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IRIS
Legal Observations
of the European Audiovisual Observatory

IRIS 2014-6

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Editorial Informations

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E-mail: markus.booms@coe.int
Web Design:
Coordination: Cyril Chaboisseau, European Audiovisual Observatory • Development and Integration: www.logidee.com • Layout: www.acom-europe.com and www.logidee.com
ISSN 2078-6158

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INTERNATIONAL

COUNCIL OF EUROPE

European Court of Human Rights: Brosa v. Germany

The European Court of Human Rights has delivered an interesting judgment on the right to freedom of political expression, during pre-election time. The applicant, Mr Ulrich Brosa alleged that a court injunction in Germany, prohibiting him from distributing a leaflet that he had drawn up on the occasion of mayoral elections, had violated his right to freedom of expression. The injunction at issue prohibited Brosa from distributing a leaflet in which he called not to vote for a candidate, F.G. for the office of local mayor, who allegedly provided cover for a neo-Nazi organisation, Berger-88. The injunction also prevented Brosa from making other assertions of fact or allegations that might depict F.G. as a supporter of neo-Nazi organisations. Any contravention was punishable by a fine of up to EUR 250,000 or by imprisonment of up to six months. The German courts found that to claim that someone was supporting a neo-Nazi organisation amounted to an infringement of that individual's honour and social reputation and to his personality rights, while Brosa had failed to provide sufficient evidence to support his allegation against F.G. In Strasbourg, Brosa complained that the injunction had breached his right to freedom of expression, as provided for in Article 10 of the Convention.

Examining the particular circumstances of the case, the Court refers to the following elements to be taken into account: (1) the position of the applicant, (2) the position of the plaintiff in the domestic proceedings, (3) the subject-matter of the publication and finally (4) the classification of the contested statement by the domestic courts.

As to the position of Brosa, the Court notes that he is a private individual, participating however in a public discussion on the political orientation of an association. F.G. was an elected town councillor who was running for the office of mayor at the time in question. This status of F.G. as a politician made the limits of acceptable criticism wider than as regards a private individual. The subject-matter of the publication concerned a leaflet asking citizens not to vote for F.G. as mayor, primarily on the basis of his attitude vis-à-vis an association having an extremist right-wing orientation. Brosa's leaflet, disseminated in the run-up to the mayoral elections was therefore of a political nature on a question of public interest at the material time and location, leaving little scope for restrictions on political speech or on debate of questions of public interest. As regards the qualification of the impugned statement by the domestic courts, the Court considers it to consist of two elements: firstly, the allegation that the association Berger-88 was a neo-Nazi organisation that, moreover, was particularly dangerous; and, secondly, the allegation that F.G. had "covered" for the organisation. The Court admits that, in substance, the reference to the neo-Nazi background and the dangerous character of Berger-88 was not devoid of factual basis, while the Court also reminds us of the fact that the association was monitored by the German Intelligence Services on suspicion of extremist tendencies. The European Court holds the opinion that that the German courts in this case required a disproportionately high degree of factual proof to be established. It also considers that the statement that F.G. has covered the neo-Nazi organisation at issue was part of an ongoing debate. The Court finds that this statement had a sufficient factual basis, referring to F.G.'s public statements, emphasizing that the association had no extreme right-wing tendencies and calling Brosa's statements "false allegations". According to the Court, Brosa's leaflet did not exceed the acceptable limits of criticism. Therefore the Court comes to the conclusion that the German courts failed to strike a fair balance between the relevant interests and to establish a "pressing social need" for putting the protection of the personality rights of F.G. above Brosa's right to freedom of expression, even in the context of a civil injunction rather than criminal charges or monetary compensation claims. Under these circumstances, the Court considers that the domestic courts overstepped the margin of appreciation afforded to them and that the interference was disproportionate to the aim pursued and not "necessary in a democratic society". There has been, accordingly, a violation of Article 10 of the Convention. The Court held that Germany was to pay Mr Brosa EUR 3,000 in respect of non-pecuniary damage and 2,683 euros in respect of costs and expenses.

• Judgment by the European Court of Human Rights (Fifth Section), case of Brosa v. Germany, Appl. No. 5709/09 of 17 April 2014
http://merlin.obs.coe.int/redirect.php?id=17052 EN

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European Court of Human Rights: Salumäki v. Finland

Can a title of a newspaper article that could be interpreted as damaging the reputation of a public person justify a criminal conviction of the journalist who wrote the article, while the article itself is written in good faith and does not contain any factual errors or defamatory allegations? That is the question the

European Court needed to answer in a recent case against Finland. The applicant in this case is Tiina Johanna Salumäki, a journalist working for the newspaper Ilta-Sanomat. Ms Salumäki published an article concerning the investigation into a homicide (of P.O.). The front page of the newspaper carried a headline asking whether the victim of the homicide had connections with K.U., a well-known Finnish businessman. A photograph of K.U. appeared on the same page. Next to the article was a separate column mentioning K.U.'s previous conviction for economic crimes. The Helsinki District Court convicted the journalist, Salumäki, and the newspaper's editor-in-chief at the time, H.S., of defaming K.U. as the title of their article insinuated that K.U. had been involved in the killing, even though it was made clear in the text of the article itself that the homicide suspect had no connections with K.U. Along with H.S., Salumäki was ordered to pay damages and costs to K.U. This judgment was subsequently upheld on appeal and the Supreme Court finally refused leave to appeal. Salumäki complained that her conviction had amounted to a violation of Article 10 (freedom of expression) of the European Convention on Human Rights. She argued that the information presented in the article was correct and that the title of the article only connected K.U. to the victim and did not insinuate that K.U. had connections with the perpetrator, or that he was involved in the homicide.

The Court explains that it had to verify whether the domestic authorities struck a fair balance when protecting two values guaranteed by the Convention that may come into conflict with each other in certain cases, namely, on the one hand, the freedom of expression protected by Article 10 and, on the other, the right to respect for private life, including the right of reputation, enshrined in Article 8. The Court applies the criteria developed by the Grand Chamber in Axel Springer Verlag and Von Hannover (no. 2) (IRIS 2012/3-1) in order to find out whether the domestic authorities indeed struck a fair balance between the rights protected by Articles 8 and 10 of the Convention. First the Court emphasises that the criminal investigation into a homicide was clearly a matter of legitimate public interest, having regard in particular to the serious nature of the crime: "From the point of view of the general public's right to receive information about matters of public interest, and thus from the standpoint of the press, there were justified grounds for reporting the matter to the public". The Court also recognised that "the article was based on information given by the authorities and K.U.'s photograph had been taken at a public event", while "the facts set out in the article in issue were not in dispute even before the domestic courts. There is no evidence, or indeed any allegation, of factual errors, misrepresentation or bad faith on the part of the applicant". Nevertheless the decisive factor in this case was that, according to the domestic courts, the title created a connection between K.U. and the homicide, implying that he was involved in it. Even though it was specifically stated in the text of the article that the homicide suspect had no connections with K.U., this information only appeared towards the end of the article. The Court was of the opinion that Salumäki must have considered it probable that her article contained a false insinuation and that this false insinuation was capable of causing suffering to K.U. The Court also refers in this context to the principle of presumption of innocence under Article 6 §2 of the Convention and emphasises that this principle may be relevant also in the context of Article 10, in situations in which nothing is clearly stated but only insinuated. The Court therefore concluded that what the journalist had written was defamatory, as it implied that K.U. was somehow responsible for P.O.'s murder. According to the Court, "it amounted to stating, by innuendo, a fact that was highly damaging to the reputation of K.U." and at no time did Salumäki attempt to prove the truth of the insinuated fact, nor did she plead that the insinuation was a fair comment based on relevant facts. Having regard to all the foregoing factors, including the margin of appreciation afforded to the State in this area, the Court considered that the domestic courts struck a fair balance between the competing interests at stake. There has therefore been no violation of Article 10 of the Convention.

• Judgment by the European Court of Human Rights (Fourth Section), case of Salumäki v. Finland, Appl. No. 23605/09 of 29 April 2014
http://merlin.obs.coe.int/redirect.php?id=17051 EN

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EUROPEAN UNION

Court of Justice of the European Union: Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos

On 13 May 2014, the Court of Justice of the European Union (CJEU) handed down its judgment in the case of C-131/12.

Case C-131/12 is a request for a preliminary ruling from the Spanish National High Court in a proceeding between Google v. Agencia Española de Protección de Datos (AEPD) and one Mr González, concerning the interpretation of some key concepts of Directive 95/46/EC and the Charter of Fundamental Rights.

In 2010, Mr González lodged a complaint with the Spanish Data Protection Agency (AEPD) against Google stating that when entering his name in the search engine he would obtain links to a newspaper that made reference to him in relation to an auction connected with proceedings for the recovery of

debts. The AEPD upheld the complaint as operators of search engines are subject to data protection legislation. Google brought an action against the decision before the National High Court, which referred a number of questions to the CJEU relating to (1) the territorial application of Directive 95/46; (2) the activity of search engines as providers of content; and (3) the scope of the so-called "right to be forgotten".

Regarding the first set of questions, the CJEU holds that 'processing of personal data' is carried out in the context of the activities of an establishment of the controller on the territory of a member state when the operator of a search engine sets up a branch that is intended to promote and sell advertising, and that orientates its activity towards the inhabitants of that member state.

Moving to the second set of questions, the Court finds that the activity of a search engine must be classified as 'processing of personal data' when the processed information contains personal data. The operator of the search engine must be regarded as the 'controller' in respect of that processing and - upon request - is obliged to remove from the list of results displayed following a search made on the basis of a person's name links to web pages, published by third parties, and containing information relating to that person.

Finally, regarding the third set of questions, the court establishes that when appraising the conditions for the application of Articles 12(b) and 14 of the Directive, it should inter alia be examined whether the data subject has a right that the information in question no longer be linked to his name by a list of results displayed following a search made on the basis of his name. Articles 7 and 8 of the Charter override, as a rule, not only the economic interest of the operator of the search engine but also the interest of the general public in having access to that information upon a search relating to the data subject's name. However, that would not be the case if it appeared, for particular reasons, such as the role played by the data subject in public life, that the interference with his or her fundamental rights is justified by the preponderant interest of the general public in having access to the information in question.

• Judgment of the Court (Grand Chamber), Google Spain SL, Google Inc. v Agencia Española de Protección de Datos, C-131/12, 10 May 2014
http://merlin.obs.coe.int/redirect.php?id=17059 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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Court of Justice of the European Union: No Private Copying Levy for Downloading from an Illegal Source

On 10 April 2014, the Court of Justice of the European Union (CJEU) delivered its opinion in Case C-435/12 (ACI Adam/Stichting de Thuiskopie). The Court considered whether reproductions from unlawful sources fall within the private copying exemption of Directive 2001/29/EC (Copyright Directive). Advocate General (AG) Villalón was of the opinion that reproductions from unlawful sources fall outside the scope of private copying (IRIS 2014-3/3). The CJEU followed the AG's opinion and stated that the private copying exception cannot cover reproductions made from unlawful sources, and that accordingly, the levy cannot be calculated on the basis of such unlawful reproductions.

The Court's reasoning is, for the most part, in line with the AG's opinion. However, a notable difference is that the CJEU put more emphasis on the fact that that the internal market can be negatively influenced if member states are allowed to include reproductions made from unlawful sources under the private copying exemption. Other than that, the CJEU also based its decision on the principle of strict interpretation and the application of the three-step-test as formulated in the Copyright Directive. The outcome of the case is identical to that which the AG concluded.

For the Netherlands, the country in which this case originates, the decision has two main implications in practice: individuals who download from unlawful sources are now copyright infringers, and the calculation method of the private copying levy must be changed. With regard to the first issue, the Dutch government stated that it will not criminally prosecute individual users. Also, Stichting Brein, a Dutch Anti-Piracy Organization, mentioned on its website that it will not change its enforcement policy to include enforcement against individual users. However, rightsholders can still initiate proceedings against individual downloaders.

According to the Dutch government, there is no need to amend the Dutch Copyright Act, as the wording of the relevant Article is quite broad and allows for the interpretation given by the CJEU. The Dutch government has stated that the CJEU decision will come into effect immediately. However, *Stichting Onderhandelingen Thuiskopievergoeding*, the organisation that determines the private copying levy in the Netherlands, has to develop a new calculation method. Until then, the old calculation method will be used, which means that for the time being, the private copying levy still takes into consideration reproductions made from unlawful sources. The new calculation method is due to be introduced in summer 2014.

