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IRIS
Legal Observations
of the European Audiovisual Observatory

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INTERNATIONAL

European Court of Human Rights: Lack of safeguards for the use by journalists of information from the internet

On 5 May 2011 the European Court of Human Rights (ECtHR) held that both the lack of safeguards for the use by journalists of information from the internet and the imposition of an obligation to apologise in defamation cases constitute a violation of Article 10 of the European Convention on Human Rights (ECHR).

A local Ukrainian daily newspaper received an anonymous letter that had been downloaded from the homepage of a news service. The letter's author accused several senior officials of engaging in unlawful and corrupt activities. The newspaper published the letter and added a note that it might not be genuine. One of the officials accused in it brought defamation proceedings against the newspaper's editorial board and editor-in-chief. They were ordered to pay damages, to retract the parts of the letter concerning the plaintiff and to publish an apology for publishing the letter. The Court stressed that they could not claim the exemption from civil liability provided for in Ukrainian law for the reprinting of already published information because section 42 of the Press Act only referred to printed works. However, the Court went on, the internet site on which the letter at issue had been published did not constitute a printed work within the meaning of the Press Act. Having lost their case before the domestic courts, the members of the editorial board and the editor-in-chief filed an application with the ECtHR alleging a violation of their freedom of expression (Article 10 ECHR).

In its decision, the ECtHR emphasised that the exercise of the vital function of the press as a "public watchdog" is seriously impeded when there are no national provisions enabling journalists to use information from the internet without exposing them to the risk of punishment. The lack of relevant provisions constitutes a breach of Article 10 § 2 ECHR, which permits statutory restrictions on freedom of expression.

The ECtHR also established that Ukrainian law does not provide for an obligation to publish an apology in a defamation case. In its case-law, it noted, the Court has accepted that the domestic courts are entitled to interpret rules that impose an obligation to retract statements and publish rectifications to mean that they also comprise the publication of an apology. However, the Ukrainian courts undertook no such interpretation of Ukrainian law but ordered the publication of an apology without giving any reasons.

• ECtHR judgment of 5 May 2011, application no. 33014/05
http://merlin.obs.coe.int/redirect.php?id=17781 EN

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COUNCIL OF EUROPE

European Court of Human Rights: RTBF v Belgium

In a judgment of 29 March 2011 the European Court found a violation of Article 10 of the European Convention on Human Rights in the case Radio-télévision belge de la communauté française (RTBF) v Belgium. The case concerned an interim injunction ordered by an urgent-applications judge against the RTBF, preventing the broadcasting of a programme on medical errors and patients' rights. The injunction prohibited the broadcasting of the programme until a final court decision in a dispute between a doctor named in the programme and the RTBF. As the injunction constituted an interference by the Belgian judicial authorities with the RTBF's freedom of expression, the European Court in the first place had to ascertain whether that interference had a legal basis. Whilst Article 10 does not prohibit prior restraints on broadcasting, such restraints require a particularly strict legal framework, ensuring both tight control over the scope of bans and effective judicial review to prevent any abuse. As news is a perishable commodity, delaying its publication, even for a short period, might deprive it of all its interest. In ascertaining whether the interference at issue had a legal basis, the Court observed that the Belgian Constitution authorised the punishment of offences committed in the exercise of freedom of expression only once they had been committed and not before. Although some provisions of the Belgian Judicial Code permitted in general terms the intervention of the urgent-applications judge, there was a discrepancy in the case law as to the possibility of preventive intervention in freedom of expression cases by that judge. The Belgian law was thus not clear and there was no constant jurisprudence that could have enabled the RTBF to foresee, to a reasonable degree, the possible consequences of the broadcasting of the programme in question. The European Court observed that, without precise and specific regulation of preventive restrictions on freedom of expression, many individuals fearing attacks on them in television programmes - announced in advance - might apply to the urgent-applications judge, who would choose different solutions to their cases and that this would not be conducive to preserving the essence of the freedom of imparting information. Although the European Court considers a different treat-

ment between audiovisual and print media not unacceptable as such, e.g., regarding the licensing of radio and television, it did not agree with the Belgian Court of Cassation decision to refuse to apply the essential constitutional safeguard against censorship of broadcasting. According to the European Court, this differentiation appeared artificial, while there was no clear legal framework to allow prior restraint as a form of censorship on broadcasting. The Court was of the opinion that the legislative framework, together with the case-law of the Belgian courts, did not fulfil the condition of forseeability required by the Convention. As the interference complained of could not be considered to be prescribed by law, there had thus been a violation of Article 10 of the Convention. The judgment contains an important message to all member states of the European Convention on Human Rights: prior restraints require a particularly strict, precise and specific legal framework, ensuring both tight control over the scope of bans both in print media and in audiovisual media services, combined with an effective judicial review to prevent any abuse by the domestic authorities.

• *Arrêt de la Cour européenne des droits de l'homme (deuxième section), affaire* RTBF c. Belgique *(n°50084/06) du 29 mars 2011* (Judgment by the European Court of Human Rights (Second Section), case of RTBF v Belgium (no. 50084/06) of 29 March 2011)
http://merlin.obs.coe.int/redirect.php?id=13171 FR

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EUROPEAN UNION

Court of Justice of the European Union: Advocate General Cruz Villalón Delivers Opinion on Scarlet v Sabam

On 14 April 2011, ECJ Advocate General Cruz Villalón delivered his opinion on case C-70/10, involving a reference for a preliminary ruling from the Cour d' appel de Bruxelles in Scarlet Extended SA v Société Belge des auteurs, compositeurs et éditeurs (SABAM). The referred question concerns whether or not EU law permits member states to authorise national courts to issue injunctions against Internet Service Providers (ISPs) obliging them to introduce, for all their customers, in abstracto and as a preventive measure, at the cost of the ISP and for an unlimited period of time, a filtering system with the objective of identifying copyright-protected works exchanged on its networks and blocking their transfer.

The case involves an appeal by ISP Scarlet against a judgment of the *Tribunal de Première Instance de Bruxelles* ordering the implementation of such measures impeding the sharing of files containing musical works in the repertoire of Sabam, a Belgian collective rights management society (see IRIS plus 2009-4).

The AG noted that such a system would, by definition, filter all data communications passing through Scarlet's network, while blocking all data exchanges involving prohibited copyrighted content either at the point at which they are requested or at the point at which they are sent. As a result, the court order constitutes a general monitoring obligation, prohibited by Article 15 of the E-Commerce Directive, while it is capable of affecting the communications of an unspecified number of natural or legal persons, whether or not they are clients of Scarlet and irrespective of their place of residence. Moreover, given the in abstracto and preventive character of the injunction, blocking will not rest on a court ruling confirming the infringing nature of the material or the imminent possibility of infringement.

In view of these considerations, AG Villalón concluded that the deployment of such a filtering system would constitute a restriction of the right to respect for the privacy of communications, and the right to protect personal data and freedom of information, as protected by the Charter of Fundamental Rights. Such restrictions may be permissible on the condition that they be "in accordance with the law" and must, in accordance with the case law of the European Court of Human Rights, meet the requirements concerning the "quality of the law". Consequently, such a restriction would only be permissible if it were adopted on a national legal basis, which was accessible, clear and predictable. This, according to the AG, is not the case for the Belgian injunction at issue, which is both special and new. Neither the filtering system, which is intended to be applied on a systematic, universal, permanent and perpetual basis, nor the blocking mechanism, which can be activated without any provision being made for the persons affected to challenge it or object to it, are, according to the AG, coupled with adequate safeguards and should therefore be considered impermissible.

• *Avocat général Pedro Cruz Villalón, 14 avril 2011, affaire C-70/10,* Scarlet Extended SA c. Société belge des auteurs compositeurs et éditeurs (Sabam) (AG M. Pedro Cruz Villalón, 14 April 2011, Case C-70/10, Scarlet Extended SA v Société belge des auteurs compositeurs et éditeurs (Sabam))
http://merlin.obs.coe.int/redirect.php?id=13172 FR

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European Commission: Commission Approves Danish Financing for Public Radio Channel FM4 and Public Service Broadcaster TV2

In two press releases on 23 March 2011 and 20 April 2011, the European Commission reported on its recent decisions approving Danish financing measures.

The first decision concerns the approval of funding for the new public radio channel FM4 using financial resources from the license fee. According to the Commission, this could constitute State aid since the amount of DKK 800,000 is paid out of the budget of the Danish State and favours a single undertaking. However, when the four criteria from the Altmark judgment are met, State measures compensating public service costs do not qualify as State aid under Article 107(1) TFEU. Since in this particular case the Commision does not consider itself to be in a position to determine whether the fourth condition is met, it assessed the compatibility of the measure with the internal market under Article 106 (2) TFEU and the Communication on the application of State aid rules to public service broadcasting.

The Commission concluded that the provider of FM4 will perform a service which is clearly in the public interest and that the compensation for this service will cover its actual costs and a reasonable profit. Further, the operator of the new channel will be appointed by an open tender procedure that will take into account the quality of the proposed business plan, the programme profile and the amount of funding requested. The conditions of the Broadcasting Communication are met as well and the compensation does not affect the development of trade to an extent that would be contrary to the interests of the Union. Instead, the measure intends to promote competition on the Danish public service radio market, since this market is currently dominated by the public broadcaster DR, which has an audience share of almost 80%. Thus, the project is in line with EU State aid rules and therefore approved by the Commission.

The second press release concerns two decisions regarding the funding of the Danish public service broadcaster TV2.

The first of these regards the funding mechanism that was in place between 1995 and 2002. The case had started already in 2003 with a probe by the Commission into the possible overcompensation of TV2 (see IRIS 2009-2/4 for an overview of the proceedings before both the Court of First Instance and the Commission). Until 2004, TV2 was financed by both license fees and advertisement income. After 2004, the only income has been provided by the commercial channels and advertising revenues. Whereas a previous decision of the Commission in 2004 declared the funding mechanism illegal, the Commission now concluded that the State compensation for public service obligations was necessary and proportionate. Moreover, the Commission stressed the importance of public service broadcasters for the cultural, democratic and public debate in the Member States.

