

# COST-BENEFIT ANALYSIS OF THE FRENCH ADVERTISING SELF-REGULATION SYSTEM

SUMMARY OF THE DELOITTE REPORT  
FOR THE ARPP ENDOWMENT FUND

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D E L O I T  
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**OUTLINE** OF THE SUMMARY OF THE COST-BENEFIT ANALYSIS REPORT ON THE FRENCH ADVERTISING SELF-REGULATION SYSTEM PREPARED BY DELOITTE FINANCE FOR THE ARPP ENDOWMENT FUND

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## INTRODUCTION

# SELF-REGULATION: GOING BEYOND THE PRECONCEPTIONS

Self-regulation is not a French tradition. It raises many preconceived ideas and, sometimes, distrust that remain difficult to overcome.

It is true that the *Conseil d'État* reaffirmed in 2013 the importance of «soft law»<sup>1</sup>, a framework within which ARPP's action falls into. Of course, advertising self-regulation has a proven track record throughout its 84 years of existence in France and worldwide.

However, our country remains reluctant to resort to self-regulation. The almost natural response of our parliamentarians and our administrations is still too often to resort to «hard law» when the «soft law» would, in many cases, be more effective.

In recent months, parliamentary reports, bills or amendments have been drafted without any consideration of advertising self-regulation. It is even possible to read untruths in some parliamentary writings, which are otherwise of very high quality.

This is why the ARPP endowment Fund requested the Deloitte Finance Economic Advisory Team to analyse the French advertising self-regulation model and to identify its advantages and disadvantages.

This world renowned firm frequently conducts research for businesses and governments. In 2017, it produced a comparable study on the relevance of advertising self-regulation in Australia<sup>2</sup>.

The conclusions of this report are very clear regarding the benefits of advertising self-regulation in France, even when compared to models of state regulation. They make it possible to debunk some well-established misconceptions, to decrypt approximations that circulate here and there and are reused without verification. This report provides new insights into self-regulation and invites us to explore wide scopes for this modern and efficient tool.

### François d'Aubert

ARPP and ARPP endowment Fund  
Chairman

### Stéphane Martin

ARPP  
Director General

<sup>1</sup> <https://www.conseil-etat.fr/actualites/actualites/etude-annuelle-2013-le-droit-souple>

<sup>2</sup> Assessing the benefits of a self-regulatory advertising complaints handling system. Examining the regulatory system, Deloitte Access Economics, Ad Standards (former Advertising Standard Bureau), August 2017

# SELF-REGULATION, A HIGHLY EFFECTIVE ALTERNATIVE TO STATE REGULATION

« The relevance of the French advertising self-regulation model (compared to other forms of regulation) is validated. Our analysis shows that the factors specific to the advertising sector, as well as the specific characteristics of the operations of ARPP, allow the French model of self-regulation to minimize the disadvantages associated with self-regulation, while ensuring the achievement of the expected benefits in terms of efficiency, responsiveness and costs.

In this context, the transition to state regulation would not offer any obvious advantages in terms of achieving objectives, while risking a significant deterioration in the quality of services offered and the responsiveness of regulation, at a higher cost for the state budget and the taxpayer.

The example of advertising thus highlights that self-regulation can, in some sectors, and under specific conditions of implementation, offer a very powerful alternative to state regulation. In a context of public expenditure prioritization, the extension of the self-regulatory model to other sectors that are currently regulated on a state-wide basis should be explored.»<sup>3</sup>

<sup>3</sup> Conclusion of the Deloitte report «Cost-benefit analysis of the French advertising self-regulation system» [May 2019]

## THE MAIN FINDINGS OF THE REPORT ARE THE FOLLOWING:

- 1. SELF-REGULATION** OVERSEEN BY ARPP ENSURES A HIGH LEVEL OF ACHIEVEMENT OF PUBLIC INTEREST OBJECTIVES;
- 2. SELF-REGULATION** OVERSEEN BY ARPP MEETS THE EXPECTED BENEFIT OF SELF-REGULATION IN TERMS OF EFFICIENCY;
- 3. SELF-REGULATION** OVERSEEN BY ARPP PROVIDES A GREATER DEGREE OF RESPONSIVENESS TO SOCIETAL AND MARKET DEVELOPMENTS THAN A GOVERNMENT AGENCY;
- 4. SELF-REGULATION** OVERSEEN BY ARPP INCURS NO COST FOR TAXPAYERS.