• Judgment of the Court (Fourth Chamber), ACI Adam and Others v. Stichting de Thuiskopie and Stichting Onderhandelingen Thuiskopie vergoeding, Case C-435/12, 10 April 2014
http://merlin.obs.coe.int/redirect.php?id=17078 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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NATIONAL

AL-Albania

Parliament issues call for applications for positions as members of the regulator

On 6 May 2014, the Parliamentary Commission on Education and Public Information Means approved the proposal to start procedures for filling four vacancies out of the seven members positions in the *Autoriteti i Mediave Audiovizive* (Audiovisual Media Authority-AMA). This proposal came from the ruling majority and was voted for only by its members. The members of parliament of the opposition put forth an alternative proposal, which consisted in seeking advice from the Council of Legislation first, since legal expertise was necessary to determine whether there were three or four vacancies in the regulator. When both proposals were voted, the proposal of the ruling majority passed with greater number of votes and the opposition refused to continue the meeting and discuss the further procedures. The decision was also discussed in the plenary session on 8 May 2014, where the parliament voted to publish the call for three vacancies and postpone the decision on the fourth vacancy until the next plenary session, allowing for the voting to be placed on the agenda.

This decision of the commission was preceded by several months of discussions and disagreements between the members of parliament on the actual vacancies in the AMA. The disagreement focused on the validity of the mandate of the current chairwoman of AMA. The ruling majority maintained that the mandate of the current chairwoman of AMA was invalid. Their claim was based on a memo of the Service of Monitoring of Independent Institutions, which concluded that her mandate had expired in September 2012 and her continuation in this post in the last 18 months has been illegal. The reasoning was that the Chairwoman's mandate had expired in September 2012, when the mandate of the member she replaced in the first place in the regulator expired. Then the memo claims she should have been voted on again as a member according to the law. On the other hand, the opposition members of parliament and the chairwoman of AMA argued that the same body, the Service of Monitoring of Independent Institutions, had a different opinion on this matter in July 2013, stating that there were three vacancies in AMA, not four.

In this context, the opposition regarded the decision as a political one, aiming to control independent institutions. The members of parliament of the opposition declared they will reject this decision and they can also challenge it at the Constitutional Court, if necessary. The ruling majority has defended its decision, claiming that the regulator was unable to make decisions for more than a year, since it lacked the necessary quorum due to expiration of the mandates of four of its seven members.

• *Për shpalljen e 3 vendeve vakante për anëtarë të AMA-s* (Call for missing members of AMA)
http://merlin.obs.coe.int/redirect.php?id=17032 SQ

• Report on plenary session of the Albanian Parliament, Parliament convenes in plenary session, 8 May 2014
http://merlin.obs.coe.int/redirect.php?id=17033 EN

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Regulator approves decision on must-carry rules for cable televisions

The regulator of audiovisual media, the *Autoriteti i Mediave Audiovizive* (Audiovisual Media Authority-AMA), approved the decision "On the must-carry obligation of national programmes by networks of electronic communications authorized for rebroadcasting of audio and audiovisual programmes in these networks" in a meeting convened on 26 March 2014. The regulator reported that this decision was in line with Law no. 97/2013 "On Audiovisual Media in Republic of Albania" (see IRIS 2013-8/9). More specifically, the regulator cited Article 87 of the law, "Retransmission obligations" which states: "The AMA has the right to impose reasonable obligations on the media service providers for broadcasting one or more audio and audiovisual programmes of general interest to the public to ensure their reception in the territory of the Republic of Albania at a national, regional or local level. The retransmission obligations pursuant to point 1 of this article shall be imposed in conformity with the principles of proportionality and transparency only on electronic communication operators, whose networks are utilised by a considerable number of users as the main way of receiving audiovisual programmes and only if this is in the interest of the public."

Based on this article, AMA's decision is particularly relevant for the rebroadcasting of national TV stations in cable networks. AMA claimed that the current two commercial TV stations cover an area significantly lower than their license terms, respectively

54% and 51% of the territory. AMA further claimed that given this situation, the decision to approve the "must-carry" rule of the programmes of national TV stations by cable networks in the country was necessary and in line with the law. The decision also states that rebroadcasting of national television stations' programmes by cable networks should be free of charge.

This decision was opposed by the television stations, which claimed that this was similar to legalising theft and piracy. Quoting the annual report and interviews of the chair of AMA, which admitted that AMA lacked the capacity to monitor piracy of programmes, especially of cable television stations, they considered AMA's decision as harmful to their own activity.

The main national television stations, the respective multiplexes they own, and the regulator are also locked in a legal dispute dating back to summer of 2013, when the multiplexes filed a lawsuit that has temporarily suspended AMA's plans to start the licensing of existing digital multiplexes. The trial is ongoing.

• *"Njoftim për shtyp"* (Report on the meeting of AMA and its decisions)
http://merlin.obs.coe.int/redirect.php?id=17029 SQ

• *"Deklaratë për shtyp"* (Clarification on the reasons, why AMA made this decision)
http://merlin.obs.coe.int/redirect.php?id=17030 SQ

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BA-Bosnia And Herzegovina

State Court rejects action initiated by former religious leader against regulator's decision

In a Decision of 7 April 2014 (not publicly available), the *Sud Bosne i Hercegovine* (Court of BiH) rejected the action initiated by a former religious leader in an administrative dispute against the Decision of the *Regulatorna agencija za komunikacije BiH* (Communications Regulatory Agency of Bosnia and Herzegovina - CRA) of 13 November 2012. This is the Court's second ruling on the case, but with a different outcome.

In January 2009, the former religious leader, the then Reis-ul-ulema, Grand Mufti of Bosnia and Herzegovina, filed a complaint against a broadcaster for the alleged use of vulgar and inappropriate language in a commentary about some of his public statements. Initiated by the complaint, the CRA conducted its regular procedure in which it found no breach of the broadcasting code and consequently suspended the procedure on 12 May 2009. In the course of the procedure, the complainant requested that he be granted the status of a party to the case with the view of protecting his rights, claiming that his reputation, honour and dignity have been violated by the inappropriate and malicious language used in the programme. The complainant's request was rejected by the CRA - and confirmed by the CRA Council in second instance - for the lack of legal standing. It should be noted that granting the status of party to a complainant, though possible in theory, is not usual in cases concerning programme content. Administrative procedures concerning potential violation of CRA rules and regulations are conducted ex officio with the view of protecting public interest and not individual rights. To this end, the complainant was informed of the possibility of filing a defamation case against the broadcaster.

This Decision was challenged before the Court of BiH. The plaintiff argued that protection of one's reputation, honour and dignity constitutes a legitimate interest to be granted the status of a party in the administrative procedure. In August 2011, the Court returned the case to the Agency for another procedure in which the complainant would be treated as a party, with the reasoning that essentially stated that protection of reputation, honour and dignity certainly merited enough interest to be resolved in an administrative procedure. The Court had not referred to the Defamation Law. By deciding on the status of the complainant, the Court in effect ruled on the programme, so its action was not limited to the legality of the administrative act, but was based on the merits of the case as well.

Acting upon the Court's ruling, the CRA reopened the case. Again, no breach was found and the previous conclusion was confirmed. The complainant appealed the Conclusion, which CRA rejected as unfounded by means of the abovementioned Decision of 13 November 2012.

The matter was brought up before the Court again. This time, the Court, before examining the merits of the case, examined procedural conditions and found that the reviewed CRA's decisions had not violated any of the complainant's rights or interests and as such cannot be reviewed by the Court.

• Sud Bosne i Hercegovine*, 7/04/2014* (Decision of the Court of BiH, 7 April 2014) BS

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BG-Bulgaria

bTV Media Group to withdraw two of its programs from a digital multiplex

Since the beginning of 2013 the bTV Media Group EAD decision-makers have decided to broadcast by means of the digital network one of its programmes, namely bTV Lady+1, and further in October 2013 another of its programmes, namely Ring.bg+1. '+1' means that the TV programme shall be broadcast free-to-air one hour later than the broadcasting in the paid distributors.

At its meeting of 25 March 2014, the съвет за електронни медии (Council for Electronic Media - CEM) agreed to hear the Media Group EAD decision-makers with regard to their request to withdraw from terrestrial digital distribution its abovementioned programmes. The Chief Executive Director of the company presented arguments before the CEM that "in a situation where the Bulgarian advertising market has decreased by 40% in the last five years, it is extremely difficult to keep in operation a channel with a niche audience".

According to Article 121 (1) (4) of the Radio and Television Act, the CEM may not refuse to terminate any licence upon a request of the holder.

On the basis of various arguments, the CEM has on several occasions delayed the making of the final decision in that regard. The last occasion was on 25 April 2014, when the CEM stated that it will rule definitively on the matter after the meeting of the managing committee of the digital television body scheduled on 15 May 2014.

The CEM denial to terminate the licences shall be challenged by the media, as stated: "bTV Media Group has initiated proceedings to challenge the silent refusal before the Supreme administrative court of Bulgaria".

• Позиция , *25 Април 2014* (Position of the Council for Electronic Media (CEM), 25 April 2014)
http://merlin.obs.coe.int/redirect.php?id=17076 BG

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New Bulgarian University

CZ-Czech Republic

Decision of the Constitutional Court about freedom of expression

On 17 April 2014, the wife of a former prime minister failed at the Constitutional Court with a complaint about a cartoon published in the magazine Reflex. The wife of the former prime minister demanded an apology for the illustration in the comic book Green Raoul, which she deemed inappropriate. The Constitutional Court rejected the request with reference to freedom of expression. The wife of the former prime minister previously announced that she is ready to go to the European Court of Human Rights.

According to the constitutional complaint, justice failed to protect the rights of pregnant women and their privacy. The comics are in a ridiculous way showing the wife while conceiving her baby. The Constitutional Court acknowledged that the cartoons are indeed not too kind to the two protagonists. However, the Court assessed, that the illustrations cannot be considered as being grossly pornographic or vulgarly ridiculing the beginning of the complainant's pregnancy.

According to the Court, a cartoon makes fun of someone due to its nature and purpose. "Even though cartoons certainly do not enjoy absolute constitutional protection, the constitutional limits of the genre, however, are much more extensive than the limits to be applied for example to photos, especially the various montages published in the tabloid press, often with fanciful stories, but which are disguised as real", the Court stated.

The Court stressed that the protection of privacy of public people outweighs the right to freedom of expression only in extremely serious cases.

• *Usnesení Ústavního soudu České republiky čj. I.US 2246/12 ze dne 17.4.2014* (Decision of the Constitutional Court of the Czech Republic of 17 April 2014)
http://merlin.obs.coe.int/redirect.php?id=17036 CS

Jan Fučík
Česká televize, Prague

Radio listening for personal use in a shop is no violation of copyright

On 15 April 2014, the Constitutional Court ruled that listening to the radio by the shop assistant in a shop does not violate the Copyright Act.

When a shop assistant in a store listens to his own radio, the shop owner does not have to pay fees to the collective rights management. Thus, the Constitutional Court upheld the complaint of the owner of a bike-shop. According to the earlier decision of the Regional Court in Hradec Králové, the shop owner should pay a fee to the Collecting society of sound engineers (OAZA) for the reproduction of music in his store. The complainant refused to pay because the shop assistant listened to the music at work only for personal use.

In the opinion of the Constitutional Court this form of use cannot be assumed to be an illegal distribution of the author's work. „Customers do not go there to listen to the music on the radio, but go there to do shopping; for that reason it would be formalistic to require a license" the Court continued.

The Constitutional Court also invoked the Judgement of the European Court of Justice of 15 March 2012 in Case C-135/10, Società Consortile Fonografici/SCF (see IRIS 2012-6/3) and sent the case back to the Regional Court in Hradec Králové for further decision with a binding legal opinion.

• *Nález ústavního soudu České republiky č.j. II. ÚS 3076/13 z 15.4.2014* (Decision of the Constitutional court of the Czech Republic Nr. II. ÚS 3076/13 from 15 April 2014)
http://merlin.obs.coe.int/redirect.php?id=17037 CS

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Google Obliged to Delete "Autocomplete" Entries

In a decision of 8 April 2014, the *Oberlandesgericht Köln* (Cologne Appeal Court - OLG) ruled that Google can be obliged to delete content in the form of "autocomplete" suggestions that breach personality rights (case no. 15 U 199/11). In the proceedings, a public limited company and its chairman had lodged a claim against the search engine operator after Google had suggested the terms "*Scientology*" and "*Betrug*" (the German word for "fraud") when the chairman's name was entered. The chairman claimed that this infringed his personality rights, while his company believed that it damaged its commercial reputation. Both sought the removal of the "autocomplete" suggestions and reimbursement of their legal costs, while the chairman also sought financial compensation from Google.

The OLG upheld the claim in so far as it ordered Google to refrain from committing the infringements upon which it had not already acted. For example, in an email on 4 May 2010, the company chairman had asked the search engine operator to delete the "autocomplete" suggestion "*Scientology*". On 13 May 2010, Google had replied that "the search requests concerned were automatically created [04046]" and "individual requests to remove or change the links currently displayed" could not be met. In the judges' opinion, an injunction was therefore justified because a breach of the duty to monitor content had been committed and there was therefore a risk of repeat infringements. However, the judges did not award financial compensation to the plaintiff because they did not consider that the defendants were seriously at fault. On the other hand, Google had reacted quickly by removing the "autocomplete" suggestion "*Betrug*", thereby fulfilling its monitoring obligation and negating additional claims by the company and its chairman.

