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IRIS
Legal Observations
of the European Audiovisual Observatory

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COUNCIL OF EUROPE

European Court of Human Rights: Uzeyir Jafarov v. Azerbaijan

In a case related to a violent attack on a journalist, the European Court reiterated that the States have positive obligations under the European Convention on Human Rights to create a favourable environment for participation in public debate by all the persons concerned, enabling them to express their opinions and ideas without fear. Because of failures to carry out an effective investigation, the European Court found that the criminal investigation of a journalist's claim of ill-treatment was ineffective and that accordingly there has been a violation of Article 3 (prohibition of torture or inhuman or degrading treatment) of the Convention under its procedural limb.

In 2007, Uzeyir Jafarov had been the victim of a violent attack by two men, only a few hours after publishing an article in a newspaper in which he accused a senior military officer of corruption and illegal activities. The journalist was hit several times with a hard blunt object and he was also punched by his aggressors. The attack took place just in front of the newspaper's office. Having heard the journalist's screams, his colleagues came out of the office and the assailants left the scene of the incident by car. The journalist however recognised one of his two assailants: this person (N.R.) was a police officer from the Yasamal District Police Office. Also, other journalists could confirm that they had seen N.R. standing outside the newspaper's office on the day of the attack. Although formally a criminal investigation was started in connection with the attack on the journalist, no further steps were taken in order to identify the perpetrators. In a newspaper interview the Minister of Internal Affairs was questioned about the attack on Uzeyir Jafarov. In that interview the Minister stated that the journalist had staged the attack on himself. The same day, the journalist lodged a complaint with the Prosecutor General, complaining of the police authorities' failure to conduct an effective investigation. But this action had no further result.

Relying on Article 3 of the European Convention, the journalist complained that State agents had been behind the attack on him and that the domestic authorities had failed to carry out an effective investigation in respect of his ill-treatment. In particular, the journalist pointed out that the investigator had failed to order an official identity parade including the police officer N.R. who had been one of his aggressors, to question his colleagues from the newspaper as witnesses and to obtain video recordings from security cameras situated in the vicinity of the scene of the incident. The European Court found numerous shortcomings in the investigation carried out by the domestic authorities. The Court inter alia referred to the fact that the journalist's complaint was examined by the police office where the officer who had allegedly committed the offence was based. In the Court's view, an investigation by the police into an allegation of misconduct by one of its own officers could not be independent in these circumstances. The Court also noted that, despite explicit requests by the journalist, the domestic authorities failed to take all steps reasonably available to them to secure the evidence concerning the attack. The Court further considered that the public statement by the Minister of Internal Affairs showed that during the investigation the domestic authorities were more concerned with proving the lack of involvement of a State agent in the attack on the journalist than with discovering the truth about the circumstances of that attack. In particular, it does not appear that adequate steps were taken to investigate the possibility that the attack could have been linked to Uzeyir Jafarov's work as a journalist. On the contrary, it appears that the responsible authorities had already discarded that possibility in the early stages of the investigation and with insufficient reason. These elements were sufficient to enable the Court to conclude that the investigation of the journalist's claim of ill-treatment was ineffective. There has accordingly been a violation of Article 3 of the Convention under its procedural limb.

According to the European Court, it was not possible however to establish that the journalist had been subjected to the use of force by a State agent or that a State agent had been behind the attack on the journalist with the aim of interfering with his journalistic work. The Court considered that the present case should also be distinguished from other cases, where the domestic authorities [U+2012] which were aware of a series of violent actions against a newspaper and persons associated with it [U+2012] did not take any action to protect the newspaper and its journalists. In the present case, by contrast, neither the journalist nor the newspaper had been subjected to violent actions before. Moreover, the journalist had not lodged any request for protection with the domestic authorities before the attack on him. The Court emphasised that its inability to reach any conclusions as to whether there has, in substance, been treatment prohibited by Article 3 of the Convention, derived to a large extent from the failure of the domestic authorities to carry out an effective investigation at the relevant time. However, the Court could not establish a substantive violation of Article 3 of the Convention in respect of the attack on the journalist.

Finally the Court's task was also to establish whether or not the journalist's right to freedom of expression had been violated on account of the domestic authorities' failure to conduct an effective investigation into the attack on him. The Court noted that the journal-

ist's allegations in this respect arise out of the same facts as those already examined under Article 3 of the Convention and found to be a violation of Article 3. Having regard to those findings, the Court considered that the complaint under Article 10 of the Convention did not raise a separate issue and that therefore it was not necessary to examine the complaint again under Article 10 of the Convention. The Government of the Republic of Azerbaijan is ordered to pay the journalist a sum of EUR 10,000 in respect of non-pecuniary damage and EUR 4,400 in respect of costs and expenses.

• Judgment by the European Court of Human Rights (First Section), case of Uzeyir Jafarov v. Azerbaijan, Appl. No. 54204/08 of 29 January 2015
http://merlin.obs.coe.int/redirect.php?id=17414 EN

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Committee of Ministers : Declaration on Media Freedom and Paris Attacks

On 14 January, the Committee of Ministers of the Council of Europe adopted a declaration condemning "in the strongest terms the massacre at the satirical weekly Charlie Hebdo and the anti-semitic killings at a kosher grocery store in Paris". The Committee paid tribute to the victims, extended its condolences to their families and proclaimed its solidarity with the French Government and people.

The declaration described the attacks as "a direct assault on democracy, of which freedom of expression and opinion is a cornerstone. They have sought to destabilise our institutions, radicalise our societies and set the citizens against each other". The Committee stated "[o]ur response to these horrendous acts, which cannot and should not be justified by any religion, must be to stand firm on our shared values: democracy, human rights and the rule of law. It is by upholding a united front around these values and by taking action for freedom, tolerance, mutual understanding and respect towards others, that terrorism will be curbed."

Moreover, the Chairman of the Committee of Ministers, Didier Reynders, also issued a statement on 7 January 2015, extending his condolences "to all the victims' families and express my solidarity and my full support towards the French authorities and people". The Chairman further stated that "We must mobilise in defence of our values and our freedoms, including freedom of expression. We must also strive to ensure that the spirit of tolerance holding our societies together prevails over the hatred and division which the terrorists seek to provoke. The Council of Europe is determined to pursue its action to that end."

• Council of Europe, Declaration by the Committee of Ministers on the recent attacks in Paris, 14 January 2015
http://merlin.obs.coe.int/redirect.php?id=17445 EN

• Council of Europe, Declaration by the Chairman of the Committee of Ministers on the terrorist attacks against 'Charlie Hebdo' magazine, 7 January 2015
http://merlin.obs.coe.int/redirect.php?id=17447 EN FR

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Parliamentary Assembly: Resolution on Media Freedom and Paris Attacks

On 28 January 2015, the Parliamentary Assembly of the Council of Europe (PACE) adopted a resolution on the "Terrorist attacks in Paris: together for a democratic response". The Assembly expressed its sympathy to the families and victims of the January attacks at the offices of the Charlie Hebdo magazine and a kosher store in Paris. The attacks resulted in the deaths of 17 people, including a number of journalists, cartoonists, policemen and members of the Jewish community. The resolution described the attacks not only as "anti-semitic violence" and an "assault on freedom and expression", but also attacks on the "very values of democracy and freedom in general".

The assembly recalled that, in line with well-established case law of the European Court of Human Rights, the use of satire, including irreverent satire, and information or ideas that "offend, shock or disturb", including criticism of religion, are protected as part of freedom of expression under Article 10 of the European Convention on Human Rights. Moreover, the Assembly reiterated its Resolution 1510 (2006), where it stated that "freedom of expression as protected under Article 10 of the European Convention on Human Rights should not be further restricted to meet increasing sensitivities of certain religious groups" (see IRIS 2006-8/2). In this regard, "freedom of expression, in particular that of journalists, writers and other artists, must be protected and governments of member States should not interfere with its exercise be it in printed or electronic media, including the social media. In this respect, the Assembly condemns declarations against media freedom made by certain authorities in the aftermath of the attacks on Charlie Hebdo".

Finally, the Assembly makes a number of calls in its resolution, including (a) inviting newspapers and television channels to consider a code of conduct regarding coverage of terrorist events, striking a balance between the need for freedom of information and the imperatives of police action and (b) asking member states to protect journalists, writers and other artists

from extremist threats and refrain from any interference with the exercise of their freedom of expression, in full compliance with the law, be it in printed or electronic media, including social media.

• Parliamentary Assembly of the Council of Europe, "Resolution 2013 (2015) on Terrorist attacks in Paris: together for a democratic response", 28 January 2015
http://merlin.obs.coe.int/redirect.php?id=17415 EN FR

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EUROPEAN UNION

Court of Justice of the European Union: Ruling on Online Copyright Infringement Jurisdiction

On 22 January 2015, the Court of Justice of the European Union delivered its judgment in Hejduk v. EnergieAgentur (Case C-441/13) on the question of whether an Austrian court may hear an action for online copyright infringement where the material is placed online in another Member State. The case concerned Pez Hejduk, a professional photographer of architecture, who had taken photographs of various buildings by an Austrian architect. A German company, EnergieAgentur, made the photographs available on its German website without Hejduk's consent and Hejduk brought an action for copyright infringement against EnergieAgentur in an Austrian court, claiming EUR 4,000 in damages. EnergieAgentur argued that the Austrian court lacked jurisdiction because its website was not directed at Austria and the "mere fact that a website may be accessed from Austria" was insufficient to establish jurisdiction.

