

# PANORAMA EXCEPTION

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DATE / PLACE



# PRESENTATION OF THE ADAGP

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## ADAGP: A COMPANY CREATED & MANAGED BY ARTISTS

Created in 1953, ADAGP is the **French royalty collecting and distribution society in the field of graphic and visual arts.**

ADAGP is a **non-profit partnership**, the members of which (artists, beneficiaries, assignees) are also the partners: they control the management, elect the management bodies and decide on company strategy.

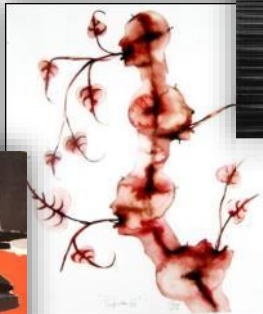
## ADAGP: THE COPYRIGHT CONTACT

Supported by a global network of almost **50 sister companies**, it currently **represents more than 110,000 artists in all disciplines of visual arts** : painting, sculpting, photography, architecture, design, comic strips, manga, illustrations, street art, digital creation and so on.

# PAINTING



Nicolas DE STAEL



Barthélemy TOGUO



Pierre SOULAGES



Jean-Michel BASQUIAT



Jean DUBUFFET



Salvador DALI



Vassily KANDINSKY



Roy LICHTENSTEIN



Marc CHAGALL



YAN Pei Ming



Andy WARHOL



René MAGRITTE



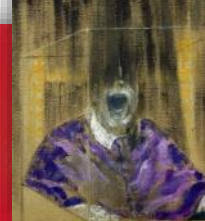
Joan MIRO



Robert COMBAS

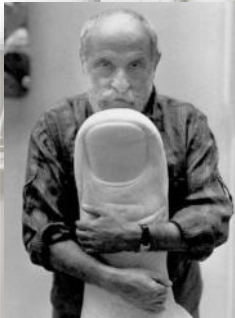


Martial RAYSSE



Francis BACON

# SCULPTURE



CÉSAR

Nicolas DE STAEL



Roy LICHT



Xavier VEILHAN



Alexander CALDER



Constantin BRANCUSI



ARMAN



Alberto GIACOMETTI



Ousmane SOW



Bernar VENET



Niki de SAINT PHALLE



Francis BACON

Joan MIRO

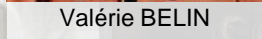
Robert COMBAS

Martial RAYSSE

# PHOTOGRAPHY

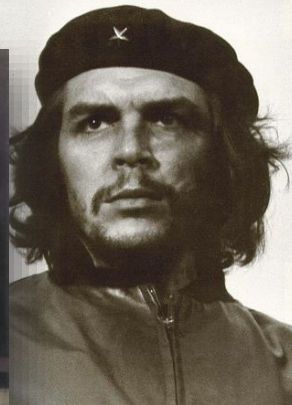


Valérie JOUVE



Valérie BELIN

Nicolas VEILT



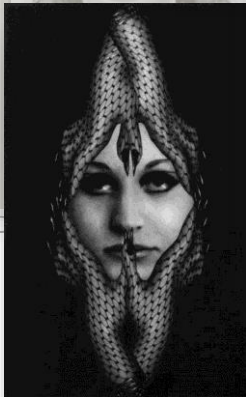
KORDA



Éric BOUTTIER



Vassily KANDINSKY



Pierre MOLINIER

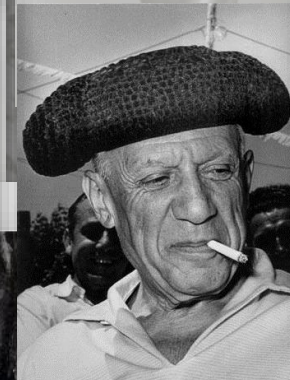


MAN RAY

Alberto G



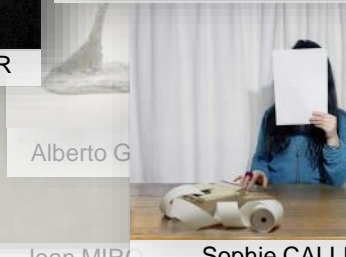
Willy MAYWALD



André VILLERS



Philippe RAMETTE



Joan MIRO

Sophie CALLE

Francis BACON

SAINT PHALLE  
Martial RAYSSE

# DESIGN



Cédric RAGOT



Matali CRASSET



Jean PROUVÉ



Gerrit RIETVELD



Frédéric RUYAN



Charlotte PERRIAND



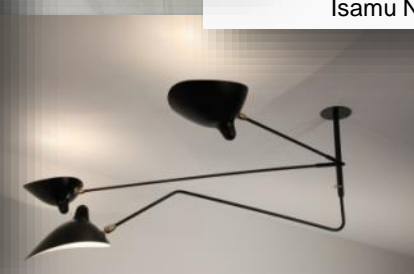
Isamu NOGUCHI



Pierre MOLINIER



Mies VAN DER ROHE



Serge MOUILLE



LE CORBUSIER

Joan MIRO

Sophie CALLE

Willy MATWALD

Martial RAYSSÉ

# STREET ART



DARCO



SPEEDY GRAPHITO



Dmitri VRUBEL



MOSKO ET ASSOCIÉS



Jérôme MESNAGER



Birgit KINDER



Jeff AÉROSOL



Ernest PIGNON-ERNEST



SPACE INVADER

Pierre MOU



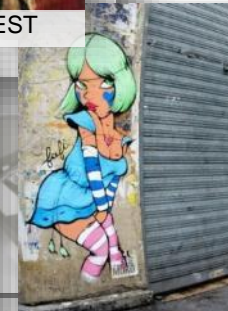
Thierry NOIR



CHUCK ONE



MISS.TIC



FAFI

Joan MIRO

Sophie C

Serge MOU

Willy IV

RAYSSÉ

# ARCHITECTURE



Santiago CALATRAVA



Dominique PERRAULT



Jean NOUVEL



Roger TAILLIBERT



Christian de PORTZAMPARC



Marc MIMRAM



Robert MALLET-STEVENS



Jean-Paul VIGUIER



LE CORBUSIER



COSTANTINI, MACARY, REGEMBAL, ZUBLENA



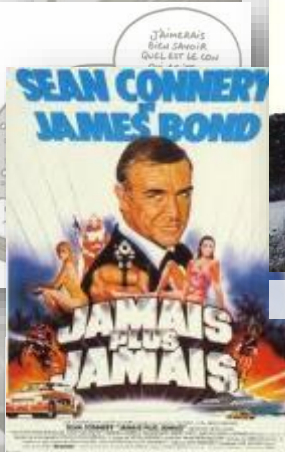
Paul ANDREU



Adrien FAINSILBER



# ILLUSTRATIONS



Michel LANDI



René FERRACCI



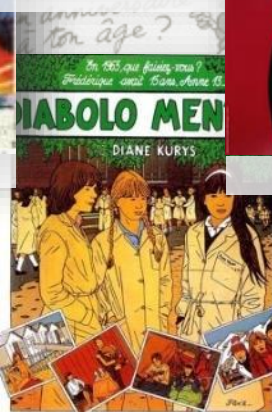
Bernard VILLEMOT



Jean MASCII



Boris GRINSSON



FLOCH



Roger BRODERS



Raymond SAVIGNAC

# COMIC STRIPS (COLLECTIVE ROYALTIES ONLY)



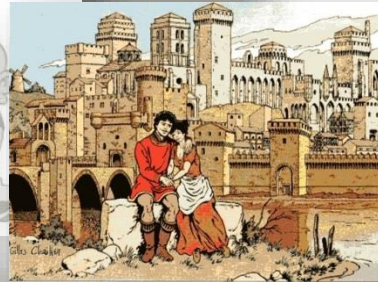
Marjane SATRAPI



CROMWELL



ZEP



Gilles CHAILLET



Soledad BRAVI



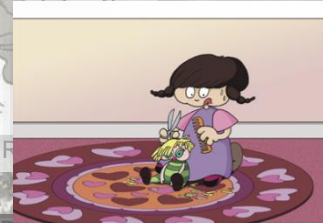
Joann SFAR



GELUCK



HERGÉ



KARINKA

Christian de

Danièle BOU

COSTANTINI, MACARY, RESEMBAL, ZUBLENA

Willy W

ASAKI

Adrien FAINSILBER

NTSOE

TLIB

CORBUSIER

# WHAT IS THE PURPOSE OF ADAGP ?

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ADAGP manages **all the property rights held by artists, for all modes of use**

- Reproduction right
  - Right of public communication
  - Resale right
  - Collective rights (private copying levy, photocopying ...)
