



## 6.11.FR – France – National legal summary<sup>737</sup>

### 6.11.1. General legal framework

#### 6.11.1.1. National legislation on copyright<sup>738</sup>

In France, the Intellectual Property Code (*Code de la propriété intellectuelle – CPI*)<sup>739</sup> regulates the scope and the enforcement of copyright (or, more precisely, intellectual property) and related rights.

The infringement of copyright is defined under Article L.122-4 of the CPI, as follows:

*Any full or partial representation or reproduction made without the consent of the author or of his rights holders or successors is illegal. The translation, adaptation or transformation, the arrangement or reproduction via any art or process is also illegal.*

In France, copyright infringement can be considered both as a civil law violation and a criminal offence. It is governed by Articles L. 331-1 to L. 311 1-4 et seq. (civil law violation) and by Article L. 335-2 et seq. (criminal offence) of the CPI.

French law does not differentiate between crimes depending on whether or not the offender acted for profit. However, depending on the circumstances and facts of the specific infringement, when the offender has acted for profit the courts may order more severe sanctions and fines and the seizure of the illegal financial proceeds as part of the sanction against the infringer.

#### 6.11.1.2. Transposition of EU directives

This section aims at highlighting the transposition of the main provisions of the EU directives related to the enforcement of copyright and related rights into national law, as reported in the table below.

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<sup>737</sup> It was not possible to receive feedback on the country report concerning France during the checking round with the national competent institutions.

<sup>738</sup> The information contained in this country report is based on data collected through a survey conducted by the European Audiovisual Observatory before the legal deadline for transposition of the DSM Directive of 7 June 2021.

<sup>739</sup> <https://www.legifrance.gouv.fr/codes/id/LEGISCTA000006161633/2021-01-18/>

Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (the DSM Directive)<sup>740</sup> has not been fully transposed to date. As of September 2021, Articles 15 and 17 to 23 have been transposed.<sup>741</sup>

**Table 72. Regulatory framework**

EU directive	National law
<b>DSM Directive</b>	<p>Law No. 2019-775 of 24 July 2019 on the creation of a related right for the benefit of press agencies and press publishers</p> <p>Law No. 2020-1508 of 3 December 2020 on adaptive provisions to EU law in the economic and financial area</p> <p>Ordinance No. 2021-580 of 12 May 2021 transposing the 6th paragraph of Article 2 and Articles 17 to 23 of Directive (EU) 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</p>
<b>Intellectual Property Rights Enforcement Directive (IPRED)</b>	<p>Law No. 2007-1544 of 29 October 2007 regarding the fight against intellectual property infringement (<i>Loi n° 2007-1544 du 29 octobre 2007 de lutte contre la contrefaçon</i>);<sup>742</sup> Decree No. 2008-624 of 27 June 2008.<sup>743</sup></p>
<b>InfoSoc Directive</b>	<p>Law No. 2006-961 of 1 August 2006 on copyright and related rights in the information society (<i>Loi n° 2006-961 du 1er août 2006 relative au droit d'auteur et aux droits voisins dans la société de l'information</i>);<sup>744</sup></p> <p>Intellectual Property Code (CPI);</p> <p>Law No. 86-1067 of 30 September 1986 as amended regarding freedom of</p>

<sup>740</sup> Directive EU 2019/790 on copyright and related rights in the Digital Single Market, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L0790&from=EN>.

<sup>741</sup> See Law No. 775 of 24 July 2019 on the creation of a related right for the benefit of press agencies and press publishers (*Loi n° 2019-775 du 24 juillet 2019 tendant à créer un droit voisin au profit des agences de presse et des éditeurs de presse*), <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000038821358/>; Law No. 1508 of 3 December 2020 regarding several adaptive provisions to EU law in the economic and financial areas (*Loi n° 2020-1508 du 3 décembre 2020 portant diverses dispositions d'adaptation au droit de l'Union européenne en matière économique et financière*), <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042607095/>; and Ordinance No. 2021-580 of 12 May 2021 transposing the 6th paragraph of Article 2 and Articles 17 to 23 of Directive (EU) 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 (*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*).

<sup>742</sup> <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000279082/>

<sup>743</sup> Decree No. 2008-624 of 27 June 2008 implementing Law No. 2007-1544 of 29 October 2007 on combatting counterfeiting and amending the Intellectual Property Code (*Décret n° 2008-624 du 27 juin 2008 pris pour l'application de la loi n° 2007-1544 du 29 octobre 2007 de lutte contre la contrefaçon et portant modification du code de la propriété intellectuelle*), <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000019080002/>

<sup>744</sup> <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000266350/>



EU directive	National law
	communication ( <i>Loi n° 86-1067 du 30 septembre 1986 modifiée relative à la liberté de la communication</i> ).
<b>E-Commerce Directive</b>	Law No. 2004-575 of 21 June 2004 for confidence in the digital economy ( <i>Loi n° 2004-575 du 21 juin 2004 pour la confiance dans l'économie numérique – LCEN</i> ). <sup>745</sup>
<b>Conditional Access Directive</b>	French Criminal Code <sup>746</sup> ( <i>Code pénal</i> )

Source: French response to European Audiovisual Observatory standardised survey

## 6.11.2. National rules applicable to audiovisual sports content

### 6.11.2.1. Legal definitions of “broadcaster” and “sports event organiser”

In French law, the definition of “broadcaster” is provided by Law No. 86-1067 of 30 September 1986 regarding freedom of communication (*Loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication, “Loi Léotard”*).<sup>747</sup> Article 2-1 defines a broadcaster, referred to as a “service distributor” (*distributeur de service*), as:

*any person establishing a contractual relationship with service publishers to propose an offer for audiovisual communication services made available to the public through an electronic communication network as defined in Article L.32 paragraph 2 of the Code of postal and electronic communications services. A service distributor is also any person who proposes said offer by establishing a contractual relationship with other distributors.*

The Sports Code<sup>748</sup> (*Code du Sport*) includes a series of provisions about the organisation of sports events (Article L.331-1 et seq.) which mention sports events organisers, but the code does not provide a specific definition of a “sports events organiser”. The closest definition appears in Article L.331-5 of the Sports Code, which provides that: “Any natural person or legal entity, other than the sports federations, organising an event open to federation members of an activity subject to a delegation of power pursuant to Article L.131-14 (...) must be granted an authorisation from the relevant federation.”

<sup>745</sup> Law No. 2004-575 of 21 June 2004 for confidence in the digital economy (*Loi n° 2004-575 du 21 juin 2004 pour la confiance dans l'économie numérique – LCEN*),

<https://www.legifrance.gouv.fr/loda/id/LEGIARTI000006421540/2021-05-07/?isSuggest=true>

<sup>746</sup> French Criminal Code (*Code pénal*), <https://www.legifrance.gouv.fr/codes/id/LEGITEXT000006070719/>.

<sup>747</sup> <https://www.legifrance.gouv.fr/loda/id/LEGITEXT000006068930/2021-01-26/>.

<sup>748</sup> [https://www.legifrance.gouv.fr/codes/texte\\_lc/LEGITEXT000006071318/2021-04-06/](https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006071318/2021-04-06/).



#### 6.11.2.2. Legal protection related to sports events

Sports events and sports competitions are protected under French law. The sports federations and event organisers (having received a delegation of power as mentioned in Article L.331-5) own the exploitation rights for the sports events or competitions that they organise. Exploitation rights are covered under Articles L. 333-1 to L.333-3 of the Sports Code. Exploitation rights include the right to consent to bets on the sports events (Article L. 333-1-1). In particular, all or part of the exploitation rights in sports events and competitions organised in each sports season by the professional leagues may be assigned at no cost by the sports federations to sports societies provided that such societies participate in these events and competitions (Article L. 333-1).<sup>749</sup>

Audiovisual exploitation rights assigned to sports societies are commercialised by the professional league, under conditions that are defined by decree. The exploitation rights of the sports federations only cover the sports events and do not include information and images not directly and exclusively related to sports events organised by a federation.

