

Working as a photographer: author's rights fundamentals in 20 points

TAKING PHOTOS AND DEFENDING YOUR RIGHTS AND THOSE OF OTHERS

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At a time when everything is digital, author's right and creation have become: photographers must reassert their rights more than ever.

The ADAGP Photography Commission wanted to provide a toolbox for all photographers, and for younger photographers in particular, to allow them to make their way through the administrative and legal aspects of their activities with peace of mind: taking photos and defending your rights; authorising use of your works or not; exhibiting your photos; working with an agency, or a gallery; budgeting; invoicing; etc. Many questions that this publication aims to answer. It can also be consulted on the ADAGP website.

This advice was written in July 2020 with the aim of informing photographers about their rights in accordance with current French legislation. These legal provisions may be subject to subsequent change.

What are author's rights?

Moral right
Property rights

Moral right

Moral right protects the non-economic interests of the author and enables infringement of the work to be sanctioned.

French law recognises several moral right prerogatives:

Right to claim authorship

Each time a work is used the name of its author must be indicated.

The right to respect the integrity of the work

The author can object to infringements of their work: modifications, destruction, use in a context that degrades or betrays the spirit of the work, etc.

Right of disclosure

The authors alone can decide when they make their work public for the first time.

The right to reconsider and the right of withdrawal

This right allows the authors to withdraw a work from circulation if they regret having made it public, within very strict conditions.

In France, moral right is perpetual: it does not enter the public domain. After the death of the author, it is exercised by their beneficiaries.

Moral right is also inalienable and imprescriptible: the author cannot give it up or assign it, Nor can they entrust it to a society of authors. Although the ADAGP does not manage its members' moral right, it can advise them on exercising this right..

Property rights

Property rights enable the author to authorise or forbid the use of their works and gain remuneration if they are used by third parties.

The author has several property rights:

Reproduction right

This right enables the author to authorise or forbid the physical fixing of a work by all processes available to a support. The reproduction right is used when the work is reproduced in a book, in a magazine or on postcards, for example.

Representation right

This right enables the author to authorise or forbid the work being communicated to the public, directly or indirectly. This is the right that is used, for example, when the work is exhibited, appears in a broadcast television programme or on a website.

Resale right

This right enables the author to receive a percentage of their works' resale price when an art dealer intervenes.

In France, property rights last for the lifetime of the author and continue for 70 years following their death. Reproduction and representation rights can be assigned in the framework of a rights assignment agreement [cf. point \(8\)](#).

The author cannot assign their resale right but it can be bequeathed on certain conditions.

The ADAGP takes care of the collection and distribution of its members' property rights.

Taking photos and defending your rights and those of others

Identifying you as the author as soon as the shot is taken
Protecting your photos
Having your moral rights respected
Image rights of people photographed
Intellectual property of objects and works photographed

(1) Identifying you as the author as soon as the shot is taken

A few simple precautions will allow you to indicate in your files that you are the author of the photograph as soon as it is taken, and enable you to ensure its traceability. You just have to fill in your photo's IPTC fields.

The IPTC information is made up of multiple fields of metadata to fill in to fully reference your photo. Not all of the fields are necessary, but it is recommended to fill in at least the following data: your name and contact details, the creation date, the title, potentially keywords, the image description and name of the ADAGP if you are a member.

These fields can be filled in directly by setting your camera or be updated using cataloguing software.

(2) Protecting your photos

For a work to be protected by author's rights, there is no formality to complete beforehand: the protection of a photo arises from the sole fact of its creation.

Although that it is not necessary for your works to be protected, in certain cases it is possible to gather proof of the date they were created or of your paternity. You can gather proof in the form of a deposit: either at a bailiff or a notary; either by sending a Soleau envelope or e-Soleau to the Institut National de la Propriété Industrielle (INPI – French national Institute of industrial property); or by sending a registered letter with acknowledgement of receipt to yourself containing the document enabling the work to be identified, to be kept sealed and which could be opened by the judge in the event of a dispute.

It is also advised you keep your photographs' source files so that if your authorship on a photograph is being contested, presentation of the high-definition files or other photographs in the same series will constitute elements of proof.

(3) Having your moral right respected

Among the moral right prerogatives, you should in particular be vigilant about:

The **right to claim authorship (right of paternity)** or “name right”, that make indicating the photographer’s name mandatory each time their photos are used, on the internet, social media and television.

