



2019 Activities Report

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pour le droit des artistes

Summary

² Editorial

³ Activities Report

³ ADAGP Mobilised during the Covid-19 Health Crisis

⁴ Copyright Protection

⁸ Other Professional Actions

¹¹ At ADAGP

Editorial

With 41.8 million euros collected, 2019 was a very good year, the slight reduction in royalties of 1.3% compared to 2018 needing to be put in context since the previous year was marked by exceptional collections of arrears.

The resale right – which in 2020 celebrates its centennial – is the driver of the dynamism of royalty collections for the visual arts today.

2019 was also marked by a fresh impetus for ADAGP. Thanks to our new premises, we have been able to develop our activity and strengthen our relationship with you.

Over the year, a series of meetings was created: information sessions, *ADAGP in practice* and *Rights Angles* to provide training to members about authors' rights, "Presentations, on the walls" to highlight the winning artists of Les Révélations, *Causeries* and *Débats!* to pose questions about practices and the future of the visual arts...

In 2020, we are staying close to you and are at your sides... even at a distance! Indeed, although the health crisis has forced us to close reception to the public, it has also accelerated a process already under way: putting ADAGP's services online.

The creation of the online Member Space now allows our 15,000 artists and member estates to view the amount of their royalties, to change their personal information, to declare the uses of their works or to more easily submit images of their works to the image bank - ADAGP Images.

Its features will continue to grow regularly.

The *Causeries* and *Débats!* as well as the training workshops and legal consultations are continuing as video-conference services and their audience is expanding to more easily include our members in the regions. In October 2020, the AGM will also be retransmitted online.

The virus preventive measures are therefore not obstacles for our teams who remain fully operational to provide services to authors.

In March, ADAGP assessed the extent of the harm of the crisis to artists and carried out 6 immediate actions to enable them to cope with their difficulties: in particular, the early repayment of certain royalties and the maintenance and development of direct aid programmes for artists.

Two new grants were created in 2019. The BD Cité Internationale residence grant of the BD/Villa Médicis/ADAGP gives two comics authors the opportunity to live in Angoulême and then in Rome. The Ekphrasis grant programme, in partnership with AICA France and the Quotidien de l'Art newspaper, puts artists in contact with art critics so they can benefit from a critical text about their work.

In the current unprecedented context, ADAGP continues its commitment to defending your rights. ADAGP relies on the widespread participation of its members to identify the future challenges in the visual arts sector both nationally and internationally.

This has already enabled us to win several victories for authors' rights and artists. The European Directive on copyright in the digital single market of April 2019 and its transposition into the law in France in 2020 will strengthen the protection and remuneration of artists, particularly in relation to Internet platforms. Finally, exhibition royalties are starting to apply with the introduction of a minimum remuneration model applicable to all exhibition places receiving grants from the Ministry of Culture (museums, art centres and FRACs).

After the total freeze of cultural activities, the relaunch of the sector is ADAGP's priority. This relaunch must be conducive to new, more virtuous practices for artists. That is why, in late May 2020, ADAGP is publishing 6 challenges, focusing on artists of the French scene, for the relaunch of the visual arts sector.

More than ever, it is collectively that we need to approach the world of tomorrow and remember that "sustainable," "local," and "collaborative" are values that also apply to culture and the visual arts.

Marie-Anne Ferry-Fall
Managing Director

The activities of the 2019-2020 financial year

Information required pursuant to Article R.321-14, II-paragraph 2 of the Intellectual Property Code

ADAGP Mobilised during the Covid-19 Health Crisis

As an introduction, it is impossible not to talk about the sudden and unprecedented current situation which, at the time of writing of this report, has also affected the activities of ADAGP.

Covid-19 is both a health and an economic crisis. The stoppage of cultural businesses and events will have far-reaching consequences for the entire sector and for artists-authors, already made very fragile. Its impact will be felt long after the lockdown has been lifted and over the coming months.

From 16 March 2020, ADAGP isolated its teams, stopped all the events planned on its premises and also took action to ensure continuity of its missions and to respond as well as possible to the urgency of the situation:

- 1 The priority: the schedule for repayments of royalties maintained or even brought forward for certain royalties;
- 2 The lengthening of the periods for communicating administrative documents;
- 3 Confirmation of the calendar of awards and grants established for the past few years by the cultural action of ADAGP in order to enable artists to continue creating and to promote their work;
- 4 The maintenance of grants to cultural actors. The budgeted aid will be paid provided that the organisers make a commitment to actually maintain the remuneration planned for the author-artists;
- 5 An information centre about the emergency measures available on adagp.fr;
- 6 ADAGP's contribution to funding emergency measures for authors of the visual arts.

Although the health crisis has dramatically increased the fragility of author-artists, its impact will be felt for many months, if not years, to come. In May 2020, given the legitimate concern of the author-artists, ADAGP submitted to policy-makers 6 priority challenges, centred on the artists of the current French scene, to relaunch the visual arts sector:

- 1 Application without exception of authors' rights legislation, exhibition royalties in museums, art centres and FRACs in particular;
- 2 Transposition, as soon as possible, of the European Directive giving creators and their societies of authors the legal means to negotiate with Internet platforms;
- 3 Commitment of all venues, institutions and galleries, to display predominantly French artists, especially those in mid-career;
- 4 A widening to include current visual arts of the obligations to produce and distribute programmes dedicated to creation on television channels in order to increase their visibility to the general public;
- 5 Establishment of a capped tax exemption mechanism to promote purchases of works by living artists of the French scene by individuals;
- 6 Creation of a support system for the visual arts, on the CNC (cinema) model, to contribute to financing creation and production of the French artistic scene.

