

# Table of Contents

About the Author	xix
List of Abbreviations	xxi
English-French Dictionary	xxiii
French-English Dictionary	xxxii
Introduction	1
I Access to Information on French Legislation and Case Law	1
[A] Legislation	1
[B] French Case Law	2
II Access to Information on Business Practices	3
[A] Information from the Collecting Societies	3
[1] Music Publishing (SACEM)	3
[2] Audiovisual Works, Performance Arts, and Illustration	4
[a] SACD	4
[b] Scam	4
[3] Graphic Arts and Photographs	4
[a] ADAGP	4
[b] SAIF	5
[4] Performers' Rights	5
[a] ADAMI	5
[b] SPEDIDAM	5
[5] Producers' Rights	5
[a] SCPP	5
[b] SPPF	6
[c] SCPA	6
[6] Remuneration Rights	6
[a] SPRE	6

## Table of Contents

---

	[b] Copie France	7
	[c] CFC	7
III	Information from the Public Administrative Organisations	7
	[A] CNC and the Public Registry for Films and Audiovisual Works ('RPCA')	7
	[B] HADOPI	8
	[C] CSPLA	8
	[D] CSA	8
CHAPTER 1		
	Subsistence of Copyright and Neighbouring Rights	11
§1.01	Subsistence of Copyright	11
	[A] Formalities	11
	[1] No Formalities in Copyright Law	11
	[2] Legal Deposit	11
	[a] General Rules	11
	[b] Computer Programs and Databases	12
	[c] Internet: Websites, Newsletters and Streaming Media	12
	[d] Films	12
	[B] Condition for Protection: Originality	13
	[1] The General Rule: A Work is Original If the Creator Has Made Arbitrary Choices	13
	[2] The Main Types of Works Protected by Copyright	14
	[a] Literary, Scientific and Technical Writings	14
	[b] Musical Works	15
	[c] Photographs	15
	[d] Audiovisual Works	16
	[e] Architectural Works	16
	[f] Adaptations and Translations	17
	[g] Plays: Scenography and Stageplay	17
	[h] Conceptual Art	17
	[i] Works of Applied Art, Clothing and Fashion	18
	[j] No Copyright Protection for Perfume	18
	[k] Video Games and Multimedia Works	18
	[l] Websites	19
	[m] Compilations, Anthologies, Databases	19
	[i] Compilations and Anthologies	19
	[ii] Databases	19
	[n] Computer Programs and Software Products	20
	[i] The Computer Program	20
	[ii] The User's Guide	21
	[iii] The Functionality of Computer Programs	21
	[iv] Graphic User Interface	21
	[o] The Title of a Work	22

Table of Contents

	[i] Case Law Is Unpredictable	22
	[ii] Recommendation	22
	[3] Originality and Evidence before the French Courts	23
	[a] The Rules	23
	[b] Reality Bites (before the Lower Courts)	23
	[c] Recommendations to Take into Account before Starting a Copyright Infringement Case in France	24
§1.02	Subsistence of Neighbouring Rights	25
	[A] Performers	25
	[1] Definition	25
	[2] Secondary Roles	25
	[3] Television Programmes: Participants and Presenters Are Not Performers	25
	[B] Phonogram Producers	26
	[1] Definition of ‘Producer’	26
	[2] Definition of ‘Phonograms’	26
	[C] Videogram Producers	27
	[1] Definition of ‘Producer’	27
	[2] Definition of ‘Videogram’	27
	[D] Broadcasting Organisations	28
	[E] Database Producers	29
	[1] The Producer of a Database	29
	[2] Foreign Database Producers	30
	[F] Producers of Sporting Events	31
CHAPTER 2		
	Ownership	33
§2.01	Copyright Ownership	33
	[A] General Rules	33
	[1] The Author Is the Initial Owner	33
	[2] Works of Collaboration	34
	[a] Definition	34
	[b] Co-ownership	34
	[c] Action in Court	35
	[d] Exploitation of Separate Parts of the Work	35
	[e] Radio Works Are Works of Collaboration (Specific System)	36
	[3] Composite Works	36
	[4] Orphan Works	37
	[5] Married Authors	37
	[B] Automatic Assignments	37
	[1] Computer Programs and Documentation Developed by an Employee or by a Civil Servant	37