# ORGANIZATION OF THE REGULATION OF ADVERTISING IN FRANCE

## THE REGULATION OF THE ADVERTISING SECTOR IN FRANCE IS GOVERNED BY SELF-REGULATION.

Self-regulation is legally defined as “the possibility for economic operators, social partners, non-governmental organizations or associations to adopt among themselves and for themselves common guidelines at European level (namely through codes of conduct or sectoral agreements). Generally, these voluntary initiatives do not imply the position taking by the institutions, especially when they intervene in areas not covered by the Treaties or in which the Union has not yet legislated”<sup>4</sup>. The rules are defined and put in place by the actors.

## REGULATION OF ADVERTISING IN FRANCE INVOLVES VARIOUS ACTORS

The Audiovisual Authority (CSA) oversees the regulation of audiovisual content in France. It has the power to ask the broadcaster to immediately stop a campaign or to prohibit any new broadcast if the broadcasted message does not comply with the applicable laws and regulations. Since 1991, the CSA ensures an *ex post* control and transfers its *ex ante* control power to ARPP following a partnership agreement between ARPP (the BVP at the time), the CSA, the Association of the Communication Agencies (AACC), the National Syndicate of Televised Advertising (SNPTV) and the Brands owners Union (UDA at the time), in 1990.

The key player in the French model of advertising self-regulation is therefore ARPP, which carries out an *ex ante* and/or *ex post* control of all advertising (audiovisual, press, internet, display, etc.).

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<sup>4</sup> Interinstitutional Agreement on better law-making of 16 December 2003 [Official Journal of the European Union No C 321/01 of 31 December 2003] - commitment 22.

>> ARPP is a professional regulatory authority independent of the state. It defines its main mission as «to work for fair, truthful, healthy and respectful advertising». Its second mission is to «ensure the control and monitoring of the proper application of the rules».

In its action, ARPP may be required to collaborate with other sectoral state authorities such as the Financial Markets Authority (AMF) or the Regulatory Authority for Online Gambling (ARJEL).

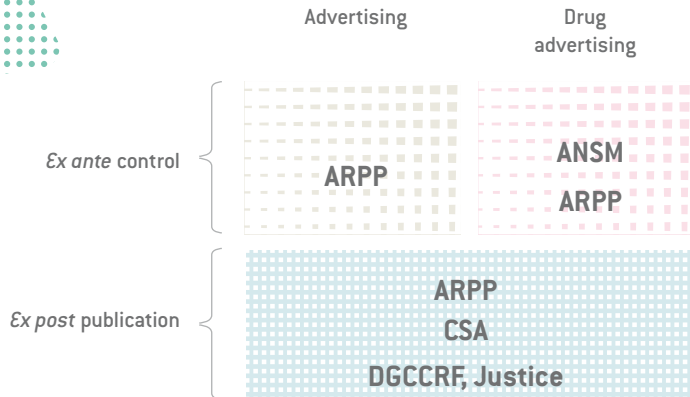
For the sensitive sector of advertising of health products, the National Agency for the Safety of Medicines and Health Products (ANSM) is specifically in charge of issuing advertising visas for non-prescription drugs. Its mandatory control does not replace ARPP for TV commercials, which intervenes after the obtaining of the ANSM visa. **Thus, ARPP appreciates the conformity of these advertisements according to its own ethical rules.**

ARPP has three associated bodies involved in the drafting of rules, their evolutions and the handling of complaints:

- **The Council of Advertising Ethics (CEP)** has the role of anticipating and reflecting on changes in social values. Its main mission is to alert ARPP to the ethical and liability issues that can arise from the content of advertising, its dissemination, its evolution and its acceptability by civil society.
- **The Joint Council of Advertising (CJP)** ensures the adequacy of advertising with civil society. Its mission is threefold: it contributes by means of public opinions to the evolution of the rules of ethics, it provides warnings to ARPP on emerging problems, and it participates in the annual evaluation of the respect of the rules by professionals.



