[FR] CSA Study on the Circulation of Audiovisual Works

IRIS 2010-9:1/26

Amélie Blocman
Légipresse

The Conseil Supérieur de l'Audiovisuel (audiovisual regulatory body - CSA) has carried out a new study with a view to improving the circulation of audiovisual works originally in the French language. This is an issue it looked at in 2006, but competition has increased since then with the arrival of the DTV channels. The legal framework has also changed, as the “Tasca” Decrees were revised in 2008 and 2009 in order to raise the production obligations incumbent on most of the players in the market, especially new arrivals.

After an initial summing up in April 2010, a number of proposals for measures designed to make the circulation of works easier were submitted to the sector’s professionals (television service editors, professional organisations in the sectors of the production, broadcasting and distribution of audiovisual programmes). The CSA used the observations made to supplement its analysis and to formulate definitive proposals.

The study highlights three fundamental points. Firstly, there was no evidence of rights being frozen. Secondly, however, works circulate mainly between channels in the same group. Thirdly, those channels not backed by a “historic” analog broadcaster may encounter problems with access to works, in the form of extremely limited access to financing arrangements, and with the effects of contractual clauses (“first and last refusal” clauses, retrocession clauses). The CSA points out in its report that this clause deals with the priority given to a first channel broadcasting a work to acquire exclusive broadcasting rights at the end of the period constituting the first “window” of rights (right of first refusal), and the obligation incumbent on the producer, before transferring rights to a third party definitively, to offer these rights to the channel on the same conditions as those negotiated by the third party (“last refusal” clause).

The CSA’s recommendations outline three objectives. Firstly, the rights granted to the broadcaster should be in proportion to its investment in the production of the work, more particularly by reserving the clause of first and last refusal for the best-financed works. Then, it is necessary to facilitate access to broadcasting rights, particularly for the “independent” channels, during the initial “window” of exclusive broadcasting rights, more particularly by allowing those “independent” channels that have committed themselves to investing in the production of new works made initially in French or another European language to have access to the financing schemes for works initiated by the “historic” analog channels. The

© European Audiovisual Observatory (Council of Europe) 2026

France Télévisions group could play a particular role in this process. At the end of the first window of exclusivity, access to broadcasting rights could be made easier by organising the release of broadcasting rights at the end of the last airing under contract, without waiting for the end of the negotiated period of exclusivity and by limiting the period for using the clause of first and last refusal. The final objective consists of ensuring the transparency of the contract for acquiring the works, more particularly by instituting a mediator for audiovisual creation responsible for overseeing the circulation of the works and for the resolution of disputes, along the lines of the cinema mediator.

Contribution à la réflexion sur la circulation des œuvres audiovisuelles, CSA, juillet 2010

http://www.csa.fr/upload/decision/Cont_%20reflex%20circul_oeuv_%20audiovi.pdf

Contribution to consideration of the circulation of audiovisual works, CSA, July 2010

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026