[FR] Key provisions of Directive 2019/790 on copyright and related rights transposed into French law

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The key provisions, namely Articles 17 to 23, of Directive 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market, were transposed into French law by Ordinance No. 2021-580 of 12 May 2021. Article 15 of the Directive had previously been transposed by the Law of 24 July 2019 creating a neighbouring right for press publishers and agencies.

Under Article 1 of the Ordinance, a new Article L. 137-1 of the Intellectual Property Code (IPC) defines the scope of the services concerned by the transposition of Article 17. It refers to online content-sharing service providers, which are understood to be providers of online public communication services. The main objective, or one of the main objectives, of these service providers is to store and provide the public with access to a large quantity of protected works and other protected items uploaded by their users, which they organise and promote with a view to making a profit, either directly or indirectly. The text states that a *Conseil d'Etat* (Council of State) decree will lay down how a large quantity of protected works and items will be defined. It explains that online public communication services that deliberately infringe copyright and related rights cannot benefit from the exemption from liability that applies to providers who make their best efforts according to Article 17 of the Directive.

Article L. 137-2 of the IPC states that, by offering access to works uploaded by its users, an online content-sharing service provider performs acts of representation for which it must obtain authorisation from the rightholders. Part II of Article L. 137-2 therefore rules out any possible application of the provisions of paragraphs 2 and 3 of part I of Article 6 of Law No. 2004-575 of 21 June 2004, which sets out certain exemptions from liability, to such a provider for such acts. While holding online content-sharing service providers liable for piracy in the case of unauthorised usage, part III of Article L. 137-2 takes into account their best efforts to obtain the authorisation of rightholders and to combat the uploading of unauthorised protected content. The new Article L. 137-4 of the IPC states that the new provisions do not prevent users from benefiting from exemptions and, in this respect, obliges service providers to create a mechanism for users to dispute the blocking or removal of a work they have uploaded that prevents lawful use of that work (with the possibility of subsequently appealing to the *Haute autorité*

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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)).

The transposition of Article 17 is designed to give authors and performers the chance either to be paid by content-sharing platforms that distribute their works on a massive scale, or to ensure that effective preventive measures are taken to ensure the unavailability of unauthorised works, while at the same time providing users with greater legal certainty and new rights.

The Ordinance also transposes Articles 18, 19, 20 and 22 of the Directive, which set out the principle of appropriate and proportionate remuneration and strengthen transparency obligations for the benefit of authors and performers. Finally, they give authors and performers new rights in their relationship with parties that exploit their works, through a mechanism for adjusting the remuneration agreed in a contract and the right of revocation if a work is not exploited. These provisions also take into account existing sector-specific provisions and, as is permitted under the Directive, suggest that conditions for their implementation should be determined through professional negotiations.

Article L. 132-18 of the IPC, amended by Article 6 of the Ordinance, for example, clarifies the scope of the transparency obligation in general representation agreements signed with on-demand audiovisual media services. This transparency covers the number of times a work is downloaded, visited or watched over a period dependent on how the rights are distributed.

The new Article L. 132-28-1, created under Article 10 of the Ordinance, aims, through the producer and the contract authorising communication of a work to the public, to include this transparency obligation for the benefit of authors in the audiovisual production contract.

Articles 8 and 9 of the Ordinance support the implementation of the right to proportionate remuneration in the audiovisual sector. According to Article 9, if no collective agreement on the remuneration of authors is in place for each form of exploitation of audiovisual works within 12 months of the Ordinance's entry into force, the regulatory authority can lay down all or some of the conditions and mechanisms for such remuneration until an agreement on the relevant points comes into force.

The Ordinance should soon be supplemented with the adoption of two further ordinances transposing the final provisions of Directives 2019/790 and 2019/789.

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Ordonnance n° 2021-580 du 12 mai 2021 portant transposition du 6 de l'article 2 et des articles 17 à 23 de la Directive 2019/790 du Parlement européen et du Conseil du 17 avril 2019 sur le droit d'auteur et les droits voisins dans le marché unique numérique et modifiant les Directives 96/9/CE et 2001/29/CE, JORF du 13 mai 2021

https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043496429

Ordinance no. 2021-580 of 12 May 2021 transposing Articles 2(6) and 17 to 23 of Directive 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, Official Gazette of 13 May 2021

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