Furthermore, broadcasting rules are covered under Articles L.333-6 to L.333-9 of the Sports Code. Pursuant to Article L.333-7 of the Sports Code, the assignment of the exploitation rights for a sports event or competition to an electronic communications service to the public (*service de communication au public par voie électronique*) cannot prevent information from reaching the public via other public electronic communications services. Other electronic communications services to the public may broadcast brief clips taken at no cost from the images produced by the assignee services and selected freely by the third-party service. Said clips can be broadcast at no cost during news programmes but must clearly identify the assignee electronic communications service.

The assignment of exploitation rights for a sports event or competition to an electronic communications service to the public does not prevent radios from capturing and broadcasting oral commentaries of the event, including live. Also, the assignment of the exploitation rights for a sports event or competition to an electronic communications service to the public does not prevent the broadcast of all or part of such event or competition by another electronic communications service to the public if the assignee service does not broadcast significant parts of the event or competition live (Article L.333-8).

Rights owners (i.e. sports federations), sports event organisers and the assignees of the federations' exploitation rights are entitled to take legal action in the event of infringement of copyright or related rights related to the broadcasting or online transmission of a sports event content.

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<sup>749</sup> [https://www.legifrance.gouv.fr/codes/section\\_lc/LEGITEXT000006071318/LEGISCTA000006167058/#LEGISCTA000006167058](https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006071318/LEGISCTA000006167058/#LEGISCTA000006167058).

### 6.11.2.3. Other specific rules applicable to sports events

No other specific rules apply in relation to the use of sports content on social media.

**Table 73. Definitions of the main concepts relating to audiovisual sports events**

Concept	Existence of a definition	Relevant rights
Broadcaster	Yes	Related rights
Sports event organiser	No	Exploitation rights

Source: French response to European Audiovisual Observatory standardised survey

## 6.11.3. Remedies and sanctions applicable in the event of infringement

### 6.11.3.1. National remedies

This section aims to list the national remedies applicable specifically to cases concerning online piracy of audiovisual sports content.

Although not specifically targeting online piracy of audiovisual sports content, Article L332-1 of the CPI provides that the rightsholders may request the competent court to order bailiffs to either produce a detailed description or seize copies of the works that are allegedly infringing and all related documentation. The court may order a detailed description of the actual seizure of the equipment used to produce and distribute the works illegally. Seizure may include the financial proceeds from the illegal activity and the suspension of the current broadcast.

More specifically concerning online infringement, such as illegal peer-to-peer (P2P) activities and illegal streaming, Chapter VI of the CPI (Articles L.336-1 to L.336-4) includes measures to prevent illegally downloading and making available works and subject matter protected by copyright and related rights. In particular, according to Article L. 336-2 CPI, in the case of infringement of a copyright or a related right due to the content of an online communications service to the public, the judicial court, ruling under an accelerated procedure on the merits (*procédure de référé*) may, upon request from the rightsholders, their beneficiaries, the collective management organisations or the professional defence organisations, order any measures likely to prevent or suspend such an infringement against any person who may be able to prevent it.<sup>750</sup>

<sup>750</sup> See further details on injunctions in section 6.11.3.5. of this country report).



Concerning the protection of technological measures and rights management information (Article 6–7 of the InfoSoc Directive), Articles 323-1 to 323-8 of the French Criminal Code<sup>751</sup> regulate breaches of automatic data processing systems (such as breaches of conditional access services). In particular, Article 323-3-1 provides as follows:

*the fact of importing, possessing, offering, transferring or making available, without a legitimate motive, in particular for research or digital security purposes, any equipment, instrument, computer programme or data designed or specially adapted to commit one or several of the offences provided for in Articles 323-1 to 323-3 shall be punishable by the penalties laid down for the offence itself or for the offence carrying the most severe penalty.*

Special sanctions and remedies are provided in the law for infringements related to these automatic data processing systems. Thus, according to Article 323-1, paragraphs 1 and 2 of the CPI, the fact of accessing or remaining fraudulently in all or part of an automatic data processing system is punished with two years in prison and a fine of EUR 60 000. When it results in either the deletion or the modification of data contained in the system, or the alteration of the operation of said system, the conviction shall be three years in prison and a fine of EUR 100 000. Besides, Article 323-2 paragraph 1 provides for five years' imprisonment and a fine of EUR 150 000 in the case of hindering or distorting the operation of an automatic data processing system. Article 323-3 introduces a term of five years' imprisonment and a fine of EUR 150 000 when there is fraudulent access to data in order to extract, possess, transmit, delete or modify the data.

On the other hand, sanctions and remedies are provided with regards to the infringement of IP rights related to the broadcasting of protected content in Articles 79-1 et seq. of Law No. 86-1067 of 30 September 1986 regarding freedom of communication, as amended.<sup>752</sup> In particular, Article 79-1 specifically provides that:

*the manufacturing, importation for sale or rental, offer for sale, possession for sale, the sale or the installation of any equipment, device or instrument designed, in whole or in part to fraudulently receive tele-broadcast programmes, when such programmes are reserved for a specific public that has access through payment of a fee to the operator of the service, are punished with two years in prison and a maximum fine of 300 000 €.*

Article 79-2 provides as follows :

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<sup>751</sup>[https://www.legifrance.gouv.fr/codes/section\\_lc/LEGITEXT000006070719/LEGISCTA000006149839?tab\\_selction=all&searchField=ALL&query=code+p%C3%A9nal&page=1&init=true&anchor=LEGISCTA000006149839#LEGISCTA000006149839](https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070719/LEGISCTA000006149839?tab_selction=all&searchField=ALL&query=code+p%C3%A9nal&page=1&init=true&anchor=LEGISCTA000006149839#LEGISCTA000006149839)

<sup>752</sup> (Loi n° 86-1067 du 30 septembre 1986 modifiée relative à la liberté de la communication)  
<https://www.legifrance.gouv.fr/loda/id/LEGITEXT000006068930/2021-01-19/>



*ordering, designing, organising or broadcasting an advertisement which, directly or indirectly, promotes an equipment, device or instrument mentioned in article 79-1 is punished with one year in prison and a fine of 15 000 €.*

Article 79-3 provides that :

*the fraudulent organisation of the rights of the service operator of the reception by third parties of programmes mentioned in article 79-1 is punished with six months in prison and a fine of 7 500 €.*

Article 79-4 states that “the purchase or possession for the purpose of being used of any equipment, device or instrument mentioned in Article 79-1 is punished with a fine of 7 500 €.”

Finally, Article 79-5 provides that in the case of a conviction for one of the offences defined in Articles 79-1 to 79-4, the court may confiscate equipment, devices, instruments and advertising documents.

#### 6.11.3.2. National bodies with competences on copyright enforcement

In France, there is no authority other than the courts which is globally competent over intellectual property infringement. There is an administrative body in charge of fighting online intellectual property infringement called the High Authority for the Distribution of Works and Protection of Rights on the Internet (*Haute autorité pour la diffusion des oeuvres et la protection des droits sur internet*, HADOPI). The missions and areas of competence of HADOPI are described in Articles L.331-12 to L.331-37 of the CPI. Its missions are threefold:

- to promote the development of the legal offer and observation of the legal and illegal online use of the works protected by intellectual property or related rights;
- to protect said works from online copyright infringement; and
- to regulate and monitor the area of technical protection and identification measures of the works protected by intellectual property or related rights.

The HADOPI may recommend legal or regulatory modifications and may be consulted by the government on any bill or draft decree regarding intellectual property (Article L.331-13 CPI).