- } Books, media, television / VOD,  
internet, merchandising ...

The process of obtaining permission for using an artwork is made quick and easy by an **online form**.

**Each request will be examined specifically so as to offer the most appropriate legal and financial response.**

# WHAT IS THE COPYRIGHT ?

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Copyright (or author's right) is a legal term used to describe the **rights that creators have over their literary and artistic works.**

There are two types of rights under copyright:

- **Economic rights**, which allow the rights owner to derive financial reward from the use of his works by others;
- **Moral rights**, which protect the non-economic interests of the author.

# WHAT ARE THE EXCEPTIONS ON COPYRIGHT?

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Copyright laws allow certain limitations on economic rights, in order to maintain an **appropriate balance between the interests of right holders and users of protected works.**

Protected works then may be used without the authorization of the right holders.

Limitations and exceptions to copyright and related rights **vary from country to country due to particular social, economic and historical conditions.**

**International Treaties** acknowledge this diversity by providing **general conditions** only for the implementation of limitations and exceptions.

# EXCEPTIONS ON COPYRIGHT: THREE STEP TEST

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All the exceptions to copyright have to respect the “three-step-test”, added by the 1967 Stockholm Revision Conference to the Berne Convention (**Article 9(2)**) .

## **Exceptions :**

- **Have to be limited to certain special cases,**
- **Shall not conflict with a normal exploitation of the work**
- **Shall not unreasonably prejudice the legitimate interests of the author.**

The three-step-test also applies under **TRIPS** (article 13), **WCT** (article 10) and the **Directive 29/2001** (article 5.5).

## DIRECTIVE 2001/29

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The Directive 2001/29/EC of 22 May 2001 is intended to **harmonize the legal protection of copyright** and related rights with particular emphasis on the information society.

According to this text “A harmonised legal framework on copyright and related rights, through increased legal certainty and while providing for a **high level of protection of intellectual property**, will foster substantial investment in creativity and innovation [...] and lead in turn to growth and increased competitiveness of European industry [...]. This will safeguard employment and encourage new job creation”.

This Directive provides for an **exhaustive enumeration of exceptions and limitations** to the reproduction right and the right of communication to the public.

# EXCEPTIONS TO COPYRIGHT IN EUROPE

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The Directive 2001/29 introduced **one mandatory exception** to the right of reproduction about the temporary acts of reproduction which are integral to a technological process.

The Directive also makes provision for other **non-mandatory exceptions** to the rights of reproduction or communication.

**The visual arts are the most concerned by the exceptions on copyright: 12 of the 22 cases provided by the Directive 2001/29.**



# EXCEPTIONS TO COPYRIGHT IN EUROPE

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In France, case law has also admits the “**accessory exception**”, **in addition to the exception provided by the law.**

**Cour de cassation, 15/03/2005, *Place des Terreaux***: there is no copyright infringement when the artwork [the flooring made by Daniel Buren] is “**accessory compared to the main represented or handled subject**” i.e. when the artwork is not intentionally included as the main element of the representation.



