OBSERVATOIRE EUROPÉEN DE L'AUDIOVISUEL
EUROPEAN AUDIOVISUAL OBSERVATORY
EUROPÄISCHE AUDIOVISUELLE INFORMATIONSSTELLE

IRIS
Legal Observations
of the European Audiovisual Observatory

IRIS 2016-2

INTERNATIONAL

NATIONAL

OBSERVATOIRE EUROPÉEN DE L'AUDIOVISUEL
EUROPEAN AUDIOVISUAL OBSERVATORY
EUROPÄISCHE AUDIOVISUELLE INFORMATIONSSTELLE

IRIS
Legal Observations
of the European Audiovisual Observatory

Editorial Informations

Publisher:
European Audiovisual Observatory 76, allée de la Robertsau F-67000 STRASBOURG
Tél. : +33 (0) 3 90 21 60 00 Fax : +33 (0) 3 90 21 60 19
E-mail: obs@obs.coe.int www.obs.coe.int
Comments and Contributions to:
iris@obs.coe.int
Executive Director:
Susanne Nikoltchev

Documentation/Press Contact:
Alison Hindhaugh
Tel.: +33 (0)3 90 21 60 10
E-mail: alison.hindhaugh@coe.int
Translations:
Snezana Jacevski, European Audiovisual Observatory (co-ordination) • Michael Finn • Katherine Parsons • Marco Polo Sarl • Katharina Burger • Nathalie Sturlèse • Brigitte Auel • Sonja Schmidt • Anne-Lise Weidmann • Martine Müler-Lombard • Elena Sotirova • Erwin Rohwer • Roland Schmid
Corrections:
Snezana Jacevski, European Audiovisual Observatory (co-ordination) • Sophie Valais et Francisco Javier Cabrera Blázquez • Barbara Grokenberger • Aurélie Courtinat • Lucy Turner • Ronan Fahy
Distribution:
Markus Booms, European Audiovisual Observatory
Tel.:
+33 (0)3 90 21 60 06
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

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

INTERNATIONAL

COUNCIL OF EUROPE

European Court of Human Rights: Cengiz and others v. Turkey

On 1 December 2015, the European Court of Human Rights (ECtHR) delivered a judgment dealing with a blocking order in Turkey of the popular video-sharing website YouTube. The Court found that the blocking of access to YouTube amounted to a violation of the right to receive and impart information under Article 10 of the European Convention of Human Rights (ECHR). The Court observed that YouTube, as an Internet platform, enabled information on political and social matters to be broadcast and citizen journalism to emerge. The Court found that there was no provision in the Turkish law allowing domestic courts to impose the blanket blocking order of YouTube at issue.

Pursuant to a law regulating Internet publications and combating Internet offences, in May 2008 the Ankara Criminal Court of First Instance ordered the blocking of access to YouTube on the ground that the website contained some ten videos which it was claimed were insulting to the memory of Atatürk. Arguing that this restriction interfered with their right to freedom to receive or impart information and ideas, Serkan Cengiz, Yaman Akdeniz and Kerem Altıparmak challenged the decision and requested, in their capacity as users, that the measure be lifted. They also alleged that the measure had an impact on their professional academic activities, as all three occupied academic positions in different universities, where they teach law. The Ankara Criminal Court of First Instance rejected their request on the ground that the blocking order had been imposed in accordance with the law and that the applicants did not have standing to challenge the blocking order. In total the YouTube website was blocked for a period of two and a half years. On 30 October 2010, the blocking order was lifted by the public prosecutor's office following a request from the company owning copyright of the videos in question.

The three law professors lodged an application before the Strasbourg Court, mainly relying on Article 10 ECHR. As active users, they complained about the impact of the blocking order on their right to freedom to receive and impart information and ideas. Relying on Article 46 (concerning the binding force and execution of judgments), they also requested that the Court indicate to the Turkish Government which general measures could be taken to put an end to the situation complained about.

The Court first considered it necessary to determine whether the applicants had victim status as required by the Convention. It noted that although the applicants were not directly affected by the blocking order, they had actively used YouTube for professional purposes, particularly downloading or accessing videos used in their academic work. It also observed that YouTube was an important source of communication and that the blocking order precluded access to specific information which it was not possible to access by other means. Moreover, the platform permitted the emergence of citizen journalism which could impart political information not conveyed by traditional media. The Court accordingly accepted that in the present case YouTube had been an important means by which Cengiz, Akdeniz and Altıparmak could exercise their right to receive and impart information or ideas and that they could legitimately claim to have been affected by the blocking order even though they had not been directly targeted by it. In the Court's view, the blocking order at issue could be regarded as an interference by a public authority with the exercise of the rights guaranteed by Article 10 ECHR. The Court went on to observe that the blocking order had been imposed under Section 8(1) of Law no. 5651, while in its judgment in the case of Ahmet Yıldırım v. Turkey (see IRIS 2013-2/1) concerning a blocking order of Google Sites, it had already found that this law did not authorise the blocking of access to an entire Internet site on account of one element of its content. Under Section 8(1), a blocking order could only be imposed on a specific publication, hence there was no legislative provision allowing the Turkish judicial authorities to impose a blanket blocking order on access to YouTube. Therefore the interference with the applicants' rights had not satisfied the condition of lawfulness required by Article 10 § 2 ECHR. The European Court also found that Cengiz, Akdeniz and Altıparmak had not enjoyed a sufficient degree of protection. Finally the Court did not consider it necessary to rule on Article 46 of the Convention, as it observed that Law no. 5651 has been amended and now allowed, under certain conditions, blocking orders to be imposed on an entire website. However, as the new Act was not of concrete application in the present case, the Court did not consider it necessary to elaborate and rule on this aspect of the case.

• *Arrêt de la Cour européenne des droits de l'homme rendu dans l'affaire Cengiz et autres c. Turquie, requêtes nos 48226/10 et 14027/11 du 1er décembre 2015* (Judgment by the European Court of Human Rights, case of Cengiz and others v. Turkey, Application nos. 48226/10 and 14027/11 of 1 December 2015)
http://merlin.obs.coe.int/redirect.php?id=17826 FR

Dirk Voorhoof
Ghent University (Belgium) & Copenhagen University (Denmark) & Member of the Flemish Regulator for the Media (VRM) and of the European Centre for Press and Media Freedom (ECPMF)

OBSERVATOIRE EUROPÉEN DE L'AUDIOVISUEL
EUROPEAN AUDIOVISUAL OBSERVATORY
EUROPÄISCHE AUDIOVISUELLE INFORMATIONSSTELLE

IRIS
Legal Observations
of the European Audiovisual Observatory

EUROPEAN UNION

Court of Justice of the European Union: Advocate General's opinion on private copying compensation and general state budgets

On 19 January 2016, Advocate General Szpunar delivered his opinion in Case C-470/14, EGEDA v. Administración del Estado, which was a reference from the Spanish Supreme Court seeking a preliminary ruling on questions relating to Article 5(2)(b) of Directive 2001/29 (the "InfoSoc Directive").

Article 5(2)(b) provides that member states may provide for exceptions or limitations to the reproduction right "in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation".

The first question was whether a scheme for fair compensation for private copying is compatible with Article 5(2)(b) of the Directive, where the scheme, while taking as a basis an estimate of the harm actually caused, is financed from the General State Budget, as it thus not possible to ensure that the cost of that compensation is borne by the users of private copies. The second question was whether, if the first question is answered in the affirmative, the scheme is compatible with Article 5(2)(b) where the total amount allocated by the General State Budget to fair compensation for private copying, although calculated on the basis of the harm actually caused, has to be set within the budgetary limits established for each financial year.

On the first question, the Advocate General considered that the financing of the compensation by the general budget of the State is not contrary to the principles established by the Court in the Padawan case (see IRIS 2010-10/7). This was because it does not expand the scope of the levy to all taxpayers, but is a funding system based on a different logic. There is no link between the taxes paid by taxpayers, including those who, like corporations, cannot benefit from the exception for private copying, on the one hand, and the financing of compensation under this exception from the general budget of the State, on the other.

In relation to the second question, the Advocate General held that compensation cannot a priori be capped at a level that does not sufficiently take into account the amount of damage suffered by the rights holders, as estimated according to the rules applicable in the internal law of the Member State concerned. As such, Article 5(2)(b) of the Directive must be interpreted as providing that the amount of compensation referred to therein is fixed in the established budget limits a priori for each financial year and is taken into account for the purposes of this fixation, the estimated amount of damage suffered by the rights holders.

The Advocate General's opinion is not binding on the EU Court of Justice, and the Court will now consider the opinion, in addition to the parties' submissions, and deliver its judgment at a later date.

• *Conclusions de l'avocat général Szpunar, affaire C-470/14 «* EGEDA c. Administración del Estado *», 19 janvier 2016* (Opinion of Advocate General Szpunar, Case C-470/14 EGEDA v. Administración del Estado, 19 January 2016)
http://merlin.obs.coe.int/redirect.php?id=17855 FR

Ronan Ó Fathaigh
Institute for Information Law (IViR), University of Amsterdam

European Commission: Communication on a modern European copyright framework

On 9 December 2015, the European Commission published a new Communication entitled "Towards a modern, more European copyright framework". The purpose of the 12-page document is to set out how the Commission intends to achieve the modernisation of EU copyright rules, and a more European copyright framework, over the short and long term. Building upon the Commission's May 2015 Communication on its Digital Single Market Strategy (see IRIS 2015-6/3), this new communication includes a number of specific proposals.

First, in order to ensure wider access to content across the European Union, the Commission has published a draft Regulation on the "portability" of online content services. The regulation is designed to ensure that users who have subscribed to or acquired content in their home country can access it when they are temporarily in another Member State. In addition, the Commission is considering other legislative proposals for spring 2016, including: (a) enhancing cross-border distribution of television and radio programmes online in the light of the results of the review of the Satellite and Cable Directive (see IRIS 2015-8/4); (b) supporting rights holders and distributors to reach agreement on licences that allow for cross-border access to content, including catering for cross-border requests from other Member States; and (c) making it easier to digitise out-of-commerce works and make them available, including across the EU.

