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IRIS 2011-4

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Publisher:
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76, allée de la Robertsau F-67000 STRASBOURG
Tél. : +33 (0) 3 90 21 60 00 Fax : +33 (0) 3 90 21 60 19
E-mail: obs@obs.coe.int www.obs.coe.int
Comments and Contributions to:
iris@obs.coe.int
Executive Director:
Wolfgang Closs

Documentation/Press Contact:
Alison Hindhaugh
Tel.: +33 (0)3 90 21 60 10;
E-mail: alison.hindhaugh@coe.int
Translations:
Michelle Ganter, European Audiovisual Observatory (co-ordination) • Brigitte Auel • Véronique Campillo • France Courrèges • Paul Green • Bernard Ludewig • Marco Polo Sàrl • Manuella Martins • Diane Müller-Tanquerey • Katherine Parsons • Stefan Pooth • Erwin Rohwer • Nathalie-Anne Sturlèse
Corrections:
Michelle Ganter, European Audiovisual Observatory (co-ordination) • Francisco Javier Cabrera Blázquez & Susanne Nikoltchev, European Audiovisual Observatory • Christina Angelopoulos, Institute for Information Law (IViR) at the University of Amsterdam (The Netherlands) • Caroline Bletterer, post graduate diploma in Intellectual Property, Centre d'Etudes Internationales de la Propriété Intellectuelle, Strasbourg (France) • Johanna Fell, European Representative BLM, Munich (Germany) • Amélie Lépinard, Master - International and European Affairs, Université de Pau (France) • Julie Mamou • Candelaria van Strien-Reney, Law Faculty, National University of Ireland, Galway (Ireland) • Anne Yliniva-Hoffmann, Institute of European Media Law (EMR), Saarbrücken (Germany)
Distribution:
Markus Booms, European Audiovisual Observatory
Tel.:
+33 (0)3 90 21 60 06;
E-mail: markus.booms@coe.int
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European Court of Human Rights: Yleisradio Oy a.o. v. Finland

In 2004 Yleisradio Oy broadcast a current affairs programme focusing on some legal aspects of incest cases in the context of child custody disputes. Genuine cases were used as examples. In one case, A. appeared undisguised and using his own first name. He was introduced as a 55-year old driver from Helsinki and it was further announced that A. had been convicted and sentenced to imprisonment for sexual abuse of his two children, X. and Y., their gender and current age being mentioned. The judgment concerning A.'s conviction for sexual offences had been declared confidential by the Court of Appeal and the case file had also been declared confidential. However, some information included in that file was revealed during the programme and some details about the court proceedings and the conduct of the children's mother were mentioned. Z., the children's mother, filed a criminal complaint and the public prosecutor charged A., the editor and the editor-in-chief on grounds of dissemination of information violating personal privacy and aggravated defamation.

The Supreme Court concluded that it was probable that several persons could have connected A. with X. and Y. on the basis of the information given in the programme and that information had been disseminated violating the personal privacy of X., Y. and Z., although the disclosure of this confidential information had not been based on the need to inform the public. On the contrary, it had been necessary to conceal that information. A. and the two journalists were fined and ordered to pay damages and costs. The broadcasting company and its two journalists complained under Article 10 of the European Convention that the Supreme Court's judgment violated their right to freedom of expression.

Although the European Court was of the opinion that the programme clearly involved an element of general importance and that in such situations any restrictions on freedom of expression should be imposed with particular caution, it noted that the two underage victims of sexual offences and their mother were private persons and that sensitive information about their lives was revealed on air nationwide. The European Court did not find arbitrary the Finnish Supreme Court's finding that the relevant criminal provision did not, in general, require that the victims be recognised de facto and that, in this particular case, it was probable that several people, even if a very limited group, could have connected the victims to the person interviewed. The Court was satisfied that the reasons relied on by the Supreme Court were relevant and sufficient to show that the interference complained of was "necessary in a democratic society" and that a fair balance between the competing interests was struck. Unanimously, the Court rejected the application by Yleisradio Yo and its editor and editor-in-chief as being manifestly ill-founded. For these reasons the Court unanimously declared the application inadmissible. Hence Article 10 of the Convention was not found to be violated in this case.

• Decision by the European Court of Human Rights (Fourth Section), case of Yleisradio Oy a.o. v. Finland (no. 30881/09) of 8 February 2011
http://merlin.obs.coe.int/redirect.php?id=13043 EN

Dirk Voorhoof
Ghent University (Belgium) & Copenhagen University (Denmark) & Member of the Flemish Regulator for the Media

Commissioner for Human Rights: Opinion on Hungary's Media Legislation

On 25 February 2011, the Commissioner for Human Rights published an opinion on Hungary's media legislation in light of Council of Europe standards on freedom of the media. The two main issues that are discussed in the opinion relate to encroachments on the freedom of the media and problems concerning the independence and pluralism of the media.

In the second half of 2010, the Hungarian Parliament amended existing media-related provisions and issued new legislation on the freedom of the press and the fundamental rules regarding media content, as well as on media services and mass media (see IRIS 2010-8/34, IRIS 2010-9/6, IRIS 2011-1/37, IRIS 2011-2/3, IRIS 2011-2/30 and IRIS 2011-3/24). The opinion of the Commissioner offers insight into his concerns about these recent developments. Since the Hungarian authorities have declared their willingness to participate in dialogue, the opinion intends to assist in bringing the Hungarian media law into compliance with international obligations.

Therefore, the first part of the opinion focuses on provisions in the Hungarian media law that are seen as incompatible with Article 10 of the European Convention on Human Rights (ECHR) and its interpretation in the case law of the European Court of Human Rights (ECtHR). Apart from this, the Commissioner finds that the legislation as a whole in several aspects fails to guarantee foreseeability, impartiality and proportionality of application.

The first concern in this regard relates to Article 13 of the Hungarian Press and Media Act 2010 on the

information and coverage that shall emanate from all media providers. According to the Commissioner, this content-regulation in advance by subjective and vague criteria could impair the important watchdog-function of the media. Moreover, the foreseeability criterion of Article 10, paragraph 2 ECHR has not been met by the insufficiently precise criteria of Article 13. The Article is considered to run counter to the letter and spirit of Article 10 ECHR.

The next concern regards the imposition of sanctions on the media by Article 187 of the Hungarian Mass Media Act 2010. The Commissioner emphasises that any form of sanction imposed on journalists, even minor ones, could lead to self-censorship. The press is then hampered in expressing critical views in contribution to the public debate. Especially provisions such as Article 187, that impose a stricter penalty after repeated infringement, are problematic. Therefore, the Commissioner recommends that this Article be abolished. Existing instruments in the Hungarian legal order could be relied on instead.

Pre-emptive restraints on press freedom in the form of registration requirements, contained in Articles 45 and 46 of the Mass Media Act, constitute the third concern. Even though Article 10 ECHR does not prohibit in its terms the imposition of prior restraints on publications, the Commissioner reiterates that print-media and internet-based media should be excluded from registration requirements given their role as watchdogs of democracy.

The final issue mentioned in the first section of the opinion concerns the exceptions to the protection of journalists' sources, as listed in Article 6 of the Press and Media Act. The Commissioner points out that the foreseeability requirement of Article 10 ECHR is not met by the overly broad exceptions, which invite state abuse. Furthermore, no procedural safeguards are foreseen, as required by Article 10 ECHR.

The second part of the opinion identifies four problems relating to the independence and pluralism of the media.

The first concern mentions the weakened constitutional guarantees of pluralism. The amended Article 61 of the Constitution of Hungary eliminates parliament's duty to pass laws precluding information monopolies. The Commissioner recommends that pluralism be more expressly enshrined in the letter and spirit of the Constitution, as well as in national practice.

The lack of independence in media regulatory bodies is listed as the second concern. The provisions regarding the appointment, composition and tenure of existing media regulatory bodies, included in Articles 124 and 125 of the Mass Media Act, require amendment, as they lack "the appearance of independence and impartiality".

The third concern regards Article 102 of the Mass Media Act and the lack of safeguards for the independence of public service broadcasting. The Hungarian provisions run counter to Council of Europe standards, by giving the President of the Authority and Media Council far-reaching powers and control over public service media.

The opinion concludes with a discussion on the absence of an effective domestic remedy for media actors subject to decisions of the Media Council. The competent administrative court may only review decisions in the light of the media legislation itself. This makes Articles 163-166 of the Mass Media Act irreconcilable with Articles 6 and 13 ECHR.

The Commissioner concludes that the large amount of problematic provisions in the Hungarian media legislation requires a wholesale review of the package. He emphasises that the body of Council of Europe standards should be taken as a guide in this task.

• Opinion of the Commissioner for Human Rights on Hungary's media legislation in light of Council of Europe standards on freedom of the media, CommDH(2011)10, Strasbourg, 25 February 2011
http://merlin.obs.coe.int/redirect.php?id=13096 EN

Vicky Breemen
Institute for Information Law (IViR), University of Amsterdam

European Commission against Racism and Intolerance: Calls for Media (Self)Regulation in New Country Reports

On 8 February 2011, the European Commission against Racism and Intolerance (ECRI) released its latest reports on Armenia, Bosnia and Herzegovina, Monaco, Spain and Turkey, adopted in the fourth round of its monitoring of the laws, policies and practices to combat racism in the Member States of the Council of Europe (for commentary on earlier reports, see IRIS 2010-9/2, IRIS 2010-4/3, IRIS 2009-10/109, IRIS 2009-8/4, IRIS 2009-5/3, IRIS 2008-4/5, IRIS 2006-6/4 and IRIS 2005-7/2).

In respect of Armenia, ECRI recommends that the national authorities promote: (i) "without encroaching on the independence of the media, the speedy adoption of a new self-regulatory Code of Ethics" containing "clear provisions against racism and related intolerance", and (ii) adherence to the new code (para. 50). It also recommends that training be organised for staff of the Armenian regulatory authority "on how to balance freedom of expression with minorities' protection" (para. 51). This issue has arisen in the context of the implementation of the Armenian Law on TV and Radio.

ECRI strikes a familiar note in its main media-related recommendation to the authorities in Bosnia and Herzegovina, i.e., "to impress on the media, without

encroaching on their editorial independence, the need to ensure that reporting does not contribute to creating an atmosphere of hostility and rejection towards members of any ethnic and religious group and the need to play a proactive role in countering such an atmosphere" (para. 51). This recommendation is supplemented by calls for: (i) due prosecution and punishment of media that breach the prohibition on incitement to hatred (para. 52), and (ii) encouragement of media initiatives to foster inter-community communication, eg. offering content that appeals to all communities in different languages (para. 53).

In its media-related recommendations concerning Monaco, ECRI calls for the establishment "by the media of a mechanism to deal with complaints against the media", with due regard for the principle of media independence (para. 91). It also supports the enactment of legislation specifically designed to counter online racism and intolerance (para. 92).

ECRI's main recommendation for the Spanish authorities is two-pronged (para. 99). First, it calls on them to promote the establishment of "regulatory mechanisms for all media, compatible with the principle of media independence, making it possible to enforce compliance with ethical standards and rules of conduct, including rules against intolerance". The emphasis on self-regulatory approaches in the reports on Armenia and Monaco is thus not replicated in this report. The second prong to the recommendation to Spain is that the study of codes of conduct and issues relating to racism be incorporated into journalism training programmes.

Finally, in respect of Turkey, ECRI recommends that the authorities raise awareness of the dangers of racism and intolerance within the media sector and underscores "the importance of ensuring that all media are bound by an effective code of ethics" (para. 148). It also advocates the prosecution and punishment of those responsible for the dissemination of racist material (para. 149).

• ECRI Reports on Armenia, Bosnia and Herzegovina and Spain (fourth monitoring cycle), all adopted on 7 December 2010; ECRI Report on Monaco (fourth monitoring cycle), adopted on 8 December 2010 and ECRI Report on Turkey (fourth monitoring cycle), adopted on 10 December 2010; all published on 8 February 2011
http://merlin.obs.coe.int/redirect.php?id=11705 EN FR

Tarlach McGonagle
Institute for Information Law (IViR), University of Amsterdam

Parliamentary Assembly: Underscoring the Protection of Journalistic Sources

With the adoption, on 25 January 2011, of its Recommendation 1950 (2011) entitled "The protection of journalists' sources", the Parliamentary Assembly of the Council of Europe (PACE) has revisited a recurrent theme in its texts focusing on freedom of expression and the media.

This latest examination of a highly topical issue is grounded firmly and explicitly in a growing body of existing standards adopted by the Council of Europe: Article 10 of the European Convention on Human Rights and relevant case-law; the Committee of Ministers' Recommendation No. R (2000) 7 on the right of journalists not to disclose their sources of information (see IRIS 2000-3/2) and Declaration on the protection and promotion of investigative journalism (see IRIS 2007-10/2), as well as PACE Resolution 1729 (2010) and Recommendation 1916 (2010), both entitled, "Protection of 'whistle-blowers'" (IRIS Extra, pending). It refers to the Council of Europe's Convention on Cybercrime and the European Union's Directive 2006/24/EC on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC. It also welcomes the attentiveness of the Council of Europe Commissioner for Human Rights to media freedom issues generally, while calling for particular attention to the protection of the confidentiality of journalists' sources in his future activities.

