[FR] Negative Opinion from CSA on Draft Decree on On-demand Audiovisual Media Services

IRIS 2010-10:1/31

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The Conseil Supérieur de l'Audiovisuel (audiovisual regulatory body - CSA) was asked by the Government for its opinion on the draft Decree on on-demand audiovisual media services (AVMSs); it has now delivered a negative opinion, something it has not done since the beginning of the 1990s. Adopted in application of the Act of 5 March 2009 transposing the AVSM Directive into French law, the aim of the draft decree is to create a specific scheme for on-demand AVMSs (catch-up TV, VoD accessible by subscription or for individual videos), supporting production and promoting European works and works originally made in the French language. It also defines the framework for regulations for advertising on these new services and amends the framework applicable to television services.

In its opinion, published on 7 October, the CSA, moved by “a desire for economic realism”, expresses its opinion that the text submitted to it makes excessive demands on on-demand AVMSs, particularly the high level of the rate of financial contribution. The lack of progressiveness is likely to seriously hamper the development of these services in France, and to encourage delocalisation. On-demand AVMS platforms are not economically viable these days and only three of them (Orange, SFR and Canal Play) have turnovers of more than EUR 10 million. The CSA therefore emphasises the need to take account of the economic constraints that apply to their activity (head-on competition with trans-national services, higher rate of VAT than that applicable to television services, low level of aid and access to support funds, difficulty in accessing royalties, etc) so that the national players are able to meet their foreign competitors on an equal footing. Having made this criticism, the CSA goes on to make a number of proposals in its opinion.

Firstly, it advocates a principle of re-examination in 18 months’ time (or no more than 24 months) of the threshold adopted, of the levels of financial contribution, and of the distinction drawn between on-demand AVMSs by subscription and in other forms. The CSA would like to see the conclusion, during this period, of professional agreements establishing how works are to be made available on on-demand AVMSs, and more specifically the duration of exploitation rights, the remuneration of beneficiaries, measures for reconciling respect for the moral rights of authors and the interruption of works for advertising.

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It goes on to recommend the setting up of an annual progression in contribution obligations for production and the proportion of European works and works originally made in the French language in the catalogues. The CSA advocates a progression, dependent on the service's turnover, ranging from 50% of European works and 35% of works originally made in the French language for services with a turnover of less than EUR 10 million to a 60:40 ratio for services with a higher turnover. The CSA also considers that setting up exclusivities is likely to lead to fragmentation of the statutory offer and to a reduction in its power of attraction. Contrary to the provisions of the draft decree, it therefore recommends not privileging the acquisition of exclusive rights through the pre-financing of works, in order to promote wider exposure and circulation.

Lastly, the CSA makes a number of comments on advertising. It says it is in favour of the greater flexibility provided for on-demand AVMSs (particularly the absence of rules on the amount of advertising and the abolition of most of the rules on the inclusion of advertising), on condition that consumer interests are protected by the identification of commercial communications and the maintenance of a clear separation between advertising and programmes.

Avis du CSA sur un projet de décret relatif aux services de médias audiovisuels à la demande, 27 septembre 2010

http://www.csa.fr/infos/textes/textes_detail.php?id=131938

CSA opinion on a draft decree on on-demand audiovisual media services, 27 September 2010

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