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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: Nenkova-Lalova v. Bulgaria

In a controversial judgment, with a 4/3 decision, the European Court of Human Rights dismissed the claim by a journalist, Ms. Nenkova-Lalova, regarding her dismissal from the Bulgarian public broadcaster BNR. The BNR journalist complained that her disciplinary dismissal, ostensibly on technical grounds regarding the way she had hosted one of her regular weekly radio shows, had in reality been a sanction for the way in which she had exposed corrupt practices during one of her radio shows. In that talk show unpleasant facts were revealed about the then ruling political party. However, as Nenkova-Lalova essentially had breached employment discipline within the meaning of the Bulgarian Labour Code and BNR regulations, the European Court agreed with the findings of the Sofia Court of Appeal and the Bulgarian Supreme Court that there had been no violation of Article 10 of the Convention.

The European Court accepts that Nenkova-Lalova's dismissal did amount to an interference with her rights under Article 10 of the Convention, but the dismissal was justified as it was prescribed by law, it pursued the legitimate aim of protecting the rights of others and was "necessary in a democratic society". The European Court is of the opinion that Nenkova-Lalova's dismissal was based on her wilful disregard of an editorial decision concerning an issue of the internal organisation of the BNR, related to the presentation of a radio show and the journalists (not) participating in it. The Court observes that there had not been any limitations on the topics to be discussed during her show, or on the substantive content or manner of presentation of the information broadcast during the show. Therefore the Court cannot agree with the applicant that her dismissal was intended to prevent the dissemination of information of public interest: her capacity as a journalist "did not automatically entitle her to pursue, unchecked, a policy that ran counter to that outlined by her employer, to flout legitimate editorial decisions taken by the BNR's management and intended to ensure balanced broadcasting on topics of public interest, or to have unlimited access to BNR's air. There is nothing in the facts of the present case to suggest that the decisions of the BNR's management in relation to the applicant's show were taken under pressure from the outside or that the BNR's management was subject to outside interferences". The Court also comes to the conclusion that although it is true that a dismissal by way of disciplinary sanction is a severe measure, it cannot be overlooked that the facts showed that her employer could not trust her to perform her duties in good faith. Insisting that employment relations should be based on mutual trust applies even more when it comes to journalists employed by a public broadcasting organisation. In sum, the Court does not consider that Nenkova-Lalova has established that her dismissal was intended to stifle her freedom to express herself rather than enable the public broadcasting organisation by which she was employed - the BNR - to ensure the requisite discipline in its broadcasts, in line with its "duties and responsibilities" under Article 10 of the Convention. There has therefore been no violation of that provision. The three dissenting judges are of the opinion that the functioning of the BNR and especially the manner in which decisions relevant to the editorial choices of journalists hosting programmes were dealt with, did not offer the necessary safeguards for the rights, activities, performance and independence of the journalists in their relationship with the public employer. They also consider that the act attributed to Nenkova-Lalova taken within this context of a rather unclear division of responsibilities as concerns editorial choices within a given programme does not appear to have been so grave or so far-reaching in its effects as to have irrevocably breached the mutual trust between employer and employee. The opinion that the Bulgarian authorities have violated Article 10 of the Convention however is not shared by the majority of the Court. Four of the seven judges indeed found that the dismissal of the BNR journalist did not amount to a breach of Article 10.

• Judgment by the European Court of Human Rights (Fourth Section), case Nenkova-Lalova v. Bulgaria, Appl. nr. 35745/05 of 11 December 2012
http://merlin.obs.coe.int/redirect.php?id=16386 EN

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European Commission against Racism and Intolerance: Media Provisions in Report on Ireland

On 19 February 2013, the European Commission against Racism and Intolerance (ECRI) published its latest reports on Ireland and Liechtenstein, adopted in the fourth monitoring cycle of the laws, policies and practices to combat racism in the member states of the Council of Europe (commentary on previous reports see IRIS 2003-5/3, IRIS 2005-7/2 and IRIS 2007-8/102). Only the report on Ireland contains a section focusing specifically on the media/Internet.

In its fourth report, ECRI welcomes the positive developments in Ireland, including the establishment of the

Office of the Press Ombudsman and the Press Council. They provide a new system of independent regulation. A voluntary Code of Practice for Newspapers and Magazines (thereafter Code of Practice) was also adopted in 2007.

Article 8 of the new Code of Practice prohibits newspapers and magazines from publishing "material intended or likely to cause grave offence or stir up hatred against an individual or group on the basis of their race, religion, nationality, colour or ethnic origin, membership of the travelling community, gender, sexual orientation, marital status, disability, illness or age". ECRI assesses that the Article was invoked in 74 complaints in 2008 and in 36 cases in 2010.

ECRI also acknowledges that since the last report, the Broadcasting Act 2009 has "consolidated the corpus of broadcasting legislation (04046) and revised the law relating to broadcasting services and content". ECRI welcomes the establishment of the Broadcasting Authority and its role in the development of different codes on programme and advertising content on radio and TV to combat any kind of discrimination and racism.

The section of the report on "public discourse and media" concludes with a recommendation. Competent authorities are encouraged to evaluate the effectiveness of the new Code of Practice as a tool to combat racism and xenophobic discourse. In addition, national authorities are invited to support initiatives by media to raise awareness on human rights and on issues relating to racism and racial discrimination.

• ECRI Report on Ireland (fourth monitoring cycle), adopted on 5 December 2012 and published on 19 February 2013
http://merlin.obs.coe.int/redirect.php?id=16369 EN FR

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European Commission against Racism and Intolerance: Media Provisions in the Conclusions on the Implementation of Recommendations in Respect of Austria

On 19 February 2013, the European Commission against Racism and Intolerance (ECRI) published its conclusions on the implementation of its recommendations made in the country reports of Albania, Austria, Estonia and the United Kingdom in its fourth monitoring round (for commentary on previous reports, see IRIS 2010-4/3, IRIS 2009-10/10, IRIS 2009-8/4, IRIS 2009-5/4, IRIS 2008-4/5, IRIS 2006-6/4, IRIS 2005-7/2).

A new process of interim follow-up has been introduced as part of the fourth monitoring cycle. Based on information gathered by ECRI itself and provided by governments, ECRI draws conclusions on the way recommendations have been followed up.

Only the conclusions relating to Austria contain provisions relevant to the media/Internet. In its fourth monitoring report relating to Austria (see IRIS 2010-4/3), ECRI recommended that "the Austrian authorities promote the reestablishment of a regulatory mechanism for the press, compatible with the principle of media independence that would make it possible to enforce compliance with ethical standards and rules of conduct including the refusal to promote, in any form, racism, xenophobia, antisemitism or intolerance".

ECRI acknowledges that in 2010 the Austrian Press Council was re-established as a voluntary self-regulatory institution to "safeguard editorial quality and guarantee freedom of the press". The Council has since set ethical guidelines by means of a code of honour for journalists. The code provides guidance in the prevention of discrimination (race, religion, gender, national origin, etc.) and is used as a basis for the Press Council on complaints. ECRI points out several positive outcomes such as: the publication of the decisions of the Press Council, the power of the Press Council to issue decisions against newspapers that are not members of the Council and the annual allowance granted by the State to the Council to cover its costs.

ECRI considers that the next step would be to "encourage all major newspapers to join the Press Council and to extend the Council's competence to cover electronic media, radio and television".

The conclusions were adopted on 4 December 2012. They constitute specific interim recommendations and are not intended to provide an overall analysis of all developments to combat racism and intolerance in the country under review.

• ECRI Conclusions on the implementation of the recommendations in respect of Austria subject to interim follow-up, 19 February 2013
http://merlin.obs.coe.int/redirect.php?id=16370 EN FR

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EUROPEAN UNION

Court of Justice of the European Union: Live Streaming of TV Programmes Constitutes a Communication to the Public

On 7 March 2013, the Court of Justice of the European Union (CJEU) delivered a preliminary ruling in the case

ITV Broadcasting and others v. TVCatchup. The judgment was issued on a request made by the High Court of Justice of England and Wales.

At national level, the case involved a dispute between ITV Broadcasting and other commercial TV broadcasters on one side and TVCatchup, another broadcasting organisation, on the other side. TVCatchup offers an Internet TV broadcasting service that allows its users to watch, via the Internet, live streams of TV broadcasts from other broadcasters. Users can only subscribe to its services and get access to content if they legally hold a TV licence to watch TV programmes in the United Kingdom. ITV Broadcasting and others initiated the proceedings before the High Court of Justice alleging that TVCatchup had infringed their copyright by communicating to the public their TV broadcasts, shows and movies without their authorisation. They claimed that national law (section 20 of the Copyright, Designs and Patents Act 1998 as applicable) and Article 3 (1) of Directive 2001/29/EC on copyright in the information society, prohibit such communication to the public.

The High Court of Justice referred preliminary questions to the CJEU to determine whether there is communication to the public, within the meaning of Article 3 (1) of Directive 2001/29/EC, in a case where an organisation other than the original broadcaster streams live broadcasts to members of the public entitled to access the original broadcast signal on their TV sets or laptops at a place chosen by them.

The CJEU first determines the meaning of "communication to the public" under Directive 2001/29/EC and then ascertains whether the TV broadcasts have been communicated to the public.

Concerning the definition of "communication to the public", the Court notes that Directive 2001/29/EC does not define the notion. But Recital 23 of the Directive provides that the right to communication should be interpreted broadly to cover any (re)transmission of a work to the public not present at the place where the communication originates by wire or wireless means, including broadcasting. By virtue of Article 3 (3) of Directive 2001/29/EC, the inclusion of a protected work in an authorised communication does not exhaust the right to authorise other communications of this work to the public. As a consequence, each retransmission of a work having multiples uses must be individually authorised.