*La place des Terreaux à Lyon prise du balcon de l'hôtel de ville,  
Philippe MICHAUD, 2010.*

Source : [http://commons.wikimedia.org/wiki/File:Place\\_des\\_Terreaux\\_01.jpg](http://commons.wikimedia.org/wiki/File:Place_des_Terreaux_01.jpg)

# WHAT IS THE EXCEPTION OF PANORAMA ?

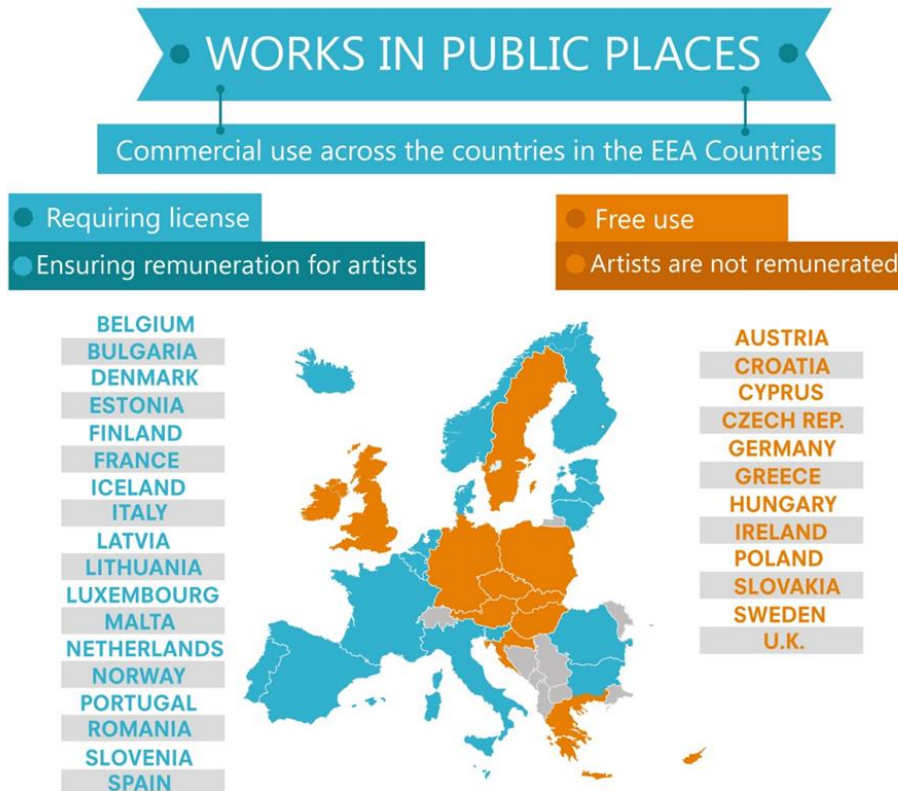
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The Panorama exception is **one of 20 optional** exceptions provided for by Directive 2001/29

It applies to the « **use of works, such as architecture or sculpture, made to be located permanently in public places** »

And many other artworks, like **street art** !

# PANORAMA: A NON MANDATORY EXCEPTION



Each Member State **decides to introduce or not those non-mandatory exceptions** provided by the Directive 2001/29.

# COMMERCIAL USES: THE REAL ISSUE

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Artworks have an extraordinary **power of attraction** to the public

Using them in a commercial purpose is a **choice, not an obligation**

**Artists can not be deprived of their right to grant authorisations and of a fair remuneration**

# EXAMPLES OF COMMERCIAL USES OF ADAGP'S CATALOGUE

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Christian PORTZAMPARC, Tripode  
(Nantes)



Renault's advertising

# EXAMPLES OF COMMERCIAL USES OF ADAGP'S CATALOGUE

Daniel BUREN, Les Anneaux  
(Nantes)



orange Vous rapprocher de l'essentiel

Tech Et si tout était encore plus fun à Nantes ?

reseaux.orange.fr

La Fibre, 100% Fibre

La Fibre 100% Fibre : Accessible en France métropolitaine sous réserve d'éligibilité et du raccordement du domicile du client. Habitations individuelles, frais d'acide : 149 €

Orange's advertising

# EXAMPLES OF COMMERCIAL USES OF ADAGP'S CATALOGUE

JONONE x Perrier



KASHINK x Converse

## COMMERCIAL USES: THE REAL ISSUE

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### Point 46 of the “new” Reda report :

“Considers that the **commercial use** of photographs, video footage or other images of works which are permanently located in physical public places **should always be subject to prior authorisation from the authors** or any proxy acting from them”



## COMMERCIAL USES: THE REAL ISSUE

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- **Internet users will still be free** to post photos/videos of artworks on their social media account and share them
- **Internet platform providers should have to pay**, due to their commercial activities
  - **Platform providers have to take part to the shared value**

## COMMERCIAL USES: THE REAL ISSUE

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- **More than exception on copyright issue, the question of the exemption of the platform providers is a global policy issue**

# MAIN ARGUMENTS FOR THE ADOPTION OF THE PANORAMA EXCEPTION

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In 2015, there are more artworks available than ever and artists are the firsts to communicate their creations to the rest of the world.

However, there are more criticisms about copyright than ever:

- 1) Copyright is a **barrier to a full access to artistic heritage**
- 2) **Web users would be under threat to be pursued by authors** of art works in public places for up-loading private photos and videos on social media entries when these images included protected works
- 3) **Differences between the legislations** would be making cross-border uses difficult

# 1) COPYRIGHT: CONSUMERS WOULD BE UNDER THREAT TO BE PURSUED BY AUTHORS ?

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**Artists are the firsts to communicate their creations** to the rest of the world

ADAGP witnesses that its members are the first ones to give clear indications in order **to exonerate the non-commercial uses of their works from copyright royalties**

But artists must remain **free** to grant or not this kind of authorization

# 1) COPYRIGHT: CONSUMERS WOULD BE UNDER THREAT TO BE PURSUED BY AUTHORS ?

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- **Is it possible to take picture of artworks?**

**YES** (and not only of those located in public spaces!)

- **Is it possible to upload them on social media ?**

**YES** : even though there is no exception, **NO ONE** has ever been threatened or sued for that

- **Why not go for an exception for those uses ?**

- Because it is **useless**
- Because it could **prevent the payment of copyright royalties by social media platforms**

# 1) COPYRIGHT: CONSUMERS WOULD BE UNDER THREAT TO BE PURSUED BY AUTHORS ?

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*“Facebook users would be under threat because Facebook's terms and conditions give Facebook a licence to use their photograph for any purposes”*

- **Can we accept that Facebook make a commercial use of outdoor artworks, either directly or through a third party without paying any fee for copyright ?**

