

5.12 FR – France – National legal summary¹³²

5.12.1 Definitions

This section aims at identifying the relevant definitions of a work adopted as well as identifying which categories of works are considered as audiovisual works.

5.12.1.1 Audiovisual works

Article 4 of of Decree No. 90-66 defines audiovisual works as follows:

“Audiovisual works are programmes that do not fall into one of the following genres: feature-length cinematographic works; news and current affairs programmes; variety shows; games; non-fiction broadcasts mostly produced on set; sport events; advertising; teleshopping; self-promotion; and teletext services.”

Article L. 112-2(6) of the Intellectual Property Code also gives a definition of audiovisual works by stating that they:

“Are considered especially as works of the spirit within the meaning of the present code: [...] (6) Cinematographic works and other works consisting of animated sequences of images, with or without sound, called together audiovisual works.”

5.12.1.2 Cinematographic works

Article 2 of Decree No. 90-66 defines cinematographic works as follows:

“1. Works that have obtained an exploitation visa within the meaning of Article 19 of the above-mentioned cinematographic industry code, with the exception of documentary works that have been the subject of an initial broadcast on television in France;

2. Foreign works that have not obtained this visa but have been the subject of a commercial cinematographic exploitation in their country of origin.”

Article 3 adds that:

¹³² The factsheet on France incorporates the feedback received from Marianne Jacob and Raphaël Honoré (Conseil supérieur de l'audiovisuel, CSA) during the checking round with the national regulatory authorities.

“feature-length cinematographic works are those whose duration is greater than one hour.”

Article 211-5 of The Cinema Code also gives a definition of cinematographic works in the context of economic public support:

“Feature-length cinematographic works eligible for financial support for production and preparation are works intended for first exploitation in cinemas.”

5.12.1.3 Domestic works

Article 5 of Decree No. 90-66 defines works of French original expression as follows:

“Cinematographic or audiovisual works of French original expression are works made entirely or mainly in an original version in French or in a regional language used in France. Cinematographic works having received before the date of application of this Decree the investment approval within the meaning of Article 19-I of Decree No. 59-1512 of 30 December 1959, are assimilated to cinematographic works of French original expression.”

Article 211-7-1 of The Cinema Code also gives a definition of cinematographic works of French initiative:

“I. – A cinematographic work “of French initiative” means:

1° A work produced solely by one or more production companies established in France;

2° A work produced in the framework of an international co-production in which the French participation in the financing is preponderant and for which the exploitation rights of the original work or the scenario have been acquired by one or more executive production companies established in France.

II. – A cinematographic work “of foreign initiative” means a work that does not meet the conditions laid down under point I.”

5.12.1.4 European works

Article 6 of Decree No. 90-66 defines European works as follows:

“I. European cinematographic or audiovisual works are:

(a) Works originating in Member States of the European Community;

(b) Works of European third States party to the European Convention on Transfrontier Television of the Council of Europe,

that meet the following conditions:

1. On the one hand, they must be done essentially with the participation of authors, performers and creative collaborating technicians residing in one or more

of those States and with the assistance of technical services provided in studios for shooting or sound studios located in those same States. The level of participation and assistance cannot be lower than a proportion fixed by order of the Minister of Culture and Communication;

2. *On the other hand, they must:*

(a) be produced by an enterprise whose registered office is in one of the above-mentioned States and whose chairman, director or manager and the majority of the directors are nationals of one of those States, provided that such an enterprise actually supervises and controls the production of these works by taking personally or by sharing jointly the initiative and the financial, technical and artistic responsibility for the realisation of the works considered, and guarantees that the work is successfully completed;

(b) be financed in the majority by the contributions of co-producers established in the above-mentioned States, provided that the co-production is not controlled by one or more producers established outside those States.

The companies and co-producers referred to above shall not be controlled, within the meaning of Article L. 233-3 of the Commercial Code, by one or more producers established outside those States.

II. In addition, European cinematographic or audiovisual works are works co-produced in the framework of agreements concluded between the European Community and third States and fulfilling the conditions defined in these agreements.

