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of the European Audiovisual Observatory

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European Court of Human Rights: Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland

Following the Chamber judgment of the European Court of Human Rights (ECtHR) two years ago (see IRIS 2015-8/1), the Grand Chamber has also come to the conclusion that the right to freedom of expression and information was not violated in Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland. By fifteen votes to two the Grand Chamber found that a prohibition issued by the Finnish Data Protection Board that had prevented two media companies from publishing personal taxation data in the manner and to the extent that they had published these data before was to be considered as a legal, legitimate and necessary interference with the applicants' right to freedom of expression and information. The ECtHR approved the approach of the Finnish authorities, who had rejected the applicants' reliance on the exception provided in respect of journalistic activities by the law which protects personal data.

The ECtHR observed that at the heart of the present case lay the question of whether a correct balance had been struck between the right to freedom of expression and press freedom under Article 10 of the ECHR, on the one hand, and the right to privacy under Article 8 of the ECHR, on the other hand (both rights must be accorded equal respect). In addition, the ECtHR referred to a set of principles that are (i) related to press freedom, including "the gathering of information (as) an essential preparatory step in journalism and an inherent, protected part of press freedom" and (ii) related to privacy protection, emphasising that "the fact that information is already in the public domain will not necessarily remove the protection of Article 8 of the Convention". The ECtHR was of the opinion that the interference at issue was one that was prescribed by law and that had pursued the legitimate aim of protecting the reputation or rights of others. The question however remains whether the interference at issue was necessary in a democratic society. The relevant criteria in such a case are: a contribution to a debate of public interest, the degree of notoriety of the person affected, the subject of the news report, the prior conduct of the person concerned, the content, form and consequences of the publication, the way in which the information was obtained (and its veracity), and the gravity of the penalty imposed on the journalists or publishers.

The ECtHR pointed out that the derogation of journalistic purposes (which is indeed provided by the Finnish Personal Data Act) "is intended to allow journalists to access, collect and process data in order to ensure that they are able to perform their journalistic activities, themselves recognised as essential in a democratic society", while the right of access to public documents does not by itself justify the dissemination en masse of such "raw data in unaltered form without any analytical input". The ECtHR was not persuaded that the publication of taxation data in the manner and to the extent undertaken by the applicant companies contributed to a debate of public interest, or that its principal purpose was to do so. Rather, considered that the dissemination of the data at issue might have enabled curious members of the public to categorise named individuals, who are not public figures, and that this could be regarded "as a manifestation of the public's thirst for information about the private life of others and, as such, a form of sensationalism, even voyeurism". Because the impugned publication cannot be regarded as contributing to a debate of public interest, nor as a form of political speech, it cannot enjoy the traditionally privileged position of such speech, which calls for strict scrutiny by the ECtHR of interferences with press freedom, and allows little scope for restrictions under Article 10 § 2 of the ECHR. The vast majority of the Grand Chamber agreed with the findings at the domestic level "that the publication of the taxation data in the manner and to the extent described did not contribute to a debate of public interest and that the applicants could not in substance claim that it had been done solely for a journalistic purpose, within the meaning of domestic and EU law". This led the ECtHR to the conclusion that the Finnish authorities had acted within their "margin of appreciation" in striking a fair balance between the competing interests at stake. Therefore, the ECtHR found that there had been no violation of Article 10 ECHR.

The Grand Chamber on the other hand confirmed the finding of a violation of Article 6 § 1 of the ECHR (right to a fair trial), as the length of the proceedings at the domestic level (six years and six months) had been excessive and had failed to meet the "reasonable time" requirement, even taking into account the complexity of the case.

• Judgment by the European Court of Human Rights, Grand Chamber, case of Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland, Application no. 931/13 of 27 June 2017
http://merlin.obs.coe.int/redirect.php?id=18618 EN

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European Court of Human Rights: Ghiulfer Predescu v. Romania

The European Court of Human Rights (ECtHR), in a

case against Romania, has confirmed the strong protection of the right to freedom of expression to be guaranteed to statements by journalists made within the context of a lively debate in a television show on a matter of public interest.

Ms Predescu, an investigative journalist, complained of a violation of her right to freedom of expression. She appeared on a television show on a national television channel together with the Mayor of Constanţa, R.M., to discuss certain violent incidents that had taken place in Mamaia, a seaside resort on the outskirts of Constanţa. During the broadcast, Ms Predescu had made allegations that the Mayor was personally connected to a vendetta between violent rival clans operating in the area. The Mayor had lodged a civil complaint against her for defamation, essentially arguing that Ms Predescu's allegations about specific facts had not been previously verified, nor ever proved to be true. He had further argued that by associating his name and image with that of criminal groups or clans, the journalist had seriously harmed his reputation as a public person and a locally elected official. After the case went to appeal, the Mayor's claim was ultimately successful and Ms Predescu was ordered to pay RON 50,000 (approximately EUR 10,000) in damages, plus costs, and to publish at her own expense the judgment against her in two newspapers.

The question before the ECtHR was whether the domestic authorities had struck a fair balance between the protection of freedom of expression, as enshrined in Article 10, and the protection of the reputation of those against whom allegations are made, a right which, as an aspect of private life, is protected by Article 8 of the European Convention on Human Rights (ECHR).

Firstly, the ECtHR reiterated that there is little scope under Article 10 § 2 of the ECHR for restrictions on political speech or on debate on matters of public interest, and that the limits of acceptable criticism are therefore wider with regard to a civil servant or a politician acting in his public capacity than in relation to a private individual. Journalistic freedom also covers possible recourse to a degree of exaggeration or even provocation, while the safeguard afforded by Article 10 of the ECHR to journalists in relation to the reporting of issues of general interest is subject to the proviso that they are acting in good faith in order to provide accurate and reliable information, in accordance with the ethics of journalism.

Focusing on the concrete elements of the case, the ECtHR observed that the impugned television show had been an attempt to debate publicly the question of the possible implication of R.M. - the Mayor of the city of Constanţa and a local businessman - in violent incidents in which a large group of armed persons had wrecked several hotels in Mamaia, including a hotel belonging to a company in which R.M. was a shareholder. It stressed that the role of the press certainly entails a duty to alert the public when it has learned of presumed misappropriation on the part of local elected representatives and public officials. The ECtHR also noted that the format of the television show was designed to encourage an exchange of views or even an argument, in such a way that the opinions expressed would counterbalance each other and the debate hold the viewers' attention. The show had been broadcast live on television, so Ms Predescu had had only a limited possibility to reformulate, refine or retract any statements before they were made public. Furthermore, the statements expressed by Ms Predescu had had a sufficient factual basis, as they had been based on information which was already known to the general public - namely articles and journalistic investigative material that had been previously published about R.M.

In contrast with the judgment by the domestic appeal court that found Ms Predescu liable for defamation, the ECtHR was of the opinion that there was nothing in the case to suggest that the journalist's allegations had been made otherwise than in good faith and in pursuit of the legitimate aim of debating a matter of public interest. Finally the ECtHR noted that the amount that Ms Predescu had been ordered to pay had been extremely high and was capable of having a "chilling", dissuasive effect on her freedom of expression. The sanction imposed on the journalist had also lacked appropriate justification and the standards applied by the domestic courts had failed to ensure a fair balance between the relevant rights and related interests. Accordingly, the interference complained of was not "necessary in a democratic society" within the meaning of Article 10 § 2 of the ECHR; therefore the ECtHR found that there has been a violation of Article 10 ECHR.

• Judgment by the European Court of Human Rights, Fourth Section, case of Ghiulfer Predescu v. Romania, Application no. 29751/09 of 27 June 2017
http://merlin.obs.coe.int/redirect.php?id=18619 EN

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European Court of Human Rights: Halldórsson v. Iceland

In a case against Iceland, the European Court of Human Rights (ECtHR) stated that a journalist responsible for a TV news item causing prejudice to an identifiable public person must give relevant evidence that he or she has been acting in good faith as pertains to the accuracy of the allegations in the news item. The ECtHR also made clear that a journalist cannot shield behind his right to protect his sources where he cannot produce evidence of serious accusations uttered in a news item, tarnishing a person's reputation as

protected under Article 8 of the European Convention on Human Rights.

The applicant is a journalist working for the newsroom of the Icelandic National Broadcasting Service (RUV). RUV broadcasted a series of news reports about a loan transaction of about EUR 20 million between an Icelandic company and a shelf company in Panama. It was reported that three Icelandic businessmen (A, B and C) had planned the Panama deal in advance in order to send the money to Panama and then back into their own company again. Pictures of A, B and C were shown on the screen with the text "under investigation", accompanied by the message that the authorities were investigating the case and the role of A, B and C. In another news item, pictures of A, B and C were shown above a world map, with a pile of money being visually transferred to the pictures of the men, mentioning that the money went back in "the pockets of the threesome". An article summarising the content of the broadcasted news items was also published on RUV's website. After the news broadcast, A issued a press release denying any link with the alleged suspect transaction. The online news article was promptly updated to include the press release.

A few weeks later, A lodged defamation proceedings against Svavar Halldórsson, the RUV journalist who produced the news items. He requested that the reference to his name and the word "threesome" in the news report and on the website be declared null and void. The Supreme Court, overturning the judgment by the District Court which found for the journalist, ordered Halldórsson to pay approximately EUR 2,600 to A in compensation for non-pecuniary damage, and about EUR 8,800 for A's legal costs before the domestic courts. The mentioning of A's name and the word "threesome" were declared null and void. Before the ECtHR, Halldórsson maintained that the statements in the news items had not affected A's reputation to a sufficient degree, and that therefore A could not invoke the protection of Article 8 ECHR. He also argued that the statements were not defamatory and that there was nothing presented in the news item to the effect that A had been guilty of a financial crime or other actions punishable by law.

In evaluating whether the interference with Halldórsson's freedom of expression was justified as being necessary in a democratic society, the ECtHR first clarifies that a person's reputation, even if that person is being criticised in the context of a public debate, forms part of his or her personal identity and psychological integrity and therefore falls within the scope of his or her "private life". The attack on personal honour and reputation must however attain a certain level of gravity and in a manner causing prejudice to the personal enjoyment of the right to respect for private life in order for Article 8 ECHR to come into play. In line with the findings by the domestic courts, the ECtHR confirms that the news items indeed contained a serious accusation of a factual nature concerning unlawful and criminal acts; therefore the ECtHR is of the opinion that the dispute requires an examination of the fair balance to be struck between the right to respect for private life and the right to freedom of expression. The ECtHR refers to the criteria which are relevant when balancing these rights, such as the contribution to a debate of general interest; how well known the person concerned is and what the subject of the report is; his or her prior conduct; the method of obtaining the information and its veracity; the content, form and consequences of the publication; and the severity of the sanction imposed.

The ECtHR agrees that A was to be considered a public person and that the subject matter of the disputed news items was an issue of public interest; however, it confirms the findings by the Icelandic Supreme Court that Halldórsson had not been acting in good faith, as he had not presented any documents supporting the legitimacy of the statements, for which he had to bear the burden. Halldórsson had also omitted to seek information from A while preparing the news item. The ECtHR reiterates that the safeguard afforded by Article 10 ECHR to journalists in relation to reporting on issues of general interest is subject to the condition that they are acting in good faith and on an accurate factual basis and that they provide "reliable and precise" information in accordance with the ethics of journalism. It finds that there were no special grounds to dispense the journalist from his ordinary obligation to verify factual statements that are defamatory of private individuals, and it observed that there was no confirmation that A had been charged, indicted, or was on trial or had been convicted of a crime.

Next, the ECtHR dismisses Halldórsson's arguments referring to the right to protect his sources and to keep his sources and the documentation behind the news items confidential. The ECtHR confirms that the protection of journalistic sources is one of the basic conditions for press freedom, without which sources may be deterred from assisting the press in informing the public on matters of public concern. In the present case, however, the journalist was at no stage required to disclose the identity of his sources. The ECtHR clarifies that "a mere reference to protection of sources cannot exempt a journalist from the obligation to prove the veracity of or have sufficient factual basis for serious accusations of a factual nature, an obligation that can be met without necessarily having to reveal the sources in question".

