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Legal Observations
of the European Audiovisual Observatory

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COUNCIL OF EUROPE

European Court of Human Rights: Axel Springer AG v. Germany

In two judgments of 7 February 2012 the Grand Chamber of the European Court of Human Rights has balanced the right to freedom of expression by the media (Article 10 of the Convention) with celebrities' personality rights and their right of privacy (Article. 8 of the Convention). The overall conclusion is that media coverage including pictures of celebrities is acceptable when the media reporting concerns matters of public interest or at least to some degree contributes to a debate of general interest. In the case of Von Hannover v. Germany (no. 2), the Court held unanimously that the publication of a picture of Princess Caroline of Monaco illustrating an article about the Principality of Monaco and the refusal by the German Courts to grant an injunction against it, did not amount to a violation of the right of privacy of the Princess. The European Court is of the opinion that the Princess, irrespective of the question to what extent she assumed official functions, is to be regarded as a public person. The article with the picture at issue did not solely serve entertainment purposes and there was nothing to indicate that the photo had been taken surreptitiously or by equivalent secret means such as to render its publication illegal.

The judgment in the case Axel Springer AG v. Germany concerns the media coverage by the newspaper Bild of the arrest and conviction of a famous TV-actor (X), found in possession of drugs. X had played the part of Police Superintendent as the hero of a popular television series on German TV, reaching between 3,000,000 and 4,700,000 viewers per episode. X brought injunction proceedings against the publishing company of Bild because of the publication of two articles, one reporting that X was arrested for possession of cocaine and another, a year later, that he was convicted of the same offence. The German courts granted X's request to prohibit any further publication of the two articles and the photos illustrating these articles. Although these injunctions were prescribed by law and pursued the legitimate aim of protecting the reputation of X, the Grand Chamber of the European Court is of the opinion that the interference by the German judicial authorities cannot be considered necessary in a democratic society. The Court noted that the arrest and conviction of X concerned public judicial facts of which the public has an interest in being informed. It is also emphasized that there was a close link between the popularity of the actor in question and his character as a TV-actor, playing a police superintendent, whose mission was law enforcement and crime prevention. This element increased the public's interest in being informed of X's arrest for a criminal offence. The Court also observed that X was arrested in public, in a tent at the beer festival in Munich. According to the Court there were no sufficiently strong grounds for believing that Bild should preserve X's anonymity, having regard to the nature of the offence committed by X, the degree to which X was well-known to the public, the circumstances of his arrest and the veracity of the information in question. Furthermore the articles in Bild did not reveal details about X's private life, but mainly concerned the circumstances of and events following his arrest. They contained no disparaging expression or unsubstantiated allegation. The fact that the first article contained certain expressions which, to all intents and purposes, were designed to attract the public's attention cannot in itself raise an issue, according to the Court. Finally the Court finds that the injunction against the articles in Bild was capable of having a chilling effect on the applicant company. In conclusion, the grounds advanced by the German authorities, although relevant, are not sufficient to establish that the interference complained of by Springer Verlag AG was necessary in a democratic society. Despite the margin of appreciation enjoyed by Contracting States, the Court considers that there is no reasonable relationship of proportionality between, on the one hand, the restrictions imposed by the national courts on Bild's right to freedom of expression and, on the other hand, the legitimate aim pursued. Accordingly, there has been a violation of Article 10 of the Convention. Germany is ordered to pay EUR 50,000 in respect of pecuniary damages and costs and expenses to Springer Verlag AG.

Five judges dissented with the finding of a violation of Article 10, mainly arguing that the European Court should have respected a broader margin of appreciation for the German courts. According to the five dissenting judges it is not the task of the Strasbourg Court to act as a "fourth instance to repeat anew assessments duly performed by the domestic courts". The majority of 12 judges of the Grand Chamber however found that the interference in Bild's reporting by the German authorities amounted to a violation of Article 10 of the European Convention, especially taking into account 6 criteria of the media content: the contribution to a debate of general interest, the fact that the reporting concerned a public figure, the subject of the report, the prior conduct of the person concerned, the method of obtaining the information and its veracity, the content, form and consequences of the media content and the severity of the sanction imposed. In essence the European Court found that the injunctions against Bild were capable of having a chilling effect on the applicant's freedom of expression.

• Judgment by the European Court of Human Rights (Grand Chamber), case of Axel Springer AG v. Germany, No. 39954/08 of 7 February 2012
http://merlin.obs.coe.int/redirect.php?id=15664 EN

• Judgment by the European Court of Human Rights (Grand Chamber), case of Von Hannover v. Germany (no. 2), Nos. 40660/08 and 60614/08 of 7 February 2012
http://merlin.obs.coe.int/redirect.php?id=15665 EN

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Committee of Ministers: Declaration and Recommendation on Public Service Media Governance

On 15 February 2012, the Council of Europe's Committee of Ministers (CM) adopted both a Declaration and a Recommendation on public service media governance.

The Declaration starts by describing public service media as the most important tool for freedom of expression in the public sphere, enabling people to exercise the right to seek and receive information (Article 10 of the European Convention on Human Rights, ECHR). Further, it emphasises the primary mission of public service media "to support general interest objectives [...] through a varied and high-quality mix of content" and the obligation "to serve the public in all its diversity, including minority communities [...]".

Then the Declaration points at various other instruments regarding public service media (see IRIS 1996-10/4, IRIS 2007-3/5, IRIS 2009-8/3 and IRIS 2010-7/2). These call on Member States to secure the necessary legal, political and organisational conditions for public service media independence and to provide adequate means for their functioning. The CM underlines that new information and communication technologies give public service media "an unrivalled opportunity to fulfil their remit in new and more effective ways". At the same time, striving to provide multimedia, interactive and non-linear services brings about certain challenges. To secure the succesful transition of public service media to a new media environment, the CM stresses the importance of an appropriate system of governance. The Declaration also identifies risks to pluralism and diversity if the current model of public service, commercial and community media is not preserved.

The Recommendation amplifies on these issues. The CM recommends that Member States "further strengthen and, where necessary, enhance the appropriate legal and financial environment [...] by drawing inspiration from the appended guiding principles, thereby guaranteeing the independence and sustainable development of public service media [...]". The guiding principles should be seen as characteristics rather than precise mechanisms.

The first part of the guiding principles appended to the Recommendation discusses the challenges facing public service media. These include technological, societal, cultural and financial challenges. Examples are securing the right level of independence from the State and the transformation from public service broadcasting to public service media.

The second part of the Appendix examines the role of governance in meeting these challenges. Both external and internal governance arrangements need to be reviewed, and where necessary strengthened. In this regard, the CM explores what a new framework for governance could entail. To this end, the Recommendation sets out an interlocking set of criteria in three different tiers that represent the levels at which the model operates ("Structures", "Management" and "Culture"). The criteria contain principles relating to accountability and independence (tier 1), effective management (tier 2), responsiveness and responsibility as well as transparency and openness (tier 3). These tiers and their principles are substantively elaborated on in the rest of the Recommendation. The focus lies on their importance and their contribution to the wider system of governance.

• Declaration of the Committee of Ministers on public service media governance, 15 February 2012
http://merlin.obs.coe.int/redirect.php?id=15692 EN FR
• Recommendation CM/Rec(2012)1 of the Committee of Ministers to member states on public service media governance, 15 February 2012
http://merlin.obs.coe.int/redirect.php?id=15694 EN FR

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EUROPEAN UNION

Court of Justice of the European Union: EU Law and Fundamental Rights Preclude Requested Filtering Injunction against Hosting Provider

On 16 February 2012, the Court of Justice of the European Union delivered its preliminary ruling in the case of SABAM v. Netlog NV. The judgment was issued on a request made by the Court of First Instance of Brussels.

In the main proceedings the Belgische Vereniging van Auteurs, Componisten en Uitgevers CVBA ('SABAM'), a management company representing authors, composers and publishers of musical works, alleged that the hosting service offered by Netlog, a social network, enables its users to make works from SABAM's repertoire available to the public. Consequently, other users of the network could then access the works

without SABAM's consent and without Netlog paying remuneration to SABAM.

SABAM then started injunction proceedings before the Court of First Instance of Brussels, requesting Netlog to be ordered instantly to stop unlawfully making available works from SABAM's catalogue and to pay a EUR 1000 penalty for each day of delay. Netlog however argued that when this injunction would be awarded, this could lead to the imposition of a general monitoring obligation, prohibited by the E-commerce Directive and to the imposition of a general filtering system.

This led to the referral for a preliminary ruling by the Court of First Instance of Brussels. According to the Court of Justice, the issue referred by the Court of First Instance comes down to the question whether Directives 2000/31 ('the E-Commerce Directive'), 2001/29 ('the Infosoc Directive'), 2004/48 ('the Enforcement Directive'), 95/46 ('the Data Protection Directive') and 2002/58 ('the E-Privacy Directive'), taken together with the relevant fundamental rights (articles 8 and 10 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, regarding privacy and freedom of expression and information, and article 16 of the Charter of Fundamental Rights of the European Union, regarding the freedom to conduct a business), must be interpreted as containing a prohibition for national courts to grant an injunction against a hosting service provider requiring it to install a filtering-system for stored information on its servers by its customers at its own cost and for an unlimited period.

According to the Court of Justice, the proposed injunction contains a requirement for preventive monitoring and for installing a filtering system of such a kind that this would oblige Netlog to actively monitor almost all the data of all its users to rule out any future infringement of intellectual property rights. This would thus entail a requirement for the hosting provider to carry out general monitoring, which is prohibited by article 15(1) of the E-Commerce Directive.

