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COUNCIL OF EUROPE

European Court of Human Rights: Bohlen and Ernst August von Hannover v. Germany

In two cases related to humorous cigarette advertisements, the European Court of Human Rights found that there had been no reason for the domestic authorities to interfere with the freedom of commercial speech in order to protect the right of reputation and the right to their own names of two public persons referred to in the advertisements, without their consent. The European Court found, in particular, that the German Federal Court of Justice had struck a fair balance between freedom of expression (Article 10) and the right to privacy (Article 8).

The first applicant, Dieter Bohlen, is a well-known musician and artistic producer in Germany, while the second applicant, Ernst August, is the husband of Princess Caroline of Monaco. In 2000, the company British American Tobacco (Germany) used in an advertisement campaign the first names and references to events associated with Mr. Bohlen and Mr. Von Hannover, who both sought injunctions prohibiting the distribution of the advertisements. The cigarette manufacturer immediately stopped the advertisement campaign, but refused to pay the sums the applicants claimed in compensation for the use of their first names. The Hamburg Regional Court and the Court of Appeal upheld the claims and awarded the applicants EUR 100 000 and EUR 35 000 respectively. However, the Federal Court of Justice quashed the Court of Appeal judgments and held that, despite their commercial nature, the advertisements in question were apt to help shape public opinion and had not exploited the applicants' good name or contained anything degrading. On this basis, it dismissed the applicants' claims seeking financial compensation. Mr. Bohlen and Mr. Von Hannover lodged applications with the European Court of Human Rights, complaining that the ruling of the Federal Court of Justice had breached their right to privacy and their right to their own names, protected by Article 8 of the European Convention on Human Rights.

The European Court reiterated the relevant criteria laid down in its case-law for assessing the manner in which the domestic courts had balanced the right to respect for private life against the right to freedom of expression: the contribution to a debate of general interest, the extent to which the person in question was in the public eye, the subject of the report, the prior conduct of the person concerned and the content, form and impact of the publication. The Court gave the opinion that the advertisements were able to contribute to a debate of general interest to some degree, as they dealt in a satirical manner with events that had been the subject of public debate. It also considered that the applicants were sufficiently well-known to be unable to claim the same degree of protection of their private lives as persons who were unknown to the public at large or have not been in the public eye before. Furthermore, the image of and references to the applicants in the advertisements had not been degrading, while they obviously had a humorous character. The Court agreed with the finding by the German Federal Court of Justice that, in this case, priority was to be given to the right to freedom of expression of the tobacco company and that the dismissal of the applicants' claim for financial compensation was justified, as they already had obtained the suspension of the distribution of the advertisements at issue. Hence a fair balance had been struck between freedom of expression and the right to respect for private life. The European Court found therefore, by six votes to one, that in both cases there had been no violation of Article 8 of the European Convention on Human Rights.

• *Arrêt de la Cour européenne des droits de l'homme (cinquième section), affaire Bohlen c. Allemagne, requête n°53495/09, 19 février 2015* (Judgment by the European Court of Human Rights (Fifth Section), case of Bohlen v. Germany, Appl. No. 53495/09, 19 February 2015)
http://merlin.obs.coe.int/redirect.php?id=17485 FR

• *Arrêt de la Cour européenne des droits de l'homme (cinquième section), affaire Ernst August von Hannover c. Allemagne, requête n°53649/09, 19 février 2015* (Judgment by the European Court of Human Rights (Fifth Section), case of Ernst August von Hannover v. Germany, Appl. No. 53649/09, 19 February 2015)
http://merlin.obs.coe.int/redirect.php?id=17486 FR

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EUROPEAN UNION

Court of Justice of the European Union: Member States may provide for more protective provisions with regard to live streaming

In 2007, Swedish TV channel Canal+ (now C More) broadcast ice hockey games on pay per view, inter alia through live streaming on the Internet. The broadcasts were produced by the company C More Entertainment AB (C More) and the rights to the transmissions were owned by the same company.

In October and November 2007, a person published links to the broadcasts of the games on his website, an unofficial fan site of his favourite Swedish ice hockey team. By following hyperlinks visitors were granted direct and free access to the games via their

computers. C More filed charges and the perpetrator was prosecuted for violating the Swedish Copyright Act. The claims were based on the grounds that the broadcasts as such constituted works of art, as well as being protected on the basis of neighbouring rights granted to producers of recordings of sounds and images.

In previous judgments on this matter, the District Court and Court of Appeal had both found the perpetrator guilty of violating C More's neighbouring rights under the Swedish Copyright Act. However, the courts reached opposite conclusions on whether the commentary and broadcasts in their entirety were subject to copyright. The previous rulings have been reported in IRIS 2011-1/47 and IRIS 2011-9/33.

The case is now pending before the Swedish Supreme Court, which decided to refer the following question to the Court of Justice of the European Union (CJEU) for a preliminary ruling: "May the Member States give wider protection to the exclusive right of authors by enabling 'communication to the public' to cover a greater range of acts than provided for in Article 3(2) of [Directive 2001/29 'InfoSoc Directive']?"

The CJEU noted that the concept of "making available to the public" - which refers to interactive on-demand transmissions - forms part of the wider notion of a "communication to the public". It was further concluded that live streaming does not meet the criteria for on-demand transmission and is not an act harmonised by the InfoSoc Directive.

Since the InfoSoc Directive does not prescribe full harmonisation, the CJEU concluded that member states could extend the definition of "communication to the public" to give wider protection to authors and broadcasters. Consequently, there is nothing that precludes member states from legislating in order to bring the provision of links to paywall-protected live streaming within the scope of national legislation.

The CJEU's ruling does not answer the question of whether the broadcasts as such will be protected under the Swedish Copyright Act. This issue remains to be settled by the Swedish Supreme Court eventually.

• Judgment of the Court (Ninth Chamber) in C-279/13 C More Entertainment AB v. Linus Sandberg, of 26 March 2015
http://merlin.obs.coe.int/redirect.php?id=17487 DE EN FR CS DA EL ES ET FI HU IT LT LV MT NL PL PT SK SL SV HR

Erik Ullberg and Michael Plogell
Wistrand Advokatbyrå, Gothenburg

NATIONAL

AT-Austria

Federal Administrative Court upholds complaints about ORF's "Wahl 13" and "Skiweltcup" apps

In a decision of 11 February 2015 (case no. W120 2008698-1), the Austrian Bundesverwaltungsgericht (Federal Administrative Court - BVwG) ruled that online services provided by the Austrian public service broadcaster, Österreichischer Rundfunk (ORF), may not be designed specifically for mobile devices, but must be independent of the technology later used to download them.

The decision followed a complaint submitted by the Verband Österreichischer Privatsender (Association of Austrian Private Broadcasters - VÖP) to the Austrian regulator KommAustria about the ORF apps dedicated to the 2013 parliamentary election ("Wahl 13") and the 2013/14 Ski World Cup ("Skiweltcup"). The VÖP argued that the apps had been designed specifically for mobile devices, which was prohibited under Article 4(f)(2)(28) of the ORF-Gesetz (ORF Act - ORF-G). After KommAustria partially upheld the complaint, both ORF and the VÖP appealed to the BVwG against its decision.

In its recent decision, the BVwG rejected ORF's complaint as unfounded, but upheld the VÖP's appeal. It found that online services created specifically for mobile devices clearly infringed Article 4(f)(2)(28) ORF-G. It explained that not every service was admissible under Article 4f(2)(28) ORF-G just because it was mirrored in an equivalent online service. The law made it absolutely clear that existing online services could be used on mobile devices in a technology-neutral way, but that creating content specifically for mobile devices was prohibited.

• *Erkenntnis vom Bundesverwaltungsgericht (BVwG) vom 11. Februar 2015 - Geschäftszahl: W120 2008698-1* - (Decision of the Federal Administrative Court of 11 February 2015 - case no. W120 2008698-1 -)
http://merlin.obs.coe.int/redirect.php?id=17523 DE

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New RS Act on public peace and order treats social networks as public space

On 5 February 2015, Narodna skupština Republike Srpske (the National Assembly of Republika Srpska - RS), one of the two entities comprising the state of Bosnia and Herzegovina, passed a controversial new Act on Public Peace and Security. This happened despite numerous warnings from the opposition, human rights activists and watchdogs, media, NGOs and foreign embassies of the devastating effects it might have for freedom of speech on the Internet. The proposed provisions had been denounced for criminalising social media by allowing the authorities to fine or even imprison people who post offensive content on social networks.

In comparison to its previous version, the new Act extends the definition of a public space to "any [other] space in which the offence has been committed". The explanation to the Act further clarifies that this broader definition concerns primarily social networks when used to organise "certain attempts to disturb the public peace and order". Reacting to the criticism, the lawmakers removed measures introducing prison terms and adopted an amendment stating that those who criticise state institutions on social networks will not be prosecuted.

Nevertheless, the adoption of the Act was met with heavy criticism, including reactions by the EU Delegation to Bosnia and Herzegovina and the OSCE Representative on Freedom of the Media, who warned that this Act could be used to limit freedom of expression on social media. Public reactions mainly concern too broad or vaguely phrased terms that leave too much room for arbitrary interpretation, such as ambiguous definition of what constitutes public order offences online, which could potentially lead to the criminalisation of social media posts that contain indecent, offensive or disturbing content. In addition, the adopted amendment excluded criticism of institutions, but not individuals.

The RS Government officials have stated that this Act does not aim to restrict freedom of expression and will not be used against citizens and journalists who publicly present their views on social networks such as Facebook or Twitter. According to them, the Act would, for example, apply to a person who used social networks to plan or organise offences against the public order committed in a public place.

These statements have been met with scepticism; there are fears the government could, for instance, prevent protesters from using social networks to organise demonstrations by labelling the events violations of the public order. The fears are further fuelled by the recent police raid on the premises of a news portal in search of the source of a recording allegedly featuring the voice of the RS Prime Minister who, according to the posted voice recording, stated that two members of the RS Parliament were paid to secure the rule of her party after the elections.

• *Zakon o javnom redu i miru* (Act on Public Peace and Security)
http://merlin.obs.coe.int/redirect.php?id=17516 BS

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Communications Regulatory Agency

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Flemish Media Regulator clarifies the rules on editorial and commercial content

Having established during its monitoring of Flemish television broadcasts that very short "bumpers" have been increasingly used to indicate advertising breaks, the Flemish Media Regulator issued an opinion on the implementation of the principle related to the distinction between editorial and commercial content. This principle is laid down in Article 79 of the Flemish Media Decree, which implements Article 19 of the Audiovisual Media Services Directive. According to Article 79, television advertising must be readily recognisable and distinguishable from editorial content. After consulting with the Flemish television broadcasters, a number of concrete guidelines were put forward. Regarding the "initial bumper", two options were identified: either the "initial bumper" may be shown for a minimum duration of 5 seconds or the "initial bumper" may be shown for a minimum duration of 2 seconds accompanied by the word "RECLAME" ("ADVERTISEMENT") in a size which is easily readable for an average viewer. In both cases, the bumper must be shown in a "screen-filling" manner, meaning that the screen must be completely filled, without using "wipes" for the duration of 5 or 2 seconds. It was clarified that there will be no clear distinction between editorial and commercial content if the initial bumper is incorporated in the editorial content or the advertising spot or if the initial bumper contains a sponsor message. The "end bumper" must be shown for a minimum duration of 2 seconds, also in a screen-filling manner, without using wipes. Mentioning the word "RECLAME" ("ADVERTISEMENT") is not required, but if the end bumper is incorporated in the editorial content or the advertising spot or if it contains a sponsor message, it will not comply with the distinction principle.

• *Vlaamse Regulator voor de Media, Onderscheid reclame - redactionele inhoud, 23 maart 2015* (Flemish Regulator for the Media, Distinguishing advertising and editorial content, 23 March 2015)
http://merlin.obs.coe.int/redirect.php?id=17488 NL

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Violation of the volume of an advertisement

On 26 February 2015, the Council of Electronic Media published on its website a penalty statement for a violation of the Radio and Television Act.

On 2 November 2014, on the "Nova TV" channel in the "Dikoff" programme were included marked blocks with commercial messages. The measurements of the audio signal, performed with the “TSL Pam Pico” system and certified by measurement protocols, show a difference between the volume of the broadcast commercial messages (advertising and self-promotions) and that of the rest of the programme. The measurement results show that the volume at the time of broadcasting of the total of two mentioned marked advertising blocks is higher than the volume of the rest of the programme.

The Radio and Television Act prohibits audiovisual commercial messages to be broadcast with a volume higher than the volume of the rest of the programme.

By allowing the broadcasting on the "Nova TV" channel on 2 November 2014 of the above-mentioned advertising blocks (audiovisual commercial messages) with a higher volume than the volume of the rest of the programme, the media service provider "Nova Broadcasting Group" AD violated Article 75, paragraph 10 of the Radio and Television Act (IRIS 2013-5/12).

• Наказателно постановление на председателя на СЕМ нарушение на забраната аудио - визуалните търговски съобщения да се излъчват със сила на звука по - голяма от силата на звука на останалата част от програмата . 435460472460467460402465473475476 постановление № РД-10-5/ 13.01.2015 г . (The Penalty Statement of the Chairman of the Council of Electronic Media, № РД -10-5/ 13 January 2015)
http://merlin.obs.coe.int/redirect.php?id=17509 BG

Rayna Nikolova
New Bulgarian University

Copyright Act amendments implement the orphan works Directive

On 12 February 2015, the Bulgarian Parliament adopted amendments to the Copyright and Related Rights Act, aimed at implementing Directive 2012/28/EU on certain permitted uses of orphan works.