Finally, the ECtHR does not find the financial compensation and payment of the costs of the domestic proceedings excessive or to be of such a kind as to have a "chilling effect" on the exercise of media freedom. The ECtHR also considers the potential impact of the medium an important factor in the consideration of the proportionality of an interference. In this respect, the ECtHR reiterates "that the audio-visual media have a more immediate and powerful effect than the print media". Because the Icelandic Supreme Court balanced the right of freedom of expression with the right to respect for private life, and took into ac-

count the criteria set out in the ECtHR's case law, it acted within the margin of appreciation afforded to it and struck a reasonable balance between the measures imposed, restricting the right to freedom of expression. Therefore, the ECtHR concludes, unanimously, that there has been no violation of Halldórsson's right to freedom of expression under Article 10 ECHR.

• Judgment by the European Court of Human Rights, Second Section, case of Halldórsson v. Iceland, Application no. 44322/13 of 4 July 2017
http://merlin.obs.coe.int/redirect.php?id=18620 EN

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Parliamentary Assembly: Recommendation and Resolution on political influence over independent media and journalists

On 29 June 2017, the Parliamentary Assembly of the Council of Europe (PACE) adopted a Recommendation and Resolution on political influence over independent media and journalists. Both instruments are intended to address different types of attacks that hinder the independence of journalists.

The Resolution recalls that there is no independence when journalists and their families are exposed to the dangers of physical, legal and economic attacks. Those attacks or threats may be perpetrated through the internet and social media and tend to cause self-censorship and hinder the public´s right to receive unbiased, critical information. This is supported by what is said in the Rapporteur's Report, where it is stated that, according to organisations like Reporters without Borders, there is a "deep and disturbing decline in media freedom". PACE denounces the existence of practices aimed at fuelling public distrust of the media; political forces use different strategies to silence criticism and dissent. In the same vein, cyber bullying, psychological violence and intimidation are subjects with special relevance in both of the PACE instruments. Moreover, PACE noted in this Resolution that the digital environment had brought about changes in the media business model. It was also noted that media that are dependent on public funding are vulnerable to political influence. Furthermore, the fact that political, economic and other social actors are having an increasingly important role on the internet and social media has diminished the role of journalism and independent media in public debate and in the flow of information.

The term "independence" of media outlets, according to the Rapporteur's Report, must be examined in financial, operational and editorial contexts; moreover, it is linked to pluralism. On the one hand, pluralism upholds independence as a way of weakening the effectiveness of pressures; on the other hand, independence is a necessary condition to impede pluralism from becoming merely formal.

The Resolution provides different recommendations regarding the engagement of the Council of Europe member States in safeguarding journalists' security and freedom, as well as media pluralism and independence. Those recommendations include the effective implementation of prior recommendations, including Recommendation CM/Rec(2016)4 on the protection of journalism and the safety of journalists and other media actors (see IRIS 2016-5/3) and Recommendation CM/Rec(2012)1 on public service media governance. Moreover, the Resolution gives specific recommendations regarding issues such as the appointment of public service media (PSM) managers and staff for which the intervention of public authorities is required; the funding of such media; and the design of support schemes for private and non-profit media.

Finally, public service media issues are also emphasised in PACE's Recommendation. This instrument elaborates on recommending the design of and support for targeted co-operation programmes aimed at promoting good practices in the governance of public service media.

• Parliamentary Assembly of the Council of Europe, Resolution 2179 (2017) on political influence over independent media and journalists, 29 June 2017
http://merlin.obs.coe.int/redirect.php?id=18623 EN FR
• Parliamentary Assembly of the Council of Europe, Recommendation 2111 (2017) on political influence over independent media and journalists, 29 June 2017
http://merlin.obs.coe.int/redirect.php?id=18624 EN FR
• Parliamentary Assembly of the Council of Europe Committee on Culture, Science, Education and Media, Rapporteur Report, Political influence over independent media and journalists, 9 June 2017
http://merlin.obs.coe.int/redirect.php?id=18625 EN FR

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Council of Europe: European Broadcasting Union becomes partner organisation of the Council of Europe Platform to protect journalists

On 30 June 2017, the European Broadcasting Union (EBU) signed a partnership agreement and became the eleventh Partner Organisation to join the Council of Europe Platform to promote the protection of journalism and the safety of journalists. The Platform, established in April 2015, allows the compilation of alerts on serious concerns about media freedom and the safety of journalists in Council of Europe member States by certain Partner Organisations (see

IRIS 2017-2/2). Since the launching of the Platform, Partner Organisations have issued 306 alerts from 35 countries, including 82 concerning physical attacks, 70 alerts on the detention and imprisonment of journalists, as well as 36 cases of harassment or intimidation and 104 acts that have a chilling effect on media freedoms. These alerts are reported by the Partner Organisations and subsequently sent to the authorities of the country concerned, as well as to the Council of Europe's competent institutions. This process is followed by dialogue on the issue with the national authorities. Out of all reported cases, around half (51%) have resulted in some kind of follow-up action by national states or the Council of Europe institutions. The actions undertaken, including the outcome of the dialogue, are also available on the Platform. The Platform has also been relied upon in recent Recommendations and Resolutions of the Parliamentary Assembly of the Council of Europe (PACE) on journalist safety and media freedom in Europe (see for example IRIS 2017-3/3). In this regard, the significance of the EBU becoming a Partner Organisation was highlighted by the Council of Europe Secretary General Thorbjørn Jagland, who stated that, as the leading network of public broadcasters, working for almost 70 years for and with broadcasters, the EBU would strengthen the Council of Europe's efforts to protect media freedom.

• Council of Europe, European Broadcasting Union joins Council of Europe platform to protect journalists, Ref. DC 099(2017), 30 June 2017
http://merlin.obs.coe.int/redirect.php?id=18653 EN FR

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EUROPEAN UNION

Advocate General: Opinion on jurisdiction in Internet defamation proceedings

On 13 July 2017, Advocate General Bobek delivered an opinion in Bolagsupplysningen OÜ and Ingrid Ilsjan v. Svensk Handel AB (Case C-194/16) concerning jurisdiction in internet defamation proceedings. The case involved a company, Bolagsupplysningen OÜ, which was established in Estonia, but which did most of its business in Sweden. A Swedish trade federation placed the company on a blacklist published on its website, stating that the company "deals in lies and deceit". A forum on the website had over 1,000 comments in response to the blacklisting, with some comments including "calls for acts of violence" against the company and its employees. In September 2015, the company and one of its employees brought an action in an Estonian court, seeking an order for the Swedish trade federation to rectify the information on its website about the company, remove the comments from its website, and pay damages of around EUR 56,000 for loss of profit. The company claimed that the trade federation's publication had "crippled" the company's business in Sweden.

However, in October 2015, an Estonian district court dismissed the application, holding that the harm had not been proven to have been sustained in Estonia, and applied EU Regulation No. 1215/2012, Article 7(2), which provides that a person domiciled in a Member State may be sued in another Member State in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur. The court noted that the publication and comments were written in Swedish, which would be "incomprehensible" to Estonian readers, and that the fall in turnover was in Swedish krona, which indicated that the harm was sustained in Sweden. The Tallinn Court of Appeal also dismissed the action. On further appeal, the Estonia Supreme Court decided to stay the proceedings, and referred a number of questions to the Court of Justice of the European Union (CJEU) concerning EU Regulation No. 1215/2012, mainly on whether a legal person can bring proceedings over the publication of incorrect information on the internet before the courts of the Member States in which it had its "centre of interests". This was a special ground of jurisdiction which had been applied by the CJEU to "natural persons" in its Date judgment (see IRIS 2012/1: Extra).

In the Opinion, AG Bobek considers that a legal person alleging that its personality rights have been infringed by a publication on the internet can bring proceedings "in respect of the entirety of the harm sustained" before the courts of the Member States in which its "centre of interests" is located. AG Bobek was of the view that there is no good reason why the jurisdictional rules should be applied differently depending on whether the claimant is a natural or legal person.

In this regard, AG Bobek stated that a legal person's centre of interests is located where it conducts its main professional activities, provided that the allegedly harmful information is capable of affecting its professional activities in that Member State. In order to determine the centre of interest of a legal person, the relevant factors are likely to be the main commercial or other professional activities, which in turn will be most accurately determined by reference to turnover or number of customers or other professional contacts. The seat may be taken into account as one of the factual elements, but not in isolation. Finally, the relevant national court has full jurisdiction for both the determination and award of damages, as well as for any other remedies available to it under national law, including injunctions.

• Court of Justice of the European Union, Opinion of the Advocate General Michal Bobek, Case C-194/16 Bolagsupplysningen OÜ and Ingrid Ilsjan v Svensk Handel AB, 13 July 2017
http://merlin.obs.coe.int/redirect.php?id=18621 DE EN FR
CS DA EL ES ET FI HU IT LT LV MT NL PL PT SK SL SV HR

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European Parliament: Resolution on online platforms and the Digital Single Market

On 15 June 2017, the European Parliament adopted a Resolution on online platforms and the Digital Single Market. This follows the European Commission's Communication on a Digital Single Market Strategy for Europe in 2015, which included creating a fit for purpose regulatory environment for platforms and intermediaries (see IRIS 2015-6/3).

The Resolution begins by welcoming the Commission's Communication on Online Platforms and the Digital Single Market (see IRIS 2015-10/4 and IRIS 2017-7/7), and by acknowledging that online platforms benefit today's digital economy and society by increasing the choices available to consumers and by creating and shaping new markets. However, at the same time, online platforms present new policy and regulatory challenges. The Resolution goes on to consider a number of issues, including:

- how to define platforms;

- how to facilitate the sustainable growth of European online platforms;

- how to clarify the liability of intermediaries;

- how to create a level playing field;

- how to increase online trust;

- how to foster innovation; and

- how to respect business-to-business relations and EU competition law.

In this regard, a number of notable provisions should be mentioned.

First, on the definition of platforms, the Resolution acknowledges that it would be very difficult to arrive at a single, legally relevant and future-proof definition of online platforms at EU level, and that online platforms should be distinguished and defined in relevant sector-specific legislation at EU level according to their characteristics, classifications and principles and following a problem-driven approach. Secondly, the Resolution notes that despite the fact that more creative content is being consumed today than ever before on services such as user-uploaded content platforms and content aggregation services, the creative sectors have not seen a comparable increase in revenue from this increase in consumption. In this regard, the Resolution stresses that one of the main reasons for this is considered to be a transfer of value that has emerged as a result of the lack of clarity regarding the status of these online services under copyright and e-commerce law and it also stresses that an unfair market has been created which threatens the development of the digital single market and its main players, namely the cultural and creative industries. It is noteworthy that the Resolution urges online platforms to strengthen measures to tackle illegal and harmful content online and welcomes the ongoing work on the AVMS Directive and the Commission's intention to propose measures for video-sharing platforms in order to protect minors, and for taking down content related to hate speech (see IRIS 2017-7/6). Thirdly, the Resolution also considers the role of online platforms and fake news, and calls on the Commission to analyse in depth the current situation and legal framework with regard to fake news, and to verify the possibility of legislative intervention to limit the dissemination and spreading of fake content.

Finally, and in relation to audiovisual content in particular, the Resolution emphasises the need to restore a balance in the sharing of value for intellectual property, in particular on platforms distributing protected audiovisual content. Moreover, the Resolution calls for closer cooperation between platforms and rightsholders in order to ensure proper clearance of rights and to fight the infringement of intellectual property rights online.

• European Parliament resolution of 15 June 2017 on online platforms and the digital single market (2016/2276(INI)), 15 June 2017
http://merlin.obs.coe.int/redirect.php?id=18622 DE EN FR
CS DA EL ES ET FI HU IT LT LV MT NL PL PT SK SL SV HR

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REGIONAL AREAS

CIS – Commonwealth of Independent States: New model law on Internet regulation

On 25 November 2016 the Commonwealth of Independent States (CIS) Interparliamentary Assembly enacted a new version of the 2011 Model Statute on the Basics of Internet Regulation (Модельный закон «

Об основах регулирования Интернета » - see IRIS 2011-8/10). It consists of three chapters containing a total of fifteen articles.

The Act sets out the principles governing (and determines the main direction of) the regulation of relations concerning the use of the Internet, sets out the procedures for State support of its development, and outlines the rules for determining the place and time of legally relevant actions with the use of Internet.

