

Article 17 of the New Copyright Directive: A French mission on content recognition technologies

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In a letter dated 29 March 2019, the President of the CSPLA ('*Conseil supérieur de la propriété littéraire et artistique*'), an independent body in charge of advising the French Minister of Culture on copyright law, has appointed three public institutions to submit a report on the use of recognition tools for copyright-protected content on online sharing platforms. The three institutions are the CSPLA, the HADOPI (the High Authority for the distribution of Works and the Protection of Rights on the Internet) and the CNC (the '*Centre National du Cinéma et de l'image animée*' is a public administrative organisation that is a regulatory body for the film, broadcasting, video, multimedia and technical industries).

The letter concerning this mission explains that recommendations must be given on the use of these technologies in the framework of the new copyright directive, and points out that the President of the CSPLA has already commissioned a [report that was presented in December 2017, entitled 'Copyright protection on digital platforms: existing tools, good practice and limitations'](#), which provided an initial inventory of existing tools, good practices and their limits. The letter also states that this 2017 report was used by the French negotiators to help draft and adopt the controversial and already challenged Article 17 'Use of protected content by online content-sharing service providers' of the EU Directive 2019/790 on copyright and related rights in the Digital Single Market adopted by the EU Parliament on 26 March 2019.

Article 13 of the text initially proposed by the Commission on the use of protected content by online content-sharing service providers specifically mentioned the "use of effective content recognition technologies". Article 17 of the adopted Directive no longer mentions these technologies, but puts in place a liability regime aimed at inciting the content-sharing platforms to set up automatic content recognition tools. In particular, Article 17(4) provides that if the rightholders do not grant authorisation, online content-sharing service providers shall be liable for unauthorised acts of communication to the public, unless the service providers demonstrate that they have made their best efforts to obtain authorisation, and their best efforts to ensure, "in accordance with high industry standards", that the content is unavailable, and have acted expeditiously after notification to remove the content and prevent future uploads.

The letter of the President of the CSPLA explains that the mission shall make proposals regarding the evolution of the European legal framework. The President certainly has in mind Article 17(10) of the Copyright Directive, which provides that as of 6 June 2019, "the Commission, in cooperation with the Member States, shall organise stakeholder dialogues to discuss the best practices for cooperation between online content-sharing service providers and rightholders [and] issue guidance on the application of this Article, in particular with regard to the cooperation referred to in paragraph 4" (Article 17 is indeed difficult to implement, and Martin Husovec is organising a debate on '[How to Implement Article 17 DSM? Have Your Say!](#)').

After having vigorously defended the new Directive, France is continuing its efforts to reshape European copyright law. In his letter, the President of the CSPLA says that he is expecting a first detailed presentation of the report before summer, and the final report by autumn.