The Austrian court decided to refer the question to the Court of Justice of the European Union, asking for a preliminary ruling on whether under EU Regulation No. 44/2001 the Austrian court has jurisdiction to hear an action for damages for copyright infringement "resulting from the placing of protected photographs online on a website accessible in its jurisdiction". First, the Court held that the acts liable to constitute copyright infringement "may be localised only at the place where EnergieAgentur has its seat, since it is where the company took and carried out the decision to place the photographs online". It followed, according to the Court, that since this "causal event" took place in another Member State, it did not attribute jurisdiction to the Austrian court.

However, the Court then went on to examine whether the Austrian court may have jurisdiction "on the basis of the place where the alleged damage occurred". EnergieAgentur argued that its website operated under a "country-specific German top-level domain" (".de") and that it was not "directed at Austria". The Court rejected this argument, holding that Regulation No. 44/2001 does not require the "activity concerned to be 'directed to' the Member State in which the court seized is situated" (applying Pinckney v. KDG Mediatech (see IRIS 2013-10/4)).

The Court stated that "it must thus be held that the occurrence of damage and/or the likelihood of its occurrence arise from the accessibility in the Member State of the referring court, via the website of EnergieAgentur, of the photographs to which the rights relied on by Ms. Hejduk pertain". Further, the Court stated that "courts of other Member States in principle retain jurisdiction, in the light of Article 5(3) of Regulation No 44/2001 and the principle of territoriality, to rule on the damage to copyright or rights related to copyright caused in their respective Member States, given that they are best placed, first, to ascertain whether those rights guaranteed by the Member State concerned have in fact been infringed and, secondly, to determine the nature of the damage caused".

Thus, the Court concluded that where there is an allegation of infringement of copyright and rights related to copyright guaranteed by the Member State of the court seized, that court has jurisdiction, on the basis of the place where the damage occurred, to hear an action for damages in respect of an infringement of those rights resulting from the placing of protected photographs online on a website accessible in its territorial jurisdiction. That court has jurisdiction only to rule on the damage caused in the Member State within which the court is situated.

• *Urteil des Gerichtshofs (Vierte Kammer) in der Rechtssache C-441/13 Pez Hejduk gegen EnergieAgentur.NRW GmbH, 22. Januar 2015* (Judgment of the Court (Fourth Chamber) in Case C-441/13 Pez Hejduk v. EnergieAgentur.NRW GmbH, 22 January 2015)
http://merlin.obs.coe.int/redirect.php?id=17416 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

Assessment Study on the Independence of the Regulator

In November 2014, the Council of Europe office in Albania published the findings of an assessment on the independence and functioning of the Audiovisual Media Authority (AMA) in Albania. This study was commissioned by the Council of Europe on request of the Albanian Parliament. The aim of the study was to apply the INDIREG methodology to AMA and provide a contextual interpretation of the results with policy recommendations. The methodology used assessed the formal and de facto independence and functioning of the regulator in five aspects, including status and powers, financial autonomy, autonomy of the decision-makers, knowledge and transparency, and accountability.

The assessment study concluded that AMA faces two sets of challenges. The first set of challenges is related to the inability of the regulator to establish its independence as a regulatory authority, as it finds itself under the influence of political factors and the media it is supposed to regulate. As a result, the study notes that AMA's functioning has for a long time been hampered due to the hindrances that stop the board from being fully operational. The report also notes that "[t]here is a continuing risk that politicized appointments can lastingly damage the perception of AMA being an impartial arbitrator in pursuit of public interest."

According to the study, the second set of challenges that AMA faces is related to the overall environment in which it operates, where "the culture to respect its independence and legal compliance is not very succinct." The findings of the report show that the regulator has never managed to succeed in asserting itself as a regulator that is impartial, effective, and independent.

Based on the assessment, the study offered policy recommendations. In terms of the status and powers of the regulator, the study suggested that approval of the organisational chart of the regulator should not depend on the parliament. It also suggested transferring powers related to the transmission of electronic signals to the other regulator and removing the active fight against piracy from AMA's responsibilities. With regard to the autonomy of decision-making within the regulator, the study recommended that the nomination procedure should "strictly favour candidacies based on their merit in terms of professional expertise over political support," stressing that the ruling majority and the opposition should strive to find qualified and consensual candidates. The study also included recommendations to amend the law so that the requirements on knowledge for both AMA employees and board members are more detailed.

The study also published recommendations addressed to the regulator itself. That AMA "should build and publish on its website a repository of all its decisions with motivations that is organised to reflect subject-areas and the application of AMA code powers" was one of the recommendations. AMA should also adopt a more active stance in terms of approving organisational measures against threats, while making sure to officially report on these threats. The recommendations concluded that AMA should also consider different measures to increase its transparency, justify and explain its decisions and, in general, improve its accountability and communication with the media and with the public.

• Irion, K., Ledger, M., Svensson, S., Fejzulla, E., "The Independence and Functioning of the Audiovisual Media Authority in Albania", study commissioned by the Council of Europe, Amsterdam/Brussels/Budapest/Tirana, October, 2014
http://merlin.obs.coe.int/redirect.php?id=17417 EN

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BG-Bulgaria

Legislative amendments for a transparent and competitive media landscape

On 23 January 2015, the Bulgarian Government adopted a programme for the stable development of the Republic of Bulgaria for the 2014-2018 period. One of the priorities as outlined under paragraph/section 18.1, which concerns the media landscape, is the: "[d]evelopment of a public landscape and legislation that guarantee media independence and pluralism as well as transparency and public disclosure of media ownership and media supervision".

The Government's aim over the next four years is to adopt legislative amendments that will help "to achieve a transparent and competitive media landscape". The measures set out in the programme cover three areas. Firstly, draft regulations will be drawn up to prevent mergers and/or the acquisition of media companies by certain people if they would obtain a "considerable influence" on the media landscape as a result.

Secondly, a debate will be held on whether public tendering procedures should be restricted to media

companies that are prepared to abide by the provisions of an ethical code for Bulgarian media and the National Ethical Regulations on Advertising and Commercial Communication. There are currently two parallel ethical codes in Bulgaria that regulate media self-regulation: the Bulgarian Media Ethical Code, signed in 2004, and the Professional Code of Ethics of the Bulgarian Media, which was adopted in December 2013 by the Bulgarian Media Union (Български медиен съюз). The Government programme therefore uses the neutral title of "an ethical code".

Thirdly, discussion will focus on the adoption of legislation under which public funding would only be made available to media that had met their legal obligations regarding the transparency of media ownership. As far as the print media are concerned, these obligations are laid down in the Act on the compulsory notification of information on print and other works (Закон за задължителното депозиране на печатни и други произведения). According to Article 7a, every publisher of a printed periodical is obliged to publish information about its "actual owner" in the first edition each year. The same obligation applies if the ownership structure changes during the year, in which case the latest information must be published in the next edition. Electronic media are not subject to such a legislative obligation. The Govenment programme therefore states that electronic media may only receive public funding if, on their websites, they "provide users with easy, direct and permanent access to current information about their actual owners".

The Council of Ministers is the public institution responsible for implementing this part of the Government programme.

• Програма на правителството за стабилно развитие на Република България за периода *2014 -2018* г . , *23* Януари *2015* г . (Government programme for the stable development of the Republic of Bulgaria for the 2014-2018 period, 23 January 2015)
http://merlin.obs.coe.int/redirect.php?id=17442 BG

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New Members of the Ethical Journalism Committee

On 21 January 2015, twelve new members of the national Ethical Journalism Committee began their work.

The members of the committee were elected by the Board of Founders of the “National Council on Journalistic Ethics” foundation, which includes representatives of some of the most influential media organisations in Bulgaria - the Association of Bulgarian broadcasters (ABBRO), the Bulgarian Union of Publishers and the Media Development Center.

The foundation was created in 2005 and, to date, there have been two operating committees: the ethical committee for printed media and the ethical committee for electronic media. After analysing the practices in self-regulation exercised hitherto, considering the development of the media environment during the past nine years and holding consultations with representatives of the journalistic guild and media experts, the Board of Founders has concluded that henceforth it shall be more effective for all complaints to be reviewed by a single committee with wider media and professional representation.

An invitation to nominate members of the committee was sent out to more than 500 media, media organisations and journalistic societies.

The “National Council on Journalistic Ethics” foundation is convinced that operating in a uniform Ethics committee with proven experts, such as the elected members, best meets the requirements of the multiplatform media environment.

The newly elected Ethical committee is the most authoritative and suitable platform for the application of standards in electronic, printed and internet media.

• Известни журналисти и медийни експерти в Комисията (Press release on the new members of the Ethical Journalism Committee)
http://merlin.obs.coe.int/redirect.php?id=17418 BG

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Federal Administrative Court permits regional advertising by national TV broadcaster

In a ruling of 17 December 2014 (case no. 6 C 32.13), the Bundeswaltungsgericht (Federal Administrative Court - BVerwG) decided that it was not a breach of broadcasting law for advertising spots to be transmitted on a regional basis on a national television channel.