The Model Statute (Article 2) provides definitions of "Internet", "operator of Internet services", "national segment of Internet", etc. The updated Article 5 spells out the principles governing legal regulation. In comparison with the 2011 Model Statute, these principles exclude all reference to the need to limit State regulation according to subject matter (which may or may not be regulated by the rules adopted by self-regulatory organisations of users and operators of Internet services). It also sets out new principles, namely: limitations of access to information must be prescribed by law; the inviolability of privacy in the use of Internet; the inadmissibility of establishing by means of legal instruments any advantages for the use of certain technologies (unless allowing such advantages is in the interests of national security); the "right to be forgotten"; and the right of the owner of any online information to dispose of it within the legally permissible limits and/or limits established by the website owner.

CIS Member States are encouraged (under Article 13) to ban (or block) the dissemination of information via the Internet that: causes harm to minors and/or their development; aims at propagandising for war and national, racial or religious hatred and enmity; calls for mass disturbances or other extremist activities; violates copyright; contains pornographic images of minors; details methods of producing and developing narcotics; and "any other information, the dissemination of which is forbidden or limited by the national law or a decision of the national court of justice." The CIS Member States are recommended to maintain national registers of forbidden websites, to establish the liability of both users and ISPs in respect of the dissemination of forbidden information, and to cooperate with each other on these issues.

At the same time Article 15 of the Act suggests that ISPs shall not bear liability for the dissemination of illegal information if the services in question are provided on condition that the disseminated information is kept intact or if they were not aware and could not have been aware of the ban or limitation on access to the particular information.

Article 14 of the Model Statute stipulates that ISPs should store the personal data of national citizens on the territory of the relevant states, unless national law provides otherwise.

• Модельный закон « Об основах регулирования Интернета » (Model Statute on the Basics of Internet Regulation, adopted at the 45th plenary meeting of the CIS Interparliamentary Assembly (Resolution No. 45-12 of 25 November 2016))
http://merlin.obs.coe.int/redirect.php?id=18611 RU

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NATIONAL

BE-Belgium

New audiovisual legislation in Brussels

It is sometimes forgotten than Belgium's complex institutional organisational structure in respect of audiovisual matters is not made up only of the country's three linguistic communities (the French-, Flemish- and German-speaking sections of the population). A few areas of responsibility have been retained by the federal (that is to say, national) authorities; these include audiovisual matters in the bilingual region of Brussels-Capital - an area that is home to nearly 1.2 million people; Brussel's French- and Flemish-speaking communities do have some responsibilities, but only with regard to those institutions whose activities connect them exclusively to one or other community. Thus, for example, the two main public services are located in neighbouring buildings in Brussels: the Belgian public service broadcaster RTBF is dependent on the French-speaking community, whereas the Vlaamse Regulator voor de Media (Flemish Regulator for the Media) (VRT) is dependent on the Flemish-speaking community.

On 30 March 1995 the Parliament enacted legislation regulating the audiovisual scene in Brussels. The legislation affected in particular cable distributors in Brussels (which were of course not connected exclusively to one or other of the communities); it also theoretically covered bilingual radio stations and television channels, as well as stations and channels broadcasting in languages other than Belgium's official languages. This resulted in the necessity for audiovisual media services that were based in Brussels but whose services were directed at audiences in non-European countries to apply to the national postal and telecom authority (Institut Belge des Services Postaux et des Télécommunications) for authorisation to carry out their activities, since it is the regulator of electronic communications and the postal service that serves as the regulator of audiovisual media services in the Brussels region.

A new law of 5 May 2017 on audiovisual media services in the bilingual Brussels region (published in the

Moniteur Belge on 23 May 2017) has replaced the 1995 Act. It does not make any major changes to the substance of the legislation, but it does enable Belgium to fully transpose throughout the country European Directives on networks and audiovisual media services.

• *Loi relative aux services de médias audiovisuels en région bilingue de Bruxelles-Capitale, 5 mai 2017* (Law on audiovisual media services in the bilingual Brussels-Capital region, 5 May 2017)
http://merlin.obs.coe.int/redirect.php?id=18634 FR

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CSA demands control over RTL Belgium

The Conseil Supérieur de l'Audiovisuel de la Communauté Française (audiovisual regulatory body for the French Community of Belgium - CSA) wants to bring RTL Belgium under its control. However, the broadcaster, which belongs to the RTL Group and operates the RTL-TVi, Club RTL and Plug RT channels, only recognises the authority of the Autorité luxembourgeoise indépendante de l'audiovisuel (Luxembourg independent audiovisual authority - ALIA).

The CSA is the regulatory body for the French Community of Belgium. On 29 June 2017, it announced that it wanted to bring the broadcaster RTL Belgium under its control and that complaints against RTL Belgium would no longer be sent to its Luxembourg counterpart, the ALIA. It will now examine the legislation of the French Community of Belgium and the agreements that were concluded with regard to the broadcaster.

Belgium's federal structure is reflected in the Belgian media landscape, which is characterised by the cultural and political division of the country. The politico-administrative system is split into three regions with their own legislative and executive institutions (Flanders, Wallonia and Brussels). In parallel, the country is also divided into three Communities (Flemish, French and German), each with their own parliaments and governments. Above these two tiers are the Belgian federal government, which is responsible for national affairs, and the supranational decision-making bodies of the European Union.

Since deciding on 1 April 2010 to forward all complaints against RTL Belgium to the ALIA in Luxembourg, the CSA had not dealt with any such complaints.

The CSA's decision to deal with public complaints against RTL Belgium itself followed several periods of monitoring of the activities of the broadcaster's channels, as well as analysis of the distribution of powers, which, in the CSA's opinion, showed that it made more sense for the broadcaster to fall under Wallonia's jurisdiction rather than that of Luxembourg. However, the broadcaster and the ALIA disagree, arguing that, since the RTL Group is based in Luxembourg, that country's media law provisions should apply and its activities should therefore be monitored by the ALIA.

One consequence of Belgium's federal structure is that each of the Communities has its own independent media authorities. There are no national media covering all three Communities; the Belga news agency is the only organisation that works in all three, although it is divided into three editorial offices, each of which compiles and publishes news for its respective Community. In addition, Belgian media report relatively rarely on events in other parts of the country, which means they themselves play a significant part in the cultural divide within the country.

At present, the regulation of broadcasting and media in Belgium takes place primarily at Community level, within the framework of EU law. As a result, each of the three Communities has its own media regulatory authority. Alongside the CSA for the French Community, the Vlaamse Regulator voor de Media (VRM) monitors the Flemish media sector, publishes an annual report on media concentration and issues licences for new radio and television broadcasters. The Medienrat (Media Council) fulfils the same role for the German Community. All three are also members of the Conference of Regulators of Electronic Communications Networks, along with the Belgian Institute for Postal Services and Communications.

• *Communiqué de presse du CSA, 6 juillet 2017* (CSA press release, 6 July 2017)
http://merlin.obs.coe.int/redirect.php?id=18629 FR
• *Communiqué de presse de l'ALIA, 10 juillet 2017* (ALIA statement, 10 July 2017)
http://merlin.obs.coe.int/redirect.php?id=18630 FR

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CY-Cyprus

Television temporary licences extended for one year to June 2018

The operation of audiovisual media service providers will continue with temporary licences until the end of June 2018. This is provided by Law 81(I)/2017, which amends the Basic Law on Radio and Television Organisations L. 7(I)/1998, published in the Official Gazette on 30 June 2017; the law amends Article 56 of the Basic Law and authorises the Radio Television Authority to extend the validity of television licences for all operating service providers for one more year. Following

the switchover to digital television in July 2011, temporary licences for digital transmission replaced the licences for analogue transmission, initially valid until 30 June 2012. While waiting for amendments to Basic Law 7(I)/1998 that would respond to the conditions of the new environment, temporary licences have since then been renewed each year. Thus, temporality is now extended until 30 June 2018. Under the Basic Law, normal television licences are valid for ten years.

Under the same amending law, temporary licences to legal entities of public law are also extended for one year, even in the event that they do not meet all the requirements set out by law; this is applicable to CYTA (the Cyprus Telecommunications Authority - Αρχή Τηλεπικοινωνιών 332΄305300301377305), a semi-governmental organisation that operates IPTV. Its capital share and structure as a legal entity of public law deviates from the model set by the Basic Law, which requires, among other things, capital share dispersion and a ceiling of 25% for shareholders. After having operated in an analogue environment which was unregulated for online providers, CYTA benefits from a special provision and has been operating in the digital environment since 2011.

The amending law authorises the Radio Television Authority to issue temporary licences to new applicants; these licences are also valid until the aforementioned date.

It is noteworthy that the Basic Law has undergone no major amendment since December 2010, when provisions of the AVMS Directive were incorporated into the national law of Cyprus. In June 2017, the relevant parliamentary committee noted in its report to the Plenary of the House of Representatives that the extension of temporary licences was required pending major amendments to the basic law that would adapt it to the new environment and make permanent licences possible. No details are available of the timing of the expected amendments.

• Αριθμός *81(331)* του *2017* - ΝΟΜΟΣ ΠΟΥ ΤΡΟΠΟΠΟΙΕΙ ΤΟΥΣ ΠΕΡΙ ΡΑΔΙΟΦΩΝΙΚΩΝ ΚΑΙ ΤΗΛΕΟΠΤΙΚΩΝ ΟΡΓΑΝΙΣΜΩΝ ΝΟΜΟΥΣ ΤΟΥ *1998* ΕΩΣ *2017* (Amending Law 81(I)/2017 of the Law on Radio and Television Organisations 7(I)/1998)
http://merlin.obs.coe.int/redirect.php?id=18614 EL

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CZ-Czech Republic

Frequencies in the 3.7 GHz band will be divided between two existing and two new operators

The "Invitation to tender for the award of rights to use radio frequencies to provide an electronic communications network in the 3600-3800 MHz band" has ended. In addition to two existing operators (O2 Czech Republic a.s. and Vodafone Czech Republic a.s.), Nordic Telecom 5G a.s. and PODA a.s. - two new applicants for high-speed data networks in this band - succeeded in the auction.

While existing operators could get only a 40 MHz frequency allocation in the auction, the spectral limit was doubled for new operators. This option has been taken up by Nordic Telecom 5G a.s.

The Chairman of the Czech Telecommunications Office (Český telekomunikační úřad) said that the result of the successful auction showed that the telecommunications market is geared to providing data services that are the backbone of a functioning digital economy. He pointed out that the 3.7 GHz frequencies were particularly suitable for building high-capacity mobile data networks and the future development of fifth-generation networks.

Each of the five auction blocks was auctioned for CZK 203 million - seven times higher than the starting price. The Czech Telecommunications Office is expected to officially allocate the acquired radio frequencies immediately after the successful tenderers pay the prices for the auctioned spectrum.

• *Výběrové řízení za účelem udělení práv k využívání rádiových kmitočtů pro zajištění sítí elektronických komunikací v kmitočtovém pásmu 3600–3800 MHz* (Invitation to tender for the award of rights to use radio frequencies to provide an electronic communications network in the 3600-3800 MHz band)
http://merlin.obs.coe.int/redirect.php?id=18615 CS

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DVB-T2 broadcasting

České Radiokomunikace a.s. (CRA) is the Czech provider of television, radio and internet infrastructure. It has launched DVB-T2 broadcasting, enabling 26% of the population to view eleven television channels in the second generation standard of digital television broadcasting.

CRA launched the first part of the transitory network for DVB-T2 /HEVC from the Zizkov and Cukrak transmitters in Prague. In the coming months, the network will be extended to other regions, aiming to cover 99% of Czech territory by the spring of 2018. The DVB-T2 network will enable the broadcasting of programmes by commercial television channels even after 2020, when a switch-off of the current DVB-T network is planned. CRA is thus implementing the Strategy for the Development of Terrestrial Broadcasting adopted by the Government.

The transition to DVB-T2 will follow the release of some television frequencies for the allocation of 5G mobile data networks after 2020. Terrestrial broadcasting reception is provided for more than 60% of households. It is the only platform that is free for viewers. The parallel broadcasting launched by CRA also has an important social dimension. People will have time to upgrade their sets - they have until 2020 to buy a new model.

Channels broadcasting in the 12 DVB-T2 transitory network are Prima, Prima Love, Prima Zoom, Prima Max, Prima Cool, Barrandov television, Barrandov Plus, Kino Barrandov, Ocko, Ocko Gold and Slagr television.

