

2.2.3 France

In November 2000, prior to the various statements related to the Open Access movement, the French National Centre for Scientific Research (CNRS) created the Centre for Direct Scientific Communication (CCSD)³⁹ which can be considered as a major actor of the French national Open Access policy. In 2001, the Centre developed the Hyper Articles en Ligne (HAL)⁴⁰ platform, a national and centralised multi-disciplinary open archive chosen by the whole French scientific and university community for the dissemination of knowledge. In 2005, it launched the HAL-SHS⁴¹, the specific open archive dedicated to humanities and social sciences. Five years later, in 2010, a novel open archive platform dedicated for deposition of visual and audio data produced as part of scientific research was created: MédiHAL⁴². Currently, there are 149 open archives running in the French academic environment (listed in OpenDOAR⁴³), mostly institutional ones but also some disciplinary and governmental ones.

Concerning national policies, an important event concerns the publication in May 2016, of a French decree making the submission of the electronic thesis mandatory for all institutions as of September 2016⁴⁴. This can be done by depositing the document in HAL or other national/institutional open archives.

Another key element is the entry into force in October 2016 of the French Law for a Digital Republic Act (LOI n° 2016-1321 du 7 octobre 2016 pour une République numérique⁴⁵). This law introduces new provisions to regulate the digital economy, online cooperative economy, data protection and access to the internet. Two articles are of specific concern for scholarly communication, as they relate directly to open access/open data and text & data-mining (TDM). Article 30 is about Open Access and creates a new right for authors to archive an OA copy of their publication (related to publicly funded research outcomes) even if they have granted an exclusive right to a publisher. Article 30 also ensures the re-usability of open data deriving from public funding.

Article 38, meanwhile, creates a new exception for TDM and modifies the intellectual property law. Regarding TDM, it is expected that further decrees should soon be published to make explicit what this law allows. This new exception anticipates and supports the likely modification of the European Directive on Copyright in the Digital Single Market on this topic.⁴⁶

On 4th July 2018 a national Open Science Plan⁴⁷ was officially published by the French Ministry of Higher Education, Research and Innovation. This plan is centred around three key commitments: Generalise Open Access to publications; Structure research data and make it available through Open Access; Be part of a sustainable European and international Open Science dynamic. This plan foresees specially to make open access mandatory for the dissemination of both research articles & books and

³⁹ <https://www.ccsd.cnrs.fr/en/>

⁴⁰ <https://hal.archives-ouvertes.fr/>

⁴¹ <https://halshs.archives-ouvertes.fr/>

⁴² <https://medihal.archives-ouvertes.fr/>

⁴³ Directory of Open Access Repositories <http://www.openoar.org/find.php>

⁴⁴ <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000032587086>

⁴⁵ <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000033202746&categorieLien=id>

⁴⁶ OpenAIRE <https://www.openaire.eu/blogs/new-french-digital-republic-law-boosts-support-for-oa-and-tdm-1>

⁴⁷ https://cache.media.enseignementsup-recherche.gouv.fr/file/Recherche/50/1/SO_A4_2018_EN_01_leger_982501.pdf

research data resulting from publicly funded projects, create the conditions for and promote the adoption of an Open Data policy for articles published by researchers, create an Open Science fund, support the national open repository HAL and simplify the publication filing procedures for researchers who publish through open access platforms around the world. With this plan, the French government explicitly mandates French research institutions and universities to develop their own OA policies. According to ROARMAP⁴⁸ around 21 French research institutions and 3 national Funders have until now open access mandates requiring authors to self-archive their papers.

On 6th July 2021 a second national Plan for Open Science⁴⁹ “Generalising open science in France 2021-2024” was officially published by the French Ministry of Higher Education, Research and Innovation. This plan is centred around four key themes: Generalizing open access to publications; Structuring, sharing and opening up research data; Opening up and promoting source code produced by research; Transforming practices to make open science the default principle. This plan takes effect until 2024. It extends the scope of the first plan to include source code from research, it structures actions promoting data sharing and openness through the creation of the Gov Data Research platform, it fosters the generalisation of practice of open science. It includes a European-wide vision, particularly to promote EOOSC. This involves initiating a process of sustainable transformation in order to ensure that open science becomes a common and shared practice, encouraged by the whole international ecosystem of higher education, research and innovation.

IPR, with respect to copyright, are defined by the French Code de la Propriété Intellectuelle (CPI). It provides for a presumption of authorship which defines as author any person indicated as such, unless proven otherwise. It also defines the notion of co-authorship and the different types of co-owned work that result from it (collaborative work, composite work, and collective work), along with the notion of protected work (any intellectual work of any kind, form of expression, quality or purpose).