The decision followed an announcement by the provider of the "ProSieben" television channel that it intended to offer regional advertising spots to advertising customers for whom national TV advertising was unattractive. The lower-instance Verwaltungsgericht Berlin (Berlin Administrative Court - VG Berlin), in a decision of 26 September 2013 (case no. 27 K 231.12), ruled that it was not entitled to do so. It considered advertising to be part of the programme, which meant that the holder of a licence to broadcast

a national programme was only allowed to transmit advertising on a country-wide basis.

The BVerwG upheld the leapfrog appeal lodged againt this decision by the broadcaster. It found that only editorial content was covered by the broadcasting licence, not advertising. As such,the broadcaster was free to decide whether and how to broadcast advertising, as long as it adhered to advertising regulations. In this regard, the Rundfunkstaatsvertrag (Inter-State Broadcasting Agreement - RStV) does not contain any provisions limiting the transmission area of advertising spots.

The BVerwG also examined the objectives of the RStV and noted that the suggestion that such provisions could be a sensible way of protecting the financial future of local or regional media did not appear in the RStV.

• *Urteil des Bundeswaltungsgerichts (6 C 32.13), 17. Dezember 2014* (Ruling of the Federal Administrative Court of 17 December 2014 (case no. 6 C 32.13))
http://merlin.obs.coe.int/redirect.php?id=17454 DE

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KJM approves new Internet age verification measures

At its meeting on 10 December 2014, the Kommission für Jugendmedienschutz (Commission for the Protection of Young People in the Media - KJM) gave a positive assessment of three new age verification measures (AVS partial modules) for closed user groups in telemedia. They are Aristotle Inc.'s "Aristotle Integrity/Instant Global ID and Age Verification (Integrity)" system, edentiX GmbH's "Online Ausweischeck" and Web Shield Limited's "KYC Shield".

According to the Jugendmedienschutz-Staatsvertrag (Inter-State Agreement on the Protection of Young People in the Media - JMStV), certain content that is harmful to minors may only be distributed via telemedia within a closed user group. As a result, telemedia providers must ensure that access data for such content is only given to people who have proved that they are over 18.

According to the KJM, reliable age verification should be a two-step process. Firstly, the person's age should be checked through personal face-to-face contact and secondly, authentication should take place each time the service is used.

All three of the systems checked by the KJM represent modules (partial solutions) of a multi-stage identification procedure that enables face-to-face checks to be carried out via webcam.

Under these systems, simple identification via webcam, as the initial age check for repeated usage, is combined with additional security measures. Users can only obtain permission to access the required content after entering their personal details along with a PIN number on the website of the content provider, providing information from their identity card and holding a video-conference with qualified employees of the provider, during which the information they have provided is verified.

There are currently 32 KJM-approved age verification system concepts or modules, as well as six general youth protection concepts of which age verification systems form a component.

According to the KJM, however, all modules must form part of an overall concept in order to ensure a closed user group.

In this context, the KJM is offering to check whether the concepts devised by interested companies for technical measures to protect young people in the media meet the relevant legislative provisions.

• *Pressemitteilung 10/2014 der KJM vom 16. Dezember 2014* (KJM press release 10/2014 of 16 December 2014)
http://merlin.obs.coe.int/redirect.php?id=17444 DE

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FI-Finland

Proposed New Copyright Provisions on IPTV

A new Government bill (HE 181/2014 vp) proposes amendments to the Finnish Copyright Act (Tekijänoikeuslaki 404/1961). One of these amendments concerns new provisions on extended collective licences for network personal video recorder (PVR) services provided by third parties, such as IPTV companies. Early in 2014, a solution for copyright-proof recording services was introduced, which was based on negotiations between core actors in the field, including leading broadcasters, teleoperators and collective management societies representing authors, performers, musicians, and producers. Later the same year, the new Government bill was introduced to the Parliament.

The proposed new Section 25 l (1) states that the provider of a network recording service may make a copy of a programme and work included in a television transmission by virtue of an extended collective licence, as provided for in Section 26. This copy may be used for making available to the public in such

a way as to enable the programme and work to be viewed and listened to by customers of the recording service provider from a place and at a time chosen by them. Paragraph 1 does not apply to a work whose author has assigned to the broadcasting company the right to make a copy and the right of communication to the public (§ 25 l (2)).

According to the Government bill, recording of programming is to be based on contracting with both the broadcasters and the organisation(s) representing right-holders. Broadcasters grant permissions regarding their own and acquired rights, as well as negotiate on the practical execution. The organisations representing right-holders grant permissions with regard to rights that have not been transferred to broadcasters. By force of law, the effects would be extended to right-holders not represented by the organisation(s). The organisation(s) should, however, have a wide coverage with regard to right-holders (including foreign) and explicit coverage with regard to the rights concerned. References to related rights are also proposed, not including the protection of transmission signals in Section 48. Broadcasters' authorisation is thus required.

In principle, all programming is included in the provision, but contracting may mean the exclusion of some programmes. The starting point in the negotiations would be streaming for private purposes by customers, although solutions enabling offline viewing could also be agreed upon. The solution based on extended collective licencing combined with direct contracting was deemed appropriate, especially due to the mass scale nature of the activity and the large number of right-holders, as well as challenges related to obtaining all authorisations beforehand.

At the same time, amendments are proposed to Section 26 concerning extended collective licences. A new sentence would be added to paragraph 1, which clarifies the legal basis of the extension effects of collective licences. Provisions on extended collective licences apply when the use of a work has been agreed upon between the user and the organisation approved by the Ministry of Education and Culture, which represents, in a given field, numerous authors of works used in Finland. Such an organisation would be considered representative also of authors of other works in the same field with regard to the contract in question. All works in a given field could be used as prescribed by the licence. Clarifications and updates are also proposed to the language used in the Section.

Other amendments concern explicit provisions on the fairness of contract terms when copyright is assigned by the original author, as well as enforcement measures (e.g., preventive injunctions imposed on teleoperators). New titles are also proposed for each Section of the Copyright Act.

• *Hallituksen esitys eduskunnalle laiksi tekijänoikeuslain muuttamisesta (HE 181/2014 vp)* (Government proposal on Act amending to the Copyright Act)
http://merlin.obs.coe.int/redirect.php?id=17451 FI

• *Tekijänoikeustoimikunnan mietintö - Ratkaisuja digiajan haasteisiin, Opetus- ja kulttuuriministeriön työryhmämuistioita ja selvityksiä 2012:2* (Report of the Copyright Commission - Solutions to challenges of the digital age, Reports of the Ministry of Education and Culture 2012:2)
http://merlin.obs.coe.int/redirect.php?id=16874 FI

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Entry into Force of the New Information Society Code

Finland has undergone a comprehensive legislative reform in the field of electronic media and communications. The new Information Society Code (Tietoyhteiskuntakaari 917/2014) was enacted by Parliament in late 2014. To a large extent, the Code entered into force at the beginning of 2015. Some provisions of previous acts, however, have an extended applicability, while some provisions of the new Code will remain in force for a limited time (§ 351).

The Code codifies and repeals acts such as the Communications Market Act (393/2003), the Act on Television and Radio Operations (744/1998), the Act on Radio Frequencies and Telecommunications Equipment (1015/2001), the Domain Name Act (228/2003), the Act on the Provision Of Information Society Services (458/2002) (the so called e-Commerce Act), as well as the Act on the Protection of Privacy in Electronic Communications (516/2004). The Domain Name Act will continue to be applicable until 4 September 2016. The Finnish Communications Regulatory Authority (FICORA) will continue to maintain the registry for domain names, but an intermediary service provider will act as intermediary between companies and FICORA.

On the one hand, the Information Society Code functions as a codification of previous legislation and many of its provisions correspond to the previously existing ones. On the other hand, major amendments were also introduced. The licensing system in the field of broadcasting was reformed in order to adapt to the contemporary technological and economic environment. This means that competitive tendering is emphasised, while the administration of licences is simplified, especially in cases where there is no scarcity of frequencies and FICORA has a greater role. Most television operating licences for the antenna network will expire by 2017 and frequency bands are reserved for wireless broadband.

The Code also includes a new concept of a "communications provider", which refers to the party conveying electronic communications for purposes other than personal or private. It was considered appropriate to extend the provisions on confidentiality and the protection of privacy to cover all intermediaries in electronic communication.

From a consumer perspective, regulation was enhanced in particular by the joint responsibility of the telecommunications operator, service provider and the seller, now resembling the system applied in the field of credit cards. This provision enters into force on 1 July 2015. Moreover, a detailed provision on net neutrality is included in the Information Society Code.

As regards significant market power, the reforms aim to establish efficient prior price control. Finally, the "must carry" obligation for content other than public service is subject to a fixed term and will remain in force until the end of 2016.

