OBSERVATOIRE EUROPÉEN DE L'AUDIOVISUEL
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IRIS

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of the European Audiovisual Observatory

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INTERNATIONAL

COUNCIL OF EUROPE

European Court of Human Rights: Meltex Ltd v. Armenia

On 17 June 2008, the European Court of Human Rights delivered a judgment in the case of Meltex Ltd and Movsesyan v. Armenia (see IRIS 2008-8/1). The Court held that there had been a breach of Article 10 of the Convention as the refusal by the Armenian National Radio and Television Commission (NTRC) to allocate a broadcasting license to Meltex, amounted to an interference with Meltex' freedom to impart information and ideas that did not meet the Convention requirement of lawfulness. The Court noted, in particular, that a procedure that did not require a licensing body to justify or motivate its decisions did not provide adequate protection against arbitrary interference by a public authority with the fundamental right to freedom of expression. In 2009 Meltex complained in Strasbourg that the Armenian authorities had failed to enforce the Court's judgment of 17 June 2008. In particular, relying on the Court's Grand Chamber judgment in the case of Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2) (see IRIS 2009-10/2), Meltex claimed that the refusal of the Court of Cassation in Armenia to reopen its case constituted a fresh violation of its freedom of expression under Article 10 of the Convention.

In its decision of 21 May 2013, the European Court of Human Rights reiterates that a judgment in which the Court finds a breach of the Convention or its Protocols imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction. The State must also take the appropriate general or individual measures required to put an end to the violation found by the Court and to redress so far as possible the effects of that violation. Subject to monitoring by the Committee of Ministers, the respondent State however remains free to choose the means by which it will discharge its legal obligations under the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment. The European Court itself does not have jurisdiction to verify whether a State has complied with the obligations imposed on it by one of the Court's judgments. The situation is different however when it concerns a new interference or a new issue. A "new issue" can result from the continuation of the violation that formed the basis of the Court's initial decision, but the determination of the existence of a "new issue" very much depends on the specific circumstances of a given case. In Meltex Ltd and Movsesyan v. Armenia, the Committee of Ministers ended its supervision of the execution of the Court's judgment of 17 June 2008, after the refusal by the Court of Cassation to reopen the proceedings. Although the Committee of Ministers had been informed that the Court of Cassation had dismissed the application to reopen the proceedings, in its resolution the Committee of Ministers declared itself satisfied with the individual and general measures taken by the Republic of Armenia to execute the Court's judgment. That being so, the Court finds that it has no jurisdiction to examine Meltex' complaint as it did not contain a new issue and therefore the application is incompatible *ratione materiae* with the provisions of the Convention. The Court rejected the application under Article 10 of the Convention as manifestly ill-founded.

• Decision by the European Court of Human Rights (Third Section), case of Meltex Ltd. v. Armenia, Appl. nr. 45199/09 of 21 May 2013
http://merlin.obs.coe.int/redirect.php?id=16587 EN

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EUROPEAN UNION

Court of Justice of the European Union: Legality of the "Telecoms Charge" Designed to Offset the Ending of Advertising on Public TV Channels Confirmed

On 27 June 2013, the CJEU confirmed the legality of the "telecoms charge", ruling that Directive 2002/20/EC (the so-called Authorisation Directive") did not restrict member states' powers to impose non-administrative charges for the provision of electronic communications services. In January 2010, the European Commission opened an infringement procedure against France concerning this charge, which amounts to 0.9% of turnover and was imposed on telecommunications operators by the Law of 5 March 2009 (Article 302 bis KH of the General Tax Code) in order to offset the ending of advertising on public TV channels between 8pm and 6am (see IRIS 2009-9/4). As there was no response from the French authorities, the Commission brought an action for failure to fulfil obligations, before the CJEU in March 2011.

The Commission held that the charge was contrary to Article 12 of Directive 2002/20/EC because it was an administrative charge levied on the basis of factors relating to the operator's activities or turnover and not on the basis of the actual costs incurred as a result of the authorisation system. Moreover, the Commission went on, that contrary to the Directive's requirements the charge was not intended to finance the activities of the national regulatory authority. France

pointed out in its defence that Article 12 only applied to charges the trigger for which was linked to the authorisation procedure: since the charge at issue did not constitute such a trigger, it did not fall within the scope of that provision and could accordingly not be subject to its requirements. In its judgment, the Court pointed out, firstly, that the administrative charges covered by the Directive represented remuneration and that the only purpose of such charges was to cover the administrative costs incurred in the issue, management, control and enforcement of the general authorisation scheme in the field of electronic communications. Accordingly, a charge the trigger for which was linked to the general authorisation procedure for access to the electronic telecommunications services market constituted an administrative charge within the meaning of the Directive and could be imposed only in accordance with the requirements set out therein. However, the Court found that the trigger for the charge in question was linked neither to the general authorisation procedure for access to the electronic telecommunications services market nor to the grant of a right to use radio frequencies or numbers. Indeed, it went on, that the charge related to the operator's activities, which consisted of providing electronic communications services to end users in France. In these circumstances, it held that the charge concerned did not constitute an administrative charge within the meaning of the Directive and accordingly did not fall within its scope. The Court therefore dismissed the Commission's action.

Maintaining the charge, which avoids an annual revenue shortfall of nearly 250 million euros, should enable the government to approach the financing of France Télévisions with a lower degree of political urgency. In a joint statement, the Ministers for Culture and for the Economy, Finances and the Budget declared that "(t)he funding of public service broadcasting is therefore secure".

• *CJUE (3e ch.), 27 juin 2013 (affaire C 485/11) - Commission européenne c. République française soutenue par Royaume d'Espagne et Hongrie* (CJEU (3rd Chamber), 27 June 2013 (Case C 485/11) - European Commission v. France, supported by the Kingdom of Spain and by Hungary)
http://merlin.obs.coe.int/redirect.php?id=16580 FR

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Council of the EU: Approves USA/EU Free-Trade Talks Excluding Audiovisual Services

On 14 June 2013, the Council of the European Council (Council) adopted a mandate for the European Commission (Commission) to negotiate a comprehensive trade and investment agreement with the United States, the "Transatlantic Trade and Investment Partnership" (TTIP). The mandate is made up of a decision of the Council and a decision of the representatives of member states that authorise the opening of negotiations and directives for the negotiation of the agreement. These directives foresee an agreement made up of three key components: market access, regulatory issues and non-tariff barriers and rules.

The Council has agreed that audiovisual services will not be covered by the mandate, as the EU legislation in this area is still in development. In light of this, the European Commission has only recently invited stakeholders to comment on the future of the audiovisual media landscape (see IRIS 2013-6/5). The exclusion of audiovisual services from the mandate is a notable alteration considering the fact that the Commission had adopted a draft mandate on 12 March 2013 authorising the opening of negotiations that would include cultural and audiovisual services (see IRIS 2013-5/25). The Commission will nevertheless have the opportunity to make recommendations on additional negotiating mandates at a later stage. According to the mandate text, "[t]he Commission will, in a spirit of transparency, regularly report to the Trade Policy Committee in the course of negotiations. The Commission, according to the Treaties, may make recommendations to the Council on possible additional negotiating directives on any issue, with the same procedures for adoption, including voting rules, as for this mandate".

The EU is now ready to launch negotiations with the US. The Commission will negotiate on behalf of the EU and its member states, keeping the Trade Policy Committee and the European Parliament regularly informed and updated. Information related to the negotiations is regularly updated on the Commission's website. When completed, the TTIP will be the biggest bilateral trade deal ever negotiated. The Council will conclude the final agreement after the European Parliament has given its consent and member states have ratified the text.

• Press release: Council approves launch of trade and investment negotiations with the United States, Luxembourg, 14 June 2013, 10919/13, PRESSE 255
http://merlin.obs.coe.int/redirect.php?id=16571 EN

• Press release: Member States endorse EU-US trade and investment negotiations (MEMO/13/564 of 15/06/2013)
http://merlin.obs.coe.int/redirect.php?id=16572 DE EN FR

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European Commission: Scheme to Finance Digitisation and Extension of Terrestrial TV Network in Spain Incompatible with EU State Aid Rules

On 19 June 2013, the European Commission con-

cluded that a Spanish scheme to finance the digitisation and extension of the terrestrial television network in Spain was incompatible with EU state aid rules.

The Spanish EUR 260 million scheme was initiated in 2005 to subsidise the transition to digital terrestrial television (DTT) in remote areas of Spain as well as to help finance the operation and maintenance of the DTT infrastructure. The subsidies were allocated exclusively to operators of terrestrial platforms. Alternative transmission platforms such as satellite, cable or the internet did not benefit from the subsidies.

The Commission launched an investigation into the public funding of the DTT infrastructure in Spain following a complaint by a satellite platform operator. According to the Commission, the Spanish scheme favours the terrestrial technology giving operators of terrestrial platforms an advantage over operators using other technology. The scheme has therefore failed to support the digital switchover in a technology-neutral way and as such unduly distorts competition between terrestrial operators and operators using other technology. The Terrestrial operators in Spain must therefore repay subsidies received from the Spanish taxpayer.

The Commission has previously set out indicators on how member states should support the digital switchover in compliance with EU state aid. In its decision in Berlin Brandenburg (see IRIS 2004-6/5, IRIS 2004-9/3 and IRIS 2006-1/8), the Commission stated that the switch from analogue to digital broadcasting must be non-discriminatory and must be completed in a technology-neutral manner. The principle of technological neutrality was confirmed in the Court of Justice ruling on the Commission's decision in the Mediaset case (case T-177/07, see IRIS 2011-8/4).