The provisions regulating the HADOPI do not specifically address sports content. The HADOPI is primarily known to the public for its fight against illegal P2P usage and through a “gradual response” (*riposte graduée*) process, governed by Articles L.336-1 et seq. and R.335-5 of the CPI. The focus is on educating users and raising their awareness by sending notices to internet service subscribers so that they ensure that their connection is not used for illegal purposes by themselves or by third parties. The HADOPI can be referred to by rightsholders or their beneficiaries (Article L.331-33 CPI). The





maximum offence is a fine of EUR 1 500 for natural persons and EUR 7 500 for legal entities infringing online intellectual property rights.

The law originally included the possibility for the court to order suspension of access to the internet for the subscriber but this provision was repealed by decree on 8 July 2013. Although hundreds of thousands of notices have been sent to internet subscribers since the law was enacted in 2009, very few court decisions have been reached and the amounts have always been minimal (a few hundred euros).

A recently-adopted bill regarding the regulation and protection of access to cultural works in the digital age, which was promulgated on 25 October 2021,<sup>753</sup> establishes the creation of a new audiovisual regulator, the Audiovisual and Digital Communication Regulatory Authority (*Autorité de régulation de la communication audiovisuelle et numérique*, ARCOM)<sup>754</sup> on 1 January 2022. The creation of ARCOM, which will merge the existing HADOPI and CSA (*Conseil supérieur de l'audiovisuel*), aims to create an integrated regulator with extended competences, notably on the creative chain, from the setting of obligations to the protection of copyright and related rights and the fight against piracy. ARCOM will also be given new areas of competence in relation to digital content piracy. In particular, ARCOM will be given competences to identify infringing websites and notify intermediaries, using data transmitted by the rightsholders, for the purposes of blocking access, and to request search engines, directories and other indexing services to de-index infringing websites.

#### 6.11.3.3. Codes of conduct and Memorandums of Understanding

Codes of conduct have been widely recommended by the institutions, regarding online activities as well. More particularly the former *Forum des droits sur l'internet* (Internet Rights Forum), an administrative institution, promoted and contributed to the development and implementation of several codes of conduct.

Codes of conduct, also known as “charters” (*chartes*) or “agreements” (*accords*), have been used increasingly in the IT and intellectual property industry. In France, two main documents may be considered as codes of conduct or Memorandums of Understanding that relate to the enforcement of intellectual property rights and the fight against online piracy. These documents were adopted by public and/or private entities.

A first anti-piracy charter was signed on 28 July 2004 between the major Internet Service Providers (ISPs) in France and members of the cultural industry (distributors, collective management organisations, producers), under the direction of the Minister for Economy (former President Mr. Nicolas Sarkozy). This document, entitled “Charter of

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<sup>753</sup>Law No. 2021-1382 of 25 October 2021 on the regulation and protection of access to cultural works in the digital age (*LOI n° 2021-1382 du 25 octobre 2021 relative à la régulation et à la protection de l'accès aux œuvres culturelles à l'ère numérique*), <https://www.legifrance.gouv.fr/dossierlegislatif/JORFDOLE000043339178/>.

<sup>754</sup> *Autorité de régulation de la communication audiovisuelle et numérique*





commitment to the fight against piracy and for the development of legal online music offers” (*Charte d’engagement pour la lutte contre la piraterie et pour le développement des offres légales de musique en ligne*) was heavily criticised by certain collective management organisations and consumer associations emphasising that not all P2P activities were illegal (e.g. the right to make a private copy of a protected work – *droit à la copie privée*).<sup>755</sup>

In September 2017, an agreement to combat audiovisual piracy (*Accord de lutte contre la piraterie audiovisuelle*) was signed between Google and ALPA (*Association de lutte contre la piraterie audiovisuelle* – Association Against Audiovisual Piracy) under the auspices of the French National Cinema Centre (*Centre national du cinéma et de l’image animée* – CNC). The purpose of this agreement, signed at the Ministry of Culture in Paris, is to help rightsholders fight audiovisual piracy on the internet, and more specifically illegal videos posted on YouTube, ensuring Google’s cooperation to improve the effectiveness of the notice and take-down process.<sup>756</sup>

The agreement provided that Google would make its Content ID detection tools available to the association in order to achieve faster blocking of content posted online illegally. Another part of the agreement concerned Search, a search engine provided by Google to organise the downgrading of the indexation of illegal content via the Trusted Copyright Removal Program (rather than the de-indexation of illegal content). Furthermore, in this agreement, the CNC entrusted ALPA with a new mission:

*which consists in using, on behalf of its members who wish to do so, tools for monitoring and protecting works on the internet in order to fight more effectively against the presence of infringing content on online platforms.*

#### 6.11.3.4. Notice and take-down procedures

Notice and take-down procedures can be applied whenever infringing content is uploaded to a website, including content-sharing platforms.

Articles 6-I-3 and 6-I-5 of the Law for trust in the digital economy (*Loi pour la confiance dans l’économie numérique* – LCEN) provide for a notice and take-down procedure that can be used by rightsholders each time they find that their online content is being used (i.e. posted, broadcast) illegally.

According to these provisions, hosting service providers are not liable (under civil or criminal liability) for third-party content hosted on their servers or platforms, provided they have no actual knowledge that such content is blatantly illegal. If they become aware of illegal content being hosted on their servers/platforms through a notification received by a rightsholder, a beneficiary, a user or through self-monitoring, then they must act promptly to remove the content or block access to the content.

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<sup>755</sup> No copy of the charter has been made available on the internet.

<sup>756</sup> <https://www.nextinpact.com/article/27249/105211-piratage-ce-que-dit-laccord-signe-entre-google-et-lalpa-sous-legide-cnc>; [https://www.lepoint.fr/high-tech-internet/lutte-contre-le-piratage-accord-inedit-entre-google-et-l-audiovisuel-francais-19-09-2017-2158297\\_47.php#](https://www.lepoint.fr/high-tech-internet/lutte-contre-le-piratage-accord-inedit-entre-google-et-l-audiovisuel-francais-19-09-2017-2158297_47.php#)



The service provider is deemed to have knowledge of illegal content when the following information is provided by the notifying party: (i) full identification of the person (natural person or legal entity) reporting the illegal content; (ii) a description of the illegal content; (iii) its precise location (e.g. URL, website, etc.); (iv) if relevant, the electronic address(es) where the content can be accessed; v) the legal reason why the illegal content should be removed or blocked; and (vi) a copy of the message sent to the author or to the publisher of the illegal information or activities requesting their suspension, removal or modification, or a justification that the publisher could not be contacted.

#### 6.11.3.5. Removal and blocking orders

There are currently no injunction procedures specific to audiovisual sports content in France (see below on the antipiracy bill). Injunction procedures for piracy of online content are governed by Article L.336-2 of the CPI, as follows:

*in case of intellectual property infringement or related rights infringement due to the content of an online public communications service, the judicial court, ruling under an emergency procedure on the merits may, upon request from the rights owners, their beneficiaries or the collective management organisations (...) order any measures to prevent or suspend such infringement against any person who may be able to prevent it. The request may also be made by the National Centre for Cinema.*

Based on this provision (and Article 6-1 of the LCEN), the court, upon request by the rightsholders or their beneficiaries, can order the ISPs to block access to the illegal website and URLs (P2P, streaming, domain names) when it is not possible to obtain the closure of the website through a criminal procedure against the operators of the illegal websites. The blocking measures are civil proceedings introduced by the rightsholders against the ISPs and search engines (not against the infringers). The illegal websites still exist but can no longer be accessed through ISPs or search engines.