# 1) COPYRIGHT: CONSUMERS WOULD BE UNDER THREAT TO BE PURSUED BY AUTHORS ?

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**Market capitalisation: 247,65 Md \$**

## **Statement of Rights and Responsibilities:**

“ 2.1: For content that is covered by intellectual property rights, like photos and videos (IP content), you specifically give us the following permission, subject to your privacy and application settings: **you grant us a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use any IP content that you post on or in connection with Facebook (IP License)**”

*Extract from Facebook's Terms of Service (<https://en-gb.facebook.com/legal/terms/update>)*

# 1) COPYRIGHT: CONSUMERS WOULD BE UNDER THREAT TO BE PURSUED BY AUTHORS ?

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« Our goal is to deliver advertising and other commercial or sponsored content that is valuable to our users and advertisers. In order to help us do that, **you agree to the following: You give us permission to use your name, profile picture, content, and information in connection with commercial, sponsored, or related content** (such as a brand you like) served or enhanced by us. This means, for example, that **you permit a business or other entity to pay us to display your name and/or profile picture with your content or information, without any compensation to you** ».

Extract from Facebook's Terms of Service (<https://en-gb.facebook.com/legal/terms/update>)



# 1) COPYRIGHT: CONSUMERS WOULD BE UNDER THREAT TO BE PURSUED BY AUTHORS ?

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**Market capitalisation: 22,76 Md \$**

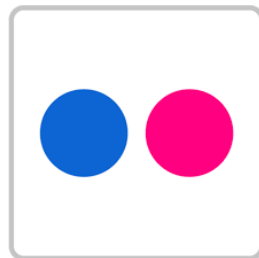
## **Twitter Terms of Service:**

“You retain your rights to any Content you submit, post or display on or through the Services. By submitting, posting or displaying Content on or through the Services, you grant us a **worldwide, non-exclusive, royalty-free license (with the right to sublicense) to use, copy, reproduce, process, adapt, modify, publish, transmit, display and distribute such Content in any and all media or distribution methods (now known or later developed)**”

# 1) COPYRIGHT: CONSUMERS WOULD BE UNDER THREAT TO BE PURSUED BY AUTHORS ?

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Facebook and Twitter are not the only ones who will have to pay, but also **Instagram**, **Flickr**, **Pinterest**, **Picasa** ...



# THE IMPORTANCE OF THE SOFT LAW

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**2010: agreement Youtube / ADAGP & SACD** (French authors' societies)

- **Fees = same level as TV channels**
  - **Compensation for 28 000 artists**
- **Youtube can pursue the development of its video offering while providing remuneration for authors and creators.**

# WHY THERE IS NO NEED FOR AN EXCEPTION OF PANORAMA: THE EIFFEL TOWER EXAMPLE



Illuminations / light shows of the Eiffel Tower are **protected by copyright**.

However, pictures of the Eiffel Tower may be taken **by private persons, by day or by night**, and published for instance on social media entries or personal websites.



## DAYLIGHT VIEWS OF THE TOWER

Free use

The image of the Eiffel Tower by day falls within the public domain: its use is rights-free, and may therefore be reproduced without prior authorisation by the SETE, the managing company of the image of the Eiffel Tower on behalf of the Mairie de Paris.



## THE TOWER ILLUMINATED

Controlled use

The various illuminations of the Eiffel Tower (golden illumination, twinkling, beacon and events lighting) are protected. The use of the image of the Eiffel Tower at night is therefore subject to prior authorisation by the SETE. This use is subject to payment of rights, the amount of which is determined by the intended use, the media plan, etc.

Views of the Eiffel Tower taken by private individuals for private use do not require prior agreement. However, professionals must contact our teams, who will inform them of the conditions of use governing images.



## 2) COPYRIGHT: A BARRIER TO A FULL ACCESS TO ARTISTIC HERITAGE ?

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Concert au Marais,  
Paul Ambille, 1990,  
© ADAGP

What if the European legislator finally takes into account the “full access to artistic heritage” argument to justify the adoption of the exception of panorama?

In this case, **this argument would be applicable to any work located in public places**: paintings in museums, the music played during concerts, the movies projected in public...

Do copyright must be purely and simply sacrificed?

## 2) COPYRIGHT: A BARRIER TO A FULL ACCESS TO ARTISTIC HERITAGE ?

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**Copyright is also there to protect this heritage and to sustain those who work today to constitute tomorrow's cultural heritage**

Every day, ADAGP and her sister companies all over the world grant **hundreds of authorizations for the uses of the artworks of their catalogues**

# HAVE YOU EVER SEEN THOSE BUILDINGS ?



*European Parliament,  
© Ralf Roletschek - Architecture Studio - ADAGP*



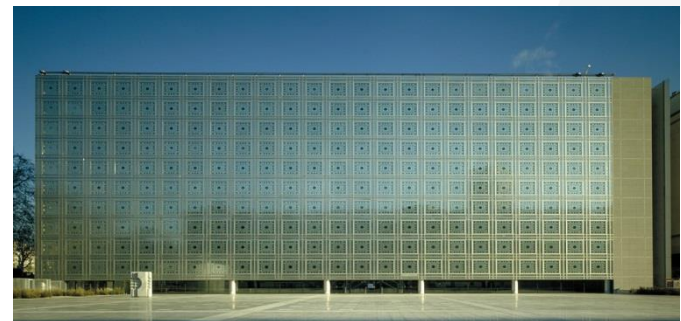
*La Grande Motte © Jean Balladur - ADAGP*



*La Bibliothèque nationale de France  
© Dominique Perrault - BNF - ADAGP*



*Stade de France  
© Macary - Zublena & Regembal - Costantini, Architectes - Adagp*



*L'Institut du Monde arabe  
© Jean Nouvel - Gilbert Lézénès - Pierre Soria - Architecture Studio - ADAGP*

### 3) COPYRIGHT: WHICH CROSS-BORDERS EFFECTS?

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Copyright varies from country to country, what is also the case for other rights within the European Union.

The Berne Convention (Article 5.2) provided for more than a century **international private law** rules regarding copyright laws, used daily.

The ADAGP itself deals with a catalogue of **110 000 artists**, living in **about fifty countries** (and as many legislations), what does not prevent it from delivering each week hundreds of authorisations of exploitation.