In regular contact with the government and the Ministry of Culture, ADAGP is endeavouring to give a voice to authors because only a government policy, defined and consistent with their economic and social importance, will enable the visual arts sector to withstand the crisis and remain the flagship of the cultural and creative industries.

Copyright Protection

The Resale Right

To the WIPO (World Intellectual Property Organisation)

The resale right is a fundamental author's right for visual artists.

Created in France in 1920, this royalty, which celebrates its centennial in 2020, is paid on the occasion of the resale of an original work in which a professional of the art market is involved (auction sales, gallery sales, etc.).

The resale right is now present in 80 countries and on five continents, from Australia to the European Union to the Russian Federation, India, the Philippines, the United Kingdom, Senegal, Turkey and Venezuela.

Since 2013, CIAGP, the visual arts council of the CISAC (International Confederation of Societies of Authors and Composers) has focused mainly on the artist's resale right. As part of a global multi-faceted campaign involving the CISAC presidency, its partners and all its societies of authors of visual arts, including ADAGP, the CIAGP is continuing to lobby to make the resale right compulsory under the Berne Convention. In this context, ADAGP set up and chaired an international working group on the resale right to convince the World Intellectual Property Organisation (WIPO) to undertake work on a treaty to make the resale right compulsory internationally.

The efforts made since then have led to significant progress: the preparation of a draft treaty by the largest international copyright expert, Australian law professor Sam Ricketson, the organisation of a resale right symposium at the WIPO in 2017, the publication of an international economic study on the absence of a negative effect of resale rights on the art market and, most importantly, the inclusion of the question of resale rights on the agenda of the WIPO Standing Committee for the Monitoring of Author's Rights and Related Rights (SCCR), under the determined pressure of several African states and Senegal and Congo in particular.

A new milestone was reached in October 2019, with the establishment by the WIPO of three working groups dedicated to the resale right:

- the first, led by Professor Ricketson, deals with the study of legislation relating to the resale right (rate, basis, payment responsibility, mandatory collective management or not);
- the second, led by Aziz Dieng, adviser to the Minister of Culture of Senegal and Vice-Chairman of the Standing Committee on Copyright and SCCR, is responsible for compiling statements and concrete examples to show how resale rights help structure the art market and how emerging-country artists can benefit from the world market;
- the third, overseen by Marie-Anne Ferry-Fall, Managing Director of ADAGP, is focusing on galleries (primary/secondary market, the weight of red tape for small galleries, compliance with transparency obligations).

The establishment of these three working groups confirms the interest of the WIPO and the national delegations have with respect to the issue of resale rights.

The WIPO's work for the universal recognition of this right specific to the visual arts has had some success. Malawi, an English-speaking country, has recognised the resale right for a few years, whereas previously, on the English-speaking African continent, only Kenya provided for this right in its national law. Moreover, South Korea and Japan are beginning to explore the possibility of recognising resale rights, with each of these countries having signed a treaty with the European Union committing them to do so. ADAGP will monitor these developments carefully and closely with its counterparts on the spot.

The involvement of ADAGP, in terms of international cooperation, was materialised by its presence, on 10 and 11 June 2019, at the WIPO regional meeting, during a symposium for African copyright office officials organised in Nairobi in cooperation with the Government of the Republic of Kenya. Some 40 English- and French-speaking African states participated in this seminar organised by various African organisations working in favour of copyright and intellectual property.

Aimed at promoting dialogue and formulating a strategy so that Africa can advance copyright issues on the continent, this meeting focused on the application of the resale right. On this occasion, ADAGP recalled the importance of this right for African artists whose works circulate and are resold on the international art market.

Abroad

Australia

In 2020, Australia will celebrate 10 years of the resale right on its territory. An event was due to be organised in August for this occasion (but at the time of writing, there is uncertainty about whether it will be maintained). At the moment, the sister company CAL only collects royalties for Australian artists (those

mainly benefiting are Aboriginal artists), but it hopes soon to extend collecting to artists of other nationalities.

Kenya

The resale right has recently been recognised by Kenya and a society of authors is being set up.

India

The resale right has been provided for in Indian law for a long time, and a society for managing this right is also being formed.

In France

1920 - 2020: centennial of the resale right

At the end of the First World War, the French Parliament adopted a bill put forward by the MP André Hesse recognising for authors of graphic and plastic arts a fundamental author's right, the resale right, which allows them to participate in the proceeds of successive resales of their works on the art market. Motivated by considerations of fairness (everyone had in mind the sad example of Millet's *Angélus*, resold for a record price, while the artist's family lived in abject poverty), the law of 20 May 1920, "imposing a royalty on public sales of art objects for the benefit of the artists" was a world first.

Since then, the resale right has been incorporated into the national legislation of more than 80 countries, and the French experience is still held up as a model.

ADAGP, which currently manages the resale right for nearly 125,000 artists in France, is celebrating the centennial of the resale right by organising a symposium at the National Assembly, both focusing on its foundations, its implementation and the prospects for extending it internationally. The discussions, scheduled for one day, will bring together artists and estates, academics, gallery owners and auctioneers, national elected representatives and representatives of international institutions such as the WIPO...

Originally scheduled to take place in May 2020, the symposium has had to be postponed to 2021 due to the health crisis. At the time of writing, ADAGP is not yet in a position to specify the exact date.

Liability and collection of the resale royalty: 2 new favourable judicial decisions

ADAGP has obtained two favourable judicial decisions in relation to resale rights, making timely reminders about the liability and collection of the resale royalty.