N.B. The indications “RR” or “rights reserved” does not have any legal value. Using these indications, which contributes to making photographs anonymous, does not enable your name to be replaced and constitutes an infringement of your paternity right. In your contracts, you can recall this legal obligation by indicating the precise indication you wish to see mentioned. You can also ask that your name is shown “next to / underneath” each photo in an clear way, to avoid indications in small letters at the end of a book, for example.

The **right to respect the work** allows photographs to oppose infringements of their works’ integrity: modification, colourisation, reframing, photo montage, etc.

(4) Image right of people photographed

The right to respect privacy enables any person to oppose their image being distributed. If you wish to publish photographs in which people can be identified, you must obtain from them **a written and precise authorisation** before diffusion. If the persons photographed are minors, you must have the authorisation of the persons who have parental authority. If you sell or assign your rights to a photo, it is important to point out to your contact that they must obtain the authorisation of the photographed person for any use of the photo.

On the other hand, the fact that a person is featured in your photos, even if they are the main subject, gives them no right to use the photo without your authorisation.

The need to obtain authorisation can be nuanced in certain cases, for example, when your photo is required for the diffusion of an information: news photos, report on a demonstration, etc.

(5) Intellectual property on photographed objects and works

If you photograph other artists' works: architectural works, brand products, design objects, etc., you should be aware that these works or objects may be protected by intellectual property rights: author's rights, trademarks... For photographs of works protected by author's rights, you should ensure that you respect property rights if these works are not in the public domain, but also to some extent moral right (authorship, respect of the work...) of the initial author.

This means that you cannot use these photos commercially without the **written authorisation of the artists and architects** (or their beneficiaries) whose work you have photographed, if these are not in the public domain.

In this case, if you sell or assign your rights, it is important that you let your contact know that you are not responsible for third party rights.

Authorising uses of your works or not: rights assignment

(6) Selling a photograph and retaining your author's rights

If you sell a print or a negative, the purchaser does not acquire the work's rights from the mere sale as physical property is independent of intellectual property.

If the commissioner or person acquiring your photo asks you to assign your rights, this will be specifically indicated in writing and subject to strict validity conditions cf. point (8).

For example, if you sell a photograph to a private collector or a museum and you do not assign your author's rights, you can indicate the following on your invoice :

"This sales contract does not lead to the photographer's author's rights being assigned. Any use of the photograph should be the subject of distinct invoicing and authorisation."

If you are a member of a collective management organisation for managing your rights such as the ADAGP, your invoices can refer to this company for the author's rights authorisations to obtain.

(7) Taking a commissioned photograph

Just as for selling a photograph, taking a commissioned shot does not lead to the automatic assignment of your author's rights. If your client wants to use your photographs for their communication or advertising, an rights assignment agreement must be drawn up and precisely stipulate the conditions in which you authorise the use of your works cf. point (8).

(8) Defining use of a work: the rights assignment agreement

If you are not a member of a collective management organisation and you have to assign your rights to authorise a third party to use one of your photographs, you must pay attention to clearly delimit the rights assignment. To be valid, the law provides for author's rights assignment to be established through a written contract identifying the works concerned, specifying the extent of the assigned rights, conditions for use, duration, where they can be used and financial conditions of this assignment.

↳ What are the essential points to be specified in your contract?

MAKE THE LIST OF THE ASSIGNED RIGHTS

This therefore concerns your **property rights**, and the two rights that can be assigned are the **reproduction right** and the **representation right**

Reproduction rights allow the author to authorise or forbid a work being physically attached to a support: reproduction on a poster, in a book, a paper magazine, etc.

The right of representation allows direct or indirect communication to the public of your work to be authorised or forbidden: exhibition, broadcasting on the internet or television, etc.

In your agreement, you should specify if you are assigning your reproduction right, your representation right, or both.

For example if a press publisher wants to use one of your photos to illustrate an article in a paper magazine, only the reproduction right comes into account. To be able to use the same photo in the digital version of their magazine, your contract must also specify the assignment of your representation right.

N.B. Indications such as "all rights assigned", "rights included", etc. without further precisions do not have any legal value.

MAKE THE LIST OF AUTHORISED SUPPORTS AND DEFINE THE TYPES OF USE ALLOWED

Writing that you agree to assign your reproduction or representation right is indispensable but not enough. You should then **list the various supports** on which your customer can reproduce and represent your photos and indicate to what ends these supports can be used: communication, promotion of a product, commercial use.