Second, in relation to copyright exceptions in EU law, the Commission will also consider proposing additional legislation in spring 2016, including: (a) providing clarity on the scope of the EU exception for "illustration for teaching", and its application to digital uses and to online learning; (b) providing a clear space for preservation by cultural heritage institutions, reflecting the use of digital technologies for preservation

and the needs of born-digital and digitised works; (c) supporting remote consultation, in closed electronic networks, of works held in research and academic libraries and other relevant institutions, for research and private study; (d) clarifying the current EU exception permitting the use of works that were made to be permanently located in the public space (the "panorama exception"), to take into account new dissemination channels. Moreover, the Commission will also assess the need for action to ensure that, when Member States impose levies for private copying and reprography to compensate right holders, their different systems work well in the single market and do not raise barriers to the free movement of goods and services.

Third, to ensure a "well-functioning marketplace for copyright", the Commission will examine whether action is needed on the definition of the rights of "communication to the public" and of "making available". It will also consider whether any action specific to news aggregators is needed, including intervening on rights. Moreover, the Commission will also consider whether solutions at EU level are required to increase legal certainty, transparency and balance in the system that governs the remuneration of authors and performers in the EU, taking national competences into account.

Finally, in relation to the legal framework for the enforcement of intellectual property rights, including copyright, the Commission will assess options and consider by autumn 2016 the need to amend the legal framework focusing on commercial-scale infringements, inter alia to clarify, as appropriate, the rules for identifying infringers, the application of provisional and precautionary measures and injunctions and their cross-border effect, and the calculation and allocation of damages and legal costs.

• European Commission, Communication from the Commission to the European parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Towards a modern, more European copyright framework, 9 December 2015, COM(2015) 626 Final
http://merlin.obs.coe.int/redirect.php?id=17853 DE EN FR CS DA EL ES ET FI HU IT LT LV MT NL PL PT SK SL SV HR

• European Commission, Proposal for a Regulation of the European Parliament and of the Council on ensuring the cross-border portability of online content services in the internal market, 9 December 2015, COM92015) 627 Final
http://merlin.obs.coe.int/redirect.php?id=17854 EN

Ronan Ó Fathaigh
Institute for Information Law (IViR), University of Amsterdam

NATIONAL

BE-Belgium

New guidelines on the portrayal of minors in the media

The Code of Journalistic Ethics, drafted by the Flemish Council of Journalism, contains 27 articles. Particular articles are accompanied by a guideline which provides more information on the way a certain principle must be interpreted and implemented by the press. In December 2015, a new guideline was adopted to clarify Article 15, which states that journalists must use certain methods to gather or process information, photos, images and documents, and that journalists must not abuse their capacity, especially vis-à-vis vulnerable individuals such as minors, and victims of crime, disasters or accidents or their family. Minors are often portrayed in the media, generally as a group in society or individually, because a child has been a victim of an accident or has gained popularity because of his or her participation in a talent show. The new guidelines put forward a number of principles which journalists must take into account (a) when they give a minor the opportunity to speak in an article or programme; (b) when a minor is portrayed in a recognisable manner; or (c) when information about minors from archives is used. The guidelines were created after consultation with other European press councils (members of the Alliance of Independent Press Councils of Europe) and the Flemish Children's Rights Commissioner.

The guidelines emphasise that journalists must keep the minor's best interests in mind, and must be attentive to both the minor's right to protection and the minor's right to freedom of expression. In their considerations, journalists must take into account the following elements: the context, nature and sensitivity of the subject, the emotional involvement of the minor with the subject, and the maturity and level of judgment of the minor. When a minor is given the opportunity to speak, the journalist must inform him or her about the intention of the report, in an (age-) appropriate manner. The guidelines very clearly integrate the notion of "consent". The journalist must in principle ask consent from the parents or guardian, or a third party who temporarily or occasionally bears responsibility of the minor. Consent is necessary when it comes to emotionally charged topics, controversial topics or longer features or reports in which the minor is a recurring thread. The more controversial or emotional, the more a journalist must consider whether it is appropriate to contact the parents or guardian directly. The guideline further states that in exceptional cases there may be a demonstrable reason not

to obtain consent, and further that consent is not necessary in cases of everyday and non-controversial subjects. In any case, the journalist must consider whether or not the minor should be portrayed anonymously or under another name.

With regard to other situations where a minor is portrayed in a recognisable manner, consent must in principle be obtained from the minor him- or herself, and from the parents or guardian, or a third party who temporarily or occasionally bears responsibility of the minor. However, the guidelines enumerate a number of circumstances where consent is not necessary, specifically for general images in public spaces, for recognisable images which are disseminated by official bodies, or when a significant public interest outweighs the interests of the minor.

For events that are accessible by the press or where the press is invited, implicit consent of the persons present is assumed, but when a minor or the person who is responsible for the minor at that time objects to the making of recognisable images, the journalist must take this into account. Again, it is emphasised that it must always be considered whether it should be ensured that the minor is unrecognisable. In exceptional circumstances, where a minor consciously takes up a public role, the threshold to present the minor in a recognisable manner is lower.

The guideline also addresses situations where previously published interviews or images of minors are published again. In such cases, the journalist must take into account the fact that the context of a minor rapidly evolves, on the one hand, and the original context of the publication, on the other hand. It may be recommended not to publish older material again or to ask for permission for re-publication.

Aside from these three situations, the guidelines also refer to other articles or guidelines of the Code, where minors' interests may be at stake. These articles and guidelines address the use of information from social media (guideline Article 22), privacy (Article 23), identification in a judicial context (Article 23) and intimate family or funeral ceremonies (Article 24). Whereas these references mainly emphasise the caution with which journalists must act when minors are involved, the reference to the guideline related to Article 23 contains an important new addition. According to Belgian criminal law, identification of a minor who is the subject of a measure of the juvenile courts is prohibited by law and is a criminal offence. However, the Council of Journalism emphasises in its guidelines that regardless of this prohibition, identification of such minors may be justified from a deontological perspective in certain circumstances. This may be the case (a) when a report does not concern or mention the measure taken by the court; (b) when the personal details which may be published have already been released by the judiciary, the police or Childfocus, for instance in case of a search operation; or (c) in exceptional circumstances of significant public interest, for instance in order to allow a minor to give his or her side of the story. In the latter situation, the minor's interests must be the prime consideration and the journalist must explain this.

• *Raad voor de Journalistiek, Nieuwe richtlijn over pers en minderjarigen* (Council of Journalism, Guideline regarding press and minors)
http://merlin.obs.coe.int/redirect.php?id=17827 NL

Eva Lievens
Ghent University

BG-Bulgaria

CEM's Report on monitoring of pre-election campaign

On 11 December 2015, the Council for Electronic Media (CEM) announced the results of its monitoring during the pre-election campaign for local elections and a national referendum. The monitoring was carried out on 17 public programmes created by public suppliers of media services: 14 with national and regional range by the public service broadcaster Bulgarian National Television (BNT) and the Bulgarian National Radio; one programme of the Political Party Attack, Alpha Television; and two radio programmes implemented by the Municipalities Burgas and Veliko Tarnovo (The Voice of Burgas and Veliko Tarnovo Municipal Radio). The monitoring also comprised 36 programmes of commercial suppliers of media services: 20 television and 16 radio programmes.

CEM's judgment is that the pre-election campaign addressed several questions of home and foreign general policy and media storylines: the prices of electricity, the refugee crisis, the war in Syria, the dialogue between USA, Russia, and the EU, and so on. To a great extent, they are the ones that cultivate the voters' attitude immediately before the last stage of the pre-election race.

No drastic cases of hate speech and sex-based discrimination were noted in this campaign. The media showed their active critical position against the vote control and corporate vote. The journalistic investigations carried out and the critical materials on topics and cases have direct or indirect influence on the vote carried out, both concerning particular candidates and main political subjects nominating them. However, long before the start of the pre-election campaign, the investigations of the private national televisions BTV and Nova TV regarding the wealth of the Mayors of Pazardzhik, Haskovo, and Botevgrad, and regarding the exercise of official power by the Mayors of Balchik, Petrich, Kresna, had direct or indirect influence on the vote carried out.

The media coverage of the referendum was rather stifled, even compared to the campaign for local elections. It had no active presence as to its meaning and contents. The opinion of political forces whose decision premised this result did not ring out clearly. More active participation had the representatives of Initiative Committees supporting the Yes or No to the question worded for the referendum.

For the whole period of this campaign, the journalists generally respected the European requirements for a pre-election campaign. There were exceptions, including the politically committed media, Alpha TV and SKAT. Furthermore, the programming was not balanced, and the presentation of political ideas and platforms was in favour of one party and coalition only. The pre-election messages frequently become negative against the other participants in the elections. One thing that is typical for both programmes is that some of the hosts of permanent programmes for current politically-related issues are candidates for mayors and municipal councillors, and this position gives them greater presence in the pre-election campaign of the respective media.

Generally the suppliers of media services fail to accommodate the audience of persons with hearing and visual impairments. However, there are exceptions to this, including the public television programme BNT 1, which provides sign language interpretation during the afternoon debates, and the information campaign of the Central Election Commission; the possibility for persons with hearing difficulties to perceive the materials related to the institution's information campaign is provided for.

• Доклад от наблюдението на предизборната кампания за провеждане на Местни избори - *2015* и на Национални референдум (CEM's Report on Monitoring of Pre-election Campaign)
http://merlin.obs.coe.int/redirect.php?id=17828 BG

Rayna Nikolova
New Bulgarian University

CH-Switzerland

Bill to amend legislation on copyright

The Swiss Government has submitted an important bill revising national legislation on copyright for consultation by 31 March 2016. Based on the recommendations of the AGUR12 working party (see IRIS 2014-8/15), the aim of the bill is to increase the fight against Internet piracy and to adapt the legal provisions to recent technological developments. The ultimate aim is to strike a fair balance between the interests of performers, the cultural economy, and users of works protected by copyright, in order to promote the development of legal offers on the Internet.

