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IRIS
Legal Observations
of the European Audiovisual Observatory

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INTERNATIONAL

COUNCIL OF EUROPE

European Court of Human Rights: Tuşalp v. Turkey

On 21 February 2012, the European Court of Human Rights has once again found an unjustified interference with the right to freedom of expression and press freedom by the Turkish authorities. The peculiarity this time is that the Prime Minister, Mr Recep Tayyip Erdoğan, himself lies at the centre of the violation of the European Convention by the Strasbourg Court. In the case Tuşalp v. Turkey the European Court was asked to consider whether two defamation actions taken by the Prime Minister of Turkey against a journalist for protection of his personality rights were compatible with Article 10 of the European Convention. The applicant was Erbil Tuşalp, a journalist and author of several books. He criticised in two articles, published in the newspaper Birgün, the alleged illegal conduct and corruption of high-ranking politicians, also including the Prime Minister in his commentary. The Prime Minister brought civil actions for compensation against the journalist and the publishing company before the Turkish courts on the ground that certain remarks in the articles constituted an attack on his personality rights. The Turkish courts considered that the remarks made in the articles indeed went beyond the limits of acceptable criticism and belittled the Prime Minister in the public and the political arena. According to the domestic courts, Tuşalp had published allegations of a kind that one cannot make about a Prime Minister, including the second article that had alleged that the Prime Minister had psychological problems and that he had a hostile attitude suggesting he was mentally ill. The journalist and publishing company were ordered to pay TRY 10,000 (EUR 4,300) in compensation.

The European Court of Human Rights however disagreed with the findings of the Turkish courts. The Court considered that the articles concerned comments and views on current events. Both articles focused on very important matters in a democratic society which the public had an interest in being informed about and fell within the scope of political debate. The Court also considered the balance between Tuşalp's interest in conveying his views, and the Prime Minister's interests in having his reputation protected and being protected against personal insult. The European Court considers that, even assuming that the language and expressions used in the two articles in question were provocative and inelegant and certain expressions could legitimately be classed as offensive, they were, however, mostly value judgments. These value judgments were based on particular facts, events or incidents which were already known to the general public, as some of the quotations compiled by Tuşalp for the purposes of the domestic proceedings demonstrate. They therefore had sufficient factual basis. As to the form of the expressions, the Court observes that the author chose to convey his strong criticisms, coloured by his own political opinions and perceptions, by using a satirical style. According to the Court offensive language may fall outside the protection of freedom of expression if it amounts to wanton denigration, for example where the sole intent of the offensive statement is to insult. But the use of vulgar phrases in itself is not decisive in the assessment of an offensive expression as it may well serve merely stylistic purposes. Style constitutes part of communication as a form of expression and is as such protected together with the content of the expression. However, in the instant case, the domestic courts, in their examination of the case, omitted to set the impugned remarks within the context and the form in which they were expressed.

The European Court is of the opinion that various strong remarks contained in the articles in question and particularly those highlighted by the domestic courts could not be construed as a gratuitous personal attack against the Prime Minister. In addition, the Court observes that there is nothing in the case file to indicate that the applicant's articles have affected the Prime Minister's political career or his professional and private life. The Court comes to the conclusion that the domestic courts failed to establish convincingly any pressing social need for putting the Prime Minister's personality rights above the journalist's rights and the general interest in promoting the freedom of the press where issues of public interest are concerned. The Court therefore considers that in making their decisions the Turkish courts overstepped their margin of appreciation and that they have interfered with the journalist's freedom of expression in a disproportionate way. The amount of compensation which Tuşalp was ordered to pay, together with the publishing company, was significant and such sums could deter others from criticising public officials and limit the free flow of information and ideas. The Court concluded that the Turkish courts had failed to establish any "pressing social need" for putting the Prime Minister's personality rights above the right to freedom of expression and the general interest in promoting press freedom. There had thus been a violation of Article 10.

• Judgment by the European Court of Human Rights (second section), case of Tuşalp v. Turkey, Nos. 32131/08 and 41617/08 of 21 February 2012
http://merlin.obs.coe.int/redirect.php?id=15728 EN

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European Commission against Racism and Intolerance: Recommendations on Media and Internet in New Country Reports

On 21 February 2012, the European Commission against Racism and Intolerance (ECRI) released its latest reports on Iceland, Italy, Latvia, Luxembourg, Montenegro and Ukraine, adopted in the fourth cycle of its monitoring of the laws, policies and practices to combat racism in the Member States of the Council of Europe (for commentary on earlier reports, see IRIS 2011-4/3, IRIS 2010-9/2, IRIS 2010-4/3, IRIS 2009-10/109, IRIS 2009-8/4, IRIS 2009-5/4, IRIS 2008-4/5, IRIS 2006-6/4 and IRIS 2005-7/2). With the exception of the Report on Montenegro, all of these reports contain sections focusing specifically on the media/Internet.

In this latest batch of reports, two main preoccupations regarding the media/Internet are apparent: (i) the role of the media in countering hostility and rejection towards certain societal groups, and (ii) the role of the Internet in disseminating racist and xenophobic expression.

As far as the first point is concerned, ECRI follows the approach it has consistently taken in its earlier monitoring work: States authorities should impress on the media, without encroaching on their editorial independence, the need to ensure that reporting does not contribute to creating an atmosphere of hostility and rejection towards members of minority groups (Reports on Iceland (para. 68), Italy (para. 57), Luxembourg (para. 82), Ukraine (para. 57); it should be noted that the precise wording varies per report). ECRI further states that the media or States authorities should play a pro-active role in preventing the emergence of such an atmosphere, including through media training programmes and other initiatives (Reports on Ukraine (paras. 57 and 58), Italy (para. 57) and Luxembourg (para. 82)). In respect of Latvia, ECRI calls on the authorities to specifically encourage "those media addressing exclusively either the majority of the population or the Russian speakers to engage in objective reporting of events" (para. 93).

Also in keeping with its previous monitoring work, ECRI emphasises the importance of self-regulatory standards (eg. the development of and/or adherence to journalistic codes of ethics or practice) and mechanisms for preventing the dissemination of racist and discriminatory expression via the media (Reports on Italy (para. 58) and Latvia (para. 90)). In respect of Iceland, this general recommendation is adapted to focus specifically on "the manner of reporting on the citizenship or ethnicity of suspects in criminal cases" (para. 68).

In addressing the second point, ECRI routinely draws the attention of States authorities to its own General Policy Recommendation No. 6 on combating the dissemination of racist, xenophobic and antisemitic material via the Internet (2000) (Reports on Iceland (para. 71), Italy (para. 61) and Ukraine (para. 61)). The approaches recommended by ECRI in this connection vary from monitoring the Internet (Report on Iceland (para. 71)), to creating a "law-enforcement unit with dedicated capacity to monitor the Internet for instances of racism or racial discrimination" (Report on Latvia (para. 90)). On other occasions, general/open wording is used, such as combating the dissemination of racist and xenophobic ideas via the Internet (Report on Italy (para. 61)). Elsewhere, the emphasis is more explicitly on the prosecution of persons "responsible for publishing and disseminating racist material via the Internet" (Report on Ukraine (para. 61)), and also "members of the media who incite racial hatred" (Report on Luxembourg (para. 82)).

• ECRI Reports on Iceland, Italy, Latvia, Luxembourg, Montenegro and Ukraine (fourth monitoring cycle), all adopted between 6-9 December 2011; all published on 21 February 2012
http://merlin.obs.coe.int/redirect.php?id=11705 EN FR

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EUROPEAN UNION

European Commission: Possible Referral of the Anti-Counterfeiting Trade Agreement (ACTA) to the Court of Justice of the European Union

On 22 February 2012, the European Commissioner for Trade, Karel De Gucht, announced that the European Commission would refer the Anti-Counterfeiting Trade Agreement (ACTA) to the Court of Justice of the European Union.

The European Commission has already passed ACTA to national governments for ratification and to the European Parliament for debate and vote. Moreover, the Council has adopted ACTA unanimously and has authorized member states to sign it (see IRIS 2011-8/7).

The opinions on ACTA are however far from unanimous. While at the institutional level the ratification process seemed to be going forward slowly, the decision to refer the Agreement to the Court follows the protests and debates that took place throughout Europe regarding the ratification of ACTA.

The main arguments put forth against the Agreement concerned the lack of transparency of negotiations, its compatibility with the EU acquis and its implications for fundamental rights and freedoms.

The Commissioner has stated that the referral will focus on the compatibility of ACTA with the EU's fundamental rights and freedoms. At stake are such rights as the freedom of expression and information, but also the right to property (which includes intellectual property).

• Statement by Commissionner Karel De Gucht on ACTA (Anti-Counterfeiting Trade Agreement), 22 February 2012
http://merlin.obs.coe.int/redirect.php?id=15727 EN

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European Parliament: Resolution on the Recent Political Developments in Hungary

On 16 February 2012, the European Parliament adopted a resolution on the recent political developments in Hungary. The resolution indicates as main topics of concern the independence of the judiciary and the political implications of a number of provisions in the underlying laws to the Hungarian Constitution, adopted in April 2011. Also, the freedom and pluralism of the media and the quality of democracy in general in Hungary are mentioned as areas of concern (for more information on the Hungarian situation see IRIS 2012-2/25, IRIS 2011-5/100, IRIS 2011-5/2, IRIS 2011-4/7, IRIS 2011-4/2, IRIS 2011-3/24, IRIS 2011-2/30, IRIS 2011-2/3, IRIS 2011-1/37, IRIS 2010-9/6 and IRIS 2010-8/34).

In this resolution, the European Parliament refers in particular to the resolution on the media law in Hungary adopted in March 2011 in which the European Parliament urged Hungary to further align its media law with EU law. The Parliament shared the concerns of the Commission, for example with regard to the compliance of the media law with the Audiovisual Media Services Directive and the general acquis communautaire with regard to the obligation to offer balanced coverage applicable to all audiovisual media service providers. Respect for the fundamental right to freedom of expression and information and the politically homogenous composition of the Media Authority and the Media Council were amongst the other matters of concern that were raised in that resolution.

Before the adoption of the resolution on the recent political developments in Hungary, the Committee on Civil Liberties, Justice and Home Affairs held a public hearing with representatives of the Hungarian Media, civil society and government. One of the focuses of the hearing was the media law in Hungary. At that occasion, the Vice-President of the Commission Neelie Kroes emphasized the importance of media freedom, both as a fundamental right and also "because private investors and international institutions need to know they have full access to independent media analysis".

The resolution was adopted against the background of the implementation of the Basic Law of Hungary (the new Constitution), which was adopted on 18 April 2011, and the Transitional Provisions of this Basic Law, which were adopted on 30 December 2011. According to the resolution, the implementing laws give rise to concern in several areas in particular with regard to the exercise of democracy, the rule of law, respect and protection of human and social rights, the system of checks and balances, equality and non-discrimination. The freedom and pluralism of the media in Hungary is also an area of concern.

In its recommendations, the European Parliament calls on the Hungarian Government to comply with the recommendations, objections and demands of the European Commission, the Council of Europe and the European Commission for Democracy through Law on these issues, and consequently amend the laws in question. In its main recommendation, the Parliament calls on the Commission to monitor closely potential amendments to and the implementation of the laws concerned, and to carry out a thorough study to ensure, amongst other things, that the freedom and pluralism of the media is guaranteed by the letter and implementation of the Hungarian Media Law, especially regarding the participation of civil and opposition representatives in the Media Council. Apart from this study, the Parliament also requests a report from the Committee on Civil Liberties, Justice and Home Affairs, which should follow up on the Hungarian matter together with the European Commission, the Council of Europe and the European Commission for Democracy through Law and monitor the implementation of the Parliament's recommendations. Finally the Parliament calls on the Conference of Presidents to consider whether Article 7 (1) of the EU Treaty (used in case of a clear risk of serious breach of EU common values) should be activated.

• European Parliament resolution of 16 February 2012 on the recent political developments in Hungary 2012/2511 (RSP)
http://merlin.obs.coe.int/redirect.php?id=15733 DE EN FR
CS DA EL ES ET FI HU IT LT LV MT
NL PL PT SK SL SV

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NATIONAL

AL-Albania

Tirana District Court Rules in Favour of Digital Multiplex on Charges of Piracy

On 13 January 2012, The District Court of Tirana recently ordered some Internet Service Providers (ISP) to interrupt the signal and connection to some servers that pirate TV programmes.

The case was brought to court by the District Attorney's office, upon the request of Digitalb, the first digital terrestrial and satellite multiplex operating in the country since 2004 (see IRIS 2005-8/10). Digitalb offers several paid programme bouquets on terrestrial and satellite platforms. The company claimed that a number of servers and companies were illegally and unrightfully distributing Digitalb content, damaging the company economically. Digitalb's claim was submitted on February 2011.