The case had previously been heard by the *Landgericht Köln* (Cologne District Court - LG) and the OLG, both of which had concluded that no personality rights breaches could have been committed, since Google's "autocomplete" software merely analysed users' behaviour - as users were fully aware - and could therefore not be considered to convey a comprehensible message. In the subsequent appeal procedure, the *Bundesgerichtshof* (Federal Supreme Court - BGH) quashed the OLG's initial decision and referred the case back to it in a ruling of 14 May 2013 (case no. VI ZR 269/12). It thought that "autocomplete" suggestions conveyed a comprehensible message if Google was aware that the party concerned had requested an injunction (see also IRIS 2013-6/12).

In its latest decision of 8 April 2014, the OLG did not grant leave to appeal. The plaintiffs have one month in which to appeal against the denial of leave to appeal, before the decision takes effect.

• *Urteil des Oberlandesgericht Köln, 15 U 199/11* (Decision of the Cologne Appeal Court, 15 U 199/11)
http://merlin.obs.coe.int/redirect.php?id=17064 DE

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Copyright Dispute over News Programme Signature Tune

According to media reports, at the beginning of April 2014 the *Oberlandesgericht München* (Munich Appeal Court - OLG) recommended an out-of-court settlement in the case concerning the signature tune of the Zweites Deutsches Fernsehen (ZDF) news programme "heute journal" (case no. 6 U 21 65/13).

The case followed a complaint by the Birnbach music publisher about the current version of the news

programme's jingle, written in 2009. The plaintiff argued that the broadcaster's arrangement of the 1962 classic melody "Fanfarenblues", created without the composer's permission, as required by Article 23 of the *Urheberrechtsgesetz* (Copyright Act), represented a breach of copyright. ZDF replied that the reworked version was a new creation and had therefore been lawfully used since the programme had been updated. The lower-instance court (*Landgericht München I* - Munich District Court I) had rejected the publisher's complaint on the grounds that the new melody was a new composition.

Among other things, the plaintiff submitted to the OLG a report confirming the similarity of the two versions. The court expressly gave ZDF two months in which to respond to the report, but called on the parties to reach an out of court settlement before the procedure resumed.

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Bill Tightening Sex Crime Legislation Tabled

The *Bundesministerium für Justiz und Verbraucherschutz* (Federal Ministry of Justice and Consumer Protection) has tabled a bill designed to tighten German sex crime legislation. The bill is designed to transpose into national law the Council of Europe Conventions on the Protection of Children against Sexual Exploitation and Sexual Abuse (ETS 201 - Lanzarote Convention, 25.10.2007), and on preventing and combating violence against women and domestic violence (ETS 210 - Istanbul Convention, 11.5.2011), which have been signed by the Federal Republic of Germany, as well as Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography.

The bill contains provisions on the territorial area of application of the *Strafgesetzbuch* (Criminal Code - StGB) and broadens the definition of victims and offenders in relation to the sexual abuse of wards (Art. 174 StGB).

Among the provisions relevant to the audiovisual sector is Article 176(4)(3) StGB (sexual abuse of children through the use of written materials), which the bill extends to include offences committed using information and communication technologies.

The bill also extends the scope of application of Articles 184b and 184c StGB (distribution, purchase and possession of written materials containing child pornography) to materials depicting wholly- or partly-naked children in unnatural sexual poses.

A specific rule will also be introduced concerning criminal liability for the production of written materials containing child pornography based on an actual event (Arts. 184b(1)(3) and 184c(1)(3) of the new bill). Under other specific regulations, anyone who makes pornographic content available to a person or to the public via broadcasting or telemedia can be punished under the existing Articles 184 to 184c StGB (Art. 184d(1)(1) of the bill). Anyone who downloads child pornography via broadcasting or telemedia will be punishable under Articles 184b(4) and 184c(4) StGB (Article 184d(2) of the bill). In addition, a new Article 184e will be added to the Criminal Code, prohibiting the organisation of, or attendance at, live performances of child pornography.

Finally, the bill provides that the scope of application of Article 201a StGB (breach of intimate privacy through recording of images) will, in future, also include "revealing images" and images of a naked person. It will not matter whether or not the depicted person is in a private home or a place protected from public view. At the same time, harsher penalties will apply to anyone who distributes or makes available to the public images that fall under the new scope of Article 201a StGB. The concept of "revealing images" is only defined in the explanatory memorandum, where they are described as images that show the depicted person in an embarrassing or degrading situation or in a situation images of which, it can be assumed, would not normally be made accessible to a third party.

This final amendment in particular has been criticised by legal experts, who claim that the terms "revealing images" and "images of a naked person" make the definition of the offence too broad. They believe it restricts freedom of expression and freedom of the press, while it has also been suggested that it conflicts with the *Kunsturhebergesetz* (Art Copyright Act - KUrhG).

- *Referentenentwurf des Bundesministeriums für Justiz und Verbraucherschutz* (Bill of the Federal Ministry of Justice and Consumer Protection)
http://merlin.obs.coe.int/redirect.php?id=17065 DE

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ZAK Issues First Decision on Virtual Product Placement

On 15 April 2014, the German media authorities' *Kommission für Zulassung und Aufsicht* (Commission on Licensing and Supervision - ZAK) issued its first decision on the lawfulness of virtual product placement.

The investigation concerned the virtual placement of a poster advertising the film "Hansel & Gretel: Witch

Hunters" in the RTL2 programme "Berlin Tag & Nacht" in February 2013, coinciding with the cinema release of the film.

The ZAK concluded that the 15-second sequence did not breach the *Land* media authorities' advertising regulations. The film poster had been embedded in the programme in such a way that it did not appear artificial and forced, but a natural part of the action. Other rules governing traditional product placement (such as labelling, protecting the independence of the broadcaster with regard to content and time of broadcast, no excessive prominence of the product) had also been respected.

Although the ZAK stressed that the decision concerned one particular case, it also pointed out that virtual product placement was not fundamentally prohibited as long as the provisions of the *Rundfunkstaatsvertrag* (Inter-State Broadcasting Agreement) governing real product placement were respected.

• *Pressemitteilung der ZAK vom 15. April 2014* (ZAK press release of 15 April 2014)
http://merlin.obs.coe.int/redirect.php?id=17066 DE

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ES-Spain

Offering advanced P2P technology is not connected to IPR infringement

On 8 April 2014, the Madrid Court of Appeals found a Spanish software developer not guilty of an Intellectual Property Rights (IPR) infringement. According to the Regional Court of Appeals, developing a P2P software is legal and does not infringe IPRs; in particular, the Court decision states that P2P protocols are a tool to connect devices and therefore allows users to share content stored on his or her own computer. Indeed, P2P software allows direct and decentralised communication among users, and software developers do not interfere in the communication process as file sharing takes place among user devices.

Therefore, according to the Spanish Regional Court, developing P2P software does not imply 'per se' an IPR infringement, as this type of software is designed to connect devices and allow file sharing. P2P software development does not connect users to the network, nor does it transmit or store data; hence P2P developers cannot be considered as intermediaries and are not legally answerable for IPRs infringement.

According to Spanish law, IPR infringement only occurs when sharing files protected by copyright laws; this activity is unquestionably illegal in Spain. Thus, users will be liable for sharing files protected by copyright laws, but liability will not extend to P2P software developers - P2P software only enables device interconnection, it does not reproduce files or make them available for illegal consumption.

Unlike other national jurisdictions, such as the US, the Spanish Court of Appeal decision does not consider either 'contributory liability' or 'vicarious liability' to IPRs infringement in P2P software developing. According to the court, 'contributory liability' cannot be applied in this case due to the fact that the software developer did not promote IPR infringement; on the contrary, the outlawed web pages (www.bluster.com, www.piolet.com and www.manolito.com) displayed clear advice on the need to protect IPRs. Likewise, 'vicarious liability' cannot be applied in this case as the software developers do not receive any type of economic benefit in case of illegal file sharing and, most importantly, they do not intend to benefit either financially or commercially from it.

• Sentencia num. 103/2014, Audiencia Provencial Civil de Madrid, 8 Abril 2014 (Decision 103/2014, Madrid Court of Appeal, 8 April 2014)
http://merlin.obs.coe.int/redirect.php?id=17061 ES

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Spain approves new telecommunications law

On 9 May 2014, the Spanish Parliament adopted the *Ley 9/2014 de Telecomunicaciones* (Act. No. 9/2014 on Telecommunications). This new general regulation of electronic communications networks and services replaces the previous law that had been in place for more than ten years, since 2003. The new law is fully in line with the so-called Telecom Package approved in 2009 (which consists of the European Union Directives on Citizens' Rights and Better Law Making and the Regulation establishing the Body of European Regulators for Electronic Communications), yet the incorporation of such provisions into Spanish law had already taken place through a Decree adopted by the Spanish Government in March 2012.

The adoption of this law has to be put in the general framework of the European Commission's Digital Agenda for Europe launched by the European Commission to stimulate investment in the area of broadband connections, promote a stable regulatory environment and ultimately deliver smart, sustainable and inclusive growth. Besides this, the law is also aimed at fostering a higher degree of competition in the Spanish telecommunications sector as well as a

major simplification of administrative burdens, particularly in the area of licensing and registration requirements.

The elaboration of the law took place in the context of the creation and implementation of a new regulatory authority. In particular, Act. No 3/2013 created the National Commission for Markets and Competitions, which constitutes a probably unique example of a multi-sector regulator (with competences that cover the areas of telecommunications, audiovisual media services, energy, transportation and postal services, as well as competition), that incorporates both ex-ante and ex-post powers of intervention (see IRIS 2014-2/16). During the discussions prior to the approval of the new telecommunications law, different sectors accused the Spanish Government of trying to deprive the new regulator of its most important competences (those that had been exercised by the Telecommunications Market Commission as the former regulator) and to give them back to the current Ministry of Industry, Energy and Tourism. Finally, the introduction of several last minute amendments seems to have resulted in a more balanced text. However, it should be stressed that competences regarding planning, management and regulation of electromagnetic spectrum vis-à-vis the provision of audiovisual media services still remain fully in the hands of the Government.

• Ley 9/2014, de 9 de mayo, de Telecomunicaciones (Act. No. 9/2014 adopted on 9 May 2014 on Telecommunications)
http://merlin.obs.coe.int/redirect.php?id=17056 ES

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FR-France

Regional Aid to the Cinema Under Threat?

On 3 April 2014, the administrative court in Lyon delivered a judgment which, beyond its local consequences, "threatens the entire system of aid to the cinema from the regions", according to the President of the Rhône-Alpes Region. In the present case, a member of the Regional Council applied to the administrative court for cancellation of the Council's decision renewing for 2011-2015 the Region's subsidy to Rhône-Alpes Cinéma; its co-production structure. It is the leading regional structure providing aid to the cinema in France, with a catalogue of 220 titles including Tony Gatlif's latest film, 'Geronimo', presented this year in competition at the Cannes Festival. In application of the convention approved by the contested deliberation, the Rhônes-Alpes Region is paying a subsidy of 2 million EUR to Rhône-Alpes Cinéma to be invested in films, as well as an additional contribution from the *Centre national de la cinématographie et de l'image animée* (National Centre of Cinematography - CNC) of a global annual amount of one million euros. In support of its application, the complainant claimed in particular that since the subsidy constituted State aid as construed by European Union law, the disputed deliberation disregarded the rules governing economic aid arising out the EU Treaty which are incorporated in the General Code on Local Authorities.

The court found that there was no question that this regional subsidy constituted State aid, within the meaning of Article 107 of the Treaty on the Functioning of the EU. Article 108(3) provides that "The Commission shall be informed (04046) of any plans to grant or alter aid. (04046) The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision". In application of these provisions, Article L. 1511-1-1 of the General Code on Local Authorities provides that "The State shall notify the European Commission of plans to provide aid or of aid schemes which the local authorities or their government wish to implement". The court found that the Rhône-Alpes Region had not demonstrated that the specific subsidy it grants to Rhône-Alpes Cinéma would be among the aid notified by the French Government to the European Commission and validated by the Commission on 22 March 2006. Consequently, the applicant's claim for the cancellation of the disputed deliberation was upheld.

This judgment would appear to jeopardise the continuity of the entire system of regional aid for cinema. The amount of this aid has been increasing constantly for the past ten years, with selective aid granted for between 17 and 23% of the budget for films with an estimated cost of less than four million euros (i.e. 133 productions in 2013, representing two-thirds of France's production). The Rhône-Alpes Region for its part says it is "looking into ways, in conjunction with the CNC, of safeguarding an economic model of financing for the cinema that has stood the test of time".

