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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: Ressiot and Others v. France

Once again the European Court has emphasised the importance of the protection of journalists' sources, this time in a case concerning searches and seizures carried out at the French sporting daily L'Equipe, the weekly magazine Le Point and at the homes of some of their journalists. This judgment comes only a few months after the judgment of the European Court found a violation of Article 10 of the European Convention by the French authorities for disrespecting the protection of journalists' sources (ECtHR 12 April 2012, Martin and Others v. France, Appl. Nr. 30002/08).

The case Ressiot and Others v. France concerns investigations carried out at the premises of L'Equipe and Le Point and at the homes of five journalists accused of breaching the confidentiality of a judicial investigation. Both newspapers had published a series of articles about an ongoing investigation into alleged doping by the Cofidis cycle racing team in the Tour de France, an investigation carried out by the Drugs Squad. The French authorities wanted to identify the source of the leaks the journalists were obviously relying upon. Searches, seizures and telephone tapping were ordered. The five journalists requested that all the material seized and gathered during the searches at the newspapers' offices and at their homes be declared null and void. While some of the investigative measures were considered null and void by the French courts, the seizure and placing under seal of certain materials were considered to be legitimate interferences, not violating the rights of the journalists. The five journalist lodged an application with the European Court of Human Rights, complaining that the investigations into their actions had been carried out in violation of Article 10 of the Convention.

In its judgment the Court reiterates the importance of the protection of journalistic sources as one of the cornerstones of freedom of the press. Without such protection, sources might be deterred from assisting the press in informing the public. As a result, the vital public-watchdog role of the press might be undermined and the ability of the press to provide accurate and reliable information might be adversely affected. The Court accepts that the interference by the French authorities out of concern for the confidentiality of the investigation had been aimed at preventing the disclosure of confidential information, protecting the reputation of others, ensuring the proper conduct of the investigation and therefore protecting the authority and impartiality of the judiciary. According to the Court journalists cannot, in principle, be released from their duty to obey the ordinary criminal law. The Court, however, notes that when the searches were carried out and the telephone calls tapped, the sole aim had been to identify the source of the information published in the newspaper articles, while the right of journalists not to disclose their sources could not be considered a mere privilege to be granted or taken away depending on the lawfulness or unlawfulness of their sources, but was part and parcel of the right to information. In this case there was no overriding social need to justify the interference with the journalists' sources. The means used by the French authorities were not reasonably proportionate to the legitimate aims pursued having regard to the interest of a democratic society in ensuring and maintaining the freedom of the press. Hence the Court, unanimously, comes to the conclusion that there has been a violation of Article 10 of the Convention.

• *Arrêt de la Cour européenne des droits de l'homme (cinquième section), affaire* Ressiot et autres c. France, *n°15054/07 et 15066/07 du 28 juin 2012* (Judgment by the European Court of Human Rights (Fifth Section), case of Ressiot and Others v. France, nrs. 15054/07 and 15066/07 of 28 June 2012)
http://merlin.obs.coe.int/redirect.php?id=16086 FR

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Committee of Ministers: Declaration on the Desirability of International Standards Dealing with Forum Shopping in Respect of Defamation, "Libel Tourism"

On 4 July 2012, the Council of Europe's Committee of Ministers (CM) adopted a Declaration on the Desirability of International Standards dealing with Forum Shopping in respect of Defamation, "Libel Tourism", to Ensure Freedom of Expression.

The CM firstly notes that although everyone is entitled to freedom of expression, the media have specific rights, because they play an essential role in democratic societies. Freedom of expression, as guaranteed by Article 10 of the European Convention of Human Rights, is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive, but also to those that offend, shock or disturb the State or any sector of the population" (case Handyside v. United Kingdom, 7 December 1976). However, freedom of expression carries with it duties and responsibilities, meaning that inter alia the media at any time must respect the reputation and rights of others and their right to private life. That means that

in defamation cases, a fair balance must be struck between guaranteeing freedom of expression and protecting a person's honour and reputation.

The CM emphasises that the existing differences between national defamation laws and the special jurisdiction rules in tort and criminal cases have given rise to the phenomenon known as "libel tourism". Libel tourism is a form of "forum shopping" when a complainant files a complaint with the court thought most likely to provide a favourable judgment and where it is easy to sue. Forum shopping may have a chilling effect and restrict freedom of expression, and can therefore have detrimental effects on media pluralism and diversity. These risks are exacerbated as a consequence of increased globalisation and the persistent accessibility of content and archives on the Internet (see IRIS 2009-5/1).

According to the margin of appreciation of member states, the proportionality of the balance between the competing human rights in defamation cases has led to substantial variations in the stringency of defamation law or case law. Because it is often impossible to predict where a defamation claim will be filed, a general need for increased predictability of jurisdiction exists. To prevent libel tourism, member states are obliged to reform the legislation on defamation in order to ensure better protection of freedom of expression within a system that strikes a fair balance between competing human rights. The relevant case law of the European Court of Human Rights (ECtHR) should be inventoried with a view to suggesting new action if need be. Also, clear rules as to the applicable law and indicators for the determination of the personal and subject matter jurisdiction should be created to enhance legal predictability, in line with the case law of the ECtHR. Likewise, clear rules as to the proportionality of damages in defamation cases are highly desirable. The CM acknowledges therefore the necessity for member states to provide appropriate legal guarantees against awards for damages and interest that are disproportionate to the actual injury. Furthermore, the CM notes the need to align national law provisions with the case law of the ECtHR. Finally the CM undertakes to pursue further standard-setting work in order to provide guidance to member states.

• Declaration of the Committee of Ministers on the Desirability of International Standards dealing with Forum Shopping in respect of Defamation, "Libel Tourism", to Ensure Freedom of Expression, 4 July 2012
http://merlin.obs.coe.int/redirect.php?id=16121 EN FR

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Parliamentary Assembly: Media Provisions in New Texts on (Roma) Migrants and Refugees

The Parliamentary Assembly of the Council of Europe (PACE) adopted its Resolution 1889 on the portrayal of migrants and refugees during election campaigns and its Recommendation 2003 (2012) on Roma migrants in Europe on 27 and 28 June 2012 respectively. While formally distinct, the texts display some limited thematic overlap and both of them contain provisions that are relevant for the (audiovisual) media.

In its Resolution on the portrayal of migrants and refugees during election campaigns, the PACE considers that "the rise of xenophobia is challenging democratic principles and respect for human dignity" (para. 2). It acknowledges that while Council of Europe member states "already have legal remedies for countering xenophobia and racist speech", "a real strategy is needed for combating xenophobia, especially during election campaigns" (para. 3). This statement underscores the distinctive nature of election campaigns vis-à-vis other forms or contexts of political or public discourse.

The Resolution explores the different (negative) ways in which migrants and refugees are portrayed during election campaigns by a variety of actors, including political parties and individual politicians. It seeks to explain the influence of those actors as well as the influence of particular practices that are characteristic of election campaigns, e.g. (biased) opinion polls. The PACE describes the media's role in the electoral context as "vital", adding that the media "bear a major responsibility in shaping the image of migrants and their descendants" (para. 8). It also notes that "Internet and the social networks play an increasingly important role in spreading xenophobic and anti-immigrant attitudes" (para. 9).

The PACE calls on (especially the parliaments of) Council of Europe member and observer states to "encourage the media to use factually correct, balanced and fair formulations by providing them with the appropriate data and statistics" (para. 11.4). It also calls on states to draw up guidelines to prevent bias in opinion polls (para. 11.5).

The Recommendation on Roma migrants in Europe is built on the recognition that the "combination of being a Roma and a migrant takes disadvantage and discrimination to an even higher level as a result of this double stigmatisation" (para. 2). The Recommendation examines the causes, manifestations and implications of this double stigmatisation and explores suitable responses to the problem. It identifies "the overall negative depiction of Roma spread by certain media and politicians" as meriting "further attention" by the Council of Europe and its member states (para. 5.1). To this end, it recommends that the Committee of Ministers instruct relevant Council of Europe

bodies and committees, including the Steering Committee on Media and Information Society (CDMSI), to: "consider ways and means of addressing the problem of negative stereotyping and stigmatisation of Roma in the media and in political speech, with due respect for freedom of expression and freedom of the media" (para. 6.4).

• "The portrayal of migrants and refugees during election campaigns", Resolution 1889 (2012), Parliamentary Assembly of the Council of Europe, 27 June 2012
http://merlin.obs.coe.int/redirect.php?id=16094 EN FR
• "Roma migrants in Europe", Recommendation 2003 (2012), Parliamentary Assembly of the Council of Europe, 28 June 2012
http://merlin.obs.coe.int/redirect.php?id=16095 EN FR

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Advisory Committee National Minorities: Relationship between Minority Languages and Media Clarified

"Language Rights and Media" is one of the key chapters in a thematic commentary adopted by the Advisory Committee (AC) on the Council of Europe's Framework Convention for the Protection of National Minorities (FCNM) on 24 May 2012. The thematic commentary is entitled "The Language Rights of Persons Belonging to National Minorities under the Framework Convention".

The thematic commentary comprises six substantive chapters: 'Language Rights and Identities'; 'Language Rights and Equality'; 'Language Rights and Media'; 'Public and Private Use of Minority Languages'; 'Language Rights and Education'; 'Language Rights and Participation'.

The chapter, 'Language Rights and Media', relates mainly to the AC's findings in respect of two provisions of the FCNM: Article 9 (dealing with freedom of expression and access to media) and, to a lesser extent, Article 6 (dealing with tolerance, intercultural dialogue and understanding). The chapter's most extensive focus (paras. 41-44) is on "public sector media", by which the AC essentially means public service broadcasting (PSB). The AC advocates minority-oriented approaches to a range of pertinent issues: access to PSB; representation and participation in production and editorial processes and structures; programming (eg., content, language, budget), etc. The balancing of official and minority language usage in broadcasting time is a central theme. The role of the media in promoting tolerance and intercultural dialogue and thereby social cohesion is also touched upon.

The chapter's subsequent focus on private sector media includes community media. It supports, inter alia, "the creation of incentives for private and community media providers, for instance through funding and the allocation of frequencies, to increase access to and presence in the media especially of numerically smaller minorities and their languages" (para. 45). The AC expresses its concern that the "application of official language quotas in the private media sector" should not "unduly" limit "private initiative" or "hinder the creation or continuation of minority language media" (para. 46).

The AC underlines the importance of print media for persons belonging to national minorities, both in practical terms (e.g., as a source of information and news in their own language) and in symbolic terms (e.g., by conferring status on the language in the public sphere). The commercial unviability of many minority-language newspapers and periodicals points up the need for them to be appropriately subsidised (para. 47).

The positive and negative impact of new media technologies on minorities is highlighted, in particular in the context of increased dependence on Internet-based media and in the context of digital switchover: "special needs and interests of minority communities must be taken into account, for instance, when frequencies are changed" (para. 49).

Finally, recognising that films and music in minority languages can enhance the "prestige and presence" of minority languages in public life, the AC takes the view that "authorities must not create excessive requirements in terms of dubbing, post-synchronisation or subtitling into the official language, as these could disproportionately hinder the production and projection of films in minority languages" (para. 50).

Thematic commentaries are adopted by the AC in order to enhance its monitoring of the implementation of the FCNM by States Parties to the Convention. Such commentaries seek to consolidate the experience acquired by the AC through its monitoring activities in respect of specific rights or themes. They seek to identify patterns and principles in the AC's acquis, which should guide the AC in its future monitoring work. The thematic commentary on language rights is the third of its kind: the two earlier commentaries deal with educational rights and participatory rights of national minorities. They were adopted in 2006 and 2008, respectively.

• "The Language Rights of Persons Belonging to National Minorities under the Framework Convention", Thematic Commentary No. 3, Advisory Committee on the Framework Convention for the Protection of National Minorities, Doc. No. ACFC/44DOC(2012)001rev, adopted on 24 May 2012 but published on 5 July 2012
http://merlin.obs.coe.int/redirect.php?id=16097 EN FR

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EUROPEAN UNION

European Commission: Proposal for a Directive on Collective Rights Management

On 11 July 2012 the European Commission published its Proposal for a Directive on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online uses in the internal market.

The Proposal includes a draft version of the Directive, the traditional Explanatory Memorandum and two Annexes on transparency-related information for Collective Management Organizations (CMOs) and explanatory documents to be provided by member states accompanying the implementation. The Commission also made available MEMO/12/545 with answers to frequently asked questions, as well as an Impact Assessment Analysis.

