OBSERVATOIRE EUROPÉEN DE L'AUDIOVISUEL
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EUROPÄISCHE AUDIOVISUELLE INFORMATIONSSTELLE

IRIS
Legal Observations
of the European Audiovisual Observatory

IRIS 2015-9

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Editorial Informations

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

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INTERNATIONAL

EUROPEAN UNION

European Commission: Statement of Objections to UK broadcaster and major films studios

On 23 July 2015, the European Commission sent a Statement of Objections to Sky UK and a number of film studios, setting out the Commission's preliminary view that the parties have anti-competitive agreements in place, in violation of EU competition law. A statement of objections is a formal step in an investigation into possible violations of EU law, and while the statement does not prejudge the outcome of an investigation, it contains the Commission's preliminary position. The film studios involved include Disney, NBCUniversal, Paramount Pictures, Sony, Twentieth Century Fox and Warner Bros.

The Commission's preliminary view is that the broadcaster and film studios have "bilaterally agreed to put in place contractual restrictions that prevent Sky UK from allowing EU consumers located elsewhere to access, via satellite or online, pay-TV services available in the UK and Ireland". This follows from the Commission's investigation started in January 2014, which "identified clauses in licensing agreements between the six film studios and Sky UK which require Sky UK to block access to films through its online pay-TV services (so-called "geo-blocking") or through its satellite pay-TV services to consumers outside its licensed territory (UK and Ireland)".

The Commission considers that these clauses "restrict Sky UK's ability to accept unsolicited requests for its pay-TV services from consumers located abroad, i.e. from consumers located in Member States where Sky UK is not actively promoting or advertising its services". Thus, the Commission's preliminary conclusion is that "in the absence of convincing justification, the clauses would constitute a serious violation of EU rules that prohibit anticompetitive agreements (Article 101 of the Treaty on the Functioning of the European Union)".

The parties will now examine the statement of objections, may reply, and may request an oral hearing to present their comments before representatives of the European Commission and national competition authorities. The European Commission takes a final decision only after the parties have exercised their rights of defence.

• European Commission, "Press Release - Antitrust: Commission sends Statement of Objections on cross-border provision of pay-TV services available in UK and Ireland", 23 July 2015
http://merlin.obs.coe.int/redirect.php?id=17702 DE EN FR

• European Commission, Press Release: "Antitrust: Commission investigates restrictions affecting cross border provision of pay TV services", 13 January 2014
http://merlin.obs.coe.int/redirect.php?id=17703 DE EN FR

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European Commission: Consultation on electronic communications networks and services

On 11 September 2015, the European Commission launched its consultation on the evaluation and the review of the regulatory framework for electronic communications networks and services (ECS). The Commission also published a Background Document setting out the context of the consultation and the scope of the current regulatory framework.

The Commission states that the review of the regulatory framework for electronic communications is one of the 16 actions of the Digital Single Market Strategy adopted on 6 May 2015 (see IRIS 2015-6/3) and a key element for creating the right conditions for digital networks and services to flourish. The purpose of the consultation is to (a) gather input to evaluate the telecoms regulatory framework against the evaluation criteria according to the Better Regulation Guidelines, which includes effectiveness, efficiency, coherence, relevance and EU added value; and (b) seek views on issues that may need to be reviewed with a view to reforming the regulatory framework in light of market and technological developments, with the objective of achieving the ambitions laid out in the Digital Single Market Strategy.

Notably, the Background Document states that "following IP convergence and a demand shift from voice to data traffic, over-the-top (OTT) services such as VoIP, messaging and also social networks are increasingly seen by end users as substitutes for traditional" electronic communications networks such as voice telephony and text messages for interpersonal communications. In this regard, the document notes that such "OTT services are not subject to the same regulatory regime at this stage, as the current scope of the EU regulatory framework is centred on the definition of ECS, which requires inter alia "conveyance of signals".

The consultation asks a range of questions, including in relation to network access regulation, spectrum management and wireless connectivity, sector-specific regulation for communications services, the universal regnum and institutional set-up and governance. The consultation is open from 11 September to 7 December 2015, and views are sought from any

interested stakeholders. A summary of the results will be published in January 2016.

• European Commission, Public consultation on the evaluation and the review of the regulatory framework for electronic communications networks and services, 11 September 2015
http://merlin.obs.coe.int/redirect.php?id=17716 EN

• European Commission, Background to the Public Consultation: on the Evaluation of the Regulatory Framework for Electronic Communications and on its Review, 11 September 2015
http://merlin.obs.coe.int/redirect.php?id=17704 EN

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NATIONAL

AL-Albania

Postponement of the digital switchover deadline and lack of quorum of the media regulator

On 15 June 2015, the Audiovisual Media Authority (Autoriteti i Mediave Audiovizive - AMA) issued a press release, stating that due to various factors it was impossible for Albania to meet the deadline for the digital switchover. AMA declared that in spite of measures taken to realize the switchover, it was impossible to fully implement the strategy of switching to digital broadcasting and decided to switch off analogue broadcasting until 17 June 2015. AMA declared further, that apart from bearing financial costs the postponement of the deadline and the delays in the digital switchover process also has an influence on the Albanian state's ability to respect international commitments.

In its statement AMA highlighted various parts of the process of the digital switchover that have been slow or halted, leading to delays in the whole process. The regulator specified three particular components of the digital switchover process that are intertwined and affect the whole progress: the digitalization of terrestrial analogue networks of the public broadcaster, of national commercial operators, and of local analogue broadcasters.

More specifically, the regulator particularly referred to the slow digitalization of the two networks of the public broadcaster. After a long court dispute, the company that won the tender for building the digital networks of the public broadcaster Albanian Radio and Television (Radio Televizioni Shqiptar - RTSH) signed the contract with RTSH and the government on March 2015.

In addition, AMA mentioned as a hindering factor the failure of the Parliament to elect the seventh missing member of the regulator. The regulator also referred to the lack of quorum and limited functionality of AMA resulting from two current members' refusal to participate in meetings until the completion of a court process started by the opposition on the election of new members and the chair of AMA. As a result, AMA's ability to make decisions that require a quorum has been limited.

Next to the postponement of the digital switchover deadline, the lack of quorum also affects the regulator's ability to issue network licenses to existing commercial multiplexes that have completed the application process in spring 2015. Although the decision was expected to take place 60 days after the closing of the application deadline, AMA lacks the quorum to make decisions on licenses for commercial operators. In fact, the latest scheduled meeting of AMA of 31 July 2015 did not take place due to the lack of quorum, the regulator announced. Furthermore, the process of licensing commercial digital networks has been challenged in court by one of the commercial operators, which might lead to further delays in the overall process.

• *MBI MOSRESPEKTIMIN E AFATEVE TË PROCESIT TË DIGJITALIZIMIT* (Audiovisual Media Authority's statement on the failure to respect the deadline of the digitalization process)
http://merlin.obs.coe.int/redirect.php?id=17706 SQ

• *Për mungesë të kuorumit, nuk zhvillohet mbledhja e parashikuar e Bordit Drejtues të AMA-s* (Audiovisual Media Authority's press release of 31 July 2015)
http://merlin.obs.coe.int/redirect.php?id=17707 SQ

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The Steering Council of the public broadcaster fails to elect the new General Director after three rounds of voting

The Steering Council of the public broadcaster Albanian Radio and Television (Radio Televizioni Shqiptar - RTSH) failed to elect the new General Director of RTSH after three rounds of voting in June 2015. The voting process shortlisted two final candidates, but none of them managed to get the majority required to become the General Director. According to Article 99, paragraph 6 of the Law 97/2013 on Audiovisual Media in the Republic of Albania, the Steering Council needs at least seven votes out of eleven to appoint the new General Director.