III. European cinematographic or audiovisual works are works which are produced in the framework of bilateral co-production agreements concluded between Member States of the European Community and third States where works are financed mainly by contributions from co-producers established in Member States, provided that the co-production is not controlled by one or more producers established outside those States.”

Article 6-1, in the context of economic public support, adds that:

“For works produced or co-produced by a producer established in France and for which financial support from the State for the film industry and the audiovisual industry has been requested, the qualification of “European work” and of “work of French original expression” are awarded by the CSA after consulting the Director General of the CNC.”

5.12.1.5 Categories included in the calculation of the share of European works

Article 4 of Decree No. 90-66 defines audiovisual works as follows and therefore excludes from the scope of the term “work” the following genres:

“Audiovisual works are programmes that do not fall into one of the following genres: feature-length cinematographic works; news and current affairs programmes; variety

shows; games; non-fiction broadcasts mostly produced on set; sports events; advertising; teleshopping; self-promotion; and teletext services.”

In a decision about reality shows, the Conseil d’État ruled that programmes whose main object is not listed in Article 4 of Decree No. 9-66¹³³ must be considered as audiovisual works. They may include some elements which characterise programmes listed in article 4, but these elements are subsidiary.

The Conseil supérieur de l’audiovisuel (CSA)¹³⁴ decides if a TV show is an audiovisual work on a case-by-case basis, and in this framework it uses its own guidelines, which are the result of consultations involving the broadcasting sector (for example, the consultation concerning scripted reality).¹³⁵

Table 19. Definition of the main concepts in terms of the nationality of European works

Concept	Existence of a definition
Audiovisual works	Yes
Cinematographic works	Yes
Domestic works	Yes
European works	Yes

Source: French response to European Audiovisual Observatory standardised survey

5.12.2 Nationality of audiovisual works in the framework of the AVMS Directive and film legislation

Article 1, paragraph 1, letter (n) and Article 1, paragraphs 2 to 4 of the AVMS Directive provide a list of criteria to assess whether an audiovisual work can be considered as European.

This section aims at identifying the way in which the relevant national body in charge of monitoring the compliance of AVMS providers with the AVMS Directive (in this case, the CSA assesses whether or not a work falls under one of the situations covered by Article 1, paragraph 1, letter (n) and Article 1, paragraph 4 of the AVMS Directive.

This section also details, if any, the practice of the CSA in terms of the verification of Article 1, paragraph 2 (discriminatory measures in the third country concerned) and Article 1, paragraph 3 (the nationality of co-productions) of the AVMS Directive.

¹³³ www.legifrance.gouv.fr/affichJuriAdmin.do?idTexte=CETATEXT000008198442.

¹³⁴ www.csa.fr.

¹³⁵ www.csa.fr/Informer/Collections-du-CSA/Travaux-Autres-publications/Divers/Concertation-sur-les-programmes-dits-de-realite-scenarisee.

Finally, it also details, if any, the sources used by the CSA, the specific difficulties encountered in implementing Article 1, paragraph 1, letter (n) and the way in which the CSA cooperates on this issue with the national film fund (in this case, the Centre National de la Cinématographie – CNC).¹³⁶

5.12.2.1 Eligible nationality of European works

The assessment that a work falls under Article 1, paragraph 1, letter (n) (i) of the AVMS Directive (that is, qualifies as a “work originating in Member States”) is made by applying the provisions of the aforementioned Articles 6 and 6-1 of Decree No. 90-66, and in particular Article 6-I-A.¹³⁷ This Decree is supplemented by additional criteria established by an Order of 21 May 1992 according to which a number of points are granted for each of the various contributions to the work (for example: European director 3 points, European scriptwriter 2 points, European leading role 3 points, European second role 2 points, sound 1 point...). In practice, when the work is subject to the support of the CNC, the assessment is made jointly by the CSA and the CNC, whereas in the other cases the assessment is made by the CSA alone. A database is available for the audiovisual media service providers in which they can consult which works have been qualified as European works.

