

**Law No 97-283 of March 27, 1997, On the Transposition into the Intellectual Property Code EEC Council Directives Nos 93/83 of September 27, 1993 and 93/98 of October 29, 1993<sup>\*</sup>**

**TABLE OF CONTENTS<sup>\*\*</sup>**

*Articles*

Title I: Provisions on Satellite Broadcasting and Cable Retransmission ..... [1-4](#)  
Title II: Provisions on the Term of Protection of Copyright and Neighboring Rights .. [5-12](#)  
Title III: Miscellaneous and Transitional Provisions ..... [13-19](#)

**Title I**  
**Provisions on Satellite Broadcasting and Cable Retransmission**

*Art. 1.* After **Article L. 122-2 of the Intellectual Property Code**, two [Articles, L. 122-2-1](#) and [L. 122-2-2](#), reading as follows, are inserted:

“*Art. L. 122-2-1.* The right of performance of a work broadcast by satellite shall be governed by the provisions of this Code where the work is transmitted to the satellite from the national territory.

“*Art. L. 122-2-2.* The right of performance of a work broadcast by satellite which is transmitted from the territory of a non-Member State of the European Community that does not afford a level of copyright protected equivalent to that guaranteed by this Code shall also be governed the provisions of this Code:

- “1. where the uplink to the satellite is provided by a station situated on the national territory, in which case the rights provided for in this Code shall be exercisable against the person operating the uplink station;
- “2. where the uplink to the satellite is not provided by a station situated in a Member State of the European Community, and where the transmission takes

---

<sup>\*</sup>*French title:* Loi n<sup>o</sup> 97-283 du 27 mars 1997 portant transposition dans le code de la propriété intellectuelle des directives du Conseil des Communautés européennes n<sup>os</sup> 93/83 du 27 septembre 1993 et 93/98 du 29 octobre 1993.

*Entry into force:* April 1, 1997.

*Source:* Communication from the French authorities.

*Note:* Translation by the International Bureau of WIPO.

Articles 1 to 12 and 17 have been incorporated into the Legislative Part of the Intellectual Property Code. See *Copyright and Neighboring Rights Laws and Treaties*, FRANCE—Text 3-01.

<sup>\*\*</sup> Added by the International Bureau of WIPO.

place at the request, on behalf or under the control of an audiovisual communication enterprise having its principal establishment on the national territory, in which case the rights provided for in this Code shall be exercisable against the said audiovisual communication enterprise.”

*Art. 2.* After **Article L. 132-20 of the Intellectual Property Code**, two [Articles, L. 132-20-1](#) and [L. 132-20-2](#), reading as follows are inserted:

“*Art. L. 132-20-1.*— I. As from the date of the entry into force of Law No. 97-283 of March 27, 1997, the right to authorize the simultaneous, complete and unchanged cable retransmission on the national territory of a work broadcast from a Member State of the European Community may be exercised only through a royalty collection and distribution society. If that society is governed by **Title II of Book III**, it shall be approved for the purpose by the Minister responsible for culture.

“Where the owner of the rights has not already entrusted the management of those rights to such a society, he shall designate that to which he entrusts the exercise thereof. He shall notify the designation in writing to the society, which may not refuse it.

“The contract authorizing the broadcasting of a work on the national territory shall mention the society responsible for exercising the right to authorize the simultaneous, complete and unchanged cable retransmission thereof in Member States of the European Community.

“The approval provided for in the first paragraph shall be granted in consideration of:

- “1. the professional qualifications of the directors of the societies, and the means that the societies are able to bring to bear for the exercise of the rights specified in the first paragraph and the exploitation of works in their repertoire;
- “2. the size of their repertoire;
- “3. their observance of the obligations imposed on them by the provisions of **Title II of Book III**.

“A Decree in Council of State shall lay down the conditions for the grant and revocation of approval. It shall also, in the case provided in the second paragraph, lay down the procedure for the designation of the society responsible for the management of the right of retransmission.

“II. Notwithstanding [paragraph I](#), the owner of the rights may license those rights to an audiovisual communication enterprise.

“The provisions of paragraph I shall not apply to rights licensed to an audiovisual communication enterprise.

“*Art. L. 132-20-2.* Mediators shall be appointed, without prejudice to the right of the parties to go to court, in order to promote the settlement of disputes concerning the grant of authorization for the simultaneous, complete and unchanged cable retransmission of a work.