The amendments, in force from 24 February 2015, closely follow the provisions of the Directive and introduce the concept of an orphan work, which previously was not regulated by Bulgarian law. The new provisions have limited scope and, according to Article 71b of the Copyright and Related Rights Act, they are applicable only to publicly accessible libraries, educational establishments, museums, archives, film or audio heritage institutions with an official address in Bulgaria and the public service broadcaster. These organisations are entitled to use orphan works only in order to achieve aims related to their public interest missions, in particular the preservation of, restoration of and provision of cultural and educational access to works and phonograms contained in their collection. They may generate revenues in the course of such uses for the exclusive purpose of covering the costs of digitising orphan works and making them available to the public.

With respect to the type of the works concerned, the amendments apply to: 1) works published in the form of books, journals, newspapers, magazines or other writings contained in the collections of publicly accessible libraries, educational establishments or museums, as well as in the collections of archives or of film or audio heritage institutions; 2) cinematographic or audiovisual works and phonograms contained in the collections of publicly accessible libraries, educational establishments or museums, as well as in the collections of archives or of film or audio heritage institutions; and 3) cinematographic or audiovisual works and phonograms produced by public service broadcasting organisations up to and including 31 December 2002 and contained in their archives. Such works must be protected by copyright or related rights and be first published in a Member State or, in the absence of publication, first broadcast in a Member State, provided that the works compose an orphan work according to the criteria of the Act.

The new provisions will also apply to works and phonograms referred to in the previous paragraph which have never been published or broadcast, but which have been made publicly accessible by the organisations mentioned above with the consent of the rightholders, provided that it is reasonable to assume that the rightholders would not oppose the uses by the above-mentioned organisations in order to achieve aims related to their public interest missions.

According to paragraph 4 of the transitional provisions of the new Act, the new provisions will apply only to works and phonograms which are under legal protection on 29 October 2014 and after this date.

Concerning the sources used for the diligent search, the Bulgarian legislator also follows the Directive strictly, providing for future consultations between the Minister of Culture and rightholders' organisations and copying the list of minimum sources as given in the Annex of the Directive.

The new law provides for the right of the rightholders to terminate the orphan work status of the works on which they own the copyright or related rights at any time, but no explicit rules are given for the procedure. If the work is deleted from the register of the orphan works, the rightholder could claim a fair remuneration for the use by the organisations during the last 5 years before the termination of the orphan work status.

• Закон за допълнение на Закона за авторското право и сродните му права (Act for addition of the Copyright and Related Rights Act published on 14 February 2015, issue 14 of State Gazette)
http://merlin.obs.coe.int/redirect.php?id=17510 BG

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Report on the share of European productions for 2013

The Council for Electronic Media (CEM) has issued a Report on the share of European productions for 2013 concerning the application of Article 13, Article 16 and Article 17 of the Audiovisual Media Services Directive and of the Article 19, paragraph 2 to 4 and Article 19460 of the Radio and Television Act.

The providers of linear media services with national coverage for the year 2013 constitute a total of 57, 38 of which have provided data: more than half of the programmes - 36 programmes - have met the quota of 50% for the share of European productions in broadcasting time. The quota for independent producers has also been met (14.72 %).

The providers of non-linear media services, which have provided on-demand services for the year 2013, constitute a total of 15; four of these have informed CEM that they do not perform such services. High percentages of European productions have been recorded in the catalogue content, as well as a high level of demand for such productions, with the single exception being "Global Communication Net" AD, with under 50%.

Data about linear media services for the year 2013 was given by 38 providers, two less than the preceding year 2012, when 40 providers have given data. Data about non-linear media services for the year 2013 was provided by 5 providers, marking no change from the preceding year.

The received data shows that the number of providers of linear media services which provided data for CEM is more or less the same as in the preceding year of 2012 and that the trend for the implementation of European productions and independent producers continues.

• Доклад и приложения с данни за дела европейски произведения за *2013* г ., *20* Януари *2015* (Report for the share of European productions for 2013, 20 January 2015)
http://merlin.obs.coe.int/redirect.php?id=17508 BG

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DE-Germany

Federal Supreme Court considers victims' ability to recognise themselves as sufficient

In its judgment of 26 February 2015 (case no. 4 StR 328/14), the Bundesgerichtshof (Federal Supreme Court - BGH) decided that video footage in which victims of crime can recognise themselves on the basis of identifiable personal features is covered by the criminal law provision enshrined in Article 201a(1) of the old version of the Strafgesetzbuch (Criminal Code - StGB) (Article 201a(1)(1) of the 49th Act amending the Criminal Code). This provision is designed to protect the intimate privacy of individuals from intrusion through the taking of video and photographs.

In the case concerned, a gynaecologist from Rhineland-Palatinate was sentenced to three and a half years' imprisonment by the LG Frankenthal (Frankenthal District Court) on 11 November 2013 (case no. 5221 Js 25913/11.6 KLs). The LG Frankenthal considered the fact that the gynaecologist had secretly filmed his patients during gynaecological examinations over 1,400 times between 2008 and 2011 as proof. In three further cases, the gynaecologist was also found guilty of committing sexual abuse by exploiting the doctor/patient relationship of care. Both the defendant and two of his former patients, as joint plaintiffs, appealed against this ruling.

With regard to the sentencing under Article 201a(1) StGB (old version), the court explained that the rule protected individuals from intrusions of their privacy through the secret taking of video and photographs. It covered video footage in which victims of crime could recognise themselves on the basis of identifiable personal features. However, the victims did not need to

be recognisable by others. The offence did not depend on whether the person depicted could be identified by third parties. The BGH did not take a decision on whether the same offence is committed if the person depicted cannot be identified from the images alone.

• *Beschluss des Bundesgerichtshofs (4. Strafsenat) vom 26. Februar 2015 - 4 StR 328/14* - (Decision of the 4th criminal chamber of the Federal Supreme Court of 26 February 2015 - case no. 4 StR 328/14 -)
http://merlin.obs.coe.int/redirect.php?id=17524 DE

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Frankfurt Appeal Court rules that darts or skat club screening is not public

In a decision of 20 January 2015, the OLG Frankfurt (Frankfurt Court of Appeal - case no. 11 U 95/14) ruled that showing a football broadcast in a pub during normal opening times does not constitute a public screening if the programme is only made accessible to the members of a darts or skat club, to the exclusion of all third parties.

Pay TV broadcaster Sky charges different subscription fees for private individuals and pubs. Only customers who pay the more expensive pub fee are allowed to show the programme in public. A pub manager had subscribed to the channel as a private customer, but had shown football programmes in his pub during normal opening hours. During the football broadcasts, the only people in the pub had been members of darts and skat clubs, who were also friends and acquaintances of the pub manager. There had been no more than 20 of them. Non-members had been asked to leave the pub while the football match was being shown. Sky instituted legal proceedings against the pub manager, claiming damages under the licence analogy method.

The OLG Frankfurt rejected the application and found that the programme had not been shown in public for the purposes of Article 15(3) of the Urheberrechtsgesetz (Copyright Act - UrhG), since the members of the darts and skat clubs were not the general public under the meaning of this provision. It was not necessary for the people present to be particularly well acquainted with each other. Furthermore, the concept of the 'public' included a certain minimum threshold and did not cover small groups of people. A gathering of up to 20 people could therefore not be considered part of the general public.

• *Urteil vom OLG Frankfurt (11. Zivilsenat) vom 20. Januar 2015 (Az. 11 U 95/14)* (Ruling of the 11th civil chamber of the Frankfurt Court of Appeal of 20 January 2015 (case no. 11 U 95/14))
http://merlin.obs.coe.int/redirect.php?id=17526 DE

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KJM grants conditional approval to new youth protection programmes

Youth protection programmes, alongside technical precautions and watersheds, are a specific instrument that content providers can use to protect young people in accordance with the Jugendmedienschutz-Staatsvertrag (Inter-State Agreement on the Protection of Young People in the Media - JMStV) when distributing Internet content that may harm the development of young people. The programmes enable parents to unblock internet content that is suitable for their children depending on their age, and to block unsuitable content.

The Kommission für Jugendmedienschutz (Commission for the Protection of Young People in the Media - KJM) is responsible for approving youth protection programmes. At its meeting on 11 March 2015, it conditionally approved two new youth protection programmes developed by provider Cybits AG.

The first programme, SURF SITTER Plug & Play, can be set up on a WLAN router and provides an overall solution for the protection of a certain group of users, such as families, nurseries or schools.

The second programme, SURF SITTER PC (full version), functions as a filter to protect children and young people using the internet on a Windows PC.

Approval has been initially granted for two years, during which time both programmes will need to be regularly checked and improved by Cybits AG. The provider must also keep the KJM informed of the progress it has made in developing the programmes further at least once a year.

The creation of new concepts, especially for mobile platforms, and the distribution of youth protection programmes remains an urgent priority for the Commission. So far, four such programmes have been approved by the KJM, the other two being Kinderschutz Software and JusProg.

• *Pressemitteilung 04/2015 der KJM vom 16. März 2015* (KJM press release 04/2015 of 16 March 2015)
http://merlin.obs.coe.int/redirect.php?id=17525 DE

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FR-France

LFP has broadcasting of Leagues 1 and 2 matches on a streaming site stopped

On 19 March 2015, the regional court (tribunal de grande instance - TGI) of Paris delivered a judgment, which is a promising development for holders of rights involving sports events in their battle against on-line video platforms and streaming sites. The case involved the French professional football league (Ligue de Football Professionnel - LFP) which had granted exclusive live audiovisual rights for the League 1 and 2 championships (in return for 748.5 million euros per season for the period from 2016 to 2020) to the pay channels Canal Plus and beIN Sport, and for subsequent availability on the YouTube, Dailymotion and L'Equipe internet sites. The LFP, noting that the Spanish internet site 'rojadirecta' was making it possible to view live broadcasts of sports events free of charge, offering a calendar with a series of hypertext links allowing live or slightly delayed viewing of matches, including those organised by the LFP, had contacted the site, calling on it to remove the disputed links and to do its utmost to prevent their being put on-line. In the absence of any reaction from site, the LFP summoned 'rojadirecta' to appear in court. Its main argument was that the site's operator had the capacity of editor with an active role in providing internet users with the means of fraudulently viewing the rightsholders' protected content, using the 'transclusion' technique which gave internet users the impression that the video was being broadcast from its own site. In its defence, the operator claimed it was merely a host, and therefore covered by the limited liability scheme provided for in Article 6 of the LCEN. Accordingly, it argued that it could not be held responsible for internet users posting hypertext links that made it possible to view the matches and that it was therefore not at fault under Article 1382 of the Civil Code.

The court, however, found that the League was entitled to take action on the basis of Article 1382 of the Civil Code, since it had a substantial pecuniary interest in preserving the exclusive nature of the sale of its rights to its commercial partners at a high price, without unfair competition from free-of-charge broadcasting. It also recalled that Article 6-1-2 of the LCEN of 21 June 2014 defined 'host' as being the opposite of an 'editor' which, by analogy with the editor of an audiovisual media service, was defined as the party with "editorial control" over content which made original content available. The court pointed out that a single site could be covered by two separate qualifications, and observed that technically the company 'rojadirecta' appeared to be a host, particularly since it operated a "forum" which did no more than list a number of links to short videos (match summaries) sent in by internet users. Beyond this technical aspect, however, the company operating the disputed site was in fact (knowingly, intentionally and as its main activity) making a selection or editorial choice on a specific theme, namely topical sport events in target areas that were constantly updated, with a programme and an appropriate search engine, in such a way that anyone could - easily and free of charge - have access to protected content (in this case the current LFP matches, live and in their entirety) which normally is reserved for a limited audience of pay-TV subscribers. It therefore could not claim the benefit of the limited liability granted to hosts by the LCEN. The court therefore upheld the LFP's application for the site to be made to delete and stop any hypertext links on its site that made it possible to view LFP competition matches live or with a slight delay (except for links providing access to earlier matches which had already been broadcast) and any page listing such links, subject to payment of a fine in the event of any delay. The court also ordered internet users to be notified of the ban on showing LFP matches live or with a slight delay by means of an insert visible when they accessed the site, to be shown for a period of fifteen days. As regards the prejudice suffered, whereas the LFP claimed this amounted to more than 8 million euros for the six matches the disputed site had broadcast live in 2014, the court noted that the LFP had not furnished proof of any loss in respect of the amount charged to its commercial partners for assigning live broadcasting rights as a result of the links making it possible to watch certain matches free of charge being put on-line; neither had it furnished proof of any complaint made by these partners that there had been a drop in the number of paying subscribers as a result of the links being put on-line. The court awarded the LFP 100 000 euros for the moral prejudice suffered, i.e. loss of credibility in the eyes of its partners.