• *Tribunal administratif de Lyon (3e ch.), 3 avril 2014 - M. Tete* (Administrative court of Lyon (3rd chamber), 3 April 2014 - Mr Tete) FR

Amélie Blocman
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Preventing and Combating Counterfeiting On-Line - Report Advocates Four Operational Tools

Completely in line with the "Report on ways to combat streaming and illegal downloading" published by the HADOPI on 15 February 2013 and the conclusions

of the Lescure report (see IRIS 2013-6/19), the Minister for Culture gave in July 2013 Ms Imbert-Quaretta, President of the HADOPI Committee for the Protection of Rights, the task of compiling a number of "operational tools for the effective involvement of the technical and financial intermediaries in preventing and combating commercial counterfeiting on-line". The reports had highlighted the value of attempting to dry up the financial resources of the "massively counterfeiting" sites by involving the stakeholders in online advertising and payment (the 'follow the money' approach). Drawn up after hearing from around 50 stakeholders, both French and foreign, and submitted to the Minister for Culture on 12 May 2014, the new 25-page report recommends setting up a range of complementary, coordinated actions involving all the stakeholders. Current regulations are already substantial and the search for innovative solutions is necessarily modest, according to the preamble to the report. It proposes four operational tools, which would evolve, in keeping with the Directive on e-commerce. Firstly, the report advocates the signature of sector charters involving the stakeholders in advertising and on-line payment (Visa, MasterCard, PayPal), which have a major role to play in protecting copyright and neighbouring rights on the Internet. Charters of this type already exist, for example in the United Kingdom and in the United States, where agreements have been reached between beneficiaries and stakeholders in the sector in order to define good practices. This self-regulatory approach would be supplemented in a second stage by public information on the websites that were massively infringing copyright and neighbouring rights. A public authority would be instructed to draw up a list of the sites concerned, and this list would be used as a reference to make self-regulatory action secure and to inform all the technical and financial intermediaries on the sites at issue. As a third stage, the report proposes the creation of an order for prolonged removal, pronounced by a public authority and targeting specific counterfeit content. Lastly, the report recommends setting up arrangements for monitoring, over a period of time, legal decisions concerning websites hosting counterfeit items to a massive extent. The purpose of this would be to combat the reappearance, via a mirror site for example, of pirated content even though it had been suppressed, and to make sure that legal decisions were not circumvented. In both its introduction and its conclusion, the report stresses that rightsholders (and their representatives) should remain at the heart of the arrangements: it was for them alone to decide whether or not to instigate action, either private or public, administrative or legal, in order to defend their rights. This is not to say that the public authority would not be involved. The role proposed for it in the report is deemed "innovative, in that it accompanies, by means of mediation and incentive, the regulations set up on the initiative of the various players". All these proposals will be examined by the draft legislation on 'creation', although its presentation seems to keep being postponed.

• *Outils opérationnels de prévention et de lutte contre la contrefaçon en ligne, Rapport à la ministre de la culture et de la communication,12 mai 2014* (Operational tools for preventing and combating counterfeiting on-line; report to the Minister for Culture and Communication, 12 May 2014)
http://merlin.obs.coe.int/redirect.php?id=17069 FR

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Presentation of Satirical Drawings on Television - the Limits of the Right to Exercise Humour

On 22 May 2014 the press chamber of the regional court of Paris delivered two judgments which illustrate the subtle appreciation of the right to exercise humour and the limits of freedom of speech on television. In the case at issue, Marine Le Pen, leader of the right-wing 'Front National' political party, had summoned both the director of publication of France Télévisions and the presenter of the weekly infotainment programme 'On n'est pas couché' to appear in court in respect of the presentation, in two separate broadcasts, of satirical drawings which the complainant found insulting. The first sequence at issue, broadcast on 7 January 2012, involved the presentation, after an interview with a candidate for the presidential election, of the various posters of the election candidates as compiled and presented in that week's issue of the satirical magazine 'Charlie Hebdo'. The presenter of the broadcast showed the eight satirical posters on the air, including one in which Marine Le Pen was likened to "an enormous steaming turd". The second sequence at issue concerned the presentation in the broadcast of 5 November 2011, after mentioning a book on the genealogy of a number of political figures, of the family trees of a number of political figures, including François Hollande (in the shape of a rose bush), Marine Le Pen (a swastika), Nicolas Sarkozy (a bonsai), Dominique Strauss-Kahn (a phallus), etc. Marine Le Pen complained that she felt the fact of claiming and circulating that she had a family tree in the shape of a swastika, a symbol of Nazism, was insulting to her. The defendants felt that in both cases the boundaries of freedom of speech had not been overstepped. The court began by recalling the general principles for application in this area: caricature and satire, even though they were deliberately provocative, were an element of the freedom of speech and the communication of thoughts and opinions. Thus the use of a humorous and deliberately outrageous tone could remove the seriousness of the disputed terms, and humour permitted greater freedom in the tone adopted. The right to exercise humour had its limits nevertheless, and had to stop at the point beyond which it constituted an infringement of respect for human dignity, and personal attack. Furthermore, appreciation of the insulting nature of the

incident, which lay with the judge, needed to take account of the context, and the elements that were intrinsic and extrinsic to the message, in an objective fashion, not based on the personal perception of the victims. The court recalled lastly that the boundaries of admissible criticism were wider when public figures were involved.

The insulting nature of the two disputed drawings was therefore examined in the light of all these principles. Regarding the first (the steaming turd), the court found that the disputed poster was presented in a form similar to a press review, since the presenter showed all the posters and specified that they were from 'Charlie Hebdo', a satirical magazine well known as such and which had not raised any objections, although it had not supported the presentation either. Indeed it had kept its distance, merely stating, "It's satirical - it's 'Charlie Hebdo'". Since the intentional element of the insult was therefore not demonstrated, despite the outrageousness and vulgarity of the drawing, the defendants were dismissed from the proceedings.

Regarding the second drawing (the swastika-shaped family tree), the court noted that it was very clear to television viewers that the sequence was humorous and that they were not genuine family trees. It nevertheless noted that outrageous, derisive humour was not enough to eliminate the insult caused by the drawing. The association of the name and image of Marine Le Pen (who was shown at the centre of the swastika) with a swastika, emblem of the Nazis, was manifestly outrageous. Its excessiveness went beyond the bounds of the acceptable limits of the freedom of speech, even in this particular context. The offence of insult was therefore constituted and both the director of the television channel and the presenter, in the capacity of accessory, were fined EUR 1 000 and ordered to pay EUR 2 000 to Marine Le Pen in damages.

• *TGI de Paris (17e ch.), 22 mai 2014 - M. Le Pen c. L. Ruquier, France Télévisions et a. (2 espèce)* (Regional court of Paris (17th chamber), 22 May 2014 - M. Le Pen v. L. Ruquier, France Télévisions and others (2 cases)) FR

Amélie Blocman
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European Elections and Political Diversity - CSA Supervision

After issuing a serious alert on 14 May 2014 to the heads of the television channels and radio stations, particularly private generalist ones, on the need to abide by the principle of equity ten days prior to the European Parliament elections, the *Conseil Supérieur de l'Audiovisuel* (audiovisual regulatory authority - CSA) eventually announced in the following week a number of warnings concerning the serious imbalances it had noted. The principle of equity implies that television services must allocate air time to the candidates (or to the political parties) and their supporters in proportion to their representativeness and their effective involvement in campaigning. As part of its mission to ensure diversity at the time of elections and in accordance with its deliberation of 4 January 2011, the CSA regularly looks into air time throughout every election campaign to make sure that this principle of equity is being observed. On 2 April 2014 the CSA adopted a recommendation on the European Parliament elections, applicable from 14 April 2014 up to the date of the election, directed at all radio and television services. According to this recommendation, editors were to note and inform the CSA each week of the total air time allowed to the lists of candidates, parties and political groups and their supporters, not only in newscasts, news flashes, news magazine programmes and special broadcasts, but also in other broadcasts. On 14 May 2014 the CSA noted the existence of serious imbalances in the breakdown of air time, and in particular that a number of political groups had still had no access to the air waves. It therefore issued a serious alert to the heads of the television channels and radio stations, particularly the private generalist ones, on the necessity of observing the principle of equity in the ten remaining days before the election and the end of the period for applying the recommendation; to no effect. Eight days later, the CSA could only note the persistence, despite its alerts, of substantial imbalance in the distribution of air time and that a number of political parties or groups had still not had access to certain channels and stations. Two days before the end of campaigning, at midnight on Friday 23 May, the CSA therefore emphasised the extreme urgency for radio stations and television channels to abide by the principle of equity by remedying immediately the imbalances noted. It issued a particular warning to the channels TF1 and RMC Découverte (and to a number of radio stations) regarding the risks of failing to observe this requirement. According to CSA figures for the period between 14 April and 16 May, TF1 allowed 49.80% of campaign air time to the Socialist Party, and 32.81% to the UMP party, with the remainder shared between five other formations, including the National Front (6.78%), while twelve had no air time at all. On RMC Découverte (a DTV channel), only 24 minutes had been devoted to the elections, and only six parties or groups had been able to express themselves, mainly 'Debout la République' (32.76% of air time) and the left-wing 'Parti de Gauche' (28.67%).

• *Communiqué de presse du Conseil supérieur de l'audiovisuel, « Elections européennes : le Conseil supérieur de l'audiovisuel prononce plusieurs mises en garde », 21 mai 2014* (Press release from the CSA "European elections: CSA announces a number of warnings", 21 May 2014)
http://merlin.obs.coe.int/redirect.php?id=17070 FR

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Conventions Reinforce Presence of French Cinema in Other Countries

The 67th Cannes Festival provided an occasion for French cinema to develop its presence outside its national borders. Two conventions aimed at promoting French cinema worldwide were signed on 18 May 2014 by Aurélie Filippetti, Minister for Culture, and Fleur Pellerin, Secretary of State with responsibility for foreign trade. The first, signed by the Ministry of Foreign Affairs and International Development and the *Centre national de la cinématographie et de l'image animée* (National Centre of Cinematography - CNC), in conjunction with the Institut Français and Unifrance Film, involves digitising cinema theatres within the French cultural network outside France. France does in fact have an international network of multipurpose halls among its cultural establishments dedicated to the promotion of French culture outside France. These halls constitute an essential tool for the non-commercial diffusion of France's cinematographic heritage, the promotion of recent films and the international renown of the French image industry. The aim of the convention, by supporting the digitisation of the cinema venues used by the French network in other countries, is thus modernisation and the circulation of French creative work. The CNC will make a financial contribution to the digitisation of the cinema venues used by the Institut Français institutions in Abidjan, Barcelona, Beirut, Budapest, Dakar, Hanoi, Istanbul, Jakarta, Cairo, Libreville, Madrid, Phnom Penh, Rio de Janeiro, Sofia, Tokyo and Yaoundé. About 30 cinemas should have been digitised by 2015. The aim of the second convention, signed by the Institut Français and the CNC, is to encourage the promotion of educational arrangements in other countries regarding the cinema. Its purpose is to create a young audience and develop interest in the French cinema, to be achieved by the French diplomatic cultural network and its partners screening a programme of films.

For its part, the CNC launched two bilateral funds in Cannes, to support co-productions with Greece and Portugal, just two months after the Chaillot Forum (see IRIS 2014-5/19) set these projects in motion. Two conventions have been signed for this by Frédérique Bredin, President of the CNC, and Grigoris Karantinakis, President of the Greek Film Centre (GFC), on the one hand, and Seras Pereira, President of Portugal's *Instituto do Cinema e do Audiovisual* (ICA), on the other. Created for a three-year period (2014-2016), these funds make it possible to allocate, before production, non-repayable subsidies for cinematographic projects falling within the scope of the co-production agreements between France and Greece on the one hand and Portugal on the other. The aid will be capped at 50% of the estimate for the film, with a maximum of EUR 500 000. It may be combined with other public aid, up to the limit of the intensity ceilings for aid laid down in the European Commission's 'Cinema Communication' directive. For the first year, the budget for the fund amounts to 1 million euros (including EUR 800 000 from the CNC and EUR 200 000 from its Greek and Portuguese counterparts), which should make it possible to provide aid for three to six full-length films.

• *Communiqué de presse du CNC, « Signature de deux conventions - numérisation des salles de cinéma du réseau culturel français et sur la promotion des dispositifs d'éducation au cinéma à l'étranger », 18 mai 2014* (CNC Press release, "Signature of two conventions - digitisation of cinema theatres within the French cultural network outside France and promotion of educational arrangements in other countries regarding the cinema", 18 May 2014)
http://merlin.obs.coe.int/redirect.php?id=17067 FR

• *Communiqué de presse, « Le CNC lance les fonds bilatéraux d'aide à la coproduction avec la Grèce et le Portugal », 23 mai 2014* (Press release, « CNC launches two bilateral funds to support co-productions with Greece and Portugal », 23 May 2014)
http://merlin.obs.coe.int/redirect.php?id=17068 FR

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GB-United Kingdom

Channel 5 in breach of guidelines over "inappropriate" Celebrity Big Brother show

On 6 May 2014, Ofcom found Channel 5 in breach of its guidelines, after the broadcaster repeated a risqué episode of the reality show Celebrity Big Brother, in which housemates talked freely about their sexual experiences, during a time when children were watching.