As to the part of the question that relates to fundamental rights, the Court stresses that a fair balance must be found between the protection of the intellectual property right of the copyright holder on the one hand, and the freedom for Netlog to conduct a business as well as the right to data protection and freedom to receive or impart information of Netlog's users on the other hand. The Court observes that installing the filtering-system would be a severe infringement of the freedom of Netlog to conduct its business. The injunction would oblige the hosting service provider to install at its own cost a complex and expensive system of a permanent nature. This would also go against the conditions of article 3(1) of the Enforcement Directive, that provide that measures to guarantee respect for intellectual property rights should not be unnecessarily intricate or costly. As to the users' right to protection of personal data, the Court states that the injunction may infringe this right, since the filtering would entail the identification, systematic analysis and processing of the information connected with the profiles that the users have created. This data however is protected data, because it is connected to the users' profiles and thus allows the users to be identified. Lastly, the Court observes that the filtering system can also infringe the freedom of expression and information of Netlog's users, since the system might block lawful communications as well. All in all, the Court holds that if the national court would adopt the injunction, this would mean that it would not have fairly balanced the right to intellectual property with the three other fundamental rights mentioned above.

In conclusion, the Court's answer to the question of the Court of First Instance of Brussels is that "Directives 2000/31, 2001/29 and 2004/48, read together and construed in the light of the requirements stemming from the protection of the applicable fundamental rights, must be interpreted as precluding an injunction made against a hosting service provider which requires it to install the contested filtering system".

Finally, it should be noted that throughout this judgment, the Court refers to its ruling in the Scarlet Extended case (Case-70/10 Scarlet Extended [2011] ECR I-0000) (see IRIS 2012-1/2).

• Judgment of the Court (Third Chamber) in Case C-360/10, 16 February 2012
http://merlin.obs.coe.int/redirect.php?id=15669 DE EN FR
CS DA EL ES ET FI HU IT LT LV MT
NL PL PT SK SL SV

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Court of Justice of the European Union: Exploitation Rights of Film Directors

On 9 February 2012, the Court of Justice of the European Union (ECJ) issued a preliminary ruling on request of the Handelsgericht Wien (Commercial Court of Vienna) concerning the exploitation rights of the director and of the producer of a film.

At national level, the case involves the director and producer of a documentary film on German war photography during WWII ("Fotos von der Front"). The two parties had concluded an agreement acknowledging their respective roles and assigning all copyright and related rights to the film producer, with the exception of certain methods of exploitation (such as transmission to closed circles of users and pay-TV), that were subject to a separate payment. The contract was silent as to the statutory rights to remuneration (i.e., the "blank cassette remuneration" or levy on material recordings). The dispute arose when the

film producer made the movie available online and assigned the rights to an online movie platform for video-on-demand download. The film director considered that this method of exploitation had been reserved to him by contract and that therefore the contract and his copyright had been breached. The film producer disagreed and argued that all exclusive exploitation rights were assigned to him. In addition, he claimed to be entitled in full to the statutory rights to remuneration. The national court considered that under Austrian copyright law, as interpreted by the Supreme Court, exploitation rights were directly and originally vested in the film producer. Any agreements having a contrary effect were void. The law provided that the statutory rights to remuneration were shared equally between the film producer and the film director; however they could be waived and the parties could have agreed differently. The national court had doubts concerning the compatibility and consistency of the relevant provisions of the Austrian law with EU law and referred a series of questions for a preliminary judgment to the ECJ.

The first question sought to determine whether a national law that exclusively granted the exploitation rights in a cinematographic work to a film producer would be compatible with EU law (namely Articles 1 and 2 of the Cable and Satellite Directive; Articles 2 and 3 of the Information Society Directive and Article 2 of the Term of Protection Directive). According to the ECJ, a film director should be regarded as "having fully acquired under European Union law, the right to own the intellectual property in [a cinematographic] work". Denying him the exploitation rights "would be tantamount to depriving him of his lawfully acquired intellectual property right". As a consequence, the EU provisions should be interpreted as "precluding national legislations which allocates (04046) exploitation rights by operation of law exclusively to the producer of the work".

The second question related to the transfer of the rental right to the film producer. The ECJ ruled that EU law allows member states to establish a presumption of transfer of exploitation rights in favour of the film producer, under the condition that the presumption is not irrebuttable and the film director can agree otherwise (opt-out).

The third and fourth questions concerned the right of fair compensation. The ECJ had to determine whether a film director in his capacity as author or co-author would be entitled to fair compensation (under private copying) and whether the right of fair compensation could be subject to an automatic presumption of transfer. The Court ruled that under EU law, a film director should be directly and originally entitled to fair compensation. However, this right of fair compensation cannot be the subject of an automatic presumption of transfer in favour of the film producer, whether the presumption is rebuttable or not.

In conclusion, according to the ECJ, EU law requires that member states grant to a film director exploitation rights in a cinematographic work together with the right to fair compensation. National laws can establish a presumption of transfer of the exploitation rights to the film producer provided the film director can agree otherwise. However, fair compensation cannot be the subject of a presumption of transfer.

• Court of Justice of the European Union, C-277/10, Martin Luksan v. Petrus van der Let, 9 February 2012
http://merlin.obs.coe.int/redirect.php?id=15667 DE EN FR
CS DA EL ES ET FI HU IT LT LV MT
NL PL PT SK SL SV

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European Commission: Decision on OPTA's Assessement of the Retail Market for TV Services

On 12 December 2011, the European Commission notified the *Onafhankelijke Post en Telecommunicatie Authoriteit* (Independent Post and Telecommunication Authority - OPTA), the Dutch national regulatory authority, that it had no comments on OPTA's assessment of the retail market for TV services in the Netherlands.

As the retail market for TV services is not listed in the Commission Recommendation 2007/879/EC of 17 December 2007 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation, OPTA has carried out the three criteria test to assess whether the market warrants ex ante regulation. According to Article 2 of the Commission Recommendation, a market is susceptible to ex ante regulation when three (cumulative) criteria are met: the market is subject to high and non-transitory entry barriers; the market structure or characteristic does not tend over time towards effective competition and general competition law is insufficient to address market failures.

Considering the first criterion, OPTA finds that although significant investments are required to enable operators to enter the market, entry barriers have decreased since its last review of the wholesale broadcasting markets and could decrease further. Consequently, at this stage, OPTA could not reach a final conclusion on the nature of the entry barriers and thus proceeds with the analysis of the second criterion. OPTA concludes that this second criterion is not fulfilled as competition is developing faster than expected and in the absence of ex ante regulation the retail TV market will develop towards effective competition. Its assessment of the situation is based in on recent developments in the television services market. Among these developments are the declining importance of analogue television, the investments in

copper and fibre networks, the expansion of TV products offered by the competitors and the increase of OTT (over the top) television. These developments have led to a reduction of market shares held by the different operators. As the second criterion does not apply, OPTA does not assess the third one and concluded that the TV-services market does not warrant any ex ante regulation.

In its response, the European Commission acknowledges the aforementioned details of OPTA's analysis. It also refers to OPTA's remark concerning the existence of strong players in the Dutch television services market and to the commitment made by the national authority to follow and re-analyse the market if deemed appropriate. The Commission declares itself as having no comments, without prejudice to any position it may take towards other notified draft measures. This ends the national OPTA-proceedings regarding regulation of the retail market for TV-services, although there are procedures still pending that have been initiated by market players that disagree with OPTA's assessment.

• Commission decision concerning Case NL/2011/1267: Retail Market for TV Services, 12 December 2011
http://merlin.obs.coe.int/redirect.php?id=15690 EN

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European Commission: Communication on a Coherent Framework for E-Commerce and Online Services

On 11 January 2012, the European Commission adopted the Communication on e-commerce and other online services announced in the Digital Agenda and the Single Market Act. The Communication was released after an in-depth public consultation and in response to the request from the European Council to submit a roadmap for the completion of the Digital Single Market by 2012.

The Communication begins with pointing out the enormous benefits Europeans have derived from the development of electronic commerce. The internet has revolutionised the everyday lives in a way comparable to the industrial revolution; the internet economy creates 2.6 jobs for every "off-line" job lost, while the gains brought by lower online prices and a wider choice of available products and services are estimated at EUR 11.7 billion, equivalent to 0.12 % of European GDP. However the Digital Single Market is far from reaching full potential.

The Communication accordingly presents an action plan of 16 targeted initiatives aimed at doubling the share of e-commerce in retail sales and that of the internet sector in European GDP by 2015. By that year online trade and services could account for more than 20% of growth and net job creation in some member states. Of the main actions promised, the following practical commitments stand out as particularly relevant to the audiovisual sector:

- to examine the possibility of a European private copying initiative within 2013 and complete a review of the Copyright Directive within 2012. The Commission also intends to report on the outcome of the consultation on the online distribution of audiovisual works and the implications of the ECJ's "Premier League" ruling (see IRIS 2011-9/2);

- to develop, through dialogue with the stakeholders, codes of good conduct, good practice guides and guidelines giving consumers access to transparent and reliable information allowing them to more easily compare the prices, the quality and the sustainability of goods and services;

- to adopt, by 2012, a European Consumer Agenda putting forward a strategy and initiatives to place consumers at the heart of the Single Market, including digital issues, in particular by empowering consumers and offering appropriate protection of their rights;

- to develop a strategy for the integration of the markets for payments by card, internet or mobile phone, on the basis of a Green Paper adopted at the same time as this Communication with the aim of (i) assessing the barriers to entry and competition on these markets and proposing legislative action where necessary, (ii) making sure that these payment services are transparent for consumers and sellers, (iii) improving and accelerating the standardisation and interoperability of payments by card, internet or mobile phone, and (iv) increasing the level of security of payments and data protection. The Commission will present the conclusions of this exercise and the next stages by mid-2012;

- to adopt, by 2012, a horizontal initiative on notice and action procedures in order to combat the dissemination of products and services which are counterfeit, pirated or otherwise violate intellectual property rights.