• *TGI de Paris (5e ch. 2e sect.), 19 mars 2015 - Ligue de football professionnel c/ Puerto 80 Project* (Paris regional court (TGI) (5th chamber, 2nd section), 19 March 2015 - Ligue de Football Professionnel v. Puerto 80 Project) FR

Amélie Blocman
Légipresse

Presentation on television of satirical drawings showing a politician: Paris court of appeal upholds the right to caricature

On 2 April 2015, the Paris Court of Appeal overturned a judgment delivered last year which found that the director of the France Televisions publication and the presenter of the programme 'On n'est pas couché' had insulted the leader of the Front National party by presenting a number of satirical drawings of her on television (see IRIS 2014-6/19). The image at issue represented the "family tree of Marine le Pen", and

included a photograph of her at the centre of a tree, the four main branches of which formed a swastika. The image was presented to coincide with the publication of a book on the genealogy of a number of public figures, in a supposedly humorous sequence showing the family trees of François Hollande, Nicolas Sarkozy, Christine Boutin, and Dominique Strauss-Kahn, which were represented respectively by a rose bush, a bonsai tree, a cross, and a phallus. Thus each image embodied one particular characteristic which, even if it was not truthful, evoked the politician in question. In its judgment delivered on 22 May 2014, the Paris regional court (tribunal de grande instance - TGI) had found that humour was not a sufficient argument to cancel out the seriousness of the offensiveness or derision being expressed. The connection made between the name and image of Marine Le Pen and the swastika, a Nazi emblem, was manifestly offensive and its excessive nature went beyond the permissible limits of freedom of expression, even in the given context. The appellants called for the judgment to be overturned, claiming that in fact the limits of freedom of expression had not been exceeded.

The court of appeal recalled the principle according to which "the appreciation of offensiveness lay with the court and should take the context into account in an objective manner, i.e. without reference to the personal perception experienced by the victims; the mode of expression used should also be taken into consideration". Regarding the context, the broadcast at issue is an entertainment programme and the disputed sequence was intended to elicit laughter from the studio audience. The court was therefore being called upon to appreciate whether the disputed drawing, which was supposed to express each of the politicians' ideology, had retained any degree of seriousness, as this would mean that Marine Le Pen was being described, through the political party she leads, as having a Nazi ideology. The court therefore looked into whether the way in which her image was presented was tantamount to describing her personally as a Nazi, which it would have considered offensive. The court observed, however, that the purpose of the register of satire and buffoonery inherent in the sequence at issue was to elicit laughter, albeit by mocking the personalities presented therein, but without necessarily expressing contempt. Because of the disputed drawing's manifestly outrageous nature and lack of seriousness, it could not be interpreted as portraying Ms Le Pen in a way that reflected her actual political positioning and guiding ideology. The judgment was therefore overturned and the defendants acquitted. As a result, Marine Le Pen's claims for reparation for the prejudice suffered were rejected.

In another decision on the same day, the court of appeal upheld the civil part of the judgment (the criminal part of the acquittal being final) which had rejected the proceedings brought by Marine le Pen on the grounds of insult as a result of the presentation in another edition of the same programme of the various posters for the candidates in the presidential election as devised by 'Charlie Hebdo' and published in that week's issue of the magazine. The programme's presenter had shown the eight satirical posters on the air, including one showing Marine Le Pen in which she was compared to "an enormous steaming turd", with the caption "Le Pen - the candidate who is like you" and said, "it's satirical - it's 'Charlie Hebdo'". The Court of Appeal upheld that the drawing at issue fell within the register of a particularly unrestrained form of humour that was typical of 'Charlie Hebdo', which had no hesitation in using scatological images, and that the humorous aspect was more acceptable and indeed accepted when it referred, as in this case, to a politician. The court also noted that the presenter had been careful to indicate that the drawings were intended to be understood as being satirical. He had therefore clearly shown the intention not to present an insulting or degrading image of the complainant, but to make the audience laugh and to elicit a reaction to the mock election posters from the programme's guest. The court thereby found that the broadcasting of the disputed drawing was within the limits of freedom of expression. The leader of the Front National party [Ms Le Pen] has appealed against both judgments.

• *Cour d'appel de Paris (pôle 2, ch. 7), 2 avril 2015 - M. Le Pen c/ R. Pfimlin, L. Ruquier et France Télévisions* (Paris court of appeal (section 2, chamber 7), 2 April 2015 - M. Le Pen v R. Pflimlin, L. Ruquier and France Télévisions) FR

• *Cour d'appel de Paris (pôle 2, ch. 7), 2 avril 2015 - M. Le Pen c/ R. Pfimlin, L. Ruquier* (Paris court of appeal (section 2, chamber 7), 2 April 2015 - M. Le Pen v. R. Pflimlin, L. Ruquier) FR

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Broadcasting the image of a person involved in a debate of general interest is lawful

The Court of Cassation has delivered a judgment which deserves reporting, since it concerns the scope of the transfer to the producer of a documentary of the right to use a person's image by someone who has been interviewed. In the present case, the director of a review had granted a film interview to the producer of a documentary entitled "La vérité est ailleurs ou la véritable histoire des protocoles des sages de Sion" ('the truth is elsewhere, or the true story of the Protocoles des Sages de Sion'), co-produced by and broadcast on the channel Arte. The purpose of the interview was to ascertain the director's position on the work entitled "Protocoles des Sages de Sion", published in the review. The person concerned had signed a "letter authorising use of image" according to which no shots of the interview could be broadcast without his first having viewed the sequences retained when the broadcast was edited. Since the documentary had been broadcast without this having been done, the person concerned had the production

companies summoned by the courts and ordered payment of reparation for the prejudice suffered as a result of failure to observe right to control the use of his image, for which he claimed 10 000 euros in damages. The Versailles Court of Appeal had rejected the interviewee's application in 2012, on the grounds that there had been no infringement of his right to control the use of his image since his involvement in the discussion on the ideas covered by the disputed documentary was of general interest. In support of his appeal to the Court of Cassation, the applicant claimed that the Court of Appeal had been wrong in its decision, since it had noted that he had not been able to view the sequences in which he appeared before the documentary was broadcast (the sequences lasted a total of one minute out of the 52 minutes of the broadcast), and that he had therefore not given his consent to his image being broadcast. He called on the Court of Cassation to find that the Court of Appeal erred in its observations and that his right to control the use made of his image, and hence Article 9 of the Civil Code, had been violated. However, the Court of Cassation - the highest court in France - recalled, as the Court of Appeal had noted, that the applicant had not been unaware that he was being filmed, that he had agreed to answer the producer's questions, and that the interview was part of a debate on issues of general interest concerning both the current repercussions of the work at issue and questioning in negationist circles regarding the document's authenticity. The Court found that the Court of Appeal had made the correct decision, i.e. that the applicant's involvement in the debate justified illustrating his interview by broadcasting his image, which had not been taken out of its agreed context, without there being any need to obtain his authorisation. As a result it was of no importance whether or not the stipulations of the "letter authorising use of image" had been disregarded, and the appeal was rejected.

• *Cour de cassation (1re ch. civ.), 9 avril 2015 - M. X c/ Arte France et Doc en Stock* (Court of Cassation (1st chamber, civil matters), 9 April 2015 - Mr X v. Arte France and Doc en Stock)
http://merlin.obs.coe.int/redirect.php?id=17527 FR

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GB-United Kingdom

Broadcaster breached impartiality rules in news reports on Ukraine

Ofcom, the UK communications regulator, has determined that RT (formerly known as Russia Today) breached Ofcom's rules on accuracy and impartiality in four news bulletins on the situation in Ukraine during March 2014. In a detailed 40-page decision, Ofcom concluded that in light of previous breaches (see IRIS 2014-2/22), the broadcaster is now being put "on notice" that any further breaches may result in further regulatory action, including statutory sanctions.

RT is a global news and current affairs channel produced in Russia and broadcast on satellite and digital terrestrial platforms in the UK. Following a number of complaints, Ofcom decided to investigate four news bulletins broadcast by RT during March 2014 under Rules 5.1, 5.11 and 5.12 of the Broadcasting Code. These rules require that news must be reported with due accuracy and presented with due impartiality (5.1), due impartially must be preserved on matters of major political controversy (5.11), and in dealing with matters of major political controversy, an appropriately wide range of significant views must be included and given due weight in each programme or in clearly linked and timely programmes (5.12).

The first news bulletin was broadcast on 1 March 2014 and principally dealt with the news that the Russian parliament had approved the use of military forces in Ukraine. The interim Ukrainian Government had been described as a "putsch government", which had come to power with the help of "violent mobs". Ofcom reviewed the bulletin and held that the viewpoint of the interim Ukrainian Government was not "adequately reflected" and "given due weight" and therefore there had been a breach of Rule 5.12.

The second news bulletin was broadcast on 3 March 2014 and dealt with issues, such as the degree to which Crimea was under the control of the interim Ukrainian Government and the appointment of "two oligarchs" as regional governors in Ukraine. The interim Ukrainian Government was described as "self-appointed", giving "illegal orders" and "self-proclaimed". Ofcom reviewed the bulletin and held that the bulletin did not contain any statements that could be reasonably described as reflecting the viewpoint of the interim Ukrainian Government in relation to these allegations, and therefore breached Rule 5.12.

The third news bulletin was broadcast on 5 March 2014 and included videos of right-wing organisations entering a local parliament session in a town outside Kiev, wearing uniforms, masks and t-shirts with Nazi symbols and reported various statements that referred to right-wing organisations being part of the interim Ukrainian Government. Ofcom reviewed the bulletin and considered that "by linking the extreme views of the Patriots of Ukraine with the interim Ukrainian Government, the likely effect on viewers would have been to suggest that these extreme views were representative of the interim Ukrainian Government as whole". Ofcom held that the broadcaster "should have sought to reflect adequately" the viewpoint of the interim Ukrainian Government in response to these allegations and therefore breached Rule 5.12.

The final news bulletin was broadcast on 6 March 2014 and concerned the news that the Crimean Parliament

had unanimously voted to hold a referendum as to whether Crimea should become part of Russia. Ofcom reviewed the bulletin and considered that allegations had been made that the then Ukrainian opposition may have had a role in sniper shootings that had led to a number of deaths in protests on 20 February 2014 and a leading member of the interim Ukrainian Government had, during the protests, been seen driving away with "a sniper's rifle" in his car. Ofcom held that the viewpoint of the interim Ukrainian Government on these allegations had not been "sufficiently" reflected and therefore, Rule 5.12 had been breached.

Before concluding, Ofcom reiterated that there is no requirement on broadcasters to provide an alternative viewpoint on all news stories, or to do so in all individual news item and it is also legitimate for news to be presented in broad terms from the viewpoint of a particular nation-state. However, all news must be presented with due impartiality and broadcasters must ensure that they reflect an appropriately wide range of significant views and give those views due weight.

Finally, Ofcom noted that this was the third time RT's licence holder, TV Novosti, had breached the Code's rules on impartiality and accuracy in news and, as a result, Ofcom put TV Novosti on notice that any future breaches of these rules may result in further regulatory action, including consideration of a statutory sanction.

• Ofcom Broadcast Bulletin, "News", Issue 266, 10 November 2014, 5-44
http://merlin.obs.coe.int/redirect.php?id=17522 EN

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Decision on Vox-Pop interviews about police not duly impartial or accurate

Channel 4 News broadcast an item on 6 March 2014 concerning possible corruption in the London Metropolitan Police (MPS), as well as, in another situation, the role of undercover policing. The item involved, to a small extent, a reporter conducting "vox-pop" interviews with five individuals in an area of South London, defined as "recorded interviews with members of the public talking informally in public places about particular topics."

The (London) Metropolitan Police Service (MPS) complained to Ofcom that the item was neither duly accurate nor duly impartial (the MPS, additionally, complained of unjust or unfair treatment in the programme as broadcast). The reporter asked five people the question: "Do you trust the police?" All the respondents answered in the negative.

The following week, Channel 4 broadcast an apology. It stated that the impression had been given that at least four of the interviewees had been chosen at random. However, this was not the case and Channel 4 stated: "We would like to make clear the individuals were all linked to a youth focused organisation based in Brixton and were not a random sample. This should have been made clear and it was not our intention to mislead in any way. We apologise for the impression given, which fell below our normal high standards".

Rule 5.1 of the Broadcast Code requires that "[n]ews, in whatever form, must be reported with due accuracy and presented with due impartiality". In that regard, Ofcom decided that, taking the whole segment of the programme into account during which other non-critical opinions were broadcast, the item did not warrant investigation as failing to be duly impartial. However, Ofcom considered that the item warranted investigation under Rule 5.1 of the Code in relation to its requirement that news must be reported with due accuracy.

As to the vox-pop interviews, Ofcom addressed two issues: first, the manner in which these interviews were presented in the programme as to how they were selected; and second, whether they were representative of likely attitudes to the MPS amongst black people in Brixton.

As to the first issue: given that three of the interviewees were only identified by their names and interviewed in different street settings, there was potential for viewers to have been misled, as in fact they were from the same organisation with which the reporter had links (Livity). Thus, "the programme did not provide sufficient biographical details of these three interviewees, to make clear that they were not members of the public stopped at random for the purpose of taking part in an interview". Ofcom decided that there had been an infringement of the Code and the reporter's relative lack of experience was no excuse. Channel 4 had failed to properly select and present three of the vox-pop interviews.

As regards the second question of the representativeness as a whole of the views expressed vis-a-vis the people of the area: Ofcom accepted that whether including other interviewees would have produced a different overall impression is a matter of conjecture and that it is impossible to reach a "definitive conclusion" as to the extent of variation of views about the MPS in the area. However, Ofcom concluded that "if the reporter had used a genuinely random selection of people in the report, he may have received more varied responses" and so in this respect the news was not presented with due accuracy. This was found to hold true even though the vox-pop segment only took up a small amount of the overall item.

Ofcom considers that it is a "fundamental obligation" on, in particular, public service broadcasters, to "ensure that audiences are not misled by the manner in which news is presented" and that "[b]reaches of this

nature are amongst the most serious that can be committed by a broadcaster". The reason for this is because it is at "the heart of the relationship of trust between a broadcaster and its audience."