The first, handed down on 8 January 2020 by the Court of Grande Instance of Marseille against the Petitjean gallery, confirmed a position, well-established in case law, regarding the starting point of the limitation period. The judge recalled very clearly that the five-year limitation period of proceedings for payment of the resale royalty only begins to run from the time that the statements have been communicated to ADAGP. The judgment also states that, when the beneficiary of the resale royalty depends on it for their subsistence, the art market professional responsible for payment of this debt cannot benefit from payment terms.

The second dispute, between ADAGP and the Siboni auction house, dealt with the conditions of application of the resale right to copies of works for the applied Arts. The Court of Grande Instance of Paris recalled that the resale of an original work, neither signed nor numbered, may nevertheless give rise to the resale royalty when the work has been executed "*in a limited number of copies and under the author's responsibility*" and lacking a signature or number, it has been "*duly permitted in another way by the author*" (Article R.122-3 of the Intellectual Property Code).

Private Copying

The private copying royalty is financial compensation established to allow everyone to have the freedom to reproduce works (music, visual arts, films, etc.) for their personal use without harming creation.

Imposed on storage media, this compensation thus remunerates the authors and 25% of it is used to finance cultural events.

The Private Copying committee continued its work throughout 2019. After having voted for new remuneration rates for memory cards and USB sticks, it has begun work on computer hard drives.

In addition, in the context of the health crisis and for the purpose of supporting the authors, the 2019 distribution of Private digital copying royalties of images and text was brought forward to the first half of 2020, whereas it is usually paid in the 2nd half for the previous years.

Author's Rights in the Digital Age

The bill "relating to audiovisual communication and cultural sovereignty in the digital age" was initially due to be scrutinised by the National Assembly in late March 2020. But the health crisis relating to COVID-19 has upset the parliamentary timetable. At his hearing in the Senate on 16 April 2020, the Minister of

Culture stated that the text would be reviewed as soon as possible and that the effects of the health crisis on the sector would be taken into account.

It is intended that this bill, in particular, will transpose certain provisions of the notorious European Directive of April 2019 – which led to a long and intense mobilisation of the teams and artists of ADAGP between 2015 and 2019 – and thus help to strengthen the protection and remuneration of artist-authors.

Responsibility of the platforms

This directive makes online sharing platforms (Facebook, Instagram, Twitter, etc.) responsible for content posted by their users and obliges them to respect the authors' rights, either by entering into contracts with collective management organisations, or by withdrawing works whose distribution is not permitted. ADAGP, which already has an agreement with YouTube, will be able, on the basis of the new legal provisions, to negotiate with Facebook, Instagram, Twitter, etc.

If these negotiations fail to result in an agreement, the online content-sharing platforms will need to cooperate in good faith to ensure that non-authorised works are not available on their services.

Image search engines

The image search engines allow web users to launch queries in a database of several tens of billions of images, to filter the results (by size, by keyword, by colour, by subject, etc.) and to download the images without having to visit the site on which they have been published.

In this, they are no different from an image bank ... except that they do not pay the authors.

A great victory was won in July 2016 with the adoption of an article in the Freedom of Creation, Architecture and Heritage Act introducing a mandatory collective management mechanism for image search engines. However, the mechanism was unable to be implemented, owing to a decision of the European Court of Justice, which judged that this type of measure could only be applied at the national level if it was expressly permitted by European law.

This is now the case thanks to Article 12 of the Directive on extended collective licences.

Under the impetus of ADAGP, a new text has been developed by the CSPLA (Conseil Supérieur de la Propriété Littéraire et Artistique) for the purpose of giving effect to the mechanism created in 2016, and to ensure that finally, image search engines, Google in particular, pay royalties to the artists whose work they use. The Ministry of Culture has undertaken to introduce it in the form of a government amendment in the audiovisual bill.

The Law on the Related Rights of Publishers and Press Agencies

Passed in July 2019, the law establishing a related right for the benefit of news agencies and press publishers entered into force on 24 October 2019.

It provides that online services that share press articles, including partially, are required to pay press publishers remuneration for a new related royalty, separate from the author's royalty. Part of this remuneration must be shared with the authors of texts, photographs and other categories of works incorporated into press publications.

The GAFAs have reacted strongly to the application of this measure, provided for in the 2019 European Copyright Directive. Google thus announced that it was unwilling to pay the French press, believing that such remuneration was unjustified, given the audience generated by referencing for newspaper publishers. Worse still, Google has offered publishers an impossible choice: give up their rights or no longer be referenced.

Referred to by the press publishers, the Competition Authority ordered Google to negotiate in good faith with the publishers on 9 April 2020, for the purpose of agreeing on appropriate remuneration to "***cover retroactively, the royalties due from the entry into force of the law***". Thanks to this decision, publishers and news agencies will be able to negotiate this related royalty, because the law expressly states that the authors of works contained in these publications can benefit from a share of this remuneration.

Application of Exhibition Rights

Exhibition rights are the rights that allows artists to receive remuneration in exchange for the public exhibition of their works. They form an integral part of the representation right set out in Article L.122-2 of the Intellectual Property Code, which specifically refers to the "public presentation" of works. But, though undisputed in sectors like music or theatre, the "representation" right is unfortunately implemented only very unsatisfactorily in the visual arts field.

ADAGP, which has been fighting for years for things to change, has finally been heard.

In late 2018, the Creative Arts Department (DGCA) of the Ministry of Culture set up a working group on exhibition rights with the participation of ADAGP, the CIPAC, the DCA network of art centres, the FRACs, museums of France and the SAIF.