The District Court of Tirana ruled in favour of Digitalb, demanding from several ISPs to immediately discontinue communication to the servers that were proven to transmit illegal content produced by Digitalb or content to which it held broadcasting rights. The decision was based on Art. 143/a of the Penal Code on electronic fraud.

According to Digitalb and the District Attorney's investigations, the piracy took place in the form of card sharing between several servers of one regular Digitalb subscription card. The card encryption codes were derived from using a dreambox device, which then sent the signal to an unlimited number of decoders, just by using a smart card. The District Attorney identified the addresses of the servers that exerted this illegal activity, as well as different persons that had engaged in this activity. However, the investigation revealed that most servers are located abroad, with the aim of avoiding any legal liability.

Piracy of TV programmes and movies is a widespread problem in the country, mainly in the form of local TV stations broadcasting programmes they do not hold the rights to. However, currently the problem has also spread to the web and the courts have recognised it as a damage for the multiplexes and similar companies.

On the other hand, Digitalb, although operating for more than seven years, is not legalised as a terrestrial platform, since the Law on Digital Broadcasting, approved in 2007 (see IRIS 2007-8/6), was never implemented, while the new Law on Audiovisual Services is still being discussed in the Parliament. This situation, which is unclear for all players in the market, has led to greater opportunities to pirate programmes and content without any rights.

• Decision of the Tirana District court No.262 of 13 January 2012 NN

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Regulator Assumes a More Active Role in Monitoring Broadcasting Content

In recent times the National Council of Radio and Television (NCRT) has been significantly more active in monitoring broadcasting content of television stations and taking relevant decisions.

So, in February 2012, the NCRT banned the broadcasting of an advertising spot of a mobile company, deeming it as a spot "that promotes a behaviour that endangers the normal health and psychic development of children." The mobile company appealed this decision before the Council of Complaints at the NCRT. Both the Council and the psychologists' reports said that the spot contained elements that might foster violent behaviour. As a result, the NCRT's previous decision to immediately stop broadcasting this advertising spot remained in force. However, the NCRT monitoring efforts noted that the programme "Zonë e Lirë" on the national TV Klan broadcast the spot and violated the decision of the NCRT. The regulator appealed to the programme provider to stop violating ethical norms as indicated by law and NCRT decisions.

The NCRT has also monitored advertising spots and product placement in several TV stations, noting irregularities. The monitoring showed that the local TV station UTV broadcast some advertising spots with "subtitles" on the upper part of the screen during newscasts. The Law on Broadcasting explicitly states that advertising spots may not be broadcast during news programmes. In addition, the TV station exceeded the allowed 12-minute advertising time per hour. The NCRT warned the station that, if these practices continued, sanctions would follow.

The regulator also warned Ora News TV to stop broadcasting advertising spots in foreign languages at a time when the law states that advertising should only be in the Albanian language. Finally, the regulator noted that in spite of an earlier decision that was issued regarding surreptitious advertising in a programme broadcast by TV Klan, the provider of the programme continued to refer to specific products and services that were not clearly marked as advertising. While amendments to the Law on Broadcasting, currently under discussion in Parliament, address the issue of product placement and advertising, the cur-

rent regulation does not allow surreptitious advertising. Hence, the regulator again warned the TV station to stop this practice.

• *KKRT-ja rrëzon ankesën e AMC-së, për "internetin 3G"* (NCRT press release)
http://merlin.obs.coe.int/redirect.php?id=15701 SQ

• *Njoftim për Media, Tiranë më, 07.03.2012* (NCRT press release) SQ

• *Njoftim për Media, Tiranë më, 23.02.2012* (NCRT press release)
http://merlin.obs.coe.int/redirect.php?id=15703 SQ

• *Njoftim për Media, Tiranë më, 20.02.2012* (NCRT press release)
http://merlin.obs.coe.int/redirect.php?id=15704 SQ

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Albanian Parliament Decriminalises Defamation

On 1 March 2012 the Albanian Parliament adopted some amendments to the Penal Code that decriminalise libel and defamation. These changes followed a first round of amendments to the Civil Code defamation provisions, which were passed by Parliament on 17 February 2012.

The changes culminated in a seven-year effort led by the Justice Initiative and the Albanian Media Institute, which received multi-partisan support in three successive legislature and civil society discussions. The aim was to bring Albania's defamation laws into line with prevailing European standards.

The Penal Code amendments included the full repeal of four offences that granted special protection to national and foreign Government officials. Prison terms and the involvement of public prosecutors in defamation cases were also abolished. The lawmakers maintained that insult and the deliberate publication of defamatory falsehoods should be misdemeanours, to be prosecuted privately and subject to a fine.

The Civil Code amendments provide greater guidance to judges, by requiring them to consider elements such as truth and the contribution of statements to a democratic debate, while also taking due account of unjust attacks on reputation. The changes seek to limit damage awards to proportionate levels that do not jeopardise the financial survival of media outlets. Civil libel awards granted by Albanian courts have increased dramatically in recent years, casting a chilling shadow perhaps longer than that of the criminal offences, which have largely fallen into disuse in the recent past.

Last week's reforms in Albania follow a trend set by new European democracies, such as Estonia and Bosnia, who were among the first to repeal criminal libel laws. Such laws remain in the books in several Western European countries, but are sparsely used and are subject to the close scrutiny of the European Court of Human Rights in Strasbourg.

The changes to the criminal and civil codes, the adoption of which required a qualified majority in Parliament, became possible due to a recent thaw in the chilly relationship between Government and opposition parties that had greatly hampered lawmaking activities in recent years. The two sides have now committed to passing reforms important to the country's efforts to seek European Union membership. The European Commission and media freedom watchdogs had repeatedly called for defamation law upgrades.

• Kuvendi mblidhet në seancë plenare dhe miraton me 126 vota pro dhe asnjë kundër, katër nismat legjislative, për ndryshimet në "Kodi Penal i Republikës së Shqipërisë" (Press release of the Albanian Paliament)
http://merlin.obs.coe.int/redirect.php?id=15699 SQ

• Joint statement of Albanian Media Institute and Justice Initiative
http://merlin.obs.coe.int/redirect.php?id=15700 EN

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AT-Austria

Administrative Court Rules Out Notification Obligation for One-Off Violation of Time-Limit for Authorised Satellite Window Programme

On 15 December 2011, the Austrian *Verwaltungsgerichtshof* (Administrative Court - VwGH) upheld a broadcaster's appeal against a decision of the *Kommunikationsbehörde Austria* (Austrian communications authority - KommAustria) and held, *inter alia*, that a one-off violation of the time limit applicable to an authorised satellite window programme did not breach the notification requirement laid down in Article 6 of the *Privatfernsehgesetz* (Private Television Act - PrTV-G).

In its decision of 26 May 2008, KommAustria had ruled that, by broadcasting the entertainment programme "Amadeus Award 2008" as a window programme between 8.15 p.m. and 10.42 p.m. on 19 April 2008, the TV broadcaster had substantially exceeded the 60-minute limit for this period without prior notification. KommAustria based its ruling on several licensing decisions taken between 2003 and 2005, which had authorised the broadcaster to transmit a total of two daily programme windows of up to 60 minutes plus a weekday morning programme lasting up to 210 minutes and another window of up to 120 minutes per day for a quiz-based programme broadcast during the night. Since the entertainment programme

was broadcast in so-called "prime time" (8.00 p.m. - 10.00 p.m.), it should not have exceeded 60 minutes. However, it lasted 147 minutes, substantially exceeding the limit.

In its appeal, the broadcaster argued that KommAustria had ruled, for no apparent reason, that the individual licences had specifically restricted the window programme to a particular time of day and that an amendment should therefore have been notified in accordance with Article 6 PrTV-G. However, it claimed that the wording of Article 5(3) PrTV-G indicated that it was not necessary to define the programme window according to a precise time or time of day. Rather, the description in the licences ("during the morning programme" and "during the night") should be interpreted in connection with the respective description of the intended programme content. The broadcaster therefore assumed that, at the time of the disputed broadcast, it had been allowed to broadcast the programme window for a total of up to 180 minutes (60+120 minutes). This limit had not been exceeded.

The VwGH began by pointing out that the broadcaster had correctly noted that Article 5(3) PrTV-G did not, in principle, stipulate at what time of day an authorised window programme should be broadcast. However, such rules could be derived indirectly from the type of programme that had been authorised, so it was in fact true that the "morning programme" specified in the licence could not simply be broadcast at any time of the evening or night. However, no specific time had been laid down for the programme window that, according to the licence, should be broadcast during the night. KommAustria's interpretation that a daily window programme lasting up to 120 minutes starting after 10 p.m. had been approved was incorrect. The broadcaster had therefore not exceeded the limit of 180 minutes in this particular case.

However, the VwGH went even further and explained that, regardless of the above findings, the programme's time slot could not be considered to have been significantly changed just because the broadcaster had exceeded the time limit for the authorised window programmes on a single occasion. Even if the maximum prime-time window was actually only 60 minutes long, the broadcast of the programme from 8.15 p.m. until the end of prime time would have constituted an excess of 45 minutes. It was unlikely that the legislator would consider such one-off changes to a window programme's time slot as significant and therefore want to make it subject to notification and approval requirements.

• *Entscheidung des VwGH vom 15. Dezember 2011 (Az. 2011/03/0053)* (VwGH decision of 15 December 2011 (case no. 2011/03/0053))
http://merlin.obs.coe.int/redirect.php?id=15739 DE

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Parliament Adopts Audiovisual Media Services and ORF Act Amendments

On 29 February 2012, the Austrian *Nationalrat* (national assembly) adopted the long-debated amendments to the *Audiovisuelle Mediendienste-Gesetz* (Audiovidual Media Services Act - AMG) and *ORF-Gesetz* (ORF Act - ORF-G).

In the AMG, the licence restrictions for private television companies, which date back to the era when analogue frequencies were in short supply, were relaxed. The provision preventing private media companies from transmitting more than two terrestrial television channels was replaced with a rule limiting media companies to the provision of one radio channel and no more than one-third of the terrestrial TV channels available in a particular region or town. The amendment also enables a person or partnership to own more than one licence for digital terrestrial television as long as no more than three of the supply areas covered by its licences overlap.

One key amendment to the ORF-G concerns the broadcast of certain sports competitions on the specialist sports channel of *Österreichische Rundfunk* (Austrian public broadcaster - ORF). In order to prevent distortions of competition detrimental to private broadcasters, the ORF sports channel is, in principle, prohibited from broadcasting sports competitions that already receive a high level of coverage in the Austrian media (so-called premium sports competitions). These particularly include the football Bundesliga, the UEFA Champions and Europa Leagues, football World Cup and European Championships, Alpine and Nordic Skiing World Cups and World Championships, the Summer and Winter Olympic Games and Formula 1 races.

In the interests of fringe sports, the amendment adds a new paragraph to the ORF-G, defining which sports competitions do not receive a high level of media coverage. These are defined as sports events, other than those listed above, either held in Austria or in which Austrian individuals or teams compete, for which no private broadcaster has acquired the broadcast rights even though ORF made them available in good time, without discrimination, transparently and under normal market conditions. If ORF can show that these conditions are met, its sports channel may now broadcast such competitions.

• *Änderungsgesetz zum Audiovisuellen Mediendienste-Gesetz* (Act amending the Audiovisual Media Services Act)
http://merlin.obs.coe.int/redirect.php?id=15737 DE
• *Änderungsgesetz zum ORF-G* (Act amending the ORF-G)
http://merlin.obs.coe.int/redirect.php?id=15738 DE

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BE-Belgium

Flemish Commercial Broadcaster Does Not Infringe Teleshopping Provisions, But Offers an Interactive Service

During the programme 'Kill the Clip' on TMF, a Flemish commercial broadcaster, 5 video clips are broadcast. During these video clips the following banner is shown: 'Keep the clip04046Kill the clip' 'You decide SMS KILL or KEEP to 3373 (EUR 0,60/SMS)'. *Vlaamse Regulator voor de Media* (Flemish Media Regulator - VRM.) had to examine whether such a service should be labeled as teleshopping. Art. 2, 45°*Mediadecreet* (Flemish Broadcasting Act) defines teleshopping as "direct offers broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment". If this service was labeled as teleshopping, VRM had to examine whether the teleshopping spot was readily recognizable and distinguishable from editorial content (Art. 79 Flemish Broadcasting Act).