Importantly, the PACE reaffirms that "the confidentiality of journalists' sources must not be compromised by the increasing technological possibilities for public authorities to control the use by journalists of mobile telecommunication and Internet media" (para. 12). The "interception of correspondence, surveillance of journalists or search and seizure of information" are of central relevance here. Moreover, it stresses that "Internet service providers and telecommunication companies should not be obliged to disclose information which may lead to the identification of journalists' sources in violation of Article 10 of the Convention".

The PACE notes that the obligation not to disclose sources when information is received in confidence is often enshrined in journalistic professional/ethical codes of conduct (para. 14). It also notes that ongoing changes in media and communications technologies have facilitated profound changes in the practice of journalism and the public dissemination of information generally (para. 11). In light of these observations, it states that the "right of journalists not to disclose their sources is a professional privilege, intended to encourage sources to provide important information to journalists that they would not give without a commitment to confidentiality" (para. 15). It then goes on to state that the "same relationship of trust does not exist with regard to non-journalists, such as individuals with their own website or web blog" and that "non-journalists cannot benefit from the right of journalists not to reveal their sources" (para. 15).

The PACE recommends that the Committee of Ministers inter alia call on Member States which have

not already done so, to adopt legislative measures to protect the confidentiality of journalistic sources (para. 17.1). It additionally suggests the preparation of relevant guidelines for prosecutors and police and training materials for the judiciary (para. 17.3). It advocates the development of a separate set of guidelines for "public authorities and private service providers concerning the protection of the confidentiality of journalists' sources in the context of the interception or disclosure of computer data and traffic data of computer networks [04046]" (para. 17.4).

• "The protection of journalists' sources", Recommendation 1950 (2011), Parliamentary Assembly of the Council of Europe, 25 January 2011
http://merlin.obs.coe.int/redirect.php?id=13098 EN FR

Tarlach McGonagle
Institute for Information Law (IViR), University of Amsterdam

EUROPEAN UNION

European Commission: Inquiry into Digitisation of European Cinemas Closed

In a press release of 4 March 2011, the European Commission announced that preliminary anti-trust investigations concerning the digitisation of European cinemas had ended.

In general, the Commission supports the digitisation of European cinemas. However, some provisions in the contracts of several major U.S. Hollywood film studios with third party intermediaries ("integrators") and cinema exhibitors had caused concerns. They regard the financing and installation of digital projection equipment in cinemas. The provisions in their original form could hamper small film distributors from releasing their films in digital cinemas. Therefore, the Commission considered them as possibly incompatible with Article 101 of the EU Treaty that prohibits restrictive business practices.

The press release mentions the numerous advantages of switching to digital technology, such as better image and sound quality and maintaining a consistent quality over time. Nevertheless, the costs of digital projection systems are high. To give cinemas an incentive to invest in digital equipment, various Hollywood film studios made agreements in Europe based on the "virtual print fee" (VPF) model they use in the US as well. This model leads to both film studios and cinemas contributing towards digital investments and thus stimulates its development. At the same time, as the Commission points out, integrators originally had to offer Hollywood studios the same conditions as those offered to distributors of independent or art house films. Since the business models of the latter are different, this could restrain integrators from signing contracts with them.

The Commission closed the preliminary investigation after Hollywood studios changed their conditions in such a way that independent and art house distributors will have easier access to digital cinema equipment. The switch over to digital cinema will continue to be monitored.

• Press release of the European Commission, IP/11/257, 4 March 2011
http://merlin.obs.coe.int/redirect.php?id=13065 DE EN FR IT

Vicky Breemen
Institute for Information Law (IViR), University of Amsterdam

Europeana Sets out its Strategy for the Period 2011-2015

On 14 January 2011 Europeana launched its Strategic Plan for the period 2011-2015. The plan can be seen "as a clear-sighted assessment of the route Europeana must take in order to fulfill its potential", Dr. Elisabeth Niggeman, Chair of the Europeana Foundation Board, states in her foreword.

Jill Cousins, Executive Director of Europeana, notes in her introduction to the Strategic Plan that it is Europeana's ambition "to provide new forms of access to culture, to inspire creativity and stimulate social and economic growth". However, while working towards the achievement of this ambition, several challenges have been encountered, for example intellectual property barriers to digitisation. To overcome these challenges, the Strategic Plan presents four tracks on which Europeana will focus in the coming five years. These tracks have been developed through consultation with stakeholders and analysis of the results. Amongst the stakeholders both users and policy makers were included.

The first track listed is named "Aggregate". Its goal is to build the open trusted source for European cultural heritage content. Several elements of the goal are mentioned in the plan: the source content must represent the diversity of European cultural heritage, the network of aggregators must be extended and the quality of metadata improved. The diversity-aspect, for example, will be addressed by covering content from under-represented cultures and countries. Another aim is to stimulate digitisation programmes to make sure that Europeana displays a proper level of visibility. Europeana especially aims to fill the lacuna that exists with regard to audiovisual and 20th/21st century content, making sure that it covers a range

of formats from all domains. Where new types of cultural heritage develop, such as 3D visualisations, Europeana wants to ensure that these are included as well.

The second track, "Facilitate", aims for support for the cultural heritage sector through knowledge transfer, innovation and advocacy. Elements of this aim are the sharing of knowledge among cultural heritage professionals, fostering research and developments in digital heritage applications and the strengthening of Europeana's advocacy role. When it comes to the sharing of knowledge, Europeana plans to build on its previous achievements, while also seeking new platforms and methods to develop and reinforce digital competencies throughout the cultural heritage sector. It wants to promote dialogue and collaboration between parties such as librarians, curators, archivists and the creative sector to work together regarding interests they share. In addition, an online publishing programme will be launched to spread best practice guidelines, standards and positioning papers on policy issues. Conferences and workshops to broadly distribute information will continue to be organised as well.

The third track, "Distribute", seeks to make cultural heritage available to users wherever they are and whenever they want it. In order to achieve this goal, the plan states that Europeana's portal must be upgraded, content put in the user's workflow and partnerships developed to deliver content in new ways. The portal Europeana.eu is the flagship for the content and services and will continue to be so, but it will be developed according to users' evolving needs and expectations. The content is aimed to be made as findable, understandable and reusable as possible. Also, Europeana wants to bring the content to the places that the users often visit, instead of depending on the users seeking out content, for example by using web services to put content in places like social networks, educational sites and cultural spaces.

The fourth track mentioned by the plan is "Engage", which aims to cultivate new ways for users to participate in their cultural heritage. This engagement should be realised through enhancing the user experience, extending Europeana's use of web 2.0 tools and social media programmes and arranging a new relationship between curators, content and users. As the plan states, by enhancing the user experience, a richer and more intuitive service will be created that maximises users' participation and interaction and increases usage of the content. It is believed that greater participation in the site will increase user interest and loyalty.

Lastly, the plan elaborates on the resources for Europeana in the period 2011-2015, including budget, cost allocation and Cost-Benefits.

• Europeana Strategic Plan 2011-2015
http://merlin.obs.coe.int/redirect.php?id=13059 EN

Kelly Breemen
Institute for Information Law (IViR), University of Amsterdam

European Parliament: Resolution on Hungary's Media Law

In its resolution of 10 March 2011, the European Parliament assessed and criticized the recent changes to the Hungarian media law (see IRIS 2010-8/34, IRIS 2010-9/6, IRIS 2011-1/37, IRIS 2011-2/3, IRIS 2011-2/30 and IRIS 2011-3/24).

In the light of the values of democracy and the rule of law and especially with regard to guaranteeing and promoting the freedom of expression and of information, the resolution declares that media pluralism and freedom continue to be matters of grave concern in the EU and its Member States. The resolution states that the recent criticism of the media law in Hungary and its constitutional changes illustrate this. Among the critics are the Organization for Security and Cooperation in Europe (OSCE) and the Council of Europe Commissioner for Human Rights (see IRIS 2011-4/2).

The resolution mentions the concerns raised by the Commission regarding, for example, the conformity of the Hungarian media law with the Audiovisual Media Services Directive (AVMSD) and the general *acquis communautaire* in relation to the obligation to offer balanced coverage applicable to all audiovisual media service providers. Also its compliance with the principle of proportionality is called into question, as well as its respect for the fundamental right of freedom of expression and information. Further, the resolution brings up some serious concerns raised by the OSCE, among which the politically homogeneous composition of the Media Authority and Media Council, as well as the conflicts between OSCE and international standards of freedom of expression and the most problematic parts of the legislation. The resolution mentions that the European Parliament shares these serious reservations.

It is recalled that the Commissioner for Human Rights recommended in a second opinion of 25 February 2011 that the Hungarian media law would be subject to a "wholesale review". Consequently, the resolution states, the Hungarian media law should be suspended and reviewed in the light of the comments and proposals of the OSCE, the Commission and the Council of Europe. Also, the European Parliament again expresses the need for a directive on media freedom, pluralism and independent governance, which it stresses has become a pressing matter.

Further, the Parliament calls on the Hungarian authorities to restore the independence of media governance and refrain from state interference with freedom of expression and "balanced coverage". The Parliament considers the over-regulation of the media to be counterproductive and an endangerment to effective pluralism in the public area. The Parliament welcomes the Commission's cooperation with the Hungarian authorities, but regrets the Commission's decision to concentrate on only three points with regard to the implementation of the acquis communautaire by Hungary, as well as the lack of a reference to Article 30 of the AVMSD. It urges the Commission to review Hungary's conformity with other EU law, including, for example, the EU framework decision on combating certain forms and expressions of racism and xenophobia by means of criminal law (2008/913/JHA).

In addition, the Parliament calls on the Commission to keep closely monitoring and assessing the conformity of Hungary's media law as amended in accordance with European legislation, especially as regards the provisions concerning fundamental rights. Also, it demands that Hungary includes all stakeholders when revising the media law and the Constitution and repeats its call for the Commission to propose a directive before the end of the year. Lastly, it calls on the Hungarian authorities to further examine the media law in the light of the comments, proposals and recommendations made by, among others, the Commission and the Council of Europe Commissioner for Human Rights, as well as the case law of the European Court of Justice and the European Court of Human Rights.

• European Parliament resolution on media law in Hungary
http://merlin.obs.coe.int/redirect.php?id=13066 DE EN FR CS DA EL ES ET FI HU IT LT LV MT NL PL PT SK SL SV

Kelly Breemen
Institute for Information Law (IViR), University of Amsterdam

NATIONAL

AL-Albania

The Licence Fee for Public Broadcasting Doubles

Starting this year, the licence fee each household pays for the public broadcasting service will double.

After a joint decision of the Ministry of Finances and the director of the public broadcaster Radio Televizioni Shqiptar (Albanian Radio and Television) each family in 2011 will pay ALL 1,200 (approximately EUR 8.7 per year, instead of ALL 600, EUR 4.34).

For years Albania has had one of the lowest licence fees for public broadcasting in the region. This fee is paid through the payment of the respective electricity bills. Until last year, the fee was paid as a lump sum, in the first trimester of each year. From now on, the sum will be divided in monthly rates of ALL 100 (EUR 0.72) in order to evenly distribute the amount that the population owes to the public broadcasting service through the year.

The collection of this sum has been a problematic issue in the past, mainly due to the inefficiency of the collection of electricity payments, as well as the inefficiency of the transfer of the funds collected from the overall State budget.

In the last few years the collection of this fee has experienced a continuous growth. At the moment, it amounts to ALL 420 million (EUR 2,940,000).

The efficient collection of the licence fee is absolutely necessary in relation to TVSH's independence from the State budget.

• *Kuvendi e Shqipërisë* (Further information and an interview with Petrit Beci (General Director of RTSH))
http://merlin.obs.coe.int/redirect.php?id=12432 SQ

Ilda Londo
Research co-ordinator, Albanian Media Institute

AT-Austria

Council of Ministers Agrees on Data Retention

On 22 February 2011, the Austrian *Ministerrat* (Council of Ministers) agreed on a series of bills designed to implement the Data Retention Directive 2006/24/EC. In addition to the planned amendment of the 2003 *Telekommunikationsgesetz* (Telecommunications Act -TKG), a first draft of which was tabled by the *Verkehrsministerium* (Ministry of Transport) in July 2010 (see IRIS 2010-9/11), the proposals now also concern the *Strafprozessordnung* (Code of Criminal Procedure - StPO) and the *Sicherheitspolizeigesetz* (Police Act - SPG). The amendments are designed to regulate access to stored data.

The draft amendment to the 2003 TKG provides for a six-month data retention limit. This proposal is at the lower end of the scale required by the Directive. Regarding data categories, the bill does not go beyond those set out in Article 5 of the Directive. However, only providers who are obliged to contribute to

the financing of *Rundfunk und Telekom Regulierungs-GmbH* (RTR) under Article 10 KommAustriaG are required to retain data. Small providers are therefore exempt from the retention obligation.

The question of cost reimbursement remained controversial right to the end of the inter-ministerial discussions. The cost of purchasing the equipment required to retain data is estimated at EUR 15 to 20 million, with annual operating costs of around EUR 3 million. According to the final draft, 80% of these costs will be covered by the Federal Government, with the rest to be paid by the providers.

The transfer of data to the requesting bodies will be subject to certain security precautions, such as the "four eyes principle" and "technically sophisticated encryption technologies". The details will be set out in a Ministry of Transport decree, which will be the subject of a report to the *Nationalrat* (National Assembly).

