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EUROPEAN AUDIOVISUAL OBSERVATORY
EUROPÄISCHE AUDIOVISUELLE INFORMATIONSSTELLE

IRIS
Legal Observations
of the European Audiovisual Observatory

IRIS 2010-7

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Editorial Informations

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European Audiovisual Observatory
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Tel.:
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E-mail: markus.booms@coe.int
Web Design:
Coordination: Cyril Chaboisseau, European Audiovisual Observatory • Development and Integration: www.logidee.com • Layout: www.acom-europe.com and www.logidee.com
ISSN 2078-6158

INTERNATIONAL

COUNCIL OF EUROPE

European Court of Human Rights: Jean-Marie Le Pen v. France

A few years ago, Le Pen, the president of the French National Front party, was fined EUR 10,000 for incitement to discrimination, hatred and violence towards a group of people because of their origin or their membership or non-membership of a specific ethnic group, nation, race or religion, on account of statements he had made about Muslims in France in an interview with the Le Monde daily newspaper. In the interview, Le Pen asserted, among other things, that "the day there are no longer 5 million but 25 million Muslims in France, they will be in charge". He was subsequently sentenced to another fine after he commented on the initial fine, in the following terms, in a weekly magazine: "When I tell people that when we have 25 million Muslims in France we French will have to watch our step, they often reply: 'But Mr Le Pen, that is already the case now!' - and they are right." The French courts held that Le Pen's freedom of expression was no justification for statements that were an incitement to discrimination, hatred or violence towards a group of people. The Court of Cassation dismissed an appeal lodged by Le Pen in which he argued that his statements were not an explicit call for hatred or discrimination and did not single out Muslims because of their religion and that the reference to Islam was aimed at a political doctrine and not a religious faith.

In a decision of 20 April 2010 the European Court declared the application of Le Pen, which relied on Article 10 ECHR (freedom of expression), manifestly ill-founded and hence inadmissible.

The Court was of the opinion that the French authorities' interference with Le Pen's freedom of expression, in the form of a criminal conviction, was prescribed by law (Arts. 23-24 of the French Press Freedom Act - Loi sur la Liberté de la Presse) and pursued the legitimate aim of protecting the reputation or rights of others. Again it was crucial to decide whether or not the conviction of Le Pen was to be considered necessary in a democratic society, taking into account the importance of freedom of expression in the context of political debate in a democratic society. The Court reiterated that freedom of expression applies not only to "information" or "ideas" that were favourably received, but also to those that offend, shock or disturb. Furthermore, anyone who engages in a debate on a matter of public interest can resort to a degree of exaggeration, or even provocation, provided that they respect the reputation and rights of others. When the person concerned is an elected representative, like Le Pen, who represents his voters, takes up their concerns and defends their interests, the Court has to exercise the strictest supervision of this kind of interference with freedom of expression. Le Pen's statements had indeed been made in the context of a general debate on the problems linked to the settlement and integration of immigrants in their host countries. Moreover, the varying importance of the problems concerned, which could conceivably generate misunderstanding and incomprehension, required that considerable latitude be left to the State in assessing the need for interference with a person's freedom of expression.

In this case, however, Le Pen's comments had certainly presented the Muslim community as a whole in a disturbing light likely to give rise to feelings of rejection and hostility. He had set the French as a group against a community whose religious convictions were explicitly mentioned and whose rapid growth was presented as an already latent threat to the dignity and security of the French people. The reasons given by the domestic courts for convicting Le Pen had thus been relevant and sufficient. In addition, the penalty imposed had not been disproportionate. The Court recognised that the fine imposed on Le Pen was significant, but underlined the fact that Le Pen under French law had risked a sentence of imprisonment. Therefore, the Court did not consider the sanction to be disproportionate. On these grounds the Court found that the interference with Le Pen's enjoyment of his right to freedom of expression had been "necessary in a democratic society". LePen's complaint was accordingly rejected.

Le Pen is confronted with a boomerang effect of the Court's case law, as in an earlier case the Grand Chamber of the European Court had found that defamatory and insulting statements about Le Pen published in a book were not protected by Article 10 of the Convention, as these statements were to be considered as a form of hate speech. The Grand Chamber in Lindon, Otchakovsky-Laurens and July v. France had regard "to the nature of the remarks made, in particular to the underlying intention to stigmatise the other side, and to the fact that their content is such as to stir up violence and hatred, thus going beyond what is tolerable in political debate, even in respect of a figure who occupies an extremist position in the political spectrum" (Lindon, Otchakovsky-Laurens and July v. France, 22 October 2007, §57). It is precisely this argument, that hate speech is beyond what is tolerable in political debate, which has now turned against Le Pen.

• *Décision de la Cour européenne des droits de l'homme (cinquième section), affaire Jean-Marie Le Pen c. France, n°18788/09 du 20 avril 2010.* (Decision by the European Court of Human Rights (Fifth Section), case of Jean-Marie Le Pen v. France, No. 18788/09 of 20 April 2010)
http://merlin.obs.coe.int/redirect.php?id=12504 FR

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Committee of Ministers: Reply to PACE Recommendation on PSB Funding

On 21 April 2010, the Council of Europe's Committee of Ministers adopted its Reply to Recommendation 1878 (2009) of the Parliamentary Assembly (PACE), entitled, "The funding of public service broadcasting" (see IRIS 2009-8: 4/3). The Comments of the Steering Committee on the Media and New Communication Services (CDMC) are appended to the Committee of Ministers' Reply.

Both the Committee of Ministers and the CDMC welcome the PACE Recommendation for its timeliness and its usefulness. The Committee of Ministers (following the CDMC) "notes in particular the Assembly's recognition of the need for public service broadcasters to make full use of all the technologies and platforms currently available and those of the future in order to provide high quality programming to the widest audience possible".

The Committee of Ministers refers to its own replies to earlier PACE Recommendations with similar focuses, before noting that "follow-up action or future review of developments in the funding of public service broadcasters is very important". The PACE had recommended that the European Audiovisual Observatory should be asked to collect relevant information. It also commends (following the CDMC), "The Public Service Remit and the New Media" (IRIS plus 2009-6). It then notes the relevance of ongoing work at the European Broadcasting Union (EBU) and of the European Convention for the Protection of the Audiovisual Heritage (ETS No. 183, entry into force: 1 January 2008).

The Committee of Ministers' Reply clearly tracks the comments it received from the CDMC. Those comments are, however, more detailed than the Committee of Ministers' Reply; they engage with specific focuses and formulae of the PACE Recommendation to a greater extent. They also seek to situate the Recommendation in the context of the Committee of Ministers' relevant standard-setting work, the Action Plan adopted at the first Council of Europe Conference of Ministers responsible for Media and New Communications Services in 2009 (see IRIS 2009-8: 3/2) and ongoing work within the CDMC.

Based on Recommendation Rec(2007)3 of the Committee of Ministers on the remit of public service media in the information society (see IRIS 2007-3: 5/5), the CDMC "considers that public value in respect of public service broadcasters or more broadly public media services can only be assessed if they are considered as an integral whole, rather than as discrete and disconnected features of public service". It continues: "More particularly, public service media cannot be confined to a subsidiary role, characterised by offering services that do not feature highly on the agendas of commercial broadcasters".

• Reply to "The funding of public service broadcasting" - Parliamentary Assembly Recommendation 1878 (2009), Committee of Ministers of the Council of Europe, Doc. CM/AS(2010)Rec1878 final, 23 April 2010
http://merlin.obs.coe.int/redirect.php?id=12551 EN FR

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Parliamentary Assembly: Recommendation and Resolution on Combating Sexist Stereotypes in the Media

On 25 June 2010 the Parliamentary Assembly of the Council of Europe (PACE) adopted Resolution 1751(2010) and Recommendation 1931(2010), both of which are entitled "Combating Sexist Stereotypes in the Media".

The Resolution notes and deplores the fact that women are victims of sexist stereotypes in the media. They are under-represented and the subject of persistent sexist stereotypes in the media based on the roles traditionally assigned by society. This forms a barrier to gender equality. The sexist stereotypes are conveyed in various forms such as humour and clichés and are trivialised and tolerated under the banner of freedom of expression. The consequence is that these stereotypes have an unmistakable impact on the formation of public opinion and may facilitate or legitimise the use of gender-based violence.

According to the Resolution, the media has a particular responsibility to promote, inter alia, equality between women and men. There should be no place for sexism in the media, just as there is none for racism or other forms of discrimination. Besides the positive role that the media can play, the Resolution notes that education and training are absolutely essential towards learning how to recognize, be aware of and overcome stereotypes.

The Assembly calls on Member States to strengthen training and education activities by a broad range of measures which, inter alia, consist of awareness-raising, self-regulatory mechanisms and education in

schools. It also calls for measures to promote the visibility and importance of women in the media. The Assembly furthermore calls on National Parliaments to, inter alia, adopt legal measures and provide for adequate remedies in cases of gender-based discrimination. Finally the Assembly calls on the media to raise journalists' awareness of gender equality within their work, to promote gender equality in regulatory and self-regulatory authorities and to favour a non-stereotyped representation of women and men.

In a subsequent Recommendation on the matter, the Assembly emphasises again that education and the media play a key role in combating sexist stereotypes. Upholding the principle of non-discrimination is not sufficient according to the Assembly and positive obligations on states are important for guaranteeing the right to gender equality. Therefore the Assembly invites the Committee of Ministers to, inter alia, draw up a European code of good practice and a handbook for the media for combating sexist stereotypes.

• Resolution 1751(2010) of the Parliamentary Assembly on combating sexist stereotypes in the media, adopted on 25 June 2010
http://merlin.obs.coe.int/redirect.php?id=13063 EN FR

• Recommendation 1931(2010) of the Parliamentary Assembly on combating sexist stereotypes in the media, adopted on 25 June 2010
http://merlin.obs.coe.int/redirect.php?id=13064 EN FR

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EUROPEAN UNION

Court of Justice of the European Union: Joined Cases M6 and TF1 v. Commission

On 1 July 2010 the Court of Justice of the European Union ruled on the question of the compliance of State aid granted by the French State to France Télévisions, a French public company which owns the public service channels France 2, France 3, France 4, France 5, France Ô and RFO, with the rules of the EC Treaty. The aid was intended to cover the costs of public service broadcasting undertaken by France Télévisions in view of the decision of the French authorities, announced initially in 2008, to eliminate advertising on public channels, which would then financially rely on subsidies collected through two new taxes, one on advertising and one on electronic communications (see IRIS 2009-9: 5/4). France notified the European Commission of its plan to provide capital funding of EUR 150 million to France Télévisions. In its decision of 16 July 2008 the Commission found the plan to constitute State aid compliant with EU rules. In response, two French commercial channels, Métropole television (M6) and Télévision française 1 (TF1), competitors of France Télévisions, brought an action before the ECJ seeking the annulment of the Commission's decision.

In its judgement the Court found that the funding in question was in no way intended to finance France Télévisions' commercial activity of selling advertising slots, but, on the contrary, was intended, explicitly and exclusively, to cover the costs of the public service broadcasting undertaken by France Télévisions, a point which, as the Court stressed, is of particular significance; according to the Amsterdam Protocol, the provisions of the EC Treaty are without prejudice to the competence of Member States to fund public service broadcasting insofar as such funding is provided for the purpose of fulfilling the mission of public service and to the extent that this funding does not adversely affect trading conditions and competition within the EU. In addition, under paragraph 71 of the Broadcasting Communication, "it is as a general rule necessary that the amount of public compensation does not exceed the net costs of the public service mission, taking also into account other direct or indirect revenues derived from the public service mission". This conclusion is supported by the fact that, as the Commission had already observed in its decision, the EUR 150 million funding notified by France was significantly less than the costs of the public service broadcasting undertaken by France Télévisions, estimated at EUR 300 millions. According to EU law, a State measure for financing a public service may constitute State aid within the meaning of the Treaty, but nevertheless be compatible with the common market, if it meets the conditions laid down in the Treaty. On the basis of this reasoning, the Court decided to dismiss the action against the Commission.

• Joined cases T 568/08 et T 573/08, Métropole television and Télévision française 1 v. Commission, 1 July 2010 FR

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European Commission: New Digital Agenda Unveiled

On 19 May 2010, the European Commission presented its Communication on a Digital Agenda for Europe, the first of seven flagship initiatives under the "Europe 2020" strategy for reviving the European economy. The Communication asserts that, in the face of the current downturn in the economy, demographic ageing and global competition, Europeans will have to work harder, work longer and work smarter if they are to achieve sustainable economic and social benefits. The Digital Agenda is focused on the last of these three approaches.