According to the Flemish broadcaster, this service should not be classified as teleshopping, but as an interactive service. The interactive service works as follows: When a video clip starts, the viewers can send an SMS with the message 'kill' or 'keep'. If six viewers have texted 'kill' a little box will move to the red zone of a bar. If this box stays 15 seconds in this red zone, the clip will be interrupted, the message 'you killed the clip' will be shown and a new video clip will start.

According to VRM the main feature of teleshopping is the broadcast of a direct offer made with the intent to supply products or services in return for payment. The viewer should be enabled, via the indication of a price and contact details, to respond directly to the offer and place an order by phone, email, fax or mail. In the past, VRM has often classified SMS games as teleshopping. In those cases, banners were shown during video clips asking the viewers to send an SMS to find out whether they would stay together with their partner or what the name of their first born baby would be. Given that the answers appeared in a banner on the screen, VRM decided that the viewers bought a part of the screen and, thus, that these SMS games should be labeled as teleshopping. However, the main difference between those SMS games and 'Kill the Clip' is that during the latter programme, viewers do have a real impact on the content of the programme. As a result, VRM agreed that this programme should not be classified as a teleshopping programme, but as an interactive service. This implies that Article 79 of the Flemish Broadcasting Act does not apply to this programme. Additionally, VRM stressed that broadcasters are not allowed to limit the level of interactivity of an SMS game by using a set of filters, such as the number of text messages that should be sent before something happens, or a time limit within a specific number of text messages should be sent.

• *VMMa t. MTV Networkds, Beslissing 2012/001* (VMMa v. VRT, Decision 2012/001, 18 January 2012)
http://merlin.obs.coe.int/redirect.php?id=15730 NL

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Flemish Commercial Broadcaster Infringes Product Placement Provisions

During the programme Huizenjacht on VT4, a Flemish commercial broadcaster, showed the logo of Martini Brut (sparkling wine) several times. According to *Vlaamse Regulator voor de Media* (Flemish Media Regulator - VRM), this practice infringes Article 100, § 1, 3°*Mediadecreet* (Flemish Broadcasting Act) requiring that product placement is allowed if no undue prominence is given to the products included in the programme.

Huizenjacht is a programme about the renovation of houses and house hunting. Huizenjacht contains an item in which an interior designer informs a couple about the renovation of a specific room in their house. When doing so, the interior designer gives a 3D presentation on a computer screen. During Huizenjacht on 16 November 2011, a bottle of Martini Brut was standing next to the computer. During this item, different shots of the computer and the bottle were shown clearly displaying the logo and the brand of Martini Brut. The logo of Martini was shown 11 times during this item of 3 minutes. At the end of the presentation, while the interior designer and the couple were drinking a class of sparkling wine, the bottle of Martini was once more displayed.

According to the broadcaster, when dealing with the notion of 'undue prominence', VRM should take into account the content and context of the programme in which the brand appears. The broadcaster argued that it is the tradition of Huizenjacht to drink a glass of sparkling wine after the presentation. As a result, drinking a glass of sparkling wine is an intrinsic part of the programme. However, VRM disagreed with this reasoning. Huizenjacht is programme about house hunting, renovating and decorating houses and the item deals with a question about renovating a specific room of a house. Given that neither the concept nor the nature of the programme is related to sparkling wine, the drinking of a glass of sparkling wine is not an intrinsic part of the programme. VRM decided that VT4 had violated the limits of acceptable

attention that can be directed at a product in programme containing product placement. As a consequence, the product had benefited from undue prominence, in breach of Article 100, §1, 3. Due to the gravity of the violation, VRM decided to impose a fine of EUR 5,000.

• *VRM t. SBS Belgium, Beslissing 2012/002, 23 Januari 2012* (VRM v. SBS Belgium, Decision 2012/002, 23 January 2012)
http://merlin.obs.coe.int/redirect.php?id=15732 NL

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BG-Bulgaria

Telecommunications Regulator Finally Submits an Air to TV Evropa in the City of Sofia

On 26 January 2012, the Communications Regulation Commission (CRC) issued Decision No. 143 which authorises the regulator to grant a permit to TV Evropa for analogue broadcasting in the territory of Sofia.

The news television channel shall have an opportunity to broadcast on the frequencies of channel No. 43 which had got involved in scandals. So far, the Bulgarian National Television (BNT) has used it to broadcast a regional programme emanating from the capital - BNT2.

In 2009, BNT received permission to come on air when CRC was providing temporary permits for analogue broadcasting in Sofia. At the last moment of the procedure in 2009, the Commission submitted the frequency to BNT and did not provide it to the private media. TV Evropa appealed this to the Supreme Administrative Court which ruled that the procedure had been strictly followed.

After having played out all legal options for protection at the national courts' institutions, TV Evropa referred the case to the European Commission (see IRIS 2011-7/11 and IRIS 2011-4/12).

The threat of a procedure against Bulgaria was the reason for the Parliament to vote for amendments to the Electronic Communications Act (see IRIS 2012-3/13). These provided an opportunity to TV Evropa to obtain a frequency, thus, required legislatively the Communications Regulation Commission to solve the case after nearly three years delay in favour of the private media.

The decision of CRC has been issued on the basis of a positive standpoint of the Council for Electronic Media. One more broadcaster now comes on the air without a programme license, having only a permit from the telecommunications regulator.

• CRC Decision No. 143 of 26 January 2012 NN

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National Strategy for Culture Development Coming soon

According to Art. 2a of the Culture Protection and Development Act, which entered into force in 2006, the Council of Ministers shall adopt a National Strategy for the Development of Culture upon the proposal of the Minister of Culture. For more than five years the Ministry had not even offered any conception of such a Strategy, but now, there is a real chance to have the draft of a Strategy by 1 July 2012.

The Strategy is being drawn up in a partnership between the Ministry of Culture and other Government institutions and representatives of civic and cultural organisations. More than 150 people from similar groups are involved. The working draft of the measures that shall be included in the Strategy is published on the Internet and can be discussed by the interested parties. After collecting the statements of the professional organisations the final document will be brought into line with the opinion of a special Government group of experts and discussed by the Ministers. The expectation of the people involved into this project is that the final document will be ready in July 2012.

The most important purpose of this Strategy is to propose alternative sources for funding creative industries in Bulgaria. Special measures concerning software, visual arts, scenic arts, publishing, design, architecture and the film industry will be offered. One of them consists of preparing a National Programme for the Film Industry, which was required since 2003 by virtue of Art. 9, para 3, point 1 of the Film Industry Act, but has never been even discussed. In this programme criteria for estimating films created with State subsidy shall be drawn up and best practices shall be stimulated.

Representatives of the film sector also insist on some tax relieves for investments in film productions realised in Bulgaria to be inserted in the Strategy, or a special fund for financing new films to be created, based on gambling as the money source, similar to the British model.

With this Strategy for the first time the Government shall demonstrate its policy regarding the digitalisation of Bulgarian cinema. The lack of sufficient cinemas in the country and the out-dated legislation in

this field are pointed to as some of the disadvantages of Bulgarian film digitalisation. Internet piracy and the high costs for the process of digitalisation of the national film fund have been the arguments by the politicians for doing nothing in this field during the last 10 years. Now, the draft of the Strategy includes the creation of a digital cinema accessible via Internet by streaming and the development of a platform for the legal download of films.

• Проектът „435460406470476475460473475460 стратегия за развитие на творческите индустрии " (Working draft of the measures that shall be included in the Strategy)
http://merlin.obs.coe.int/redirect.php?id=15706 BG

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Telecommunications Law Disclosure Obligations Partly Unconstitutional

The *Bundesverfassungsgericht* (Federal Constitutional Court - BVerfG) has partially upheld a complaint about storage and disclosure obligations laid down in telecommunications law.

The complainants had mainly argued that Articles 111-113 of the *Telekommunikationsgesetz* (Telecommunications Act - TKG) infringed their basic rights.

Article 111 TKG requires telecommunications service providers to store certain data concerning the connections they provide and the owners of those connections. The BVerfG considered this requirement to be justified on the grounds that it enabled the State authorities to carry out their tasks, in particular in the field of criminal prosecution, security and intelligence-related activities. As the stored data only contained a limited amount of information, the intrusion was not particularly serious. In particular, apart from the storage of traffic and location data, it did not contain any information about the actual activities of individuals.

According to Article 112 TKG, the *Bundesnetzagentur* (Federal Networks Agency - BNetzA), as the national regulatory body for telecommunications, can access the data stored under Article 111 TKG by means of the so-called automated retrieval procedure directly and without the knowledge of the company that stored it. Approved authorities can obtain this data from the BNetzA on the basis of legislative provisions under which data collection is permitted. The BVerfG also considered this "double door" procedure as proportionate, since it enabled the State to carry out its duty to guarantee security. To this end, it needed to be able to allocate telecommunications numbers to individuals. In principle, this also applied to static IP addresses, since these were currently, as a rule, only assigned to major clients. However, the legislator should monitor this and, if necessary, improve the regulations. Dynamic IP addresses, on the other hand, are, according to the ruling, excluded from the storage requirement of Article 111 TKG and the information retrieval procedure provided for in Article 112 TKG.

Telecommunications companies are also obliged, under the so-called manual information procedure described in Article 113(1) sentence 1 TKG, to provide information on data collected under Article 111 TKG and other user-related data stored under Article 95 TKG as part of consumer contracts. The BVerfG also deemed these provisions compatible with the *Grundgesetz* (Basic Law); however, they needed to be interpreted in accordance with the Constitution: on the one hand, the rule should not yet be considered, in itself, as an obligation to provide information. Rather, for both "competence-related and constitutional reasons", it was necessary to create independent sectoral provisions that clearly regulated which authorities were entitled to the information. Such clear rules were not currently in place, particularly with regard to requests for information about the allocation of dynamic IP addresses, which were usually based on Article 113 TKG. However, such disclosure was not allowed under Article 113(1) sentence 1 TKG because the resulting violation of telecommunications privacy fell under the "*Zitiergebot*", i.e., the rule according to which the basic right affected must be specified in the legislative text. This was not the case here.

However, the BVerfG considered further obligations under Article 113(1) sentence 2 TKG concerning information on PINs and PUKs used to protect access to mobile communications devices and the data stored on them to be disproportionate. Such access was not required for the authorities to carry out their tasks effectively. Rather, it should be governed by independent sectoral provisions regulating which authorities were entitled to the information and how the data could be used. Data-use restrictions were not provided under current regulations. The court granted the legislator a transitional period lasting until 30 June 2013, during which Article 113(1) sentence 2 TKG could continue to be applied, as long as the conditions for data use were met in each individual case.

• *Urteil des BVerfG vom 24. Januar 2012 (Az. 1 BvR 1299/05)* (BVerfG judgment of 24 January 2012 (case no. 1 BvR 1299/05))
http://merlin.obs.coe.int/redirect.php?id=15741 DE

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

BayVGH Upholds Axel Springer AG Complaint about P7S1 Takeover

On 15 February 2012, the *Bayerische Verwaltungsgerichtshof* (Bavarian Administrative Court - BayVGH) upheld a complaint by the German publishing house Axel Springer AG against the *Bayerische Landeszentrale für neue Medien* (Bavarian New Media Office - BLM).

In 2005, Axel Springer AG planned to take over the media group ProSiebenSat.1 Media AG (P7S1) by means of a buy-out (see IRIS 2005-9/13). The *Kommission zur Ermittlung der Konzentration im Medienbereich* (Commission on Concentration in the Media - KEK) refused to grant the permission required under media law for the planned takeover on the grounds that it could give Axel Springer AG a dominant market position (see IRIS 2006-2/13). This decision was officially implemented by the BLM as the responsible *Land* media authority. The *Bundeskartellamt* (Federal Cartel Authority) also prohibited the takeover on the basis of the *Gesetz gegen Wettbewerbsbeschränkungen* (Act against Restrictions of Competition - GWB) (see IRIS 2006-4/16); this decision was confirmed by the *Bundesgerichtshof* (Federal Supreme Court) (see IRIS 2010-7/12). The publishing house gave up its takeover plans, but sought a court judgment declaring the decision to refuse permission as unlawful. The BayVGH, to which the case was referred, initially rejected Axel Springer AG's appeal against the lower-instance ruling on procedural grounds (see IRIS 2009-9/12). This decision was quashed by the *Bundesverwaltungsgericht* (Federal Administrative Court), which referred the matter back to the BayVGH (see IRIS 2011-2/18).

