

[FR] Legislation on freedom of creation published

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The Act on the Freedom of Creation, Architecture, and Heritage was published in the Journal Officiel on 8 July 2016. The first article of its section on ‘freedom of creation’ refers to the freedom of artistic creation and its circulation, which is to be exercised “with due regard for the principles governing freedom of expression and in accordance with the first section of the Intellectual Property Code”. Infringement of this right is to attract criminal punishment: “Hampering, in a concerted fashion and under threat, exercise of the freedom of artistic creation or the freedom to circulate artistic creation shall be punishable by a one-year prison sentence and a fine of EUR 15 000”. In response to the far-reaching economic changes brought about by the new uses made of digital devices, the Act was intended to update and render more transparent relations between stakeholders in the musical and cinematographic fields.

The new Act therefore includes in the French intellectual property code (Code de la Propriété Intellectuelle - CPI) a section on “Contracts concluded between a performer and a phonogram producer”. This section is aimed at allowing the long-term development of online music, ensuring that performers receive a minimum remuneration (proportional in the case of unforeseen and unforeseeable use), separate for each mode of use (streaming, webcasting, etc), and greater transparency in relations with producers for sharing the remuneration.

The new Act also aims to improve transparency in the production and operation accounts for cinematographic works, as advocated in the Bonnel report in December 2013. The Act amends the Cinema and Animated Image Code (Code du Cinéma et de l’Image Animée) to institute a duty of economic transparency applicable to the entire audiovisual and cinematographic sector, in exchange for benefiting from the financial aid paid by the CNC. This new obligation requires production as well as operation accounts to be circulated. The former must be sent to the co-producers, the television channels which contributed to the funding, and any other party with which the producer concluded a contract conceding a share in revenue from use of the work, conditional on amortisation of production costs. Operation accounts must be sent out by the distributor, the dealer, or the producer’s agent, who must then send them to the co-producers or to anyone involved in operating revenue. It is intended that the form of these production and operation accounts should be decided under professional agreements, or by decree if no agreement is reached within one year of the Act

being promulgated. Accounts could be audited by the CNC, and there is provision for administrative sanctions in the event of any shortcomings.

It should be pointed out that the new Act also makes provision for the ways in which video recording functions could be developed in the cloud.

Loi n° 2016-925 du 7 juillet 2016 relative à la liberté de la création, à l'architecture et au patrimoine, Journal officiel, 8 juillet 2016

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000032854341&dateTexte=20160913>

Act No. 2016-925 of 7 July 2016 on the freedom of creation, architecture and the heritage, published in the Journal Officiel on 8 July 2016