According to media reports, serious concerns were raised internally about the infringement of basic rights. In particular, an unpublished report by the *Bundeskanzleramt* (Federal Chancellery) is said to be critical of the provision in the draft amendment of the SPG that data could be used "in order to ward off general dangers", which would significantly increase access to data. Previously, a "concrete danger" was necessary. The *Datenschutzrat* (Data Protection Council), which advises the Federal Government and regional governments on data protection issues, has created a working group which is currently examining the bills. Internet service providers have also been critical. The association that represents the interests of the Internet sector, "Internet Service Providers Austria", is demanding that the State should cover the full costs of a measure that it considers to be exclusively the State's responsibility. The private data protection organisation "*Arge Daten*" has expressed fundamental opposition to data retention in Austria on the grounds that it seriously breaches basic rights.

The government bill will now be debated in parliament and is expected to be adopted in May. However, providers will then have nine months in which to adapt their technical equipment and processes accordingly.

The deadline for transposing the Directive was 1 January 2008. In an action brought by the European Commission, the ECJ has already found Austria guilty of infringing the Treaty. Austria is now under pressure if it wishes to avoid being fined a large sum in another procedure. At the same time, however, it is keen to wait until the Commission publishes its evaluation report on the Directive, which is expected to provide a clear idea of the future development of data retention in Europe. After several delays, this report is expected to be published at the end of March.

• *Entwurf zur Änderung des TKG-2003* (Bill amending the 2003 TKG)
http://merlin.obs.coe.int/redirect.php?id=13079 DE

• *Entwurf zur Änderung der StPO und des SPG* (Bill amending the StPO and SPG)
http://merlin.obs.coe.int/redirect.php?id=13080 DE

Sebastian Schweda
Institute of European Media Law (EMR), Saarbrücken/ Brussels

Mobile Networks to Receive Digital Dividend from 2013 and Must Share GSM Bands

The radio spectrum allocated to mobile communication networks in Austria is being reorganised. This process will also have an impact on terrestrial broadcasting: from 31 October 2013, the "mobile radio communication service" (except the aeronautical mobile service) will be the only primary user of the UHF band frequencies (790-862 MHz, so-called "digital dividend") freed up as a result of television digitisation. It is already using these frequencies on a co-primary basis, i.e., with the same rights as broadcasting. This is set out in the amended Annex 1 to the amended *Frequenzbereichzuweisungsverordnung* (Decree on the allocation of frequency bands - FBZV), which the Austrian *Infrastrukturministerium* (Ministry of Infrastructure - BMVIT) published on 24 February 2011.

The decree defines the mobile radio communication service as not only "terrestrial systems capable of providing electronic communication services" (commonly known as "mobile communication networks"), but also broadcasting services such as wireless microphones or other professional programme production devices (programme making and special events, PMSE). From 2012, the latter will only be allocated frequencies in the 821-832 MHz band. The remaining spectrum (791-821 MHz and 832-862 MHz) will be allocated to "normal" mobile communication networks, although the number of allocations will be limited in accordance with the Annexe to the *Frequenznutzungsverordnung* (Decree on frequency use - FNV), which has also been amended.

At the same time, the Annexe to the FNV states, in conformity with the amended GSM Directive, that the 900 and 1800 MHz frequency bands, previously allocated to GSM services, will in future be available for use by "terrestrial systems capable of providing Europe-wide electronic communication services". This means that these frequency bands, which were previously limited to the GSM standard, will have a broader range of possible uses. It may also soon be possible to use UMTS technology in these bands.

Rundfunk & Telekom Regulierungs-GmbH (RTR), which is conducting the process on behalf of the *Telekom-Control-Kommission*, the relevant regulatory body, has already launched a consultation on this subject. In its consultation document, it recommends an

early auction of the 900 MHz band and the reallocation of frequencies after the digital dividend is allocated. Since this is impossible in the 1800 MHz band due to the fact that some licences still have a long time to run, the situation here should be reassessed in due course. Responses to the document had to be submitted by 18 March 2011.

• *Geänderte Anlage zur FZBV* (Amended Annex to the FZBV)
http://merlin.obs.coe.int/redirect.php?id=13100 DE
• *Geänderte Anlage zur FNV* (Amended Annex to the FNV)
http://merlin.obs.coe.int/redirect.php?id=13101 DE
• *Konsultationsdokument der RTR* (RTR consultation document)
http://merlin.obs.coe.int/redirect.php?id=13078 DE

Sebastian Schweda
Institute of European Media Law (EMR), Saarbrücken/ Brussels

BE-Belgium

Online Journalists' Undercover Operation in Reality Television Programme Judged Unethical

The Flemish commercial broadcaster VMMa's reality tv programme "My Restaurant" was invaded by three undercover journalists from the news website Clint.be. In this programme five couples are followed throughout their attempts to set up a successful restaurant business. One of these couples organised solicitations in order to recruit staff, in which ten journalists of the news website participated without revealing their journalistic capacity. Three of them were selected. Later on, they revealed the results of their undercover actions through emails and also by way of reports on their website. In the same period an interview was published in a Flemish magazine in which they exposed their infiltration. According to the complainants no serious societal importance that could justify the undercover operation exists. They noted that, in the published interview, the journalists spoke of a "stunt" and a "joke in order to lead as many people as possible to the website" and also admitted that they had done their upmost best to be featured as prominently as possible during important scenes. This proves that their only goal was sensationalism. After the complaint had been lodged, the journalists defended their actions by claiming that they wanted to expose the fact that participators in the programme are not fully aware of the consequences of their participation. However, these alleged exposures are not mentioned in the website reports or in the magazine interview.

In a fairly concise decision of 10 February 2011, the *Vlaamse Raad voor de Journalistiek* (Flemish Council for Journalism Ethics) judged the complaint to be well-founded. It referred to Article 17 of the new Code on journalism ethics (6 October 2010, see IRIS 2011-1/10), according to which, during the newsgathering process, a journalist should make him/herself as well as the aim of his/her actions known. The directive accompanying this provision sums up the conditions under which exceptions are allowed. Amongst others, the information to be obtained should reflect a great societal importance and it should not be possible to obtain the information via conventional journalistic methods. The Council noted that the journalists concealed their journalistic capacity, consciously adopted another capacity and made recordings with a hidden camera. It then observed that, in casu, there existed no great societal importance to justify these actions. Investigating whether the couples received sufficient professional support and why the couples from previous editions of this programme are not fond of it anymore could reflect a societal importance, neither the reports on the website nor the interview in the magazine, however, offer new and relevant information in this regard. Furthermore, it was not demonstrated in any way that such information cannot be obtained through means other than an undercover operation. As a consequence, the Council found a violation of the ethical principles on undercover journalism.

• *Beslissing 2011-02 van de Raad voor de Journalistiek over de klacht van de Vlaamse Media Maatschappij NV, Kanakna NV, de heer Jeroen Van Alphen en mevrouw Isaura Mariën tegen Clint.be en hoofdredacteur Jorn Van Besauw en de medewerkers Bart Pierreux, Cain Ransbottyn en Helen Heynssens* (Flemish Council for Journalism Ethics, VMMa NV v. Clint.be, 10 February 2011)
http://merlin.obs.coe.int/redirect.php?id=13042 NL

Hannes Cannie
Department of Communication Sciences / Center for Journalism Studies, Ghent University

BG-Bulgaria

Allocation of Digital and Analogue TV Frequencies

By Decision No. 615 dated 9 June 2009 the Communications Regulation Commission issued to Towercom Bulgaria EAD a permit for the use of two national multiplexes. A month later, on 9 July 2009, the Communications Regulation Commission issued a permit for the use of three national multiplexes to Hanu Pro Bulgaria EAD (Decision No. 674). Furthermore, on 14 July 2009, the Communications Regulation Commission announced that Hanu Pro Bulgaria EAD was the winner in the latest tender for a national multiplex, which would broadcast the programmes of the public service media (Decision No 749). Currently, DVBT and Mobiltel (see IRIS 2010-8/16) are appealing the allocation of national multiplexes to Hanu Pro. In its claim

DVBT states that the commission's members were put under enormous pressure and that they were threatened by the chairman of the Communications Regulation Commission to select "the right offer", irrespective of the fact that some of the competitive offers were better (Case N 10496/2010 of the Supreme Administrative Court).

There have been media publications in the last two years stating that digital TV is connected with the New Bulgarian Media Group, which has acquired newspapers, a TV channel and distribution companies for print media. The financial support to the New Balkan Media Group is provided by the Corporate Commercial Bank. In the meantime, there have been certain media concentrations, which have not been sanctioned by the State. The Bulgarian Telecommunications Company sold 50 percent of NURTS (holding the network for national TV broadcasting) to a Cypriot company Mancelord Limited for the amount of EUR 57 million. It was later understood that Mancelord Limited was represented in Bulgaria by the owner of the Corporate Commercial Bank. The transaction was approved by the Competition Protection Commission on 23 June 2010. Later, a newly-formed company NURTS Bulgaria acquired Towercom, i.e., the owner of the first two multiplexes in Bulgaria.

In the summer of 2010, the European Commission commenced an inspection at the request of Television Evropa concerning the allocation of multiplex and analogue frequencies. The claims of Television Evropa are that the multiplex tenders have been carried out on a discriminatory basis laid down in the Radio and Television Act and thus the winner was easy to select. Further, Television Evropa claims that two formal conditions have made the procedure biased - first, the tenderers should not have their own TV programmes, and second, they should not have a broadcasting network. In fact, those two conditions were passed by the Parliament when it became clear that a strategic investor - the Austrian ORS, was interested in participating in the tender process. The European Commission sent to the Bulgarian Government nine questions to clarify the issues involved. The purpose of the questionnaire is to ascertain whether Bulgaria has infringed EU rules. The European Commission will decide whether there is an infringement of the EU rules after the Communications Regulation Commission issues its report.

• Решение № 749 от 14.07.2010 г. на Комисията за регулиране на съобщенията (Communications Regulation Commission, Decision № 749 of 14 july 2010)
http://merlin.obs.coe.int/redirect.php?id=12639 BG

Rayna Nikolova
New Bulgarian University

The New Association of Cable Communication Operators (BACCO)

On 9 February 2011 an open meeting of the Council for the Protection of Intellectual Property under the presidency of the Ministry of Culture with representatives of the collective management societies and some associations of users of protected works took place. The topic of the meeting was the actual problem of cable re-transmission in Bulgaria.

It is a well known fact that for many years cable operators in Bulgaria have not been paying any remuneration to the collecting societies for the re-transmission of phonograms and audio-visual works/films included in television programmes and are even re-transmitting some programmes without the permission of the respective broadcasting organisations. The termination of that illegal practice was beyond the capacity of many ministers, experts, public prosecutors and judges. Now, this problem is extending over the other new and not so new technological means of re-transmission such as satellite, Internet and IPTV.

The motto of the meeting was that the Council shall take the initiative to prepare a new strategy to combat illegal re-transmission of protected works. All interested organisations were invited to submit their proposals for specific measures and legislative amendments.

The new movement at that meeting was the position of the new association of cable operators - BACCO, which was established in December 2010. It consolidates almost 40 cable operators, among which is the biggest one, named Blizoo.

The BACCO's representative declared that all members of BACCO are ready to sign contracts with the collecting societies and to start negotiations on the tariffs for a due remuneration for cable re-transmission. They also upheld the desire of the Council for more effective measures against those who infringe copyrights, but insisted on equal treatment of all operators re-transmitting programmes without any consideration of the technical means of re-transmission. Their reasoning was that all these enterprises are working on the same market and are offering the same service. They are competitors among each other and a stricter treatment of cable operators would create the conditions for an unfair advantage for the other operators.

Recerntly BACCO officially started negotiations with the two societies that administer copyrights and related rights of music works. The parties informed the Council for Electronic Media about this with the purpose of avoiding any sanctions under the provision of Art. 125v of the Radio and TV Act until the end of the negotiations. Meanwhile, the Parliament started

the second reading of the amendments to the Copyright and Related Rights Act, which provide numerous changes to the rules about cable and satellite retransmission and the status of the collective management organisations (see IRIS 2010-10/15).

Ofelia Kirkorian-Tsonkova
Sofia University St. Kliment Ohridsky

CY-Cyprus

Provisions of the Law on Retention of Telecommunications Data Declared Unconstitutional

The Supreme Court of the Republic of Cyprus decided on 1 February 2011 that Arts. 4 and 5 of the Law on the Retention of Telecommunications Data for the Investigation into Criminal Offences (L.183(I)2007) are in breach of the Constitution; moreover, the Law appears to go beyond the scope and goals of Directive 2006/24/EC on data retention.

The Court verdict was issued in relation to petitions for a writ of certiorari by four persons against District Court orders that granted the police access to the claimants telephone communications data. The orders were issued according to Arts. 4 and 5 of L.183(I)2007, which aimed at harmonising Cyprian Law with the Directive. The petitioners claimed that both the aforementioned articles of the Law and the District Court orders were in breach of the Constitution as they violated their rights of privacy and family life (Art. 15.1) and of secrecy of communications (Art. 17.1). Based also on the decision of the European Court of Justice issued on 10 February 2009 (Ireland, C-301/06; see IRIS 2009-8/102), they claimed that the Directive created no obligation for States to introduce a law for the fight against crime.