To achieve this, the bill proposes involving the suppliers of Internet services directly in the fight against piracy, since they are in a position to take speedy, targeted action to remove illegal offers. Thus Swiss hosts would be required to remove from their servers any content which infringed copyright. Furthermore, on instruction from the authorities, access suppliers headquartered in Switzerland would have to block access to illegal offers if the company hosting the content was headquartered elsewhere, or concealed its headquarters. An opposition procedure would make it possible to avoid unjustified or excessive blocking preventing access to lawful content ('overblocking'). In return for the new obligations required of them, the Internet service providers would not be held liable for any infringements of copyright committed by their customers, and would thus have the benefit of greater legal security.

If serious infringements of copyright were committed over the peer-to-peer networks, the courts - at the request of the rightsholders - would be able to order the access providers to send messages to the users concerned, enjoining them to stop and making them aware of the consequences of failure to abide by the law. 'Serious infringements' would be deemed to include making a work available on the Internet without authorisation before it had been made public (a film prior to release, for example), or making a large number of works available (thousands of music files, for example). Should the infringements continue despite two warnings being sent within a twelve-month period, the courts would be able to communicate the identity of the user concerned to the wronged party, who would then be in a position to instigate civil proceedings and obtain reparations for the prejudice suffered. This procedure would simplify copyright infringement proceedings as it would no longer be necessary to instigate criminal proceedings.

To facilitate the acquisition of the necessary rights and authorisations from each rightsholder for the use of content on the Internet where use covers a large number of protected works or performances, the bill provides that the management companies would be able to exercise the exclusive rights held by those rightsholders who were not affiliated to any management company. Inspired by the model of the 'extended collective licence', this system aims to make it easier to make new offers available in line with the evolution of market needs. To preserve the economic freedom of the rightsholders, they would be able to request that the management companies exclude their works from the collective management at any time (thereby opting out of the system).

Lastly, the Swiss Government has also submitted for consultation two treaties it wishes to ratify and implement in the field of copyright, namely the Beijing Treaty on Audiovisual Performances and the Marrakech Treaty to Facilitate Access to Published Works

for Persons Who are Blind, Visually Impaired or Otherwise Print Disabled.

• *Projet de modification de la Loi fédérale sur le droit d'auteur du 11 décembre 2015* (Bill to amend national legislation on copyright, 11 December 2015)
http://merlin.obs.coe.int/redirect.php?id=17868 DE FR IT

Patrice Aubry
RTS Radio Télévision Suisse, Geneva

CY-Cyprus

New rules for the protection of minors

On 23 December 2015, the Law on Radio and Television Organisations of 1998 was amended. The goal of these amendments is the regulation of the participation of minors in advertising and teleshopping messages, as well as in television programmes, in order to ensure their interests and protect their rights. Amending Law N. 201(I)/2015 established general rules with regard to the participation of minors in commercial and other television productions, while the regulator, the Cyprus Radio Television Authority, is required to produce a code of conduct on the matter. More specifically, the following amending provisions have been voted on:

The definition of minor is introduced in the respective section of the law; this is a person under 18 years old.

A new article (29A) is introduced, which subjects the participation of minors in "commercial programmes, programmes, commercial announcements and advertisements" to the consent of parents or custodians and requiring that this serves the minor's interests. It further clarifies that notwithstanding the provisions of employment laws, which apply in case of employment, the participation in cultural or artistic programmes is left to the person's free will. In the case of a minor over 15 years of age, his/her written consent is required. For minors under 15 years of age, the maturity of the person is taken into account and in case of refusal, his/her participation stops or is cancelled.

Further regulation of the issue by the Cyprus Radio Television Authority is required, through its obligation to produce a Code of Conduct within six months, which should be implemented by the audiovisual media services organisations. The code should be drafted in consultation with stakeholders including minors' organised bodies. It should include guidelines regarding the participation of minors, the behaviour that audiovisual media services organisations must adopt in order to protect minors' rights, and "other relevant issues". Audiovisual media services organisations can themselves adopt their own codes of co- or self-regulation in addition to the aforementioned code of conduct.

The rules introduced with the amending law supplement the provisions of Article 29 of the law that transcribes Article 27 of the Audiovisual Media Services Directive (AVMSD), and of Article 33 that transcribes Articles 19 to 22 of the Directive; Article 33 also includes additional rules on advertising. Rules on the participation of minors are also provided in the Regulations to the Law on Radio and Television Organisations of 1998 to 2015 or Normative Administrative Acts (33236137537737537130330437137 2´365302 Διοικητικές 340301´361376365371302) KDP 10/2000. They include the definition of minor (a person aged under 18 years) and require the parents' consent for interviewing minors under 16. Rules can also be found in the code of advertising and teleshopping, an appendix to the Regulations. They aim at the protection of minors from content, not providing any specific rule with regard to their participation in audiovisual productions.

The introduction of rules regarding the participation of minors in audiovisual productions may raise the issue of the Radio Television Authority's extent of supervisory powers; how can the regulator ensure respect for the rules at the production stage, without interfering in ways that may lead to censorship?

• Τροποποιητικός Νόμος *201(331)/2015* του περί Ραδιοφωνικών και Τηλεοπτικών Οργανισμών Νόμου του *1998* μέχρι *2015* (Act 335.201(331)/2015 amending the Law on Radio and Television Organisations of 1998 το 2015, Official gazette, 23.12.2015 pp. 1418-9)
http://merlin.obs.coe.int/redirect.php?id=17829 EL

• Κανονιστικές Διοικητικές 340301´361376365371302*] KDP 10/2000* (Regulations to the Law on Radio and Television Organisations of 1998 to 2015 or Normative Administrative Acts)
http://merlin.obs.coe.int/redirect.php?id=17830 EL

Christophoros Christophorou
Political Analyst, Expert in Media and Elections

DE-Germany

TV show "Germany's Next Top Model" does not breach German law

The TV show "Germany's Next Top Model" broadcast by the commercial channel ProSieben does not breach the provisions of the Jugendmedienschutz-Staatsvertrag (Inter-State Agreement on the Protection of Minors in the Media - JMStV). That is the conclusion drawn by a panel from the Kommission für Jugendmedienschutz (Commission for the Protection of Young People in the Media - KJM) following an in-depth review of the programme's content. The KJM is the central supervisory authority for the protection of minors in nationwide German TV programmes and on the Internet. Its task is to ensure compliance with the

legal provisions relating to that protection and to encourage providers to demonstrate responsibility in the context of government regulated self-regulation.

The reason for conducting the review was a study by the Internationales Zentralinstitut für das Jugend- und Bildungsfernsehen (International Central Institute for Youth and Educational Television - IZI), which reports to the Munich based Bayerischer Rundfunk (Bavarian Broadcasting Corporation), and by the Bundesfachverband Essstörungen (Federal Association for Eating Disorders). As part of the study, 241 patients were interviewed on the role of television programmes in connection with eating disorders such as anorexia and bulimia. Almost a third of those affected said the programme had played a decisive part in the development of their own illness. Another third believed the show had had a "slight impact" on their disorder. In addition, viewers had complained that the format of the show could promote anorexia.

The KJM panel therefore examined several episodes of the previous, 10th series and concluded that, based on the provisions of the JMStV, the show had no effect on the development of a disorder. Giving their reasons for reaching this conclusion, they noted that critical comments in the programme relating to the participants' body weight had always been justified with reference to a model's professional requirements. The show's presenter, Heidi Klum, had always made it clear to young models that not eating was not the right approach. ProSieben had pointed to Heidi Klum's statement in the programme: "A healthy diet and sport are important for a model's career. A healthy diet and sport are important when an individual faces challenges in school, a competitive situation or working life." The youth-protection commission criticised the objectionable ideal of a slim body in the world of professional models but ultimately saw no adverse effect on or danger to the development of children and young people.

• *KJM-Pressemitteilung 17/2015 vom 3.November 2015: KJM prüft erneut "Germany's Next Top Model": Kein Jugendschutz-Verstoß festgestellt* (KJM press release 17/2015 of 3 November 2015: KJM re-examines "Germany's Next Top Model" and establishes no breach of the provisions on the protection of minors)
http://merlin.obs.coe.int/redirect.php?id=17856 DE

Ingo Beckendorf
Institute of European Media Law (EMR), Saarbrücken/ Brussels

FR-France

TV channel sanctioned for broadcasting programme during which guests smoked

On 20 November 2015 the Court of Appeal in Paris found against the heads of the TV channels M6 and Paris Première for broadcasting a programme during which three guests smoked. The programme 'Rive Droite' brings together, as for a dinner party, a number of well-known figures on the political and cultural scenes for an informal discussion on matters of politics, culture and society. Three of the guests (one musician, one journalist, and one female television presenter) on the programme broadcast on 9 November 2011 and available to view on the channel's replay website for a further eight days thereafter were filmed during the programme while they were smoking. An anti-tobacco association had the person responsible for the website and the chairman of the channel summoned to appear before the criminal court to answer charges of illegal advertising for tobacco. Since the court acquitted the defendants, the association lodged an appeal. In a decision handed down on 20 November 2015, the Court of Appeal overturned the initial judgment, recalling that Article L 3511-3 of the Public Health Code prohibited any type of commercial communication, regardless of the medium used, aimed at or having the effect of promoting tobacco or a tobacco product. In the case at issue, it was noted that the programme, classified by the channel as cultural entertainment, staged a dinner, i.e. an occasion of conviviality and open discussion, attended by guests from differing spheres (a number of journalists, an actress, a number of writers, and a songwriter). The court noted that the format of the disputed programme was neither a television news programme nor a documentary or information programme, and that it was therefore possible during editing to choose shots which did not include the three people while they were smoking without rendering the discussions unintelligible or requiring editing out which inhibited freedom of expression. The judge pointed out that, in the particularly festive context of the dinner, the sequence during which the three relatively well-known people were seen consuming tobacco with pleasure was such as to constitute the broadcasting of images contributing to a promotion of tobacco and hence illegal propaganda. This was true even in the absence of any additional utterance promoting the occurrence. The court found that the television channel ought to have checked the content of the programme regarding the statutory provisions on pro-tobacco propaganda. Furthermore, the company which edits the channel's website on which the programme was broadcast was also a host. It could be held responsible for content put on-line and, in its capacity as editor, it was required to make sure that the programme did not contain any images which contravened the legislation. The same applied to the chairman of the company editing the site and to the chairman of the audiovisual group to which the television channels belonged. The defendants were ordered to pay 10,000 euros in damages to the applicant association.