Based on case law, dynamic injunctions are currently only applicable against search engines for de-indexing purposes, for a duration of 12 months.<sup>757</sup> Regarding the ISPs, no dynamic injunctions can be imposed on them at the moment. It is, however, possible to introduce emergency procedures (*procédures en référé*) for updating purposes against mirror websites. (Articles 484 to 492 of the Code of Civil Procedure – *Code de procédure civile*).

It is also worth mentioning that according to the above-mentioned recently-adopted bill regarding the regulation and protection of access to cultural works in the

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<sup>757</sup> TGI Paris, 15 Décembre 2017, Syndicat de l'édition vidéo numérique (SEVN), Association des producteurs indépendants (API) vs SFR, Bouygues Telecom, Google Inc., Orange et al.



digital age, ARCOM will be given competences to identify infringing websites and notify intermediaries, using data transmitted by the rightsholders, for the purposes of blocking access, and to request search engines, directories and other indexing services to de-index infringing websites. In addition, ARCOM will have the power to extend courts' dynamic blocking orders to related domain names and mirror sites. The new law foresees agreements between rightsholders and intermediaries to guarantee the enforcement of court decisions and the establishment of a "blacklist" of infringing websites. In the case of non-compliance, intermediaries may be exposed to further legal action.

Furthermore, a bill on democratising sport in France,<sup>758</sup> was presented by the government through accelerated procedure and adopted at first reading by the National Assembly on 19 March 2021. It is currently under examination by the Senate (as of October 2021).<sup>759</sup> If promulgated into law, the bill would amend the Sports Code (*Code du sport*) and introduce a new specific provision (proposed new Article L. 333-10) foreseeing a live blocking/forward-looking injunction (in the current draft) to combat illegal live streaming of sporting events. In the case of serious and repeated infringements of the rights attached to a sports event or competition, caused by the content of an online service whose main objective or one of the main objectives is the unauthorised broadcasting of sports competitions or events, and in order to prevent or remedy a new, serious and irremediable infringement of these same rights, the rightsholder may refer the matter to the president of the court. The court would, in the accelerated procedure or in summary proceedings, decide on the merits ordering all proportionate measures that are likely to prevent or put an end to this infringement against any person likely to contribute to the infringement. Such an anticipatory injunction could be introduced by a professional sports league or an audiovisual communications company. The president of the court may order, if necessary under penalty, all proportionate measures, such as blocking, withdrawal or dereferencing measures, to prevent access from French territory to any online service, identified or not identified at the date of the said order, which illegally broadcasts the competition or sports event or whose main objective or one of the main objectives is the unauthorised broadcasting of the competition or sports event. This injunction would be limited in time – to every day appearing in the official calendar of the competition or sports event and within the limit of a period of 12 months.<sup>760</sup>

#### 6.11.3.6. Measures against end-users

Blocking injunctions are issued against ISPs and search engines, but not against end-users. There is no regulatory process to suspend or block internet access in France. The

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<sup>758</sup> Follow-up of the legislative procedure by the French Senate, <https://www.senat.fr/dossier-legislatif/ppl20-465.html>

<sup>759</sup> LFP, "Adoption du projet de loi « protection des œuvres à l'ère numérique » : une avancée majeure dans la lutte contre le piratage du sport", 21 May 2021, <https://www.lfp.fr/Articles/COMMUNIQUE%202021/05/20/apps-adoption-du-projet-de-loi-protection-des-oeuvres-a-l-ere-numerique>

<sup>760</sup> *Proposition de loi visant à démocratiser le sport en France*, <http://www.senat.fr/leg/ppl20-465.html>



original bill on “Creation and Internet” dating back to June 2008 included provisions on gradual sanctions up to the suspension of internet services; however, they have been declared unconstitutional. More exactly, the law provided that the user would receive two written warnings and in the case of continuing illegal use of intellectual content, the ultimate sanction would be the suspension of the internet subscription for a period of three months to one year, with a prohibition against obtaining a new subscription from a separate ISP during the suspension period. In a decision reached on 10 June 2009, the Constitutional Court (*Conseil constitutionnel*) rejected this measure, ruling that freedom of expression includes free access to online public communications services. Any limitation to fundamental freedoms must be made through the judicial courts.<sup>761</sup> In addition, Decree No. 2010-965 dated 25 June 2010 defining the notion of manifest negligence (*négligence manifeste*) included the possibility to suspend access to the internet for a maximum period of one month. This provision was repealed through Decree No. 2013-596 dated 8 July 2013.

As to the collection of personal data by private entities to identify end-users, pursuant to Article L.331-29 of the CPI, the HADOPI had to set up a specific data process in order to process the data of individuals using digital communications services illegally to implement the “gradual response process” (which is focused on illegal P2P and is directed at both people uploading illegal content and people downloading/viewing illegal content – but very seldom followed by legal proceedings).

A first decree entitled “System for the management of measures to protect intellectual works on the internet” (*Système de gestion des mesures pour la protection des oeuvres sur internet*) was published on 5 March 2010 (Decree No. 2010-236 of 5 March 2010),<sup>762</sup> amended on 11 March 2011 by Decree No. 2011-264.<sup>763</sup> A second decree about the procedure before the HADOPI Commission for the protection of rights was published on 26 July 2010 (Decree No. 2010-872 of 26 July 2010), describing the interconnection between the automatic personal data process used by professional organisations, collective management organisations, and the CNC, on the one hand, and the data process used by access service providers on the other hand. The decree describes the conditions for the interconnection between the different data processes and the type of personal data that may be collected.

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<sup>761</sup> Decision n° 2009-580 DC of 10 June 2009,

<https://www.conseil-constitutionnel.fr/decision/2009/2009580DC.htm>

<sup>762</sup> Décret n° 2010-236 du 5 mars 2010 relatif au traitement automatisé de données à caractère personnel autorisé par l'article L. 331-29 du code de la propriété intellectuelle dénommé “Système de gestion des mesures pour la protection des œuvres sur internet”.

<sup>763</sup> Décret no. 2011-264 du 11 mars 2011 modifiant le décret no. 2010-236 du 5 mars 2010 relatif au traitement automatisé de données à caractère personnel autorisé par l'article L. 331-29 du code de la propriété intellectuelle dénommé “Système de gestion des mesures pour la protection des œuvres sur internet”.

### 6.11.3.7. Criminal sanctions

In the event of infringement of his/her rights, the rightsholder may bring an action for infringement before either the civil or the administrative courts in order to obtain compensation or before the criminal courts to obtain criminal sanctions. Infringement of copyright constitutes an offence of counterfeiting (*délit de contrefaçon*)<sup>764</sup> punishable by a fine of EUR 300 000 and three years' imprisonment (Article L.335-2 et seq. CPI). Additional penalties – closure of the establishment, confiscation of equipment, publication by posting the judicial decision online or publishing it in national newspapers – may also be pronounced.

There are currently no criminal procedures in the case of online piracy of audiovisual sports content. However, there are two types of criminal procedures that can be initiated to combat online piracy of audiovisual content:

- For illegal P2P activities, the HADOPI may apply a “gradual response” (riposte graduée) to the individuals or entities pursuant to Article L.331-25 of the CPI. This proceeding is primarily aimed at “educating” users. In the case of copyright infringement, it may however end up in criminal proceedings. When the HADOPI is notified of an illegal P2P activity by rightsholders or agents, a first recommendation to the subscriber of the internet contract can be sent by email. If another violation is committed within six months of the first recommendation, a second recommendation is sent by email and registered mail. If further violations are committed during the 12 months following the second recommendation, the HADOPI may send a notification informing the subscriber that he/she may be subject to criminal proceedings. The file may be forwarded to the prosecutor who may then decide to engage criminal proceedings against the subscriber of the internet contract.
- For illegal P2P activities and illegal streaming, the general criminal proceedings in intellectual property rights infringement (*délit de contrefaçon*) may be introduced by the prosecutor pursuant to Article L.335-1 et seq. of the CPI.

