[FR] Neighbouring rights: France is the first country to transpose the European Copyright Directive

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The French Minister of Culture, Franck Riester, has welcomed the adoption of the law of 24 July 2019 creating a neighbouring right for news agencies and news publishers, noting that “France is the first country to transpose the EU directive on neighbouring rights [Directive 2019/790 on copyright and related rights in the Digital Single Market] into national law.”

In accordance with Article 15 of the directive, the law provides news publishers and news agencies with the right to remuneration for any reproduction and communication to the public of news content in digital form. The rights provided for expire two years after 1 January of the year following the date on which a press publication is first published.

The law’s scope includes photographs and videos, as well as any use (even partial) of publications that may give rise to remuneration. In accordance with the directive, the rights do not extend to hyperlinking and the use of “individual words or very short extracts” of press publications. It is up to the courts to define these terms in practice. Periodical publications published for scientific or academic purposes, such as scientific journals, are also excluded.

The remuneration due in relation to these neighbouring rights is “based on income from exploitation of any kind, direct or indirect or, failing that, a lump sum”. It should in particular take into account “the human, material and financial investments made by news publishers and news agencies, the contribution of press publications to political and general news, and the extent to which press publications are used by online services that communicate to the public”. Professional journalists and other authors of works contained in press publications are entitled to an “appropriate and fair” proportion of such remuneration. This proportion, and the way it is distributed among the authors concerned, must be fixed through a company-level agreement or, failing that, a collective bargaining agreement.

As regards other authors, a specific agreement negotiated between professional organisations of press companies and representative agencies on the one hand and professional authors’ or collective management organisations on the other will determine the “appropriate and fair” proportion of the remuneration due to

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them under neighbouring rights. Under the law, this additional remuneration does not have the nature of a salary.

If no agreement is reached in the six months following the publication of the law, one of the stakeholders will be able to refer the matter to a committee (established under the law) composed of an equal number of representatives of publishers and agencies on the one hand and journalists and authors on the other, and chaired by a state representative. This committee will be responsible for seeking a compromise with the parties in order to conclude an agreement. If no agreement can be reached, it will fix the appropriate level of remuneration due under these neighbouring rights, and the means of distributing it among the authors concerned. Rightsholders will need to be sent, at least once a year, "up-to-date, relevant and full information on the method to be used to calculate the appropriate and fair proportion of remuneration due to them".

Stakeholders are therefore now being urged to study the new law. "What happens next will depend on the unity of the press. The publishers hold the balance of power under the law. The second round is now under way," explained the law's author, Senator David Assouline. With this in mind, before the law was published, the board of directors of the General Press Alliance on11 July set up an *ad hoc* working group to implement neighbouring rights. When it begins work in September, among its tasks will be: determining the remuneration base and methods, appointing a management company, negotiating with platforms, and establishing rules for distribution among publishers.

Loi n° 2019-775 du 24 juillet 2019 tendant à créer un droit voisin au profit des agences de presse et des éditeurs de presse, JORF, 26 juillet 2019

https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000038821358&dateTexte=&categorieLien=id

Law No. 2019-775 of 24 July 2019 creating a neighbouring right for the benefit of news agencies and press publishers, JORF, 26 July 2019

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