In the latest judgment, the Administrative Court decided that the KEK had "overstepped the boundaries of its decision-making powers in several ways". The crucial factor in the decision (not) to grant approval of the takeover under media law was the overall audience share. At the time in question, P7S1's share had been 22.06%, much lower than the 25% threshold (Art. 26(2) and (3) of the *Rundfunkstaatsvertrag* (Inter-State Broadcasting Agreement) - RStV). Therefore, the fact that the appellant was present in other media-relevant markets should not have been taken into account. Furthermore, the *Rundfunkstaatsvertrag* provided that regional window programmes and transmissions by third-party broadcasters should be deducted from the overall audience share figures; in this case, this would have reduced the share by approximately 5% (Arts. 26(3) and (5), and 25 RStV). The arguments put forward by the KEK also did not represent "particular circumstances" under which broadcasters could, in exceptional cases, be deemed to hold a dominant market position even if their audience share was below the threshold.

The BayVGH's decision cannot be appealed.

• *Urteil des BayVGH vom 15. Februar 2012 (Az. 7 BV 11.285)* (Judgment of the BayVGH of 15 February 2012 (case no. 7 BV 11.285))
http://merlin.obs.coe.int/redirect.php?id=15740 DE

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OVG Rules WDR Must Provide Information under NRW Freedom of Information Act

In a ruling of 9 February 2012, the *Oberverwaltungsgericht Münster* (Münster Administrative Appeal Court - OVG) overturned the decision of the lower-instance court (see IRIS 2010-2/11) and ruled that *Westdeutscher Rundfunk* (WDR) is, in principle, obliged to provide information to a journalist under the North Rhine-Westphalia *Informationsfreiheitsgesetz* (Freedom of Information Act - IFG NRW).

The procedure followed a journalist's request to WDR for information about which companies it cooperated with and how much money was involved. The journalist had requested this information because he suspected that the broadcaster, which is funded by the licence fee, commissioned work from companies that employed members of its own *Rundfunkrat* (Broadcasting Council). WDR itself had not disputed the applicability of the IFG NRW, but refused to disclose the information on the grounds that it was not entitled to reveal trade secrets and internal company information.

After the first-instance decision, an amendment to the *WDR-Gesetz* (WDR Act) was adopted, in which the legislator expressly confirmed the applicability of the IFG NRW to WDR, provided no journalistic information was involved.

In the OVG Münster's view, WDR is not obliged to disclose information to the press under the *Pressegesetz NRW* (NRW Press Act). However, under the IFG NRW in conjunction with the *WDR-Gesetz*, it must provide access to information that does not allow conclusions to be drawn about its editorial secrets and programming mandate. This guarantees the basic right to freedom of reporting. Providing access to this information does not prevent public service broadcasters from fulfilling their traditional remit and competing with private broadcasters.

The court therefore instructed WDR to revise its decision on the information request and, in particular, to carefully verify the precise scope of the information to which the journalist was entitled and any obstacles to the provision of that information.

• *Urteil des OVG Münster vom 9. Februar 2012 (Az. 5 A 166/10)* (Ruling of the OVG Münster of 9 February 2012 (case no. 5 A 166/10))
http://merlin.obs.coe.int/redirect.php?id=15748 DE

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No Unlimited Media Reporting on Public Court Hearing

The criminal procedure against a famous TV weather presenter accused of rape, which has attracted huge media interest, has also repeatedly occupied Cologne's civil courts in recent months. The journalist, who has since been acquitted, launched numerous lawsuits - some of which were successful - following media reporting of the case which he believed had infringed his personality rights (see IRIS 2012-3/16 and IRIS 2012-1/19).

In three judgments issued on 14 February 2012, the *Oberlandesgericht Köln* (Cologne Appeal Court - OLG) considered the extent to which questioning of the accused about his sexual preferences, held during the main hearing, could be reported.

The defendants, a media publisher and a website operator, had reported extensively on the usual consensual sexual practices that formed part of the relationship between the accused and his alleged victim, basing their story on interview transcripts that had been read out during the public hearing.

The OLG confirmed the first-instance rulings of the *Landgericht Köln* (Cologne District Court - LG) of 22 June 2011, in so far as the presenter had been granted injunctions against the publisher and the website operator. The OLG also essentially agreed with the grounds given by the LG: in the weighing up process, the plaintiff's personality rights were, in this particular case, more important than the freedom of the press and the public's right to information. In some of the disputed articles, the detailed descriptions were totally unrelated to the alleged crime. In addition, the presumption of innocence that applied when an investigation was pending meant that reporting should be restrained and balanced. The comments taken from the judicial questioning had been largely irrelevant to the decision on whether the defendant was guilty because the criminal procedure had concerned the accusation that he had forced his accuser to have sexual intercourse by issuing threats. Their usual consensual sexual practices were irrelevant to this.

However, the public revelation of his sexual preferences, which readers would remember in spite of his subsequent acquittal, represented a serious violation of the plaintiff's personality rights. It did not matter whether these preferences were socially acceptable or not. The court thought that there was a danger that this characterisation of the plaintiff would have a pillorying effect which would not be eliminated even if he was acquitted, since the criminal judgment did not cover the normally consensual nature of the sexual relationship.

The OLG also stressed that previous revelations in other media had been judged differently because the reporting had been less detailed and much more restrained and balanced. The plaintiff himself had never discussed his sex life in the media. Finally, the fact that the interview transcript had been read out in the public main hearing did not justify the reporting, since the public nature of the courtroom, which contained a limited number of people, could not be equated with the public nature of the media. The principle of public court proceedings did not give the press the right to report on everything that was said in court.

However, in another case (no. 15 U 157/11), the *OLG Köln* ruled that the publication of quotes from the case file concerning the weather presenter's sex life were admissible. According to the judge, the quotes had not been published in the daily newspaper concerned primarily for the purposes of sensationalist reporting, but on the contrary as part of a critical analysis of a tabloid newspaper article that also contained the quotes.

• *Urteil des OLG Köln (Az. 15 U 123/11) vom 14. Februar 2012* (OLG Köln ruling (case no. 15 U 123/11) of 14 February 2012)
http://merlin.obs.coe.int/redirect.php?id=15742 DE
• *Urteil des OLG Köln (Az. 15 U 125/11) vom 14. Februar 2012* (OLG Köln ruling (case no. 15 U 125/11) of 14 February 2012)
http://merlin.obs.coe.int/redirect.php?id=15743 DE
• *Urteil des OLG Köln (Az. 15 U 126/11) vom 14. Februar 2012* (OLG Köln ruling (case no. 15 U 126/11) of 14 February 2012)
http://merlin.obs.coe.int/redirect.php?id=15744 DE

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Launch of Support Programmes for Small Art House Cinema and National Film Heritage Digitisation

At the beginning of February 2012, two new programmes for the support of digitisation in the German film sector were launched (see IRIS 2011-7/18).

On 9 February 2012, the *Land* of North Rhine-Westphalia (NRW) and the *Film- und Medienstiftung NRW* (NRW Film and Media Foundation) announced a cooperative programme to provide financial support for the conversion of small cinemas to digital technology. The aim of the programme, which will last until 31 December 2013, is to equip around 150 screens with digital projection technology. To this end, the *Land* is making available EUR 3 million of funds

granted by the European Regional Development Fund. Support will be offered to cinemas with a maximum of six screens, which have not previously been equipped with digital technology, with up to EUR 20,000 available per screen. The scheme is therefore particularly designed to promote local cultural life, small art house cinemas and the showing of European and German films. The new programme is meant to supplement existing measures in NRW to promote digitisation (see IRIS 2010-7/17) and can be combined with programmes run by the *Filmförderungsanstalt* (Film Support Office - FFA) and the *Bundesbeauftragte für Kultur und Medien* (Federal Commissioner for Culture and Media - BKM).

On 8 February 2012, at a meeting of the Culture and Media Committee of the German *Bundestag* (lower house of parliament), the BKM expressed a desire to push forward with the digitisation of the national film heritage. The aim was to safeguard historic film material for the long term and keep it accessible to the public. For this purpose, the Federal Archive would receive a sum of EUR 230,000 in 2012 in order to implement the technical requirements for inspecting, preparing and digitising the material. A further EUR 100,000 will be granted to two film foundations to digitise pre-war film material and films from the former GDR. The BKM also urged the film industry to help finance the measures needed for film heritage digitisation, as it does with cinema digitisation (see IRIS 2010-9/21).

• *Pressemitteilung der Filmstiftung NRW* (Press release of the NRW Film and Media Foundation)
http://merlin.obs.coe.int/redirect.php?id=15746 DE
• *Pressemitteilung des BKM* (BKM press release)
http://merlin.obs.coe.int/redirect.php?id=15747 DE

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KJM Recognises Two Youth Protection Programs

On 9 February 2012, the *Kommission für Jugendmedienschutz der Landesmedienanstalten* (*Land* Media Authorities' Commission for the Protection of Minors in the Media - KJM) recognised two World Wide Web youth protection programs, subject to certain conditions.

These are the first youth protection programs for internet services that the KJM has recognised in accordance with the criteria that it published in May 2011 (see IRIS 2011-7/17).

Both programs therefore meet the requirement of user independence; they provide users with age-appropriate access to online services and can be switched on and off, configured and expanded by parents or guardians. They are also compatible with current Windows operating systems.

If they set up a recognised youth protection program, providers of telemedia services that are potentially dangerous to young people or their development can in future distribute their content without taking any additional youth protection measures (e.g., time restrictions or technical age verification mechanisms). These privileges reward content providers who take part in youth protection programs. However, until use of these programs becomes the norm, these privileges will only apply to content up to the "16+" age category.

The conditions attached to recognition include the requirement for the programs to be checked regularly, by means of practical tests, to ensure that they are user-friendly and technically up to date, and to be adapted if necessary. In particular, efforts should be made to ensure they are compatible with smartphones and games consoles.

• *Pressemitteilung der KJM* (KJM press release)
http://merlin.obs.coe.int/redirect.php?id=15745 DE

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DK-Denmark

The ROJ TV case

In 1999 two private limited companies, established under Danish law with the purpose of broadcasting TV programmes targeted at Kurdish people obtained a license from the Danish television authorities to broadcast television programmes via satellite from Denmark. In 2003 the companies obtained permission to establish a new television channel under the name of ROJ TV. The channel's headquarter was in Denmark where the editorial decisions were also taken.

In the following years ROJ TV was several times accused of broadcasting programmes that promoted the Kurdish liberation movement PPK, by many regarded as a terrorist organization (for more reporting on Roj TV see IRIS 2011-9/4, IRIS 2011-7/3, IRIS 2010-4/16, IRIS 2009-7/12, IRIS 2008-8/16 and IRIS 2005-7/17). The Danish Radio and TV Board, the Danish supervisory authority within the broadcasting area, three times (in 2005, 2006 and 2008) assessed whether ROJ TV had violated the prohibition in the Broadcasting Act regarding incitement to hatred based on race, sex, religion and nationality. Each time the Board concluded that the provision had not been violated. Hence, there

was no basis under the Broadcasting Act for revoking ROJ TV's broadcasting license.

In September 2010 the prosecution initiated criminal proceedings against the two companies behind ROJ TV, charging them of promoting a terror organization in violation of s 114-114d of the Criminal Code.

The City Court of Copenhagen, in a judgment of 10 January 2012, found that the prosecution had proved that PKK was a terrorist organization, and that the defendant companies in the period from 7 February 2008 to 10 September 2010 through programmes broadcasted on ROJ TV had promoted PKK and its activities. The Court put special emphasis on the fact that the TV channel in various programmes in a one-sided and uncritical way had communicated PKK's messages, including requests for rebellion and for joining the PKK.

The punishment was a fine assessed at approx. EUR 8,700 for each of the companies. In assessing this fine the Court underlined that it regarded ROJ TV to be financed by and under the influence of PKK.

The City Court did not, however, find in favour of the prosecution's charge that the defendant should be deprived of the right to broadcast according to s. 79 of the Criminal Code. The simple reason was that the provision does not apply to companies.

Moreover, the Court did not agree with the prosecution that the license to broadcast should be confiscated, because the rules regarding confiscation in s. 75 of the Criminal Code only apply to physical objects, not services such as a license to broadcast.

ROJ TV has appealed the judgment to the High Court.

• Københavns Byrets dom af 10. januar 2012 i sag nr. 3-22041/2010 (The City Court of Copenhagen's judgment of 10 January 2012 in case 3-22041/2010) DA

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ES-Spain

Constitutional Court on Use of Hidden Cameras in the Journalistic Field

On 30 January 2012, the Spanish Constitutional Court declared the use of hidden cameras in a journalistic field to be unconstitutional, regardless of the public relevance of the investigation's purpose.

This statement arises from a lawsuit filed against a Spanish TV production company for the infringement of the rights to honour and to personal portrayal, when a journalist went to an appointment with an estheticienne (beautician) posing as a patient. The appointment was at the beautician's home, which was partly used as her office, where the journalist recorded the voice and image of the beautician by means of a hidden camera. The material recorded was then transmitted to a Valencian TV, which broadcasted a program on fake health professionals.