The voting rounds took place after the application process, in which the record number of 20 applications were submitted for the position of the General Director of RTSH, including from the former General Director, current RTSH staff, and other well-known personalities and journalists. 16 candidates who met the

legal criteria were shortlisted. The Steering Council organised a public, televised hearing of their presentations on 20 June 2015, which marked the first public presentation in the history of the election procedure of RTSH directors.

After the voting process shortlisted two candidates, and neither of these two shortlisted candidates received a majority of votes, the Steering Council decided to do another shortlisting process from the total number of applicants, in order to expand the pool of candidates. This led to a deadlock in the voting process. In its following meeting on 6 August 2015, the Steering Council failed to agree on a process of election that would lead to the new General Director. Currently the process has been postponed until September 2015.

Given the deadlock of the process, there have been proposals to change the current regulation on the election of the General Director. The Deputy Chair of the Parliamentary Commission on Media and Public Information and member of the ruling majority of Parliament has made a public statement on his social media page suggesting that the law could be amended to elect the director through a simple majority of votes. According to the Deputy, this would solve the deadlock that threatens to leave the public broadcaster without a General Director.

For more than a year the public broadcaster has been managed by the deputy director. First the delay in electing members of the Steering Council, and now the delay in electing the General Director, have led to the failure of RTSH to adopt its Statute, elect new management structures, and adopt other necessary documents and guidelines.

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AT-Austria

Administrative Court exempts streaming devices from licence fee

In a ruling of 30 June 2015 (ZI. Ro 2015/15/0015), which has now been published in full, the Austrian Verwaltungsgerichtshof (Administrative Court - VwGH) decided that notebook computers that can only receive streamed content from the Internet are not broadcast reception devices and are therefore not subject to the broadcasting licence fee.

The court held that the legislator at the time of the adoption of the Bundesverfassungsgesetz vom 10. Juli 1974 über die Sicherung der Unabhängigkeit des Rundfunks (Federal Constitutional Act of 10 July 1974 on guaranteeing the independence of broadcasting - BVG-Rundfunk) had not intended that the Act should cover electronic transmissions via the Internet. This was demonstrated by a teleological reduction of Article 1(1) BVG-Rundfunk: under Article 2(16) of the Audiovisuelle Mediendienste-Gesetz (Audiovisual Media Services Act - AMD-G), television channels include not only audiovisual channels within the meaning of the BVG-Rundfunk, but also other audiovisual media services broadcast via electronic communications networks and provided for simultaneous viewing. In the VwGH's opinion, this additional provision would be superfluous if audiovisual media services broadcast via electronic communications networks (for simultaneous viewing) were included in the concept of broadcasting within the meaning of the BVG-Rundfunk. However, it was generally assumed that the legislator did not legislate unnecessarily.

Although live streaming therefore fell under the concepts of 'television broadcasting' in AVMS Directive 2010/13/EU and 'television channel' in Article 1a(2) of the ORF-Gesetz (ORF Act), it did not meet the definition of 'broadcasting' in the BVG-Rundfunk.

Broadcast reception devices were therefore only devices that used 'broadcast technologies', i.e. aerials, cable networks or satellite. The same applied to computers that could receive broadcast channels via a TV or radio card or a DVB-T module, for example. However, if a computer only had an Internet connection but no broadcast technology, it was not a broadcast reception device. Users of such devices were therefore exempt from the broadcasting licence fee.

• *Urteil des Verwaltungsgerichtshofs vom 30. Juni 2015 (ZI. Ro 2015/15/0015)* (Ruling of the Administrative Court of 30 June 2015 (ZI. Ro 2015/15/0015))
http://merlin.obs.coe.int/redirect.php?id=17733 DE

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KommAustria approves ORF's purchase of Champions League rights

In a decision of 24 June 2015 (KOA 10.300/15-028), the Austrian broadcasting regulator, KommAustria, ruled that the public service broadcaster Österreichische Rundfunk (ORF) did not pay an inflated price for the rights to broadcast the UEFA Champions League for the next three seasons.

The case followed a complaint lodged by Austrian private broadcaster Puls 4, which had accused ORF of breaching Article 31c(1) of the ORF-Gesetz (ORF Act). Under this provision, the public service broadcaster is forbidden from using licence fee income to purchase broadcast rights at excessive prices that cannot be

justified by commercial principles and in a manner that distorts competition. According to the broadcasting regulator, the case essentially revolved around determining what should be considered a reasonable price for the Champions League rights, taking legal provisions into account. It was therefore necessary to find out whether ORF would have been able to afford the rights without using licence fee revenue.

In a confidential investigation, KommAustria examined not only the bids made for the UEFA rights in the Austrian market but also the price for which ORF won the contract. On the basis of these figures, in a report for KommAustria, RTR GmbH demonstrated that ORF's bid for the UEFA rights had not distorted competition. In an economic simulation, RTR GmbH treated ORF as a private broadcaster with no licence fee income and, on this basis, calculated the advertising revenue that it could realistically expect to generate from its Champions League coverage, as well as the value of strategic effects such as viewer retention and image enhancement.

Based on this report, KommAustria decided that, even ignoring its licence fee revenue, ORF had paid an affordable price for the UEFA Champions League rights, so the purchase was commercially justified. The ORF-Gesetz had therefore not been breached.

KommAustria's decision is not yet legally binding.

• *Bescheid der KommAustria vom 24. Juni 2015* (KommAustria decision of 24 June 2015)
http://merlin.obs.coe.int/redirect.php?id=17732 DE

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CY-Cyprus

Validity of temporary TV licences extended for one more year

On 26 June 2015, Law 94(I)/2015 amending Law 7(I)/1998 on Radio and Television Organisations was published in the Official Gazette. It extends the validity of TV licences for all operating service providers for one more year. Following the switch-over to digital television on 1 July 2011, the existing licences for analogue transmission were replaced by temporary licences for digital transmission valid until 30 June 2012. Since then, due to pending amendments to the basic Law 7(I)/1998 to respond to the conditions of the new environment and to make possible the issuance of permanent licences, temporary ones have been renewed each year for one more year. Thus, the validity of the temporary TV licences is extended until 30 June 2016.

With the same amending law, temporary licences to legal entities of public law are also extended for one year, even in the case that they do not fulfil the requirements set by law. This applies to the Cyprus Telecommunications Authority (321301307΄367 Τηλεπικοινωνιών Κύπρου - CYTA), a semi-governmental telecommunication organisation that operates IPTV as well. Its capital share and structure deviates from the model set in the basic law and in 2011 a special provision was introduced into law to accommodate it and enable its operation in the digital environment.

A provision is also made in the amending law that authorises the Radio Television Authority to issue temporary licences to new applicants, also valid until the aforementioned date.