These discussions resulted, in late 2019, in the establishment of a minimum compensation model for artists, which all exhibition venues receiving grants from the ministry will have to respect: namely a retainer of €1,000 for a monographic exhibition or divided up between the artists for collective exhibitions (with a minimum amount of €100 per artist) as well as 3% on all ticket receipts once the retainer has been achieved.

ADAGP and its artists are therefore closely concerned in how this law is implemented. As a reminder, the exhibition royalty is included in the agreements signed between ADAGP and the Museums/ art centres/FRACs.

Exceptions to Author's Rights to the benefit of Museums, Libraries and Archives

ADAGP has concluded nearly 150 agreements with museums and art centres, which, given the nature of the activity of these cultural institutions and what links them to the artists, makes obtaining authorisations much easier and provides for specific rates tailored to their economic circumstances. In other countries, ADAGP's sister societies have also implemented similar mechanisms. This is satisfactory for the museums, the authors and their rights holders.

However, there are countries where no collective management organisation such as ADAGP exists. In this case, it can be difficult for museums to obtain the necessary authorisations to reproduce works in the exhibition catalogues, educational brochures, merchandising products, etc. This explains why in the World Intellectual Property Organisation (WIPO), a number of national delegations are calling for the adoption at the international level of a copyright exception which would generalise the exemption for museums from having to apply for authorisation and the payment of copyright royalties.

This approach, which is an abrupt denial of copyright, is obviously not the one that should be followed. ADAGP and its sister societies have worked closely with the services of the WIPO to show them how collective management facilitates obtaining authorisations and that the royalties to be paid in this context are fully compatible with the economics of museums. It also contributed at a major international conference on the subject held in Geneva on 18 and 19 October 2019, in the presence of representatives of different States. The message that the most appropriate solution is to encourage the development of collective management organisations in countries where they do not exist, was heard. Unfortunately, immediately after the conference, several organisations representing museums, libraries and archives stepped up their lobbying efforts for new copyright royalty exceptions. It is a sensitive subject, the consequences of which could be far-reaching for the authors of visual arts, and ADAGP, with the help of its artists, will naturally remain highly mobilised in the coming months.

Judicial Decisions

In France, in late 2019, the Paris Court of Appeal considered the thorny question of "appropriation" (Paris Court of Appeal, 17 December 2019). In the author's right field, the legal situation is clear: the Intellectual Property Code provides that the re-use of all or part of a pre-existing work in a new creation is considered to be a "composite work" (Article L. 113-2) and that it may only be exploited "*subject to the author's right of the pre-existing work*" (Article L. 113-4).

However, in a judgment of 15 May 2015, the Court of Cassation held that the author's right must be weighed up against freedom of expression, but without giving any "instructions" on how this balance should be achieved.

The judgment of the Paris Court of Appeal makes things a little clearer. The Court was asked to rule on a dispute between the rights holders of the photographer Jean-François Bauret and the American artist Jeff Koons. The latter produced a sculpture ("Naked") which shows strong similarities with a pre-existing work of the photographer, representing two naked children.

In proceedings brought against him, Jeff Koons did not deny the appropriation of the main components of the work but invoked his creative freedom: the Court of Appeal therefore had to decide whether creative freedom or author's rights should take priority. The judges decided that Jeff Koons did not demonstrate that he was unable "*to choose or create other images of children to convey his artistic message*", that he had not tried to obtain the author's permission whose identity he knew, and that it was not established that the unauthorised use of the photographer's work "*was necessary for him to exercise his freedom of artistic expression*".

In short, for creative freedom to override author's rights, the artist must be able to demonstrate that the appropriation of the work in question (this work and not another) is necessary for their artistic message and that they have previously requested the permission of the author of the appropriated work or its rights holders, but that this has been refused.

Other Professional Actions

In France

France Créative

France Créative is an association that brings together the actors of the cultural and creative industries. ADAGP represents the visual arts sector within it. This movement is notably behind the *Economic Panorama of Cultural and Creative Industries* (CCI).

On 28 November in St Ouen, in the presence of the Minister of Europe and Foreign Affairs, Jean-Yves Le Drian, the Minister of Economy and Finance, Bruno Le Maire and the Minister of Culture, Franck Riester, the 3rd Panorama of Cultural and Creative Industries in France was presented: "the Mosaic economy" (France Créative – EY study).

As for the previous editions, Creative France and EY studied economic and financial data from visual arts, music, live entertainment, cinema, television, radio, video games, books, press, advertising and communication.

The sector as a whole has total revenue of 91.4 billion euros and its added value (47.5 billion euros in 2017) is equivalent to 2.3% of GDP, a weight comparable to that of the food industry and 1.9 times larger than that of the automotive industry.

Representing a quarter of total revenues in 2018 of the cultural and creative industries (CCI), visual arts are the leading CCI sector in terms of turnover and workforce, with respectively 23.4 billion euros and 333,100 people receiving income from their work in this sector.

The Fight against Forgery and Fake Art Works

As part of its mission to defend and protect artists' rights, throughout the past year, ADAGP has worked closely with police and customs services on cases of the trafficking of copied works (forgeries) or those falsely attributed to an artist (fakes). Its legal department has also continued to provide support to the authors or rights holders who are victims of forgers and has acted as the intermediary between the relevant actors (police, lawyers, sales advisers, auctioneers, etc.).

ADAGP has also continued its work in its committee for fighting against fakes and forgeries, which brings together each quarter, estates and artists' committees, judges, law academicians, police service representatives and lawyers to work together and share their experiences.