The Agenda outlines seven priority areas of action:

1. Creating a new Single Market to deliver the benefits of the digital era

2. Improving ICT standard-setting and interoperability

3. Increasing Europeans' access to fast and ultra-fast internet

4. Boosting cutting-edge research and innovation in ICT

5. Empowering all Europeans with digital skills and accessible online services

6. Unleashing the potential of ICT to benefit society

7. Delivering the Digital Strategy for Europe.

The final goal is the creation of a well-functioning virtuous cycle of growth. This can happen when attractive content and services are made available in an interoperable and borderless internet environment, thereby stimulating demand for higher speeds and capacity, which then in turn gives impetus for investment in faster networks, thus finally leading right back to the creation and implementation of new innovative services and content. The final result is self-reinforcing flow of activity, which however is only possible in a business environment that fosters investments and entrepreneurship.

The aforementioned measures will be put into place or proposed over the next 2-3 years and will be succeeded by follow-up actions. The initiative will evolve and develop over the next 10 years. To implement the objectives of the Digital Agenda, the European Commission will sustain regular dialogue with the European Parliament and establish a High Level Group of Member State representatives, while all interested stakeholders are also invited to participate in action-oriented stakeholder platforms, as well as the annual Digital Assemblies, which will be assessing progress and emerging challenges. The first Digital Assembly is scheduled to be held in the first half of 2011.

• European Digital Agenda Website
http://merlin.obs.coe.int/redirect.php?id=12516 DE EN FR

• Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on "A Digital Agenda for Europe", COM (2010) 245, Brussels 19 May 2010
http://merlin.obs.coe.int/redirect.php?id=12517 EN

• Communication from the Commission on "Europe 2020 - A strategy for smart, sustainable and inclusive growth", COM (2010) 2020, Brussels 3 March 2010
http://merlin.obs.coe.int/redirect.php?id=12518 DE EN FR

BG CS DA EL ES ET FI HU IT LT LV
MT NL PL PT RO SK SL SV

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NATIONAL

AT-Austria

New Film Aid System Based on DFFF Model

At the beginning of 2010, the Austrian *Bundesministerium für Wirtschaft, Familie und Jugend* (Ministry for the Economy, Family and Youth) announced that a new model for aid for the Austrian film industry would be introduced later in the year. This model is essentially based on the *Deutsche Filmförderfonds* (German Film Fund, DFFF; see IRIS 2007-1:3/3).

At present, only the draft aid guidelines, which are currently at the notification stage, are available. According to the draft, the system will be implemented by the *Bundesministerium für Finanzen* (Ministry of Finance), which will use the *Austrian Business Agency GmbH* (ABA) and *Austrian Wirtschaftsservice GmbH* (AWS) for this purpose. The first payments should be made in the second half of the year. A budget of EUR 5 million is set aside for 2010, followed by EUR 7.5 million for 2011 and 2012.

Aid will be available for Austrian feature and documentary films as well as international co-productions and jointly-financed films that are at least 79 minutes long (59 minutes for children's films) and have a budget of at least EUR 1 million for feature films or EUR 200,000 for documentary films. Support will only be offered if at least 25% of the production costs are spent in Austria. This proportion may be reduced to 20% for large productions with a budget of more than EUR 10 million. Exceptions may be made for jointly-financed films and well-founded individual cases.

Production costs that are eligible for aid must, in principle, be spent in Austria. Eligible costs include, for example, preliminary production costs, exploitation rights, salaries, wages, fees, video and audio recording, editing, synchronisation, mixing, image and sound production, adaptation, travel, carriage and transport costs. The maximum level of support for an individual project is 25% of the eligible production costs, which may not exceed 80% of the overall production costs.

Aid will be granted on a "first come, first served" basis until the funds are exhausted. However, as in the German model, the films must pass a (relatively low-threshold) cultural quality test. The content is not evaluated by a commission, for example.

Applicants must be legal entities (producers) with their headquarters in the European Economic Area and at least one office or subsidiary in Austria, and

must have an appropriate level of experience. They must demonstrate that they have produced and exploited films with an Austrian flavour in the previous five years. They must also provide a reference film of which they have sold at least 15 copies (three copies for documentary films, seven copies for a producer's first film). Where jointly-financed films are concerned, one Austrian partner is required, in principle. Finally, the film producer must agree to sell at least 15 copies of the film in Austria (three copies for documentary films, seven copies for a producer's first film).

Payments will be made in three instalments (40% at the start of filming, 40% when the rough cut is ready and 20% when the final costs are known). According to the draft, applications will be dealt with within seven weeks of submission, while the film producer has three months in which to demonstrate how the overall funding of the project will be acquired and must start shooting within four months. The aid programme will initially run until 31 December 2012.

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BA-Bosnia And Herzegovina

RAK Report on the Internet in Bosnia and Herzegovina

The Communications Regulatory Agency (RAK/CRA) recently published its 2009 report on the Internet in Bosnia and Herzegovina.

There are currently 77 Internet Service Providers (ISPs) legally registered in the country. However, seven ISPs were not included in this survey; RAK did not give specific reasons for this.

In total, there are 399,329 Internet subscribers and close to 1.5 million Internet users, which is an increase of 63,166 Internet subscribers and approximately 200,000 Internet users compared with the previous year (see IRIS 2009-5: 7/10). 37% of the country's total population (estimated at 4.5 million) use the Internet. This number is derived following the International Telecommunications Union's (ITU) definition according to which an Internet user is any person aged from 16 to 74 using the Internet during the year.

Regarding access to the Internet the xDSL modus operandi prevails, making up 43% of the total number of Internet users, followed by the dial-up model (via analogue modem and ISDN) representing 26.8%. The remaining percentage is spread among wireless, cable, FTTx leased lines and others.

The xDSL Internet access increased by 39.3% in 2009. The number of broadband accesses in the same year increased by 35.5%. Currently, broadband access makes up 73.1% of the total number of Internet subscribers in the country.

Regarding support services ISPs offer spam protection (80% of them) and antivirus protection (59% of them).

The RAK expects that further liberalisation of the telecommunications markets and the introduction of new technologies, digitisation in particular, will offer better services, implying a further expansion of the Internet.

• *RAK website* (RAK, 2009 report on the Internet in Bosnia and Herzegovina)
http://merlin.obs.coe.int/redirect.php?id=10734 BS

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Public Broadcaster Again in Breach of New Regulation on Product Placement

On 26 April 2010, the *Vlaamse Regulator voor de Media* (Flemish Regulator for the Media - monitoring and enforcement of media regulation) again addressed the public broadcasting corporation VRT for breach of the regulation on product placement. The violation once again occurred in the Sunday morning information programme 'De Zevende Dag' (freely translated, 'The Seventh Day') (see "Public Broadcaster, Shocking Images, and Product Placement", see IRIS 2010-5: 1/9).

A report focusing exclusively on the opening of the new restaurant 'Kwint' in Brussels and lasting approximately three minutes was broadcast as part of this programme. During this report, the new commercial establishment was repeatedly mentioned and depicted. The Regulator considered that the representation did exclusively portray 'Kwint' in an attractive way. The images were shot during its opening and drew attention to its stylish and trendy interior. Moreover, the comments accompanying the report, as well as those of patrons interviewed, were without exception full of praise. For these reasons, the Regulator decided that VRT had violated the limits of acceptable attention that can be directed at a product in an audiovisual media service. As a consequence, the product had benefited from undue prominence, in breach of Article 100, §1,3°of the Flemish Media Decree. Moreover, the Regulator held that such purely promotional presentation of the restaurant, without any critical note, amounts to a direct encouragement

to visit the new establishment, in breach of Article 100, §1 2°of the Media Decree. The Regulator added that the location was obviously chosen by and placed at the disposal of the broadcasting organisation in order to realise a favourable and complimentary report on this new restaurant. Therefore, there is no doubt that this cooperation was a form of production aid (Article 99, 2°of the Media Decree), a type of product placement that is allowable within certain limits, which were, however, disregarded in the present case. Due to the gravity of the violation and given that the programme reached a market share of 52%, the Regulator decided to impose a fine of EUR 5,000.

• *VRM v. NV VRT, 26.04.2010 (No 2010/026)* (VRM v. NV VRT, 26 April 2010 (No 2010/026))
http://merlin.obs.coe.int/redirect.php?id=12503 NL

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Ethical Directive on Identification in a Judicial Context

The *Vlaamse Raad voor de Journalistiek* (Flemish Council for Journalism Ethics) has issued a directive (15 April 2010) on identification in a judicial context. This Council is an independent self-regulating institution that supervises journalistic work in all Flemish media upon the filing of a complaint by a member of the public, thereby guaranteeing that journalistic ethics are upheld. It can also issue ethical directives and recommendations on its own initiative. The new ethical directive is concerned with the way the media deal with suspects, persons convicted of a crime and victims in news coverage. It emphasises that journalists, when planning to identify a suspect, person convicted of a crime or victim through words or images, should always balance the conflicting interests at stake: on the one hand, the public's right to be informed as much as possible and, on the other hand, the right to privacy of the person being reported upon. The directive's aim is to aid journalists in carrying out this delicate balancing exercise.

The directive refers to the Belgian *Code van journalistieke beginselen* (Code of Journalistic Principles, 1981), which states that editors and journalists must respect individual dignity and privacy and avoid impermissible interferences in personal pain and distress, unless this is necessitated by considerations related to the freedom of the press. Reference is also made to the case law of the European Court of Human Rights, which has consistently held that disclosure of private data is only allowed if it contributes to a debate of public interest. That is why the directive takes as its starting point that restraint should be exercised when revealing names or other data that enable an individual's identification in judicial news coverage. This also applies to indirect identification. There are, however, situations in which identification could be preferable.

The decision to fully identify a suspect or a victim should not be made by an individual journalist, but should be the result of collective deliberation on the part of the editorial department. Considerations related to the public interest in media coverage should play a key role during this deliberation and when the public interest is invoked this must always be justified. The directive adds that every journalist should be able to refuse participation if he/she is of the opinion that a journalistic action is problematic from an ethical point of view.

The directive outlines some specific situations with distinct focus on suspects, convicts and victims, with a separate chapter devoted to minors, in each situation designating the preferred solution. Its main principles are the following: identification of suspects should be exceptional, due to the presumption of innocence. Also, identification of persons convicted of crimes should be carefully deliberated, due to concerns about their reintegration into society. Full identification of suspects and convicted persons, as well as images in which they are recognisable, are only allowed in specific circumstances, such as an overriding public interest, danger to society, very grave criminal acts or where there is consent. When considering whether to identify victims, journalists and editorial departments should as much as possible respect the concerns of the victim and those close to him/her. Full identification of victims, and images in which they are recognisable, are, as a matter of principle, prohibited (identification of victims of sexual violence is even prohibited by law, unless there is explicit, written consent). Identification should be even more exceptional if the media coverage concerns minors, especially victims who are minors. But also when minors are (alleged) perpetrators, full identification and images in which they are recognisable, remain, as a matter of principle, prohibited. The directive concludes that the specific circumstances of each case could lead to another justifiable choice. The journalist or the editorial department must, however, always be able to explain any choice that leads to identification.

• Richtlijn over identificatie in een gerechtelijke context (Directive on identification in a judicial context)
http://merlin.obs.coe.int/redirect.php?id=12502 NL

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Draft Amendments to the Copyright Act in Bulgaria

On 26 May 2010 the Council of Ministers generally approved the amendments to the Закон за авторското право и сродните му права (Copyright and Related Rights Act - ЗАПСП) proposed by the Ministry of Culture. The draft includes some basic changes concerning the status of collecting societies.

This is the second attempt by the Government to improve the regulation on the activities of the collective management societies in Bulgaria. The previous attempt was made one year ago but could not finish with completed a draft because the different parties that participated in the consultations did not come to an agreement.

The recent draft was prepared with the participation of the representatives of the existing collective management societies in Bulgaria and the Асоциация на българските радио и телевизионни оператори (Association of Bulgarian Broadcasters - ABBR/O420421440436). Its main purpose is to settle conflicts between collecting societies and broadcasters, which are the general category users of protected works but very often refuse to pay the remuneration due. Their representative organisation ABBRO states that the broadcasters would like to know how their money is spent by the societies and mostly what are the arguments of the societies regarding the recent amount of their fees. During the last months this dispute was very tense especially between ABBRO and PROPHON (ПРОФОН), which is the general collecting society for the neighbouring rights of phonogram producers and performing artists.

In order to make the collecting societies more transparent, the new draft provides a new procedure for the registration of such organisations and an administrative supervision on their activity by the Ministry of Culture. The hot point for the societies in this draft is the rule for preliminary confirmation of their tariffs by the Minister of Culture after consultation with the representative organisation of the relevant users who have obligations under the tariff. In case the consultation does not come to an agreement the tariff shall be confirmed after the decision of a committee that includes representatives of the Ministries of Finance, of Economy, Energy and Tourism and of Culture. Any amendment to the tariff shall be confirmed in the same way.