## CONTROL OF ADVERTISING IN FRANCE



- **The Advertising Ethics Jury (JDP)** evaluates the compliance of an advertisement with all the rules and standards established by ARPP by studying complaints and issuing opinions. The JDP is independent of ARPP which intervenes directly only in the logistical organization of its activity. It is co-chaired by two magistrates, in order to reinforce its independence and impartiality. Any legal body or member of the public can complain (individuals, NGOs, administrations, etc.) regarding an advertisement of any medium or sector. In order to be considered admissible by the JDP, a complaint must relate to a clearly identified advertisement, effectively broadcast on French territory during the two months preceding the receipt of the complaint and be linked only to the content of the advertisement (its message,

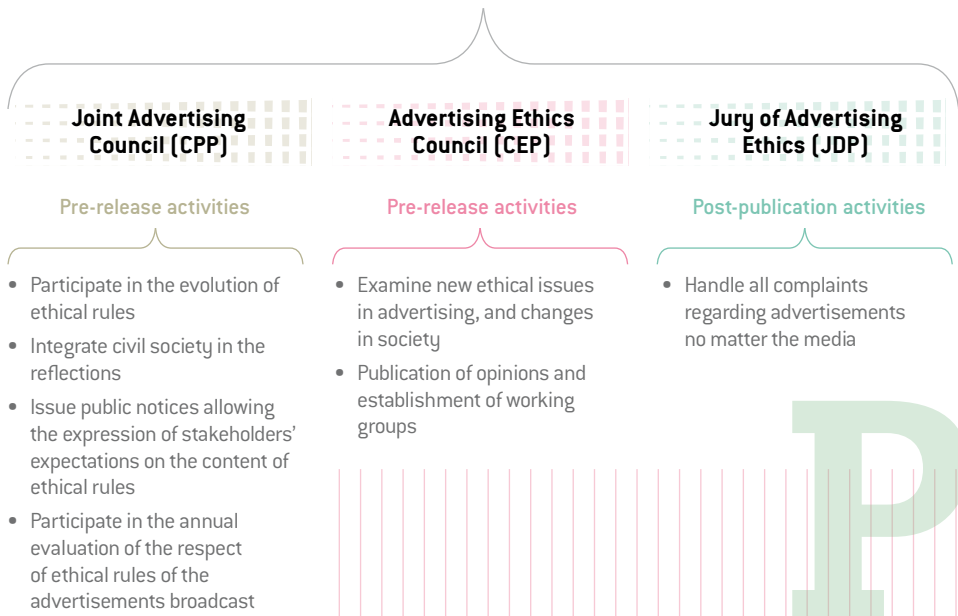
images, sounds, atmosphere, etc.). Since 2016, the body includes an appeal system.

An appeal can be lodged by both parties, it ensures a new review of the advertisement in question, which may reopen the case before the JDP, with comments from the Reviewer justifying the reversal of the first opinion.



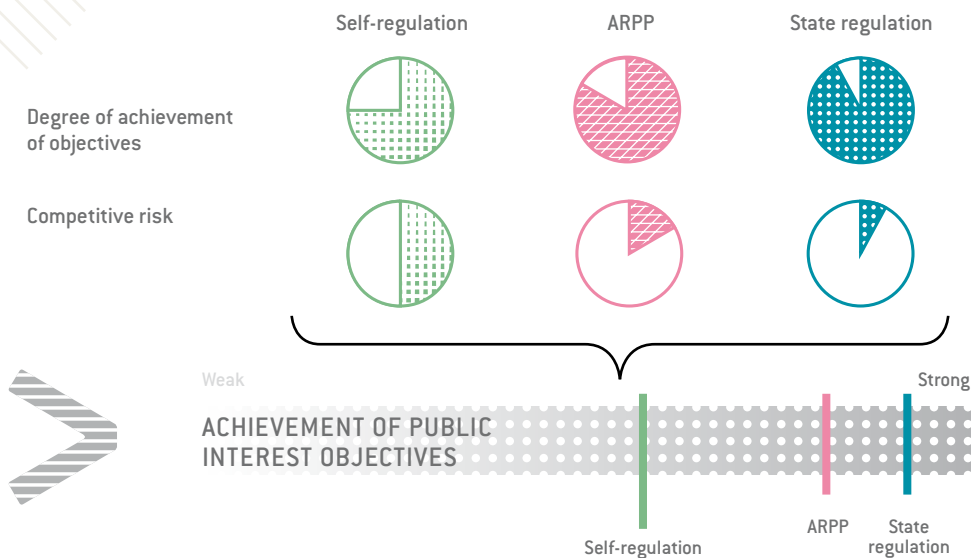
## ORGANIZATION AND ROLES OF ARPP BODIES