An amending draft law was sent to the House of Representatives in 2013 (see IRIS 2013-10/13), aiming at extensive changes to the basic law to, inter alia, make possible -the issuance of permanent licences. The draft law was later withdrawn by the government for further study, with no date set for the return to the House.

• *94(I)/2015* ΝΟΜΟΣ ΠΟΥ ΤΡΟΠΟΠΟΙΕΙ ΤΟΥΣ ΠΕΡΙ ΡΑΔΙΟΦΩΝΙΚΩΝ ΚΑΙ ΤΗΛΕΟΠΤΙΚΩΝ ΟΡΓΑΝΙΣΜΩΝ ΝΟΜΟΥΣ ΤΟΥ *1998* ΜΕΧΡΙ *2014* (Amending Law 94(I)/2015 of the Law 7(I)/2015 on Radio and Television Organisations)
http://merlin.obs.coe.int/redirect.php?id=17728 EL

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Large fine for M7 Group

In its monitoring report of June 2015, the Czech Telecom Office (CTU) announced that it has fined the M7 Group, which operates the DTH platforms Skylink and the CS Link, CZK 9.5 million (EUR 350,660) for failing to inform the regulator about the commencement of its activities in the country.

The Czech law requires the providers of electronic communication services to register the start of their activities with the CTU. The Group M7 is one of the major service providers of electronic communications in the Czech Republic. Its services are distributed by Astra and received by one tenth of the country's population. The company performs communication activities in the Czech Republic since 1 January 2013, but only met its reporting obligation last year on 28 May 2014.

In a statement the CTU says that the amount of the fine reflects the seriousness of the offence and the duration in which the company carried out its communication activities without authorisation. Furthermore, the long-term illegal status had a significantly negative affect on the statistical data for the years 2013 and 2014 which was dealt with not only by the CTU, but also by other government authorities, the judiciary, international organizations, and the European Union.

The M7 Group has defended itself by saying that it acted in good faith and on the basis of the belief that it was no "electronic communication service" as defined by Article 2 lit c of the European Framework Directive (2002/21/EC), since it only provided content. Therefore, it believed it was not obligated to inform the regulator about the commencement of its activities.

• *Monitorovací zpráva CTÚ červen 2015* (The Monitoring Report Bulletin of CTÚ of June 2015)
http://merlin.obs.coe.int/redirect.php?id=17729 CS

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BGH rules that framing of lawfully uploaded content does not infringe copyright

In a ruling of 9 July 2015, the Bundesgerichtshof (Federal Supreme Court - BGH) decided that, in principle, copyright is not infringed by a website operator who uses 'framing' to embed, in its own website, copyright-protected content that has been made accessible to the public on a third-party website with the copyright-holder's consent (case no. I ZR 46/12 - Die Realität II).

The plaintiff had commissioned a video entitled 'Die Realität', in which it advertised its products and for which it held the exclusive usage rights. According to the plaintiff, the video had been uploaded to the 'YouTube' video portal without its consent. The defendants, who were self-employed sales representatives of one of the plaintiff's competitors, had used the 'framing' technique to embed the video on their respective websites so users could watch it, hosted on the 'YouTube' server, in a window displayed on their websites. The plaintiff had accused them of unlawfully making the video available to the public. Its claim for damages, upheld in the first instance, had been rejected on appeal.

The BGH ruled that 'framing' itself did not constitute communication to the public within the meaning of Article 19a of the Copyright Act (UrhG). Whether the video remained accessible to the public was purely a matter for 'YouTube' in this case. Neither had an unnamed public communication right been breached if Article 15(2) UrhG was interpreted in conformity with EU directives. Before reaching its decision, the BGH had asked the Court of Justice of the European Union (CJEU) for a preliminary ruling, in which the latter had found that the 'framing' of content did not constitute communication to the public if the content had been made available on the original website with the copyright-holder's consent (CJEU, decision of 21 October 2014 - ECLI:EU:2014:2315 - see IRIS 2015-1/3). In the BGH's opinion, the CJEU's findings suggested that, conversely, 'framing' would constitute communication to the public if the copyright-holder did not give its consent. The defendants in the case at hand had therefore infringed the film's copyright if it had been uploaded to 'YouTube' without the plaintiff's permission. Since the appeal court had not ruled on this point, the BGH quashed its decision and referred the case back to it for a new ruling. The appeal court must now establish whether the uploading of the video to 'YouTube' was unlawful before it can issue a new decision.

• *Urteil vom 9. Juli 2015 - I ZR 46/12 - Die Realität II* (Judgment of the Federal Supreme Court of 9 July 2015 - I ZR 46/12 - Die Realität II)
http://merlin.obs.coe.int/redirect.php?id=17709 DE

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ZAK takes fundamental decisions on platform regulation

At its 69th meeting in Saarbrücken on 23 June 2015, the German media authorities' *Kommission für Zulassung und Aufsicht* (Commission on Licensing and Supervision - ZAK) discussed some fundamental questions concerning platform integrity.

In particular, it emphasised that the so-called red button or HbbTV signal does not need to be transmitted by platform operators because it does not constitute part of the programme signal. The HbbTV signal is used to activate the so-called red button that viewers can press on their remote control to participate in votes or select additional content offered by the broadcaster.

This decision followed a complaint lodged by ARD about the filtering out of the HbbTV signal by Kabel Deutschland Vertrieb und Service GmbH (KDG), which ARD deemed to be an infringement of the rules on signal integrity enshrined in Article 52a(3) of the Rundfunkstaatsvertrag (Inter-State Broadcasting Agreement - RStV). However, the ZAK ruled that the concept of 'programme' in Article 52a(3)(1) RStV

only covered the broadcast programme itself, but not additional services that were merely designed to complement it. It also considered that it must be possible to modify programme signals in order to make them compatible with the relevant platform standard. Furthermore, it could not be stated that the programme had been altered, or that the ARD had been discriminated against in comparison with private broadcasters, since their channels were transmitted with higher definition under a separate contractual agreement with KDG.

Another item on the ZAK's agenda concerned whether the Sky Box home screen represented an unreasonable obstruction to other channels. Sky has changed its user interface in such a way that a home screen is now displayed when the box is switched on, giving an overview of directly accessible Sky channels. A list of the other channels can only be found by pressing a button on the remote control. However, users can choose to switch back permanently to the previous system without the home screen (opt out).

Since viewers are required to complete a two-step process to access the whole range of available channels, the new system does, in fact, discriminate between Sky and other channels. In this case, however, the ZAK did not consider that the rules on fair, non-discriminatory user interfaces had been breached. This was mainly due to the fact that viewers could change the new user interface fairly easily themselves by amending their default settings. All channels were still available. In addition, the intermediate step required to access non-Sky channels was not serious enough to cause an unreasonable obstruction to those channels. It should also be remembered that Sky subscribers paid for the Sky channels and experience showed that these were the channels they mainly watched and wanted to find.

At its meeting, the ZAK also decided that the current model for the payment of feed-in fees to Kabel Deutschland Vertrieb und Service GmbH (KDG) was incompatible with the principle of equal opportunities, since it only made economic sense for providers with a strong market position and constituted an unreasonable obstruction for small and new providers. As this hindered broadcasting diversity, KDG was urged to change its feed-in model in order to create a level playing field.

