[FR] Advertising Internet Sites - Council of State Sanctions CSA

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In an Order of 3 July 2000, the Conseil d'Etat (Council of State), the supreme administrative court in France, annulled Communiqué 414 of the CSA (French Independent Broadcasting Authority) of 22 February 2000, which authorised the television advertising of the Internet sites of companies in sectors banned from advertising (press, distribution, cinema, literary works) under the terms of Article 8 of the Decree of 27 March 1992 (see IRIS 2000-3: 12).

The Council of State thus upheld the request of professional organisations in the film and radio sectors, which thought that the CSA's decision was likely to upset the economic balance in these sectors, as well as the distribution of advertising income between television and radio. However, the main reason for the Council of State's decision was the fact that the regulatory authority had acted beyond its remit. Article 27 of the amended Act of 30 September 1986 entrusts the Government, acting by decree, with the task of setting out the conditions and restrictions under which advertisements may be shown on television. On the grounds that the restrictions on television advertising imposed by Article 8 of the Decree of 27 March 1992 on the press, distribution, cinema and literary publishing sectors should not apply to the Internet sites of these sectors because those sites constituted a new and specific economic sector, the CSA limited the scope of those restrictions by means of a mandatory and general provision. Thus, the Council of State ruled that "by allowing television advertising of these sites which, through their activity, help to promote companies in sectors which are banned from advertising on television by the Decree of 27 March 1992, the CSA did not merely interpret the Decree's provisions, but laid down a new legal regulation". Insofar as there was no legislative instrument giving the CSA the power to enact such a regulation, the Council of State held that the regulatory authority had gone beyond its remit and that Communiqué 414 should therefore be annulled. There was an established precedent (Council of State, 16 November 1990, SA LA Cinq) according to which the CSA was not empowered to create regulatory measures, but was only competent to interpret existing legislation or regulations. In response to this decision, the Minister of Culture and Communication announced that she would carry out a broad consultation on access to television advertising for banned sectors with a view to a possible amendment to Article 8 of the 1992 Decree. However, the Minister pointed out that current restrictions had been laid down as part of a policy of pluralism and that such objectives remained a priority.

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Conseil d'État (section du contentieux) 3 juillet 2000 Sté civile des auteurs réalisateurs producteurs et autres.

Council of State (litigation department), 3 July 2000 Society of authors, directors, pro-ducers et al.

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