[FR] CSPLA, Hadopi and CNC recommendations on the transposition of Article 17 of the Copyright Directive

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As stated in the law of 3 December 2020, the French Government is preparing to adopt an ordinance transposing Copyright Directive 2019/790 into French law by the summer. In particular, the new rules applicable to online platforms under the controversial Article 17 of the directive will need to be transposed. This article stipulates that, in future, content-sharing platforms will be liable for the unauthorised communication of copyright-protected content unless they conclude remuneration agreements with the rightsholder or make best efforts to block access to such content or remove it from their websites.

With this in mind, the Ministry of Culture's *Conseil supérieur de la propriété littéraire et artistique* (Higher Council for Literary and Artistic Property – CSPLA), the *Haute autorité pour la diffusion des œuvres et la protection des droits sur Internet* (High Authority for the Dissemination of Works and the Protection of Rights on the Internet – Hadopi) and the *Centre national du cinéma et de l'image animée* (National Centre for Cinema and the Moving Image – CNC) published their second joint report on content recognition tools for digital content-sharing platforms. The report was presented in the context of the forthcoming publication of the European Commission's guidance on the subject. The three institutions had published their first report on the matter in January 2020. They had concluded that these automatic recognition tools were effective and identified ways of ensuring that they could play their full role within the framework of Article 17. As a follow-up to this publication, the CSPLA president wanted to look at the proposed recommendations in more detail, in particular by clarifying the notion of the "best efforts" – mentioned in Article 17 of the Directive – that content-sharing platforms were required to make in order to ensure that unauthorised content could not be accessed. The question of what information rightsholders should provide in this context also needed addressing. The report's authors consider that technological content recognition tools are crucial and provide the only realistic way of regulating the enormous quantities of online content. Such tools are already in widespread use for video and audio content (Facebook, YouTube, Twitch, etc.).

The report goes on to describe the conditions of the balance that needs to be struck with regard to exceptions to intellectual property rights and to freedom of expression in order to ensure that these tools are not simply seen as filtering

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measures. It proposes amending France's draft implementing legislation in order to formally enshrine a guarantee as regards copyright exceptions. This would ensure that such exceptions, especially those for quotation and parody, could be invoked by users *ex post*. The regulator will also play an important role in keeping the mechanism in balance. It will provide out-of-court redress for users wishing to benefit from the intervention of a trusted third party if content is blocked without justification, and will be able to clarify best practices. The transparency of the management rules applicable to content access rights could also be improved. The report recommends broadening the range of licensed content, especially in certain sectors, such as still images. Finally, Article 17 should also make it possible to consolidate the shared responsibility of all players, including rightsholders.

Les outils de reconnaissance des contenus sur les plateformes numériques de partage : propositions pour la mise en œuvre de l'article 17 de la directive européenne sur le droit d'auteur, Rapport de mission du CPLA, de l'Hadopi et du CNC

https://www.culture.gouv.fr/Sites-thematiques/Propriete-litteraire-et-artistique/Conseil-superieur-de-la-propriete-litteraire-et-artistique/Travaux/Missions/Mission-du-CSPLA-sur-les-outils-de-reconnaissance-des-contenus-et-des-oeuvres-sur-les-plateformes-de-partage-en-ligne-II

Content recognition tools for digital content-sharing platforms: proposals for the implementation of Article 17 of the EU Copyright Directive, report by the CSPLA, Hadopi and CNC

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