[FR] First Stages of “Culture Act II” Mission

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Launched on 25 September 2012, the “mission of concertation on digital content and cultural policy in the digital age” (“Culture Act II”) headed by Pierre Lescure drew up its first interim report on 5 December 2012. The mission is scheduled to send its final report to the Government on 15 March 2013, and in December it proceeded to hear sixty bodies, companies and individuals out of the hundred or so that are to be heard.

Its work focuses on the following three topics: public access to cultural works and development of the legal offer; remuneration for creators and the financing of creation; the protection and adaptation of intellectual property rights.

After drawing up a report on the legal offer, sector by sector, this interim report points the finger at media chronology as one of the barriers to its development. Rather than a total makeover, which would render the system for financing cinema fragile, a pragmatic approach would envisage more flexibility and experimentation in order to produce a dynamic that would favour the development of the legal offer. Competition from the Internet giants (Google, iTunes, Amazon, etc) is deemed inequitable. Apart from the tax issue, they also avoid specific regulations: in the video distribution sector, a stakeholder such as YouTube is treated as a host, whereas the French VOD platforms are subject to the same obligations of investment and exposure as television editors.

Regarding intellectual property rights, the idea of legalising non-commercial exchanges (via a “global licence” or a “creative contribution licence”) is fairly generally rejected, although there are some exceptions. There has been much criticism of the “graduated response” implemented by the HADOPI scheme; its effectiveness is difficult to evaluate. The mission points the finger at the fact that too little emphasis has been placed on combating commercial infringement of copyright aimed at the real culprits, namely the Internet sites (sites for streaming or downloading, hosts, torrent directories, etc.). To redirect repression towards these stakeholders, which are often based outside France and by their nature are more difficult to apprehend, the parties heard referred to a number of possible methods:

- increasing responsibility on the part of hosts by obliging them to withdraw illegal content promptly and prevent its reappearance, and by reinforcing international

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judicial cooperation in order to punish recalcitrant sites;

- reducing the visibility of the illegal offer by acting on browser referencing, if necessary with the assistance of the public authorities;

- drying up the sources of income from sites that infringe copyright by increasing responsibility on the part of the intermediaries (advertisers, advertising agencies, on-line payment services, etc.).

To promote the development of new uses and content, the mission is considering ways of facilitating the use of free licences for those creators who so wish, and their recognition in the world of creation.

On the remuneration of creators and the financing of creation, the mission notes a high degree of inequality, varying from one sector to another, in the proportion of remuneration represented by digital media. It also notes the unsuitability of aid for creation and the increasingly fragile state of the mechanisms for remuneration and financing. For example, the cinema and the audiovisual sector, through the fund supporting the programme industry (Compte de Soutien à l'Industrie des Programmes - COSIP) and investment obligations, have the benefit of support arrangements financed by all the stakeholders involved in circulating the works in question. The television channels, which make a large contribution (tax on television services paid by editors, investment obligations), could be threatened by fragmentation of audiences and competition on the part of new stakeholders contributing little (DTV channels, connected television). Furthermore, the contribution of the IAP (tax on television services paid by distributors) is currently under threat, in terms of yield and even in terms of principle, as the result of a problem of compatibility with Community law. Lastly, neither the VOD platforms based outside France (such as iTunes) nor the new circulation stakeholders (such as YouTube) make any contribution to the support fund, although some are beginning to set up mechanisms for contributing to the financing of creation on a voluntary basis (the "YouTube Original Programming" project, for example). In conclusion, the hearings noted that many of the topics have a Community dimension, with medium- to long-term negotiation schedules. It is therefore important to identify, by 15 March 2013, more short-term measures that could be deployed at the national level.

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http://www.culture-acte2.fr/

Hearings in deferred format (audio or video), accompanied by a written summary

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