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

• *Cour d'appel, Paris, (pôle 4 - ch. 11), 20 novembre 2015, Association « Les droits des non-fumeurs » c/ N. de Tavernost et a.* (Court of Appeal, Paris (unit 4 - chamber 11), 20 November 2015, the association 'Les Droits des Non-Fumeurs' (non-smokers' rights) vs. N. de Tavernost and others) FR

Amélie Blocman
Légipresse

Director's rightsholders legitimately refuse to renew video publication contract

On 17 December the Court of Cassation delivered an interesting decision on the operating rights of the rightsholders of a deceased film director. In the case at issue, the director of the film 'Le Sang à la Tête' had, under a contract signed in 1989, ceded his cinematographic representation rights for TV broadcasting and video publication to a publishing house. The director has since died, and his rightsholders have refused to renew the contract on expiry. The company had them summoned to appear in court to answer charges of abusive refusal on the basis of Article L. 122-9 of the Intellectual Property Code. This Article provides that, 'in the case of manifest abuse in the exercise or non-exercise of the operating rights on the part of the representatives of the deceased copyright holder, the regional court may order any appropriate measure. The same shall apply if there is disagreement among the said representatives, if there is no known rightsholder, or in the case of the absence of heirs or escheat'. The company also held that the refusal on the part of the director's rightsholders constituted manifest abuse of their exercise of the operating rights they held from the director in respect of the collaborative work the film constituted. The initial court and subsequently the Court of Appeal rejected the company's application to obtain authorisation to resume its use of the film; the company then appealed to the Court of Cassation. The Court of Appeal had found that the applicant company had infringed copyright by continuing to use the film without having requested the agreement of the rightsholders who consequently had no desire to continue contractual relations with the company. The Court of Cassation found that the Court of Appeal had been right to decide that the company could not be authorised to resume its use of the film. It also found that the Court of Appeal had rightly noted that the company was invoking the benefit of the provisions of Article L. 122-9 of the Intellectual Property Code on disagreements among representatives of a deceased copyright holder, and not the provisions on manifest abuse in the non-exercise of operating rights. The argument was therefore not founded, and the appeal rejected.

• *Cour de cassation (1re ch. civ.), 17 décembre 2015 – Editions René Chateau* (Court of Cassation (1st civil chamber), 17 December 2015 - Editions René Chateau)
http://merlin.obs.coe.int/redirect.php?id=17869 FR

Amélie Blocman
Légipresse

Draft revision of the AMS Directive: CSA publishes its response to the public consultation

The audiovisual regulatory authority (Conseil Supérieur de l'Audiovisuel - CSA) has published its response to the European Commission's consultation on the Audiovisual Media Services Directive (AMSD) - 'A media framework for the 21st century'. This contribution to the current consideration of the evolution of Europe's audiovisual framework highlights the need to extend the perimeter of the Directive to include digital intermediaries to which a set of suitable rules would be applied. The CSA uses a number of examples to exemplify the difficulty in qualifying certain on-demand services not included in the scope of the Directive, demonstrating that a certain set of services (operators of economic communications distributing content, video-sharing platforms making professional content available, app stores, search engines, etc) occupy a fundamental place in terms of access to audiovisual content. Competition and consumer law, however, do not make it possible to approach all the aspects of pluralism and cultural diversity correctly. The CSA is therefore calling for the creation of a new legal category for 'digital platforms', subject to a legal scheme separate from that of hosts, which could be based on the concepts of 'loyalty' and 'good faith'. The second main section of the CSA's contribution concerns the limits of the principle of country of origin. Services established outside the EU but targeting one or more EU States (250 services are established in the USA; Netflix is established in the Netherlands) could be considered determined to circumvent established European rules; the CSA therefore recommends applying the rules of the country in which the services are received. Regarding the rules laid down for commercial communications, the CSA advocates maintaining the status quo, as it feels the current rules are pertinent, effective, and fair, and that the French legal framework allows a proper regulation of practices. The same applies to the rules on the protection of minors, for which the established distinction in the Directive between broadcasting and the protection of on-demand content was deemed to still be pertinent. The CSA is thus in favour of maintaining the status quo, except with regard to the rules on the most harmful programmes made available on the AMSD, for which there did not appear to be enough protection: programmes 'likely to be seriously damaging to minors' are authorised by the AMSD subject to certain conditions.

Given the transfrontier nature of the accessibility of online AMSD, however, the CSA feels measures governing access to such content could be tightened up, coordinated and harmonised (particularly with regard to technical measures). It also pronounced on the proposal in the Directive to allow the regulatory authorities independence, with the establishment of specific characteristics including for example the transparency of decision-making processes, the obligation to report back to interested parties, open and transparent procedures for appointing, designating and revoking members, powers of sanction, etc. Reporting on the results of the French presidency of the ERGA, CSA Chairman Olivier Schrameck recalled that the process for revising the Directive should begin in 2016.

• *Réponse du CSA à la consultation de la Commission européenne sur la directive Services de médias audiovisuels - Un cadre pour les médias du 21e siècle* (CSA response to the European Commission's consultation on the Audiovisual Media Services Directive - 'A media framework for the 21st century')
http://merlin.obs.coe.int/redirect.php?id=17862 FR

Amélie Blocman
Légipresse

CSA authorises LCI channel to shift to free DTT

In a decision made public on 17 December 2015, the audiovisual regulatory authority (Conseil Supérieur de l'Audiovisuel - CSA) has decided to allow the TF1 group's continuous news channel LCI to broadcast on free DTT, overturning its decisions made in 2011 and again in 2014 (see IRIS 2014-8/22). Its most recent refusal had been cancelled by the Conseil d'État on the grounds of formal defect, since the CSA had not published its impact study in good time (see IRIS 2015-7/15). At the end of a further cycle of analysis in accordance with the procedure recalled by the Conseil d'État, the CSA considered that 'the LCI channel had ceased to have an economic future in the pay-TV environment and that access free of charge would contribute to diversity and was in the public interest'.

The CSA began its decision by recalling the applicable legal framework. Article 42-3 of the Act of 30 September 1986 amended in 2013 enabled the CSA to authorise a channel's shift from pay to free DTT (or a shift in the opposite direction). Such a change in a channel's financing required approval from the CSA, which is conditional upon observance of diversity, attention to the equilibria of the advertising market, and promotion of the quality and diversity of the programmes to be broadcast. The CSA had therefore carried out an impact study, particularly on the economic aspects, and held a public hearing of the applicants, hearing all those third parties who so requested. It paid particular attention to analysing the risk of the LCI channel disappearing if it were to stay on pay DTT, and concluded that 'absence of any change in the ways of financing the service is likely to result in the company ceasing its operation', given that distribution contracts were coming to an end, audience levels and income from advertising were down, there were accumulated losses, and there were no prospects on pay DTT. This meant that the channel's ability to return to a virtuous economic model by limiting its distribution - under a pay model - to ADSL, fibre, cable and satellite platforms did not seem likely. Furthermore, the TF1 Group intended to stop supporting a service with an economic model it considered no longer viable. The CSA went on to consider the risks that LCI's shift to free DTT would pose for the existing free continuous news channels, namely iTélé, BFM TV and L'Équipe 21. It concluded that, for each of these channels, 'the arrival of the LCI service was not such as to contest their viability'. Lastly, the CSA analysed the respective contributions the services made to diversity and programme quality. It noted that the plan for LCI, plus the undertakings the TF1 Group proposed to make, made the structure of its programming different from those of the two other continuous news channels BFM TV and iTélé, and would provide viewers with an alternative that complemented the present offer. The offer intended to shift the emphasis away from live coverage for everything, promoting news on specific topics, as well as a differentiated treatment of the news, particularly by using magazine formats. The CSA felt that this could lead to emulation of the continuous news services. In the end, the CSA found that the continuation of LCI's activity on free DTT would strengthen the diversity of socio-cultural currents of expression and would be in the public interest. The NextRadioTV Group, which owns BFM, felt on the contrary that 'this decision thoroughly destabilises the two existing free news channels' and has appealed against the CSA's decision to the Conseil d'État.

In contrast, in two other decisions on the same day the CSA felt that the particular situations of the channels Paris Première and Planète+ did not justify waiving the general requirement of an open call for applications: these two channels will therefore remain in the pay-TV category.

• *Décision n°2015-526 du 17 décembre 2015 relative à la demande d'agrément de modification des modalités de financement du service de télévision hertzienne terrestre Le Chaîne info (LCI)* (Decision no. 2015-526 of 17 December 2015 on the application for approval of a change in the method of financing the terrestrially broadcast television service La Chaîne Info (LCI))
http://merlin.obs.coe.int/redirect.php?id=17861 FR

Amélie Blocman
Légipresse

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

GB-United Kingdom

Regulator fines broadcaster for serious and repeated failures of compliance procedures

The UK Communications Regulator, Ofcom, has for the first time imposed a financial sanction on a broadcaster for inadequate compliance procedures. International Television Channel Europe (ITCE) is a general broadcaster on the digital satellite platform, aimed at the Bangladeshi audience in the UK and elsewhere in Europe. A standard licence requires licensees to adopt procedures to ensure that their programmes comply in all respects with their licence conditions and to ensure that such procedures are observed, in particular by ensuring that there are sufficient qualified or trained staff to do so.