- *Pressemitteilung der ZAK vom 24.06.2015 zur Übertragung des HbbTV-Signals und zur Frage der Verletzung des Prinzips der Chancengleichheit des Home Screen der Sky-Boxen* (ZAK press release of 24 June 2015 on the transmission of the HbbTV signal and the infringement of the principle of equal opportunities on the Sky Box home screen)
http://merlin.obs.coe.int/redirect.php?id=17710 DE
- *Die Pressemitteilung der ZAK vom 24.06.2015 zum Entgeltmodell der KDG* (ZAK press release of 24 June 2015 on the KDG pricing model)
http://merlin.obs.coe.int/redirect.php?id=17711 DE

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FR-France

Court of Cassation reviews application of collective agreement of the audiovisual production sector to a company

On 24 June 2015 the Court of Cassation delivered a judgment it decided to have published in the official gazette because it usefully defined the scope of application of the collective agreement applicable to the audiovisual production sector. In the case at issue, an employee who had been recruited by the French audiovisual group AB as a video technician with the status of a worker in casual employment in show business and had had 589 fixed-term contracts in the space of nine years had taken her case to the industrial tribunal, with claims concerning both the performance of the contractual relationship and its termination. The court of appeal had upheld her claims, requalifying the various successive fixed-term contracts that had been concluded as one contract of undetermined duration (permanent contract). The company AB Productions, whose registration referred to the activity of 'making, producing, distributing, exhibiting, importing, exporting, and acquiring cinematographic and television films and audiovisual works', appealed to the Court of Cassation. It claimed in particular that the court of appeal had stated that it was covered by the collective agreement applicable to the audiovisual production sector and that the employee ought to have the benefit of its provisions. Under Article L. 132-23 of the intellectual property code (Code de la Propriété Intellectuelle - CPI), an audiovisual work's producer is the natural person or legal entity who takes the initiative and responsibility for producing the work. The national collective agreement applicable to the audiovisual production sector states that an audiovisual producer is the natural person or legal entity who takes the initiative and responsibility for producing a programme comprising animated images and sounds. The company bringing the case on appeal argued that the producer of an audiovisual work was its owner, and was therefore - regardless of the actual funding - involved in all the financial, commercial and artistic responsibilities, provided the driving force, and fulfilled the roles of management, and coordination. It claimed that the court of appeal, in deciding whether the employee could claim the advantage of application of the provisions of the national collective agreement applicable to the audiovisual production sector, had assimilated the audiovisual services provided by the company AB Télévision to the 'production of a work', without considering whether the company AB Télévision had taken the initiative and responsibility for producing the works in question.

The Court of Cassation noted that the court of appeal, having recalled that the CPI defines production as the

realisation of a work, had found that the company AB Télévision could not maintain any confusion between its 'audiovisual services' activity which in 2010 generated turnover of EUR 35,117,780.31 and its 'production' activity which in the same year generated a turnover of zero, since the company's audiovisual services in fact involved production which could be analysed as the completion of a work. The court of appeal had therefore been correct in concluding that the collective agreement applicable to the audiovisual production sector did indeed apply to the employer, and that this alone legally justified its decision.

• *Cour de cassation, (ch. soc.), 24 juin 2015, Mme X c/ AB Production* (Court of Cassation (social chamber), 24 June 2015, Ms X v. AB Productions) FR

Amélie Blocman
Légipresse

Sanction for infringing copyright of a sci-fi film released thirty years ago

The regional court (tribunal de grande instance - TGI) of Paris has delivered an interesting judgment in a case of infringement of film copyright. The case at issue was brought by an American director and producer of a number of horror and science-fiction films. He made the film 'New York 1997', which was released in 1981. In it, the hero - in exchange for his freedom - has 24 hours to save the president of the United States, who is being held on Manhattan island, transformed into a prison. In April 2012 he learned of the release of a film entitled 'Lock-Out', produced by the company Europacorp and scripted in collaboration with Luc Besson; he felt that this film was very similar to his own, and therefore instigated copyright infringement proceedings against the French production company of 'Lock-Out', and its writers. In reaching its decision, the court recalled that although ideas are free to be used and there could be no protection merely for the theme of a film, it was nevertheless possible to consider whether the form of the film was not a characteristic feature, and whether its reproduction was such as to constitute infringement of copyright; this was determined by considering similarities rather than differences. The court therefore embarked on a detailed comparison of the plot and development of the films, their characters, and the sequences filmed, in order to determine the similarities between the works and deteremine whether these were sufficiently significant to be characteristic of infringement of copyright. A number of elements present in both 'New York 1997' and 'Lock-Out' could in fact be considered as stock elements in the cinema. Other elements differed, such as the pace of the film and the special effects, but this could be because of the amount of time that had passed between the releases of the two films - 1981 and 2012 - and by the evolution in both techniques and mentalities in the intervening period. The court nevertheless noted many similarities between the two science-fiction films: both presented an athletic, rebellious and cynical hero, sentenced to a period of isolated incarceration - despite his heroic past - who is given the offer of setting out to free the President of the United States or his daughter held hostage in exchange for his freedom; he manages, undetected, to get inside the place where the hostage is being held, after a flight in a glider/space shuttle, and finds there a former associate who dies; he pulls off the mission in extremis, and at the end of the film keeps the secret documents recovered in the course of the mission. The court held that the combination of these elements, which gave the film 'New York 1997' its particular appearance and originality, had been reproduced in 'Lock-Out', apart from certain scenes and specific details that were only present in the first film. The difference in the location of the action and the more modern character featured in 'Lock-Out' was not enough to differentiate the two films. The disputed film seemed to be in the same vein as 'New York 1997', and this had indeed been picked up in a number of press articles. The court therefore found that copyright had indeed been infringed. The defendants were ordered jointly and severally to pay EUR 20,000 to the director of the original film, EUR 10,000 to the scriptwriter, and EUR 50,000 to the company holding the concession rights.

• *Tribunal de grande instance, Paris, (3e ch., 4e sect.), 7 mai 2015, J. Carpenter et a. c/ SA Europacorp et a.* (Regional court of Paris (3rd chamber, 4th section), 7 May 2015, J. Carpenter and others v. Europacorp SA and others) FR

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GB-United Kingdom

Co-regulatory scheme for age-rating online music videos made permanent

Agreement has been reached by the UK Government, the British Board of Film Classification and Vevo and YouTube to make permanent a trial scheme for the rating of all music videos by artists signed to Sony Music UK, Universal Music UK and Warner Music UK. Independent music labels will also take part in a further six month phase of the project. The governing Conservative Party had included in its manifesto a commitment to introduce age rating for all music videos online. This development is part of the implementation of the commitment; the Government will also seek to extend it internationally by sharing its experience.