## Table of Contents

---

[a]	The Economic Rights Are Automatically Assigned to the Employer or to the State	37
[b]	The Moral Rights of the Author Are Limited	39
[c]	No Specific Remuneration for the Author, Except for Civil Servants	39
[2]	Works Commissioned under an Advertising Agreement	40
[3]	Audiovisual Works	41
[a]	Audiovisual Works Are Works of Collaboration	41
[b]	Presumptions of Authorship	42
[c]	The Moral Rights of the Authors Are Limited	43
[i]	During the Creation of the Audiovisual Work	43
[ii]	During the Exploitation of the Work	44
[d]	Exploitation of Parts That Can Be Separated from the Audiovisual Work	44
[4]	Works Made by Journalists	44
[a]	The Exploitation within the 'Press Publication' and during the 'Reference Period': Automatic Assignment of Rights	45
[i]	The 'Press Publication' Affected by the Automatic Transfer	45
[ii]	The Journalists Affected by the Automatic Transfer	46
[iii]	No Additional Remuneration during the 'Reference Period'	46
[iv]	Exploitation in the 'Press Publication' after the 'Reference Period': Additional Remuneration but No Individual Agreement	46
[v]	The Author Keeps the Right to Exploit His Works	47
[b]	The Exploitation within the Publications of a Group	47
[c]	The Transfer of the Work to a Third Party	48
[5]	Works Created by Civil Servants	48
[a]	The Economic Rights of Civil Servants	49
[b]	The Moral Rights of Civil Servants	49
[6]	The Digital Exploitation of Unavailable Books	50
[a]	The Compulsory Collective Management System	50
[i]	A Six-Month Opt-Out Period for Rightsholders	50
[ii]	After the Opt-Out Period: Right of Preference and Right to Withdraw from the System	51
[b]	Compliance of the Collective Management System with the French Constitution	52
[c]	Permitted Uses for Publicly Accessible Libraries	52
[C]	Presumptions of Ownership	53
[1]	Collective Works	53

	[2] Presumptions of Ownership Created by Case Law to Facilitate Infringement Actions	54
	[D] Issues Relating to Employees	55
	[1] Rules	55
	[2] Recommendation	55
§2.02	Ownership of Neighbouring Rights	55
	[A] The Agreements between Performing Artists and Producers	55
	[1] General Rule: No Presumption or Automatic Assignment	55
	[2] Presumption of Assignment for Audiovisual Agreements	56
	[B] Presumption of Ownership Created by Case Law to Facilitate Infringement Actions	56
CHAPTER 3		
	Moral Rights	57
§3.01	Moral Rights in Copyright	57
	[A] The Right to Paternity and the Right to Integrity	58
	[1] The Right to Paternity	58
	[a] The General Rules	58
	[b] Recommendations	58
	[c] Pseudonymous and Anonymous Works	59
	[2] The Right to Integrity	59
	[a] Physical Integrity	59
	[b] Intellectual Integrity	60
	[3] Characteristics of the Rights to Paternity and to Integrity	60
	[a] During the Author's Lifetime	60
	[i] The Rights Are Attached to the Author	60
	[ii] The Rights Are Perpetual and Imprescriptible	60
	[iii] The Rights May Not Be Transferred or Waived, but They May Be Organised	61
	[b] After the Author's Death	61
	[i] Who Exercises the Rights to Paternity and to Integrity?	61
	[ii] The Rights Are Perpetual and Imprescriptible, but the Right to Integrity Weakens with Time	62
	[c] Foreign Works and Authors in France	62
	[B] Right to Disclose the Work	63
	[1] The Right to Disclose	63
	[2] The Right to Disclose Posthumous Works	63
	[3] The Right to Disclose Is Perpetual	64
	[C] The Right to Reconsider or to Withdraw	64
§3.02	The Moral Rights of Performers	65
	[A] Right to Paternity	66
	[B] Right to Integrity	66
	[C] No Other Rights	67