The CJEU then specifies the notion of "a 'public'" to determine if the protected works have in fact been communicated. According to the Court's case law, the term "public" as contained in Article 3(1) of Directive 2001/29/EC refers to "an indeterminate number of potential recipients", i.e., "a fairly large amount of persons". In the present dispute, the Court notes that the retransmission of the TV programmes is aimed at all residents in the United Kingdom having an Internet connection and holding a valid TV licence in that country. The Court finds that the criteria of "a public" are met in the context of live streaming of TV programmes on the Internet. As a consequence, the Court concludes that the protected broadcasts at stake, by their retransmission via live streaming, are indeed communicated to the public in the sense of Article 3(1) of Directive 2001/29/EC.

In sum, the concept of "communication to the public" must be interpreted "as meaning that it covers a retransmission of works included in a terrestrial television broadcast, where the retransmission is made by an organisation other than the original broadcaster, by means of an Internet stream made available to the subscribers of that other organisation who may receive that retransmission by logging on to its server, even though those subscribers are within the area of reception of that territorial television broadcast and may lawfully receive the broadcast on a television receiver".

• Case C-607/11, ITV Broadcasting et al. v. TVCatchup, Judgment of the Court of Justice of the European Union (Fourth Chamber), 7 March 2013
http://merlin.obs.coe.int/redirect.php?id=16373 DE EN FR
CS DA EL ES ET FI HU IT LT LV MT
NL PL PT SK SL SV

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NATIONAL

BG-Bulgaria

Agreement on Standard for Regulation of Loudness in Advertising

On 6 February 2013, the stakeholders in the television advertising industry - advertisers, communication agencies, and providers of audiovisual media services - adopted a common standard for the regulation of loudness in advertising on the basis of a Общо споразумение (self-regulatory General Agreement).

The application of the standard will ensure the balance of separate elements of television programmes. This addresses frequent consumer complaints about drastic differences in sound levels especially between the audiovisual advertising and other programme elements. The standard has been elaborated according to the European Broadcasting Union's Recommendation № 128 of August 2011 ("Loudness normalisation and permitted maximum level of audio signals").

Starting from April 2013, the communication agencies - members of the БЪЛГАРСКА АСОЦИАЦИЯ НА КО-

МУНИКАЦИОННИТЕ АГЕНЦИИ (Bulgarian Association of Communication Agencies - BACA) - will have to comply with the set rules regarding the production of audiovisual commercial advertisements.

On the other side, it will be the audiovisual media service providers' obligation to exercise effective control over compliance with the requirements of the standard. The deadline for the establishment of an effective control system will be 30 June 2013.

The regulation of the loudness of advertising in audiovisual media services will be exercised regardless of the mode of dissemination (terrestrial, cable, satellite, IPTV) or the type of the transmitted media service (linear or non-linear).

The introduction of the so-called "loudness control," which normalises the sound level of audiovisual advertising, will have a positive effect on the overall sound environment by reducing the difference in levels between the commercial breaks and other productions. The increase of the dynamic range in the volume adjustment will reduce the discomfort of compression and deformation. The method has been approved from an engineering and scientific point of view and has been tested in practice. The new regulations will provide for the measurement of three main characteristics of the sound signal (programme loudness, loudness range and the maximum peak level). This method will replace the former practice of measuring only the maximum signal level.

The initiative is part of a strategic partnership between the АСОЦИАЦИЯ НА БЪЛГАРСКИТЕ РАДИО И ТЕЛЕВИЗИОННИ ОПЕРАТОРИ (Association of Bulgarian Broadcasters - ABBRO), the БЪЛГАРСКА АСОЦИАЦИЯ НА РЕКЛАМОДАТЕЛИТЕ (Bulgarian Association of Advertisers - BAA) and the BACA. The general objective of this partnership is the promotion of good advertising practices and the credibility of commercial advertising.

• Общо споразумение на индустрията относно единен стандарт за регулация на нивата на звука в рекламата , *06.02.2013* (A General Industry Agreement on a Single Standard for Regulation of Loudness in Advertising, 6 February 2013)
http://merlin.obs.coe.int/redirect.php?id=16345 BG

• European Broadcasting Union's Recommendation № 128 of August 2011
http://merlin.obs.coe.int/redirect.php?id=16346 DE EN

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DE-Germany

Federal Supreme Court Submits Questions on Video Game Copyright Protection

On 6 February 2013, the *Bundesgerichtshof* (Federal Supreme Court - BGH) decided, in a request for a preliminary ruling, to ask the Court of Justice of the European Union under which provisions technical measures taken to protect copyrighted video games were themselves protected.

The plaintiff in the national court proceedings produces and sells video games for a portable games console, which are only sold on special memory cards exclusively designed for this console. The defendants had sold, on the Internet, adapters for these memory cards with either a built-in memory chip or a slot for standard memory cards, which could be used to play unauthorised copies of the games on the console. The plaintiff claimed that this infringed Article 95a(3) of the *Urheberrechtsgesetz* (Copyright Act - UrhG), which is based on Article 6 of Copyright Directive 2001/29/EC and prohibits the sale of devices that enable the circumvention of effective technological measures designed to protect works protected by copyright.

The lower-instance courts had upheld the complaint and found that the common format of the memory cards and consoles produced by the plaintiff constituted an effective technological measure designed to protect the spoken, musical, photographic and video content of the games.

However, the BGH adjourned the proceedings on the grounds that the video games sold by the plaintiff did not only consist of spoken, musical, photographic and video content, but were primarily based on computer programs. These were governed by specific, less stringent regulations of the Directive on the legal protection of computer programs (2009/24/EC). Furthermore, Directive 2001/29/EC stated that its provisions did not affect existing Community law provisions on the legal protection of computer programs. On this basis, Article 69a(5) UrhG, which was designed to transpose this provision, stipulated that Article 95a(3) UrhG did not apply to computer programs.

The question that therefore arises is whether the ban on the sale of devices that enable the circumvention of effective technological measures designed to protect "hybrid products" such as those at issue in this case is governed by the provisions specifically applicable to computer programs or by those generally applicable to works protected by copyright, or whether both sets of rules are applicable to video games.

• *Pressemitteilung des BGH vom 7. Februar 2013 (Az. I ZR 124/11)* (BGH press release of 7 February 2013 (case no. I ZR 124/11))
http://merlin.obs.coe.int/redirect.php?id=16376 DE

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Federal Administrative Court Bases Press Information Right Directly on Article 5 of the Basic Law

In a decision of 20 February 2013, the *Bundesverwaltungsgericht* (Federal Administrative Court - BVerwG) rejected a complaint by a journalist who had tried to assert the press's legal right to information vis-à-vis the *Bundesnachrichtendienst* (Federal Intelligence Service). He had requested information about the number of full-time and unofficial employees with a National Socialist past who had worked for the Federal Intelligence Service and its predecessor organisation during specific periods between 1950 and 1980.

The BVerwG firstly stated that the press's right to information under the press laws of the *Länder* (in this case: Article 4(1) of the *Berliner Pressegesetz* (Berlin Press Act - BlnPrG)) did not apply in this case. The authorities covered by Article 4(1) BlnPrG did not include the Federal Intelligence Service, since the *Länder* did not have the legislative power to grant such a right to information from this particular federal authority. According to Article 73(1)(1) of the *Grundgesetz* (Basic Law - GG), the right to information from the Federal Intelligence Service fell under the exclusive legislative competence of the Federal Government in relation to foreign affairs and defence. However, insofar as is relevant, the *Gesetz über den Bundesnachrichtendienst* (Federal Intelligence Service Act - BNDG) does not provide for a right to information for journalists.

However, this does not mean that such a right to information is excluded *per se*, according to the BVerwG. The duty to protect the fundamental right of press freedom enshrined in Article 5(1) GG required the legislator to create such a right to information in view of the fundamental role played by the press in a free and democratic society. If such a right was not created under normal legislation such as the BNDG, a minimum obligation to provide information could be derived directly from Article 5(1) GG. There was therefore a right to information under the Basic Law, as long as it did not infringe the protected interests of private individuals or public bodies, as reflected in the restrictions on the information rights granted under press legislation (see Article 4(2) BlnPrG).

In the present case, the plaintiff was unable to obtain the information it wanted by asserting its right under Article 5(1) GG because the Federal Intelligence Service did not possess any information about the number of employees with a National Socialist past at the relevant time. However, the right to information did not create an obligation for the recipient of the request to obtain the required information, but only to provide information currently available.

The Federal Minister of the Interior has announced plans to assess whether legislation on the right to information from federal authorities should be reformed.

• *Pressemitteilung des Bundesverwaltungsgerichts zum Urteil vom 20. Februar 2013 (Az. 6 A 2.12)* (Press release of the Federal Administrative Court on the judgment of 20 February 2013 (case no. 6 A 2.12))
http://merlin.obs.coe.int/redirect.php?id=16377 DE

• *Pressemitteilung des Bundesministers des Innern vom 21. Februar 2013* (Press release of the Federal Minister of the Interior of 21 February 2013)
http://merlin.obs.coe.int/redirect.php?id=16378 DE

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Federal Administrative Court Allows Appeal against ProSiebenSat.1 and Axel Springer AG Ruling

According to media reports, on 22 January 2013, the *Bundesverwaltungsgericht* (Federal Administrative Court - BVerwG) upheld the appeal lodged by the *Bayerische Landeszentrale für neue Medien* (Bavarian New Media Office - BLM) against a decision denying it leave to appeal. In so doing, the BVerwG quashed the ruling of the *Bayerische Verwaltungsgerichtshof* (Bavarian Administrative Court - BayVGH) on the planned takeover of ProSiebenSat.1 by Axel Springer AG and allowed an appeal on the grounds of the fundamental importance of the case under Article 132(2)(1) of the *Verwaltungsgerichtsordnung* (Administrative Court Procedural Code - VwGO).