• Ofcom Broadcast Bulletin, "News report on Metropolitan Police Service and the Ellison Review", Issue 273, 16 February 2015, 6-17
http://merlin.obs.coe.int/redirect.php?id=17528 EN

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Regulator announces allocation of party election broadcasts

Although political advertising is not allowed in UK broadcasting, the Communications Act 2003 makes provision for the allocation of free party election broadcasts before elections and referendums to be shown by the major broadcasters. The broadcasts are to be allocated to major parties included in a list drawn up by Ofcom, the communications regulator, which has also drawn up a set of rules relating to the broadcasts. Each major party is entitled to at least two such broadcasts, whilst other parties are entitled to one broadcast if they are contesting one-sixth of seats in the election. The BBC has its own rules on election broadcasts administered by the BBC Trust.

Ofcom has now announced its list of major parties for the May 2015 general election. It undertook consultation and assessed evidence of previous elections, including an analysis of the share of votes alongside seats won. Ofcom also examined trends in opinion polling data, although it did not regard party membership as being as robust an indicator of wider support as the other factors.

Ofcom concluded that, in Great Britain, the Conservative Party, the Labour Party and the Liberal Democrats are entitled to the two free broadcasts. Additional parties would be so entitled in each of the constituent nations of the UK. These were, in Scotland, the Scottish National Party; in Wales, Plaid Cymru (the Welsh Nationalist Party); and in England, UKIP (the UK Independence Party). Reflecting the fragmented state of Northern Ireland politics, the Alliance Party, the Democratic Unionist Party, Sinn Fein, the Social Democratic and Labour Party and the Ulster Unionist Party would be entitled to two broadcasts.

The most controversial part of the decision was the exclusion of the Green Party. The Green Party had achieved only 1% of the vote and one Parliamentary seat in the 2010 General Election; it had achieved 8% of the vote in the 2014 European Parliament elections and its opinion poll rating had increased to 7%. By contrast, UKIP had secured 29% of the vote in England in the European Parliament elections and, in 2015, had a poll rating of 15%.

• Ofcom, "Ofcom Statement on Party Election Broadcasts", 16 March 2015
http://merlin.obs.coe.int/redirect.php?id=17489 EN

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HR-Croatia

CEM adopts new rules on the protection of minors in electronic media

After concluding consultations with stakeholders and the interested public, the Council for Electronic Media (CEM) has adopted new rules on the protection of minors in electronic media on 27 February 2015.

The main change introduced by the new rules relates to the protected time period.

The time period in which programmes intended for viewers older than 18 may not be broadcast remains unchanged. It includes the period from 7 a.m. to 11 p.m. with a mandatory graphic sign (a transparent circle with an inscribed red number 18) present throughout their duration.

The time period in which programmes intended for viewers older than 15 may not be broadcast has changed. These programmes may not be broadcast in the period from 7 a.m. to 8 p.m. (previously the period from 7 a.m. to 10 p.m.) with a mandatory graphic sign (a transparent circle with an inscribed orange number 15) present throughout their duration.

The programmes which are not suitable for viewers under the age of 12 are no longer subject to a time limit (previously they were not allowed in the period from 7 a.m. to 9 p.m.), but they must be recognisable throughout their duration by a prominent graphic sign (a transparent circle with an inscribed green number 12). The novelty in this category is the obligation to announce such programmes by an audible warning: "The following programme is not suitable for persons under the age of 12".

All media service providers broadcasting in non-encrypted form are obliged to adhere to the prescribed manner of marking the programmes.

Media service providers broadcasting in encrypted form are obliged to ensure the recognisability of programmes by a visual sign (a written warning) included immediately before their broadcast, stating that: "The following programme is not suitable for persons under the age of 12/15/18".

• *Pravilnika o zaštiti maloljetnika u elektroničkim medijima* (Rules on the protection of minors in electronic media, Official gazette 28 - 13 March 2015)
http://merlin.obs.coe.int/redirect.php?id=17511 HR

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IE-Ireland

New Broadcasting Guidelines on referenda coverage

On 25 March 2015, the Broadcasting Authority of Ireland published its new Guidelines in Respect of Coverage of Referenda. The Guidelines set out rules and advice for broadcasters in their coverage of two referenda set to take place in May 2015 (the first proposing allowing same-sex marriage and the second proposing a reduction in the age of eligibly for presidential candidates). The new Guidelines replace the previous Guidelines in Respect of Coverage of Referenda, issued in 2013 and 2011 (see IRIS 2013-8/27 and IRIS 2011-9/24).

Rule 27 of the Authority's Code of Fairness, Objectivity and Impartiality in News and Current Affairs provides that broadcasters must comply with Guidelines and codes of practice on election and referenda coverage (see IRIS 2013-5/32). The new Guidelines broadly reflect the previous Guidelines, but with some additions.

First, there is an expanded section on how broadcasters may achieve "fairness, objectivity and impartiality" in covering the referenda. Among other things, the section clarifies that, while this may be achieved during programming by including referenda interests from both sides of the debate, it may not always be necessary if the discussion of the issues is fair, objective and impartial. For example, this can be achieved by the programme presenter playing the role of "devil's advocate". Moreover, the Guidelines stress that there is no obligation to automatically "balance" each contribution on an individual programme with an opposing view nor is there a requirement to allocate an absolute equality of airtime to referenda interests during coverage of the referenda.

Notably, the Guidelines set out new advice on "social media", including that there must be policies and procedures for handling on-air contributions via social media and ensuring that on-air references to social media are accurate, fair, objective and impartial.

The Guidelines also detail how broadcasters must avoid "conflicts of interest", including that it is not appropriate for persons "involved with referenda interests" to present programmes during the referenda campaign period. The Guidelines also state that the "inherent qualities or personal circumstances of an individual", e.g. a person's marital status, beliefs or sexual orientation, will not, of themselves, constitute a conflict of interests.

Further, the Guidelines also reflect the ban on advertisements "directed towards a political end" under section 41(3) of the Broadcasting Act 2009, which includes "advertising for events, notices regarding meetings or other events being organised by referenda interests as part of their campaign". Party Political Broadcasts are permitted, however, and broadcasters must ensure that the total time allocated for such broadcasts amounts to equal airtime being afforded to both sides of the debate.

Finally, the moratorium period on coverage by broadcasters of a referendum remains unchanged and runs from 2:00 p.m. on the day before the referendum poll takes place and throughout the day of the poll itself until polling stations close. The Guidelines confirm that the moratorium is not intended to preclude coverage during this period of legitimate news and current affairs, but relates to content that may influence or manipulate voters during the moratorium period.

The Guidelines came into effect on 25 March 2015 and will remain in effect until the closing of polling stations on the day of the referenda. The Guidelines apply to broadcasters within the jurisdiction of Ireland, but do not apply to services received in Ireland but licenced in other jurisdictions (although the Authority encourages such broadcasters to be mindful of the Guidelines).

• Broadcasting Authority of Ireland, Guidelines in Respect of Coverage of Referenda, 25 March 2015
http://merlin.obs.coe.int/redirect.php?id=17490 EN

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IT-Italy

Strategies for ultra-broadband and digital growth

During the meeting of the Council of Ministers held on 3 March 2015, the Italian Government approved the Italian strategies for ultra-broadband and digital growth for the years 2014-2020. The Italian strategy for ultra-broadband, which provides the allocation of public resources for a total amount of EUR 6 billion (taken from the FESR - Fondo europeo di sviluppo regionale - and FEASR - Fondo europeo agricolo per lo sviluppo rurale - European Funds, the Development

and Cohesion Fund and the funds in connection with the Investment Plan for Europe), shall be articulated as follows: (a) simplification of rules and reduction of administrative fees, aimed at eliminating barriers due to implementation costs; (b) improvement of the management of the subsoil by introducing a registry of soil and subsoil, which shall grant the monitoring of interventions and the best usage of existing infrastructures; (c) electromagnetic limits consistent with those applicable in other European countries; (d) fiscal and credit facilitations with preferential rates in the most profitable areas, aimed at promoting a "quality leap"; (e) public subsidies in order to invest in less important areas; and (f) infrastructures made directly by the State in areas subject to market failures.

The Government declared that the implementation of the strategy and the achievement of the objectives set forth under the European Digital Agenda would depend on private investments. Moreover, the strategy for digital growth (that will have its main base in the platform named "Italia Log In") aims at achieving the following objectives: (a) the analogue switch-off of the Public Administration, with the digitisation of the public services offered to citizen, (b) a new systematic approach based on open logic and standards, maximum interoperability of data and services, flexible and user-centred architectures; (c) transparency and sharing of public data (dati.gov.it); (d) new models for public/private partnerships; (e) coordination of all digital transformation interventions; (f) the enhancement of the digital culture and the development of digital competences in companies and citizens; (g) solutions aimed at encouraging cost reduction and improving the quality of services, also through mechanisms of remuneration able to stimulate suppliers to look for more innovative ways to provide/use services; (h) the progressive adoption of cloud models; and (i) higher reliability and security standards.

• *Agenzia per l'Italia Digitale, Approvati i piani nazionali per la banda ultralarga e crescita digitale, 3 Marzo 2015* (Agency for Digital Italy, National Plans for Ultra-Broadband and Digital Growth, 3 March 2015)
http://merlin.obs.coe.int/redirect.php?id=17491 IT

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Parliamentary hearing of AGCOM's President on the fact-finding survey on the audiovisual media services

On 25 February 2015, AGCOM's President, Professor Angelo Marcello Cardani, was heard by the IX Permanent Commission for Transportation, Mail Services and Telecommunications of the Italian Chamber of Deputies in relation to a fact-finding survey on the system of audiovisual media and radio services, started by the Committee on 30 April 2014 (see IRIS 2015-3/20).

In particular, in his report, the President focused on (a) the current trends of the TV sector; (b) the main issues, which involve the expertise and the regulatory activities of AGCOM; (c) the remaining problems to solve in order to guarantee an effective regulation in light of the challenges imposed by continuous technological and market advancements.

In respect to the first point, the President highlighted how, in the last few years, the TV sector has been subject to significant technological transformations. In particular, the digitalisation process has altered TV viewers' consumption habits. With reference to the regulatory profiles, the President focused on a number of issues, including, first, the technological neutrality issue. This implies uniformity in the regulation of all the electronic communication networks, with particular regard to regulatory aspects concerning the authorisation regime, the assignment and management of scarce resources and possible duties related to transmission or to access to electronic guides to programmes, in order to ensure the accessibility to content of general interest. The second issue concerned the unique European television market, which is one of the main objectives of the European Commission in the context of the politics of growth and occupation of the IT society and which consists of the establishment of a modern, flexible and simplified area of rules for audiovisual content. Third, the President also focused on the various issues related to the information society and copyright protection.

Finally, in respect to unsolved regulatory problems, the President highlighted that the main criticalities in the TV regulatory sector concern: (a) the establishment of a level playing field, i.e. the issue of whether OTT operators and traditional broadcasters should be subject to homogeneous rules; (b) the walled garden issue, i.e. the risk of discrimination in the access to content; and (c) the necessity to update the idea of "editorial responsibility".

• *Camera dei Deputati, IX Commissione Permanente Trasporti, Poste e Telecomunicazioni: Audizione del Presidente Prof. Angelo Marcello Cardani, Indagine conoscitiva sul sistema dei servizi di media audiovisivi e radiofonici* (IX Permanent Commission for Transportation, Mail Services and Telecommunications of the Italian Chamber of Deputies: Hearing of the President, Professor Angelo Marcello Cardani, fact fact-finding survey on the system of audiovisual media and radio services)
http://merlin.obs.coe.int/redirect.php?id=17492 IT

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New Act on the film fund for audiovisual production

On 22 September 2014, the Act on the national fund

for the support of audiovisual production (Loi relative au Fonds national de soutien à la production audiovisuelle - FNAV Act) was adopted. It was published in the Luxembourg official journal (Mémorial) on 10 October 2014. The FNAV Act substantially modifies the Luxembourgish support scheme for audiovisual works, which had existed for more than two decades.

Until the entry into force of the FNAV Act, the promotion of the Luxembourg film sector took two forms, both of which were administered under the umbrella of the Luxembourg film fund: In 1988, a fiscal regime of so-called "certificates of audiovisual investment" ("certificats d'investissement audio-visuel") was introduced, which allowed companies investing in audiovisual productions to reduce their overall tax burden by a maximum of 30 percent. In addition, a film fund was established in 1990 to support the production and distribution of selected audiovisual works and promote co-productions. The details of each scheme were outlined in two separate legal acts accompanied by several Grand-Ducal regulations (see IRIS 2007-6/101 and IRIS 1999-2/15).

Due to the economic crisis and because the attractiveness of the certificates of investment has substantially lessened, the FNAV Act entirely abolishes the fiscal incentive scheme. More precisely, Article 29 (2) of the FNAV Act specifies that this scheme is discontinued as of the end of 2013 instead of 2015, as stipulated in the original law of 1988. At the same time, the law of 1990 on the creation of a Film Fund is abrogated pursuant to Article 30 FNAV Act. However, the FNAV Law constructs a Luxembourg film fund, which now constitutes the remaining support mechanism and which is equipped with more resources.