Both the Spanish Courts of first instance and of Appeals considered that the use of the hidden camera in this specific case was valid, as it could be classified as "investigation journalism". Because the report met the veracity, objectivity, public interest and informative purposes requirements, no rights were infringed.

Notwithstanding this, the Supreme Court considered that the report had clearly infringed the right to privacy of the beautician, but not her right to honour.

Finally, on 30 January 2012, the Spanish Constitutional Court, analysed which right, between the fundamental rights to freedom of communicating truthful information (freedom of speech and information) and the personal rights to privacy and to personal portrayal, had to prevail.

One of the most important arguments of the Constitutional Court in order to consider there had been a clear infringement of the rights to privacy and to personal portrayal of the beautician is the lack of knowledge and consent of the affected person to disclose her image through the media. Similarly, the fact that using a hidden camera is considered to be an excessive method in order to provide journalistic information when it is possible to use other means much less invasive of a person's rights to privacy and to personal portrayal, such as simply interviewing other clients of the beautician's "clinic". The Constitutional Court decision considers it is not justified posing as a patient "simulating an identity that fits the situation in order to access the private area of the affected person with the purpose of recording its uninhibited behaviour or to provoke certain comments or reactions as well as to register in a surreptitious way her statements over certain facts or persons, which certainly would not have obtained if the journalist had previously informed of her real identity, profession and her real purposes".

In summary, the Spanish Constitutional Court has considered the use of hidden cameras or similar devices unlawful as it is an excessive means, which infringes the fundamental rights to privacy and to personal portrayal.

The decision does not state anything about other fields or backgrounds in which the use of hidden cameras or similar devices may be justified, such as investigations on drug cartels or women trafficking. The union of investigation journalists considers that the use of hidden cameras should not be prohibited in certain investigations (such as drug cartels or women trafficking).

Notwithstanding, the first consequences of this decision have already happened. The "book of style" of the Spanish Public Television (TVE) currently contains a provision allowing the use of hidden cameras "in very special cases", such as to demonstrate illegal or criminal practices affecting public interest, always with the prior consent of the Management of the broadcaster. However, after the decision of the Constitutional Court, it has been decided that the "book of style" will be amended to contain a provision prohibiting this method.

• Tribunal Constitucional, Sala Primera. Sentencia 12/2012, de 30 de enero de 2012. BOE núm. 47, de 24 de febrero de 2012 (Spanish Constitutional Court Decision 12/2012 of 30 January 2012, Official Journal no. 47, 24 February 2012)
http://merlin.obs.coe.int/redirect.php?id=15731 ES

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Supreme Court Agrees to Hear Arguments against Sinde Law

The new anti-piracy law in Spain (the so called Sinde Law after former Ministry Ángeles González Sinde, see IRIS 2012-2/18, IRIS 2011-3/17 and IRIS 2011-2/23) has hit a setback after the country's Supreme Court agreed to hear an appeal by the *Asociación de Internautas* (Association of Web Users), who claimed the Sinde Law is unconstitutional.

Spanish copyright laws have been criticised for over a decade after various courts ruled that the file-sharing of unlicensed content was not illegal, hindering civil legal action even against those who provide software or web services that enable copyright infringement. Unlike in the UK and France, where new anti-piracy laws target those who actually access illegal content sources via three-strikes style systems, in Spain web-blocking was prioritised, making it easier for rightsholders to force copyright infringing websites offline.

The *Asociación de Internautas* says that the Sinde Law, which allows a government body to issue orders to internet service providers to block access to copyright infringing websites, is unconstitutional because only a court should be able to force a website offline.

The Spanish Supreme Court confirmed it will consider the *Asociación de Internautas*'s claim, while also issuing an injunction that basically stopped the Spanish government from putting the anti-piracy system set out in the Sinde Law into force pending their hearing, though the Government can appeal that element at any point before March.

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FR-France

Court of Cassation Pronounces on Accusation of False Reporting

On 28 February 2012 the Court of Cassation delivered a judgment that attracted much attention in the legal saga over disputed reporting on France 2. It will be remembered (the images were seen all over the world) that in September 2000 the channel broadcast a report with comments by its permanent correspondent in the Middle East on clashes between Palestinians and Israelis in the Gaza Strip. The report showed a Palestinian trying to protect his child, Mohammed al-Dura, from shooting that, according to commentators, was coming from Israeli positions, and that fatally wounded the child. Four years later, the director of a media rating agency posted on his Internet site and circulated by e-mail an article and a press release accusing the journalist and the channel's head of news of having broadcast a "false report - a fabrication starting with a series of staged scenes". The channel and the journalist brought a complaint, and the originator of the accusation was declared guilty of defamation by the criminal court in Paris. On appeal, the court of appeal ordered further investigation and asked the television channel to supply the rushes of footage filmed by its cameraman on 30 September 2000, as it was evident from the pleadings in court that it was necessary to view the images at issue. Six months later, the court acquitted the defendant and dismissed the applications brought by the channel and the journalist. The court found that the accusation at issue was "undeniably damaging to the honour and reputation of the news professionals", but gave the journalist the benefit of acting in good faith, holding that he had "not exceeded the limits of the freedom of expression". Since the court could not, without exceeding its powers, order further investigation before judgment in order to obtain the rushes of the report at issue, the journalist and the channel appealed to the Court of Cassation against the appeal court's ruling. In its decision of 28 February 2012, the criminal chamber of the Court of Cassation stated the principle according to which "it transpires from Article 29 of the 1881 Act that in matters of defamation, if the accused is able to demonstrate his good faith by the existence of particular circumstances, it falls to him alone to furnish such proof, without the courts having the power to provoke, supplement or complete their establishment". By ordering the channel to hand over film rushes, the court of appeal had therefore disregarded this principle; the Court overturned the appeal judgment and hence ordered the acquittal of the accused, and returned the case to a different composition of the court of appeal in Paris. To be continued!

• *Cour de cassation (ch. crim.), 28 février 2012* - A. Enderlin et France 2 c. M. Karsenti (Court of Cassation (criminal chamber), 28 February 2012 - *A. Enderlin and France 2 v. Mr Karsenti*) FR

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French State Ordered to Pay Back Television Services Tax Paid by TF1

The French national press has just published a judgment delivered by the administrative court in July 2011 in a case in which the national channel TF1 was claiming the repayment of the tax on television services it had paid between June 2004 and April 2006 on the basis of Article 302 bis KB of the General Tax Code, according to which "there shall be instituted a tax payable by every operator of a television service received in France (04046) which, in the course of the previous calendar year, has programmed one or more cinematographic works eligible for aid from the special allocation account (04046) entitled 'Financial support for the cinematographic and audiovisual industries' 04046". TF1 claimed that the aid to the audiovisual and cinematographic sector financed by this tax during this period was illegal because it had not been notified to the European Commission before being implemented, as required by Article 88 of the Treaty establishing the European Community (currently Article 108 of the Treaty on the Functioning of the European Union (TFEU)). In its judgment, the administrative court in Montreuil noted that the application in respect of most of the contested period was already out of time. However, it upheld the application in respect of the period from 1 December 2005 to 31 March 2006. In this respect, the court noted that, in accordance with Article 87(1) of the EC Treaty, except as waived in the Treaty, aid granted by the States that was likely to distort competition by favouring certain companies or certain productions was incompatible with the common market. The European Commission and the member states examine the aid schemes in existence in each State on a permanent basis. The Commission must be notified of plans to introduce such aid sufficiently in advance to allow it to present its observations (Article 88(3) of the EC Treaty, currently Article 108(3) of the TFEU). In the present case, however, the court noted that the proceeds of the tax at issue were intended to finance the national centre for cinematography and animated images (Centre National de la Cinématographie et de l'image animée - CNC), which was responsible for allocating aid to the cinematographic and television sectors. Thus the tax, which formed an integral part of the French aid scheme managed by the CNC, was likely to affect intra-Community trade, and consequently constituted State aid falling within the scope of application of Article 87(1) of the EC Treaty. As a result, the French State could not institute the tax at issue before the Commission had been notified and before the Commission had pronounced on its compatibility with the common market, which had not been the case for the period under consideration. The State will therefore have to pay back to the channel the amount corresponding to the period from 1 December 2005 to 31 March 2006. The judgment does not mention a specific figure, but the amount referred to in the press is EUR 30 million. The French State is thought to have entered an appeal against the judgment.

• *Tribunal administratif de Montreuil (1re ch.), 12 juillet 2011 - SA TF1* (Administrative court of Montreuil (1st chamber), 12 July 2011 - TF1 S.A.) FR

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Application for Suspension of Broadcasting a Programme on the Crash of the Rio/Paris Flight

On 12 March 2012 the judge sitting in urgent matters at the regional court in Paris had to deal with an application for suspension of the broadcasting of a programme entitled *Vol AF 447 Rio/Paris : les raisons d'un crash* (Flight 447 from Rio to Paris - the reasons for a crash), scheduled to be shown two evenings later on the public channel France 3, which included a reconstruction of the last four minutes immediately preceding the disaster. On the basis of Article 809 of the Code of Civil Procedure, the fathers of the two pilots and an association defending the victims of the accident were calling for the broadcasting of the programme to be suspended until the investigations and experts' reports currently in hand had been completed. They denounced the deliberately sensation-seeking and emotive nature of the programme, and claimed that two issues were involved, firstly the violation of the secrecy of the investigation and preparation of the case as well as the illegal possession of the plane's black boxes, and secondly the distortion of the truth as the pilots were presented as being solely responsible for the deaths of 228 people in the Air France plane that disappeared in the Atlantic on 1 June 2009.

The judge sitting in urgent matters recalled that the requested measure of suspending even temporarily the broadcasting of an audiovisual work was by its preventive nature one of the measures that were most radically contrary to the freedom of expression. It could therefore only be pronounced in extremely serious cases and if there were substantial elements demonstrating the reality of a manifest likelihood of the infringement of the rights of third parties, with irreparable consequences. Similarly, the judge could only view it in advance, as requested in the alternative, if there were substantial elements of proof that

the risk of seriously infringing the rights of the person concerned could not be perfectly made good by the awarding of damages. Regarding the alleged violation of the secrecy of the investigation and preparation of the case, and the illegal possession of the black boxes, the judge noted that no proof was provided. As attested by a number of articles in the press circulated on the Internet, and a book about the crash, produced by the defence, the content of the black boxes was already public knowledge. The journalists could not therefore be accused of violating secrecy or concealment. Nor had the applicants supplied proof of a distortion of the truth or the presentation of the pilots as being solely responsible, the producer of the broadcast having indeed indicated to viewers that the aim was not specifically to incriminate the pilots but rather to reconstruct what had happened, on the basis of the BEA reports and the book, with no intention of sensationalism. Thus the applicants had not furnished any proof at all that established the reality of a direct and certain "imminent prejudice", or a "manifestly illegal disturbance", other than in terms of a possibility or a subjective judgment, within the meaning of Article 809 of the Code of Civil Procedure. In the absence of proof that broadcasting the programme would cause them irreparable consequences, or that the measures requested constituted necessary restrictions on the freedom of expression, their applications could not be upheld. The disputed programme was therefore broadcast on 14 March 2012 as scheduled.

• *TGI de Paris (ord. réf.), 14 mars 2012* - G. Robert et a. c. France Télévisions (Regional court of Paris (sitting in urgent matters), 14 March 2012 - *G. Robert et al. v. France Télévisions*) FR

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GB-United Kingdom

Supreme Court Decides that Freedom of Information Act has Only Limited Application to the BBC

The UK Supreme Court has now determined the final appeal in the "Sugar" case relating to the application of the Freedom of Information Act to the BBC (see IRIS 2010-3/25 and IRIS 2009-4/15).

The BBC is listed as an organisation covered by the Freedom of Information Act that provides public rights of access to official information, but on in relation to information held "for purposes other than those of journalism, art or literature." In 2005 Mr Sugar had applied under the Act for disclosure of the Balen Report, an internal management report relating to the question of whether BBC coverage of the Israeli-Palestine conflict was not impartial. The BBC refused the request on the ground that it held the information for the purposes of journalism. Mr Sugar appealed to the Information Tribunal, arguing that even if the information is held only partly for purposes other than those of journalism, it is covered by the Freedom of Information Act and should be made available. The BBC argued that if information is in part held for purposes of journalism it is not covered by the Act, even if it is also held for purposes other than journalism. The Tribunal decided that the test was whether the predominant purpose of holding the information was for reasons other than those of journalism, and that once the report had been placed before the BBC Journalism Board it was held for purposes other than journalism. Appeals to the High Court and Court of Appeal and Court of Appeal were unsuccessful, the latter holding that any information held for the purposes of journalism is exempt from disclosure, regardless of the predominant purpose for holding it.