• *Tietoyhteiskuntakaari, 7.11.2014/917* (Information Society Code, 7.11.2014/917)
http://merlin.obs.coe.int/redirect.php?id=17452 FI

• *Hallituksen esitys eduskunnalle tietoyhteiskuntakaareksi sekä laeiksi maankäyttö- ja rakennuslain 161 §:n ja rikoslain 38 luvun 8 b §:n muuttamisesta* (HE 221/2013 vp: Government proposal on the Information Society Code and Acts amending Section 161 of the Land Use and Building Act and Section 8b of Chapter 38 of the Criminal Code)
http://merlin.obs.coe.int/redirect.php?id=17419 FI

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FR-France

Publication of code for allocating CNC aid

The "règlement général des aides financières" (general regulations on financial assistance - RGA) of the Centre National du Cinéma et de l'image animée (national centre for the cinema and animated images - CNC) were published in the French official journal on 10 February 2015. These regulations are the final stage of the codification of legislation on the cinema and thereby constitute the first ever code for allocating CNC aid. Without actually changing the legislation, it repeals and replaces the entire body of eleven decrees and the hundred or so decisions of various kinds in the field of financial support. The texts which were in force previously have been retained, and the changes made essentially concern the form of the document. Nevertheless, the changes set out in the Bonnell report (see IRIS 2014-2/21) on aid for production and distribution regarding documentaries and audiovisual fiction, the modernisation of aid for the online showing of cinematographic and audiovisual works, particularly with the creation of an automatic aid in favour of editors of on-demand audiovisual media services other than catch-up television services, have been incorporated in the regulations. Another new feature, as announced in November 2014, is that the RGA has introduced a ceiling on the remuneration payable to writers, performers, and producers of full-length cinematographic works. If these ceilings are exceeded, such works will not be eligible for automatic selective aid support investment.

The regulations are divided into seven sections. The first section sets out the general rules for all types of aid and, according to the new terminology used, draws a distinction between "supervised financial assistance" allocated according to the procedures provided for in sections II to VII, "optional financial assistance", and the "financial allocations" managed by the CNC. One section is devoted to the deprivation of aid, while another lays down the general procedural conditions, particularly as applicable to the consultative committees. In this respect, the ethical rules which are to apply to committee members are set out in a uniform manner. The other sections in the RGA set out the rules applicable to each type of aid. For ease of reading, the seven sections correspond to both the internal organisation of the CNC and the major professional sectors receiving support. Their subdivisions are dictated by the fundamental distinction between automatic and selective aid. All applications for aid sent to the CNC before the date of entry into force of the Deliberation will be considered, and the aid allocated or refused, under the conditions and according to the procedures provided for in the RGA.

• *Délibération n°2014/CA/11 du 27 novembre 2014 relative au règlement général des aides financières du Centre national du cinéma et de l'image animée, JO du 10 février 2015* (Deliberation no. 2014/CA/11 of 27 November 2014 on the general regulations on financial assistance awarded by the CNC, published in the official journal on 10 February 2015)
http://merlin.obs.coe.int/redirect.php?id=17439 FR

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Television report infringed presumption of innocence of the subject of the report

The Tribunal de Grande Instance (regional court - TGI) of Paris has delivered a judgment recalling the vigilance necessary on the part of production companies and television channels in order to respect the presumption of the innocence of people presented in reports. A public-sector television channel had broadcast a report entitled Rwanda: des prêtres accusés (Rwanda - priests under accusation) on the massacre which took place in Rwanda in 1994, claiming that a number of priests had taken part in the "genocide", and that some of them, found guilty by courts in Rwanda, had been "exfiltrated by the Roman Catholic Church" and had found refuge in France. It was indicated that "Father W. M., found against in absentia (04046) by the courts in Rwanda in 2006 (04046) is living in France", with images of the person concerned celebrating mass in a church in France. Claiming an infringement of the presumption of innocence

in the first twenty minutes of the hour-long film, the priest instigated court proceedings against the television channel and the production companies concerned.

The court recalled that in accordance with Article 9-1 of the Civil Code, a person who is "the object of an enquiry or a legal investigation" should not be presented publicly as being guilty of the acts that were being investigated. It further stated that the presumption of innocence will be deemed to have been infringed if two conditions are met: if the existence of the enquiry or investigation was not indicated in the disputed words or text, unless it was a generally well-known fact, and if the disputed words contained definitive conclusions manifesting a prejudice upholding the guilt of the person concerned in respect of the facts covered by the enquiry or investigation.

In this respect, it was firstly noted that the applicant party was under investigation for the facts referred to, and that as a result, the first condition required by Article 9-1 of the Civil Code was met. The Court found that the report showed biased against the applicant, taking for granted his guilt without demonstrating sufficient precaution. At the start of the film a number of images were shown of the archives of the police headquarters in Kigali and the boxes "containing proof against the torturers of 800,000 victims", and more particularly the box devoted to the applicant party, who was portrayed as being one of these torturers. The court went on to observe that the report indicated on a number of occasions that the Rwandan courts had already found against the applicant party in 2006, but failed to indicate, on a number of occasions, that the judgment had been pronounced in absentia. Also, it was not stated at any point that the court judgment was delivered by military courts, whose summary justice has been denounced by a reputed international organisation for the defence of human rights.

The court concluded that despite some precautions regarding style added by the compilers of the report, such as the indication that the applicant party had always denied his involvement in the murders carried out, and the qualifier "presumed" used at the beginning of the report, it transpired that the report presented definitive conclusions manifesting a prejudice upholding the guilt of the applicant party regarding the facts for which he was under investigation. The television channel and the production companies were ordered to pay 5,000 euros in damages to the applicant party. The channel was also ordered to broadcast, at the start of the next programme during which the report was shown, a communiqué to be scrolled down the screen and read out loud at the same time. The production companies will have to indemnify the channel for the judgments delivered against it. An appeal against the decision has been lodged.

• *TGI de Paris (17e ch. civ.), 26 novembre 2014 - W. M. c. Sté France Télévisions et a.* (Paris regional court (17th civil chamber), 26 November 2014 - W. M. v. the company France Télévisions and others) FR

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Audiovisual media handling of terrorist attacks: CSA delivers its decisions

On 11 February 2015, five weeks after the terrorist attacks in France, the Conseil Supérieur de l'Audiovisuel (audiovisual regulatory authority - CSA) delivered its decisions on the way in which television channels and radio stations handled coverage of the attacks (see IRIS 2015-2/18). After analysing approximately five hundred hours of programmes, the CSA has announced that it found 36 breaches of the CSA Code, 15 of which justified the issue of a warning. Orders to comply have been issued in respect of the other 21 more serious breaches. However, none of the sanctions the CSA may impose under Article 42 of the Act of 30 September 1986, such as reading out a communiqué on the air or the imposition of a fine, have been implemented.

Regarding the breaches for which orders to comply were issued, the broadcasting by France 24 of images from the video showing the killing of a police officer in the street by the terrorists on the day of the attack against Charlie Hebdo was the most controversial. The CSA found that the sequence "relayed the sound of gunshots and the victim's voice; the victim's face and distressed situation were also displayed". The broadcast therefore infringed the respect for the dignity of the shooting victim. The channel France 5, which had shown the front page of the British newspaper, Daily News, which portrayed the image of the police officer a few seconds before he died, in a distressed state, also failed to show respect for the dignity of the human person, according to the CSA, who issued the channel with a warning.

The CSA found that the divulging by i-Télé and LCI of elements making it possible to identify the two terrorists who had decimated the editorial team at Charlie Hebdo, before the police authorities had issued a call for witnesses to come forward risked disturbing the action being carried out by the authorities. The channels were therefore ordered to comply with their obligations with regard to public order.

Similarly, since the live revelation that the forces of law and order had engaged with the terrorists in the factory where they had taken refuge could have had dramatic consequences for the other hostages being held at the same time in Paris in the Hyper Cacher supermarket, the CSA ordered the television channels and radio stations concerned to respect the imperative of safeguarding public order. The same applied

to the broadcasting of information, which revealed the presence of a number of people in hiding at the place where the terrorists had taken up their position. At the time of the broadcast, the forces of law and order had not yet intervened and the lives of the victims were still at risk. The CSA considered that revealing this information could have posed a serious threat to the safety of the people being held.

The CSA has also issued a warning on France 3 and Canal Plus, which showed the attack on the Hyper Cacher supermarket, including the fatal shots fired at the terrorist as he faced the forces of law and order. It found that these persistent images were likely to fuel tension and antagonism and might have contributed to a disturbance of public order. The continuous information channels LCI and BFM TV received the most warnings, followed by TF1 and France 2. M6 was the only channel not to be issued with a warning. Based on these findings, the CSA proposed making three additions to its 2013 Recommendation on the handling of international conflicts, civil wars and terrorist acts by the audiovisual communication services, and on respect for the dignity of the human person, the preservation of public order, and control over the airwaves. These proposed amendments should be the subject of a consultation with the audiovisual media to which the Recommendation is addressed, as soon as possible.

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GB-United Kingdom

New Definition of "British Film"

The UK Films Act 1985, Schedule 1, sets out the so-called "cultural test" according to which a film is certified as "British" and hence qualifies for film tax relief (see IRIS 2008-2/19 and IRIS 2006-1/25). A film so certified, i.e., that has passed the test, may apply for tax relief on film production costs (see Corporation Tax Act 2009, Part 15). The test is passed by gaining a certain number of points based on various criteria, including, the setting; subject matter; characters; language; location of the work; and the participants in the production of the film. The new 2015 Order, The Films (Definition of "British Film") Order, amends and updates the test.

Articles 3 to 5 of the Order amend the cultural test in paragraphs 4A to 4C of the Schedule. The amendments (i) increase the points available if certain percentages of film production work (50% and 80%) take place in the UK; (ii) increase the points available for language use; and (iii) provide that points awarded for a film's British setting, subject matter, characters and language will equally be awarded for setting, etc, relating to other EEA states.