The Commission has also initiated in-depth investigations into two other digitisation cases in Spain. The first case concerns technological discrimination as well as discrimination against regional and local terrestrial platform operators. The second case investigates the granting of aid to broadcasters for the change of bandwidth. These cases are still under investigation.

• State aid: Terrestrial digital platform operators in Spain must pay back incompatible subsidies
http://merlin.obs.coe.int/redirect.php?id=16574 DE EN FR ES

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European Parliament: Press and Media Freedom in the World

On 13 June 2013, the European Parliament adopted a Resolution on the freedom of press and media in the world. The adoption of the resolution is timely as it focuses on a number of pressing issues that have dominated political and news agendas recently. It usefully addresses those issues - such as media pluralism, the protection of journalists, whistle-blowing, net neutrality and mass surveillance - from the perspective of their relevance to freedom of expression of the media in the contemporary, increasingly digitised media environment.

The Resolution references an array of international and European human rights legal texts, as supplemented by relevant reports and initiatives adopted by different institutions and mechanisms that are active in the area of freedom of expression. Importantly, it acknowledges the relevance of initiatives such as the Ruggie Framework that sets out 'Guiding Principles on Business and Human Rights' and European Parliament texts that underscore the relevance of corporate social responsibility and the growing private governance dimension to freedom of expression.

The Resolution proceeds from a reaffirmation of key principles and of the role ascribed to the press and media in democratic society, to an overview of recent developments and a consideration of the consequences of digitisation. It then turns to the incorporation of relevant principles and priorities in EU policies and external actions and sets out a multi-stranded strategy for the advancement of those principles and priorities by different EU organs.

The Resolution is critical and condemnatory of a litany of threats to press and media freedom and the rights of media actors: attacks on and murders of journalists, which are often accompanied by impunity; concentrations of media ownership; State pressurising of media actors; (increasing) criminalisation of expression and imprisonment of journalists and bloggers, pursuant to, inter alia, defamation, blasphemy and other laws; the lack of legal assistance for journalists, etc.

Similarly, the Resolution deplores "all attempts to create various forms of 'closed internet', since they represent serious breaches of the right to information". Its concern over "mass surveillance, mass censoring, and blocking and filtering tendencies affecting not only the media and the work of journalists and bloggers" leads it to deplore also "the fact that numerous technologies and services deployed in third countries to violate human rights through censorship of information, mass surveillance, monitoring, and tracing and tracking of citizens and their activities on (mobile) telephone networks and the internet originate in the EU". It therefore urges the Commission to "take all necessary steps to stop this 'digital arms trade'". The Resolution also stresses (i) the need for greater understanding of the role of intermediaries and their responsibilities, and (ii) "the fact that digital and (computer) data-driven platforms or services such as search engines are privately owned

and require transparency so as to preserve the public value of information and prevent restrictions on access to information and freedom of expression". The need for "whistleblower and source protection" and the need for the EU "to act to that end globally" are also stressed.

The Resolution calls for coherence and leadership by example in the EU's external relations, on issues relating to press and media freedom. The final section of the Resolution makes a number of general and specific - political, financial and other - recommendations to this end.

• Resolution on the freedom of press and media in the world, European Parliament, Doc. No. 2011/2081(INI), 13 June 2013
http://merlin.obs.coe.int/redirect.php?id=16575 DE EN FR
CS DA EL ES ET FI HU IT LT LV MT
NL PL PT SK SL SV HR

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OSCE

OSCE: Report Highlights Need to Fight for Journalists' Safety and Internet Freedom

On 13 June 2013, Dunja Mijatovic, the OSCE Representative on Freedom to the Media addressed the Permanent Council, the governing body of the organization, for the first time this year and presented a series of recommendations designed to keep the Internet free from unnecessary government interference. The recommendations were developed as a result of the conference in Vienna, "Internet 2013: Shaping policy to advance media freedom," organized by her office in mid-February (see IRIS 2013-5/7). The report covers the period from 29 November 2012 to 13 June 2013.

The main issues highlighted in the report include:

- Affordable access to broadband Internet shall be fostered and become a universal service;

- The right to free expression and free media as human rights is not reserved for media companies or editorial offices alone; they belong to everyone. These rights shall be equally applicable to all forms of journalism, not just traditional media;

- No one shall be held liable for disseminating content on the Internet of which he or she is not the author, as long as they obey legal orders to remove that content, where they have the capacity to do so;

- Journalism codes of ethics and media self-regulatory bodies shall adapt to the online environment. Anyone involved in the production of information of public interest shall be allowed and encouraged to participate in self-regulatory mechanisms;

- The multi-stakeholder model of Internet governance needs to be preserved and enhanced so that it is truly representative of the public interest. The existing Internet governance infrastructure needs to evolve to ensure that the user is a recognized participant in the decision-making process;

- In today's democratic societies, citizens shall be allowed to decide for themselves what they want to access on the Internet. As the right to disseminate and receive information is a basic human right, government-enforced mechanisms for filtering, labelling or blocking content shall not be acceptable;

- It is important to recognize the relationship between copyright and freedom of expression. We need a system that keeps a balance between the interests of rightsholders and those of the public.

Mijatovic expressed her concerns about the lack of political will to achieve real Internet freedom. Mijatovic also expressed similar concerns with regard to the issue of journalists' safety.

The report, which covers approximately six months of activities, shows that:

- At least 21 members of the media have been assaulted and injured by unidentified assailants;

- At least 10 members of the media have been jailed or put in short-term detention for doing their jobs;

- At least five journalists have been jailed or are serving time in prison on criminal defamation charges.

However, the report shows that a new category of harassment is growing - the almost indiscriminate and excessive use of force by law enforcement personnel against media who are reporting on public demonstrations. "This situation must change and it must change immediately," she said. And to make it happen, all that is necessary is the political will to make it happen. There is no need for many new laws".

"There is no need for intense work of fact-finding commissions and complex regulations that govern conduct", she said. Law enforcement personnel must be told that it is "hands off the media."

The Representative's next report to the Permanent Council is scheduled for 28 November 2013.

• OSCE Representative on Freedom to the Media, Regular Report to the Permanent Council for the period from 30 November 2012 to 13 June 2013
http://merlin.obs.coe.int/redirect.php?id=16560 EN

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NATIONAL

BG-Bulgaria

Court Confirms High Sanction Due to Violation of Protection of Minors

On 11 April 2013, the Administrative Court in Sofia City annulled a decision of the Sofia District Court and thereby confirmed a fine imposed by the Bulgarian regulatory authority Council for Electronic Media (CEM). The CEM had imposed a sanction of BGN 15,000 (approximately EUR 7,500) on the media service provider "BTV Media Group".

On 20 February 2012, the TV programme "The Slavi's Show" was broadcast as a repeat at lunch time between 12:30 pm and 1:30 pm. As regards this repeat, CEM found that there had been a violation of Article 17(2) of the Radio and Television Act (RTA) and No. 27 of CEM's Criteria for content assessment that might be harmful to, or pose a risk of harming, the physical, mental, moral and/or social development of children (see IRIS 2012-2/10). Those stipulations not only forbid the broadcasting of content that incites national, political, ethnic, religious or racial intolerance or shows undue violence, but also contain aspects relating to the protection of minors. Accordingly, potentially harmful content is to be broadcast at times when children are not usually the audience.

"The Slavi's Show" is a popular humorous night-time show that has been successful over decades. It is usually broadcast at night from 10:30 pm to 11:30 pm, because the dialogue between the host with the screen characters contains cynical, arrogant and vulgar speech.

The CEM accordingly imposed the above-mentioned fine, which was successfully contested before the Sofia District Court. This first-instance court found in its ruling of 7 January 2013 that the language used in the show is veiled and implied and thus not directed at children. According to the Sofia District Court, there is no violation of Art. 17(2) RTA in relation to the danger of harm to children and their development.

As the appeal court, the Administrative Court found in its ruling of 11 April 2013 that the language of the characters in combination with obscene gestures is not only potentially but actually harmful to the physical, mental, moral, and social development of children. Implications and veiled ways of expressing such harmful content does not change this perception, since children are especially vulnerable and are not able to distinguish between literal and implied statements, however sarcastic or ironic they may be. Since the show is successful with a popular host and screen characters, children tend to imitate, reproduce and discuss the topic in a way that does not correspond to their physical, mental or moral state of development. That may adversely affect each aspect of their upraising. The Court also found that the young audience is exceedingly vulnerable since the repeat was broadcast at a time of day of no parental supervision (working hours of parents), which makes the viewing of the show not subject to control.

According to Art. 126(1) RTA, the fines for violations range from BGN 3,000 (approximately EUR 1,500) to BGN 20,000 (approximately EUR 10,000). The amount of the fine at issue is one of the highest in the recent years of CEM's regulatory practice.

• Решение № *2396* от *11* април *2013* г. на Административен съд - София град (Decision no. 2396/2013 of the Administrative Court Sofia City of 11 April 2013)
http://merlin.obs.coe.int/redirect.php?id=16561 BG

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CZ-Czech Republic

RRTV Specifies Regulation of Advertising Loudness

On 14 May 2013, the Czech broadcasting regulatory authority *Rada pro Rozhlasové A Televizní Vysílání* (Council for Radio and Television - RRTV) issued a Decree regulating certain characteristics of audio signal levels in advertising, teleshopping and sponsorship information on television. It is based on the stipulations contained in the Czech Broadcasting Act No. 231/2001 Coll. (see IRIS 2013-1/12) and specifies the requirements and technical aspects of the broadcasting audio signal.