In the period April 2013 to September 2014, 20 different breaches of the Broadcasting Code were recorded against the licensee. Most of the breaches related to the rule restricting commercial references in television programming. A number of the breaches had occurred after Ofcom had notified ITCE that it was investigating compliance, and after Ofcom had engaged extensively with the broadcaster in an attempt to improve compliance. Ofcom concluded that ITCE did not take appropriate steps to prevent a breach of the licence condition requiring compliance procedures, although senior management was aware of their inadequacies. There had thus been serious, repeated and reckless breaches of the licence condition.

ITCE accepted that compliance procedures had been poor due to inadequate staffing but stated that they had not intended to harm viewers. Problems had been caused by the fact that 90% of its content was obtained directly from Bangladesh where there is no separation of advertising and editorial material and no broadcasting regulator. It had also had difficulties in recruiting sufficient staff with sufficient levels of English and Bangladeshi language. After the hearing, Ofcom was satisfied that the broadcaster had recognised its previous failings and had put into place training for staff. The proportion of material taken directly from programming in Bangladesh had been reduced to 50%.

Ofcom decided to impose a financial penalty of £20,000 on ITCE as a result of the breach, and also warned the broadcaster that it will be undertaking a period of monitoring its broadcast output. Should there be further compliance failings, the regulator will consider whether ITCE's licence should be revoked.

• Ofcom, Sanction 98(15), Sanction to be Imposed on International Television Channel Europe ("ITCE"), 17 December 2015.
http://merlin.obs.coe.int/redirect.php?id=17831 EN

Tony Prosser
School of Law, University of Bristol

IE-Ireland

Programme discussion of abortion violated Broadcasting Act

The Broadcasting Authority of Ireland (BAI) has upheld a complaint against the public broadcaster RTÉ over a programme which featured an interviewee discussing abortion, finding that the programme breached the Broadcasting Act's rules on fairness, objectivity and impartiality in coverage of current affairs (for previous decisions, see IRIS 2014-2/23).

The decision arose following a complaint in relation to a June 2015 edition of The Ray D'Arcy Show, a lifestyle/entertainment show broadcast weekdays on RTÉ 1 Radio. The show featured an interview with the Irish director of the non-governmental organisation Amnesty International, to discuss the publication of its report entitled "She is not a criminal: The impact of Ireland's abortion law".

Under Section 39(1)(b) of the Broadcasting Act 2009, broadcasters must ensure that the broadcast treatment of current affairs "is fair to all interests concerned and that the broadcast matter is presented in an objective and impartial manner and without any expression of his or her own views". However, if it is "impracticable in relation to a single broadcast to apply this paragraph, two or more related broadcasts may be considered as a whole, if the broadcasts are transmitted within a reasonable period of each other".

The complainant argued that the interview violated Section 39(1)(b) because of certain partisan remarks made by the show's presenter, and a "lack of balance" due to the absence of opposing arguments concerning abortion. On the other hand, RTÉ argued that "very robust text and emails, unhappy with the Amnesty campaign," were read out by the presenter, and a statement by the "Pro-Life Campaign" was quoted extensively to the interviewee by the presenter, "alleging that Amnesty was no longer an unbiased defender of human rights principles".

The BAI, in a majority decision, upheld the complaint, holding that there had been a violation of Section 39(1)(b) of the Broadcasting Act 2009. First, the BAI acknowledged that Amnesty International's report was an "important news and current affairs issue

that merited discussion". However, "other perspectives" provided "were insufficient, particularly where the presenter provided very little in terms of counterpoints to those of his interviewee and where there were no other contributions via interviewees". Second, the BAI held that "listeners to the programme would have reasonably concluded that the presenter endorsed the views of his interviewee and was articulating a partisan position". The BAI pointed to a number of statements made by the presenter, including "we have been told that our laws need changing and government after government have done nothing about it", and described a legislative committee report on abortion as "flawed, basically, fundamentally flawed". Thus, the broadcast did not comply with the fairness, objectivity and impartiality requirements of the Broadcasting Act 2009.

• Broadcasting Authority of Ireland, Broadcasting Complaint Decisions, December 2015, p. 7
http://merlin.obs.coe.int/redirect.php?id=17832 EN

Ronan Ó Fathaigh
Institute for Information Law (IViR), University of Amsterdam

"Robust" questioning by interviewer was not unfair

The Broadcasting Authority of Ireland (BAI) has rejected a complaint against the broadcaster Newstalk, over a programme interviewer's "robust" questioning of an interviewee. The decision arose following a complaint in relation to a May 2015 edition of the Newstalk Breakfast show, a current affairs programme broadcast each morning from 07.00 - 10.00. The show featured an interview with David Quinn, head of the religious advocacy group "The Iona Institute", which was arguing against the then forthcoming same-sex marriage referendum.

The complainant argued that the presenter "went beyond his remit as 'Devil's Advocate'", when he asked Quinn "do you have a problem with gay people", which was "invidious and unfair and left Mr. Quinn having to deny he was homophobic". The complainant also argued that the presenter referred to a tweet Quinn had written on Twitter about the "pregnancy announcement of a gay work colleague of the programme presenter", which the complainant argued was "impartial" and represented a "conflict of interest."

It was argued that there had been a violation of two rules under the BAI's Code of Fairness, Objectivity & Impartiality in News and Current Affairs, namely Rule 4.3, which reads "A broadcaster shall deal fairly with contributors to current affairs content or with persons or organisations referred to in that content"; and Rule 4.25, which reads "Each broadcaster shall have and implement appropriate policies and procedures to address any conflicts of interests that may exist or arise in respect of anyone with an editorial involvement in any news or current affairs content, whether such person works on-air or off-air".

The BAI rejected the complaint, holding that there had been no violation of the BAI's Code. First, the BAI noted that "the Code requires the presenter to take care that their approach to an interview, including their tone, does not result in unfairness". However, the presenter's "tone and approach, while robust", did not prevent Quinn from setting out his views, given the interview lasted 30 minutes. Second, the BAI held that no conflict of interest arose over discussion of Quinn's tweet on the presenter's colleague, as "the tweet was in the public domain and had been the subject of previous coverage. The contents of the tweet were also deemed relevant to the programme discussion". Accordingly, the complaint was rejected.

• Broadcasting Authority of Ireland, Broadcasting Complaint Decisions, December 2015, p. 60
http://merlin.obs.coe.int/redirect.php?id=17832 EN

Ronan Ó Fathaigh
Institute for Information Law (IViR), University of Amsterdam

IT-Italy

AGCOM approves new technical specifications for synthesizers/decoders receiving digital TV signals

On 16 December 2015, the Autorità per le garanzie nelle comunicazioni (Italian Communications Authority - AGCOM) by means of Resolution no. 685/15/CONS, introduced new technical specifications for the construction of receivers (decoders for the receipt of digital terrestrial TV signals). The new technical rules replace the ones set forth under Annex A to Resolution no 216/00/CONS. The new provisions will apply to set-top-boxes as well as to receivers (decoders embedded in TV sets). In particular, the adoption of new technical specifications by AGCOM in lieu of the ones adopted by means of Resolution 216/00/CONS is aimed at the inclusion of the DVB-T2 standard and MPEG4 signal compression. DVB-T2 (i) is the technological development of DVB-T and (ii) implements the efficiency of the performances of the digital terrestrial platform compared to first generation systems.

• *Delibera n. 685/15/CONS, Modifiche alla determinazione degli standard dei decodificatori e le norme per la ricezione dei programmi televisivi ad accesso condizionato di cui alla delibera n. 216/00/CONS* (Resolution no. 685/15/CONS, amendments to determining decoders' standards and provisions for the reception of TV programmess at conditional access)
http://merlin.obs.coe.int/redirect.php?id=17468 IT

Ernesto Apa, Daniel Joseph Giuliano
Portolano Cavallo Studio Legale

AGCOM approves evaluation of the Integrated System of Communications for 2014

On 1 December 2015, the Autorità per le garanzie nelle comunicazioni (Italian Communications Authority - AGCOM) by means of Resolution no. 658/15/CONS approved the evaluation of the economic size for 2014 of the Integrated System of Communications (SIC), i.e. the economic sector consisting of daily and periodic press, annual and electronic publishing (also through the Internet), audiovisual media services and radio services, cinema, external advertising, initiatives of communications of products and services, and sponsoring. Based on this evaluation, for the year 2014 the overall value of the SIC is equal to more or less EUR 17 billion, with a downturn of 2.8% compared to 2013.

The area of audiovisual media services and radio services (also through the Internet) has a major impact on the overall economic resources, covering 49.2% of the SIC (equal to more than EUR 8 billion). Next, there is the daily and periodic publishing (and publishing agencies) also through the Internet, covering 25.9% of the SIC (more than EUR 4 billion). The editorial sector is completed by the revenues deriving from the annual publishing and other electronic publishing (also through the Internet), equal to an overall amount of EUR 235 million (1.4% of the SIC).The revenues relating to online advertising are equal to EUR 1.6 billion (9.5% of the SIC). The cinematographic sector covers 4.7% of the SIC with EUR 811 million, while external advertising is worth EUR 364 million and covers 2.1% of the SIC.

As to the initiatives of communications of products and services and to sponsoring, such areas reach an overall amount of EUR 1.2 billion, equal to 7.2% of the SIC.

• *Delibera n. 658/15/CONS, Procedimento per la valutazione delle dimensioni economiche del Sistema Integrato delle Comunicazioni (SIC) per l'anno 2014* (Resolution no. 658/15/CONS, Procedure for the evaluation of the economic dimensions of the Integrated System of Communications (SIC) for year 2014)
http://merlin.obs.coe.int/redirect.php?id=17468 IT

Ernesto Apa, Daniel Joseph Giuliano
Portolano Cavallo Studio Legale

MK-"the Former Yugoslav Republic Of Macedonia"

New Regulation for political advertising during elections

In light of the heaviest political crisis since the independence of the country, the four biggest political parties agreed on regulation of political advertising. According to many experts, political advertising severely influences the editorial policy of the media outlets, especially during elections. Based on the political agreement, which has been achieved with mediation by the European Union, the National Parliament amended the Electoral Code (Изборен законик) in order to ensure that the political parties will have equal access to the media during the early elections, scheduled for April 2016. Besides the classic media, the regulation now also encompasses the internet publishers, meaning news websites. The text of the law operates with the term "electronic media (internet portals)".