In a judgment of 15 February 2012, the BayVGH had ruled that the *Kommission zur Ermittlung der Konzentration im Medienbereich* (Commission on Concentration in the Media - KEK) had "overstepped the boundaries of its decision-making powers in several ways" when assessing the planned takeover under competition law. The BayVGH had not allowed an appeal against its judgment.

The procedure followed the KEK's decision of 10 January 2006, in which it ruled that the planned takeover would create a dominant market position in the sense of Article 26(1) of the *Rundfunkstaatsvertrag* (Inter-State Broadcasting Agreement - RStV) for the companies involved. The permission required to complete the takeover was therefore refused. As the responsible *Land* media authority, the BLM had implemented

the KEK's decision at the time. The BLM's ban on the merger was lifted as a result of the BayVGH's judgment.

The Federal Administrative Court will now again have to decide on the lawfulness of the ban on the planned takeover.

• *Pressemitteilung der KEK vom 14. Februar 2012* (KEK press release of 14 February 2013)
http://merlin.obs.coe.int/redirect.php?id=16379 DE

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Cologne District Court Rules on Reporting of Traffic Police Drug Test

According to media reports, in a ruling of 5 December 2012 (case no. 28 O 403/12), the *Landgericht Köln* (Cologne District Court) upheld a temporary injunction (decision of 13 September 2012) preventing a TV broadcaster from reporting on a drug test carried out by traffic police on a famous actor.

The traffic police carried out the check because they had noticed that the actor's eyes appeared to be red. They therefore conducted a drug test, which proved negative.

The incident was reported in a TV programme, which mentioned the actor's name. The court ruled that it was unlawful to identify the actor in reports on this case and that his general personality rights, enshrined in Article 2(1) in conjunction with Article 1(1) of the *Grundgesetz* (Basic Law - GG), had been infringed. In view of the fact that the plaintiff could not be blamed for any wrongdoing, there was no justification for using the drug test as the basis for a report suggesting that the actor might be a drug user. The principles governing the reporting of unproven allegations contained in press legislation did not apply in cases in which the person concerned had merely been exposed to the general risk of being subjected to a traffic check and had done nothing to contribute to any potential defamation.

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Federal Government Struggles to Reach Compromise on "Anti-Scam Law"

According to media reports, the discussion of the Federal Government's "anti-scam bill" was taken off the agenda of the cabinet meeting on 6 February 2013. It is thought that recent criticism has triggered a further need for consultation.

The current ministerial bill contains a series of provisions designed to prohibit certain practices relating to the mass distribution of warning letters, particularly concerning copyright infringements, as well as shady business models used by telesales firms and collection agencies. For example, subscriptions or competition entries completed over the telephone would only become legally binding if they were confirmed by email or fax. The maximum fines that the *Bundesnetzagentur* (Federal Network Agency) can impose for unauthorised telephone advertising would also be increased from EUR 50,000 to EUR 300,000. The bill also contains tighter regulations on the activities of collection agencies: firstly, higher fines could be imposed for deliberately making unjustified demands, while a comprehensive obligation to provide information about the amount, origin and justification of payment demands would also be introduced.

The bill also includes more consumer-friendly regulations regarding Internet copyright infringement warnings. The value of a claim would be limited to EUR 1,000, for example, while the official warning fee, which depends on the amount in dispute, would be capped at around EUR 155. Exceptions to this upper limit would only be possible if the warned party had previously infringed the rights of the rightsholder or if the copyright infringements were taking place on a commercial scale. The party issuing the warning would also be required to explain in detail the source of the information about the alleged infringement. If the warning proved to be unfounded, the procedural and legal costs of the unjustifiably warned party would need to be fully reimbursed *ipso jure*.

The bill is reported to have attracted criticism from people including the Federal Government Representative for Culture and Media (Minister for Culture), who thought the proposed regulations went too far. He demanded, for example, that the cap on the value of claims for copyright infringements should be removed not only in the case of repeat infringements against the same party, but whoever made the claim. The Minister for Culture also thought an exemption rule should, in principle, remove the cap on costs in cases that would lead to "unreasonable" results. Incidentally, he also opposed the principle that legal costs incurred as a result of unfounded warnings should be legally reimbursable. Rather, this should only apply if the demands made were "discernibly" unfounded *ex tunc*.

In view of the need for further consultation and the likely length of the legislative process, it remains uncertain whether the bill will be passed during the current legislative period.

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ES-Spain

Supreme Court Rules on the Use by a TV Broadcaster of Sampling of Another Broadcaster's Programmes

On 14 January 2013, the Supreme Court confirmed the decisions of the Court of First Instance of Barcelona and the Barcelona Court of Appeal ruling that the broadcaster La Sexta had repeatedly infringed the intellectual property rights of its competitor Telecinco by sampling images of Telecinco's programmes. Therefore, La Sexta was ordered to immediately stop using content and images produced or broadcast by Telecinco.

The conflict between the Spanish TV broadcasters, "La Sexta" and "Telecinco" arose in 2008 when Telecinco filed a lawsuit against La Sexta arguing that La Sexta was constantly using images and content produced and/or broadcast by Telecinco without its authorisation, consequently infringing the intellectual property rights of Telecinco. La Sexta included clips, excerpts and samplings from other programmes in a "remix" programme that highlighted the humorous nature of the clips or included an excerpt from programmes covering celebrities' activities.

La Sexta alleged that the use of images and content from Telecinco in its own programmes should be protected by the rights of freedom of expression and information, and also by the limitation of copyright consisting in the right to citation or quotation of fragments of the works of others (Article 32 Spanish Copyright Act), and was in accordance with the usual practice of the sector.

However, both the Court of First Instance of Barcelona and the Barcelona Court of Appeal rejected such allegations. Finally, the Supreme Court confirmed both decisions on the basis of the following:

- La Sexta used too much content from Telecinco to consider it as information, (approximately 21% of one particular programme consisted of content and images from Telecinco);

- This use cannot be derived from the right to quote fragments of the works of others, as the purposes of such use was not for an educational, cultural or investigative purpose as set out in Article 32. This Article states that "It shall be legal to include in one's own work fragments of the works of others, whether of written, sound or audiovisual character, and also to include isolated works of three-dimensional, photographic, sculpted or comparable art character, provided that the works concerned have already been published and that they are included by way of quotation, or for analysis, comment or critical assessment. Such use may only be made for teaching or research purposes and to the extent justified by the purpose of the inclusion, and the source and the name of the author of the work shall be stated".

La Sexta states that the Supreme Court's decision does not affect its broadcast scheduling as the decision of the Barcelona Court of Appeal in 2010 was accepted and La Sexta has complied with it. Nevertheless, the amount and payment of damages remain live issues. Telecinco may initiate immediate proceedings on these issues.

• *Sentencia del Tribunal Supremo STS 426/2013 de 14 de enero de 2013 "Telecino contra la Sexta"* (Decision STS 426/2013 of 14 January "Telecino v. la Sexta")
http://merlin.obs.coe.int/redirect.php?id=16391 ES

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Telecommunications Market Commission Exempts Vodafone from Funding RTVE

Since the funding of the national public service broadcaster, RTVE Corporation, was reformed in August 2009, advertising was eliminated as a source of income and a new tax was imposed on national commercial television companies as well as on national telecommunications operators offering audiovisual services (see IRIS 2010-1/18). The tax to be paid annually by the latter is to amount to 0.9% of their gross operating income, corresponding to their yearly turnover.

The telecommunications company Vodafone España S.A.U. announced in 2012 that before January 2013 it would cease to offer television services to its ADSL clients and mobile users. Therefore the operator asked the Spanish telecommunications regulator, the *Comisión del Mercado de las Telecomunicaciones* (Telecommunications Market Commission - CMT), to be exempted from paying the tax through which they had been contributing to the funding of RTVE.

Once the CMT checked that Vodafone was no longer providing audiovisual services and therefore subject to the payment of the tax, it agreed during its meeting of 14 February 2013 that Vodafone would be exempted from funding RTVE.

• *Resolución por la que se analiza la obligación de VODAFONE ESPAÑA, S.A.U, de realizar la aportación recogida en la Ley 8/2009, de 28 de agosto, de Financiación de la Corporación de Radio y Televisión Española (RO 2012/2885), 14 de febrero de 2013* (Resolution that analyses the obligation of Vodafone España, S.A.U., of contributing as stated in the Act 8/2009 of 28 August 2009 on the funding of RTVE Corporation (RO 2012/2885), 14 February 2013)
http://merlin.obs.coe.int/redirect.php?id=16392 ES

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

FR-France

Competition Authority Sets Framework for CanalSat Channel Distribution

In July 2012, the *Autorité de la Concurrence* (competition authority) authorised the grouping of the pay television activities of TPS and the Canal Plus group, i.e., the two satellite bundles CanalSat and TPS, subject to the implementation of corrective measures imposed in the form of thirty-three injunctions (see IRIS 2012-8/25). By means of these injunctions, the competition authority wanted to ensure clear rules for the independent channels having access to distribution on CanalSat. The authority called on Canal Plus to ensure that these channels would have the benefit of technical, commercial and tariff conditions within the CanalSat offer that were transparent, objective, and non-discriminatory. The authority also prohibited Canal Plus from concluding separate contracts for commercial distribution and the services associated with carrying the channels without making the commercial distribution of a channel dependent on the signature of a contract for carrying the channel. The authority had also made its authorisation conditional on giving alternative distributors, and more particularly the IAPs, the possibility of competing effectively with exclusive distribution on CanalSat. It therefore required Canal Plus to make available all the cinema channels Canal Plus edits or might edit, except the Canal+ channels (i.e., "unbundle" them), and to maintain the quality of these channels (Ciné + Premier, Ciné + Frisson, Ciné + Famiz, etc), which are currently distributed exclusively as part of a satellite package. When a channel wants to be included in the CanalSat bundle, it receives a fee per subscriber. The merger with TPS puts CanalSat in a dominant position, enabling it to impose lower fees or even take on the most attractive channels on an exclusive basis, thereby completely depriving the distributors (Free, Orange, etc) of access to them.