According to the Decree, the television broadcaster shall ensure that the level of the audio signal of advertising, teleshopping and the sponsor information meets the requirements of the Recommendation of the European Broadcasting Union (EBU R-128) and the requirements set up by the European Broadcasting Union in their document "EBU Tech 3343-2011v2".

For the purposes of this obligation, broadcasters shall ensure that the volume of the abovementioned forms of commercial communication is normalized to the target level of 23.0 Loudness Units relative to Full Scale (LUFS - unit created by the Recommendation EBU R-128) with a maximum deviation of +/- 1.0 Loudness Unit (LU - relative amount to the LUFS; 1 LU equals one decibel [db]). The maximum allowable actual peak level in the cases in issue is -1 dB

true peakTP (dBTP - highest possible volume level), measured in accordance with the recommendations of the International Telecommunication Union "ITU-R BS.1770-2" and the Technical Document of the European Broadcasting Union (EBU Tech Doc 3341).

The Decree entered into force on 1 June 2013.

• *Vyhláška č. 122 ze dne 14. května 2013 o některých charakteristikách zvukové složky reklam, teleshoppingu a označení sponzora v televizním vysílání a o způsobu měření hlasitosti zvukové složky reklam, teleshoppingu a označení sponzora v televizním vysílání* (Decree of 14 May 2013 about some of the characteristics of sound components of advertising, teleshopping and the sponsor information in television broadcasting and how to measure the volume of the sound component of advertising, teleshopping and the sponsor information on TV)
http://merlin.obs.coe.int/redirect.php?id=16562 CS

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Schleswig Administrative Court Confirms Sat.1 Licensor Switch

In a decision of 27 May 2013, which is yet to be published, the *Verwaltungsgericht Schleswig* (Schleswig Administrative Court - VG) rejected complaints about the decision of *ProSiebenSat.1 TV Deutschland GmbH* to change licences for its channel Sat.1.

The switch was made due to disagreements between ProSiebenSat.1 and its subsidiary, *Sat.1 SatellitenFernsehen GmbH* (Sat.1), and the *Landeszentrale für Medien und Kommunikation Rheinland-Pfalz* (Rhineland-Palatinate regional media and communication authority - LMK) concerning the allocation of third-party transmission time and the broadcast of regional window programmes under Article 31 of the *Rundfunkstaatsvertrag* (Interstate Broadcasting Agreement - RStV).

On account of these disagreements, Sat.1 applied to the *Medienanstalt Hamburg-Schleswig-Holstein* (Hamburg-Schleswig-Holstein media authority - MA HSH) for a licence. For its part, the MA HSH forwarded the application to the *Kommission für Zulassung und Aufsicht der Medienanstalten* (Media Licensing and Monitoring Commission - ZAK), the joint licensing body of the regional media authorities. Private broadcasters in Germany are monitored by the 14 media authorities, while national issues fall within the responsibility of their central commissions, including the ZAK. Providers of channels that are broadcast throughout the country can, in principle, apply to any media authority for a licence.

After the ZAK had agreed to the switch of licensor for ProSiebenSat.1, the MA HSH granted a new licence on 11 July 2012. Sat.1 announced that it would return its LMK licence, which still had several years to run.

The LMK, supported by the *Hessische Landesanstalt für privaten Rundfunk und neue Medien* (Hessian regional private broadcasting and new media authority - LPR Hessen) and the private media companies to which third-party transmission time had been allocated, appealed to the VG Schleswig against the MA HSH decision to award the licence. It claimed that a licensee could not simply switch licensing authorities while a current licence was still valid. Such a switch was detrimental to the recipients of third-party transmission time, who were left at the mercy of the broadcaster. Although such "licence hopping" was not expressly prohibited under the RStV, it could not be in the spirit of the law. However, the VG rejected the complaint entirely.

The MA HSH has urged the regional media authorities not to take any further legal action and to settle the matter out of court. With regard to the allocation of third-party transmission time, it has promised to seek a decision acceptable to all parties.

At its meeting on 7 May 2013, the *Kommission zur Ermittlung der Konzentration im Medienbereich* (Commission on Concentration in the Media - KEK) decided that, as the holder of the new licence, Sat.1 is still required to grant third-party transmission time. The decrease in its market share mentioned by Sat.1, which is relevant to its obligation to allocate transmission time to third parties under Article 26(5) RStV, had no effect on the KEK's decision.

• *Pressemitteilung der Medienanstalt Hamburg Schleswig-Holstein vom 27. Mai 2013* (Press release of the Hamburg-Schleswig-Holstein media authority of 27 May 2013)
http://merlin.obs.coe.int/redirect.php?id=16578 DE
• *Pressemitteilung der KEK vom 8. Mai 2013* (KEK press release of 8 May 2013)
http://merlin.obs.coe.int/redirect.php?id=16579 DE

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FR-France

Takeover of TPS by Canal Plus: Competition Authority Approves the Three Benchmark Offers of Groupe Canal Plus

By its decision of 7 June 2013, the *Autorité de la concurrence* (Competition Authority) approved the offers made by Groupe Canal Plus to carry independent channels and make film channels available. On 23 July 2012, the Authority had authorised the acquisition of TPS and CanalSatellite by Vivendi Universal

and Groupe Canal Plus, subject to compliance with injunctions likely to bring about sufficient competition on the pay-TV markets (see IRIS 2012-8/25) .The aim of those injunctions was to set up clear rules of access to CanalSat by independent channels and to open up access by competing distributors to the film channels produced by Canal Plus in order to enable them to offer those channels to viewers as part of their own pay-TV packages. Canal Plus was required to publish a benchmark offer setting out the technical conditions and charges involved in making these channels available ("unbundling"), (See IRIS 2013-4/13). In order to comply with the injunctions and following a public consultation, which also enabled the opinion of the audiovisual regulator CSA to be obtained, the Authority has just approved the benchmark offer to carry independent channels. The implementation of this document should enable the contractual relations between Groupe Canal Plus and the independent channel producers to be rebalanced and the pay-TV offerings available to be improved and diversified. This greater transparency should also make it possible for alternative operators (internet access providers and cable networks) to provide their own distribution services that would be of interest to the independent channels and thus offer their subscribers greater diversity. Making film channels available would make it possible for all distributors to create more attractive packages. The implementation of these benchmark offers will take place under the supervision of the Competition Authority, which has said it will remain vigilant with regard to compliance with the injunctions and the competition objectives forming part of its remit.

• *Décision n°13-DAG-01 du 7 juin 2013 relative à l'exécution de l'injonction n°3(c) prononcée dans la décision n°12-DCC-100 autorisant la prise de contrôle exclusif de TPS et CanalSatellite par Vivendi Universal et Groupe Canal Plus* (Decision no. 13-DAG-01 of 7 June 2013 relating to the implementation of Injunction no. 3(c) issued in Decision no. 12-DCC-100 authorising the acquisition of sole control of TPS and CanalSatellite by Vivendi Universal and Groupe Canal Plus)
http://merlin.obs.coe.int/redirect.php?id=16581 FR

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Private Copies: Apple Ordered to Pay EUR 5 Million in Fees to Copie France

In a judgment of 30 May 2013, the *Tribunal de grande instance de Paris* (Paris Regional Court) ordered Apple to pay, with immediate effect, to the collecting society Copie France, which is in charge of collecting private copying levies, the sum of 5 million euros in respect of the remuneration due for private copies made on on iPads sold by Apple in 2011.

It should be recalled that the so-called Private Copying Committee tasked under Article L. 311-5 of the *Code de la propriété intellectuelle* (Intellectual Property Code) with setting the scales of private copying levies, adopted Decision No. 13 on 12 January 2011 subjecting multimedia touch screen tablets to this payment on a scale provisionally applying until 31 December that year. The scale adopted is identical to the one in force for mobile telephones, which was the subject of Decision No. 11, and the committee will have to continue its work in order to adopt a definitive scale. However, Decision No. 11 was set aside by the *Conseil d'Etat* (Council of State) because it did not meet the requirement to exempt uses other than making private copies, in accordance with the CJEU's Padawan judgment (see IRIS 2011-7/20). Although Apple, in execution of Decision No. 13, made stock withdrawal declarations and Copie France issued debit notes, the validity of which Apple contests, Apple called on the court to declare the debt claimed by Copie France unlawful and unfounded. It considers it unfounded because it also includes payment for professional use and for unlawful copies, whereas Decision No. 13, on which it is based and which is currently the subject of an appeal before the Council of State, was adopted by analogy with multimedia mobile telephones even though Decision No. 11 had been set aside.

The court pointed out that it was not up to the ordinary court to rule on the legality of an administrative act, but the plaintiff's arguments, which were based on earlier Council of State annulment decisions, were sufficiently serious for a stay of proceedings to be issued pending the judgment of the administrative court already examining the question. Copie France nonetheless requested the allocation of an advance on the debt. The court pointed out that the possible setting aside by the Council of State of the Private Copying Committee's Decision No. 13 did not affect the validity of Article L331-1 of theIntellectual Property Code, which laid down the very principle of remuneration for private copying and of which that payment was simply its implementation. Copie France was accordingly entitled to invoke the principle of remuneration for private copying in order to request payment in order to compensate for the loss it had incurred because of the current difficulties in recovering the sums due in this connection. Since the law obliged manufacturers and importers of recording devices to register the payment of fair compensation, it was up to them to pass the charge on to the final consumer who benefited from the private copying exception. The court held that Apple, which collected the amount of the remuneration for private copying from final consumers, was indeed responsible for indemnifying Copie France. Referring to the scale provided for by Decision No. 14 of the Private Copying Committee the court ordered Apple to pay Copie France copying levies amounting to 5 million euros and ordered the provisional execution of its judgment in order to ensure prompt redress for the harm suffered by the latter.