## Table of Contents

---

[D]	The Characteristics of the Moral Rights of Performers	67
CHAPTER 4		
	Economic Rights	69
§4.01	Economic Rights in Copyright	69
[A]	The Exclusive Rights: The Right of Reproduction and the Right of Communication to the Public (Right of Performance)	69
[1]	The Right of Reproduction	69
[a]	General Features of the Right of Reproduction	69
[b]	The Right of Reproduction of the Author of a Computer Program	70
[i]	Corrections, Back Copies and Analysis	71
[ii]	Decompilation to Ensure Interoperability	71
[iii]	The Interpretation of the Limitations to the Author's Rights	72
[iv]	The Pledge of the Rights to a Computer Program (' <i>Nantissement</i> ')	72
[c]	Distribution Right and the Exhaustion of Rights (First Sale Doctrine)	73
[d]	Rental and Lending Rights	74
[i]	The Rental Right	74
[ii]	The Public Lending Right	74
[2]	The Right of Performance (Right of Communication to the Public)	75
[a]	The Right of Performance	75
[i]	Definition	75
[ii]	The Public in Question	76
[iii]	Hyperlinks	78
[b]	The Right of Communication to the Public of a Work Broadcast by Satellite	78
[c]	The Right of Communication to the Public of a Work Broadcast by Cable	79
[B]	The Resale Right (' <i>Le Droit de Suite</i> ')	79
[1]	Definition and Scope of the Resale Right	80
[2]	The Beneficiaries of the Resale Right	80
[3]	The Works Subject to Payment	81
[4]	The Calculation of the Fees	81
[5]	The Persons Subject to Payment	82
[6]	Information and Payment	83
[C]	Remuneration for Private Copying (Also Concerns Neighbouring Rights)	83
[1]	The Beneficiaries	84
[2]	The Amount and Distribution of the Compensation	84
[3]	The Persons Subject to Payment	85

Table of Contents

	[4] Exceptions	86
	[D] Remuneration for Photocopying	86
§4.02	Economic Rights in Neighbouring Rights	87
	[A] EU Exhaustion of Rights	87
	[B] The Rights of Performers	88
	[C] The Rights of Phonogram Producers	88
	[D] Compulsory Licence for Performers and Phonogram Producers	89
	[1] The Scope of the Licence	89
	[2] The Remuneration	89
	[3] International Issues	90
	[E] The Remuneration for Private Copying	91
	[F] The Rights of Videogram Producers	91
	[G] The Rights of Broadcasting Organisations	91
	[H] Satellite Broadcasting and Cable Retransmission	91
	[1] Satellite Broadcasting	91
	[2] Cable Retransmission	92
	[I] The Sui Generis Rights of Database Producers	92
	[1] 'Extraction' and 'Re-utilisation'	93
	[2] A 'Substantial Part'	94
	[3] Meta Search Engines	94
	[4] Prohibition of Excessive Royalties in Licence Agreements	94
	[J] The Rights of Producers of Sporting Events	95
§4.03	Protection of Technical Measures and Rights-Management Information	95
	[A] The Protection of Effective Technical Measures	96
	[1] Prohibited Acts and Sanctions	96
	[2] Technical Measures and Exceptions	97
	[a] The Protection of Certain Exceptions	97
	[b] Protection Afforded to the Exceptions	98
	[c] The Role of the Haute Autorité (HADOPI)	99
	[3] Technical Measures and Interoperability	99
	[B] Rights-Management Information	101
§4.04	Duration of Economic Rights	101
	[A] Duration of Copyright	101
	[1] General Rules	101
	[a] Duration of Seventy Years Post-mortem	101
	[b] Copyright Restoration	102
	[2] Works of Collaboration	103
	[3] Pseudonymous, Anonymous and Collective Works	103
	[4] Posthumous Works	103
	[5] Extensions of Copyright in Order to Take into Account Wars	104
	[6] The Duration of the Resale Right	105
	[7] Foreign Works	105
	[8] The Public Domain	105