The Supreme Court noted that in its deliberations it did not take into account the 6th amendment of the Constitution, that in certain cases allows an interference of the right of secrecy of communication by the authorities, since the orders were issued before the promulgation of this amendment (4 June 2010).

After an examination of the provisions of Directive 2006/24/EC, the Court deliberated that from both the title and the content of the Law it appeared that its goal was broader. While the Directive aims at the retention of descriptive communications data, the Law links the obligation for the retention of data not only to the investigation of serious criminal offences, but it additionally rules on issues regarding access to the data. At the same time, the Court noted that the legislator expressed through Art. 22 its will to maintain the existing state of affairs regarding the protection of the secrecy of communications. The case-law, which was created in connection to the enforcement of the Law on the Protection of the Secrecy of Private Communications (monitoring of communications, L.92(I)/1996), was recalled by the Supreme Court, which noted that "monitoring or information that is connected to or comes from the communication between citizens and that falls out of the exceptions of Art. 17.2 of the Constitution cannot be accepted by the Courts as evidence".

The provisions of L.183(I)2007 on ways of access to telecommunications data by police authorities were introduced not for harmonisation purposes, since no such obligation on the Republic derives from Directive 2006/24/EC; therefore, they are not covered by Art. 1A of the Constitution, which establishes the superiority of EU directives over the Constitution. Thus, the Supreme Court examined the constitutionality of the relevant provisions, on the basis of which the orders on the disclosure of data were issued by the District Courts.

It found that:

a. Both the Constitution and Art. 8 of the ECHR protect privacy of communications, while case-law has established that any interference with an individual's telephone communication is a violation of his rights to privacy of communication.

b. Access to telephone call data by police authorities without the knowledge or consent of the persons affected constituted a breach of the secrecy of communications.

c. Access to telecommunications data was not a legitimate constraint on their right, since Art. 17.2 of the Constitution provides that such a limitation can only be imposed on convicted persons or such under pre-conviction or in the professional correspondence of bankrupt persons. At the time of the orders, one petitioner was free, therefore the orders infringed her rights; two petitioners were under pre-conviction. However, the orders allowed access to telecommunications data of periods prior to their arrest, which violated their rights; however no retroactive restriction was allowed by the Constitution or case-law. The fourth petitioner was serving a sentence of several years in jail and communicating via a mobile telephone was not allowed by law; therefore, he could claim no constitutional protection.

The Supreme Court issued writs of certiorari for the Courts orders concerning three of the petitioners and rejected the petition of the convicted person.

• Αποφάσεις Ανωτάτου Δικαστηρίου - Αιτήσεις - Απόφαση σχετικά με την εφαρμογή του 335. *183(331)/2007* για την αποκάλυψη τηλεπικοινωνιακών δεδομένων (Cyprus Supreme Court (Civil applications 65/2009, 78/2009, 82/2009 and 15/2010-22/2010))
http://merlin.obs.coe.int/redirect.php?id=13053 EL

Christophoros Christophorou
Expert in Media and Elections

New Developments in the Field of Digital Television

A transitional period and the vote of a new law that will govern digital television are the main elements of arrangements and processes that will lead to the digital switch-over in Cyprus (see IRIS 2010-9/16).

An official announcement of the Office of the Commissioner for Electronic Communications and Postal Regulation (OCECPR) and the Cyprus Radio Television Authority (CRTA), addresses the main questions related to the digital switch-over. The announcement contains information on the rights, obligations and the role of the major actors, the operator of the commercial digital platform Velister Ltd, a consortium of commercial broadcasters and television services companies, the broadcasters and the regulators OCECPR and CRTA. The former is responsible for networks and services of electronic communications, including terrestrial digital television, CRTA is the authority that will grant content licences and monitor the content transmitted. The main provisions for the passage from analogue to digital are:

During the transitional period, Velister is obliged to create and operate a digital television network according to the terms and conditions set down in the authorisation granted to it. The broadcasters will have to come to an agreement with Velister for the transmission of their programmes in digital form. The existing broadcasters will have to get a new or amended licence. Local channels will have the opportunity to operate as island-wide channels by applying for a new licence; island-wide broadcasters will have their analogue television licence changed to digital, while channels providing content in electronic form must apply for a digital licence. The digital network operator is obliged to carry the signals of digital television operators in accordance with their agreement. In the first stage, the network operator must publish a Draft Offer for Access to Services of the Digital Platform. Consultations with the interested parties may start with the involvement of the OCECPR, which has the authority to approve or amend it. The OCECPR has issued orders relating to Application Programmes Interfaces and Electronic Programme Guides, and has decided that MPEG4 is the digital television equipment standard. The Office is also the co-ordinator of the information campaign on digital television. The CRTA is in the process of a public consultation for the introduction of a new law that will govern digital transmission. The existing law covers analogue television only.

According to official press releases the OCECPR and the Director of Electronic Communications of the Ministry of Communications and Works have granted two authorisations for the "use of radio frequencies and for the creation and operation of a network of terrestrial digital television".

The Cyprus Broadcasting Corporation (341361364371377306311375371372΄377 Ίδρυμα 332΄305300301377305) was granted one licence following negotiations in accordance with a decision of the Council of Ministers to lease one of the digital platforms to the public broadcaster. The second was granted to Velister Ltd, which won an auction competition. The public service broadcaster shall provide services of public utility, excluding any commercial exploitation of the digital platform under its authority. The second digital network operator shall have the obligation to offer digital access to all existing broadcasters according to specific rules and range of fees; it will also have the possibility of offering a full range of digital services that will enable the commercial use of the network. The full switchover is to take place on 1 July 2011.

• Ανακοίνωση - Σερματισμόσ Αναλογικῶν Σθλεοπτικῶν Μεταδόςεων και Εισαγωγι τθσ Επίγειασ Ψθφιακισ Σθλεόραςθσ (325350343) ςτθν Κφπρο (Information on the announcement of the OCECPR)
http://merlin.obs.coe.int/redirect.php?id=13093 EL

Christophoros Christophorou
Expert in Media and Elections

DE-Germany

BGH Asks ECJ for Preliminary Ruling on Food Health Claims

According to a decision of 13 January 2011 (case no. I ZR 22/09), the *Bundesgerichtshof* (Federal Supreme Court - BGH) will, in a request for a preliminary ruling, submit a number of questions to the Court of Justice of the European Union (ECJ) concerning the interpretation of the concept of "health claim" in the sense of Article 2(2)(5) of Regulation (EC) No. 1924/2006 on nutrition and health claims made on foods ("Health Claims Regulation").

The decision follows a case concerning advertising for a herbal liqueur containing 27% alcohol with the words "*wohltuend und bekömmlich*" (beneficial and agreeable). Under Article 4(3) of the Health Claims Regulation, health claims relating to beverages containing more than 1.2% alcohol are prohibited.

The *Landgericht Regensburg* (Regensburg District Court) had rejected a complaint by an association opposed to the promotion of the liqueur on the grounds that the terms "*bekömmlich*" and "*wohltuend*" used in the advertisement did not concern health, but general well-being. It had therefore decided that, as was clear from the way in which the Health Claims Regulation had evolved, these terms were not covered by its provisions.

The BGH will ask the ECJ to what extent the concept of "health claim" includes statements concerning general well-being. It will argue that the word "*bekömmlich*" suggests that the liqueur does not put a strain on or damage the body and its functions, but does not indicate that the advertised product is good for the health. The BGH will also ask the ECJ to clarify, with a view to the freedom of expression and information, whether it is proportionate to include such a statement in the ban contained in Article 4(3) of the Health Claims Regulation.

On the other hand, the BGH believes that the word "*wohltuend*" does represent a "health claim", since it suggests, at least indirectly, that consumption of the liqueur is likely to improve the health of the consumer.

In a similar case in September 2010, the *Bundesverwaltungsgericht* (Federal Administrative Court) also asked the ECJ to interpret the concept of "health claim" referred to in the Health Claims Regulation.

• *Beschluss des BGH (Az. I ZR 22/09) vom 13. Januar 2011* (Decision of the Federal Supreme Court (case no. I ZR 22/09) of 13 January 2011)
http://merlin.obs.coe.int/redirect.php?id=13068 DE

Peter Matzneller
Institute of European Media Law (EMR), Saarbrücken/ Brussels

Federal Administrative Court Rules on Film Contributions

On 23 February 2011, the *Bundesverwaltungsgericht* (Federal Administrative Court - BVerwG) ruled that the obligation to pay film contributions is compatible with the German Constitution and therefore rejected complaints by several cinema operators.

According to the *Filmförderungsgesetz* (Film Support Act - Art. 66 et seq. FFG), cinema operators, video companies and television providers are obliged to pay film contributions to the *Filmförderungsanstalt* (Film Support Office - FFA).

However, under the version of the FFG that was valid until July 2010, while cinema operators and video companies had to pay a fixed amount laid down by law, television providers were free to negotiate the amount of their contributions with the FFA. The cinema operators complained that this infringed the principle of equality of contributions derived from Article 3(1) of the *Grundgesetz* (Basic Law - GG) and contested their obligation to pay the contributions.

The BVerwG also had reservations concerning the constitutionality of this unequal system and, in February 2009, referred the matter to the *Bundesverfassungsgericht* (Federal Constitutional Court - BVerfG) (see IRIS 2009-4/8 and IRIS 2010-1/17).

In order to dispel these concerns and, at the same time, create a secure legal basis for the financing of the FFA, the German legislator adopted an amendment to the FFG in July 2010, establishing a legal obligation for television companies to pay a fixed level of contributions (see IRIS 2010-8/22).

Consequently, the BVerwG revoked its decision to refer the matter to the BVerfG because it considered that the potentially unconstitutional regime had been corrected. It added that the legality of the obligation for the cinema, video and television industries to pay the contributions was in no doubt. These industries benefited financially from the exploitation of German films at national level, and these films were supported by the FFA. It was therefore appropriate that they should contribute to the costs of the film aid system. The legislator's failure to include other market players - particularly film exporters - was justified because they made their profits abroad. The BVerwG also ruled that the federal government had legislative competence in the field of business promotion (promotion of the film industry in this case) and was therefore also entitled to regulate the film contributions system by law.

• *Pressemitteilung des BVerwG zu den Urteilen vom 23. Februar 2011 (Az. 6 C 22.10 bis 30.10)* (Press release of the Federal Administrative Court on its rulings of 23 February 2011 (case no. 6 C 22.10 to 30.10))
http://merlin.obs.coe.int/redirect.php?id=13070 DE

Anne Yliniva-Hoffmann
Institute of European Media Law (EMR), Saarbrücken/ Brussels

BVerwG Action against Frequency Relocation Rejected

In a ruling of 26 January 2011, the *Bundesverwaltungsgericht* (Federal Administrative Court - BVerwG) confirmed the rejection of a complaint by a telecommunications company against a frequency relocation procedure conducted by the *Bundesnetzagentur* (Federal Network Agency - BNetzA).

In frequency relocation procedures, particular frequencies are directly allocated to one or more providers. This case concerned allocations in the 900 MHz band, which were previously reserved for military use, to the providers O2 and E-Plus. In return, these providers were required to relinquish other frequencies in the 1800 MHz band, which would then be reallocated.

The plaintiff argued that the allocation of the former military frequencies infringed its right to participate in the assignment procedure without discrimination. The complaint, which had already been rejected by lower instance courts, was also dismissed by the BVerwG in the appeal procedure.

The judges explained that, regardless of whether or not the assignment procedure in this case had actually been conducted correctly, no subjective rights of the telecommunications company had been violated. Furthermore, the plaintiff had not submitted its own concept for the efficient use of the 900 MHz band frequencies. The company itself had failed to meet the allocation requirements at the time of the decision.

The court also explained that the objective pursued by the BNetzA when relocating the frequencies, i.e., to promote sustainable competition, was compatible with the objectives of the *Telekommunikationsgesetz* (Telecommunications Act).

• *Pressemitteilung des BVerwG zum Urteil vom 26. Januar 2011 (Az. 6 CF 2.10)* (Press release of the Federal Administrative Court on the judgment of 26 January 2011 (case no. 6 CF 2.10))
http://merlin.obs.coe.int/redirect.php?id=13071 DE

Max Taraschewski
Institute of European Media Law (EMR), Saarbrücken/ Brussels

BKartA Expresses Concern over Planned ProSieben-Sat.1 and RTL Online Video Platform

The *Bundeskartellamt* (Federal Cartels Office - BKartA) has expressed concern to the television provider ProSiebenSat.1 Media AG and the RTL Deutschland media group in a provisional assessment of their plans to create a joint online video platform.

Following the example of the US video portal "Hulu", the two companies have, for some time, been developing a business model for digital audiovisual content on the Internet, in order to take into account the changes in consumer behaviour and the increasing convergence of television and the Internet. The initiators of the portal, which is funded by advertising and features programmes of different broadcasters, intend it to include services of other private TV companies and public service broadcasters.

According to the Cartels Office's provisional assessment, it is likely that the service would harm competition in the national television market on account of the dominant position held by the ProSiebenSat.1 and RTL channels in the German private television market.

Therefore, after an extended evaluation deadline, the BKartA demanded that strict conditions be imposed on the planned online video portal of the two companies, which were unwilling to meet those conditions. Although they said they were prepared, in principle, to operate the platform under certain conditions, they did not consider the commitments required by the BKartA to be acceptable.