The competition authority has therefore called on Canal Plus to draw up three "benchmark offers": one for including independent channels in its CanalSat offer, one for its carrying services, and one setting out the tariff and technical conditions for making the Canal Plus cinema channels available. These benchmark offers are currently being examined by the authority. To help it in its examination, the authority has put the offers on line on its Internet site, and invited interested third-parties (channels, distributors, etc) to submit their observations on them by no later than 18 March 2013. The composition of the IAPs' offers could therefore evolve in the coming months, and CanalSat may lose its exclusivity for certain channels.

• *Communiqué de l'Autorité de la concurrence du 4 mars 2013* (Communiqué from the competition authority, 4 March 2013)
http://merlin.obs.coe.int/redirect.php?id=16380 FR

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GB-United Kingdom

ATVOD's Rulings on What is a "Video-on-Demand" Service Overturned

If a service in the United Kingdom constitutes a "video-on-demand" service, it should so notify ATVOD - the Authority for Video on Demand - so as to come under its regulatory jurisdiction regarding editorial content and pay an annual fee.

Interpreting the criteria in concrete cases is, in the first instance, the responsibility of ATVOD; however, it is the UK regulator Ofcom which has the ultimate legal responsibility and so an appeal lies to it.

VOD criteria (in implementing the Audiovisual Media Services Directive) are retrofitted through the Audiovisual Media Services Regulations 2009 and the Audiovisual Media Services Regulations 2010, as Section 368A of the Communications Act 2003. This defines an On Demand Programme Service (ODPS); one of the main characteristics is that 04046"its principal purpose is the provision of programmes, the form and content of which are comparable to the form and content of programmes normally included in television programme services." (Section 368A(a)).

Two cases involved BBC Worldwide, in respect of the two YouTube channels. One was Top gear and the other BBC Food. (In fact there is a third, involving ODPSs provided by Channel Flip Media Limited, in which Ofcom overturned ATVOD's ruling as well- see IRIS 2013-2/27).

In determining whether a VOD constitutes an ODPS, Ofcom adopts a two-stage test:(i) what is the principal purpose of the service (i.e., is it to provide programme services?) and (ii) the comparability test (is the material sufficiently comparable to television programme services?).

BBC Worldwide argued that, whilst the relevant content was similar to television programme services, it was "in the form of clips of programmes, not programmes in themselves". Clips were of approximately 5 to 8 minutes (and a maximum of 15 minutes) duration whereas, e.g., BBC iPlayer (regulated by ATVOD) presents "full-length" programmes.

Ofcom, however, stressed that its decision (focusing on duration and production quality) is fact-specific,

stating "any service would need to be considered on the basis of its relevant characteristics and all the relevant evidence".

• Ofcom BBC Food Youtube decision, published on 18 January 2013
http://merlin.obs.coe.int/redirect.php?id=16357 EN
• Ofcom BBC Top Gear decision, published on 18 January 2013
http://merlin.obs.coe.int/redirect.php?id=16358 EN

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Regulator Finds Sponsorship Credits to be in Breach of Broadcasting Code

Ofcom, the UK communications regulator, has decided that a number of sponsorship credits were in breach of its Broadcasting Code. These are credits that identify the sponsors of programmes, as is required for reasons of transparency. Indeed, the Code requires that sponsorship is clearly identified by credits that make clear the identity of the sponsor and the relations between the sponsor and the sponsored content. However, credits do not count as part of the advertising permitted under the AVMS Directive, and in order to prevent the credits from effectively becoming extra advertising, they must not contain advertising messages. This is required both by the Directive and by guidance from the European Commission. The requirements are reflected in the Broadcasting Code, which requires that such credits around sponsored programmes must not contain advertising messages or calls to action, and must not encourage the purchase of the products or services of the sponsor. They may only refer to such products or services for the sole purpose of helping to identify the sponsor. Credits during programmes must also not be unduly prominent and must consist of a brief neutral statement identifying the sponsor. Ofcom has periodically monitored the use of such credits, and compliance in some member states is also being monitored by the European Commission.

Ofcom has reported 11 cases of sponsorship credits that infringed the provisions of the Code. For example, sponsorship credits for the Channel 5 programme 'Half Built House' by RatedPeople.com, an internet service permitting homeowners to contact tradespersons rated for quality, had included the message 'The next time you are looking for a tradesman make sure they're rated; Ratedpeople.com sponsors of Half Built House'. Messages relating to other programmes included 'MakeaMatch sponsors Inside Hollywood; find love today', 'Indian Idol presented by Lycamobile; call the world for less', and 'Powered by Claim Today Solicitors; don't delay, claim today'. All were found to be in breach as they included advertising material or a call to action. In one case, sponsorship of weather forecasts by Qatar Airways included credits showing more pleasant conditions elsewhere in the world accompanied by the company's logo for less than two seconds, with no further identification of the sponsor in the opening credits. Although a voiceover identified the sponsor in the closing credits, Ofcom decided that there was a breach of the Code as the association between the sponsor and the sponsored content was not made clear in the opening credits.

• 'Sponsorship Credit Findings' in Ofcom Broadcast Bulletin 223, 4 February 2013
http://merlin.obs.coe.int/redirect.php?id=16359 EN

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HU-Hungary

Amendment of Hungarian Constitution regarding Political Advertising

On 4 January 2013, the *Magyar Köztársaság Alkotmánybíróság* (Constitutional Court of Hungary) annulled the new Election Act which a.o. amended regulations on political advertising. The provisions gave the exclusive right to disseminate political advertisements to the public service media. Subsequent to the ruling, the government submitted a draft amendment to the *Magyarország Alaptörvénye* (Fundamental Law, Constitution of Hungary). The content of the amendment implements the wording of the provision, which the Constitutional Court had eliminated, into the Constitution.

On 26 November 2012, Hungary's Parliament had passed a new law regulating the election process ("New Election Act") that sought to implement a number of changes to Act C of 1997 on Electoral Procedure ("Old Election Act"), including revisions to the provisions regulating political advertising in the media.

The Old Election Act foresaw the institution of campaign silence, which permitted commercial and public media service providers to run political advertisements during the roughly fifty-day period from the announcement of the elections until midnight preceding the election day. Campaign silence was prescribed by the Act in favor of the free development of the voter's will by guaranteeing them time to consider their decision calmly before voting. The New Election Act extended this campaign silence to 48 hours preceding the election day.

But more importantly, the New Election Act should provide the public service media with the exclusive right to show political advertising. According to this legislative concept, commercial and community media providers would have been prohibited from disseminating political advertisements. Consequently,

public service media would have been the sole source of electoral information. No other media provider would have been able to take part in the electoral process since not only political advertisement but also reports about the parties' programmes and candidates would have been forbidden.

The President of the Republic vetoed the New Election Act on constitutional grounds and objected to an infringement of the freedom of media and information as provided by Article 9 of the Magyarország Alaptörvénye. Equality between the media providers, both public and commercial, should be upheld in favor of pluralistic electoral coverage. Following the President's reasoning, the Constitutional Court eliminated the relevant provisions in its ruling of 4 January 2013. Not only did the Court find that the exclusive right of the public service media to disseminate political advertisements infringes the freedom of the media but also the citizen's right to information.

On 8 February 2013, supported by two-thirds of the Parliament, the Government submitted an amendment seeking to incorporate the exclusive right of public service media in the corpus of the Constitution itself as section 3 of the aforementioned Article 9. The National Assembly passed the bill amending the constitution on 11 March 2013.

• *Ügyszám: I/03653/2012 Első irat érkezett: 06/12/2012 Az ügy tárgya: az Országgyűlés által 2012. november 26-án elfogadott, a választási eljárásról szóló törvény (T/8405. számú törvényjavaslat) tárgyában előterjesztett előzetes normakontroll* (Constitutional Court's Resolution of No. 1/2013 I. 7. AB of 4 January 2013)
http://merlin.obs.coe.int/redirect.php?id=16347 HU

• *Magyarország Alaptörvényének negyedik módosítása* (Draft of the Fourth Amendment to the Fundamental Law of Hungary of 8 February 2013)
http://merlin.obs.coe.int/redirect.php?id=16384 HU

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New Amendments to Media Law

In February 2013, the Hungarian Government submitted another bill amending the media laws to the National Assembly. The amendment is based on the negotiations between the Hungarian Government and the Council of Europe. In May 2012, the Council published a report with a host of recommendations on transforming Hungary's new media regulation (see IRIS 2011-4/2). The amendment of Hungary's media laws, in early summer 2012, addressed parts of these recommendations in a rather incomplete manner (see IRIS 2012-8/100)

Among these recommendations, the ones addressed by the recently proposed amendment — which reflects the agreement reached by the Council of Europe and the Government of Hungary — have to do with safeguards for the independence of the media authority and stipulations regarding media content.

Pursuant to the amendment, the President of the *Nemzeti Média- és Hírközlési Hatóság* (National Media and Infocommunications Authority) will no longer be appointed by the Prime Minister, but by the President of the Republic on the recommendation of the Prime Minister (see IRIS 2010-8/34). In another change, the amendment has empowered professional interest groups and self-regulatory industry organisations to make staffing proposals as part of the appointment procedure. The Prime Minister is not bound to follow these proposals, but has to consider and deliberate upon them.