## THE WIKIPEDIA POSITION

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**ADAGP proposed an agreement to Wikipedia** in order to provide the uses of the artworks of its catalogue on the platform.

Wikipedia has set his conditions as conditions as follows (CCbySA licence, 2002):

- **High Definition files**
- **Right to modify the artworks**
- **Right to make commercial uses of the artworks (!)**

Such conditions could only be **inacceptable** for the authors...

## THE WIKIPEDIA POSITION

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Do this Community has been told about the **incompatibility between the CCbySA licence and the copyright issues?**

Why the Community didn't choose to change the **licence system [BY-NC-ND]** (Attribution + NonCommercial + NoDerivatives) into a more restrictive one, respectful of the copyright?

**Why did Wikipedia refused this option ?**

**Do Member States have to modify their own law and have to bend in front of a shadow Community?**

## THE WIKIPEDIA POSITION



Seule vue du Havre disponible sur Wikimedia Commons à cause de l'absence de liberté de panorama  
Le Havre 2008 – Kamel15 – GPL ou CC BY-SA 3.0 via Wikimedia Commons

Source : <http://blog.wikimedia.fr/clarifier-les-enjeux-autour-de-la-liberte-de-panorama-7300>

According to an article intitled *Clarifier les enjeux autour de la liberté de panorama* posted on the Wikimedia's blog, on April 2th 2015: “ the existence of rights in architectural buildings prevents the publication of numerous photos of contemporary works that are part of the heritage of France”.

The article is illustrated with this picture of the French city of Le Havre, assumed to be **“the only view of Le Havre available on Wikimedia Commons because of the lack of freedom of panorama”**.

## LE HAVRE: THE WIKIPEDIA EXAMPLE

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Le Havre is a city in Normandie, north-western France

**The city has been destroyed during the WW2**

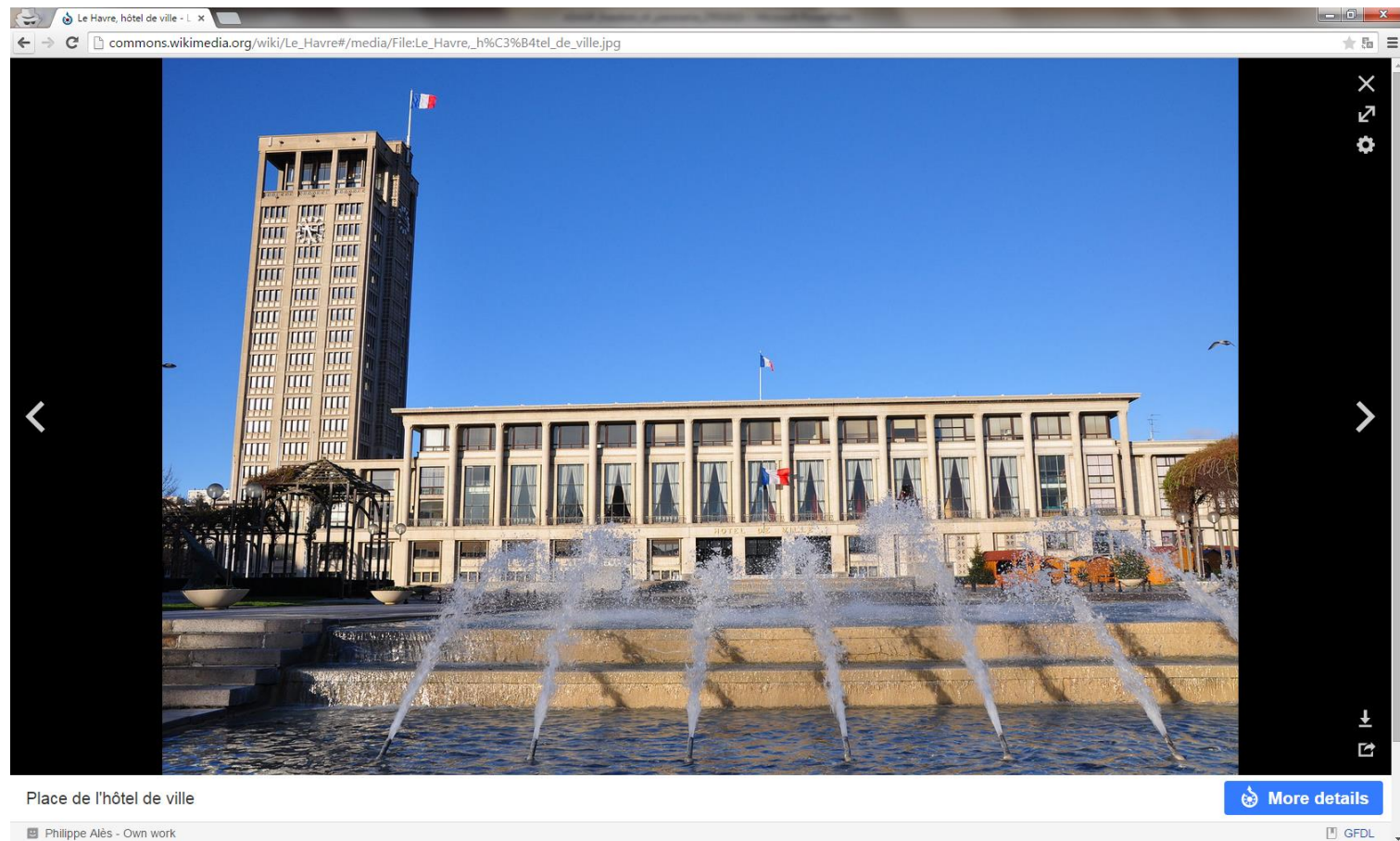
**Most of the reconstructed buildings are still protected by the copyright of its architects (Auguste Perret, Oscar Niemeyer, Georges Candilis ...)**

