[FR] Definition of an “Audiovisual Work”

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On 21 March, David Kessler, Director General of the CNC, delivered his report on defining audiovisual works to Catherine Tasca, Minister for Culture and Communications. He had been asked to produce this study following the dispute that occurred in November 2001 (see IRIS 2002-1: 8) as a result of the CNC placing the television programme "Popstars" in the 'audiovisual works' category, thereby providing its producer with access to the support fund. The programme was consequently included by the CSA in its calculation of works included in quotas. The existence of a number of different ideas of the concept of an audiovisual work is probably, at least in part, behind the controversy. Although the report concludes that it is not urgently necessary to question the CNC's definition of an audiovisual work, it would appear to be appropriate in the long term to clarify a number of points and even introduce some restrictions.

All the professional groups concerned have been consulted. An initial consensus was reached; this excludes debates from the definition of an audiovisual work given by the French Intellectual Property Code. In audiovisual communication law, there has been a "negative" definition since 1990 It is set out in Article 2 of Decree no. 90-66 of 14 January 1990, amended in 1992, according to which "audiovisual works constitute those broadcasts that do not fall within any of the following categories: full-length cinema films, news broadcasts and magazines, variety, games, broadcasts other than fiction produced mainly in the studio, sports coverage, advertising, teleshopping, self-promotion and teletext services". This is an open-ended definition that includes, but not exclusively, fiction programmes, documentaries, broadcasts produced to a minor degree in the studio, video clips, broadcasts of live shows and short films and other types of programmes also covered by this definition such as, for example, entertainment programmes. The consultations carried out by the CNC's Director make it possible to highlight a number of important points: the representatives of authors and producers invite those responsible to focus support on programmes involving creation with a cultural objective, excluding programmes where the element of original creation is of lesser importance. Thus the genre that still raises a problem is that of magazine programmes. This is a hybrid genre sometimes involving an assembly of reporting assignments and extracts from advertising spots, or alternatively making use of original creative work when they include true documentaries. The Société des Auteurs, Compositeurs et Editeurs de Musique (French association of authors, composers and music editors - SACEM), for

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example, stresses the need to exclude reality television broadcasts. The Union Syndicale de la Production Audiovisuelle (French audiovisual production union - USPA), for its part, proposes excluding all magazine programmes, although documentaries lasting at least 26 minutes would be included as audiovisual works. Broadcasters also raise the problem of magazine programmes, but their regret is that some types of reporting assignments are not eligible to apply for the support fund.

On the whole, broadcasters are not in favour of changing the definition of an audiovisual work, as they are unwilling to upset the fragile balance that has been achieved since 1990. David Kessler's report therefore concludes, while recalling the fundamental imperative of the cultural objective, that it would not be advisable to introduce a hasty revision of the definition of an audiovisual work merely in order to stabilise the legal environment, particularly in view of the fact that the digital television environment is still in the making. The report adds that an administrative court might find that the introduction at this stage of regulatory measures defining an audiovisual work in even more restrictive terms than those of the 1990 Decree would not comply with the law. Catherine Tasca reacted by expressing her agreement on the need to maintain a broad definition of an audiovisual work and confirmed that the author of the report should continue the consultations and dialogue.

L'oeuvre audiovisuelle, rapport de David Kessler, directeur général du CNC au ministre de la Culture et de la Communication, mars 2002

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