The EU CMO market is composed of 250 collecting societies managing around EUR 6 billion in every year, the majority of which is controlled by 70 authors' rights CMOs where 80% of income results from musical creations. Harmonization of collective rights management in the EU has been on the Commission's agenda from as far back as 1995, being subject to consideration in several communications, recommendations, studies and decisions ever since, both from the Commission and the EU Parliament. Although the existing acquis contains scattered provisions on the topic, this would be the first Directive providing a framework for the operation of CMOs.

Structurally, the draft Directive is organized into five titles, containing general provisions, rules on CMOs, multi-territorial licensing (MTL), enforcement measures, and reporting and final provisions. The draft Directive applies to management activities of all CMOs (irrespective of sector of activity) but, in what concerns MTL, its scope of application is much narrower, being limited to online licensing of musical works by author's rights' CMOs involving the territory of at least two member states.

The Proposal's complementary objectives are those of promoting transparency and better governance of CMOs, as well as facilitating MTL of authors' rights in musical works for online uses in the EU/EEA.

The first objective is tackled through the establishment of a governance and transparency framework, seeking better enforcement or codification of existing principles. As such, the proposal contains organisational and transparency framework rules governing the relationship of CMOs with members, other CMOs and (commercial) users. The second objective is addressed via the creation of a mechanism termed a "European Licensing Passport" for MTL purposes. This is intended to foster voluntary repertoire aggregation for online uses of musical works at EU level and the licensing of rights through MTL infrastructures, leading to the implementation of efficient licensing practices.

Concerning enforcement measures, the Proposal contains a three-pronged approach to dispute resolution involving CMOs: (i) disputes with members or rightsholders are subject to an internal resolution mechanism; (ii) disputes with users are subject to either judicial control or an independent and impartial body; (iii) specific MTL disputes can be submitted to an independent and impartial body. In all cases decisions are subject to judicial control.

Under the ordinary legislative procedure, the Proposal was submitted to the European Parliament. The next step is for the European Parliament to deliver its position on first reading.

- European Commission, Press Release, 'Copyright: Commission proposes easier music licensing in the Single Market´, IP/12/772, Brussels, 11 July 2012
http://merlin.obs.coe.int/redirect.php?id=16088 DE EN FR
- European Commission, ´Proposed Directive on collective management of copyright and related rights and multi-territorial licensing - frequently asked questions´, MEMO/12/545, Brussels, 11.07.2012
http://merlin.obs.coe.int/redirect.php?id=16089 EN

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European Commission: Four Member States are Required to Provide Information on the Implementation of the AVMS Directive

On 23 July 2012, the European Commission announced that it had written to Portugal, Slovenia, Finland (concerning the region of Åland) and the United Kingdom (concerning Gibraltar) to seek information on the implementation of the Audiovisual Media Services (AVMS) Directive. In 2011, the European Commission had already sent fact-finding letters to twenty-four member states (including Finland and the United Kingdom).

The European Commission is looking for clarifications on the following issues: the country of origin principle and jurisdiction issues; audiovisual commercial communications; the protection of minors; the promotion of European and independent works; the right of reply; basic obligations under the Directives; events of major importance for broadcasting, and cooperation between regulators. The press release does not provide for more details on these different topics.

The national authorities of the four member states must reply to the European Commission within ten

weeks. The request made by the European Commission does not mean that the four member states have not correctly implemented the Directive but only indicates that the European Commission is currently seeking more information on the national implementation. In May 2012, the European Commission released a report on the application of the AVMS Directive in which it pointed out areas for improvements (see IRIS 2012-6/5). One country (Poland) has already been referred to the Court of Justice of the European Union for incomplete implementation of the Directive (see IRIS 2012-8/6).

• Digital Agenda - Commission seeks information from four member states on their implementation of Audiovisual Media Services Directive, press release of 23 July 2012
http://merlin.obs.coe.int/redirect.php?id=16096 DE EN FR FI PT SL

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European Commission: Report on Telecommunication Market and Regulatory Developments

On 18 June 2012, the European Commission published its report on the Telecommunication services, based on the implementation of the revised EU Telecom Framework (see IRIS 2009-6/6, IRIS 2009-1/5 and IRIS 2010-1/7). According to the report, four member states still need to implement the framework into their national laws (Belgium, Poland, Portugal and Slovenia). The Commission assesses the work and functioning of the national regulatory authorities (NRAs), the revenues and investment of the electronic communications sector, the status of the broadband connection, the voice and other e-communication services (including broadcasting), the EU Radio Spectrum policy programme and the consumer's interest (including the issue of net neutrality).

On the topic of broadcasting, the Commission focuses on the regulation of broadcasting markets (status of the ex ante regulation in view of the three criteria test) and the progresses of the digital switchover of analogue terrestrial and cable transmissions (availability and penetration of the Internet Protocol Television (IPTV)).

Concerning net neutrality, the Commission notes that member states have issued rules on transparency and quality of services while implementing the Telecom framework. Some members states have adopted guidelines or parliamentary resolution on the topic. Others have delegated to their NRAs the task of setting up a general approach in that field. The Netherlands is the only member state to have adopted a specific law on this issue (see IRIS 2012-7/32).

In conclusion of the report, the European Commission identifies several areas that need improvement (e.g. the functioning and independence of NRAs, the protection of consumer rights and the validity of specific tax on operators).

• Telecommunication Market and Regulatory Developments, 18 June 2012, EU Commission Report
http://merlin.obs.coe.int/redirect.php?id=16116 EN

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European Commission: Report on Promotion and Distribution of European Works and Independent Productions

On 24 September 2012 the European Commission submitted its first report on the application of Articles 13, 16 and 17 of the Audiovisual Media Services Directive. Article 13 defines the obligation incumbent on the providers of on-demand audiovisual services to promote the production of and access to European works. Articles 16 and 17 provide for the obligation for European television services to promote European works and independent productions. The report covers the period 2009-2010.

Assessment of the application of Article 13 is based on an independent study and on the data supplied to the European Commission by the member states. The European on-demand services sector has developed unevenly across the European Union. According to the study, the number of on-demand services is estimated at 435 (of which more than 25% are catch-up television services). The data supplied by the member states reflect major disparities in market development. Some member states do not have on-demand services, while others have a substantial offer. Concerning the promotion of European works, fourteen national reports reflect the important place occupied by these works in their national stock lists (ranging from 36.4% in Spain to 100% in Austria). Five member states mention the existence of financial contributions to European productions, and six the use of promotion tools.

Concerning the application of Articles 16 and 17 of the Directive, the Commission mentions a change in methodology to take account of channels having very few viewers. The Commission noted an increase in the number of national reports supplying statistical data. The European average broadcasting time devoted to European works has been increasing since 2007, reaching 63.8% in 2009 and 64.3% in 2010. Three member states have not, however, reached the required level of broadcasting. Concerning the average proportion reserved for independent works, the European Commission noted a downward trend

(35.3% in 2007 and 33.8% in 2010). However, all member states have achieved the objective of 10% of air time provided for in Article 17 of the Directive. The Commission also noted a downward trend in the broadcasting of recent European works by independent producers (63% in 2007 compared with an average of 61.8% in 2010 across Europe).

In its conclusion, the European Commission noted that the data supplied by the on-demand service providers were neither sufficient nor systematically checked by the national authorities. The European Commission is therefore in favour of setting up effective control at the national level. It will also embark on a consideration of appropriate measures for implementing Article 13. Regarding the application of Article 16, the Commission noted an improvement, although most of the European works broadcast were national works. Lastly, the obligations laid down in Article 17 were being observed correctly. The European Commission nevertheless encourages member states to continue their efforts to support the independent production sector.

• First Report on the Application of Articles 13, 16 and 17 of Directive 2010/13/EU for the period 2009-2010 Promotion of European works in EU scheduled and on-demand audiovisual media services /* COM/2012/0522 final */ 24 September 2012
http://merlin.obs.coe.int/redirect.php?id=16125 DE EN FR

• Independent study on the transposition of Articles 13, 16 and 17 of the Audiovisual Media Services Directive, 13 December 2011
http://merlin.obs.coe.int/redirect.php?id=16108 EN

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OSCE

OSCE: Activity Report of the Representative on Freedom of the Media to the Permanent Council

In her regular report to the OSCE Permanent Council on 21 June 2012 the themes highlighted by OSCE Representative on Freedom of the Media Dunja Mijatović were Internet regulation and journalists' safety.

The report covers the period from 29 March to 21 June 2012.

"A global struggle for control of the Internet is under way," Mijatović told the council, which is the governing body of the organization. "There are competing views about rights, freedoms, security and regulations online. The discussions of freedoms and rights and the discussions around security often appear to be running on parallel tracks.

"We need to bring these debates and perspectives together and we need to encourage a more interdisciplinary understanding of cyberspace governance while enabling broad consultation. The OSCE offers a framework for the rights-security debate that we need to take advantage of," she said.

The Representative also updated the council on the many steps taken by international organizations to increase awareness of the dangers of practicing journalism in the OSCE region, which comprises 56 countries in North America, Europe and the former Soviet Union.

"These consciousness-raising efforts have resulted in quicker and more intense efforts by authorities across the region to hunt down and prosecute assailants," Mijatović said. "Success or failure of this movement cannot be judged in simple numbers - a decrease in violence does not, ipso facto, mean the environment is safer.

"The campaign to end the attacks will be long and hard and only joint and coordinated efforts engaging all stakeholders can bring success. My Office will continue to vigorously address issues of the safety of journalists for the benefit of our societies," she said.

Among other matters, the Representative:

- Expressed concern over several incidents of the arbitrary detention and obstruction of activities of journalists in Belarus.

- Said she would continue to monitor developments regarding media legislation in Hungary and would be ready to assist authorities to bring the media package in line with OSCE commitments.

- Hoped that a Kyrgyz Parliamentary decision to block access to the fergana.ru website would be reversed.

- Said she was pleased that the Association of Journalists and the government of The former Yugoslav Republic of Macedonia had reached compromise on a ceiling on moral damages in libel cases, thus paving the way for future decriminalization of defamation.

- Hoped that the Minister of Justice of Poland would reconsider his position opposing repeal of criminal defamation.

- Welcomed a vote by the lower house of Parliament of Tajikistan on measures which would lead to the decriminalization of defamation.

Mijatović's office also provided a legal review to Spanish authorities on proposed access to information legislation.

The Representative's next report to the Permanent Council is scheduled for 29 November 2012.

• OSCE Representative on Freedom of the Media, Report to the Permanent Council, 21 June 2012
http://merlin.obs.coe.int/redirect.php?id=16076 EN

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NATIONAL

BE-Belgium

Amended Flemish Broadcasting Act Prohibits Call-In Prize Shows

Call-in prize shows are programmes in which the broadcaster invites viewers to participate in a prize game by directly dialling premium-rate telephone numbers. In the past, such programmes have been regarded as a type of teleshopping by Vlaamse Regulator voor de Media (Flemish Media Regulator - VRM). The 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". According to VRM, these shows should be labelled as teleshopping programmes, because they constitute an actual economic activity in their own right involving the supply of services and they are not restricted to a mere offer of entertainment within the broadcast. This implied that such programmes could be broadcast, but that they were subject to both qualitative and quantitative rules relating to their timing, frequency and insertion. Recently, the Flemish legislator decided that the viewers should be better protected against such programmes. In July 2012, the Broadcasting Act was amended and a new section was added to Article 82 of the Flemish Broadcasting Act explicitly prohibiting the broadcasting of such call-in prize shows.

However, it should be said that the Flemish commercial broadcasters decided to stop broadcasting these programmes long before the Flemish Broadcasting Act was amended. In the winter of 2011, the last call-in prize show was broadcast on a Flemish television channel.

Article 84 of the Flemish Broadcasting Act prohibits teleshopping for medicinal products as well as teleshopping for medical treatment. To this Article, a new prohibited service was added: astrology television in which astrologers and fortune tellers offer their services.

• *Decreet van 13 juli 2012 houdende wijziging van diverse bepalingen van het decreet van 27 maart 2009 betreffende radio-omroep en televisie* (Act of 13 July 2012 amending Flemish Community Radio and Television Broadcasting Act 2009, Official Gazette 17 August 2012)
http://merlin.obs.coe.int/redirect.php?id=16085 NL

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Appointment of a Member of the Council for Electronic Media from the Presidential Quota

On 4 June 2012, the President of the Republic of Bulgaria appointed Maria Stoyanova as a representative to the Council for Electronic Media (CEM). That appointment was the result of a newly adopted procedure, hitherto unspecified in the law.