The second decision authorises restructuring aid for TV2. This aid is intended to restore the broadcaster's long term viability. TV2 will put into practice a new business model that enables the broadcaster to levy subscription payments for its main public service channel as of 2012. Provided that TV2 becomes viable without continued State support, the Commission concluded that the restructuring plan is in conformity with the rescue and restructuring aid guidelines.

- "State aid: Commission approves aid for Danish public service broadcaster TV2", IP/11/497, Brussels, 20 April 2011
http://merlin.obs.coe.int/redirect.php?id=13173 DE EN FR DA
- "State aid: Commission approves Danish Government financing for new public radio channel FM4", IP/11/350, Brussels, 23 March 2011
http://merlin.obs.coe.int/redirect.php?id=13174 DE EN FR DA
- European Commission decision of 23 March 2011 regarding Danish radio channel FM4, C(2011)1376 final, Brussels, 23 March 2011
http://merlin.obs.coe.int/redirect.php?id=13175 EN

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European Commission: Investigation into Alleged Anti-Competition Practices by Collective Rights Management Organisations Closed

On 11 March 2011, the European Commission annnounced that it has closed its preliminary probe into anti-competitive practices by collective rights management organisations (CMOs) in Hungary and Romania.

The Commission feared that SCAPR, the international association of national performers' collective management organisations, EJI, the national CMO in Hungary, and CREDIDAM, the national CMO in Romania, had been pursuing an anti-competitive policy regarding the membership of the organisations. Leading to restricted competition in the European Union and especially in Hungary and Romania, this would infringe Article 101 of the Treaty on the Functioning of the European Union.

The investigation followed a complaint by the UK company Rights Agency, which stated that SCAPR's "Policy and Guidelines" contained membership barriers. Also, according to Rights Agency, CREDIDAM and EJI inflicted discriminative administrative requirements

on foreign performers wishing to register to become members of the aforementioned organisations.

However, following the Commission's investigation, the above-mentioned organisations made changes to their membership policy. After discussions with the Commission, SCAPR changed its recommendations on membership policy and now actively promotes the adoption of the new model agreement by its members. CREDIDAM and EJI amended their administrative policies and their requirements for Rights Agency's clients wishing to register. Subsequent to these changes, Rights Agency withdrew its complaint and the Commission closed its investigation.

The Commission Vice-President in charge of competition policy, Joaguín Almunia, welcomed the changes, although he stated that the Commission would continue to keep an eye on the sector in order to make sure that the antitrust provisions of the European Union are followed and the development of a single market in the field concerned is ensured.

• "Antitrust: Commission welcomes steps taken by collective rights management bodies in Hungary and Romania to improve competition", IP/11/284, Brussels, 11 March 2011
http://merlin.obs.coe.int/redirect.php?id=13178 DE EN FR HU RO

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European Commission: Working Paper Commenting on the "Opinion of European Academics on Anti-Counterfeiting Trade Agreement"

The European Commission's Directorate General for Trade has issued a working paper that comments on the "Opinion of European Academics on Anti-Counterfeiting Trade Agreement", released in January 2011.

In that Opinion, the academics highlight several specific aspects of the Anti-Counterfeiting Trade Agreement (ACTA), namely those related to the compatibility of its provisions with EU law and to safeguarding a balance between the interests of different parties. The signatories wrap up their statement by inviting the European institutions and the national legislators and governments to carefully consider the points stressed and, "as long as significant deviations from the EU acquis or serious concerns on fundamental rights, data protection, and a fair balance of interests are not properly addressed, to withhold consent."

In its working paper, the Commission holds that, even though ACTA is not entirely consistent with existing EU law, the compatibility of the Agreement with the latter does not raise problems. The Commission recognises that the ACTA text is drafted in more general terms than the ones to be found in the *acquis communautaire*. According to the Commission, this is desirable because it provides ACTA with the flexibility appropriate to an international instrument. Moreover, the Commission is of the opinion that the Agreement manages to strike a balance between all the rights and interests involved, which also takes into account different legal traditions.

Because ACTA is deemed compatible with EU law, the Commission declared that it will not require changes to existing EU legislation. By the same token, it is the Commission's understanding that the Agreement will not encompass different interpretations of the acquis. In any case, the Directorate-General for Trade concluded that ACTA has been extensively debated - something that should enable informed consent from the competent institutions.

• Commission Services Working Paper, Comments on the "Opinion of European Academics on Anti-Counterfeiting Trade Agreement", 27 April 2011
http://merlin.obs.coe.int/redirect.php?id=13181 EN

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NATIONAL

AT-Austria

BKS Submits Questions to ECJ on Interpretation of TWF Directive

In a decision of 31 March 2011, the Austrian *Bundeskommunikationssenat* (Federal Communications Senate - BKS) submitted questions to the Court of Justice of the European Union (ECJ) as part of the preliminary ruling procedure concerning the interpretation of Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (Television without Frontiers Directive).

The case before the BKS concerned the depiction of a couple dancing from the left to the centre of the bottom third of the screen, together with the caption "*Dancing Stars ab Freitag 20:15*" (Dancing Stars starts Friday 8.15 p.m.) during a feature film shown on public service television. The *Publikumsrat* (Viewers'

Council) of *Österreichischer Rundfunk* (Austrian public service broadcaster - ORF) considered this to represent advertising for an ORF production and therefore as self-advertising, a form of commercial communication. It thought it was clearly designed to boost viewer ratings for Dancing Stars, make the programme more attractive for advertisers and thereby generate greater advertising revenue. The advertisement had not been labelled as such. On the other hand, ORF argued that it had been a programme announcement which should be treated as a programming element rather than as advertising.

The BKS held that, in the present proceedings, the only legal question to be addressed was whether programming elements in which the TV broadcaster referred to its own programmes were covered by the advertising rules laid down in Article 13(1) of the 2007 version of the *ORF-Gesetz* (ORF Act) and, if so, whether they should be separated from other programme material in accordance with Article 13(3) *ORF-Gesetz* and whether the rules on the insertion of advertising set out in Article 14(7) and (8) *ORF-Gesetz* applied.

Since the relevant national legislation had been introduced in order to implement Directive 89/552/EEC, the BKS adjourned the proceedings and referred these questions to the ECJ.

• *Bescheid des BKS vom 31. März 2011 (GZ 611.942/0002-BKS/2011)*
(BKS decision of 31 March 2011 (GZ 611.942/0002-BKS/2011))
http://merlin.obs.coe.int/redirect.php?id=13197 DE

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National Assembly Adopts Data Retention Laws

On 28 April 2011, the Austrian *Nationalrat* (National Assembly) approved, with only minor amendments, government bills designed to implement Data Retention Directive 2006/24/EC (see IRIS 2011-4/9). The regulations should enter into force on 1 April 2012.

Following controversial debates in the relevant committees, the bill amending the 2003 *Telekommunikationsgesetz* (Telecommunications Act - TKG) was submitted to the plenary session for a vote on 7 April 2011 and was adopted with the support of the government coalition parties (ÖVP and SPÖ). The opposition parties (FPÖ, Greens and BZÖ) voted unanimously against the bill, raising serious concerns about the infringement of basic rights. They also criticised the fact that the bill went far beyond the requirements of the Directive. However, the Transport Minister argued that it only represented the minimum level of implementation. She referred to rules and requirements such as the short data retention period and the provision of a serious criminal offence and a judicial decision designed to guarantee the greatest possible protection of basic rights. According to a committee conclusion that had been accepted by the government majority, the committee assumed that a full record of access to data would be kept. In this context, there was support for the creation of a specific body to deal with all information requests.

The government bill amending the 1975 *Strafprozessordnung* (Code of Criminal Procedure - StPO) and the *Sicherheitspolizeigesetz* (Police Act - SPG), which the *Justizausschuss* (Justice Committee) had already approved with minor amendments on 23 March 2011, was also adopted. The amendments to these acts are designed to regulate the authorities' access to stored data. Prior to the decision, a public hearing had been held with five chosen experts, the majority of whom were critical of the proposed text. For example, the Scientific Director of the Ludwig Boltzmann Institute of Human Rights (BIM), which had prepared the original draft, described it as "terminological juggling, in view of the opacity of the wording and references in the version under discussion. The only expert to speak in favour of the draft was the Vice-President of the Supreme Court. He thought it upheld the rule of law and referred to the need for effective criminal prosecution as a condition for the exercise of basic rights.

Both acts must now be approved by the *Bundesrat* (upper house of parliament), although this is unlikely to pose a problem in view of the large majority held by the government parties in the lower house. The Greens announced plans to lodge an individual complaint to the *Verfassungsgerichtshof* (Constitutional Court) against the new regulations.

• *Entwurf zur Änderung des TKG-2003* (Bill amending the 2003 TKG)
http://merlin.obs.coe.int/redirect.php?id=13195 DE
• *Entwurf zur Änderung der StPO und des SPG* (Bill amending the StPO and SPG)
http://merlin.obs.coe.int/redirect.php?id=13196 DE

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BA-Bosnia And Herzegovina

Revision of the Framework for Audiovisual Media Content Regulation

On 11 April 2011, the *Regulatorna agencija za komunikacije* (Communications Regulatory Agency) launched a public consultation on several revised regulatory documents, most prominent of which are the

Draft Code on Audiovisual Commercial Communications and Commercial Communications in Radio Media Services and the Draft Code on Audiovisual and Radio Media Content.

The revision principally aims at bringing the existing regulation into line with the EU Audiovisual Media Services Directive (AVMSD). A two-tiered approach to the regulation of audiovisual media content has been established. In addition, its scope of application is extended, where appropriate, to radio media services as well.

In this vein the current Broadcasting Code of Practice and the Code on Advertising and Sponsorship have been substantially amended as well as renamed in order to cover all audiovisual and radio media services, including on-demand services. The Draft Codes introduce some substantial novelties to content regulation of both audiovisual and radio media services in Bosnia and Herzegovina. First and foremost, they introduce new terminology and concepts, such as audiovisual/radio media services, audiovisual/radio media services on demand, audiovisual commercial communication and product placement.