In more detail, Article 1 of the FNAV Law grants legal personality to the film fund, which is a public institution. According to Article 17 of the FNAV Act, the film fund is financed by the state budget and, to a lesser extent, by remuneration charged for its services, as well as external funding from potential donations. Its mission is set forth in Article 2 of the FNAV Act, which refers to, among other things, the promotion of cinematographic and audiovisual works, the dissemination and circulation of Luxembourg films in Luxembourg and abroad and the allocation of subsidies in the form of financial aids, grants and reimbursements. Pursuant to Article 9 of the FNAV Act, financial aids are granted to support the creation (e.g. script-writing or project development) and production (or co-production) of cinematographic and audiovisual works. Beneficiaries of the scheme are companies established and fully taxable in Luxembourg. In addition, companies are only eligible if their principal objective is the production of audiovisual works and they effectively produce such films. By virtue of Article 13 of the FNAV Act, the amount of the contribution varies and depends on the overall expenses incurred by the company.

In order to de-politicise the composition of the internal bodies of the film fund, the FNAV Act provides for a management board ("Conseil d'administration") composed of three members nominated respectively by the Minister responsible for audiovisual policy, the Minister of Finance and the Minister of Culture. This body sets the agenda, determines the budget and generally manages the fund. In addition to regular staff, a selection committee ("Comité de selection") is introduced, which consists of a minimum of five and a maximum of seven independent members tasked with making the decisions about the selection of companies requesting aid. The criteria for selection are stipulated in Article 12 and include, among others, artistic and cultural criteria, criteria on the impact of the development of the audiovisual sector and more general considerations on the prospects of distribution, circulation and commercialisation of the production. These criteria are further specified in a Grand-Ducal regulation (see this issue of IRIS).

• *Loi du 22 septembre 2014 relative au Fonds national de soutien à la production audiovisuelle et modifiant 1) la loi modifiée du 22 juin 1963 fixant le régime des traitements des fonctionnaires de l'Etat 2) la loi modifiée du 13 décembre 1988 instaurant un régime fiscal temporaire spécial pour les certificats d'investissement audiovisuel (Mém. A - 191 du 10 octobre 2014, p. 3760; doc. parl. 6535)* (Act of 22 September 2014 on the National fund for the support of audiovisual production and modifying 1) the law modified on 22 June 1963 establishing the system of remuneration for civil servants 2) the law modified on 13 December 1988 establishing a special fiscal regime for audiovisual investment certificates)
http://merlin.obs.coe.int/redirect.php?id=17493 FR

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New Grand-Ducal Regulation on the film fund for audiovisual production

Accompanying the adoption of the new Act on the Luxembourgish support scheme for the audiovisual sector (see this IRIS issue), a Grand-Ducal regulation was adopted, on 4 November 2014, which entered into force on 5 December 2014. The Grand-Ducal regulation on the execution of the Act of 22 September 2014 on the national fund for the support of audiovisual production (Règlement grand-ducal portant execution de la loi du 22 septembre 2014 relative au Fonds national de soutien à la production audiovisuelle) - hereinafter the regulation - lays down the conditions, criteria and modalities for receiving contributions from the film fund, as indicated in the law in question. It thus offers greater substance in particular to Articles 9, 10, 12 and 13 of the law. This Grand-Ducal regulation replaces the one of 16 March 1999, which was adopted in view of the reform of the film fund in 1998 (see IRIS 1999-2/15). The regulation of 2014 is a lot more detailed (especially with respect to the selection criteria) than its predecessor, even if the basic approach remains the same.

In general, the types of programmes supported encompass cinematographic or audiovisual works of fic-

tion, animation, experimentation or documentation, provided that they are not employed for promotional ends (Article 1 of the regulation). Luxembourgish production companies with a manifest interest in the realisation of an audiovisual or cinematographic project, as well as those projects subject to public tender, potentially benefit from the scheme (Article 2(1) of the regulation). In addition, co-productions in which Luxembourgish production companies participate may receive an aid under certain conditions applied cumulatively (compare with Article 2(2) of the regulation). Accordingly, the share of expenses incurred by the (Luxembourgish) company receiving the aid must be at least 10 percent of the total production costs and, at the same time, this is also the minimum share of expenses that the potential foreign company in the co-production must have incurred. Furthermore, the property rights of the originals from which the film can be reproduced have to be in common ownership of the co-producers. In addition, the division of the right to exploitation between the production companies concerned must reflect at least the amount of the share of investment in the production of the audiovisual or cinematographic work. Finally, the artistic and technical participation of the (Luxembourgish) company receiving the aid in the production of the work must be real.

Production companies, which are eligible for funding may address their request to the film fund. In case of co-productions, the request is to be submitted by the company bearing the largest investment (Article 3 of the regulation). The application must include, in particular, information on the screenplay and the concept of the audiovisual or cinematographic work, an overview of the budget and a financing plan, as well as artistic and technical information (Article 4 of the regulation). In addition, applicants must disclose information about their company structure, their organs, management and shareholders, potential economic beneficiaries (of the aid) and internal compliance and control procedures (Article 4 of the regulation). After admissibility of the application is verified, it is subsequently transferred to the selection committee ("Comité de selection") for assessment in line with several criteria set out in Article 5 regulation.

This provision differentiates between four kinds of selection criteria: first, artistic, cultural and technical criteria, secondly, criteria concerning the production and the impact on the growth of the sector, thirdly, criteria regarding distribution, dissemination and exploitation and fourthly, criteria related to the promotion of the Grand Duchy of Luxembourg. Each criterion is further specified in Article 5 regulation.

The cultural and artistic value is, for instance, evaluated with a view to the history of the topic presented in the work, its genre, originality, narrative, dialogues and style (e.g. the atmosphere of the work and vision of producers).

Moreover, the amount of the aid is calculated by reference to the total costs outlined in the application, taking into account the actual financial participation of the recipient of the grant (Article 6 of the regulation). The regulation also stipulates in detail what expenses are effectively included in the calculation of the aid and the manner in which the aid is paid (Article 7-9 of the regulation). A convention is concluded between the recipient of the aid and the film fund (Article of the 10 regulation). In principle, the aid granted by the film fund is completely repayable, but the latter may modify the amount to be repaid. The exact conditions for the repayment are outlined in Article 11 of the regulation.

• *Règlement grand-ducal du 4 novembre 2014 portant exécution de la loi du 22 septembre 2014 relative au Fonds national de soutien à la production audiovisuelle et modifiant 1) la loi modifiée du 22 juin 1963 fixant le régime des traitements des fonctionnaires de l'Etat 2) la loi modifiée du 13 décembre 1988 instaurant un régime fiscal temporaire spécial pour les certificats d'investissement audiovisuel, et portant fixation des indemnités revenant aux membres du conseil d'administration et du comité de sélection du Fonds national de soutien à la production audiovisuelle (Mém. A -222 du 05 décembre 2015, p. 4274)* (Grand-Ducal regulation of 4 November 2014 on the execution of the Law of 22 September 2014 on the national fund for the support of audiovisual production and modifying 1) the law modified on 22 June 1963 establishing the system of remuneration for civil servants 2) the law modified on 13 December 1988 establishing a special fiscal regime for audiovisual investment certificates and establishing the amount of allowances for members of the management board and the selection committee of the national fund for the support of audiovisual production)
http://merlin.obs.coe.int/redirect.php?id=17494 FR

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MD-Moldova

Sanctions against Russian broadcasts

On 7 October 2014, the broadcast regulator of Moldova, the Council for Coordination on Audiovisual (CCA), following a complaint on the failure to observe the principles of political balance, impartiality and objectivity in newscasts of Russian origin, issued a decision which sanctioned several Moldovan companies that re-broadcast Russian TV newscasts and other programmes. In particular, "Teleproiect, SRL" was found to be an offender in relation to its functions as an affiliate of "REN-Moldova TV", re-transmitting in Moldova broadcasts of Moscow's REN-TV, as well as its own programming and commercials.

The particular sanction was caused by a complaint of the NGO APOLLO that the newscast "Svobodnoye vremya" on 9 September 2014 was "misinforming and distorting the developments in Ukraine, presenting exclusively the viewpoint of the Donbas region separatists". The complaint recalled that an earlier monitoring report by the CCA of "REN-Moldova TV" found violations of Article 7 ("Political and social balance and pluralism") paragraph 4, b) and c), as well as Article

10 ("Rights of Program Consumer"), paragraph 5 of the Audiovisual Code (See IRIS 2006-9/27).

The CCA agreed with the complaint and decided to suspend the right of "Teleproiect, SRL" to broadcast commercials for 72 hours, as this was not their first violation of the law. Other offenders were fined to the amount of Leu 5400 (approximately EUR 280) each.

Teleproiect appealed the decision, but the CCA confirmed it again on 5 November 2014. Teleproiect then took the complaint to court. In December, the judge, in order to secure the claim and avoid the increasing complexity of the case, ruled to grant the suspension of the CCA decision. The merits of the contested decision are still to be verified by the court.

- *Consiliul Coordonator al Audiovizualului. Decizie Nr. 135, 07.10.2014 cu privire la respectarea principiului echilibrului social-politic, echidistanţei şi obiectivităţii în cadrul emisiunilor informative " Время ", " Сегодня ", " Вести " şi " Новости 24" transmise din Federaţia Rusăde către posturile de televiziune "Prime", "TV 7", "RTR Moldova" şi "Ren Moldova", inclusiv secvenţele serviciilor de programe menţionateîn sesizările AO "APOLLO" nr. 627, 628 din 08.07.2014 şi nr. 642, 643 din 23.09.2014.* (Council for Coordination on Audiovisual, decision no. 135, 7 october 2014)
http://merlin.obs.coe.int/redirect.php?id=17500 MO
- *Consiliul Coordonator al Audiovizualului. Decizie Nr. 168, 14.11.2014 cu privire la examinarea cererii prealabile a „TELEPROIECT" SRL* (Council for Coordination on Audiovisual, decision no. 168, 14. November 2014)
http://merlin.obs.coe.int/redirect.php?id=17501 MO
- *Concluzia Judecatorului din cadrul Tribunalului Districtului Central din Chisinau in cazul Nr. 3-3033/14, 18 December 2014.* (Conclusion of the Judge of Chisinau Central District Court on case No. 3-3033/14, 18 December 2014) MO

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NL-Netherlands

Court rejects application for delisting from search engine results

On 31 March 2015, the Amsterdam Court of Appeal ruled in a case where the plaintiff, a convicted criminal, demanded to have certain search results delisted from Google Search based on search queries limited to his name. The Court of first instance rejected plaintiff's claim to be delisted from Google Search (see IRIS 2014-10/25).

The plaintiff was convicted for the attempted incitement of a contract killing. The conviction was primarily based on audiovisual evidence, which revealed that the plaintiff had discussed a murder with a contract killer, gathered by a Dutch crime reporter by means of hidden film equipment. A Dutch commercial television station aired the audiovisual evidence in advance of the plaintiff's trial. The plaintiff appealed against the conviction and the appeal is still pending.

The plaintiff demanded before the Court of Appeal that Google delist search results that lead to websites covering his conviction and the audiovisual evidence of the commercial broadcaster. Furthermore, the plaintiff claimed that Google deliberately infringed his rights by means of the auto-complete function of Google Search, which proposed certain search queries, disclosing search results leading to websites covering his actions and the reporting of the airing of his conversation with the contract killer.

The Court stated that every data-subject has the right to have their personal data rectified, deleted or suppressed where the processing of their personal data is irreconcilable with the European Data Protection Directive. The Court reasoned that Articles 7 and 8 of the European Charter of Fundamental Rights grant a data-subject the right to opt-out from a search engine which discloses the related information to a public at large. However, following from the Google Spain ruling (see IRIS 2014-6/3), an interference with data-subjects' rights, as in this case, is justified where the data-subject plays an important role in society and/or the public at large has a legitimate interest in receiving the information.

By balancing the rights of the plaintiff and the public's right to receive and impart information, the Court considered that the news reporting on the plaintiff's conviction was a result of his own actions. Furthermore, the Court accepted Google's claim that suggestions by Google Search's autocomplete function are derived from popular search queries, demonstrating the public's interest in receiving the imparted information. Therefore, Google could not be deemed to have deliberately infringed the rights of the plaintiff. The Court also held that the public at large has a strong interest in receiving information regarding serious crimes, such as the one perpetrated by the plaintiff.

Notably, the Court also took into consideration that certain websites containing information about the plaintiff's conviction merely disclosed his alias and not his full name. The Court was of the opinion that, due to the fact that the initials of the plaintiff do not necessarily correspond with his full name, it is not evidently clear for third parties that the plaintiff's initials refer to him and his persona. In the case where third parties do link the initials of the plaintiff to his full name the Court deemed that this was the result of his own actions and his public role in society.

Therefore, the Court upheld the decision of the Court of first instance and ruled that the delisting of search results based on search queries limited to the plaintiff's name, supplemented by proposed search queries via Google Search's auto-complete function, which disclose search results leading to websites covering his conviction and the aired audiovisual evidence should be rejected.

• *Gerechtshof Amsterdam, 31 maart 2015, [eiser] tegen Google Netherlands B.V. en Google Inc., ECLI:NL:GHAMS:2015:1123* (Amsterdam Court of Appeals, 31 March 2015, [plaintiff] v Google Netherlands B.V. and Google Inc., ECLI:NL:GHAMS:2015:1123)
http://merlin.obs.coe.int/redirect.php?id=17497 NL

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Broadcaster ordered to remove part of video report on police raid

On 1 March 2015, the police raided a warehouse in Brunssum and discovered a drugs laboratory. Two persons were arrested. The local broadcaster made a video report covering the raid and police investigation and this video was posted on its website. The footage was then sold to the regional broadcaster, who re-edited it and placed it on its website accompanied by text written by the regional broadcaster. The raid was also covered on the regional broadcaster's news programme.