Another very important amendment provided by the recent draft concerns the rules for collecting the compensation for reproductions of protected works for personal use. The obligation of producers and importers of blank discs and recording machines exists according to the Copyright Act of 1993, but according to the societies and the Ministry of Culture up to now no monies have been paid. The new rules have to make more transparent the tariffs for this type of compensation and the new initiative is that they shall be confirmed by the Ministry of Culture in the same way as the tariffs for other kinds of use of protected works. Several sanctions are provided for persons with obligations under the tariff who fail to pay the due amounts or do not provide the required information necessary for the correct determination of the due amount.

After approval by the Government the amendments to the Copyright Act should be filed with the Parliament within the next few days. Since the collecting societies disagree with most of the new rules the discussion on the subject in the Parliament will probably be tense.

• Проекти на нормативни документи (Amendments and relevant documents)
http://merlin.obs.coe.int/redirect.php?id=12541 BG

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Terrestrial Digital Licensing

In its session on 21 May 2010 the Council for Electronic Media resolved to issue 18 licenses for the carrying out of television activities for channels intended for broadcasting by means of networks for terrestrial digital radio broadcasting with a national scope.

These are in particular Bulgaria Cable TV OOD (for the channel "Bulgaria TV"); Television Europe AD (for the channel "Television Europe"); Radio Veselina EAD (for the channel "The Voice TV"); TV Guide Network OOD (for the channel "TV Guide"); Television Varna AD (for the channel "Television Varna"); Pink BG EOOD (for the channel "PINK BG"); Balkan Bulgarian Television EAD (for the channel "BBT"); TV seven EAD (for the channels "TV7" and "Super7"); Eurofootball print EOOD (for the channel "Eurofootball"); ICS EAD (for the channel "Chance TV'); Estate TV EOOD (for the channel "TV1"); M.Sat TV EOOD (for the channel "M SAT"); R.D. -TV EOOD (for the channel "Black sea" ("Cherno more")); Ring TV EAD (for the channel "Ring BG"); Folklore TV OOD (for the channel "Folklore TV"); Fan TV OOD (for the channels "Balkanika Music Television" and "Fan TV").

At the same session the Council for Electronic Media resolved to issue licenses to the Bulgarian National Television for the creation of the channel "BNT Sofia" which will be broadcast by means of networks for terrestrial analogous and terrestrial digital television broadcasting with a regional scope.

• Прессъобщения (Council's decision concerning digital broadcasting)
http://merlin.obs.coe.int/redirect.php?id=12532 BG

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CZ-Czech Republic

Amendment of the Law on Electronic Communication

The Czech Parliament recently approved amendments to the Law on Electronic Communication.

The essence of the amendments lies in an introduction and withdrawal possibility concerning the allocation of radio frequencies. Until now the authorities were not able to modify or withdraw an allocation of radio frequencies. As a result, parts of the frequency spectrum were sometimes blocked. Now, it is possible to withdraw unused frequencies.

Another change involves the financing of universal services. Universal services have been funded in two ways: By the operators - a fund of universal services to which operators contribute - and by the State - with regard to the costs for disabled persons. But the universal service is a legal requirement to perform certain duties in the public interest. The State should therefore need to reimburse the businesses for their expenses. Thus, the new law provides for the unification of the financing of universal services from the State budget.

The new legislation lifted the ban on cross-ownership in the Law on Radio and Television Broadcasting. The Law prevented electronic communications businesses from obtaining a license to operate also in the fields of radio and television broadcasting. The competition in the media market was limited in this way. Furthermore, restrictions on the ownership of electronic communications networks for the transmission of radio and terrestrial digital broadcasting according to the Law on Radio and Television Broadcasting were annulled. The limitation on entrepreneurs to own or operate more than two networks previously impeded free competition in the market for electronic communications.

The competence of the Council for Radio and Television Broadcasting (RRTV) to make changes to the set of technical parameters of broadcasters has been specified. The provisions on the transition from analogue to digital television broadcasting address the situation where the television broadcaster operates simultaneously on the same territory with both analogue and digital broadcasting. RRTV obtains the permission to initiate administrative procedures of restrictions to the set of technical parameters, namely limitations to analogue broadcasting.

There is also an amendment to the Copyright Act: the payments for the use of copyright-protected content due to the reception of digital television through joint television antennas were annulled. The reception of analogue television broadcasting was not subject to this payment until now.

Several obligations have been adopted for the public Czech Television's switchover to digital television broadcasting. The legislation restricts the duplication of analogue and digital terrestrial television broadcasting in one area outside the framework provided for by the Government Plan on the technical transition to digital television broadcasting.

• Zákon č. 153/2010 Sb. kterým se mění zákon č. 127/2005 Sb. o elektronické komunikaci a některé další zákony (Law No. 153/2010 Coll. Amending the law No. 127/2005 Coll. on electronic communications and some other laws dated 21 May 2010)
http://merlin.obs.coe.int/redirect.php?id=12536 CS

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DE-Germany

BGH Confirms Ban on Merger between Springer and ProSiebenSat1

On 8 June 2010, the *Bundesgerichtshof* (Federal Supreme Court - BGH) confirmed the decision taken by the *Bundeskartellamt* (Federal Cartel Office - BKartA) in 2006 to ban the merger between Axel Springer AG and TV broadcaster ProSiebenSat1.

The BKartA had prohibited the planned merger due to concerns about competition (see IRIS 2006-4: 10/16). Springer's appeal against this decision was initially rejected by the *Oberlandesgericht Düsseldorf* (Düsseldorf Regional Appeal Court - OLG) as inadmissible. Springer successfully appealed to the BGH against this ruling and the matter was referred back to the OLG Düsseldorf (see IRIS 2007-10:9/13). The OLG Düsseldorf rejected the company's request for a declaratory judgement on 3 December 2008 as unfounded (see IRIS 2009-2: 10/14), but left its decision open to appeal.

The BGH has now confirmed the OLG Düsseldorf's decision. The companies involved in the planned merger would have formed an oligopoly with a dominant market position and would, between them, have represented more than 80% of the German TV advertising market. It was therefore likely that this oligopoly

would have been strengthened further if the merger had been approved. The merger ban imposed by the BKartA had therefore been lawful.

• *Der Beschluss des BGH vom 8. Juni 2010 (Az: KVR 4/07)* (BGH ruling of 8 June 2010 (case no. KVR 4/07))
http://merlin.obs.coe.int/redirect.php?id=12525 DE

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BGH Finds WLAN Operator Liable

On 12 May 2010, the *Bundesgerichtshof* (Federal Supreme Court - BGH) granted an injunction to a music rights marketing company against the private operator of a WLAN under contributory negligence rules.

A piece of music, the rights to which were marketed by the plaintiff, had been shared on the Internet using the defendant's WLAN. The plaintiff claimed damages from the defendant and demanded an injunction as well as reimbursement of the cost of sending a cease-and-desist demand. The *Landgericht Frankfurt/Main* (Frankfurt/Main district court) had essentially upheld the plaintiff's application. On appeal, however, the *Oberlandesgericht Frankfurt/Main* (Frankfurt/Main appeal court) had ruled that the WLAN operator was not liable.

Ruling on a further appeal, the BGH agreed that the plaintiff had no civil law entitlement to damages for breach of copyright by the defendant, either as perpetrator or participant, since it had not been proved that the defendant had shared the music himself or deliberately helped a third party to do so. There was every reason to assume that the person to whom an IP address had been allocated would be responsible for an infringement committed from that address. However, in this case, this assumption had been credibly refuted by the defendant's claim that he had been on holiday when the offence was committed. Neither had he intentionally participated in an infringement by a third party.

However, under contributory negligence rules, the BGH found the WLAN owner liable for failing to prevent a protected work from being made available to the public (Art. 19a of the *Urheberrechtsgesetz* - Copyright Act). By operating a WLAN that was not sufficiently secure, the defendant had wilfully and, with sufficient causality, contributed to this infringement and failed to meet his duty of due diligence in this respect. Even private individuals - if only in their own interest to protect their data - could be expected to verify whether their WLAN was sufficiently secure to prevent its misuse by third parties standing outside. Although private WLAN operators could not be required to ensure that their network was always protected by the latest technology, when buying a WLAN router they could be expected to implement "security measures that are standard for private households in accordance with their purpose".

The defendant's WLAN router was secured using a 16-digit password according to the WPA encryption method. The BGH held that this system had been adequate in September 2006, when the offence was committed. However, the defendant had not changed the original password set by the manufacturer. One of the "minimum standards for private computer use" at the time had been to enter a personal, sufficiently secure password.

Limitations of liability on the basis of which - in order to protect a business model, for example - preventative duties of due diligence were disregarded or which could apply to hosting service providers under Art. 10 of the *Telemediengesetz* (Telemedia Act - TMG) did not apply in this case. The BGH did not examine the more obvious possibility of indemnity for access providers under Art. 8 TMG (or Art. 9 of the *Teledienstegesetz* - Teleservices Act - that applied when the offence was committed).

• *Urteil des BGH vom 12. Mai 2010 (Az. I ZR 121/08)* (BGH ruling of 12 May 2010 (case no. I ZR 121/08))
http://merlin.obs.coe.int/redirect.php?id=12523 DE

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BGH Rules on Unauthorised Use of Film Images

In a recently published ruling of 19 November 2009, the *Bundesgerichtshof* (Federal Supreme Court - BGH) decided that the use of photographs taken in connection with the production of a film does not infringe the right of cinematographic exploitation enshrined in Art. 91 of the *Urheberrechtsgesetz* (Copyright Act - UrhG).

The defendant operates an online archive of around 400,000 photographs from various films, including some the rights to which are owned by the plaintiff, a film producer. These images can be viewed in thumbnail form and downloaded for a fee. The plaintiff argued that this service offered by the defendant breached her copyright-related rights over the photographs and film recordings under Arts. 72, 91, 94 and 95 UrhG and demanded compensation from the defendant.

The BGH partly rejected her claim. The plaintiff was not entitled to compensation due to a breach of the film producer's right of cinematic exploitation of the images. The BGH applied Art. 91 UrhG, which had

been in force until 30 June 2002, because the films concerned had been produced before the currently applicable Art. 89 para. 4 UrhG entered into force on 1 July 2002. In this case, however, the images in question had not been "used either in the context of exploitation of a film or in the form of a film". The fact that the images had originated from films did not mean that their use automatically constituted "cinematographic exploitation" in the sense of the Act.

Regarding the right of non-cinematographic exploitation of the images (Arts. 72 and 2 para. 1 no. 5 UrhG), the BGH ruled that this belonged, in principle, to the photographers. Although the plaintiff had claimed that she had acquired the rights from the photographers, she had not provided sufficient proof that this was the case. However, the BGH upheld complaints submitted with the appeal, according to which the appeal court had made a procedural error by refusing the plaintiff's request to produce evidence that she had acquired these rights. Consequently, the BGH annulled the appeal court's decision and referred the case back for a new hearing and ruling.

With regard to the claim for compensation due to the breach of the film producer's rights over the film recordings (Arts. 94, 95 UrhG), the BGH noted that the plaintiff had only lodged this claim in the alternative, so it only needed to be considered if the main application was unsuccessful. However, as a precaution, the BGH ruled that the subject of protection was not the "film recording as a tangible item, but the film producer's organisational and economic effort, embodied in the film recording". It thought that this would include acts of exploitation that did not make direct use of the film recording. The "economic value worthy of protection", which justified protection under Arts. 94 and 95 UrhG, was present in even the smallest part of a film.

• *Urteil des BGH vom 19. November 2010 (Az: I ZR 128/07)* (BGH ruling of 19 November 2010 (case no: I ZR 128/07))
http://merlin.obs.coe.int/redirect.php?id=12524 DE

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Court Clears Rapidshare of Copyright Infringements

On 27 April 2010, the *Oberlandesgericht Düsseldorf* (Düsseldorf Regional Appeal Court - OLG) ruled that file-hosting site "Rapidshare" was not liable for copyright infringements committed by third parties using its service.

In the OLG's view, Rapidshare was not responsible, either as perpetrator or participant, for copyright infringements committed by users. Rapidshare made storage space available for the uploading of files and offered access to stored data by providing a download link. The site operator itself did not publish any content, so it could not be guilty of infringing copyright. As long as Rapidshare did not make uploaded files accessible to the public or enable others to do so, it could not be held liable as a wilful participant in the infringement. Insofar as the files could be used legally by users, it was not sufficient to argue that the service provider had accepted that its service might be used to infringe copyright.

The OLG ruled that, in such a case, Rapidshare was also not liable for its users' copyright infringements under contributory negligence rules. Contributory negligence was the failure to fulfil a duty of due diligence, the scope of which depended on what was generally considered "reasonable". A higher degree of diligence was particularly required if the wrongdoer had been informed by the rightsholder of a clear infringement. In that case, it would not only have to block access to the actual file immediately, but also take reasonable precautions to prevent similar infringements occurring in the future.