Additionally, the amendment tightens up the professional eligibility requirements of the authority's president, stipulating ten years' professional experience instead of the previously envisaged three years. "Professional experience" is defined as being connected with an official supervisory function, or a scientific degree in a field related to media or telecommunications, or a track record of relevant teaching in higher education. Finally, the new provisions prohibit the reappointment of the president for a second term in office.

By leaving the procedure of electing members to the Media Council intact, the amendment does not bring about changes; procedural safeguards that would ensure multi-party presence in the body are not envisaged. In view of the current political power situation in Hungary, the proposed changes do not amend the framework according to which the political independence of the media authority shall be safeguarded. Since the amendments will apply to appointment procedures commenced after the coming into force of the new provisions, they will have no effect on the mandate of the current members and the president of the authority. They will stay in office until 2019 when their nine-year term expires.

The other central component of the submitted bill concerns the requirement of balanced coverage applicable to linear media services. The current wording of the Media Act requires news coverage to be "comprehensive, factual, up-to-date, objective and balanced." If the suggested amendments go through unchanged, the first four of these five adjectives will be dropped, leaving "balanced" as the only stipulation. The stated reason for this simplification is that the omitted adjectives impose an obligation on radio and television stations that is difficult to interpret. Considering, however, that judicial practice to date has construed the criterion of the "balanced" quality of reporting as an umbrella concept that semantically covers the formally omitted criteria, the amendment is unlikely to amount to a narrowing down of this provision's scope of application.

The media law amendments so far have affected an enormous number of sections in the Hungarian me-

dia legal framework. To date, these amendments have addressed the structural and conceptual objections articulated in several fora, including international documents, partially and largely confining themselves to specifics of application. Substantial changes, however, have not been implemented. Hungarian non-governmental organisations therefore sent on 4 February 2013 an open letter to the Council of Europe, pointing out that the recent agreement was not in accord with the former requirements of the Council and did not do much to improve the freedom of the media in the country.

• *T/10051. számú törvényjavaslat a sajtószabadságról és a médiatartalmak alapvető szabályairól szóló 2010. évi CIV. törvény és a médiaszolgáltatásokról és a tömegkommunikációról szóló 2010. évi CLXXXV. törvény módosításáról* (Draft of the Amendment to the Media Act of February 2013)
http://merlin.obs.coe.int/redirect.php?id=16349 HU

• Open letter of Hungarian NGOs to the Council of Europe of 4 February 2013
http://merlin.obs.coe.int/redirect.php?id=16350 EN

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IE-Ireland

Presenter's Comments Breached Broadcasting Act

At their January 2013 meeting, the Compliance Committee of the Broadcasting Authority of Ireland (BAI) upheld a series of complaints made by viewers of Tonight with Vincent Browne, broadcast by TV3. The complaints were made in accordance with section 48 of the Broadcasting Act 2009 and, those complaints upheld claimed that the broadcast breached the requirement for fair, objective and impartial treatment of current affairs.

The complaints relate to a current affairs programme that focused upon the forthcoming US Presidential election and was broadcast on 23 October 2012. The statements cited by the complainants, were comments by the presenter that the State of Israel is "the cancer in foreign affairs", that Israel "polarises the Islamic community of the world against the rest of the world" and that with the creation of Israel the Jews "stole the land from the Arabs". The presenter subsequently, on 25 October 2012, clarified his comments by stating he was not anti-Semitic and was referring to Israel's foreign policy.

In dealing with the complaints the BAI accepted that broadcasters have discretion in the treatment of current affairs and such treatment can be challenging, robust and lively but this must be handled in a fair, objective and impartial manner. The BAI also acknowledged that a critical examination of the relationships between the State of Israel and its neighbouring countries is a legitimate topic for a current affairs programme. The comments by the presenter in this case, however, were included without any apparent context or relevance to the discussion of the then forthcoming US Presidential election and were not balanced by contributions from the programme guests.

The BAI concluded that the broadcast failed to meet the requirement for fair, objective and impartial treatment of current affairs. With respect to further complaints that the presenter's comments were anti-Semitic and likely to encourage acts of terror against Israel, the Compliance Committee was satisfied that this was not substantiated by the programme content and that there was nothing to indicate that the comments made were of this nature or that they incited or promoted criminal activity.

• Broadcasting Authority of Ireland (BAI), Broadcasting Complaints Decisions (February 2013)
http://merlin.obs.coe.int/redirect.php?id=16363 EN

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Household-Based Public Broadcasting Charge Moves a Step Closer

On 26 February 2013 the Minister for Communications, Energy and Natural Resources confirmed that plans are being advanced to introduce a household-based public broadcasting charge. The new charge will replace the existing television licence fee, a device-based charge, legislated for under sections 140 to 148 of the Broadcasting Act 2009.

The television licence revenue is currently used to fund public service broadcasting on RTE, TG4, and separately through independent broadcast productions, by way of the Sound and Vision Scheme, which is administered by the Broadcasting Authority of Ireland. A further proportion of the television licence revenue is used to fund a Broadcast Archiving Scheme which runs until 31 December 2014 (see IRIS 2012-4/29).

According to the Minister, convergence in technology means that public service broadcasting and content is available to everyone on a range of platforms and devices and is no longer dependent on the ownership of a television. Therefore, in order to secure future funding for public service broadcasting a device-independent charge on eligible households and businesses will be introduced. No date has been set for the introduction of the new charge and the Minister

awaits the recommendations on the best way to collect the charge from an independent group, who are tasked with undertaking a value-for-money review.

• Dáil Éireann Debate, Vol. 794, No. 1, 26 February 2013
http://merlin.obs.coe.int/redirect.php?id=16364 EN

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IT-Italy

Ministerial Decree Sets Transmission Time and Investment Quotas for Italian Works

On 22 February 2013, the Ministry of Economic Development and the Ministry of Cultural Heritage and Activities, upon consultation with the relevant Parliamentary Committees, adopted a Ministerial Decree defining the notion of "cinematographic work of original Italian expression" and specifying the transmission time and investment quotas that broadcasters subject to Italian jurisdiction must reserve for such works, as per Section 44(2) and (3) of the Consolidated Law of Audiovisual and Radio Media Services (CLARMS). These "Italian quotas" are framed as sub-quotas of the transmission time and revenues that Italian broadcasters must devote to European works pursuant to those provisions.

The notion of "cinematographic work of original Italian expression" ("Italian works") comprises films, whatever their place of production, whose original version is, for more than 50% of its duration, in Italian, in one of Italy's dialects, or in one of Italy's minority languages (if a film is set in or includes characters associated with Italian Regions inhabited by language minorities). The above criteria must be applied having regard to a film's spoken sequences only. Interested parties may request the Directorate General for Cinema (established within the Ministry for Cultural Heritage and Activities) to certify a given film's status as Italian work.

The Ministerial Decree sets different transmission time quotas that the public service broadcaster (PSB) and other broadcasters must reserve for Italian works produced in the last five years. In this connection, the notion of "transmission time" does not include the time allotted to news, sports events, games, advertising, teletext services and teleshopping. The PSB must devote to Italian works produced in the last five years: 4% of its transmission time and, in the case of dedicated theme channels; 1.3% of its transmission time, in the case of non-thematic channels. The PSB, moreover, must schedule an adequate proportion of such works at all the times of the day. Other broadcasters, instead, must reserve for such works: 3% of their transmission time, in the case of dedicated theme channels; and 1% of their transmission time, in the case of non-thematic channels.

The Ministerial Decree also sets different investment quotas that the PSB and other broadcasters must devote to Italian works. Those quotas are calculated: for the PSB, on the basis of its revenues from licence fees and advertising, excluding revenues from contracts with public entities and from the sale of goods and services; for other broadcasters, having regard to their annual revenues from advertising, teleshopping, sponsorship, agreements and contracts, public funding, and premium offers of non-sports programmes broadcast under their editorial responsibility. The PSB must devote: 3.6% of its revenues to the production, financing, pre-acquisition or acquisition of Italian works; 0.75% of its revenues to animation works for the education of children. Other broadcasters must reserve 3.2% of their revenues to the production, financing, pre-acquisition or acquisition of Italian works by independent producers. However, those broadcasters must devote 70% of that sub-quota (i.e., 2.24% of their revenues) to Italian works transmitted within 5 years of their production.

Finally, the Ministerial Decree lays down transitional arrangements for the phasing in of the above quotas. The transmission time quotas are reduced by 40% in the second half of 2013, by 30% in 2014 and by 15% in 2015. The investment quotas are reduced by 30% in the second half of 2013 and by 15% in 2014. The quotas set in the Ministerial Decree may be modified in the future by another Decree adopted pursuant to the same procedure.

• *Decreto del Ministero per lo Sviluppo Economico e del Ministero per i Beni e delle Attività Culturali del 22 febbraio 2013* (Decree of the Ministry of Economic Development and the Ministry of Cultural Heritage and Activities of 22 February 2013)
http://merlin.obs.coe.int/redirect.php?id=16387 IT

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LV-Latvia

Amendments to Electronic Media Law Adopted

On 14 February 2013, the Saeima (Latvian Parliament) adopted amendments to the Electronic Media Law. The amendments were announced in the law gazette on 6 March 2013 and aim at implementing a new regulatory framework for digital terrestrial broadcasting services (see IRIS 2013-1/29). The current structure, according to the Electronic Media Law is in force only

until 31 December 2013. So far, digital terrestrial broadcasting is provided by only one operator chosen in the course of a tender organized by the Cabinet of Ministers (see IRIS 2010-2/27). The chosen operator is the company SIA Lattelecom, which is owned partly by the State (51%) and partly by a private entity (49%, by a member of TeliaSonera AB group).