Five viewers complained to the watchdog, after the show, which also involved celebrities making "rude food", was rebroadcast on a Sunday (morning) at 11.30 am. Ofcom said that BARB (Broadcasters Audience Review Board) viewing figures revealed that out of 290,000 viewers, 33,500 had been aged 16 or under, including 8,800 children aged between four and nine.

On the show on 19 January 2014, the singer Linda Nolan boasted about having "loads of sex with other men," while other housemates made a series of jokes about suggestively-shaped bread rolls.

In their response to the complaints, Channel 5 had claimed that the audience for Celebrity Big Brother would have been aware of the programme's reputation for "cheeky conversation, rude language and mildly sexually suggestive innuendos".

But Ofcom ruled that the broadcaster had breached Rule 1.3 of the Broadcasting Code, which says that children must be protected by appropriate scheduling from unsuitable material.

While the Code does not prohibit sexual discussions pre-watershed, the regulator added that the "cumulative effect" of sexual innuendos and frank discussions on sexual experiences "resulted in an inappropriate, and prominent, sexual theme and adult tone." It concluded: "We therefore considered the material to be unsuitable for children."

Ofcom said that while the sexual content was not explicit and was humorous in intent, the programme should have had more careful editing and there was no advance warning to parents of the kind of discussion that was to take place. It therefore found Channel 5 in breach of the code.

Channel 5 said that the episode, first broadcast on Saturday 18 January at 9.45 pm, had been checked and some content had been removed or 'bleeped' out, but it accepted that "it may have been prudent to have ensured that an appropriate flagging was aired prior to the daytime repeat".

• Ofcom Broadcast Bulletin, issue number 253, May 2014
http://merlin.obs.coe.int/redirect.php?id=17055 EN

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BBC in breach of code for inappropriate scheduling of current affairs documentary

In a decision published on 3 March 2014, Ofcom found that public sector broadcaster, the British Broadcasting Corporation (BBC), had breached the Ofcom Rules 1.3 and 2.3; namely inappropriate scheduling and a risk of being seen by children, and containing potentially offensive material, by broadcasting a current affairs programme depicting graphic scenes of physical and sexual violence arising during the Sri Lankan Civil War. Under the Ofcom Broadcasting Code.:

Rule 1.3 states: "Children must be protected by appropriate scheduling from material that is unsuitable for them";

Rule 2.3 states; "In applying generally accepted standards broadcasters must ensure that the material which may cause offence is justified by the context... Appropriate information should also be broadcast where it would assist in avoiding or minimising offence".

Both the above rules are a consequence of Ofcom's statutory duty pursuant to the Communications Act 2003 whereby the body has an obligation to set standards for broadcast content as appears to be best calculated to secure their standard objectives including that "persons under the age of eighteen are protected and that generally accepted standards are applied so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material."

When considering the complaint, Ofcom took into account the broadcasters right to freedom of expression which gives the broadcaster a right to transmit, and the audience a right to receive creative material, information and ideas without interference from a public body, but subject to restrictions prescribed by law and necessary in a democratic society in accordance with Article 10 of the European Convention on Human Rights.

On the weekend of the 9th and 10th November 2013, the BBC, on its 24 Hours News Channel broadcast a documentary entitled "Our World - Sri Lanka's Unfinished War". The documentary concerned human rights abuses that have allegedly occurred since 2009, during the Sri Lankan Civil War between the country's government and the Liberation Tigers of Tiger Ealam (LTTE). The documentary contained various harrowing accounts of what had happened to men and women who were allegedly tortured, raped and sexually abused by Sri Lankan Government forces. The programmes showed images of dead people, naked women, albeit with their genitalia masked on screen, plus scars from torture wounds. Apart from the visual imagery various witnesses gave interviews describing the alleged gruesome and disturbing physical and sexual attacks.

The documentary had been initially broadcast on the 24 hour BBC News Channel in a post watershed time slot; the Ofcom code defines this as "The watershed only applies to television. The watershed is at 2100 (hours). Material unsuitable for children should not in general, be shown before 2100 or after 0530".

A repeat of the programme was broadcast simultaneously at 0530 hours on a Saturday morning on both BBC News Channel, and on BBC1 which is one of the BBC's mainstream terrestrial channels.

Prior to screening the broadcaster gave a warning to viewers saying that the programme contained "very graphic images and language which some viewers may find distressing"

Although it was early in the morning, and one of the broadcasts was on a news channel, Ofcom considered that the graphic nature of the violence depicted was such that the viewer would not normally expect to see at that time of day. Further, whilst younger audiences were less likely to watch a news channel, nevertheless, a risk existed. Official viewing records showed that at that time of morning there was a very low child audience. In relation to the simultaneous broadcast on BBC1, however, the risks of younger audiences seeing the material increased, and it was not the sort of material one would expect to see at that time of day. The BBC admitted in its submissions to Ofcom that that particular screening was a "signifi-

cant schedule error". Ofcom, therefore, concluded that there had been a breach of Rule 1.3 of their Code.

Ofcom also found a breach of Rule 2.3. The material was offensive and in a different time slot, and with suitable warnings, the broadcaster would have justification in showing such a programme. However, despite the warnings ahead of screening Ofcom considered that there was no justification in showing potentially offensive material at 0530 in the morning; especially as there was a risk of children watching at that time of day. Warnings by the broadcaster alone were not sufficient to justify a screening at that time.

• Ofcom Broadcast Bulletin, Issue 249 3 March 2014, p.9
http://merlin.obs.coe.int/redirect.php?id=17062 EN

Julian Wilkins
Blue Pencil Set

IT-Italy

Parliamentary Committee Approves Service Contract for Italy's Public Service Media Operator

On 7 May 2014, the Joint Committee of the Italian Parliament responsible for the oversight of public service media (*Commissione parlamentare per l'indirizzo generale e la vigilanza dei servizi radiotelevisivi*) gave its opinion on the draft national service contract, which will govern the relationship between Italy's public service operator (RAI) and the Ministry for Economic Development (the Ministry) for the next three years.

The national service contract is an act of paramount importance in Italian media policy insofar as it is instrumental in the definition of RAI's public service remit, along with the Consolidated Law on Audiovisual and Radio Media Services (CLARMS, Legislative Decree no. 177 of 31 July 2005) and the regional service contracts concluded by RAI with the Autonomous Provinces of Trento and Bolzano.

The Joint Committee's opinion proposed a number of amendments to the draft submitted by RAI and the Ministry on 20 September 2013, which in turn had been prepared taking into account the guidelines issued by the Ministry and the Italian Communications Authority on 29 November 2012 (see IRIS 2013-2/30).

In particular, the Joint Committee called for stricter transparency commitments for Italy's public service operator. While the draft service contract merely required RAI to disclose aggregated data on the pay ranges of its highest-ranking employees, the Joint Committee recommended that RAI should also divulge the resumes and remuneration of both its employees and its consultants.

The Joint Committee also introduced provisions concerning the rationalisation of public expenditure. In particular, the Committee suggested the introduction of a specific contract proviso compelling RAI to primarily rely on its internal resources for the achievement of its remit and to hire external consultants only in accordance with the objective criteria followed by other public entities.

As far as television advertising is concerned, the Joint Committee's opinion advocated the imposition of an outright ban on both direct and indirect advertising of gambling services. Moreover, the Joint Committee called for the establishment of internal auditing procedures to detect surreptitious advertising in the course of its programmes and to prevent individuals frequently appearing as hosts in RAI programmes from promoting activities or initiatives to which they are related.

Finally, in order to promote access to public service programmes by persons with disabilities, the Joint Committee recommended, inter alia, to the display of subtitles for all the lunchtime and evening editions of the news and to broadcast at least one edition of the news each day in Italian Sign Language.

The Opinion of the Joint Committee, although required by law prior to each renewal of the national service contract, is not legally binding. RAI and the Ministry will thus define the final text of the service contract in the coming weeks.

• Commissione parlamentare per l'indirizzo generale e la vigilanza dei servizi radiotelevisivi, Parere del 7 maggio 2014 sullo schema di Contratto di servizio tra il Ministero dello sviluppo economico e la RAI Radiotelevisione italiana S.p.a. per il triennio 2013-2015 (Parliamentary committee for the oversight and governance of public service media, Opinion of 7 May 2014 on the draft service contract between the Ministry of Economic development and RAI Radiotelevisione italiana S.p.a. for the period 2013-2015)
http://merlin.obs.coe.int/redirect.php?id=17053 IT

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LT-Lithuania

Retransmission of programmes of Russian-language Channels "RTR Planeta" and "NTV Mir Lithuania" suspended in Lithuania

On 2 April 2014, the *Lietuvos radijo ir televizijos komisija* (Radio and Television Commission of Lithuania - RTCL) temporarily suspended the retransmission

of part of programmes of the Russian-language channel "RTR Planeta". The basis for the suspension was the violation of Article 19 of the Law on the Provision of Information of the Republic of Lithuania during the programme "Vesti nedeli" (Weekly News), which was broadcast by the "RTR Planeta" in the beginning of March 2014. The programme concerned recent events in Ukraine. After consulting with the Office of the Inspector of Journalist Ethics, the RTCL found that during the programme in question, biased and tendentious information was disseminated, which was justifying violence against civilians, instigating hatred between Russians and Ukrainians and against USA and its allies, justifying military intervention in the sovereign state and annexation of part of its territory. Publication of such information is prohibited by the Law on the Provision of Information, Article 19 paragraphs 1(3) and 2.

Paragraph 1(3) prohibits publishing information that instigates war or hatred, ridicule, humiliation, instigates discrimination, violence, physical violent treatment of a group of people or a person belonging thereto on grounds of age, sex, sexual orientation, ethnic origin, race, nationality, citizenship, language, origin, social status, belief, convictions, views or religion. Paragraph 2 prohibits the dissemination of disinformation and information which is slanderous and offensive to a person or which degrades his honour and dignity.

This decision obliged the operators retransmitting the "RTR Planeta" channel in Lithuania to suspend for 3 months the rebroadcast of programmes of the "RTR Planeta", but only those originating from countries other than the EU member states, the EEA states or the countries that have ratified the European Convention on Transfrontier Television. The decision was approved by the Vilnius Regional Administrative Court on 7 April 2014.

A similar decision was taken by the National Electronic Mass Media Council of Latvia on 3 April 2014 against "Rossiya RTR" channel concerning the same "Vesti nedeli" and other news broadcasts (see IRIS 2014-5/25). Previously, on 19 March 2014, the RTCL suspended retransmission of programmes of another Russian-language channel - "NTV MIR Lithuania" - after the broadcast "The damned. A trap for the Alpha group" about the events of 13 January 1991 in Lithuania (the USSR aggression), which was judged, by the Lithuanian regulator, as containing false and offensive information. Last year, the RTCL adopted a similar decision against the "PBK Lithuania" channel.

The audience share of the "RTR Planeta", "NTV Mir Lithuania" and "PBK Lithuania" in 2013 was 4%, 5.5% and 3.6% respectively.

Following the RTCL's decision, all cable operators suspended the retransmission of the programmes of the above mentioned channels. However, these programmes are still available via satellite for the viewers subscribed to VIASAT service packages. VIASAT, which is licensed in Estonia and owned by the Swedish Modern Times Group (MTG), claims that it is not under the jurisdiction of Lithuanian regulator and that it acts according to the European Union law.

Following the complains of the Lithuanian Cable Television Association and Lithuanian Telecommunication Operators Association concerning the provision of satellite services to Lithuanian customers by VIASAT without the licence from the RTCL, the Prosecutor General's Office has started an investigation on the basis of Article 202 paragraph 1 of the Criminal Code ("Unauthorised engagement in economic, commercial, financial or professional activities").