Rapidshare could not be reasonably expected to manually check uploaded files, and automatic file verification was largely unsuitable for technical reasons. In particular, checking file names was impractical, since these could be chosen freely, and this could instead lead to legitimate files being wrongly identified. Blocking all file names containing certain words was also out of the question because this would not provide any compelling indication that the file content was illegal. Finally, the verification and blocking of IP addresses was unsuitable since many IP addresses were used by so many different people that the likelihood of establishing further infringements was disproportionately small.

On 30 September 2009, the *Oberlandesgericht Hamburg* (Hamburg Regional Appeal Court) adopted a different legal opinion and found Rapidshare liable for copyright infringements under the principle of contributory negligence (case no. 5 U 111/08).

• *Urteil vom 27. April 2010 (Az: Az. I-20 U 166/09)* (Ruling of 27 April 2010 (case no. I-20 U 166/09))
http://merlin.obs.coe.int/redirect.php?id=12528 DE

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VG Berlin Rules on "Structural Improvement" in the Sense of Film Support Act

On 27 April 2010, the *Verwaltungsgericht Berlin* (Berlin Administrative Court - VG) ruled on the decisive criteria for defining "structural improvement"

in the sense of Art. 56 para. 1 no. 1 of the *Filmförderungsgesetz 2004* (2004 Film Support Act - FFG 2004) and the date on which such criteria should be applied.

In the underlying case, the plaintiffs had applied to the *Filmförderungsanstalt* (Film Support Office - FFA) in 2006 for financial assistance with the construction of a multiplex cinema with 10 screens and 1,200 seats. The FFA refused the application, most recently in a decision taken on 29 November 2007, against which the appeal was lodged. The plaintiffs opened the multiplex cinema in December 2007.

The VG agreed with the FFA and rejected the appeal. It ruled that the basis for a claim in this case was provided by Art. 56 para. 1 no. 1 and para. 3 of the 2004 version of the FFG, in accordance with which the application was submitted. Under this provision, the FFA could provide financial assistance for the modernisation, improvement and construction of cinemas, as long as the project would produce a structural improvement.

The plaintiffs had argued that the new multiplex building had been constructed by a party that was not involved in the proceedings and that they themselves were only tenants or leaseholders, so the funding would not support the construction of a new cinema but the furnishing of it, which meant that a structural improvement was completely irrelevant. The VG rejected this argument and held that this case did concern a new construction in the sense of the Act, since "a new cinema was opened"; its ownership structure was irrelevant.

In this case, the new construction did not produce a structural improvement. In view of the case-law of the *Bundesverwaltungsgericht* (Federal Administrative Court - BVerwG; see IRIS 2010-1: 1/14), such an improvement was only produced if, at the location concerned, "there is a shortage of cinemas for the local population, or at the very least, if the anticipated increase in ticket sales is so great that the average seat occupancy level (including new seats) will not be significantly lower than the average found in similar locations." An examination of the 19 similar cities used for such a comparison had shown that, before the multiplex had opened, the number of cinema screens and seats in the location concerned had been average and seat occupancy levels "(below) average". There had been no shortage of cinemas for the local population.

As regards the significant increase in ticket sales, the BVerwG required that this "is able to offset the increase in capacity linked to the new construction [...] and that existing providers will not be disadvantaged, or proof that the newly-built cinema will appeal to specific groups who are not adequately served by existing local cinemas."

The VG also thought that these criteria were not met in this case. According to the regular statistical surveys referred to by the FFG, the anticipated increase in ticket sales in the location concerned in 2007 had been no more than 16.7%, whereas the new multiplex had increased the number of seats by 140%. It had therefore been unlikely that the capacity increase would be offset. However, it had been foreseeable that fierce competition would result, which would be detrimental to the existing providers, since the plaintiffs, with the multiplex, owned 57% of the seats and 71% of the screens in the area. This threat to existing providers had been realised with the closure of both existing cinemas in 2009 and 2010.

The plaintiffs' claim that their cinema would appeal to specific groups by screening particularly highbrow films in its "*Kino für Kenner*" programme as well as Turkish-language films had remained unsubstantiated. In any case, the plaintiffs had failed to mention this to the FFA in their application, which was why it had not been taken into account.

This ruling cannot be appealed.

• *Urteil des VG Berlin vom 27. April 2010 (Az: 21 K 4.10)* (Ruling of the VG Berlin of 27 April 2010 (case no. 21 K 4.10))
http://merlin.obs.coe.int/redirect.php?id=12529 DE

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New Developments for Cinema Digitisation Aid

On 6 May 2010, the *Beauftragte der Bundesregierung für Kultur und Medien* (Federal Government Commissioner for Culture and the Media - BKM) presented a model for the financial support of full cinema digitisation, developed in partnership with the *Filmförderungsanstalt* (Film Support Office - FFA).

The aim of the project is to protect the diversity of the cinema landscape and provide a basic cultural service. To this end, cinema operators who cannot afford to switch to digital projection technologies themselves will receive financial support. These particularly include art house cinemas, municipally-owned cinemas and cinemas in rural areas. The new system should begin in summer 2010, with EUR 4 million in the BKM's 2010 budget earmarked for the support of cinema digitisation.

On 19 May 2010, the *Filmstiftung Nordrhein-Westfalen* (Film Foundation of North Rhine-Westphalia - NRW) launched its own support programme for cinema digitisation in NRW in order to promote a diverse cinema landscape and enable smaller cinemas to benefit from technical advances.

The programme seeks to provide a flat investment subsidy of EUR 20,000 per screen, with the cinema

operator expected to pay 20% of the cost. The money will go towards the purchase of the equipment needed for digital cinema projection (server, projector and installation). It is available to cinemas in NRW with up to six screens and an average annual turnover of EUR 180,000 or less. The investment subsidy is available in addition to other public funding, such as funding from the FFA or BKM, and represents so-called *de minimis* aid in the sense of European State aid regulations.

• *Mitteilung des BKM Neumann* (Press release of BKM Neumann)
http://merlin.obs.coe.int/redirect.php?id=12535 DE

• *Mitteilung der Filmstiftung NRW und weitere Hinweise* (Press release of the Filmstiftung NRW and further references.)
http://merlin.obs.coe.int/redirect.php?id=12527 DE

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ES-Spain

New Decree Regulates HD/DTT

At the meeting of the Council of Ministers of 20 May 2010, the Spanish Government approved a new Decree that regulates high definition digital terrestrial television (HD/DTT). The Decree was published in the official journal on 2 June as Royal Decree 691/2010. It develops the technical specifications for HD/DTT, a service recently regulated when the Parliament approved the General Law of Audiovisual Communications (see IRIS 2010-4: 1/21), and establishes the conditions to broadcast in HD/DTT.

As regards the former, HD/DTT services will follow the ETSI EN 300 744 transmission system, use video resolution of at least 720 lines with an aspect ratio of 16:9 and the H.264/MPEG-4 video compression standard, although future more efficient standards are not ruled out. Manufacturers will have six months to include an HDTV tuner in any TV set over 21 inches that will become available on the market (DTT tuners are already incorporated) and will have the obligation to inform consumers about the reception capabilities of equipment.

In relation to the latter, those who are to be assigned a whole multiplex will be allowed to broadcast the number of channels specified in their license, including HD signals, as long as they use the technical specifications authorised. If the multiplex is shared, all broadcasters will have the right to broadcast in high definition, as long as they all reach an agreement about the matter. In any case, according to the new General Law (Article 35), before any broadcaster begins to offer HD services such a decision must be notified to the authority that granted the license.

• Real Decreto 691/2010, de 20 de mayo, por el que se regula la Televisión Digital Terrestre en alta definición (Royal Decree 691/2010, on the regulation of high definition digital terrestrial television)
http://merlin.obs.coe.int/redirect.php?id=12505 ES

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FR-France

Dailymotion Sanctioned again for Infringing Film Copyright

The companies *La Chauve-Souris* and *120 Films* had a statement drawn up by sworn officers of the association to combat audiovisual piracy (*Association de Lutte contre la Piraterie Audiovisuelle* - ALPA) noting that the video-sharing platform Dailymotion was showing shortened extracts of the film *Sheitan*, of which they are the producers. Dailymotion subsequently withdrew the unlawful content from its site. As extracts of the film were still being shown, the producers had the platform charged with piracy.

Referring to its by now well-established jurisprudence, the third chamber of the regional court in Paris refuted the qualification of Dailymotion as an editor, contrary to the claim of the applicant parties. The court held that the company's role was limited to supplying the technology for storing and viewing videos that allowed them to be put on line on the sole initiative of the site's users, who retained complete control of the operation. Furthermore, the commercialisation of advertising space provided by Dailymotion could not be held to prevent the benefit of the provisions of Article 6-I-2 of the Act of 21 June 2004 setting up a scheme of limited liability for hosts.

The court noted firstly that the platform was qualified as a host and might validly invoke that scheme, and secondly that because it had been notified of the judge's order in respect of the applications further to the reports drawn up by ALPA's officers, it had had knowledge that it was unlawful to show the film at issue on its site and as a result it should have used all necessary means to withdraw that content promptly and prevent further showing. Since Dailymotion did not make further showing impossible, the company could not invoke the scheme of limited liability introduced by Article 6-I-2 of the LCEN, and its civil liability was therefore invoked under the terms of common law. The court therefore sanctioned Dailymotion for failing in its obligations as a host, and fined it the sum of EUR 15,000 in damages in favour of the two production companies that had brought the proceedings. It was also ordered to display a legal communiqué on the opening page of its site for eight days.

• *TGI de Paris (3e ch. 2e sect.), 11 juin 2010, Stés La chauve souris et 120 Films c/ Dailymotion* (Regional court of Paris (3rd chamber, 2nd section), 11 June 2010, La Chauve-Souris and 120 Films v Dailymotion) FR

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Legality of the CSA Deliberation Aimed at Protecting Under-3s from the Effects of Television

In a deliberation adopted on 22 July 2008 "aimed at protecting children under the age of three years from the effects of television", the *Conseil Supérieur de l'Audiovisuel* (audiovisual regulatory body - CSA) required the distributors of television services established in France to warn their subscribers regularly of the risks television poses for children under the age of three years, even in the case of channels directed specifically at them, and to pass on the same message in their communication documents and in their subscription contracts. Promotion of television services presented as being specifically designed for children under the age of three years is not allowed either. The American company Baby First, which edits a television channel distributed in France that is specifically directed at children under the age of three years, brought the matter before the *Conseil d'Etat* with a view to having the CSA's deliberation cancelled.

In a decision delivered on 26 May 2010, the *Conseil d'Etat* stated firstly that the applicant did indeed have an interest in contesting the deliberation at issue, as its programmes were available in France by means of distribution by a satellite operator with a registered office in France, where the operator distributed services specifically designed for children under the age of three years. On the substance of the case, the deliberation at issue, which is in the form of a regulatory document, did not have to be preceded by proceedings in the presence of the parties. The CSA could validly collect from the Ministry of Health, as it had done, all the information it needed for reaching its decisions. No proof had been furnished that it had considered itself to be bound by the opinion of the Ministry, nor that it had renounced the exercising of its own appreciation of the matter of the protection of children under the age of three years from the effects of television. Moreover, the obligation incumbent on distributors, introduced by the deliberation, to broadcast a warning on the effects of television on very young children concerned both the channels specifically directed at that age group and the other programmes. The deliberation therefore did not introduce a breach of the equality of the various television services directed at young viewers. The *Conseil d'Etat* held that the applicant company was not justified in calling for the cancellation of the deliberation at issue.

• *Conseil d'Etat (sect. contentieux), 26 mai 2010, Société Baby First c/ Conseil supérieur de l'audiovisuel* (Conseil d'Etat (disputes section), 26 May 2010, Baby First v Conseil Supérieur de l'Audiovisuel) FR

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CSA Lays down Conditions for Broadcasting Audiovisual Advertising of On-line Games and Betting

The Act designed to open up to competition and regulate the on-line gaming sector adopted on 6 April 2010 was gazetted on 13 May 2010, after validation by the Constitutional Council, thereby achieving the French Government's aim of allowing the market to be liberalised before the start of the football World Cup. The Act is intended to open up the market for on-line gaming (betting on sporting events, betting on horse racing, and poker) in a regulated fashion by authorising, through the new authority regulating on-line gaming (*Autorité de Régulation des Jeux en Ligne* - ARJEL), operators who will be required to observe strict specifications. Article 7 of the Act lays down the conditions for broadcasting advertising in favour of the approved operators, which must be accompanied by a message warning against excessive or pathological gaming. Advertising is prohibited in publications, audiovisual communication services and on-line services directed at minors, and also in cinemas showing works that may be viewed by minors, on penalty of being fined between EUR 30,000 and 100,000, and will be prohibited for non-approved operators.