• *Die Pressemitteilung des BKartA vom 22. Februar 2011* (Press release of the *Bundeskartellamt* (Federal Cartels Office - BKartA) of 22 February 2011)
http://merlin.obs.coe.int/redirect.php?id=13069 DE

Peter Matzneller
Institute of European Media Law (EMR), Saarbrücken/ Brussels

OLG Rejects Claim to Additional Remuneration for "Tatort" Opening Credits

In a judgment of 10 February 2011, the *Oberlandesgericht München* (Munich Appeals Court - OLG) rejected a claim under copyright law for additional remuneration and naming of the author.

The plaintiff wrote the opening credits of the television series "Tatort". The defendants are two public service broadcasters affiliated to the ARD. The "Tatort" series is very popular and has been broadcast for over 40 years. The same opening credits have been used ever since it was first broadcast. In the proceedings, the plaintiff argued that this unusually long-term use of the work she had created was highly disproportionate to the fixed sum of DM 2,500 (approx. EUR 1,250) that she had received for producing the opening credits. She therefore claimed additional remuneration in accordance with Article 32a of the *Urheberrechtsgesetz* (Copyright Act - UrhG). The plaintiff also requested that she be named during the opening credits as their author.

The OLG München rejected both requests and overturned most of the provisions of the lower instance ruling. The additional remuneration mentioned in Article 32a UrhG was based on the notion of fairness and only applied if the agreed amount of compensation for granting exploitation rights was clearly disproportionate to the proceeds and benefits generated from exploitation of the work (see IRIS 2010-9/20). However, this additional remuneration did not apply to every copyright-protected work. The work in question needed to be more than of secondary importance to the work as a whole. However, the "Tatort" opening credits were only designed to introduce the programme and show viewers that it was starting. The fact that these opening credits had been used for more than 40 years and were therefore very well known was due to the popularity of the series itself, whereas the opening credits were not a decisive factor in the series' success. There was therefore no entitlement to additional remuneration in this case. The author's claim to be named in the opening credits was also rejected. Although the plaintiff had not expressly waived her right to be named in this way, it was customary for the opening and final credits of a cinematographic work to name only those who had played a substantial role in its production. Furthermore, since the plaintiff had not complained about

this practice over a period of several decades, the defendants could no longer be expected to take such a request seriously.

This judgment cannot be appealed.

• *Pressemitteilung des OLG München zum Urteil vom 10. Februar 2011 (Az. 29 U 2749/10)* (Press release of the Munich Appeals Court concerning its judgment of 10 February 2011 (case no. 29 U 2749/10))
http://merlin.obs.coe.int/redirect.php?id=13077 DE

Anne Yliniva-Hoffmann
Institute of European Media Law (EMR), Saarbrücken/ Brussels

Film Agreement between Germany, Austria and Switzerland Signed

On 11 February 2011, representatives of Germany, Austria and Switzerland signed an agreement to step up economic and cultural cooperation in the film industry.

The trilateral film agreement creates a legal framework for cooperation between producers from the three signatory States. It promotes the bi- or trilateral co-production of cinematographic works (Art. 1). Such co-productions will be categorised as national films and therefore be eligible to receive national funding (Art. 2(1) and (2)).

A further condition is that the financial, artistic or technical contribution of each producer must represent at least 20% of the overall costs (Art. 4), while these contributions must also be properly balanced (Art. 6).

The responsible authorities under the agreement are the German *Bundesamt für Wirtschaft und Ausfuhrkontrolle* (Federal Office of Economics and Export Control), the German *Filmförderungsanstalt* (Film Support Office), the Austrian *Bundesministerium für Wirtschaft, Familie und Jugend* (Federal Ministry of Economy, Family and Youth) and the Swiss *Bundesamt für Kultur* (Federal Office of Culture) (Art. 2(4)).

Previous bilateral agreements between the parties expired with the entry into force of this trilateral agreement, which remains valid for an indefinite period (Art. 14(3); see IRIS 2004-10/105 and IRIS 2004-10/103).

• *Trilaterales Abkommen zwischen der Regierung der Bundesrepublik Deutschland, der Regierung der Republik Österreich und der Regierung der Schweizerischen Eidgenossenschaft über die Zusammenarbeit im Bereich Film* (Trilateral agreement between the Governments of the Federal Republic of Germany, the Republic of Austria and the Swiss Confederation concerning cooperation in the film sector)
http://merlin.obs.coe.int/redirect.php?id=13074 DE

Anne Yliniva-Hoffmann
Institute of European Media Law (EMR), Saarbrücken/ Brussels

German-Turkish Producers' Fund Agreed

On 11 February 2011, the creation of the first "German-Turkish Co-Production Development Fund" was announced in Berlin.

The parties to the film aid agreement are the two German regional film aid institutions *Medienboard Berlin Brandenburg* (MBB) and *Filmförderung Hamburg Schleswig-Holstein* (FFHSH), the Turkish Ministry of Culture and Tourism, and the co-production market of the Istanbul International Film Festival (IIFF), "Meetings on the Bridge" (MoB).

Under the agreement, joint film productions will be able to access financial support from the early stages of the film-making process. To this end, the fund will provide up to EUR 500,000 in support for German-Turkish co-productions each year.

The aid will be granted to feature or documentary films to be shown in cinemas, but only in exceptional circumstances to television film projects. The funding, to be granted as an interest-free loan where necessary, can represent up to 80% of production costs, in which the producers must invest at least 20% themselves. The co-producers' contributions must therefore be between 20% and 80%.

The first round of funding applications had to be submitted by 15 March 2011.

• *Pressemitteilung der FFHSH* (FFHSH press release)
http://merlin.obs.coe.int/redirect.php?id=13075 DE
• *Antragsrichtlinien* (Application Guidelines)
http://merlin.obs.coe.int/redirect.php?id=13076 DE

Anne Yliniva-Hoffmann
Institute of European Media Law (EMR), Saarbrücken/ Brussels

IRIS
Legal Observations
of the European Audiovisual Observatory
OBSERVATOIRE EUROPÉEN DE L'AUDIOVISUEL
EUROPEAN AUDIOVISUAL OBSERVATORY
EUROPÄISCHE AUDIOVISUELLE INFORMATIONSSTELLE

ES-Spain

Private Copying Levy Will not be Applied to Blank Media Acquired by Companies

On 2 March 2011, the *Audiencia Provincial de Barcelona* (Barcelona Provincial Court) acquitted Padawan, a company which owns a computer store and which had been sued by the Spanish collecting society *Sociedad General de Autores y Editores* (General Society of Authors and Publishers - SGAE) for not paying the private copying levy in respect of CD-R, CD-RW, DVD-R and MP3 players marketed by it. The Court stated that, in this case, it had not been able to determine which equipment and devices were sold to companies and which were sold to individuals.

This is the first case challenging the private copying levy to come before the courts in Spain. The Barcelona Provincial Court vindicated the defendant and found that the levy may not be applied indiscriminately, but should only be applied in cases where the device is clearly intended for private copying. Furthermore, the ultimate recipient of the copying device must be a private individual.

Thus, in order to earn the fair compensation for private copying, although it is not necessary to prove the effective use of the copy device affected by the levy, it must be credible that the device would be able to serve that goal. Therefore the judge, having found that many of the defendant's customers were companies, reasoned that the levy would, if permitted in this case, be applied indiscriminately, even to situations where it is clearly not going to be for private copying. In fact, according to European Law and to the Spanish Copyright Law, private copying may be performed only by individuals, entitling collecting societies to apply a levy, thus achieving a fair balance of interests affected, only over equipment and devices sold to individuals, not to companies or professionals.

The new ruling is in line with the response of the Court of Justice of the European Union on this issue, published last October (see IRIS 2010-10/7), to a question raised at the request of Padawan in this case. The Court of Justice considered that the indiscriminate application of the levy in relation to any equipment or device, including those purchased by persons other than individuals for purposes clearly unrelated to private copying is not in conformity with the European Copyright Directive.

Along those lines, the Barcelona Provincial Court ruled that it was not able to distinguish in this case which devices were sold to private individuals and which to companies. Accordingly, the defendants' appeal was upheld. The costs for the first instance proceedings were imposed on SGAE.

• *Sentencia n. 89/2011 de la Audiencia Provincial de Barcelona, 2 de Marzo de 2011* (Judgement n. 89/2011 of the Barcelona Provincial Court, Case Padawan v SGAE, 2 March 2011)
http://merlin.obs.coe.int/redirect.php?id=13060 ES

Pedro Letai
IE Law School, Instituto de Empresa, Madrid

FR-France

What Scheme of Liability Applies to Google Vidéo?

Google has suffered a serious setback, with the court of appeal in Paris delivering four judgments on 14 January 2011 ordering the major Internet player to pay more than EUR 500,000 in damages to various film production companies. These companies had complained that their films were being broadcast in their entirety free of charge via Google Vidéo (the films at issue were two documentaries on the Clearstream case, another on the Armenian genocide, and the feature-length film 'Mondovino'), even though their withdrawal had previously been requested. Although Google had withdrawn them, the films were accessible again a few days later, via new links. In the initial proceedings, the regional court in Paris had rejected the application of the rightsholders, finding that the activity of Google in the context of the operation of Google Vidéo constituted a storage activity with a view to making content available to the public within the meaning of Article 6.I.2 of the Act of 21 June 2004, that Google had taken the necessary steps for withdrawal promptly, and that its liability was therefore not incurred in its capacity as host. On the other hand, the court ordered Google to refrain from reproducing or communicating to the public all or part of the films and/or referencing the links allowing them to be viewed or downloaded. Google disagreed with this decision, which it considered to be impossible to apply in practice, and contested the requirement of an obligation of particular and future supervision of content already notified and withdrawn. For their part, on appeal, the rightsholders continued to refuse to qualify Google as a host, as they felt that the various services offered by Google Vidéo went far beyond those of a mere search engine and data storage facility. Recalling the provisions of Article 6.I.2 of the 2004 Act and Recital 42 of EC Directive 2000/31 on electronic commerce, the court of appeal sought to determine whether the role carried out by Google was neutral in relation to the information it stored. On completing an examination of the various technical resources and services proposed (commentaries, video classification tools, advertising links, etc.), the court confirmed the absence of active control on the part of Google over the accessible content. The court therefore concluded that both in its activities as a service

provider storing videos received from third parties and in its referencing service (search engine), the role of Google met the requirements of neutrality set out in the European Directive: subject to limiting its activity as a technical intermediary to hosting services exclusively, it was able to benefit from the specific liability scheme resulting from Article 6.I.2 referred to above. The court then went on to confirm that as the beneficiaries had notified unlawful content to Google, it should have not only withdrawn the videos at issue but also implemented every possible technical means of preventing access to them. Having failed to prevent the films notified as unlawful being put on line again, Google's civil liability was invoked under common law in respect of infringement of copyright.

The court nevertheless dealt separately with the cases in which, by using the search engine function, Internet users could see links to other sites that made the disputed videos available - these could be viewed by clicking on Google Vidéo once a window had been opened. In this case, the court held that Google was implementing an active function enabling it to monopolise the content stored on third-party sites in order to represent them directly on its pages for use by its own customers, separate from those of the third-party sites. In doing so, Google was exceeding both its referencing service and the limits of the hosting activity, and its liability for such acts should be appreciated not in the light of Article 6.I.2 of the 2004 Act but on the basis of common law. The court held that copyright was indeed being infringed, and overturned the judgment that had not held Google liable in this respect. The Internet giant has announced that it has already appealed to the court of cassation to have these judgments overturned.

• *Cour d'appel de Paris (pôle 5, chambre 2), 14 janvier 2011 - Google Inc. c. Bac Films, The factory et Canal Plus (4 arrêts dans le même sens)* (Court of appeal in Paris (Section 5, Chamber 2), 14 January 2011 - Google Inc. v Bac Films, The Factory, and Canal Plus (4 judgments on the same topic)) FR

Amélie Blocman
Légipresse

TV Reporter Convicted of Provocation of Racial Hatred

Speaking in March 2010 in a television debate on the integration of immigrants, a reporter said, "Why are these people getting their ID checked so often? Why? Because most traffickers are Blacks and Arabs - that's just the way it is, it's a fact." He was prosecuted after complaints were made by a number of anti-racism associations on the grounds of racial defamation and provocation of racial hatred. Article 32 (2) of the Act of 29 July 1881 on the freedom of the press lays down a sentence of one year's imprisonment and/or a fine of EUR 45,000 as the penalty for public defamation committed "in respect of a person or group of persons because of their origin or their belonging or not belonging to a specific ethnic group, nation, race or religion". Article 24 (8) of the Act provides for the same punishment for anyone publicly provoking discrimination, hatred or violence in respect of a person or a group of persons because of their origin or their belonging to a specific race. In its judgment delivered on 18 February 2011, the 17th chamber of the regional court in Paris held that, despite its abrupt, unambiguous nature, the utterance at issue did not constitute racial defamation. The only specific fact in the disputed utterance that constituted an infringement of honour was the reference to traffickers. This only referred to a very limited number of individuals - i.e., those involved in trafficking - compared with the entire group constituted by black people and Arabs. Thus the slur did not refer to the group as a whole, which the court found was not the same as this small group of specific offenders. On the other hand, the offence of provocation of racial discrimination was proven, in that by uttering the sentence at issue the reporter was clearly and directly justifying the arbitrary systematic checks being carried out on certain categories of the population on the basis of their origin or their race. While the accused was entitled to express his point of view on the problems connected with immigration and on ID checks carried out on the basis of ethnic appearance, this did not necessarily legitimise an illegal practice on the part of the police. By justifying discriminatory checks in this way, the reporter was clearly encouraging discrimination against a group of persons, defined as being black people and Arabs, purely by virtue of their belonging to a "race" within the meaning of the Act, which the court held were the only selection criteria on which the ID checks at issue were being carried out. Thus even in the context of an open debate on societal phenomena within the scope of legitimate public interest, the accused had exceeded the limits of freedom of expression allowed by law. He was fined EUR 1,000 conditionally and ordered to pay one euro in damages to the associations that were private complainants in the proceedings. As no appeal has been lodged, the judgment is final.

