[FR] Reclassification of a Work Originally Made in the French Language

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Under Article 6-1 of the Decree of 17 January 1990 laying down the general principles for the broadcasting of cinematographic and audiovisual works, the qualification of a work as a "work of European origin" and a "work originally made in the French language" and the monitoring of compliance of the channels with production quotas fall under the authority of the *Conseil Supérieur de l'Audiovisuel* (French audiovisual regulator - CSA) under the supervision of the *Conseil d'Etat* , as confirmed in a recent decision of this supreme administrative court.

Under the terms of its convention, concluded with the CSA, the channel M6 is supposed to devote "1% of its annual net turnover for the previous financial year to commissioning animated works of European origin or originally made in the French language". It has to "communicate to the regulatory authority no later than 31 May a report on the conditions for fulfilling its obligations and undertakings of the previous financial year". In January 2002, as in each year, the channel therefore submitted its report on the conditions for fulfilling its obligations for the year 2001. The CSA then drew up the "Balance sheet for the company M6 - Financial year 2001", comprising a list of the works classified as audiovisual works originally made in the French language, broadcast over the year by the channel. The report was adopted by the CSA meeting in plenary on 8 October 2002, resulting in the production of a "Communiqué concerning the company M6 for the financial year 2001". On 10 February 2004, in the light of information sent by the *Conseil National de la Cinématographie* , the CSA decided to withdraw the classification of "an audiovisual work originally made in the French language" from the cartoon entitled "Evolution", and hence to remove the work from the calculation of the channel's production obligations for the financial year 2001. Consequently, the CSA required the channel to invest a further EUR 540 000 in the production of animated works before the end of the financial year 2005. Contesting the decision, M6 applied to the Chairman of the CSA for a review, but this was turned down. It therefore took the matter before the *Conseil d'Etat* , which stated quite clearly the principle according to which the communiqué concerning a channel's previous financial year (including a table setting out its quantitative obligations and undertakings and their level of achievement), adopted by the CSA after examination by its relevant departments, constituted a decision creating a right in favour of the channel, as it specified a list of the works classified as works of European origin and works originally made

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in the French language for the purpose of calculating the service's production and broadcasting obligations for the financial year referred to in the balance sheet. According to the Court, "Although the CSA may modify the classification of an audiovisual work for the future in the case of receipt of new information indicating that the work did not meet the relevant conditions, it may only withdraw the classification given for a financial year in the four months following adoption of the channel's balance sheet for that year, unless the classification was obtained fraudulently", which was not the case here. The *Conseil d'Etat* therefore held that the CSA was not lawfully capable of withdrawing its decision concerning the classification of the disputed cartoon, and to require the channel to reinvest the corresponding amounts.

Conseil d'Etat (5e et 4e sous-sections réunies), 27 avril 2007, Société Métropole Télévision

Conseil d'Etat (5th and 4th sub-sections together), 27 April 2007, the company Métropole Télévision

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