“In the absence of an amicable settlement, the mediator may propose to the parties the solution that seems appropriate to him, which the said parties shall be deemed to have

accepted if they have not expressed their opposition in writing within a period of three months.

“A Decree in Council of State shall specify the conditions for the application of this Article and lay down the procedure for the designation of mediators.”

*Art. 3.* After [Article L. 216-1 of the Intellectual Property Code](#), a [Chapter VII](#) reading as follows is inserted:

## **“Chapter VII Provisions Applicable to Satellite Broadcasting and Cable Retransmission**

“*Art. L. 217-1.* The rights neighboring on copyright that relate to the satellite broadcasting of a performer’s performance, a phonogram, a videogram or the programs of an audiovisual communication enterprise shall be governed by the provisions of this Code in so far as the broadcasting takes place under the conditions specified in [Articles L. 122-2-1](#) and [L. 122-2-2](#).

“In the cases provided for in [Article L. 122-2-2](#), those rights may be exercised in relation to the persons referred to in [subparagraphs \(i\) and \(ii\) of that Article](#).

“*Art. L. 217-2.—I.* Where it is provided for in this Code, the right to authorize the simultaneous, complete and unchanged cable retransmission, on the national territory, of a performer’s performance, a phonogram or a videogram broadcast from a Member State of the European Community may only be exercised, as from the date of the entry into force of Law No. 97-283 of March 27, 1997, by a royalty collection and distribution. If the society in question is governed by [Title II of Book III](#), it must be approved for the purpose by the Minister responsible for culture.

“Where the owner of the rights has not entrusted their management to a royalty collection and distribution society, he shall designate that to which he entrusts the exercise thereof. He shall notify the designation in writing to the society, which may not refuse it.

“The contract authorizing the broadcasting on the national territory of a performer’s performance, a phonogram or a videogram shall mention the society, if any, responsible for exercising the right to authorize the simultaneous, complete and unchanged cable retransmission thereof in the Member States of the European Community.

“The approval provided for in the first paragraph shall be granted in consideration of the criteria listed in [Article L. 132-20-1](#).

“A Decree in Council of State shall lay down the conditions for the grant and revocation of approval. It shall also, in the case provided for in the second paragraph, lay down the procedure for the designation of the society responsible for the management of the right of retransmission.

“II. Notwithstanding [paragraph I](#), the owner of the rights may license those rights to an audiovisual communication enterprise.

“The provisions of paragraph I shall not apply to rights licensed to an audiovisual communication enterprise.

“*Art. L. 217-3.* Mediators shall be appointed, without prejudice to the right of the parties to go to court, in order to promote the settlement of disputes concerning the grant of authorization, where required, for the simultaneous, complete and unchanged cable retransmission of subject matter protected by the rights laid down in this Title.

“In the absence of an amicable settlement, the mediator may propose to the parties the solution which seems appropriate to him, which the parties shall be deemed to have accepted if they have not expressed their opposition in writing within a period of three months.

“A Decree in Council of State shall specify the conditions for the application of this Article and lay down the procedure for the designation of mediators.”

*Art. 4.—I. Article L. 321-1 of the Intellectual Property Code* is completed with a paragraph reading as follows:

“Actions seeking the payment of the royalties charged by such civil-law companies shall be statute-barred after ten years from the date on which they were charged, that period being suspended until the date of their allocation.”

II. *Article L. 321-9 of the same Code* is amended as follows:

A. The first sentence of the first paragraph is replaced by four paragraphs reading as follows:

“The societies shall use for action to assist creation and promote live entertainment and for training schemes for performers:

- “1. 25% of amounts obtained from the remuneration for private copying;
- “2. the whole of those amounts charged under *Articles L. 122-10, L. 132-20-1, L. 214-1, L. 217-2* and *L. 311-1* that have not been allocated on the expiry of the period provided for in the *last paragraph of Article L. 321-1*.

“They may use for the said action all or part of the amounts referred to under (ii) as from the end of the fifth year following the date of their intended allocation, without prejudice to claims for payment of non-statute-barred royalties.”

B. The second paragraph is worded as follows:

“The amounts and uses of these sums shall be included every year in a report by the collecting societies to the Minister responsible for culture. The Auditor shall verify the information contained in that report for honesty and consistency with the accounting documents of the society. He shall draw up a special report to that end.”