• Commission Communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, "A coherent framework for building trust in the Digital Single Market for e-commerce and online services", COM(2011) 942
http://merlin.obs.coe.int/redirect.php?id=15666 DE EN FR

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AL-Albania

Regulator Decides to Ban Broadcasting of Controversial Ad and Music Video Clip

The National Council of Radio and Television (NCRT) made two decisions regarding the broadcasting of an advertising spot and a music video clip.

On 31 January 2012, the NCRT advised against the broadcasting of the video clip "High" by Babastars, broadcast by local music TV stations. The video shows a field full of plants of a narcotic nature and the text of the song favours consuming this substance and casts a favourable light upon this habit, according to the NCRT.

The NCRT examined the content of the video as a result of numerous complaints lodged by citizens to the Council. According to the Directorate of Programmes in the NCRT, this video violates the moral and ethical norms of broadcasting and the rights, education as well as moral and mental health of children.

In this context, the NCRT called upon electronic media to be more careful in selecting the content they broadcast.

Several days later, on 2 February 2012, the newly elected Council of Ethics connected to the NCRT, examined the content of an advertising spot of a mobile phone company, prompted by a complaint of the Commission for Consumer Protection.

The advertising spot shows a person that is ready to drop another person from a building's terrace and then is reminded of childhood memories they have in common. According to the Council of Ethics, this spot violates the content provisions in the broadcasting law that forbid advertising "that promotes behaviour that endangers normal health and psychic development of children."

As a result, the NCRT has asked all stations to immediately stop broadcasting this advertising spot.

• *NJOFTIM PËR MEDIA, Tiranë më 31.01.2012* (Decision of the NCRT of 31 January 2012)
http://merlin.obs.coe.int/redirect.php?id=15651 SQ

• *NJOFTIM PËR MEDIA, Tiranë më 02.02.2012* (Decision of the NCRT of 2 February 2012)
http://merlin.obs.coe.int/redirect.php?id=15652 SQ

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AT-Austria

Act on Transparency of Media Cooperation Announced

On 27 December 2011, the Austrian Federal Gazette announced the *125. Bundesgesetz* (125th Federal Act - MedKF-TG) enacting a *Bundesverfassungsgesetz über die Transparenz von Medienkooperationen und Werbeaufträgen und Förderungen an Medieninhaber eines periodischen Mediums* (Federal Constitutional Act on the transparency of media cooperation, advertising orders and support for owners of periodical media) and amending the *KommAustria-Gesetz* (KommAustria Act).

The MedKF-TG is particularly aimed at creating greater transparency in media announcements by the government or other public bodies. To this end, the institutions concerned are obliged to disclose their cooperation with the media, i.e., advertisements, other advertising orders and support for periodical publications and electronic media, radio and television broadcasters (Arts. 1(1) and 2(1, 2 and 4) MedKF-TG).

KommAustria is required to publish the information, including the total amount paid to each named media company, on a quarterly basis. The *Rechnungshof* (national audit office) will check that the published information is complete (Art. 1(1) MedKF-TG). Official announcements and job advertisements are expressly excluded (Art. 2(2) MedKF-TG). Infringements of the obligation to disclose information can be punished with a fine of up to EUR 20,000 (up to EUR 60,000 for repeat offences) (Art. 2(5) MedKF-TG). Article 2(3a) MedKF-TG also sets out the content-related requirements for admissible audiovisual communication and announcements paid for by public authorities, and instructs the Federal Government to adopt more detailed content-related guidelines.

These legislative measures are designed to strengthen transparency, media diversity and democracy - the latter in particular by guaranteeing a right to information for the supreme bodies (Art. 1(1) MedKF-TG).

In addition, the *Mediengesetz* (Media Act) has been amended in order to make ownership structures in the media sector more transparent. In future, fiduciary relationships and, in instances where shares are owned by foundations, the donors to and beneficiaries of the foundation concerned must also be disclosed (Art. 25 *Mediengesetz*).

The *Bundesverfassungsgesetz* entered into force on 1 January 2012 (Art. 1(2) MedKF-TG). The *Bundesgesetz* and amendments to the *Mediengesetz* will enter

into force on 1 July 2012 (Art. 2(7) MedKF-TG, Art. 55 *Mediengesetz*).

• *125. Bundesverfassungsgesetz über die Transparenz von Medienkooperationen sowie von Werbeaufträgen und Förderungen an Medieninhaber eines periodischen Mediums und Bundesgesetz über die Transparenz von Medienkooperationen sowie von Werbeaufträgen und Förderungen an Medieninhaber eines periodischen Mediums sowie Änderung des KommAustria-Gesetzes, 27. Dezember 2011* (125th Federal Constitutional Act on the transparency of media cooperation, advertising orders and support for owners of periodical media and Federal Act on the transparency of media cooperation, advertising orders and support for owners of periodical media and the amendment of the KommAustria Act, 27 December 2011)
http://merlin.obs.coe.int/redirect.php?id=15672 DE

• *131. Bundesgesetz, mit dem das Mediengesetz geändert wird, 27. Dezember 2011* (131st Federal Act amending the Media Act, 27 December 2011)
http://merlin.obs.coe.int/redirect.php?id=15673 DE

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ORF Facebook Pages Unlawful

In its decision of 25 January 2012 (KOA 11.260/11-018), the Austrian communications authority, KommAustria, concluded that various Facebook pages provided by the public service broadcaster ORF in connection with its television programmes constituted unlawful cooperation with Facebook as a social network. The *ORF-Gesetz* (ORF Act) prohibits ORF from offering online services in the form of social networks, including links to and other forms of cooperation with them.

The case concerned a total of 62 different ORF Facebook pages. Some content was provided by commissioned producers and some directly by ORF staff and editors. The pages contained not only the type of information found on a traditional website, but also opportunities to interact with registered Facebook users.

Article 4f of the *ORF-Gesetz* regulates the provision of online services by ORF, including a list of services that may not be offered by ORF. Under Article 4f(2)(25), these include social networks and links to social networks and other forms of cooperation with them. An exception applies to links related to ORF's own online news reports, i.e., links shown editorially, including as part of a report. This exception did not apply in the cases examined here.

ORF particularly argued that the pages were not social networks, but marketing activities or web content which it, like any other company, provided as part of its online activities and which were comparable to traditional websites. The regulator disagreed, especially since Facebook was more or less the prototype of a social network. It also noted that, in order to participate, Facebook's terms of use had to be accepted, which amounted to a form of cooperation.

In summary, KommAustria concluded that 38 Facebook pages produced by ORF staff members or employees of ORF-commissioned producers should be attributed to ORF and infringed the restrictions set out in Article 4f *ORF-Gesetz*.

• *Entscheidung KOA 11.260 / 11-018 der KommAustria, 25. Januar 2012* (KommAustria decision KOA 11.260 / 11-018, 25 January 2012)
http://merlin.obs.coe.int/redirect.php?id=15674 DE

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BE-Belgium

Flemish Public Broadcaster Infringes Commercial Communication Provision

On 19 December 2011, *Vlaamse Regulator voor de Media* (Flemish Media Regulator - VRM) decided that the public broadcaster VRT infringed the rules on commercial communication (Art. 53 *Mediadecreet* (Flemish Broadcasting Act)) when referring to Jupiler Pro League (the Belgian national football league) during the sports programme Extra Time.

Every Monday evening, the programme Extra Time is broadcast on Canvas, a channel of the Flemish public broadcaster. Usually, this programme contains an analysis of each match day of Jupiler Pro League. However, on 10 October 2011, this programme was exceptionally dedicated to the matches of the Belgian national football team. Even though the matches of Jupiler Pro League were not the subject of this show, the logo and the name of Jupiler Pro League were visually displayed.

The Belgian national football league is sponsored by Jupiler, a Belgian beer. Hence, it comes as no surprise that the official name of the league and the logo of the league refer to this beer. Pro League, the organisation that upholds the interests of all professional football clubs in Belgium, requires the broadcaster to include the logo and the name of the competition in each programme dealing with the Belgian football competition. As such, VRM is not opposed to the fact that the name and logo of the league makes reference to a commercial brand, but indicates that any references to the name and logo could be labeled as commercial communication. Commercial communication is defined as "images with or without sound, or sounds, which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity. Such images accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes" (Article 2, 5°Flemish

Broadcasting Act). According to VRM, the systematic visual display of the name and the logo promotes (at least indirectly) the goods, services or image of a natural or legal entity pursuing an economic activity: the beer Jupiler and Jupiler Pro League itself. Furthermore, VRM stated that when Extra Time is dedicated to the Belgian national football league, the display of the name and logo is allowed. However, on 10 October 2011, this programme dealt with the matches of the Belgian national football team. As a result, the V.R.M. decided that Extra Time contained commercial communication which was not readily recognisable as such, as required by Article 53 of the Flemish Broadcasting Act. VRM decided not to impose a fine but issued a warning instead.

• VMMa t. VRT, Beslissing 2011/034, 19 december 2011 (VMMa v. VRT, Decision 2011/034, 19 December 2011)
http://merlin.obs.coe.int/redirect.php?id=15657 NL

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BG-Bulgaria

Judicial Review of the Public Digital Multiplex Completed

On 16 January 2012 the Supreme Administrative Court rejected the appeal of DVBT (a group of seven companies led by Insat Electronics that support the networks of television Pro.bg and radio Express, Darik and FM+) against the choice of the Latvian company Hannu Pro to build up a so-called public multiplex (see IRIS 2010-8/16). The public multiplex will distribute the programmes of BNT and BNR from October 2013 (see IRIS 2009-7/5).