On 29 March 2012, the Administration of the President initiated a procedure, by way of publishing a communication, for nomination of a member of the Council for Electronic Media from the presidential quota. All interested Non-Governmental Organisations and professional bodies were invited to submit their written applications by 6 April 2012. The intention was that the proposals would be subject to public consultation after 9 April 2012 and that all the nominees and media representatives should be invited to contribute to that consultation.

However, on 9 April 2012, instead of discussing the proposals, the communication was supplemented by an additional requirement: along with the documents required by law, candidates were asked to present a their individual conceptual visions on the future work of CEM (up to 8 pages). Until 23 April 2012, 12 nominations were received including 3 self-nominations, despite the fact that such direct nomination was explicitly excluded - which itself may be regarded as a discriminatory prohibition.

In its meetings of 2 and 3 May 2012, the Assessment Commission - which was approved by Decree № 171 of 25 April 2012 of the President of the Republic (not published in the "State Gazette") - listened to the conceptions of 11 candidates without any media presence. The criteria that formed the basis of whether short-listed candidates were admitted to public discussion, are of a special interest: "The presentation of a good vision of the activities, the problems in the current agenda of the CEM and an overall knowledge of the media environment, which the candidates showed during the interview conducted by the Commission, are among the reasons that [these] three candidates have reached the final phase of the procedure".

On 11 May 2012, in the presence of media representatives, the three candidates attended a public hearing. After a brief presentation of their viewpoints, they answered questions made by the media. Based on this hearing, the President took his decision on the appointment of the new member of the CEM.

Rayna Nikolova
New Bulgarian University

CEM Monitoring Report concerning the coverage of London Olympic Games

With reference to the Summer Olympic Games that were held in London in 2012, the Council for Electronic Media (CEM) has carried out a monitoring procedure under the Radio and Television Act (RTA) of 9 television programmes: "Nova TV" "BTV", "BG ON AIR", "TV 7" 'RING BG", "NOVA SPORT", 'TV EVROPA", "KANAL 3", "BNT 1". The Bulgarian National Television (BNT) had acquired the exclusive rights to broadcast the event.

According to Art. 19b of RTA, a television broadcaster that holds an exclusive right for the transmission of an event of major importance shall be obligated to afford the other television broadcasters access to the news coverage of the said event in accordance with the obligations assumed by the Republic of Bulgaria in accordance with relevant international treaties in effect, in particular under the EU Directive on Audiovisual Media Services (2010/13/EU).

The findings of CEM are that the coverage of the Olympic Games on the television programmes surveyed respected the law. The main goal of the corresponding provisions of the RTA, i.e., that as many people as possible should be informed about events of public interest, was secured, according to the CEM's report.

In particular, concerning the programme "Nova TV", extracts of the Olympic Games were broadcast during the news section of the morning show "Hello Bulgaria!", during the newscasts at 1 pm, 7 pm and 11.30 pm as well as during the repeat at 3.30 am. The material concerning the Olympic Games was concentrated thoroughly in the sports sections following the respective newscasts. The CEM spotted several options as to how the extracts were used: some with BNT's logo and an inscription reading "The scene has been broadcast with the assistance of BNT"; others, without BNT'S logo but with the Olympic rings in the upper right corner of the screen and the same inscription.

On the channel "BTV", the Olympic Games were mainly broadcast during the sports sections of news programmes with extracts of races, which did not exceed the admissible maximum duration of 90 seconds. The inscription "With the assistance of BNT" was inserted at the bottom of the screen.

• Доклад относно фокусирано наблюдение на радио - и телевизионни програми във връзка с провеждането XXX летни олимпийски игри в Лондон (CEM Monitoring Report concerning the coverage of London Olympic Games)
http://merlin.obs.coe.int/redirect.php?id=16079 BG

Rayna Nikolova
New Bulgarian University

CH-Switzerland

No Advertising on Internet for Public-Service Radio and Television, but More Freedom Regarding Content of On-Line Offer

An important stage has been reached in the long-standing face-off between the Swiss broadcasting company *Société Suisse de Radiodiffusion et Télévision* (SSR) and newspaper editors. Although a degree of rapprochement has been reached on a number of issues, two years of negotiations between the public-service broadcaster and the editors have failed to make it possible to reach an agreement on collaboration in the field of the Internet. The Federal Council (Switzerland's Government) has therefore finally made a decision: the ban on advertising on the SSR's Internet sites is to be maintained, but the company will have greater freedom regarding the content of its online offer.

The Federal Council nevertheless reserves the right to revise its decision if the SSR's income from advertising should decrease; indeed it hinted that the company might be in need of new sources of income from advertising from 2017 onwards. In this way, the Federal Council confirms the position it expressed in 2010: in the interests of people paying the reception licence fee, the SSR should be allowed to carry out a commercial activity on the Internet in the medium term (see IRIS 2011-1/13). In the light of the positive evolution of the SSR's advertising revenue in the last two years, however, the Federal Council feels that such a move would be premature at the present time. The ban ought to support the economic development of the press, which is facing the erosion of its income from advertising, and opposes the sale of advertising space on the SSR's Internet sites. Since newspaper editors would like to launch a fee-paying Internet offer, they feel that the copy and photos made available free of charge on the SSR's Internet sites - financed by the reception licence fee - constitute unfair competition. The SSR for its part considers that opening up advertising on the Internet is strategically essential,

particularly in the light of consumers' new ways of using the media.

The Federal Council felt that the current framework of regulations was too rigid and unsuited to the evolution in the public's consumption habits, and that the time had come to allow the SSR more flexibility in its online offer, so that the public service would not be relegated to the background by growing competition from large international companies. The SSR should therefore be authorised, within a clearly delimited framework, to put online content that is not directly linked to the radio and television programmes it broadcasts. More flexibility in the SSR's concession will therefore be proposed by spring 2013. As it stands at present, Article 13 of the concession provides that the SSR may only include programme-linked multimedia contributions if they are directly linked in terms of time and topic with the programmes being broadcast.

The Federal Council is also proposing the creation of an extra-parliamentary commission on the media. Most of its members would be representatives of the branches and specialists, and its main task would be to observe the evolution and the importance of Switzerland's media marketplace and public sector, and to assess public requirements. It would also act as a consultative committee, and could provide support for the Federal Council whenever changes were made to the legal framework concerning the media.

• Communiqué by Switzerland's Federal Council of 14 September 2012
http://merlin.obs.coe.int/redirect.php?id=16124 DE FR IT

Patrice Aubry
RTS Radio Télévision Suisse, Geneva

CZ-Czech Republic

Court Protects the Source of Journalists' Information

In November 2011, the weekly magazine „Respekt" announced that the police had called on it to hand over the document referred to in an article entitled "Destroy Document No 1439". From this document it became evident that the state attorney dealing with the corruption scandal at the State Environmental Fund was pressured not to deal with the case. The magazine refused to release the document to the police claiming that the police already had it and that they would be able to identify the source of the document. The magazine held that revealing a source would be an unpardonable offense and that there would be no reason to reveal its sources. The magazine feared that other witnesses would lose their trust in the media regarding protection from interference by the State.

Two months later, the police imposed a fine on the magazine and the author of the respective article, with a statement that further sanctions may be imposed. The magazine and the author submitted a complaint to the courts against this decision of the police. The District Court Praha 4 ruled in the complainants' favor. The Court's decision is considered as essential not only for the magazine concerned. The Court inter alia dealt with the question of whether a given action (fines for refusing to hand over case-related information by journalists) is in line with constitutional law and with the case-law and decision-making practice of the European Court of Human Rights (ECtHR). The Court could not depart from the concrete criminal proceedings and the circumstances that surrounded the publication of the referenced document. In the given case, it did not find important and serious issues justifying the imposition of fines. In this context, the Court pointed to the extensive recording material that would enable the bodies active in criminal proceedings to obtain sufficient additional knowledge and evidence, which may in this case satisfy their demand. It is not necessary to impose sanctions pursuant to the Criminal Code in order to obtain information on the origin of the document in question. The court is of the opinion that the results of the investigation in that case allow the authorities to make reasoned conclusions on the basis of the material already available to them. Therefore, it is no longer necessary to use methods that interfere with the fundamental rights guaranteed by the constitutional order and that arise from the practice of the ECtHR, respectively. On the basis of this, the Court reversed the decision concerning the fines.

• Usnesení Obvodního soudu pro Prahu 4 č.j. 0 Nt 6533/2012, doručené 6. 8. 2012 (Decision of the Prague 4 District Court of 6 August 2012 - not yet published) CS

Jan Fučík
Ministry of Culture, Prague

New Regulation on Data Retention

On 18 July 2012, the Czech Parliament adopted the Act No. 275/2012 Coll., amending Act No. 127/2005 Coll. on electronic communications (the Electronic Communications Act) and some related acts.

The Electronic Communications Act transposed Directive 2006/24/EC on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and implemented Directive 2002/58/EC (the "Directive on privacy and electronic communications") into the Czech legal order.

On 26 March 2010 a group of 51 Members of the Chamber of Deputies of the Czech Republic delivered a submission to the Constitutional Court to annul Art. 97 paragraphs 3 and 4 of the Electronic Communications Act and the Decree No. 485/2005 Coll. regulating details of the retention of traffic and location data. The petitioners argued that both the contested provisions in the Act and the Decree were inconsistent with the constitutional order of the Czech Republic. On 31 March 2011, the Constitutional Court fully upheld the complaint and annulled the contested provisions (see IRIS 2011-6/10). The Constitutional Court held that the rules violated the constitutional rights, that they did not meet the requirements arising from the rule of law and that they were in conflict with requirements on the limitation of the fundamental right to privacy and of the right to informational self-determination.

For the above reasons, the Ministry of Interior in co-operation with the Ministry of Industry and Trade and the Ministry of Justice prepared an amendment to the Electronic Communications Act and to some other acts.

The bill is divided into five parts. The first part amends the Electronic Communications Act so that it tightens the technical and organisational measures in order to protect traffic and location data. The provisions of the Electronic Communications Act are extended to the stakeholders to which operators will be required to provide traffic and location data, for the purpose and under the conditions according to which entities are entitled to require the provision of traffic and location data.

The second part amends Art. 88a of the Penal Code, by setting out stricter conditions for obtaining a permit to detect traffic and location data, and defines the crimes and offenses for which it is possible to require traffic and location data.

The third and fifth part amend the Act on the Security Intelligence Service and the Law on Military Intelligence, respectively. Security Intelligence Service and Military Intelligence can require traffic and location data under conditions identical to wiretapping, i.e. after the permission of the presiding judge of the Supreme Court.

The fourth part amends the Act on the Supervision of the capital market so that it specifies the purpose for which the Czech National Bank in exercising supervision over the capital market may request traffic and location data. This respects the decision of the Constitutional Court that required the principle of proportionality and subsidiarity, and the need to complement the prior written consent (permission) of the presiding judge of the High Court in Prague to demand data.

• Zákon č. 275/2012 Sb., kterým se mění zákon č. 127/2005 Sb., o elektronických komunikacích, ve znění pozdějších předpisů a některé další zákony (Act No. 275/2012 Coll. amending Act No. 127/2005 Coll., on electronic communications and amending some related Acts, as amended)
http://merlin.obs.coe.int/redirect.php?id=16077 CS

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DE-Germany

Unauthorised Use of EPG Programme Information Breaches Copyright Law

In a recently published judgment of 27 March 2012, the *Bundesgerichtshof* (Federal Supreme Court - BGH) decided that text and images made available by a television broadcaster to advertise programmes via an electronic programme guide (EPG) are protected under copyright law and cannot therefore be used by third parties without the copyright-holder's permission.

The legal proceedings were instituted by a collecting society that looks after the copyright of several broadcasting companies, against the provider of an EPG that was free to use and funded through advertising. The defendant was accused of regularly downloading programme information (text and images) without the plaintiff's consent from the relevant press pages of the broadcaster's website, saving it and making it available for the public to download from its own web servers as part of a service funded through advertising. The plaintiff argued that the defendant should not be allowed to generate advertising income by using third-party programme information that was protected by copyright, rather than through its own efforts.

In its decision, the BGH agreed with the lower-instance appeal court (*Oberlandesgericht Dresden* - Dresden court of appeal, ruling of 15 December 2009, case no. 14 U 818/09) and granted an injunction under Article 97(1) of the *Urheberrechtsgesetz* (Copyright Act - UrhG). The copying of text and images could not be considered permitted as reporting on daily events in the sense of Article 50 UrhG, which did not apply because the information could not be accessed during the programme itself. This provision should be interpreted in its narrow sense and therefore did not cover the possibility of "indirectly" accessing the programme content summarised in the text, which the defendant had mentioned in its defence.