The scheme works through the three record labels supplying to the British Board of Film Classification

ahead of release any music video by their artists for release in the UK that they would expect to receive at least a 12 rating. The Board then classifies each video, watching it through in its entirety and assigning an age rating of 12, 15 or 18 and specific content advice (for example on strong language, sexual references or sexualised nudity) on the basis of the Board's published Classification Guidelines. The issues considered in determining the rating include drug misuse, dangerous behaviour presented as safe, bad language, sexual behaviour and nudity, and threatening behaviour and violence. On Vevo the ratings symbol appears on the video player for the first few seconds and again when the cursor is moved or when the 'I' icon is clicked. Vevo is also exploring plans to link these age ratings to additional technology to support age controls. On YouTube, a 'Partner Rating' appears on the website and the smartphone app; record labels may also 'age-gate' music videos rated 18, and the system complements YouTube's existing 'restricted' mode.

So far 132 music videos have been submitted for certification and only one was given an 18 rating (Dizzee Rascal's 'Couple of Stacks').

• Department for Culture, Media and Sport, '"Action to protect children from viewing age-inappropriate music videos online", 18 August 2015
http://merlin.obs.coe.int/redirect.php?id=17717 EN

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Information Commissioner orders Google to remove links to recent news articles in search results for an individual's name

Following the judgment of the European Court of Justicein Google Spain (Case C-131/12) (see IRIS 2014-6/3), many people sought to take advantage of the so-called "right to be forgotten". Google, in processing these claims, developed the practice of notifying the news sources of the decision to de-list that story in response to a search on an individual's name. As a result, a number of news outlets then ran stories about the de-listing which included a re-iteration of the data thatin the circumstances have been accepted as out-of-date. In this regard, an individual who had successfully requested that Google remove a link to a website, which contained a report of the individual's conviction for a minor offence, made a further request to Google that recent stories be de-listed in relation to searches on that individual's name. Google refused on the basis that the de-listing itself was a story in the public interest, which thereby outweighed the individual's data protection rights. The individual then complained to the Information Commissioner's Office (the UK's information rights authority, ICO).

The ICO confirmed that Google was a data controller for the purposes of s.1(1) Data Protection Act 1998 (DPA). As a data controller, s. 4(4) DPA required Google to comply with the 'data protection principles' set out in the DPA. The relevant provisions of the DPA are the first and third data protection principles. The first principle requires that data be processed fairly and lawfully, and the third that data must be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed. The ICO then considered the principles developed jointly by the ICO and the other European Data Protection Authorities in the light of the Google Spain judgment (see IRIS 2015-2/3). Google did not comply with the ICO's determination that the articles should be de-listed due to a failure to comply with the first and third data protection principles. Consequently the ICO issued an enforcement notice in respect of that decision, giving Google 35 days to comply (22 September 2015). Google may appeal, but if the notice stands, failure to comply is a criminal offence under s. 47 DPA.

In balancing the data subject's rights with the public's interest in knowing, the ICO highlighted the fact that the individual in question is a private individual rather than someone in public life. Further, the data concerned was 'sensitive personal data' within the meaning of s.2(2) DPA in that it concerned the commission of a criminal offence. Further, the information pertaining to the individual was not reasonably current, being in relation to a conviction from more than 10 years ago. The conviction, for a minor offence, was spent under the Rehabilitation of Offenders Act 1974. The re-publicising of the conviction was having a prejudicial effect on the individual concerned. While the ICO noted that there was journalistic activity involved, this did not necessitate having the story about de-listing arise in relation to the individual's name.

So while the removal of search engine links was a matter of public interest in itself, the identity of the complainant was not. Google's processing was contrary to the third data protection principle in that Google was processing data that was no longer relevant and was excessive in proportion to the purposes served. It was moreover unfair contrary to the first data protection principle in that the effect of the processing was having such a prejudicial effect on the individual. In its press release accompanying the enforcement notice, the ICO remarked that 'Google was right, in its original decision, to accept that search results relating to the complainant's historic conviction were no longer relevant and were having a negative impact on privacy. It is wrong of them to now refuse to remove newer links that reveal the same details and have the same negative impact'.

• Information Commissioner's Office, Enforcement Notice to Google Inc., 18 August 2015
http://merlin.obs.coe.int/redirect.php?id=17718 EN

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BBC World News breached Ofcom rules by allowing current affairs programmes to be sponsored

BBC World News (BBCWN) is a 24 hour international news and information channel owned by BBC Global News Limited (BBCGTV), a commercial subsidiary of the BBC, and funded through advertising and subscription. BBCGTV holds an Ofcom Licence. Ofcom investigated BBCWN for possible breaches of funding rules resulting from broadcasting documentaries without cost or at a nominal cost, as low as £1. Ofcom initially investigated 75 programmes broadcast on BBCWN, narrowing it to 14 programmes.

Each programme lasted around 30 minutes and was funded by not-for-profit organisations operating largely in the areas of developing-world issues and environmental concerns. Ofcom applied Section 320 (1)(b) Communications Act 2003 (2003 Act) to ensure programmes maintain impartiality, especially in matters of political and industrial controversy, as stated in Section 320 (2) of the 2003 Act.

Ofcom also applied a number of Rules in the Ofcom Code from the 2008 - 2011 editions of the code, including: (a) Rule 5.5 which provides that "due impartiality on matters of political or industrial controversy and matters relating to current public policy must be reserved on the part of any person providing a service. This may be achieved within a programme or over a series of programmes taken as a whole"; (b) Rule 9.1 that "news and current affairs programmes on television" may not be sponsored; (c) Rule 9.5 prohibiting "promotional reference to the sponsor, its name, trademark, image, activities, services or products or to any of its other references. Non promotional references are permitted only where they are editorially justified and incidental"; (d) Rule 9.19 stating, "sponsorship must be clearly identified by means of sponsorship credits. These must make clear the identity of the sponsor by reference to its name or trademark; and the association between the sponsor and the sponsor content"; and (e) Rule 9.20 that for sponsored programmes, credits must be broadcast at the beginning and/or during and/or end of programme.

Ofcom considered the 14 programmes were each in breach of certain applicable rules, depending upon date of broadcast. Some of the programmes included were "Taking the Credit" (23 October 2009); "Earth Report Burning Bush" (28 October 2009); and "Earth Report REDD Alert" (4 November 2009). All breached Rule 9.1 (October 2008 Code) as current affairs programme and sponsorship was forbidden.

Moreover, "Kill or Cure - Bittersweet" (12 January 2010) breached the rules for being a sponsored current affairs programme promoting its sponsor, International Diabetes Federation; "Stealing the Past" (26 March 2011) breached the rules for being a current affairs programme sponsored by UNESCO; "Nature Inc - Hard Rain" 1 (16 April 2011) breached the rules because it was a current affairs programme funded by UNDP and there had been insufficient clarity to show it was sponsored; and "Nature Inc 21 Gigatonne Time Bomb" (4 June 2011) breached the rules for being a current affairs programme about policy on the effect of hydrocarbons on global warming yet had a sponsor, OzonAction and United Nations Environment Programme.

• Ofcom Broadcast Bulletin, Issue number 285, 17 August 2015, p. 49
http://merlin.obs.coe.int/redirect.php?id=17705 EN

Julian Wilkins
Blue Pencil Set

IE-Ireland

Live programme featuring minor discussing 'sexting' violated broadcasting code

The compliance committee of the Broadcasting Authority of Ireland (BAI) has held that the broadcaster 98FM violated a number of broadcasting rules during a live phone-in programme on the issue of minors sending inappropriate pictures of themselves. A complaint had been made by the mother of a 13-year-old girl over an April 2014 broadcast of 98FM's phone-in programme Dublin Talks. The complainant claimed that her daughter's participation in the programme breached the broadcasting act's rules on harm and offence, and the broadcasting code's rules on harm and privacy.