It is now up to the Council of State to rule on the le-

gality of the scale applied and up to the authorities to follow, or not to follow, the recommendations of the Lescure mission (see IRIS 2013-2/25). While endorsing the justification for remuneration for private copying ("there is no reason to question the foundations of the current system"), the mission proposes laying down the corresponding scales by decree.

• *TGI de Paris (3e ch. 4e sect.), 30 mai 2013 - Apple c. Copie France* (Paris Regional Court (3rd Chamber, 4th section), 30 May 2013 - Apple v. Copie France) FR

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Collective Agreement on Film Production: Signing of the Extension Decree

It was against a backdrop of considerable tension and after ten years of negotiations that the Labour Minister, Michel Sapin, and the Culture Minister, Aurélie Filippetti, announced on 2 July 2013 that they had signed a decree to extend the collective agreement on film production. That agreement, which was signed in January 2012 by the labour unions and the Association of Independent Producers (API) and lays down the rates of pay for film sector workers and technicians, was to be extended to the entire profession on 1 July 2013, but most producers' associations, because they are worried about the economic impact of the extension on employment and on film diversity, have refused to sign the text as it stands.

The ministers have announced that they have finally set 1 October 2013 as the date for the extension to come into effect, in order to take account of the impact of this collective agreement on film productions that is subject to the most stringent financial constraints. This was emphasised by the mediator Raphaël Hadas-Lebel, who was appointed in April 2013 to try to defuse the conflict (see IRIS 2013-5/26). In particular, he concluded that when the collective agreement was applied, and despite the override clause, the films having the lowest budgets (under one million euros) would see their budget rise by 20 to 25%, thus threatening their existence. Fiction films with budgets under 2.5 million euros and documentaries and with budgets under 1.5 million euros, all of them within the limit of 20% of the films produced each year, are in fact eligible under the "override clause" provided for by the agreement for a period of five years. However, the arrangements for implementing this clause still have to be clarified and the criteria for triggering its application are fraught with difficulties. The ministers would like to reach agreement before 1 October 2013 on a rider amending certain parameters of the agreement and have therefore called on the social partners to continue the dialogue. Trade unions and employers' associations now have three months to find common ground on the annexe to the agreement, which permits derogating from the rates of pay in the case of low-budget films. The *Direction générale du travail* (Directorate General for Labour) and the national film agency *Centre National du Cinéma et de l'Image animée* should each provide their support for preparing and holding new joint consultations. The Minister for Culture has, incidentally, very clearly expressed the government's desire to change the film support arrangements by the end of the year by drawing on the work of the *Assises pour la diversité du cinéma* (Conference on Cinema Diversity). She would like a more substantial contribution to be made to preserving the diversity of film production, especially by increasing funding for films subject to the most stringent financial constraints.

• *Signature de l'arrêté d'extension de la convention collective de la production cinématographique, 2 juillet 2013* (Signature of the decree to extend the collective agreement on film production, 2 July 2013) FR

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GB-United Kingdom

Everton TV is not an On Demand Programme Service

On 26 June 2013, Ofcom (UK's audiovisual regulatory body) decided that the Everton TV section of Everton Football Club's website was not an on demand programme service (ODPS). Everton had appealed ATVOD's decision to Ofcom, after ATVOD (UK's VoD co-regulatory body) had determined on 11 April 2012 that the Everton TV section constituted an ODPS.

When determining whether a particular website or section of a website is an ODPS, two core criteria had to be fulfilled pursuant to section 368A of the Communications Act, namely:

- The principal purpose is to provide audiovisual material.

- Whether the form and content of the programmes comprising that service is comparable with the form and content of programmes normally included in linear (traditional) broadcast television service.

ATVOD's determination was that the Everton TV's principal purpose was to provide audiovisual material to its audience. ATVOD considered Everton TV was a distinct brand and it provided a service in its own right. Furthermore, Everton met the second part of the criteria whereby the form and content of the material on the site was comparable to traditional TV.

However, Ofcom disagreed relying on two benchmark decisions, Sun Video and Viva TV. These decisions indicate factors determining whether the principal purpose was to provide audiovisual material and that such content was comparable to normal TV output. Such factors included whether the TV site have its own homepage, the presentation/style of material and whether on an overall assessment, the audiovisual material could be said to be integrated into and ancillary to another service. This analysis is consistent with the guide recitals such as recital 22 as contained in the EU Audiovisual Media Services Directive which is enacted in the UK via the Act.

Ofcom considered Everton's material was incidental to the purpose of providing a website/fanzine (a colloquial term to describe a journal dedicated to fans of a particular activity) for Everton supporters. Ofcom acknowledged that the material was at face value audiovisual material, but on their interpretation of the facts the content was ancillary to the wider functions offered by the overall Everton website. Ofcom examined more of Everton TV's output than ATVOD, and whilst acknowledging that it came close to having its principal purpose as providing audiovisual material the cumulative effect of Everton's material was considered incidental to a wider purpose.

Ofcom considered the second part of the test namely whether the site was comparable in form and content to conventional TV. Consideration, for instance, was given to Recital 24 of the Directive:- "It is characteristic of an on demand audiovisual service that they are "television like" i.e that they compete for the same audience as television broadcasts....". According to Ofcom, Everton TVs material had no consistent style nor format as compared to established TV programmes such as the BBC's "Match of the Day" and "Football Focus". Everton's material lacked the coherence and consistency of say MUTV (Manchester United Television) who had programmes using presenters and formats akin to a conventional TV presentation.

Ofcom made clear that subject matter and size of audience was not relevant, also factors determining principal purpose and comparability with linear TV were not exhaustive or determinative. "However, Ofcom considered that audiovisual material could evolve from something incidental to another purpose ie not being an ODPS to becoming an ODPS in which case a fee would be due to ATVOD".

- Decision of Ofcom, Everton TV, 26 June 2013
http://merlin.obs.coe.int/redirect.php?id=16576 EN
- ATVOD's notice of determination, Everton TV, 11 April 2012
http://merlin.obs.coe.int/redirect.php?id=16577 EN

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Bangladeshi Satellite Broadcaster CHSTV in Breach of Ofcom Impartiality Rules

On 3 June 2013, the free-to-air satellite and cable broadcaster CHSTV, which provides general news and entertainment services aimed at the Bangladeshi community in the UK, was held by Ofcom to be in breach of Rule 5.1 of the Broadcasting Code, which requires due impartiality in broadcast news. The item in question was broadcast on 12 February 2013 and concerned disturbances surrounding the 'Shahbag' protests, which were organised by the Bangladeshi opposition party Jamaat, in protest against various actions of the International Criminal Court (ICT) in Bangladesh, particularly the decision to sentence the Jamaat leader Kader Molla to life in prison.

Ofcom received two complaints regarding the CHSTV coverage, specifically related to the perceived bias or lack of impartiality in the news segment. The Ofcom report quotes the item extensively pointing out a number of statements critical of the Jamaat organisation and associated groups, and notes that despite this, during the course of the 17 minute segment, no explicit or even implicit representation of the Jamaat point of view was given.

The ICT was established in the country to investigate and try war crimes connected to the 1971 war of independence in Bangladesh. The topic of the war, the continued tensions and the work of the tribunal is a very emotive topic for Bangladeshis and provokes strong reactions from all factions. In this light the CHSTV submission protested the difficulty of representing all points of view and made the specific point that its coverage reflected the tone of the reporting of the disturbances on local Bangladeshi TV. The licensee made further representations regarding the constraints of the budget they worked within and that they were reliant upon the terrestrial Bangladeshi stations and news organisations for much of their material.

Despite recognising these constraints, Ofcom deemed that it would not have been difficult to garner the views of Jamaat or a linked representative, as would be required when the piece was so openly critical of that organisation. The Ofcom report was at pains to emphasise that impartiality is not a single stationary concept, but that the standard is rather due impartiality judged in the context of the story and the report.

This breach once again brings to light the issue of impartiality required of non-PSB (public service broadcasters) in reporting the news. There is scepticism as to how the concept can be correctly judged in differing circumstances, and a recent House of Lords Communications Committee report envisaged a time when this requirement could be relaxed or removed to bring non-PSB news closer to the mode of the printed press, which has no such impartiality requirement.

• Ofcom Broadcasting Bulletin Issue no. 231 3 June 2013
http://merlin.obs.coe.int/redirect.php?id=16558 EN

• House of Lords Communications Committee Report on Media Convergence
http://merlin.obs.coe.int/redirect.php?id=16420 EN

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Ofcom Orders Review of Amount of Alcohol Advertising on Television

On 24 May 2013 Ofcom ordered a review of the amount of alcohol advertising on television, after it emerged that children are increasingly watching reality programmes, such as: Britain's Got Talent, X-Factor, and I'm A Celebrity, Get Me Out of Here, which can show such advertisements under current rules.

The existing guidelines ban adverts from being aired during shows that have a particular appeal to the under 18s. But research carried out for the broadcasting regulator reveals that children saw an average 3.2 alcohol adverts per week in 2011 - an increase of 18% on 2007 when they saw 2.7 per week.

The kind of programmes that children watch has changed during those years and they also tend to watch later in the evenings - so that much of the television that under-18s now view is aimed at an adult audience. They also tend to watch more on multi-channel TV stations that are allowed to carry more minutes of advertising per hour.

Figures suggest that in 2011 a child aged 4-15 watched, on average, 227 commercials each week and 3.2 of these were for alcohol products. The top programmes watched by 4-9-year-olds where alcohol could have been advertised were: Britain's Got Talent, The X Factor and The X Factor Results.