### Professional Advertising Regulatory Authority (ARPP)



# SELF-REGULATION PRACTICED BY THE ARPP: IN THE PUBLIC INTEREST

## RELATIVE PERFORMANCE OF ARPP - «ACHIEVEMENT OF PUBLIC INTEREST OBJECTIVES»

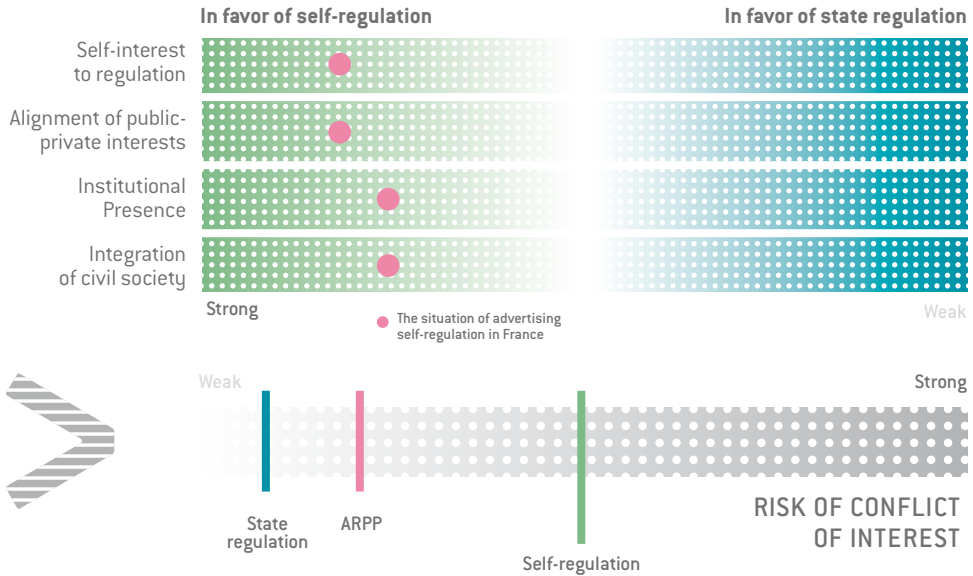


The risk of conflict of interest is minimized by sector players aligning with public interest objectives. Facing the risk of adverse selection and advertising misunderstanding, the actors have an interest in disciplining themselves to preserve the credibility of advertising.

The existence of state authorities that have the capacity to supervise the action of ARPP and to carry out its missions in case of dissatisfaction prevents the risk of lax drifts of ARPP. ARPP provides *ex ante* and *ex post* control for any advertising medium and for any actor concerned.



## RELATIVE PERFORMANCE OF ARPP - «RISK OF CONFLICT OF INTEREST»



ARPP considers public interests by the integration of civil society within the various bodies which ensure the adequacy of the rules with the expectations of society.

ARPP has put in place various tools to encourage stakeholders in the sector to follow the rules (educational sessions, monitoring and observatories, complaint forms, opinion of the Jury, «Name & Shame» techniques)

ARPP has an independent Associate Body charged with investigating complaints and, if necessary, sanctioning advertisements that do not respect the rules of ethics. The Advertising Ethics Jury (JEP), co-chaired by two magistrates, thus instructs all complaints. Any consumer or group of consumers can file a complaint.