To simplify consumer navigation, the CRA has devised certification for television sets supporting the new standard, with a "DVB-T2-certified" logo to be placed on devices which support the new broadcasting standard and have passed the relevant tests. The list of such models is regularly updated.

• *Spuštěno vysílání v první části přechodové sítě DVB-T2* (Press release: Starting transmission in the first part of the DVB-T2 transmission network)
http://merlin.obs.coe.int/redirect.php?id=18650 CS

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DE-Germany

Sat.1 disputes third-party airtime

Sat.1 SatellitenFernsehen GmbH has successfully submitted an urgent application to the Verwaltungsgericht Neustadt (Neustadt Administrative Court - VG Neustadt) against a licensing decision of the Rhineland-Palatinate regional media authority, the Landeszentrale für Medien und Kommunikation (LMK), which had been declared immediately enforceable. In a decision of 14 July 2017, the court reinstated the suspensive effect of the appeal against the LMK's decision.

The case concerned the question of whether Sat.1 was obliged to allocate airtime to independent third parties. On 13 February 2017, the LMK awarded licences to three television production companies for the production and distribution of national window programmes. Consequently, Sat.1 was obliged to allocate airtime to these TV companies at its own expense for a five-year period from 1 March 2017. In concrete terms, this meant that Sat.1's licence to produce and distribute its national general interest channel would be limited during the times when the third-party providers broadcast their window programmes.

Sat.1 filed an appeal against this decision, as well as an application for suspensive effect to be reinstated, given that the ruling had been declared immediately enforceable. In response to the latter application, the court decided that, prima facie, the LMK's decision appeared unlawful. The licences should not have been awarded to the three TV production companies and Sat.1's licence should not have been limited in this way because the procedure had not been conducted in accordance with the relevant provisions of the Rundfunkstaatsvertrag (Inter-State Broadcasting Agreement). The licensing procedure should not have been initiated and a call for tender should not have been issued while the licensing procedure for the 1 June 2013 to 31 May 2018 licensing period, concerning which the Oberverwaltungsgericht Rheinland-Pfalz (Rhineland-Palatinate Administrative Court of Appeal - OVG Rheinland-Pfalz) had yet to issue a decision, was still ongoing. The fact that the call for tender had contained certain caveats had not been sufficient to resolve the problem. The procedure should not have been initiated nor a new call for tender issued until after the conclusion of the appeal proceedings in February 2017. At that time, the applicant had not (or no longer) been obliged to allocate airtime to third parties because the audience share of the broadcasting group of which it was part had been below 19% during the relevant reference period of February 2016 to January 2017.

In addition, regardless of the licensing period overlap, the audience share calculation carried out in accordance with the Rundfunkstaatsvertrag for the new licensing period had been based on the wrong reference period and the applicant had probably not been under any obligation to allocate third-party airtime at all. During the relevant reference period of February 2016 to January 2017, the audience share of the ProSiebenSat.1 broadcasting group had been less than 19%; however, the Rundfunkstaatsvertrag stated that the obligation to allocate third-party airtime only applied to broadcasting groups with an annual average market share of 20% or more, or to individual general interest channels with a share of at least 10%. Even the latter figure had not been reached in this case, since Sat.1 had only achieved an average market share of 7.3% in 2016.

After the court's decision, Sat.1 immediately removed the programmes of third-party providers Good Times and Tellvision from its schedule.

The court also ruled that the LMK should not have launched the new licensing procedure while another procedure remained the subject of appeal proceedings before the OVG Rheinland-Pfalz. An urgent procedure between the parties had been initiated in September 2014 and complaint proceedings in April 2015. In the latter, the VG Neustadt had decided that the LMK should issue a new call for tender for Sat.1 third-party airtime. The TV production companies summoned to the proceedings appealed against this decision and the matter was not concluded un-

til February 2017, when the appeal was withdrawn. However, by issuing the new call for tender in January 2016 and then licences to third parties in February 2017, the LMK had committed a further procedural error.

An appeal against the decision may be lodged with the OVG Rheinland-Pfalz.

• *VG Neustadt, Pressemitteilung Nr. 28/17, 4. August 2017* (Neustadt Administrative Court, press release no. 28/17, 4 August 2017)
http://merlin.obs.coe.int/redirect.php?id=18664 DE

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ES-Spain

CNMC fines the Professional Football League

According to CNMC, the LPF prevented Mediaset cameras from accessing football stadiums for three league days during Season 2016/17. Specifically, the LFP prohibited the cameras of the Mediaset group (Telecinco and Cuatro) from taking images of the pitch during rounds 24 (24, 25 and 26 February 2017) and 25 (28 February, 1 and 2 March 2017) of the First Division, and round 27 of the Second Division (24, 25 and 26 February 2017).

CNMC determined that the LFP had violated its Decision of January 2016 on the limitation of access to stadiums. By this decision, CNMC obliged the LFP to guarantee audiovisual media access to spaces in which events of general interest are held.

• *Resolución del procedimiento sancionador SNC/DTSA/020/17/LNFP, incoado a la Liga Nacional de Fútbol Profesional, por el presunto incumplimiento de la resolución de la Sala de Supervisión Regulatoria de la Comisión Nacional de los Mercados y la Competencia de 14 de enero de 2016, recaída en el expediente CFT/DTSA/0010/15, y por el presunto incumplimiento del artículo 19.3 de la ley 7/2010, de 31 de marzo, general de la comunicación audiovisual, en lo relativo al impedimento al acceso a los estadios de fútbol* (CNMC Decision SNC/DTSA/020/17/LNFP)
http://merlin.obs.coe.int/redirect.php?id=18657 ES

• *Nota de prensa: La CNMC sanciona a la Liga de Fútbol Profesional (LFP) con 250.000 euros por impedir el acceso a Mediaset a los estadios* (CNMC Press release on the Decision SNC/DTSA/020/17/LNFP)
http://merlin.obs.coe.int/redirect.php?id=18658 ES

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Report on the fulfilment of the investment in European works in 2015

On 4 May 2017, the CNMC published its report on the fulfilment of the investment in European works in 2015. Under the Spanish Audiovisual Communication Law, media service broadcasters and electronic communications providers broadcasting television channels are required to earmark 5% of their operating revenue for the pre-funding of European cinematographic films, and films and series made for television. The CNMC is responsible for monitoring compliance with this law.

The CNMC notes that the designated providers invested a total of EUR 179.93 million in European works in 2015, which is 15.37% less compared to 2014. Investments made by regional television providers amounted to EU 22.08 million, which means an annual increase of EUR 1.80 million compared to 2014.

Of the 17 national providers analysed, DTS was the only one that had not reached the minimum 5% contribution. Other providers, such as 13TV, Atresmedia, Vodafone ONO and Telefónica also missed the threshold, but they offset that deficit with the surplus of investment generated in 2014.

The main share of the 2015 investment - EUR 58.69 million (that is to say, 33.20%) - was allocated to Spanish cinema. Providers funded 128 out of 255 cinematographic films, which represents more than 50% of the year's total film production.

• *Informe sobre el cumplimiento en el ejercicio 2015, por parte de los prestadores del servicio de comunicación audiovisual televisiva, de la obligación de financiación anticipada de la producción europea de películas cinematográficas, películas y series para televisión, documentales y series de animación, 4 de mayo de 2017* (CNMC Report on the fulfilment of the investment on European works in 2015)
http://merlin.obs.coe.int/redirect.php?id=18659 ES

• *Nota de prensa - Las televisiones reducen en un 15,37% su inversión en obra audiovisual europea* (CNMC Press release on the Report)
http://merlin.obs.coe.int/redirect.php?id=18660 ES

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FR-France

Media chronology: Senate's Committee on Culture makes proposals

The saga of the reform of media chronology - the rules that define the operating windows for films shown via

various media (cinemas, DVD, pay and freeview channels, video on demand, etc.) - is entering a new phase thanks to the efforts of the Senate's Committee on Culture.

The various windows specific to each mode of operation are laid down in an extended agreement within the industry (signed on 6 July 2009 by thirty-five parties) and in legislation governing cinemas and pay-per-view video. Operators in the cinema sector, as well as consumers, want to see quicker access to films. What is more, the very foundation of media chronology is being threatened by the emergence of new stakeholders and changes in viewing habits. Platforms such as Netflix and Amazon now occupy a major part of the market; some of them avoid conforming to the rules on media chronology and the obligations to finance creation by virtue of their place of establishment. At the same time, traditional stakeholders such as Canal+ are finding themselves in serious difficulty, even though advance purchases (particularly by pay channels) are a core feature of the financing of films. Even so, discussions with the national centre for cinema and animated images (Centre National du Cinéma and de l'Image Animée) have failed to reach a conclusion. Faced with stalemate in the negotiations with the industry on the one hand and the urgency of adapting the regulations on the other, the Senate's Committee on Culture held a session on 12 July 2017 at which all stakeholders in the sector had a chance to give their views, before delivering its conclusions on 27 July.

In its report, the Committee stresses the need to reform the present framework for media chronology. It reiterates that Directive 97/36/EC of 30 June 1997 lays down the principle of giving priority to an agreement with the industry on the subject, although the legislator's intervention is not excluded if no agreement can be reached. It therefore proposes that, if no agreement is reached with the industry by the end of the year, legislative arrangements should be set in motion in early 2018 in the form of a bill or inclusion in the drafting of any new audiovisual legislation. Such an opportunity might indeed be provided by the need to transpose the AMS Directive into national law in 2018. The Committee goes on to note that the definition of a window more favourable than the thirty-six months for subscription VOD operators should be conditional on significant multi-year undertakings to finance the French cinema sector; it is convinced that modernising chronology should form part of a global reform, and in particular that it should be accompanied by both a stepping-up of the fight against piracy and the setting-up of systematic marking embedded in works.

As part of this overall reform, a number of aspects of chronology will need to be adjusted. The adoption of "sliding windows" would make it possible in respect of a work that has not found a distributor for one of its windows for distributors in the following window to be authorised to commence their operations earlier. Bringing forward the VOD window to three months is also recommended. Similarly, unfreezing the VOD window during the television windows would make it possible to extend the amount of time films would be available to viewers on the platforms and to promote legal offers. Bringing forward the broadcasting of films to six months after their first showing in cinema theatres (instead of ten months) ought to find favour with viewers, as well as help to combat piracy and add value for those stakeholders investing most in financing the cinema sector. Lastly, a more favourable window for "virtuous" subscription VOD platforms should be defined, so that those stakeholders that contribute as much as the pay channels to the financing of works would be allowed comparable conditions for using the films. The Committee feels that media chronology should continue to evolve in the coming years and adapt to new offers and new methods of use.

• *Rapport d'information de Mme Catherine MORIN-DESAILLY, fait au nom de la commission de la culture, de l'éducation et de la communication du Sénat, n°688 (2016-2017) - 26 juillet 2017* (Information report by Ms Catherine Morin-Desailly on behalf of the Senate's Committee on Culture, Education and Communication, no. 688 (2016-2017) - 26 July 2017)

http://merlin.obs.coe.int/redirect.php?id=18666 FR

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Considerations on rules for advertising on television

On 19 July 2017, when it examined the possibility of extending the authorisation to broadcast granted to the television channel TF1, the national audiovisual regulatory authority (Conseil Supérieur de l'Audiovisuel - "CSA") announced that it was allowing the group's request that the general rules governing advertising spots laid down by decree in 1992 should apply: the relevant Decree authorises commercial breaks during television news programmes that last more than thirty minutes. This would make it possible to introduce advertising, but observing the present limit of twelve minutes of advertising per hour. On the other hand, the CSA refused a request lodged by the channel for a reduction in its obligations regarding the broadcasting of news programmes; it also rejected further requests by the channel to reduce the number of programmes directed at young people and to introduce cross-promotion with the news channel LCI.

At the same time, the Government has announced that a public consultation will be held until 13 October 2017 to gather the comments of stakeholders on was to simplify the rules for advertising on television, as laid down in Act No. 86-1067 of 30 September 1986 and Decree No. 92-280 of 27 March 1992 (which cover

sponsorship, tele-shopping, sectors not allowed to advertise, interruptions for commercial breaks, etc.). The stated aim is to create an environment that is more favourable to boosting the audiovisual sector in the present difficult economic context (given the falling value of the advertising market in the past ten years and unequal competition among the major digital stakeholders, which have to comply with much less demanding rules (in terms of both advertising and financing creation). The possibility of extending the maximum amount of time that advertisements may last, relaxing the rules governing commercial breaks in programmes, and the pertinence of introducing a third break in films are also under consideration. The Ministry of Culture is also consulting stakeholders on conditions for broadcasting teleshopping programmes, which at present may not include commercial breaks. Introducing '"tele-shopping spots" - offers made direct to the public outside teleprogrammes - is being considered. Discussions will be continued in the autumn.