Following the publication of the government's Alcohol Harm Reduction Strategy, the advertising code that was drawn up by the CAP (Committees for Advertising Practice) was strengthened in 2005 in order to limit the appeal of alcohol ads to children and ensure they did not link alcohol consumption with youth culture, sex or violent behaviour.

But as a result of this latest research, Ofcom has asked the regulators, the Advertising Standards Authority (ASA), which ensures compliance with advertising rules, and the Broadcast Committee of Advertising Practice (BCAP), which keeps the rules under review, to assess whether the current curbs on alcohol advertising are still effective. Preliminary recommendations from BCAP will be set out in October 2013; these will cover broadcasting TV advertising only.

• Ofcom: Children and young people's exposure to alcohol advertising 2007-2011
http://merlin.obs.coe.int/redirect.php?id=16556 EN

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New Defamation Act Clarifies Defences to Defamation Claims

On 25 April 2013, the Defamation Act 2013 completed its passage through Parliament with the Royal Assent. The Act aims to correct serious problems for all types of media caused by the UK's law of defamation that allows individuals and companies to sue for allegedly defamatory statements; it does so by a mix of different provisions either clarifying or modifying the existing law. The Act does not attempt to set out any general codification of the law of defamation. Most provisions apply only to England and Wales as Scotland has separate and different legal rules.

The Act provides that a statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant, including where the harm has not yet occurred. Harm to the reputation of a business is not "serious harm" unless it has caused or is likely to cause the body serious financial loss.

The Act replaces the old common law defence of justification with a new statutory defence of truth. It does not make a major change in the law, providing that it will be a defence if the imputation of the statement complained about is substantially true. It will remain the case that it is no defence that the statement merely repeats what others have said. The Act also creates a defence of 'honest opinion'. This applies where there is a statement of opinion, where the statement made indicated the basis of the opinion, and where an honest person could have held that opinion. This also reflects the existing law.

A further defence relates to matters of public interest. Here the Act gives statutory form to the so-called Reynolds defence, where the defendant can show that the statement complained of was, or formed part of, a statement on a matter of public interest and that he/she reasonably believed that publishing the statement complained of was in the public interest.

A new rule protects the operators of websites from liability where they can show that they did not post the document on the website, unless the person who had posted it could not be identified by the claimant for defamation and the operator had failed to respond to a request to disclose that person's identity or to take down the document. Power is also given to courts to

order website operators to take down defamatory material where a defamation action has been successful in court.

Special protection is provided for peer-reviewed scientific or academic journals where it cannot be shown that the publication involved malice, and for reports of the decisions of courts and other official publications.

The Act prevents a defamation action from being brought where the same statement is published again by the same publisher more than a year after the first publication; previously each republication could form the basis of a fresh action.

To avoid 'libel tourism' in which cases are brought in the English courts where there is little link with the UK, the Act specifies that where the defendant is domiciled outside the EU or a state party to the Lugano Convention, the case may only proceed where England is clearly the most appropriate place to bring the action. This test applies even if some damage in England is alleged. The courts will also not be able to hear actions brought against persons other than the author, editor or publisher of the statement unless it was not practicable to bring the action against them.

The Act also provides that cases will normally be decided by a judge alone, not a judge and jury. It will be brought into effect later in 2013.

• Defamation Act 2013
http://merlin.obs.coe.int/redirect.php?id=16555 EN

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IE-Ireland

Revision of General and Children's Commercial Communications Codes

On 4 June 2013 the Broadcasting Authority of Ireland (BAI) published revised versions of its General and Children's Commercial Communications Codes. The Codes deal with advertising, sponsorship, product placement and other forms of commercial promotion. The revisions deal, in particular, with the approach to be taken to products that are high in fat, salt and sugar (HFSS). The Codes apply to all radio and television broadcasters regulated in the Republic of Ireland.

The BAI is required under section 42 of the Broadcasting Act 2009 to develop advertising codes to protect the general public health interests of children, and may prohibit the advertising in a broadcasting service of a particular class or classes of foods. The revised Codes were developed following a two-stage consultation process, which was undertaken between September 2011 and October 2012. The consultation process also included input from a BAI convened Expert Working Group, that examined health concerns for children in Ireland (see IRIS 2013-1/26 and IRIS 2011-7/29).

HFSS foods are those that are assessed as high in fat, salt or sugar in accordance with the Nutrient Profiling Model developed by the UK Food Standards Agency and which is adopted by the BAI. The BAI has exempted cheese from the Nutrient Profiling Model, however, advertisements for cheese must include an on-screen message indicating the recommended daily consumption limits (see IRIS 2013-1/26).

Children's Programmes are defined as programmes commonly referred to as such or programmes where more than half the audience are under 18 years. The revised Codes provide that commercial communications for HFSS food and drink shall not:

- be permitted in Children's Programmes;

- include celebrities or sports stars;

- include Children's Programme characters;

- include licensed characters, for example characters and personalities from cinema releases;

- contain health or nutrition claims; or

- include promotional offers.

The revised Codes will also limit HFSS advertising so that no more than 25 percent of advertising sold by a broadcaster can be for HFSS food and drink. Also, only one in four advertisements for HFSS products will be permitted in any advertising break. The revised Codes will come into effect from 2 September 2013 onwards.

• Broadcasting Authority of Ireland, BAI General Commercial Communications Code, (June 2013)
http://merlin.obs.coe.int/redirect.php?id=16553 EN
• Broadcasting Authority of Ireland, BAI Children's Commercial Communications Code, (June 2013)
http://merlin.obs.coe.int/redirect.php?id=16554 EN

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Corporate Income Tax Incentives for Investments in Film Production

On 13 June 2013, the Seimas, the Parliament of the Republic of Lithuania, approved the amendment to

the Law on Corporate Income Tax. The amendment intends to create incentives for investment in Lithuanian film production and will come into force once it is signed by the President of the Republic of Lithuania, which is expected to happen within the next four weeks.

The amendment envisages that the expenses of the Lithuanian film industry are deductible for Lithuanian corporate income tax purposes up to a level of 75 % of the amount. Hence, the amendment introduces the possibility of reducing the taxable income with expenses incurred due to an investment in film production if the following cumulative conditions are met:

1. At least 80 % of the expenditure of the budget of the film is incurred in Lithuania,

2. the overall budget incurred in Lithuania amounts to at least LTL 150,000, and

3. no more than 20% of the budget of the film are financed by funds of Lithuanian entities or entities with a permanent establishment in Lithuania.

However, the expenses occurred by the Lithuanian film industry cannot be deducted for Lithuanian corporate income tax purposes if they are used by the film company for one of the following purposes within the film production:

1. consultation related to an application for film subsidy;

2. preparation of the application for film subsidy;

3. payment of fines, penalties, litigation;

4. mere capital acquisition purposes, like the accumulation of fixed assets or acquisition of premises, as long as such are not necessary for or directly linked with the production of the film;

5. film production-related travel expenses if the Republic of Lithuania is neither the entry or exit country;

6. expenses arising from preparatory work on the film;

7. advertising of the film and marketing activities;

8. film distribution, and

9. extra-high remunerations for performers that are in excess of 4 % of the overall budget of the film.

The amendment applies to expenses that are provided to the Lithuanian film industry as from the year 2014.

• *Pelno Mokesčio Įstatymo 2 Straipsnio, IX1 Skyriaus Pavadinimo Pakeitimo Ir Papildymo Ir Įstatymo Papildymo 172, 462 Straipsniais Įstatymas* (Amendment to the Law on Corporate Income Tax, 13 June 2013)
http://merlin.obs.coe.int/redirect.php?id=16563 LT

Laurynas Ramuckis
Sorainen

MK-"the Former Yugoslav Republic Of Macedonia"

Public Debate over the New Media Law

The public debate over the draft of the new Закон за медиуми и аудиовизуелни медиумски сервиси (Law on Media and Audiovisual Media Services - "Draft Law") has brought to the fore several crucial problematic areas. The Draft Law consisting of 166 Articles has been published and has been open to public debate since 30 April 2013.

For the first time in the young Macedonian democracy, media regulation will be imposed on the print media and on websites, in addition to the existing broader legal framework comprising Criminal Law, Competition Law and the Law on Libel and Defamation (see IRIS 2012-10/22), which already apply to media companies and their products.

The Draft Law is intended to transpose the framework of the Audiovisual Media Services Directive 2010/13/EU into Macedonian law. The necessity of amendments within the audiovisual and media sector was highlighted in the "Macedonia 2012 Progress Report" of the European Commission.

One of the main problematic areas is censorship. Article 4 of the Draft Law envisages "permitted censorship". The Organization for Security and Co-operation in Europe (OSCE) stated in its "Legal Analysis of the Draft Law": "This shows a mistaken understanding of what restrictions on freedom of expression are: they should not be seen as censorship - censorship should be banned without qualification - as legitimate restrictions still do not give the right to exercise the process known as censorship, such as pre-control of publications, need to ask permission for certain content beforehand and so on."

The self-regulatory Association of Journalists of Macedonia (AJM) reacted on the grounds of the lack of regulation of advertising for Government and State institutions. According to the Association, this is one of the biggest threats to media freedom in the country: "If these government advertising campaigns remain out of the scope of the law, possibilities arise for the Government to influence the editorial policy of media outlets and to destabilise the market".