The meetings of the committee have been the place for in-depth consideration about the law in this area and on the most effective methods for identifying and dealing with fakes and forgeries. The members of the committee, having noted a flagrant lack of information on this subject for customs, police, judges and rights holders, and therefore the need for educational actions, have called for an information guide to be drawn up and distributed to which they have actively contributed, with ADAGP's teams.

This guide will be published by ADAGP for both artists and their rights holders owners as well as public authorities, law enforcement personnel (customs officers, non-specialised police services, etc.) and judges. With the upcoming edition of this advice compendium, ADAGP is continuing its work of informing and raising awareness of the specific challenges facing the art market and the fight against forgeries and fakes.

Authors and the Creative Act (Racine Report)

On 11 July 2019, after several preparatory meetings, ADAGP and a delegation of member artists (Nicolas Giraud, Olivier Masmonteil, Dorothee de Monfreid and Delphine Toutain, who provide everyday support to artists with their procedures) were heard as part of the preparation of the Racine Report, commissioned by the Ministry in April 2019. The hearing panel was composed not only of Bruno Racine but also of a range of experts from various backgrounds: members of the Ministry staff, in particular Gaëlle Bebin, a plastic arts researcher, the economist François Rouet and Stéphanie Le Cann, a private law lecturer.

The issues addressed by the delegation included the social and fiscal status of artists in the context of the succession of reforms, which has resulted in an increase in the contributions of author-artists and the lack of creation of additional rights, the problems authors encounter at the various stages of their careers, but

also the issue of the remuneration of the exhibition right, the remuneration of authors by image search engines and finally the more general problem of the decline in value on the Internet.

Bruno Racine's Report has made 23 recommendations for the situation of artists-authors.

On 18 February 2020, the Minister of Culture, Franck Riester, announced to a packed hall, the four main focus areas of action by his Ministry, to "adapt existing public policies in favour of artists, authors and creators" following the publication of the Racine Report:

- guarantee the social rights of artists-authors
 - improve their economic situation
 - give them the means to be better represented
 - and finally change the organisation of the Ministry of Culture to monitor their situation more effectively.
- Beyond these statements, author-artists are now awaiting concrete actions by the Ministry.

"Let's Be Clear", a Web Series to Assist Artists with their Tax Returns

On 20 April 2020, a web series, consisting of 5 videos, was launched to assist author-artists with their tax returns for art income in 2019.

Developed jointly between the societies of authors of the various artistic repertoires (ADAGP, SACD, SACEM, SAIF, SCAM, and SGDL) to best respond to the needs and many questions of the creators of all the repertoires, this unique project marks an active collaboration between six French societies of authors wishing to offer their members guidance and cross-cutting information.

The "LET'S BE CLEAR" web series is split into five episodes:

1. How to declare my author's royalties
2. Salaries & Wages
3. Non-commercial profits
4. Business expenses
5. Understanding VAT

Each episode – of around 5 minutes – is supplemented by factsheets.

The videos and factsheets can be viewed on the mesdroitsdauteur.com website or on the ADAGP YouTube channel.

Abroad

The Decisions of the European Court of Justice

Several important judicial decisions were handed down by the European court last year.

One of them, like the Paris Court of Appeal's Jeff Koons judgment, mentioned earlier, raised the question of creative freedom: can an artist, without asking for permission, reuse all or part of a work by another author in a creation? This raises the question of the balance between two fundamental rights: on the one hand copyright and on the other hand, freedom of expression, which includes creative freedom.

In its Pelham judgment of 29 July 2019 (C-476/17), the Court of Justice of the European Union for the first time ruled, in a dispute regarding the music field (*sampling*), on the question of "freedom of the arts", specifically embodied in Article 13 of the Charter of Fundamental Rights of the European Union.

For the European judges, where none of the characteristics of the re-used work is recognisable, copyright should not apply.

However, where all or part of the work is identifiable, the balance between copyright and freedom of the arts must necessarily be found within the framework of one of the few exceptions allowed by European law, such as the quotation exception.

This decision has the virtue of curtailing national laws or court decisions which provide for a blanket erasure of copyright in favour of creative freedom. However, it remains unclear as to how the quotation exception can apply to material objects, and future case law will need to be closely monitored.

On a completely different subject, the Court of Justice ruled, in a decision of 5 September 2019 (case C-145/18), on the conditions under which photographs can be considered as "works of art", thereby benefiting from a reduced rate of VAT. According to the judges, the photographs simply have to have been **"taken by their creator, printed by him/her or under his/her supervision, signed and numbered and limited to 30 copies, to the exclusion of all other criteria"**. The Court clearly recalls that the "artistic character" of the photograph is not a relevant criterion and cannot be taken into account.

The CIAGP (October 2019)

At the end of October, the CIAGP - the International Council of Creators of Graphic, Plastic and Photographic Arts - was received in Berlin by the German sister society, BildKunst. The societies of authors, including ADAGP, worked on the key challenges to be met: the application of the 2019 Copyright

Directive, agreements with museums, the international extension of resale rights, etc. ADAGP contributed on the issues of the universality of resale rights, the use of automated recognition tools for works (AIR project) and the future negotiations with the digital platforms (Google, Facebook, Twitter, etc.) within the new framework defined by the European Directive, that obliges them to respect author's rights. Exchanges of information and consultation are essential to ensure that the sister societies are able to negotiate effectively with global users and build an efficient and professional network in favour of copyright.

The next session, which should have been held in late June at the Reina Sofia Museum in Madrid, will take place on 6 November 2020 by video conference.

Round table discussions on copyright problems and opportunities in the digital world, the strengthening of the international network of societies of authors and universality of resale rights will be the topics of this meeting.

