[FR] Conseil d'Etat Determines Legal Status of Popstars Programme

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The decision issued by the Conseil supérieur de l'audiovisuel (audiovisual regulatory body - CSA) on 15 November 2001, classifying the televised reality show Popstars, broadcast on M6, as an audiovisual work provoked strong reactions from the main professional organisations, including collective management companies (see IRIS 2002-1: 8). Following this decision, the Etats généraux de la création audiovisuelle, an organisation representing several copyright collecting companies, appealed to the Conseil d'Etat against the decision on the grounds that the CSA exceeded its powers.

The Conseil d'Etat announced that it was rejecting the appeal on 30 July 2003. It considered that the disputed programme was an audiovisual work in the sense of Article 4 of the Decree of 17 January 1990. It took this decision in spite of the conclusions drawn by the government commissioner, who urged it to overturn the CSA's decision on the grounds that certain important elements of the programme suggested it was partly a game and partly variety entertainment, both of which are excluded from the definition of an audiovisual work (see IRIS 2002-2: 10).

The Conseil d'Etat based its decision on the view that the game elements present in the disputed programme "are only of secondary importance and are not such that this programme should be regarded primarily as a game or variety entertainment". It also did not think the programme in question fell under the self-promotion category, since it did not comprise a set of advertisements having the sole purpose of promoting the television channel that broadcast it.

On the contrary, the Conseil d'Etat ruled that the disputed programme, "whose main objective is to present to the public the coaching, training and progress of the selected singers and to portray the early stages of their career in show business, contains elements of a screenplay and is both staged and edited", which means it may be classified as an audiovisual work.

The Popstars programme is currently the subject of a second procedure, in which the plaintiffs are asking the Conseil d'Etat to annul a decision taken by the CNC in August 2001. The CNC also classified the disputed programme as an audiovisual work, this time on the basis of Decree no. 95-110 of 2 February 1995 (see IRIS 2002-2: 10), by virtue of which it was eligible for financial assistance under the support scheme.

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