In 2005, UNESCO inscribed the central city of Le Havre as a World Heritage Site



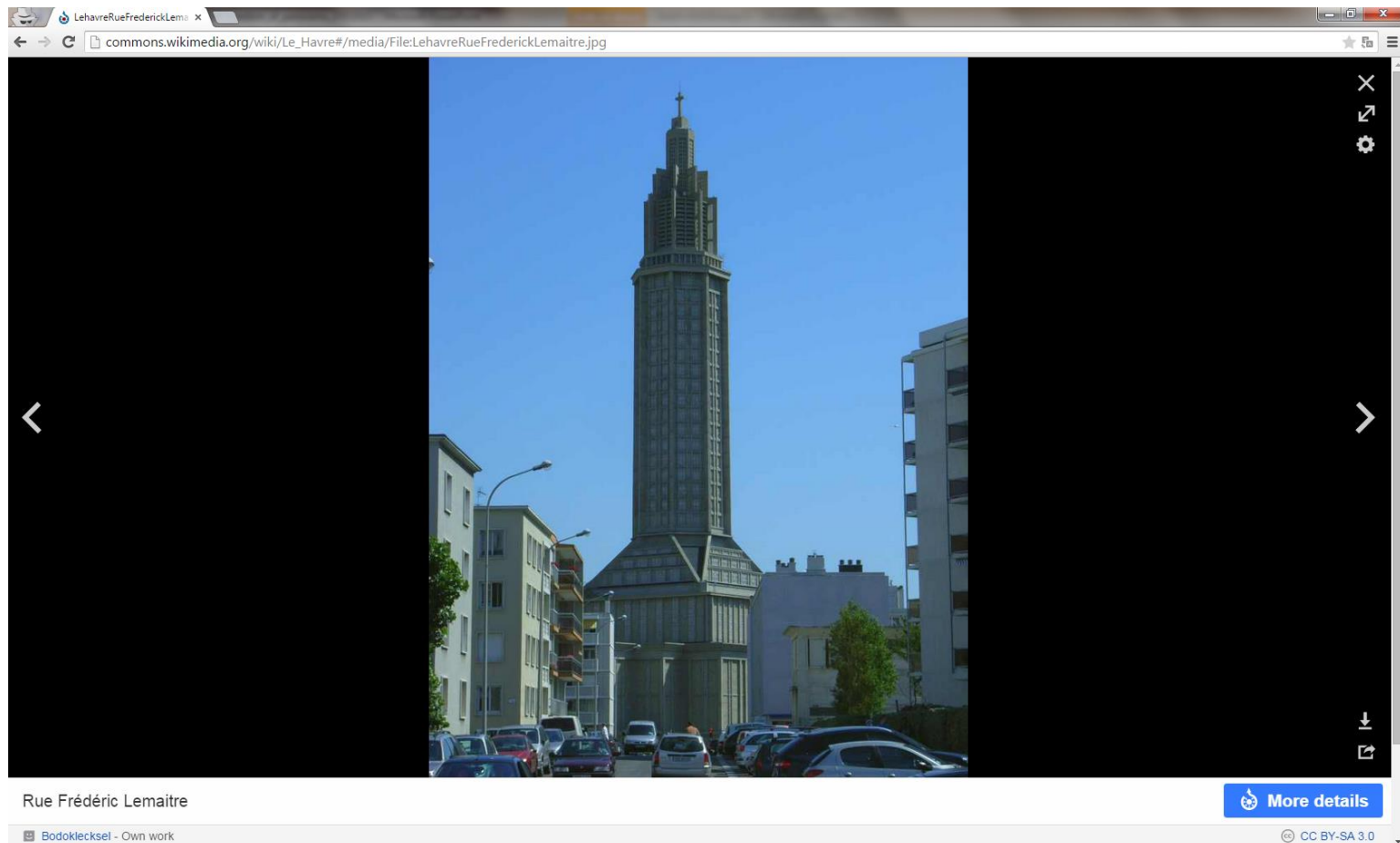
© Copyright Wikipédia - Carte extraite de l'article « Le Havre » ([http://fr.wikipedia.org/wiki/Le\\_Havre](http://fr.wikipedia.org/wiki/Le_Havre)) sous CC BY-SA 3.0.

# LE HAVRE: THE WIKIPEDIA EXAMPLE



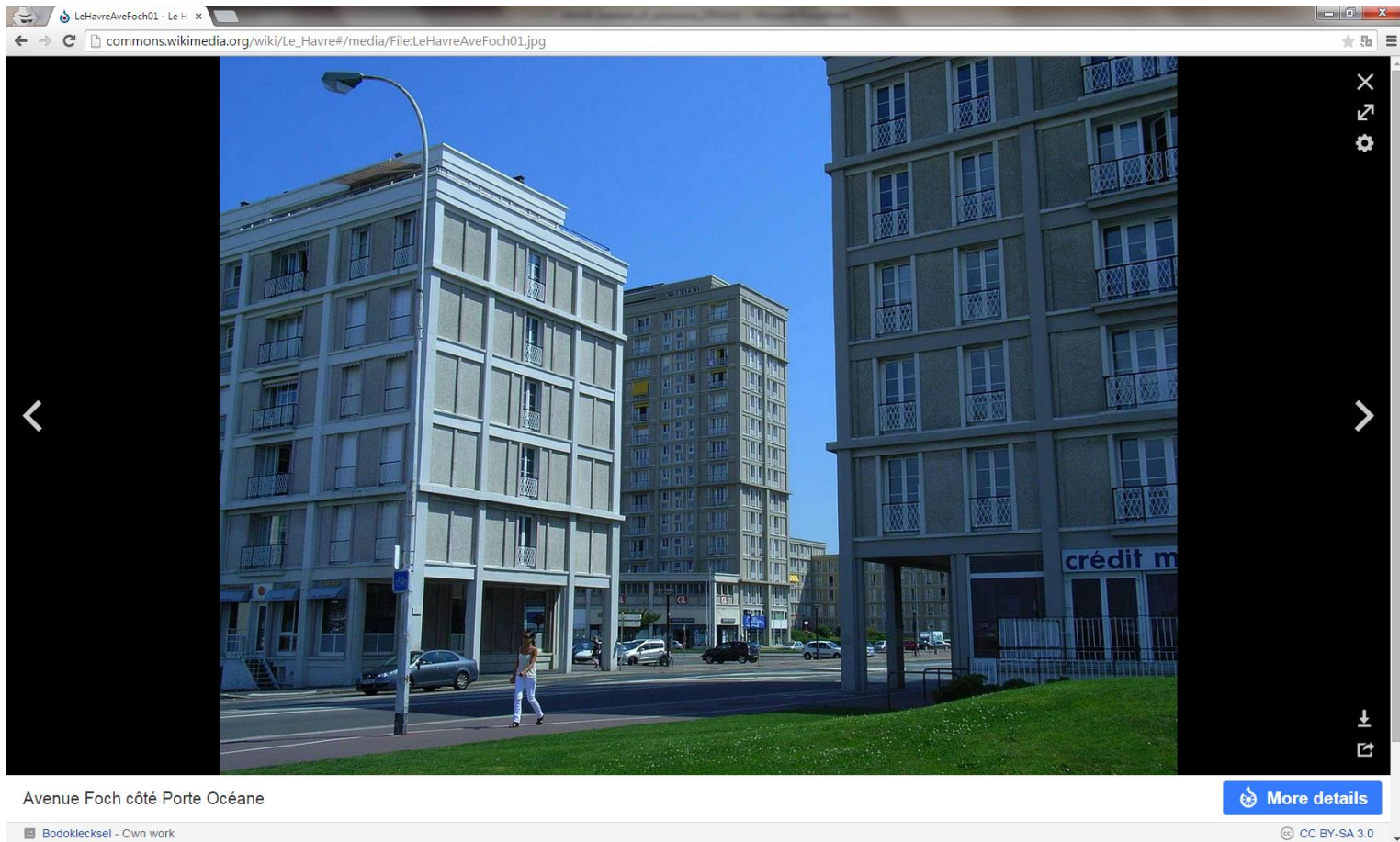
Source: [http://commons.wikimedia.org/wiki/Le\\_Havre](http://commons.wikimedia.org/wiki/Le_Havre)