The Draft Code on Audiovisual Commercial Communications and Commercial Communications in Radio Media Services introduces and defines misleading and comparative audiovisual commercial communication, as well as split-screen, virtual advertising and product placement. In line with the AVMSD, limits on the quantity of television advertising are now more flexible: daily limits have been abolished, but the hourly limit for advertising and teleshopping spots remains. New provisions on sponsoring introduce the obligation of media service providers to clearly identify sponsored programmes at the beginning, during and/or the end of the programmes, as well as the obligation to inform viewers of the existence of a sponsoring agreement. Product placement will be allowed under certain conditions in cinematographic works, films and series made for audiovisual or radio media services, sports programmes and light entertainment programmes. The proposed visual symbol for the identification of product placement consists of the capital letters PP inside a circle which will appear in the bottom right corner of the screen for at least 30 seconds at the start and the end of the programme, as well as after advertising breaks.

The most prominent change in the Draft Code on Audiovisual and Radio Media Content concerns the protection of minors. For the first time, a uniform system for audiovisual content classification and rating is introduced, the proposed categories being "12+", "16+" and "18+". While acknowledging full editorial responsibility of a media service provider for the classification of content, there are some indicators given for each category according to the level of potential harm. In the case of on-demand audiovisual and radio media services, provisions have been included to ensure that minors are not able to see or hear content which might seriously impair their physical, mental and moral development. The Draft Code also introduces more detailed provisions on the right of reply and the participation of the audience in audiovisual and radio programmes such as more transparency and security, particularly in relation to premium rate services.

The Draft documents are open for public consultation until the end of May 2011.

- Nacrt - Kodeks o audiovizuelnim komercijalnim komunikacijama i komercijalnim komunikacijama u medijskim uslugama radija (Draft Code on Audiovisual Commercial Communications and Commercial Communications in Radio Media Services)
http://merlin.obs.coe.int/redirect.php?id=13211 BS
- Nacrt - Kodeks o audiovizuelnim medijskim uslugama i medijskim uslugama radija (Draft Code on Audiovisual and Radio Media Content)
http://merlin.obs.coe.int/redirect.php?id=13211 BS

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Umbrella Agreement between Broadcasters and Holders of Neighbouring Rights

On 27 April 2011 the first umbrella agreement between the Association of Bulgarian Broadcasting Operators (ABBRO) and the collecting society of the phonogram producers, music video producers and music performers, PROPHON, was signed. It is a result of two-year negotiations during which significant numbers of the broadcasters did not pay the due remuneration for broadcasting phonograms and music videos in their programmes.

The agreement covers only the use of the PROPHON repertoire by radio broadcasters during 2009 and 2010, but it is a very symbolic act. It is expected that further negotiations are to be started in order to conclude such an agreement on the use of the PROPHON repertoire in television programmes for the same period and an agreement about the tariff of the society on grounds of the latest amendments to the Закон за авторското право и сродните му права (Bulgarian Copyright and Neighbouring Rights Act) of 25 March 2011 (see IRIS 2011-5/9).

According to the new Art. 40e of the Act the amounts of the remuneration due for the use of protected works shall be preliminarily discussed with the representative organisations of users if it is practically possible. In case the organisations do not manage to sign an agreement within three months the Minister of Culture shall appoint a special commission in which representatives of both parties and three experts nominated by both of them participate. If the

parties cannot reach consent on the three experts, the Minister of Culture shall choose them from a list of mediators. The commission shall prepare a statement on the tariff filed by the collecting society within one month and based on this the Minister of Culture confirms or refuses to confirm the suggested tariff.

The earlier communication between ABBRO and PROPHON was not that friendly and the expectations towards such an agreement were not very optimistic. That is why the agreement of 27 April was interpreted by both parties and the institutions as a very important sign for starting a new period of bilateral relations. It renewed the hope that Bulgarian broadcasters would now follow the law and in addition disseminate their programmes with agreed neighbouring rights.

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Constitutional Court Struck Down Parts of the Data Retention Law

A campaign of the civic rights organisation Iuridicum Remedium (IuRe) against the public surveillance of everyday communication resulted in considerable success: spying on communication was judged unconstitutional. On 31 March 2011 the Constitutional Court agreed with IuRe privacy protection activists and a group of 51 MPs, who in March 2010 had submitted a proposal calling for a repeal of the relevant sections of the Electronic Communications Act implementing obligations on mobile operators and internet providers to retain communications data for the purpose of police investigations.

The Electronic Communications Act Nr. 127/2005 Coll. (in force since 1 May 2005), as amended in 2008, serves as the transposition measure of the Directive 2006/24/EC on the retention of data generated or processed in connection with the provision of public electronic communications services or public communications networks, which requires the member states to gather telecommunications connection data in order to combat serious crime, in particular terrorism and organised crime. The judicial challenge to the Act related to the information showing when and with whom people were communicating.

The Court overturned section 97 paras. 3 and 4 of the Electronic Communications Act, which stipulated that telecommunications companies have to maintain records of their customers Internet and telephone use (including phone calls, faxes, text messages, Internet activities and emails) for up to twelve months. According to the Court, the ambiguous data retention rules resulted in measures, applied for requesting and using retained data, "being overused by authorities engaged in criminal proceedings for purposes related to investigations in common, i.e., less serious crimes". The Constitutional Court also regards certain provisions of the Criminal Act concerning the use of such data by investigation authorities as highly questionable and called on MPs to consider the modification of these provisions.

According to the Court, it will be necessary to consider each individual case in which data have already been requested in order to be used in criminal proceedings - with respect to the principle of proportionality regarding the infringement of the right to privacy. The decision implies that electronic communication providers are no longer obliged by any law to retain such data for the use of the entitled authorities; the respective databases should be deleted.

The ruling is of great importance not only for the Czech Republic but for the EU as a whole, since there is currently an evaluation process underway assessing the impact of, and compliance with, higher ranking norms of the Data Retention Directive.

• Nález ústavního soudu ČR Nr. Pl. ÚS 24/10 (Decision of the Constitutional Court of the Czech Republic of 31 March 2011)
http://merlin.obs.coe.int/redirect.php?id=13184 CS

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DE-Germany

BayVGH Rules on State Sports Betting Monopoly

On 21 March 2011, the *Bayerische Verwaltungsgerichtshof* (Bavarian Administrative Court - BayVGH) decided, in a temporary injunction procedure, that the state monopoly on sports betting based on the *Glücksspielstaatsvertrag* (Inter-State Gambling Agreement), which is valid until the end of 2011, does not comply with European legislation (see cases C-447/08 and C-448/08).

In the court's opinion, due to the steadily increasing number of licensed slot machines in amusement arcades, which can be much more addictive than sports betting, the objective of systematically and coherently limiting betting and gambling is not being achieved. Therefore, the state monopoly on gambling represents a disproportionate restriction of the freedom to provide services and the freedom of establishment in Europe and can no longer be used as the basis for prohibition orders.

In the case at hand, a sports betting provider's application for the temporary suspension of a prohibition order was nevertheless rejected because the court could not judge conclusively whether the conditions for the award of a licence had been met, regardless of the state monopoly on sports betting.

In decisions issued on 1 April 2011 in two other temporary injunction procedures, the BayVGH also ruled that the ban on Internet gambling still applied, regardless of whether the state monopoly of sports betting was valid. The Internet ban was not so inextricably linked to the state monopoly on sports betting that, if the said monopoly was incompatible with basic freedoms under EU law, the ban would also have to be considered invalid. Taking all gambling sectors into account, it was considered sufficiently systematic and coherent under the requirements of the Court of Justice of the European Union.

• *Beschluss des BayVGH vom 21. März 2011 (Az. 10 AS 10.2499)* (BayVGH decision of 21 March 2011 (case no. 10 AS 10.2499))
http://merlin.obs.coe.int/redirect.php?id=13200 DE

• *Beschluss des BayVGH vom 10. April 2011 (Az. 10 CS 10.589)* (BayVGH decision of 10 April 2011 (case no. 10 CS 10.589))
http://merlin.obs.coe.int/redirect.php?id=13201 DE

• *Beschluss des BayVGH vom 1. April 2011 (Az. 10 CS 10.2180)* (BayVGH decision of 1 April 2011 (case no. 10 CS 10.2180))
http://merlin.obs.coe.int/redirect.php?id=13202 DE

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BayVGH Rules on Broadcast Time Restrictions for "MTV I want a famous face"

On 23 March 2011, the *Bayerische Verwaltungsgerichtshof* (Bavarian Administrative Court - BayVGH) endorsed the decision to restrict the broadcast times of two episodes of the programme "MTV I want a famous face" to between 11pm and 6am, thereby upholding the appeal of the *Bayerische Landeszentrale für neue Medien* (Bavarian Centre for New Media - BLM) on youth protection grounds (see IRIS 2009-10/8).

The decision followed a complaint by the provider of the MTV music channel against the broadcast time restriction imposed by the BLM for several episodes of the "MTV I want a famous face" series, which had been broadcast between 9.30pm and 10.30pm in July and August 2004. In these programmes, young adults underwent plastic surgery in order to look like their respective idols. The broadcast time restriction was based on a principle previously laid down by the *Kommission für Jugendmedienschutz* (Commission for the Protection of Minors in the Media - KJM), under which "TV programmes in which cosmetic surgery is suggested, carried out or filmed for entertainment purposes should, in principle, not be shown before 11pm". Such programmes were intrinsically likely to harm the development of children and young people. During the formative phase in which they were developing their own identity, it was "suggested to young viewers that outward appearance was all that mattered and that this could be changed at will. They could be given the impression that self-esteem problems could be solved by cutting off, reducing or increasing the size of certain parts of their body, or undergoing liposuction or injections."

The BayVGH ruled in the BLM's favour. It held that the BLM could base the broadcast time restriction on the provisions of the *Staatsvertrag über den Schutz der Menschenwürde und den Jugendschutz in Rundfunk und Telemedien* (Inter-State Agreement on the Protection of Human Dignity and Young People in Broadcasting and Telemedia - JMStV). The episodes of the series concerned were likely to significantly affect the development of children and young people into independent, socially active, healthy individuals. In fact, although the KJM had no discretionary power in respect of the application of the JMStV, its expert opinion was binding because it had not been questioned or refuted during the court procedure. Furthermore, although *Freiwillige Selbstkontrolle Fernsehen e.V.* (Voluntary Self-Regulatory Authority for Television - FSF) had previously deemed one of the two episodes suitable for daytime broadcasting, the BayVGH thought that it had no other option since the programme had been changed before it was broadcast in Germany after the FSF had seen its original English-language version.