A number of national exceptions to copyright protection are introduced by the CPI, such as the impossibility for the author to prohibit, as long as the source and the author are cited, the reproduction, analysis or extract of his/her work for the purpose of illustration for teaching and scientific research and non-commercial use. The same type of exception applies for the electronic reproduction of scientific works, the dissemination of public speeches, the citation for purposes of criticism, review, education, science and information, the making of private copies for non-collective use, etc. Software and databases are subject to separate exceptions. All relevant exceptions and further information on French copyright regulations are detailed in Appendix 7.2.5.3.

With regard to open data repositories and research results, the French Code de la Recherche (Article L533-4) provides that data resulting from a research activity financed at least for 50% with public funding coming from the State, public institutions or the EU, may be freely reused once they have been made public, unless they are protected by specific rights.

In the context of research publications, this same article indicates that the author of a scientific work resulting from such a research activity and published in a journal publishing at least once a year,

⁴⁸ ROARMAP: Registry of Open Access Repository Mandates and Policies
<http://roarmap.eprints.org/view/country/250.html>

⁴⁹ https://cache.media.enseignementsup-recherche.gouv.fr/file/science_ouverte/20/9/MEN_brochure_PNSO_web_1415209.pdf

retains the right to a second publication in an electronic, open and freely accessible way, even when an exclusive license has been granted to the publisher, with a possible embargo period ranging from 6 months to 12 months.

The French legislative initiative, Act No. 78-17 of 6 January 1978 on Information Technology, Data files and Civil liberties, introduces national safeguards on data protection for research purposes. In particular, it specifies safeguards for sensitive data, genetic data or health data processing, that can relate to consent, professional secrecy, or control procedures through ethics or audit committees.

The same law also lays limitations on access, rectification or processing of data for archiving measures in the public interest for scientific research.

More detailed information on data protection regulation in France can be found in Appendix 7.3.5.4.

6.2.5.3 France

6.2.5.3.1 Authorship

The French *Code de la Propriété Intellectuelle* (CPI)¹¹² provides for a presumption of authorship which defines as author everyone who is indicated as such, unless proven otherwise (Article L113-1 CPI). It also specifies that the editor or the publisher of an anonymous or pseudonymous work represents the author in the exercise of copyright (Article L113-6 CPI).

As to co-authorship, Article L113 CPI provides detailed definition of work of collaboration, composite work, collective work. A work of collaboration is co-owned by co-authors (“propriété commune”), and copyright shall be exercised on the basis of mutual agreement. In case of disagreement, a judge will decide. Contributions of different types can be exploited singularly by each respective co-author without prejudice to the work of collaboration. A composite work is owned by the author who created it without prejudice to the copyright of the author of the pre-existing work. A collective work is owned, unless proven otherwise, by the person indicated as the author. All contributors to audio-visual and radiophonic works are considered co-authors.

6.2.5.3.2 Subject matter

In line with the continental tradition and the Berne Convention, the CPI qualifies as protected work “any intellectual work of any genre, form of expression, quality or destination”. The general definition is followed by a list of works traditionally classified as subject matters of author’s rights. Titles of works are also included (arts. L112-1,-2,-3,-4 CPI).

6.2.5.3.3 Exceptions

Illustration for teaching and scientific research. Article L122-5(3°)(a),(e) CPI provides that authors cannot prohibit the inclusion of lawfully accessed works nor the reproduction and communication to the public of excerpts of the work for illustration for teaching or scientific research, under the condition that such uses do not have any commercial purpose and address an audience mostly consisting of students, teachers or researchers. The exception includes also uses for exams and tenders in educational environments, but excludes works specifically intended for educational uses and music sheets. It is mandatory to indicate the source and author, and a fair compensation system is envisioned based on lump-sum schemes. Article 5 CDSM Directive on digital teaching exception has not been implemented yet.

Private use for non-commercial purposes. With a text that partially differs from the related EU InfoSoc exceptions, according to Article L122-5(1) and (2) CPI, authors cannot prohibit the making of private copies of lawfully acquired works if they are not intended for a collective use. Artworks, software and databases are excluded from the provision, while fair compensation is due only when the use is not proportionate or does not relate to the exceptional informational purpose pursued by the exception.

¹¹² Code de la propriété intellectuelle, Partie législative, JO no 0153 du 03/07/1992, as last amended by Décret n°2020-946 du 30 juillet 2020.