# LE HAVRE: THE WIKIPEDIA EXAMPLE



Source: [http://commons.wikimedia.org/wiki/Le\\_Havre](http://commons.wikimedia.org/wiki/Le_Havre)

# LE HAVRE: THE WIKIPEDIA EXAMPLE



Source: [http://commons.wikimedia.org/wiki/Le\\_Havre](http://commons.wikimedia.org/wiki/Le_Havre)

# WIKIPEDIA: THE FREE ENCYCLOPEDIA

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Wikimedia is a service based on voluntary contributions which has obtained a **dominant position - close to a monopoly - in the field of online dictionary services**

**The fact that Wikimedia will always remain a non-commercial service is not certain**

Indeed, it is a **private entity** and, as such, there is in principle an option for **change in governance** resulting from a modification of its status



# WIKIPEDIA: THE FREE ENCYCLOPEDIA

Copy screen of the page of the article *Clarifier les enjeux autour de la liberté de panorama* posted on the Wikimedia's blog, on April 2th 2015



Source : <http://blog.wikimedia.fr/clarifier-les-enjeux-autour-de-la-liberte-de-panorama-7300>



Badge moyen 32 mm  
Taille unique  
TTC  
Hors frais de port € 7,90



Tasse  
Taille unique  
TTC  
Hors frais de port € 11,90



Tee shirt Homme  
Taille ...  
TTC  
Hors frais de port  
Prix € 17,90 € 16,90 Ajouter au panier



Casquette classique  
Taille unique  
TTC  
Hors frais de port € 47,00 € 16,90

Today: there are 122 items, not really free.  
**What about tomorrow ?**

# CONCLUSION ABOUT THE ARGUMENTS PRO EXCEPTION OF PANORAMA

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None of the arguments of the opponents stands up to the test of a serious opposite demonstration.

- In case of **non-commercial exploitation of the works**, the European citizens can freely access to their cultural heritage, fearless of legal proceedings and without any concern regarding international private law rules.
- In case of **commercial exploitation of the works** on the contrary, the entrepreneur will logically have to take those steps.

The ADAGP and its network of sister societies are there to be a **unique interlocutor** for demands of authorisation and to offer **legal security to its users**, by resolving itself practical and legal issues.

# EXCEPTION OF PANORAMA ≠ THREE STEP TEST

**By their very nature, exceptions on copyright are strictly limited. The exception of panorama wouldn't respect the three-step-test:**

<b>Special case</b>	<b>NO</b> (general exception to all the works situated in public places)
<b>Conflict with a normal exploitation of the work</b>	<b>YES</b>
<b>Unreasonably prejudice the legitimate interests of the author</b>	<b>YES</b>

Such exception would generate a **loss between 10 and 19% of the fees** collected by the ADAGP (between 3 and 6 millions €/year).

Such exception would **deprive some authors** (such as architects, sculptors, street art creators ...) **of the possibility to received any copyright fee, even if their artworks are exploited in a commercial way by third people!**

# COPYRIGHT ≠ OBSTACLE TO INNOVATION

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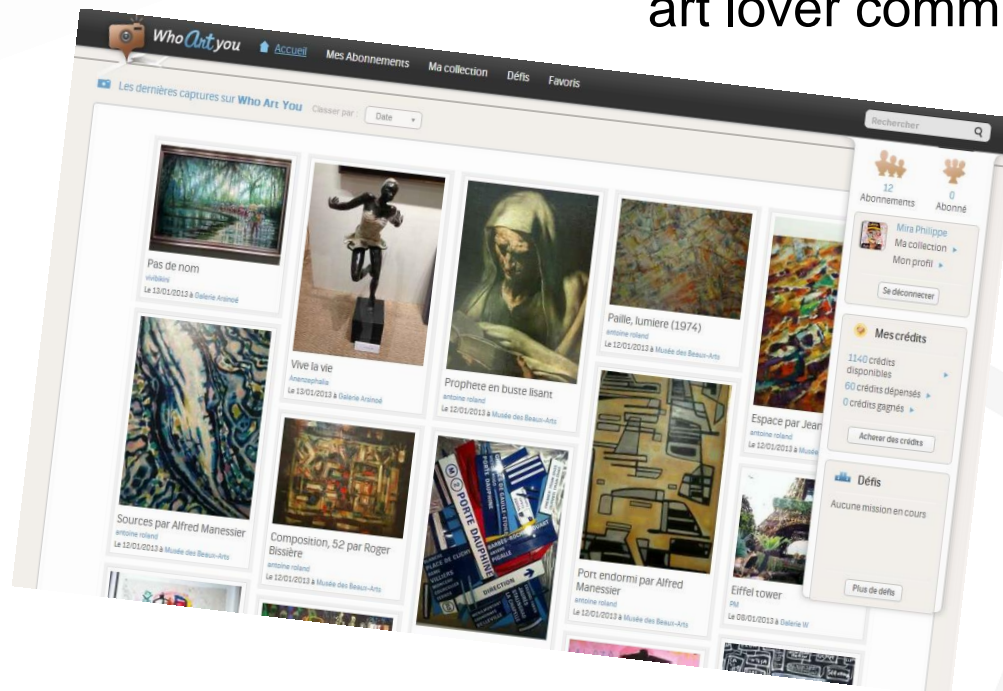
**Reda Report:** “the **European legal framework for copyright and related rights is central to the promotion of creativity and innovation**, and to access to knowledge and information”.