On 18 May 210, after a very wide-ranging consultation with the parties involved, the *Conseil Supérieur de l'Audiovisuel* (audiovisual regulatory body - CSA) adopted a deliberation on the conditions for radio and television services broadcasting commercial communications (advertising, sponsorship, product placement) on behalf of on-line gaming operators. The deliberation refers to all the operators legally authorised by the State, whether by virtue of an exclusive right (*Française des Jeux, Pari Mutuel Urbain*), an authorisation (casinos), or an approval issued by the ARJEL (activities on the physical network and on line). The first part of the text defines the radio and television services and the programmes "presented as being directed at minors" within the meaning of Article 7 of the Act of 12 May 2010, during which commercial communications on behalf of gaming operators are prohibited, based on a range of factors (the tone used, visual identity, subjects broached, time of day, prizes offered, etc) intended to inform players on the guidelines to be used by the CSA in applying the Act. Commercial communications on behalf of gaming operators are also prohibited during the thirty minutes before and after these programmes. The second part of

the deliberation defines the conditions for broadcasting commercial communications on behalf of gaming operators. Lastly, the text includes provisions concerning the identification of commercial communications on behalf of gaming operators and of their object, the protection of minors, and combating addiction. The Act provides that a joint report by the CSA and the professional advertising regulation authority (*Autorité de Régulation Professionnelle de la Publicité*) assessing the consequences of advertising by online gaming and betting operators in the media should be presented to Parliament within eighteen months of the Act being promulgated.

• *Loi n°2010-476 du 12 mai 2010 relative à l'ouverture à la concurrence et à la régulation du secteur des jeux d'argent et de hasard en ligne, JO du 13 mai 2010* (Act No. 2010-476 of 12 May 2010 on opening up to competition and regulating the on-line gaming sector, gazetted on 13 May 2010)
http://merlin.obs.coe.int/redirect.php?id=12521 FR

• *Délibération n°2010-23 du 18 mai 2010 relative aux conditions de diffusion, par les services de télévision et de radio, des communications commerciales en faveur d'un opérateur de jeux d'argent et de hasard légalement autorisé, JO du 21 mai 2010* (Deliberation No. 2010-23 of 18 May 2010 on the conditions for radio and television services broadcasting commercial communications on behalf of a legally authorised gaming operator, gazetted on 21 May 2010)
http://merlin.obs.coe.int/redirect.php?id=12522 FR

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GB-United Kingdom

Competition Authorities Require Restrictions on Advertising Contracts to Continue

The UK Competition Commission, the country's main competition authority, has decided that the Contract Rights Renewal (CRR) undertakings required of ITV1, the largest commercial broadcaster, are to continue.

The undertakings were imposed by the Competition Commission and the Secretary of State after the merger of Carlton and Granada in 2003 to create a single ITV plc. They reflected concerns about the effect of the enhanced market position of the new company on competition in the sale of television advertising airtime. The undertakings allow buyers of advertising airtime to roll forward their pre-merger contracts, subject to annual adjustments which reflect the change in ITV1's share of ratings (measured in the form of its share of commercial impacts). Disputes relating to the undertakings are determined by an Adjudicator, who also reports on compliance with them.

After an investigation, the Competition Commission determined that ITV1 retains the unique ability to deliver audiences of up to 18 million at a time and, in 2009, accounted for 982 of the top 1,000 most-watched programmes on commercial television. Indeed, its relative position of strength compared with other commercial broadcasters is little changed since 2003. New competition from the Internet and many new digital channels cannot yet replicate ITV's ability to deliver large television audiences. Moreover, most advertising is bought through a small number of media agencies, which cannot credibly withdraw expenditure from ITV1 if they are to serve their clients' needs.

ITV had also overstated the effect of the undertakings which do not prevent it from producing good-quality programmes. The majority of media agencies have in fact negotiated to some extent with ITV rather than simply falling back on the terms of earlier deals. ITV's suggested alternatives would not be effective in preventing the broadcaster from offering worse deals to advertisers.

However, the Competition Commission decided that the definition of ITV1 in the undertakings should be widened to include any future ITV1+1 channel and the recently launched ITV1 high-definition channel so that impacts from them are included in the CRR calculation.

• CC Publishes Final Decision on CRR, Competition Commission Press Release 18/10, 12 May 2010
http://merlin.obs.coe.int/redirect.php?id=12506 EN

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Competition Authority Decides that Joint Venture for Internet TV Is not a Merger

The Office of Fair Trading, the general UK competition authority, has decided that Project Canvas, a proposed joint venture between the BBC, ITV, Channel 4, Five, BT, Talk Talk and Arqiva, does not constitute a merger and so does not qualify for investigation by the competition authorities.

Project Canvas (see IRIS 2010-2: 1/22) is a proposal to build an open Internet-connected television platform with common technical standards. An earlier project ('Project Kangaroo') was blocked as anti-competitive by the Competition Commission in 2009 (IRIS 2009-4: 12/16), as it would provide viewers with access to video-on-demand content from all the partners; the Commission considered that this would be likely to lead to a loss of rivalry between the parties, amounting to a substantial lessening of competition in the supply of such content at the wholesale and retail levels. By contrast, Project Canvas does not involve the contribution of any video-on-demand content or other business by any of the partners and it will have no role in aggregating, marketing or directly retailing any

such television content. It is merely concerned with establishing a common technical standard, while the joint venture will have no rights over content.

The Office of Fair Trading decided that none of the partners is contributing a pre-existing business or enterprise to the joint venture nor would any individual partner have any more influence over it than would the others. Therefore it falls outside the merger provisions of the Enterprise Act 2002.

Project Canvas still requires final approval by the BBC Trust and is strongly opposed by other broadcasters as potentially anti-competitive. If approval is given, it is expected to be launched in early 2011.

• Office of Fair Trading, 'Project Canvas falls outside UK merger control jurisdiction', Press Release 51/10, 19 May 2010
http://merlin.obs.coe.int/redirect.php?id=12507 EN

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Online Infringement of Copyright and the Digital Economy Act 2010

The Digital Economy Act 2010, Section 3, concerning 'Online infringement of copyright', has amended the Communications Act 2003, Section 124. The Explanatory Memorandum for Section 3 of the 2010 Act states that the Act imposes duties on Internet Service Providers to (a) "notify their subscribers if the internet protocol ("IP") addresses associated with them are reported by copyright owners as being used to infringe copyright" and (b) "keep track of the number of reports about each subscriber and, on request by a copyright owner, compile on an anonymous basis a list of those subscribers who are reported on by the copyright owner above a threshold set in the initial obligations code [...] After obtaining a court order to obtain personal details, copyright owners will be able to take action against those included on the list."

Prior to such obligations coming into force, the UK communications regulator, Ofcom, its mandate having been extended by the Digital Economy Act, is required to draw up a Code which will set out "how and when Internet Service Providers (ISPs) covered by the code will send notifications to their subscribers to inform them of allegations that their accounts have been used for copyright infringement." The code of practice is called 'The Online Copyright Infringement Initial Obligations Code'.

Initially, Ofcom proposes that the Code will be applied to the "larger" ISPs, meaning fixed-line ISPs with over 400,000 subscribers, specifically, BT, Talk Talk, Virgin Media, Sky, Orange, O2 and Post Office. As regards subscribers, Ofcom proposes a "three stage notification process for ISPs to inform subscribers of copyright infringements and [...] that subscribers which have received three notifications within a year may be included in a list requested by a copyright owner." An appeal procedure is also contemplated: the establishment of "an independent, robust subscriber appeals mechanism for consumers who believe they have received incorrect notifications, arrangements for enforcement and dealing with industry disputes, as well as sharing the costs arising from the code."

Finally, the Code also envisages consumer education; the promotion of lawful alternative services; and targeted legal action against serious infringers.

The Code is expected to come into force in early 2011, not later than eight months after the Act received the Royal Assent. There is now to be a period of consultation, from 28 May 2010 until 30 July 2010. Also, the draft Code has to be approved by the European Commission.

• Digital Economy Act 2010 Section 3
http://merlin.obs.coe.int/redirect.php?id=12508 EN
• Explanatory Memorandum, "Topic 2: Online infringement of copyright"
http://merlin.obs.coe.int/redirect.php?id=12509 EN
• Online Infringement of Copyright and the Digital Economy Act 2010: Draft Initial Obligations Code
http://merlin.obs.coe.int/redirect.php?id=12510 EN
• Draft code of practice to reduce online copyright infringement
http://merlin.obs.coe.int/redirect.php?id=12511 EN

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Court Imposes Limits on Satirising Economic Measures Taken by the Government

On 4 May 2010 the Εθνικό Συμβούλιο Ραδιοτηλεόρασης (National Council for Radio and Television - ESR) issued a decision (Nr. 220/4.5.2010) condemning a television channel for the transmission of a show ridiculing the Greek Prime Minister.

According to the decision, "satire is a way of making social criticism that nevertheless cannot extend to the derision and insult of (the Prime Minister)".

The minority opinion of the President of the ESR was different: the show depicted in a satirical way the pressure applied by the European Union Commissioner on the Prime Minister to undertake a series of painful economic measures. Therefore the TV show was not insulting to the Prime Minister per se and, as a result, no fine should be imposed on the TV channel.

Finally the ESR recommended the depiction of persons in a fair, appropriate and respectful manner. It also threatened to impose fines in the future.

The decision has many similarities to another decision issued by the ESR on 16 March 2010 (Nr. 132/16.3.2010). The regulator then condemned a different TV channel for a satirical TV show which transmitted consecutive clips of a government spokesperson announcing economic measures imposed by the government to stabilise the economy, followed by footage from a pornographic film and vulgar language. The face of the government spokesperson was camouflaged, as were the private parts of the couple in the clip. The face of the woman was not camouflaged. It should be mentioned that this part of the show was transmitted after midnight.

According to the ESR's decision, television is a public good and TV channels can make use of the medium for the transmission of programmes within the limits set by the Greek Constitution (i.e., taking into account the cultural development of the country and respect for human value). Satire must neither be an excuse for the humiliation of persons nor an excuse for the transmission of pornographic material.

In addition, according to the decision, the fact that this part of the programme was transmitted after midnight was irrelevant because "no regulation provides for promiscuity on TV shows after midnight".

The decision concludes that the depiction of the woman in this manner and the broadcasting of sexual acts and vulgar language constitute an infringement of the Greek Constitution and of the media law regulation.

• Εθνικό Συμβούλιο 3413613643713773043673733653773013613033673023, Αποφάσεις 321301371370μ. 220/4.5.2010 και 132/16.3.2010 (National Council for Radio and Television, Decisions No. 220/4.5.2010 and 132/16.3.2010)
http://merlin.obs.coe.int/redirect.php?id=11564 EL

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Transmission of a Video Taped by Hidden Camera Possible under Strict Conditions

The possibility of circumventing the legal provision (Article 8 para.1, Presidential Decree 77/2003) that forbids the transmission of images filmed by hidden means was established by a decision of the plenary session of the Συμβούλιο της Επικρατείας (Council of State). In Decision No. 1213/2010, Greece's highest administrative court found that the televised transmission of images captured by hidden means constitutes a limitation on the constitutionally protected right of the portrayed person to their image, as a particular expression of the right to the respect for private life, and cannot, in principle, be considered to be a legitimate exercise of the right to inform. This rule may be overridden if the independent regulatory body Εθνικό Συμβούλιο Ραδιοτηλεόρασης (National Council for Radio and Television - ESR) finds, on the basis a specific and fully justified adjudication, that the transmission of a certain news item would be absolutely impossible or especially difficult without the transmission of the image that was captured by hidden means and which constitutes the source of the news item, as long as the news item in question contributes to a discussion of general interest, particularly in view of the identity of the portrayed person. The opinion of the dissenting minority, according to which there is no absolute ban on the transmission of such images, especially when a public person who is acting in a way that can conceivably be of interest to the public is involved, is noteworthy. According to the court's minority, the fact that the fixation of the image of a person is inherent in the very notion of television should also be taken into consideration.

In the relevant case a decision of the ESR from May 2002 (i.e., before the adoption of Presidential Decree 77/2003) was examined, in which a fine amounting to EUR 200,000 for the transmission of audiovisual material (video) taken by means of a "hidden camera" was imposed on a television channel. The video in question depicted a Member of Parliament (and President of the bi-partisan committee for the examination of the issue of arcade video games) entering an amusement arcade and playing on two machines. The applications for annulment were finally rejected (although a strong minority dissented) because, as it was stated, "it was not established that the transmission of the news item in question would have been absolutely impossible or especially difficult without the transmission of the images that constituted its source and were taken by hidden means".