The Supreme Court rejected Mr Sugar's appeal. The majority of the Court considered that if the information is held only partly for the purposes of journalism, it is exempt from disclosure, whilst a further judge held that it was predominantly for purposes of journalism and so not covered by the Act. The Court's decision was based on the powerful public interest that broadcasters should be free to gather, edit and publish news and comment on current affairs without the inhibition of an obligation to make public disclosure of their work. This would be defeated if the coexistence of non-journalistic purposes resulted in loss of immunity. The Court also considered that there was no contravention of Article 10 of the European Convention on Human Rights as it did not create a general right to freedom of information, and, even if it did so, a State could still legislate to protect information held for the purposes of journalism.

• Sugar (Deceased) v. British Broadcasting Corporation [2012] UKSC 4, 15 February 2012
http://merlin.obs.coe.int/redirect.php?id=15725 EN

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High Court Issues Ruling on Satellite Decoder Case

Following the October 2011 preliminary ruling of the European Court of Justice (joined cases C-403/08 and C-429/08, see IRIS 2011-9/2), the High Court of England and Wales, in a decision handed down on 3 February 2012, has now confirmed that pub landlords in the UK can legally broadcast FA Premier League football matches using foreign satellite decoders, providing they can obtain a clean feed of the games, they broadcast sound during live play only and do not charge an entrance fee.

The decision concerned the liability of six publicans (the "Madden defendants") for using decoder cards in order to transmit matches shown by cheaper foreign broadcasters thereby bypassing the official UK rightsholders, as well as two companies, QC Leisure and AV Station plc, which supplied such decoders.

The High Court established that showing FAPL matches in pubs using foreign satellite decoders does constitute an infringement of the FAPL's exclusive communication to the public rights. However, s. 72 CDPA (implementing Article 8(3) of the Rental Right Directive) provides a defence in the case of the showing or playing in public of a broadcast to an audience who have not paid for admission to the place. In accordance with the court ruling, landlords will have to be careful to avoid copyright infringement of ancillary works contained in the broadcasts of football matches, such as logos or graphics. The FAPL's anthem was also found to lie outside the defence, meaning that publicans playing broadcasts must turn the sound off during its transmission.

By contrast, the High Court confirmed his 2008 judgement finding QC and AV liable for authorising copyright infringement through the supply of the decoder cards for the purpose of committing infringing acts. AV has in the meantime gone out of business.

As far as a possible injunction restraining the defendants from further infringement is concerned, the judge accepted that, as a matter of general principle, the defendants who are continuing to trade must be entitled to carry on their businesses in a way which avoids infringement of FAPL's copyrights if they are able to do so. The judge also decided to issue a declaration stating that the FAPL's terms of license for its broadcast rights constituted a restriction on competition prohibited by Article 81 EC (now Article 101 TFEU) and are void to the extent that they prohibited the supply of satellite decoder cards for use in the UK. The judge further decided to refer the case to the Patents County Court to determine to what extent further orders for disclosure of the extent of the defendants' dealings in and use of decoder cards are necessary and proportionate to dispose of any outstanding issues.

In a separate decision handed down on 24 February 2012, the High Court overturned the conviction of pub landlady Karen Murphy for using a Greek decoder to bypass BSkyB's official Premier League satellite feed to show matches cheaply at her Red, White and Blue pub in Portsmouth. According to the court, the territorial restrictions imposed on the use of Ms Murphy's NOVA viewing cards were unlawful under EU law, the viewing cards were not illicit devices, she had paid for her card, had not avoided any charge applicable to its use and had not acted dishonestly. The court did however note that the use of cards or devices originating from outside the European Union gives rise to different considerations, which are not examined in the appeal.

- Football Association Premier League Ltd et al v QC Leisure et al. [2012] EWHC 108 (Ch), 2 February 2012
http://merlin.obs.coe.int/redirect.php?id=15735 EN
- Karen Murphy v Media Protection Services Ltd [2012] EWHC 466 (Admin) 24 February 2012
http://merlin.obs.coe.int/redirect.php?id=15736 EN

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Operators of 'The Pirate Bay' Infringe Copyright

The High Court has decided that the operators of The Pirate Bay website and its users are both guilty of infringing the copyright of rightsholders in the music industry. This means that internet service providers can now be forced to block their customers' access to the site.

The case was brought by major record companies against the six major UK internet service providers. The Pirate Bay is a website which enables users to search for and download copyrighted material, including music and films, and the record companies sought an injunction from the court to force the service providers to block their customers from accessing the site. Under the Copyright, Designs and Patents Act 1988 (as amended to implement the EU Information Society Directive), such an injunction may be granted against an internet service provider if it has 'actual knowledge' that the service was being used to infringe copyright. This hearing concerned the preliminary issue of whether the users and operators of the site breached copyright.

The court decided that the users of The Pirate Bay were in breach of copyright because of the way in which they shared music files; this amounted to communicating the recordings to a new public, as required by the European Court of Justice in Case C-306/05 Sociedad General de Autores v. Editores de España (SGAE) v. Rafael Hoteles SA [2006] ECR I-11519 (see IRIS 2007-2/3). These infringements of copyright had been authorised by the operators of The Pirate Bay who were jointly liable for them; the name of the site and its funding by a Swedish anti-copyright organisation contributed to the Court's finding that such infringement was part of the operators' 'objective and intention'. The case thus cleared the way for a decision at a further future hearing to grant an injunction, following the precedent of the Newzbin2 case in which such an injunction was granted to force a leading internet service provider to block access to a site infringing the copyright of six major film studios (see IRIS 2011-9/21).

• Dramatico Entertainment Ltd v. British Sky Broadcasting Ltd [2012] EWHC 268 (Ch), 20 February 2012
http://merlin.obs.coe.int/redirect.php?id=15726 EN

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IE-Ireland

Approval of Funding Scheme for Broadcast Archiving

The Broadcasting Authority of Ireland (BAI) on 25 January 2012 announced that the funding scheme it had developed to support the archiving of broadcast material has been approved by the Minister for Communications, Energy and Natural Resources.

A funding scheme was provided for under s.154(1)(e) of the Broadcasting Act 2009. However, when approval was sought from the European Commission in 2010, the wording of section 154(1)(e) was found to be incompatible with EU state aid rules, as it related only to material produced in Ireland. In order to obtain EU approval and to ensure the non-discriminatory application of the scheme an amendment to s.154(1)(e) was made by the Communications Regulation (Postal Services) Act 2011. The legislative amendment further provided for the funding of technological and system developments for the purposes of enhancing the availability of and access to archived programme material.

The aim of the Scheme is to encourage and support the development of an archiving culture in the Irish broadcasting sector as a whole and to contribute to the preservation of Ireland's broadcasting heritage. Three objectives for the Scheme are outlined by the BAI in their announcement:

(i) to develop an integrated approach to the archiving of programme material to include the promotion, development and safeguarding of Ireland's broadcasting heritage (this includes the promotion of the archiving of programme material which is of benefit to, and advances the standards of, Irish broadcasting);

(ii) to develop suitable storage processes and formats to encourage and assist bodies in the restoration and/or storage of material recorded on failing, or soon to be obsolete formats, and

(iii) to provide fast and accurate access to programme materials by interested parties and to raise public awareness in the preservation and use of broadcast archive materials.

The Scheme will be financed by a percentage of the annual Broadcasting Fund established pursuant to s.157 of the Broadcasting Act 2009 and is derived from the TV licence fee. EU approval for the Scheme runs until 31 December 2014 and the approval is for an overall budget of EUR 12.86m spread over the four years of the Scheme. The BAI will issue further information about the Scheme, including details on funding rounds, in the coming months and expects to announce a call for applications by the end of the second quarter of 2012.

• Broadcasting Authority of Ireland (BAI), "Broadcast Archiving Scheme is approved", 25 January 2012
http://merlin.obs.coe.int/redirect.php?id=15719 EN
• European Commission, Approval of Irish Funding Scheme for the Archiving of Programme Material ("The Archiving Scheme"), Brussels, 27 June 2011, C(2011) 4679 final
http://merlin.obs.coe.int/redirect.php?id=15720 EN

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Copyright Review Committee Publishes Consultation Paper

On 29 February 2012 the Copyright Review Committee published Copyright and Innovation: A Consultation Paper. The Committee was established in May 2011 to examine the current copyright legislative framework in Ireland and to identify any areas of the legislation that might be deemed to create barriers to innovation (see IRIS 2011-7/27).

The aim of the Consultation Paper is to begin the process of identifying possible reforms to Irish copyright law in order to further innovation, without denying protection to those who require copyright law in order to innovate. The Consultation Paper is based on submissions received by the Committee arising from their initial public consultation process which closed in June 2011. In the 182-page submission-led paper the Committee:

- Considers the intersection of innovation and copyright by defining innovation and sketching an outline of copyright principles (Chapter 2);

- Provides a classification of submissions received (Chapter 2);

- Explores the possible establishment of a Copyright Council of Ireland (Chapter 3);

- Considers the position of rightsholders and collecting societies (Chapters 4 and 5);

- Considers the position of intermediaries, users, entrepreneurs and heritage institutions (Chapters 6 to 9);

- Considers the doctrine of fair use (Chapter 10); and

- Provides proposed draft statutory provisions (Appendix IV).

Each chapter is set out as a discussion document that explores various options on foot of which the Committee poses specific questions. All eighty-six questions posed in the Consultation Paper are compiled in Appendix III. The Committee invites further submissions on these questions and on any of the issues raised by the Consultation Paper. The Closing date for submissions is 13 April 2012.

The Committee will then evaluate the further submissions and prepare a Final Report to be submitted to the Government. The Committee intend providing the draft heads of a Copyright and Related Rights (Innovation) (Amendment) Bill 2012, in their Final Report in order to implement their recommendations.

• Department for Enterprise, Jobs and Innovation, "Copyright and Innovation: A Consultation Paper" prepared by the Copyright Review Committee, Dublin 2012
http://merlin.obs.coe.int/redirect.php?id=15721 EN

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Copyright Injunctions Law Introduced

On 29 February 2012 the Minister for Jobs, Innovation and Enterprise signed into law the European Union (Copyright and Related Rights) Regulations 2012. The statutory instrument amends s.40 and s.205 of the Copyright and Related Rights Act 2000 by inserting provisions that permit the owner of the copyright or a related right in a work to apply to the High Court for an injunction against an intermediary whose services are used by a third party to infringe a copyright or related right in respect of that work.

The statutory instrument describes an intermediary, against whom an application for an injunction can be made, as one to whom Article 8(3) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society applies. No further guidance is provided in the statutory instrument as to the specific remedies which may be applied by the courts.

The amendment follows from the High Court decision of 11 October 2010 in EMI v. UPC [2010] IEHC 377, a case taken by five record companies (EMI, Sony, Universal, Warner and WEA) against the Internet service provider UPC, where the judge held that there was no provision in Irish law for the blocking, diverting or interrupting of transient Internet communications (see IRIS 2011-1/38). The court further advised that in not providing such remedies Ireland was not yet fully in compliance with its obligations under European law and that legislative intervention was required.

The background to the introduction of the statutory instrument is also informed by a series of cases taken by the record companies against Internet service providers seeking to address the issue of copyright infringement over the Internet (see: IRIS 2005-10/28, IRIS 2006-4/26 and IRIS 2010-6/34). These cases led to an agreement between one Internet service provider, Eircom, and the record companies to introduce a graduated response known as the three-strikes system to terminate the connections of persistent copyright infringers.

On 5 December 2011 the Irish Data Protection Commissioner issued an enforcement notice directing Eircom to stop implementing the three-strikes system as it breaches data protection law. Subsequently, on 28 February 2012, four record companies (EMI, Sony, Universal and Warner) issued proceedings challenging the Data Protection Commissioner's decision to issue an enforcement notice against Eircom. These proceedings are pending.

Following the EMI v. UPC judgment, the Department of Jobs, Innovation and Enterprise indicated that they would restate the law to expressly provide for rightsholders to make applications for injunctions against intermediaries. The Department sought submissions on a proposed wording for the statutory instrument, through a public consultation process, in July 2011.

Following the initial consultation process the Department had indicated that they would introduce the statutory instrument early in 2012. However on 10 January 2012 five record companies (EMI, Sony, Universal, Warner and WEA) issued proceedings against that state for the alleged failure to implement aspects of EU copyright law. A revised wording for the statutory instrument was then published on 26 January 2012. The revisions from the initial wording were confined to limiting the scope of those against whom injunctions could be sought, namely to intermediaries as defined in the Article 8(3) of Directive 2001/29/EC. This was followed by a short period of intense media scrutiny and prompted an emergency Dáil debate (lower house of Irish Parliament) but no further amendments or changes to the proposed statutory instrument were accepted.