The new amendments provide that the State-owned company *VAS Latvijas Radio un televīzijas centrs* (Latvia State Radio and Television Centre - LVRTC) will take over the distribution of public service broadcasting television programmes as well as the commercial national and regional television programmes by concluding contracts with the relevant broadcasters. The *Nacionālā elektronisko plašsaziņas līdzekļu padome* (National Electronic Media Council - NEPLP), the media regulatory authority, will approve the list of the programmes that are to be distributed to end-users free of charge. The list may be appealed to the Administrative Court. However, the broadcasters will have to pay a fee to the LVRTC for the distribution of these programmes. The fee will be calculated according to criteria approved by the Cabinet of Ministers. During the parliamentary debate prior to the amendments it was claimed that the fee should be much lower than the current one paid to SIA Lattelecom.

As regards pay-TV programmes the Saeima had to make a fundamental choice regarding the number of operators distributing the programmes: namely, the distribution of such programmes could be entrusted to only one operator (current situation) or to several ones. The Cabinet of Ministers did not make such a choice and simply briefed the Saeima on the advantages and disadvantages of both solutions.

After a lengthy debate the Saeima decided that the pay-TV services will be provided by just one commercial operator selected on the basis of a tender organized by the Cabinet of Ministers. The operator will have to provide the service by using the technical means of the LVRTC. The results of the tender will be determined by a cross-institutional commission, including members of the Council, the Ministry of Transport, the Ministry of Culture and the Competition Council. The amendments to the law provide the basic criteria for the tender selection: experience in distributing television programmes to end-users, availability of client service in the whole territory of Latvia, financial means and stability, and the strategy for providing the service. The results of the tender may be appealed to the Administrative Court.

The adopted amendments do not include the power of the Council to approve the list of programmes included in pay-TV packages to be distributed by digital terrestrial means. Such a suggestion had been included in the draft amendments and was approved at the first reading. It was much criticised subsequently, and the Saeima decided not to approve it at its final reading.

The amendments will come into force on 15 March 2013. By 31 March 2013, the Cabinet of Ministers will have to issue the tender rules for the selection of the distributor of pay TV programmes.

- *Likums "Grozījumi Elektronisko plašsaziņas līdzekļu likumā". 06.03.2013* (Amendments to the Electronic Media Law of 6 March 2013)

http://merlin.obs.coe.int/redirect.php?id=16385 LV

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NL-Netherlands

Decision of the Council of State on Budget Cuts for Dutch Regional Broadcaster

On 6 February 2013 the highest Dutch administrative court, the *Raad van State* (Council of State), decided on an appeal filed by the Dutch regional public service broadcaster "RTV Noord-Holland" regarding cuts to RTV Noord-Holland's budget. RTV Noord-Holland is funded by the Province of Noord-Holland. In 2011 *het college van Gedeputeerde Staten van Noord-Holland* (Executive Board of the Province of Noord-Holland) informed RTV Noord-Holland that its budget for 2012 would be 10% lower than the previous year and that the real index, which was usually added to its budget to compensate for increases in costs, would not apply.

RTV Noord-Holland appealed the decision to the Executive Board. The Executive Board dismissed the appeal, after which RTV Noord-Holland appealed to the Court of Haarlem in 2012. The Court ruled that the decision of the Executive Board was not duly motivated and ordered the Executive Board to take a new well-motivated decision. However the Court did not rule on the budget cuts. RTV Noord-Holland subsequently appealed to the Council of State. The Council of State considered both the verdict of the Court of Haarlem as well as the newly motivated decision of the Executive Board.

In the appeal before the Council of State, RTV Noord-Holland claimed that the budget cuts violate Article 2.170 of the Dutch Media Act (Mediawet 2008). According to that Article, a Province has to provide funding for least one regional public service media-institution. The funding has to facilitate a high quality offer of media services and enable maintenance of the level of activities with regard to offering media services by regional public broadcasters as existed in 2004. The Council of State dismissed the appeal, declaring that the budget cuts are admissible, as Article 2.170 of the Dutch Media Act imposes the duty to maintain the high quality offer and activities of 2004, but not a duty to maintain the budget applicable in

2004. In other words, budget cuts are permissible if the level of activities is maintained at the level of 2004.

Other claims brought forward by RTV Noord-Holland included an alleged violation of administrative principles of sound administration and diligence and an incorrect imposition of the burden of proof. The Council of State rejected all grounds of appeal and upheld the renewed decision of the Executive Board of the Province of Noord-Holland.

• *Raad van State, 6 februari 2013 LJN: BZ0700* (Decision of the Council of State of 6 February 2013, LJN: BZ0700)
http://merlin.obs.coe.int/redirect.php?id=16393 NL
• *Rechtbank Haarlem, 29 maart 2012, LJN: BW0289* (Decision of the Court of Haarlem of 29 March 2012, LJN: BW0289)
http://merlin.obs.coe.int/redirect.php?id=16394 NL

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Scribes are not Allowed under the Dutch Media Act

On 14 January 2013 the *Rechtbank Amsterdam* (Amsterdam District Court) ruled that electronically-added advertisements displayed with games results, so-called "scribes", (i.e., promotional expressions) are not allowed under the *Mediawet 2008* (Dutch Media Act - Mw). On 10 September 2009 the *Commissariaat voor de Media* (Dutch Media Authority) imposed a EUR 60,000 fine on the *Nederlandse Omroep Stichting* (Dutch Public Broadcaster NOS) for not complying with the sponsorship rules applicable to public service broadcasters (violating Article 2.89 (1)(b) Mw) by using the above-mentioned scribes. NOS filed an objection against the imposed fine, which was rejected by the Dutch Media Authority. NOS appealed the decision of the Dutch Media Authority before the Amsterdam District Court.

NOS argued that the advertisements for the Sponsor Bingo Lottery (hereafter the "Lottery") that were electronically added fall within the exemption applicable to charity institutions provided by Article 1.1(2) Mw. The Court, however, does not accept this argument. It states that the viewer is encouraged to buy the Lottery's products, because buying a lottery ticket is the only way in which the viewer could support the Lottery's charities.

Subsequently, NOS argued that the scribes were allowed under Article 2.89(2) Mw, because the scribes were not predominant in the broadcast and were therefore exempted. The Court rejects this argument on the following grounds. The Explanatory Memorandum of the Dutch Media Act mentions that the non-commercial nature of public broadcasting services is a fundamental principle. It was not the intention of the legislator to bring scribes under the exception provided by Article 2.89(2) Mw. Article 2.89 Mw does not cover advertisements that are electronically added to the broadcast. Therefore, scribes do not benefit from this exception.

Thirdly, NOS stated that scribes were allowed because they comply with the criteria of Article 9(1)(c) *Mediabesluit 2008* (Dutch Media Ordinance, see IRIS 2009-3/29), which allows advertisements in certain circumstances. The Dutch Media Ordinance provides specific rules on certain aspects of the Dutch Media Act. According to the aforementioned Article, reference to a product or service is allowed, if the reference is not exaggerated or excessive. The Court, however, states that exaggeration and excessiveness is a given fact with regard to scribes. Finally NOS argued that the imposed fine infringed Article 10 of the European Convention on Human Rights (ECHR), because the law did not adequately prescribe the imposed fine. The Court states that the general prohibition is sufficiently grounded in Article 2.89 Mw and that Article 10 ECHR was not infringed.

If the imposed fine were to be upheld, NOS argued that the amount of EUR 60,000 would not be proportionate to the culpability involved, that there were mitigating circumstances and that the amount of the fine was therefore in conflict with the *Beleidslijn Sanctiemaatregelen 2007* (consolidated version of the policy rules on sanctions of 2007, see IRIS 2007-6/24). The Court does not agree with NOS and states that the Dutch Media Authority was justified in categorising the offence as 'serious' due to its systematically showing and putting emphasis on the name Sponsor Bingo Lottery during the broadcast. Moreover, it was NOS's duty to examine whether scribes were prohibited under the Dutch Media Act. However, the Court finds that the fine should be reduced due to the fact that scribes are a completely new phenomenon that the Dutch Media Authority has never sanctioned before. The Court also takes into account the fact that NOS has taken adequate measures to prevent future offences. Therefore, the imposed fine has been reduced to EUR 30,000.

• *Rechtbank Amsterdam 14 januari 2013, NOS-Eredivisie v. CvdM, LJN BY8744* (Judgment of the District Court of Amsterdam, NOS-Eredivisie v. CvdM, LJN BY8744)
http://merlin.obs.coe.int/redirect.php?id=16390 NL

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Bill Modernising the Media Act 2008

On 14 February 2013, the Dutch Secretary of Education, Culture and Science, S. Dekker, introduced a

bill to amend the *Mediawet 2008* (Media Act 2008) in order to "modernise the system of national public broadcasting". The system should become more compact in the future: in 2016 the public broadcasting service will consist of up to 8 broadcasters, instead of the current 21. The public broadcasting service will be composed of three cooperative broadcasters (AVRO/TROS, VARA/BNN and KRO/NCRV), two task organisations (NOS and NTR) and three independent broadcasters (EO, MAX, VPRO). New aspiring broadcasters can become part of the public broadcasting service as from 2016. Before the start of this new accreditation period, the current aspiring broadcasters, PowNed and WNL, should enter into cooperation with one of the three cooperative broadcasters or one of the three independent broadcasters.