## **Title II**

### **Provisions on the Term of Protection of Copyright and Neighboring Rights**

*Art. 5.* The *second paragraph of Article L. 123-1 of the Intellectual Property Code* reads as follows:

“On the death of the author, that right shall subsist for his successors in title during the current calendar year and the 70 years thereafter.”

*Art. 6. Article L. 123-2 of the Intellectual Property Code* is completed with a paragraph reading as follows:

“In the case of audiovisual works, the calendar year taken into account shall be that of the death of the last survivor of the following joint authors: the author of the scenario, the author of the dialogue, the author of the musical compositions, with or without words, specially composed for the work and the main director.”

*Art. 7. Article L. 123-3 of the Intellectual Property Code* reads as follows:

“*Art. L. 123-3.* In the case of pseudonymous, anonymous or collective works, the term of the exclusive right shall be 70 years from January 1 of the calendar year following that in which the work was published. The publication date shall be determined by any form of proof recognized by the general rules of law, particularly by statutory deposit.

“Where a pseudonymous, anonymous or collective work is published in installments, the term shall run as from January 1 of the calendar year following the date on which each installment was published.

“Where the author or authors of anonymous or pseudonymous works reveal their identity, the term of the exclusive right shall be that provided for in [Article L. 123-1](#) or [Article L. 123-2](#).

“The provisions of the first and second paragraphs shall apply only to pseudonymous, anonymous or collective works published during the 70 years following the year of their creation.

“Nevertheless, where a pseudonymous, anonymous or collective work is disclosed on the expiry of the term mentioned in the foregoing paragraph, its owner by succession or on another ground who publishes it or causes it to be published shall enjoy exclusive rights for 25 years from January 1 of the calendar year following that of publication.”

*Art. 8. The first paragraph of Article L. 123-4 of the Intellectual Property Code* reads as follows:

“In the case of posthumous works, the term of the exclusive right shall be that provided for in [Article L. 123-1](#). In the case of posthumous works disclosed after the expiry of that term, the term of exclusive rights shall be 25 years from January 1 of the calendar year following that of publication.”

*Art. 9.* In [Article L. 123-7 of the Intellectual Property Code](#) the number “50” is replaced by the number “70.”

*Art. 10. Chapter III of Title II of Book I of the Intellectual Property Code* is completed with an [Article L. 123-12](#) reading as follows:

“*Art. L. 123-12.* Where the country of origin of the work, within the meaning of the Paris Act of the Berne Convention, is a country outside the European Community and the author is not a national of a Member State of the Community, the term of protection shall

be that granted in the country of origin of the work, but may not exceed that provided for in [Article L. 123-1](#).”

*Art. 11.* [Article L. 211-4 of the Intellectual Property Code](#) reads as follows:

“*Art. L. 211-4.* The term of the economic rights provided for in this Title shall be 50 years from January 1 of the calendar year following that of:

- “— the performance for performers;
- “— the first fixation of a sequence of sounds for phonogram producers, and of a sequence of images with or without sound for videogram producers;
- “— the first communication to the public of the programs referred to in [Article L. 216-1](#) for audiovisual communication companies.

“However, where a fixation of the performance, a phonogram or a videogram is included in a communication to the public during the term defined in the first three paragraphs, the economic rights of the performer or phonogram or videogram producer shall not expire until 50 years after January 1 of the calendar year following that of the said communication to the public.”

*Art. 12.* An [Article L. 211-5](#) reading as follows is inserted in the Intellectual Property Code:

“*Art. L. 211-5.* Subject to the provisions of international treaties to which France is party, the owners of neighboring rights who are not nationals of a Member State of the European Community shall be given the term of protection provided for in the country of which they are nationals, but that term may not exceed that provided for in [Article L. 211-4](#).”

### **Title III**

## **Miscellaneous and Transitional Provisions**

*Art. 13.* Where a contract for the joint production of an audiovisual work, concluded prior to the entry into force of this Law between one or more joint producers established in France and one or more joint producers established in another State, makes express provision for a regime of distribution of exploitation royalties by geographical zones without distinguishing between the regime applicable to satellite broadcasting and the provisions applicable to other means of exploitation, and where such satellite broadcasting would adversely affect the notably linguistic exclusive rights of one of the joint producers or his successors in title on a given territory, authorization given by one of the joint producers or his successors in title to the broadcasting of the work by satellite shall be subject to the prior consent of the beneficiary of those exclusive rights, whether he is a joint producer or a successor in title.

