[FR] Definition of an Audiovisual Work still not Settled

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Reality shows on television at least have the merit of raising the question of qualification as an "audiovisual work" under French law, and the relevant definition. This is decisive, as it determines which legal and financial systems apply to the work. However, the difficulty lies in the multiplicity of definitions, each with a separate area of application. Thus, in addition to Article L. 112-2(6) of the Intellectual Property Code, Article 4 of the Decree of 17 January 1990 lays down the general principles for the broadcasting of cinematographic and audiovisual works on television by giving a negative definition of what constitutes an audiovisual work (see IRIS 2002-1: 8). For its part, the Decree of 2 February 1995 on State financial support for the audiovisual programme industry makes provision for the allocation of financial support from the French national cinematographic centre (Centre national

de la cinématographie CNC) for companies involved in the production of audiovisual works belonging to one of the following genres: fiction, animation, "creative documentaries", and the presentation of live shows.

On 30 July last year, the Conseil d'Etat upheld the decision of the CSA (Conseil supérieur de l'audiovisuel audiovisual regulatory body) qualifying the Popstars reality show on television as an "audiovisual work" within the meaning of Article 4 of the Decree of 17 January 1990 (see IRIS 2003-8: 9). On 11 March, the administrative tribunal set the cat among the pigeons by cancelling the decision of the CNC's director who had qualified the broadcast as a "documentary audiovisual work" within the meaning of the 1995 Decree, thereby entitling its production company to a supplementary investment grant of EUR 126 532.68.

The Tribunal held that the Popstars serial related and portrayed the full story of a pop music group created by a record company, from its constitution to the cutting of a record and presentation of the final concert, filming all the intermediate stages, including rehearsals, auditions, selection and the reactions of all the participants. Thus the content of the broadcast was not pre-existing but was created for the needs of the production and the broadcast. The disputed broadcast therefore did not constitute a documentary work and could not be considered as belonging to the "creative documentary" genre within the meaning of the provisions of Article 1 of the amended Decree of 2 February 1995.

The Ministry of Culture has announced that it will not appeal, and this ruling merely confirms the need to reform the definition of what constitutes an audiovisual work, which the CSA has been calling for since the end of 2001 (see IRIS 2002-1: 8).

Recently, the French media development directorate (Direction du développement des médias DDM) and the CNC submitted to the CSA four areas for reflection, some of them attempting to narrow the gap between the definitions. The first suggestion involves the introduction of sub-quotas for investment in works that meet one of the two definitions. The second proposes refusing the qualification of audiovisual work if the work comprises elements that belong to an excluded genre. The third involves the non-promotion of sections filmed in a studio within audiovisual works mainly filmed out of the studio. Lastly, the final suggestion involves weighting the amount allocated to works according to criteria linked to their level of elaboration. The CSA took a preliminary look at each of these four areas of reflection at its plenary assembly on 30 March.

Tribunal administratif de Paris (7 section, 2 chambre), 11 mars 2004, Société des auteurs et compositeurs dramatiques

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