[FR] CSA Able to Sanction a Channel that Fails to Comply with Legislation on the Protection of Intellectual Property

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The *Conseil d'Etat* has just delivered an extremely interesting decision on an issue that, to our knowledge, has given rise to few disputes. A television channel that had retransmitted live without authorisation a programme on the debates between the Socialist Party's candidates for the presidential election being broadcast on the parliamentary channel had been ordered by the *Conseil Supérieur de l'Audiovisuel* (audiovisual regulatory body - CSA) to comply in future with the terms of Article 2-2-3 of its agreement, according to which the editor is required to comply with France's legislation on intellectual property. The channel had applied to the administrative judge for the decision to be cancelled.

The *Conseil d'Etat* recalled that, under Article 42 of the Act of 30 September 1986, the CSA may order editors and distributors of radio or television broadcasting services to abide by the obligations imposed on them by the legislative and regulatory texts and by the principles defined in Article 1 of the Act. These principles include respect for other people's property, including intellectual property and the neighbouring rights attached to it. The *Conseil d'Etat* concluded that one of the CSA's missions was to ensure that the audiovisual services it supervised complied with the legislation protecting intellectual property, and that if they failed to do so, it ought to exercise the power of sanction conferred on it by the provisions of the Act of 30 September 1986. In the present case, it was therefore for the CSA to carry out its own appreciation of such disregard on the part of the applicant channel, without waiting for the courts to reach a decision on the dispute between the two channels. Consequently, the channel's argument was not well founded in claiming that the CSA did not have authority to issue it with an order. The *Conseil d'Etat* went on to examine the merits of the dispute. It recalled that audiovisual communication companies holding neighbouring rights were not able, under Article L. 211-3 of the Intellectual Property Code, to "forbid: (...) 3. Subject to elements of identification of the source: (...) - the broadcasting, even in full, as topical news, of addresses made to the public at political, administrative, legal or academic meetings, and public meetings of a political nature and official ceremonies". In the present case, the applicant channel was claiming that the debate broadcast should be considered a public meeting of a political nature, within the meaning of the text, and as a result the parliamentary channel was not able, subject to elements of

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identification of the source, to prevent live broadcasting by the channel in question.

Having regard to the specific nature of these studio programmes, and more specifically to the television broadcasting arrangements set up by the services editor, the*Conseil d'Etat*found that these could not be considered as constituting addresses made to the public at a public meeting of a political nature. Since the exception could not be applied, the parliamentary channel held an intellectual property right in respect of these programmes, reproduction of which, under Article L. 216-1 of the Intellectual Property Code, was subject to their authorisation. Since this had not been obtained, the grounds for contesting the CSA's order were not erroneous from a legal point of view.

Conseil d'Etat (5eet 4esous-sect. réunies), 2 décembre 2009, Société BFM TV

Conseil d'Etat (5thand 4thsub-sections combined), 2 December 2009, the company BFM TV

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