• Συμβούλιο της 3253003713723013613043653713613023, Απόφαση 321301371370μ. 1213/2010 (Decision of the Administrative Court of Justice Nr. 1213/2010) EL

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Irish Request for ECJ Preliminary Ruling on Related Rights

The commercial division of the High Court decided on 23 March 2010 that a preliminary ruling should be sought from the European Court of Justice on the interpretation of Articles 8 and 10 of Directive 92/100/EC

on rental right and lending right and on certain rights related to copyright in the field of intellectual property, as codified by Directive 2006/115/EC. The case was taken by PPI, a licensing body which acts on behalf of phonogram producers who hold rights in sound recordings. The central issue is whether section 97 of the Irish Copyright Act 2000 is contrary to Ireland's obligations pursuant to the Directive, as it allows sound recordings to be heard in hotel and guesthouse bedrooms without payment, though not in areas such as nightclubs or concert areas where a discrete charge is made for admission. The judge found, inter alia, that under s.97 if a "like use" were made by hospitals, nursing homes, residential care facilities, prisons and other institutions, no payment (equitable remuneration) would be payable to the phonogram producers.

Having examined the relevant Articles of the Directives, related case law of the ECJ and the arguments of the parties to the case, the judge decided that it was necessary to seek the preliminary ruling of the ECJ on five questions, which she set out in her judgment. These concern: whether a hotel operator is a "user" making a "communication to the public" for the purposes of Article 8(2) of Codified Directive 2006/115/EC; if so, does Article 8(2) oblige Member States to provide a right to payment of equitable remuneration from the hotel proprietor in addition to equitable remuneration from the broadcaster for the playing of the phonogram; or does Article 10 permit member states to exempt hotel operators from the obligation to pay "a single equitable remuneration" on the grounds of "private use"; is a hotel operator who provides in a guest bedroom apparatus (other than a television or radio) and phonograms in physical or digital form which may be played on or heard from such apparatus a "user" making a "communication to the public" for the purposes of Article 8(2); and, if so, does Article 10 permit member states to exempt hotel operators from the obligation to pay "a single equitable remuneration" on the grounds of "private use".

• Phonographic Performance [Ireland] Ltd v Ireland & Anor, High Court (Commercial), [2010] IEHC 79, judgment of 23 March 2010
http://merlin.obs.coe.int/redirect.php?id=12512 EN

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Progress of the New Electronic Media Law in Latvia

As reported previously (see IRIS 2009-10: 16/22) Latvia is planning to adopt a new Electronic Media Law which is intended to transpose the AVMSD. The Electronic Media Law (Draft) is not the first draft intended to replace the 1995 Radio and Television Law currently in force. As media laws have traditionally been a widely discussed topic among the Latvian public, the previous attempts have been unsuccessful. Also, the progress of the Draft in the Saeima (Latvian Parliament) is far from smooth. However, it may be hoped that this draft will be adopted, as otherwise Latvia may face severe consequences for a failure to implement the AVMSD.

The Draft was submitted to the Saeima on 16 June 2009 and adopted at the first reading on 8 October 2009. The subsequent progress was very slow as the responsible Saeima committee received around 356 proposals concerning the Draft. The adoption of the Draft at the second reading therefore was postponed several times. At the end of March 2010 some Saeima members even suggested that it would be impossible to review all the proposals in the time available, so it might be better to implement the AVMSD by just amending the existing Radio and Television Law. The majority of Saeima members supported a further movement of the Draft and it was adopted at the second reading on 15 April 2010.

The Draft introduces new definitions more suitable for the modern media environment, such as distinguishing among various types of advertising and commercial announcements and providing more technology-neutral definitions of audiovisual media. The law would apply to all electronic media (not only audiovisual, but also audio) under Latvian jurisdiction irrespective of the transmission technology. Electronic media are divided into different types, e.g. on basis of the transmission technology in terrestrial, satellite, cable, internet and other electronic media.

The Draft also solves the currently unclear status of public broadcasters, by providing that they are State owned capital companies. Their share capital is constituted by State investments, and the National Media Council (NMC, replacing the National Radio and Television Council) will represent the shareholder in the general meetings of these companies. The chief task of the public broadcasters is the fulfilment of the national remit. They will receive annual funding from the State budget (as is currently the case) and will remain entitled to carry out some commercial activities.

As to the broadcasting permits, in the case of scarce resources such permits are issued on the basis of a tender organised by the NMC. The description of this procedure is quite similar to the existing regulation and may be criticised for a failure to provide more detailed guidelines on the assessment of tender applications. Implementing the AVMSD the Draft provides detailed regulation for on-demand services, more precise rules on commercial communications, sponsoring, product placement and various types of advertising. The provisions on the NMC as the institution responsible for supervision and content-regulation of media are not substantially different from the current

rules. The five council members are elected by the Saeima for a period of five years, however, the Draft provides a more detailed description of the necessary qualifications. The council will remain an independent institution. A new initiative will be a Public Consulting Council, comprising representatives of non-governmental organisations. This institution, however, will have an advisory function only.

It was planned that the Saeima should have reviewed the draft Electronic Media Law at the final third reading on 17 June 2010.

• *Elektronisko plašsaziņas līdzekļu likums* (Electronic Media Law (Draft))
http://merlin.obs.coe.int/redirect.php?id=12542 LV

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Malta Transposes the AVMS Directive

On 1 June 2010, the European Union Audiovisual Media Services (AVMS) Directive was transposed in its entirety into Maltese law. This was done through eight different pieces of legislation.

The Broadcasting (Amendment) Act, 2010 - Act No. IV of 2010 - was enacted by Parliament and published in the Malta Government Gazette of 4 June 2010. This law entered into force on 1 June 2010 in accordance with Legal Notice 320 of 2010, the Commencement Notice of the Broadcasting (Amendment) Act.

Whilst Act No. IV of 2010 transposed several of the AVMS Directive's rules, certain other provisions of the Directive had to be transposed through subsidiary legislation, as it was with such subsidiary legislation that the EU Television without Frontiers Directive had been implemented.

Hence, Legal Notice 321 of 2010 replaced the relevant provisions in the Code for Advertisements, Teleshopping and Sponsorship with the new rules of the AVMS Directive.

Legal Notice 322 of 2010 substituted the Fifth Schedule of the Broadcasting Act for a new Schedule. The Fifth Schedule sets out the administrative penalties to be inflicted by the Broadcasting Authority when there is a breach of the provisions of the Broadcasting Act and subsidiary legislation made thereunder including, of course, the provisions of the AVMS Directive as transposed both in the Broadcasting Act and the said subsidiary legislation.

Legal Notice 323 of 2010 amended the Broadcasting Jurisdiction and European Co-operation Regulations.

Legal Notice 324 of 2010 updated the Broadcasting (Short News Reporting) Regulations. Malta already had regulations on short news reporting based on the Council of Europe's Transfrontier Television Convention. Now these regulations have been updated to be brought into compliance with the AVMS Directive.

Legal Notice 325 of 2010 has amended the Broadcasting Code for the Protection of Minors to bring it into line with the AVMS Directive.

Legal Notice 326 of 2010 has amended the enforcement powers of the Broadcasting Authority.

• Broadcasting (Amendment) Act, 2010 (Act No. IV of 2010)
http://merlin.obs.coe.int/redirect.php?id=12514 EN MT
• Legal Notices, published in The Malta Government Gazette of Friday, 4 June 2010
http://merlin.obs.coe.int/redirect.php?id=12515 EN

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Dutch Court Says that Facilitating Downloading Qualifies as Making Available

The Hague District Court issued a judgment in preliminary proceedings on 2 June 2010 in the case of FTD BV v Eyeworks Film & TV Drama BV. The case concerned the role played by the defendant FTD in the downloading of copyright material from Usenet. FTD provides a service through which users can easily find and download Usenet files. To that end, FTD provides access to a computer application (the FTD application) with which users can share information about files, including copyright-protected works, stored in Usenet servers. The main question examined by the judge involved the extent to which this behaviour constitutes a form of making available to the public.

By means of the FTD application users post so-called spots, i.e. data regarding files which they consider to be interesting. The FTD application allows users to search for spots, which are organised in different categories, such as "DVD", "HD", "Playstation" or "Xbox". Moreover, moderators appointed by FTD actively, whether on their own initiative or otherwise, check files for quality and, if necessary, remove files from the system. The file name as listed in the spot can be used to find and download the desired file by means of a Usenet search engine.

Eyeworks is the producer and copyright owner of the film "Komt een vrouw bij de dokter" (loosely translated, "A Woman Goes to the Doctor"). Almost immediately after the film became available for sale and rent, several spots for the film were posted on the FTD application.

FTD argued before the court that it is not engaged in acts of making available, as the files containing copyright-protected material are not at any point within its control. The servers in which the files are stored are not controlled by FTD nor does FTD have any influence on actual downloading by users.

The judge however ruled that whether the copyrighted files are actually within the control of FTD or not is not a relevant factor. Instead what is important is the fact that the behaviour of FTD allows users to download (in an easier manner) copyrighted files and that files are thus in fact made available to the public.

In his assessment, the judge also found relevant the fact that it appears likely that FTD is actively and substantially involved in the creation of the spots; the moderators appointed by FTD check, whether by their own initiative or otherwise, the quality of the spots posted, users are encouraged to post files which FTD ought to presume to be copyright-protected and FTD has been shown to be able to meet with a considerable level of accuracy a cease and desist order involving the infringement of specific copyrights, by removing spots which refer to a specific work. On this basis the conclusion must be drawn that FTD performs a key role in making files available to the public. The fact that the public can also gain access to the copyrighted files by other means does not make the act of making available by FTD less unlawful nor is this conclusion affected by the fact that FTD itself does not control copyrighted material. The judge found that, by reason of its behaviour, FTD has made the copyright work "Komt een vrouw bij de dokter" available to the public without the consent of Eyeworks.

It is worth noting that in his decision the judge referred to the court rulings in Brein v Mininova (Utrecht District Court, 26 August 2009 - see IRIS 2009-9: 15/23) and Twentieth Century Fox Film et al. v Newzbin (UK High Court, 29 March 2010 - see IRIS 2010-6: 1/32).

• Rb.'s-Gravenhage, 2 juni 2010, FTD BV v Eyeworks Film & TV Drama BV, LJN BM6729, 366481 / KG ZA 10-639 (District Court of The Hague, 2 June 2010, FTD BV v Eyeworks Film & TV Drama BV, LJN BM6729, 366481 / KG ZA 10-639)
http://merlin.obs.coe.int/redirect.php?id=12550 NL

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ANCOM Regulated in Response to Infringement Proceedings

On 26 May 2010, the plenary session of the Romanian Senate adopted the *Ordonanţa de Urgenţă a Guvernului, OUG nr. 22/2009* (Emergency Government Decree no. 22/2009) in its original form, establishing the *Autoritatea Naţională pentru Administrare şi Reglementare în Comunicaţii* (National Authority for Administration and Regulation in Communications - ANCOM) (see IRIS 2009-5: 18/31).

The European Commission had written to the Romanian government on 29 January 2009 informing it that infringement proceedings would be launched if legislative provisions in Romania jeopardised the authority's independence and thus violated Art. 3 of Directive 21/2002/EG on a common regulatory framework for electronic communications networks and services (see IRIS 2010-4: 1/36). On 5 May 2010, the Commission sent a second formal letter to Romania, asking the government to provide, within two months, information about the authority's independence.

The Commission launched two infringement procedures against Romania in 2009. The first procedure opened in January 2009, as part of which the aforementioned request for information was submitted, concerned the lack of a legislative framework to guarantee the ANCOM's independence and the fact that the ANCOM was controlled by the government, which could restructure it by means of an emergency decree and had done so four times in the previous five years. In September 2008, the ANCOM was restructured by means of such a decree and its President was replaced, despite a court order to the contrary. In April 2009, the Romanian authorities informed the Commission that the ANCOM had been restructured in accordance with Emergency Government Decree no. 22/2009 of 19 March 2009 and placed under parliamentary control. The second procedure, opened in October 2009, also concerned the ANCOM's independence, in particular the structural separation between telecommunications regulators and service providers.

The *Ministerul Comunicaţiilor şi Societăţii Informaţionale din România* (Ministry for Telecommunications and Information Society - MCSI) announced on 26 May 2010 that, under the recently-adopted legislation, all the principles agreed with the European Commission had now been implemented:

- political independence by means of parliamentary control;

- financial independence through the fulfilment of all conditions required for the proper functioning of the authority; and

- administrative continuity through the appointment of the same board of directors for at least one period of office.

It therefore declared that all conditions for ending the infringement procedure had been met.