The Dublin Talks programme featured a live discussion about minors sending inappropriate images of themselves via text message and social media, and unknown to her mother, a 13-year-old girl phoned in to voice her opinion. The girl was asked to confirm she was over 16, which she did.

Under section 48 of the Broadcasting Act 2009, individuals may make a complaint to the Authority that a broadcaster failed to comply with the broadcasting rules. The complainant argued that there had been a breach of Principle 3 of the Code of Programme Standards, in that broadcasters must take due care to ensure no undue offence and harm, and Principle 7 on privacy, in that consent concerning a child less than 16 years of age should be obtained from the child and from a parent. In response, the broadcaster argued that the girl was not exposed to "any harm or danger", and that "she had much to say about the topic, and was in fact, informative and enlightening". Further, the broadcaster argued that it "engaged in the

standard practices and protocol for radio talk shows", relied upon the girl's "honesty when she confirmed she was over 16", and the fast paced nature of the programme "makes it impossible to get parental consent or verification of a person's age".

The Authority unanimously upheld both grounds of complaint. First, the Authority held that the girl was placed on-air "at the same time as another older caller whose contributions were abusive", with one caller describing teenagers who engage in "sexting" as "filthy dirt bags, vermin, sick, disgusting, vile filthy people, clowns and commented that their heads should be chopped-off". The Authority considered it "unacceptable that the broadcaster had permitted a young girl to be placed in this position and to be subject to abusive language of a strong nature". Second, the Authority held that "the broadcaster took no apparent steps to seek the consent of the parents, guardians or other relevant parties before placing the complainant's daughter" on-air. In this regard, "the interests of those under-16 would supersede the editorial imperative of the programme".

Finally, given the "significant problems with the production and conduct of this programme which raise broader issues about the programme that merit further consideration", the Authority also decided to issue the broadcaster with a "Warning Notice". The Authority issues warning notices "where it considers the compliance issue to be of a serious nature", and 98FM is asked to provide "a plan for remedying compliance issues arising with a view to ensuring there is no re-occurrence of it".

• Broadcasting Authority of Ireland, Broadcasting Complain Decisions, June 2015, pp. 21-24
http://merlin.obs.coe.int/redirect.php?id=17719 EN

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Comedian's comments on religious figure did not violate broadcasting code

The executive complaints forum of the Broadcasting Authority of Ireland (BAI) has rejected a complaint against the broadcaster TV3 that a comedian's joke referring to Jesus was offensive and disrespectful to Christian beliefs. A complaint had been made over the December 2014 broadcast of the comedian Tommy Tiernan's Crooked Man programme by TV3, when the comedian stated "On St Patrick's Day, Jesus himself comes out of the desert, 'mother of fuck04046 any chance of a pint is there. The Devil is driving me demented. Question after fucking question. Pint of Guinness please Seamus, thanks. What's that? I'd love to judge the parade, I'd love to. I know fuck all about floats but I'll give it a go".

Under section 48 of the Broadcasting Act 2009, individuals may make a complaint to the Authority that a broadcaster failed to comply with the broadcasting rules. The complainant argued that the comments violated the Code of Programme Standards principles that broadcasters must have respect for community standards, and show due respect for religious views, images, practices and beliefs in programme material.

The Authority unanimously rejected the complaint. First, it was noted that "comedy content may be offensive to some", but will only breach the code when the content "was offensive in a manner that would infringe general community standards and which could be considered unduly offensive". Second, the Authority had regard to the fact that (a) the programme was broadcast after 10pm; (b) the comedian regularly uses "coarse and offensive language" addressing topics such as religion; and (c) the "humour was not aimed at the figure of Jesus, but rather at the attitudes of Irish people to alcohol". The Authority concluded that the "item would not offend General Community Standards or cause undue offence but was instead an exaggerated comparison used for comic effect".

• Broadcasting Authority of Ireland, Broadcasting Complaint Decisions, June 2015, pp. 47-49
http://merlin.obs.coe.int/redirect.php?id=17678 EN

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Ryanair ordered to disclose fuel policy and "safety-incidents" to Channel 4 in defamation case

On 29 July 2015, the Court of Appeal ordered the airline company Ryanair to disclose its fuel policy between 2010 and 2012 to the broadcaster Channel Four Television Corporation, in a pre-trial hearing in Ryanair's defamation proceedings against the broadcaster. The case arose following an August 2013 edition of Channel 4's investigative programme Dispatches, which "was to the effect Ryanair had endangered passenger safety by operating a low-fuel policy and by pressuring its pilots to take as little fuel as possible". The airline issued defamation proceedings over the broadcast, and the broadcaster decided to defend the case on the basis that the "allegations were true", the defence of "honest opinion", and of the Defamation Act 2009's defence of "fair and reasonable publication on a matter of public interest".

The Court of Appeal's ruling, delivered by Mr. Justice Gerard Hogan, partly upheld an earlier High Court ruling, which had ruled that Ryanair should disclose its fuel policy from 2009 onwards. The Court of Appeal ruled that this was "too broad", and limited disclosure

to the period of 2010 to 2012. In addition, Ryanair was ordered to disclose "safety-related incidents" in the period 2010 to 2012.

Finally, the Court of Appeal also order the broadcaster to disclose to Ryanair "documents related to editorial decisions", and "documents related to research and investigations carried out by the defendants for the programme". In this regard, the Court ruled that while "journalists cannot normally be compelled to reveal their sources", that "protection was not absolute". Therefore, if the broadcaster wished to invoke protection of sources, it could set out the factual basis for that in an affidavit of discovery later.

Following this ruling, and disclosure of documents by both parties, the full defamation proceedings will take.

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IT-Italy

AGCOM's guidelines on the quantification of fines

On 16 July 2015, the Italian Communications Authority (Autorità per le garanzie nelle comunicazioni - AGCOM) issued new Guidelines on quantification of AGCOM's administrative pecuniary sanctions.

AGCOM's Resolution no. 410/14/CONS set forth procedural rules on fines and commitments, as a consequence of the ascertained infringements. In the preamble of the same Resolution, AGCOM pointed out that there is a consolidated practice related to the infliction of sanctions, and the adoption of an official set of Guidelines to regulate the matter is to be considered a best practice. This is because in this way (i) AGCOM will be coherent and balanced when it will issue the fines; and (ii) the parties involved shall be able to verify the adequacy of the sanction, whose main purpose is to stop the unlawful conduct and to prevent its repetition.

The Guidelines set forth the criteria which AGCOM will follow in the application of Section 11 of Law no. 689 of 24 November 1981, according to which the Authority shall determine the amount of the fine between a minimum and maximum, taking into account the following circumstances: (a) the gravity of the infringement (duration, seriousness of the damages triggered, if the infringers gained an unlawful profit, etc.); (b) the infringer's actions to eliminate or diminish the consequences of infringement (if the infringer cooperated with AGCOM, or adopted measures aimed at reducing the effects of the infringement, etc.); (c) infringer's personality (if the infringer is a first-time offender, if the infringement is the result of a strategy, if the company tried to hide the infringement, etc.); and (d), the infringer's economic conditions (the turnover showed in the last financial statement approved before the start of the proceeding).