The IFRRO Annual Congress in Edinburgh

The IFRRO (International Federation of Reproduction Rights Organisations) is the equivalent of CISAC for the collective management societies of the book world. It is also an important forum for tackling the challenges facing copyright.

A long-standing member of this organisation, ADAGP, which has not been actively involved in recent years, has become more widely involved in the "Visual Arts" working group which includes Sofia, DACS, ARS, BK, BUS, VEGAP and PICTORIGHT.

The CISAC AGM

With 239 member societies of authors in more than 120 countries, the CISAC – the International Confederation of Societies of Authors and Composers – is the world's copyright institution. It promotes copyright in countries that neglect it and lays down the code of conduct for countries among sister societies worldwide.

In Japan, on 30 May 2019, the CISAC organised its General Meeting and Board of Directors (on which ADAGP sits). Directors of societies of authors and creators from all over the world together considered solutions to improve the income and protection of millions of authors of all the repertoires.

The agenda included the globalisation of the principles adopted by the European Directive on Copyright in the Digital Single Market. Indeed, the expansion of digital technologies and platforms is a global challenge. These annual elections were an opportunity to renew the Board of Directors of the CISAC, which saw the SACD take over the vice-chairmanship alongside the Brazilian music society which is chairing this body for the 2019-2022 period.

At the General Meeting on 29 May 2020, Björn Ulvaeus, co-founder of ABBA and a prolific author, was appointed as Chairman of the Confederation. He has taken over from Jean-Michel Jarre who has carried the voice of the CISAC community worldwide for seven years, defended the interests of the creators of all the repertoires represented by the CISAC and contributed to the success of the campaign for the adoption of the European Copyright Directive.

European Visual Artists (EVA) meetings

The European Economic Interest Grouping (EEIG) EVA is also intensely active since it is now contributing to the development of guidelines for the European Commission that the Member States will have to adopt to transpose the European Directive of April 2019.

The Visual Arts repertoire, so present on Internet platforms (social networks such as Facebook, Instagram, Pinterest, etc.) but nevertheless unstructured as a cultural industry, must not be forgotten by the European and national public authorities. That is why EVA actively participates, throughout the year, in European Commission meetings.

The other major focus of the EEIG's work is the development of the network of sister societies in Eastern Europe, in Poland and Slovenia in particular.

ADAGP at the ALAI 2019 Congress in Prague

Founded in 1878 by Victor Hugo, the International Literary and Artistic Association (ALAI) is dedicated to promoting creators' rights worldwide. To do so, it organises a large congress of professionals every year to discuss pressing copyright issues.

From 18 to 20 September 2019, ADAGP contributed to the 2019 ALAI Congress held in Prague. Professionals from around the world exchanged views on future copyright issues such as "the blockchain, big data, extensive and mandatory collective management, or the European directive on collective management".

Marie-Anne Ferry-fall, Managing Director of ADAGP, more particularly contributed her expertise to the topic of collective management of the visual arts repertoire because it is still a subject too little known about by international legal experts.

AT ADAGP

The Repertoire

Between 1 June 2019 and 31 May 2020, ADAGP received 992 new members and to date has 14,562 direct members and 196,206 via sister societies and photo agencies.

The Member Space

Since 17 February 2020, members have had a personal online space.

In order to provide individual support, especially for members with less experience of IT tools, the login procedures have been sent out in batches of 1,000 at a time. A dedicated team has been set up to answer calls and emails and to thus guide members, step-by-step, in discovering the various features of their space.

This secure space allows the 15,000 ADAGP members to:

- know their joining date and the type of rights managed
- verify and complete their personal and banking information
- consult their royalty statements
- consult the summary of royalties paid in 2019 (2019 tax return)
- download their deduction certificate of the year (for authors not benefiting from a deduction exemption)
- transmit images of their works to ADAGP Images and monitor the processing of their integration into the image bank
- complete the statements for 2020: TV + YouTube broadcast (for All Rights members) as well as the TV + Press + Publishing statements (for members managed for their Collective Rights only). The statements must be communicated to ADAGP by 31 March of each year.

The services and features of the Member Space will be enriched over time.

For any question regarding logging in or opening you Member Space: espace.adherent@adagp.fr

The Work of the Repertoire Advisory Committees

In direct contact with the issues inherent in their sector, each committee establishes actions and tools to meet the needs of the authors.

Cultural Action Committee

The task of the Cultural Action Committee is to study the applications for grants sent to ADAGP relating to cultural action.

It proposes a list of projects and events to the Board of Directors which it has pre-selected for submission to the General Meeting for approval.

It also monitors the payment of grants and, if a beneficiary drops out in the course of the year, their possible reallocation.

Applied Arts Committee

The Applied Arts Committee is going to launch a call for projects for designers with less than five years' experience. The aim will be to design an object that can be edited for the 2023 Rugby World Cup or summer Olympic Games of 2024.

Graphic Novel Committee

On the occasion of the Angoulême International Comics Festival and the Comics Year, the committee has produced the 2020 Calendar of Comic Authors showing the highlights of the life of a comics author and key information about their rights, their tax and social status, etc.

For each month of the year, a comics author illustrates a highlight of an author's life related to that month. Practical information for authors, developed in partnership with Snac BD, is provided in addition to this drawing.

To receive a copy of the 2020 calendar, contact: communication@adagp.fr

Youth Books Committee

The Youth Books Committee creating a website on which authors and illustrators will be able to evaluate the events in which they have participated in order to award a “quality label” highlighting the best practices of the fairs and festivals dedicated to Youth Books.