• *TGI de Paris (17e ch.), 18 février 2011, SOS Racisme et a. c. E. Zemmour* (Regional court of Paris (17th chamber), 18 February 2011, SOS Racisme et al. v E. Zemmour) FR

Amélie Blocman
Légipresse

CSA Adopts Report on Access to Audiovisual Media by Associations

Access to the audiovisual media is important for associations and the causes they defend, as they are able in this way to make their action more widely known

and, for those that appeal to public generosity, to make potential donors more aware of the issues involved and persuade them to donate. In 2009, in the run-up to the Téléthon (a programme lasting several hours organised by the French association to combat myopathies (Association Française contre les Myopathies), the aim of which is to collect funds), there was some discussion on the place that a cause defended by a specific association could be given within the audiovisual media, highlighting the risk of rivalry between associations or competition between causes of general interest. In this context, the Government asked the Conseil Supérieur de l'Audiovisuel (audiovisual regulatory body - CSA) to look into access to the audiovisual media by associations. A committee was set up for this purpose in January 2010, comprising members of the CSA, media specialists, specialists with experience of working with associations, and representatives of the public authorities. The committee heard a large number of representatives of associations and the media, in order to appraise their expertise and their expectations. It used this information as the basis for its report, adopted in January 2011 and submitted on 2 March 2011, which contains ten proposals based on three essential principles: equity, clarity, and the promotion of commitment on the part of citizens. The proposals include giving more air time to the people involved in the associations (by increasing and diversifying the number of special broadcasts in their favour), identifying clearly on the air the purpose of the appeal for donations, and reporting on the air on the use made of the money collected. The committee also recommends that each audiovisual medium should define and make public its criteria of eligibility for associations wishing to be present on the air, and that in their communications the associations should abide by the rules governing audiovisual ethics. It also wants to see an end to the practice of selling advertising space in exchange for reporting, as this creates confusion between firstly information and programmes, and secondly between advertising and sponsorship. These proposals do not have any compulsive value, and indeed the members of the CSA recalled the freedom and joint responsibility of the audiovisual media and the associations.

• *Rapport au Premier ministre élaboré par la commission de réflexion sur l'accès des associations aux médias audiovisuels adopté par le Conseil supérieur de l'audiovisuel le 4 janvier 2011* (Report to the Prime Minister drawn up by the commission to look into access to the audiovisual media by associations, adopted by the CSA on 4 January 2011)
http://merlin.obs.coe.int/redirect.php?id=13067 FR

Amélie Blocman
Légipresse

GB-United Kingdom

Live Video Streaming Might Infringe Copyright

ITV Broadcasting Limited, ITV 2 Limited, ITV Digital Channels, Channel 4 Television Corporation, 4 Ventures Limited and Channel 5 Broadcasting Limited are alleging that TV Catchup "has infringed the copyrights in their broadcasts by communicating those broadcasts to the public by electronic transmission." This hearing was generally to determine whether there was any real prospect of the claimants succeeding and whether specifically "the fact that the defendant's transmissions are not broadcasts is necessarily fatal to the claim."

TV Catchup facilitates live video streaming of content (including that of the claimants) to its members, which is accessible by PC, games consoles and mobile devices, such as the iPhone and iPad, over both 3G and WiFi networks. There is a short delay as advertisements are shown before the content, which is how TV Catchup makes its revenue. This, as a separate issue, concerns the BBC. In total, TV Catchup makes over 50 channels available. The legality of TV Catchup has been questioned earlier and it was suspended before being started up again without the network PVR functionality.

The judge began his analysis in terms of Directive 2001/29/EC, since Section 20 of the Copyright Designs and Patents Act 1988 implements Article 3 and in particular Recitals 9 and 10 (on protecting author's rights), as well as 23 and 24 (how to understand the rights involved) of the Directive. He also relied on ECJ Case C-306/05 Sociedad General de Autores y Editores de Espana (SGAE) v. Rafael Hoteles SA, according to which: "It follows from the 23rd recital in the preamble to Directive 2001/29 that "communication to the public" must be interpreted broadly. Such an interpretation is moreover essential to achieve the principal objective of that Directive, which, as can be seen from its ninth and tenth recitals, is to establish a high level of protection of, inter alios, authors, allowing them to obtain an appropriate reward for the use of their works, in particular on the occasion of communication to the public."

The claimants contended that TV Catchup's service, whilst not a broadcast in terms of Section 6 of the Copyright Act 1988, does nonetheless involve "communication of the claimants' broadcasts to the public by electronic transmission and so falls within the scope of section 20 of the Copyright Act 1988."

TV Catchup's position is that any finding that it had infringed the copyright in a broadcast under Section 20

of the Act hinged on the transmission being a broadcast as understood within the meaning of Section 6 - which the claimants agreed was not the case.

Mr Justice Kitchin concluded that TV Catchup had confused the "protected work and the restricted act." The former is the broadcast (although it could be some other genre of work, e.g., a photograph). A broadcast is a "transmission of visual images, sounds and other information for reception by or presentation to members of the public." The latter, on the other hand, is the "communication to the public by electronic transmission of all of those images, sounds and other information." In his opinion, that suggested that the claimants might succeed at trial. Following on from Article 3, he said that "it is clear that the right of communication of a work to the public must be interpreted broadly so as to cover all communication to the public not present where the communication originates. It includes, but is not limited to, broadcasting and access on demand."

• ITV Broadcasting Ltd & Ors v TV Catch Up Ltd, [2010] EWHC 3063 (Ch) (25 November 2010)
http://merlin.obs.coe.int/redirect.php?id=13044 EN

David Goldberg
deeJgee Research/ Consultancy

LU-Luxembourg

Amendment of Regulations on European Works and Advertising in Audiovisual Media

On 17 of December 2010 a package of legislation specific to the media was enacted in Luxembourg. In addition to the modifications made to the Law on Electronic Media (see IRIS 2011-2/31) which transposes the EU Audiovisual Media Services (AVMS) Directive, several regulations have been amended in parallel (see IRIS 2011-4/29). The amendments principally aim at bringing the executing regulations into line with the new version of the Electronic Media Law of 2010 (see IRIS 2011-2/31). The two regulations on the promotion of European works and on commercial communication have, however, been changed substantially.

With these two regulations the adaptation of the Luxembourgish law concerning audiovisual media to the requirements of the AVMS Directive has been completed. The Regulation of 17 December 2010 on the rules about content in European works and in the works of independent producers of television programmes deemed to fall within Luxembourgish jurisdiction under the European Television without Frontiers Directive and the Regulation of 17 December 2010 on the rules about advertising, sponsorship, teleshopping and self-promotion in television programmes were enacted on the same day as the modified Electronic Media Law of 2010.

The regulation on European works and works of independent producers henceforth applies to audiovisual media services, but excludes from its scope of application local television services and channels exclusively devoted to teleshopping and self-promotion. Art. 7 introduces a new Art. 5bis, which stipulates in its first paragraph that on-demand audiovisual media service providers are to ensure the promotion of and access to European works. Service providers have a reporting duty on a four-yearly basis, the first report being due before 30 September 2011.

Moreover, in line with Art. 1 para. 1 lit. n) of the AVMS Directive, the notion of European works is broadened to encompass those works co-produced within the framework of agreements between third countries and EU member states. Several other changes concern the adaptation of the terminology to that of the AVMS Directive, such as the inclusion of the terms "audiovisual media service provider", "programme" or "promotion".

In a similar vein, the scope of application of the regulation on advertising, sponsorship, teleshopping and self-promotion is extended to non-linear audiovisual media services. The first modification of this regulation of 2001 in June 2008 had already taken account of the changes to the content requirements of advertising and the limits on its frequency resulting from the AVMS Directive (see IRIS 2008-7/103). The current amendments concern editorial changes and most importantly the insertion of a provision on product placement (Art. 5bis). As a derogation to the newly introduced Art. 26ter of the Law on Electronic Media, product placement is admissible in certain types of programmes, or if products or services were provided free of charge. The first exception does not apply to children's programmes. In addition, the minimum requirements of programmes that contain product placement are codified. In general, the wording of Art. 5bis is very close to Art. 11 of the AVMS Directive.

• *Règlement grand-ducal du 17 décembre 2010 portant modification du règlement grand-ducal du 5 avril 2001 fixant les règles applicables en matière de contenu en œuvres européennes et en œuvres de producteurs indépendants des programmes de télévision réputés relever de la compétence du Luxembourg conformément à la Directive européenne Télévision sans frontières, Mémorial A, n°241 du 24 décembre 2010.* (Regulation on the rules on content in European works and in the works of independent producers of television programmes deemed to fall within Luxembourgish jurisdiction under the European Television without Frontiers Directive of 17 December 2010, Mémorial A, n°241 of 24 December 2010)
http://merlin.obs.coe.int/redirect.php?id=13045 FR

• *Règlement grand-ducal du 17 décembre 2010 portant modification du règlement grand-ducal modifié du 5 avril 2001 fixant les règles applicables en matière de publicité, de parrainage, de téléachat et d'autoproduction dans les programmes de télévision, Mémorial A, n°241 du 24 décembre 2010.* (Regulation on the rules on advertising, sponsorship, teleshopping and self-promotion in television programmes of 17 December 2010, Mémorial A, n°241 of 24 December 2010)
http://merlin.obs.coe.int/redirect.php?id=13046 FR

Mark D. Cole
University of Luxembourg

Amendment of Several Regulations Concerning Electronic Media

As a consequence of the changes made to the Electronic Media Law on 17 December 2010 in Luxembourg (see IRIS 2011-2/31), several executing regulations were amended on the same day (see IRIS 2011-4/28). The modifications to the regulations are predominantly editorial as a result of the adaptation of the wording of the Luxembourg Electronic Media Law to the EU Audiovisual Media Services (AVMS) Directive.

The following two regulations refer to the licensing procedure for programmes disseminated by cable or satellite respectively and their wordings are modified by replacing the term "programme" with that of the term "service": the Regulation of 17 December 2010 on the Attribution of Licenses by the Government for Luxembourgish Programmes Broadcast by Satellite Including General Rules Concerning the Licenses and Book of Obligations and the Regulation of 17 December 2010 on the Attribution of Licenses by the Government for Luxembourgish Programmes Broadcast by Cable Including General Rules Concerning the Licenses and Book of Obligations.

Three other regulations and their modifications relate to different forms of programmes and destinations: the Regulation of 17 December 2010 on Distribution of Licenses for Luxembourgish Programmes Broadcast Internationally Including General Rules Concerning the Licenses and Book of Obligations, the Regulation of 17 December 2010 on the Modalities for Permission of Television and Teletext Programmes Including General Rules Concerning the Licenses and Book of Obligations and the Regulation of 17 December 2010 on Permission for Radio Programmes Using High-Power Transmitters Including General Rules Concerning the Licenses and Book of Obligations. The terminological changes are the substitution of the term "service" for that of the word "programme" and deletion of references to changed provisions in the law. Especially, in the latter two regulations a reference concerning the license attribution is repealed as this aspect is already regulated in the Electronic Media Law.

Finally, the advertising regime on the radio is affected by the Regulation of 17 December 2010 on the Limits to Advertising to be Inserted in Local Radio Programmes. The changes to this regulation are only editorial.

The Luxembourg government enacted this package of amendments to the Regulations executing the Electronic Media Law to ensure internal consistency of the different texts after amendment to bring the law in line with the AVMS Directive.