The effect of the changes is that the number of points available changes from 31 to 35. The pass mark is accordingly changed from 16 to 18 points.

The main change is in relation to subject matter and qualifying persons. "EEA" replaces "UK", "British" and "English". Making the test wider in this way "will make it a lot easier to fulfil the criteria. As well as this, greater weight is to be given to original dialogue in an EEA language (six points instead of the previous four), to visual and special effects and to shooting, if at least 80% of them take place in the UK (four points instead of the previous two)."

The Order come into effect on 29 January 2015.

• The Films (Definition of "British Film") Order 2015, SI 2015/86
http://merlin.obs.coe.int/redirect.php?id=17432 EN

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Ofcom determines when it is warranted to infringe a person's privacy in a news report

On 5 January 2015, Ofcom published its decision holding that ITV's Meridian News (covering south and south east England) had not caused an unwarranted infringement of Mrs Diane Ash-Smith's privacy during a live news broadcast that disclosed her full address and showed footage of her car registration number, in relation to a murder enquiry of which her son, Colin Ash-Smith, was a suspect. Ofcom did not consider the Meridian News had breached Practice rules 8.2, 8.3, 8.4 or 8.6 of Ofcom's Broadcasting Code of Conduct.

Colin Ash-Smith had in 1993 been a suspect in a murder inquiry concerning the death of 15-year-old schoolgirl Claire Tiltman. The original police inquiry included searches of his parents' home and as a consequence had attracted significant media coverage. About 20 years later, Kent Police undertook further inquiries including another search of Colin Ash-Smith's mother's home. On 12 September 2013, Meridian News undertook a live report from outside Mrs Diane Ash-Smith's home, although the crew were on public land. The report was supplemented by a pre-recorded report showing a close-up shot of the house number; there was a picture of Mrs Ash-Smith's car and its registration number. The footage showed police officers entering and exiting the house by the front door and searching the inside of Mrs Ash-Smith's car parked on the driveway. The reporter concluded that it was "not clear what brought police here today, they're giving no interviews ... it's the third search of the property since Claire was murdered four days before her 16th birthday."

Mrs Ash-Smith complained to Ofcom that the 12 September 2013 report was an unwarranted infringement of her privacy. Ofcom's statutory duties include providing adequate protection to members of the public from unjust and unfair treatment and unwarranted infringement of their privacy. However, Ofcom must balance this against an appropriate level of freedom of expression. Ofcom must exercise this balancing act in a transparent, accountable and proportionate way. Where there is a conflict between a person's privacy and the broadcaster and its audience's freedom of expression, Ofcom must consider the comparative importance of the respective rights.

Section 8 of the Ofcom Broadcasting Code contains a number of rules on infringements of privacy, including that information which discloses the location of a person's home should not be revealed without permission, unless it is warranted (8.2), when people are caught up in events which are covered by the news they still had a right to privacy in both the making and the broadcast of the programme, unless it is warranted to infringe it (8.3), broadcasters should ensure words, images, or actions filmed or recorded in, or broadcast from, a public place, are not so private that prior consent is required before broadcast, unless broadcasting without their consent is warranted (8.4), and if the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted (8.6).

Applying those principles to Mrs Ash-Smith's complaint, Ofcom considered a number of factors, including the fact that both the 1993 and 2013 police investigations had extensive media coverage; that the fact that Mrs Ash- Smith's home was the subject of the enquiry was common knowledge in the locality and the information was in the public domain; the filming on 12 September 2013 was from the public highway; Meridian had not been asked to stop filming by the Ash-Smiths or the police; Mrs Ash-Smith's husband, Aubrey, had co-operated with questions from reporters; the filming of the car and house was incidental to the report; and the reportage did not linger on the car or the house front door.

Further, Mrs Ash-Smith contended that the report had inaccurately stated that her home was her son's home, while Meridian stated it had third-party evidence to support their assertion. Ofcom considered that this conflict on facts did not take away from the fact that the house was the subject of a murder investigation. Finally, Colin Ash-Smith had already been convicted of attempted rape and attempted murder of another woman, so details about him and the premises were in the public domain. In light of these considerations, Ofcom concluded that there was no unwarranted breach of the Mrs Ash-Smith's privacy.

The publication of Ofcom's adjudication was postponed until the outcome of a court trial, whereby on 12 December 2014 Colin Ash-Smith was convicted of Claire Tiltman's murder.

• Ofcom Broadcast Bulletin, 'Complaint by Mrs Diane Ash-Smith', Issue 270, 5 January 2015, 40-47
http://merlin.obs.coe.int/redirect.php?id=17431 EN

Julian Wilkins
Blue Pencil Set

IE-Ireland

New Code of Programme Standards

On 27 January 2015, the Broadcasting Authority of Ireland published its revised code of programme standards. The previous code had been in effect since 2007 (see IRIS 2008-5/23) and in 2014 a public consultation was launched in order to update the code. The Authority noted that the review indicated that the content of the previous code remained relevant, but "the structure and wording of the code required substantial revision". This was to ensure the code was more "user-friendly and understandable".

Thus, while the previous code had over 14 sections under both "Content Rules" and "Content Principles", the new code is divided into seven distinct "Principles", namely (1) respect for community standards, (2) importance of context, (3) protection from harm, (4) protection of children, (5) respect for persons and groups in society, (6) protection of the public interest, and (7) respect for privacy. The code then sets out specific guidance for broadcasters on how these principles might be fulfilled.

While Principles 1 - 5 mainly reflect the rules under the previous code, the new code introduces two significant additions. The first is a non-exhaustive definition of "public interest content", which includes programme material that reveals or detects crime, protects public health or safety, exposes false or misleading claims made by individuals or organisations, discloses incompetence of individuals or organisations that affect the public, exposes misuse of public funds, exposes the breaking of the law, encourages and facilitates debate and understanding of social and political topics or informs the public or raises a debate, on matters of public importance.

The second significant addition to the code is Principle 7 on "Respect for privacy". The code provides that broadcasters shall respect the privacy of the individual and ensure that it is not unreasonably encroached upon, either in the means employed to make the programme or in the programme material broadcast. In this regard, the code states that the privacy of a person is unreasonably encroached upon where there is

no good reason for the encroachment. However, the right to privacy is not absolute and must be balanced against other rights and considerations, such as the public interest and freedom of expression.

Notably, the code sets out a number of rules for broadcasters on the issue of privacy, including (a) any encroachment on the right to privacy must be proportionate and limited to the degree that is required to inform the audience in the public interest, (b) ensure that participants in a broadcast are generally aware of the subject matter, context and the nature and format of their contribution so that their agreement to participate constitutes informed consent, (c) have due regard to the impact that coverage and repeated coverage of death may have on the families and friends of the deceased, (d) have due regard for the particular considerations that apply when filming in situations of emergency or when filming victims of accidents or those suffering personal tragedy, in order to ensure that the privacy of such persons is not unreasonably encroached upon, and (e) ensure that surreptitious filming or recording is only used where it is warranted.

The new code will come into effect on 1 March 2015.

• Broadcasting Authority of Ireland, Code of Programme Standards, 27 January 2015
http://merlin.obs.coe.int/redirect.php?id=17420 EN

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New Rules on Television Subtitling

On 27 January 2015, the Broadcasting Authority of Ireland published its new "Rules on Television Subtitling, Sign Language and Audio Description". The previous rules had been in effect since 2012 (see IRIS 2012-7/28) and in 2014 a public consultation was launched on revising the rules (see IRIS 2014-7/25). The rules set out the level of subtitling, sign language and audio-description that television broadcasters must offer to the public.

Under the new rules, a range of percentage targets are set for each broadcast service (television station) that they must provide for the period 2014-2018 and different targets are set for each broadcaster. The target range is increased annually for each applicable broadcast service on an incremental basis over the five-year period.

Subtitling (on-screen text that represents what is said on screen) targets are set for the first time for the three additional public service broadcaster television services established in 2011, namely RTÉjr, RTÉ Plus One and RTÉ News Now. The new rules do not prioritise any programme genres, types or time-blocks. However, broadcasters must consult at least annually with user groups as to their viewing preferences. Further, targets for Irish sign language and audio description (commentary that provides a verbal description of what is happening on screen) are also set in the new rules, including for the children's channel RTÉjr.

The new rules come into effect on 1 March 2015 and provide that further reviews will take place in 2016 and 2018.

• Broadcasting Authority of Ireland, Access Rules 2015, 27 January 2015
http://merlin.obs.coe.int/redirect.php?id=17421 EN

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IT-Italy

Ruling on ISP Liability for Online TV Programmes

On 7 January 2015, the Appeals Court of Milan issued a decision that represents a turning point in Italian case law on the role and liability of internet service providers (ISPs), insofar as it rejects the "Italian" distinction between "active" and "passive" hosting providers, lending a new perspective to the issue. The case was brought by Reti Televisive Italiane S.p.A (RTI), Italy's main private broadcaster and part of the Mediaset group, against Yahoo! Italia S.r.l. (Yahoo! Italia) and Yahoo!, Inc.