It is important to identify the various means of use possible: do you authorise your photo to be used as an illustration in a work, on a cover, for a paper and/or digital press article, a poster, a catalogue, business cards, for social media, internet, a company's intranet, etc.? For example, to assign rights limited to non-commercial use, you can use the following wording:

"This authorisation of reproduction and representation on the aforementioned supports is granted exclusively within the framework of free distribution to the public, with the exclusion of any commercial use."

ESTABLISH IF THE ASSIGNMENT IS EXCLUSIVE OR NOT

Although this precision is not made obligatory by law, it is fundamental for the photographer. Indeed, if you assign your rights "**exclusively**", that means that only your customer will have the right to distribute your photo during the period, on the supports and places established; no one else, not even you, can use this photo. In a "**non-exclusive**" assignment, you authorise your customer to use your photograph in the established conditions, but you retain the right to distribute it yourself and authorise other people to use the same photo.

For a non-exclusive rights assignment, it is recommended to use the term "authorise" rather than "assign".

Example of wording for non-exclusive assignment "The photographer non-exclusively authorises the customer to reproduce and represent their photograph on all physical and digital communication medium (brochures, flyers, intranet, website, social media) solely for the purposes of promoting their activity, for a duration of five years from the signature of the contract and the whole world."

LIMITING THE DURATION OF YOUR CONTRACT

If a client asks you to assign your rights for their full legal duration (an author's lifetime plus 70 years after their death), this is **not illegal but certainly excessive**. In having discussions with your client, you can better understand their projects to plan authorisation limited to their real needs.

Example If you work with a company taking photos of their employees, premises or services for the needs of their communication, assigning your rights for a maximum duration of 5 or 10 years can be a good compromise.

For any use on published objects, limiting the number of authorised examples is also advised.

Example Authorisation for 500 catalogues, 1,000 postcards, 20,000 copies of a magazine, 300 posters, etc.

SETTING GUIDELINES FOR THE TERRITORY ON WHICH YOUR PHOTOGRAPHS CAN BE USED

You can establish whether your photographs can be distributed on French territory only, in several countries or the whole world. For the internet and social media, as well as for uses leading to international distribution, authorisations of uses are granted for the whole world.

For uses of your photographs in a book, assigning your rights can also be limited to one or several language versions of the work.

SETTING THE AMOUNT OF REMUNERATION

You can assign your rights of reproduction and representation either for free, if that is specifically mentioned, or for a fee, that is to say in return for remuneration. As part of an assignment for a fee, **the author's remuneration is proportional** to revenue from the sale or use of their works.

Example If your photographs are used for postcards or a poster, your remuneration will be a percentage of the sales price for each example sold. The amount of this percentage will be calculated proportionally to your participation in the work.

Through dispensation, your remuneration can be a set sum if the proportional remuneration is difficult to establish.

Example When one of your photos is reproduced in a book or if your photo is reproduced on a format distributed free of charge (communication formats, free publications, free access websites, etc.), you can be remunerated with a set sum.

(9) Combating non authorised use of your photos

Has someone copied, reproduced, depicted your photograph without your authorisation? Reproduction and representation of a work in any form without the author's prior authorisation constitutes counterfeiting. In application of article L. 122-4 of the French Intellectual Property Code:

“Any reproduction or representation of a work without the consent of the author or their beneficiaries is illegal.”

You can defend yourself by writing to the person using your photo without authorisation, to give them notice to cease using your work and demand **payment of the author's rights** owed to you.

If you have joined a collective management organisation such as the ADAGP to manage your reproduction and representation rights, this company can intervene in your name.

(10) Managing your exploitation rights

If you are a member of the ADAGP for the management of your reproduction and representation rights (“exclusive rights” member or “TD” on your membership card or your online membership space), you have entrusted ADAGP with delivering the authorisations that exhibition venues, publishers, press, television, or any other customer, need to use your photos.

You can therefore inform your contacts that you are a member of the ADAGP. As of 1 July 2020, the ADAGP had made agreements with 189 museums, art centres and foundations, 127 press titles and 275 TV broadcasters in France. If you work with one of these places, titles or distributors, the conditions of using your photos are therefore supervised by the ADAGP. Thanks to your membership, you have the assurance that your rights will be respected. To know if the ADAGP has an agreement with the place you are going to work with, you can contact the Multimedia (multimedia@adagp.fr) and Publishing (edition@adagp.fr) services.