The plaintiffs are a family whose members are also the partners in a commercial partnership. In the video report, the street on which the raid took place was filmed and the plaintiffs' warehouse and sign with the partnership's name was shown repeatedly. However, the warehouse that was raided was not the one located on the plaintiffs' property. Customers were confused by the report and the plaintiffs argued that their reputation has been damaged due to the wrongly-created impression of an existing link between the raid and their partnership. In their view, this constituted an unlawful act against the plaintiffs.

The defendants are the regional and local broadcasting companies. They maintained that there was no voice-over in the video report which showed the investigation and that the accompanying text clearly stated that there is no relation between the warehouse owned by the plaintiffs and the warehouse that was raided by the police.

If the claims are successful, a restriction on the freedom of speech of the defendants, as contained in Article 10 of the European Convention on Human Rights (ECHR), would result. However, this right may be restricted if this is necessary to protect the rights of others, such as the right to respect for private and family life as contained in Article 8 of the ECHR. In this case, establishing an unlawful act by the regional broadcaster against the plaintiffs would give rise to a lawful restriction.

The court concluded that, in the video report, the regional broadcaster wrongly implied that the plaintiffs were involved with the raid, discovery of the drugs laboratory and the subsequent arrests. Since the video report could be watched without seeing the accompanying text denouncing any relation between the plaintiffs and the raid, this text was not a sufficient measure. This constituted an unlawful act against the plaintiffs. In order to avoid the impression that the plaintiffs were involved with the raid, the relevant part of video report must be removed from the regional broadcaster's website. All other claims, seeking publication of a correction, were rejected. This judgment is subject to payment of a periodic penalty payment if the regional broadcaster does not comply with the provisions contained therein.

• *Rechtbank Limburg, 26 maart 2015, vennootschap onder firma [naam VOF] VOF , [eiser sub 2], [eiseres sub 3], [eiser sub 4], [eiser sub 5], tegen Omroepbedrijf Limburg B.V., Stichting Lokale Omroep Gemeente Onderbanken, ECLI:NL:RBLIM:2015:2515* (Limburg District Court, 26 March 2015, commercial partnership [name of the commercial partnership] VOF , [plaintiff 2], [plaintiff 3], [plaintiff 4], [plaintiff 5], v. Omroepbedrijf Limburg BV, Stichting Lokale Omroep Gemeente Onderbanken, ECLI:NL:RBLIM:2015:2515)
http://merlin.obs.coe.int/redirect.php?id=17498 NL

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Dutch public broadcaster ordered to alter report on fraud allegations

On 5 February 2015, the District Court of Amsterdam partly upheld a complaint against the Dutch public broadcaster Avrotros. The proceedings had been initiated following the 11 November 2014 episode of the Dutch television show "Opgelicht" ("Swindled"), in which attention was paid to a large scale insolvency fraud allegedly committed by the plaintiff and the company for which he worked. During the episode concerned, the plaintiff's name was mentioned, an image of his driver's licence was shown and words of an accusing nature were used.

As an immediate consequence, the plaintiff started preliminary relief proceedings against the Dutch public broadcaster Avrotros. He claimed that all media coverage managed by Avrotros wrongfully mentioning his name should be removed. Furthermore, he demanded that Avrotros make a rectification. Avrotros argued, in short, that the episode at issue fell within the scope of its freedom of expression and that this right should not be limited in the case at hand. In its argument, Avrotros emphasised Opgelicht's role as public watchdog, stating that the goal of the episode concerned was to inform and warn its audience with regards to insolvency fraud.

The Court balanced the freedom of expression of Avrotros against the plaintiff's right to the protection of his reputation. The Court started by stating that the episode's theme was socially relevant. It then considered four main factors in its balancing test. First,

the content of the programme, which suggested that crimes were committed by the plaintiff, even though these allegations did not find sufficient support in the available facts. Secondly, the grave consequences of accusing a person of insolvency fraud on television, as well as on the internet. Thirdly, Avrotros' regular modus operandi is to partially anonymise all references to a person whenever that person is suspected by the public prosecutor. Avrotros refrained from doing so in the current case, however. Finally, Avrotros did not hear the plaintiff before the episode originally aired.

Taking all of the above-mentioned circumstances into consideration, the Court concluded that the plaintiff was wrongfully exposed to suspicions and unwanted publicity. As such, the Court ordered Avrotros to replace the plaintiff's name and surname with his initials on Avrotros' website. Additionally, the plaintiff should be made unrecognisable in the episode that was uploaded to Avrotros' website. However, the Court rejected the plaintiff's claim for rectification, arguing that the measure was not proportionate. It substantiated that claim by stating that the image of the plaintiff's driver's licence was only showed vaguely and briefly, that the plaintiff's surname was only mentioned once and that the possibility should be considered that Avrotros' allegations are, in fact, correct.

• *Rechtbank Amsterdam, 5 februari 2015, ECLI:NL:RBAMS:2015:740* (District Court Amsterdam, 5 February 2015, ECLI:NL:RBAMS:2015:740)
http://merlin.obs.coe.int/redirect.php?id=17496 NL

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Dutch Media Authority imposes a EUR 150 000 fine on public service broadcaster

The Dutch Media Authority (Commissariaat voor de Media - CvdM), imposed a EUR 150 000 fine on NTR, an independent Dutch public service broadcaster. Each year, on the evening of 5 December, Dutch families celebrate the birthday of Saint Nicholas (Sinterklaas) with the giving of gifts. And each year, in the weeks before the festive evening, NTR airs a daily fictional news show called "Het Sinterklaasjournaal." The show is meant for children under the age of twelve. In 2013, the broadcaster also produced and distributed wrapping paper with a Sinterklaas theme. According to the Media Authority, NTR violated the Dutch Media Act 2008 (Mediawet 2008) when they displayed the wrapping paper in the news show and on a special website.

Article 2.89 (1) (b), of the Media Act 2008, states that "avoidable media communications" (vermijdbare uitingen) are not allowed in media offerings by public service broadcasters that are meant for children under the age of twelve, with the exception of media offerings of an informative or educational character. Article 7 of the Dutch Media Decree 2008 (Mediabesluit 2008) defines "avoidable media communications" as avoidable media communications other than commercials or teleshopping spots that clearly serve to promote the sale of goods or services. Furthermore, following Article 2.132 of the Media Act 2008, public service broadcasters like NTR are only able to engage in other paid activities with the prior permission of the Media Authority. Accordingly, the NTR sought permission from the Media Authority to produce and distribute wrapping paper in the theme of Sinterklaas for wholesale trade. The Media Authority granted such permission and stressed the above rules.

However, the wrapping paper was used in the story line of "Het Sinterklaasjournaal 2013" and featured on a special website. In about twenty episodes the show devoted attention to gifts that were wrapped in the paper. Visitors of a special website devoted to "Het Sinterklaasjournaal" could order a gift wrapped in the paper. In an article on their own website, NTR itself boasted that the online action was a big hit.

The Media Authority notified the NTR of its intention to impose a fine for an alleged violation of the Media Act, but NTR maintained that it had not committed a violation. It argued that "Het Sinterklaasjournaal" is of an educational character and that the wrapping paper was only available in wholesale. Nevertheless, the Media Authority pointed to the gravity of the violation and stated that it attaches much value to the prevention of commercial influences on children. It imposed a EUR 150 000 fine on NTR for the violation of Article 2.89 of the Media Act. NTR objected that the fine is disproportionate in relation to proceeds from the wrapping paper. The broadcaster will appeal the decision.

• *Commissariaat voor de Media, oplegging bestuurlijke boete aan de stichting NTR (hierna: de NTR) vanwege handelen in strijd met artikel 2.89, eerste lid, aanhef en onder b, van de Mediawet 2008, 10 maart 2015* (Dutch Media Authority, Decision with regard to the imposition of a sanction, 10 March 2015)
http://merlin.obs.coe.int/redirect.php?id=17499 NL

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New Dutch Cookie Act comes into effect

On 11 of March 2015, the new Cookie Act came into effect in the Netherlands, amending Article 11.7a of the Dutch Telecommunications act (Telecommunicatiewet) (see IRIS 2014-10/28 and IRIS 2012-7/32). The act governs access to and storage of information

on a terminal of an end-user via an electronic communications network.

The new Cookie Act has interesting implications for the consent requirement regarding certain types of cookies that can be deemed non-privacy invasive. The previous law already exempted functional cookies, which are technically indispensable in order to provide a requested service to an end-user, from the consent requirement. Under the new act, the consent requirement is also excluded for cookies that have little or no impact on the privacy of end-users.

The explanatory memorandum states that analytical cookies, which are solely used to monitor the functioning and use of a website, are excluded from the consent requirement, provided that they have little or no impact on the privacy of an end-user. Under the new Cookie Act, consent is still required for the placing of cookies on the terminals of end-users which are deemed to have a significant impact on the privacy of the end-user. Therefore, consent is still required for the placing of tracking-cookies, which monitor and profile the individual online behaviour of an end-user.

The amendment also provides that access to websites run by public bodies cannot be made dependent on a user consenting to privacy-invasive cookies. The explanatory memorandum states that a "cookiewall" can be deemed to comply with the law, unless end-users are dependent on the information which is disseminated by the website.

Furthermore, it is important to note that, in spite of the name, the Cookie Act's application is not limited to the placing of cookies on end-users' terminals by websites. The law applies to any type of technique used that enables the storage on or access to a terminal of an end-user. This means that the law also applies to malware, spyware, botnets, device fingerprinting, java-scripts and pixel tags. Terminals of end-user are not limited to computers, but also include devices such as smartphones, tablets and smart-TVs.

Lastly, the Dutch authority for consumers and markets (Autoriteit Consument en Markt - ACM), which enforces the Cookie Act, has stated that they will do so proactively. Various websites in the Netherlands have already been notified by ACM of possible enforcement actions. Websites that do not comply with the new cookie law risk facing administrative fines of up to EUR 450 000.

• *Autoriteit Consument en Markt, Nieuwsbericht, 11 maart 2015* (Dutch Authority for Consumers and Markets, Press Release, 11 March 2015)
http://merlin.obs.coe.int/redirect.php?id=17531 NL

• *Besluit van 28 februari 2015, houdende vaststelling van het tijdstip van inwerkingtreding van de Wet van 4 februari 2015, houdende wijziging van de Telecommunicatiewet (wijziging artikel 11.7a)* (Decision of 28 February 2015 concerning the date of entry into force of the Law of 4 February 2015 amending the Telecommunications Act (amendment to Article 11.7a))
http://merlin.obs.coe.int/redirect.php?id=17532 NL

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RO-Romania

Modification of the Copyright Act

A new Act on the modification and completion of the Law no. 8/1996 on copyright and related rights (Lege pentru modificarea şi completarea Legii nr.8/1996 privind dreptul de autor şi drepturile conexe) was promulgated by Romania's President on 24 March 2015 (Act no. 53/2015) and published in the Official Journal of Romania no. 198/2015 part I. The Draft Law was adopted by the Senate (Upper Chamber of the Parliament) on 15 December 2014 and by the Chamber of Deputies (Lower Chamber) on 25 February 2015 (see IRIS 2006-8/27). The Act transposes Directive 2011/77/EU of the European Parliament and of the Council of 27 September 2011 amending the Directive 2006/116/EC on the term of protection of copyright and certain related rights.

The new act aims to change the term of protection of economic rights of performers, by extending them from 50 to 70 years. The term of protection for musical compositions with words is also extended to 70 years from the death of the last surviving from among the lyricists and composers. The new provisions distinguish, in terms of the duration of protection, between the publication or the legal communication of a phonogram and the publication or the legal communication other than in a phonogram. The act also regulates issues regarding the interpretation and execution of rights transfer contracts between performers and phonogram producers. To translate the terms of non-recurring and recurring remuneration and to avoid misinterpretation of these terms, the act uses the terms "single remuneration" and "compensation paid gradually". According to the new paragraph (3) of Article 27, the term of protection of a musical composition with words shall expire 70 years after the death of the last survivor from among the lyricists and composers, whether they were or were not designated as co-authors, provided that any word-based contributions to the musical compositions were created specifically for that purpose.

According to the new wording of Article 102(1), the term of protection of the economic rights of perform-

ers is 50 years from the interpretation or execution, with the following exceptions: a) if the fixation of the performance other than in a phonogram is legally published or communicated to the public during this period, the rights shall expire 50 years from the first publication or first communication to the public, depending on which of these is the earlier; b) if the fixation of performance in a phonogram is legally published or communicated to the public during this period, the rights shall expire 70 years from the first publication or the first communication to the public, depending on which of these is the earlier.

According to the new wording of Article 106(1), the duration of the protection of the economic rights of the producers of phonograms is 50 years from the date of the first fixation. However, if during this period the phonogram has been lawfully published or communicated to the public by law, the duration of the rights will be 70 years from the date on which the first publication or communication to the public occurred.

In 2014 the European Commission started an infringement procedure against Romania for not having transposed the Directive 2011/77/EU into national legislation.

On 23 March 2015 the Romanian Senate adopted another draft Law on the modification and completion of Act no. 8/1996 on copyright and related rights. The decision of the Chamber of Deputies will be final. The second draft Law aims to correct the methodology of the remuneration payable to performers and producers of phonograms for broadcasting trade phonograms and those phonograms published for commercial purposes or reproductions thereof by broadcasters. This methodology was considered unfair because only the large users and collecting societies took part in negotiations, while the collecting societies have virtually a monopoly position in the market. In order to have a fair methodology, the initiator proposed that representatives of the employers' associations of local licensed users be present at the negotiations and that the fixed amount or minimum payment by each broadcaster is to be proportionate to the potential recipients of the programmes.