The compliance rate of ads controlled after publication is greater than 99%<sup>5</sup>, demonstrating the effective appropriation of the ethical rules by the actors of the sector.

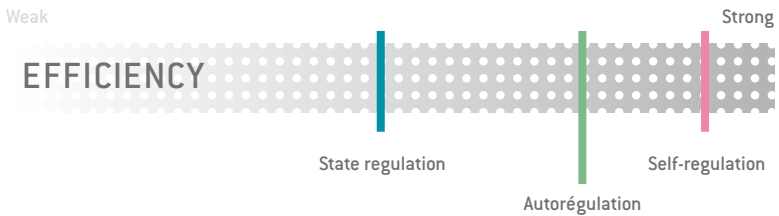
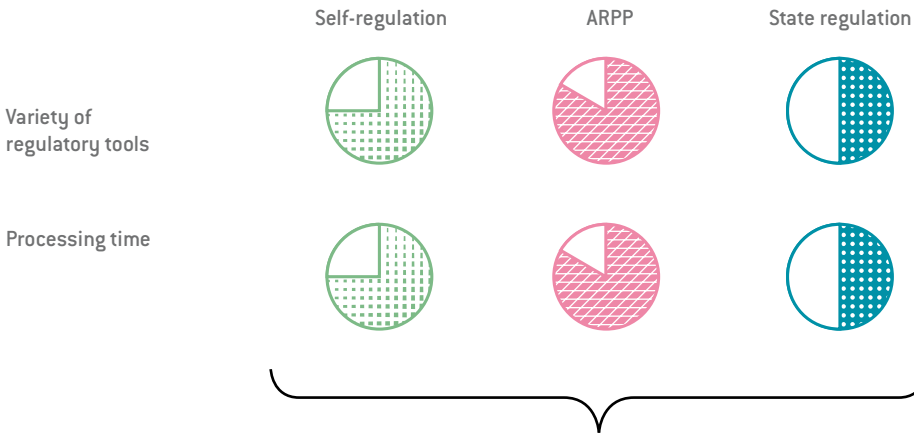
“Our combined analysis of the structural factors of the advertising market and the modalities of the French self-regulatory advertising model leads to the conclusion that the model can guarantee a high degree of achievement of public interest objectives. The quantitative analysis carried out from the statistical data of ARPP supports this analysis and positions the performance of the ARPP very close to a state regulation in terms of reaching the objectives of public interest”.<sup>6</sup>

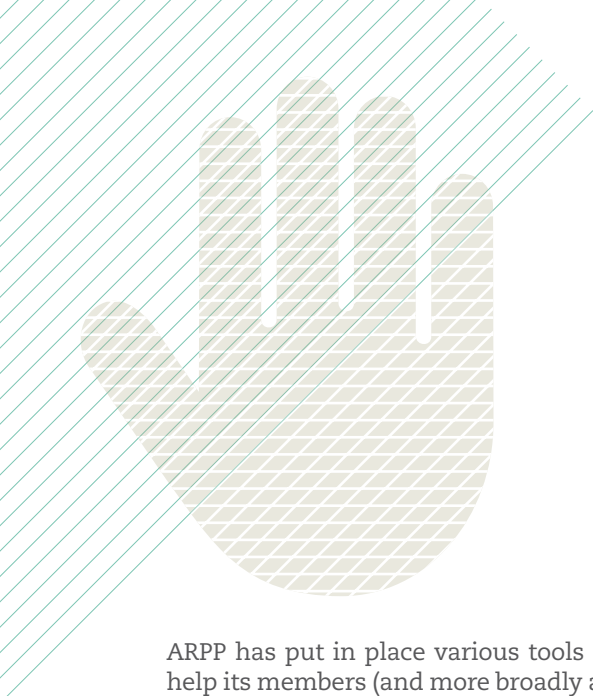
<sup>5</sup> ARPP Monitorings (2017)

<sup>6</sup> Conclusion of the Deloitte report «Cost-benefit analysis of the French advertising self-regulation system» (May 2019)

# SELF-REGULATION PRACTICED BY THE ARPP: THE BENEFIT OF EFFICIENCY

RELATIVE PERFORMANCE OF THE ARPP - «EFFICIENCY»