For your customers who have not signed an agreement with the ADAGP, you simply have to inform them that you are a member and invite them to fill in an online authorisation request on the website. Its services will give your contacts the required authorisations and will collect the rights you are owed.

You can also send the contracts that have been provided for you to the ADAGP to ensure that your author’s rights are respected.

(11) Receiving your collective rights

Collective rights – or **remuneration rights** – cover certain uses of works which, for practical reasons, cannot be individually managed: for example, the copying of a work by an individual onto a digital support for their own use (private copying) or photocopies (reprographics).

These rights cannot be managed individually but they can be collected thanks to the authors societies that collect them. You can **join the ADAGP only for your collective rights** and make your declarations online by listing all your publications (whether from publishing, press or television), for the rights owed to you can be calculated.

It is also important to declare international publications (books and press), as the ADAGP acts throughout the world thanks to a network of more than 50 author's societies internationally that ensure author's rights management on their territories.

Exhibiting your photos and working with an agency or gallery

(12) Taking part in an exhibition

When you take part in an exhibition to present your photographs, in a gallery or in an exhibition centre, several documents must be prepared in advance:

- A **deposit slip** (or a loan form).
- A **contract** with the event organiser indicating all of the exhibition conditions: describing the works concerned, transport conditions, exhibition and loan or deposit dates, works return, insurance, various expenses, and for a gallery: sharing out of the sale price and presentation of the accounts, i.e. the inventory of sales made.
- **Rights assignment**, when necessary, for uses the organiser has planned (exhibition catalogue, online promotion, etc.) and that can be planned for in the exhibition contract. If you are a member of the ADAGP for the management of your exploitation rights i.e. “exclusive rights”, you do not need to draw up rights assignment cf. **point (10)**.

(13) Working with an agency

The relationship with an agency must be founded on trust and respect of mutual interests. It must be envisaged in the perspective of a long-term collaboration. At the time of signing a contract with a photo agency, you must ensure that your agreement is balanced.

↳ It is important that you ask yourself all of the following questions before signing your contract.

CHECK THE EXTENT OF YOUR UNDERTAKING

Which sectors will the agency represent you in: written and visual press, publishing, advertising agencies, galleries, etc.? Do you choose to accept or refuse subscription principles? Will the agency represent you exclusively? For how long? On what territories? Is the duration of your contract set or renewable automatically? Does your contract oblige you to supply new photos to the agency regularly?

WHAT EQUIPMENT ARE YOU GOING TO PROVIDE TO THE AGENCY?

If you work digitally, you give the agency copies of digital files. You should keep the original formats. Your contract must stipulate the format in which you are giving your files and how many you are giving. If you work in analogue, you should give the agency digital files generated from your negatives. These files are your property.

PHOTOGRAPH PRODUCTION

If your contract plans for production of photographs at the request of the agency, you should make sure that the production costs are shared pro rata with the planned profits. Agencies do not own files even if it is a commission.

YOUR REMUNERATION

Is the remuneration planned for fair? Does the agency commission rate vary according to the nature of the projects (archives, corporate, cultural, etc.)? Are projects provided directly by the photographer subject to a commission by the agency?

PAYMENT TERMS

Does the frequency offered by the agency to pay your rights: month, quarter, etc. suit you? Is payment conditioned to a minimum amount of rights to collect?

THE FREQUENCY OF THE RECORDS OF THE USES OF YOUR PHOTOS

Will they be sent to you every month / quarter / year?

THE INFORMATION ON THESE STATEMENTS

You should make sure that these statements are complete and indicate TV broadcasts and publication titles. This information will be essential for you to be able to make your declarations and collect your collective rights from approved societies such as the ADAGP cf. point (11).

CONNECTION WITH THE AGENCY'S WEBSITE

Do you have access to the agency's website? It is important that you know which of your photos are online and that you have a preview of what agency clients can look at.

WHAT HAPPENS IF YOU LEAVE THE AGENCY?

The termination terms must be provided for in the contract: notices, inventory. When you leave, you should check that all files have been destroyed. It is therefore important that you know the number of online files. You can ask for a certificate certifying that the files have been deleted.