An appeal against the verdict was permitted.

• *Urteil des VGH vom 23. März 2011 (Az. 7 BV 09.2512 und 7 BV 09.2513)* (Administrative Court ruling of 23 March 2011 (case no. 7 BV 09.2512 and 7 BV 09.2513))
http://merlin.obs.coe.int/redirect.php?id=13204 DE

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OLG München Rules on Overall Agreement Between VG Wort and German Universities

In a decision of 24 March 2011, the *Oberlandesgericht München* (Munich Appeal Court -OLG) ruled on a dispute between the Wort collecting society for authors and publishing companies (VG Wort) and the *Bundesländer* concerning claims under Article 52a of the *Urheberrechtsgesetz* (Copyright Act - UrhG).

The plaintiff, VG Wort, wanted the defendants, the 16 *Bundesländer*, in their role as university providers, to conclude a so-called overall agreement, to be valid

from 1 January 2008, in accordance with the *Urheberrechtswahrnehmungsgesetz* (Copyright Collection Act - UrhWG). The claims were not disputed on the merits.

In its ruling refusing the application, the OLG laid down an overall agreement with effect from 1 January 2008, with tariffs around half way between the amounts suggested by the parties. The OLG ruled that fees should be based on usage rather than a flat rate. It also considered the fees suggested by the plaintiff to be unreasonable and drew up its own fee proposal. Furthermore, it held that it was only necessary to make works available to the public in the sense of the provision if the required part of the work was not made available in digital form under reasonable conditions by the relevant rightsholder for use on the respective institution's network.

The court authorised an appeal to the *Bundesgerichtshof* (Federal Supreme Court) on the grounds that the issues of usage-based fees and the size of those fees were significant for a large number of cases.

- *Pressemitteilung des OLG zum Urteil vom 24. März 2011 (Az. 6 WG 12/09)* (OLG press release on the ruling of 24 March 2011 (case no. 6 WG 12/09))
http://merlin.obs.coe.int/redirect.php?id=13203 DE

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Minister-Presidents' Conference Approves Draft GlüStV

At a special conference held on 6 April 2011, the Prime Ministers of the *Länder* approved the draft amendment to the *Glücksspielstaatsvertrag* (Inter-State Gambling Agreement - GlüStV), which is currently valid until the end of 2011.

A key aspect of the draft is an experimental clause, valid initially for seven years, under which seven national sports betting licences will be granted. The extent to which the objectives of the licensing system have been achieved will be evaluated five years after it comes into force. The licence fee will be 16.66% of all stakes. Licence-holders must undertake not to offer betting services that are illegal in Germany and only to allow live betting on final results.

Although the Prime Ministers thought that shirt and perimeter advertising for sports betting should be allowed, advertisements for sports betting will not be permitted on television nor in connection with sports broadcasts. This rule will be reassessed after five years.

Under the draft, Internet sites offering casino games will only be allowed in relation to real games being played in a licensed casino, and may only be run by such casinos.

After the draft had been distributed on various websites, criticism was immediately directed at one particular provision, under which the gambling supervisory authorities may prohibit service providers from (responsibly) helping to provide access to unauthorised gambling services. In the critics' opinion, this renewed attempt to block access to certain Internet content ignored the debate over the proportionality of such measures. This subject had already been discussed in relation to the *Zugangserschwerungsgesetz* (Act on Access Obstruction), which has since been overturned by the CDU/CSU and FDP coalition committee (see IRIS 2011-5/19).

- *Pressemitteilung der Staatskanzlei des Landes Sachsen-Anhalt* (Press release of the State Chancellery of the *Land* of Saxony-Anhalt)
http://merlin.obs.coe.int/redirect.php?id=13198 DE
- *Erster Staatsvertrag zur Änderung des Staatsvertrages zum Glücksspielwesen in Deutschland (Erster Glücksspieländerungsstaatsvertrag - 1. GlüÄndStV)* (First Inter-State Agreement amending the Inter-State Agreement on Gambling in Germany - 1. GlüÄndStV)
http://merlin.obs.coe.int/redirect.php?id=13199 DE

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DK-Denmark

Calculation of Damage and Assessment of Evidence in Illegal File-Sharing Cases

In a recent landmark case the Danish Supreme Court decided the criteria for calculating compensation and damage in illegal file-sharing cases. The decision also contained an interesting reasoning regarding the assessment of evidence in these cases.

The case concerned whether a person (A) by use of a software programme, Direct Connect, had made a large number of musical works available to the public from his computer in violation of the Copyright Act.

The rightsholders had via a specially developed programme established contact with a certain IP address over a period of time and obtained computer-generated lists of about 13,000 titles of musical works that allegedly were available from the IP address that belonged to A. The rightsholders had not applied provisional measures to secure evidence, e.g., by the physical seizure of A's computer.

A explained that he had stored his own music collection (approximately 500 titles) on his computer and that he had installed and used the Direct Connect

programme a small number of times for locating and downloading specific musical works that he only had in poor quality in his own collection. He rejected the allegation of having used the programme for downloading the titles on the rightsholders' lists.

After assessing all the evidence in the case the Supreme Court found that the rightsholders had shown that A had used Direct Connect to make his music collection stored on his own computer available to other users of the file-sharing network.

However, the Court found that the rightsholders had failed to prove that the musical works appearing on the lists generated by the rightsholders in fact emanated from A's computer. Hence, the mere presentation of a computer-generated list with music titles that was claimed to be downloaded via a given IP address is not sufficient evidence that these musical works in fact are stored on the computer connected to the IP address, let alone sufficient proof that the downloading has been conducted by the registered user of the IP address.

By this relatively strict assessment of evidence the Supreme Court confirms a tendency established recently by the High Courts. In previous decisions of the lower courts computer-generated lists of copyright protected works being transmitted via a given IP address were often regarded as sufficient proof that the music had been downloaded to the user's computer and that the user of the IP address was in fact the infringer.

With regard to the sanctions imposed on A for making musical works available illegally, the Court found that A was liable to pay damages and compensation to the rightsholders. In accordance with the existing case law the level of compensation was based on an estimate of the royalties to which the rightsholders would have been entitled, had the use of the musical works happened lawfully.

However, as regards the level of damages (e.g., for market disturbance) in addition to the compensation, the Supreme Court rejected the so-called "double-up" principle that has been applied by the High Courts in a couple of newer cases and according to which the amount of damages - due to the difficulties in documenting that the illegal file sharing has actually resulted in a specific loss for the rightsholders - is determined by simply doubling the assessed amount of compensation. Instead, the Supreme Court measured the damage as an estimate based on the facts of the specific case. As a result, the total amount of compensation and damages was considerably lower than would have been the case if the double-up principle had been applied.

• Højesterets dom af 24. marts 2011 i sag 27/2009, Poul Larsen mod IFPI Danmark m.fl (The Supreme Court's judgment of 24 March 2011 in case 27/2009, Paul Larsen v IFPI Denmark)
http://merlin.obs.coe.int/redirect.php?id=13170 DA

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FR-France

Ban on Broadcasting Programme Showing a Minor in Difficult Circumstances without Obtaining Parents' Authorisation

As part of its duty to protect children and young people, conferred on it by Article 15 of the Act of 30 September 1986, the *Conseil Supérieur de l'Audiovisuel* (audiovisual regulatory body - CSA) ensures not only the protection of young viewers but also the protection of minors taking part in television programmes. On 17 April 2007 it therefore adopted a deliberation on the participation of persons under the age of 18 in television programmes other than works of fiction (see IRIS 2007-6/17). This text reaffirms the need for young people to be able to express their opinions, and requires editors to obtain consent not only from the minor but also from the person exercising parental authority, to avoid dramatisation or derision in handling the young person's contribution, to ensure that filming conditions and the questions to be asked are suited to the child's age, to make sure the child's participation will not be damaging for its future, and to preserve the child's prospects of personal fulfilment. Editors must also ensure protection of the identity of minors talking about the difficult circumstances of their private lives where there is a risk of stigmatisation after the programme has been broadcast. In keeping with these principles, TF1 has undertaken, under the terms of Article 13 of its convention with the CSA, that when it is considering broadcasting the contribution of a minor facing difficult circumstances in its private life it will ensure the child's anonymity and obtain prior parental authorisation, in compliance with the provisions of the Civil Code.

However, further to TF1's showing of a report entitled *Enfants à la dérive* ("children adrift"), during which questions were put to a minor placed by the courts with a foster family, and whose identity was concealed, the CSA issued formal notice to the channel to comply with these provisions. The interview had been broadcast despite written refusal on the part of the child's mother. The channel referred the matter to the Conseil d'Etat, requesting cancellation of the formal notice, basing its claim more particularly on the argument that the decision would be contrary to Article 10 of the European Convention on Human Rights. In its decision delivered on 16 March 2011, the Conseil

d'Etat stated that the ban, referred to in both Article 13 of the channel's convention and the deliberation of 17 April 2007 on broadcasting a programme including the participation of a minor facing difficult circumstances in its private life without obtaining authorisation from the person exercising parental authority, fell within the scope of the provisions of paragraph 2 of Article 10 of the European Convention on Human Rights. The fact that the minor's identity had been concealed was irrelevant. The requirement to obtain parental authorisation even if the minor's identity was concealed did not constitute a disproportionate infringement of the freedom of expression compared with the need to protect children and young people, as the Conseil d'Etat held that there were no grounds of general interest likely to justify not obtaining the authorisation of the person exercising parental authority. TF1's application was therefore rejected.

• *Conseil d'Etat (5e et 4e sous-sect.), 16 mars 2011 - TF1* (Conseil d'Etat (5th and 4th sub-sections), 16 March 2011 - TF1)
http://merlin.obs.coe.int/redirect.php?id=13215 FR

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M6 Appeal against Online Guide to Catch-up TV Rejected

On 27 April 2011 the court of appeal in Paris rejected the appeal brought by the M6 group against the company operating the TV-replay.fr site, an online guide to catch-up TV sites that offers summaries and links to the programmes of most of the major French channels that are available as catch-up TV. In doing so, the court upheld the judgment delivered in the initial proceedings (see IRIS 2010-8/29). The television group, which operates the channels M6 and W9 together with their catch-up TV services M6replay and W9replay, complained more particularly that TV-replay.fr was providing direct access to its programmes, without first directing viewers to the home pages of M6replay and W9replay. M6 claimed this was a violation of the general conditions for using its catch-up TV services, an infringement of its copyright protection as the creators and producer of a database, and considered that TV-replay's action constituted unfair competition and parasitic behaviour.