## Table of Contents

---

	[B] Duration of Neighbouring Rights	105
§4.05	Exceptions to Copyright and Neighbouring Rights	106
	[A] General Rules	106
	[1] Exceptions Must Be Construed Restrictively	106
	[2] The Three-Step Test	107
	[3] Moral Rights	107
	[4] Exceptions and Technical Measures	108
	[B] The Exceptions to Copyright and Neighbouring Rights	108
	[1] Performances within the Family Circle	108
	[2] The Private Copying Exception	108
	[3] Temporary Acts of Reproduction	109
	[4] Analyses and Quotations	110
	[a] The Quotation Must Be Short	110
	[b] The Purpose and Character of the Quotation	111
	[5] Incidental Uses	111
	[6] Use of Excerpts of Sporting Events	112
	[7] Press Reviews	112
	[8] Speeches	112
	[9] Work Intended to Be Reproduced in the Catalogue of a Judicial Sale	113
	[10] Exception for Educational Purposes	113
	[11] Parody, Pastiche and Caricature	114
	[a] Freedom to Parody in Accordance with the ‘Rules of the Genre’	114
	[b] The Second Work Must Respect the Parodied Work or Subject-Matter	114
	[i] Identification of the Parodied Work or Subject-Matter	114
	[ii] Absence of Any Denigration of the First Work or Subject-Matter or Its Author	115
	[iii] The Second Work or Subject-Matter Must Be Separate from the First Work or Subject-Matter	115
	[12] Access to the Contents of an Electronic Database	116
	[13] Exception for the Benefit of People with a Disability	116
	[14] Conservation and Consultation	116
	[15] Information of the Public	116
	[16] Works Used for Judicial and Administrative Procedures, Patents, Parliamentary Speeches, Etc.	117
CHAPTER 5		
	Exploitation and Contracts	119
§5.01	Contracts and Collective Management: Applicable Rules	119
	[A] Contracts	119



---

[1]	General Contract Law Applicable to Copyright and Neighbouring Rights Agreements	119
[a]	Requisites for the Validity of Agreements	119
[i]	Consent	119
[ii]	Deception	120
[iii]	Formal Requirements	120
[b]	Transfer of Acquired Rights to Third Parties	121
[c]	Damages for Non-performance	121
[d]	Unforeseen Circumstances	121
[e]	Bankruptcy of the Assignee	122
[f]	Termination for Breach of Contract	123
[2]	Specific Rules Applicable to Copyright Agreements	123
[a]	The Prohibition of a General Assignment of Future Works	123
[b]	Situations in Which the Agreements Have to Be in Writing	124
[c]	The Rights Assigned Must Be Defined Precisely	124
[i]	The Assigned Rights	125
[ii]	Duration of the Assignment and French-Style Perpetuity	125
[iii]	The Territory of the Assignment	126
[d]	Remuneration	126
[i]	Assignment Free of Charge	126
[ii]	General Rule: Royalties Based on the Exploitation of the Work	127
[iii]	The Basis of Calculation	127
[iv]	The Percentage	128
[v]	Exception to the General Rule: Fixed Royalties in the Form of a Lump Sum	128
[e]	VAT Payable on Royalties Paid to Authors	130
[i]	Withholding Tax System on Royalties	130
[ii]	How the System Works	130
[iii]	The Authors May Waive the System	131
[iv]	Contractual Clause	132
[f]	Unforeseen Forms of Exploitation at the Date of the Agreement	132
[g]	The Assignee Must Exploit the Work	132
[h]	Information on the Technical Measures Likely to Be Implemented	133
[i]	Applicable Law	133
[j]	Interpretation of Copyright Agreements	134
[3]	Publishing Agreements	134
[a]	Definition	134