The assessment that a work falls under Article 1, paragraph 1, letter (n) (ii) of the AVMS Directive (that is, qualifies as a “work originating in European third States party to the European Convention on Transfrontier Television of the Council of Europe”) is made by applying the same provisions, and in particular Article 6-I-B.

The assessment that a work falls under Article 1, paragraph 1, letter (n) (iii) of the AVMS Directive (that is, qualifies as a “work co-produced within the framework of agreements related to the audiovisual sector concluded between the Union and third countries and fulfilling the conditions defined in each of those agreements”) is made by applying the same provisions, and in particular Article 6-II.

The assessment that a work falls under Article 1, paragraph 1, letter (n) (iii) of the AVMS Directive (that is, qualifies as a “work co-produced within the framework of agreements related to the audiovisual sector concluded between the Union and third countries and fulfilling the conditions defined in each of those agreements”) is made by applying the same provisions, and in particular Article 6-III.

¹³⁶ www.cnc.fr.

¹³⁷ Article 5 of Decree No. 90-66 is also applied to further determine if the work is of French original expression (works made entirely or mainly in an original version in French or in a regional language used in France). In this regard, the Conseil d'État has ruled that a work in English is not a work of French original expression because English is not a regional language, although this language is spoken by some inhabitants of the French Antilles. See www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CETATEXT000021468369&fastReqId=1540847362&fastPos=10.

Beyond these four situations, it should be noted that, pursuant to Article 16 of Decree No. 90-66, the two following situations also have to be taken into consideration in order to qualify a work as European:

“I. Audiovisual works which, before 31 March 1992, received financial support from the State for the audiovisual programme industry provided for by Decree No. 86-175 of 6 February 1986, are assimilated to audiovisual works of French original expression.

II. Cinematographic works which, before 31 March 1992, were classified as works of reinvestment within the meaning of Article 13 of Decree No. 59-1512 of 30 December 1959, are assimilated to cinematographic works of French original expression.”

5.12.2.2 Nationality and discriminatory measures

The survey carried out for this mapping did not identify any legal provisions or relevant practices of the CSA in this regard.

5.12.2.3 Nationality and co-productions

Pursuant to Article 6-II and 6-III of Decree No. 90-66:

“[...] II. In addition, European cinematographic or audiovisual works are works co-produced in the framework of agreements concluded between the European Community and third States and fulfilling the conditions defined in these agreements.

III. European cinematographic or audiovisual works are works which are produced in the framework of bilateral co-production agreements concluded between Member States of the European Community and third States where works are financed mainly by contributions from co-producers established in Member States, provided that the co-production is not controlled by one or more producers established outside those States.”

The survey carried out for this mapping did not identify any relevant practices of the CSA in this regard.

Regarding co-productions which are eligible for funding, this matter is fixed in bilateral agreements and dealt with by the CNC. The list of all the bilateral agreements between France and EU Member States is available on the CNC website.¹³⁸

5.12.2.4 Other enforcement issues

Regarding the sources which can be used to identify the nationality of audiovisual works, the following should be noted:

¹³⁸ www.cnc.fr/professionnels/reglementation/accords-internationaux.

- The ISAN (International Standard Audiovisual Number) is an identification number which can be assigned to an audiovisual or cinematographic work only upon request by the producer. It allows the proper identification of the work. Pursuant to Article L. 122-26-1 of the Cinema Code, the ISAN is requested for every work seeking financial support from the CNC.¹³⁹
- The CNC has had a RCA (registre du cinéma et de l'audiovisuel – cinematographic and audiovisual register) since 1944. Pursuant to Articles L121-1 to L. 126-3 of the Cinema Code, the RCA secures the disclosure of documents, contracts and judgments for production, distribution and film exhibition. The RCA is not mandatory, except for works which benefit from SOFICA (a tax shelter system).

5.12.2.5 Cooperation between national regulatory authorities and film agencies

The qualification of a European work for the purpose of compliance with the AVMS Directive is carried out by the CSA, independently of the CNC. This means that a work can be qualified as an audiovisual work by the CSA for broadcasting and investment quotas and not by the CNC for public funding (the CSA tending to be more flexible than the CNC). For example, scripted reality can be considered as an audiovisual work by the CSA while the CNC considers that scripted reality is not eligible for financial support.