• *Règlement grand-ducal du 17 décembre 2010 portant modification du règlement grand-ducal du 21 janvier 1993 fixant les modalités selon lesquelles le gouvernement accorde les concessions pour programmes luxembourgeois par satellite, ainsi que les règles générales gouvernant ces concessions et les cahiers des charges qui leur sont assortis, Mémorial A, n° 241 du 24 décembre 2010* (Regulation of 17 December 2010 on the Attribution of Licenses by the Government for Luxembourgish Programmes Broadcast by Satellite Including General Rules Concerning the Licenses and Book of Obligations, Memorial A - N°241 of 24 December 2010)
http://merlin.obs.coe.int/redirect.php?id=13047 FR

• *Règlement grand-ducal du 17 décembre 2010 portant modification du règlement grand-ducal du 17 mars 1993 fixant les modalités selon lesquelles le gouvernement accorde les concessions pour programmes luxembourgeois par câble, ainsi que les règles générales gouvernant ces concessions et les cahiers des charges qui leur sont assortis, Mémorial A, n°241 du 24 décembre 2010* (Regulation of 17 December 2010 on the Attribution of Licenses by the Government for Luxembourgish Programmes Broadcast by Cable Including General Rules Concerning the Licenses and Book of Obligations, Memorial A - N°241 of 24 December 2010)
http://merlin.obs.coe.int/redirect.php?id=13045 FR

• *Règlement grand-ducal du 17 décembre 2010 portant modification du règlement grand-ducal du 21 janvier 1993 déterminant les modalités d'attribution des concessions pour les programmes radiodiffusés luxembourgeois à rayonnement international, ainsi que les règles générales gouvernant ces concessions et les cahiers des charges qui leur sont assortis, Mémorial A, n° 241 du 24 décembre 2010* (Regulation of 17 December 2010 on Distribution of Licenses for Luxembourgish Programmes Broadcast Internationally Including General Rules Concerning the Licenses and Book of Obligations, Memorial A - N°241 of 24 December 2010)
http://merlin.obs.coe.int/redirect.php?id=13048 FR

• *Règlement grand-ducal du 17 décembre 2010 portant modification du règlement grand-ducal du 17 mars 1993 déterminant les modalités d'attribution des permissions pour les programmes de télévision et de télétexte diffusé et programmes y assimilés, ainsi que les règles générales gouvernant ces permissions et les cahiers des charges qui leur sont assortis, Mémorial A, n°241 du 24 décembre 2010* (Regulation 17 December 2010 on the Modalities for Permission of Television and Teletext Programmes Including General Rules Concerning the Licenses and Book of Obligations, Memorial A - N°241 of 24 December 2010)
http://merlin.obs.coe.int/redirect.php?id=13049 FR

• *Règlement grand-ducal du 17 décembre 2010 portant modification du règlement grand-ducal du 15 octobre 1992 déterminant les modalités d'attribution des permissions pour les programmes de radio à émetteur de haute puissance, ainsi que les règles générales gouvernant ces permissions et les cahiers des charges qui leur sont assortis, Mémorial A, n° 241 du 24 décembre 2010 2010* (Regulation of 17 December 2010 on Permission of Radio Programmes Using High-Power Transmitters Including General Rules Concerning the Licenses and Book of Obligations, Memorial A - N°241 of 24 December 2010)
http://merlin.obs.coe.int/redirect.php?id=13049 FR

• *Règlement grand-ducal du 17 décembre 2010 portant modification du règlement grand-ducal du 13 février 1992 fixant les limites à imposer au volume des messages publicitaires pouvant être contenus dans les programmes de radio locale, Mémorial A, n° 241 du 24 décembre 2010* (Regulation of 17 December 2010 on the Limits to Advertising to be Inserted in Local Radio Programmes, Memorial A - N°241 of 24 December 2010)
http://merlin.obs.coe.int/redirect.php?id=13047 FR

Mark D. Cole
University of Luxembourg

PT-Portugal

Parliament Approves New Television Law

On 4 February 2011, the Portuguese Parliament approved a new television law. The Socialist Party (PS) voted in favour of the new law, while both the Social Democratic Party (PSD) and the right wing Christian Democrats CDS-PPs abstained. The decree, called *Decreto nº 76/XI*, derives from the *Proposta de Lei n.º 29/XI/1.ª* (Bill no. 29/XI), which was previously approved by the Parliamentary Commission on Ethics, Society and Culture (*13ª Comissão de Ética, Sociedade e Cultura*).

The new Television Law transposes the EU's Audiovisual Media Services Directive (Directive no. 2007/65/CE - AVMSD) and makes amendments to several previous national laws, namely the Television Law no. 27/2007, the Publicity Code and the law that restructured the radio and television public service broadcasters (Law no. 8/2007). *Decreto nº 76/XI* requires promulgation by the President of the Republic and publication in the official news bulletin (Diário da República) in order to come into force.

The major changes introduced in the television sector are related to advertising and media ownership. Broadcasters gain a wider margin for manoeuvre as concerns advertising and product placement. Regarding media ownership and management, a new set of guidelines is introduced in order to increase transparency regarding property and editorial responsibilities. Broadcasters shall publish information about the ownership structure online. If this does not take place, the relevant information must be given to *Entidade Reguladora para a Comunicação Social* (the State media regulatory body) to publish on its own website.

• *DECRETO N.º 76/XI Procede à primeira alteração à Lei da Televisão, aprovada pela Lei n.º 27/2007, de 30 de Julho, à 12.ª alteração ao Código da Publicidade, aprovado pelo Decreto-Lei n.º 330/90, de 22 de Outubro, e à primeira alteração à Lei n.º 8/2007, de 14 de Fevereiro, que procede à reestruturação da concessionária do serviço público de rádio e de televisão, transpondo a Directiva n.º 2007/65/CE, do Parlamento Europeu e do Conselho, de 11 de Dezembro de 2007* (Decree no. 76/XI, approved by the Portuguese Parliament)
http://merlin.obs.coe.int/redirect.php?id=13050 PT

• Proposta de Lei n.º 29/XI/1.ª - Procede à primeira alteração à Lei da Televisão aprovada pela Lei n.º 27/2007, de 30 de Junho, à 12.ª alteração ao Código da Publicidade aprovado pelo Decreto-Lei n.º 330/90, de 22 de Outubro, e à primeira alteração da lei que procede à reestruturação da concessionária do serviço público de rádio e de televisão aprovada pela Lei n.º 8/2007, de 14 de Fevereiro, e transpõe a Directiva n.º 2007/65/CE, do Parlamento Europeu e do Conselho, de 11 de Dezembro de 2007 (Law proposal no. 29/XI - First amendment to the Television Act approved by Law no. 27/2007 dated 30 June, 12th amendment to the Publicity Code approved by Law-decree no. 330/90 dated 22 October, as well as first amendment to the law that restructures the Radio and Television public service broadcasters approved by law no. 8/2007 dated 14 February, transposing Directive no. 2007/65/CE of the European Parliament and the European Council dated 11 December 2007)
http://merlin.obs.coe.int/redirect.php?id=13092 PT

Mariana Lameiras & Helena Sousa
Communication and Society Research Centre, University of Minho

RO-Romania

Draft Amendments to the Audiovisual Law

Romania's Audiovisual Law could be changed, according to a Draft on the amendment and completion of the *Legea Audiovizualului nr. 504/2002* (Audiovisual Law no. 504/2002) proposed mid-February 2011 by four deputies of the Democrat-Liberal Party, the major component of the ruling coalition (see inter alia IRIS 2009-2/29, IRIS 2010-1/36 and IRIS 2010-9/34).

The Draft, which was withdrawn, corrected and proposed again in less than ten days, is mainly intended to merge the existing Audiovisual Law with most of the provisions of the Audiovisual Content Regulatory Code (Decision no. 187/2006 - Audiovisual Code).

The authors want to enforce by law the provisions of the Audiovisual Code, but several members of the *Consiliul Naţional al Audiovizualului* (National Council for Electronic Media - CNA) consider that introducing the provisions of the Code into the law will make it very difficult to change secondary legislation in order to make it flexible in accordance with market developments. The members of the Council argued that the project was not discussed with them and fear the Draft is intended to diminish CNA's powers.

The first version of the Draft proposed to cancel the obligation of cable network providers to carry commercial television programmes and, on the other hand, to increase dramatically the minimum threshold of fines imposed by the CNA for infringing the rules. Meanwhile the initiators gave up these intentions.

The Draft foresees further provisions from the Audiovisual Code with regard to: the protection of children and minors, of dignity, honour and reputation; the right to one's own image; the presumption of innocence and the protection of the right to a fair trial;

the protection of private and family life and of mail. The Draft includes provisions for political campaigns; sponsoring and product placement, the right of reply and to rectify; concerning infringements of gambling rules; on the right to equal opportunities and non-discrimination; on the freedom of expression and the public's right to be informed objectively.

The Draft requests broadcasters to make a clear distinction between facts and opinions and to mention explicitly if the respective information comes from confidential or not sufficiently verified sources. The number of representatives from the majority and the opposition during debates has to be equal. Broadcasters are requested to observe during news programmes and debates accuracy in editing and presenting the news. News programmes and debates shall not be sponsored anymore. It shall be forbidden to broadcast images of people taken in their own house or in other private places without their consent. The Draft also forbids airing images/sounds taken with hidden cameras/microphones, except in cases when these materials could not be obtained under open conditions and their content is of justified public interest. Another aspect regulated is the transparency of radio/TV stations with regard to their organisation, functioning and financing.

On 24 February 2011 the CNA completed the discussions on the modification of the Audiovisual Code. According to a new provision television and radio stations have to assure gradually until 1 January 2015 the access of hearing-impaired people to the main news programmes they broadcast.

Another modification adopted is about social campaigns which can be aired free of charge by broadcasters and shall not be included in the maximum advertising times (12 minutes per hour for commercial and 8 minutes for public broadcasters).

The new Code will enter into force after its publishing in the Official Journal of Romania.

• Propunere legislativă pentru modificarea şi completarea Legii audiovizualului nr.504/2002, cu modificările şi completările ulterioare, Pl-x. 27/2011 (Draft Amendment to the Audiovisual Law 504/2002, with the subsequent changes and the completions, Pl-x. 27/2011)
http://merlin.obs.coe.int/redirect.php?id=13094 RO

• Proiect de modificare a Deciziei privind Codul de reglementare a conţinutului audiovizual (Draft Amendment to the Decision on the Audiovisual Regulatory Code)
http://merlin.obs.coe.int/redirect.php?id=13057 RO

Eugen Cojocariu
Radio Romania International

Draft Decision to Amend Statistical Indicators Reported by Electronic Communications Operators

On 3 February 2011 the *Autoritatea Naţională pentru Administrare şi Reglementare în Comunicaţii* (National Authority for Administration and Regulation in Communications, ANCOM) opened a public consultation on a Draft Decision on amending the way of reporting certain statistical data by providers of public electronic communications networks or of publicly available electronic communications services (see inter alia IRIS 2010-8/43, IRIS 2010-10/37 and IRIS 2011-2/35).

The statistical indicators have to be amended due to evolutions and trends in the Romanian and international electronic communications markets, the appearance of new technologies and services, as well as to some unclear aspects with regard to the information connected to certain indicators.

All providers of public networks with an access at a fixed location shall report on the number of households with cable connection, irrespective of the services provided to the end-users (fixed telephone services, Internet access services, audiovisual programme re-broadcasting). They shall also report on the territorial and population coverage with terrestrial analogue radio, DVB-T and WiMAX networks.

Further, providers of fixed Internet access services shall report on the number of connections, classified by five best-effort speed intervals, separately for each access technology.

ANCOM has introduced new statistical indicators corresponding to the download/upload traffic achieved during the reporting period by end-users of fixed/mobile Internet access services.

When the audiovisual programme re-broadcasting services will become available through terrestrial digital networks, providers shall also have to report the number of subscribers to paid audiovisual programmes through terrestrial digital networks, other than those freely transmitted.

The consultation was closed on 7 March 2011.

• Proiect de decizie privind raportarea unor date statistice de către furnizorii de reţele sau servicii de comunicaţii electronice destinate publicului (Draft Decision on the reporting of certain statistical data by providers of public electronic communications networks or of publicly available electronic communications services)
http://merlin.obs.coe.int/redirect.php?id=13055 RO

Eugen Cojocariu
Radio Romania International

Open Letter to Unfreeze the Digital Switchover

A number of Romanian associations, NGOs and companies from the telecommunications sector sent an open letter to the European Commission and the

domestic authorities on 15 February 2011, requesting it to unfreeze the digital switchover in Romania (see IRIS 2009-9/26, IRIS 2010-3/34, IRIS 2010-7/32, IRIS 2010-9/35 and IRIS 2011-1/45).

They requested the revision of the Strategy of transition to digital television until the end of the first quarter of 2011 and to set 2013 as the deadline for finishing the transition. The Romanian Government decided in August 2010 to postpone for three years, until 2015, the digital switchover, arguing that providers had not enough time to adapt and that the population would not be able to buy the necessary equipment because of the economic crisis.

The authors of the open letter consider that the digital switchover, requested by the EC, will lead to the development of a new major television programme transmission platform, beyond cable and satellite. At the same time, the process will lead to the partial release of spectrum ("digital dividend"), which could be used for broadband Internet services and new technologies (4G), according to the European Commission's recommendation.

The president of the signing Association for Digital Communications considers that, if the process were not unfrozen, it would become more and more difficult for Romania to fulfill its obligations to the European and international bodies with regard to closing down analogue transmission and to the adoption of the necessary legislation, in due time.

The letter complains that when the digital switchover was stopped and postponed, a competitive selection procedure for granting the first two digital multiplexes was underway.

The document was addressed to the European Commissioner Neelie Kroes and the Romanian Prime Minister, *Ministerul Comunicaţiilor şi Societăţii Informaţionale* (Ministry of Communications and Information Society), *Autoritatea Naţională pentru Administrare şi Reglementare în Comunicaţii* (National Authority for Administration and Regulation in Communications - ANCOM) and the *Consiliul Naţional al Audiovizualului* (National Council for Electronic Media - CNA).