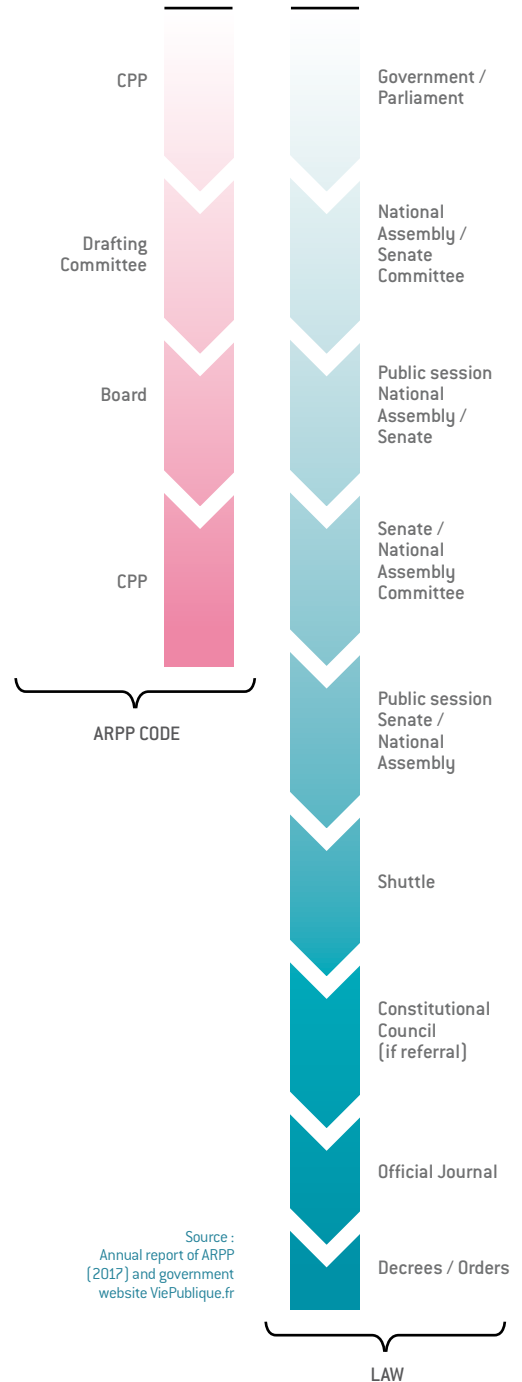
## COMPARISON OF THE PROCESS FOR CREATING A CODE BY ARPP TO THE PROCESS OF CREATING A FRENCH LAW

ARPP has put in place various tools to help its members (and more broadly all stakeholders in the sector) to understand and apply the rules correctly.

It advises its members and can, on request, monitor their advertising when it is being developed. It provides a digital platform that allows them to know the status of their requests and to have detailed information on the application of the rules at any time.

Regarding the speed of the processing of requests, ARPP has put in place processes adapted to the needs of actors in advertising. This is especially the case of the *ex ante* conformity check of television commercials. ARPP offers a specific service to ensure a response within one hour, widely used by members.

