[FR] Conseil d'Etat confirms ARCOM’s decision not to sanction BFM TV for unauthorised broadcast of Playboy magazine content

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On 3 April 2023, Kanra Publishing France, owner of the quarterly magazine Playboy, lodged a complaint with the *Autorité de régulation de la communication audiovisuelle et numérique* (the French audiovisual regulator – ARCOM) after the television service BFM TV, broadcast photographs and excerpts from an interview with Marlène Schiappa, who held a government post at the time, a few days before publication of the magazine for which they were intended, without the consent of the holders of the rights to the publication and its content. After ARCOM rejected the complaint, Kanra Publishing France asked the *Conseil d’Etat* (Council of State) to overturn this decision. In support of its request, the company claimed that its intellectual property rights had been breached, causing it significant damage as a result of its effect on sales of the magazine. If its claim is upheld, it is likely to be awarded compensation by the courts.

In its decision, the *Conseil d’Etat* points out that, under the terms of Article 2-2-3 of the agreement between BFM and the *Conseil Supérieur de l'Audiovisuel* (ARCOM’s predecessor as the French audiovisual regulator – CSA), “The publisher shall comply with French intellectual property legislation”, that under Article 42 of the Law of 30 September 1986, ARCOM may give formal notice to publishers and distributors to comply with the obligations imposed on them by legislative and regulatory texts and by the principles defined in Articles 1 and 3-1 of the Law, and that these include “respect for the property of others”, such as copyright and related rights protected by the French Intellectual Property Code. ARCOM is therefore responsible for ensuring that audiovisual services under its jurisdiction comply with intellectual property law and, in the event of their non-compliance, exercising the prerogatives conferred on it under the Law of 30 September 1986.

However, in view of the isolated nature of the breach, the broad discretion conferred on ARCOM by the legislator for the implementation of its prerogatives with regard to operators who fail to meet their obligations, and the essentially commercial nature of the harm alleged by the applicant company, which in its complaint stated that it had not ruled out seeking redress before the relevant court, the *Conseil d'Etat* ruled that ARCOM had been within its rights to reject the claim. The application was therefore dismissed.

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CE, 20 décembre 2024, n° 494111, Kanra publishing France

http://www.conseil-etat.fr/fr/arianeweb/CE/decision/2024-12-20/494111

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