[FR] Access for minors to pornographic websites: ARCOM’s powers stipulated by decree

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Decree no. 2021-1306 of 7 October 2021 sets out the conditions for the application of the intervention measure devolved to the French audiovisual regulator (CSA, now known as ARCOM) under Article 23 of the Law of 30 July 2020 with regard to providers of online public communication services that allow minors to access pornographic content in violation of Article 227-24 of the Penal Code.

Incorporated in the Law on Domestic Violence, this provision aims to protect minors from exposure to pornographic content. Therefore, if a provider of an online public communication service is found to be allowing minors to access pornographic content in violation of Article 227-24 of the Penal Code, the ARCOM president will send it a formal notice ordering it to take all possible steps to prevent minors accessing the content concerned. The recipient of the injunction then has 15 days in which to present its observations. The decree of 7 October 2021 explains the content of the formal notice, how it should be served and how the evidence should be assessed. In this regard, it states that: “the president [of ARCOM] takes into account the level of reliability of the technical procedure established by the [service provider] to ensure that users wishing to access the service are adults”. Furthermore, ARCOM “may adopt guidelines concerning the reliability” of these technical procedures.

If the injunction addressed to the service provider by ARCOM is breached and the content remains accessible to minors, the ARCOM president may refer the matter to the president of the Paris judicial court with the request that, ruling on the merits under the accelerated procedure, it should order Internet access providers to block access to the service. It can also demand that the service be removed from search engines or online directories. The French public prosecutor is informed of the court president’s decision. The decree states that, if a court has ordered that access to the disputed service should be blocked in this way, Internet access providers should take “any steps necessary […] including using Domain Name System (DNS) blocking”. Users of online public communication services to which access is blocked are “directed to an [ARCOM] information page stating the reasons for the blocking measure”.

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Finally, in response to a legitimate concern to combat mirror sites, the law also permits the ARCOM president to “refer the matter, on request, to the president of the Paris judicial court for the same purpose if the online public communication service is made accessible from a different address”.

The aw of 25 October 2021 states that the ARCOM president may act “ex officio or at the request of the public prosecutor or any legal or natural person with an interest in bringing proceedings”.

Décret n° 2021-1306 du 7 octobre 2021 relatif aux modalités de mise œuvre des mesures visant à protéger les mineurs contre l'accès à des sites diffusant un contenu pornographique

https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000044173388

Decree no. 2021-1306 of 7 October 2021 on methods for implementing measures to prevent minors accessing sites with pornographic content

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