- *Lietuvos radijo ir televizijos komisija, KS-59, 2/04/2014* (Decision of the Radio and Television Commission of Lithuania No. KS-59 of 2 April 2014)
http://merlin.obs.coe.int/redirect.php?id=17038 LT
- *Lietuvos radijo ir televizijos komisija, KS-46, 19/03/2014* (Decision of the Radio and Television Commission of Lithuania No. KS-46 of 19 March 2014)
http://merlin.obs.coe.int/redirect.php?id=17038 LT

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MT-Malta

Broadcasting in Connection with European Parliament Elections

On 2 April 2014 the Broadcasting Authority issued a directive to all broadcasting stations - both radio and television - governing programmes and advertisements broadcast during the period from 11 April to 24 May 2014: the electoral period for the EU Parliament elections. Elections will be held in Malta for the EU Parliament on Saturday, 24 May 2014. Contrary to previous years (see IRIS 2009-6/26), the Broadcasting Authority will not require broadcasting stations to submit programme schedules for its approval during the EU Parliament electoral campaign but will do so only for the two day moratorium (silence period), that is, on 23 May and 24 May 2014. This will cut down on bureaucracy and give more freedom to broadcasters whilst at the same time putting more of an onus on the broadcasters to exercise an element of self-regulation. Naturally the Broadcasting Authority will still continue to monitor broadcasting stations to ensure that they do not abuse their self-regulatory powers.

In the directive, the Broadcasting Authority advised broadcasters to take care to ensure that all programmes and all advertisements are free from material that could be interpreted as favouring or giving undue exposure to any political party or candidate,

or that might be reasonably considered as being directed towards a political end. In particular, therefore, it is not permissible, in the case of advertisements commissioned by public entities or other entities, to allow persons who have submitted, or intend to submit their candidature for these elections to appear in such advertisements, even when the said advertisement cannot be considered to be a political advertisement for the purposes of the Broadcasting Act.

Nor can a programme be presented by a person who has submitted or who intends to submit his or her candidature for these elections when such person is not a regular employee of the station broadcasting such a programme.

The directive prohibits an interview/feature or commentary with or by a prospective candidate from being broadcast solely to give prominence to the candidate and that has no bearing on an event/statement/news item.

Nor can a person who has submitted, or intends to submit, his or her candidature for these elections feature in the opening or closing of a programme.

All programmes that concern any aspect of a political or an industrial controversy or which refer to current public policy that are broadcast with effect from 11 April to 24 May 2014 have to be balanced. This requires that in such programmes all diverse opinions on the subject under consideration have to be included and, therefore, representatives of the three main political parties contesting the elections must participate in these programmes.

While the Authority, in accordance with the law, insists on safeguarding balance and impartiality, it also recognises that it would be practical, and at the same time, in conformity with the law that the programmes broadcast by the political stations are considered in the light of the optional provision that may be exercised by the Authority in terms of Article 13(2) of the Broadcasting Act. This provision allows the Authority to consider balance together as a whole rather than in each and every individual programme. But this provision is not to be interpreted that political stations are not bound to observe the provisions of the law. The political stations in question to which this provision applies are One Radio, Radio 101, ONE and NET TV.

• Broadcasting Authority Directive on Programmes and Advertisements broadcast during the period 11th April to 24th May 2014
http://merlin.obs.coe.int/redirect.php?id=17054 EN

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NL-Netherlands

Prohibition against broadcasting hidden camera images at Dutch secondary school

On 16 May 2014, the Preliminary Court of Midden-Nederland ruled that RTL, a Dutch broadcaster, was prohibited from broadcasting images recorded by means of a hidden camera in the television programme 'Project P'. The images were recorded at a secondary school in order to bring attention to the bullying of a schoolchild. The Court held that the interest of RTL in informing the public about abuses in society, such as bullying, did not outweigh the right to privacy of the fellow schoolchildren and the teachers of the school.

RTL produces a television programme called 'Project P'. In this programme a 12-year old schoolchild, X, was given a prepared backpack with a hidden camera so as to film him being bullied at his school, the Einstein Lyceum. The recorded images were shown to the fellow schoolchildren outside the school during a confrontation by the show's presenter, which was also recorded by RTL.

The Einstein Lyceum objected to RTL's intention to broadcast these images. The school stated that the broadcasting of the images would seriously infringe the right to privacy and the portrait rights of the schoolchildren and their teachers. Broadcaster RTL argued that the use of a hidden camera was the only way by which it could inform the public about the seriousness of bullying in society.

The court weighed the interests of both parties involved: the freedom of speech of RTL in informing the public about abuses in society, against the right to privacy of the schoolchildren in question and of the school.

The court considered that the images of the hidden camera seriously infringed the right to privacy of the schoolchildren and the teachers. According to the court, the school is a non-public area; the schoolchildren should not have to expect secret recordings at school for national broadcasting. Since the schoolchildren in question are of a young age, 11 to 13 years of age, they have no choice but to attend school. The court held that the interest of RTL in informing about bullying at school did not justify the use of a hidden camera by X in this specific case.

The court further considered the fact that RTL blocked the road between the school and the playing field by a car with a large television screen. The schoolchildren were confronted by the programme's well-known television presenter who showed them the secretly filmed images. Neither the school nor the parents of the

schoolchildren were informed about the filming or the fact that the children would be confronted with the images by the presenter.

Despite the fact that the images of the children were blurred and their voices distorted, the filming of the footage still made it possible for the children to be recognized by their fellow schoolchildren and their parents. Through the dissemination of the images on social media, the possibility of recognition of the children would increase. The court found that RTL had not done their utmost to prevent recognition of the schoolchildren. In its judgment, the court also took into account the efforts of the school to prevent bullying through the implementation of special anti-bullying projects. The court held that the right to privacy of the schoolchildren outweighed RTL's right to freedom of speech and therefore prohibited the broadcasting of the footage.

• Voorzieningenrechter Rechtbank Midden-Nederland, 16 mei 2014, *ECLI:NL:RBMNE:2014:1940, Project P* (Preliminary Court Midden-Nederland, 16 May 2014, ECLI:NL:RBMNE:2014:1940, Project P)
http://merlin.obs.coe.int/redirect.php?id=17057 NL

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Report of the Dutch Council for Culture on the future of the Dutch public broadcasting

On 27 March 2014, the Dutch *Raad voor Cultuur* (Council for Culture) made recommendations in a report entitled 'De Tijd Staat Open' to the Secretary of State, Sander Dekker. The report poses eight recommendations for ensuring a modern and future-proof public broadcasting system.

As a result of economic cut-backs in the public broadcasting sector as well as technological changes in the consumption of media, the State Secretary asked the Council to advise on a number of issues: the distinctive character of the public media system; the stimulation of innovation and creative competition; cultural and philosophical programmes; the position of new media and mobile services; the position of the Dutch Public Broadcaster (NPO); and the possibility of providing new forms of programmes.

The Council of Culture formulated three new criteria of the Publieke mediaopdracht (Public media instruction), in addition to the current criteria in Article 2.1 (2) of the Mediawet (Dutch Media law), i.e. independence, pluriformity, reliability, and cultural diversity in order to evaluate and advise on the questions posed. The new criteria are: innovative character; cooperation with third parties; and public participation.

The Council advises the public broadcasters' associations to come into extensive contact with their audiences, experts in the field of broadcasting and programme makers through consultations, in order to target the whole spectrum of society. On the basis of a 'contract with society', priorities can be formulated to create traditional programmes as well as programmes online. The Council recommends that public broadcasting associations should focus more on specific groups of audiences and themes, such as culture.

The system should be more open to new broadcasting organisations to enter if they can demonstrate their ability and willingness to target specific audiences. It also recommends the introduction of a new central organ: Editors in Chief at the NPO. This organ will be responsible for ensuring the plurality of the programmes. As well as recommending cooperation with external parties at national level, the Council also proposes collaboration at regional level between the private and public sector. Regional newspapers and broadcasting actors can strengthen their forces by creating content for local broadcasters, newspapers and other journalism initiatives.

In order to comply with the new criteria, legal and organisational amendments to the Mediawet (Dutch Media law) will be required.

• Rapport van de Raad voor Cultuur: 'De Tijd Staat Open: Advies voor een toekomstbestendige publieke omroep.' (Report of the Council for Culture: 'De Tijd Staat Open: Advise on a future-proof Public Broadcasting System')
http://merlin.obs.coe.int/redirect.php?id=17058 NL

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RO-Romania

ANCOM suspended more electronic communications providers

The *Autoritatea Naţională pentru Administrare şi Reglementare în Comunicaţii* (Authority for Management and Regulation in Communications - ANCOM) suspended the activity of 49 electronic communications providers for 60 days for failure to comply with their obligations of sending statistical data for the first semester of 2013. The decision was made public through a press release issued on 16 April 2014 (see IRIS 2010-8/43 and IRIS 2012-10/23).

After the expiry of the deadline for sending the statistical data for the first semester of 2013, in February 2014, ANCOM communicated the suspension decisions to 187 electronic communications providers for

failure to comply with their legal obligations of sending the above mentioned data. According to the decisions, the providers were granted 45 days to fulfil their obligations. After that period, a decision suspending the right to provide electronic communications networks or services for 60 days was to enter into force under the general authorisation.

49 of the providers which received service suspension decisions entered the period of temporary activity suspension. The suspension ceases once the providers comply with the obligation to send the statistical data. Should there still be providers that fail to send the respective data by the end of the suspension period, the ANCOM is entitled to issue a final decision withdrawing their right to provide electronic communications networks or services under the general authorisation.

ANCOM made available to providers an online application for sending half-yearly statistical data. Starting with 1 July 2013, electronic communications providers have the obligation to send their statistical data exclusively by means of this application. The statistical data is used for regular monitoring of the Romanian electronic communications market and for conducting market surveys and analyses requested in the market regulation process. The Authority is the official provider of statistical data reports on the Romanian electronic communications market for various national and international bodies.

Beginning of March 2014, ANCOM sent 73 decisions for temporary suspension of activity to more providers which failed to send the statistical data for the second semester of 2013.

During the suspension period, the rights granted by the licences for the radio frequencies use, the licences for the use of numbering resources or the decisions on granting technical resources, as applicable, are suspended, as well. According to the Public Record of the Electronic Communications Networks and Service Providers, there are 1,473 such authorised providers in Romania.

• Press release of the Authority for Management and Regulation in Communications "ANCOM Suspends 49 Operators for Obligation Compliance Failure", 16 April 2014
http://merlin.obs.coe.int/redirect.php?id=17042 EN

Eugen Cojocariu
Radio Romania International

Intended modifications of the public audiovisual services law

On 15 April 2014, the Senate (upper Chamber of the Romanian Parliament) approved the draft law on the approval of the Government Emergency Decree no. 110/2013 for the completion of the Law no. 41/1994 on the organization and operation of the Romanian Radio Broadcasting Corporation and of the Romanian Television Corporation. The Emergency Decree was meant to allow the Parliament to appoint easily an interim Director General of the public broadcasters in case that the plenum of the Parliament does not succeed in reaching the legal quorum. On the other hand, the Chamber of Deputies (lower chamber) on 1 April 2014 tacitly adopted a draft law for the modification of Art. 40 of the Law no. 41/1994. The initiators want to restrict the payment of the licence fee for the public audiovisual broadcasters to only those who have radio and TV sets and who opt for the programmes of the public services (see IRIS 2003-4/24, IRIS 2003-8/25, IRIS 2013-5/37, and IRIS 2014-1/38).

The Government Emergency Decree no. 110/2013 (see IRIS 2014-2/30) intended to avoid the exceptional situations when the quorum of the plenum of the Parliament is not reached in case of appointment of the management of the public radio and television services. In such cases, according to the new paragraph (8) of Art. 46 of the Law no. 41/1994, the Standing Bureau of Parliament's two chambers can appoint for 60 days an interim Director General of the public audiovisual broadcasters. A new paragraph (9) of Art. 46 stipulates that, during this period, the interim Director General can perform acts of current management of the society. The Senate's decision is final. The draft law had been tacitly approved by the deputies on 18 February 2014.

A second draft law has been tacitly adopted by the Chamber of Deputies on 1 April 2014, the draft law for the modification of Art. 40 of the Law 41/1994. The Senate will have the final decision. According to this draft law, only the holders of radio receivers and/or TV sets and only the households or firms who opt for the services provided by the public audiovisual broadcasters will have to pay a subscription fee for the public radio and a subscription fee for the public television.

The proposed form of Art. 40 (1) provides that the revenues of the radio and TV public services are composed of sources made according to their object of activity, fees for public service broadcasters from subscribers who have opted for these services, donations and sponsorships, advertising receipts, receipts from fines and civil damages, and other incomes. The proposed new form of Art. 40 (2) stipulates that individuals residing in Romania who opted for public service broadcasters, owners of radio and television sets, as beneficiaries of these services, are required to pay subscriptions fees to the public service broadcasters. According to the new Art. 40 (4), the following will be set through Government decision: the amount of the subscription fees; the categories of payers, recipients of the public radio and TV broadcasting services; the manner of collection and of exemption from taxation; the penalties for incompletion of the declaration of exemption by the holders of radio and television receivers, who, according to their choice, are benefi-

ciaries of the services and pay subscription taxes for the public audiovisual broadcasting services.