• Department for Enterprise, Jobs and Innovation, "Copyright S.I. signed and consultation process launched on copyright and innovation - Minister Sherlock", 29 February 2012
http://merlin.obs.coe.int/redirect.php?id=15723 EN
• European Union (Copyright and Related Rights) Regulations 2012 (S.I. no. 59 of 2012)
http://merlin.obs.coe.int/redirect.php?id=15724 EN

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LT-Lithuania

Act on Copyright and related Rights Amended

On 21 December 2011 the *Seimas* (Lithuanian Parliament) adopted some amendments to the Law on Copyright and Related Rights. The main part of these amendments relates to the regulation of the determination, pay out and distribution of the remuneration to copyright and related rightsholders for the reproduction of audiovisual works or phonograms for private use. The amendments to remuneration came into force on 1 March 2012.

The amendments determine that remuneration shall be paid for reproduction devices and empty audiovisual data storage devices produced in the Republic of Lithuania or imported to its territory, which are meant for the reproduction of works for personal use.

It has to be noted that the former Law on Copyright and Related Rights provided that in Lithuania the payment of remuneration for the reproduction of works for personal use was due to rightsholders only for certain empty audiovisual data storage devices, e.g., audio/video tapes, CDs, DVDs etc. However, it did not establish any payment of remuneration for reproduction devices. From now on, the remuneration shall have to be paid for mobile phones, TV sets with memory stick and audio/video recording function etc. The list of data storage devices and reproduction devices as well as the tariffs is defined in Appendix 1 of the Law on Copyright and Related Rights. Remuneration has to be paid by persons who are trading with the mentioned reproduction devices and empty data storage devices in the territory of Lithuania.

In addition, the amended Law determines the cases when the paid remuneration has to be returned i.e., when the reproduction devices and empty data storage devices are purchased for professional or disabled needs or are brought away from Lithuania.

The Law also establishes new rules for distributing the newly collected remuneration. According to these 25 % of remuneration is allocated to the financing of creative activity programmes and copyright and related rights protection programmes. The remaining part of the payment of remuneration (for the empty audiovisual works storage devices and reproduction devices) is distributed among authors, performers and producers of audiovisual works in the amount of 1/3 each.

The former law did not foresee any amount of the remuneration. This was determined only in the by-law act of 19 September 2007 adopted by Government Resolution. According to the rules set out in the mentioned legal act, the amounts of the remuneration for the copyright and related rights parties were not equal, i.e. 40 % were meant for authors and 30 % for performers and 30 % for producers of phonograms.

The amendments to the Law on Copyright and Related Rights determine that the collecting, distributing and paying out of the remuneration for the copyright and related rights parties is the prerogative of collecting societies in accordance with the rules set out by the Government. The rules on the procedure of returning paid remuneration are also set out by the Government. Until now, none of these rules have been approved.

• Autorių teisių ir gretutinių teisių įstatymo 2, 16, 19, 20, 21, 22, 23, 24, 25, 26, 28, 33, 39, 58, 75 straipsnių ir įstatymo priedo pakeitimo ir papildymo ir įstatymo papildymo 201 straipsniu ir 1,2 priedais įstatymas (Law on the Amendment of the Law on Copyright and Related Rights, adopted on 21 December 2011)
http://merlin.obs.coe.int/redirect.php?id=15751 LT

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MT-Malta

Scheme of Local Council Election Broadcasts

The Broadcasting Authority has launched a scheme for local council election broadcasts. Although local councils have been established in Malta since 1993, this is the first time in the history of political broadcasting that the Broadcasting Authority is organising a political broadcasting scheme for local councils. In the past, local council election broadcasts used to form part of the scheme of political broadcasts that would normally be running during the year including during the campaign period for local council elections.

The new round of local council elections was held on Saturday 10 March 2012. Launched less than a month before polling day, the scheme consisted of three debates and 150 minutes of political spots and party productions. These were in turn sub-divided as follows: one debate was assigned to the Labour Party, one debate was assigned to the Nationalist Party and one debate was assigned to Alternattiva Demokratika - The Green Party. The Labour Party is the party in opposition; the Nationalist Party is the party in Government; and the Green Party does not have any representation in Malta's unicameral House of Representatives. In all three debates, the Nationalist Party and Labour Party were both entitled to two speakers, while the Green Party was entitled to one speaker. The Green Party normally polls between 1% and 2% of the electorate in general elections.

In so far as political party productions and political spots are concerned, the Nationalist Party and the

Labour Party were each entitled to 60 minutes while the Green Party was allocated thirty minutes. Each production could not be less than 30 seconds but not longer than five minutes. All three debates were broadcast on the public service broadcaster's national television station - TVM - and on its radio station - Radio Malta. The debates' chairpersons were been chosen by the Broadcasting Authority and the speakers by the political parties.

Although these elections were limited to local council elections, it must be noted that half of Malta has been called on to express its vote during these elections. So these elections can be considered as a testing ground for the general elections that are due to be held at the latest by August 2013. Moreover in Malta, it is the Broadcasting Authority and not the public service broadcaster that approves the scheme of political broadcasts and also organises it.. The public service broadcaster comes into the picture only as the carrier of these broadcasts. Such broadcasts have been organised by the Authority right from its inception way back in 1961. Such broadcasts ensure that all political parties contesting an election are given ample opportunity to put forward to the viewer and listener their views and electoral manifesto for local council elections.

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NL-Netherlands

Decision on Lowering Funding for Regional Broadcasters Annulled

On 26 January 2012, the Court of Hertogenbosch annulled a decision by the Province of Noord-Brabant regarding the lowering or funding to the regional broadcaster 'Omroep Brabant'.

Under the Dutch Media Act (Mediawet) each Province is obliged to financially enable at least one regional broadcaster. Specifically Article 2.170 of the Dutch Media Act states that a Province has to enable a media-offer of high quality and has to guarantee continuity of funding, maintaining the quality and quantity that was the standard in 2004.

On 2 July 2010 the Province of Noord-Brabant adopted a decision to lower its funding to the regional broadcaster 'Omroep Brabant' by EUR 400.000,- and in 2012 to EUR 1.700.000,- in 2015. It qualified the decision by stating that even though this would result in limiting the current number of programme units, this number would not decrease below the qualitative level of 2004: the qualitative and quantitative level of 2004 as mentioned in the provision above would be maintained.

The Court ruled that the decision of the Province did not provide sufficient grounding for the limitation of regional funding. Amongst other things it stated that the Province did not take into account the actual costs of the broadcaster, also bearing in mind the adjustments that have to be made as a result of the changing demands of media-users. As a result it annulled the decision as it was not made in line with the Province's duty of care and was not based on proper grounds (Articles 3:2 and 7:12 Dutch General Administrative Law Act).

The decision being reversed, the Province now has to take a new decision on the funding of the regional broadcaster.

- *BV1954, Rechtbank 's-Hertogenbosch, AWB 11/176* (Decision BV1954 of the Court of Hertogenbosch, AWB 11/176)
http://merlin.obs.coe.int/redirect.php?id=15752 NL

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RO-Romania

New Decision on the Granting and Modification of Rebroadcasting Notifications

The *Consiliul Naţional al Audiovizualului* (National Council for Electronic Media - CNA) approved on 2 February 2012 Decision no. 72 on the conditions for granting and modifying a rebroadcasting notification. It was published in the Official Journal no. 118 of 16 February 2012 and replaced CNA Decision no. 12/2003 (see inter alia IRIS 2010-4/37, IRIS 2011-6/30 and IRIS 2012-2/32).

According to the Decision, any person who intends to distribute TV and/or radio programme services has to request, under Art. 74 of the Audiovisual Law no. 504/2002, a rebroadcasting notification. The applicant has to fill in the Decision's Appendix 1 with relevant personal data and data about the electronic communications network; a copy of the certificate issued by the *Autoritatea Naţională pentru Administrare şi Reglementare în Comunicaţii* (National Authority for Administration and Regulation in Communications - ANCOM), which confirms that it offers electronic communications networks/services; the structure of rebroadcast programme services (Appendix 2) in line with Art. 82 Audiovisual Law with regard to the "must carry" principle; the rebroadcasting acceptance/rebroadcasting contract. The provider can air

the rebroadcast programme services offer only after obtaining the rebroadcasting notification. Any modification of the provider's identification data has to be notified to the CNA within 30 days. If the provider intends to modify its rebroadcasting offer, the same steps as above have to be taken. The Council is bound to decide on the modification of the offer within 30 days. If, according to Art. 75 (3) Audiovisual Law (breaches of Art. 39 - programmes that seriously impair the physical, mental or moral development of minors; and Art. 40 - programmes comprising incitement to hatred due to race, religion, nationality, gender or sexual orientation), the Council temporarily limits the right of free-to-air rebroadcasting for a programme service, the providers will suspend the service as provisioned in the decision.

The rebroadcasting notification can be withdrawn under the following circumstances: upon the holder's request; if there is a cease of the right to provide electronic communications networks/services, decided by ANCOM; and in the case of an application of Art. 74 (4) Audiovisual Law (service provider distributing a programme service without rights). If a rebroadcasting notification holder wants to sell it to a third party, it has to ask the Council for permission and the new holder has to take the same steps as the former holder.

The "must carry" index has to be published by the CNA until 1 February. The index also includes the programme services declared by private broadcasters to be free-to-air in descending annual audience order measured and communicated until 15 January each year by the Asociaţia Română pentru Măsurarea Audienţelor (Romanian Association for Audience Measurement- ARMA).

The interested broadcasters will declare (Appendix 3) until 15 January at the latest for the respective year in which programmes will be free-to-air, without any technical or financial condition (which also means free and unconditioned access to the uncoded/unencrypted signal). The declaration is valid until 15 January of the next year. The "must carry" list is applicable to all service distributors, except those using public networks with Direct-to-Home satellite access for rebroadcasting.

Distributors have to ask the broadcaster in written form within seven days for the annual rebroadcasting permission for every "must carry" service. A lack of written response within 15 days after the release of the "must carry" index is considered tacit approval. The distributors are obliged to insert into their offer the programmes included in the "must carry" index within 30 days after its release. They are obliged to assure for every "must carry" programme the same quality of rebroadcast signal in the electronic communication network as the signal quality offered by broadcasters.

If a broadcaster decides during a year, to give up or it is no longer compliant with the legal conditions for the "must carry" regime for a certain programme service, the Council will announce this publicly on its website.

Infringements of the Decision could be sanctioned in accordance with to the Audiovisual Law.

• *Decizia nr. 72 din 2 februarie 2012 privind condiţiile de eliberare şi modificare a avizului de retransmisie* (CNA Decision no. 72 of 2 February 2012)
http://merlin.obs.coe.int/redirect.php?id=15708 RO

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Severe Sanctions for Breaching Audiovisual Regulations

The *Consiliul Naţional al Audiovizualului* (National Council for Electronic Media - CNA) imposed in February 2012 numerous severe sanctions on several Romanian television stations for breaching audiovisual rules with regard to the right to private life; the right to one's own image; the protection of reputation and human dignity; the limit of advertising; the modification of rebroadcasting without permission; and the "must carry" principle (see inter alia IRIS 2011-1/44, IRIS 2011-6/31, IRIS 2012-1/38, and IRIS 2012-2/32).

The commercial station Antena 1 was sanctioned for severe infringements of Audiovisual Law no. 504/2002 and of the Audiovisual Code. Antena 1 had aired repeatedly during a tabloid night programme candid camera images showing the former Romanian Prime Minister naked while changing his clothes in the changing room of a gym. CNA considered Antena 1 infringed Art. 3 (1) Audiovisual Law which rules the observance of fundamental human rights and liberties. CNA also considered the station impinged Art. 30, 32 (1) and (2), 33 (1), 34 (1) and (2), 35, 36 Audiovisual Code, which provide for the observance of fundamental human rights and liberties; the right to private and family life; the right to one's own image, the protection of honour, reputation and human dignity; the interdiction to use a legal right in an excessive and non-reasonable way in bad faith; the fact that not every public interest has to be satisfied and the simple invocation to the right to information cannot justify the breach of the right to private life; the broadcast of the image/voice of a person in a private space without his/her permission; the regime of entertainment and candid camera audio and/or video recordings. The commercial station OTV which relayed the images from Antena 1 was sanctioned at the maximum legal fine of RON 200,000 (EUR 46,000) for similar infringements. The commercial station România TV was also sanctioned for the same breaches, with a fine of RON 50,000 (EUR 11,500), because it relayed repeatedly in news programmes the images in question. Those were partially blurred and România TV

insisted that its moderator criticised their release by Antena 1, but the CNA considered the station guilty.