DVBT ranked second in the competition conducted by the Communications Regulation Commission with a score of 0.3 points lower than Hannu Pro. According to the company's appeal, pressure has been exerted on the working group's members in order to manipulate the assessments in favour of Hannu Pro. The company has previously been granted three more multiplexes in Bulgaria. On 8 December 2011, during the court meeting, the appeal by DVBT was supported by the prosecutor on that case. He said that the choice of Hannu Pro was unlawful and contrary to EU Directives that encourage competition in the media market.

The Supreme Administrative Court rejected making a request for a preliminary ruling to the European Court of Justice because the answer comes clear and unambiguously from a decision of the Court of Justice in a similar case: C-380/05 (Centro Europa 7 Srl v. Ministero delle Comunicazioni e Autorita per le garanzie nelle comunicazioni and Direzione generale per le concessioni e le autorizzazioni del Ministero delle Comunicazioni, see IRIS 2008-7/25).

Competitions have been conducted for six multiplexes so far (see IRIS 2011-4/12). The first two of them have been won by the Slovak company Towercom and the remaining four by Hannu Pro. According to some publications in the Bulgarian media both companies are directly or indirectly connected to the owner of the Corporate Commercial Bank, which is participating in the purchase of NURTS (a network for analogue television broadcasting).

• Решение № 772 от 16.01.2012 г . на Върховния административен съд , Петчленен състав , II колегия (Decision № 772 of the Supreme Administrative Court, five-member jury, II College, 16 January 2012)
http://merlin.obs.coe.int/redirect.php?id=15654 BG

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New Section in the Radio and Television Act

On 29 December 2011, a new section in the chapter on "Licensing and Registration of Operators" in the Radio and Television Act entered into force. It is titled "Registration of Radio and Television Operators that Produce Programmes Addressed to the Audience beyond the Territory of the Republic of Bulgaria". The purpose of this addition was to fill the gap in Bulgarian legislation concerning programmes that are produced in Bulgaria, but are transmitted outside Bulgaria via an electronic communication network for terrestrial or satellite broadcasting located in Bulgaria (see IRIS 2011-7/12).

For these broadcasters the Bulgarian law already requires registration with the Council for Electronic Media (CEM) and imposes an obligation to observe the same general principles for audio-visual media services that are obligatory for registered operators broadcasting their programmes in Bulgaria. These obligations also include the requirement to observe copyrights and neighbouring rights when producing and transmitting programmes. At the same time, the law releases these broadcasters from the obligation to submit to the CEM preliminary contracts proving the settlement of copyrights and neighbouring rights along with the application for registration as is required from broadcasters producing programmes addressed to the Bulgarian audience.

Despite this, the law provides that all enterprises that transmit such programmes are obliged to submit to the CEM twice a year documents proving that they have settlements with rightsholders on their programmes and on the elements of the programmes that are transmitted beyond Bulgaria.

• ЗАКОН за радиото и телевизията (Radio and Television Act (consolidated version))
http://merlin.obs.coe.int/redirect.php?id=12342 BG

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Postponement of Analogue Television Broadcasting

On 29 December 2011, a change was made to the Electronic Communications Act (SG, No 105/29.12.2011, in effect since 29 December 2011). Terrestrial analogue television broadcasting in the Republic of Bulgaria will be suspended on 1 September 2013 (see IRIS 2008-4/13).

Thus, this again enables television broadcasters who have not participated in the competition and have no programme licences (these licences exist according to § 5 of the Transitional and Final Provisions of the Electronic Communications Act - ECA) to claim, within the next 20 months, unfair competition against those that have licences and are supervised by the media regulator.

Within three months of the enforcement of this Act, the Council of Ministers shall adopt a plan for the implementation of digital terrestrial television broadcasting (DVB-T) in Bulgaria. The plan itself includes the stages, terms and conditions for the implementation of DVB-T. It provides for a set of measures to assist people with special social needs to ensure the having of equipment that allows access to radio and television programmes. The category of persons is based on criteria specified in the plan. The competent State authorities together with the undertaking that has won the multiplexes has the responsibility to put into effect the appropriate actions and procedures for informing the population about the implementation of DVB-T in the Republic of Bulgaria, within three months of the adoption of the plan. The implementation of the information measures continues until at least 30 November 2013.

The provision of § 214 of the Transitional and Final Provisions of the ECA holds that the Communications Regulation Commission (CRC) shall grant a free analogue frequency for the city of Sofia to the company "TV Europe". The company was sanctioned in the year 2009 (see IRIS 2011-4/12).

• Закон за електронни съобщения (Electronic Communications Act (consolidated version))
http://merlin.obs.coe.int/redirect.php?id=15653 BG

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CH-Switzerland

Swiss Government Report on Protection of Copyright on the Internet

In a report published on 30 November 2011, the Federal Council (Swiss Government) held that the current legal framework provided sufficient and adequate protection for Swiss cultural creation. A revision of the legislation aimed at increasing the protection afforded to works falling within the scope of copyright (music, films and video games) would therefore be premature and as a result was unnecessary.

The Federal Council had consulted the parties concerned and based its report on a number of recently published studies in order to draw up an analysis of the situation. However, the existing surveys do not make it possible to reach clear, unambiguous conclusions on the impact of file-sharing sites on sales and commercial losses in respect of protected works. While some of the studies reported that the illegal sharing of files has a negative effect on turnover for sales of protected works, others noted either the exact opposite, or did not observe any significant effect on sales. Furthermore, the users of file-sharing sites spend what they have saved on other lawful entertainment products (concert and cinema tickets, merchandising products, etc.), so that the prejudice suffered by the cultural branch of the economy as a whole would appear to be limited. As a result, the new consumer habits produced by the development of the Internet and digital technologies do not appear overall to have any negative effect on cultural creation in Switzerland. In this respect, the Federal Council observes that the turnover for the sectors of music, video games and cinema entertainment has remained relatively stable in recent years, despite the existence of the file-sharing sites.

It should be recalled that downloading works for private use is allowed in Switzerland, whether the works are from a legal or illegal source. At the same time, the Federal Council feels it is legitimate to consider the pertinence of the repressive measures intended to stem the flow of violations of copyright. The effectiveness of these has indeed proved to be limited, given firstly the scale of the violations of copyright and secondly the limited resources available to the authorities in terms of criminal prosecution. It would therefore be sensible to look into the advisedness of setting up a system of legal licensing, combined with a flat-rate remuneration fee, for making works available on the Internet for non-commercial purposes; such a solution is controversial among the general public, however, and it would be necessary to check its compatiblity with Switzerland's international commitments.

The Federal Council feels it is important to carefully monitor the evolution of the technologies and the international debate on the protection of copyright in the digital world. The situation should be reassessed periodically in order to detect the need to adapt copyright regulation in good time. Both the players involved and the authorities must continue at all times with their work of informing and making the public aware of copyright protection. Lastly, the Federal Council feels it is up to the market's players to adapt their business models to the structural changes resulting from the emergence of the new technologies.

• Federal Council report on the illegal use of works on the Internet, 30 November 2011 DE FR

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DE-Germany

BVerfG Rules on Dispute over Hyperlink to Software for Circumventing Copy Protection Systems

On 15 December 2011, the *Bundesverfassungsgericht* (Federal Constitutional Court - BVerfG) decided that it should not rule on a complaint by several music industry representatives against a judgment issued in a copyright dispute by the *Bundesgerichtshof* (Federal Supreme Court - BGH) in October 2010.

The case concerned an article published in 2005 by the defendant, a publishing house, in its online news service concerning a named piece of software that could be used to decode DVD films and circumvent copy protection software. As well as a warning that such activities were prohibited in Germany and Austria, the article contained a hyperlink to the website of the software provider concerned, from which the software could be downloaded. The plaintiffs claimed that this form of reporting infringed their DVD rights and demanded that the publisher remove the link. Their demand was upheld by the *Landgericht München* (Munich district court) and *Oberlandesgericht München* (Munich regional appeal court) under the rules on liability for aiding and abetting enshrined in Articles 823(2) and 830(2) of the *Bürgerliches Gesetzbuch* (Civil Code - BGB) and Article 95a(3) of the *Urhebergesetz* (Copyright Act - UrhG) (see IRIS 2005-9/12). However, the BGH largely overturned these decisions and rejected the complaint with reference to the overriding rights of free expression and media freedom under Article 6 of the EU Treaty, Article 11(1) of the Charter of Fundamental Rights and Article 5(1) of the *Grundgesetz* (Basic Law - GG).

Regarding the complaint that this ruling breached Article 14(1) GG (protection of intellectual property), the BVerfG held, firstly, that on account of a lack of relevance to constitutional law and a low chance of success, it should not rule on the complaint.

The BVerfG explained that, since there was no explicit legal regulation on the admissibility and limitations of hyperlinks, the opposing fundamental rights in this case had to be weighed up on the basis of the press and copyright law benchmarks recognised in case law. The crucial provisions here were German fundamental rights, on which the responsibility of the BVerfG was based. Since the relevant Directive 2001/29/EC did not grant the member states any freedom regarding its implementation, the provision of Article 95a UrhG itself should be measured against EU fundamental rights and, if there was any doubt, it should be submitted to the ECJ in accordance with Article 267(3) TFEU. In the present case, however, it was necessary to consider whether the granting of an injunction under the principle of liability for aiding and abetting in connection with Article 95a UrhG stood in the way of the basic rights of the publishing house. Since Directive 2001/29/EC did not contain any fully harmonising provision regarding this weighing up of interests, the process needed to be based on the *Grundgesetz*. The BVerfG had no reservations about the BGH's decision, particularly since there was little scope for it to examine the outcome of a court's weighing up process. In this connection, the BVerfG pointed out that the BGH was therefore right to consider that the provision of a link in an online article was protected under Article 5(1) GG. The discussion process necessary for the formation of opinion, protected by Article 5(1) GG, included private and public information about third-party statements, and also therefore the purely technical distribution of such statements, regardless of any associated expression of opinion by the distributor itself.