(14) Working with a gallery

Just as with an agency, you have shared interests with your gallery. The gallery owner's mission is to advise you as well as to exhibit, promote and sell your work. The Code of ethics of art galleries, issued in 2016 and updated regularly by the Comité Professionnel des Galeries d'Art (Art Galleries Professional Committee) illustrates the professional relations between artists and galleries and recalls the rights and obligations of each party.

- ↳ It is advised to draw up a contract to formalise your relationship in order to anticipate all situations that you may encounter, by addressing the following the subjects in particular.

TERMS OF DEPOSITING YOUR WORKS

The collection and return dates of your works should be specified and your contract should indicate who covers the transport costs.

THE GALLERY AND ARTIST'S RESPECTIVE OBLIGATIONS

If an exhibition is organised, if management and promotion costs are covered (hanging, communication, etc).

THE EXCLUSIVE CHARACTER OR NOT OF YOUR CONTRACT

If you have signed an exclusive contract, this means that you can only sell your photographs through your gallery: you cannot sell photographs directly to a collector, or via another gallery.

THE DURATION OF YOUR CONTRACT

Have you been working with this gallery for a number of years or just for the purpose of an exhibition?

YOUR REMUNERATION

The contract must indicate how the photographs' sales price will be defined, how the sale proceeds will be distributed between the gallery and you and the timeframe within which the gallery undertakes to pay you your share. Also make sure that the share of remuneration between the gallery and you is carried out after deducting agreed production costs, which will be reimbursed to those who incurred them.

INSURANCE

It is important that the gallery confirms that it has taken out insurance coverage for its premises, the works, its equipment and staff and that it has taken out insurance providing nail-to-nail coverage and civil liability insurance. You may ask that your gallery provide you with details of the name of its insurer and the insurance policy number.

THE CONTRACT TERMINATION POSSIBILITIES AND CONDITIONS

Although it is never the intention, the purpose of the contract is also to allow you to anticipate terminating the contract in the event of failure to comply with obligations. It is a good idea to stipulate the conditions for recuperating your works and make sure that the share of remuneration potentially owed to you is due immediately.

To avoid any future discussion about the photographs covered by this contract, you can annexe a list of your works which can be updated with deposit slips.

In any event provide your photographs without having signed a deposit slip including a statement of the state of your works at the time of depositing and also at the time of recuperating your photos. It is also important to stipulate the conditions in which you can recuperate your works.

(15) Benefiting from resale right royalties

Resale right refers to the remuneration that authors of original graphic and visual works benefit from the resale of their works when an art market professional intervenes: auction house, auctioneer, gallery owner. This right is inalienable, that is to say that the artist cannot assign it, give it, nor give it up.

In order to benefit from resale right, it is in particular necessary that your photographs are limited to 30 prints, all formats and supports combined and signed. The photographer's stamp can be equal to their signature. A signature is not required if the resold photograph is a single print.

The resale right can be collected by directly contacting the art market professional in charge of the sale. As such processes are fastidious, it is usual to mandate an authors society like the ADAGP, which directly receives all the information necessary to collect resale right from auction houses and galleries.

(16) Number your photographs: why, how?

Numbering your photos has consequences in terms of VAT. To be considered as works of art to which a reduced rate of VAT at 5.5% is applied, the photographs must be taken by the artist or printed by them or under their control, signed and numbered with a maximum of 30 copies, all formats and supports combined.

Numbering is done with a numerator and denominator for each print, whatever the format: 5 / 30, 6 / 30, etc.

Example If you choose to make prints in several formats, the entire number of prints cannot be more than thirty copies: it is not possible to make thirty copies of a same photograph several times in different formats.

The notion of 30 prints is a maximum: you can have series with smaller numbers. You can produce larger numbers of copies but in that case you cannot collect the resale right and the reduced VAT rate will not apply if sold. For numbering your photographs, your choice must be made from the first print and will then have consequences on the art market: limited numbers of prints are usually worth more.

Numbering your photographs is recommended in general to ensure better traceability of your works.

(17) Draw up a certificate of authenticity

The Code of ethics of art galleries recommends, although it is not obligatory, to provide a unique certificate of authenticity when selling a photograph, which is written with a date, including several indications.