In the present case, the copyright-holders had not granted permission. In the BGH's opinion, it would have been both possible and reasonable for the defendant to obtain the copyright-holders' permission

before copying the text and images from the aforementioned press pages.

Weighing up the opposing basic rights, the BGH explained that the public's right to information, referred to by the defendant, and the broadcasting company's vested interest in advertising for its television programmes would also have been safeguarded if the EPG provider had accessed the broadcaster's copyright-protected programme information with the copyright-holder's permission and in return for payment in order to report on its television programmes.

However, the BGH disagreed with the appeal court in one respect. The latter had wrongly assumed that the defendant could not argue that the ban on discrimination enshrined in Article 20 of the *Gesetz gegen Wettbewerbsbeschränkungen* (Act on Restraints of Competition - GWB) had been infringed on the grounds that the rightsholders had refused to provide it with the text and images free of charge. The OLG Dresden had found that potential breaches of cartel law were not subject to civil court decisions, but could only be investigated by the supervisory authority under Article 18 of the *Urheberrechtswahrnehmungsgesetz* (Copyright Administration Act - UrhWG). The BGH disagreed, ruling that supervision under Article 18 UrhWG did not block the path to the ordinary courts. It also noted that the plaintiff allowed magazine publishers to use the material free of charge, which was therefore discriminatory. Since the appeal court had failed to provide sufficient reasons to justify such discrimination, the BGH quashed the lower-instance decision and referred the case back to the appeal court for a new decision.

• *Urteil des BGH vom 27. März 2012 (Az. KZR 108/10)* (BGH decision of 27 March 2012 (case no. KZR 108/10))
http://merlin.obs.coe.int/redirect.php?id=16103 DE

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LG Leipzig Prohibits Unfair Contract Clause on Film-Makers' Remuneration Rights

In a ruling of 8 August 2012, the *Landgericht Leipzig* (Leipzig District Court - LG) prohibited *Mitteldeutscher Rundfunk* (MDR) from using the so-called "VFF clause" in its contracts. Under this clause, broadcasters that commission films are allowed to claim for themselves all remuneration owed to the film producer by third parties. The court considered that this put the film producer at an unreasonable disadvantage.

The ruling followed a complaint from the *Arbeitsgemeinschaft Dokumentarfilm* (German Documentary Association - AG DOK), a professional association of independent authors, directors and producers. The AG DOK criticised the clause used in pre-formulated contracts, under which MDR, as the commissioning body, had the exclusive right to third-party remuneration generated from commissioned productions. Under the clause, this remuneration was to be collected by the *Verwertungsgesellschaft der Film- und Fernsehproduzenten GmbH* (Film and Television Producers' Collecting Society - VFF). Half of the proceeds were due to MDR as the commissioning body.

The LG Leipzig considered the VFF clause to be a standard business term in the sense of Articles 305 *et seq.* of the *Bürgerliches Gesetzbuch* (Civil Code - BGB). It created an unreasonable disadvantage in the sense of Article 307(1)(1) BGB, since it was incompatible with the essential principles of Article 94 of the *Urheberrechtsgesetz* (Copyright Act - UrhG). Under the latter provision, film producers, in principle, held copyright-related rights. The clause also excessively limited the film producer's right to assert the various remuneration claims under Articles 20b, 27 and 54 UrhG. It also infringed Article 94(4) in conjunction with Articles 20b(2), 27(1) and 63a UrhG, under which these claims could not be waived or assigned in advance. Although film producers should be able to choose which collecting society to use, the VFF clause required them to use a particular one. In the court's opinion, the fact that there was actually no freedom of choice in Germany, where the VFF was the only suitable collecting society, was irrelevant.

An additional factor was that, in the present case, the film was a so-called genuine commissioned production, in which the commercial risk associated with the production of a film was predominantly borne by the producer.

The procedure did not concern the VFF's equally controversial distribution formula, which the AG DOK has described as "arbitrary" and concerning which it has promised to take further legal action.

The ruling has particular significance beyond this specific case, since the disputed VFF clause has been used by all the ARD-affiliated regional broadcasting companies and Zweites Deutsches Fernsehen for decades.

• *Urteil des LG Leipzig vom 8. August 2012 (Az. 05 O 3921/09)* (LG Leipzig decision of 8 August 2012 (case no. 05 O 3921/09))
http://merlin.obs.coe.int/redirect.php?id=16104 DE

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ES-Spain

Announcement of VAT Rate Increase for Cultural Industry Services

On 13 July 2012, the Spanish Minister of the Treasury, Mr. Cristóbal Montoro, announced the next VAT rate increase in Spain with respect to cultural industry services (cinemas, concerts and theatres) as of 1 September 2012.

Specifically, the rate should increase from the current 8% to 21%, instead of 10%, which was the first proposal, as these services have always been included in the group of reduced tax rates. But as from 1 September 2012 these cultural services should belong to the group of services to which the general rate applies, which will also be increased from 18% to 21%.

Therefore, the situation is that VAT for cultural industry services would increase by 13% in September, a measure which is seriously worrying for the cultural sector.

The only cultural industry that should not be affected by this measure is the printed book market. Here VAT should be maintained at 4% (super-reduced tax rate). However, electronic books, which are considered as being services rendered by digital means, will be subject to the general rate of 21%.

• *Real Decreto-ley 20/2012, de 13 de julio, de medidas para garantizar la estabilidad presupuestaria y de fomento de la competitividad. BOE Núm. 168 de 14 de julio de 2012* (Royal Law Decree 20/2012 of 13 July 2012, BOE No. 168 of 14 July 2012)
http://merlin.obs.coe.int/redirect.php?id=16117 ES

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New Plan to Promote DTT and Technological Innovation

On 24 August 2012 the Council of Ministers approved a plan, entitled *Plan de Impulso de la TDT y de la Innovación Tecnológica* (Promotion Plan for DTT and technological innovation), which aims to support high definition television and 4G mobile broadband services but which will also affect DTT services.

Since the switch-off of analogue terrestrial television took place in April 2010 in Spain (see IRIS 2010-6/24), it was decided that the frequencies to be released, best known as the digital dividend, would be mainly dedicated to the provision of 4G services. Nevertheless, the allocation of television services to band 470-790 MHz (channels 21 to 60), in order to free up subband 790-862 MHz (channels 61 to 69) for other uses by 1 January 2015 (see IRIS 2010-6/25), has been a matter of negotiation between the government and national commercial broadcasters. The reason was that, in a context of an economic crisis, whereas the government was interested in taking advantage of those new telecommunication services that are supposed to be helpful in boosting the economy, national commercial broadcasters requested financial support for the switch to different frequencies.

The Spanish government and broadcasters, gathered around the commercial TV association UTECA (Unión de Televisiones Comerciales Asociadas), have finally reached an agreement which is, in fact, at the heart of the approved plan. Although the text has not yet been released to the public, the Council of Ministers has announced that the digital dividend will be cleared by January 2014 and that high-definition DTT services will be strengthened at the same time as the number of DTT frequencies available will be reduced.

Following this recent agreement, a new DTT technical plan is therefore set to be approved soon. The new allocation map for DTT services would be as follows: national commercial broadcasters will share capacity across five multiplexes instead of six, as was originally planned; the national public service broadcaster, RTVE, will reduce its capacity from two multiplexes to one; and it is expected that regional public service broadcasters will do the same. As a consequence of this reduction in their DTT capacity, national commercial broadcasters will offer four standard-definition and one high-definition services.

National commercial broadcasters that were in place when the current DTT frequency plan was decided (Antena 3, Telecinco, La Sexta, Cuatro, Net TV and Veo TV) have now gone through a concentration process. While Telecinco and Cuatro had merged by the end of 2010 (see IRIS 2011-1/25), the Council of Ministers authorized the acquisition of La Sexta by Antena 3 (see IRIS 2012-8/21) during the meeting; it also approved the above-mentioned Plan to promote DTT.

• *Referencia del Consejo de Ministros de 24 de agosto de 2012* (Council of Ministers meeting of 24 August 2012)
http://merlin.obs.coe.int/redirect.php?id=16087 ES

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FR-France

Protection of Reality TV Programme Formats Limited by Rules on Unfair Competition

In a decision handed down on 12 September 2012, the court of appeal in Paris overturned the judgment that had found ALJ Productions, a production company owned by Alexia Laroche Joubert, guilty of unfair competition in respect of her previous employer, Endemol. Endemol is the exclusive international distributor of the *Big Brother* reality TV programme format, and in France it operates the programmes *Loft Story* and *Secret Story*. It felt that the programme *Dilemme*, produced by ALJ Productions and broadcast between May and July 2010 on the W9 channel, made deliberate use of the essential characteristics, both technical and aesthetic, of its own formats and programmes, thereby creating confusion in the public's mind.

Contrary to the commercial court, which had found in favour of the claims brought by Endemol and deemed unfair competition proven (see IRIS 2011-5/21), the court of appeal stated that "barring direct disregard for the principle of the freedom of commerce and industry and the resulting rule of free competition, the mere fact of copying the service provided by another party in no way constitutes an offence if these are usual elements common to an entire profession or to an entire specific sector of activity and for which [as in the case at issue] intellectual property rights are not justified". After a detailed analysis of the elements of the "confinement formats", "places of confinement", the features of the broadcasting of the programmes (channels, frequency, duration of broadcasting and repeat broadcasting), selection method for candidates, who were pre-selected for their physical or psychological profile (the tattooed muscle-man, the buxom blonde, etc), which Endemol claimed had been reused, and of the technical and aesthetic elements of the broadcasts at issue, the court of appeal concluded that the similarities noted were intrinsically linked to the confinement reality TV genre and merely referred to the usual codes for this type of broadcast, without creating any kind of identification with the formats claimed by Endemol, and without incurring any risk of confusion for the viewer as to the origin of the format.

The court of appeal rejected the allegations of parasitism, as indeed the commercial court had done, since the elements allegedly reused, which were inherent in the reality TV genre, could not be considered as constituting an individualised economic value likely to procure a competitive advantage for a party using them as inspiration. By rejecting all the applications brought by Endemol, the court of appeal lifted the order of the commercial court banning ALJ Productions from broadcasting the *Dilemme* programme, and ordered Endemol to refund the EUR 900,000 damages the production company had been ordered to pay under the provisional enforcement of the initial court's judgment. Endemol has announced that it has appealed to the court of cassation against this latest judgment.

• *Cour d'appel de Paris (pôle 5, chambre 4), 12 septembre 2012 - ALJ Productions c. Endemol Productions* (Court of appeal of Paris (section 5, chamber 4), 12 September 2012 - ALJ Productions v. Endemol Productions) FR

Amélie Blocman
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CSA Authorises Purchase by Canal Plus of Direct 8 and Direct Star

After the French Competition Authority (*Autorité de la Concurrence*) in July 2012 (see IRIS 2012-8/26), it has been the turn of the audiovisual regulatory authority (*Conseil Supérieur de l'Audiovisuel* - CSA) to authorise - "subject to conditions" and "in the light of the undertakings subscribed to by Canal Plus" - the latter's purchase of the channels Direct 8 and Direct Star. This closes the long round of negotiations between the French pay television giant and the independent administrative authorities, which wanted above all to prevent the group from being able to disturb the balance of the market for free-view television because of its dominant position. The Competition Authority has authorised the purchase in exchange for undertakings involving mainly a limit on the acquisition of rights for American films, American series and French films, and the conditions for granting rights for sports events of major importance. For its part, the CSA stresses the fact that its decision is based mainly on "the viewer's interests", and on its desire to preserve the balance of the audiovisual sector, to ensure the maintenance of the format of the two channels, and to strengthen support for cinematographic and audiovisual production and creation in France.

To achieve this, the CSA has imposed a number of important undertakings on D8 (the new name of Direct 8), to such an extent that the channel's convention now includes the greatest number of obligations of all the conventions of the unencrypted DTV channels launched since. For example, the channel will no longer be able to devote more than the first half of one evening's viewing per week to the broadcasting of new unencrypted series of the main American studios. It will also have to broadcast two hours each day of programmes never before shown on French television, and keep to a minimum lead time of 18 months between the broadcasting of French series not previously broadcast on Canal+ and on its airwaves. The CSA has also imposed obligations on D8 to invest

more substantially in the production of new films and fiction programmes made originally in the French language, beyond the statutory requirements. As a result, the channel will have to contribute to the pre-financing of cinematographic works as of 2013. The undertakings given to the Competition Authority on the films purchased jointly with Canal+ are to be reiterated in D8's convention and supplemented by an obligation to purchase broadcasting rights for films with a budget of less than 7 million euros. Apart from a number of other undertakings, mainly to reinforce the offer of cultural programmes and the protection of young children, D8 has undertaken to show a more diverse range of sports disciplines in its programmes. Now that is has been given the go-ahead by the CSA, Canal+ has been able to communicate officially on D8's broadcasting schedules.