The decision overturned a previous decision of the Milan Court of First Instance issued on 19 May 2011, in which Yahoo! Italia was found liable for infringement of copyright held by RTI in respect of television programmes that were uploaded and displayed on Yahoo! Italia's online video-sharing platform. The Court of First Instance held that the liability exemptions for hosting providers under the E-commerce Decree (Legislative Decree 70/2003), which implements the EU E-Commerce Directive (2000/31/EC), did not apply to Yahoo! Italia, as it was an "active hosting provider", since it played an active role in organising its services and the videos uploaded to its platform with a view to commercial benefit (e.g., (i) it provided a search tool that enabled users to search for content by keyword; (ii) it indexed and selected videos; (iii) within its T&Cs, it reserved the right to reproduce and adapt videos and display them to the public, as well as the right to use them for promotional or advertising purposes). In this respect, the Court of First Instance's decision adhered to the distinction between "passive hosting providers" and "active hosting

providers" stemming from previous decisions of Italian courts (e.g., amongst others, Court of Rome, 20 October 2011, RTI vs. Choopa).

The Appeals Court rejected the distinction between "active" and "passive" hosting providers. In the Court's words, "the notion of active hosting provider is today misleading and shall be rejected because it does not fit the actual features of the hosting services." Indeed, in keeping with recent case-law of the Court of Justice of the European Union (CJEU) on ISPs' liability (such as case C-314/12, Telekabel (see IRIS 2014-5/2)), the Appeals Court stressed that in a possible clash between fundamental rights, such as the protection of intellectual property rights versus freedom of speech and freedom to conduct business, the latter shall prevail.

In addition and in accordance with recent CJEU rulings on the matter, the Appeals Court clarified that the features of the service at issue are not able to make the provider of such service liable with respect to the hosted contents, insofar as such features do not make the provider the "owner" of said contents. According to the court, a different interpretation would weaken the safe harbour clause for hosting providers set forth by the E-Commerce Directive, whereby ISPs are liable only where they fail to remove the infringing contents upon receipt of a notice from the right holder or they fail to comply with a removal order issued by the competent administrative or judicial authorities.

Finally, according to the Appeals Court, a detailed cease and desist letter (which contains the URL where the infringing content can be found) sent by the right-holder is equivalent to a removal order issued by the competent authority. Both instruments are able to oblige the ISPs to remove infringing contents from their platforms.

• *Corte di Appello di Milano, sentenza del 7 gennaio 2015* (Appeals Court of Milan, decision of 7 January 2015)
http://merlin.obs.coe.int/redirect.php?id=17453 IT

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AGCOM Consultation on the Promotion of European Works

On 2 February 2015, the Italian Communications Authority - AGCOM (Autorità per le garanzie nelle comunicazioni) launched a public consultation on a codified regulation on the obligations to promote European works applicable to both linear and non-linear or on-demand audiovisual media service providers (Resolution no. 21/15/CONS), as well as a fact-finding inquiry aimed at collecting information on the production of the audiovisual content sector (Resolution no. 21/15/CONS).

First, due to changes to the relevant legal provisions, the current regulatory framework has been substantially amended several times in the last few years and AGCOM therefore intends to adopt a new regulation, aimed at codifying (and replacing) five AGCOM resolutions, which currently regulate the matter (namely, Resolutions 66/09/CONS, 397/10/CONS, 188/11/CONS, 186/13/CONS and 526/14/CONS). At the same time, AGCOM intends to change the proceeding relating to exemptions from the quota system. In fact, under Italian law, audiovisual media service providers, which satisfy certain requirements, may submit a request for a total or partial derogation from content and/or investment quotas. According to the draft regulation, the applications filed by audiovisual media service providers to get such an exemption will be published on the AGCOM website, in order to allow third parties (e.g., content producers and competitors) to submit comments. The deadline for the submission of the responses will expire 45 days after the launch of the public consultation. Targeted respondents include audiovisual media service providers, producers, associations representing the industry and consumers' associations. AGCOM will also hold hearings with the operators.

Secondly, the inquiry on the audiovisual content sector by AGCOM will last for 90 days. Operators interested in providing information in connection with the inquiry may submit a contribution within 45 days. AGCOM has arranged a questionnaire aimed at gathering information on the business models, the structure of the market and the availability - according to different genres - of European works and works made by independent producers.

• *Delibera n. 21/15/CONS, Consultazione pubblica sullo schema di testo coordinato dei regolamenti in materia di obblighi di programmazione ed investimento a favore di opere europee e di opere di produttori indipendenti* (Resolution no. 21/15/CONS, Public consultation on the draft consolidated text of the regulations on programming and investment quotas of European works and works made by independent producers)
http://merlin.obs.coe.int/redirect.php?id=17422 IT

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MK-"the Former Yugoslav Republic Of Macedonia"

New Regulation on Promotion of European Works

On 4 December 2014, the media regulation authority, the Agency for Audio and Audiovisual Media Services, adopted a by-law regulation, based on the provisions in Article 18 of the broadcasting law, which regulates the broadcasting of European works and works

of independent producers. The by-law act, the Rulebook on Broadcasting European Audiovisual Works and Works of Independent Producers (Правилник за емитување европски аудиовизуелни дела и дела од независни продуценти), defines more precisely the types of broadcast programming that could be considered as a "European audiovisual work" or as a "work of an independent producer". The obligations from this rulebook refer only to broadcasters with national coverage, while regional and the local broadcasters, niche TV channels which broadcast news, sports events, advertising and teleshopping, as well as the Parliamentary Channel are exempt from this obligation.

The Rulebook provides the broadcasters with guidelines on how to calculate the airing time of European audiovisual works. More precisely, it specifies that the share of European audiovisual works in the broadcast programming is only allowed to include two broadcasts of each work (the premiere and the first rerun) in the course of one year, regardless of the year of production. European audiovisual works also include audiovisual works produced by the broadcasters themselves and Macedonian audiovisual works. For newly licensed TV broadcasters, Article 6 of the by-law act envisages a so called "progressive fulfillment of these requirements": the television programme services that will be granted state-level broadcast licenses for the first time after this Rulebook enters into force shall meet the requirement for the promotion of European audiovisual works progressively, over a period of five years, as follows:

- in the first year, the share of European audiovisual works should be at least 10%, while

- in the second, third and fourth year, the share of European audiovisual works shall increase by at least 10% annually each year, amounting to at least 51% in the fifth year.

The rulebook obliges the TV broadcasters to allocate at least 10% of their annual programming-related budget (both for the production and for the purchasing of television programmes) to European audiovisual works produced by independent producers, while at least half of these should have been produced in the last five years. The broadcasters are required to keep daily records of the broadcast European audiovisual works and works by independent producers throughout the year and report to the media regulation authority on the fulfillment of this requirement in the previous year by 31 March of the following year at the latest.

• Правилник за емитување европски аудиовизуелни дела и дела од независни продуценти (Rulebook on Broadcasting European Audiovisual Works and Works by Independent Producers)
http://merlin.obs.coe.int/redirect.php?id=17423 EN MK

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Increased Personal Data Protection for the TV Subscribers

The latest Rulebook on Security and Integrity of the Public Electronic Communication Networks, Services and Activities which the Operators must Undertake when the Personal Data Protection is Endangered (Правилник за обезбедување на безбедност и интегритет на јавните електронски комуникациски мрежи и услуги и активности кои што операторите треба да ги преземат при нарушување на безбедноста на личните податоци), developed by the Macedonian Agency for Electronic Communications, aims at increasing data protection for TV subscribers who sign contracts for the provision of TV services.

The Rulebook provides details about what information is necessary when a natural person wants to get into a contractual relation with a cable TV, IPTV, DVB-T or satellite TV operator, in order to avoid the unnecessary collection of personal data. According to the new provisions, the operators are also obliged to inform the regulatory body for electronic communications and the affected subscribers in all cases when the security of the data protection system becomes endangered. In order to prevent unauthorised access to the data systems, the operators are obliged to implement additional security measures. Moreover, as Article 37 of the new Rulebook stipulates, the operators will have to run a Register on Personal Data Threats, which will include information on the facts and the reasons for the threats, the implications of these threats, the measures that have been undertaken by the operator, as well as other relevant information.

Since very often - as the Agency for Electronic Communications states - subscribers complain about accidental and unannounced changes to the TV channel offer, this Rulebook also provides legal protection for the customers of TV services. The new by-law now obliges the operators to inform their TV subscribers at least 30 days in advance to the envisaged changes to their TV programme packages and the subscribers have the right to cancel the contract - with no obligation to pay additional fees or penalties before the contract expires - if they are not satisfied with the new offer.

• Правилник за обезбедување на безбедност и интегритет на јавните електронски комуникациски мрежи и услуги и активности кои што операторите треба да ги преземат при нарушување на безбедноста на личните податоци (Rulebook on Security and Integrity of the Public Electronic Communication Networks, Services and Activities which the Operators must Undertake when the Personal Data Protection is Endangered)
http://merlin.obs.coe.int/redirect.php?id=17424 MK

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Media Prohibition on Publishing Information on Possible Criminal Activities

"The Public Prosecutor's Office holds it necessary to emphasise that the publishing of materials which may become the subject of possible future criminal proceedings is prohibited and punishable by law" reads the press release, published on the Public Prosecutor's website. This reaction of the Public Prosecutor came after undercover footage was shown in the media of the leader of the opposition informing the Prime Minister that he possesses materials on corrupted activities of high-ranking state officials. In a police action which has been named "Coup", the leader of the opposition was charged with violence against representatives of high-ranking state authorities and was ordered to surrender his passport, while three more persons were detained under suspicion of espionage for a foreign secret service.