Another important stipulation of the Draft Law is the obligation on all website and print media outlets to register with the new media regulation authority - the Media Agency. This distinctly exceeds the common media regulation practice in democratic societies, so both OSCE, the AJM and media stakeholders believe that this would impose unnecessary restrictions on

the internet sector, which could seriously affect freedom of expression. Hence, the OSCE urges a complete cancellation of this obligation: "The main objections to the Draft Law concern printed and electronic publications and the requirements made on them for registration. These provisions should be deleted completely as there is no need for registration of such publications in addition to what follows from other laws (for tax and business purposes) and any registration requirements may have a chilling effect on freedom of the media."

Another widely criticised part of the Draft Law is the nine-year mandate of the seven members and eight-year mandate of the director of the Media Agency. Not only are the mandates considered too long, but, in addition, the member salaries, amounting to four times the average salary in the country, are seen as excessive. Furthermore, the members of the Agency's Council will be nominated mainly by the ruling political powers: three members appointed by the Parliament, another three by the city mayors and only one by a self-regulatory association of journalists.

The OSCE also addresses the sanctioning policy proposed in the Draft Law, especially in view of the ultimate measure, the revoking of licenses: "Any sanctions must be applied in a gradual and escalating manner, with revocation of the license only being an ultimate sanction in extreme cases." The Draft Law in its current version does not provide for this implementation of the principle of proportionality.

The public debate is still in progress. Accordingly, there are no dates set as far as the finalisation or even adoption of the Draft Law is concerned.

• Закон за медиуми и аудиовизуелни медиумски сервиси (Draft Law on Media and Audiovisual Media Services with comments)
http://merlin.obs.coe.int/redirect.php?id=16588 MK

• The OSCE's Legal Analysis of the draft Law on Media and Audiovisual Media Services of the former Yugoslav Republic of Macedonia
http://merlin.obs.coe.int/redirect.php?id=16564 EN

• Здружение на новинарите на Македонија (ЗНМ) ЗАБЕЛЕШКИ на Нацрт - законот за медиуми и аудиовизуелнимедиумски услуги објавен на *08.04.2013* година ,477400465464473460463460407 Министерството за информатичкоопштество и администрација (AJM's Remarks on the Draft Law of Media and Audiovisual Media Services)
http://merlin.obs.coe.int/redirect.php?id=16565 MK

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Dutch Court Denies Ryanair Access to Raw Source Material of TV Interviews with Employees

On 15 May 2013, the District Court in Amsterdam denied Ryanair access to the raw source material of television interviews with its employees. In two television broadcasts - one at the end of 2012 and one at the beginning of 2013 - the Dutch public broadcaster KRO addressed the business practices of the airline, which, according to anonymous pilots, could lead to dangerous situations. Based on the interviews, KRO reported that sick and overtired pilots regularly had to fly and that Ryanair's policy to fly with a minimal amount of fuel is contrary to airline regulations. Ryanair, suspecting that KRO presented the pilots' statements out of context, brought a case before the court, arguing that the broadcasts were unlawful. During the proceedings, the airline applied for an interlocutory injunction to require KRO to hand over the unedited interview footage to them.

The Court refused to grant the injunction, stating that it would amount to an interference with freedom of expression, as protected by Article 10 of the European Convention on Human Rights. The Court reasoned that if Ryanair was granted access to the raw source material of the interviews, the airline might be able to determine the identities of the anonymous pilots, which would lead to the disclosure of KRO's sources. According to ECHR jurisprudence, the judge continued, an interference with the protection of sources can only be justified by an overriding general or public interest. The judge stated there was no such public interest justification in this instance and explicitly held that the protection of Ryanair's public reputation was not enough to merit granting the injunction. Furthermore, the airline could determine whether the statements from its employees were taken out of context without obtaining an injunction.

The Court has not yet decided on whether or not the television broadcasts were unlawful.

• *Rechtbank Amsterdam, Vonnis in incident van 15 mei 2013* (Interlocutory judgment of the Amsterdam court, 15 May 2013)
http://merlin.obs.coe.int/redirect.php?id=16559 NL

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

Decision of the Dutch Advertising Code Committee on Political Television Broadcasts and Children

On 19 April 2013 the Dutch Advertising Code Committee (DACC Reclame Code Commissie) upheld a complaint regarding a broadcast by the Dutch political party 'Animals' Party' (Partij voor de Dieren).

The DACC is a self-regulatory body that receives complaints about breaches of the Dutch Advertising Code. It can advise on complaints but it cannot impose sanctions. If certain expressions in advertising violate the law one can either complain to the DACC or begin civil or criminal proceedings in court. The complaint in question concerned a trailer for a documentary broadcast by the Animals' Party. The documentary was created for the Party's 10-year anniversary and is entitled 'The Hare in the Marathon' (De Haas en de Marathon). The trailer for the documentary was broadcast on national television in a broadcasting slot that is specifically reserved for political parties. The specific times allocated for broadcasts by political parties are set out in the *Mediawet 2008* (Media Act). The trailer in question was broadcast during the allocated time which was before 8 p.m. Accordingly the trailer was broadcast before the Dutch watershed, directly after the popular children's television series 'Sesame Street'. The trailer for the documentary showed images of decapitated animals and an animal being abused. The complaint was that the broadcast was not suitable for viewing by children and therefore should not be broadcast prior to 8 pm.

The DACC first had to decide whether the broadcasting of the trailer qualified as an 'advertising-expression'. The Animals' Party argued that it did not, but the Committee decided that the broadcast qualified as a 'public presentation of ideas' within the meaning of Art. 1 of the *Nederlandse Reclame Code* (Dutch Advertising Code). Accordingly, the political advertisement was considered an expression of advertising and, as such, the Dutch Advertising Code was applicable. Furthermore, the DACC decided that although the Dutch Public Service Broadcaster designates the timeslot for political broadcasts, the Animals' Party is responsible for the content of the broadcast. In other words, even though political parties cannot influence the time of the broadcast, they are responsible for keeping their content in line with the Dutch Advertising Code. This includes ensuring that the material in question is suitable to be viewed by children. The DACC considered that the broadcast of the trailer before 8 p.m. was in bad taste and improper. The Animals' party was therefore advised to refrain from broadcasting political advertisements containing images that are not suitable for viewing by children before 8 p.m.

• *DACC Reclame Code Commissie, 19/04/2013* (Decision of the Dutch Advertising Code Committee of 19 April 2013)
http://merlin.obs.coe.int/redirect.php?id=16589 NL

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Legislative Proposal to Change the Media Act 2008

On 4 June 2013, the Dutch House of Representatives discussed a legislative proposal to amend the Dutch Media Act 2008. State Secretary Dekker proposed several changes to the Media Act in reaction to the growing digitisation of media and the increased level of competition within the media sector. The proposal contains provisions relating to television as well as radio channels. An example of this digitisation is the vast rise of digital television and radio subscriptions as opposed to analogue subscriptions. An example of increased competition in the media sector is the introduction of services comparable to television or radio that are provided on the Internet.

The core element of the legislative proposal is the introduction of a minimum amount of programme channels that must be offered by digital television providers in their standard packages. This requirement can be found in Article 6.13 of the legislative proposal. Several requirements are set with regard to the minimum of 30 channels that have to be offered. For example, the package must contain three general channels of the regional public broadcaster. Also, the package must contain three channels of the Belgian public broadcaster that are in the Dutch language. The goal of the minimum amount of 30 channels that have to be offered is to maintain a sufficiently varied media offer in the standard television packages. The Dutch Commissariat for Media will supervise adherence to the new provisions.

Another proposed amendment to the current Act is the abolition of local programme councils. The role of programme councils is to advise television providers about which channels to include in their television packages. One concern in this regard is how the consumer will still be able to have an influence on the channels offered in the television packages. In reaction to this concern, State Secretary Dekker stated that this should not pose a serious problem as consumers can switch to another provider if they are unhappy with the channels offered. Consumers can also go to the Authority Consumer & Market, an independent supervisory body, to file a complaint.

This legislative proposal has not yet reached its final stage. The House of Representatives will have a subsequent meeting on the proposal, the date of which is yet to be announced.

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RO-Romania

CNA Changes Conditions of Broadcasting Licences

On 6 June 2013, the *Consiliul Naţional al Audiovizualului* (National Audiovisual Council - CNA) unanimously adopted Decision No. 277/2013 on the procedure for the granting, modification, extension and transfer of audiovisual licences and authorisation decisions, except for digital terrestrial system broadcasting, along with the conditions regarding broadcasting of local programmes or the rebroadcasting of other broadcasters' programmes. The Decision replaced the CNA's previous Decision No. 488/2010 and Decision No. 260/2003 on the audiovisual licence transfer (see IRIS 2002-7/28, IRIS 2005-5/24, IRIS 2005-8/29, IRIS 2006-9/30, IRIS 2012-10/23, and IRIS 2013-5/38).

The CNA has adopted the proposal of the non-governmental organisation *Asociaţia Română de Comunicaţii Audiovizuale* (Romanian Association for Audiovisual Communications - ARCA) to overturn the obligation of local terrestrial broadcasters to air daily a local programme lasting at least 6 hours in towns of more than 50,000 inhabitants and at least two hours daily in towns having fewer than 50,000 inhabitants.

The audiovisual licence for terrestrial broadcasting is granted by way of a competitive selection procedure held and decided by the CNA. According to the Decision, the application file for a licence will from now on have to include the editorial strategy for the entire period of validity, along with the initial investment value.

Furthermore, the application will have to include a list describing and classifying all programme types, with clear data about the percentages of different kinds of programmes (information, cultural, educational and entertainment), external sources of programmes and other arguments which could support the editorial project. The programmes will have to reserve a significant percentage of their schedule for news and information, while fully observing the requirement to provide correct information as provided by audiovisual legislation.