Text and data mining. While Articles 3 and 4 CDSM Directive are yet to be implemented, Art. L122-5(10) CPI already provides that authors cannot prohibit the electronic reproduction of lawfully accessed works for the extraction of data from scientific works having research and non-commercial purposes.

Public lecture. Under Article L122-5(3°)(c) CPI, authors cannot prohibit the distribution of public speeches at academic events, even in full, by the press or television for the purpose of information. It is mandatory to indicate the source and author of the work.

Quotation. In line with the Berne Convention, Article L122-5(3)(a) CPI provides that authors cannot prohibit quotation – albeit only short – of lawfully accessed works for the purpose of criticism, review, education, science and information, with the mandatory indication of source and author.

Uses in libraries and other CHIs. While Article 6 CDSM Directive has yet to be implemented, France already features a provision allowing libraries and other non-profit cultural institutions to reproduce and communicate to the public published works for purposes of preservation, access, private study and research (Article L122-5(8) CPI). Article L133-1 to –4 CPI allows the public lending of a work if subject to a publishing contract, subject to a fair compensation scheme managed by collecting societies.

Marrakesh (accessibility for visually impaired individuals). Arts. L122-5(1)-(2)-(7) CPI introduce the Marrakesh exception departing very limitedly from the text of the EU Directive, referring for the regulatory implementation of the details of the legislative mechanism to the Conseil d’Etat.

Orphan works. The orphan work exception follows the EU scheme, adding a legal presumption that authors do not oppose their reproduction and making it available to the public by cultural institutions.

Out-of commerce works. While Article 8(2) CDSM Directive has yet to be implemented, at the moment the French system provides for a mandatory collective management schemes of out-of-commerce works managed by collecting societies and having as object the right of reproduction and communication to the public of works that have not been commercialized for a certain period of time. The original scheme provided by French law was quashed by the CJEU in the *Soulier and Doke*¹¹³ decision, and partially revisited while waiting for the implementation of the CDSM Directive.

Other software exceptions. Aside from the possibility granted to the author of a software program to oppose modifications of the code which would prejudice his honor or reputation (Article L121-7 CPI), the French CPI provides the EU-based mandatory exception of reproduction for lawful uses, backup copy, study of functioning and the mandatory interoperability exception (Article L122-6-1 CPI), all subordinated to the three-step test. Article L122-5(6) excludes the applicability of the private copying exception beyond backups.

Other database exceptions. Article L122-5(6) excludes the applicability of the private copying exception to databases, while Art. L122-5(2)-(5) covers the lawful use, private copy and teaching and research exception of the sui generis right.

¹¹³ Case C-301/15, Marc Soulier and Sara Doke v Premier ministre and Ministre de la Culture et de la Communication, EU:C:2016:878

Open repository right. Article L533-4 of the *Code de la Recherche*¹¹⁴ provides that the author of scientific works funded at least for 50% with public funding coming from the State, public institutions or the EU, and resulting in contributions on journals publishing at least one issue a year, retains the right to a second publication in an electronic, open and freely accessible way of the final version of the manuscript, even when an exclusive license has been granted to the publisher. The embargo period can be maximum 6 months in the field of natural sciences and 12 months in the field of social sciences. The consent of co-authors, if any, is needed. The re-use of such works, once published in open access, is free and cannot be prohibited by rights holders, unless they are protected by specific rights or a particular regulation.

¹¹⁴ https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000038588829
www.eosc-pillar.eu

6.3.5.4 France

Relevant legislative initiative

- Act No. 78-17 of 6 January 1978 on Information Technology, Data Files and Civil Liberties.

Issues

- Legal bases are specified by art. 44 for sensitive data processed by public research, under the condition that the processing is necessary for reasons of public interests.
- For genetics data, the data subject consent is required under article 75.
- Technical and organizational measures for health data processing for research purposes are listed below:
 - Article 72 The ethics committee analyses whether or not the data processing meets the public interest.
 - Article 74 Professional confidentiality is required for the data processing.
 - Article 73 established the requirement that the research shall provide its adherence to the “méthodologie de référence” established by the CNIL, otherwise a specific authorization is required under article 76. The procedure distinguishes the research including human beings from the one that enables personal data flows without involving human beings.
 - Monitoring and enforcement activities: the article 77 establishes an audit board “comité d’audit” promoting a system of auditing activities aimed at harmonizing the compliance level of all research activities processing health data.
- Technical and organizational measures for archiving in the public interests' purposes for scientific, historical, and statistics research include:
 - Data subjects' rights can be limited as far as the rights to access, correction, restriction of processing, and objection are concerned
 - Article 14 is not applicable neither to initial nor to secondary purposes.