**Table 74. National regulation applicable to audiovisual sports content**

Specific features on sports	Description
Specific rules on sports content copyright	Yes, protection under the Sports Code
Specific rules on the use of sports content in social	No

<sup>764</sup> The CPI defines “counterfeiting” as (i) all acts of unauthorised use of the work, and incriminates under the offence of counterfeiting any reproduction, representation or distribution, by whatever means of a protected work in violation of the author’s rights (Article L.335-3 CPI); and (ii) the act of disseminating (in particular by sale) infringing goods, the export and import of “infringing” works (Article L.335.2 al.3).



Specific features on sports	Description
media	
Specific competent bodies (other than judicial bodies)	No (High authority for the distribution of works and protection of rights on the internet “HADOPI” competent on education and awareness). Specific competent body (ARCOM) set up by law
Entitlement to take legal action	Yes, rights owners (i.e. sports federations), sports event organisers and the assignees of the federations’ exploitation rights are entitled to take legal action in case of infringement of broadcasting or online transmission of a sports event.
Codes of conduct	Yes
Specific proceedings	Yes
Specific remedies	No

Source: French response to European Audiovisual Observatory standardised survey

**Table 75. National remedies in the case of copyright infringement**

Typology	Description
Criminal prosecution and criminal sanctions	Yes
Differentiation of criminal sanctions based on acting for profit	No
Removal and blocking injunctions	Yes
Dynamic and/or live blocking injunctions	Yes, according to case law (only applicable against search engines for de-indexing purposes, but not on ISPs) Emergency procedures available for updating purposes against mirror websites
De-indexing injunctions	Yes
Damages and orders to cease and desist	Yes
Administrative offence and remedies	No
Notice and take-down procedures	Yes

Source: French response to European Audiovisual Observatory standardised survey



## 6.11.4. Case law

In this section, relevant national cases concerning copyright are reported in the table below, with particular reference to the following content: communication to the public; knowledge and awareness of illegal activity; notice and take-downs; measures against end-users and criminal sanctions, in relation to online infringement of audiovisual sports content.

**Table 76. Relevant case law related to copyright infringement of audiovisual sports content**

Content	Substance of the decision	Decisions
<b>Communication to the public</b>	N/A	N/A
<b>Hosting providers' knowledge and awareness of illegal activity</b>	Sanction against a platform for not blocking illegal content. Notification to the service provider in order to guarantee knowledge of the illicit content.	<i>Tribunal de Grande Instance de Paris 3ème chambre, 4ème section, 13 septembre 2012, TF1 et autres / Dailymotion</i> <i>Tribunal de Grande instance de Paris 3ème chambre, 4ème section, 28 avril 2011, SPPF / YouTube, Google France, Google Ireland</i> <i>Tribunal de Grande Instance de Paris, Ordonnance de référé 20 octobre 2010, Alexandre B. / JFG Networks</i>
<b>Notice and take-downs</b>	N/A	N/A
<b>Measures against end-users</b>	Measures against end-users cannot be ordered, because the right to freedom of expression is considered prevalent.	Constitutional Court – Decision No. 2009-580 DC of 10 June 2009
<b>Criminal sanctions</b>	Violation of Article L.333-1 of the Sports Code – not given authorisation to exercise exploitation rights. Illicit sale of match tickets by a platform.	<i>Cour d'Appel de Paris Pôle 5, 1ère chambre, 14 octobre 2009, Unibet International c. Fédération française de tennis</i> <i>Tribunal de Grande Instance de Paris, 5ème chambre, 1ère section, 20 mai 2014, Fédération française de football c. Viagogo Inc.</i>

Source: French response to European Audiovisual Observatory standardised survey

### 6.11.4.1. Communication to the public

No specific case law was reported in France related to the notions of communication to the public and copyright infringement of audiovisual sports content.





#### 6.11.4.2. Online infringement of audiovisual sports content

In France, there is case law on the liability of hosting service providers and of ISPs regarding the blocking of illegal content. Most case law is related to illegal P2P or streaming services of music and/or films. Two cases were reported that relate more specifically to the sports sector.

A court decision dated 14 October 2009 taken by the Paris Court of Appeal<sup>765</sup> between the French Tennis Federation (*Fédération française de tennis* – FFT) and Unibet, a betting platform located in Malta. Unibet was not authorised to operate in France and had not been assigned the right to organise online bets by the FFT. The court decided that Unibet: (i) had violated Article L.333-1 of the Sports Code (exploitation rights belonging to the sports federations) by organising an online betting activity that had not been authorised by the FFT; (ii) had violated trademark law (the FFT owns the Roland Garros tournament trademark) and could not benefit from Article L.713-6 of the CPI allowing the use of a trademark by a third party provided that its reference is necessary to inform the public about a product or service. The court also sanctioned Unibet for unfair competition (*parasitisme*).

The second court decision was taken by the Paris Civil Tribunal (*Tribunal de grande instance*) on 20 May 2014<sup>766</sup> in a case between the French Football Federation (*Fédération française de football* – FFF) and Viagogo, Inc. Football match tickets involving French teams were being resold on the Viagogo platform in violation of Article L.333-1 of the Sports Code. Viagogo had refused to remove the tickets from the platform despite several official notifications sent by the FFF.

In addition, a recent decision of the Paris Civil Court (*Tribunal Judiciaire*) is worth mentioning as regards the right to request identification data from hosting providers in relation to alleged copyright infringers.<sup>767</sup> In this case, beIN SPORTS' anti-piracy teams identified websites that were broadcasting exclusive sports content without authorisation, free of charge and on a daily basis, which is a service normally reserved for subscribers to beIN SPORTS' pay channels. To obtain data allowing the identification of the pirates in order to take action against them, beIN SPORTS has taken the following steps:

- Evidencing the illegal activities carried out on the websites, through several bailiff reports.
- Seeking the identity of the holders of the domain names of the illicit websites. The anti-piracy teams at beIN SPORTS were unable to obtain this information

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<sup>765</sup> *Cour d'appel de Paris Pôle 5, 1ère chambre, 14 octobre 2009, Unibet International c. Fédération française de tennis* <https://www.legalis.net/jurisprudences/cour-dappel-de-paris-pole-5-1ere-chambre-arret-du-14-octobre-2009/>

<sup>766</sup> *Tribunal de Grande Instance de Paris, 5ème chambre, 1ère section, 20 mai 2014, Fédération française de football c. Viagogo inc* <https://www.bertrand-sport-avocat.com/droitdu sport/droit-du-sport/jurisprudence/935-la-federation-francaise-de-football-gagne-une-bataille-contre-viagogo>

<sup>767</sup> the Scaleway case



because said domain name holders had chosen to remain anonymous, as revealed by the “Whois” records. These records indicated that the illegal websites’ IP addresses belonged to Cloudflare, a company incorporated in the United States and located in Texas.

- Contacting Cloudflare. This company provides so-called “reverse proxy” services. The reverse proxy acts as an IP address scrambler: Cloudflare provides an IP address to illegal websites that does not correspond to the server on which they are actually hosted. Each server has its own IP address. Therefore, Cloudflare is able to identify its customers’ hosts. Cloudflare sent beIN SPORTS back to Scaleway, which is identified as the host of the illegal websites based on the real IP address of the websites. However, Cloudflare did not provide beIN SPORTS with this real IP address.
- Filing a complaint against Scaleway as the hosting service provider for the illicit websites on the ground of Article 6-II of the LCEN and Article 145 of the French Civil Procedure Code in order to obtain the identification data relating to the litigious websites and the pirates operating them. In response, Scaleway objected that it was not, in its opinion, a hosting provider within the meaning of the LCEN because it was merely providing the leasing of a dedicated server to its customers who could, themselves, provide hosting services.