The greatest chilling effect on the freedom of media so far came from the possibility for the media outlets to be donors of ruling political parties and their pre-election campaigns. In return, after the elections, these media outlets were receiving state funds in order to broadcast advertisements of the Government and other state and public institutions, which raised a suspicion of misuse of public funds for political advertising and corruption (see IRIS 2015-1/28). Moreover, the ruling parties used to buy the entirety of the advertising time, so the opposition did not have a media platform to address their potential voters. The European Commission, in the Country Progress Report for 2015, noted a big shortcoming in regard to the Government's advertising activities: "Government advertising provides the largest single source of funding and has a major influence on the media market at both national and local level. There is no systematic or detailed reporting on government advertising. Moreover, the content of the intercepted communications revealed close links between government and media owners with the highest viewership and circulation, who also receive most of the funding allocated to government advertising campaigns." The newest amendments to the Electoral Code allow the broadcast media 18 minutes per hour additional time for political advertising, whereas the ruling political parties and the opposition would have 8 minutes each. The smaller political parties, including those who are represented in the Parliament and those who are not, will have one minute each. The media outlets now are obliged to sell their advertising time to all political parties under the same conditions. The broadcasting media is not allowed to broadcast political advertising free-of-charge from the day when the elections are announced until the end of the elections.

According to the Electoral Code (Article 76-a), the Public Broadcasting Service (PBS) has the obligation to inform the public in a balanced manner, meaning 30 percent of its informative programming should be dedicated to the activities of the ruling parties, 30 percent to the activities of the opposition and ten percent to the non-parliamentarian political parties. Moreover, the PBS now has an obligation to produce talk shows, where representatives from the opposition have to be invited, in addition to the ruling parties.

On the other hand, the media regulation authority must develop a methodology for monitoring the broadcast and online media during the elections by the end of January 2016, which should serve as a tool for a non-partisan regulatory response to possible violations (Article 76-c).

• Предлог закон за изменување и дополнување на Изборниот законик , по скратена постапка (The Law on Amending the Electoral Code)
http://merlin.obs.coe.int/redirect.php?id=17833 MK
• EU Country's Progress Report
http://merlin.obs.coe.int/redirect.php?id=17857 EN

Borce Manevski
Independent Media Consultant

New methodology for media monitoring during elections

Based on the newly amended Electoral Code - Article 76-c (Изборен законик), the media regulation authority, the Agency for Audio and Audiovisual Media Services, developed a methodology to monitor media election coverage on the radio and television programme services (Методологија за мониторинг на изборното медиумско претставување преку радио и телевизиските програмски сервиси за време на изборните процеси).

The EU Senior Expert Group, led by Reinhard Priebe, who was tasked to pinpoint the systemic rule of law issues, noted in June 2015 that there was "an unhealthy relationship between the mainstream media and top government officials, with the former seemingly taking direct orders from the latter on both basic and fundamental issues of editorial policy. This practice harms the public's right to receive information from a variety of sources and expressing a variety of views, and reduces the scope for objective and balanced reporting of facts." The aim of the Methodology is to detect if the media will report in a balanced and professional manner during the forthcoming early elections, which are expected to take place in April 2016, which in return should result in the creation of a pluralistic media landscape.

The methodological approach is based on the provisions from the Electoral Code, as well as on the Media Law and on the Law on Audio and Audiovisual Media Services. The Methodology defines the monitoring activities, which the media regulation authority will undertake depending on the stage of the electoral process which it divides into three phases. The first phase is the time period prior to the start of the election campaign. In this phase the TV and radio programme services will be monitored, and if there are indications of possible violations, the respective content will be further analysed. The second phase includes the first and second election rounds. In this phase the broadcast content will be analysed according to qualitative and quantitative indicators, including discursive analysis, when needed (tone of the reporting, story framing, etc.). The third phase is the silence period: the programmes will be monitored and analysed, in order to determine if a certain broadcast content violates the regulations.

However, the Electoral Code sets an obligation for the media regulation authority also to monitor the informative websites (the Electoral Code uses the term electronic media [internet portals]), the media regulator issued on its webpage an official standpoint of the Agency, in which it informed the public that it will not monitor the news websites, because there was no definition of 'internet portal' or explanation of the scope of this term. The decision of the media regulation authority not to implement the electoral legislation to its full extent may have an impact on the overall elections and may add fuel to the already explosive political crisis.

• Предлог закон за изменување и дополнување на Изборниот законик , по скратена постапка (The Law on Amending the Electoral Code)
http://merlin.obs.coe.int/redirect.php?id=17833 MK
• The former Yugoslav Republic of Macedonia: Recommendations of the Senior Experts' Group on systemic Rule of Law issues relating to the communications interception revealed in Spring 2015
http://merlin.obs.coe.int/redirect.php?id=17752 EN
• НАЦРТ - СТАВ НА АГЕНЦИЈАТА ЗА ОБВРСКАТА ДА ВРШИ НАДЗОР ВРЗ ИЗБОРНОТО МЕДИУМСКО ПРЕТСТАВУВАЊЕ НА ИНТЕРНЕТ ПОРТАЛИТЕ (The Official Standpoint of the Agency for Audio and Audiovisual Media Services)
http://merlin.obs.coe.int/redirect.php?id=17834 MK

Borce Manevski
Independent Media Consultant

NL-Netherlands

Court rules on publication restrictions on media footage from inside detention centres

The Hague Court of Appeals has ruled that Ministry of Justice restrictions placed on a journalist concerning pictures and video footage taken inside detention centres violate freedom of expression and the European

Convention on Human Rights (ECHR). The case arose following a request from a journalist to the Ministry seeking permission to take pictures and video footage at certain detention facilities. The Ministry initially rejected the request, but following negotiation, the Ministry agreed to grant permission for taking footage, provided the journalist enter into a contract setting out when and how the footage could be subsequently used.

The Ministry's restrictions included clauses that none of the footage could be redistributed without the permission of the Ministry, and text accompanying the pictures must be checked beforehand by the Ministry for "factual inaccuracies". The journalist made an application to the courts, arguing that the Ministry's restrictions on the use of the journalist's footage violated the Dutch constitution and Article 10 of the ECHR. He was supported by a number of organisations, including the Nederlandse Vereniging van Journalisten (Dutch Association of Journalists), Persvrijheidsfonds (Press Freedom Fund) and Reporters Without Borders.

The Court found the restrictions violated both the Dutch constitution, and Article 10 of the ECHR. First, the Court ruled that the restrictions violated Article 7 of the Constitution, which prohibits requirements of prior approval for the dissemination of thoughts and opinions. Second, under Article 10 of the ECHR, the Court held that the restrictions were not "in accordance with law", as the Prisons Act nowhere granted the Ministry the power to limit republication of footage gathered by journalists within detention facilities. Finally, the Court rejected the arguments that the restrictions were needed to protect detainees' privacy, and maintain order. The Court held that it was unclear how republication of footage with no inmates or employees depicted could violate privacy, and there was no evidence that "provocative" captions accompanying the footage could lead to unrest among detainees. The Court concluded that the restrictions no longer applied, and the journalist could distribute footage without prior permission or editorial input from the State.

- *Gerechtshof Den Haag, 29 december 2015, ECLI:NL:GHDHA:2015:3545* (The Hague Court of Appeals, 29 December 2015, ECLI:NL:GHDHA:2015:3545)
http://merlin.obs.coe.int/redirect.php?id=17835 NL

Ronan Ó Fathaigh
Institute for Information Law (IViR), University of Amsterdam

Dutch public broadcaster acted unlawfully towards a Syrian refugee

In a judgment on preliminary relief proceedings on 15 December 2015, the District Court of Amsterdam ruled that the Dutch public broadcaster PowNed acted unlawfully towards a Syrian refugee. PowNed broadcast video images in which the plaintiff refugee talked about a medical problem with his testicles and seemed to express an aversion to homosexuality. PowNed also shared the fragment on its Facebook page, where it was widely viewed, shared, liked and received many negative comments. The footage was made during a conversation between the plaintiff and a reporter of PowNed while she visited a temporary reception location for refugees.

The Court considered that the plaintiff's right to protection of his privacy conflicted with PowNed's right to freedom of expression, and that the question of which right should outweigh the other would depend on the particular circumstances of the case. In that regard, the Court took into account that the reporter and her cameraman did not introduce themselves to the plaintiff as correspondents for PowNed, whereas acting openly ("handelen met open vizier") is a widely supported journalistic principle. In fact, during the proceedings it became clear that the reporter told the plaintiff the footage would just be for personal use. Next, the Court deemed it important that the plaintiff was not used to being the centre of interest, and had a very limited proficiency in English language. In addition to this, the Court reiterated that journalists should refrain from pure sensationalism (referring to Armellini and others v. Austria, ECtHR, 16 April 2015). It found that the plaintiff's statements were taken out of context, and that there was no justification for displaying the images in this edit. The raw video material showed that the reporter asked highly suggestive questions and that the plaintiff gave a more nuanced view on homosexuality.

On the basis of this, the Court ruled that the plaintiff's right to privacy outweighed PowNed's right to freedom of expression. The Court concluded that PowNed could not invoke the journalistic freedom to expose abuses. Given the content of the video images, the intimate character of the topic, and the manner in which the plaintiff was portrayed, the Court found it sufficiently proven that the plaintiff suffered harm to his private life, his name and good honour. The conduct of PowNed was a tortious act against the plaintiff within the meaning of Article 6:162 of the Dutch Civil Code. The Court ordered the broadcaster to prevent any further broadcasting of the item and to ensure it would be removed from other websites, and from Google and Yahoo's search results. Lastly the Court allowed a claim for damages of EUR 2,500.