All shareholders of a licence holder or an applicant, who are involved in the trade sector, have to be clearly designated. A certificate issued by the Trade Register, clearly stating the object of activity and the detailed composition of the shareholders has to be submitted along with a fiscal certificate.

When granting a licence, the CNA will take into account the strategy for the nationwide audiovisual coverage of the Romanian territory, content of the offered programmes, the experience and the competence of the applicant in the audiovisual sector.

The audiovisual licence cannot be transferred until at least one year after the commencement of broadcasting and requires the agreement of the CNA. The new holder has to comply with all the requirements of the initially granted licence. The CNA will decide upon a licence transfer request within 30 days.

The Decision no. 227/2013 stipulates that holders of several local licences can choose - according to the territorial coverage - to merge those into a regional or national licence or to continue to use them as local licences.

The Decision No. 277/2013 does not refer to programmes services broadcast via the digital terrestrial system.

• *Decizie nr. 277 din 06.06.2013 privind procedura de acordare, modificare, prelungire a valabilităţii şi de cedare a licenţei şi a deciziei de autorizare audiovizuală, cu excepţia celor pentru difuzare în sistem digital terestru, precum şi condiţiile privind difuzarea de programe locale, retransmiterea sau preluarea de programe ale altor radiodifuzori* (Decision no. 277 of 6 June 2013 on the procedure for the granting, modification, or extension of the validity and transfer of a licence and of the audiovisual authorisation decision, except for terrestrial digital system broadcasting, along with the conditions regarding broadcasting of local programmes, and the rebroadcasting or the release of other broadcasters' programmes)
http://merlin.obs.coe.int/redirect.php?id=16568 RO

Eugen Cojocariu
Radio Romania International

Government Obliges ANCOM to Pay out Surplus of 2012

On 29 May 2013, the Romanian Government issued the Emergency Decree no. 53/2013 for the completion of Art. 14 of the Emergency Decree no. 22/2009 for the set up of the *Autoritatea Naţională pentru Administrare şi Reglementare în Comunicaţii* (National Authority for Administration and Regulation in Communications - ANCOM), the Romanian telecom watchdog (see IRIS 2009-5/31).

According to the document, which introduces a new paragraph (5) into the above-mentioned Art. 14, the ANCOM has to transfer within 15 days of the Emergency Decree entering into force, the sum of RON 100 million (approximately EUR 21.98 million) to the revenue account of the State budget. The sum comes from ANCOM's financial surplus from previous years. According to the annual report of the institution, ANCOM registered a surplus of RON 107,930,600 (approximately EUR 23.72 million) in 2012.

According to Art. 14(4) of the Emergency Decree no. 229/2009, the annual surplus resulting from the implementation of the budget of income and expenditure of ANCOM was originally supposed to be carried forward to the following year. The new Art. 14(5) envisages the above-mentioned exception for 2013.

The money will be used by the Romanian Government in order to increase the necessary resources required for social protection and welfare measures promised by the Government. These measures are intended to increase the guaranteed minimum income in Romania, along with an increase of the State's familiy support necessary to cover additional expenses arising from expected increases in electricity and gas prices.

• *Ordonanţă de Urgenţă pentru completarea art. 14 al OUG nr. 22/2009 privind înfiinţarea Autorităţii Naţionale pentru Administrare si Reglementare in Comunicaţii* (Emergency Decree for the completion of art. 14 of the Emergency Ordonance no. 22/2009 for the set up of the National Authority for Administration and Regulation in Communications - ANCOM, 29 May 2013)
http://merlin.obs.coe.int/redirect.php?id=16566 RO

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SE-Sweden

Amendments to the Swedish Copyright Act

On 17 June 2013, the Swedish Parliament adopted amendments to the *lag (1960:729) om upphovsrätt till litterära och konstnärliga verk* (Act on Copyright in Literary and Artistic Works - CA). The amendments enter into force on 1 November 2013 and will improve the existing possibilities to exploit works after an agreement has been entered into with organizations that represent a large number of creators in the area - so called extended collective licensing.

The amendments include, among other things, a new general collective licensing option that will give actors an extended possibility of using collective licenses. This possibility will apply in cases where large amounts of copyrighted material is used by the same user and where the user cannot determine in advance which works will be used and where it, from an objective point of view, is not practically possible to enter into agreements directly with a rightsholder. Rightsholders will be able to object to this kind of exploitation.

Moreover, the amendments introduce the opportunity for all organizations that represent several rightsholders of works used in Sweden to enter into collective licenses for specific purposes. This means that from now on any organization covering several international rightsholders, whose works are used in Sweden, can enter into binding collective licenses.

The changes also include an extended possibility for companies and governmental organizations to enter into collective licensing agreements should they need to use copyright-protected works. These types of licenses are only admissible insofar as their objective is to satisfy the need for information within the company or organisation. Additionally, under such a collective licensing agreement, all radio and television companies are now provided with the opportunity to both (i) broadcast works, and (ii) communicate to the public works part of a radio or television broadcast in a way that individuals can access the same at a time and place of their choosing. The new regime thus allows for the possibility of online access to copyrighted material by individuals, while simultaneously providing copyright owners with the right to oppose this type of exploitation.

Another change that will be introduced in November relates to information being made available to the public. Libraries and certain archives will be given increased rights to make works available to the public.

Finally, in order to implement Directive 2011/77/EU of the European Parliament and of the Council of 27 September 2011 amending Directive 2006/116/EC on the term of protection of copyright and certain related rights, the protection for performers and producers of sound recording is extended from the existing protection of 50 years to 70 years.

• *SFS 2013:691 Lag om ändring i lagen (1960:729) om upphovsrätt till litterära och konstnärliga verk* (Act SFS 2013:691 amending the Act on Copyright in Literary and Artistic Works)
http://merlin.obs.coe.int/redirect.php?id=16591 SV

Erik Ullberg and Michael Plogell
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SK-Slovakia

Violation of Ban on Political Advertising

On 21 May 2013, the Supreme Court's (hereinafter "Court") ruling of 25 April 2013 has been published, which confirmed the decision of the Council for Broadcasting and Retransmission of Slovak republic (hereinafter "Council"). The Council imposed a fine of EUR 100,000 on the major commercial broadcaster for broadcasting political advertising outside the official election campaign set by law (21 days before the election day).

Three months prior to the election, the broadcaster aired, on a rather large scale, sponsorship announcements of the civic association "Citizen in action" (about 20 messages per day). These announcements presented (in graphics, words and text) the top three

candidates and their basic ideas and the slogans of the newly-founded political party "99% citizen's voice". The spots visually referred to the internet site "www.99percent.sk" which was the official internet site of the party. The "signature" slogan of this party "I am also the 99%" was featured both by reading out and in text format.

Due to the upcoming elections the speed of the decision-taking mattered greatly in this case. The broadcaster exercised procedural rights (requests for prolongation of the time limit for submitting its opinion combined with requests to "clarify" the accusations).

The case was nevertheless put on the agenda of the very next Council meeting (two weeks) and the broadcaster was invited to present his opinion in person. On the day of the meeting, the broadcaster requested the Council to postpone the hearing in order to have "sufficient time to thoroughly familiarise with the case".

The Council scheduled a special meeting that took place one week later (regularly, the Council meets every two weeks). During the hearing at the meeting, the broadcaster claimed that the given messages were proper sponsorship announcements of a civic association. They merely promoted the ideas and goals of the civic association, which is fully in line with provisions on sponsorship.

However, the broadcaster did not elaborate on the candidates and slogans of the political party that had been broadcast within those announcements. The Council stated that the mere labelling of the spots as sponsorship announcements and the fact that the civic association paid for these spots cannot change their purpose. Messages clearly promoting candidates and slogans of a political party qualify as political advertising. Political advertising, however, may not be in any circumstances broadcast on TV before the legally determined official election campaign has begun.

Due to the high frequency of these spots, the Council qualified the broadcasting of the political advertising as a severe violation that is capable of seriously disrupting the process of a fair election. Accordingly, the Council imposed an exceptionally high fine in the amount of EUR 100,000.

Before the court, the broadcaster repeated the arguments regarding sponsorship and claimed that his procedural rights had been violated due to the insufficient time for the submission of his opinion and the failure of the Council to sufficiently clarify the case. The Court, however, found the factual base of the case to be clear and simple. Thus, no special treatment of the broadcaster was necessary. On the contrary, the circumstances of the case justified the unusually high pace of the Council's actions. The Court also agreed on the gravity of the violation and fully supported the amount of the fine.

• *Najvyšší súd, 25/04/2013* (Decision of the Supreme Court of 25 April 2013) SK

Juraj Polak
Office of the Council for Broadcasting and Retransmission of Slovak Republic

Refusal to Disclose information Confirmed by Court

On 2 April 2013, the Supreme Court's (hereinafter "Court") ruling of 28 February 2013 was published. It confirmed the decision of the Supreme Audit Office of the Slovak Republic (hereinafter "Audit Office"). With reference to the Act on Free Access to Information (hereinafter "Information Act"), the Audit Office refused to disclose information about a controversial public tender carried out by the Ministry of Construction.

The Information Act represents a frequently used and thus valuable investigation tool for journalists in all types of media (print, audiovisual or online). The importance of its effective usage has been described by the deputy editor of the major quality newspaper "Sme" (also provider of the on-demand audiovisual media service "TV Sme"): "The Legislation is satisfactory. The actual problem is the willingness of the authorities to 'act'. If an authority refuses to provide information, it is virtually impossible to get it because to obtain a court order takes too long, and when the court finally delivers a decision, the information is out of date - which usually means it's useless."