• *CSA, Communiqué de presse du mardi 18 septembre 2012* (CSA, press release of Tuesday, 18 September 2012)
http://merlin.obs.coe.int/redirect.php?id=16101 FR

Amélie Blocman
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CSA Convention with Deovino Wine Channel Cancelled

The face-off involving the two rival channels Edonys and Deovino, both of which focus on the culture, practices and art of wine, has finally reached a conclusion. In its decision of 11 July 2012, the Conseil d'Etat (France's highest administrative jurisdiction), to which the matter had been referred by the company Media Place Partners (Edonys), pronounced the cancellation of the convention that the audiovisual regulatory authority (*Conseil Supérieur de l'Audiovisuel* - CSA) had agreed with Deovino.

Edonys ("the international vine and wine channel") had already referred the matter to the Conseil d'Etat under the urgent procedure last summer, as the CSA had refused to grant it a convention in late March 2010. At the time, the judge deliberating under the urgent procedure had refused the application for suspension of performance of the convention reached on 6 July 2011 between the CSA and its competitor Deovino. In support of its decision, it had referred to "the numerous and specific clauses in the convention signed with Deovino regarding observance of the rules governing propaganda and advertising in favour of alcoholic beverages" (see IRIS 2011-9/18).

This did not put the disappointed competitor off, however, and an application was entered to have the convention cancelled. The Conseil d'Etat observed firstly that the applicant Edonys did indeed have an interest that entitled it to take action, since it had been refused a CSA convention for its own channel devoted to wine and winemaking. It went on to recall that Article L. 3323-2 of the Public Health Code, which provides an exhaustive list of the media authorised to host direct or indirect propaganda or advertising in favour of alcoholic beverages, makes no mention of television services, and concluded accordingly that "direct or indirect propaganda or advertising in favour of alcoholic beverages is not permitted on television". The themed channel Deovino is entirely devoted to wine and winemaking, and intends to present the merits and attractions of wine. Given its very nature, the Conseil d'Etat found that broadcasting its programmes would necessarily infringe the law's ban on any direct or indirect propaganda in favour of alcoholic beverages on television services. Thus by agreeing to conclude the convention the CSA had disregarded the provisions of Article L. 3323-2 of the French Public Health Code, which result from the "Evin Act" (legislation restricting the promotion of tobacco and alcohol), despite the restrictive conditions laid down in certain clauses of the convention. One of the arguments raised by the defendant company editing the channel was that it had met officials from the Ministry of Health, the Department of Health, and organisations for the prevention of alcohol abuse, and done everything necessary to comply with the Evin Act in drawing up its programme schedule. The convention agreed with the CSA also stated its intentions: "the exclusion of advertising and promoting wine and alcoholic beverages; the absence of any elements specifically praising wine and alcoholic beverages, or being indulgent or promotional in their favour; and the broadcasting of programmes on the prevention of alcohol abuse". The channel had also taken care to set up an ethical committee, comprising doctors and specialists in the prevention of abuse, with responsibility for checking in advance the appropriateness of the broadcasts in the light of the Evin Act. Unfortunately, this has apparently not been sufficient. Deovino announced that it would be "investigating all the possible options for reacting to this decision on the part of the Conseil d'Etat".

• *Conseil d'Etat, 5e et 4e sous-sections réunies, 11 juillet 2012, SARL Media Place Partner* (Conseil d'Etat, 5th and 4th sub-sections combined, 11 July 2012, Media Place Partner SARL)
http://merlin.obs.coe.int/redirect.php?id=16102 FR

Amélie Blocman
Légipresse

Conseil d'Etat Cancels Rating Certificate for Film by Lars von Trier

In a decision handed down on 29 June 2012, the Conseil d'Etat (France's highest administrative jurisdiction) has cancelled for a second time the rating certificate for Lars von Trier's film *Antichrist,* which prohibited showing it to anyone under 16 years of age.

In France, the showing of films in cinema theatres is subject to obtaining a rating certificate (*visa d'exploitation*) from the Minister for Culture, on the opinion of the Film Rating Board (*Commission de Classification des Oeuvres Cinématographiques*). The Board may issue a certificate authorising the showing of a film to any audience, a certificate prohibiting showing to anyone under 12 years old, or a certificate prohibiting showing it to anyone under 16 years of age. The Minister may also decide to ban the showing of the cinematographic work completely. Lastly, a film listed as pornographic or such as to incite violence may not be shown to anyone under 18 years of age. Article L. 211-1, paragraph 2 of France's Cinema and Animated Image Code states that "the certificate may be refused or its issue made subject to compliance with a number of conditions for reasons based on the protection of children and young people or respect for human dignity". Additionally, according to Article 2 of the Decree of 23 February 1990, as amended, "any opinion [delivered by the Film Rating Board] in favour of a decision including a restriction of any kind on the showing of a cinematographic work may only be given in plenary session. In this case, the reasons for the opinion must be explained and may be made public by the Minister with responsibility for Culture".

In the case at issue, the film *Antichrist* had been referred to the Film Rating Board, which in May 2009 delivered its opinion recommending that the film should not be shown to anyone under 16 years of age because of its violent nature; the opinion was adopted by the Minister for Culture of the time. The certificate was cancelled on 25 November 2009 by the Conseil d'Etat for lack of explanation of the reasons for the rating, then granted once again by the Minister for Culture. The applicant association, Promouvoir, which has as its aim "the promotion of Judeo-Christian values in every area of social life", requested a further cancellation of the ministerial decision granting the certificate. In its decision of 29 June 2012, the Conseil d'Etat noted that the Film Rating Board had merely referred to the "violent climate" of the film as justification of its opinion in favour of banning showing the film to anyone under 16 years of age, without stating how the violence justified the proposed ban. As the Conseil d'Etat had indeed already noted in its decision of 25 November 2009, such an opinion could not be deemed "adequately explained" as required by Article 2 of the Decree of 23 February 1990, as amended.

The Conseil d'Etat found that this irregularity deprived the Minister of a crucial element in determining the choice of the various possible restrictions that could be imposed on showing the work, in the light of the need to protect children and young people, to show respect for human dignity, and to uphold freedom of expression. Moreover, the lack of explanation was also likely to deprive the public of an element of information regarding the circumstances taken into consideration by the Minister in issuing the certificate. Thus the inadequate explanation of the reasons for the Rating Board's opinion was likely to influence the Minister's decision and to deprive the various parties concerned of a guarantee regarding the limitations on the freedom of expression constituted by any measure restricting the showing of a cinematographic work. As a result, the new rating certificate for the film *Antichrist*, granted in the light of the same inadequately explained opinion, was therefore the conclusion of a flawed irregular procedure, and this justified its cancellation once more.

• *Conseil d'Etat, 29 juin 2012 - Association Promouvoir, n°335771* (Conseil d'Etat, 29 June 2012 - Association 'Promouvoir', no. 335771)
FR

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GB-United Kingdom

Regulator Clarifies Meaning of Editorial Responsibility for On-Demand Programme Services

The UK communications regulator (Ofcom) has asked the co-regulatory Authority for Television on Demand (ATVOD) to reconsider a decision relating to editorial responsibility for on-demand programme services. The Communications Act 2003, as amended to implement the Audiovisual Media Services Directive, requires that there be a person with editorial responsibility for such services, who must notify ATVOD and pay a fee. Editorial responsibility is defined in terms of 'general control' over what programmes are included in the service and over the manner in which such programmes are organised, although it is not necessary to have control of the content of individual programmes nor of the broadcasting and distribution of the service.

ATVOD was designated as the appropriate regulatory authority by Ofcom and had decided that British Sky Broadcasting Ltd (BSkyB) had editorial control over, and was the provider of, services provided by MTV, Nickelodeon and Comedy Central. The Act made it clear that only one person could have editorial responsibility. BSkyB had the final say on the selection of programmes for inclusion in the service, and the programmes comprising the service were not organised in any respect other than the placement given them by BSkyB within the service.

BSkyB appealed to Ofcom against the decision, claiming that ATVOD had not taken appropriate account of the intentions of the parties and that its decision was flawed. Ofcom noted other recent decisions that it had taken stating that it was entirely proper for the parties themselves to settle ambiguity about editorial

responsibility by contract so long as this did not frustrate the purposes of the Act or of the Directive. In this case, ATVOD had not sufficiently addressed whether contractual provisions purporting to allocate regulatory responsibilities between the parties settled the ambiguity as to the allocation of editorial responsibility. Nor had it properly applied its own Guidance, which merely provides a guide to the approach it is likely to take but is not legally binding. Ofcom however decided to remit the decision for ATVOD to take it again, rather than simply substituting its own decision, as ATVOD is the appropriate authority to decide in the light of Ofcom's earlier decisions.

• Ofcom, 'Appeal by BSkyB Against a Notice of Determination by ATVOD', published on 12 July 2012
http://merlin.obs.coe.int/redirect.php?id=16093 EN

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Ofcom Continues to Regard Sky as a Fit and Proper Person to Hold Broadcast Licences

Ofcom, the UK Regulator, has a duty, under the Broadcasting Acts 1990 and 1996, Section 3(3), to be satisfied that any person holding a broadcasting licence (i.e., the licencee) is (and remains) 'fit and proper' to hold that licence.

When considering whether a licence holder is fit and proper, Ofcom will take into account 'any relevant misconduct of those who manage and control the licensee.'

As part of its on-going duty under Section 3(3) of the Acts, Ofcom has recently considered whether the broadcaster Sky remains fit and proper to hold broadcast licences in the light of information that has become available regarding unlawful activities at newspapers owned by News Group Newspapers Limited ("NGN").

Ofcom determined that Sky was, indeed, still a fit and proper person to hold broadcast licences,' notwithstanding our views in relation to James Murdoch's conduct04046..Whilst we consider that James Murdoch's conduct in various instances fell short of the standard to be expected of the chief executive officer and chairman, we do not find that James Murdoch's retention as a non-executive director of Sky means that Sky is not fit and proper to hold broadcast licences. We recognise that whether it is appropriate for James Murdoch to be a director in light of the events is a matter for the Board and shareholders of Sky.'

• Fit and Proper Assessment Decision concerning British Sky Broadcasting Limited, published on 20 September 2012
http://merlin.obs.coe.int/redirect.php?id=16099 EN

• Frequently asked Questions: 'Fit and Proper' in relation to broadcast licensees
http://merlin.obs.coe.int/redirect.php?id=16100 EN

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Co-Regulatory Approach to Television on Demand Services to Continue

Ofcom, the UK communications regulator, has decided after consultation to continue the arrangements by which the Authority for Television on Demand (ATVOD) is the co-regulatory authority for television on demand services under the Audiovisual Media Services Directive and the Communications Act 2003. ATVOD had asked to assume this role, and was designated to do so under the Act in 2010.

The designation authorised ATVOD to carry out a range of functions, including those to administer procedures relating to notification of on-demand services, to determine whether providers had notified their services to the regulator, to require the payment of a regulatory fee, and to ensure compliance with statutory content rules and promote European works. It was given the powers necessary to carry out these functions and made subject to a number of obligations, for example to issue guidance. Ofcom acted as a concurrent regulator and as a backstop, with the power to hear appeals from ATVOD's decisions and to exercise enforcement powers. The arrangements were to be reviewed after two years.

After receiving responses to its review, Ofcom decided to maintain the co-regulatory model. The responses suggested that ATVOD has adequately performed its functions and carried out its duties. Ofcom considered that industry incentives and consumers' interests are sufficiently aligned to support co-regulation and that the designation provides for an effective and efficient co-regulatory model.

Ofcom did however decide to amend the designation in a number of respects. It will remove the obligation for ATVOD to refer to Ofcom any particular case to decide whether a service is an on-demand programme services or whether a programme is included in such a service; remove the obligation for Ofcom's approval before it issues guidance, and remove the requirement to consult Ofcom about the complaints handling process and before issuing enforcement notices. Ofcom has also published new procedures for the handling of appeals from ATVOD decisions and for imposing sanctions.

• Ofcom, 'Review of the Ofcom Designation of the Authority for Television on Demand', 15 August 2012
http://merlin.obs.coe.int/redirect.php?id=16092 EN

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HR-Croatia

Parliament Adopts Amendment to the Croatian Radio-Television Act

On 6 July 2012, the Croatian Parliament adopted the Act amending the Croatian Radio-Television Act, which entered into force on 9 July 2012 after being published in the Official Gazette No. 76 of the same day.