Photography Committee

Alerted by the sharp fall in the allocation of press cards to photojournalists over the past several years, the Photo Committee has set up a working group to examine the reasons for this.

The aim is to identify the current criteria for allocating the card by the Professional Journalists Identity Card Commission (CCIJP), to analyse their relevance and to propose solutions that would enable photojournalists, who need the press card for their work, to be able to receive it more easily.

A file has been drafted, by ADAGP’s legal department, bringing together in a single working document: a summary of the current situation and issues related to the criteria for the allocation of the press card, a quantified study and proposals for changing the criteria for allocating the press card to photographers. This document was presented to the photography delegation of the Ministry of Culture in May 2019. It is available, for information purposes, on request by email at the following address: juridique@adagp.fr In addition to its professional activities, the Photography Committee is also working on a guide of 20 tips for photographers. “Selling a photograph and keeping its author’s rights” “drawing up an invoice” and “protecting your photos”. These professional tips will be available online in late June 2020 and subsequently in a hard copy.

Meetings at ADAGP

Thanks to its new offices it moved to in February 2019, ADAGP has developed a regular schedule of meetings for its members and the actors of the art world.

Every quarter, the Auditorium hosts *Causerie* where sociologists, art theorists, display venues and artists talk about the current situation and give their views on sociological, economic, and societal issues about the visual arts.

In April 2019, on the occasion of the official opening of its new premises, ADAGP opened its auditorium to a first *Causerie* on the question of: “Are visual arts broadcastable on television?” C215 (artist), Régine Hatchondo (Director General of Arte France), François Jost (media semiologist), Yves Michaud (philosopher) and Clémence de Montgolfier (information and communication science doctor) shared their analyses and expertise on this issue. These exchanges were led by Célyne Bayt-Darcourt (journalist at Radio France) and put into pictures by the cartoonist Thibaut Soulié.

In October 2019, *Causerie #2* explored the topic of “Parity in art”.

The journalist Samuel Belfond facilitated the exchanges between the speakers: Eva Nielsen (artist), Camille Morineau (Director of collections and exhibitions of the Paris Mint, co-founder and president of AWARE), Pascal Ory (Professor Emeritus of History at La Sorbonne-Paris 1) and Agnes Saal (Senior Civil Servant for Equality, Diversity and Preventing Discrimination reporting to the Secretary-General of the Ministry of Culture).

At the same time, *Débats!*, initiated and led by Stéphane Corréard (art critic and director of the Galeristes trade fair) are a space to discuss controversies currently in the news of the world of art.

On 18 November 2019, the first session of *Débat!, Cartel or not Cartel? That is the Bacon*, asked the question of mediation in exhibitions with the participation of the artist Marion Batalillard, François Blanc, director of the Communic’Art agency, and Didier Ottinger, curator of the exhibition “Bacon en toutes lettres”. The *Débat! #2, Artist at any Cost?*, in March 2020, brought together Colette Barbier, director of the Ricard Corporate Foundation, Tiphonie Blanc, art critic, and Thomas Levy-Lasne, artist, to discuss placing artists in competition and the competitive price system in contemporary art.

On 4 May 2020, on the eve of the first phase of the easing of the lockdown, Stéphane Corréard wanted to hold a discussion on the “afterwards” to discuss the future of art after the COVID-19 health crisis.

Organised live on ADAGP’s YouTube channel, this third *Discussion!* attracted more than 350 viewers (and more than 2,300 subsequent viewings) attentive to the proposals of designer artist Matali Crasset, the chairman of Universcience, Bruno Maquart, and the professor specialising in infectious diseases, Didier Sicard.

The recordings of *Causeries and Débats!* are available on ADAGP’s YouTube channel.

To answer the questions of its members – from the most theoretical to the most detailed – ADAGP has set up two types of meetings every month: *ADAGP in practice* and *Rights Angles*.

Once a month, the members may, depending on their membership field and their needs, register for an *ADAGP in practice* meeting that will inform them about the practical management of their rights by ADAGP or for legal training, *Rights Angles*, to better understand copyright and its legal applications.

ADAGP also showcases the winners of Revelations by presenting their work on its walls. Arthur Hoffner (Plastic Arts Revelation 2019), Anne-Hélène Dubray (Young People's Books Revelation 2019), Eric Feres (Comics Revelation 2019), Pierre Pauze (Digital Arts Revelation) presented their artistic approach and the stages of their work. Visitors to ADAGP (artists, institutional and cultural partners) every 6 weeks discover a new artistic discipline and a new scenography, produced with the participation of the artist, presenting in a novel way the research stages of the award-winning work and the winner's current work.

Finally, as part of its partnership with the Gens d'Images association – which it supports for the Nièpce Award – ADAGP hosts monthly workshops in its Auditorium, every third Wednesday of the month, devoted to photography and open to ADAGP members.

The National House of Artists, a Retirement Home Open to ADAGP members

Because ADAGP wishes to support its members at every stage of their career, it has chosen to financially support the National House of Artists, managed by the Artists Foundation.

In return for this allocation, each year, two rooms are made available for ADAGP members as a priority.

This retirement home is approved for social assistance, which means that there is no income condition for admission: if the incomes are not high enough, social assistance can supplement it.

This unique retirement home, due to the profile of many of its artist residents, and for the cultural programming offered, is located at Nogent sur Marne.

Exhibitions, meetings, conferences, concerts, readings, screenings, tea and philosophy... are organised every day for residents and their visitors.

In addition, in the context of the health crisis, ADAGP Cultural Action Committee has given the retirement home 12 tablets that can be connected to Wi-Fi in order to ensure the artist residents of the retirement home of Nogent are not isolated.