In 2007, the Ministry of Construction carried out a public tender for an amount of almost EUR 120 million. Despite its significance, the public tender was solely issued on the billboard inside the Ministry's building. The non-governmental organisation (NGO) "Fair-Play Alliance" requested disclosure of the tender submission, the proposals and the final evaluation of this tender based upon the provisions of the Information Act. The Ministry of Construction refused this request, reasoning that they no longer possessed these documents. The documents had been sent to the Audit Office after the official inspection had started. Therefore, the NGO addressed the Audit Office with the same request. The Audit Office refused to disclose information since "it concerns the performance of an inspection by a public authority".

The NGO took legal action against this decision arguing that the information did not concern the performance of the inspection but the information itself was subject of the inspection. The mere fact that information becomes a subject of inspection by a public authority cannot prevent a journalist from obtaining access. The purpose of the Information Act is to allow

public control of governmental bodies. The interpretation that enables the governmental body to avoid public control simply by referring to governmental inspection is in clear conflict with the purpose of the Information Act.

The Court rejected these arguments. It agreed that if the Ministry had possessed the information at the time of the request they would have had to disclose it. However, since the documents had been forwarded for official inspection, they then concerned the administrative performance of the inspection and thus might be refused to be disclosed by the Audit Office.

The Court did not acknowledge a difference between information that is subject to inspection and information that concerns the performance of inspection. On the contrary, the Court stated that such information (subject of inspection) will always concern the performance of the inspection. Regarding constitutional aspects, the Court did not see an interference with the right to access to information as long as the requirements of the Information Act are fulfilled. The proportionality of the decision or the requirements of the Information Act have not been assessed by the Court.

On the contrary, the Court advised the NGO in its ruling to use the tools of the Information Act for "effective" public control only and not as an instrument "for meaningless and formalistic court trials". The Court stated that the NGO should have waited upon the request until the completion of the inspection. It did not consider the great public interest in the governmental tender procedure at the time when the subject was topical.

The NGO expressed its intention to file a complaint with the Constitutional Court due to a violation of their basic rights and freedoms.

• *Najvyšší súd, 28/02/2013* (Decision of the Supreme Court of 28 February 2013)
http://merlin.obs.coe.int/redirect.php?id=16569 SK

Juraj Polak
Office of the Council for Broadcasting and Retransmission of Slovak Republic

TJ-Tajikistan

New Media Law Adopted

On 19 March 2013, the new Tajik Statute "On Periodical Press and Other Mass Media" went into force. It was adopted after two years of discussions and substitutes the statute "On Press and Other Mass Media" adopted in 1990.

The new Act extends the notion of journalists and the scope of their rights, as well as developing provisions on access to information. It also contains new tools for the authorities to control the mass media. The Act obliges all mass media outlets, including broadcasters, to be registered as legal entities. Declaring the principle of professional independence of the editorial office, the Act also introduces the requirement for the founder (owner) to spell out its programme and the main directions of editorial activity. The founder is to provide the governmental authority with a report when changing the directions. It also abolishes earlier provisions granting journalists the right to elect the editor-in-chief. The editorial charter, which served as a guarantee of editorial independence, is also abolished.

The OSCE Representative on Freedom of the Media commissioned a legal review on Tajik law on periodical print and other mass media and issued a public statement in this regard.

• О периодической печати и других средствах массовой информации (Statute of the Tajik Republic "On Periodical Press and Other Mass Media" of 19 March 2013 № 96)
http://merlin.obs.coe.int/redirect.php?id=16551 RU

• КОММЕНТАРИЙ К ЗАКОНУРЕСПУБЛИКИ ТАДЖИКИСТАН « О периодической печати и других средствах массовой информации » (OSCE Representative on Freedom of the Media, Legal review on Tajik law on periodical print and other mass media)
http://merlin.obs.coe.int/redirect.php?id=16552 RU

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DE-Germany

New State Treaty for the SWR

On 3 July 2013, the Prime Minister of "Rheinland-Pfalz" and the Prime Minister of "Baden-Württemberg" signed the New State Contract for the public broadcasting system in both countries, the Südwestrundfunk (SWR). The New State Treaty for the SWR came into force on 1 January 2014 and replaced the old State Treaty of 31 May 1997.

The new SWR-State-Treaty specifies the programme mandate of the public broadcasting including the online activities of the SWR and directed the programme to a younger audience. By creating more flexible structures, the new state contract wants to allow the SWR the establishment of a multimedia organization and the financial consolidation in difficult times (between 2010 and 2020 the SWR has to save 166 million Euro (= 15% of total budget)). Therefore, the basic

principles of allocation and the assignment of business divisions are no longer regulated by the SWR-State-Treaty. Both things are now included in the main statutes and the administrative order of the SWR, whereby the SWR gets more freedom to regulate its own affairs (both the main statutes and the administrative order must be approved by the supervisory bodies of the SWR). With regard to the elimination of state's contractual requirements, the supervisory bodies of the SWR not only have more freedom to act, they also have a greater responsibility for the design and the orientation of the SWR. The new state treaty sets the SWR in the position to develop a balanced overall concept and to create focal points in the individual business areas at the different locations.

Another important goal of the new SWR-State-Treaty is to strengthen the regional identity in the two countries Rheinland-Pfalz and Baden-Württemberg. The targets of the new state treaty are deeply rooted in the two countries, their regions and cities. Therefore, these regional roots should take a prominent role in the offers of the SWR. The regional diversity is expressed by the different locations of the SWR in the two capital cities of Mainz and Stuttgart, the third location in Baden-Baden and numerous other broadcast studios across the country. To find the right balance between decentralized organization and efficient uniform structures, the design of the SWR in detail is not made by the new state treaty. This is the task of the organs of the SWR, especially of the artistic director and the supervisory bodies.

With regard to the composition and task assignment of the SWR supervisory bodies, the extension of the principle of distance from the state was an important policy objective. Under the new state treaty, the governments of both countries no longer send members to the Broadcasting Board and the Board of Directors is expanded with three non-government members. Through these measures, the editorial independence of the SWR should be secured and strengthened. In order to reflect the realities in today's society, the supervisory bodies of the SWR include for the first time Muslims and Sinti and Romanies. Furthermore, the new state contract determines binding requirements for a higher proportion of women in the Broadcasting Board and in the Board of Directors. Thus, the representation of women is to be strengthened in the supervisory bodies of the SWR.

To ensure transparency, the meetings of the Broadcasting Board are public and the decisions taken at those meetings shall be made available for everyone. In order to fulfill their transparency obligations, the members of the management must publish their remunerations. To strengthen the participation of employees, the Board of Directors has to take up a full voting member of the Staff Committee from each country. In addition, an editorial statute is to be installed, which should strengthen the participation rights of employees. The editorial statute regulates in detail the involvement of employees in programme matters, whereby the editorial independence is secured.

• *Staatsvertrag über den Südwestrundfunk* (SWR-State-Treaty)
http://merlin.obs.coe.int/redirect.php?id=16916 DE

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No injunctive relief in the case of photo reporting from the realm of contemporary history

In a judgment of 11 June 2013 (Case VI ZR 4/12) the Bundesgerichtshof (Federal Court of Justice - BGH) ruled that there was no entitlement to injunctive relief in the case of photo reporting from the realm of contemporary history.

On 2 November 2010, the television channel of the public service broadcaster ARD carried an episode of a socio-critical satirical programme in which the plaintiff could be seen and heard for a total of three and a half minutes. A few months before, on 24 June 2010, the plaintiff, a member of a group of three women who describe themselves as "grandmothers against war", held a vigil on Berlin's Pariser Platz against a military operation that had taken place shortly before. A journalist who was filming for an episode of the aforementioned television production spoke about the vigil to the plaintiff on camera and discussed with her issues of international law and the legitimacy of military operations. The next day and a few days later, the plaintiff wrote an email to the defendant company that produces the programme and revoked as a precaution any consent given to the recording and the broadcasting of the images. After the programme had been broadcast nevertheless, she brought an action seeking an injunction to prevent any further broadcasting of the programme. She claimed that she had neither expressly nor tacitly consented to the recording and that at the time the recording was made she knew neither the journalist nor the programme broadcast.

The court of appeal affirmed the plaintiff's right to injunctive relief but this was rejected by the BGH. On the basis of the graduated approach to protection afforded by sections 22 and 23 of the Kunsturhebergesetz (Art Copyright Act - KUG), images of a person may exceptionally be published without his or her consent if the images are from the realm of contemporary history and their dissemination does not harm the legitimate interests of the person depicted. On this point, the BGH stated that the vigil held by the plaintiff was such an event of contemporary history as it had been held on a busy city square with the intention of it being seen by as broad a section of the public as pos-

sible. In addition, it pursued a political goal in connection with a military operation that had taken place shortly before and had caused a stir both nationally and internationally. The plaintiff's intention with the vigil had, according to the court, been to exert influence on public opinion.

The court also noted that the broadcast had not violated any of the plaintiff's legitimate interests. In his discussion with her, the journalist had adopted a critical position rejecting her opinion, so that she had to expect her action to be shown in a critical light in the programme. The satirical treatment of her statements in the broadcast had not exceeded the limits of permissible and reasonable criticism.

• *Das Urteil des Bundesgerichtshofs vom 11 Juni 2013 (Az.: VI ZR 209/09)* (Judgment of the Federal Court of Justice of 11 June 2013 (Case VI ZR 209/09))
http://merlin.obs.coe.int/redirect.php?id=17791 DE

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Agenda

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