• *Legea nr. 53/2015 pentru modificarea şi completarea Legii nr.8/1996 privind dreptul de autor şi drepturile conexe* (Act no. 53/2015 on the modification and completion of the Law no. 8/1996 on copyright and related rights)
http://merlin.obs.coe.int/redirect.php?id=17512 RO

• *Proiect de Lege nr. 315/2015 pentru modificarea şi completarea Legii nr.8/1996 privind dreptul de autor şi drepturile conexe, forma adoptată de Senat* (Draft Law no. 315/2015 on the modification and completion of the Law no. 8/1996 on copyright and related rights, as adopted by the Senate)
http://merlin.obs.coe.int/redirect.php?id=17513 RO

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Modifications of the Audiovisual Act rejected

In March 2015, the Chamber of Deputies (lower chamber of the Romanian Parliament) rejected two draft laws intended to modify and complete the Audiovisual Act no. 504/2002 with further modifications and completions (Legea nr. 504/2002 a audiovizualului, cu modificările şi completările ulterioare). The decision of the Senate (Upper Chamber) will be final in both cases (see IRIS 2002-3/20, IRIS 2009-2/29, IRIS 2010-1/36, IRIS 2011-4/31, IRIS 2011-7/37, IRIS 2014-1/37, IRIS 2014-7/29, IRIS 2014-9/26).

The first draft law was rejected almost unanimously by the deputies on 11 March 2015. The document intended to introduce an obligation for audiovisual media providers to introduce in their programme schedules health education campaigns in the form of audio/TV medical spots of one minute per hour. The purpose of these spots was to provide information needed to acquire a healthy lifestyle. Another purpose was to provide information necessary to ensure optimal first aid measures.

The second draft law, which proposed significant changes to the Audiovisual Act, was rejected by the deputies on 18 March 2015. The Lower Chamber rejected the Draft Law on the set-up, the organisation and the provision of audiovisual mass-media services with a very large majority. The draft law proposed, inter alia, a change in the composition of the National Audiovisual Council (Consiliul Naţional al Audiovizualului - CNA) and intended to introduce several requirements for a membership in the CNA (graduation of certain studies or 5 years' experience in the fields of audiovisual media, journalism, communication sciences, PR, theatre, cinema, visual arts, sociology, psychology or IT) and more clear exclusion criteria. The President's mandate would have been for 3 years, renewable only once. The dismissal of the CNA President and Vice-President would have been possible with the vote of 6 members out of 11. Another important change would have been the introduction of mixed financing of the CNA (combining own revenues and state subsidies, in comparison to the present state budget financing).

• *Propunere legislativă nr. 11/2015 pentru modificarea şi completarea Legii nr.504/2002 a audiovizualului, cu modificările şi completările ulterioare - forma iniţiatorului* (Draft Law no. 11/2015 on the modification and completion of the Act no. 504.2002 with further modifications and completions - initiator's form)
http://merlin.obs.coe.int/redirect.php?id=17514 RO

• *Propunerea legislativă nr. 10/2015 privind înfiinţarea, organizarea şi furnizarea de servicii mass-media audiovizuale - forma iniţiatorului* (Draft Law no. 10/2015 on the set-up, the organisation and the audiovisual mass-media services provision - initiator's form)
http://merlin.obs.coe.int/redirect.php?id=17515 RO

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Investigative Journalism Act rejected by the Senate

On 25 February 2015, the Romanian Senate (Upper Chamber of the Parliament) rejected with an overwhelming majority the Propunerea legislativă privind înfiinţarea Fondului Special pentru Jurnalismul de Investigaţie (draft act on setting up of a special fund for investigative journalism). The final decision rests with the second Chamber, the Chamber of Deputies.

The Draft Act intended, according to the initiators, to fight against corruption which affects public money through supporting any step taken by investigative journalists and natural and moral persons towards the disclosure of illegal practices. The document proposed to support these steps through a so-called "Special Fund for Investigative Journalism", meant to finance directly investigative journalism, but also the persons who dare to disclose acts of corruption through the mass media (print media, the radio, television and the Internet) or through a complaint directed to investigative and prosecuting bodies. The above-mentioned journalists and persons were supposed to receive 2% of the value of the damage within 30 days of its restitution to the state budget after the final and conclusive judgment of the courts in corruption cases.

The sums would be paid to any natural person above 18 years old or to any Romanian or foreign moral person which makes public through any medium (print publication, online, radio, TV) or by complaining directly to the investigative and prosecuting bodies any corruption case, abuse of office, embezzlement, receiving undue benefits, tax evasion or any action or inaction under criminal law in force which by its nature is prejudicial to the state budget by at least RON 100 000 (˜EUR 22 470). The 2% of the recovered damage will be received upon request to the Finance Ministry.

Prior to the rejection of the Draft Act by the Senate, the Legislative Council issued a positive opinion with comments and suggestions, the Romanian Government issued a negative opinion and the Senate's standing committee for budget, finance, banking and capital markets and the committee on culture and media issued a common negative report, with a recommendation for the Draft Act to be rejected. The Government considered that the proposed document is contrary to Act no. 500/2002 on public finance, with further modifications and completions, with regard to the setting up of special funds, the principles of universality and unity and the rules on budgetary expenditure. The Government also considered that the Draft Act breaches the fiscal responsibility Act no. 69/2010, with further modifications and completions, because it does not include proposals for measures to address the financial impact on the state budget by increasing other budget revenues or, alternatively, it has not the support of the Ministry of Finance and of the Fiscal Council, stating that the financial impact has been taken into account in the forecast budget revenues and it does not affect the annual and the medium term budgetary targets.

• *Propunere legislativă privind înfiinţarea Fondului Special pentru Jurnalismul de Investigaţie - forma iniţiatorului* (Draft Act on setting up the Special Fund for the Investigative Journalism - as initiator)
http://merlin.obs.coe.int/redirect.php?id=17517 RO

• *Propunere legislativă privind înfiinţarea Fondului Special pentru Jurnalismul de Investigaţie - expunerea de motive* (Draft Act on setting up the Special Fund for the Investigative Journalism - Explanatory Memorandum)
http://merlin.obs.coe.int/redirect.php?id=17518 RO

Eugen Cojocariu
Radio Romania International

Regional digital multiplexes granted

On 12 February 2015, the Autoritatea Naţională pentru Administrare şi Reglementare în Comunicaţii (National Authority for Management and Regulation in Communications - ANCOM), the telecom authority in Romania, announced that the auction for awarding regional digital television multiplexes in Romania has been completed. Following the allocation round, the allotted multiplexes and the amounts the bidders will pay for them were established (see IRIS 2010-3/34, IRIS 2010-7/32, IRIS 2010-9/35, IRIS 2011-4/33, IRIS 2013-6/30, IRIS 2014-4/26, IRIS 2014-5/29, IRIS 2014-9/27).

The companies Regal and Cargo Sped entered the allocation round, during which the specific allocation for the categories with several regional multiplexes available was determined, upon the bidders' payment of an additional amount for the preferred allocation of the acquired multiplexes. The Regal acquired one regional multiplex (Râmnicu Vâlcea, in the sounthern part of Romania) for EUR 8 010 (representing the licence fee), whereas Cargo Sped won one regional multiplex (Sibiu in central Romania) for EUR 8 001. The company 2K Telecom acquired five regional multiplexes (four in Bucharest, the capital city, and one in Ploiești, southern Romania) for which it will pay EUR 52 000, Radio M Plus obtained one regional multiplex (Iași, north/eastern Romania) for EUR 10 000, and Digital Video Broadcast won one regional multiplex (Satu Mare, north-western Romania) and will have to pay EUR 8 000. The licences, worth of a total of EUR 86 011, are to be paid to the state budget within 90 calendar days from the announcement of the results.

All licences are granted for the period 17 June 2015 to 17 June 2025. The winners of the regional multiplexes will be able to start the provision of commercial television broadcasting services after 17 June 2015. By 1 May 2017, they will have to launch into operation at least one transmitter in each assignment area. A

total of two national, 40 regional and 19 local multiplexes were auctioned through this competitive selection procedure.

Following the auction for awarding national digital multiplexes, completed on 10 June 2014, three national multiplexes were awarded to the National Broadcasting Company S.A. The company won the multiplex under the free-to-air broadcasting obligation and two other multiplexes in the UHF band for EUR 1 020 002, representing the licence fee.

The terrestrial analogue television stations will no longer have the right to use the frequency band they are currently using as of 17 June 2015 and they are to be replaced by digital television transmissions. By Government Decision no. 403/2013 for the approval of the Strategy regarding the digital switchover and the implementation of multimedia services on a national level, the Romanian Government has committed to complete the analogue switch off by 17 June 2015. Romania was allocated a total of five multiplexes, four in UHF and one in VHF, in DVB-T2 standard. The first multiplex in UHF (MUX 1) will be used to broadcast free-to-air, under transparent, competitive and non-discriminatory conditions, the public and private television stations that are currently broadcast in analogue terrestrial system, according to the Audiovisual Act no. 504/2002, with its further modifications and completions.

• Auction for Regional Digital Television Multiplexes, Completed, ANCOM press release, 12 February 2015
http://merlin.obs.coe.int/redirect.php?id=17519 EN

• All 5 Applications in the Auction for Awarding Digital Television Multiplexes Admitted to the Next Stage, ANCOM press release, 20 January 2015
http://merlin.obs.coe.int/redirect.php?id=17520 EN

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RU-Russian Federation

Media Council on TV propaganda

In the context of coverage on Russian TV of events in and around Ukraine, notable are two decisions by the Public Collegium on Media Complaints (PCMC), a national Media Council in Russia, adjudicated on complaints on biased TV fare.

In the first case, of the TV weekly newscast on Rossiya-1, the PCMC ruled on a complaint of its Ukrainian counterpart. In its decision of 13 February 2014, the PCMC refused to judge the programme in accordance with the standards of professional journalism, stating that it was beyond the scope of such standards. The PCMC instead found that it constituted a sheer piece of propaganda, satisfying all the criteria of this genre. It stopped short of calling the programme "hate speech", as claimed by the complainant, as it found no calls to violence.

In the second case, the PCMC reviewed a complaint in relation to a public affairs programme by the national broadcaster NTV, which reported from Perm's museum of the Gulag. The TV programme claimed, in particular, that the guides of the museum, sponsored by USAID money, promote Ukrainian fascist nationalists, "while in Donetsk People's Republic followers of Stepan Bandera [the embodiment of Ukrainian nationalism and the main historical target of Russian narrative of the events in Ukraine] bomb hospitals and shoot peaceful civilians." (In March 2015 the NGO which ran the museum filed for its closure as a result of mounting pressure to change museum's profile or quit.).

On 22 January 2015, the PCMC found in the NTV reports elements of a "synthetic" genre: a mix of straightforward propaganda and of the so-called mockumentary with "pseudodocumentality" as its basic element. Although the decision clearly found a complete departure of the broadcaster from the Russian standards of professional journalism, it also touched upon a legal aspect of the programme. The PCMC said, in particular: "National airing of materials that openly contradict the fundamentals of civil society that are fixed in the Constitution of the Russian Federation as national values shall not be considered an interior matter of a federal TV channel."

• О жалобе Комиссии по журналистской этике (Украина) на программу «Вести недели» (телеканал «Россия-1») и её ведущего Дмитрия Киселёва в связи с выходом в эфир сюжета «Украинское вече»" (On the complaint of the Commission on Journalists' Ethics, Ukraine, regarding the programme Vesti nedeli of the TV channel Rossiya-1 and its anchor-man, Dmitry Kiselyov, triggered by the airing of a story on the "Ukrainian Assembly": Decision of the Public Collegium on Media Complaints N 98, 13 February 2014)
http://merlin.obs.coe.int/redirect.php?id=17502 RU

• « О жалобе сотрудников АНО « Пермь -36» на публикацию телеканалом НТВ телесюжетов « Спонсоры из США открыли в Перми музей " националистов - мучеников " Украины » и «"437417402460417 колонна " прославляет бандеровцев на деньги США : расследование НТВ » (On the complaint of the staff workers of NGO "Perm-36" triggered by broadcasting by the NTV TV channel of stories on "US sponsors Perm museum of 'nationalist martyrs' of Ukraine" and "Paid by US money the 'fifth column' praises Band465rivtsi: investigation by NTV". Decision of the Public Collegium on Media Complaints, N 116, 22 January 2015)
http://merlin.obs.coe.int/redirect.php?id=17503 RU

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SK-Slovakia

Promotion of referendum answers do not qualify as political advertising

The Council for Broadcasting and Retransmission (hereinafter "Council") on 24 February 2015 dismissed a complaint about at story aired in the prime time news programme of the Slovak public service broadcaster. The story covered a meeting of the national committee of the Christian democratic movement "KDH", a well-established conservative political party in Slovakia.

The claimant complained about the fact that at the end of the story the spokeswoman of the political movement invited people to attend the upcoming national referendum and to vote yes to all three questions. Although the Council investigated this complaint only as to the provisions on the objectiveness and impartiality (the complaint was declared unfounded, since the story only reported on the meeting and did not analyse or further examine the outcomes), the official dismissal of this compliant does have more significant implications. By an official declaration of "no violation of legal provisions", the Council confirmed its previous press statements that the definition of political advertising does not cover TV or radio appeals to vote in a specific direction in the referendum (including ads in return for remuneration).

