

## **Chambers and Partners Global Guide 2014**

### ***Overview for France: Intellectual Property***

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France has a long history of protecting intellectual works through various intellectual property (IP) rights, the main ones being copyrights, neighboring rights, trade marks, patents, designs and origin labelling.

French laws, European Regulations and Directives, and International Treaties create a complete and evolving framework to protect and manage all IP rights in France. All applicable legislations are gathered in the French Intellectual Property Code.

As regards copyrights and neighbouring rights, France is a party to all main international treaties i.e. the Berne Convention for the Protection of Literary and Artistic Works since 1886, the Universal Copyright Convention (1952), the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (1994) and the WIPO Copyright Treaty (1996).

The first French law on literary and artistic works was enacted on March 11th 1957 and has been amended and complemented regularly ever since in order to implement EC Directives (particularly, 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society; and 2004/48/EC on the enforcement of intellectual property rights) and adapted to an ever-changing environment.

#### **The French copyright system**

The French copyright system entitles the author of a work to protection, under the condition that it is an original work, without the need for any specific registration. Such an author is granted moral rights (paternity and integrity, in particular) which are unassignable, inalienable and irrevocable. The author also owns exclusive patrimonial rights on his/her work: he/she can decide to be the only person authorised to use and exploit it, or he/she may transfer these rights, partly or entirely, for a limited scope and period of time, to one or more persons (individuals or companies). Even though moral rights are perpetual, patrimonial rights are limited to the lifetime of the author, and an additional 70 years after his/her death. Neighbouring rights are automatically granted to artists-performers and video and music producers, amongst others. These rights enable their owners to exclusively exploit their work for 50 years after its diffusion or first fixation, and give them a perpetual moral right.

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French and European legislation has built a specific copyright regime for software that provides specific exceptions to copyright (Directives 91/250/EEC and 2009/24/EC on the legal protection of computer programs; French law on computer programs dated May 10th 1994).

### **Industrial property right**

As regards industrial property rights, France is also a party to all main international treaties, including the Paris Convention for the Protection of Industrial Property (1883), the Madrid Union (1891, 1989), the Patent Cooperation Treaty (PCT, 1970) and the European Patent Convention (EPC, 1973).

In France, the National Institute of Industrial Property ("INPI") is the office in charge of all examinations and registrations of French industrial property rights. In 2011, the INPI received 91,214 applications for national trademarks, and 80,986 applications for national designs, and in 2012, 16,632 applications for national patents.

As regards French trade marks, registration is a condition for protection. The use is only a condition to maintain the effectiveness of a trade mark, but does not generate trade mark rights on a name. The main criterion of registration is distinctiveness. Once registered, a trade mark is protected during an indefinitely renewable period of ten years. French trade mark legislation is harmonised with that of other European countries (Directive 2008/95/CE), and includes Community trademarks (Directive 89/104/CEE and Regulation 40/94).

In France, an invention can be patented for a maximum period of 20 years, under conditions of novelty, inventiveness and potential industrial application. France is part of the PCT and EPC systems which facilitate international and European co-operation in the patent field. Most importantly, France plays a key role in the Unified Patent Court (UPC) as it will host the Central Division of the UPC expected to be created in 2014 (Regulation 1257/2012 implementing enhanced co-operation in the area of the creation of unitary patent protection, and Agreement on the UPC dated February 19th 2013, such Agreement having been under a French ratification process since October 2013).

Designs that are new and with unique characteristics can be protected in France by a national design for a five-year period, renewable for up to 25 years in total. French design legislation is harmonised with that of other European countries (Directive 98/71/EC).

### **Enforcement**

Even though IP rights holders can take civil and/or criminal action in the case of infringement, the majority of actions are brought before civil courts. All civil IP litigations in France are heard before ten specialised first-tier civil courts, except for patent litigation, for which the Paris first-tier civil court has sole jurisdiction. All infringement actions, nullity actions, and unfair competition claims when related to IP infringement, are managed by these specialised courts. (Unfair competition claims independent of an IP right infringement are under the jurisdiction of Commercial Courts.)

There are specific anti-counterfeiting legal tools and procedures available to IP rights holders to actively protect their rights (law on the fight against counterfeiting dated October 29th 2007 transposing Directive 2004/48/EC). All IP rights holders can request from the court preliminary actions to ascertain some infringing behaviour and acts, before introducing a legal action based on infringement (so-called 'saisie-contrefaçon'). Industrial rights holders can apply for customs intervention. As of January 1st, 2014, Regulation (EU) 608/2013/UE will strengthen the role of customs in the interception and the destruction of counterfeit goods, and in some cases for the intervention, investigation and seizure of infringing products by the General Direction for Competition Policy, Consumer Affairs and Fraud Control(1). A new anti-counterfeiting bill has been brought forward before the Senate on September 30th, 2013 and is currently under review; it aims at strengthening the French legal framework to widen the scope and effectiveness of all existing tools.

The challenges raised by copyright protection on the internet led to the creation of the High Authority of Diffusion on the Art Works and Protection of Rights (the HADOPI(2)) on the internet that is in charge of implementing the so-called "three strikes approach" (laws related to the dissemination and protection of creative works on the internet dated June 12th and October 28th 2009). Based on a report delivered to the French Ministry of Culture by the so-called "Lescure" Commission, legislative development may occur over the course of 2014 and potentially range from VoD and audiovisual services to private levy, DRMs and copyright exceptions.

(1) Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes

(2) Haute Autorité pour la diffusion des œuvres et la protection des droits sur internet

(3) The three strikes approach remains enforceable and can result in a fine, although the additional penalty, that of the suspension of internet access, was repealed by a decree dated July 8th 2013