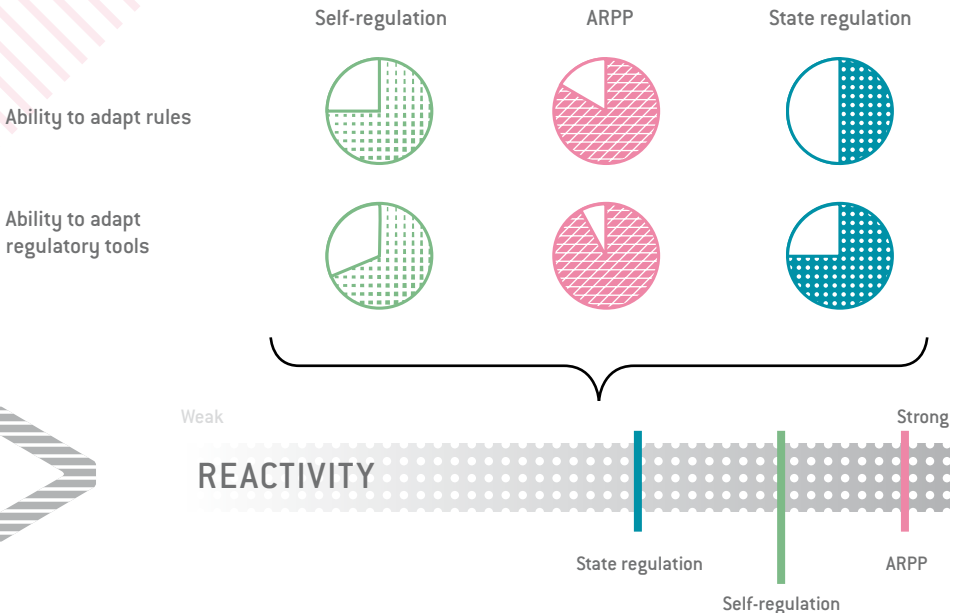
ARPP's services are among the most efficient in terms of response time.



Source :  
Annual report of ARPP  
(2017) and government  
website ViePublique.fr

# SELF-REGULATION PRACTICED BY THE ARPP: ENSURES THE HIGHEST LEVEL OF RESPONSIVENESS TO SOCIETAL AND MARKET DEVELOPMENTS

## RELATIVE PERFORMANCE OF THE ARPP - «REACTIVITY»



The operation of ARPP is based on soft law that can be more easily reviewed. It cannot be perceived as an interference by the state in mentalities and morals issues, therefore it is better able to adjust the rules of the actors.

ARPP has set up bodies to anticipate and respond to societal changes. They continuously produce opinions aimed at revising the current rules.

The Advertising Ethics Council (CEP) is the forum for anticipating and reflecting on the values of society, its expectations and its movements regarding matters related to advertising ethics. Its job is to ensure a continuous evolution of the rules.

The Joint Council of Advertising (CPP) contributes to the reflection on the evolution of the rules of ethics. Systematically consulted during the update of the ARPP Code, the CPP issues its opinion. It is also responsible for raising consumer concerns through its structure made of consumer, environmental and societal associations, and advertisers, agencies and media.

In 2017, these two bodies participated in the full review of the ARPP Recommendations and contributed to the review of each of them to produce a fully updated version of the *ARPP Code of Advertising Recommendations*.

Since 2000, ARPP has produced a recommendation on «**Internet, advertising medium**», revised in 2005 and replaced in 2010 by the «Digital Advertising Communication» Recommendation, which has been regularly updated to adapt to all technological developments.

ARPP, with its «**Image and Respect for the Person**» Recommendation, whose initial version «Image of Women» dates to 1975, devotes a whole paragraph to gender stereotyping, including sexism, and bans such occurrences from advertising.

Since 1975, ARPP has filled a legal gap by intervening on its own initiative when a breach was detected. It was only in 2014 that a legal text came to extend the control of the CSA to the cases of sexism in audio-visual media advertising.

ARPP innovates in the area of control through the Advertising Ethics Jury (JDP), creating settlements and simplified procedures. Settlements occur in agreement with the Chairman of the JDP, when the concerned actor agrees to directly modify the content of the advertisement. In 2017 and 2018, 3 out of 108 cases were settled. The simplified procedure saves time when there is a flagrant breach of professional rules. So, the case is treated without hearing. This represents in 2017 as in 2018, 45% of opinions rendered by JDP.

