



**THE RIGHTS OF FRENCH AND FOREIGN
PRODUCERS OF PHONOGRAMS AND VIDEOGRAMS
IN FRANCE**

**SOCIÉTÉ CIVILE DES PRODUCTEURS
DE PHONOGRAMMES EN FRANCE**

SPPF

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LEGAL AND REGULATORY FRAMEWORK IN FRANCE

Since July 1, 1992, the Intellectual Property Code has regrouped:

- The provisions of the **Law of July 3, 1985**, relating to "the rights of authors and the rights of performers, producers of phonograms and videograms and of audiovisual communication companies", which confers rights in France to producers of phonograms and videograms as well as to performers.
- The provisions of the **Law of March 11, 1957**, on literary and artistic property, which confers rights in France to authors.

The intellectual Property Code confers specific **economic rights** to performers and to **producers of phonograms and videograms**. The latter are defined as the **natural or legal person who takes the initiative and the responsibility for the initial fixation of a sequence of sounds and of a sequence of images, whether accompanied by sounds or not**.

Moreover, regulatory provisions specify the conditions for application of the articles setting for the principle of **Equitable Remuneration** and of the **right to remuneration for Private Copy** (Articles L. 214-1 and L. 311-1 of the Intellectual Property Code).

LEGAL PROVISIONS

RIGHTS CONFERRED ON PRODUCERS OF PHONOGRAMS AND VIDEOGRAMS

I/ THE EXCLUSIVE RIGHT TO AUTHORIZE OR TO FORBID (Articles L. 213-1 and L. 215-1 of the Intellectual Property Code)

1. **The total or partial reproduction** of their phonograms and/or videograms, whatever the intended use of such reproduction, with the exception of private copies (see below) and reproductions strictly reserved for private or for use by critics or short extracts (Article L. 211-3 of the Intellectual Property Code).

2. **The mode of exploitation by which copies are made available to the public for private use, i.e.:**

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|------------|---|-----------------------------------|
| - sale |) | The producer may forbid some |
| - exchange |) | of these modes of exploitation of |
| - rental |) | his phonograms and/or videograms |

3. **Communication to the public:**

- of phonograms

- either directly in a public place, in the particular case when such communication occurs as part of a performance (Article L. 214-1 - 1° of the Intellectual Property Code).
- or indirectly, i.e. transmission by wire, cable or satellite, either of the original phonogram or of its lawful reproduction, with the exception of radio broadcasting and a simultaneous cable television broadcasting of such a radio broadcast in its entirety (Article L. 214-1 - 2° of the Intellectual Property Code) or its dissemination under the cases provided in Article L. 211-3 - 3° of the Intellectual Property Code.

- of videograms:

- The producer may forbid any communication, whether direct or indirect, to the public of his videograms.

II / THE RIGHT TO REMUNERATION **(Articles L. 214-1 and L. 311-1 and following of the Intellectual Property Code)**

These rights, whose administration must obligatorily be made through the intermediary of collectif societies for the purpose of collecting and distributing such remuneration include, pursuant to the terms of Articles L. 214-5 and L. 311-6 of the Intellectual Property Code :

1. The right to Equitable Remuneration (equivalent to a compulsory license)

- For the direct communication of phonograms published for commercial purposes in a public place (other than usage as part of a performance)
- For the radio broadcasting of phonograms published for commercial purposes and the simultaneous cable television broadcasting of such a radio broadcast in its entirety.

2. The right to remuneration for Private Copy of phonograms and videograms, provided that they reproduce a work of art (within the meaning of the Intellectual Property Code).

3. Articles L. 214-1 and L. 311-1 and following of the Intellectual Property Code provide that such remuneration shall be paid for some use of phonograms (see above page 4) and reproduction for strictly private use of phonograms and/or videograms, no matter where the works were originally recorded. However, Articles L. 214-2 and L. 311-2 of the Intellectual Property Code expressly state that, **subject to the provisions of International Conventions, such rights to remuneration are only shared by producers whose phonograms and/or videograms were originally fixed in France.**

SOME USEFUL SPECIFICS

The 1985 Law is now codified, and it took effect on January 1, 1986.

Articles L. 214-1 (last paragraph) and L. 311-7 of the Intellectual Property Code establish payment formulas for the distribution of remuneration between the different categories of beneficiaries.

. For Equitable Remuneration	50,00%)	Performers
	50,00%)	Producers
. For Private Copy of Phonograms	50,00%)	Authors
	25,00%)	Performers
	25,00%)	Producers
. For Private Copy of Videograms	33,33%)	Authors
	33,33%)	Performers
	33,33%)	Producers

It is considered that public policy is concerned in these payment formulas.

Article L. 211-4 of the Intellectual Property Code limits the producer's **economic rights to a duration of fifty years**, as from January 1 of the calendar year following that of the initial communication to the public of the phonogram or videogram.

Finally, in application of the provisions of Article L. 321-9 of the Intellectual Property Code, **non-trading companies must use for activities involving assistance with creation, the extension of live performances and performer-training activities 25 % of sums received from Private Copies.**

Furthermore, SPPF goes on to affect 50 % of non-distributable sums received under the terms of Equitable Remuneration despite the new provisions of the law of march 27, 1997 which has abolished obligations concerning the appropriation of these sums.

REGULATORY PROVISIONS

EQUITABLE REMUNERATION

The decision of September 9, 1987, fixing the amount and the means of payment of Equitable Remuneration, which took effect on January 1, 1988, and applies to broadcasters, discotheques and leisure facilities and to background music and closed-circuit sound tracks, was determined by a Joint Administrative Commission created by Article L. 214-4 of the Intellectual Property Code, failing agreements specific to each branch of activity provided by Article L. 214-3 of the Intellectual Property Code.