In a decision dated 26 March 2021, the President of the Paris Civil Court (*Tribunal Judiciaire*) ruled in favour of Scaleway and rejected beIN SPORTS’ request on the ground that Scaleway could not be considered to be the host of the disputed websites within the meaning of the Article 6-II of the LCEN, as Scaleway was merely leasing servers. Therefore, the judge considered that Scaleway was not subject to the obligation to store identification data of the users of its services (contrary to a real “host”) and could not be ordered to provide the information requested by beIN SPORTS. As a result, beIN SPORTS was unable to identify any of the individuals behind the five pirate websites that were the subject of its action.

#### 6.11.4.3. Knowledge and awareness of illegal activity

Under Article 14 of the E-Commerce Directive, a liability exemption for hosting providers is provided on condition that the provider does not have actual knowledge of illegal activity or information or that the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

French courts rely on the notification (notice and take-down) conditions listed in Article 6-1-5 of the LCEN, i.e. that the hosting service provider receive the following information:

- the identification of the notifying party (natural person or legal entity)
- the description of the illegal content and its location
- the legal reasons for which the illegal content should be removed or blocked



- a copy of the mail sent to the author or publisher of the illegal information or activities requesting their suspension, removal or modification, or a justification that the publisher could not be contacted.

The hosting service provider can be held liable and/or in breach of contract if it removes or blocks content hosted by its services which is not blatantly illegal or if it does not receive the necessary elements to be able to remove or block the illegal content.

A few examples of cases regarding the notification requirements as per Article 6-I-5 of the LCEN are as follows:

- Dailymotion, a platform hosting third-party videos (TV series, films, news and TV programmes), was sanctioned for not blocking access to infringing content “promptly” (four days passed between the notification and the withdrawal).<sup>768</sup>
- SPPF, a collective society lost its lawsuit against YouTube, and was sanctioned because it refused to collaborate in order to allow the hosting platform to use its tool to prevent illegal content already notified from being published again.<sup>769</sup>
- A rights owner lost against a hosting service provider because the rightsowner had not notified the website making available the illegal content prior to suing the hosting provider, even though the contact details were accessible on its blog.<sup>770</sup>
- A hosting platform lost against collective management societies and rights owners for not promptly blocking access to infringing content (music videos and films). Although duly notified by the plaintiffs, the hosting platform considered that counterfeit content did not qualify as “blatantly infringing content”.<sup>771/772</sup>

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<sup>768</sup> Tribunal de Grande Instance de Paris 3ème chambre, 4ème section, 13 septembre 2012, TF1 et autres / Dailymotion: <https://www.legalis.net/jurisprudences/tribunal-de-grande-instance-de-paris-3eme-chambre-4eme-section-jugement-du-13-septembre-2012/>

<sup>769</sup> Tribunal de Grande instance de Paris 3ème chambre, 4ème section, 28 avril 2011, SPPF / Youtube, Google France, Google Ireland: <https://www.legalis.net/jurisprudences/tribunal-de-grande-instance-de-paris-3eme-chambre-4eme-section-jugement-du-28-avril-2011/>

<sup>770</sup> Tribunal de Grande Instance de Paris, Ordonnance de référé 20 octobre 2010, Alexandre B. / JFG Networks : <https://www.legalis.net/jurisprudences/tribunal-de-grande-instance-de-paris-ordonnance-de-refere-20-octobre-2010-2/>

<sup>771</sup> Tribunal judiciaire de Nancy, jugement correctionnel, 23 avril 2021, SACEM, SCPP, Warner et autres / DStorage et M. X.: <https://www.legalis.net/jurisprudences/tribunal-judiciaire-de-nancy-jugement-correctionnel-du-23-avril-2021/>

<sup>772</sup> According to Article 53 of the Code of Criminal Procedure: “A crime or misdemeanour that is currently being committed, or has just been committed, shall be deemed to be flagrant (or blatant). There is also a crime or offence in flagrante delicto when, in the immediate vicinity of the action, the suspected person is pursued by public clamour, or is found in possession of objects, or presents traces or clues, suggesting that he has participated in the crime or offence.



#### 6.11.4.4. Notice and take-down requirements

There are no cases on notice and take-down requirements. As mentioned above, the courts rely on the notification (notice and take-down) conditions listed in Article 6-1-5 of the LCEN.<sup>773</sup>

#### 6.11.4.5. Removal and blocking orders

The courts often apply measures to block illegal content against ISPs or to de-index content against search engines.

An example is the “Allostreaming case” in which the Paris Court of First Instance ordered five access service providers to block several Allostreaming websites and three search engines to de-index them. The decision did not, however, extend to related domain names or mirror sites, instead requesting the plaintiffs to file new emergency procedures if and when necessary.<sup>774</sup>

#### 6.11.4.6. Measures against end-users ordered by the courts

There are only a few cases in which the rightsholders or collective management societies sued the infringers, as for example:

- A case before the Nanterre Civil Court in which collective management societies sued six people who had illegally uploaded a movie on the internet before its official release in movie theatres. The defendants were condemned, at the criminal level, to a one-month suspended prison sentence (*sursis*) with a warning that a new conviction would lead to the enforcement of the sentence (without application to the criminal record). At the civil level, the defendants were sentenced to pay lump sums of EUR 15 000 in joint and several liability (*condemnation solidaire*).<sup>775</sup>
- In 2013, an IT student was sued by rightsholders and collective management societies for developing and providing a software program to circumvent the

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<sup>773</sup> See section 6.11.4.3. of this country report.

<sup>774</sup> *Tribunal de Grande Instance de Paris, Ordonnance de référé 28 novembre 2013, APC et autres / Auchan Telecom et autres*: <https://www.legalis.net/jurisprudences/tribunal-de-grande-instance-de-paris-ordonnance-de-refere-28-novembre-2013>

<sup>775</sup> *Tribunal de grande instance de Nanterre 15ème chambre Jugement du 12 février 2009, TF1, SEV et autres / Cédric P. et autres*: <https://www.legalis.net/jurisprudences/tribunal-de-grande-instance-de-nanterre-15eme-chambre-jugement-du-12-fevrier-2009/>



technical protection system used by a legal music platform and was sentenced to pay a lump sum of EUR 15 000.<sup>776</sup>

#### 6.11.4.7. Compensation criteria adopted by the courts

Regarding the compensation criteria adopted by the courts, French law does not recognise the notions of punitive or alternative damages. In civil law, the parties must prove the damages incurred based on civil liability (fault, damage, causality) and claim compensation on that basis, plus liquidated damages (*dommages et intérêts*).

In the *FFT v. Unibet* case, damages were awarded to the FFT based primarily on the violation of its exploitation rights and trademark infringement. The criteria used to assess the damages for violating the exploitation rights of the FFT were the “value” of the tournament (Roland Garros – the French Open), the reputation of the event, its worldwide exposure and the fact that Unibet continued to act illegally even after having been notified by the FFT.

In the *FFF v. Viagogo* case, the court ruled that the financial damage incurred by the FFF was nil as the tickets were being resold on Viagogo, i.e. they had been sold a first time by the FFF. The court however assessed the “moral” damage (i.e. damage to the image of the FFF) incurred by the FFF at EUR 50 000.

#### 6.11.4.8. Criminal sanctions ordered by the courts

On 8 June 2020, the Rennes specialised jurisdiction for organised crime and financial and/or complex offences (JIRS) rendered a judgement convicting five individuals charged, in particular, with unauthorised reproduction, communication and broadcasting to the public of sports television programmes to the prejudice of beIN Sports France, SFR and Canal +.<sup>777</sup> The individuals were prosecuted for having created, maintained and operated a “galaxy” of several dozen websites (amongst which the core website “beinsports-streaming.com”), broadcasting illegally streamed sports content 24/7 between 2014 and 2018.