The exposition of the final draft of the Act Amending the Croatian Radio-Television Act stated that the object of the Act itself and its implementation was to fully achieve an adjustment of the public service broadcaster Croatian Radio-Television (HRT) in accordance with the acquis communautaire that had already been transposed into the Croatian Radio-Television Act in 2010 (Official Gazette No. 137/2010).

The original Act, dating from 2010, introduced a new organisational structure of the HRT management through new HRT bodies, namely the Management Board and the Supervisory Board, which were to ensure the better functioning and operation of HRT. At the same time, the competences of the already existing Programme Council of the HRT were expanded through the introduction of joint competences with the Supervisory Board, related to the election of members of the Management Board and the adoption of HRT's basic acts such as its Statute, Work and Financial Programme. However, because of the new distribution of powers between the bodies of HRT and their scopes, a significant problem occurred in the daily functioning and management of HRT, thereby requiring that certain legislative provisions be amended.

The Croatian Radio-Television Act, as now amended, restructures the management of HRT so as to ensure a clear procedure for the election of members to a particular HRT body, which is now the task of the Government. In addition, the amendment provides for an unambiguous sharing of competences, while clearly defining the responsibilities of the Director General for the work and operations of HRT. This should enable the harmonious functioning of the bodies of the public service broadcaster in the context of all of its business commitments and programme remits and its future development into a modern public service broadcaster, able to adopt new technologies and offer to the public significant new audio and audiovisual services. By increasing the responsibilities of the Director General and enabling the supervision of operations by the Supervisory Board, conditions have been created for the reconstruction of HRT. The implementation of the pending reconstruction programme should ensure HRT's reorganisation, financial stabilisation and increased business investments into its own programme.

• *Zakon o izmjenama i dopunama Zakona o Hrvatskoj radioteleviziji* (Act amending the Croatian Radio-Television Act (Official Gazette No. 76 of 7 July 2012))
http://merlin.obs.coe.int/redirect.php?id=16080 HR

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IT-Italy

The AGCOM Logical Channel Numbering Plan Declared Void

The logical channel numbering plan (LCN) for digital terrestrial television adopted by AGCOM - Autorità per le garanzie nelle comunicazioni (the Italian Communication Authority) has been declared void by four judgments (no. 04658/2012, no. 04659/2012, no. 04660/2012, no. 04661/2012) of the Consiglio di Stato (the Italian High Administrative Court) published on 31 August 2012. The LCN plan was adopted with AGCOM resolution no 366/10/CONS of 15 July 2010 pursuant to Article 32 of the Italian AVMS Code after a public consultation and a specific survey on the preferences and behaviours of viewers.

The plan establishes a numbering classification based on ten blocks of a hundred numbers each with a distinction based on the genre of programming. The most valuable positions from no. 1 to no. 9 are assigned to the traditional national analogue broadcasters, the positions from no. 10 to no. 19 are assigned to the main local broadcasters of any Region and the positions from no. 20 to no. 70 are reserved to national semi-generalist and thematic broadcasters ranked among the following genres: children, news, culture, sport, music and teleshopping.

The Administrative Court judged that both formal and substantive errors affected the AGCOM decision.

The formal error consists in the shorter term given by AGCOM for comments to be delivered within the public consultation (i.e., a-15 day period instead of the usual 30-day period). The Court observed that the shorter term was not supported by any urgency.

The substantive errors are mainly related to the criteria adopted by AGCOM for assigning positions to the local channels. In the first place, the Court deemed

that criteria adopted for ranking listed by the Regional Committees for the assignment of the positions from 10 to 19 did not properly reflect the qualitative and geographical requirements set by the law for the definition of "the most valuable local broadcasters".

Secondly, the Court's decision argued that the criteria adopted by AGCOM to assign the positions no. 8 and no. 9 did not satisfy the main legal criteria provided for a broadcaster to be defined as a "traditional national analogue broadcaster" and held that the habits and preferences of users had not been properly evaluated by the Ministry in assigning position no. 9 to a national broadcaster rather than to a local broadcaster, as 51% of the users had expressed during the survey carried out after the public consultation.

Finally, since the Court intended to avoid situations of legal uncertainty before the adoption of the new plan, it allowed AGCOM to temporarily confirm the effects of the existing LCN plan.

The new LCN plan will be adopted after conducting a new survey on the habits and preferences of viewers and a new public consultation to be launched by 4 October 2012, and for these purposes the effects of the existing LCN plan have been prolonged until the entry into force of the new Plan.

• *Delibera n. 391/12/CONS, Proroga, in via d'urgenza, del piano di numerazione automatica dei canali della televisione digitale terrestre, in chiaro e a pagamento* (Decision no. 391/12/CONS Provisional renewal of the Logical Channel Numbering (LCN) Plan)
http://merlin.obs.coe.int/redirect.php?id=16090 IT

• *Delibera no. 366/10/CONS, Piano di numerazione automatico dei canali della televisione digitale terrestre in chiaro e a pagamento* (Decision n.366/10/CONS, Logical Channel Numbering (LCN))
http://merlin.obs.coe.int/redirect.php?id=16091 IT

• *Consiglio di Stato* (Judgments of the Consiglio di Stato)
http://merlin.obs.coe.int/redirect.php?id=11281 IT

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Short News Reports Reduced from 3 Minutes to 90 Seconds

On 4 September 2012, the *Autorità per le garanzie nelle comunicazioni* (Italian Communications Authority - AGCOM) adopted resolution no. 392/12/CONS amending Regulation no. 667/10/CONS on short news reports of events of high interest to the public transmitted on an exclusive basis by a broadcaster under Italian jurisdiction. This regulation was adopted pursuant to Article 32-quarter of the Italian AVMS Code, which implemented Article 15 of the AVMS Directive (see IRIS 2011-8/32 and IRIS Plus 2012-4).

The amendment follows a judgment of 23 March 2012 of the *Consiglio di Stato* (the High administrative court) declaring the illegitimacy of the envisaged duration of 3 minutes of the extracts instead of 90 seconds as per recital no. 55 of the AVMS Directive, thus confirming a judgment of 13 July 2011 of the *Tribunale Amministrativo Regionale* (the Regional administrative court) (see IRIS 2012-1/31).

While AGCOM had decided to opt for the length of 3 minutes in order to avoid different regimes for similar cases - taking into account that existing Italian provisions on the use of images from national football and basket championships allow broadcasters to use them up to 3 minutes for information purposes (Art. 5 of Legislative Decree no. 9/2008, which codifies a long-existing practice in Italy for sports events, see IRIS 2012-2/27) - the Court ruled that, in the absence of a clear statement in the Italian AVMS Code, AGCOM had no authority to autonomously extend the length of short news reports but should have followed the recital of the AVMS Directive.

In compliance with this decision, AGCOM therefore approved resolution no. 392/12/CONS, reducing the maximum length of the reports from 3 minutes to 90 seconds.

• *Delibera n. 392/12/CONS, Modifica al regolamento concernente la trasmissione di brevi estratti di cronaca di eventi di grande interesse pubblico ai sensi dell'art. 32-quater del testo unico dei servizi di media audiovisivi e radiofonici* (Deliberation No. 392/12/CONS amendments to the regulation concerning the broadcasting of short news reports of events of high interest to the public)
http://merlin.obs.coe.int/redirect.php?id=16118 IT

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MK-"the Former Yugoslav Republic Of Macedonia"

The New Strategy for Development of the Broadcasting Sector Defines the Reform of the Media Legislation

Over 80 participants from the NGO-sector, state institutions, national agencies and other local stakeholders have been participating in public meetings, organised by the Macedonian Broadcasting Council (BC), whose aim is to draft the new five-year National Strategy for Development of the Broadcasting Sector for the period 2013-2017.

One of the main tasks of the new strategy is to identify the regulatory directions of the new Law on Audiovisual Services as well as to identify the shortcomings and gaps in the existing legislative acts that indirectly regulate the media sector, like protection of consumers' rights, copyright and minors' protection, media literacy, fostering of competition etc. In total the new strategy focuses on nine crucial areas:

- Pluralism and diversity of the programme content;

- Media literacy;

- Transition to digital broadcasting;

- Broadcasting in a digital environment;

- Economic potentials of the broadcasting industry;

- Illegal media concentration and transparency of ownership;

- Reform of media regulation;

- Copyright protection;

- Protection of the users of media services and easing access to the media services.

During the past several years, the Public Service Broadcaster (PSB), the Macedonian Radio and Television, has been conducting serious reforms in order to transform itself into a real public service broadcaster. However, one of the main challenges for the future regulation will be the introduction of new media services and their positioning in the national media landscape. The draft strategy reads "04046the future media regulation should more precisely define the minimum number of PSB-channels and it should allow the PSB to establish and operate additional specialised media services04046". However, the new media legislation should also define mechanisms for public and regulatory assessment of the need for these kinds of services.

When speaking of the PSB, the "legal position" of the Parliamentary Channel should also be revised. The current Law on Broadcasting is unclear about the competences of the Parliament and the PSB in the functioning of this channel. While the Parliamentary Commission is in charge of overall programming content and technical realisation, editorial responsibility falls on the PSB. The experts suggest: "The Parliamentary Channel should be re-organised in such a way that it will be a niche channel of the PSB, independent from the Parliament and other state institutions, with editorial responsibility with the PSB, and should work using the tools of professional journalism." The new law on media should decide if this PSB service will cover only the Parliament's activities or whether it will also cover the whole political process of the country, including the activities of the Government and the President.

Regarding the commercial sector, the analysis of the BC shows that there are too many media outlets, offering the same programming format "Televison broadcaster with generally dominant entertainment function". That is why one of the obligations for the regulatory authority is to re-define its license-granting policy in a direction to stimulate niche channels.

In order to keep the media as much distinct as possible from the political centers, the draft Strategy suggests more precise regulation on political advertising: "It must be determined in a precise manner, what should be considered as a public interest and what kind of advertising should be defined as such..." .

Another challenge for the new legislation is to ensure transparency of the media ownership structure and prevention of abuse of a dominant position in the media market, which could endanger media pluralism. In this vein, the Strategy recommends that "04046. [t]he editorial decisions should be strictly separated from the managerial decisions04046".

Besides measures for easier access to the media market for non-linear media content providers and full transposition of the EU Audiovisual Media Services Directive, the Strategy envisages clear measures that will ensure fostering of a culture of tolerance and non-discrimination in the media: "... Education of the editorial staff is needed in order to increase the professional standards, so that the journalists can identify hate speech, discrimination based on gender, sex, sexual orientation, religion, ethnicity etc04046. A secondary legislation [measure] and co-regulatory act is needed, in which hate speech and discrimination will be explained, as well as the ways to avoid them."

The Strategy further defines the completion of the process of digitisation and sets the strategic goals for the period after the analogue switch off, scheduled for June 2013. Macedonia being a country where the cable TV networks are dominant, the Strategy also includes measures that will stimulate cable operators to fully digitise their networks as well as to further spread the fiber-to-the-home-access (FTTH-access). The regulatory authority will also encourage investments in the introduction of IPTV2, DVB-T2, mobile television through 4G etc.

The adoption of the Strategy for Development of the Broadcasting Sector for the period 2013-2017 has been planned for December 2012 and its implementation is expected to start at the beginning of 2013.

Borce Manevski
Broadcasting Council of the Republic of Macedonia

Equal Regulatory Approach with a newly Adopted Rulebook on Finance and Accounting Procedures

On 25 May 2012, the Macedonian media regulatory authority, the Broadcasting Council (BC), adopted a Rulebook on the Procedures for Finance and Accounting, which sets the rules on the collection of the annual fee that each broadcaster must pay for its license, the so-called "Broadcasting License Fee". The broadcasters are obliged to pay this fee directly to the BC.

The new by-law is expected to create an environment of a non-selective approach in implementation of the Law on Broadcasting regarding collection of the fee for broadcasters' licenses.

The current Law on Broadcasting in Art. 60 sets out the basic regulation of this matter: "The commercial broadcasting companies and the non-profit broadcasting institutions shall pay an annual fee for the license to the account of the Broadcasting Council."

However, the implementation practice showed that some broadcasters had not paid their license fees for years, while other broadcasters had fully respected this obligation. This law enforcement practice has created a market environment where some broadcasters have been put in a better position than others, which in legal terms means an "uneven enforcement of the broadcast legislation" by the media regulation authority.