The important things to indicate are: your artist's name, your professional identification numbers (Maison des Artistes, ADAGP, SIREN), the title and an image of the work, the technique and materials used, the format, creation date, where the signature is placed, the identification number and the number of copies if the work comes from a numbered limited series, the artist's signature, and the date the certificate was issued.

Collective management organisations do not have the competence to make decisions on the authenticity of their members' works and do not issue authenticity certificates nor any other document referring to the authenticity of a work. The certificates come under the competence of the artists or experts.

(18) Drawing up a clear and precise quote

From your initial discussions with a client, it is important that you agree on the extent of your work: do not commit to a price before having very precisely defined what this price covers and what it does not cover!

Example If a client asks you to take photos, have you thought of exactly how many days you plan to work for the price offered? Is post-production work planned for? Are your travel expenses covered by the client? Other than the work service, does the quote include assigning your author's rights?

Your quote must be detailed post by post to avoid any ambiguity: design fees, shots, post-production, additional expenses, sale of the work, rights assignment, etc.

If you do not want to assign your author's rights or you have not yet agreed on your photos' conditions of use cf. points (6) & (8), you can nevertheless draw up a quote for the "photograph" part of your work and exclude your author's rights assignment from the document. In this case, you can use the following formula:

"This quote does not include remuneration for author's rights. Any photograph use should be the subject of distinct authorisation."

Do not send any HD files of your photos until you have agreed on their use. If you have to show images to your clients, use low-definition files instead, which could not be used.

(19) The compulsory statements on an invoice

To be valid, it is imperative that you show a certain number of indications on your invoice:

- **Your identity:** name or company name, address, and where applicable the Siren/Siret number associated with this name and the APE code
- **Your client's identity:** name, domiciliation address, invoicing address
- **The invoice issue date**
- **The invoice number** respecting continuous numbering
- **The sales or service date**
- **Purchase order number:** if your client has issued a purchase order, you should indicate the number on your invoice
- **Designating the invoice subject:** sale, service (equipment supply, shots, etc.)
- **Detailed breakdown** for each service carried out: a distinct price must correspond to each line of the invoice; transport expenses or packaging for example, must be on a separate line
- **Reductions or potential increases in the price**
- **VAT identification number** (or indication of the VAT exemption scheme)
- **Legally applicable VAT rate:** when goods and services that you invoice are subject to different VAT rates, you should show the corresponding rate on each line
- **Amount to pay excluding taxes and inclusive of all taxes**
- **Date at which payment must be made.**
It is possible to plan for a penalty if payment is not made on the planned date.
- **If you are subjected to a deduction,** indicate the amount of social contributions to be paid by the broadcaster to the artist-author scheme

(20) Applicable VAT rates

Author's rights assignment invoicing is subject to a VAT rate of 10%. If you benefit from an exemption regarding VAT application, you should state on your invoices the indication "VAT not applicable under article 293b of the French General Tax Code".

The sale of your photographs as original art works, i.e. not exceeding the number of 30 original, signed and numbered prints, is subject to a VAT rate of 5.5% cf. point (16).

On the other hand, if you exceed the number of 30 prints, sales of your photographs no longer benefit from reduced VAT and a rate of 20% will be applied.

The ADAGP is the French society of authors for visual arts. It collects and distributes author's rights for more than 190,000 artists in the world, including 14,500 in France. In particular, it manages collective rights (reprographic rights, remuneration for private copying, broadcasting by cable, satellite and ADSL, library lending, educational uses, etc.) for more than 3,300 member photographers. In order to represent the 40 artistic fields in its repertoire, the ADAGP has set up artists' committees.

The ADAGP Photography Committee is made up of the photographers Diane Arquès, Jean-Philippe Baltel, Alain Bizos, Alix Delmas, Pierre-Olivier Deschamps, Brigitte Enguerand, Nicolas Giraud, Valérie Jouve, Romuald Meigneux, Gilles Rolle and Antoine Schneck. It initiated this publication.

Browse the 20 points on the ADAGP website
<https://www.adagp.fr/fr/20-conseils-aux-photographes>

Publication Director Marie-Anne Ferry-Fall

Graphic Design Lauren Budestschu
Editing Martine Michon

Acknowledgements: Comité Professionnel des Galeries d'Art,
Véronique Raimond Dit Yvon.

Printed on the presses of STIPA printers
in Montreuil in November 2020. Legal deposit November 2020



Pour le droit des artistes

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