Deliberating firstly on the alleged infringement of the exploitation rights of MS and W9's production subsidiaries, the court of appeal warned that it was not up to that court to deliver a general judgment on the lawful or unlawful nature of systematically making audiovisual works available to the general public using deep hyperlinks. It recalled that it was required to deliberate on the merits of an application for a court order for the payment of a sum of money in compensation for prejudice suffered. However, since M6's production subsidiaries had failed to identify the works they claimed they held rights for, they had not furnished proof of either an infringement of specific rights or quantifiable prejudice. The judgment was therefore upheld in that it rejected the applications based on such an infringement. M6 was also claiming infringement of its rights as a producer of a database. Article L. 341-1 of the Intellectual Property Code (Code de Propriété Intellectuelle - CPI) provided that "the producer of a database, to be understood as the person taking the initiative and the risk of the corresponding investment, has the benefit of protection of the content of the database where its constitution, verification or presentation demonstrates a substantial financial, material or human investment". As the court confirmed, in order to put a daily selection of programmes on its catch-up TV services, M6 devised a search tool for its programmes classified by genre, date, time and title, links to bonus material, and an RSS feed updating the programmes available by date and title, including the associated deep hyperlinks. The court held that this information met the definition of a database in accordance with Article L. 112-3 of the CPI. However, the documentary evidence M6 produced for infringement of its rights as the producer of the database, referred to the expenditure incurred in listing the programmes and operating the proposed catch-up TV services, but contained no indication of the expense connected with organisation and updating, "which constituted the essence of a databank", according to the court. M6's application on this point was therefore rejected. The court also confirmed that M6 had not produced proof of the alleged prejudicial parasitic behaviour on the part of TV-replay, i.e. that it had deliberately concealed its intention to constitute and commercialise a parallel competitor on-demand video portal. On the other hand, and contrary to the court's finding in the initial proceedings, the court of appeal awarded TV-replay 15 000 euros in damages, holding that M6 had, without giving sufficient notice, broken off their established commercial relationship. TV-replay has more than 2 million single visitors per month and an offer of free on-demand programmes that is constantly increasing; this judgment facilitates the continuation of its development.

• *Cour d'appel de Paris (pôle 5, ch. 1), 27 avril 2011* - Métropole Télévisions SA, M6 Web et a. c. Sbds Active (Court of appeal in Paris (section 5, chamber 1), 27 April 2011 - *Métropole Télévisions SA, M6 Web et al. v. Sbds Active*) FR

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Canal+ Sport Receives Serious Warning from the CSA to Abide by Regulations on Advertising

The *Conseil Supérieur de l'Audiovisuel* (audiovisual regulatory body - CSA) sent a "serious warning" to the

channel Canal+ Sport further to the repeat showing on 8 November 2010, between 12 noon and 6 p.m., of the broadcast of a tennis match during which the name of a brand of beer appeared 195 times for an aggregate time of 24 minutes, 34 seconds, contrary to the ban on all advertising or promotion of alcoholic beverages provided for in Article L. 3323-2 of the Public Health Code and Article 8 of the Decree of 27 March 1992. The CSA also found fault with the channel that the bank partnering the competition had benefited from over-exposure, particularly by means of the appearance, by insertion of its logo on the screen for an aggregate time of 8 minutes, 40 seconds and by the broadcasting, thirty times, of a short full-screen animated film of the logo, contrary to the ban on surreptitious advertising provided for in Article 9 of the Decree of 27 March 1992. The CSA also noted that the sponsorship by a brand of watches was not clearly identified, contrary to the obligation to clearly identify sponsored television broadcasts provided for in the first paragraph of Article 18-III of the Decree of 27 March 1992. Lastly, the CSA noted the presence of many insertions in English that were not translated into French, and reminded the channel that it needed to make more of an effort to provide French translations of insertions that appeared on the screen in English.

• *Manquements à la réglementation publicitaire : Canal+ Sport fermement mise en garde, Décision du CSA, 18 avril 2011* (Failures to apply the regulations on advertising: serious warning issued to Canal+ Sport, Decision of the CSA, 18 April 2011)
http://merlin.obs.coe.int/redirect.php?id=13194 FR

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Advertising for Gambling - New Deliberation by the CSA

Drawing conclusions from the first year of the application of the Act of 12 May 2010 organising an opening up of competition for online gambling, and taking documented practice into consideration, the *Conseil Supérieur de l'Audiovisuel* (audiovisual regulatory body - CSA) has issued a new recommendation on the conditions for radio and television stations broadcast of advertising for operators of gambling and games of chance. Article 7 of the Act of 12 May 2010 leaves the CSA the job of determining the conditions for broadcasting advertising, sponsoring, and product placement in favour of operators of gambling and games of chance, although this is prohibited during programmes aimed at minors. An initial deliberation, applicable until the end of April, was adopted on 18 May 2010 (see IRIS 2010-7: 21)

The CSA noted firstly in its new deliberation that the evolution in the content of certain sports broadcasts, particularly on radio, sometimes resulted in the distortion of these programmes, with the promotion of betting on sports events and encouragement to the public to play, accompanied by references to the prize money they could hope to win. The CSA called on the various parties involved (service editors, the organisation representing the sports journalists' profession, operators of gambling and games of chance, and the umbrella bodies for the organisers of sports competitions) to adopt a charter of ethical commitments. These should cover the need to separate content relevant to reporting on the sports event from content linked to betting during the programmes.

The CSA is keen to combat "unidentified advertising", as for example when betting on sports or horse racing is mentioned in a broadcast sponsored by a betting operator. The deliberation also gives more details of the ban on encouraging minors to gamble and play games of chance. The advertisements must not make gambling the games of chance particularly attractive to minors, nor feature celebrities, characters or heroes from the world of children and teenagers, or who are particularly well-known to these groups. Similarly, advertisements should not lead anyone to believe that minors had the right to play. The deliberation will remain valid until 30 June 2012. Before that date, the CSA will adopt a new deliberation, on the basis of documented practice and the experience acquired during this period, and on observance of the good conduct charters signed by the professionals.

• *Délibération du CSA n°2011-09 du 27 avril 2011 relative aux conditions de diffusion, par les services de télévision et de radio, des communications commerciales en faveur d'un opérateur de jeux d'argent et de hasard légalement autorisé, JO du 30 avril 2011* (CSA Deliberation No. 2011-09 of 27 April 2011 on the conditions for broadcasting advertisements on radio and television in favour of a lawfully authorised operator of gambling and games of chance, gazetted on 30 April 2011)
http://merlin.obs.coe.int/redirect.php?id=13216 FR

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GB-United Kingdom

Court Rejects Challenge to Legislation to Combat Online Copyright Infringement

The UK High Court has rejected a challenge to provisions of the Digital Economy Act 2010 designed to limit file-sharing in breach of copyright law. They provide that internet service providers must notify subscribers if their internet protocol addresses are reported by copyright owners as being used to infringe copyright, must keep track of the number of reports about each subscriber and must compile on an anonymous basis a list of those reported on. After obtaining a court order to obtain personal details, copyright

owners will be able to take action against those on the list. These provisions will not become effective until after the communications regulator Ofcom has published a Code dealing with points of detail. The challenge was brought by British Telecommunications and TalkTalk, two internet service providers; no fewer than 12 other parties took part in the litigation, including organisations concerned with copyright protection and with freedom of speech.

The claimants alleged that the provisions of the statute were in breach of European Union law on four different grounds; all the allegations were rejected by the court. Thus there was no breach of the Technical Standards Directive requiring notification of standards to the European Commission as the statutory provisions were contingent and did not come into operation until the Code was enacted; as a result, they had no legal effect for individuals on their own. There was no breach of the various articles of the e-Commerce Directive, as they did not impose on the service provider liability for information transmitted, did not require active monitoring of information transmitted and did not fall within the "coordinated field" where restrictions on freedom to provide information society services are prohibited. Nor was there any breach of the Data Protection and Privacy and Electronic Communications Directives given that any processing of personal data would be done for the establishment of legal claims and promoting the right to property. There was no breach of the electronic communications Authorisation Directive, as it did not require that all sector-specific rules had to be contained in a general authorisation, and the provisions did not limit the immunities the Directive conferred.

The statutory provisions were also challenged as a disproportionate restriction of the free movement of services, of the right to privacy and of the right to free expression. Several grounds were put forward to support this claim, and all were rejected by the Court. It held that this was an area where substantial weight should be attached to the balance struck by the primary decision-maker, Parliament. It had addressed a major problem of social and economic policy where important and conflicting interests are at play and a lengthy process of consultation had been undertaken; the Court was not the appropriate forum for assessing the complex economic arguments put forward by each side.

The claimants were successful on one minor issue. The Court held that an Order currently before Parliament allocating the costs of the administration of the provisions breached the Authorisation Directive through requiring copyright owners to reimburse part of the costs of internet service providers; these were not "administrative costs" permitted by the Directive. Nor were the costs of appeals such "administrative costs".

• R (on the Application of British Telecommunications plc and TalkTalk Telecom Group plc) v The Secretary of State for Business, Innovation and Skills [2011] EWHC 1021 (Admin), 20 April 2011
http://merlin.obs.coe.int/redirect.php?id=13176 EN

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GR-Greece

Council of State Ruling Threatens to Invalidate Countless ESR Decisions

The risk that a significant number of decisions of the Εθνικό Συμβούλιο Ραδιοτηλεόρασης (National Council for Radio and Television - ESR) may be cancelled is now visible in the wake of Decision 1098/2011 of the Συμβούλιο της Επικρατείας (Council of State - Supreme Administrative Court of Greece). The Court, on the basis of a constitutional provision (Article 101a) that states that the term of office of members of independent agencies must be fixed, held that statutory provisions extending such term beyond a reasonable period of time are unconstitutional. It consequently annulled an ESR decision - a fine imposed by the National Council for Radio and Television on a regional TV station that was issued in February 2007 - because the term of office of some of the persons involved in the seven-member independent body had expired eight months earlier.