This schedule had to be modified in 1993 and 1996 respectively in the radios and discotheques sectors.

1. In the Radio sector:

Following a legal action before the Conseil d'Etat (French Administrative Supreme Court) by an organisation representing Local Private Radio Stations petitioning for the cancellation of the provisions of this decision applicable to local and "fringe" radio stations, French lawmaker took action under the Law of July 20, 1993, to validate this remuneration scale for the period running from January 1, 1988, to December 31, 1993.

A new Commission, of the same type as the preceding one, began deliberations on September 30, 1993, and on December 22, 1993, fixed the new remuneration scale applicable to all radio stations. It was published in the Journal Officiel (Official Journal) on January 4, 1994, and took effect on January 1, 1994.

1. In the Discotheque sector:

The SPRE (Company which includes non-trading companies representing performers - ADAMI and SPEDIDAM - and Producers - SCPP and SPPF -, which is responsible in France for collecting Equitable Remuneration from users), was confronted with an almost general refusal to pay the Equitable Remuneration in this sector and therefore had to undertake an intense policy of litigation in order to carry out its task of collection. Faced with this prejudicial situation for Performers and Producers of phonograms, the SPRE was able to obtain from the Minister of Culture the formation of a new Administrative Commission with the task of setting a new schedule for future application to this category of payers.

This Commission, which was formed in March 1995, adopted on 28th June 1996 the Equitable Remuneration schedule applicable to Discotheques as from 1st August 1996. This schedule was published in the French Official Journal on 25th July 1996.

Moreover, heads of agreement were signed in July 1996 between the SPRE and certain groups representing discotheques, which defined the payment conditions for the Equitable Remuneration since 1988 together with the methods of application for the decision of 28th June 1996.

**THE EQUITABLE REMUNERATIONS SCALE
WHICH CURRENTLY APPLIES**

I- IN THE FIELD OF BROADCASTING

- **For National State-owned Companies, a rate of 4.446%** is applied on a base which includes all income linked to sound broadcasting, including advertising income less broadcasting costs and payments for Performers' social costs incurred for the making of the musical programmes and after application of the annual rate for the use of phonograms published for commercial purposes in relation to all programmes transmitted.

- **For Private Sound Radio Broadcasting Services, a rate of 4,25%** is applied on a base made up of all revenues, including advertising, after deducting the following, upon the presentation of documented proof:
 - uncollectible accounts,
 - advertising exchanges, under certain conditions determined by the joint Administrative Commission,
 - a 22 % deduction for services which broadcast, at least five hours per day, programs made up of news and non-musical magazines, created by professional reporters within the meaning of the provisions of the Labor Code,
 - a 22 % deduction, which cannot be added to the preceding deduction, for services which create and broadcast, during peak hours, at least five hours per day of non-musical local interest programs,
 - a 10 % deduction for services which provide the collecting societies for the purpose of collecting and distributing neighbouring rights, with the documentary items and documentation necessary for the collection and distribution of remuneration.

The usage time of phonograms, applied to the above base, is set at a fixed level of 85 %, unless the radio station shows proof of a lower proportion.

An annual minimum for collection (1 500 french francs) has been set for these remuneration payers.

(decision of December 22, 1993 taking effect from the 1st January 1994)

- **For State-Owned and Private Television Stations, a rate of 2%** applied on a base made up of all revenues, including advertising, after deducting advertising department charges limited to 28% and some other network charges; the usage time of phonograms is fixed for each Company in relation to its program planning.

(decision of September 9, 1987)

II- IN THE FIELD OF DISCOTHEQUES AND LEISURE FACILITIES

Since the statutory decision taken in June 1996, a **rate of 1.650%** has been applied on a base which includes all gross income received from entrance charges together with the sale of drinks or meals, including service charge, excluding tax, after deduction of:

- an allowance of 15 % for establishments which pay before the 25th of the month the amount of Equitable Remuneration invoiced the previous month,
- an allowance of 12 % (in addition to the above-mentioned allowance) for establishments which give details, firstly on the 25th of the month following the corresponding month, of a certified true declaration of all detailed gross income, achieved for this month and secondly, prior to the 25th of the month following the reference period, a copy certified true by a chartered accountant or an approved accountant of the declaration made to the tax authorities regarding tax on turnover.

This schedule is applicable as from 1st January 1996 for a period of five years and beyond, if no new schedule is implemented.

(decision of June 28, 1996 ratified by the law of March 27, 1997)

III- BACKGROUND MUSIC - CLOSED CIRCUIT SOUND TRACKS

The total amount of the remuneration is directly computed from the amount of authors rights assessed for such establishments.

For such proportional remuneration, the following assessment rates have been established:

- 12% for 1988
- 13% for 1989
- 14% for 1990
- 16% for 1991
- 18% beginning in 1992

Minimum assessment rates per establishment have been set.

REMUNERATION FOR PRIVATE COPY OF PHONOGRAMS AND VIDEOGRAMS

This remuneration provided in Article L. 311-1 of the Intellectual Property Code **is collected from manufacturers, importers or persons making intra-EC acquisitions of blank recording support media**, at the time of their introduction into circulation in France.

The amount and the means of payment of such remuneration for Sound and Audiovisual Private Copy were fixed on June 30, 1986 by the Commission specified in Article L. 311-5 of the Intellectual Property Code.

This decision, published by the Journal Officiel (Official Journal) on August 23, 1986, has been applied since September 8, 1986.

The remuneration is set at **€ 28.51 per 100 hours** (i.e. € 0,00475 per minute), **for blank audio tapes** and at **€ 42.84 per 100 hours**(i.e. € 0,00714 per minute) **for blank video tapes usable for the private copy of videograms.**