• Ordonanţa de Urgenţă a Guvernului, OUG nr. 22/2009 (Emergency Government Decree no. 22/2009, establishing the National Authority for Administration and Regulation in Communications (ANCOM), adopted by the plenary session of the Romanian Senate on 26 May 2010)
http://merlin.obs.coe.int/redirect.php?id=12553 RO

• *Senatul a aprobat OUG privind înfiinţarea ANCOM, 26 mai 2010* (Press release of the Ministry for Telecommunications and Information Society)
http://merlin.obs.coe.int/redirect.php?id=12530 RO

• Decizia nr. 338/2010 privind regimul de autorizare generală pentru furnizarea reţelelor şi a serviciilor de comunicaţii electronice, publicată în Monitorul Oficial al Romaniei nr. 347/26.05.2010 (Decision no. 338/2010 on the general authorisation regime for providing electronic communications networks and services, published in the Official Journal of Romania no. 347 of 26 May 2010)
http://merlin.obs.coe.int/redirect.php?id=12554 RO

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Government Decision on the Switchover to Digital Television

The Romanian Government adopted on 12 May 2010 a decision that regulates the switchover to digital television and enables the National Authority for Administration and Regulation in Communications (ANCOM) to start the procedures to award the first two licenses in this field (see IRIS 2010-3: 1/34).

The Government decision regarding the granting of licenses for the use of radio frequencies within the digital television system modified the Government's Decision no. 1213/2009 (HG 1213/2009), which approved the Strategy of transition from analogue terrestrial television to digital television and the introduction of digital multimedia services at national level (see IRIS 2009-9: 17/26).

The decision sets the conditions, license fees and the type of procedures to award licenses for the switchover to digital television.

According to the decision, the first two digital multiplexes will be granted on a comparison-based selection by 30 July 2010 and the next four digital systems will be awarded by 31 October 2010. Romania's population will be able to receive free to air 14 digital TV channels through the first two multiplexes.

The Romanian Communications Minister said the license fee will range between EUR 1 million and 2.5 million, adding that the fee for the first two licenses will be set taking into account the reception equipment that future license winners will subsidise. The Minister further stated that the license fee for the offer of digital television services cannot be below EUR 1 million.

The first two licenses will cover 60% of the country's population and 50% of its territory by 30 June 2011. By the end of 2011, the digital services of the first two license winners will cover 80% of the population and 70% of the territory, respectively 90% of the population and 80% of Romania's territory by 30 June 2012.

The initial schedule to switch from analogue to digital television on 1 January 2012 was delayed for six months. Romania has a total of six allocations (multiplexes) which will cover the national territory.

• Hotărârea Guvernului privind acordarea a licenţelor de utilizare a frecvenţelor radio în sistem digital terestru de televiziune şi de modificare a Hotărârii Guvernului nr. 1213/2009 pentru aprobarea Strategiei privind tranziţia de la televiziunea analogică terestră la cea digitală terestră şi implementarea serviciilor multimedia digitale la nivel naţional, 12.05.2010 (Government Decision with regard to the grant of licenses for the use of radio frequencies for the digital television system and the modification of Government Decision no. 1213/2009, HG 1213/2009 approving the Strategy of transition from analogue terrestrial television to digital television and the introduction of digital multimedia services at national level, 12 May 2010)
http://merlin.obs.coe.int/redirect.php?id=12543 RO

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CNA Imposes Sanctions on the Electronic Media

On 3 June 2010 the *Consiliul Naţional al Audiovizualului* (National Council for Electronic Media, CNA) imposed a 10-minute prime-time interruption in broadcasting on the commercial TV station Antena 1, as a sanction for its repeated breach of regulations concerning the protection of minors (see IRIS 2008-5: 17/27).

Antena 1 was ordered to broadcast between 19.00 and 19.10 an announcement of the sanction issued by CNA for repeated breaches of the Audiovisual Law and of the Audiovisual Code in the show „Acces Direct" („Direct Access"). The Show is broadcast live from Monday to Friday between 17.00 and 19.00 and the moderator was accused of having discussed repeatedly sexual matters focusing on minors involved in alleged prostitution and pro-xenphobia cases. The subject was also treated in Antena 1's main news show „Observator" at 19.00. According to the law, subjects involving sexual matters can be broadcast before 22.00 only if the images and comments do not harm children. According to CNA's President Antena 1 has to suspend its broadcast for ten minutes and to relay only the CNA's sanction text within 24 hours after officially receiving the decision. Until now only the

commercial station OTV had its broadcast suspended for ten minutes and, respectively, for 3 hours, in 2007-2008, due to CNA sanctions.

The CNA imposed a total of 163 sanctions (56 fines totalling Lei 765,000, around EUR 182,000, and 107 public warnings) to broadcasters for breaches of the audiovisual law between 1 January and 31 May 2010 (see IRIS 2010-1: 1/38, IRIS 2009-1: 18/29 and IRIS 2008-9: 19/31). The CNA stated on 31 May 2010 that most sanctions were imposed on the commercial television stations OTV, ten fines (RON 155,000, approx. EUR 36,900) and two public warnings; Kanal D, four fines (RON 95,000, EUR 22,600) and six public warnings; Antena 1, four fines (RON 60,000, EUR 14,300) and six public warnings; Realitatea TV, two fines (RON 15,000, EUR 3,600) and six public warnings; Antena 3, three fines (RON 20,000, EUR 4,800) and three public warnings; Prima TV, two fines (RON 55,000, EUR 13,100) and three public warnings; Pro TV, one fine (RON 10,000, EUR 2,400) and four public warnings.

The public television TVR received five public warnings along with the commercial stations B1 TV (three public warnings), Naţional TV and Pro Cinema (two public warnings each), Etno TV, Vox News, Antena 2 and New Europe Channel TV (one public warning each).

The central television stations had imposed on them 46 public warnings, 26 fines of RON 410,000 (approx. EUR 97,600) and a decision on the right to reply.

The local television stations had imposed on them 25 public warnings, one fine (RON 5,000 approx. EUR 1,200) and three decisions on the right to reply.

• *CNA, Comunicat de presă 03.06.2010* (Press release of the CNA dated 3 June 2010)
http://merlin.obs.coe.int/redirect.php?id=12494 RO

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Subsidies for Film Events in the Period from July to December 2010

The *Centrul Naţional al Cinematografiei* (National Cinematography Centre - CNC) announced the results of its session concerning subsidies for cinematography projects for the period from 1 July to 31 December 2010 (organising of or attending domestic or international film festivals or fairs, support for cultural or cinematography education programmes, publishing of specialised works on cinematography, and other activities; see IRIS 2010-5: 1/34 and IRIS 2010-2: 1/30).

The CNC granted subsidies for 21 projects and rejected 29 projects. The total amount of the subsidies is RON 1,896,290 (around EUR 451,500).

Thirteen subsidies, amounting to RON 1,537,840 (around EUR 366,150) were granted to associations, foundations and companies organising film festival projects, some of which are already traditional and widely appreciated in Romania and abroad (i.e., DaKino International Film Festival, International Short Films Festival „Alternative", International Students' Film Festival "CineMAiubit", International Cartoons Film Festival "Anim-Est", "Kinodissea" Film Festival, Youth Film Festival). The jury rejected, among others, a project for subsidising the well-reputed International Independent Film Festival "Anonimul".

The biggest subsidy amounts to RON 336,000 (around EUR 80,000) for the *Fundaţia Europeană pentru Cultură Urbană* (European Foundation for Urban Culture), the organiser of the *Festivalul de Film de comedie „Comedy Cluj"* („Comedy Cluj" Comedy Film Festival).

The *Uniunea Cineaştilor din România* (Romanian Filmmakers Union - UCIN) was granted RON 46,250 (around EUR 11,000) for organising the annual presentation of the Premiile UCIN (UCIN Prizes).

At the previous subsidy session twelve projects were granted RON 2,956,982 (around EUR 704,000).

• Comunicat al Centrului Naţional al Cinematografiei privind rezultatele sesiunii de finanţare a acţiunilor ce vor avea loc în perioada 1 iulie - 31 decembrie 2010 (Press release of the National Cinematography Centre with regard to the results of the subsidy session)
http://merlin.obs.coe.int/redirect.php?id=12547 RO

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Report on the Electronic Communications Market in 2009

Despite the economic crisis, some segments of the Romanian electronic communications market continued to grow last year, according to the Statistical Data Report for 2009, presented by a high level representative of the *Autoritatea Naţională pentru Administrare şi Reglementare în Comunicaţii* (National Authority for Administration and Regulation in Communications, ANCOM) on 27 May 2010.

As of 31 December 2009, the paid audiovisual programme re-broadcasting services sector counted 5,82 million subscribers, around 3% more than at the end of 2008. The penetration rate per household reached 79.4% (77.1% in 2008). The total number of active audiovisual programmes re-broadcasting service providers dropped in 2009 to 507 from 523 one year before.

The number of cable subscribers decreased slightly in 2009 (-0.4%) to 3.48 million, whereas the number of subscribers to the services provided through

DTH satellite networks increased by 8.4% to 2.33 million and the services provided through IP technology (IPTV) increased from 340 subscribers to 750.

The cable networks re-broadcasting services penetration rate per household decreased to 47.6% (from 47.7%) and the digital networks (DTH) re-broadcasting services penetration rate per household reached 31.9% (29.4% in 2008).

46% of the total number of subscribers (2.65 million) receive the audiovisual programme re-broadcasting services digitally. Except for the subscribers to the services provided via DTH satellite networks and IP technology, 319,000 subscribers receive the audiovisual programmes in digital format (cable network to which they subscribe); their number increased by 59% in the last year.

On the other hand, the new general authorisation regime for the electronic communications providers came into force on 29 May 2010, as ANCOM stated on 3 June. The main amendments concern modifications to the Standard Notification Form and the Service Description File, triggering all the electronic communications networks and/or service providers' obligation to submit a re-authorisation request to ANCOM, no later than 31 December 2010.

At the same time, the ANCOM decision contains specific provisions regarding the regime of foreign entities (companies), new instances in which it can cease the right to provide electronic communications networks or services, details of the procedure of suspending this right and stipulates the providers' obligation to send to ANCOM the list of localities where they actually provide public terrestrial networks at fixed locations, on physical support.

• *Piata comunicatiilor electronice a continuat sa inregistreze cresteri pe anumite segmente in anul 2009, 27.05.2010* (ANCOM press release of 27. May 2010 on the electronic communications market)
http://merlin.obs.coe.int/redirect.php?id=12544 RO

• *ANCOM reia reuniunile regionale cu industria telecom, 03.06.2010* (ANCOM press release of 3 June 2010, which resumes the regional meetings with the telecom industry)
http://merlin.obs.coe.int/redirect.php?id=12545 RO

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SI-Slovenia

Matching the Independent Production Quota

Producing audiovisual content for television broadcasters is essential for independent producers and one of the pillars of a sustainable audiovisual industry. The Slovenian *Zakon o medijih* (Media Act) provides in Article 90 a requirement for a 10% share of European audiovisual works by independent producers and sets out special provisions for the national broadcaster RTV Slovenia in Article 92: Slovenian audiovisual works must make up at least 25% of the annual transmission time of Radiotelevizija Slovenija television programme services 1 and 2, and one quarter of this share must be created by independent producers. The Media Act provides for financial sanctions in the event of an infringement of the quota rules.

The Slovenian independent producers' guild GIZ SNAVP has been trying for the last three years to get proper information on matching the required quota as they suspect the share is far from what is needed. The Media Act actually requires that broadcasters report on the quotas themselves. The GIZ SNAVP discovered that the control over reported quotas is not adequate and requested the *Ministrstvo za kulturo* (Ministry of Culture) to check the reports. The Ministry responded that it had an inspector for media, but this person was not entitled to control the quotas.

After much correspondence it was established that the *Agencija za pošto in elektronske komunikacije* (Post and Electronic Communications Agency - APEK) is responsible for the revision of the transmission time and for checking the reported quotas.

The APEK placed the revision in its yearly plan of activities that took another year. One of the problems that arises is that broadcasters are obliged to keep their recordings of their programmes for 30 days and they claim that APEK is exceeding its mandate and hence refuse to provide the relevant data. So APEK is not able to complete the revision, despite the fact that APEK discovered that the national broadcaster did not match the required quotas of independent production in 2008. Following this APEK released a written order in which it admonished RTV Slovenia to observe the quota rules.

On the other hand the report of RTV Slovenia says that there is only a small number of independent producers that can provide the professional, technical and artistic quality sufficient for an independent production. According to RTV Slovenia the national broadcaster systematically performed calls for tenders during the last eight years, but there are only few independent producers in the market who can assure quality production. Even the best producer is not chosen if he or she is engaged on other projects.

• *APEK, Letno poročilo 2009* (APEK´s revision included in the Annual Report)
http://merlin.obs.coe.int/redirect.php?id=12547 SL

• *RTV, Letno poročilo 2008* (RTV report included in the yearly report)
http://merlin.obs.coe.int/redirect.php?id=12500 SL

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SK-Slovakia

Protection of Audiovisual Heritage in the Slovak Republic

On 10 May 2007 the Slovak President ratified the European Convention for the Protection of Audiovisual Heritage. According to Article 1 of the Convention its main objective is to ensure the protection of the European audiovisual heritage and its appreciation both as an art form and as a record of our past by means of its collection, preservation and the availability of moving image material for cultural, scientific and research purposes, in the public interest.