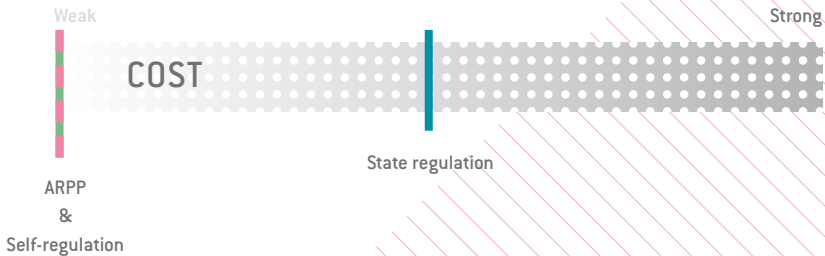
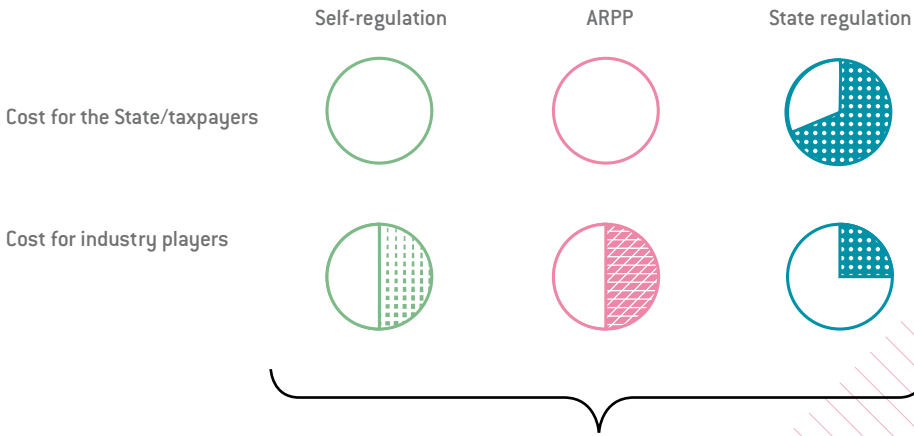
ARPP invests significantly in its infrastructure to ensure more effective management of its control and the complaints it receives.

It invests in **artificial intelligence** to anticipate the growth of digital advertising and therefore the need for more efficient and automated control to ensure the effectiveness of regulation.



# SELF-REGULATION PRACTICED BY THE ARPP: NO “COST” FOR TAXPAYERS

## RELATIVE PERFORMANCE OF THE ARPP - COST





The last dimension analyzed by the Deloitte report is cost.

The analysis of ARPP's accounts confirms that the resources come entirely from private actors, via the contributions of its members and the payment of TV/AVMSD<sup>7</sup> pre-clearance by the actors of the sector. The cost for the taxpayer is therefore null.

There is no guarantee that a state regulatory authority would be able to provide the same service at the equivalent costs. A recent report by the Court of Auditors<sup>8</sup> has pointed out the spiraling operating costs of sectoral regulators, calling them to reduce their costs.

In the event of less efficiency, the transition from self-regulation to state regulation would therefore result in an increase in the social cost or in a reduction in the quality of services, in addition to a transfer of costs from private sector players to taxpayers.

<sup>7</sup> Audiovisual Media Services on Demand (AVMSD)

<sup>8</sup> Independent administrative and public authorities: remuneration policies and practices (2011-2016), Court of Auditors (Communication to the National Assembly's Committee on Finance, the General Economy and Budgetary Control - December 2017)

## TO LEARN MORE ABOUT IT



The reading of this summary can be supplemented by that of the full report carried out by Deloitte, it is available (in French) on request.

The ARPP *Code of Advertising Recommendations* can also be obtained on request.

The ARPP website contains all useful information on the operation of the Authority and its associated bodies, the Council of Advertising Ethics (CEP), the Joint Advertising Council (CPP) and the Advertising Ethics Jury (JDP).

[www.arpp.org](http://www.arpp.org)



Publication published by the ARPP Endowment Fund declared on August 11th, 2017 (Advertisement 1498).

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Soutnsou-Affaires publiques

Translation: Ellen Zevounou (ARPP) - EASA

Concept and Graphic Design:  
ERWANN KERVADEC DESIGN

Printed by: Graph 2000  
Legal deposit: July 2019  
ISBN: 978-2-9569391-0-8



Deloitte, at the request of the ARPP endowment Fund, has produced a «cost-benefit analysis of the French system of advertising self-regulation».

This booklet is a summary of the ARPP Fund report produced by Deloitte as a result of its work. It evaluates with objectivity and rigor the role of advertising self-regulation in France.

Its reading makes it possible to remove some doubts and preconceptions that may remain about self-regulation and the use of soft law.

# MAIRYI LOITT