The Association of Journalists of Macedonia (AJM) condemned the Public Prosecutor's decision to bring charges against those journalists who would like to report on the possible corrupted behaviour of state officials and emphasised that "it is an obligation of the media to be a corrective instrument in democratic societies04046 There is no such law in Macedonia, which gives the Public Prosecutor the right to hinder the publishing of materials which descry crime". The journalists claim that the Public Prosecution might have the right to stop the publication of materials which refer to ongoing criminal cases which are processed by courts, but not to possible criminal or corruptive behaviour of high ranking officials which might be perceived as a "crime" by the state law-enforcement agencies.

Reaction came also from the civil community. The NGO Centre for Media Development Centre (MDC) informed the media and the journalists that "journalists are not held liable for the ways their sources have received information, including the unauthorised monitoring of communications." MDC urged the journalists to consider above all the public interest when reporting about the "Coup" case, but also to adhere to general journalistic ethics.

The Public Prosecutor's decision may have an additional chilling effect on media freedom in the country, which is anyway ranked in the lowest position (123) in Europe by Reporters without Borders in its Media Freedom Index for 2014. This decision may also discourage investigative journalists from pushing possible cases of organised crime and corruption higher on the public agenda and encourage self-censorship, as has also been noted in the European Commission Country Progress Report for 2014, according to which "self-censorship is wide-spread".

• СООПШТЕНИЕ *,03 Февруари 2015* (Press release of the Public Prosecutor's Office, 3 February 2015)
http://merlin.obs.coe.int/redirect.php?id=17425 MK

• ЗНМ ги осуди заканите на Обвинителството кон новинарите

Објавено во Среда *, 4. Февруари 2015* (Reaction of the Association of Journalists (AJM), 4 February 2015)
http://merlin.obs.coe.int/redirect.php?id=17426 MK

• ЦРМ ги повикува новинарите да не го запоставаат јавниот интерес во известувањето за случајот „437403407" *Share, 2015-02-04* (Reaction of the NGO Media Development Centre, 4 February 2015)
http://merlin.obs.coe.int/redirect.php?id=17427 MK

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MT-Malta

Consultation on Hygiene and Food Safety in Broadcasting

The Broadcasting Authority has issued a consultation document on good practices and the wearing apparel to ensure hygiene, health and safety during cooking programmes. The Consultation Document proposes new regulations which the Authority is recommending should be approved by it in order to regulate cooking programmes. In all, twelve proposals have been launched for public discussion.

The Broadcasting Authority suggests that, whenever a person is cooking during a programme, such person has to ensure that s/he complies with hygiene standards, as well as those standards related to health and safety. Moreover, a professional chef should wear clean clothes suited to a chef. Wearing such apparel should ensure that his or her hair is pulled back and is covered by a hat and that s/he wears a jacket with long sleeves, preferably white in colour. Chefs are requested to wear trousers used in the trade by chefs, a bib apron and a neck tie. Persons who are preparing food but who are not professional chefs are to wear protective clothing, such as a bib apron, and should have their hair pulled back. No person who is cooking should wear rings, watches or bracelets. Nails should be clean, short and with no nail varnish or other chemicals applied thereto. Hands cannot be contaminated and the person preparing the food should not touch his or her hair whilst doing so.

In addition, all kitchens used for cooking programmes should be equipped with hand washing facilities and with a water dispenser. Hands should be dried by means of paper napkins. Whoever prepares food has to ensure that s/he does not contaminate the food being prepared. Sufficient kitchen utensils should be used in the preparation of food and such utensils should be washed well before use. In order to avoid food contamination, different cutting boards are to be used and if only one cutting board is used, it should

be washed when used between one process of food preparation and another. This message has to reach the viewer either by visual means or orally.

The person preparing the food on a plate should use the appropriate kitchen utensils to ensure that no food is touched by human hands. Each kitchen should be fitted with a fire blanket and a fire extinguisher and the person preparing food should mention these safety items during the programme. Particular attention should be paid so that no alcohol is poured from a bottle directly into the frying pan or any other cooking receptacle during the cooking process. When the oven is used, the person making use of the oven should wear protective clothing in the form of oven cloths or other forms of protective gloves.

Finally, no animals should be present during cooking programmes.

• *L-Awtorità tax-Xandir, Dokument ta' Konsultazzjoni Dwar Standards ta' Iġjene fil-Programmi tat-Tisjir, 30 ta' Jannar 2015* (Broadcasting Authority, Consultation Document on Hygiene Standards and Food Safety in Cookery Programmes, 30 January 2015)
http://merlin.obs.coe.int/redirect.php?id=17428 MT

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NL-Netherlands

Court Ruling on Broadcaster's Comment on Public Figure

On 23 December 2014, the Court of Appeal in Amsterdam ruled in favour of the Dutch broadcast company Powned in a dispute regarding a board member of Buma/Stemra, the Dutch collective rights management society for musical works. This decision affirms the decision of the District Court of Amsterdam.

Powned had published on its website and in its television news programme that Gerrits, board member of Buma/Stemra, was "corrupt". Powned based this allegation on a phone call between Gerrits and an agent of a composer. In this phone call, which Powned secretly recorded, Gerrits offered to use his influential position as a board member of the collective management society in exchange for a third of the profits gained from the exploitation of the composer's work.

Gerrits claimed that Powned acted unlawfully against him and infringed his reputation and right to privacy under Article 8 of the European Convention of Human Rights (ECHR). The Court of Appeal ruled that Powned's statements did not concern a private matter, but Gerrits' public function as a board member. Since Gerrits failed to demonstrate that his personality rights were infringed by Powned's statement, he could not successfully invoke Article 8 of the ECHR.

The Court of Appeal ruled that calling Gerrits "corrupt" is a value judgment, which includes a variety of more or less severe acts that may not be corruption. The context in which this statement is made is essential to assess whether Powned acted unlawfully. The Court was of the opinion that there was enough evidence to support the statement, namely the telephone call in which Gerrits offered his powers as a board member in exchange for a percentage of the profits. Therefore, Powned had not acted unlawfully against Gerrits.

Furthermore, the Court of Appeal stated that the news medium is allowed to exaggerate or to provoke to a certain extent, as long as there is enough factual evidence available. Viewers of Powned will deem exaggeration as inherent to the news medium and therefore Powned is allowed to provoke and such statements should be less quickly held unlawful.

• *Gerechtshof Amsterdam, arrest van de meervoudige burgerlijke kamer van 23 december 2014* (Appeal Court of Amsterdam, Decision of 23 December 2014)
http://merlin.obs.coe.int/redirect.php?id=17429 NL

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Court Ruling on Broadcasting Licence Fee Calculation

On 8 January 2015, the College van Beroep voor het bedrijfsleven (CBb), a Dutch court of last instance for certain administrative matters, gave its partial decision in a case concerning the renewal fees for commercial radio broadcasting licences. It found that the calculation method applied to determine this fee was unsuitable for one of the licences and that, as a consequence, the charge levied for that licence was too high.

The Dutch Telecommunications Act (Telecommunicatiewet) contains rules on the allocation of radio broadcasting frequencies. Those frequencies intended for commercial use can be divided amongst market participants through an auction, through a "beauty contest" or on a first-come, first-serve basis. Once these licences expire, the above process may be repeated. As an alternative, however, the licences granted to the previous holder may simply be renewed. In these cases, the Ministry for Economic Affairs must calculate a reasonable licence fee related to "the profit to be expected throughout the licensing period".

Sky Radio BV is a commercial broadcaster that has held a licence for the "A2" frequency block since 2003,

which it uses for their station Radio Veronica. While some licences are not tied to specific content requirements, several licences may only be used to broadcast according to specific "format restrictions". In this case, Sky Radio BV was required to play classic pop music ("golden oldies") for most of the day-time. In 2011, the Ministry granted them a renewal of the A2 licence. The renewal fee was calculated to be equivalent to the licence's value for a "fictional, averagely efficient newcomer to that frequency block", as determined through an independent study conducted by three institutes (SEO Economic Research, TNO Information and Communication Technologies and the Institute for Information Law (IViR)). This calculation resulted in a licensing fee of EUR 20,385,000.

Sky Radio BV filed suit against the renewal decision, objecting to the level of this fee. They claimed that it was insufficiently linked to the gain to be expected throughout the licensing period. Sky Radio BV argued that the government study, by examining the spectrum's value to a "fictional, averagely efficient newcomer", failed to take into account factors specific to Radio Veronica which affect the spectrum's value, such as branding and synergy with other broadcasting services.

Hence, they argued that the model did not reflect the value reduction caused by content restrictions on A2 block. The Court decided in their favour, stating that an abstract value calculation based on fictional market entrants must take into account the effect of content restrictions for it to be in accordance with the Telecommunication Act. The CBb's decision is final, with no further appeal possible.

The CBb is currently re-examining the fee decisions for spectrum blocks A1 (Sky Radio), A3 (Q-music) and A6 (Radio 538).