In order to create an equal regulatory approach, without any kind of discrimination among the market players, the new Rulebook defines the deadline for payment of the fee. If the broadcaster refuses to pay the issued invoice after a 15-day-deadline, then the Broadcasting Council can initiate a procedure for revocation of the license, according to Art. 63 of the Broadcasting Law.

Together with an additional 15-day-deadline after the initiation of such a procedure as foreseen in Art. 23 of the Rulebook, this means in practice that broadcasters have 30 days in total to pay the fee until the final decision on the license's revocation is made.

In 2012, three satellite broadcasters have already lost their licenses due to not having adhered to the provisions in the law that regulate the payment of the broadcasting license fee, which marked the start of the implementation of this piece of secondary legislation.

This Rulebook should not only provide a good mechanism that will contribute to the efforts of non-selectivity when the media law is implemented by the media regulatory authority, but it should also ensure the council's sustainable funding, bearing in mind that besides the four per cent of the broadcast fee, the main source of finance is the annual fee that the broadcasters have to pay for their licenses.

In its latest Country's Progress Report on Macedonia, the European Commission noted that: "Sustainable funding of the public service broadcaster and the Broadcasting Council is yet to be secured." The effective implementation of the present Rulebook should give hope that the Broadcasting Council will secure sustainable funding and will increase the effectiveness of the implementation of the media legislation.

• Rulebook on the procedures for financial and accounting working of the Broadcasting Council of the Former Yugoslav Republic of Macedonia
http://merlin.obs.coe.int/redirect.php?id=16081 EN

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MT-Malta

No Copyright in Live Football Matches

In its 20 April 2012 judgment in the names Dr Henri Mizzi nomine et v. Telestarr Limited (C 8957), the Civil Court, First Hall, had to decide whether there was a breach of copyright law on the part of the defendant company Telestarr Limited. Dr Henri Mizzi was representing The Football Association Premier League (FAPL) Limited of London whilst the other plaintiff was Melita Cable plc which is the sole cable company operating in Malta. The first plaintiff company is the copyright owner of the Premier League of England, while the second company is the licensee of the first company authorised in Malta to cablecast the English Premier League. On the other hand, the defendant company, Telestarr Limited, is a Maltese registered company which sells to consumers decoders and decoder cards such as those of SKY (UK), SKY (Italia), TPS, ART and Digi Alb. According to the plaintiff companies, the defendant company was not authorised to sell cards by means of which viewers could see the English Premier League.

Following an unsuccessful attempt by all three companies to reach an out of court settlement to settle their dispute, the Civil Court, First Hall, was requested to hear and decide this case. In its judgment, the court held that copyright did not cover live football games. The court came to this conclusion after reviewing two judgments of the European Court of Justice: Football Association Premier League v. QC Leisure (C403/08 decided on 4 October 2011) and Karen Murphy v. Media Protection Services Limited (C429/08 decided on 4 October 2011). In its judgment, the European Court of Justice stated that: 'FAPL cannot hold copyrights in the live football matches since they cannot be classified as works ... To be so classified, the subject-matter concerned would have to be original in the sense that it is its author's own intellectual creation... However, sporting events cannot be regarded as intellectual creations, and football matches ... which are subject to rules of the game, leave "no room for creative freedom"'. Applying the case law of the European Court of Justice to the case before it, the Civil Court, First Hall, decided that FAPL did not enjoy any copyright in the English Premier League and therefore FAPL could not suffer any breach of an alleged copyright that it did not enjoy.

Basing itself on the case of Karen Murphy v. Media Protection Services Limited, the Civil Court, First Hall, concluded that once FAPL did not enjoy copyright in the Premier League, Melita Cable plc could not enjoy an exclusive right because such a right was not opposable with regard to third parties. The only rights that existed were the contractual rights between the first and second plaintiff companies. Hence there was nothing that could impede the defendant company from selling the decoders and the respective cards. Once FAPL enjoyed no copyright as to the English Premier League, there could be no connection between the exclusive rights that Melita Cable plc enjoyed over the Maltese territory and any derogation from the related principle of freedom to provide services. Therefore, the principle of freedom to provide services applied and the defendant company was well in its rights to sell decoders and their related cards.

• *Mizzi Henri Av. Dr. Noe Et v. Telestarr Limited, Ċivili, Prim Awla, 20 April 2012, Riferenza 451/2007* (Mizzi Henri Av. Dr. Noe Et v. Telestarr Limited, Civil Court, First Hall 20 April 2012, reference 451/2007)
http://merlin.obs.coe.int/redirect.php?id=16111 MT

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Amendments to the Criminal Code and the Press Act Concerning the Media

Parliament has approved legislation to amend the Criminal Code and the Press Act to introduce offences in relation to gender, gender identity, sexual orientation, race, etc., and to increase punishments therefor. This is because as the law previously criminalised only one type of hatred - racial hatred.

Article 82A of the Criminal Code criminalised incitement to racial hatred through written or printed material in the case of 'violence or hatred against a group of persons in Malta defined by reference to colour, race, religion, descent, nationality (including citizenship) or ethnic or national origins or against a member of such a group.' This provision was limited to racial hatred. The Criminal Code (Amendment) Act, 2012 enlarged the scope of Article 82A to include other categories of hatred namely gender, gender identity, sexual orientation, race, colour, language, ethnic origin, religion or belief or political or other opinion'.

The same amendment was introduced in Article 82C of the Criminal Code dealing with denying or trivialising crimes against peace directed against a person or a group of persons. The amendment criminalises condoning, denying or trivialising crimes against peace directed against a group of persons defined by reference to gender, gender identity, sexual orientation, race, colour, language, ethnic origin, religion or belief or political or other opinion. A similar amendment is made in article 83B which provides that the punishment provided for any offence is being increased by one to two degrees when the offence is 'aggravated or motivated, wholly or in part, by hatred against a person or a group, on the grounds of gender, gender identity, sexual orientation, race, colour, language, ethnic origin, religion or belief or political or other opinion'.

The amendments to article 222A, 251D and 325A of the Criminal Code once again extends racial hatred to all the forms of hatred mentioned above.

Finally the Press Act, which applies both to the press, the broadcasting media and the new media, has been amended. Article 6 deals with racism and similar offences. Its purport has also been widened. It is now a criminal offence by means of a medium to threaten, insult, or expose to hatred, persecution or contempt, a person or group of persons because of their gender, gender identity, sexual orientation, race, colour, language, ethnic origin, religion or belief or political or other opinion and disability.

• Att Nru. VIII tal-2012 (Att biex jemenda l-Kodiċi Krimimali, Kap 9) (Act No. VIII of 2012 (an Act to amend the Criminal Code, Cap 9.), Malta Government Gazette of 26 June 2012)
http://merlin.obs.coe.int/redirect.php?id=16109 EN MT

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NL-Netherlands

Court Orders Newspaper to Cease Publication of Programme Guide

On 13 June 2012, the Amsterdam Court ordered the Dutch newspaper De Telegraaf to cease publication of its weekly programme guide. An interlocutory injunction was sought by four broadcasting organisations (NPO, RTL, SBS and Veronica), which claimed copyright protection in the programming schedules. De Telegraaf considered these schedules as being databases within the meaning of Directive 96/9/EC (the Database Directive) and the protection granted under Article 10 of the Dutch Copyright Act to non-original writings, such as databases, in breach of the Directive. The argument made by De Telegraaf is based upon the recent decision by the Court of Justice of the European Union, Case C 604/10 Football Dataco Ltd. which held that copyright protection in databases can only exist where 'the selection or arrangement of the data which it contains amounts to an original expression of the creative freedom of its author'.

The Amsterdam Court found that an interpretation in conformity with the Directive would lead to a contra legem decision. Until the Dutch government responds to the implications of the Football Dataco Ltd. case, the programming schedules are protected under Article 10 of the Dutch Copyright Act. The Minister for Education, Culture and Science has reported that the issue is currently under investigation. Earlier, the Dutch government adopted an amendment to Article 2139 of the Dutch Media Act 2008, which makes programme data available by abolishing the monopoly held by public broadcasting organisations. (see IRIS 2012-6/28).

• *LJN: BW8334, Rechtbank Amsterdam, 518640 / KG ZA 12-774 SR/JWR, 13-06-2012* (Decision of the Amsterdam Court, NPS/RTL a.o. v. Telegraaf Media Group, LJN: BW8334, 13 June 2012)
http://merlin.obs.coe.int/redirect.php?id=16075 NL

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PT-Portugal

Deadline for DTT Subsidies' Applications Extended until the End of the Year

The Portuguese National Communications Authority (ANACOM) has announced the extension of the application period concerning the subsidy programmes for DTT (Digital Terrestrial Television) decoders. Following this decision, applications can be submitted until 31 December 2012 to PT Comunicações, the global telecommunications operator leader in Portugal.

There are two types of support programmes available, one for the installation of the reception system of DTH (Direct to Home) and the other for DTT kit reimbursement.

On the one hand, reimbursements are of EUR 47 for anyone living in places where satellite is accessible, regardless of the individuals' economic situation. This program is available until 2023, although the reimbursement value might change. People who purchase the satellite TV kit can benefit from this refund by either ordering the kit within five days (paying EUR 30 on delivery of the satellite) or by purchasing the kit immediately (paying EUR 77 and being refunded EUR 47 later).

On the other hand, support programmes for the installation of the DTH reception system are limited to EUR 61 but are available to everyone having access to the satellite signal, independently of individuals' economic situation. Pensioners whose monthly income is less than EUR 500 and people with at least 60% disability benefit from a subsidy of 50% (up to a maximum amount of EUR 22) to buy a DTT or DTH decoder. Citizens aged 65 or older, retired people or pensioners having a monthly income of up to EUR 500, referenced by the Portuguese Institute of Social Security, can also benefit from an extra subsidy of EUR 61 to adapt, redirect or reinstall the new DTT or satellite reception antenna.

These support programmes were initially established until the end of June 2012 but because the intent was to cover the largest number of beneficiaries, the deadline was first extended to 31 August 2012, and with the recent decision of ANACOM until the end of 2012.

• *TDT - Prazo para pedido de subsídios prorrogado até 31.12.2012* (Decision of the Portuguese National Communications Authority (ANACOM), 13 August 2012)
http://merlin.obs.coe.int/redirect.php?id=16098 PT

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Public Consultation for a Reviewed Authorisation Regime for Electronic Communications Providers

On 24 August 2012 the *Autoritatea Naţională pentru Administrare şi Reglementare în Comunicaţii* (National Authority for Administration and Regulation in Communications - ANCOM), the Romanian telecom regulator, opened a public consultation on a draft Decision on reviewing the general authorisation regime for electronic communications providers (see IRIS 2010-8/43, IRIS 2011-2/35, IRIS 2011-4/32, and IRIS 2012-4/37).

The draft Decision aims to amend and complete the ANCOM President's Decision no. 338/2010 in order to transpose into the secondary legislation the provisions of the new legal framework for electronic communications, as well as to correct some weak points of the above-mentioned Decision. The most important amendments and modifications focus on the security and integrity of electronic communications networks and services, the provision of emergency electronic communications services, the terms of use for numbering resources, the technical conditions which apply for the retransmission of audiovisual programme services, and the content of the description form for networks and services.

The draft Decision proposes a set of technical parameters for the electronic communications networks used for the retransmission of audiovisual programme

services, with a view to setting the conditions for a protection framework for end-users' interests in their relationship with the service providers. The parameters are linked to the general security conditions and the electromagnetic compatibility: the distribution systems through electronic communications networks have to be conceived, built and installed according to the relevant provisions with regard to the general security conditions and the electromagnetic compatibility adopted by the national standardisation body; the active and passive equipments used for the reception, processing and distribution of signals through electronic communications networks have to observe the provisions of the Government Decree no. 982/2007 with regard to the electromagnetic compatibility.

The consultation closed on 7 October 2012.

- *ANCOM propune revizuirea regimului autorizării generale pentru furnizarea reţelelor şi serviciilor de comunicaţii electronice; comunicat 24.08.2012* (ANCOM proposes a reviewed general authorisation regime for the electronic communications providers, 24 August 2012)
http://merlin.obs.coe.int/redirect.php?id=16082 RO
- *Proiect de decizie pentru modificarea şi completarea Deciziei preşedintelui Autorităţii Naţionale pentru Administrare şi Reglementare în Comunicaţii nr. 338/2010 privind regimul de autorizare generală pentru furnizarea reţelelor şi a serviciilor de comunicaţii electronice* (Draft decision on amending and completing the ANCOM President's Decision no. 338/2010 on the general authorisation regime for providing electronic communications networks and services)
http://merlin.obs.coe.int/redirect.php?id=16083 RO
- *Expunere de motive* (Explanatory Memorandum)
http://merlin.obs.coe.int/redirect.php?id=16084 RO

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Age Ratings for TV and Online Media Introduced

On 4 September 2012, the governmental watchdog agency for the media and communications, Roskomnadzor (see IRIS 2011-1/46 and IRIS 2011-7/42), issued recommendations to the media outlets on how to apply the recently amended Federal Statute "On the Protection of Minors against Information Detrimental to their Health and Development" (see IRIS 2011-4/34 and IRIS 2012-8/36).