- *Rechtbank Amsterdam, 15 december 2015, ECLI:NL:RBAMS:2015:8976* (Amsterdam District Court, 15 December 2015, ECLI:NL:RBAMS:2015:8976)
http://merlin.obs.coe.int/redirect.php?id=17836 NL
- Judgment by the European Court of Human Rights (First Section), Armellini and Others v. Austria, Application no. 14134/07 of 16 April 2015
http://merlin.obs.coe.int/redirect.php?id=17837 EN

Sarah Johanna Eskens
Institute for Information Law (IViR), University of Amsterdam

PL-Poland

New amendment to the Act on Radio and Television

On 8 January 2016, an amendment to the Act on Radio and Television came into effect immediately after it was signed by the President on 7 January 2016. The draft law was submitted to the Sejm (the lower house of the Polish Parliament) on 28 December 2015. The first reading in the Parliament took place on the following day. The next day, the draft law was referred to the Sejm committee, which accepted it on the same day. The second and the third reading of the Act, and consequently its passing by the Sejm, also occurred on that day. Then the Act was immediately referred to the Senate (the upper house of the Polish Parliament). On 31 December 2015, the Senate declared that it did not propose any amendments to the Act. The Act was then passed to the President for signing.

The Act is referred to as the "minor Media Act" and has a definite term, since Article 4 thereof stipulates that the Act shall expire on 30 June 2016. This is an interim and temporary solution, since the programme of the party which is currently in power assumes that the existing public television and radio companies are to be transformed into institutions of higher public utility, with their governing bodies to be appointed by the Regulatory Authority for a 5-year term of office. Work on a future amendment of the Act on Radio and Television has commenced in the Ministry of Culture. Save for the change of the public media structure, the Act will also regulate the public media financing system as the existing one turned out to be inefficient, and the licence fee collectability rate is at present rather low.

The current amendment includes only four articles: the first one introduces amendments to the Broadcasting Act of 29 December 1992, the second and the third one include interim provisions, and the fourth one pertains to the immediate coming into effect of the Act. As regards the management boards of the public media companies, the amendments in the provisions relate to:

1) waiving the competence of the National Council in running the competitions for the positions of members of the public media supervisory boards;

2) repealing the provision on the 4-year term of office of the management board's members;

3) introducing the rule according to which it is the Minister of the State Treasury who appoints and dismisses the management board members; and

4) repealing the provisions which limit the ability to dismiss the management board members to certain specific premises only.

The previous procedure of appointing the management board members of the public media companies was by way of a competition run by the Supervisory Board, which had been elected by the National Council, with management board term limits. Now, the Minister of the State Treasury gained an unlimited power to appoint and dismiss management board members at any time. The Minister of the State Treasury made use of his new competence on the day the Act came into effect (8 January 2016), appointing a politician connected with the party Law and Justice to the position of chairman of the management board of the public broadcaster Polish Television. He also replaced the composition of the board of the public broadcaster Polish Radio.

Further amendments pertain to the supervisory boards of the public media companies:

1) the number of supervisory board members has been limited to three;

2) the provisions on appointing supervisory board members and limiting the premises for their dismissal have been repealed;

3) the Minister of the State Treasury has been granted power to appoint and dismiss the supervisory board members; and

4) the provision on the 5-year term of office of the supervisory board members has been repealed.

The provision that stipulates that any changes to the articles of association of public media companies require the consent of the National Council has been repealed (now there is no need to approve any changes into articles of association by the National Council). Moreover, the management board of Polish Television has been granted the right to appoint the directors of regional offices. (Until now, this power was vested in the supervisory board, acting upon a management board's request.) Another provision of the Act further stipulates that upon the Act coming into effect, the terms of office of the Polish Radio and Polish Television management and supervisory board members shall terminate. Changes adjusting the articles of association of public media companies accordingly to the provisions of the new Act shall be introduced within 30 days from the act coming into force. The current provisions of the articles of association are no longer applicable in practice.

The Act also introduces the possibility to interfere in the individual labour law relations between the public media companies and members of their management boards. As stipulated in the amendment, the relations in question shall terminate upon the moment of appointment of the new management board members. Furthermore, the public media companies will

be allowed to terminate the non-competition clauses, by which the existing members of the management board had been bound until now. Under such clauses an employee cannot engage in competitive activities (including employment at competitors) while an employer has to pay compensation to the employee. In this respect, the provisions of the Act shall take precedence over the earlier civil law agreements.

• *Ustawa z dnia 30 grudnia 2015 r. o zmianie ustawy o radiofonii i telewizji* (Act of 30 December 2015 amending the Act on Radio and Television of 29 December 1992)
http://merlin.obs.coe.int/redirect.php?id=17838 PL

Krzysztof Kowalczyk
BSJP Brockhuis Jurczak Prusak, Warsaw

RO-Romania

Draft laws on cinematography

On 28 October 2015, the Senate (upper Chamber of the Romanian Parliament) rejected the Proiectul de Lege pentru completarea articolului nr. 13 din Ordonanţa Guvernului nr. 39/2005 privind cinematografia (draft Law on the completion of Article 13 of the Government Decree no. 39/2005 on Cinematography).

The draft Law intends to add, through a new Article 13 (1) e1), another source of revenues for the Cinematographic Fund. The Fund was established to provide financial resources needed to develop cinematographic work as well as to help with the fulfilment of the duties incumbent on the National Film Centre: the collection of a contribution of four per cent of the annual profit made by operators who organise gambling; the payment will be made by 31 May of the current year for the previous year. The draft Law intends to restore the revenues of the Cinematographic Fund after the repeal of the provisions of the Government Emergency Decree no. 77/2009 on the organisation and operation of gambling, which cut the funds transferred by the gambling operators to the Cinematographic Fund by EUR 1.5 million a year.

The proponents of the draft Law on Cinematography consider that the Government Decree no. 39/2005 on Cinematography, with further modifications and completion, gave a boost to film production, but now is obsolete and its gaps threaten the main areas of this field: financing the film production, access to financial resources and the internal market for Romanian film. The proponents proposed, inter alia, the set-up of a second Cinematographic Fund, dedicated to grants, fed by the national lottery and the gambling organisers; a more efficient system for collecting contributions to Cinematographic Funds; regulation of a clearer contribution of the public television to film production; creation of a Film Investment Bureau and of a mechanism through which private individuals and companies can invest in film production; establishment of a new mechanism of competition similar to the evaluation systems in other European countries; placing a ceiling on films with funding from the National Film Centre which producers may run simultaneously; creating opportunities for debuts for short films, documentaries and animation films; automatic financing for the next project of filmmakers who get major honours at the most important festivals; to set minimum quotas of Romanian films in cinemas and on television; enhance the functioning of cinemas distributing mostly European and Romanian film; creating a national network of cinemas dedicated to Romanian and independent film.

On 13 October 2015, the Senate had rejected another draft Law, the Propunerea legislativă pentru abrogarea Legii nr. 35/1994 privind timbrul literar, cinematografic, teatral, muzical, folcloric, al artelor plastic, al arhitecturii şi de divertisment (draft Law on the repeal of the Law no. 35/1994 on the cultural stamp on literature, cinema, theatre, music, folklore, fine arts, architecture and entertainment).

The cinema stamp is worth two per cent of the ticket price, and this value is added to the regular price of the ticket. The proponents consider that the repeal of Law no. 35/1994 on the cultural stamp facilitates the access of the public to cultural products and relieves the cultural institutions, local authorities and investors in the culture to collect surcharges in favour of private entities (the unions of creators).

In the meantime, a Proiect de Lege privind Cinematografia (draft Law on Cinematography) is lying on the table of the Chamber of Deputies (lower chamber of the Parliament) months after it was rejected by the Senate on 30 March 2015 (see, inter alia, IRIS 2002-7/30, IRIS 2003-2/23, IRIS 2004-2/35, IRIS 2013-9/22, and IRIS 2015-2/29).

• *The Proiect de Lege privind Cinematografia - forma iniţiatorului* (Draft Law on Cinematography - proponent's form)
http://merlin.obs.coe.int/redirect.php?id=17843 RO

Eugen Cojocariu
Radio Romania International

Rejected law on the Investigative Journalism Fund

On 4 November 2015, the Chamber of Deputies (lower Chamber of the Romanian Parliament) rejected the Propunerea legislativă privind înfiinţarea Fondului Special pentru Jurnalismul de Investigaţii (draft Law on the setting up of a Special Fund for Investigative Journalism). The draft Law had been rejected by the

Senate (upper Chamber of the Romanian Parliament) on 25 February 2015. The decision of the deputies was final (see IRIS 2014-8/4).

The draft Law was intended, according to the proponents, to establish a Special Fund for Investigative Journalism meant to support through direct funding any action aimed at disclosing illegal practices that affect the state budget. The Fund would have financed individuals aged 18 and over and Romanian and foreign legal persons which made public any corruption, abuse of office, embezzlement, receiving of undue benefits, tax evasion or any acts or omissions under the criminal law, which by their nature are prejudicial to the state budget by an amount greater than or equal to LEI 100,000 (approximately EUR 22,075), using any medium of information (print, online, radio, television) or by complaints addressed directly to the investigating and prosecuting authorities.

The above-mentioned persons would have been entitled to receive, based on a request sent to the Minister of Finance, a funding from the Special Fund equal to two per cent of the reported injury, within 30 days after disbursement of the recovered amounts to the state budget. The Special Fund for Investigative Journalism should have been established as a special account in the State Treasury, financed by a two per cent relocation of recovered damage to the state budget in the above mentioned cases of unlawful actions, after a final and irrevocable judgments of courts.