Furthermore, one of the major cable television services, Internet and telephony providers, RCS&RDS, was sanctioned several times for breaching the Audiovisual Law. It was fined on 16 February 2012 for breaches of Arts. 74 (3) and 82 (2), providing that the programme offer can only be modified with the CNA's approval and that providers have to rebroadcast at least two local programmes in an area. RCS&RDS stopped the transmission of local station Info TV Arad and introduced two more local channels (TV Arad, TVRM Educaţional) in its offer in Arad (western part of Romania) without approval. Previously, RCS&RDS had been sanctioned for breaching Arts. 74 (3) and 82 (1) ("must carry") Audiovisual Law. On 31 January 2012 the provider was fined because it eliminated from its offer in Bucharest and other 25 cities the channel Naţional 24 PLUS, which is included in the "must carry" index. One week before, RCS&RDS had received a public warning for similar breaches with regard to Antena 2 which was cut from the minimum subscription offer in 25 cities. On 23 February 2012, CNA issued the 2012 "must carry" index, which includes both, Antena 2 and Naţional 24 PLUS.

In the same period, three commercial (Kanal D, Pro TV, Prima TV) and one public television channel (TVR 1) were fined, and the commercial station OTV received a public warning for breaches of Art. 35 (1) Audiovisual Law, which provides that the maximum limit for advertising and teleshopping altogether is of 8 minutes/hour for public and of 12 minutes/hour for commercial stations.

• Decizia nr. 86 din 16.02.2012 privind obligarea radiodifuzorului S.C. ANTENA TV GROUP S.A. pentru postul de televiziune ANTENA 1 de a difuza, în ziua de 17.02.2012, timp de 10 minute, între orele 19.00-19.10, numai textul deciziei de sancţionare emise de CNA (Decision no. 86 on ANTENA 1)
http://merlin.obs.coe.int/redirect.php?id=15710 RO

• Decizia nr. 87 din 16.02.2012 privind amendarea cu 200.000 lei a S.C. OCRAM TELEVIZIUNE S.R.L. pentru postul de televiziune OTV (Decision no. 87 on OTV)
http://merlin.obs.coe.int/redirect.php?id=15711 RO

• Decizia nr. 94 din 21.02.2012 privind amendarea cu 50.000 lei a S.C. RIDZONE COMPUTERS S.R.L. pentru postul ROMÂNIA TV (Decision no. 94 on ROMÂNIA TV)
http://merlin.obs.coe.int/redirect.php?id=15712 RO

• Decizia nr. 95 din 21.02.2012 privind amendarea cu 130.000 lei a S.C. DOGAN MEDIA INTERNATIONAL S.A. pentru postul KANAL D (Decision no. 95 on KANAL D)
http://merlin.obs.coe.int/redirect.php?id=15713 RO

• Decizia nr. 96 din 21.02.2012 privind amendarea cu 100.000 lei a S.C. PRO TV S.A. pentru postul de televiziune PRO TV (Decision no. 96 on PRO TV)
http://merlin.obs.coe.int/redirect.php?id=15714 RO

• Decizia nr. 97 din 21.02.2012 privind amendarea cu 50.000 lei a S.C. SBS BROADCASTING MEDIA S.R.L. pentru postul de televiziune PRIMA TV (Decision no. 97 on Prima TV)
http://merlin.obs.coe.int/redirect.php?id=15715 RO

• Decizia nr. 98 din 21.02.2012 privind amendarea cu 20.000 lei a SOCIETĂŢII ROMÂNE DE TELEVIZIUNE pentru postul de televiziune TVR 1 (Decision no. 98 on TVR 1)
http://merlin.obs.coe.int/redirect.php?id=15716 RO

• Decizia nr. 99 din 21.02.2012 privind somarea S.C. OCRAM TELEVIZIUNE S.R.L. pentru postul de televiziune OTV (Decision no. 99 on OTV)
http://merlin.obs.coe.int/redirect.php?id=15717 RO

• Topul staţiilor TV pentru 2012 în vederea aplicării principiului "must carry" (2012 TV index for "must carry" principle)
http://merlin.obs.coe.int/redirect.php?id=12296 RO

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New Minimum Provisions for Improving Consumer Protection

Starting with 25 February 2012, contracts concluded by consumers with providers of electronic communications services contain more minimum mandatory provisions intending to improve consumer protection (see IRIS 2008-6/24, IRIS 2010-5/33 and IRIS 2010-8/43).

The new provisions are included in the Emergency Government Decree no. 111/2011 on electronic communications, published in the Official Journal on 27 December 2011. The maximum initial duration of contracts concluded with resident end-users may not exceed 24 months. Providers are also obliged to give consumers the alternative to benefit from services for a contractual duration of maximum of 12 months and to enable consumers to choose the offer which best suits their needs.

The providers have to include in their contracts the restrictions they impose on the use of terminal equipment, the categories of measures they can take should incidents or security threats occur as well as information on the procedures of traffic management to avoid network congestion. This information will enable subscribers to find out whether their provider will restrict access to certain sites/web applications, will encode their telephone set or will limit transfer speed upon reaching a certain traffic volume. As for incidents/security threats, the providers must insert in contracts the actions they might take and their impact on the continuous provision of networks and services at regular level, as well as the conditions under which these restrictions will be enforced.

The contracts for Internet services must contain provisions relating to quality parameters: nominal/maximum data transfer speed; guaranteed minimum data transfer speed; transfer delay/transfer delay variation; packet loss rate; term from which Internet access will be provided; damage repair term; and the term of solving user complaints. Providers will quarterly publish on their websites the values of aforementioned parameters, firstly on 25 April 2012.

The changes apply to both, contracts concluded from 25 February 2012 and by that time. Providers have the obligation to amend the contracts and to inform the subscribers. The changes are imposed by legal provisions and not the result of the provider's wish to

unilaterally change contracts, so users who are currently in the minimum contractual period may not invoke these amendments to request contract cancellation without payment of agreed penalties.

The *Autoritatea Naţională pentru Administrare şi Reglementare în Comunicaţii* (National Authority for Administration and Regulation in Communications - ANCOM) took over the duties relating to monitoring and controlling the distance contracts concluded between providers of electronic communications services and users. ANCOM will take action to ensure the access of disabled end-users to, and their possibility to benefit from, electronic communications services adjusted to their needs and under the same conditions as those applicable to other end-users. ANCOM is entitled to sanction providers if they do not include the new minimum mandatory provisions in their contracts and may resolve disputes which have failed to be settled amicably between users and providers in relation to the non-observance of these provisions.

• Contractele încheiate pentru furnizarea de servicii de comunicaţii electronice se vor modifica; comunicat de presă 23.02.2012 (ANCOM press release of 23 February 2012)
http://merlin.obs.coe.int/redirect.php?id=15709 RO

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DACIN-SARA - The Collecting Society for Cinematography Works

On 23 January 2012 the *Oficiul Român pentru Drepturile de Autor* (Romanian Copyright Office - ORDA) designated the collective administration body DACIN-SARA - Copyrights for Cinematography-Audiovisual - Romanian Authors' in Audiovisual Society based in Bucharest, as the collector of the remuneration due to the authors of cinematography and other audiovisual works for the reproduction of their works (see IRIS 2005-6/34, IRIS 2006-8/27 and IRIS 2006-9/30).

The decision, which was published in the Official Journal no. 93 of 6 February 2012,provides that the remuneration shall be calculated according to the methodology of the reproduction of cinematography and other audiovisual works' index and to the remuneration table that includes the property rights of authors. The decision was taken under *Legea nr. 8/1996 privind dreptul de autor şi drepturile conexe, cu modificările şi completările ulterioare* (Law no. 8/1996 on copyright and related rights, with further completions and modifications).

The decision came after two written warnings issued by ORDA on 24 January and 20 July 2011, which imperatively requested DACIN-SARA to correct within 30, respectively 60 days, several breaches of Law 8/1996 as well as of its own statutes. ORDA issued in 2011 written warnings also to other remuneration collectors in the field: the *Uniunea Producătorilor de Film şi Audiovizual din România - Asociaţia Română de Gestiune a Operelor din Audiovizual* (Film and Audiovisual Producers' Union of Romania - The Romanian Association for Managing Audiovisual Works, UPFAR ARGOA), *Uniunea Muzicologilor şi Compozitorilor din România - Asociaţia pentru Drepturi de Autor* (Musicologist and Composers' Union of Romania - Association for Copyrights, UCMR ADA, unique remuneration collector for cable transmission) and *Asociaţia Internaţională de Gestiune Colectivă a Operelor Audiovizuale România* (International Association for the Collective Management of Audiovisual Works Romania - AGICOA ROMANIA), due to numerous infringements of Law 8/1996. All these bodies competed with each other to collect the remuneration due to the authors of cinematography and other audiovisual works.

During 2010 and 2011 DACIN-SARA and AGICOA ROMANIA had launched repeated judicial actions against each other, trying to become the remuneration collector for cinematography and other audiovisual works.

• Decizie nr. 5/2012 din 23.01.2012 privind desemnarea organismului de gestiune colectivă DACIN-SARA - Drepturi de Autor în Cinematografie-Audiovizual - Societatea Autorilor Români din Audiovizual drept colector al remuneraţiilor cuvenite autorilor de opere cinematografice şi alte opere audiovizuale pentru reproducerea operelor cinematografice şi altor opere audiovizuale (Decision no. 5 of 23 January 2012 with regard to the designation of the collective administration body DACIN-SARA)
http://merlin.obs.coe.int/redirect.php?id=15718 RO

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DE-Germany

Draft Reform of the Restraints on Competition Act Provides for Easing of the Regulations on Press Mergers

On 23 March 2012, the German government introduced a draft amendment to the *Gesetz gegen Wettbewerbsbeschränkungen* (Restraints on Competition Act - GWB), concerning, inter alia, the regulations on controlling press mergers.

In Germany, the regulations on stakeholdings and ownership are to be found at various levels. The GWB, which falls within the competence of the Federal Government, contains general, cross-sectoral rules of antitrust legislation, and the purpose of the draft submitted is to adapt these rules to the developments of EU merger control law. In order to maintain media diversity, the *Rundfunkstaatsvertrag* (Inter-State Broadcasting Agreement) contains fundamental provisions governing public service and private broadcasting in

the dual broadcasting system of the *Länder* and, consequently, also rules on the legality and monitoring of broadcasters' shareholdings in other companies. Moreover, the media and/or press laws of the *Länder* contain rules that provide for additional measures to safeguard diversity of opinion in the media.

The amendments to the GWB now proposed concern the "turnover threshold", by which is meant the figure for the total worldwide revenues of the press companies intending to merge, above which figure the *Bundeskartellamt* (Federal Cartel Office) examines the planned merger. The multiplication factor for the turnover threshold is to be reduced from 20 to 8 (section 38(3) GWB), which means that eight times stricter rules would apply in the future to takeovers in the press sector than in other sectors (see section 35 GWB). In terms of numbers, this means a rise in the turnover threshold from EUR 25 million to EUR 62.5 million. The change would particularly benefit small and medium-sized publishers, whereas no support is to be given to the purchase of small publishers by large publishing houses. In order to ensure that this is not encouraged, the multiplication factor 20 is to be retained for calculating the minor market threshold (section 36 GWB).

Bodies representing specific interests, such as the *Bundesverband Deutscher Zeitungsverleger* (Federal Association of German Newspaper Publishers - BDZV), criticised the changes envisaged as insufficient and would like to see more extensive reforms, for example making it easier for publishers in economic difficulties to be taken over and put back on an even keel or redefining the markets subject to monitoring by the Federal Cartel Office in accordance with technological developments in the field of publishing. In addition, the basis for calculating the amount relevant for the turnover threshold should be limited to the advertising and distribution revenues of newspapers and magazines.

• *Entwurf der Bundesregierung für ein Achtes Gesetz zur Änderung des Gesetzes gegen Wettbewerbsbeschränkungen* (Federal Government's draft of an Eighth Law amending the Restraints on Competition Act)
http://merlin.obs.coe.int/redirect.php?id=16238 DE

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EUROPÄISCHE AUDIOVISUELLE INFORMATIONSSTELLE

Agenda

Levelling the playing field? Towards New European Rules for Film Funding
19 May 2012 Organiser: European Audiovisual Observatory
Venue: Cannes
http://www.obs.coe.int/about/oea/pr/mif2012.html

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