The transition to digital television will be restarted by a Government Decree, the Romanian Communications Minister declared in December 2010. At the same time the President of ANCOM estimated that the six Romanian digital television licences will be granted in 2011.

• Scrisoare deschisă către autorităţi şi Comisia Europeană pentru deblocarea procesului de trecere la televiziunea digitală terestră în România; HotNews.ro, 15.02.2011 (Open letter to the authorities and the European Commission)
http://merlin.obs.coe.int/redirect.php?id=13058 RO

Eugen Cojocariu
Radio Romania International

RU-Russian Federation

Law on the Protection of Minors against Information Detrimental to their Health and Development Adopted

On 21 December 2010 the State Duma (parliament) adopted at the third and last reading the bill "О защите детей от информации , причиняющей вред их здоровью и развитию " (On the Protection of Minors against Information Detrimental to their Health and Development) (see IRIS 2009-8/29), which was signed into law by the President on 29 December 2010. It comes into force on 1 September 2012.

The new federal statute shall regulate "products of the mass media, printed materials, audiovisual materials on any material object, computer programmes and databases, as well as information disseminated by means of public performance and on the information telecommunication networks of general access (including Internet and mobile telephony)" (Art. 2). It shall not regulate advertising, or information of "historical, artistic or any other cultural value to society" (Art. 1).

The Statute defines seven categories of information banned for dissemination among minors (persons of below 18 years of age). They range from pornography (also defined in the Statute) to information that contains "bad language" and "negation of family values" (Art. 5 para. 2).

The ratings of the "informational products" related to the age of their consumers shall be as follows: below 6 (years old), 6+, 12+, 16+ and 18+ (Art. 6 para. 3). The Statute introduces mandatory specific labeling of the products including TV programmes (other than live broadcasts) in accordance with their age rating (Arts. 11-12). Airing of products labeled 16+ shall be allowed on TV only from 9 p.m. to 7 a.m., and those labeled 18+ from 11 p.m. to 4 a.m. (Art. 13)

Producers and distributors shall be responsible for marking their products in accordance with the directives of the new law. In particular it encourages them to solicit an expert opinion (that is an opinion of experts as to what category the product belongs) from organizations and experts accredited by the government, specific rules and legal consequences of which are also regulated in the bill. The expert opinion as to computer and other games is mandatory.

• О защите детей от информации , причиняющей вред их здоровью и развитию (Federal Statute On the Protection of Minors against Information Detrimental to their Health and Development, Rossiyskaya gazeta governmental daily No. 297 of 31 December 2010)
http://merlin.obs.coe.int/redirect.php?id=13041 RU

Andrei Richter
Moscow Media Law and Policy Centre

State Permits Cancelled, Watchdog for Collective Societies Abolished

As reported in a previous issue (see IRIS 2011-2/36) the Federal Service to Control Observance of Law in the Sphere of Protection of Cultural Heritage (*Rosokhrankultura*) at the Ministry of Culture was assigned and conducted in 2008-2010 the accreditation procedure in all six fields of collective management, including public performance, broadcasting and cablecasting of musical works.

The results of the accreditation process were recently successfully challenged in the courts by bidders that had failed to obtain state permits. On 25 January 2011 the Arbitration Court of the City of Moscow by resolution on case No. А 40-123953/10-21-756 found the decree of Rosokhrankultura of 24 September 2010 No. 167 that awarded the Russian Union of Rightsholders (RSP) the status of an accredited organization null and void. The permit was to collect fees on all imported electronic devices and blank recordable media on behalf of authors.

On 28 December 2010, the Arbitration Court of the Ninth Circuit by resolution on case No. 09420437-26574/2010- АК found the decrees of Rosokhrankultura of 6 August 2009 No. 136 and 137 that awarded the All-Russian Organization for Intellectual Property (VOIS) the status of an accredited organization to collect fees on behalf of performers and producers of phonogrammes null and void. Both court decisions were made on the grounds that the procedures used in the accreditation were not in accordance with the provisions of the law, in particular Rosokhrankultura did not provide reasons for the refusal of permits to the competing applicants that lost in the tender. The decisions ordered Rosokhrankultura to conduct new tenders based on the earlier applications. Meanwhile the fees that are to be collected without collecting societies should be deposited in special accounts.

As of today only two of the four organisations keep the status of accredited organizations. They are the Russian Authors' Society (RAO) and the Partnership to Protect and Manage Rights in the Sphere of Arts (UPRAVIS).

Meanwhile on 9 February 2011 President Dmitry Medvedev of the Russian Federation signed the decree "On the issues of Ministry of Culture" which effectively abolishes Rosokhrankultura and merges its functions directly with those of the Ministry of Culture.

• Российская Федерация - Арбитражный суд г . Москвы - Решение По делу № А *40-123953/2010* (Arbitration Court of the City of Moscow, resolution on case No. А 40-123953/10-21-756, 25 January 2011)
http://merlin.obs.coe.int/redirect.php?id=13091 RU

• Вопросы Министерства культуры Российской Федерации (Decree of the President On the issues of Ministry of Culture)
http://merlin.obs.coe.int/redirect.php?id=13040 RU

Andrei Richter
Moscow Media Law and Policy Centre

SK-Slovakia

Development and Progress in the Field of Media

On 18 February 2011 the Minister of Culture of the Slovak Republic (SR) welcomed representatives of the Executive Board of the International Press Institute (hereinafter: "IPI Executive Board") to a meeting, the aim of which was to provide the latter with information on developments in the Slovak media sector.

These developments particularly concern the Draft Bill amending Act No. 167/2008 Coll. on Periodicals and News Agency Services and the Amendment and Supplementing of Certain Acts (hereinafter referred to as "Press Act"; see IRIS 2008-5/29), the Act No. 308/2000 Coll. on Broadcasting and Retransmission and on Amendments to the Act No. 195/2000 Coll. on Telecommunications, as amended (hereinafter: "Amendment"), as well as other important changes in the field of media in the SR, in particular the merger of the Slovak Television and Slovak Radio into a single public institution called Radio and Television of Slovakia ("RTS") proposed by the Minister of Culture (see IRIS 2011-2/39).

The relevant Amendment to the Press Act proposed by the Ministry of Culture introduces several changes to the current regulation. Most importantly it shall restrict the right of public officials to reply, in accordance with a statement relating to the performance of their function (s. 8 (2) of the relevant Amendment). In order for clarity and exactness to be achieved, the Amendment provides a legal definition of the term "public official" for the purposes of the relevant Act. In accordance with the Explanatory Memorandum of the Amendment the term "public official" includes representatives of political power elected either directly by citizens or appointed to office on the grounds of parliamentary election results, as well as head representatives of political parties and movements specifically enumerated in s. 8 (3) of the Amendment, namely the

President of the SR, Members of the National Council of the SR, Members of the European Parliament elected in the SR, Members of the Government of the SR, mayors of municipalities, etc. However, "they (public officials) will have the right to reply as private individuals," said the Minister of Culture.

In this regard, pursuant to the respective Amendment, it shall be possible to request the publication of an answer to an untrue, incomplete or distorting factual statement concerning the honour, dignity or privacy of a natural person or the name or good reputation of a legal entity. It is interesting to note that, according to the current Press Act, any statement (i.e., either untrue or true relating to the particular natural person or legal entity) is a subject matter of the right to reply.

The right to monetary compensation in the case where a correction, answer or additional announcement is not published or some of the conditions necessary for its publishing are not met, shall be abolished under the Amendment. In addition, should the publishing of a correction, answer or additional announcement cause the commitment of a crime, offence or other administrative offence or be contrary to good manners or the interests of a third party protected by law, the publisher of periodicals and press agencies shall not be obliged to publish these. For the sake of completeness it is to be noted that the relevant Amendment has currently been sent to the Government for discussion.

Jana Markechová
Markechova Law Offices

DE-Germany

Act on Legally Binding Communication via "De-Mail" Adopted

With the votes of the ruling coalition, the German *Bundestag* (lower house of parliament) adopted the *Gesetz zur Regelung von De-Mail-Diensten und zur Änderung weiterer Vorschriften* (Act on the regulation of "De-Mail" services and amending other provisions) on 24 February 2011. The creation of the "De-Mail" e-mail service is designed to enable German citizens to send messages via the Internet in a secure, reliable and verifiable way with a single user account. Use of "De-Mail" is optional for citizens. Service providers can charge fees for carrying "De-Mails", although the cost must be significantly lower than standard postage charges (see IRIS 2009-4/103).

The controversial Federal Government bill of 23 November 2010 had been amended in several places by the *Bundestag's* Internal Affairs Committee. This process had also taken into account amendments proposed by the *Bundesrat* (upper house of parliament) as part of its role in the legislative process. However, the committee's proposal, which has now been adopted by the parliament, ignored one essential objection. Both the *Bundesrat* and opposition parties had complained that no provision had been made for end-to-end encryption in order to guarantee secure communication. Under the new Act, e-mails are only encrypted while they are travelling and are also decrypted for a short time in order to check for viruses or unsolicited advertising (spam). The Federal Government refused to include the obligation to encrypt e-mail content so that only the sender and receiver can see it. It referred to the fact that the necessary software, although it had been available for a long time, was not used by many people, and that the "De-Mail" service was designed to offer basic security functions only. However, users could also incorporate end-to-end encryption themselves at any time.

Nevertheless, improved data protection rules were adopted, with strict limitations on the use of data, subject to criminal penalties. Accredited service providers may now only collect and use consumers' personal data for the purposes of providing and operating De-Mail. General data protection rules, which allow data to be used for other purposes, are only applicable on a subsidiary basis and therefore do not apply in view of the aforementioned limitations.

The opposition voted unanimously against the bill, since it thought essential points had still not been adequately addressed. The *Bundesrat* will now vote on it on 18 March 2011. However, it can no longer veto the Act, since the Federal Government - contrary to the opinion of the *Bundesrat* - considers that the *Bundesrat's* assent is not required.

- *Gesetzentwurf der Bundesregierung (BT-Drs. 17/3630) vom 8. November 2010* (Federal Government bill (BT-Drs. 17/3630) of 8 November 2010)
http://merlin.obs.coe.int/redirect.php?id=13072 DE
- *Beschlussempfehlung des Innenausschusses des Bundestages (BT-Drs. 17/4893) vom 23. Februar 2011, mit den angenommenen Änderungsvorschlägen* (Recommendation of the *Bundestag* Internal Affairs Committee (BT-Drs. 17/4893) of 23 February 2011, with proposed amendments)
http://merlin.obs.coe.int/redirect.php?id=13073 DE

Sebastian Schweda
Institute of European Media Law (EMR), Saarbrücken/ Brussels

IT-Italy

Related Rights of Performers - Reestablishment of the Collecting Society IMAIE

The collecting society IMAIE (*Istituto mutualistico*

artisti interpreti esecutori) was re-established on 30th April 2010 by Decree-Law no. 64/2010 and converted into Law no. 100/2010. The new IMAIE took on the duties and functions of the former IMAIE on 14th July 2009, and its first duty was to distribute compensation to among the performers. Some employees from the former IMAIE have been transferred to the new IMAIE, and in April 2011, the new IMAIE launched its newly designed website www.nuovoimaie.it with new contents.

On 28th May 2009, the Prefect of the Province Rome confirmed by Decree that the former IMAIE had been dissolved, and the liquidators of the former IMAIE stated that the same's assets were not sufficient to settle its debts. The former IMAIE was responsible for the distribution of compensation to performers, which complemented the activities of the collecting society SIAE (*Società Italiana degli Autori e Editori*) that continues to collect and distribute compensation to the creators of original works. Private copying levy was introduced in 1992. This levy is due for digital reproduction equipment, devices and media and has to be paid by the manufacturer, importer or distributor to SIAE, which has to transfer the amount of compensation due to the performers to IMAIE (*compenso per la copia privata* in accordance with art. 71-sexies and 71-septies of Italian Copyright Law no. 633/41, *legge d'autore*, known as LDA). Since 1975, performers have also been entitled to fair compensation for communication to the public. These amounts are collected by SIAE from the users and transferred to the collecting society IMAIE (*equo compenso*, art. 73 and 84 LDA).

Up until its dissolution, the former IMAIE was not able to properly distribute compensation to performers. In fact, several million Euro were never distributed, mainly due to the fact that a large number of performers remain unidentified. Until 18th February 2010 the liquidators of the former IMAIE informed identified performers about their claims for compensation and commenced distribution. It is important to note that it is in the duty of the individual performer to request payment of any credits which were accrued until 14th July 2009 towards the former IMAIE.

The distribution of compensation after 14th July 2009 will be the duty of the new IMAIE. In the future, a list of identified performers shall be published on the website www.nuovoimaie.it of the new IMAIE on a regular basis.

- Decreto del Prefetto di Roma del 28 maggio 2009 (Decree of the prefect of Rome dated 28th May 2009) IT
- Art. 7, testo coordinato del Decreto-Legge 30 aprile 2010, n. 64 (Coordinated version of decree-law no. 64 dated 30th April 2010) IT

Hannes Spinell
CBA Studio Legale e Tributario

Agenda

Conference on the Future of the Audiovisual Industry
19 - 20 April 2011 Organiser: Ministry of National Development Venue: Budapest Information & Registration: E-mail: audiovisual.conference@nfm.gov.hu
http://www.eu2011.hu/event/conference-future-audiovisual-industry

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