[FR] New Cinema Code Amended Already

IRIS 2010-1:1/21

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Article 72 of the Act of 05 March 2009 on audiovisual communication authorises the Government to organise by decree a certain number of the provisions of the new legislation on the economic regulation of the cinema industry. Thus the Decree of 05 November 2009 has amended (or in some cases created) certain provisions of the new *Code du Cinéma et de l'Image Animée* (Code for the Cinema and Animated Image - CCIA) (see IRIS 2009-9: 11).

Firstly, the text redefines and improves the scheme for programming commitments the operators are required to observe. This is in order to adapt the original regulations to recent developments in the sector, the better to take into account the competition situation at the local level in order to determine the commitments to which each individual operator must subscribe. The Decree also extends the competence of the cinema mediator (Articles L. 213-1 to L. 213-5 of the CCIA) to include all the operating conditions, including the economic aspects, that apply to cinematographic works shown in cinemas. The mediator is also responsible for promoting the resolution of disputes between operators and distributors arising out of their disregard for their mutual contractual commitments. Lastly, the mediator may have jurisdiction over determining the time after which works may be exploited physically as videos, as provided for in the "HADOPI" Act of 12 June 2009 (see IRIS 2009-7: 13). The Decree also changes the arrangements concerning ticket schemes where buying one multiple ticket - called an "unlimited card" - gives access to an unspecified number of viewings (Articles L. 212-22 to L. 212-25). Their implementation is subject to the prior approval of the Chairman of the CNC. As the unlimited cards scheme means that it is no longer possible to calculate the remuneration payable to rightsholders according to the number of tickets bought by the audience, the regulations define a reference price to be used as the basis for this. Implementing the recommendations of the council on competition (*Conseil de la Concurrence*), the Decree provides that this reference price will be determined and assessed on the basis of measurable economic data (evolution of the average price of tickets sold singly by the operator, the market situation of the operator, and the noted and expected effects of the access scheme, etc.).

The Decree also introduces new rules on the conditions for concession of the representation rights for cinematographic works shown in cinemas. The text requires the concession contract concluded by the distributor and the operator to

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be in writing and contain a certain number of compulsory indications (Article L. 213-14 of the CCIA). The Decree also introduces the rule of minimum levels of remuneration for distributors representing the rightsholders who concede the operating rights for the works to the operators. The present system of proportional remuneration for all the economic players in the chain is based on shared risk, but it does not make it possible to guarantee sufficient remuneration to the distributors (and, consequently, to all the rightsholders) where the operator, who has complete freedom in determining his prices, adopts particularly low prices, whether occasionally or over a long period.

Lastly, the Decree has an additional chapter on the remuneration for the exploitation of cinematographic works by on-demand audiovisual media services. Article L. 223-1 of the CCIA lays down the principle of remuneration for beneficiaries for each dematerialised access to a work on an on-demand service. It then provides for the possibility for the public authorities to introduce a minimum level of remuneration, which should reconcile the objectives of access for the greatest number of users with maintaining a diversified cinematographic offer and the full effect of the provisions applicable to the chronology of exploiting cinematographic works. These arrangements are intended to ensure firstly the development and maintenance of the diversity of the cinematographic offer on the on-demand services, and secondly the full application of the new media chronology. A Decree will lay down the method for applying these two new schemes for minimum remuneration and will state more specifically the economic data to be used as the basis for its determination.

Ordonnance n° 2009-1358 du 5 novembre 2009 modifiant le code du cinéma et de l'image animée, JO du 5 novembre 2009

http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=E8004E88A098A1FD0BAA8B267E130C45.tpdjo13v_1?cidTexte=JORFTEXT000021238221&dateTexte=20091208

Decree No. 2009-1358 of 05 November 2009 amending the Code for the Cinema and Animated Image, published in the Journal Officiel of 05 November 2009

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