The trial held on 5 March 2020 was the result of a thorough and complex investigation which allowed the individuals who had implemented this illegal activity to be identified, along with their *modus operandi*. It also allowed analysis of the financial streams which some of them had benefitted from, in particular through advertising on the illegal websites. The court sanctioned the defendants with sentences of up to several

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<sup>776</sup> Tribunal de grande instance de Nîmes Chambre correctionnelle, 28 juin 2013, *Blogmusik, Sacem et autres / Jérôme G.*: <https://www.legalis.net/jurisprudences/tribunal-de-grande-instance-de-nimes-chambre-correctionnel-jugement-du-28-juin-2013/>

<sup>777</sup> The beinsportstreaming.com case,



months' imprisonment, as well as with significant fines. Several properties and goods seized during the investigation, considered as profits of the criminal activity, were also confiscated. A further hearing will take place in autumn 2021 on the civil claims to be awarded to beIN Sports France, SFR and Canal +, civil parties who estimate at several million euros the damage suffered in this case.

A further decision was rendered by the same jurisdiction on 10 March 2021 on the civil claims: EUR 7 million damages were awarded to beIN, CANAL+ and RMC. An appeal has been filed only in respect of the damages awarded (the criminal convictions are final).

The other following two cases related to the application of criminal sanctions to online piracy of audiovisual sports content were identified:

- the Paris Court of Appeal decision dated 14 October 2009<sup>778</sup> between the FFT and Unibet, a betting platform located in Malta
- the Civil Tribunal of Paris (Tribunal de Grande Instance) decision dated 20 May 2014<sup>779</sup> between the French football federation and Viagogo Inc.

### 6.11.5. Reports and studies

The HADOPI has published several studies and reports on online piracy of IP protected content. The recent reports and studies include the following:

- “Joint report by the CSPLA (High Council for Intellectual Property) / HADOPI / and CNC (National Centre for Cinema): towards an effective application of intellectual property on digital P2P platforms: State of the art and proposals on content recognition tools” (*Rapport CSPLA / HADOPI / CNC: vers une application effective du droit d'auteur sur les plateformes numériques de partage: état de l'art et propositions sur les outils de reconnaissance des contenus*) - April 2020<sup>780</sup>;
- “Illegal access to cultural content on social networks” (*Accès illicite à des contenus culturels sur les réseaux sociaux*) - October 2019<sup>781</sup>
- “Study on the illegal use of live TV programmes” (*Étude: La consommation illicite de programmes TV en direct*) – May 2019<sup>782</sup>
- “Study on the illegal ecosystem of digital cultural goods” (*Étude: L'écosystème illicite de biens culturels dématérialisés*) – January 2019.<sup>783</sup>

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<sup>778</sup> *Cour d'appel de Paris Pôle 5, 1ère chambre, 14 octobre 2009, Unibet International c. Fédération française de tennis*: <https://www.legalis.net/jurisprudences/cour-dappel-de-paris-pole-5-1ere-chambre-arret-du-14-octobre-2009/>

<sup>779</sup> *Tribunal de Grande Instance de Paris, 5ème chambre, 1ère section, 20 mai 2014, Fédération française de football c. Viagogo inc.*: <https://www.bertrand-sport-avocat.com/droitdu sport/droit-du-sport/jurisprudence/935-la-federation-francaise-de-football-gagne-une-bataille-contre-viagogo>.

<sup>780</sup> <https://www.Hadopi.fr/ressources/etudes/rapport-cspla-Hadopi-cnc-vers-une-application-effective-du-droit-dauteur-sur-les>.

<sup>781</sup> <https://www.Hadopi.fr/ressources/etudes/etude-acces-illicite-des-contenus-culturels-les-reseaux-sociaux>.

<sup>782</sup> <https://www.Hadopi.fr/ressources/etudes/etude-la-consommation-illicite-de-programmes-tv-en-direct>.



In October 2018, the French National Assembly published a report entitled “Report on the conclusion of the works of the information task force on a new regulation of audiovisual communication in the digital age” (*Rapport d’information de l’Assemblée Nationale en conclusion des travaux de la mission d’information sur une nouvelle réglementation de la communication audiovisuelle à l’ère numérique*).<sup>784</sup>

Three recent studies published by the HADOPI are also related to the specific issue of illegal online transmission of sports events:

- “Operational recommendations to guarantee the effectiveness of blocking measures against cultural and sports content piracy” (Rapport de préconisations opérationnelles afin de garantir l’effectivité des mesures de blocage contre le piratage des contenus culturels et sportifs) December 2020.<sup>785</sup> The report recommends building on the public authority’s identification mission (including to detect circumvention strategies and pirated sports content offers), and promoting the exchange of best practice at the international level; to detail certain procedural aspects at the judicial level (e.g. providing the means to target a plurality of intermediaries; providing for a specialised judge for sports piracy; recognising the dynamic character of injunctions issued by the judge, based on Article L. 336-2 CPI; making ISPs responsible for contesting requests made by rightsholders in the context of dynamic injunctions; identifying the real costs of blocking measures); clarifying the public authority’s role as a trusted third party.
- “Online sports broadcasting: developing market and uses – joint study by the CSA and HADOPI” (*La diffusion du sport sur internet: un marché et des usages en développement*) – March 2020.<sup>786</sup> This study analyses the offer available in France and abroad, and the economic models and strategies implemented by the players with regard to user behaviour and profile.
- “Study on the illegal use of live TV programmes” (*Étude: La consommation illicite de programmes TV en direct*) – May 2019.<sup>787</sup> In this study, HADOPI estimated that illicit consumption of live TV programmes already involves a quarter of internet users and that these practices are increasing.

According to this study, the technologies and business models used for the illegal streaming of sports content are:

- illegal Internet Protocol Television (IPTV – 5% of illegal viewing), through a box plus an activation code or through an application. Illegal IPTV gives access to a

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<sup>783</sup> <https://www.Hadopi.fr/ressources/etudes/etude-lecosysteme-illicite-de-biens-culturels-dematerialises>.

<sup>784</sup> [https://www.assemblee-nationale.fr/dyn/15/rapports/cion-cedu/l15b1292\\_rapport-information#](https://www.assemblee-nationale.fr/dyn/15/rapports/cion-cedu/l15b1292_rapport-information#).

<sup>785</sup> [https://www.Hadopi.fr/sites/default/files/sites/default/files/ckeditor\\_files/2020\\_12\\_02\\_rapport\\_moyens\\_operationels\\_accompagnement\\_mesures\\_blocage.pdf](https://www.Hadopi.fr/sites/default/files/sites/default/files/ckeditor_files/2020_12_02_rapport_moyens_operationels_accompagnement_mesures_blocage.pdf).

<sup>786</sup> <https://www.Hadopi.fr/ressources/etudes/la-diffusion-du-sport-sur-internet-un-marche-et-des-usages-en-developpement-etude>.

<sup>787</sup> <https://www.Hadopi.fr/ressources/etudes/etude-la-consommation-illicite-de-programmes-tv-en-direct>.





- large number of TV channels, either in return for a paid subscription to the (illegal) service, or for free (but the service includes a lot of commercials)
- livestreaming (17% of illegal viewing), through online search of URLs pointing toward the specific event
  - social networks (14% of illegal viewing).

In France, there are also studies describing the legal offer of online sports content.

In November 2020, the CSA published a report entitled “The sports capture sector” (*Le secteur de la captation sportive*). This report focused on the quality and attractiveness of legal sports programmes, the evolution of the sports event sector and the role of the major economic/operational players in the past few years (broadcasters, sports event organisers, technical service providers, etc.) as well as the evolution of certain regulations.

