



Federation of European
Screen Directors

Fédération Européenne des
Réalisateurs de l'Audiovisuel

2019/790 Copyright Directive

Implementation status – provisions on Fair remuneration in exploitation contracts

FEMR 2021 – August 26, 2021

State of Play

Directive implementation deadline:

- June 7, 2021
- Transitional period for transparency obligation: June 7, 2022

Transposition of Title IV Chapter 3 completed in 5 Member States:

- December 2020: The Netherlands
- April 2021: Hungary
- May 2021: France
- May 2021: Germany
- June 2021: Malta

Notable trends on

- Transparency obligation / Right to information (art. 19)
- Contract adjustment mechanism / Best-seller clause (art. 20)
- Alternative dispute resolution procedure / Arbitration (art. 21)
- Right of revocation / Non-usus clause (art. 22)
- Common provisions / CDSM art. 19, 20 and 21: unwaivable rights (art. 23)
- Application in time / Works covered (art. 26)

Pre-existing legislation deemed sufficient **not always up to the CDSM standards...**

The Netherlands

Directive Article	Articles in transposition act	Reference to pre-existing national law provisions
Article 18	n/a	Copyright act Art.25c and 45d sub 1
Article 19	Article 1 section I	Copyright Act Art.25ca
Article 20	Article 1 section J	Copyright Act Art.25d
Article 21	Not included	Copyright Act Art.25g
Article 22	Article 1 section K	Copyright Act Art.25e
Article 23	n/a	Copyright Act Art.25h and 45n
Article 26	Article VI of the implementation act	

Hungary

Directive Article	Articles in transposition act	Ref. to pre-existing national law provisions
Article 18	Not included	Copyright Act section 16 (4)
Article 19	Section 18 adding section 50/A	Copyright Act section 50/A (added/new)
Article 20	Section 17	Copyright Act Section 48 (replaced)
Article 21	Not included	Copyright Act sections 102 to 105/A
Article 22	Not included	Sections 51-55
Article 23	Section 18 adding section 50/B	Copyright Act section 50/B (added/new)
Article 26	Section 30	

Germany

Directive Article	Articles in transposition act	Ref. to pre-existing national law provisions
Article 18	Article 1 section 6	Copyright Act section 32 (addition)
Article 19	Article 1 section 9, section 12	Copyright Act section 32d - 32e (replaced)
Article 20	Article 1 section 7	Copyright Act section 32a (amended)
Article 21	Article 1 section 9	Copyright Act section 32f - 32g (new)
Article 22	Article 1 section 13	Copyright Act section 41 (amended)
Article 23	included in each section	
Article 26	Article 1 section 42	Copyright Act section 133 (replaced/new)

France

Directive Article	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 (new), Article 6, Article 10, Article 12 – new L.212-3-1 [Performers]	Code de la Propriété Intellectuelle (CPI) articles L. 131-5-1 to L. 131-5-3 (new/added after L. 131-5), article L. 132-18 (amended), article L. 132-28-1 (new/added after L.132-28)
Article 20	Article 4, Article 12 – new L.212-3-2 [Performers]	Code de la Propriété Intellectuelle (CPI) article L. 131-5 (replaced)
Article 21		
Article 22	Article 5 Art. L.131-5-2 (new)	Code de la Propriété Intellectuelle (CPI) articles L. 131-5-1 to L. 131-5-3 (new/added after L. 131-5)
Article 23	Article 7	Code de la Propriété Intellectuelle (CPI) articles L. 132-24 new paragraph 2 and 3 (added)
Article 26	Article 13	

Transparency obligation

- Possibility to request information if needed to trigger contract renegotiation when contribution of author is deemed “**non-significant**” (NL, HU, DE)
- Right to information does not apply to **employment relationships** (HU)
- **Lump-sum payment contracts explicitly covered** by right to information (DE, FR)
- Possibility for **collective action** by representative organisations if obligation is not fulfilled in several similar cases (DE)
- Information provided **separately** per modes of exploitation **incl. related remuneration due** (FR)
- Framework for **mandatory** sectoral collective agreements to be **extended by decree within 12 months** (FR)
- Specific details for **on-demand services reporting** and obligation to provide **information to licensor** (FR)

Contract adjustment

- Claim can be issued **directly against third party/sublicensee** on revenues generated by the license (NL, DE)
- **Exhaustion of the right in case of existing collective agreement** on additional remuneration (DE, FR): incentive
- Definition of **threshold (more than 7/12th) for disproportionate remuneration in case of lump-sum payment** contract incl. in cases of low anticipation of work's overall economic success (FR)
- **Mandatory** collective sectoral instruments on proportional and additional remuneration to be **extended by decree within 12 months** (FR)
- **Collective use of mechanism often missing**: possibility for representation organisations to provide assistance to “one or more” authors in requesting contract renegotiation (CDSM rec. 78)

Dispute resolution

- **Binding between parties** if no court proceedings initiated (NL since 2016)
- Proceedings can be **initiated by an organisation representing authors** on their behalf (NL, DE)
- **Mediation process itself** involves professional organisations of creators and producers (FR)
- Need to clarify the scope of arbitration procedure by explicitly including transparency obligation

Revocation right

- Absence of exploitation vs insufficient exploitation, contract termination vs partial right reversion (incl. exclusivity)
- Deletion of carve-out underplaying the authors' interest (NL)
- Collaborative works: can be **exercised by mutual agreement with co-authors** (NL, FR)
- Can be **exercised against a third-party both by creators and their contractual counterparts** (NL)
- **Compensatory damages** due in case of non-compliance (NL)
- Defined via **mandatory sectoral agreements within 12 months** (FR)
- AV works excluded (MT, FR) / “obligation of continuous exploitation” (FR)

Common provisions

- **No possibility to derogate** from the application of these new rights **via foreign law** (HU)
- AV composers' rights' transfer does not prevent the exercise of the right to proportional remuneration, contract renegotiation or right to information for the exploitation in national territory (FR)
- Nullity of the contract to be invoked **solely in the interest of the author** (HU)

Applicability in time

- Applicability to existing contracts in majority of cases
- **Layer-cake effect** (NL, DE) with body of works under different regimes (e.g. right to information upon request only for DE contract concluded prior to 2008)

Thank you!

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