• *Ministère de la Culture, Consultation publique sur la simplification des règles relatives à la publicité télévisée, août 2017* (Ministry of Culture, Public consultation on simplifying the rules for advertising on television, August 2017)
http://merlin.obs.coe.int/redirect.php?id=18636 FR

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Competition Authority relaxes some measures imposed on Groupe Canal Plus after its acquisition of TPS

On 24 June 2017 the Competition Authority made changes to the set of measures imposed on Vivendi and Groupe Canal Plus (GCP) in 2012 at the time of their acquisition of TPS. Five years after the original decision, the Authority was scheduled to rule on the advisability of maintaining or lifting the injunctions in the light of the evolution of competition in the markets concerned. The injunctions were originally intended to serve three purposes: to promote the diversity of stakeholders in the pay television sector, allowing the emergence of an affordable alternative offer to that of GCP; to prevent the Group from pre-empting new forms of consuming content by offering pay-per-view subscription video-on-demand (VOD); and to preserve the system for financing the French cinema sector. To achieve this, GCP's purchasing has been regulated, and obligations drawn up to ensure clear rules for the distribution of independent channels on CanalSat. On the matter of VOD services, GCP was to refrain from concluding agreements for the distribution of its VOD services that would give them an exclusive or preferential presence on IAP platforms.

Five years on, the Competition Authority notes that GCP is still virtually the sole purchaser acquiring rights to broadcast recent films originally made in the French language. It also remains the only editor of a mixed premium channel on the market (Canal+ and its various versions), and is still an unavoidable partner for editors looking to distribute their channels. It is also evident from the Authority's analysis that GCP's position is increasingly contested in all the markets in which it operates. Furthermore, the ambitious hardline strategy of the Altice group constitutes a major development in the market (the acquisition of rights for Premier League and Champions League matches; the launch of a series-only channel; an increased non-linear offer with unlimited VOD on SFR Play; control the takeover control of the NextRadio TV group, etc.). Altice's strategy involves the convergence of its activities as IAP, editor, and television distributor, and this must be taken into account. The second significant evolution is the development of international non-linear stakeholders (such as Netflix and Amazon), which are competing strongly with GCP on these markets.

In the light of all these developments, the Competition Authority has decided to maintain, lift or adapt the various injunctions incumbent on GPC. Firstly, regarding the acquisition of cinematographic rights, the Authority feels it is necessary to maintain the ban on concluding framework agreements with the holders of French cinematographic rights, while relaxing supervision of the group's purchases of cinematographic rights from American studios. The measures regarding the Group's carriage of theme channels are also to remain in place. Regarding the specific matter of premium channels, while the Authority is maintaining the obligation for GCP to carry all premium channels, it considers that it is justified in lifting the ban on the exclusive carriage of premium channels (although this is to be supervised). Regarding the measures involving the acquisition of rights for VOD and subscription VOD and the editing of the corresponding services, the Authority feels that StudioCanal's sale of exclusive rights to third-party non-linear platforms is henceforth justified, as is the supervision of the Group intended to enable alternative distributors (including IAPs) to compete effectively with exclusive distribution on CanalSat. On the other hand, given the Group's position on the market for the distribution of linear pay television services, the ban on concluding agreements providing for or encouraging the exclusive or preferential presence of its VOD and subscription VOD offer on IAP platforms is to be maintained. The new arrangements are to apply until 31 December 2019.

• *Autorité de la concurrence, décision n°17-DCC-92 du 22 juin 2017 portant réexamen des injonctions de la décision n°12-DCC-100 du 23 juillet 2012 relative à la prise de contrôle exclusif de TPS et Canal-Satellite par Vivendi SA et Groupe Canal Plus* (Competition Authority, Decision No. 17-DCC-92 of 22 June 2017 re-examining the injunctions contained in Decision No. 12-DCC-100 of 23 July 2012 on the exclusive control of TPS and CanalSatellite acquired by Vivendi S.A. and Groupe Canal Plus)
http://merlin.obs.coe.int/redirect.php?id=18643 FR

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

CSA fines CB three million euros for broadcasting homophobic hoax

The final decision has been made. On 26 July 2017, the national audiovisual regulatory authority (Conseil Supérieur de l'Audiovisuel - "CSA") imposed a fine of three million euros on the television channel C8 in respect of the programme "Touche pas à mon poste". The fine relates to a sequence broadcast on 18 May during which Cyril Hanouna, the presenter of the programme "Touche pas à mon poste", tricked a number of homosexuals live on air after posting a fake advertisement on a dating website. These people had not been informed of the identity of the person contacting them and some of them, believing themselves to be taking part in a private conversation, revealed in public items of information about their private lives and sexual activities.

The CSA noted that the editor had not set up any technical procedure intended to protect their identity and their privacy by rendering them unrecognisable. This constituted a breach of the obligations laid down in the agreement requiring the channel to respect "personal rights regarding privacy [and] the use of a person's image and his/her honour and reputation, as laid down by law and upheld by jurisprudence".

The CSA also noted that throughout the sequence the presenter had used many clichés and stereotypical attitudes regarding homosexual people with the aim of presenting a caricature. The sequence had had the effect of stigmatising a group of people on the basis of their sexual orientation, which manifestly runs counter to the stipulations laid down in the channel's licence, under which the editor is required to "promote the values of integration and solidarity upheld by the French Republic and to combat discrimination".

The CSA pointed out that it had received nearly 47,000 complaints about the programme. Since 2015 it has handled sixteen cases and ruled that there was nothing wrong with four sequences, in view of the fact that each respective broadcast had been meant to be humorous. It has also issued three warnings and two formal notices, in addition to sending the channel a number of initial notifications. Early in June, the CSA had already announced a three-week suspension of advertising on C8. (C8 retaliated by referring the matter to the Conseil d'Etat (French Council of State), requesting the quashing of the decision and thirteen million euros in damages.)

In the light of the above, and by virtue of Article 42-2 of the Act of 30 September 1986, the CSA considered that the gravity of the facts of the matter with regard to this disputed sequence justified a fine of three million euros.

• *CSA, Décision n°2017-532 du 26 juillet 2017 portant sanction à l'encontre de la société C8* (CSA, Decision No. 2017-532 of 26 July 2017 fining the company C8)
http://merlin.obs.coe.int/redirect.php?id=18637 FR

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Two general multi-industry agreements signed on transparency in the cinema and audiovisual sectors

On 6 July 2017, the Minister for Culture, Françoise Nyssen, gathered together organisations representing the cinema sector to sign two agreements relating to the industry. As soon as they were signed, the agreements were extended by decree to cover the entire sector. Article 21 of the Act of 7 July 2016 on the freedom of creation defines the framework for the transparency of the operating and production accounts for full-length cinematographic works. In this respect, the new Article L. 213-29 of the Cinema Code provides that (i) the form of the operating account and (ii) the definition of gross revenue, operating costs and operating overheads are to be determined by means of an agreement within the industry. The same applies, under Article L. 213-25, to the form of the production account, the definition of the various categories of expenditure in the production account, and the means of financing. After large-scale consultation, film-makers, authors, producers, co-producers and distributors have reached agreement on all the elements that must be included in the production and operating accounts for films.

In real terms, this means that all partners involved in a film now have a standard model that sets out very clearly the amounts of expenses and revenue in respect of a work for all types of distribution (cinema theatre, television, VOD, subscription VOD, etc.). Thanks to these agreements, rights holders will now have the benefit of well-specified and regular remuneration stemming from revenue and expenditure in relation to the manufacture and distribution of their films. Such remuneration will also accrue to the film's financial partners, and to the performers and technicians. Also, in accordance with the provisions of the Act of 7 July 2016, the CNC will audit the production and operating accounts in order to make sure that these agreements on transparency are indeed being applied.

In the audiovisual field, the agreement concluded between authors and producers is in itself something new, making up for the total absence of collective supervision of the rules on transparency and the payment of shares of revenue. In the cinema sector, these agreements reinforce and amplify the agreement between authors and producers concluded in

2010, by providing for greater formalisation of the feedback of information and the rendering of accounts due to authors in particular. A press release from the French society of dramatic authors and composers (Société des Auteurs et Compositeurs Dramatiques - SACD) stated that "by achieving a harmonised definition of the producer's part of net revenue where this is used as the basis for remunerating authors and by reinforcing the role played by collective management in favour of authors, this agreement should improve the quality, frequency and precision of accountability to authors, particularly since the Creation Act provided for a strengthening of the CNC's supervisory resources".

• *Arrêté du 7 juillet 2017 pris en application des articles L. 251-2 et L. 251-6 du Code du cinéma et de l'image animée et portant extension du premier accord sur la transparence des comptes et des remontées de recettes en matière de production audiovisuelle du 19 février 2016, de l'avenant n°1 à l'accord du 19 février 2016 sur la transparence des comptes et des remontées de recettes en matière de production audiovisuelle du 6 juillet 2017 et de l'accord professionnel sur la transparence des comptes d'exploitation des œuvres audiovisuelles du 6 juillet 2017* (Order of 7 July 2017 adopted in application of Articles L. 251-2 and L. 251-6 of the Cinema and Animated Image Code extending the initial agreement on the transparency of accounts and the transmission of revenue in respect of audiovisual production of 19 February 2016; Codicil No. 1 to the agreement of 19 February 2016 on the transparency of accounts and the transmission of revenue in respect of audiovisual production of 6 July 2017; and the agreement within the industry on the transparency of the operating accounts for audiovisual works of 6 July 2017)
http://merlin.obs.coe.int/redirect.php?id=18667 FR

• *Arrêté du 7 juillet 2017 pris en application des articles L. 251-2 et L. 251-6 du Code du cinéma et de l'image animée et de l'article L. 132-25-1 du Code de la propriété intellectuelle et portant extension de l'accord entre auteurs et producteurs d'œuvres audiovisuelles relatif à la transparence des relations auteurs-producteurs et à la rémunération des auteurs du 6 juillet 2017* (Order of 7 July 2017 adopted in application of Articles L. 251-2 and L. 251-6 of the Cinema and Animated Image Code and Article L. 132-25-1 of the Intellectual Property Code extending the agreement between authors and producers of audiovisual works on the transparency of relations between authors and producers and the remuneration of authors of 6 July 2017)
http://merlin.obs.coe.int/redirect.php?id=18668 FR

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GB-United Kingdom

Supreme Court judgment on media reporting of court proceedings

On 19 July 2017, the Supreme Court delivered its judgment in Khuja (formerly PNM) v Times, on whether an injunction should be granted preventing the media from identifying an individual who had been named in open court during criminal proceedings. Mr Khuja was arrested on the basis of a witness statement that someone with the same commonly used first name as Mr Khuja was involved in sexual offences against children. The witness failed to identify Mr Khuja at an identity parade. Mr Khuja was not charged, although others were. At their trial, evidence was given stating that someone with the same first name as Mr Khuja had been involved in the abuse; furthermore, police evidence named Mr Khuja when informing the court that he had not been identified as the alleged abuser. He was also referred to in cross-examination, closing speeches and in the summing up. Mr Khuja applied to the High Court for an injunction preventing The Times, the Oxford Mail and two journalists from publishing the fact of his arrest (and release without charge) on suspicion of committing serious sexual offences against children. The application was dismissed at first instance and by the Court of Appeal. The matter came before the Supreme Court.

The judgment proceeded on the basis that the principle of open justice is subject to only limited exceptions: the law of contempt, defamation and the law protecting ECHR rights. The Court reaffirmed its approach in Re S (A Child) [2004] UKHL 47 where the Court had set out the "ultimate balancing test" in case of conflict between Articles 8 and 10 ECHR. The test states that neither article has as such precedence over the other; an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary; the justifications for interfering with or restricting each right must be taken into account; and the proportionality test must be applied to each.

