[FR] The Conseil d'État Delivers Statement on Qualification as a European Work Originally Made in the French Language

IRIS 2003-1:1/16

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On 12 December 2001, the Conseil d'État, required to deal with an urgent matter, decided to suspend the CSA's decision to refuse the qualification of the animated film Le journal d'Anne Franck as a European work originally made in the French language because of serious doubts concerning the legality of the measure (see IRIS 2002-2: 13). As the procedure for dealing with an urgent matter where suspension is involved requires that an application on the merits be entered, the Conseil d'État delivered a decision on 15 November in which it expressed its opinion that, on the contrary, the film's producer was not justified in calling for the CSA's decision to be cancelled.

On the refusal to qualify the film as a work originally made in the French language, the Conseil d'État recalled that the work, which merely adapts for the French public a film originally made in English and Japanese, had not been "produced principally in the French language in its original version", as required by Article 5 of the Decree of 17 January 1990. The Conseil d'État also stated that the fact that the film had received an operating and export licence that mentioned the French origin of the work did not give any entitlement to the qualification hoped for. Nor did the fact that other animated films had been qualified as works originally made in the French language even though their dialogues had been recorded in English.

On the refusal to qualify the film as a European work, the Conseil d'État recalled the definition contained in Article 6 of the Decree of 17 January 1990, according to which European works are those works: firstly, where production is carried out by a European company or financing is provided by European capital; and secondly, that make use of European performers and technicians for their production. Thus "the participation of writers, performers and technicians taking part in the creation and providing technical services" may not be less than a proportion determined in a decision of the Minister for Culture and Communication. The applicant producer pleaded the illegal nature of the decision of 21 May 1992, according to which a European work is a work that is "produced essentially" by European writers, performers and technicians using European technical resources. In order to appreciate their relative importance, the decision sets out scales that allocate points to these various contributions and lays down thresholds in terms of numbers of points, which vary according to the type of work. The Conseil d'État

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found that in establishing these scales the Minister for Culture had not exceeded the authority vested in him by Article 6 of the 1990 Decree, and that by allocating between one and four points to the various contributions to production to be taken into account and by requiring a participation of European factors set at fourteen points for an animated film to qualify as a European work, the Minister had not committed any error of appreciation either. The claim that the decision was illegal was therefore rejected. The Conseil d'État also stated that the film in question was merely an adaptation of a pre-existing work; the applicant company could not claim that it had supervised and actually controlled its production "by taking personally or sharing jointly in the initiative and financial, technical and artistic responsibility for the production", as required by Article 6 of the 1990 Decree. In consequence, and since the applicant had re-used the images of a pre-existing Japanese work, involving no more than FRF 13 million out of a total budget of approximately FRF 60 million, the CSA had applied the aforementioned texts properly by refusing to qualify the applicant as its producer, on the grounds that the applicant could not claim to meet the conditions of the definition of a producer given in Article L. 132-23 of the intellectual property code. As the conditions set out in Article 6 of the Decree of 17 January 1990 were not met in the present case, Le journal d'Anne Franck could not be qualified as a European work by the CSA.

Conseil d'Etat (10e et 9e sous-sections réunies), 15 novembre 2002 □ SA Globe Trotter Network

Conseil d'État (10th and 9th sub-sections together), 15 November 2002 □ SA Globe Trotter Network

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