• *Beschluss des BVerfG vom 15. Dezember 2011 (Az. 1 BvR 1248/11)* (Decision of the Federal Constitutional Court, 15 December 2011 (case no. 1 BvR 1248/11))
http://merlin.obs.coe.int/redirect.php?id=15675 DE

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No Right to Photograph Photographer After All?

In January 2012, the *Landgericht Köln* (Cologne District Court - LG) dealt again with the question of whether photographs of a press photographer who wanted to report on a criminal procedure against a weather presenter that had attracted huge media attention, and the publication of the pictures on the Internet by the defendant, were lawful. In the ruling,

issued on 11 January 2012, the court granted the photographer an injunction against the distribution of four images in which he appeared, in so far as they were distributed in the manner described in the complaint.

In a separate case, the LG had decided, on 9 November 2011, that images showing a press photographer waiting in his car outside the weather presenter's house for an opportunity to take photographs could be published on the Internet (see IRIS 2012-1/19). On that occasion, the court had decided that publication was in the public interest, since it documented the media's treatment of famous people as a current event. Since the press photographer had been involved in reporting on the defendant which had "violated personality rights in many respects" and had only been photographed while carrying out his profession in his social environment, the court had considered his personality right as less important.

The outcome was different in the latest case: although the LG found that the reporting was in the public interest, it stressed that the content of the reporting was vital when weighing it against the press photographer's personality rights. The overall context in which the pictures were distributed was crucial. The photos had been published on the weather presenter's Twitter page, along with comments criticising the photographer's working methods. The LG ruled that the combination of the images and these comments, some of which it thought "bordered on slander" (the use of the terms "*Pack*" (rabble) and "*lichtscheues Gesindel*" (shady riffraff), for example), infringed the photographer's personality rights. It also took into account the fact that the photographer had previously been "completely unknown to the public" and had not been involved either in the media reporting of the aforementioned criminal case or in the related public debate. This distinguished the current case from the one that had been decided on 9 November 2011, as the court expressly pointed out it in the grounds for its decision.

The LG referred to the fact that the pictures showed the plaintiff carrying out his profession and, therefore, only in his social environment. However, the freedom to gather information was also protected under the freedom of the press. This was, in principle, restricted if journalists thought they would be photographed while undertaking such research.

• *Urteil des LG Köln vom 11. Januar 2012 (Az. 28 O 627/11)* (Decision of the Cologne District Court of 11 January 2012 (case no. 28 O 627/11))
http://merlin.obs.coe.int/redirect.php?id=15676 DE

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Court Rules on Protection of Personality Rights in Connection with Hidden Camera Use

According to media reports, on 9 February 2012 the *Amtsgericht Eschweiler* (Eschweiler district court - AG) acquitted two Dutch journalists of breaching domestic peace (Art. 123 of the *Strafgesetzbuch* (Criminal Code - StGB)) and violating the confidentiality of the spoken word (Art. 201 StGB).

The two defendants interviewed the joint plaintiff in 2009. The latter, as a member of the SS, had shot dead three civilians in the Netherlands in 1944. The death penalty that was originally ordered for these crimes was subsequently mitigated to life imprisonment, a sentence that he never began because he fled to Germany. In Germany, he was not sentenced to life imprisonment until 2010. The Dutch journalists found him in an old people's home in Germany and interviewed him there. They filmed the interview by means of a hidden camera. The footage was later broadcast in a 10-minute report on Dutch television. The interviewee claimed that the journalists' conduct had infringed his rights and instituted legal proceedings against them.

The AG cleared both defendants of the alleged offences. Although secret recording of the spoken word and its subsequent use were prohibited in Germany, the journalists had been in a situation of "necessity as justification". The interest of the public and of the victims' families, and the journalistic interest in the reappraisal of the case had been substantial, especially in the Netherlands. Furthermore, the journalists had previously requested an official television interview via the joint plaintiff's lawyer, but this had been refused. The interviewee's personality rights were of secondary importance. He was a "person of contemporary history" and the secret recordings were therefore "historical documents", which meant that he was obliged to tolerate this reporting. The court also recognised, in the defendants' favour, that they had been unaware that their conduct was punishable in Germany.

• *Pressemitteilung des Deutschen Journalisten-Verbands, 9. Februar 2012* (Press release of the German Journalists' Association, 9 February 2012)
http://merlin.obs.coe.int/redirect.php?id=15679 DE

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Bundestag Adopts Proposal for Digitisation Offensive

On 26 January 2012, the German *Bundestag* (lower house of parliament - BT), thanks to the votes of the ruling parties, adopted a proposal for a "digitisation offensive for our cultural heritage".

The proposal states, firstly, that the digitisation of cultural assets and knowledge is aimed at their long-term protection and accessibility by the public. The *Deutsche Digitale Bibliothek* (German Digital Library - DDB), which is being developed jointly by federal, regional and district public authorities, is particularly designed to make this possible. Through the wide-ranging digitisation of cultural assets and scientific information of all kinds, the (digital) services of the different German institutions could be networked together, made publicly accessible free of charge and centrally, and integrated into the European digital library, *Europeana* (see IRIS 2011-4/6). Particularly in view of the danger of losing such works and information - through natural disasters or decay, for example - there is a possibility of at least preserving digital copies and reproductions for posterity. In addition, open public access to this content would, in the long term, lead to a "democratisation of culture and knowledge", since all sections of the population could be reached. With reference to the recommendations of the *Comité des Sages* on the digitisation of the European cultural heritage, which also mention the considerable cost of digitisation (see IRIS 2011-3/5), the proposal supports the use of public-private partnerships to finance the necessary measures. Under such partnerships, the public's right to information and the commercial interests of the private companies involved must be fairly balanced. This is partly the responsibility of the "*Kompetenznetzwerk DDB*" (DDB competence network) made up of representatives of 13 notable cultural and scientific institutions and of the "*Kuratorium*" (committee) comprising representatives of federal, regional and district authorities. The fulfilment of the digitisation concept is also dependent on clear legislation on out-of-print and orphan works.

In this connection, the BT expressly welcomes the measures already taken to digitise cultural assets and knowledge and to seek cooperation with private companies.

Finally, the members of parliament call on the federal government to step up its efforts to expand the technical infrastructure of the DDB and digitisation measures, to look for other possible sources of finance and, in particular, to regulate the use of orphan works in the "third basket" of copyright law.

• *Bundestag, Antrag (Drs. 17/6315) vom 29. Juni 2011* (*Bundestag*, proposal (no. 17/6315) of 29 June 2011)
http://merlin.obs.coe.int/redirect.php?id=15677 DE

• *Bericht zur Bundestagssitzung vom 26. Januar 2012* (Report on the *Bundestag* session of 26 January 2012)
http://merlin.obs.coe.int/redirect.php?id=15678 DE

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ES-Spain

New Audiovisual Legislation in the Basque Country

On 8 November 2011, the Basque Government approved a decree that regulates audiovisual communications services within the Basque Autonomous Community. It implements the New General Law of Audiovisual Communications approved by the Spanish Parliament in 2010 (see IRIS 2010-4/21), replacing all prior legislation for the Basque audiovisual sector.

This new framework includes the liberalisation of audiovisual communication services, states that broadcasting licences will last for 15 years, instead of 10 years, and allows for more flexibility in their commercialisation after two years of being granted. It establishes the following guidelines to be observed when assessing the projects competing in radio and terrestrial television tenders: fostering of plurality in the audiovisual communication market, creation of employment and commitment to programming content in the Basque language ("euskera").

Additionally, the decree determines that in the awarding of digital terrestrial television licences at least one will be reserved, in every broadcasting area, for transmissions in the Basque language only (as long as there are at least three licences to award). Conversely, in the case of FM radio, at least one third of frequencies will be reserved for transmissions in Basque only if there is a minimum of two licences to award and the broadcasting area covers more than 100,000 inhabitants.

• Decreto 231/2011, de 8 de noviembre, sobre la Comunicación Audiovisual, BOPV Nº 222, de 23 de noviembre de 2011 (Decree 231/2011 on Audiovisual Communication of 8 November, Official Journal of the Basque Country, Nº 222 of 23 November 2011)
http://merlin.obs.coe.int/redirect.php?id=15687 ES

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FR-France

Court Finds against Documentary Film

On 26 January the regional court in Lille delivered its judgment in the high-profile case of the documentary entitled *Le Mur*, which denounces the treatment of autism by psychoanalysis. Three psychoanalysts had given their authorisation for their images and voices to be used after they were filmed and interviewed for the production of a three-part documentary film. They complained that their interviews had been edited and used in a distorted form in order to make a biased 52-minute film that was eventually called *Le Mur* and subtitled *La psychanalyse à l'épreuve de l'autisme* and made available on the Internet site of an association of parents of people suffering from autism. The psychoanalysts held that their moral right as co-authors of the film had been violated, that the right to use their images and voices had been infringed, and that their professional reputation had suffered as a result; they therefore had the director and her producer summoned to appear in court, claiming compensation for these three points, a ban on showing and distributing the disputed film, and publication of the court's decision.