Regarding the awareness campaigns related to online piracy, Article L.312-6 of the Education Code provides that:

*Mandatory arts courses are given in elementary and middle schools (...). These courses include at least a music class and a fine arts class. Their purpose is to provide an introduction to arts history and to the different types of arts. (...) During these courses, the students receive information on the dangers of downloading and of illegally providing works protected by intellectual property or a related right for arts creation.*

One of the missions of HADOPI is to promote the development of “legal” offers. To accomplish this goal, workshops in schools and in universities have been organised by the HADOPI.<sup>788</sup>

Pursuant to Law No. 2006-961 of 1 August 2006 regarding intellectual property and related rights in the information society (*Loi n° 2006-961 du 1er août 2006 relative au droit d’auteur et aux droits voisins dans la société de l’information – Loi DADVSI*) ISPs must send awareness messages to their users focusing on the dangers of downloading and providing content illegally.<sup>789</sup>

On 23 March 2015, the major advertising agencies, rightsholders and advertisers signed a Charter of good practice in online advertising for the enforcement of intellectual property and related rights (*Charte de bonne pratique dans la publicité en ligne pour le respect du droit d’auteur et des droits voisins*).<sup>790</sup> The purpose of this charter was for the

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<sup>788</sup> <https://www.Hadopi.fr/organisation/encouragement-au-developpement-de-loffre-legale>.

<sup>789</sup> <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000266350/2021-01-20/>.

<sup>790</sup> <https://www.culture.gouv.fr/Presse/Archives-Presses/Archives-Communiqués-de-presse-2012-2018/Annee-2017/Charte-de-bonnes-pratiques-dans-la-publicite-pour-le-respect-du-droit-d-auteur-et-des-droits-voisins-Remise-du-rapport-d-activite-2015-2016>.

advertising agencies to implement a process to increase the fight against illegal websites, including educational and awareness-raising actions.<sup>791</sup>

### 6.11.6. Data compilation

This country report is based on data compiled by Bénédicte Deleporte-Wentz, Attorney-at-Law, member of the Paris Bar Association (*Barreau de Paris*). She specialises in IT law, including computer law, internet law (e-commerce, online payments, domain names, etc.), data privacy, intellectual property and, more generally, business law (contracts, distribution, etc.).

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<sup>791</sup> <https://www.culture.gouv.fr/Presse/Archives-Presses/Archives-Communiqués-de-presse-2012-2018/Annee-2017/Charte-de-bonnes-pratiques-dans-la-publicite-pour-le-respect-du-droit-d-auteur-et-des-droits-voisins-Remise-du-rapport-d-activite-2015-2016>.



## 6.11.7. Annex

**Table 77. Overview of relevant transposition measures**

EU directives	National law
<b>Directive 98/84/EC on the legal protection of services based on, or consisting of, conditional access</b> <sup>792</sup>	French Criminal Code ( <i>Code pénal</i> ) <sup>793</sup>
<b>Article 5 of Directive 98/84/EC – Infringing activities</b>	Articles 323-1 to 323-8 of the Criminal Code
<b>Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society (InfoSoc Directive)</b> <sup>794</sup>	Law No. 2006-961 of 1st August 2006 on Copyright and Neighbouring Rights in the Information Society <sup>795</sup>  Intellectual Property Code <sup>796</sup>  Law No. 86-1067 of 30 September 1986 as amended on freedom of communication <sup>797</sup>
<b>Article 6 InfoSoc Directive – Obligations as to technological measures</b>	Article L. 331 - 5 et seq. of the Intellectual Property Code
<b>Article 8 – Sanctions and remedies</b>	Articles 79.1 to 79.5 of the law on freedom of communication
<b>Directive 2004/48/EC on the enforcement of intellectual property rights (IPRED)</b> <sup>798</sup>	Law No. 2007-1544 of 29 October 2007 on the fight against IP infringement <sup>799</sup>
<b>Article 6 IPRED – Evidence and Article 7 IPRED – Measures for preserving evidence</b>	N/A

<sup>792</sup> Directive 98/84/EC on the legal protection of services based on, or consisting of, conditional access: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31998L0084&from=EN>.

<sup>793</sup> [https://www.legifrance.gouv.fr/codes/section\\_lc/LEGITEXT000006070719/LEGISCTA000006149839?tab\\_selection=all&searchField=ALL&query=code+p%C3%A9nal&page=1&init=true&anchor=LEGISCTA000006149839#LEGISCTA000006149839](https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070719/LEGISCTA000006149839?tab_selection=all&searchField=ALL&query=code+p%C3%A9nal&page=1&init=true&anchor=LEGISCTA000006149839#LEGISCTA000006149839).

<sup>794</sup> Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society (InfoSoc Directive): <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32001L0029&from=EN>.

<sup>795</sup> *Loi n° 2006-961 du 1er août 2006 relative au droit d'auteur et aux droits voisins dans la société de l'information* <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000266350/2021-01-19/>.

<sup>796</sup> [https://www.legifrance.gouv.fr/codes/article\\_lc/LEGIARTI000038835818](https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000038835818).

<sup>797</sup> <https://www.legifrance.gouv.fr/loda/id/LEGITEXT000006068930/2021-01-19/>.

<sup>798</sup> Directive 2004/48/EC on the enforcement of intellectual property rights (IPRED): [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32004L0048R\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32004L0048R(01)&from=EN)

<sup>799</sup> *Loi n° 2007-1544 du 29 octobre 2007 de lutte contre la contrefaçon* and Decree No. 2008-624 of 27 June 2008 <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000000279082>



EU directives	National law
Article 8 IPRED – Right of information	N/A
Article 9 IPRED – Provisional and precautionary measures	N/A
Article 10 IPRED – Corrective measures	Articles 6.VI.1 and 6.VI.2 of the LCEN
Article 11 IPRED – Injunction	Article 6.I.8 of the LCEN
Article 12 IPRED – Alternative measures	N/A
Article 13 IPRED – Damages	N/A
Directive 2000/31/EC on certain legal aspects of information society services (E- Commerce/ECD) <sup>800</sup>	Law No. 2004-575 of 21 June 2004 for confidence in the digital economy ( <i>Loi n° 2004-575 du 21 juin 2004 pour la confiance dans l'économie numérique – LCEN</i> )
Article 12-15 ECD – Liability of intermediary service providers	Article 6.I.2 (civil liability) and 6.I.3 (criminal liability)
Article 17 ECD – Out-of-court dispute settlement	N/A
Article 20 ECD – Sanctions	Articles 6.VI.1 and 6.VI.2 of the LCEN
Directive EU 2019/790 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (DSM Directive) <sup>801</sup>	Law No. 2019-775 of 24 July 2019 on the creation of a related right for the benefit of press agencies and press publishers <sup>802</sup>  Law No. 2020-1508 of 3 December 2020 on several adaptative provisions to EU law in the economic and financial areas <sup>803</sup>  Article 17 of the DSM directive was transposed by <i>Ordonnance n° 2021-580 du 12 Mai 2021</i>

<sup>800</sup> Directive 2000/31/EC on certain legal aspects of information society services (E- Commerce/ ECD): <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32000L0031&from=EN>

<sup>801</sup> Directive EU 2019/790 on copyright and related rights in the Digital Single Market: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L0790&from=EN>

<sup>802</sup> *Loi n° 2019-775 du 24 juillet 2019 tendant à créer un droit voisin au profit des agences de presse et des éditeurs de presse* : <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000038821358/>

<sup>803</sup> *Loi n° 2020-1508 du 3 décembre 2020 portant diverses dispositions d'adaptation au droit de l'Union européenne en matière économique et financière* : <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042607095>