• *The Propunerea legislativă privind înființarea Fondului Special pentru Jurnalismul de Investigaţii - forma inițiatorului* (Draft Law on the setting up of a Special Fund for Investigative Journalism - proponent's form)
http://merlin.obs.coe.int/redirect.php?id=17845 RO

Eugen Cojocariu
Radio Romania International

Recommendation of the National Audiovisual Council on communication of sanctions

On 15 December 2015, the Consiliul Naţional al Audiovizualului (National Audiovisual Council, CNA) issued the Recomandarea CNA nr. 4 din 15 decembrie 2015 (Recommendation no. 4/2015) with regard to the public communication of the reasons and the purpose of the summons or sanctions imposed by the Council, according to Article 93.1 of the Audiovisual Law no. 504/2002, with further modifications and completions.

According to Article 93.1 of the Audiovisual Law, the broadcasters are obliged to communicate to the public the reasons and subject of the sanctions or of the summons applied by the National Audiovisual Council, using the wording sent by the CNA. Taking into account the informative meaning of the communication of the sanctions/summons and due to the fact that the advertising interruptions are intended solely for commercial communications, the National Audiovisual Council recommended to all the broadcasters that the text of the summons/sanctions be broadcast before the first load of advertising during a show, under the other conditions stipulated by law.

According to the Article 93.1 of the Audiovisual Law, in the case of television services, the text of the summons or sanction shall be broadcast within 24 hours from communication, audio and visual, at least three times between 18 p.m. to 10 p.m., including once in the main news programme. The radio services have to broadcast the text of the summons/sanctions within 24 hours from communication, at least three times between 6 a.m. to 2 p.m., including once in the main news programme. For the TV and radio services that rebroadcast other programme services within the hours specified in the previous cases, the manner of broadcasting the announcement is established by the sanctioning decision. The breaches of the above-mentioned rules are fines from LEI 2,500 to 50,000 (approximately EUR 551 to 11,030).

In 2014, the CNA has issued a total of 160 sanctions, worth LEI 1,836,000 (approximately EUR 405,300), according to its annual activity report. In 2015, the CNA issued around 180 sanctions, according to provisional figures.

• *Recomandarea CNA nr. 4 din 15 decembrie 2015* (CNA Recommendation no. 4 of 15 December 2015)
http://merlin.obs.coe.int/redirect.php?id=17846 RO

Eugen Cojocariu
Radio Romania International

Digital TV transition and completion of the Audiovisual Act

On 21 December 2015, the Romanian President promulgated the Law no. 345/2015 on the approval of the Government Emergency Decree no. 18/2015 of 10 June 2015 on establishing necessary measures for assuring the transition from the analogue terrestrial television towards the digital terrestrial television and the implementation of the multimedia services at national level, as well as on the completion of the Audiovisual Act no. 504/2002 (see inter alia IRIS 2009-9/26, IRIS 2010-1/36, IRIS 2010-3/34, IRIS 2010-7/32, IRIS 2010-9/35, IRIS 2011-4/33, IRIS 2013-5/38, and IRIS 2013-6/30).

The draft Law had been adopted by the Chamber of Deputies (lower Chamber of the Romanian Parliament) on 4 November 2015, and by the Senate (upper Chamber of the Romanian Parliament) on 14 December 2015. The Act is intended to adapt the reality of the digital switchover, which is delayed in Romania for various reasons, to the external commitments of Romania with regard to the transition to the

digital terrestrial television. The digital switchover, already postponed several times, should have been completed on 17 June 2015, but the economic crisis and the legislative delays determined the non-compliance with the successive terms. According to Act no. 345/2015, the Government continued to allow the analogue TV transmission, largely used by the population. The Government permitted, on a temporary basis until 31 December 2016 at the latest, the analogue terrestrial broadcasting of public and private television, free of charge, under a technical agreement issued by the National Authority for Management and Regulation in Communications (ANCOM), subject to the following conditions: the analogue transmission through the already assigned frequencies does not perturb radio communication stations that use radio spectrum in accordance with international commitments to which Romania is part, and does not have radio protection from the above-mentioned stations. In the event of interferences and complaints from the communications administrations of neighbouring countries, the holder of the technical agreement shall immediately take all appropriate measures to eliminate interferences.

The right to use the radio frequencies for providing the public radio services through terrestrial radio broadcasting can be extended, temporarily, until 31 December 2016. The use of radio frequencies for providing the above-mentioned services after 31 December 2016 is subject to obtaining a nine year broadcasting licence, issued under the conditions of Law no. 142/2012 with further modifications and completions, which approved Government Emergency Decree no. 111/2011 on the electronic communications.

On the other hand, Law no. 345/2015 introduced a Chapter IV.1 and Articles 49.1 and 49.2 to Audiovisual Act no. 504/2002, with further modifications and completions, with measures meant to support the informative, cultural and educational programmes of the audiovisual services providers as of 1 July 2015.

The audiovisual services providers can benefit from a state aid scheme approved by Government Decision compliant with European and domestic legislation on state aid. The state aid scheme intends to stimulate the audiovisual broadcasters that produce and broadcast informative, cultural and educational programmes of public interest. The total budget of the scheme is LEI 67.5 million (approximately EUR 15 million) and can be expanded. The state aid scheme will contain the following elements: the eligibility of the beneficiaries, their estimated number, the categories of eligible expenditures and the procedure for granting and monitoring. The validity period of the aid scheme is 1 July 2015 until 31 December 2016 with the possibility of extension.

• *Ordonanța de urgență a Guvernului nr. 18/2015* (Government Emergency Decree no. 18/2015)
http://merlin.obs.coe.int/redirect.php?id=17848 RO

• *Legea nr. 345/2015 pentru aprobarea Ordonanței de urgență a Guvernului nr. 18/2015 privind stabilirea unor măsuri necesare pentru asigurarea tranziției de la televiziunea analogică terestră la televiziunea digitală terestră și implementarea serviciilor multimedia la nivel național, precum și pentru completarea Legii audiovizualului nr. 504/2002* (Act no. 345/2015 on the approval of the Government Emergency Decree no. 18/2015 on establishing necessary measures for assuring the transition from the analogue terrestrial television towards the digital terrestrial television and the implementation of the multimedia services at national level, as well as on the completion of the Audiovisual Act no. 504/2002 - form adopted by the Chamber of Deputies)
http://merlin.obs.coe.int/redirect.php?id=17858 RO

Eugen Cojocariu
Radio Romania International

US-United States

Happy Birthday everyone!

Two U.S. District Courts have recently issued rulings on copyright disputes over famous lyrics, that have expanded the scope of what is considered to be in the public domain.

On 23 September 2015 a U.S. District Court in California issued a ruling that the lyrics to the famous 80-year-old song "Happy Birthday to You" are not copyrightable, rejecting the claim by Warner/Chappell Music ("Warner") that it owns the copyright to the lyrics. The plaintiffs, a group of filmmakers who are producing a documentary about the song, sued Warner, challenging Warner's right to collect royalties for using the song, which by some estimates has amounted to over USD 2 million a year. The Court ruled that no evidence existed that the original company that asserted a copyright claim over the song ever legally obtained the rights to the "Happy Birthday To You" song from whomever wrote it. The ruling means that the song is now considered a public work and is free for everyone to use.

The plaintiff's attorneys have said that they will move to qualify the lawsuit as a class-action in an effort to recoup millions of dollars in licensing fees that Warner has collected. They indicated that they will pursue Warner for royalties that have been paid going back to at least 1988 or even as far back as 1935 when the original copyright was filed; although it is not clear how much money that would entail. A spokesman for Warner explained that Warner is still considering its options for a potential appeal.

In another case, a U.S. District Court in Miami issued a ruling on 17 September 2015 that singer Rick Ross' lyrics "Everyday I'm hustlin'," in his 2006 hit song "Hustlin'" are not copyrightable. The case arose in 2013 when Ross filed suit against the music group LMFAO for selling T-shirts with the similar catch-phrase

"Everyday I'm shufflin'." The Court held that the song "Hustlin'" is protected by copyright but found that the three-word slogan, is made up of ordinary words that are a "short expression of the sort that courts have uniformly held uncopyrightable." The judge compared it to other music catch-phrases from the past, such as "you got the right one, uh-huh," "holla back," and "we get it poppin'." The judge did not rule on whether LMFAO's song itself was an unauthorized copy of "Hustlin'." A trial is scheduled for October.

• The case "Good Morning to You", U.S. District Court for the Central District of California Western Division, Case 2:13-cv-04460-GHK-MRW
http://merlin.obs.coe.int/redirect.php?id=17850 EN

• The case William L. Roberts, II et al. v. Stefan Kendal Gordy et al, in the U.S. District Court for the Southern District of Florida, No. 13-cv-24700 ("Everyday I'm hustlin")
http://merlin.obs.coe.int/redirect.php?id=17851 EN

Jonathan Perl
Locus Telecommunications, Inc.

NSA ordered to stop surveillance of one citizen

On 9 November 2015, a US appeals court ruled that it was "substantially likely" that the bulk metadata collection program ("Program") first made public by National Security Agency (NSA) whistleblower Edward Snowden in 2013 is "unlawful," finding that "the plaintiffs have suffered concrete harm traceable to the challenged program."

The activist Larry Klayman brought an action against the NSA's Program, requesting the NSA to stop surveilling him. The judge ordered the NSA to stop the surveillance of the plaintiff, allowed the US government a period of three months to lodge an objection against his decision.

The US government filed an emergency request to allow the National Security Agency to keep collecting telephone metadata, which was granted. The government argued that the order ran the risk of shutting down the whole bulk collection program if a stay was not issued because immediate compliance with the district court's injunction would effectively require the abrupt termination of the program.

The Court acknowledged that the ruling is largely symbolic because the program was due to end on 29 November 2015. However, the judge said that ruling was still important because of the high stakes involved and that it would not "be the last chapter in the ongoing struggle to balance privacy rights and national security interests under our constitution in an age of evolving technological wizardry."

• The appeals Court's verdict, Case 1:13-cv-00851-RJL, U.S. District Court for the District of Columbia
http://merlin.obs.coe.int/redirect.php?id=17852 EN

Jonathan Perl
Locus Telecommunications, Inc.

Agenda

Book List

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