The court began by recalling that to be able to claim the capacity of co-author, with a view to obtaining compensation for the violation of their moral right, the applicants had to produce proof that they had made a specific contribution of intellectual creation to the concept or filming of the documentary. In her capacity as director and in application of the provisions of Article L. 113-7 of the Intellectual Property Code, the director was the author of the documentary film at issue. Furthermore, it was not contested that the disputed interviews had not been prepared jointly by the director and the applicant parties, and that the questions had not been communicated in advance to the interviewees, who had answered them spontaneously. Nor had the interviewees had any power to intervene in the intellectual conception of the work, its editing, or the choices to be made in selecting the extracts to be used, such that they were not entitled to claim any right of episodes of withdrawal or remorse that would imply that the final document ought to have been submitted to them first, before being shown. As a result, the applicants could not be acknowledged as being co-authors of the film and their claims that their moral rights had been violated were rejected. Regarding the effect on their reputation, the court stated that the director's rights, in her capacity as author, to create an original work by imprinting her personal hallmark on the composition and style of the film was limited by the obligation incumbent on her to refrain from any distortion of what the interviewees said. In examining whether this was the case or not, by comparing the finished film with the rushes, the court noted that the director had not respected the meaning of what the psychoanalysts had said and concluded that she had deliberately distorted what the applicants had said, making it appear that they were convinced that parents played a negative role in the causes of autism, refuting current scientific knowledge, thereby damaging their image and their reputation, since their positions on these subjects were considerably less hard-line. The court added that the film dealt with a subject that appeared to be of general interest and contributed to the public's right to information, which meant that a truncated and distorted presentation of the applicant parties' statements was inappropriate. The complainants were awarded 7,000 and 5,000 euros respectively. The court also ordered the withdrawal of all the extracts of their interviews, and publication of its judgment in three periodicals. The director has announced that she intends to appeal.

• *TGI de Lille (ch. 01), 26 janvier 2012 - E. Solano-Suarez, E. Laurent et A. Stevens c. SARL Océan Invisible Production, S. Robert et Association autistes sans frontières* (Regional court of Lille (1st chamber), 26 January 2012 - E. Solano-Suarez, E. Laurent and A. Stevens v. SARL Océan Invisible Production, S. Robert and the association *Autistes Sans Frontières*)
http://merlin.obs.coe.int/redirect.php?id=15697 FR

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CSA Classifies Advertising Spot as Political Advertising

On 13 January 2012 the audiovisual regulatory authority (*Conseil Supérieur de l'Audiovisuel* - CSA) announced that it had instructed the digital TV channel Direct Star to stop broadcasting a disputed advertisement, on the basis of Article 14 of the Act of 30 September 1986 (as amended) and the provisions of the first paragraph of Article L. 52-1 of the Electoral Code prohibiting political advertising. The CSA had noted that a message in favour of the *Parti Contre le Cancer* had been broadcast on the channel over a period of about ten days last October. The spot featured a famous professor of medicine who is a cancer specialist and president of the *Alliance pour la Recherche en Cancérologie*. He had spoken in the media on a number of occasions in the past to announce that he was standing as a candidate in the forthcoming presidential election. The CSA found that the content of the message broadcast classified it as political advertising, which was prohibited. In addition to instructing the channel to stop broadcasting the message, the CSA also notified the professional regulatory authority on publicity so that it would inform its members.

• *CSA : Direct Star : diffusion d'un message en faveur du « Parti contre le cancer »* (CSA: Direct Star: broadcasting of a message in favour of the *Parti Contre le Cancer*)
http://merlin.obs.coe.int/redirect.php?id=15671 FR

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• *Loi n°2012-158 du 1er février 2012 visant à renforcer l'éthique du sport et les droits des sportifs, JORF du 2 février 2012* (Act No. 2012-158 of 1 February 2012 aimed at strengthening the sport ethic and the rights of sportsmen and -women, Official Gazette of 2 February 2012)
http://merlin.obs.coe.int/redirect.php?id=15698 FR

Amélie Blocman
Légipresse

CSA Henceforth Competent to Lay Down Rules for Broadcasting "Brief Extracts" of Sports Competitions

Among the "Sundry Provisions" contained in Act No. 2012-158 of 1 February 2012 aimed at strengthening the sport ethic and the rights of sportsmen and -women, the audiovisual regulatory authority (*Conseil Supérieur de l'Audiovisuel* - CSA), has been entrusted with laying down the way in which the "brief extracts" of sports competitions mentioned in Article L. 331-5 of the Sport Code may be broadcast, following consulting France's National Olympic and Sports Committee and the organisers of the sports events referred to in Article L. 331-5. Since 1984, in the name of the public's right to information, Article L. 333-7 of the Sport Code has guaranteed the channels' entitlement to broadcast brief extracts of sports events for which the rights are held by another editor. There were plans for an implementing decree, but it was never adopted. The Act of 13 July 1992 took up the general features of the code of good conduct drawn up by the main broadcasters, the national Olympic committee, the CSA, sports reporters' unions, etc. The scheme adopted involves the application to sport of the right to quote resulting from the legislation on neighbouring rights to copyright (the broadcaster must identify the source, the quotation must be brief, and the quotation must be incorporated in an informative work). Two major uncertainties remained, however, regarding the interpretation of the notions of "informative work" and "brief extracts", giving rise to a number of legal disputes, encouraging the CSA to embark on a public consultation on the subject in 2008. As a result, the CSA is henceforth formally entitled by the new legislation to lay down the conditions for broadcasting these brief extracts of sports competitions. The new legislation also gives the CSA the task of laying down the conditions for applying the new Article 20-3 of the Act of 30 September 1986, which states that "television services broadcasting sports programmes shall contribute to the anti-doping campaign and the protection of people taking part in physical and sports activities by broadcasting programmes on these subjects". The previous arrangement, which required television services to broadcast short anti-doping programmes before, during and after events of major importance, was in fact extremely difficult to implement, and as a result had never been carried out.

GB-United Kingdom

On-Demand Adult Programme Service Censured

On 1 February 2012, the UK Authority for Television On Demand (ATVOD) published a determination that the web-based on-demand adult programme service Bootybox.tv had breached statutory rules requiring video on demand providers to ensure that under 18s cannot normally access hardcore pornographic content. Bootybox.tv had been notified to the ATVOD as having been available since November 2010. The service provider described its content as "generic and mostly BBFC compliant UK porn available on-line".

On 26 June 2011, a parent complained that a son had used this service and other web based services to access pornographic videos " (04046) that have no parental control on and are far too strong to be allowed even under UK law (04046)".

The matter is governed by Section 368(E) (2) of the Communications Act 2003. This states that "If an on-demand programme service contains material which might seriously impair the physical, mental or moral development of persons under the age of eighteen, the material must be made available in a manner which secures that such persons will not normally see or hear it." This provision is mirrored in the ATVOD Rules & Guidance, Rule 11.

ATVOD found that "the website broke the statutory rules in two ways. First, it allowed any visitor to the website unrestricted access to a selection of hardcore pornographic video promos/trailers featuring real sex in explicit detail and featured a large still image of explicit sex on the homepage. Secondly, access to the full videos was open to any visitor who paid a fee. As the service accepted payment methods - such as debit cards and prepaid vouchers - that can be used by under 18s, ATVOD ruled that the service had also failed to put in place effective access controls in relation to the full videos".

ATVOD followed up its ruling with an Enforcement Notification, requiring the provider of Bootybox.tv to either remove the hardcore porn content from the ser-

vice or put it all behind effective access controls that will ensure that only adults can see it.

The service has now ceased operating.

• ATVOD, Determination that the provider of the on demand programme service "bootybox.tv" was in breach of rule 11, 1 February 2012
http://merlin.obs.coe.int/redirect.php?id=15660 EN

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BBC Wins Right to Broadcast Interview with Terrorist Suspect Held in Prison

On 11 January 2012 the English High Court overturned a decision by the Justice Minister preventing the BBC from interviewing a suspected terrorist who has been held in prison for seven years without trial.

Babar Ahmad has been held in prison pending extradition to the United States since 2004, and is currently awaiting a final decision on his case by the European Court of Human Rights, which had ruled in 2007 that he should not be extradited until it had considered his application. The BBC and a journalist had sought permission to interview him in prison; this was originally granted but with audio recording only which was not to be broadcast. The decision was reviewed by the Secretary of State for Justice who decided to refuse any face-to-face interview, arguing that such an interview would case distress to victims of terrorist acts and would undermine confidence in the criminal justice system through assisting the mounting of a media campaign alongside court proceedings. Instead, the prisoner could make his views known through written correspondence.

The High Court held that the refusal to allow an interview would breach the right to freedom of expression under Art. 10 of the European Convention on Human Rights. Potential offence was not a sufficient ground for restricting freedom of expression, and the truly exceptional nature of this case meant that the case for freedom of expression was particularly strong. Thus the decision to refuse an interview was disproportionate; it had not been shown that no less restrictive alternatives to a ban were available, for example agreeing with the BBC that the programme in which the interview was shown would not be used as a platform for a media campaign protesting the prisoner's innocence. Although there were arguments for the public interest on both sides, Art. 10 conferred on the public a right to receive information and to engage in debate on the issues raised in the case that was as fully informed as possible. However, this exceptional case would not set a precedent for other cases in the future.

The Justice Secretary decided not to appeal and to open negotiations with the BBC about the terms of the interview.

