[FR] Legal Deposit of Films with the CNC must be in both Digital and Photochemical Format

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In a decision issued on 28 June 2013, the Conseil d'État has given more details of how the legal deposit of films with the national centre for the cinema and animated images (Centre National du Cinéma and de l'Image Animée - CNC) is to function. In the present case, two unions of film producers contested in the courts the provisions of Article 13 of the Decree of 19 December 2011, which introduced an Article R. 132-28-1 into the Heritage Code requiring, for cinematographic documents, that two copies be deposited with the CNC - one digital copy, and one photochemical copy (i.e. on 35 mm film).

Contesting the requirement to deposit a fragile and expensive silver-emulsion copy of their films, which are in fact produced exclusively in digital format, the unions were calling for the Decree of 19 December 2011 to be cancelled, arguing that it was vitiated with regard to the provisions of Article L. 132-1 of the Heritage Code (which details the conditions and methods of making legal deposits that it is for the body with regulatory powers to lay down). In its decision of 28 June 2013, the Conseil d'État recalled that it was not for the CNC to bear the cost resulting from the obligations connected with the legal deposit of a work; the responsibility lay with the persons who produced the cinematographic documents. It held that the body with regulatory powers was entitled to determine the forms in which the cinematographic works were to be deposited, in order to ensure optimum conservation. However, the Conseil d'État held that, by providing that digital cinematographic works were to be deposited in photochemical format, the body with regulatory powers had not misjudged the competence accorded to it by Article L. 132-1 of the Heritage Code. Furthermore, the fact that the criticised Decree created an obligation that was a source of expense did not have the effect of creating a form of taxation. Lastly, the Conseil d'État held that producers who had an original photochemical copy of their document and those who subsequently had to produce one at their own expense were not in the same situation, and the principle of equality did not prevent their obligations under the disputed Decree being different. Furthermore, noting that almost all cinematographic documents were nowadays being produced in digital format, the Conseil d'État concluded that the obligation to deposit a document in photochemical format in fact placed a similar burden on all cinema producers. As a result, the claim that the principle of equality was being flouted was rejected and the applicants were found to have no grounds for requesting that the disputed Decree should be cancelled.

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Conseil d'Etat (10e sous-sect.), 28 juin 2013 - Association des producteurs de cinéma et a.,

Conseil d'État (10th sub-section), 28 June 2013 - Association des Producteurs de Cinéma and others

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