## Table of Contents

---

[b]	Parties to the Agreement and Assignment of the Publishing Agreement	135
[c]	Remuneration	135
[d]	Obligations of the Author	135
[e]	Obligations of the Publisher	136
	[i] Exploitation	136
	[ii] Quantity of Copies to Be Manufactured	136
	[iii] Moral Rights	137
	[iv] Statements and Accounts	137
	[v] Audit and Justifications	137
[f]	Priority Right on Future Works ( <i>'Pactes de Préférence'</i> )	138
	[i] Specified Genres	138
	[ii] The Works Covered by the Priority Right	138
	[iii] Exercising the Option	139
	[iv] Agreement Model: Example of an Exclusive Songwriter's Agreement (with a Band)	139
[g]	Assignment of the Publishing Agreement to Third Parties	142
[h]	Termination of the Publishing Agreement: Sell-Off Period	143
	[i] Bankruptcy of the Publisher	143
[4]	Contracts for the Public Performance of Works	143
[5]	Contracts between Producers and Performers	144
	[a] Formal Requirements, Nature of Contracts and Applicable Law	144
	[b] Remuneration	145
	[i] General Rules	145
	[ii] Audiovisual Sector	146
	[iii] Music Sector	147
[B]	Collective Management	148
	[1] General Rules	148
	[a] Collecting Societies in France Are of a Civil Nature	148
	[b] The Collection of Royalties	148
	[i] Contracts with the Users	148
	[ii] Legal Action	149
	[c] Obligations of the Collecting Societies	150
	[i] Compliance with Competition Law	150
	[ii] Reduced Fees for Associations of General Interest	151
	[iii] Measures to Assist Creation, Live Performances and the Training of Artists	151
	[d] The Control of the Collecting Societies	151

	[2]	The Role of the Collecting Societies in the Music and Audiovisual Sectors	152
	[a]	In the Music Sector	152
		[i] Copyright	152
		[ii] Neighbouring Rights	153
	[b]	In the Audiovisual Sector	154
		[i] Authors	154
		[ii] Performers	154
§5.02		Contractual Practice	154
	[A]	Music Publishing	155
	[1]	Publishing Agreements	155
		[a] General Assignment Clauses	155
		[b] Assignment of the Reproduction Right	157
		[c] Exploitation by the Publisher	158
		[d] Assignment of the Performance Right	159
		[e] Exploitation Abroad / Sub-publishing	161
		[f] Remuneration of the Author for Direct Exploitation by the Publisher	161
		[g] Accounts	163
	[2]	Audiovisual Adaptation: A Separate Agreement from the Publishing Agreement	164
	[B]	Audiovisual Works: Copyright Assignment Agreements	165
	[1]	Television Works	166
		[a] The Agreement for the Assignment of Copyright	166
		[i] Assignment of Rights	166
		[ii] Duration of the Assignment	169
		[iii] Proportional Remuneration	169
		[iv] Exploitation through TV Broadcasting (Including VOD)	169
		[v] Secondary Exploitations	170
		[vi] Merchandising	171
		[vii] A Fixed Remuneration and/or an Advance	171
		[viii] Other Remunerations	172
		[ix] The Definition of the Producer's Net Receipts	173
		[x] Arbitration Clause	175
		[b] The Labour Law Agreement	175
	[2]	Cinema	177
		[a] Exploitation in the Movie Theatres	177
		[b] Videograms	178
		[i] The Determination of the 'Producer's Net Receipts'	178
		[ii] Additional Royalties after Amortisation of the Cost of the Film	178

## Table of Contents

---

CHAPTER 6		
Litigation		179
§6.01	Civil Procedure Applicable in All Cases	179
	[A] Burden of Proof	179
	[1] General Rule: The Parties Have to Prove Their Claim	179
	[2] Access to Evidence and Information	180
	[a] The Evidence Must Be Disclosed during the Pre-trial Phase	180
	[b] Investigations before the Commencement of Legal Proceedings	181
	[c] Investigations during the Proceedings	182
	[i] Evidence Held by the Parties	182
	[ii] Evidence Held by Third Parties	183
	[d] Inquiry Measures	184
	[e] Affidavits	185
	[B] Fighting the Cases in Court	185
	[1] Urgency Proceedings	186
	[a] Summary Proceedings	186
	[i] Situations in Which the Plaintiff May Claim an Interim Injunction	186
	[ii] Urgent Measures	186
	[iii] Protective Measures and Measures to Restore	186
	[iv] Provisional Damages or Payment	187
	[v] The Procedure	187
	[b] Urgency Proceedings on the Merits	187
	[2] Proceedings on the Merits	188
	[a] Proceedings before the Court of First Instance	188
	[i] Procedure before the High Court of First Instance	188
	[ii] Procedure before the Commercial Court	189
	[iii] Lack of Jurisdiction and Procedural Arguments Raised by the Parties	190
	[iv] Pleas of Non-admissibility	190
	[b] Appeal	191
	[3] The Supreme Court	192
	[C] Costs of Actions	193
	[1] Legal Costs (Taxable Charges)	193
	[2] Charges Not Included in the Legal Costs	194
	[3] Contingency Fees: Prohibition of ‘Quota Litis’ Agreements	195
§6.02	Procedures Specific to Infringement Cases	195
	[A] Evidence Gathering	195
	[1] Infringement Seizure ( <i>‘Saisie-Contrefaçon’</i> )	196
	[a] The President’s Order	196

