279 blocked domain names** (Top 14 rugby, French Open, Wimbledon, Formula 1, Moto GP, FIFA World Cup, Africa Cup of Nations, Champions League, Ligue 1 / 2, and the English Premier League).

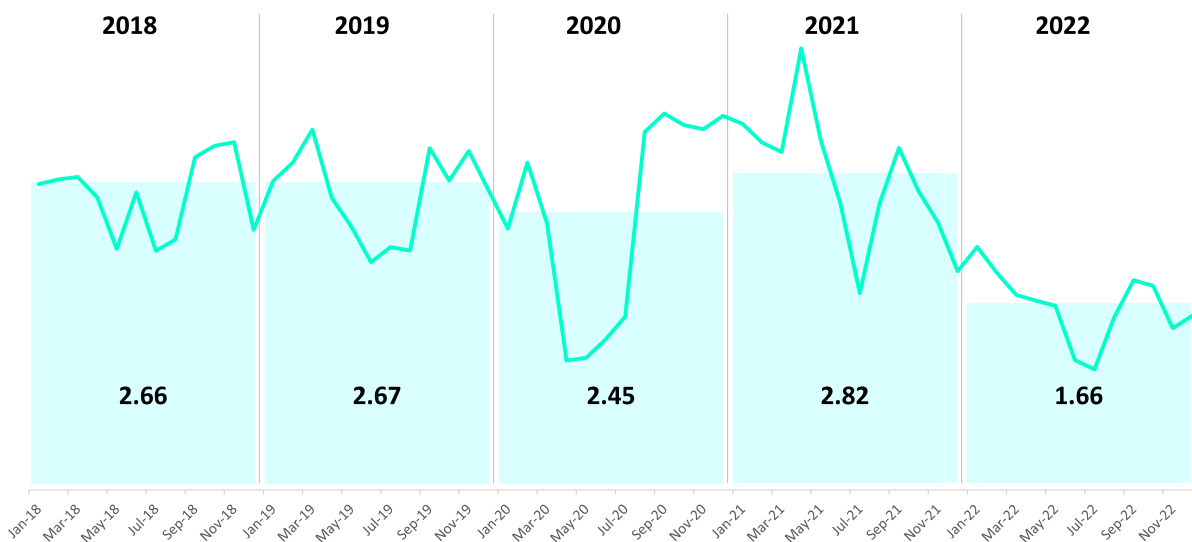
**Figure 4: Blocking of illegal sports domain names in 2022**



These measures have had a positive effect on the behaviour of Internet users: 15% of Internet users faced with a blocked website have switched to legal offer, and 37% have stopped using illegal platforms.

Ultimately, **the overall audience of illegal sports content fell by 41% between 2021 and 2022**, from an average of 2.8 million users to 1.6 million users.

**Figure 5: Trend in the illicit live streaming audience in millions of monthly Internet users (Internet users aged 2 and above)**



### Insight: Agreement signed between ISPs and sports rights holders to protect sports broadcasts

On January 18, 2023, an agreement was signed between members of FTelecoms (French Telecoms Federation) and Free on the one hand, and members of APPS (Association for the Protection of Sports Programmes) on the other hand, under the auspices of Arcom.

This agreement covers blocking measures implemented by ISPs and the arrangement for distributing the costs of setting up the system. At the same time, Arcom adopted and published an agreement template.

Although blocking measures have so far proved to be effective, the action already taken needs to be stepped up while encouraging other intermediaries to voluntarily engage in the fight against piracy, such as search engines, alternative DNS providers, virtual private networks (VPNs), hosting services and content delivery networks.

## The mission to characterise rights infringements

As part of the mission aimed at characterising rights infringements as defined by Article L. 331-25 of the IPC, Arcom is also responsible for establishing and publishing a list of services that seriously and repeatedly infringe copyrights or related rights.

The list is currently being drawn up and will have two main objectives:

- Encourage intermediaries (mainly advertising and online payment intermediaries) to stop collaborating

with the identified services and dry up their main sources of revenue (the "*follow the money*" approach).

- Inform users and stigmatise infringing services (the "*name and shame*" approach).

## The mission to assess the measures for protecting works or other protected subject matter

In addition to its anti-piracy missions and in a bid to allow the legal provision of content while protecting copyrights on content sharing services, Arcom has been pursuing a mission to assess the effectiveness of the measures aimed at protecting the works deployed by these services since January 1st, 2022. As such, it can issue recommendations about their level of effectiveness and encourage cooperation between rights holders and content sharing service providers.

During the first year of its mission, Arcom noted that several agreements had been signed and that content recognition technologies had been rolled out, thereby helping identify and monetise content or their blocking a priori. Nevertheless, these efforts need to continue and must be extended to encompass all service providers, particularly by ensuring greater communication with rights holders and especially those in the publishing and still image industries.

### Key takeaways

- 192,000 first and second warnings were issued during the educational phase of the graduated response in 2022
- 75% of Internet access subscribers who received a first or second warning did not repeat the offence
- Among the cases referred to the judicial authorities after the educational phase failed, almost 30% of the legal actions taken resulted in criminal sanctions (for a criminal response rate of almost 70%)
- 1,288 domain names of illegal sports services were blocked in 2022, and 776 were blocked after Arcom was notified
- The audience of illegal sports content fell by 41% between 2021 and 2022, from an average of 2.8 million users to 1.6 million users

**For further reading: [www.arcom.fr](http://www.arcom.fr)**

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