



Federation of European  
Screen Directors

Fédération Européenne des  
Réalisateurs de l'Audiovisuel

# Copyright Directive in France

Implementing the 2019/790 Directive on Copyright in the Digital Single Market provisions on fair remuneration in authors' and performers' exploitation contracts

**CBW webinar #1 – March 10, 2022**

# Implementation Timeline

- **Chaotic transposition process partly due to pandemic, resulting into increased complexity and fragmentation of FR authors' rights legislation:**

*Multiplying sectoral regimes, increased use of extended professional agreements to specify the content of rights, weakening of the author's exclusive right in favour of collective management, shift in the authors' rights legislation centre of gravity towards users.*

- December 2019: draft law on audiovisual communication and cultural sovereignty – legislative process interrupted by health crisis
- Subsequent transposition by blocks in different legislative texts:
  - Law n°2019-775 of 24 July 2019: press publishers & agencies neighbouring right
  - **Ordinance n°2021-580 of 12 May 2021**: transposing major parts of the Directive incl. **provisions on authors and performers fair remuneration in exploitation contracts**, uses of protected content by online services
  - Ordinance n°2021-1518 of 24 November 2021: new exceptions, out of commerce works, extended collective licensing

# “Layer cake” Overview

Directive	Articles in transposition act	Ref. to pre-existing national law provisions
Article 18	Article 9 – mandatory collective mechanisms framework Article 11 – performers	Code de la Propriété Intellectuelle (CPI) article L. 131-4
Article 19	Article 5 Art. L.131-5-1 ( <b>new</b> ), Article 6, Article 10, Article 12 – <b>new</b> L.212-3-1 [Performers]	Code de la Propriété Intellectuelle (CPI) articles L. 131-5-1 to L. 131-5-3 ( <b>new/added after L. 131-5</b> ), article L. 132-18 (amended), article L. 132-28-1 ( <b>new/added after L.132-28</b> )
Article 20	Article 4, Article 12 – <b>new</b> L.212-3-2 [Performers]	Code de la Propriété Intellectuelle (CPI) article L. 131-5 ( <b>replaced</b> )
Article 21	n/a	
Article 22	Article 5 Art. L.131-5-2 ( <b>new</b> )	Code de la Propriété Intellectuelle (CPI) articles L. 131-5-1 to L. 131-5-3 ( <b>new/added after L. 131-5</b> )
Article 23	Article 7	Code de la Propriété Intellectuelle (CPI) articles L. 132-24 new paragraph 2 and 3 ( <b>added</b> )
Article 26	Article 13	


# Article 18 – appropriate and proportionate remuneration

- Framework for mandatory collective agreements to lay down methods of determination and payment added to pre-existing authors' right to proportional remuneration (CPI L.131-4)
- *CPI L.131-4 includes the possibility for lum-sum payments in various cases (e.g. if the basis of calculation cannot be practically determined, costs out of proportion, etc.)*
- Said agreements to involve professional organisations of authors and producers, collective rights management organisations
- Said agreements to be extended by decree
- Decree to set out provisions where agreement could not be found within 12 months following transposition act
- NEW: extension of the principle of proportional remuneration to transfer of rights by performers


# Article 19 – transparency obligation

- Information must distinguish between different modes of exploitation AND remuneration due for each mode of exploitation.
- Framework for mandatory collective agreements to common sectoral reporting standards (including possible carve-outs) added to pre-existing AV producers' obligation (CPI L. 132-28).
- Specific details for on-demand services reporting in licensing agreements.
- *Pre-existing AV sector reporting obligation includes exploitation beyond FR “except for those elements that cannot be individualized”*
- Sub-licensees' obligation to provide information (in case information provided by contractual counterpart are incomplete) will be regulated by collective agreement between authors' professional organisations **or** collective rights management organisations and representative organisations of sectoral sublicensees. Agreement will determine if information is provided directly by the sublicensee to the author, or indirectly through the contractual counterpart.
- Related collective agreements can be extended by decree – if no agreement is found in the 12 months following the transposition act, the sub-licensee obligation will be set out by decree.


# Article 20 – contract adjustment

- In case of lump-sum payment, renegotiation can be requested by author/performer for a loss of more than 7/12<sup>th</sup> incl. in cases of insufficient forecasting of the work's proceeds
  - Author/performer entitled to additional remuneration when initial proportional remuneration is excessively low compared to total income of exploitation
  - Carve out related to author/performer's contribution to the overall work
  - Provision applies in the absence of comparable collective agreement/mechanism
  
  - No mention of unwaivability in contract?
  - No mention of possibility for representative organisations to be able to provide assistance to “one or more” authors/performers in relation to requests for contract renegotiation (e.g. collective action)?
- 

# Article 21 – alternative dispute resolution


- Not included in transposition
  - Existing arbitration for AV authors' contracts dispute: Association de Médiation et d'Arbitrage des Professionnels de l'Audiovisuel (AMAPA)
- 

# Article 22 – right of revocation


- **AV authors excluded.**
  - Pre-existing CPI L.132-27 AV producer obligation to “ongoing/continuous exploitation of the audiovisual work in accordance with the practices of the profession”.
  - Revocation right will be defined by sectoral collective agreements.
  - All collective agreements can be extended by decree.
  - If no agreement is found in the 12 months following the transposition act, the methods of exercising the revocation right will be set out in a decree.
  - Collective agreements will define a period of time after which the author can exercise this right.
  - Authors of collective works can exercise the revocation right by mutual agreement
- 



## And also...

- ⦿ Addition to CPI L. 132-24: No matter the jurisdiction of the contract, AV works' composers rights' transfer does not prevent the application of the right to proportional remuneration, contract renegotiation and right to information on work's exploitation only for the exploitation of the work on the French territory
  - ⦿ Author can bring any related dispute to French courts, no matter where the parties are established or what the contract stipulates
  - ⦿ Right to information provisions applicable from June 2022
  - ⦿ Contract renegotiation and performers' right to information applicable to ongoing contracts
  - ⦿ No retroactivity on new remuneration agreements provisions?
- 

# Conclusion

- ◎ **2019 Copyright Directive mostly implemented faithfully**
  - ◎ **FR authors' rights legislation provides overall more protection than required minimum harmonisation**
  - ◎ **Extended collective agreements element is a major asset for efficient enforcement**
- 

# Thank you!

Pauline Durand-Vialle, [pdv@filmdirectors.eu](mailto:pdv@filmdirectors.eu)

[screendirectors.eu](http://screendirectors.eu)

[@Film\\_directors](https://www.instagram.com/Film_directors)