The AIR Project

The AIR (Automated Image Recognition) project is an innovative software for automatic recognition of digital images launched in 2015 and since then conducted by ADAGP. It has been taken up internationally by the CISAC and 8 other societies of authors.

This technology, also known as fingerprinting, refers to algorithms that recognise, extract, and filter searched images. To be operational, this traceability tool of works (on the Internet, in pdf, video feeds, etc.) must rely on the widest possible image database to ensure it is as exhaustive as possible.

The database thus constituted will not be used to disseminate or market the images, but only to extract the digital fingerprint of the images in order to "trace" the works and thus to better protect the author's rights of the artists of ADAGP and sister societies.

Today, the reference base has 660,000 documented images and is enriched by both ADAGP teams and the artists who can now upload their images via the Member Space.

Fraud Prevention

In early 2017, ADAGP launched a fraud risk identification audit with an external audit firm. In April 2017, this firm issued a report with recommendations and the establishment of a number of systems in line with them.

In April 2018, the auditors concluded their audit mission by evaluating the actions taken to reassess ADAGP's overall level of fraud risk. Of the audit firm's 32 recommendations, 13 were fully implemented and closed, 13 points were in the process of being implemented and 6 recommendations remained to be implemented.

By late May 2020, 29 recommendations were implemented and 3 remain to be addressed.

The last major payment campaign of authors (last quarter 2019) was carried out with all the control procedures. No cases of attempted fraud were detected for 2019.

Rights Management

New Contracts with Sister Societies

Contract signed with the Senegalese society SODAV: A reciprocal representation agreement between the Senegalese Copyright and Related Rights Society (which superseded the BSDA – Senegalese Copyright Office) was signed on June 1, 2019.

In February 2020, a reciprocal contract was signed with the Czech company (OOAS).

Negotiations Under Way

Audio/Visual:

In March 2020, ADAGP reached an agreement in principle with France Télévisions whose contract had been terminated by SACD and ADAGP. This agreement will continue, for ADAGP, the remuneration provided for in the 2010 contract.

Digital uses:

The “Digital uses” contract between the Georges Pompidou Centre and ADAGP since 2010 is being renegotiated due to the redesign of the Pompidou Centre’s website planned for the summer of 2020. The museum would like to put high-definition images online so that visitors can zoom in on the works in the collection and view their details.

A contract was signed in early 2020 with the Pinault Collection (François Pinault’s private collection), thus offering the possibility of also agreeing with the Bourse de Commerce, a new location dedicated to contemporary art and the Pinault Collection, which is scheduled to open in 2021.

Some fifteen new “Digital uses” contracts have also been signed with new museum institutions across France, in particular the Fine Arts Museums of Brest and Besançon, the Angladon Museum (Avignon), the La Galerie art centre (Noisy-le-Sec), the Army Museum (Paris), the Camille Claudel Museum (Nogent-sur-Seine) and the museums of the City of Belfort.

The New Rates for “Exhibition – Digital Media Packages”

These new packages allow users to make only one authorisation request for all of their digital media produced for an exhibition (instead of one request per medium as was previously the case). This offers users several benefits: simplification of the procedure (one application, one authorisation and one invoice), speed of processing and less restrictive budgeting of the amount of the fees to be paid (the user no longer needs to make calculations according to different rates for each digital medium).

These “Exhibition – Digital Media” packages are included into the general rate schedule available on adagp.fr

ADAGP Images

The Image Bank – ADAGP Images – is a service offered to all members who wish to take advantage of this showcase and upload up to 50 images of their works to it to make them more accessible to users.

Users (iconographic services, communication and advertising agencies, media, etc.) can thus contact ADAGP to purchase files and to request authorisation, which simplifies their procedures.

The image bank is growing steadily and currently has more than 34,000 images of works from all disciplines (posters, architecture, design, drawings, paintings, photographs, sculptures, etc.).

Member artists can now offer and upload their works to the image bank directly from their Member Space.

Cultural Actions

In 2019, in addition to undertaking actions to promote the international reputation of artists of the French scene abroad, one of the priorities of our cultural action was to support visual artists in mid-career, in the form of direct aid, in promoting and enhancing interest in their careers.

Angoulême Comics – Villa Médicis Creative Residence

ADAGP has joined the residence project initiated by the two host institutions, the International City of Comics of Angoulême and the Villa Médicis in Rome, to support the dynamism of contemporary comics and support the careers of two singular authors.

On 15 January 2020, the two winners of this first edition, Isabelle Boinot and Matthias Lehmann, moved to Angoulême. Due to the COVID-19 crisis, their move to Villa Médicis, originally scheduled for 15 March, had to be postponed.

Ekphrasis Grants - *From the meeting between an artist and a critic, a literary analysis of the work is created*

ADAGP is partnering AICA France and the daily newspaper Quotidien de l’Art to connect 10 artists and critics in order to enable the writing, translation and dissemination of the resulting texts.

These 10 annual grants are for artists and rights holders, members of ADAGP for at least 3 years, all disciplines combined, whose work has not been the subject of a substantial critical text for 3 years.

“Views from elsewhere” - Atelier des Artistes en Exils

The association Atelier des Artistes en Exils (Studio of Exiled Artists) receives refugee artists in France, helps them to join a professional network and promotes their integration to allow them to continue their artistic work. Launched in 2019, this creative grant programme aims to develop the work of 5 refugee visual artists in France. The artists, selected for the relevance of their project and the prospects of exposure with the public, benefit from tailor-made support devised by the association.