The applicant argued that the High Court judge had applied Lord Rodger's remarks in Re Guardian News and Media [2010] UKSC 1 and in doing so, had applied a legal presumption which was not warranted. Lord Rodgers in Re Guardian News had said: "The identities of persons charged with offences are published, even though their trial may be many months off. In allowing this, the law proceeds on the basis that most members of the public understand that, even when charged with an offence, you are innocent unless and until proved guilty in a court of law".

The Court rejected this argument, holding that this was not a general presumption applicable irrespective of the facts; moreover, in referring to Lord Rodgers, all the judge at first instance had done was to say that, while some members of the public would equate suspicion with guilt, most would not. The dissenting judges took a stronger line on this point and described the proposition as a "controversial presumption" for which there was no basis and which could undermine individuals' rights to privacy. The majority of judges then found that "there is no reasonable expectation of privacy in relation to proceedings in open court" (though the extent to which this is an absolute principle is unclear - Lord Sumption noted that the principle of open justice has never been absolute) and that any claim would have to rely on the impact on Mr Khuja's right to family life as a consequence of the damage to his reputation. This impact was found to be indirect and incidental. The majority of judges noted the public interest in reporting on the processes by which such cases are investigated and brought to trial, and which extends to the appellant's identity. The detail of

Mr Khuja's name was not therefore peripheral to the story. By contrast, the judges in the minority thought that there was a reasonable expectation of privacy, and despite the public interest in the reporting, the balance was in favour of Mr Khuja's privacy.

• United Kingdom Supreme Court, Khuja (formerly PNM) v Times [2017] UKSC 49, 19 July 2017
http://merlin.obs.coe.int/redirect.php?id=18628 EN

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Harmful gender stereotyping in advertising - proposals for reform

At the present time, there are no direct rules preventing gender stereotyping in advertising. The nearest thing is if under the Committee of Advertising Practice Code (CAP Code) the Advertising Standards Authority (ASA) is of the opinion that an advertisement is likely to cause "serious or widespread offence". Thus, the ASA has banned advertisements that objectify or inappropriately sexualise women and girls or suggest it is acceptable for young women to be unhealthily thin. However, the ASA has generally taken the view that depictions of stereotypical gender roles or ads that mock people for not conforming to a gender stereotype do not breach the CAP Code because it is of the view that such ads are unlikely to cause harm or serious or widespread offence.

On 18 July 2017, the ASA published a report which concluded that further amendments to the CAP Code may be required to address the issue of harmful gender stereotyping in advertising. The Report is the culmination of a year-long investigation which consulted academics and specialists, reviewed relevant literature, held seminars with expert stakeholders and conducted research into public opinion. The ASA found that there was evidence to support stronger rules on the basis that harmful stereotypes "can restrict the choices, aspirations and opportunities of children, young people and adults".

Six harmful categories of gender stereotypes were identified: (1) roles (occupations or positions usually associated with a specific gender); (2) characteristics (attributes or behaviours associated with a specific gender); (3) mocking people for not conforming to stereotype; (4) sexualisation (portraying individuals in a high sexualised manner); (5) objectification (depicting someone in a way that focuses on their body); and (6) body image (depicting an unhealthy body image).

The CAP now has the job of developing new standards for advertisers and marketers; they shall come into force in 2018 and be administered and enforced by the ASA . Annex A of the Report contains a comparative survey of "International and European legislation and rules".

• Advertising Standards Authority, Depictions, Perceptions and Harm, 18 July 2017
http://merlin.obs.coe.int/redirect.php?id=18656 EN

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Regulator fines broadcaster for hate speech broadcast by terrorist

The UK communications regulator, Ofcom, has recently had to take a number of decisions on broadcasters, including decisions on material advocating terrorism. One such example relates to Ariana International, a general entertainment channel originating from Afghanistan and broadcast by satellite in the United Kingdom. Its licence is held by Ariana Television and Radio Network.

The broadcast featured a video by a 17-year-old individual, Muhammed Riyad, before he stabbed five people on a train in Germany and was subsequently killed by security forces. In the video, he brandished a knife, boasted about the forthcoming attack and made statements describing in highly positive and graphic terms his intentions, and those of "Islamic State", to carry out acts of extreme violence against the German population. Ofcom considered that the statements had the clear potential to influence impressionable viewers by encouraging serious crime, up to and including murder, leading to disorder. This likely effect was made worse by the fact that he spoke uninterruptedly for two and a quarter minutes and no views or statements were put forward in the programme to challenge or otherwise soften the inflammatory effect or the considerable level of potential offence caused by the statements.

Riyad also spoke in positive terms about jihad and about both the violent capabilities of 'Islamic State' and his own intention to kill non-Muslims and Muslims who renounce their faith. This amounted to spreading, inciting, promoting or justifying hatred based on the intolerance of those who are of a different religion, and it is thus considered to be a form of hate speech. Therefore, the network had broadcast a prolonged example of highly offensive hate speech in a news bulletin with no surrounding content that sought to challenge, rebut or otherwise contextualise Riyad's highly extreme views.

The broadcaster accepted that the showing of the video without a "vehement reaction" to Riyad's "call to action" was a serious error. Ofcom found that it breached three provisions of its Broadcasting Code; these require that material which may cause offence

is justified by the context; that material likely to encourage or to incite the commission of crime or lead to disorder must not be included in television or radio services; and that material which includes hate speech must not be included in television and radio programmes except where it is justified by its context.

Ofcom fined the Network GBP 200,000, and required it to broadcast a statement of the findings at a time and date to be determined by Ofcom.

• Ofcom, "Notice of Sanction", in Broadcast and On Demand Bulletin, Issue no. 333, 17 July 2017, p.6
http://merlin.obs.coe.int/redirect.php?id=18655 EN

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Sky News breached Ofcom requirements by failing to name all constituency candidates during a constituency report

On 7 August 2017, Ofcom determined that Sky News was in breach of Rule 6.10 of the Broadcast Code by failing to list all candidates during a constituency report held during this year's UK General Election. On 12 May 2017, during Sky's morning show called Sunrise, the presenter had a three way discussion concerning tactical voting with the Labour, Conservative and Liberal Democrat candidates for the constituency of Vauxhall in London. The discussion concerned the participating candidates agreeing not to stand against each other in an attempt to encourage tactical voting. Three other candidates were standing in the Vauxhall constituency, namely for the Green Party, the Women's Equality Party and the Pirate Party. None of these candidates were involved in the discussion or named at any point during the piece.

Rule 6.10 of Ofcom's Broadcasting Code states that "Any constituency or electoral report or discussion after the close of nominations must include a list of all candidates standing, giving first names, surnames and the name of the party they represent or, if they are standing independently, the fact that they are an independent candidate. This must be conveyed in sound and /or vision". Ofcom also determined that Rule 6.8 applied to the broadcast. Rule 6.8 of the Code states, "Due impartiality must be strictly maintained in a constituency report or discussion and in an electoral area report or discussion". Ofcom considered that the Sunrise feature was a constituency report or discussion on the 2017 General Election and that it had taken place during the election period that began on 3 May 2017; as such, all constituency candidates should have been named. Rule 6.2 deems the start of the election period for General Election purposes to be the date Parliament is dissolved. Sky, in response to the complaint, said that normally they did broadcast the names of all candidates but that on this occasion, the failure to do so was an "aberration". The news organisation said that prior to the election period and subsequent to its start, they had given strict guidance to their staff about the Ofcom rules, as well as the Representation of the People Act 1983 (the Act). Since the showing of the 12 May piece, further guidance was issued. In mitigation, Sky contended that the three candidates who did appear in the discussion accounted for 97% of the vote for Vauxhall, and the failure to name the other candidates did not have any impact on the voting for Vauxhall.

Ofcom, which in the exercise of its statutory duty had to ensure compliance with the Code and the Act, considered that Rule 6.10 was a basic requirement and in the interests of all relevant candidates so as to ensure that audiences, including any relevant voters, are made fully aware of all candidates contesting a particular constituency. Therefore, Ofcom considered the Sunrise programme to be in breach of Rule 6.10.

• Ofcom, Broadcast and On Demand Bulletin, Issue 334, 7 August 2017, p. 22
http://merlin.obs.coe.int/redirect.php?id=18661 EN

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Ofcom findings on proposed Fox/Sky merger published

On 29 June 2017, Ofcom's findings on the proposed acquisition of Sky plc by Twenty-First Century Fox, Inc. were published. The Secretary of State for the Department for Digital, Culture, Media and Sport has yet to make a final decision on whether to approve the merger, which would include accepting undertakings from Sky and Fox or, alternatively, to request that the Competition and Markets Authority (CMA) instigate a Phase 2 investigation as to whether the merger is in the public's interest.

Fox already owns 39% of Sky and last year it offered to buy the balance of Sky's shares. Sky is a European broadcaster providing TV and broadband services across Europe, with an estimated 22 million customers. On 16 March 2017, the British government issued a European Intervention Notice (EIN) concerning the proposed merger. The EIN stated that an investigation would be completed to examine whether there were any media plurality concerns and also whether the parties would have "commitment to broadcasting standards" if the companies were to merge. The EIN triggered two reports from Ofcom about media plurality and the two companies' commitment to broadcasting standards. The Secretary of State's authority to permit a media merger derives from the Enterprise Act 2002 whereby a quasi-judicial process is exercised.

Ofcom's report considered that any merger between Fox and Sky would cause plurality issues.

After the BBC and ITN, the proposed merged entity would have the third largest reach of any news provider and would span news coverage on television, radio, newspapers and online.

Ofcom considered that the merger would give the Murdoch Family Trust (the primary owner of Fox) influence over news providers and a significant presence across all key media platforms. As such, the Secretary of State was minded to refer the proposed merger to a Phase 2 Investigation. However, Ofcom considered that there were no concerns about either Sky or Fox's commitment to broadcasting standards; as such, there was no requirement to justify referring the matter to the CMA. Ofcom considered Fox's compliance record in the United Kingdom and the European Union comparable to other broadcasters' records.

Ofcom was also asked to consider the effect any failure of corporate governance would have on the public interest consideration; both companies were separately assessed. Ofcom considered that the alleged conduct of Fox News in the United States amounted to "significant corporate failures"- this concerned the company's handling of alleged sexual and racial harassment by staff. However, it deemed that this did not mean that a merged company would show any lack of commitment to broadcasting standards.

The Enterprise Act allows for a Phase 2 investigation to be averted if the parties propose undertakings. The decision on whether to accept undertakings remains with the Secretary of State alone. The parties' undertakings, unusually, formed part of their representations contained in Ofcom's report on plurality. The main undertaking offered is that Fox maintains the editorial independence of Sky News by establishing a separate editorial board with a majority of independent members to oversee the appointment of the Head of Sky News and any changes to Sky News Editorial Guidelines. Furthermore, there was a commitment to maintain Sky branded news for five years, with spending at least at similar to current levels.

Ofcom considered in their report that these undertakings would help mitigate any plurality issues, but suggested that the remedies could be further strengthened. The Secretary of State has to determine whether the undertakings are sufficient to avert a Phase 2 investigation. So far, the Secretary of State has indicated that she is not minded to accept the proposed undertakings. The Secretary of State is also noting guidance from the CMA.

The European Commission approved the merger in April by deciding that Fox and Sky are active in different markets (see IRIS 2017-6/4). However, despite the Commission's approval, Article 21 of the EU Merger Regulations allows the states to block mergers at a national level, so the final decision remains with the UK government.

• Ofcom, Public interest test for the proposed acquisition of Sky plc by 21st Century Fox, Inc, 29 June 2017
http://merlin.obs.coe.int/redirect.php?id=18662 EN

• Ofcom, Decision: Licences held by British Sky Broadcasting Limited (Fit and Proper Assessment), 29 June 2017
http://merlin.obs.coe.int/redirect.php?id=18663 EN

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HR-Croatia

Regulator publishes minimum standards for DVBT-2 reception

The Croatian Regulatory Authority for Network Industries, HAKOM, based in Zagreb, has published a recommendation on the minimum technical requirements for DVB-T2 reception. The recommendation was developed as part of cooperation between HAKOM, the Croatian Agency for Electronic Media, network and multiplex operators, public and private TV broadcasters and representatives of the academic community.

HAKOM also announced that migration from DVB-T to DVB-T2 transmission in Croatia would begin in 2019. Receivers that met the minimum requirements set out in the recommendation would be marked with a special logo in order to help consumers make informed purchases. The design of the logo and the receiver certification process are planned for 2018.