*Art. 14.* As from January 1, 2000, any contractual clauses concluded prior to the date of entry into force of this Law and relating to the satellite broadcasting, on the territory of the European Community, of works or subject matter protected by neighboring rights, shall be deemed unwritten if they are contrary to the provisions of [Articles L. 122-2-1](#), [L. 122-2-2](#) and [L. 217-1](#) of the Intellectual Property Code.

*Art. 15.* The provisions of [Articles L. 132-20-1, L. 132-20-2, L. 217-2 and L. 217-3](#) of the Intellectual Property Code are applicable to the authorization of the simultaneous, complete and unchanged retransmission, by the multiplexed distribution services on microwave channels mentioned in [Article 3 of Law No. 96-299 of April 10, 1996](#), on Experimentation in the Field of Information Technology and Services, of works or subject matter protected by neighboring rights broadcast from a Member State of the European Community.

*Art. 16.—I.* The provisions of [Title II of this Law](#) shall be applicable as from July 1, 1995. However, only those violations of the said provisions that are committed following the date of publication of this Law may give rise to criminal proceedings.

II. The application of the provisions of [Title II of this Law](#) may not have the effect of shortening the term of protection of copyright and neighboring rights that started to run prior to July 1, 1995.

III. The provisions of [Title II of this Law](#) shall not have the effect of reviving rights in works, performances, fixations or programs that passed into the public domain before July 1, 1995, unless they were still protected on that date in at least one other Member State of the European Community, in which case:

- the owners of those rights may not invoke them against acts of exploitation lawfully engaged in prior to the date of entry into force of this Law;
- the owners of those rights may not oppose the exploitation of a work, performance, phonogram, videogram or program for one year following the date of entry into force of this Law if the exploitation thereof has been lawfully initiated prior to that date;
- the owners of those rights may not, for one year following the date of entry into force of this Law, oppose the continuation of the exploitation of a work, performance, fixation or program lawfully created prior to that date on the basis of the work, performance, fixation or program in which the said rights have started to run; at the end of that period, they may only assert their economic rights, for the determination of which, in the event of difficulty, [Article L. 122-9 of the Intellectual Property Code](#) shall be applied; failure to pay remuneration under this paragraph shall be punished with the fine provided for in [Article L. 335-4 of the same Code](#);
- the owners of those rights may not oppose the making of an audiovisual work that has been the subject, prior to the entry into force of this Law, of an adaptation contract recorded in the Public Register of Cinematography; in the event of difficulty in the determination of the economic rights connected with the adapted work or in the payment of remuneration, [Articles L. 122-9 and L. 335-4 of the Intellectual Property Code](#) shall be applied.

IV. The prolongation as from July 1, 1995, of the exploitation rights which, as of the same date, were the subject of a publishing contract shall not constitute prolongation of the contract itself unless its term is determined only by reference to the legal duration of the literary and artistic property.



However, on pain of invalidity of the assignment, the author may not assign the rights corresponding to that prolongation to another publisher without first having proposed to the publisher to whom they were assigned as of July 1, 1995, that he acquire them on the same terms.

The aforesaid proposal shall be made in writing. It shall be deemed to have been refused if the publisher has not made his decision known in writing within a period of two months.

*Art. 17.* After the **item (c) of subparagraph 3, of Article L. 122-5 of the Intellectual Property Code**, two additional items reading as follows are inserted:

“(d) Complete or partial reproductions of works of graphic or three-dimensional art intended to appear in the catalogue of a sale by public auction held in France by a public or ministerial officer, in the form of the copies of the said catalogue that he makes available to the public prior to the sale for the sole purpose of describing the works of art on sale.

“A Decree in Council of State shall determine the characteristics of the documents and the conditions governing their distribution.”

*Art. 18.* Subject to judicial decisions that have become *res judicata*, the decision of June 28, 1996, published in the Official Journal of the French Republic of July 25, 1996, of the Committee set up by **Article L. 214-4 of the Intellectual Property Code** establishing the scale of remuneration payable by the operators of discotheques to performers and producers of phonograms by virtue of **Article L. 214-1 of the same Code** is hereby validated and made applicable for five years as from January 1, 1996.

*Art. 19.* This Law is applicable to the overseas territories and to the territorial entity of Mayotte.

This Law shall be executed as a Law of the State.