Based on such criteria, the minimum sanction could be applied solely in cases in which the infringement is not serious and the party tries to eliminate negative consequences and cooperates during the phase of collection of evidence.

In addition, according to the Guidelines, a unique sanction may be inflicted when multiple infringements are triggered by a single act of unlawful conduct, with a single aim, which takes place within a specific period in which it has completed its effects (so called juridical cumulus).

- *Delibera n. 265/15/CONS, Linee Guida sulla quantificazione delle sanzioni amministrative pecuniarie irrorate dall'Autorità per le Garanzie nelle Comunicazioni* (Resolution No. 265/15/CONS, Guidelines on quantification of administrative pecuniary sanctions imposed by the Italian Communications Authority)
http://merlin.obs.coe.int/redirect.php?id=17720 IT

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NL-Netherlands

Ex parte injunction granted against video-content BitTorrent release group

In a series of three ex parte decisions, the Dutch District Courts of Noord-Holland and Limburg have granted injunctions against three uploaders of copyright-protected works via the BitTorrent network. Stichting BREIN (Bescherming Rechten Entertainment Industrie Nederland) (Protection of Dutch Entertainment Industry Rights), a foundation that seeks to protect the rights of the Dutch entertainment industry, filed a suit against the 'Dutch Release Team' in ex parte proceedings. The proceedings were successful, as both district courts granted injunctions against the three leaders of the organisation: anonymised as 'V', 'D' and 'A'.

The Dutch Release Team is the Netherlands' most well-known 'release group' that illegally makes copyright-protected video content available online via the BitTorrent network. As its name implies, the release group's target audience is the Dutch market, with the films and series it uploads being subtitled in Dutch.

Also worth noting is the role of the website HetMultimediaCafe.nl. This website was a forum that - until recently - was used by the members of the Dutch Release Team to review movies and series uploaded by the release group on other BitTorrent websites. In an attempt to stay outside of copyright infringement's boundaries, thus hoping to guarantee the continuity of the website, no direct links to the actual torrent files were posted on the forum. However, each review did contain a sufficiently specific title to immediately find the torrent file in question upon entering that title in a search engine.

Interim relief judges of the District Courts of Noord-Holland (10 and 15 April 2015) and Limburg (13 April 2015) granted an injunction against leaders V, A and D respectively. In all three cases, the judge did so in ex parte proceedings, as Stichting BREIN argued it had a pressing interest in obtaining an expedient injunction against the Dutch Release Team. V, D and A were all ordered to cease and desist all copyright infringement on penalty of EUR 2,000 per day or per upload, provided that the penalty was capped at EUR 50,000. That order included stopping the 'services' provided on HetMultimediaCafe.nl.

In the meantime, all three leaders have reached a settlement with Stichting BREIN. Not only did V, D and A agree to remove the torrents that were already uploaded, they also paid a settlement fee, disclosed information about other members of the release group, and signed a cease and desist declaration.

- *Beschikking voorzieningenrechter Rechtbank Noord-Holland 10 april 2015, IEF 1516, Stichting BREIN v. Dutch Release Team V* (Decision of the interim relief judge of the District Court of Noord-Holland 10 April 2015, IEF1516, Stichting BREIN v. Dutch Release Team V)
http://merlin.obs.coe.int/redirect.php?id=17722 NL
- *Beschikking voorzieningenrechter Rechtbank Limburg 13 april 2015, IEF15168, Stichting BREIN v. Dutch Release Team A* (Decision of the interim relief judge of the District Court of Limburg 13 April 2015, IEF15168, Stichting BREIN v. Dutch Release Team A)
http://merlin.obs.coe.int/redirect.php?id=17723 NL
- *Beschikking voorzieningenrechter Rechtbank Noord-Holland 15 april 2015, IEF 1516, Stichting BREIN v. Dutch Release Team D* (Decision of the interim relief judge of the District Court of Noord-Holland 15 April 2015, IEF1516, Stichting BREIN v. Dutch Release Team D)
http://merlin.obs.coe.int/redirect.php?id=17724 NL

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Dutch Media Authority clarifies product placement rules in new regulation

On 1 August 2015, the Regulation on product placement for commercial media services 2014 of the Dutch Media Authority (Commissariaat voor de Media - CvdM) entered into force. This Regulation clarifies the rules under the Dutch Media Act 2008 (Mediawet), in particular specifying when and under which circumstances product placement is allowed. In addition, the Regulation points out the main differences between product placement and sponsoring.

The Dutch Media Act and the product placement Regulation implement the European Audiovisual Media Services Directive (AVMS Directive) of 2010. Similar to this Directive, the underlying objective of the Dutch product placement rules is to protect the consumer. Protection of the editorial independence of the broadcaster and protection of culture in general are also goals of these rules.

Product placement is defined in the Regulation as the inclusion of or reference to a product, a service or the trade mark thereof so that it is featured within a programme, in return for payment or for similar consideration. The non-financial contribution to a programme - for example in the form of lending products - cannot be qualified as product placement on the condition that the product is of minor significance in relation to the scope of the programme and, secondly, if the product is not specifically featured within the programme.

Notably, product placement is prohibited for public broadcasting services. The Regulation explains that for commercial broadcasting services, product placement is only allowed for films, series, sports programmes and other programmes whose main purpose it is to entertain - unless these programmes are exclusively intended for children under 12 years. Furthermore, placement of products is permissible only under the condition that the audience is informed of the existence of product placement. Programmes may never contain product placement of cigarettes or specific medicinal products.

Like the distinction made in the AVMS Directive, product placement has to be seen separate from the similar concept of sponsorship. Sponsorship is the financial contribution or acquisition of a programme to promote a specific name, trade mark, or product. The main difference between product placement and sponsoring is that product placement has to be integrated in the programme in a natural manner, while sponsored products or services are not allowed to be incorporated in the storyline. Sponsoring is allowed in public broadcasting services under strict conditions.

- *Het Commissariaat voor de Media, Regeling van het Commissariaat voor de Media van 18 november 2014 houdende regels omtrent productplaatsing commerciële media-instellingen 2014 (Regeling productplaatsing commerciële media-instellingen 2014), 18 November 2014* (Dutch Media Authority, Regulation on product placement for commercial media services 2014, 18 November 2014)
http://merlin.obs.coe.int/redirect.php?id=17725 NL
- *Het Commissariaat voor de Media, Nieuws: Regeling Productplaatsing treedt in werking, 31 juli 2015* (Dutch Media Authority, News: Product placement regulation enters into force, 31 July 2015)
http://merlin.obs.coe.int/redirect.php?id=17726 NL

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PT-Portugal

Self-regulatory agreement signed to protect copyright in the digital environment

On 30 July 2015, the Secretary of State for Culture announced that a Memorandum of Understanding had been signed by a number of organisations, in order to create a self-regulatory agreement on the protection of copyright in the digital environment. These organisations included two public bodies - the ministry of culture's Inspector General of Cultural Activities (Inspecção Geral das Actividades Culturais) and the Consumer Directorate General (Direção-Geral do Consumidor) - and a number of other organisations, including the telecommunication operators association (Associação dos Operadores de Telecomunicações), an anti-piracy association (Movimento Cívico Anti Pirataria na Internet), an advertising association (Associação Portuguesa das Agências de Publicidade, Comunicação e Marketing), and the association responsible for the top-level domain ".pt" (Associação dns.pt).