- *College van Beroep voor het bedrijfsleven, 8 januari 2015, ECLI:NL:CBB:2015:2* (Trade and Industry Appeals Tribunal, 8 January 2015, ECLI:NL:CBB:2015:2)

http://merlin.obs.coe.int/redirect.php?id=17430 NL

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RU-Russian Federation

Advertising Ban Amended to Excerpt Russian Entities

On 3 February 2015, the Russian President signed into law a bill adopted by the State Duma on 27 January 2015. The new law lifts the ban on commercials for pay cable and satellite television channels that do not broadcast (or rebroadcast) foreign content.

The ban, which prohibits any commercials on pay television channels if the channels do not hold a terrestrial broadcasting license or are not on the list of must-carry programmes, became effective on 1 January 2015 (IRIS 2014-8/34). Reportedly, it could negatively affect media plurality with the coming digital switchover, when hundreds of regional broadcasters will lose their terrestrial licenses, while, under the earlier amendment, there will be no economic rationale to broadcast in cable systems or even online.

As of now, pay-TV channels will again be able to run commercials, but only if their share of foreign shows, films and other programming does not exceed 25 percent of total content. Compliance with these regulations will be monitored by the Federal Antimonopoly Service (FAS), that traditionally oversees compliance with the advertising law.

The amendment adds a new term to legislation, "national media products," meaning programmes created by Russian individuals or companies registered in Russia and/or under contracts with Russian media outlets, if upwards of 50 percent of production funding was provided by Russian investors. The translation, dubbing and subtitling of foreign films will not be considered national media products.

While OSCE Representative on Freedom of the Media, Dunja Mijatović, welcomed the softened restrictions for commercials on pay television channels, she reiterated her call for a complete end to the ban, as "this does not change the fact that foreign channels that rely on advertising will continue to be de facto barred from cable television in Russia."

- Федеральный закон от 3 февраля 2015 г. N 5-ФЗ "О внесении изменения в статью 14 Федерального закона "О рекламе" (Federal law of 3 February 2015 N 5-ФЗ "On amending Article 14 of the Federal law "On advertising")

http://merlin.obs.coe.int/redirect.php?id=17436 RU

- "Mijatović welcomes eased restrictions for commercial television channels in Russia, but reiterates call for complete lifting of ban", OSCE press statement of 28 January 2015

http://merlin.obs.coe.int/redirect.php?id=17437 EN

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AT-Austria

KommAustria ascertains the lack of labeling of sponsorship and an undue prominence of product placement

On 27 February 2015, the Austrian Communications Authority (KommAustria) decided that ImageLine Medienproduktion GmbH, the organizer of the cable television program "INFO TV", violated its duty to label

sponsorship. The ImageLine company has also emphasized the product placements too strong (GZ .: KOA 1.965 / 15-008).

On 1 December 2014, from 18:00 to 20:00, the weekly broadcast "INFO TV" was broadcasted. Neither at the beginning nor at the end of the program, the operator of the programm displayed a notice of sponsorship of the companies "Gusto", "Tourismusverband Bad Hall / Kremsmünster" and "dm Friseurstudio", although their information was integrated into the program. KommAustria regarded the provision of § 37 (1) no. 2 in conjunction with § 2 no. 32 of the Audiovisual Media Services Act (AMD-G) as being infringed by this broadcasting. In addition, in a service entitled "Kochstudio-Weihnachtskekse" product placements of the "Leiner Kochstudio" label had undue prominence. As a result, § 38 (4) no. 3 in conjunction with § 2 no. 27 AMD-G had been violated. In addition, KommAustria stated that there was an infringement of § 38 (4) no. 4 in connection with § 2 no. 27 AMD-G, since "INFO TV" in the service "Kochstudio-Weihnachtskekse" did not contain a reference to product placements at the beginning and end of the programm. Furthermore, there had not been a mention of the product placement after the interruption of the service for advertising.

The Austrian communications authority also stated that the provision of § 43 (2) AMD-G had been infringed. In the course of the program, "INFO TV" has transmitted an advertisement for the "New Year's Eve in Molln", a commercial for "Gmundner Milch" and a commercial for the "Advent market in Klaus". This was done, without clearly distinguishing them from the previous and subsequent program parts, respectively, at the beginning and the end of the program, by using optical, acoustic or spatial measure. Furthermore, by failing to make a record of the program which it had broadcast on 1 December 2014 between 18:00 and 20:00, the Programmer had infringed the provision of § 47 (1) AMD-G (he had to submit a record to KommAustria).

The decision by which KommAustria has determined the lack of identification of sponsorship and the overemphasis of product placements is legally binding.

• *Bescheid der KommAustria, 27. Februar 2015* (Decision of the KommAustria, 27 February 2015)
http://merlin.obs.coe.int/redirect.php?id=18733 DE

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KommAustria classifies "Visual Radio" as a television program and rejects ORF application for the introduction of a new offer (Public Value Test)

The Austrian Communications Authorities (KommAustria) rejected the application of the Austrian Broadcasting Corporation for the introduction of the audiovisual offer "Ö3-Live / Visual" pursuant to § 6b in conjunction with §§ 3, 4e and 4f ORF-G by decision of 18 February 2015 (GZ .: KOA 11.266 / 15-001).

By letter of July 29, 2014, the ORF had applied for authorization to change the offer concept for the web radio service oe3.ORF.at by extending the offer by the function "Ö3-Live / Visual". In the existing program the station Ö3 was streamed live and the CD covers of the current music tracks were displayed as coverflow, while at the same time current headlines were shown. In order to preserve the attractiveness of Ö3-Live, it should be improved by the requested change in the area of motion pictures, whereby live images from the broadcast studio and the music videos belonging to the running music tracks should be integrated synchronously. The listener should have the opportunity to take a look at the broadcasting studio at any time, whereby often only the moderator (now as a moving picture) should be seen.

The KommAustria rejected the ORF's request after the participation of all the bodies to be consulted and decided that the proposed amendment through the introduction of the Ö3-Live / Visual offer would be the organization of a television program. There is no doubt that the offer Ö3-Live is the broadcasting of a television program which follows the sequence of a radio program in its design ("single, self-contained and temporally limited sequence of moving pictures with or without sound"). As an audiovisual media service, which would be provided for the simultaneous reception of broadcast services on the basis of a broadcasting schedule, "Ö3-Live / Visual" was another, only online transmitted television program by ORF. However, the ORF had no authority to do so because its remit had already been finalized in § 3 ORF-G. The proposed offer is not just an "illustrated radio", it goes far beyond. KommAustria also pointed out that an online offer, whether pursuant to § 4e or 4f ORF-G, should not constitute a television or radio program since these would be covered by the mandate of § 3 paragraphs 1 to 3. On the other hand, a TV or radio program may not be an online offer according to §§ 4e or 4f ORF G.

Since, according to KommAustria, "Ö3-Live / Visual" was another TV program by the Austrian Broadcasting Corporation (ORF), an availability was not possible as an online offer according to § 4e ORF-G and as an online offer according to § 4f ORF-G .

• *Bescheid der KommAustria, 18. Februar 2015* (Decision of the KommAustria, 18 February 2015)
http://merlin.obs.coe.int/redirect.php?id=18734 DE

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Agenda

Summer Course on Privacy Law and Policy
6-10 July 2015 Organiser: Institute for Information Law (IViR), University of Amsterdam Venue: Amsterdam
http://www.ivir.nl/courses/plp/plp.html

Book List

Tricard, S., Le droit communautaire des communications commerciales audiovisuelles Éditions universitaires européennes, 2014 ISBN 978-3841731135
http://www.amazon.fr/droit-communautaire-communications-commerciales-audiovisuelles/dp/3841731139/ref=sr_1_-1?s=books&ie=UTF8&qid=1405499942&sr=1-1&keywords=droit+audiovisuel
Perrin, L., Le President d'une Autorite Administrative Independante de Régulation ISBN 979-1092320008
http://www.amazon.fr/President-Autorite-Administrative-Independante-R%C3%A9gulation/dp/1092320008/ref=sr_-1_5?s=books&ie=UTF8&qid=1405500579&sr=1-5&keywords=droit+audiovisuel
Roßnagel A., Geppert, M., Telemediarecht: Telekommunikations- und Multimediarecht Deutscher Taschenbuch Verlag, 2014 ISBN 978-3423055987
http://www.amazon.de/Telemediarecht-Martin-Geppert-Alexander-Ro%C3%9Fnagel/dp/3423055987/ref=sr_1_-15?s=books&ie=UTF8&qid=1405500720&sr=1-15&keywords=medienrecht
Castendyk, O., Fock, S., Medienrecht / Europäisches Medienrecht und Durchsetzung des geistigen Eigentums De Gruyter, 2014 ISBN 978-3110313888
http://www.amazon.de/Wandtke-Artur-Axel-Ohst-Claudia-Europ%C3%A4isches/dp/311031388X/ref=sr_1_-10?s=books&ie=UTF8&qid=1405500906&sr=1-10&keywords=medienrecht
Doukas, D., Media Law and Market Regulation in the European Union (Modern Studies in European Law) Hart Publishing, 2014 ISBN 978-1849460316
http://www.amazon.co.uk/Market-Regulation-European-Modern-Studies/dp/1849460310/ref=sr_1_-9?s=books&ie=UTF8&qid=1405501098&sr=1-9&keywords=media+law