In particular, the Recommendations spell out rules for placement of markings for the ratings of the "informational products", related to the age of their consumers in audiovisual and online media.

For TV programmes the sign indicating the ratings shall be printed for every item on the listings of TV programmes as well as placed in the actual broadcasts of programmes rated 12+ and above. It is to be placed in a corner of the screen and kept there for at least 8 seconds after the start and each continuation of a programme (e.g., after commercials). Exempted are live TV programmes and the "informational products that have significant historic, artistic or other cultural value for the public."

In online media the sign shall be placed on the top part of the front page of its website and correspond to the "informational products" of the highest level of restrictions that is available on the site. The sign shall not be smaller than 75 percent of the script of the second-level headings or no smaller of the font size of the main text in bold, or not smaller than 20 percent of the size of the main column on it. In colour it should correspond to or be in contrast to the colour of the title of the online media outlet.

Online news sites are exempted from these markings. Comments from readers or their reports on the pages provided for such purposes by the online media are not to be marked either.

- Рекомендации по применению Федерального закона от 29.12.2010 № 436- ФЗ « О защите детей от информации , причиняющей вред их здоровью и развитию » (Recommendations on implementation of the Federal Statute of 29.12.2010 No 436-FZ "On the Protection of Minors against Information Detrimental to their Health and Development")
http://merlin.obs.coe.int/redirect.php?id=16078 RU

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SK-Slovakia

tvsme Considered On-demand Audiovisual Media Service

On 10 July 2012 the Council for Broadcasting and Retransmission of the Slovak Republic (the Council) decided that the service tvsme, provided by the publisher of sme - one of two major Slovak mainstream broadsheet newspapers - constitutes an on-demand audiovisual media service (AVMS) and thus falls under the regulatory scope of the Council. This is the first case in the Slovak Republic in which the provision of an electronic version of a newspaper is deemed to fall within the remit of the Council.

Interestingly, the Council had assessed the service in April 2010 and had concluded that it was not an AVMS, despite the existence of many common features between tvsme in 2010 and tvsme now. The service constitutes a separate section of the home page of the electronic version of sme. This section had then and continues to have its own IP address for direct

access, although when entering the service (through the sme homepage or directly via the section's own IP address) there was never any doubt that the user had entered the sme environment (same page layout is used). The content of the service, however, changed substantially over the years. The service in 2010 comprised all audiovisual content located on the sme.sk home page. This means that the section included (written) journalistic articles accompanied by related audio-visual (AV) elements such as interviews and short video clips. Yet it also contained journalistic TV-like videos (short news / current affairs programmes created by sme journalists) and even some acquired BBC programmes. The ambiguous character of the content was the main reason for the Council's refusal to classify this service as an AVMS in 2010. The Council declared that due to the mixed nature of this service it was not possible to clearly determine whether it formed an integral part of the electronic version of sme or whether it constituted a separate service the principal purpose of which differed from the objectives of sme.sk (provision of TV-like AV content). The Council took into account the fact that assessing this kind of internet-based service was quite a new phenomenon and there was no common approach in this matter among other EU countries or in the practice of the European Court of Justice. Even so, the Council decided to act in line with the principle of *in dubio pro mitius* ("where there is doubt, to decide in favour of the defendant") and declared that the service does not fall within the remit of the Council.

In May 2012 the provider of tvsme announced that the service was available also on Samsung smart televisions. This led to a re-assessment of the service, which showed that its content had changed. The content of tvsme now consists solely of "stand-alone" videos that do not accompany any written text. These videos indicate absolute editorial control of the service provider along with a relatively high overall professional appearance (e.g. different camera angles, own logo, own microphones, light entertainment shows/news/current affairs/documentary programmes with their own hosts, etc.). All these modifications had changed the character of the service, which now appears clearly as a separate service with the principal purpose of providing television-like AV content. This conclusion is supported by the capacity to receive the service via a connected television set.

There is now no doubt that the tvsme service provided via the internet meets the criteria of the definition of an on-demand AVMS. There is, however, one remaining uncertainty that involves the tvsme app. (i.e. specialised smartphone application) for connected TV.

Using this app. to access the AV content of tvsme in "classic" on-demand mode, provides an "intro", in which the 7 newest videos are played in automatic flow. However, users do have some control over the content since they can forward or rewind within a video and even skip to the next video (but next video only). Therefore, the question was raised whether it is a linear or a non-linear (i.e. on-demand) service. After some consideration the Council decided that the "intro" in the smart TV app. does not constitute a linear service. On the one hand this is because of the level of control the user has over the content as opposed to the complete lack of control on the part of the provider over the scheduling of the content (the "position" of videos is generated randomly). On the other hand, the provider has editorial control over the available selection (the provider's own content from the internet) and to some extent over the arrangement and layout of the content. The Council decided that on balance even the "intro" forms part of the on-demand AVMS.

• *Rada pre vysielanie a retransmisiu, Uznesenie č. 12-14/43.680, 10.07.2012* (Decision of the Council for Broadcasting and Retransmission of the Slovak Republic, No. 12-14/43.680, 10 July 2012) SK

Juraj Polak
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US-United States

Disney Establishes new Standards for Food Advertising on its Programming

On 5 June 2012, the Walt Disney Company ("Disney") introduced new standards for food advertising on its programming that targets children and families. Under the new advertising policy, "all food and beverage products advertised, sponsored, or promoted on the Disney Channel, Disney XD, Disney Junior, Radio Disney, and Disney-owned online destinations oriented to families with younger children will be required by 2015 to meet" the nutrition guidelines Disney established in 2006. The nutrition guidelines promote fruit and vegetable consumption and call for limiting calories and reducing saturated fat, sodium and sugar.

The announcement is the latest step in Disney's partnership with parents to inspire kids to lead healthier lifestyles. The Chairman and CEO of Disney thus explained that the new policy is designed to set "new food advertising standards for kids" and that to leverage "[t]he emotional connection kids have to [Disney] characters and stories gives [Disney] a unique opportunity to continue to inspire and encourage them to lead healthier lives."

Disney's announcement marks the first time a major media company has banned junk food advertisements to children. As such, its implementation, level of success, and impact on Disney's profitability and popularity will set the precedent for other players in the

audiovisual industry and go a long way towards determining whether Disney's new policy is the beginning of a trend or merely a passing fad.

• Disney Press Release of 4 June 2012
http://merlin.obs.coe.int/redirect.php?id=16072 EN

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DE-Germany

Admissibility of a Movie Made on Foreign Land

On 25 October 2012, a German Civil Court, the Kammergericht (KG) Berlin, decided (file number of the judgment: 10 U 136/12) that the publication of a documentary containing unauthorized recorded images of a third-party about facilities on a foreign land is allowed.

The applicant is a public institution operating the public transport system with busses and subways in the city of Berlin. The defendant is a producer and director of a film, which documents the graffiti art scene in Berlin. The disputed film published by the defendant includes unapproved recorded images about facilities and trains of the applicant, which were painted with graffiti. These pictures were not manufactured by the defendant. The images were produced by third parties and given to the defendant anonymous. These third parties entered the land of the applicant unjustified and painted the subways and facilities with graffiti. By its action, the applicant seeks to forbid the defendant the reproduction and distribution of pictures in the film, showing their painted transport systems and facilities.

On 10 May 2012, the lower court, the Landgericht (LG) Berlin, ruled in favour of the applicant (file number of the judgment: 16 O 199/11). The Court of Appeals, the KG Berlin, reversed the judgment of the LG Berlin and dismissed the action brought by the applicant.

In his judgment, the KG pointed out that the release of the pictures in the film showing painted trains and facilities of the applicant does not violate the property rights of the applicant. In the opinion of the KG, the property rights of the applicant are not violated, because the purpose of the recorded pictures in the film is not to present the trains and facilities of the applicant. The purpose of the images is rather to show the people, who unlawfully enter and damage the property of the applicant. The applicant does not intend to make money with the disputed recordings of her property. With regard to the publication of the film by the defendant the applicant therefore is not prevented from the use or commercial exploitation of her property.

The use of the pictures in the film, which were created illegally by third parties, constitutes an indirect intervention in the house rules of the plaintiff by the defendant. But with regard to the necessary balancing of the fundamental rights of both sides the applicant has to tolerate this interference of her rights. The fundamental rights of the applicant to protect her property (Article 14 of the German Constitution) and her business premises (Article 13 of the German Constitution) are faced with the fundamental rights of the defendant, which guaranteed him the freedom of expression (Article 5 section 1 sentence 1 of the German Constitution), the freedom of designing a film (article 5 section 1 sentence 2 of the German Constitution) and the freedom of the artistic creation process (article 5 section 3 of the German Constitution). In the context of the balancing of the fundamental rights, the KG Berlin concluded that the publication of informations unlawfully obtained is admissible in the concrete case. In the opinion of the KG Berlin, the defendant's interest in the publication of the film outweighs the applicant's interest in a ban of the film. The reason for this result lies in the fact that the film deals with a topic of great public interest. The purpose of the film was not to present the acting people in a positive way or to tolerate their criminal behavior. On the contrary, the film aims to raise attention to grievances in the form of crime against the applicant, her customers and the general public. In favor of the defendant it must also be noted that third parties (and not the defendant) have produced the pictures by means of committing crimes. The disputed pictures do not relate to trade secrets of the plaintiff and do not damage her reputation. In the film, the applicant is clearly portrayed as a victim of crimes without being confronted with incriminate things. With his film the defendant tried to penetrate the closed society of the graffiti scene and to uncover the motives of the acting people. Because of this objective, the film does not only satisfy the pure curiosity and sensationalism of the audience. Rather, the film provides the viewer with a gain in knowledge and points out that the acting persons are criminals, which one should not imitate.

Overall, the KG Berlin found that the benefits of the film outweigh the disadvantages, which are caused by the publication of the illegal pictures within the film. Consequently, the KG Berlin denied a claim by the plaintiff against the defendant.

• *Urteil des KG Berlin vom 25. Oktober 2012 (Aktenzeichen: 10 U 136/12)* (Judgment of the KG Berlin of 25 October 2012 (file number of the judgment: 10 U 136/12))
http://merlin.obs.coe.int/redirect.php?id=17299 DE

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Agenda

EUROPEAN AUDIOVISUAL OBSERVATORY
20th Anniversary Celebration Conference
Towards Transparency 2.0 - Focus on Media Concentration
4:00pm - 6.30pm, Wednesday, 7th November 2012
(Entrance possible from 3 pm onwards) Room 5, First floor, Council of Europe, Palais de l'Europe 1 Avenue de l'Europe 67000 Strasbourg (France)
More information here

Book List

Etranny, Y. N., Propriété litteraire et artistique 111 cles pour comprendre le droit d'auteur 2012, L'Harmattan ISBN 978-2296969766
http://www.harmattan.fr/groupeharmattan/
Bill, J-Ph., Intellectual Property in Luxembourg 2012, Larcier ISBN 9782879741604
http://editions.larcier.com/titres/127052_2/intellectual-property-in-luxembourg.html
Steiner, T., Massenkommunikation im Magischen Dreieck: Analyse aus der Fernsehpraxis 2012, Springerverlag ISBN 978-3531197449
http://www.springer.com/springer+vs/medien/book/978-3-531-19744-9
Paal, B., Suchmaschinen, Marktmacht und Meinungsbildung 2012, Nomosverlag ISBN 978-3832978310
http://www.nomos-shop.de/Paal-Suchmaschinen-Marktmacht-Meinungsbildung/productview.aspx?product=19665
Digital Rights Management: Concepts, Methodologies, Tools, and Applications 2012, Idea group US ISBN 978-1466621367
http://www.amazon.co.uk/Digital-Rights-Management-Methodologies-Applications/dp/1466621362/ref=sr_1_-190?s=books&ie=UTF8&qid=1350308093&sr=1-190
Gutwirth, S., European Data Protection 2012, Springerverlag ISBN 978-9400751842http://www.springer.com/?SGWID=5-102-0-0-0