Now all the households and firms from Romania have to pay monthly licence fees for radio and TV public services, unless they make an annual declaration in writing and at their own risk that they do not have radio receivers or TV sets. The initiators consider that the PBS are privileged because they have three main sources of revenue (licence fee, allocation of state budget and advertisement), while the private stations only have advertisement. On the other side, the opponents of the draft law consider that this will strongly affect the capability of the public broadcasters to fulfill their public mission and to save their independence. In 2012, the licence fee for the public radio represented 48.79% of the total revenues; in 2013 the licence fee for the public television represented 58.15% of the total revenues.

• *Proiect de lege privind aprobarea Ordonanței de urgență a Guvernului nr. 110/2013 pentru completarea Legii nr. 41/1994 privind organizarea și funcționarea Societății Române de Radiodifuziune și Societății Române de Televiziune - forma trimisă la promulgare* (Draft law with regard to the approval of the Government Emergency Decree no. 110/2013 for the completion of the Law no. 41/1994 on the organization and operation of the Romanian Radio Broadcasting Corporation and of the Romanian Television Corporation - form sent to promulgation)
http://merlin.obs.coe.int/redirect.php?id=17039 RO

• *Propunere legislativă pentru modificarea art. 40 din Legea 41/1994 privind organizarea și funcționarea Societății Române de Radiodifuziune și Societății Române de Televiziune - forma adoptată de Camera Deputaților* (Draft law for the modification of Art. 40 of the Law no. 41/1994 on the organization and operation of the Romanian Radio Broadcasting Corporation and of the Romanian Television Corporation - form adopted by the Chamber of Deputies)
http://merlin.obs.coe.int/redirect.php?id=17041 RO

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RU-Russian Federation

Bloggers' law adopted

On 22 April 2014 the state Duma (parliament) adopted the amendments to the law "On information, information technologies and on protection of information" (see also IRIS 2014-3/40). They were signed into law on 5 May 2014.

The new legislation forces owners of open access websites and web pages (now labeled as "bloggers") visited by more than 3,000 users daily to register with the public authorities. It also imposes additional responsibility on them for verifying the accuracy and reliability of posted information, following election law, respecting reputation and privacy, restraint from using curse words, etc. Those responsible include webpage owners in social networks, blog hosting services, as well as online forums.

Separate responsibility to cooperate with the public authorities, including the law-enforcement agencies, and keep personal data lies with the hosting providers. Bloggers' personal data shall disclose real identities, traffic data, and shall be stored, on Russian territory, for 6 months after the end of relevant online activity.

Penalties for violations include high fines and blocking of websites and blogs. Roskomnadzor the governmental agency for the media and communications is assigned to develop rules for and take the responsibility of the registration.

On 23 April 2014 the OSCE Representative on Freedom of the Media Dunja Mijatović criticized new legislation increasing government regulation of the Internet in the Russian Federation. "If enforced the proposed amendments would curb freedom of expression and freedom of social media, as well as seriously inhibit the right of citizens to freely receive and disseminate alternative information and express critical views," Mijatović said.

The amendments come into effect on 1 August 2014.

• О внесении изменений в Федеральный закон " Об информации, информационных технологиях и о защите информации " и отдельные законодательные акты Российской Федерации по вопросам упорядочения обмена информацией с использованием информационно - телекоммуникационных сетей (Federal Statute of 05 May 2014 N 97- ФЗ "On Amendments to the Federal Statute 'On Information, Information Technologies and Protection of Information' and Specific Legal Acts of the Russian Federation on the Issues of Regulation of Information Exchange with the Use of Telecommunication Networks", No 398-FZ of 28 December 2013, published in Rossiyskaya gazeta official daily, N 101, 7 May 2014)
http://merlin.obs.coe.int/redirect.php?id=17022 RU

• Press release of the OSCE Representative on Freedom of the Media, "Attempts to overregulate Internet undermine free speech and free media in Russia, says OSCE representative", 23 April 2014
http://merlin.obs.coe.int/redirect.php?id=17023 EN

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Restrictions on exhibition of movies

President of Russian Federation Vladimir Putin signed the Federal Statute of the Russian Federation aimed at banning swear words in public on 5 May 2014. In particular, it makes amendments to the Federal Statute "On State Support for Cinematography of the Russian Federation" (О государственной поддержке кинематографии Российской Федерации) (see IRIS 2010-2/32).

Swearing in films, plays and concerts is prohibited. A similar measure was passed in April 2013 as an amendment to Article 4 of the Statute "On the Mass media", announcing that swearing in the mass media presents an abuse of freedom of the media that

may lead to the closure of the media outlet (see also IRIS 2014-5/31).

In addition, the newly signed Federal Statute adds to the Federal Statute "On State Support for Cinematography of the Russian Federation" sweeping restrictions in the general regulation of exhibition of movies, no matter whether they apply for such state support or not. It adds an article that introduces on the statutory level the need to obtain an exhibition certificate before public airing of foreign, national and co-produced movies in Russia. Earlier the legal ground for such certificates was a governmental decree N 396 adopted on 28 April 1993 and aimed to fight piracy.

A new article introduces a general ban on exhibition of movies that "contain materials, that violate legislation of the Russian Federation on counteraction to terrorism and extremism, contain information on means, methods of development and production of narcotics, psychotropic substances, and their precursors, materials that propagate pornography, cult of violence and cruelty, contain hidden inserts and other technical means of dissemination of information that makes an effect on subconscious of people and (or) affecting their health."

Exhibition certificates issued earlier remain valid only if they correspond to the new provisions.

Amendments to the Administrative Code made by the same statute envision that violation of the ban on swearing incurs penalties of up to 2,500 roubles (EUR 50) for individuals and up to 50,000 roubles for companies and organizations. Violation of the new restrictions on exhibition incurs fines from 50,000 to 100,000 roubles.

In December 2013, the Institute of Russian Language at the Russian Academy of Sciences compiled a list of four words and their derivatives that constitute swearing. Two depict male and female reproductive organs, one describes the process of copulation and the last refers to a promiscuous woman.

The amendments enter into force on 1 July 2014.

• О внесении изменений в Федеральный закон "О государственном языке Российской Федерации" и отдельные законодательные акты Российской Федерации в связи с совершенствованием правового регулирования в сфере использования русского языка (Federal Statute of 5 May 2014 N 101-FZ "On Amendments to the Federal Statute 'On the State Language of the Russian Federation' and Specific Legal Acts of the Russian Federation on the Perfection of the Legal Regulation in the Sphere of the Use of Russian", published in Rossiyskaya gazeta official daily, N 101, 7 May 2014)
http://merlin.obs.coe.int/redirect.php?id=17024 RU

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SK-Slovakia

Supreme Court decides on 30-minute advertising break rule

On 19 March 2014, a decision of the Supreme Court confirmed the decision of the *Rada pre vysielanie a retransmisiu* (Council for Broadcasting and Retransmission of the Slovak Republic) imposing a fine of EUR 3,319 on a major Slovak commercial TV broadcaster for violating the rules on advertising.

According to article 35 (3) of the Broadcasting Act, "when broadcasting a news programme or an audiovisual work, other than serial, series, documentary film, a programme for minors or a religious ceremony, the programme may be interrupted by the insertion of advertising or teleshopping once in every thirty-minute section even if the scheduled duration of the news programme or audiovisual work is less than thirty minutes". This provision (partially) transposes Article 20 (2) of the AVMS Directive.

The Council sanctioned the broadcaster for violation of article 35 (3) of the Broadcasting Act by inserting two advertising breaks within one 30 minute period of a film. The broadcaster however challenged the Council's interpretation. According to the broadcaster, the wording of article 35 (3) of the Broadcasting Act as well as that of Article 20 (2) of the AVMS Directive is unclear and may provide for more than one meaning. In line with the principle "in dubio mitius", the Council should adopt the least restrictive interpretation which in this case would mean that these provisions do not regulate the "scheduling" of the advertising breaks but only their number. The broadcaster argued that one of the aims of the AVMS Directive was to liberalise the rules on advertising and the Council's interpretation is in direct contradiction with this aim.

The Council rejected these arguments and declared that the wording of the respective provisions is clear enough. The meaning of them is evident, not only based on the grammatical interpretation, but it is also fully in line with the purpose of Article 20 (2) AVMS Directive - namely to protect and ensure the integrity of programmes by regulating excessive interruption of programmes by advertising. The Council acknowledged only one ambiguity with respect to article 35 (3) of the Broadcasting Act and that is whether "scheduled duration" refers to net or gross time (meaning, the duration of the programme with or without the time of advertising breaks). In this respect the Council acts in accordance with the ECJ judgment ARD v. ProSieben Media AG (case C-6/98, see IRIS 1999-10/5) when using the gross time for the calculation of the permitted number of advertising breaks.

The Council also pointed out, that its interpretation does not in any way tighten up the rules on advertising. The number of breaks increased, the 20-minute rule was removed and certain genres (series, serials and documentaries) may under the new legislation be interrupted by advertising without any limits. The "only one break per 30 minutes" rule is actually the only remaining limitation. The enforcement of this rule by the regulatory authority is therefore just and proportionate.

The broadcaster repeated his arguments in front of the Court and asked the Court to initiate a preliminary ruling procedure before the ECJ. The Court however supported the Council's interpretation and agreed, that the wording of article 35 (3) of the broadcasting Act is clear and obvious. Therefore, the Court denied the request for a preliminary ruling procedure before the ECJ and confirmed the Council's decision.

• *Najvyšší súd, 6Sž/11/2013, 19/03/2014* (Decision of the Supreme Court, 6Sž/11/2013, 19 March 2014)
http://merlin.obs.coe.int/redirect.php?id=17043 SK

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

Violation of human dignity in reality show - follow up

On 27 February 2014, two decisions of the Supreme Court confirmed the decision of the *Rada pre vysielanie a retransmisiu* (Council for Broadcasting and Retransmission of the Slovak Republic) imposing a fine of EUR 12,000 and EUR 6,000 on a major Slovak commercial TV broadcaster for violating human dignity in TV broadcasting. Both fines were imposed with regards to episodes of the reality show "Extreme Families"; a preceding episode was already sanctioned by the Council for the same violation. This decision has also been confirmed by the Court (for more details see IRIS 2013-6/33).

The Broadcaster repeated in front of the Council and the Court the same arguments as in the previous case. Besides these arguments, the broadcaster also stressed that based on the principles of the criminal law these violations should have been sanctioned only by one fine. According to the broadcaster, due to the common characteristics of these violations - they referred to the same show (only different episodes), violated the same legal provision, had the same manner of violation (mockery of the participants of the show) - they represented only partial acts of one (continuous) transgression.

The Council contended that even though these cases did indeed show some similarities, they were different in substantial circumstances, so that in the end each case must qualify as a separate violation of law. The Council pointed out that the actual form of the defamation differed in each episode of the show. The Council also stressed that subjects whose human dignity was infringed varied in individual episodes. Whereas in one episode the Council confirmed the infringement of human dignity of a particular show participant, in the next episode the Council "dropped the charges" (stopped legal proceeding) with regard to the very same show participant.

The Council also stated that by accepting the arguments of the broadcaster (treat all cases as partial acts of one single transgression) would in fact result in generalising the individual violations. This would however be in direct contradiction of the principle of carefully and individually examining each interference with the freedom of the speech.

• *Najvyšší súd, 5Sž/5/2013, 27/02/2014* (Decision of the Supreme Court, 5Sž/5/2013, 27 February 2014)
http://merlin.obs.coe.int/redirect.php?id=17044 SK
• *Najvyšší súd, 5Sž/6/2013, 27/02/2014* (Decision of the Supreme Court, 5Sž/6/2013, 27 February 2014)
http://merlin.obs.coe.int/redirect.php?id=17045 SK

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TR-Turkey

Constitutional Court Rules that Twitter Ban Violates Freedom of Expression

On 2 April 2014 the Turkish Constitutional Court held that the decision of Presidency of Telecommunication and Communication (*Telekomünikasyon İletişim Başkanlığı,* herein after "TIB"), regulatory authority of telecommunications, on blocking access to Twitter infringed freedom of expression.

The ban on Twitter was imposed by a PTC decision of 20 March 2014 on account of interference with personal rights and privacy of Turkish citizens. This decision was based on numerous injunctions for protection (*koruma tedbiri*) concerning some URL addresses in Twitter already given by different domestic courts. The PTC's decision, however, did not prohibit access only to these URL addresses but to the full Twitter website instead. The Union of Turkish Bars initiated proceedings against the PTC's decision instantly. On 25 March 2014 Ankara Administrative Court granted a stay of execution on the matter. This, however, was not implemented by the PTC. Moreover, having determined that Twitter was still being used through changing DNS settings despite the ban, the PTC further blocked Google DNS addresses.

Against this background, on 25 March 2014, the applicants, who are users of Twitter, lodged a case before the Constitutional Court (CC) by using the individual complaint mechanism. As a general rule, the individual complaint, which was introduced to Turkish law in 2012, can be made only after exhausting all prior domestic remedies. However, the applicants requested for an immediate decision from the CC by claiming that there was no effective remedy applicable to their case on the basis of non-implementation of the stay of execution granted by Ankara Administrative Court. Having accepted the applicant's request, the CC declared the case admissible and examined it on the merits.