Table of Contents

	[i]	Works and Subject-Matters Protected by Neighbouring Rights	196
	[ii]	Computer Programs and Databases	197
	[iii]	The Procedure in Practice	197
	[b]	Rights and Guarantees of the Distrainee	198
	[i]	Financial Guarantee	198
	[ii]	Lifting the Seizure	198
	[iii]	Time Limit for Taking Action	198
[2]		Customs Authorities	199
	[a]	Customs Detention of Goods at the Request of the Rightholders	199
	[b]	Customs Detention of Goods in the Absence of a Request from the Rightholder	201
[3]		Evidence-Securing on the Internet	201
	[a]	Bailiff's Report	201
	[b]	Sworn Agents	203
	[c]	Information from Internet Intermediaries	203
[4]		Investigations during the Proceedings	204
[B]		Civil Procedure in Infringement Cases	205
	[1]	The Infringement Acts	205
	[a]	Copyright and Neighbouring Rights	205
	[i]	The Infringing Acts	205
	[ii]	Intention	206
	[b]	Unfair Competition (Tort)	206
[2]		Locus Standi	207
	[a]	The Rightholders	207
	[i]	Authors, Performers and Producers	207
	[ii]	Licencees and Distributors	208
	[iii]	Foreign Rightholders	208
	[b]	Collecting Societies and Trade Unions	209
[3]		Jurisdiction	209
	[a]	Specialised Courts	209
	[b]	General Jurisdiction Rules	210
	[c]	Internet Sites Abroad Accessible in France	211
[4]		Applicable Law	211
	[a]	Contracts	211
	[b]	International Infringement Cases	211
[5]		Time Limitation in Infringement Cases	213
[6]		Remedies	213
	[a]	Damages	213
	[i]	Protective Measures	213
	[ii]	The Evaluation of the Damages	214
	[iii]	Alternative to the Assessment of Damages: Lump Sum	214

## Table of Contents

---

	[iv] Additional Damages: The Proceeds of the Infringement	215
	[b] Additional Remedies: Confiscation and Publicity	215
[C]	Penal Provisions	215
	[1] The Infringement Acts and Sanctions	215
	[a] Infringement of Copyright and Neighbouring Rights	216
	[b] Computer Programs Manifestly Intended to Communicate Unauthorised Works to the Public	217
	[c] Protection of Technical Measures	217
	[d] Additional Sanctions	217
	[i] Closure of the Establishment	217
	[ii] Confiscation, Destruction and Publicity	218
	[iii] Suspension of Internet Access	218
	[iv] The Existence of an Agreement between the Victim and the Infringer	218
	[e] Sanctions Specific to Legal Entities	218
	[2] The Intention	219
	[3] Prescription	219
[D]	The Prevention of Infringement on the Internet	220
	[1] The Prevention of Unlawful Downloading and Communication to the Public	220
	[a] Computer Programs Used for Infringement Acts	220
	[b] Internet Services Used for Infringement Acts	221
	[2] Liability of Internet Users	222
	[3] Liability of Intermediary Service Providers	223
	[a] ISPs	224
	[b] Hosting Providers	224
	[i] Limitation of Liability	224
	[ii] Notice to Take Down	225
	[iii] No Stay Down Obligation	226
	Bibliography	227
	Index	229