It must be recalled that members of the ESR are decided upon by the Conference of Presidents, an inter-partisan college of the Greek Parliament, requiring a 4/5 majority of its members. Due to the obligation to achieve this increased majority, often significant delays in the appointment of new members can be observed. For example, the term of office of four ESR members expired in June 2006 and was not renewed until February 2008 and the term of office of three members that had expired in October 2009 was renewed for two of them in January 2011, while the decision on the renewal of the term of the third member is still pending. All this suggests that if the reasoning behind Decision 1098/2011 (where, it should be noted, a minority of 3 out of 7 judges dissented) is followed by other formations of the same Court, then a host of judgments that were taken in the above intervals will be threatened with annulment.

The ESR is one of the few independent authorities in the European broadcasting area lacking normative or advisory responsibilities and it has limited its activities to controlling the content of radio and television broadcasts, having issued a large number of decisions in recent years.

• Συμβούλιο της 3253003713723013613043653́371361302, Απόφαση 3213013713703μ. 1098/2011 (324́ 344μ́367μ361, 7μ.) 11 Απριλίου 2011 (Administrative Court of Justice, Decision No. 1098/2011 (Section D, 7 members) 11 April 2011) EL

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IS-Iceland

New Media Law in Iceland

On 15 April 2011 the Icelandic Parliament adopted a new media act, marking an end to a seven-year long struggle to have such an act enacted. In 2004 the President had vetoed a media law that foresaw ownership restrictions. Since then many different versions of media law bills have been presented in Parliament, but with no result until now.

The Act implements the Audiovisual Media Services Directive. It includes many other important changes to the existing legal framework for the media. The Act replaces the 2000 broadcasting act, as well as the 1956 press act. It introduces an obligation for all media in Iceland to be registered with a new media authority, the Media Committee. The term "media" is defined as any medium that delivers edited content to the public on a regular basis whose main purpose is to provide media content. This includes broadcasting media, press media and certain types of electronic media, but excludes blogs and social media. Broadcasting media that use frequencies granted by the Post and Telecoms Authority will require a media license for their operation. The new Media Committee has 5 members, appointed by the Minister of Culture and Education. Of these, one is appointed without nomination, two are nominated by the Supreme Court, one by the Universities and one by the Union of Journalists. Members must have expertise related to media and mass communication, journalism, media law or other relevant expertise, while the Chair of the Media Committee must have the same qualifications as District Court Judges.

Media service providers will have to provide the Media Committee with information on their ownership composition and any changes thereto. This information is then published on the Media Committee's website. Furthermore, broadcasting companies have to provide the Media Committee with information on their services and how obligations arising from the Audiovisual Media Services Directive are met. In addition, media companies will have to provide information on how men and women are represented in news and news-related content, the composition of their staff from a gender perspective and what the media service provider is doing to fight against gender stereotyping.

The content obligations of the media are now more stringent than before, applying also for the first time to print and electronic media. Thus, it is stipulated that media service providers have to respect human rights and equality. They must be objective and accurate in news and news-related programmes. They must take care that different points of view are represented, both those of men and women.

The protection of journalistic sources of information has been strengthened and provisions on the right of reply and on liability for unlawful content are harmonised across all media.

The new Act introduces for the first time in Icelandic law must-carry and must-offer provisions in television broadcasting, thus regulating the relationship between media service providers and network operators. There are exceptions: for example a network operator is not obliged to carry a TV broadcast if it takes up more than a third of the operator's capacity. Parties are obliged to make sure that future agreements with rightsholders reflect those provisions. If there is disagreement over payments between the parties the Post and Telecoms Authority will rule on the matter, subject to court review.

• Lög um fjölmiðla - Lög nr. 38 20. apríl 2011 (Media Act n. 38 of 20 April 2011)
http://merlin.obs.coe.int/redirect.php?id=13180 IS

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LT-Lithuania

Rules on the Licensing of Broadcasting and Re-broadcasting Activities Adopted

On 13 April 2011 the revised Rules on the Licensing of Broadcasting and Re-broadcasting Activities came into force.

A new point is that according to the revised Law on the Provision of Information to the Public, which came into force on 18 October 2010, the Rules are to be adopted by order of the Minister of Culture upon the Radio and Television Commission's (RTCL) proposal. According to the provisions of the former Law the adoption of these Rules was within the RTCL's competence (see IRIS 2011-1/39).

It should be noted that the prerogative to grant licenses for broadcasting and re-broadcasting activities

as well as to control the licensed activities still belongs to the RTCL as before.

The Rules on the Licensing of Broadcasting and Re-broadcasting Activities determine the types of licences, the procedure for issuing or refusing a licence, the tender procedure, the requirements for submitting the required documents, the rules for the amendment and specification of the terms and conditions of licences and temporary suspension or cancellation of their validity, as well as the duties and obligations of the licence holders, the supervision of compliance with the licence etc.

The revised Rules also specify the must-carry rules. According to the provisions of the Rules the RTCL on its initiative or on request of a broadcaster can grant a must-carry-programme status for another television programme when envisaged by the Law, or exempt the obligatory television programme from re-broadcasting. When taking such decisions, the RTCL takes into consideration the artistic value of the television programme, its relevance for the viewers residing within the territory of the licensed activity of the re-broadcaster as well as other criteria provided for in the revised Rules.

The Rules oblige the RTCL to publish on its website the drafts of the RTCL's decisions concerning a must-carry television programme or an exemption of such for public consultation.

• Transliavimo ir retransliavimo veiklos licencijavimo taisyklės, patvirtintos 2011-04-01 Kultūros ministro įsakymu Nr. ĮV-281-120 (Rules on Licensing of Broadcasting and Re-broadcasting Activities, adopted by decision No. ĮV-281 of the Minister of Culture)
http://merlin.obs.coe.int/redirect.php?id=13212 LT

Jurgita Iešmantaitė
Radio and Television Commission of Lithuania

MT-Malta

Broadcasting Programmes' Regulation in Relation to the Divorce Consultative Referendum

On Saturday 28 May 2011, Malta will be holding a consultative referendum where a vote will be taken in favour or against the introduction of divorce legislation in Malta. Malta, like the Philippines and the Vatican City, does not yet allow divorce to be granted by its domestic courts although the latter do recognize, in certain instances, divorces obtained abroad. On 16 March 2011 the House of Representatives approved a resolution whereby the people will be asked to vote on the following referendum question:

"Do you agree with the introduction of the option of divorce in the case of a married couple who has been separated or has been living apart for at least four (4) years, and where there is no reasonable hope for reconciliation between the spouses, whilst adequate maintenance is guaranteed and the children are protected?"

In exercise of the powers conferred by Article 15 of the Broadcasting Act, Chapter 350 of the Laws of Malta, on 4 April 2011 the Broadcasting Authority issued a directive to regulate broadcasting during the period between Monday 11 April and Saturday 28 May 2011. There are two campaign movements which will be heavily involved in debates on the broadcasting media, one in favour of the introduction of responsible divorce along the lines of Irish divorce legislation and another against divorce legislation arguing that divorce can never contribute to the strengthening of the Maltese family. The political party in Government (the Nationalist Party) has taken a stand against divorce, although a Private Member's Bill to introduce responsible divorce was tabled on 25 January 2011 by one of its own back-benchers together with a Member of Parliament from the Opposition. The Nationalist Party has further declared that if the divorce consultative referendum is approved, it will give a free vote in the House of Representatives to its Members of Parliament. The party in opposition (the Malta Labour Party) has agreed not to take a stand on the issue, although the Leader of the Opposition has declared that he will be campaigning on a personal basis in favour of the introduction of such law. Even the Opposition has given a free vote to its MPs. The Green Party, Alternattiva Demokratika, which is not represented in Parliament, has consistently been advocating the introduction of divorce legislation as a civil right in Malta.

In its directive to broadcasting stations, the Authority had requested that they, no later than noon on Thursday, 7 April, 2011, provide it with a detailed schedule of programmes and advertisements covering the period from 11 April to 28 May 2011 for the Authority's approval. Where the broadcasting station intended to produce current affairs programmes, discussion programmes, investigative journalism programmes and programmes of a similar nature during the aforesaid period, it had to forward the subject of that programme and details of the participants in the programme, together with details of the presenter and producer, to the Authority for its approval. Changes of programme scheduling as submitted and approved require the Authority's prior endorsement. Further, any programmes dealing with divorce, marriage, the family and related topics have to be rigorously balanced in the views/opinions that they present.

• Broadcasting Authority Directive on Programmes and Advertisements broadcast during the period Monday, 11th April to Saturday, 28th May 2011
http://merlin.obs.coe.int/redirect.php?id=13177 EN

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

PT-Portugal

New Television Act Comes into Force

On 11 April 2011 the new Portuguese television act (see IRIS 2011-4/30) was published in the official news bulletin, the *Diário da República*, after receiving parliamentary approval last February. The new act transposes the EU's Audiovisual Media Services Directive (Directive no. 2007/65/CE - AVMSD) and introduces amendments to previous national laws, namely the Television Act no. 27/2007, the Publicity Code and the Act that restructures the radio and television public service broadcasters (Law no. 8/2007).

Some of the main changes in this sector are related to media ownership and advertising. The new law includes, for example, the removal of the minimum interval of twenty minutes between advertising breaks and forces broadcasters to publish online, on their websites, information concerning ownership. According to legal requirements, the State media regulatory entity (*Entidade Reguladora para a Comunicação Social*) has the responsibility of promoting mechanisms of self- and co-regulation between operators in order to pursue "values of human dignity, of rule of law, of democratic society and national cohesion, and of Portuguese language and culture promotion" (Article 6). Moreover, it must deal with license allocation for broadcasters (Article 22, number 2), as well as with preparing an evaluation report, after a period of between five and ten years following the license assignment, regarding broadcasters' compliance with their legal obligations (Article 23).

