



8 October 2015

Response to the Notice of Inquiry on the U.S. Mass Digitization Pilot program

Created in 1953, ADAGP is the French collecting society in the field of visual arts. In connection with 50 sister societies, including Artists Rights Society (ARS) in the U.S. ADAGP manages the rights and defends the interests of its over 11 000 direct members and more than 120 000 authors of graphic and plastic arts from all around the world (painters, sculptors, architects, designers, photographers, illustrators, authors of comics or manga...) in France, Monaco and Luxembourg.

ADAGP carries out the following tasks:

- Granting authorizations to reproduce or communicate to the public the works of its members, thus providing legal certainty to users (publishers, museums, art galleries, broadcasters, web publishers, manufacturers...);
- Collecting and distributing the royalties related to the rights under mandatory collective management;
- Collecting and distributing the copyright royalties accruing to its members for the use or resale of their works;
- Defending its members' rights against any third party, including in the courts;
- Defending and improving authors' rights, at both national and international level.
- Promoting and providing financial support to artistic projects, cultural events, exhibitions, art fairs and conferences related to copyright and creation.

ADAGP considers the proposed ECL framework may be appropriate provided that it is carefully designed not to destabilize the economic models in place (agreements with education establishments, museums, online services...). Under no circumstances shall this legislation end up in favoring commercial companies (notably Internet companies) to the detriment of authors.

As U.S. Copyright Office knows, French legislation does provide mandatory collective management or legal license for certain copyrights (private copying levy, royalties for photocopying, cable broadcasting and library lending, educational uses...). ADAGP is approved to collect and distribute the related royalties. The French legislation can thus be of interest to appreciate the opportunity of the proposed ECL framework.

The 2012 law on out-of-print books¹ should particularly be mentioned since this legislation recognizes to approved collecting societies the right to authorize the reproduction and the representation in digital form of 'out-of-print books'. During the whole legislative process, ADAGP fought to ensure that the pictures incorporated in books will be specifically addressed (independently of the books), that authors of the incorporated visual works will be able to opt-out easily and that they will receive a fair remuneration. Today these conditions are fulfilled and ADAGP considers such a framework is satisfactory.

Another interesting example is the legal exception provided for educational and research purposes (article L. 122-5 2° e) of the Intellectual Property Code), which is accompanied by a remuneration mechanism. The legislature took care to specify that the permission to reproduce excerpts of works doesn't apply to the works specifically made for educational uses (such as school textbooks): this ensures the legal framework doesn't break the functioning economic models in place.

The experience gained in the application of compulsory collective management in France suggests that the proposed ECL framework for mass digitization could be appropriate when a number of conditions are met:

- Authors shall have the possibility to **opt-out** at any time and the licenses delivered by the approved CMO shall always be **reversible**;
- Authors shall receive a **fair remuneration**;
- Only a CMO with a **strong representation of visual artists** (including **foreign artists**) and with a **proven experience in rights management** shall be approved to issue licenses for visual works (pictorial or graphic works, photographs...) In the United States, ADAGP considers that its

¹ "Loi n° 2012-287 du 1er mars 2012 relative à l'exploitation numérique des livres indisponibles du XXe siècle", available at : <<http://www.legifrance.gouv.fr/eli/loi/2012/3/1/MCCX1133814L/jo/texte>>.

sister society, Artists Rights Society (ARS), has a long and proven record of diligently exercising these obligations;

- The **economic models in place shall not be destabilized**, the functioning contractual frameworks shall be preserved;
- The **diffusion** of the works shall be **strictly circumscribed** (both legally and technically);
- The ECL framework shall **not end up in allowing big commercial companies to make huge profits** with the works (including indirectly, if it turns out the non-profit educational establishments were allowed to communicate the works to the public under excessively extended licenses) **to the detriment of authors.**

ADAGP remains at the disposal of U.S. Copyright Office to provide supplementary information.