HAKOM is responsible for market regulation in the electronic communications, postal and railway services industries. It also protects consumer rights and manages limited resources of importance to the Republic of Croatia, such as radio frequency spectrum. HAKOM values good cooperation with neighbouring countries and plays an active part in events organised by international authorities.

Since 1 January 2015, all Croatian citizens have been able to surf the Internet with a guaranteed minimum speed of 1 Mbit/s. The notion of a guaranteed minimum speed was introduced in 2012, when it was just 144 Kbit/s. It is regulated by Article 25(1) of the HAKOM Ordinance on universal services in electronic communications. Along with Finland and Spain, Croatia is one of only three countries worldwide whose citizens are guaranteed a minimum Internet speed by law.

• HAKOM press release of 18 July 2017
http://merlin.obs.coe.int/redirect.php?id=18665 EN

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IE-Ireland

Code on short news reports comes into effect

On 1 September 2017, the Broadcasting Authority of Ireland (BAI) Short News Reporting Code of Practice came into effect. Under the legislation (S.I. 258/2010 and S.I. 247/2012) which incorporates the Audiovisual Media Services Directive (2010/13/EU) into Irish law, the BAI is required to develop a code of practice concerning short news reports provision. The Code reflects Article 15 of the AVMS Directive, and provides that a television broadcaster under the jurisdiction of the State that has acquired exclusive television broadcasting rights for an event that is of high interest to the public shall ensure that other television broadcasters established in the State or in another EU Member State have access to short extracts for inclusion as a short news report in general news programmes. The broadcaster must ensure access to short extracts on a fair, reasonable and non-discriminatory basis. Notably, the Code provides that access to short news extract shall be free of charge.

Furthermore, the Code includes provisions on what the BAI considered to be "events of high interest to the public": events that are newsworthy and/or those which would appeal to a large number of people and/or those that are of interest to people other than those who usually follow events of a similar type, including events which, by their nature, may be expected to have a significant impact on the interests of citizens. It also includes those sporting and cultural events designated by the Minister for Communications as being of major importance to society. The Code also describes the characteristics of a general news programme, which comprises newsworthy events and discusses more than one topic or one event during the programme. However, it does not cover the compilation of short extracts into programmes serving entertainment purposes.

Section 5 of the Code contains provisions on the use of short news reports including (a) extracts may not be used to compile programming for entertainment purposes; (b) short news reports should not exceed 90 seconds except by agreement between the broadcaster and the rightsholder; (c) The right to use short news extracts shall not arise until the transmission of the event from which the short extracts are derived has ended; and (d) the broadcaster benefiting from the right to use a short news extract shall clearly identify the source, unless this is not possible for reasons of practicality.

Finally, the BAI will consider complaints in respect of the Code of Practice under the BAI's Compliance and Enforcement Policy; however, the Code states that BAI decisions will only relate to compliance with the Code of Practice, and that the BAI will not arbitrate disputes between broadcasters and rightsholders.

• Broadcasting Authority of Ireland, Short News Reporting BAI Code of Practice, 28 June 2017
http://merlin.obs.coe.int/redirect.php?id=18626 EN

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Decisions on offensive comments concerning religion during television programme

On 3 August 2017, the Compliance Committee of the Broadcasting Authority of Ireland (BAI) issued a notable number of decisions (11 in total) on offensive expression and religion arising from comments made on a programme broadcast by the public broadcaster RTÉ. The BAI had received a number of complaints over the programme, including those from priests and a Christian association, generating coverage in the media. The decisions are noteworthy because they show how the BAI assesses the distinction between offence and harm; they outline which duties are applicable to broadcasters and presenters to minimise harm; and they follow a number of other recent decisions on satire and religion (see IRIS 2017-1/9 and IRIS 2015-9/17).

The complaints were made following a January 2017 edition of RTÉ's longest-running chat show, The Late Late Show. The show featured a broad discussion on faith, the Christmas period and Catholic belief and practice. During the discussion, one guest, who was a comedian, made reference to the Eucharist as "haunted bread". Later, another guest spoke about how, as a child, The Eucharist being described as the body and blood of Christ had conjured up images of "cannibalism" in her young mind, leaving her conflicted about eating the literal "Body of Christ". The complainants claimed that there had been a violation of section 48(1)(b) of the Broadcasting Act, whereby broadcasters must ensure that anything which may reasonably be regarded as causing harm or offence is not broadcast, and Principle 5 of the BAI Code of Programme Standards on respect for persons and groups in society, which includes a reference to the fact that broadcasters shall show due respect for religious views, images, practices and beliefs.

However, the BAI's Compliance Committee held, by a majority, that the programme had not violated the Broadcasting Act nor the Code of Programme Standards. All 11 decisions contained similar reasoning, and the Committee first began by noting that since a broadcaster must cater for a diverse audience, there would inevitably be programming that "causes offence to some members of the audience", though the

Code also recognised that offence can become harmful in certain circumstances. It then examined the comments concerning the Eucharist being "haunted bread", and noted that it was legitimate for a panellist to articulate their own personal views, dealing with a religious tenet which may be difficult to reconcile for those who hold other or no religious beliefs. The Committee held that the comments were an expression of his own views rather than a comment on the views of others, and that they were not intended to mock the faith of others. With regard to the mentioning of cannibalism, the Committee considered that the contributor was not equating the Eucharist with cannibalism, but rather describing her thoughts as a child. Moreover, the Committee had regard to the fact that the discussion had been broadcast after 23.00, which was a time at which content with a higher likelihood to offend may be broadcast. Furthermore, the audience would have been familiar with the comedian's artistic style.

Finally, the Committee found that the presenter had misjudged the offence likely to have been caused by use of the term "haunted bread", and while the comments did not cross a line such that undue offence was caused, the degree of offence may have been minimised if the presenter had demonstrated greater sensitivity to the potential for offence; "RTÉ is advised to have regard to the Committee's view in this regard".

• Broadcasting Authority of Ireland, Broadcasting Complaint Decisions, August 2017
http://merlin.obs.coe.int/redirect.php?id=18627 EN

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PL-Poland

Broadcaster TVN disputes tax on sale of its DTH platform

Broadcaster TVN has announced plans to take legal action to recover taxes that it was forced to pay in Poland in relation to the sale of its DTH platform.

A DTH ('direct-to-home') platform is a method of receiving satellite television and was used by TVN to broadcast various channels until it sold its platform in 2012. TVN paid PLN 110 million (around EUR 26 million) in tax, under protest. At the same time, both TVN and Scripps Networks Interactive, which had since acquired TVN, said that they "strongly disagreed" with the decision of the tax authority concerned and would file an appeal with the Administrative Court, asking it to examine the lawfulness of the tax.

Regarding the sale of the DTH platform, TVN also explained that, before completing the transaction, it had asked the Polish Ministry of Finance about its current interpretation and application of the relevant tax legislation in order to ensure that the sale was lawful. It had fully complied with the guidelines provided by the Ministry of Finance. It had also sought and followed the advice of major international tax and accounting firms relating to the sale. Explaining the reasons for its intended legal action, TVN added that the tax office had audited the transaction in 2013 and had found no infringements or irregularities whatsoever. Convinced that it had acted lawfully and met its information obligations transparently and accurately when selling the platform, the broadcaster was confident that its appeal would be successful.

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RO-Romania

Modification of the PBS law declared unconstitutional

The Constitutional Court of Romania ruled on 12 July 2017 that some articles of the modified version of the Law no. 41/1994 on the functioning of the Romanian public radio and television services are not constitutional. The Court reacted to a complaint of unconstitutionality lodged by the National Liberal Party and the Popular Movement Party (opposition) (see inter alia IRIS 2013-5/37, IRIS 2013-10/36, IRIS 2014-1/38, IRIS 2014-2/30, IRIS 2014-4/25, IRIS 2014-6/30, IRIS 2014-7/30, IRIS 2015-6/33, IRIS 2015-8/26, IRIS 2016-5/28, IRIS 2017-3/26).

The Court declared unconstitutional the provisions of the draft Law which provided for the appointment of the new Boards of Administration, within 90 days from the date of its entry into force, as well as the provision that Board of Administration representatives are required to renounce their membership of a political party during the exercise of their mandates. The right of association cannot be restricted, ruled the Constitutional Court.

The opposition considered that the proposed modifications of Law no. 41/1994 will irremediably affect the status, organisation and functioning of public radio and television - two autonomous public services that are regulated by the Constitution. The Law does not clarify the legal status of the PBS as a result of the change in the manner of the financing of State broadcasting introduced by Law no. 1/2017, which cuts the radio and television licence fees. The Law excludes from the financing the acquisition of licenses,

the production and distribution of events of major cultural, artistic and sports importance (domestic or international), thus significantly prejudicing Romanian citizens' right to be informed. It furthermore, according to the Liberal and Popular parties, removes from parliamentary control the executive management of public radio and television.

The Senate (the upper chamber of the Romanian Parliament) adopted on 20 June 2017 a draft law on the modification of Law no. 41/1994; under the amendment the functions of the President of the Board of Administration and of its CEO, presently held by a single person, will be separated.

The President of the Board will be appointed by the Parliament, as is the case now, and the CEO will be nominated on the basis of a selection of management projects, and the term of office shall be four years. During the exercise of their mandate the members of the Board of Administration are obliged to renounce to the membership of a party or, as the case may be, to renounce to be a member in the governing bodies of the trade union organizations. The draft Law provided for professional criteria for future Board members, including professional experience of at least 5 years in one of the media, cultural, communication, public relations, education, economic, financial or legal areas, as well as managerial experience. Another modification of the draft Law stipulated that the public radio and TV will mandatorily produce programmes for the ethnic minorities.

The decision of the Senate was final. The draft law was adopted tacitly by the Chamber of Deputies (the lower house) on 4 May 2016.

The Constitutional Court deemed that the Senate, acting as a decision-making body, had overstepped the constitutional limits imposed by the principle of bicameralism..

The Constitutional Court also ruled that changing the makeup of the existing Boards of Administration of the public radio and television, which operate under the existing form of the Law no. 41/1994, would breach the principle of the non-retroactivity of civil law.

The Parliament has now to correct those provisions that have been declared unconstitutional.

• *Decizia Curţii Constituţionale, 17/07/2017* (Decision of the Constitutional Court, 17 July 2017)
http://merlin.obs.coe.int/redirect.php?id=18651 RO

• *Sesizarea Curţii Constituţionale, 3 July 2017* (Complaint lodged to the Constitutional Court, 3 July 2017)
http://merlin.obs.coe.int/redirect.php?id=18652 RO

Eugen Cojocariu
Radio Romania International

Modification of the Cinematography Law rejected

The President of Romania, Klaus Iohannis, promulgated on 16 June 2017 Law no. 141/2017 on the rejection of Government Emergency Decree no. 91/2016 on the modification and completion of Government Decree no. 39/2005 on Cinematography, as well as the setting-up of measures in the field of cinema. Law no. 141/2017 was published in the Official Journal of Romania no. 461/20.06.2017 (see IRIS 2002-7/30, IRIS 2003-2/23, and IRIS 2016-10/23, EMR Newsletter no. 4/2017).

On 20 February 2017 the Senate (the upper house of the Romanian Parliament) tacitly adopted a draft law for the approval of Government Emergency Decree no. 91/2016, but on 23 May 2017 the Chamber of Deputies (the lower house) adopted, with a large majority, a contradictory draft law rejecting the Decree. The decision of the deputies was final.

Government Emergency Decree no. 91/2016 aimed, according to its initiators, at securing the functioning of a more dynamic film production sector and ensuring access to Romanian and European films.

At the beginning of June 2017, more than 450 well-known Romanian film directors, actors, critics, producers, and film industry professionals (such as Lucian Pintilie, Stere Gulea, Victor Rebengiuc, Ana Ularu, Ada Solomon, Tudor Giurgiu, Radu Jude, Călin Netzer, Levente Molnar, Andi Vasluianu, Emilian Oprea, Dorina Chiriac, Marius Manole and Daniela Nane) asked President Klaus Iohannis not to promulgate the law rejecting Government Emergency Decree no. 91/2016 and to resubmit the Decree for debate in Parliament. They called for a real debate with representatives of the sector concerned by the draft law. They argued that the Decree had been tacitly approved by the Senate and then rejected by the Chamber of Deputies without being publicly debated, without the cinema guild being been consulted and without the Ministry of Culture being given the possibility to justify its opinion.