• Lei n.º 8/2011 - Procede à 1.ª 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 23 de Outubro, e à 1.ª 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,publicada no "Diário da República" - 1.ª Série, n.º 71, de 11 de Abril de 2011, página 2139 (Law no. 8/2011 - First amendment to the Television Act approved by Law no. 27/2007 dated 30 July, 12th amendment to the Publicity Code approved by Law-decree no. 330/90 dated 23 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, published in the official journal, 1st Serie, no. 71, of 11 April 2011, page 2139)
http://merlin.obs.coe.int/redirect.php?id=13169 PT

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RU-Russian Federation

Rules for Multiplexes Approved

The Governmental Commission on Development of TV and Radio Broadcasting (see IRIS-Plus 2010-1) agreed at its meeting on 16 December 2010 on certain rules of the set-up for the 2nd and 3rd multiplexes of digital television in Russia. As was reported earlier the line-up for the first multiplex was approved by President Dmitry Medvedev in 2009 (see IRIS 2009-10/25).

According to the Ministry of Communications and Mass Communications both 2nd and 3rd sets of channels will be free for the audience. The price of the entry to the multiplexes for the broadcasters is still not determined.

The 2nd multiplex will contain 9 national channels that might include in their programming regional windows of programming. All channels must be networks that broadcast 24 hours a day. Despite earlier reservations in this regard (see IRIS-Plus 2010-1) they will be selected by the Federal Competition Commission (FCC) based on the criteria of higher ratings and "social importance".

The 3rd multiplex will contain four "municipal channels" with regional broadcasting that will be different in different parts of Russia. It will also contain one national HDTV channel to be determined by the FCC. The municipal stations can be affiliated with the networks that would not enter the 2nd multiplex. The municipal channels are to be selected in a completion procedure but the exact role of the FCC has not been determined. The press release speaks of the criteria of higher ratings, 24hr broadcasting and "social importance" of the winning channels.

• Принципы формирования составов второго и третьего мультиплексов эфирного наземного цифрового телевизионного вещания , 16.12.2010 (Principles of the Formation of the Second and Third Multiplexes for Digital Terrestrial Television Broadcasting, Press Release of the Ministry of Communications and Mass Communications of the Russian Federation, 16 December 2010)
http://merlin.obs.coe.int/redirect.php?id=13179 RU

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RO-Romania

Audiovisual Media Have to Publish Codes of Editorial Conduct

The *Consiliul Naţional al Audiovizualului* (National Council for Electronic Media - CNA) decided on 14 April 2011 (Decision no. 286) to request audiovisual media service providers to publish their professional codes of conduct, if such codes exist, according to Art. 6 (5) of the *Legea Audiovizualului nr. 504/2002* (Audiovisual Law 504/2002; see inter alia IRIS 2010-10/38 and IRIS 2010-8/42).

Within 30 days of the publication of the Decision in the Official Journal of Romania, the above-mentioned providers are obliged to publish permanently on the homepage of their websites, in a well visible place, the information under Art. 48 of the *Legea Audiovizualului* as well as the postal and online address of the CNA. Art. 48 obliges providers to ensure easy, direct and permanent public access to a minimum set of details on the company, inter alia: the name, legal status, headquarters, legal representative, certain shareholders, the right to vote of a society holding an audiovisual license, names of the company's managers and the persons editorially responsible and the list of programme services provided.

The Decision intends to allow the CNA to more easily identify intrusion into editorial policies and comes shortly after suspicions and accusations of alleged management censorship and intrusion into the editorial policies of two important Romanian television news channels, Antena 3 and Realitatea TV.

The top management of Realitatea TV was accused of interference in editorial activities due to the sudden cancellation of a political show and of changing the editorial management without any right. At the same time, the CNA complained about the lack of clear and concrete information on the responsibilities of each representative of Realitatea TV. The management of Antena 3 was accused of censorship and intrusion into the editorial activity mainly due to a cancelled interview with Romania's President on the Libyan situation. The owners of the two stations are Romanian tycoons involved in an open conflict with the President. The codes of conduct are a set of deontological values and functional rules to allow an easier identification of intrusion into editorial policy.

Discussions are underway to modify Law 504/2002, including Art. 6, which forbids censorship and editorial intrusion, but imposes no sanctions. At the same time, the CNA also wishes to modify the Audiovisual Code to enforce the provisions that guarantee non-intrusion into editorial policies. The CNA announced that all must-carry stations shall be monitored.

• Decizie nr. 286 din 14 aprilie 2011 privind publicarea codurilor de conduită profesională adoptate de furnizorii de servicii media audiovizuale (Decision no. 286 of 14 April 2011)
http://merlin.obs.coe.int/redirect.php?id=13187 RO

Eugen Cojocariu
Radio Romania International

Legislative Initiatives Concerning Website Blocking

Two different legislative initiatives with regard to blocking websites with harmful or inappropriate content are under debate in Romania.

Firstly, though rejected by the Romanian Senate on 26 April 2011, a draft law on preventing and fighting pornography, aimed at a review of the legislation on pornography (Law no. 196/2003 modified by Law no. 496/2004), proposed by the Government, will be sent to the Chamber of Deputies (lower chamber of Romania's Parliament), which will have the final decision. Secondly, the Government adopted Decision no. 150/2011 (Official Journal of Romania no. 179 of 1 March 2011) with regard to the Fiscal Code but also to the organisation and operation of gambling websites.

The Government intended, through the draft law on fighting pornography, to fill the gaps in the 2003 law in the field of online content and to restrict the access of minors to pornographic websites (and to completely ban websites with zoophilia, paedophile and necrophiliac contents) by obliging authors of such websites to introduce a password-protected access system. Access shall be granted only after having paid a fee per minute and the number of visits has to be clearly accountable. At the same time, the draft introduces the responsibility of ISPs for links to pornographic content, under the provisions of Law no. 365/2002 on electronic commerce.

The Government also tried to define more strictly and widely the term of pornography. Owners of a domain name, who intend to use this for a pornographic website only, have to notify the Ministry of Communications and Information Society of their intention. The draft law provides the obligation for such operators to place a warning on their website with regard to the content. The draft proposes such restrictions for pornographic websites only, whilst websites which include not only pornographic content, could allow access to their offer with an age verification system. One Senator had proposed a more strict text, agreed on in the Senate's Culture Committee, extending the restrictions to all websites which include pornographic content, irrespective of the percentage of these.

The draft law gives more competencies to the Ministry of Communications and Information Society to control the enforcement of the obligations imposed by

law, and, in case of non-compliance, to require service providers to block access to the websites or content for a period of up to 30 days. Providers would have to implement the blocking measure within two days following the request of the Authority. Providers which do not observe the blocking requests can be fined with Lei 10,000-50,000 (EUR 2,440-12,200).

The provisions of the draft law are considered by NGOs to be unclear and giving room to limit freedom of expression, to endanger the right to privacy and possibly to transform ISPs into a „digital police".

Furthermore, the Government adopted Decision no. 15/2011, to implement the Government Emergency Decree no. 77/2009 with regard to the organisation and operation of gambling websites. According to the Decision, the competent bodies would be able to require ISPs to block websites identified as being used to provide access to unlicensed gambling sites or to market activities with regard to gambling sites or related activities and services that are not authorised under Romanian law. The law does not provide any obligation or sanction for the ISPs to comply with that Decision.

The main criticism of the NGOs with regard to the two legal documents is that the latter consider blocking of websites to be the only and/or most efficient solution to solve the problems related to illegal online activities. The NGOs warn that blocking websites will not stop such activities because the holders and potential users will be able to easily avoid the ban and, because of the decentralised nature of the Internet, the blocked content could be accessible on other locations, probably outside the authorities' control.

• Comunicat de presă - Şedinţa plenului Senatului - 26 aprilie 2011 (Press release on the Senate's plenum of 26 April 2011)
http://merlin.obs.coe.int/redirect.php?id=13213 RO

• Proiect de lege pentru modificarea şi completarea Legii nr.196/2003 privind prevenirea şi combaterea pornografiei (Draft law on the modification and completion of Law no. 196/2003 on pornography)
http://merlin.obs.coe.int/redirect.php?id=13190 RO

• Hotărârea Guvernului nr. 150/2011 din 23.02.2011 pentru modificarea si completarea Normelor metodologice de aplicare a Legii nr. 571/2003 privind Codul fiscal precum si pentru modificarea si completarea HG 870/2009 pentru aprobarea Normelor metodologice de aplicare a OUG 77/2009 privind organizarea si exploatarea jocurilor de noroc, publicată în Monitorul Oficial, nr. 179, Partea I din 1 martie 2011 (Government Decision no. 150/2011 of 23 February 2011 concerning the Fiscal Code and the Government Emergency Decree no. 77/2009 concerning the organisation and operation of gambling sites, Official Journal of Romania no. 179, Part I, of 1 March 2011)
http://merlin.obs.coe.int/redirect.php?id=13191 RO

Eugen Cojocariu
Radio Romania International

Support for Films and Cinematography Projects

The *Centrul Naţional al Cinematografiei* (National Centre of Cinematography - CNC) announced the results of the subsidising session for the organisation of or attendance in inter-/national film festivals or fairs, the support of cultural and cinematographic education programmes (workshops), the publishing of cinematographic specialised works and for other activities or projects organised from 1 July to 31 December 2011. In addition the CNC announced the results for the second 2010 direct subsidising session for Romanian film productions and the development of cinematographic projects (see inter alia IRIS 2010-2/30 and 2011-2/34).

The CNC granted subsidies for 50 projects and rejected twelve. The total amount of subsidies is RON 4,667,498 (EUR 1,138,400). As a general conclusion, CNC came out in favour of subsidising more competitors for more events with smaller sums. The biggest part of the subsidies (RON 2,999,048 - about EUR 731,500) went to organising 27 film festivals, e.g., the reputed Festivalul Internaţional de Film CINEMAIUBIT. A further ten cinematographic events were allocated RON 1,085,660 (EUR 264,800). Seven cinema workshops were subsidised with RON 350,350 (EUR 85,450) and seven editorial projects with RON 232,440 (EUR 56,700).

As for the direct subsidising session for Romanian film productions and the development of cinematographic projects, the CNC decided to subsidise 24 projects and rejected 70 projects. The total funds awarded were RON 9,990,572 (EUR 2,436,700).