In their submissions, the applicants, relying on the corresponding articles on freedom of expression in the Turkish Constitution as well as the case law of the European Court of Human Rights (ECHR), asserted that the ban had no legal basis. They also claimed that the ban not only constituted an interference with the right to access to information but also the right to disseminate it.

Underlining the requirement of having a court decision for fully blocking internet access, the CC decided that the PTC acted in *ultra vires* while issuing the ban and the decision thus had no legal basis. Furthermore, the CC stated that internet had become an important medium for freedom of expression and that it could not be blocked in a democratic society. It therefore found a violation of freedom of expression.

Following the CC judgment, the ban on Twitter was lifted on 3 April 2014 accordingly.

• *T.C.Anayasa Mahkemesi, Başvuru Numarası: 2014/3986, Karar Tarihi: 2/4/2014* (Decision of the Constitutional Court, case number 2014/3986, 2 April 2014)
http://merlin.obs.coe.int/redirect.php?id=17063 TR

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UA-Ukraine

Ukrainian public service broadcasting law adopted

The Statute Про Суспільне телебачення і радіомовлення України ("On Public Television and Radio Broadcasting of Ukraine"), adopted by the Supreme Rada on 17 April 2014, was promulgated by the acting President Turchinov and enters into force on 15 May 2014. The law replaces the 1997 statute on the System of Public Television and Radio Broadcasting of Ukraine (IRIS 1998-4/10), which has never been enforced. The Statute envisions that all state-run TV, radio companies, including regional and world services, shall be transformed into a joint entity under the control of civil society. The Statute establishes the priority of public interests over the commercial and political ones (Art. 3). It outlines legal and institutional frameworks to protect the independence and accountability of public service broadcasting.

Civil society representatives form the majority of the Supervision Council of the new company (Art. 4). The Council approves the executive body, the Board, after a contest among candidates (Art. 7).

It also rules that the national budget will finance public broadcasting by providing at least 0.2 percent of its previous year's fund, while advertising shall not exceed 5 percent of the hourly airtime (Art. 14). The property of the new National Public Television and Radio Company of Ukraine (NSTU) belongs to the state (Art. 15).

The OSCE Representative on Freedom of the Media, Dunja Mijatović, welcomed adoption of the law on public broadcasting in Ukraine as a big effort to institutionally reinforce media freedom in the country. She pointed to her particular approval that the legal review of the law's draft made by her Office in 2013 was acknowledged and fully taken into account by the deputies.

• Про Суспільне телебачення і радіомовлення України . Верховна Рада України ; Закон від *17.04.2014 № 1227-VII* (Act "On Public Television and Radio Broadcasting of Ukraine" N 1227-VII of 17 April 2014, officially published in Holos Ukrainy daily on 14 May 2014, N 91.)
http://merlin.obs.coe.int/redirect.php?id=17026 UK

• Press release of the OSCE Representative on Freedom of the Media, "OSCE Representative welcomes new Ukrainian public service broadcasting law as way to improve media pluralism", 14 May 2014
http://merlin.obs.coe.int/redirect.php?id=17073 EN

• комментарий к проекту закона украины « Об Общественном телевидении и радиовещании Украины » (OSCE legal review on the Statute "On Public Television and Radio Broadcasting of Ukraine")
http://merlin.obs.coe.int/redirect.php?id=17074 EN RU

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US-United States

Google and Viacom Reach Settlement

On 18 March 2014 Google and Viacom reached a settlement to resolve a long-running dispute over whether YouTube, which is owned by Google, infringed the copyrighted works of thousands of Viacom's videos by hosting them without permission. The agreement was reached while Viacom's appeal of the decisions of two lower courts was pending.

Under the Digital Millennium Copyright Act ("DMCA") an Internet Service Provider ("ISP") such as YouTube is required to remove copyrighted works that are posted without authorization if they receive notice from a copyright holder. The heart of the dispute was whether YouTube had sufficient notice of the infringing activities by virtue of having a reasonable suspicion of the infringing activities of its users. Viacom alleged that YouTube had sufficient notice because it was objectively obvious to a reasonable person that there was a high probability of infringement ("Red Flag Knowledge"), while YouTube countered that Red Flag Knowledge is insufficient because actual knowledge of specific violations is required.

According to a joint announcement by the companies, the settlement "reflects the growing collaborative dialogue between our two companies on important opportunities, and we look forward to working more closely together." The terms of the settlement have been kept confidential by the parties.

• Google and Viacom Joint Announcement, Viacom and Google Resolve Copyright Lawsuit, 18 March 2014
http://merlin.obs.coe.int/redirect.php?id=17046 EN

Jonathan Perl
New York Law School

YouTube Ordered to Take Down Film due to Copyright Interest of Actor

On 26 February 2014, a Federal court ordered YouTube to take down the film Innocence of Muslims after finding that one of the actresses who participated in the film has a right to demand its removal as an owner of a copyright interest in her performance. In her complaint, Cindy Lee Garcia ("Garcia") cited numerous death threats that she received because of her participation in the film after it gained notoriety during the protests in Libya on 11 September 2012 that resulted in the death of four Americans.

The Court held that Garcia has a copyright interest in her own performance even though the filmmaker wrote the dialogue she spoke, managed all aspects of the production and dubbed over a portion of her scene, because her contribution to the film evinced "some minimal degree of creativity." The Court explained that her creativity was sufficiently creative even though her dialogue was dubbed over because her body language, facial expression and reactions to other actors were far more than just speaking words on a page. The Court was careful to clarify however, that it did not decide whether every actor has a copyright in their performance in a film but only that the balance of equities favoured her claim because she was duped into providing an artistic performance that was used in a way she never could have foreseen.

Garcia's attorney praised the ruling and reiterated that justice was served because she never would have agreed to participate had she known the true nature of the project the film. Google strongly disagreed with the ruling and vowed to fight it, which could include seeking an en banc review at the 9th Circuit or going to the United States Supreme Court.

• Court Order, United States Court of Appeal for the ninth district, No. 12-57302, 26 February 2014
http://merlin.obs.coe.int/redirect.php?id=17047 EN

Jonathan Perl
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FTC reaches Settlement with Apple on In-App Purchases

On 15 January 2014 Apple Inc. ("Apple") agreed to settle a complaint with The Federal Trade Commission ("FTC") that Apple violated the FTC Act by failing to tell parents that they were approving an in-app purchase and 15 minutes of additional unlimited purchases by simply entering a password. The complaint was triggered by complaints the FTC had received from parents for in-app charges that were incurred by children that were either accidental or not authorized.

Under the terms of the agreement, Apple will provide full refunds to consumers for charges incurred by children that were either accidental or not authorized by the consumer and give notice of the availability of the refunds to all consumers charged for in-app charges. Should Apple issue less than $32.5 million in refunds within one year after the settlement becomes final, it must remit the balance to the FTC. Apple will also change its billing procedures to require express consent from consumers before all charges are incurred for items sold in mobile apps and provide consumers with the option to withdraw their consent at any time.

FTC Chairwoman Edith Ramirez praised the agreement, exclaiming that "[t]his settlement is a victory for consumers harmed by Apple's unfair billing, and a signal to the business community: whether you're doing business in the mobile arena or the mall down the street, fundamental consumer protections apply."

• Federal Trade Commission Complaint, no 112-3108
http://merlin.obs.coe.int/redirect.php?id=17048 EN
• Settlement, 15 January 2014
http://merlin.obs.coe.int/redirect.php?id=17049 EN

Jonathan Perl
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You Got Posted & Revenge Porn

After a complaint filed on 10 December 2013, California authorities arrested a California resident for running a "revenge porn" website, charging him with 31 felony counts that include conspiracy, identity theft, and extortion. According to the complaint, the website, which is no longer operational, let people anonymously post explicit pictures of others and charged $350 to remove pictures. While the arrest comes on the heels of a first-in-the-nation law that California enacted to combat "revenge porn" websites the defendant was not charged under the newly-enacted law because it is geared towards those who post the incriminating pictures and not those who run websites that feature them.

On 18 March 2014, the founders of the website were also recently ordered by an Ohio Federal court to pay $385,000 to a woman for distributing sexually-explicit images of her on the website when she was 16 years old. The payments include $150,000 for posting two pictures of her that were deemed to be child pornography, $10,000 for violating her "right of publicity" and $75,000 for punitive damages. The plaintiff's attorney lauded the decision for sending an unambiguous message to people who run revenge porn sites, and allowing the victim to "obtain justice against the people who exploited her."

- Court Order, case No. C2-13-486, 18 March 2014
http://merlin.obs.coe.int/redirect.php?id=17050 EN
- Complaint, San Diego Superior Court, 10 December 2013
http://merlin.obs.coe.int/redirect.php?id=17077 EN

Jonathan Perl
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SK-Slovakia

Fine for the Violation of the "Language Act" Confirmed

On 21 May 2014, the Supreme Court ("Court") confirmed a decision of the Council for Broadcasting and Retransmission of the Slovak Republic ("Council") in which the Council had imposed a fine of 165 Euro on a local commercial TV broadcaster for failing to ensure that programme services are being broadcast in Slovak language.

The Act on Broadcasting and Retransmission obliges the broadcasters to exercise their broadcasting in line with the provisions of so called "Language Act". The Language Act stated that the TV broadcasting usually must be carried out in Slovak language unless the programme or a part of the programme services falls under one of the exceptions laid down in the Language Act. The "most used" exceptions (besides specific cases such as foreign language learning programmes, foreign music songs, exceptions concerning Czech language, which is considered as "understandable" for Slovaks etc.) are subtitling, simultaneous translation or consecutive transmission of the given programme in Slovak language.

The Broadcaster in question is a broadcaster, who is localized in the south region of Slovak Republic known for its high penetration of the citizens of Hungarian nationality. In his news programme, the broadcaster reported about a traffic accident that happened in this region. Among statements of the police and other officials in Slovak language the programme also included the dialogue of two witnesses of this accident transmitted exclusively in Hungarian language without any other means that would allow Slovak viewers to understand this dialogue (subtitling, translation etc.). Therefore, the Council concluded that the broadcaster violated the relevant provisions of the Language Act along with the provisions of the Act on Broadcasting and Retransmission and imposed a minimum fine of 165 Euro.

In his appeal, the broadcaster claimed that the given programme was an acquired work and as such it is qualified as an audiovisual work under the Copyright Act. According to the broadcaster, he did not have the right to edit the programme in any way (including inserting of subtitles). Therefore, there was a conflict of two legal norms, which should be solved in line with the principle "lex specialis derogat lex generali".

In its reply, the Council stated that it was the free decision of the broadcaster to acquire the given programme. Therefore, he was obliged to take necessary precautions to secure the compliance of the programme with the law (e.g. the right to adjust the programme with relation to the language requirements). The Council also emphasised that in reality there was no conflict of legal norms, since there was no legal obligation for the broadcaster to transmit this particular programme. Furthermore, the Council stressed that for instance the inserting of subtitles does not qualify as a change of the audiovisual work under the provisions of the Copyright Act. Thus it does not require the consent of the author.

The Court fully acknowledged the arguments of the Council and confirmed the decision. The Court emphasized that admitting the argument on the acquired programme and the impossibility to adjust such a programme under the provisions of the Copyright Act would create absurd situations, where basically any audiovisual work could be broadcast on TV as long as it is acquired and does not represent an own production of the broadcaster.

It is worth mentioning that the provisions of the Language Act (especially its strict character) were subject to European Commission's criticism. As a response, the Ministry of Culture amended the relevant provisions of this Act (for more details see IRIS 2014-1:1/41) and allowed the Council to grant TV licences for broadcasting in all other EU languages. However, the Council may grant such licence only on regional or local level and only if a sufficient offer of broadcasting in Slovak language exists in the given geographic area. Broadcasters with a standard licence still have to observe the general obligation to broadcast in Slovak language.

• *Najvyšší súd, 21.5.2014* (Decision of the Supreme Court of 21 May 2014)
http://merlin.obs.coe.int/redirect.php?id=17305 SK

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Agenda

Information Influx

2-4 July 2014 Organiser: Institute for Information Law (IViR), University of Amsterdam Venue: Amsterdam
http://informationinflux.org/

Book List

Ergec, R., Velu, J., Convention européenne des droits de l'homme Editions Bruylant, 2014 ASIN: B00KS1O66U Amazon Kindle
http://www.amazon.fr/Convention-europ%C3%A9enne-droits-lhomme-Rusen-ebook/dp/B00KS1O66U/ref=sr_1_-2?s=books&ie=UTF8&qid=1403181023&sr=1-2&keywords=droit+des+m%C3%A9dias
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