• BBC and Dominic Casciani v. Secretary of State for Justice [2012] UKHC 13 (Admin)
http://merlin.obs.coe.int/redirect.php?id=15661 EN

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Ofcom Upholds ATVOD Rulings

On 18 January 2012, Ofcom upheld ATVOD's Determinations that three Viacom companies - Nickelodeon UK Limited, The Paramount Partnership and MTV Networks Europe - were the responsible persons for VOD services featuring their content on the Virgin Media platform.

The issue concerns Section 368A of the Communications Act 2003. This defines 'editorial responsibility' which, in turn, triggers regulatory responsibility.

A service is only an On Demand Programme Service (ODPS) if it satisfies the defining criteria in section 368A of the Act. Key amongst these for the purpose of the appeals are in sections 368A(1)(c) and (d), that,

" a service is an ODPS if (04046) (c) there is a person who has editorial responsibility for it; [and] (d) it is made available by that person for use by members of the public".

The concept of editorial responsibility is defined in terms of general control by section 368A(4), which states that ""a person has editorial responsibility for a service if that person has general control (a) over what programmes are included in the range of programmes offered to users; and (b) over the manner in which the programmes are organised in that range; and the person need not have control of the content of individual programmes or of the broadcasting or distribution of the service".

ATVOD had studied the Agreement between each company and Virgin Media whereby each "(04046) had agreed it is the provider of the ODPS comprising the Appellant's content under the Agreement and has "editorial responsibility" over the same, save in respect of any insertions or advertising placed by Virgin Media in or around the content".

Further, "in relation to organisation of material in particular, ATVOD pointed out that the Appellant in each case provides the metadata accompanying the programmes".

• Ofcom Appeal Decision, 18 January 2012
http://merlin.obs.coe.int/redirect.php?id=15659 EN

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IT-Italy

Reform in the Field of Neighbouring Rights

The Italian government has adopted a reform (known as "Decreto Liberalizzazioni"), aimed at promoting the value of market competition. The recent Law Decree takes into account various issues, including neighbouring rights. Article 39 of the Decree states that in order to favour the creation of new undertakings aimed at protecting the rights of performers and producers - by enhancing competitive pluralism and allowing for a more economic-oriented management, as well as by favouring the actual involvement and control by rightsholders - administration and intermediation activities relating to neighbouring rights are free.

Neighbouring rights due to performing artists are currently held by New IMAIE (*Nuovo Istituto Mutualistico per la tutela dei diritti degli Artisti Interpreti ed Esecutori*). New IMAIE was established on 12 July 2010, by effect of Art. 7 of Act 100/10 "Provisions regarding the Istituto Mutualistico Artistico Interpreti Esecutori". The role and functions entrusted to IMAIE until 14 July 2009, the date on which it was declared extinguished by a decree of the Rome Prefect, have been transferred to New IMAIE. (see IRIS 2011-4/103)

New IMAIE manages and protects neighbouring rights due to performing artists in the music and audiovisual areas. Currently New IMAIE has, de facto, a monopoly in neighbouring rights management (the legislative framework before the adoption of the new "Decreto Liberalizzazioni" was unclear). The new law solves doubts and allows more intermediaries to take part in the neighbouring rights' management market. We should wait, however, for the Italian Government to determine the minimum requirements for a rational and orderly development of a neighbouring rights' market.

The new law leaves intact the functions of SIAE (Società Italiana Autori ed Editori), the copyright collecting society, which still benefits from a legal monopoly.

• Decreto Legge 24 gennaio 2012, numero 1 (articolo 39): "Disposizioni urgenti per la concorrenza, lo sviluppo delle infrastrutture e la competitivita'" (Law Decree of 24 January 2012 Number 1, Article n. 39)
http://merlin.obs.coe.int/redirect.php?id=15691 IT

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KG-Kyrgyzstan

Law on PBC Adopted by Parliament

The Statute "On Public TV and Radio Broadcasting Corporation of the Kyrgyz Republic" (Об Общественной телерадиовещательной корпорации Кыргызской Республики) was adopted by *Zhogorku Kenesh* (the Parliament) on 18 November 2011, signed into law by President Almaz Atambaev on 21 December 2011, and entered into force on 10 January 2012.

It replaces the Decree "On establishing the Public TV and Radio Broadcasting Corporation of the Kyrgyz Republic" adopted on 30 April 2010 by the then Provisional Government (see IRIS 2010-6:1/36).

The new Statute has five chapters and 29 articles and follows the governmental decree that it replaces.

The Public TV and Radio Broadcasting Corporation of the Kyrgyz Republic (thereafter - PBC) has the legal status of a State broadcasting organization: its rights and freedoms are guaranteed by the State. The State has established the PBC in order to guarantee citizens' right to freedom of information (Art. 6).

Among the goals of the Corporation are the maintenance of national culture and traditions, the formation of a common information and broadcasting space, the creation of a positive world image of the Kyrgyz Republic as a democratic country, maintenance of the highest standards of journalism, standards of tolerance and respect for human rights, as well as the production of high quality programmes on socially important issues.

The Statute (Art. 7) introduces minimum quotas for children's and educational programmes (30 percent), programmes in Kyrgyz language (50 percent), programmes produced in Kyrgyz Republic (70 percent), as well as programmes produced by independent producers (30 percent).

The management and control of the Corporation shall be the responsibility of the Supervisory Board and the Director-General (Art. 11). The Supervisory Board is the supreme body of the PBC; it consists of 15 members elected for five years by the parliament: five from among the ten candidates proposed by the president, five from among the ten candidates proposed by the parliament itself, and five from ten candidates from civil society, that is "educational and academic institutions, creative unions, public associations, the mass media, etc." (Art. 13). Its chair is elected by the Board itself.

New members of the Supervisory Board are to be elected within three months after the entry into force of the Statute (Art. 29).

The Director-General is the chief executive officer of the PBC and is elected by the Supervisory Board in an open contest for a term of 5 years (Art. 19).

The activity of the Corporation is based on the principles of transparency. Its annual report shall be delivered to the president and parliament and shall be published in the press (Art. 18).

According to Article 20 of the Statute the main source of financing of the Corporation comes from the national budget, as well as income from its commercial activity, the sale of intellectual property, advertising and sponsorship.

Article 9 contains provisions on advertising. It imposes limits of ten per cent on both the daily and hourly broadcasting time used for advertising.

Programmes of the PBC "shall not be under control of the Government, political or business forces, shall reflect a fair editorial policy and shall not represent views or opinion of the Corporation", there shall be news and current affairs programmes based on all-inclusiveness, objectivity and balance (Art. 21).

The Statute stipulates for the protection of journalistic sources, the right of reply and the need for ethical standards for PBC journalists.

• Об Общественной телерадиовещательной корпорации Кыргызской Республики (Statute of the Kyrgyz Republic "On Public TV and Radio Broadcasting Corporation of the Kyrgyz Republic" of 21 December 2011, No. 247. It was officially published by Erkin Too (Эркин Тоо) on 10 January 2012, No. 1)
http://merlin.obs.coe.int/redirect.php?id=15647 RU

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KZ-Kazakhstan

Broadcasting Law Enters into Force

On 18 January 2012 Kazakhstan President Nursultan Nazarbaev signed into law the Statute "On television and radio broadcasting", adopted earlier by the national legislature. The Act consists of six chapters and 43 articles. It enters into force 2 March 2012.

The Statute introduces a comprehensive uniform system of licensing of activities in the audiovisual sphere including IP-television and radio, satellite and cable broadcasting, down to dissemination of signals within one block of flats (Art. 40). In addition to a license all foreign TV and radio channels shall undergo special registration procedures if rebroadcast in Kazakhstan by any means of transmission. Retransmission of foreign programmes as part of programming of a Kazakhstan broadcaster shall have a cap of 20 percent (Art. 34). Licensing and registration shall be carried out by an executive body of the Government.

The Statute regulates some aspects of the digital switchover. They involve, in particular, the establishment of a national operator for digital infrastructure, as determined by the Government (Art. 25). Must-carry channels shall be determined every three years by the Government taking into account the recommendations of the Commission on Development of Broadcasting to be established by the Government and acting in accordance with by-laws as approved by the Government (Arts. 11 and 12).

The Statute imposes limitations on the use of foreign languages in television and radio broadcasting including transmissions via cable.

The Office of the Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe (OSCE) issued its Commentary on the Draft Law "On television and radio broadcasting" in which it criticized the bill from the viewpoint of the country's obligations as an OSCE Member State.

• Закон Республики Казахстан от *18* января *2012* года *№ 545-IV* « О телерадиовещании » (Statute of the Republic of Kazakhstan "On television and radio broadcasting" No. 545-IV, Kazakhstanskaya pravda, 31 January 2011, No. 33-34.)
http://merlin.obs.coe.int/redirect.php?id=15686 RU

• OSCE, Legal analysis of the Draft Law of the Republic of Kazakhstan "On television and radio broadcasting" (April 2011 with addendum of September 2011)
http://merlin.obs.coe.int/redirect.php?id=15648 EN

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MT-Malta

Public Consultation on Film and Stage Classification

The Ministry for Tourism, Culture and the Environment launched on 18 January 2012 a public consultation process relating to amendments to the Stage and Film Classification framework for Malta. A draft Legal Notice setting out the proposed new law has been published for feedback purposes. The consultation process was open until 7 February 2012.

The regulations are inspired by the Television Programmes (Classification Certificates) Regulations, which apply to television broadcasts and allow broadcasters to appoint their own person who is responsible for classifying television programmes. In so far as film, stage and theatre are concerned, the current legal framework does not allow a system of self-regulation. On the contrary, a Board of Film and Stage

Classification assigns the classification to a film/stage production and may also withhold classification. In the latter instance, the film/stage production will not be shown/performed.