The 11-page memorandum sets out a procedure for the blocking of websites that may be violating copyright law. This procedure includes the signatories notifying the anti-piracy association MAPINET of websites allegedly violating copyright law, which may then forward a complaint to the ministry's Inspector General of Cultural Activities (IGAC). IGAC may then request internet service providers to block access to these websites.

Following a complaint to the Commission on Access to Administrative Documents (Comissão de Acesso aos Documentos Administrativos), the memorandum has now been published. The agreement took effect in August 2015.

• *Secretário de Estado da Cultura, Acordo de autorregulação protege direitos de autor em ambiente digital, 2015-07-30* (Secretary of State for Culture, Self-regulation agreement protects copyright in the digital environment, 30 July 2015)
http://merlin.obs.coe.int/redirect.php?id=17731 PT

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RU-Russian Federation

Government extends plan for digital switch-over

On 29 August 2015, Prime Minister Dmitry Medvedev signed an Ordnance of the Government of the Russian Federation that approved the amended Federal Target Programme (FTP) "Development of TV and radio broadcasting in the Russian Federation in 2009-2015" (see IRIS 2010-4/39).

By the Ordnance, the Government now extends a complete digital terrestrial broadcasting switchover in Russia until the end of 2018. The FTP now states that, by early 2015, 85.3 per cent of the population had the ability to watch digital terrestrial must-carry TV channels, while 49 per cent could watch 20 free-access digital TV channels.

The cost of the implementation of the Federal Target Programme for the federal budget has increased from RUB 76,366 million to RUB 98,554 million , and the total evaluated cost of the programme from RUB 122,445 million to RUB 164,794 million (approximately EUR 2,188,622).

The switch-off will take place when 98.4 per cent of the population have the ability to receive digital terrestrial must-carry TV and radio channels.

• "О внесении изменений в постановление Правительства Российской Федерации от *3* декабря *2009* г. *№ 985"* (Ordnance of the Government of the Russian Federation of 29 August 2015, No. 911 "On amending Ordnance of the Government of the Russian Federation of 3 December 2009, No. 985")
http://merlin.obs.coe.int/redirect.php?id=17708 RU

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SE-Sweden

Public service broadcasting reports published

The Swedish Broadcasting Authority (Myndigheten för radio och tv) has published two reports on public service radio and television. The Broadcasting Authority was assigned by the Government to study and report on two issues: (i) whether the public service companies influence the competition in the media market; and (ii) the system of impact assessment as defined

by the EU Commission in its Communication on the application of State aid rules to public service broadcasting (2009/C 257/01), which provides for a notification and assessment procedure for new services introduced in the market by public service broadcasters, notably on the competition aspects of such new services.

The study of the Broadcasting Authority was a follow-up of the last review of the licence terms for public service radio and television. After having consulted with industry representatives and commercial competitors in the media market, the Authority came to the conclusion that the public service broadcasters affect the market both positively and negatively. In an overall assessment, the Authority concluded that the public service companies do not prevent competing stakeholders from introducing and developing their media services.

With regard to the impact assessment that Sweden, as well as all other EU member states, has to comply with, the Broadcasting Authority has suggested that the assessment procedure could be improved to become more effective. The Authority suggests that other companies on the market can be notified of a new service introduced by a public service broadcaster, and that such notification be handled by the Swedish Broadcasting Commission (a department of the Authority that investigates possible breaches of the radio and television act and the broadcasting licences issued by the Government or the Authority). To avoid the impact assessment procedure being in conflict with the right to freedom of expression and the editorial independence of the public service broadcasters, the Authority has suggested that it is up to the public service broadcaster to eventually notify a service or not, regardless of the outcome of the Swedish Broadcasting Commission's decision on the matter.

• *Myndigheten för radio och tv, Utveckling och påverkan i allmänhetens tjänst, 2015-09-01 (Swedish Broadcasting Authority, Development and Impact of the Public Service, 1 September 2015)* (Swedish Broadcasting Authority, Development and Impact of the Public Service, 1 September 2015)
http://merlin.obs.coe.int/redirect.php?id=17727 SV

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SK-Slovakia

New Copyright Act adopted

On 5 August 2015, the new Copyright Act No. 185/2015 Coll. was published in the official collection of law and will come into effect on 1 January 2016.

The key motive for producing a new Copyright Act was the essential changes relating to the exploitation of protected works on the internet that developed in the last decade. The progress of the digital environment caused uncertainty on the side of rights holders as well as on the side of users and industry. The preceding Copyright Act did not meet the requirements of the so-called internet economy as well as other sectors such as education, culture, and the public sector (e.g. open source education, repetitive exploitation of the protected data from the public sector or the exploitation of protected works by galleries, museums, libraries or archives). The aim of the legislators was to introduce legal norms that will secure a balance between the protection of the rights holders' and users' interests as well as legitimate access to protected works. The new Act shall also strengthen the enforcement of granted rights as well as improve the public control over the collective management organisations.

The new Act fully transposes Directive 2001/29/EC and recognizes the latest case law of the Court of Justice of the European Union (CJEU). For instance, the exception from the right to authorize or prohibit any reproduction of the protected work for a natural person's private use now explicitly states that the reproduction may be produced only from a legal source. A new exception from the reproduction right with respect to the caricature, parody or pastiche was introduced. The exception of the usage for the benefit of people with disability was complemented with new provisions on audio commentary, closed captions or audio books. The exception with regard to the incidental usage of a work or other subject-matter in non-related material was elaborated, so it clearly covers situations like incidental shots at running TV screens or a car with the radio turned on during a non-related audiovisual production. New exceptions for the purpose of the maintenance, or the demonstration of the functionality, or features of the technological equipment, were also introduced.

The new law - for the first time in the Slovak legal system - explicitly distinguishes between audiovisual works and so-called "used audiovisual works". The used audiovisual works further differ from pre-existent works that were created regardless of the audiovisual work (e.g. a book or piece of music which was not primarily written or composed for a film adaptation) and works created explicitly for given audiovisual work (e.g. script, dialogues, music composed exclusively for a given audiovisual work). The notion of the rights to the audiovisual works is aligned with the continental conception of the "droit d´auteur", where the author of an audiovisual work is always a natural person and the exercise of these rights may be transferred from the authors to the producer.

The new Act also introduced an extended collective license agreement which covers all works or other protected subject-matters, including the ones of rights holders which are not represented by the collective

management society, unless they explicitly ruled out this possibility (opt-out regime). Last but not least, to respond to the ongoing development of the digital environment, the new law introduced a multi-territorial license agreement for the online use of music.

• *ZÁKON z 1. júla 2015 Autorský zákon, 185/2015 Z. z.* (Copyright Act No. 185/2015 Coll.)
http://merlin.obs.coe.int/redirect.php?id=17730 SK

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Agenda

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