Political advertising is defined as any public announcement that promotes a political party, a political movement and its candidates or is in their favour during the election or referendum campaign. Political advertising on TV as such is forbidden, with the exception of TV campaigns specifically regulated by a relevant specific Act (e.g. the Act on National Elections). Practical problems however arose when a referendum of a civic nature was declared. The topic of the referendum was rights of lesbian, gay, bisexual and transgender (LGBT) people (to marriage and child adoption) and it was initiated by civic society with no previous political involvement. The Act on the referendum does not regulate or in any way offer information regarding TV campaigns before the referendum. According to the published statements of the Council, even if a political advert explicitly mentions the referendum campaign, it will not fall within the relevant definition unless any direct promotion of a specific political party or movement (officially registered with the Home Department) or candidates takes place.

This interpretation has been challenged by several activists and major commercial and public broadcasters. According to their opinion, the provision should be interpreted in accordance with its purpose, which is the prevention of the economic or any other monopolisation of public debate before elections or referendums. In the given example the term "political movement" should be understood in a less formalistic and more sociological/philosophical manner and civic movements actively contributing to the change of the legal system (as well as their natural opponents) should logically fall within the scope of the given definition.

Besides, recently the Home Department released an official statement which is in clear contradiction to the official statements of the Council. According to the Home Department, the legal rules are "clear" and since the specific legal rule (i.e. the Act on the referendum) does not allow TV campaigns, any promotion connected to a particular vote in the referendum on TV is forbidden.

• Decision of the Council for Broadcasting and Retransmission of 24 February 2015 EN

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

UA-Ukraine

Public Service Broadcasting Act amended

Numerous amendments to the Statute "On Public Television and Radio Broadcasting of Ukraine" (" Про Суспільне телебачення і радіомовлення України ") (see IRIS 2014-6/36) and four other statutes of Ukraine were adopted by the Supreme Rada on 19 March 2015 and promulgated by President Petro Poroshenko.

A provision on "national dialogue" was added to the list of tasks of the National Public Television and Radio Broadcasting Company of Ukraine (NSTU). In particular, the adopted statute excludes from the realm of public broadcasting the world service of the still-existing state broadcasting, the state-run parliamentary TV channel "Rada", as well as communal radio and television wherever established on the basis of local state broadcasters.

The statute bans the privatisation of any part or property of the newly-established NSTU. Amendments detail transfer to the NSTU of the property, facilities and equipment of the still-existing state-run broadcasting companies that will now fold to establish the material backbone of the public broadcaster.

The amendments detail some other aspects of the legal status, management and editorial oversight of the NSTU that will enable its long-expected launch, most likely this year. The amendments enter into force on the day following their official publication.

The OSCE Representative on Freedom of the Media, Dunja Mijatović, welcomed the new legislation as "one more assertive and important step made by the authorities to transform state media into a public broadcaster in Ukraine".

• Про внесення змін до деяких законів України щодо Суспільного телебачення і радіомовлення України (Statute of Ukraine "On Amending Certain Laws of Ukraine related to Public Television and Radio Broadcasting of Ukraine", 19 March 2015, № 271-VIII, officially published in Holos Ukrainy daily on 9 April 2015, N 6068)
http://merlin.obs.coe.int/redirect.php?id=17504 UK

• Press release of the OSCE Representative on Freedom of the Media, "OSCE Representative welcomes new legislation to foster media freedom in Ukraine", 7 April 2015
http://merlin.obs.coe.int/redirect.php?id=17505 EN

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Barrier established for Russian programmes

On 2 April 2015, President Petro Poroshenko of Ukraine promulgated the statute "On amendments to certain statutes of Ukraine to protect information television and radio sphere of Ukraine" (Про внесення змін до деяких законів України щодо захисту інформаційного телерадіопростору України) adopted by the Supreme Rada (Parliament) on 5 February 2015.

According to the amendments to the statute "On Cinematography" (see IRIS 1998-4/12), the "central body of the executive that enforces national policy in the field of cinematography" (currently, the Ukrainian State Film Agency) is to refuse the issue of new state permits for the exhibition and other forms of distribution, including via TV, of films in a number of additional cases. Among prohibited films are the following: films with the participation of persons included in the "List of persons who pose a threat to national security". This list is to be published and renewed on its official website by the Ministry of Culture, which shall be guided by requests of the national security agencies, as well as the National Council on Television and Radio Broadcasting, the independent regulator; films that popularise or create a positive image of the law enforcement agencies or any other agencies of the "aggressor state", Soviet state security and their agents. The aggressor state, according to the statute, as well as earlier resolutions of the Parliament, is the Russian Federation. This new norm (Article 15-1) bans distribution of such films if they were produced in any country after 1 August 1991; any films of any thematic character produced with the participation of physical and legal entities of the aggressor state since 1 January 2014.

The Agency is also obliged to annul the already issued permits to such films retroactively.

Violators of the above provisions will face administrative fines.

Amendments to the Broadcasting Statute of Ukraine (see IRIS 2006-5/34) introduced by the new statute envisage a ban on the broadcasting of audiovisual programmes that fall under the following categories: programmes produced after 1 August 1991 that popularise bodies of the aggressor state, as well as its actions that justify or legitimise the illegal occupation of Ukrainian territories, as specified in the statute "On Cinematography"; films and TV programmes (with the exception of news and current affairs) with the participation of a person included in the "List of persons who pose a threat to national security". The statute defines as "participation" the functions of an actor, artist, script author, music composer, narrator, director and/or producer of a film or TV programme.

Licence holders that violate the above provisions will face sanctions by the National Council on Television and Radio Broadcasting.

The statute comes into force on 4 June 2015.

• Про внесення змін до деяких законів України щодо захисту інформаційного телерадіопростору України (The statute of Ukraine "On amendments to certain statutes of Ukraine to protect information television and radio sphere of Ukraine", N 159-VIII, 5 February 2015. Published in Holos Ukrainy (Голос України) official daily on 4 April 2015, № 61)
http://merlin.obs.coe.int/redirect.php?id=17506 UK

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Sanctions on Russian broadcasts

In the past year, there has an array of similar rulings in the Ukrainian courts in relation to the suspension of Russian broadcasts.

First, on 20 March 2014, the national regulator, the National Council for Television and Radio Broadcasting (NCTRB), filed a lawsuit before the District Administrative Court of Kyiv against "Torsat, TOV" the distributor of several Russian channels (First Channel, RTR-Planeta, Russia-24 and Russian Channel by VGTRK, NTV-Mir). Although the distributor claimed that it had no authority to control the distribution of broadcasts on cable networks, the court ruled on 25 March requiring Torsat to temporarily suspend the retransmissions until the merits of the lawsuit have been considered. With this decision in hand, the NCTRB started to annul the licenses of cable operators that continued to retransmit suspended Russian channels.

The court decision was appealed by each of the Russian broadcasters affected and separately by the "Association of Russian Channels, TOO" before the Kyiv Appellate Administrative Court. The court of appeals confirmed the interim restrictive measure sanctioned by the lower court. It explained the need to take the

measure by "an imminent threat to violation of informational security of the state which is manifested in the dissemination of malicious misinformation that incites ethnic hatred, attempts against the rights and liberties of man, and may bring about irrevocable processes of the violation of the territorial integrity of Ukraine".

On 6 May 2014, the lower court assigned an expert institution to provide "a psychological and linguistic expertise" of the programmes concerned and then immediately suspended proceedings until its completion.

This decision was again appealed by the First Channel and the Association of Russian Channels, which demanded that the court order be reversed and the lower court consider the merits of the case without further delay. The appellate court concluded that such an expertise was "an objective necessity and indeed prevents the proceedings in the administrative case". It agreed with the suspension of deliberations in the case.

There have also been further appeals by VGTRK and NTV to the High Administrative Court of Ukraine, the highest court in the system of administrative courts, which on 1 September 2014 declared the complaints ungrounded.

On 14 November 2014, the expert opinion results were finally submitted to the lower court and, on 9 December, the District Administrative Court of Kyiv resumed the case.

In a second development, "Vertikal-TV, VAO", the Donetsk-based Ukrainian distributor of Russian national broadcaster "TV-Tsentr, OAO", was ordered by the NCTRB to suspend its retransmission until the consideration of the merits of the lawsuit. The same District Administrative Court of Kyiv affirmed the order to Vertikal and also those cable operators that had relevant contracts with it. The ruling on 17 July 2014 used similar arguments of informational security. Vertikal-TV also unsuccessfully appealed the decision. The High Administrative Court of Ukraine agreed to review the complaint, but a decision on the merits is still to be reached.

Thirdly, the regulator filed a lawsuit over the Russian 24-hour channel for business news "RBK-TV, ZAO" and its Ukrainian distributor "Agentstvo Klas, TOV". The District Administrative Court of Kyiv in its ruling on 12 September 2014 agreed that a violation of the law of Ukraine in the re-broadcasts of RBK-TV was evident in "the dissemination of misinformation". It ordered the suspension of the retransmission of RBK-TV until the consideration of the merits of the case.

In January and February of 2015 the District Administrative Court of Kyiv decided to combine the consideration of the merits of all three cases into one, thus once again extending the procedures.

Then, on 3 March 2015, it assigned an expert institution within the Ministry of Interior to provide another expertise of the programmes in the combined case and suspended deliberations in the case until its results are made available to the court. The questions put to the experts largely copied those raised in the court ruling of 6 May 2014.

The consideration of the merits has not yet taken place at the time of writing.

• Decisions of the District Administrative Court of Kyiv, case No 826/3456/14, 25 March 2014, 6 May 2014, 9 December 2014, 3 March 2015; Decisions of the Kyiv Appellate Administrative Court, case No 826/3456/14, 23 April 2014, 14 May 2014, 15 May 2014, 23 June 2014, 30 January 2015, 9 February 2015; Decisions of the High Administrative Court of Ukraine, No. K/800/28963/14, 3 June 2014; No. K/800/30033/14, 10 June 2014, No. К /800/39307/14, 1 September 2014; Decision of the District Administrative Court of Kyiv, case No 826/9266/14, 17 July 2014; Decision of the Kyiv Appeals Administrative Court, case No 826/9266/14, 30 September 2014; Decision of the High Administrative Court of Ukraine, case K/800/53787/14, 24 October 2014; Decision of the District Administrative Court of Kyiv, case No 826/12758/14, 12 September 2014, 28 January 2015.
http://merlin.obs.coe.int/redirect.php?id=17507 NN

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DE-Germany

Calling somebody "du" (the familiar form of address) in advertising for online roll-up games is not a prohibited children's advertising

Not every "du" (the familiar form of address) in an online roll-up game is automatically an anti-competitive advertising. Rather, the average age of the targeted group is important that is to be addressed with the respective advertising within an online game. The District Court of Berlin (Landgericht) found this with a judgment of 21 April 2015 (Az .: 16 O 648/13).

The Federation of German Consumer Organisations (vzbv) had filed a complaint. The lawsuit of the consumer protectionists was directed against the operator of an online role playing game. The company had promoted virtual game supplements, including the following messages: "Kauft ein im Haustiershop!", "Neues exklusives Reittier: Gepanzerte Blutschwinge - Holt es Euch jetzt!" and "Diese monströse, fleischfressende Fledermaus ist der perfekte Begleiter für einen Abstecher zum nächsten Schlachtfeld, um Tod und Zerstörung zu verbreiten". The federal association rated these messages with the familiar form of addressing users as a violation of the law against unfair competition (UWG). According to this, the prohibited direct purchase requests to children were prohibited by the statements in § 28 of the Annex to § 3 (3)

UWG (the so-called "blacklist"),which is shown by the use of the word "euch".

The District Court, however, did not share this view. First of all, the court clarified that the term "child" was to be interpreted in this context according to EU law, because the "blacklist" was based on an EU directive. Theoretically, an interpretation is possible that all minors have to be understood as "children". However, the District Court considered this interpretation to be incorrect and, interpreted only children under the age of 14 as "child" in the sense of the „blacklist“. This age group, however, was not specifically addressed by advertising in the online roll-up game. For neither the advertising product nor the context of advertising or the formulations used makes such a targeted approach. The product is a complex and challenging game, according to the district court. It was irrelevant whether children under the age of 14 were attracted by curiosity or by a "charm of the forbidden." A different interpretation must lead to the conclusion that practically every call for purchase should be prohibited, which is obviously not the purpose of the legal regulation.

The judges saw no indication for the targeted addressing of children in the familiar form of addressing users, too. The familar form of adress is now also common with adults.

Finally, there is nothing else to be deduced from the formula of the Federal Court of Justice in the "Runes of Magic" judgment (judgment of 17.07.2013, ref .: I ZR 34/12), according to which a targeted approach by children has to be assumed in the case of a combination of the second person plural and with "predominantly childish terms including common anglicisms". On the one hand, according to the Landgericht, the case is different because the game was designed for an older targeted group and sentences such as that of the "monstrous, carnivorous bat" are not suitable for children. On the other hand, the Federal Court of Justice has not already been able to ascertain with the necessary clarity how the characteristic of the "predominantly childish terms including common anglicisms" should be understood and applied in practice so that, in doubt, a ban on advertising promises is out of the question.

• *Berliner Landgericht (Az .: 16 O 648/13), 21. April 2015* (Judgment of the District Court of Berlin (Az .: 16 O 648/13), 21 April 2015)
http://merlin.obs.coe.int/redirect.php?id=18732 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

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