**Regulation never prevent the appearance of new actors and new economic models.**


# COPYRIGHT ≠ OBSTACLE TO INNOVATION

1st social network dedicated  
to art


Each member can **share**  
**pictures of artwork** within an  
art lover community.




# FRENCH GOVERNMENT'S POSITION

 **Ministère CultureCom** @MinistereCC · 17 mai  
#DroitAuteurNumerique @manuelvalls "les exceptions au droit d'auteur n'ont de sens que si elles restent rares" @fleurpellerin #Cannes2015


← ↻ 18 ★ 4 ⋮

 **Ministère CultureCom** @MinistereCC · 17 mai  
#DroitAuteurNumerique @manuelvalls  
"l'ampleur de la révolution numérique ne doit pas nous conduire à revoir les fondements du droit d'auteur"

← ↻ 25 ★ 5 ⋮

 **Ministère CultureCom** @MinistereCC · 17 mai  
#DroitAuteurNumerique @manuelvalls "le droit d'auteur est un mécanisme protecteur des artistes, un vecteur de notre identité collective"

← ↻ 24 ★ 6 ⋮

 **Ministère CultureCom** @MinistereCC · 17 mai  
#DroitAuteurNumerique @manuelvalls :la diversité de création européenne est sa première richesse, la vigilance de la France sera sans faille

← ↻ 13 ★ 10 ⋮

Colloque sur l'avenir du droit d'auteur en Europe, Cannes, May 17th 2015

# WHY THERE IS NO NEED FOR AN EXCEPTION OF PANORAMA

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Even in the countries where there is no exception for works in public places the **private uses are not pursued**

The **providers of platforms** on which private persons post pictures and videos taken or share image material they made **are not private users** and generate financial gains with the running of their services

**Exception of Panorama would be contrary to the three-step-test**

**There is no need for a legislator's intervention**

- **It would create an unjustified damage to the authors**

# TO GO FURTHER ...

Avril 2015

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## Exceptions for Works Permanently Located in Public Places

### Introduction

One of the outstanding objectives of the digital single market is the creation of economic growth and employment. The *visual sector* is one of the leaders in this respect within the European Union with *a turn-over of 127.6 bn € and 1,231 million jobs in 2012*<sup>1</sup>. As Commissioner Öttinger says, Europe is leading as concerns cultural content. In order to maintain this position the authors of visual works should not become subject to prejudice caused by unjustified and unremunerated exceptions and *an appropriate return of value which has been created based on authors' works* should be ensured.

Member countries have introduced the exceptions 5.3 (h) on works in public places and 5.3 (j) on incidental inclusion with some differences following their national traditions and *within the flexibility provided by the EU Directive 29/2001*. There are, however, *serious doubts that exceptions including commercial uses are in compliance with the three-step-test*.

### Position de l'ADAGP quant à une éventuelle consécration légale d'une exception dite de « liberté de panorama »

L'ADAGP a été alertée sur la tentation de consacrer dans le projet de loi sur le numérique une **exception dite de « liberté de panorama »** qui autoriserait la reproduction et la représentation des œuvres situées dans un lieu public<sup>1</sup>.

Il est rappelé, au préalable, qu'il existe déjà, en droit français, **plusieurs exceptions légales ou jurisprudentielles qui affectent directement les auteurs des arts graphiques et plastiques** (peintres, sculpteurs, photographes, designers, architectes, graffeurs...), et couvrent en tout ou partie les reproductions d'œuvres situées dans un lieu public :

- L'exception jurisprudentielle applicable aux reproductions accessoires (récemment : Cass. civ 1<sup>re</sup>, Getty, 12 juin 2012 ; Cass. civ. 1<sup>re</sup>, 12 juillet 2012, Aufeminin.com) ;
- L'exception d'information immédiate (L. 122-5 9°), qui autorise la presse à reproduire ou représenter une œuvre (bien souvent située dans un lieu public) pour faire état d'une actualité liée à cette dernière.

En outre, l'ADAGP applique et a toujours appliqué de **manière souple et raisonnable** les règles du droit d'auteur : les blogs de photos de vacances ou les pages de Wikipedia n'ont jamais donné lieu à facturation.

La **nécessité sociale** d'une telle exception de « liberté de panorama », qui en réalité sert des **intérêts sectoriels** particuliers, paraît dans ces conditions **douteuse**. A l'inverse, les auteurs des arts visuels ont de plus en plus le sentiment que, du fait des spécificités de leur secteur (mal organisé, sans filière industrielle), ils sont **une proie facile** que l'on sacrifie préférentiellement lorsqu'il s'agit de faire des concessions politiques dans le domaine du droit d'auteur.

Par ailleurs, une telle exception **heurterait frontalement** tant le **droit de propriété** que le **test en trois étapes** : sa **constitutionnalité** ne pourrait donc être que **remise en cause**, soit à l'issue des débats parlementaires, soit à l'occasion d'une inévitable question prioritaire de constitutionnalité.



THANK YOU  
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