By means of the bill, the Government aims at modernising the public broadcasting service and cutting the budget. Broadcasters will receive in the future a basic budget of 50% to provide a minimum number of hours broadcast. Public broadcasters voluntarily merging, such as AVRO/TROS, VARA/BNN and KRO/NCRV, will be granted twice the basic budget and a merging bonus. Furthermore, the program budget, which is provided by the Board of Directors of the Dutch Public Broadcasting Foundation, will be 50% of the total budget that is available for authorized broadcasters, instead of the current 30%.

In addition, the 2.42 broadcasters that are church denominations and denominations based on spiritual principles, will disappear. They will no longer receive a separate budget from the government for their services. However, the Dutch Secretary of Education, Culture and Science will make arrangements with the Board of Directors of the Dutch Public Broadcasting Foundation on good embedding of ideological programs and the involvement of church denominations.

The amendments of the bill will enter into force with effect from a date to be determined by Royal Decree, which may be determined differently for the various Articles or parts thereof.

• *Voorstel van wet, 14 February 2013, Kamerstuk 33 541 nr. 2* (Bill to amend the Media Act 2008, 14 February 2013)
http://merlin.obs.coe.int/redirect.php?id=16388 NL
• *Memorie van Toelichting, 14 February 2013, Kamerstuk 33 541 nr. 3* (Explanatory Memorandum, 14 February 2013, Kamerstuk 33 541 nr. 3)
http://merlin.obs.coe.int/redirect.php?id=16389 NL

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NO-Norway

Broadcasting Act Harmonised with the AVMS Directive

On 19 October 2012 the Government submitted a proposal to implement the AVMS Directive into Norwegian law by amending *kringkastingsloven* (the Norwegian Broadcasting Act). The amendment was enacted by Parliament on 10 December 2012 with effect from 1 January 2013. This means that the scope of the Broadcasting Act has been extended to include audiovisual on-demand services, but is limited to on-demand services that are competing with traditional television broadcasts.

One of the other main changes to the Act is that it inserts certain exceptions to the previous prohibition against product placement in Norwegian audiovisual productions. Product placement is now allowed in certain categories of programmes, but it is still prohibited in programmes directed at children and in programmes that are produced or commissioned by the State-owned Norwegian public service broadcaster Norsk Rikskringkasting AS (NRK). The rules concerning sponsoring have been liberalised, and now allow a sponsor to be identified by a product or service. This comes as an addition to the former criteria of identification by a sponsor's name, trademark or logo.

The revised Act also establishes obligations to provide subtitling for certain programmes for all nation-wide television channels with more than 5 per cent market share, as well as an increase in the level of required subtitling for NRK.

Norway has an absolute prohibition against alcohol advertising in all media. Broadcasters or other media service providers that are situated in countries that allow alcohol advertising may direct their transmissions at Norway. Previously, Norway had an explicit right to impose on these broadcasters from other EEA-countries an order to use a censor strip to prevent the showing of alcohol advertising. This special rule is not maintained. However, the Government has stated that the Norwegian prohibition on alcohol advertising can remain, and that this must apply to such advertising in foreign transmissions directed at Norway. It is assumed that the new procedure for consultation and implementation of appropriate measures concerning directed media services that breach Norwegian law, can be applied in such circumstances.

Furthermore the Norwegian Copyright Act (*åndsverkloven*) has been amended by provisions that regulate the right for television broadcasters to broadcast short news reports of events, where other

broadcasters hold exclusive rights to report such events.

The amendments mean that the Norwegian Broadcasting Act has been brought into alignment with EU/EEA law, but prepares the way for stricter regulation than the minimum requirements arising from the AVMS Directive in certain areas, especially regarding advertising in broadcasting and on-demand services directed at children.

- *Prop. 9 L (2012-2013) Proposisjon til Stortinget (forslag til lovvedtak) Endringer i kringkastingsloven, åndsverkloven og film- og videogramlova (gjennomføring av direktiv 2010/13/EU om audiovisuelle medietjenester mv.)* (Proposal to Parliament to amend the Broadcasting Act, the Copyright Act and the Act relating to Films and Videograms (implementation of Directive 2010/13/EU on audiovisual media services etc.), 19 October 2012)
http://merlin.obs.coe.int/redirect.php?id=16374 NO
- *Lovvedtak 27 (2012-2013), 10 December 2012, Vedtak til lov om endringer i kringkastingsloven, åndsverkloven og film og videogramlova (gjennomføring av direktiv 2010/13/EU om audiovisuelle medietjenester mv.)* (Enactment of Act 27 (2012-2013), Enactment of Act on amendments to the Broadcasting Act, the Copyright Act and the Act relating to Films and Videograms (implementation of Directive 2010/13/EU on audiovisual media services, etc.), 10 December 2012)
http://merlin.obs.coe.int/redirect.php?id=16375 NO

Marie Therese Lilleborge
Norwegian Media Authority

PT-Portugal

Adoption of the Specific Regulations Implementing the New Act on Cinema and Audiovisual Media

Specific regulations implementing the new Law for Cinema and Audiovisual Media (see IRIS 2012-7/33) were published in the official news bulletin, Diário da República, and all the legal requirements detailed in these documents are in force since the end of February 2013. The law came into force in October 2012, though much of its content depended on the adoption of specific regulations. These regulations stipulate the fees applicable to operators in the field of investment in cinematographic and audiovisual production (referring to ICA, the Portuguese Institute of Cinema and Audiovisual Media), supervision and fines.

The Act on Cinema and Audiovisual Media introduced a new financing model for the sector, since the number of funding sources is increased, including private television broadcasters (called "SIC" and "TVI"), operators of audiovisual services on demand, video stores, the so-called premium channels (such as "Sport TV"), as well as distributors and exhibitors (such as "Zon Lusomundo"). The absence of specific legislation for the regulation of fees in 2012 hindered the opening of public contests within the support programs for the creation, production, exhibition and distribution of cinematographic works. This situation now has a legal framework due to the approval, by the Council of Ministers, of Law-Decree no. 9/2013, which enters into force on 24 February 2013. This Law-Decree defines the regulation of the determination, collection, payment and fees supervision, as established in the Cinema and Audiovisual Law. 60 % of the fees collected are handed over to the State and 40 % to ICA (in application of Article 9 of the Law-Decree).

Moreover, the following specific regulations also come into force (as from 31 January 2013) and describe the conditions on which public tenders, in different support programs, shall be conducted:

- Decree no. 57-A/2013 (Portaria n.º 57-A/2013) relates to support programs for production. It authorizes the ICA to proceed with the allocation of resources for fiction films, first work of fiction films, short fiction films, documentaries, short animation films, and co-productions, up to a total amount of EUR 8,190,000.00. According to Article 2, the expenses resulting from future contracts for financial support envisage amounts of EUR 1,838,000.00 for 2013, of EUR 4,843,000 for 2014, of EUR 1,329,000.00 for 2015, and of EUR 180,000.00 for 2016;

- Decree no. 57-B/2013 (Portaria n.º 57-B/2013) establishes the support conditions for participation in international festivals and markets, for festivals organization and for the sector bodies. The ICA is responsible for resources allocation through public tenders, having the total amount of EUR 404,000 for the year 2013, increasing to EUR 476,000 for the following year and EUR 100,000 for 2015 (as established by Article 2 of the decree);

- Decree no. 57-C/2013 (Portaria n.º 57-C/2013) relates to support for distribution. It defines the conditions on which national productions can receive support for distribution, nationally or outside Portugal, as well as for non-national cinematographic works less widespread in the national territory. While this year, the total amount of funding available within this support program is EUR 500,000, it will be reduced to EUR 155,000 in 2014;

- Decree no. 57-D/2013 (Portaria n.º 57-D/2013) allows the ICA to proceed with the allocation of exhibition support, which includes programs for non-commercial and commercial exhibition.

- Decree no. 57-E/2013 (Portaria n.º 57-E/2013) defines the conditions on which the support program for the creation of cinematographic productions can be applied. The ICA is also responsible for this program, which includes support for scriptwriting fiction productions, series and animation films development, as well as documentaries.

• *Decreto-Lei 9/2013, de 24 de janeiro - Estipula a cobrança de taxas a operadores do setor para investimento na produção cinematográfica e audiovisual - Publicado no "Diário da República" n.º 17, 1ª Série, de 24-01-2013* (Law-Decree no. 9/2013, of 24 January - Stipulates fees collection to operators in the sector for investment in cinematographic and audiovisual production - published in the official news bulletin, no. 17, 1st Serie, of 24 January 2013)
http://merlin.obs.coe.int/redirect.php?id=16365 PT

• *Portaria n.º 57-A/2013 - Fica o ICA autorizado a proceder à repartição de encargos relativos aos contratos de apoios na tipologia de Apoio à Produção, que compreende os programas de apoio à produção de Longas-metragens de ficção, Primeira Obra de Longa-metragem de ficção e Curtas-metragens de Coproduções e Automático* (Decree no. 57-A/2013 - Support for the production of cinematographic works)
http://merlin.obs.coe.int/redirect.php?id=16366 PT

• *Portaria n.º 57-B/2013 - Fica o ICA autorizado a proceder à repartição de encargos relativos aos contratos de apoios nas tipologias de Apoio à participação em festivais e mercados internacionais, Apoio à realização de festivais e Apoio a entidades do setor* (Decree no. 57-B/2013 - Support for participation in international festivals and markets)
http://merlin.obs.coe.int/redirect.php?id=16366 PT

• *Portaria n.º 57-C/2013 - Fica o ICA autorizado a proceder à repartição de encargos relativos aos contratos de apoios na tipologia de Apoio à Distribuição, que compreende os Programas de Apoio à distribuição em território nacional de obras apoiadas pelo ICA, Apoio à distribuição em território nacional de outras obras nacionais e de obras não nacionais de cinematografias menos difundidas e Apoio à distribuição de obras nacionais fora de Portugal* (Decree no. 57-C/2013 - Support for the distribution of cinematographic productions)
http://merlin.obs.coe.int/redirect.php?id=16367 PT