By ratifying this Convention the Slovak Republic assumed inter alia the obligations to:

- preserve and deposit audiovisual records which form part of the audiovisual heritage and which were created within the territory of the country,

- designate one or more archives for preservation, deposit and restoration of audiovisual heritage,

- support the voluntary deposition of items of audiovisual heritage.

With respect to the international obligations the Audiovisual Act No. 343/2007 Coll. ("Act", see IRIS 2008-10: 18/30) was issued. According to s.31 audiovisual heritage is defined as the "collection of audiovisual and other components of the fund of audiovisual heritage documenting the history of the Slovak Republic as well as the formation and development of Slovak cinematography". The audiovisual heritage is part of the cultural heritage. The Act newly defined the goals of the Slovak Film Institute (SFI). According to s.23 the main goal of the SFI is to participate in the preservation, deposit, protection and processing of audiovisual heritage. The National Film Archive forms an integral part of SFI.

Even before the adoption of the Act on 17 May 2006 the Government approved the Project of Systematic Reconstruction of the Audiovisual Heritage of the Slovak Republic for safeguarding cinematographic works and making them available to the public. The central objective of the Project is to create the conditions for the safeguarding and reconstruction of audiovisual heritage in line with international obligations, its preservation for future generations and making available for cultural, educational and commercial purposes.

Furthermore, the audiovisual heritage scattered among various institutions should be concentrated into the specialised deposit space of SFI. For the purposes of further preserving specific criteria have to be established for the maintenance and reconstruction of works and the creating of duplicates of single works.

The financial framework consists mainly of the State budget which designates resources for the realisation of projects listed by the SFI. The financial framework is also covered by resources from the operation programme "Information Society". The Project is currently divided along two main lines as longterm priorities of the SFI:

1.) Project of the systematic safeguard and restoration of the Film Archive Fund

Concerning the required technologies at present there are inadequate conditions and a technology development and investment plan has to be elaborated for the years 2011 to 2020.

2.) Project of the information system SK CINEMA and the electronic backup of accessory material to films

The SK CINEMA information system is an integrated audiovisual system created and maintained according to the Project. Its purpose is to create a platform for exchange of information about Slovak films and their producers in a national and international context. It should also provide for the integrated electronic cataloguing of SFI collections and provide complex information and research services for internal employees and the public.

For the next period (2008-2013) the SFI has stipulated its priorities in the realisation of the SK CINEMA information system. This includes the creation of electronic copies of single catalogue documents, their archiving and making accessible through the Internet; establishment of an automatic rental system for the archived documents; improvement of the interoperability of SK CINEMA with information systems of other deposit facilities in Slovak Republic as well as the European Film Gateway and Filmarchives Online.

The Project is monitored systematically and the data are analysed for the purposes of constant improvement. The last adaptation of the Project was undertaken in December 2008.

• Projekt systematickej obnovy audiovizuálneho dedičstva Slovenskej republiky (Project of Systematic Reconstruction of the Audiovisual Heritage of the Slovak Republic)
http://merlin.obs.coe.int/redirect.php?id=12501 SK

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Adoption of the Digital Economy Act 2010

The Digital Economy Act received royal assent on 8

April 2010 and came into force (with the exception of certain sections which were granted immediate effect) on 8 June 2010. The Act is intended to regulate digital media and, to a large extent, implements the legislative proposals of last summer's Digital Britain report (see IRIS 2009-8: 14/20). The Act includes provisions relating to the UK's communications infrastructure, public service broadcasting, copyright licensing and online infringement of copyright, as well as security and safety online and in video games. Most of the provisions of the Act constitute amendments to other statutes.

The Act's most controversial provisions are those related to copyright infringement. The system of law introduced by the Act envisages the imposition of obligations on Internet Service Providers (ISPs) to cooperate with rightsholders with the intention of combating online copyright infringement. In addition, it provides for the possibility of granting power to the Secretary of State to impose obligations on ISPs to take technical measures against infringing subscribers, including the suspension of online access. The Secretary of State is also empowered to make regulations giving the courts the power to order blocking injunctions in relation to specific websites that are being or are likely to be used for copyright infringement. Most operational details concerning these provisions are not included in the Act itself, but left to secondary regulation in the form of a series of regulatory codes to be drafted by Ofcom.

Other provisions cover the following:

- Introduction of requirements that the sectoral regulator, Ofcom, carry out an assessment of the UK's communications infrastructure every three years;

- In relation to Internet domain registries, introduction of reserve powers in respect of efficient and effective management and distribution of Internet domain names;

- Adjustments to the functions of Channel 4 Television Corporation from a focus on traditional broadcast activities to include the provision of public service media content on other platforms, including the Internet;

- Enabling future alterations of the Channel 3 and Channel 5 licenses, including adjusting the requirements on Channel 3 licence-holders to produce or broadcast Gaelic programming and allowing Ofcom to provide advice to the Secretary of State on future Teletext licences;

- Providing arrangements for switchover to digital radio by making changes to the existing radio licensing regulatory framework, varying the conditions for multiplex licence-holders and facilitating the relaxation of the localness requirements of local licences;

- Access to electromagnetic spectrum to allow for the charging of periodic payments on auctioned spectrum licences and confer more proportionate enforcement powers on Ofcom;

- Introduction of changes to the UK video game classification system;

- Extending the Public Lending Right scheme to non-traditional book formats (e.g., e-books);

Since its adoption the Digital Economy Act has given rise to heated debate as to the appropriateness of the mechanisms it envisages, particularly as concerns copyright infringement provisions. In July 2010, TalkTalk and BT filed papers with the High Court requesting judicial review of the Act, while a group of MPs have called for the amendment of the Act.

• Digital Economy Act 2010
http://merlin.obs.coe.int/redirect.php?id=12730 EN
• Digital Britain Report
http://merlin.obs.coe.int/redirect.php?id=12731 EN

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LV-Latvia

New Film Law

On 17 June 2010 a new Film Act was adopted in Latvia. This is the first primary legislative act governing the film industry, production and regulation in Latvia. Previously, the area was not regulated by any comprehensive legal act. Certain issues were regulated by secondary legislative acts: Regulations of the Cabinet of Ministers No. 588 of 26 July 2005 "The regulation of the State agency National Film Centre (NFC)"; Regulations of the Cabinet of Ministers No. 487 of 20 November 2001 "Regulations of the film distribution"; Regulations of the Cabinet of Ministers No. 429 of 10 June 2008 "The Order how State budget financing is granted to projects in the film industry"; and Regulations of the Cabinet of Ministers No. 457 of 17 June 2008 "The regulations of the film classification". All these regulations lost their force with the adoption of the new Film Act.

The aim of the Film Act is to ensure the development of the film industry in Latvia by supporting the creation, distribution, protection and promotion of Latvian films. The law provides the main definitions for the area, such as what should be understood by the terms "film", "film industry", "co-production film", and others. The Act explains that a film shall be considered a Latvian film if it is produced by a Latvian film producer (registered in the NFC) and if at least one member of the main creative team (director, screen

writer, composer, artist, animator, or operator) is a Latvian citizen or permanent resident.

The Act provides rules how the copies of Latvian films must be submitted for storage to the NFC and how this centre provides the registration of film producers. The detailed rules for the registration of film producers are provided in the Regulations of the Cabinet of Ministers No. 586 of 29 June 2010 "The order of the registration of film producers" and No. 585 of 29 June 2010 "The regulations on the State fee for the registration of film producers".

The main rules for the film classification are also stipulated. The detailed rules for the classification of films are provided in the Regulations of the Cabinet of Ministers No. 587 of 29 June 2010 "The regulations of film classification"

An important feature of the Act is that it states rules for granting State financing for film projects. The law lists six criteria, three of which the film should satisfy in order to receive State financing (for example, that the script is based on an original piece of Latvian literature). The decision to grant State financing is adopted by the NFC, taking into account the opinion of an expert commission. The decision may be appealed to the Ministry of Culture and further to the court. As of 1 January 2013 the NFC may grant certain co-financing for the taking of foreign films in Latvia.

The Film Act lists the main competencies of the NFC, which is the State institution carrying out the public administration in film industry, subordinated to the Ministry of Culture. Its main tasks are to grant public financing for film projects, to supervise the granted financing, to promote Latvian films, to maintain the registry of film producers, to supervise the compliance with the film classification, and to perform several related administration tasks. The internal structure and regulations of the NFC are provided in the Regulations of the Cabinet of Ministers No. 1627 of 22 December 2009 "The regulation of the National Film Centre".

In addition, the Film Act provides for the creation of a new institution - the Latvian Film Council, which is a consulting body created by the Minister of Culture. The Film Council includes members from non-governmental organisations of the film industry, representatives from various public institutions and academic institutions, as well as representatives of broadcasting companies and film industry. The task of the Film Council is to consult on the strategy and policy of the film industry, to provide related opinions, and to submit suggestions for the improvement of the legislative acts, if needed.

The Act was published on 29 June 2010 and has came into force on 30 June 2010.

• *17.06.2010. likums "Filmu likums" ("LV", 101 (4293), 29.06.2010.) [stājas spēkā 30.06.2010.]* (Film Act of 17 June 2010, Official Journal 101 (4293) vom 29. Juni 2010)
http://merlin.obs.coe.int/redirect.php?id=12937 LV

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FI-Finland

Torrent files, Sharing and Copyright in the Finreactor Case

On 30 June 2010 the Finnish Supreme Court upheld the decision of the Turku court of appeal on the Finreactor I case and fined the defendants for the unauthorised distribution and reproduction of copyrighted material on the Finreactor network. Finreactor was a peer to peer network used to share copyrighted files without permission from the copyright holders. The functioning of the system was based on simultaneous file-sharing between users who had downloaded the files to their own computers. The files in the network were available for downloading through torrent files, not immediately from the defendants' network. The defendants in this case maintained the Finreactor network along with other parties.

The network was run on the basis that the users connected to the defendants' tracker server and got access to files located in other users' computers through torrent files. The users were not connected to the tracker server, but to other users' computers while downloading the files. The tracker server contained information about the files located in the computers of the network users. Trackers also stored the information about the number of downloads and uploads. The effective functioning of the server and reaching of the proper file transfer rate required the users to distribute the downloaded files from their own computers. Using the Finreactor network was free and required only registration. Every user had their own username and users were divided into seven groups as administrators or users; the higher-raking the group, the bigger the tasks, rights to use and benefits.

The copyright holders sued Finreactor administrators of various status before the district court in Turku. The court found some of the defendants guilty of copyright infringement and some of them of aiding a copyright offence. The court ordered all of the defendants to pay compensation to the claimants. The Turku court of appeal upheld the judicial evaluation of the infringing act.

In its decision, the Supreme Court stated that a procedure whereby copyright protected data is distributed

for copying in digital form can be estimated as making data available to the public. The protection of copyright holders should not be dependent on the way in which the unlawful distribution was executed. The file-sharing and copying in the Finreactor network was evaluated as distributing and reproducing a work.

The Supreme Court stated that the file-sharing process should be evaluated as a whole and the liability of the defendants should not be evaluated as separate actions. Administration of the system serving the unlawful use of works can be significant in the context of copyright and can mean complicity in a copyright offence. Maintaining and controlling the use of the network was an essential element in making the protected works available to the public.

The Supreme Court ordered the defendants who were found liable for copyright infringement to pay compensation to the rightsholders. Compensation is due when an act infringes an author's exclusive right to make copies of a work and to make the work available to the public. The persons found liable for a copyright infringement had used the works with other users in a way that created a basis for compensation. The compensation should be based on an amount that corresponds to the price of legal distribution in the same way. The amount of compensation was evaluated by taking in to consideration that the administrators were not acting with the intent of earning and did not receive any economic benefit from maintaining the network or from the downloads of users. The amount of compensation was 15 % of the retail price for files that did not contain music and 25 % of the wholesale price for music files. Following the same line of reasoning, on 30 June 2011 the Finnish Supreme Court upheld the judgment of the Helsinki court of appeal on the Finreactor II case and fined the defendant in this case for the unauthorised distribution of video games on the Finreactor network.

• Korkein oikeus 30.6.2010 nro 1396, KKO:2010:47 (Supreme Court, decision of 30 June 2010 nr 1396, KKO:2010:47)
http://merlin.obs.coe.int/redirect.php?id=15262 FI

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http://merlin.obs.coe.int/redirect.php?id=15263 FI

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Agenda

Communication and Citizenship - Rethinking Crisis and Change
18 - 22 July 2010
Organiser: The International Association for Media and Communication Research (IAMCR)
Venue: Braga
Information:
http://www.lasics.uminho.pt/ocs/index.php/iamcr/2010portugal/about

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