The proposed regulations attached to the consultation document will still allow the a priori classification of films, but in so far as stage productions are concerned, self-regulation will apply where it is the producer or director of the production who will age-classify the productions. A Guidance Board composed of four members will be appointed by the Minister for Culture. Their terms of reference will include the creation of a list of guide rules to be adopted by stage producers when awarding age-classifications; the assistance of producers/directors in carrying out age-classifications of theatrical performances and the receipt of complaints from the public about the age classifications.

The regulations will thus establish a two tier form of regulation: regulation in so far as films are concerned and self-regulation in so far as stage productions are concerned. However, a Classification Appeals Board is established to review decisions of the Board of Film Age-Classification. There is a further right of appeal from the decision of the Classification Appeals Board to the Administrative Review Tribunal, the latter Tribunal being presided over by a member of the judiciary. On the other hand, in so far as theatrical productions are concerned, there is a proposal to establish a Guidance Board that will decide upon the complaints it receives from the public. Hence, the Guidance Board has both an advisory and an adjudicatory function. The regulations are nevertheless silent as to whether there is a further right of appeal to the Administrative Review Tribunal.

The regulation of films and stage production will no longer be considered to be a police matter as is the situation today, but these duties will now be transferred from the Code of Police Laws to the Malta Council for Culture and the Arts.

• Television Programmes (Classification Certificates) Regulations
http://merlin.obs.coe.int/redirect.php?id=15662 EN MT
• Public Consultation Document, "Cinema and Stage Classification", 17 January 2012
http://merlin.obs.coe.int/redirect.php?id=15663 EN MT

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RO-Romania

OTV Sanctioned again for Breaching Electoral Campaigns Rules

On 19 January 2012 the *Consiliul Naţional al Audiovizualului* (National Council for Electronic Media - CNA) again sanctioned the commercial tabloid television station OTV for interrupting its programme for 10 minutes on 20 January 2012 at 19.00 local time, and for broadcasting only the announcement of the sanction.

The trigger for the sanction was electoral advertising broadcast outside the electoral campaign period in favour of the political party *Partidul Poporului - Dan Diaconescu* (PP-DD, People's Party - Dan Diaconescu) founded by the owner of the station: Dan Diaconescu (see inter alia IRIS 2009-6/28, IRIS 2011-9/31 and IRIS 2011-10/36).

The sanction was issued because of repeated breaches of Art. 139 of the *Codul Audiovizualului - Decizia nr. 220/2011 privind Codul de reglementare a conţinutului audiovizual, cu modificările şi completările ulterioare* (Audiovisual Code - Decision no. 220/2011 concerning the regulation of audiovisual content, with further modifications and completions). According to this Article positive and negative advertising for political parties, politicians and political messages is forbidden except during electoral campaign periods.

Even though the broadcaster had been sanctioned several times in the past for similar legal infringements, it continued to broadcast spots with political content between 7 October 2011 and 12 January 2012, the Council stated. OTV was sanctioned five times, from time to time, for the same fault, the total amount being RON 265,000 (EUR 61,050), in 2010-2011. The Council considered that OTV purposely continued a real electoral-campaign activity outside an allowed period, which could harm potential electoral competitors.

• Decizia nr. 35 din 19.01.2012 privind privind sancţionarea radiodifuzorului S.C. OCRAM TELEVIZIUNE S.R.L., pentru postul de televiziune OTV, cu obligaţia de a difuza, în ziua de 20.01.2012, timp de 10 minute, între orele 19.00-19.10, numai textul deciziei de sancţionare emise de C.N.A. (Decision no. 35 of 19. January 2012 concerning the sanction for S.C. OCRAM TELEVIZIUNE S.R.L., for the TV station OTV)
http://merlin.obs.coe.int/redirect.php?id=15656 RO

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Recommendation for the Coverage of Social Protests

The *Consiliul Naţional al Audiovizualului* (National Council for Electronic Media - CNA) issued on 17 January 2012 a recommendation addressed to audiovisual broadcasters to inform correctly and in full about the important social protests that started in Romania in mid-January.

The Council requested the broadcasters to observe the *Legea audiovizualului nr. 504/2002, cu modificările şi completările ulterioare* (Audiovisual Act no. 504/2002, with further modifications and completions) and the *Codul Audiovizualului - Decizia nr. 220/2011 privind Codul de reglementare a conţinutului audiovizual, cu modificările şi completările ulterioare* (Audiovisual Code, Decision no. 220/2011 concerning the regulation of audiovisual content, with further modifications and completions; see IRIS 2008-1/26 and IRIS 2011-10/37).

Due to the fact that television remains the main information source for 80% of the population and in the context of the numerous social protests reported about live or pre-recorded by most television stations, the Council reminded that, according to Art. 3 (2) of the Audiovisual Act, television and radio stations are obliged to inform the public objectively by a fair presentation of facts and events and to favour free opinion-making. Broadcasters are obliged not to air distorted or unchecked information and to make due corrections immediately, if significant errors have occurred.

The Council requested broadcasters to clearly mark replayed images with their initial date or the sign "Archive", in order to avoid confusion. The CNA also requested broadcasters to avoid repeated and unjustified replay of violent, obscene or instigating messages and reminded them that journalists must observe the rights of every member of society of pluralism and free opinion-making. The Council also requested the Gendarmerie and the protesters to allow journalists to do their job in the safest possible way.

The recommendation came after several days of extended and sometimes violent social protest which started mid-January in Bucharest and many other Romanian cities. The protesters called for the resignation of Romania's President and for early parliamentary elections. Meanwhile, the Prime Minister resigned on 6 February 2012. The protesters accused the President and the Government of wrong anti-crisis measures and of authoritarian and non-democratic acts. Violent clashes took place in Bucharest during the first stage of protests between the Gendarmerie and protesters, presumably fans of some football teams. The President and the ruling coalition accused the opposition of being behind the protests, but the opposition firmly rejected these allegations. The President and the ruling majority also accused the main Romanian news television stations of unfair and biased coverage of the protests.

• Recomandare CNA 17 ianuarie 2012 (CNA Recommendation of 17 January 2012)
http://merlin.obs.coe.int/redirect.php?id=15655 RO

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RU-Russian Federation

Supreme Court on Extremism and Terrorism-related Crimes in the Media

The Russian Supreme Court has recently held two Plenary Meetings that resulted in similar resolutions that provide explanations to all judges in the country on the issues of court practice relating to crimes of terrorism and extremism.

The Resolution "On Judicial Practice Relating to Criminal Cases on Crimes of an Extremist Nature" of 28 June 2011 instructs judges that when adjudicating on such cases they should take into account both security of public interests (i.e., foundations of the constitutional regime, and integrity and security of the Russian Federation) and protection of human rights and liberties as defined in the Constitution (freedom of conscience and religion, freedom of expression, freedom of mass information, the right to seek, receive and impart information by legal means, etc.) (point 1).

The Resolution interprets what is to be considered as hate speech, the essential element of extremist speech. The crime of hate speech can take place only with actual malice and with the aim to cause hatred and enmity as well as to denigrate the dignity of a person or a group of persons if motivated by characteristics such as gender, race, ethnicity, language, origin, attitude to religion, or belonging to a social group.

The issue whether dissemination of extremist materials (see IRIS 2002-8/32 and IRIS 2007-9/27) presents a crime should be adjudicated based on the intention of such dissemination. In this regard the expression of opinions, arguments that use facts of interethnic, interdenominational and other social relations in the discussions and texts of scholarly or political nature that do not aim to denigrate human dignity of groups of persons does not present a crime of hate speech (point 8).

In point 7 the Resolution points to the fact that criticism of political organizations, ideological and religious associations, political, ideological or religious

beliefs, ethnic or religious customs per se should not be considered as hate speech. When determining whether State officials (professional politicians) were subjected to denigration of human dignity or dignity of a group of people, the judges are directly referred to take into account points 3 and 4 of the Declaration on freedom of political debate in the media of the Council of Europe's Committee of Ministers (2004) and the relevant case law of the European Court of Human Rights. In this regard the Supreme Court states that criticism in the mass media of such persons, of their actions and beliefs per se should not be considered in all cases as action aimed at denigrating the dignity of a person or a group of people as in relation to such persons the limits of admissible criticism are broader than those in relation to other people.

The Resolution "On Some Aspects of Judicial Practice Relating to Criminal Cases on Crimes of Terrorist Nature" of 9 February 2012 stipulates that judicial "measures to prevent and stop such crimes should be taken in compliance with the rule of law and democratic values, human rights and basic liberties, as well as other provisions of international law".

Both resolutions state that public calls to extremist activities (terrorism) include calls with the use of Internet, such as the posting of such calls on websites, in blogs or fora, dissemination via bulk e-mail, etc. The crimes are considered complete from the moment of promulgation (dissemination) of such calls no matter whether they indeed cause citizens to perform extremist activity (act of terrorism), e.g., from the moment of the start of a broadcast or providing access to Internet-media.

• О судебной практике по уголовным делам о преступлениях экстремистской направленности (Resolution "On Judicial Practice Relating to Criminal Cases on Crimes of Extremist Nature" No. 11 of 28 June 2011)
http://merlin.obs.coe.int/redirect.php?id=15649 RU

• О некоторых вопросах судебной практики по уголовным делам о преступлениях террористической направленности (Resolution "On Some Aspects of Judicial Practice Relating to Criminal Cases on Crimes of Terrorist Nature No. 1 of 9 February 2012)
http://merlin.obs.coe.int/redirect.php?id=15650 RU

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Agenda

IP and Media In the Digital Age

23 March 2012 Organiser: Conferences and Training Venue: London http://www.conferencesandtraining.co.uk/ip-media

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