• *Portaria n.º 57-D/2013 - Fica o ICA autorizado a proceder à repartição de encargos relativos aos contratos de apoios na tipologia de Apoio à Exibição, que compreende os Programas de Apoio à exibição não comercial e de Apoio à exibição comercial* (Decree no. 57-D/2013 - Support for the exhibition of cinematographic productions)
http://merlin.obs.coe.int/redirect.php?id=16368 PT

• *Portaria n.º 57-E/2013 - Fica o ICA autorizado a proceder à repartição de encargos relativos aos contratos de apoios na tipologia de Apoio à Criação, através das modalidades de apoio à escrita de argumentos para longas-metragens de ficção, ao desenvolvimento de séries e filmes de animação e de documentários cinematográficos* (Decree no. 57-E/2013 - Support for the creation of cinematographic productions)
http://merlin.obs.coe.int/redirect.php?id=16368 PT

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RO-Romania

Draft Modification of the Audiovisual Media Law

On 26 February 2013, the *Consiliul Naţional al Audiovizualului* (National Council for Electronic Media - CNA), issued a Draft Decision for the modification and the completion of the *Decizia nr. 220/2011 privind Codul de reglementare a conţinutului audiovizual, cu modificările şi completările ulterioare* (Decision no. 221/2011 with regard to the Audiovisual Content Regulatory Code, with further modifications and completions, see IRIS 2006-4/33, 2007-4/30, 2011-4/31, 2011-6/27, and 2011-7/37). The draft is intended to improve the protection of minors against pornographic content and the protection of the privacy of accident victims.

The document was preceded by the CNA's online petition "Public interest above public taste". This petition was meant to evaluate the necessity to improve the audiovisual legislation, especially regarding a clearer definition of "public interest" as a justification for coverage in TV and radio programmes.

The draft Decision prohibits the usage of any personally-identifying information in the media coverage of accidents, unless the publication is approved by the victim, or a legitimate public interest in the coverage of personal information exists.

The modification also stipulates that in the case of an accident, especially when judicial consequences are involved, reports have to be objective, complete, verified, impartial, in good faith, and must respect the principle of the presumption of innocence.

During the time period between 6:00 and 24:00 hours the productions are not to be aired, in case they contain repeated present violent behaviour or language, sex scenes, obscene language or behaviour, people in degrading situations, and wrestling, which is not regulated by sports federations.

Programmes prohibited for minors under 15 years of age can be broadcast only between 24:00 (instead of the former 22:00) and 06:00 hours and have to be properly indicated. The exceptions are films and documentaries classified "15", which can be aired from 22:00 hours.

Programmes classified as "18" can only be broadcast between 01:00 and 06:00 hours and have to be clearly indicated as such. Programmes "18+" cannot be aired by audiovisual media services providers under Romanian jurisdiction. Programmes "18+" offered by foreign providers under EU jurisdiction can be included in the offers of the services distributors only under very severe and strict rules (i.e. encrypted, in special optional adult packages, broadcast only between 01:00 and 05:00 hours for linear broadcasting; encrypted and restricted through a parental control system for digital services; the services can be sold only upon request etc.).

• *Proiect de Decizie pentru modificarea şi completarea Deciziei CNA nr. 220/2011 privind Codul de reglementare a conţinutului audiovizual, cu completările ulterioare, 26.02.2013* (Draft Decision for the modification and the completion of the Decision no. 221/2011 with regard to the Audiovisual Content Regulatory Code, with further completions of 26 February 2013)
http://merlin.obs.coe.int/redirect.php?id=16351 RO

• *CNA, „Interesul public mai presus de gustul publicului"!* (Petition of the CNA "Public interest above public taste"!)
http://merlin.obs.coe.int/redirect.php?id=16352 RO

Eugen Cojocariu
Radio România International, Bucharest

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

US-United States

Executive Order "Cyber-security Framework" Signed by President

On 12 February 2013, the President of the United States of America ("President") signed an executive order ("Order") that directs federal agencies to develop a voluntary "Cyber-security Framework to help owners and operators of critical infrastructure in the United States identify, assess, and manage cyber risk" ("Framework"). The Order, which seeks to protect all "physical or virtual assets" that are "so vital to the United States that their incapacity or destruction [04046] would have a debilitating impact on security, national economic security, or national public health or safety," comes on the heels of a failed attempt by Senate Democrats to pass a similar cyber-security bill (S. 3414) in the summer of 2012. While the President explained that he was prompted to issue the Order because of Congressional inaction, he acknowledged in his 2013 State of the Union address that congressional action is still needed.

The Order directs the Department of Homeland Security ("DHS") to establish a preliminary Framework in collaboration with sector-specific federal agencies ("Participating Agencies") within 240 days of the date of the Order. The Framework must include: (1) the initial list of 'critical infrastructure' as determined by a "risk-based approach" that applies "consistent, objective criteria," (2) voluntary consensus standards, (3) industry best-practices that "align policy, business, and technological approaches," (4) incentives to promote participation in the program and (5) recommendations for ways the Participating Agencies can design privacy and civil liberties protections. Participating Agencies must review the preliminary Framework to determine whether it is sufficient given the "current and projected risks" and whether the agency has clear authority to establish requirements. If an agency finds the regulatory requirements are insufficient or that additional authority is required it must propose "prioritized, risk-based, efficient, and coordinated actions." Within two years of the release of the final Framework, which must be issued within one year of the date of the Order, Participating Agencies must report to the DHS whether any critical infrastructure is "subject to ineffective, conflicting, or excessively burdensome requirements," and issue "recommendations for minimizing or eliminating such requirements".

The Order was widely praised by the Democrats. The Senate Majority Leader hailed it a "decisive action" that addresses gaps in cyber-security protection. However, it was received with skepticism by Republicans, who argued that the President had exceeded his authority in bypassing the Congress and that the Order will "stifle innovation, burden businesses, and fail to keep pace with evolving cyber threats." The Republican-controlled House of Representatives thus introduced a more limited cyber-security bill (H.R. 624) shortly after the Order was issued. Concerns were also raised about the voluntary nature of the standards. A partner in Sidley Austin LLP explained that the standards may become quasi-mandatory in practice because the "04046independent agencies may make these standards actually or practically mandatory for significant sectors of the economy." A partner of Steptoe & Johnson LLP echoed that concern, explaining that the voluntary standards may establish the negligence for cyber-security because "government standards" are used to "rebut claims of negligence."

- Executive Order ("Improving Critical Infrastructure") of 12 February 2013
http://merlin.obs.coe.int/redirect.php?id=16353 EN
- Cyber security bill of the Democrats of 19 July 2012
http://merlin.obs.coe.int/redirect.php?id=16355 EN
- Cyber security bill of the House of Representatives of 13 February 2013
http://merlin.obs.coe.int/redirect.php?id=16356 EN

Jonathan Perl
New York Law School

Agenda

Film and Internet – Best Friends with Benefits?

Salon des Ambassadeurs, Level 4, Palais des Festivals, from 11:00 to 13:00 (Cannes, France)
The Observatory's annual Cannes workshop is looking at the increasingly intimate relationship between the film industry and the myriad of distribution possibilities offered by the Internet. Just how close are the and what are the benefits on the side04046?
Invitation here.
Registration form here.
Programme here.

Book List

Neuhoff, H., Rechtsprobleme der Ausgestaltung des Auftrags des öffentlich-rechtlichen Rundfunks im Online-Bereich Nomos, 2013 ISBN 978-3848700639 http://www.nomos-shop.de/Neuhoff-Rechtsprobleme-Ausgestaltung-Auftrags-%C3%B6ffentlich-rechtlichen-Rundfunks-Online-Bereich/productview.aspx?product=20198
Dix, A., Informationsfreiheit und Informationsrecht 2012: Jahrbuch 2012 Lexxion, 2013 ISBN 978-3869652269 http://www.lexxion.de/en/verlagsprogramm-shop/details/2986/26/informationsrecht/informationsfreiheit-und-informationsrecht-jahrbuch-2012.html
Eisele, J., Computer- und Medienstrafrecht Beck Juristischer Verlag, 2013 ISBN 978-3406646737 http://www.beck-shop.de/Eisele-Computer-Medienstrafrecht/productview.aspx?product=11511970
Lousberg, Ch., Petit, N., Droit européen de la concurrence - Institutions et procédures Larcier, 2013 ISBN 9782804445218 http://editions.larcier.com/titres/123865_-2/droit-europeen-de-la-concurrence.html
Gallezot, G., Twitter - Un monde en tout petit ? Editions l'Harmatten, 2013 ISBN 978-2-343-00253-8 http://www.editions-harmattan.fr/index.asp?navig=catalogue&obj=livre&no=39644
Akrivopoulou, Ch., Digital Democracy and the Impact of Technology on Governance and Politics: New Globalized Practices Information Science Reference, 2013 ISBN 978-1466636378 http://www.amazon.co.uk/Digital-Democracy-Technology-Governance-Politics/dp/1466636378/ref=sr_1_-184?s=books&ie=UTF8&qid=1363000870&sr=1-184
Cummings, A. S., Democracy of Sound: Music Piracy and the Remaking of American Copyright in the Twentieth Century OUP USA, 2013 ISBN 978-0199858224 http://www.oup.com/us/catalog/general/subject/HistoryAmerican/Cultur
Stivachtis, Y., The State of European Integration Ashgate; 2013 Kindle edition http://www.amazon.co.uk/State-European-Integration-ebook/dp/B00BL0P2WE/ref=sr_1_-249?s=books&ie=UTF8&qid=1363001761&sr=1-249