The other way round (that is, for public funding) and in some instances, cooperation between the CSA and the CNC is required. As detailed under section 1.1.2.1, Article 6-1 of Decree No. 90-66, in the context of economic public support, states that:

“For works produced or co-produced by a producer established in France and for which the financial support of the State for the film industry and the audiovisual programme industry has been requested, the qualification of European work and of work of French original expression are awarded by the CSA after consulting the Director General of the CNC.”

5.12.3 Issue of labelling

This section aims at identifying any relevant national practice regarding recital 35 of the AVMS Directive according to which *“the labelling in metadata of audiovisual content that qualifies as a European work should be encouraged so that such metadata are available to media service providers.”*

There are no current measures in relation to the labelling in metadata of European works, either in terms of legislation or practice.

However, it should be noted that:

¹³⁹ www.france-isan.org.

- as detailed under section 1.1.3.4, the International Standard Audiovisual Number (ISAN) is requested for all works seeking financial support from the CNC;
- pursuant to Article 511-8 of the Cinema Code, works that have been restored or digitalised with the support of the CNC shall contain all the necessary metadata for their broadcast on any digital support.

5.12.4 Envisaged amendments to the regulatory framework

In the framework of the transposition of the new AVMS Directive, the Law on Freedom of Communication is currently under review and will imply the modification of several Decrees related to the application of the law.

5.12.5 Applicable regulatory framework

Primary legislation:

- Law on Freedom of Communication (*Loi n°86-1067 du 30 septembre 1986 relative à la liberté de communication*).¹⁴⁰
- Cinema Code (*Code du cinéma et de l'image animée*).¹⁴¹
- Intellectual Property Code (*Code de la propriété intellectuelle*).¹⁴²

Secondary legislation:

- Decree No. 90-66 of 17 January 1990 adopted for the application of Law No. 86-1067 of 30 September 1986 laying down the general principles for the transmission of cinematographic and audiovisual works by audiovisual media services (*Décret n°90-66 du 17 janvier 1990 pris pour l'application de la loi n°86-1067 du 30 septembre 1986 et fixant les principes généraux concernant la diffusion des œuvres cinématographiques et audiovisuelles par les éditeurs de services de télévision*).¹⁴³
- Order of 21 May 1992 adopted for the application of Article 6 of Decree No. 90-66 of 17 January 1990 adopted for the application of Law No. 86-1067 of 30 September 1986 laying down the general principles for the transmission of cinematographic and audiovisual works by audiovisual media services (*Arrêté du 21 mai 1992 pris pour l'application de l'article 6 du*

¹⁴⁰ www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000512205&dateTexte=20190927.

¹⁴¹ www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000020908868&dateTexte=20190927.

¹⁴² www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006069414&dateTexte=20190927.

¹⁴³ www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006075275&dateTexte=20190927.

*décret n° 90-66 du 17 janvier 1990 modifié fixant les principes généraux concernant la diffusion des œuvres cinématographiques et audiovisuelles).*¹⁴⁴

5.12.6 Studies, reports and researches

- CNC - *Observatoire de la vidéo à la demande (2018), Quelle valeur de marché ?*¹⁴⁵
- CNC & CSA (2018), *La vidéo à la demande par abonnement en France : marché et stratégie des acteurs.*¹⁴⁶

5.12.7 Data compilation

This factsheet was produced based on data compiled by Marc Le Roy, PHD in law.

¹⁴⁴ www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000540134&dateTexte=20190927.

¹⁴⁵

www.cnc.fr/documents/36995/167074/Observatoire+de+la+vid%C3%A9o+%C3%A0+la+demande+2018.pdf/b3b2719e-24e8-d1d1-0c26-f3cbce30748b.

¹⁴⁶

www.cnc.fr/professionnels/etudes-et-rapports/etudes-prospectives/la-video-a-la-demande-par-abonnement-en-france--marche-et-strategies-des-acteurs_555777.