• Comunicat al Centrului Naţional al Cinematografiei privind finanţarea proiectelor pentru manifestări organizate în perioada 1 iulie - 31 decembrie 2011 (Press release of the National Cinematography Centre with regard to the subsidies of projects for events organised from 1 July to 31 December 2011)
http://merlin.obs.coe.int/redirect.php?id=13188 RO

• Comunicat al Centrului Naţional al Cinematografiei - Rezultatele concursului de proiecte cinematografice - sesiunea a II-a 2010 (Press release of the National Cinematography Centre on the results of the second 2010 session)
http://merlin.obs.coe.int/redirect.php?id=13189 RO

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The 2011 „Must Carry" TV Stations

On 11 April 2011 the *Consiliul Naţional al Audiovizualului* (National Council for Electronic Media - CNA) issued a ranking list of TV stations in order to put into practice the „must carry" principle according to Art. 82 of the *Legea audiovizualului nr. 504/2002, cu modificările şi completările ulterioare* (Audiovisual Law no. 504/2002; see IRIS 2010-4/37). The list was drawn up by the *Asociaţia Română pentru Măsurarea Audienţei* (Romanian Association for Audience Measurement - ARMA).

Art. 82 of the Audiovisual Law includes the "must carry" principle that providers of electronic communications networks services, except those using the

radio spectrum, have to observe. The providers have to include - in the amount of up to 25 percent of the total number of their services - the programmes of the public television *Societatea Română de Televiziune* (Romanian Television Corporation - SRTV); programmes of commercial stations under Romanian law (free to air, without technical or financial conditions); programmes in languages of significant national minorities (in cities or villages with more than 20 percent of the population belonging to the respective ethnic minority) or the mandatory channels as determined by international agreements signed by Romania. The selection criterion for the commercial TV stations is the decreasing value of the annual audience index. The providers are also obliged, at a regional and local level, to include in their service at least two regional and two local programmes, if such programmes exist. The selection criterion is, again, the decreasing value. The TV stations included in the „must carry" list are:

I) SRTV-channels: TVR 1, TVR 2, TVR 3, TV România Cultural, TVR INFO, the regional stations of Cluj (covering seven counties), Craiova (covering seven counties), Iaşi (covering eight counties), Târgu Mureş (covering five counties), and Timişoara (covering four counties);

II) French speaking TV 5 (mandatory according to international agreements);

III) Commercial stations (25 stations measured; decreasing annual audience index): PRO TV, Antena 1, Realitatea TV, Kanal D, Antena 3, Prima TV, Naţional TV, OTV, B1 TV, Favorit TV, Taraf TV, Kiss TV, U Televiziune Interctivă, N24 Plus, Trinitas TV, Mynele TV, DDTV, Music Channel, Neptun TV, Alfa Omega TV, The Money Channel, Party TV, Speranţa TV, TVRM Educaţional, Alpha TV.

According to Art. 90 the Council can issue a fine or a public warning for infringements of Art. 82.

• Topul staţiilor TV în vederea aplicării principiului "must carry"; comunicat de presă CNA, 11.04.2011 (The ranking of TV stations to put in practice the „must carry" principle; CNA press release of 11 April 2011)
http://merlin.obs.coe.int/redirect.php?id=12296 RO

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CNA Annual Report 2010

The *Consiliul Naţional al Audiovizualului* (National Council for Electronic Media - CNA) published on 18 April 2011 its Annual Report for the year 2010 (see inter alia IRIS 2010-1/38 and IRIS 2010-9/34).

The CNA awarded in 2010 a total of 102 audiovisual licenses (four for radio, 17 for television and 81 for electronic communications networks), 40 audiovisual licenses were extended (35 for radio, five for television) and 57 transferred.

In 2010 the Council imposed 388 sanctions, including 142 fines, for audiovisual legislation infringements. The sanctions amount to RON 1,923,000 (EUR 456,800). The CNA also issued 232 public warnings and three decisions that obliged broadcasters to interrupt their programmes in order to broadcast for a period of ten minutes the text of the sanctioning decision. The majority of sanctions were imposed on the commercial television stations OTV, Antena 1, Antena 3 and Realitatea TV. The public service broadcaster Societatea Română de Televiziune was sanctioned eight times. As for radio, more than half of the sanctions were imposed on the commercial stations Radio Zu, Kiss FM and Radio 21.

Overall, sanctions were imposed in the majority of instances due to infringements concerning child protection, the protection of human dignity and of the right to one's own image, breaches of audiovisual sponsoring, advertising and teleshopping rules and to a lack of pluralism and correct information.

The Council monitored more than 19,000 programmes - mostly for television - due to complaints and own initiatives.

At the same time, the Council, in partnership with the Romanian Academy, continued the programme for improving the quality of the Romanian language used in television and radio programmes. The result of this was a decrease of the number of errors. The CNA also monitored the quality of the Hungarian language used in audiovisual programmes; Hungarians being the largest minority in Romania.

• CNA-Raport de activitate pe anul 2010 (CNA Activity Report for the year 2010)
http://merlin.obs.coe.int/redirect.php?id=13186 RO

Eugen Cojocariu
Radio Romania International

SK-Slovakia

Payment System for Web Content

Slovak publishers have agreed on a common procedure for introducing a payment barrier for the readers of Slovak news websites as a condition for granting them access to a large amount of content from various competing media. The system, which enables paid online content and services, is called Piano and is aimed at reducing the barriers that currently discourage readers from paying for content.

The man behind the idea and also the head of the Piano project was formerly editor-in-chief and deputy director of Slovakia's largest broadsheet, and is now the co-founder of the Prague-based new media consulting company NextBig, which together with the company Etarget - a provider of online advertising - jointly owns the company Piano Media that operates the system. The premium-content payment service is open to newspapers, TV stations and online services and is used by most major Slovak news websites to put parts of their content behind a paywall. Under the respective system, paying for access will give readers content and perks in addition to financial news or specialist subjects including: comments on articles; exclusive access to newspaper articles the evening before they are available as print publication; expert forums and advertising services.

Since 2 May 2011 users are obliged to pay a fee in the amount of EUR 2.90 per month or EUR 0.99 per week for the relevant service after a two-week free trial. This is considered to be the main advantage for readers, since only one payment - which makes the full content of all engaged web pages available - is necessary in order to ensure access to any of the participating media sources. Publishers, on the other hand, might welcome the Piano system as a possibility of charging for sections and services that users would otherwise not be willing to pay for separately and thus as an instrument to increase their income.

According to a Mediaresearch survey internet users are not explicitly against paying for web content. The results of the relevant research show that more than half of the internet-using population would be willing to pay a fee in the amount of about EUR 3 per month in order to have unlimited access to added-value content on the key news websites in Slovakia. NextBig expects 0.8-1.5 percent of the Slovak internet-using population to become paying users in the next year. According to the latest data on the internet use in households, provided by the Statistical Office of the Slovak Republic, it is possible to estimate that in the near future the number of internet users will reach four million; the aforesaid 0.8-1.5 percent corresponds with 32-60 thousand internet users.

• *Pianomedia.sk* (Pianomedia.sk)
http://merlin.obs.coe.int/redirect.php?id=13192 SK

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TR-Turkey

Legal Steps against Unauthorised Broadcasting of Movies Announced

Turkish actors are planning to file lawsuits against television broadcasters to compensate for their loss resulting from the unauthorised broadcasts of their movies that were completed before 1995.

The year 1995 plays a significant role for Turkish copyright law. Until 1995 producers were considered as the sole authors of cinematographic works. By amendments to the Turkish Copyright Law (LIA) in 1995 (Law 4110), authorship was granted jointly to directors, scriptwriters and composers of the original film music (Art. 8 LIA). It is important to note that the amended article was valid only for films the production of which began after 1995, hence, producers remained authors of the films produced before 1995 (see IRIS 2008-5/30). In addition to this amendment regarding the ownership of cinematographic works, performers received a legal status and some exclusive rights as holders of related rights (Art. 80 LIA). Due to another amending Law that entered into force in 2001 (Law 4630), film producers were named holders of neighbouring rights provided that they acquired the authority to exercise economic rights from the authors and the performers.

According to Add. Art. 2 LIA the protection granted by the mentioned amendments shall be applied to all works and fixed performances existing in Turkey at the moment of the entering into force of the related Laws. The above-mentioned restriction brought for the authorship of cinematographic works by the last paragraph of Add. Art. 2 does not cover performances. This means that, after the amendments, actors became holders of related rights to all movies made before and after 1995. In spite of this, the habits of television broadcasters and film producers did not change. They continued to broadcast - especially films made before 1995 - without the written consent of the actors.

There was no significant attempt to file a complaint until 2006. The heirs of a famous Turkish actor filed a suit for damages against a producer due to the unauthorised broadcast of two movies made in 1985 and 1988. The producer alleged that he held all economic rights on the movies according to a mutual agreement between him and the actor. In 2010, the IPR court accepted the claims of the plaintiffs, in particular due to Add. Art. 2. The judgment is now being reviewed by the Court of Appeal. This decision constitutes a precedent for other actors who played roles in movies produced before 1995. Furthermore it constituted an increased awareness of the issue among actors.

As a result of this, a press conference was held by "The United Actors Collecting Society" (BİROY) which was established in 2009 to protect and pursue the rights of actors (see IRIS 2009-7/33). The representatives of BİROY declared that they are going to take action against broadcasters that broadcast movies without paying royalties.

The Turkish Cinema Sector is traditionally named Yeşilçam (Green Pine). Therefore the actors called this campaign "Yeşilçam is Awakening".

- *E.2006/521, K.2010/100, 25.05.201* (Judgment of the Istanbul 1st Industrial Property Rights Court of 25 May 2010, E.2006/521, K.2010/100) TR

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Agenda

New Audiovisual Markets Regulated? Market innovation and the role of regulation in The Netherlands and Europe
Seminar organised by the Dutch Presidency of the European Audiovisual Observatory
13.30 - 17.10 at the Media Academy - Media Park, Villa Heideheuvel Sumatralaan 45 - 1217 GP Hilversum
This seminar will focus on describing and discussing the main trends in the European audiovisual market and the legal consequences of those changes. Furthermore, given the central role of innovation and the growing importance of online distribution of audiovisual content, three keynote speakers from **UPC**, **Google** and **Philips** will share their views on the opportunities, threats and consequences of the major trend to switch to on-demand services.
More information and free registration here.
Programme here.

Book List

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