• *Lege privind respingerea Ordonanţei de urgenţă a Guvernului nr. 91/2016 pentru modificarea şi completarea Ordonanţei Guvernului nr. 39/2005 privind cinematografia, precum şi pentru stabilirea unor măsuri în domeniul cinematografiei - forma trimisă spre promulgare* (Act for the rejection of the Government Emergency Decree no. 91/2016 on the modification and completion of the Government Decree no. 39/2005 on Cinematography and the setting-up of measures in the field of cinema - form sent for promulgation)
http://merlin.obs.coe.int/redirect.php?id=18616 RO

• *Ordonanţa de urgenţă a Guvernului pentru modificarea şi completarea Ordonanţei Guvernului nr. 39/2005 privind cinematografia, precum şi pentru stabilirea unor măsuri în domeniul cinematografiei* (Government Emergency Decree no. 91/2016 on the modification and completion of Government Decree no. 39/2005 on cinematography and the setting- up of measures in the field of cinema)
http://merlin.obs.coe.int/redirect.php?id=18617 RO

Eugen Cojocariu
Radio Romania International

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

RU-Russian Federation

Law to block pirate mirror sites

After being adopted by the State Duma on 23 June 2017 and approved by the Federation Council on 28 June 2017, the President of the Russian Federation, Vladimir Putin, on 1 July 2017 signed into force a new law enabling the country to quickly block derivative sites designed to circumvent the blocking of copyright-infringing websites. The amendments to the Federal Statute "On Information, information technologies and on the protection of information" (see IRIS 2014-3/40) will enable pirate mirror, proxy and other derivative sites to be blocked quickly by ISPs.

Following the relevant decisions of the Moscow City Court (the court dealing with copyright-related matters - see IRIS 2013-8/33), sites shall be approved for "eternal" blocking by the Ministry of Communications and Mass Communications, which shall then order the Federal Service for Supervision in the Sphere of Telecoms, Information Technologies and Mass Communications (or Roskomnadzor) - a governmental watchdog authority under the authority of the same ministry (see IRIS 2012-8/36) - to contact ISPs to ensure that all access is blocked. Search engines will also be compelled to remove all alternatives from their search results.

The amendments also deal with all kinds of derivative sites that are "confusingly similar" to other sites on the Internet to which access is currently restricted due to the repeated and improper placement of information concerning objects subject to copyright (or related rights), or the information needed to acquire illegal online access to them. In relation to those sites the Ministry of Communications and Mass Communications will send a notification in both Russian and English to the operator of the suspected pirate site. Roskomnadzor will also receive a copy; the ISP or ISPs in question will then be ordered to block access to the sites concerned within 24 hours.

The law requires search engines to remove all blocked sites from search results. All advertising that informs Internet users of the whereabouts of a blocked site's mirror must also be removed. Each step in the "chain" (i.e. Moscow City Court/Ministry/Roskomnadzor/ISPs) shall take a maximum of twenty-four hours.

The amendments come into force on 1 October 2017.

• *N 156-* ФЗ О внесении изменений в Федеральный закон « Об информации , информационных технологиях и о защите информации » (Federal Statute N. 156-FZ of 1 July 2017 on amendments to the Federal Statute "On Information, information technologies and on protection of information", Rossiyskaya gazeta daily newspaper, 4 July 2017)
http://merlin.obs.coe.int/redirect.php?id=18646 RU

Andrei Richter
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Amendments to IT law

On 29 July 2017 President Vladimir Putin signed into law two sets of amendments to the Federal Statute on information, information technologies and protection of information (the IT Law - see IRIS 2014-3/40 and IRIS 2014-6/31).

Federal Statute N 276-FZ, which enters into force on 1 November 2017, grants significant powers to Roskomnadzor, the governmental supervisory authority on media, communications and personal data traffic (see IRIS 2012-8/36), to pursue persons/entities on Russian territory that utilise or provide access to information systems and resources, such as virtual private networks (VPN) (see IRIS Extra 2015-1). These amendments add a new provision (Article 15.8) to the IT law which does not restrict the use of VPNs and similar technology per se, but rather aims to establish legal grounds for Russian authorities blocking VPNs that are used as access points to websites and resources that are otherwise restricted or prohibited. To this end, Roskomnadzor is tasked with setting up a "federal state database of telecommunication network information resources that are restricted" in Russia. Once the database is operational, Roskomnadzor will have the authority to reach out to and demand compliance from hosts of sites in respect of whose resources Roskomnadzor identifies such evasive technology. The restrictions will not apply to Russian governmental actors or to those owners or operators of VPNs who grant access to their virtual networks only to specific groups of users, provided that those VPNs are being used as technological support for their owner's/operator's business. Those provisions introduced in 2014 that specified certain requirements in respect of bloggers whose websites were visited by more than 3,000 users daily (see IRIS 2014-6/31) are also annulled, with immediate effect.

Federal Statute N 241-FZ, which enters into force on 1 January 2018, introduces several new provisions to Article 10.1 of the IT Law (IRIS-Extra 2015, section 3.3.2). Those provisions ascribe additional responsibilities to the hosting and service providers of electronic message exchanges.

Those responsibilities include the obligations: 1) to identify and verify the identity of messenger service

users, 2) upon the demand of Roskomnadzor to block (within twenty-four hours) users' ability to exchange information that is forbidden by Russian law, 3) enable users to stop receiving messages from other users, 4) guarantee the confidentiality of correspondence through messenger service, 5) enable the possibility for public authorities to disseminate messages on their own initiative and in accordance with the law, 6) stop the service when so determined by the Government.

Russian providers shall store identifying information of users on Russian territory and shall not provide it to third parties, unless permitted to do so by law.

• *N 276-* ФЗ О внесении изменений в Федеральный закон "Об информации, информационных технологиях и о защите информации" (Federal Statute N. 276-FZ of 29 July 2017 on amendments to the Federal Statute of the Russian Federation "on information, information technologies and protection of information". Rossiyskaya gazeta, 4 August 2017, N 172)
http://merlin.obs.coe.int/redirect.php?id=18647 RU

• *N 241-* ФЗ О внесении изменений в статьи *10-1* и *15-4* Федерального закона "Об информации, информационных технологиях и о защите информации" (Federal Statute N. 276-FZ of 29 July 2017 on amendments to Articles 10-1 and 15-4 of the Federal Statute "on Information, information technologies and on protection of information, Rossiyskaya gazeta 4 August 2017)
http://merlin.obs.coe.int/redirect.php?id=18648 RU

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Media law amended to tighten registration procedures

On 29 July 2017 President Vladimir Putin signed into law amendments to the Statute on the Mass Media that further detail registration procedures for media outlets.

In particular they add to Article 7 a ban on establishing a media outlet for individuals who have been convicted for committing crimes involving the use of the media or telecommunications networks, such as the Internet, or for committing crimes related to extremist activities. An amendment to Article 19 establishes an identical ban in respect of editors-in-chief.

Article 16 of the Statute on the Mass Media on the procedure for the issuance by Roskomnadzor of warnings to media outlets prompted by "an abuse of media freedom" (see IRIS Extra 2017-1) is supplemented by the following qualification: "A warning is a non-regulatory act of the registering authority issued for the purpose of preventing violations of the media law and indicating their inadmissibility."

An amendment to Article 27 of the Statute on the Mass Media specifically requires that each registered online media outlet provide information on its title, founders (or owners), the last name and initials of the editor-in-chief, the email address and telephone number of the editorial office, and the age ratings of associated "informational products" (see IRIS 2012-9/37).

The new provisions enter into force on 1 January 2018.

• Федеральный закон "О внесении изменений в Закон Российской Федерации "О средствах массовой информации"" (Federal Statute of 29 July 2017 N 239- ФЗ on amendments to the Statute of the Russian Federation "on the mass media". Official publication in the Rossiyskaya gazeta daily newspaper on 4 August 2017)
http://merlin.obs.coe.int/redirect.php?id=18649 RU

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TM-Turkmenistan

Subsidies to state television to end by 2022

On 7 July 2017 President Berdymukhamedov of Turkmenistan signed an Ordinance that provides for the gradual end to the financing of State-run television and radio channels (the only broadcasters in the country) from the national budget. The reform will take place over the course of four years, beginning in 2018.

The Ordinance encourages the State Committee on Television, Radio and Cinema (a body of the Ministry of Culture, Press and Television), subject to the agreement of the Cabinet of Ministers (chaired by the President), to permit advertising and marketing broadcasts on State channels and to use the revenues thus obtained to cover expenses incurred by the broadcasters. The State Committee, together with the Ministry of Justice, is tasked under the Ordinance with preparing the necessary amendments to the relevant national laws.

• Нейтральный Туркменистан, *08/07/2017* (Report on the Ordinance, published on 8 July 2017 in the national daily newspaper Neytralniy Turkmenistan)
http://merlin.obs.coe.int/redirect.php?id=18610 RU

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UA-Ukraine

Language demands for audiovisual media

On 23 May 2017 the Supreme Rada (Parliament) adopted a law that introduces language quotas for

television programming. The law introduces changes to the Broadcasting Act of Ukraine - mostly to Article 10 - "Language of the audiovisual (electronic) media" (see IRIS 2006-5/34)

The minimum quota for Ukrainian language broadcasts is now 75% for national broadcasters, and 60% for local broadcasters. A separate 75% quota is established for newscasts and current affairs programmes on all channels. The amendments detail the requirements for a broadcast or a film in Ukrainian. For example, it is permitted to use other languages in a movie for artistic reasons, but the length of such non-Ukrainian footage remarks (not in Ukrainian) should not exceed 10% of the film's total running time and must be accompanied by Ukrainian subtitles. This exception does not apply to children's movies and animation.

Films made on the territory of the republics of the former USSR in a language other than Russian or Ukrainian, and which were later dubbed into the Russian language, shall be voiced-over in (or dubbed into) the Ukrainian language.

• *N. 2054-19* Про внесення змін до деяких законів України щодо мови аудіовізуальних (електронних) засобів масової інформації (Statute of Ukraine N. 2054-19 on amendments to certain statutes of Ukraine concerning the language of audiovisual (electronic) media, adopted on 23 May 2017)
http://merlin.obs.coe.int/redirect.php?id=18609 UK

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Analogue switch-off delayed until summer 2018

According to media reports, the Ukrainian cabinet has postponed the date of the analogue switch-off until 30 June 2018.

The head of the State Service for Special Communications and Information Protection, Leonid Yevdochenko, said that a number of financial and socio-economic problems needed to be resolved before the transition from analogue to digital broadcasting could be completed.

The delay had been on the cards for several months. In May 2017, Yuriy Artemenko, chairman of the national regulatory authority, had emphasised that the switch to digital broadcasting could not be completed this year. As a result, a draft cabinet resolution to postpone the date was adopted in June. Both analogue and digital broadcasting will therefore have to continue side by side in Ukraine until the switch at the end of June 2018.

This delay is not unusual; the analogue switch-off has already been postponed in other East European countries. In 2013, for example, Serbia decided to delay the transition until June 2015 because, despite huge support from the European Union, only around 20% of the required technical conditions and infrastructure were in place.

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Regulator fines broadcasters

The Ukrainian regulatory authority has fined a large number of licensed broadcasters for failing to meet their information obligations.

The regulator imposed fines of around UAH 350 000 (around EUR 11 647) on a total of 123 broadcasters for failing to disclose their ownership structure; it said that the broadcasters had failed to meet their obligations under the Ukrainian Television and Radio Act for the second year in a row.

The chairman of the regulatory body, Yuriy Artemenko, explained that further sanctions could be taken against broadcasters who continued to breach their duty to disclose their ownership structure. In accordance with the law, their broadcasting licences might not be renewed or might even be withdrawn completely. Ukraine is repeatedly subjected to the propaganda and destabilisation efforts of media that sympathise with or are influenced by Russia. In view of the current political situation, the authorities are therefore anxious to ensure that details of the ownership of and influences on broadcasters are disclosed. In April 2016, the National Council of Television and Radio Broadcasting banned three Russian channels - RTG TV (Russian Travel Guide), Retro and Kinoklub - on account of legal infringements.

In addition to other measures, the Ukrainian Television and Radio Act stipulates that the fines should be 5% of the sum paid by the broadcaster concerned for all the licences that it holds.

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Agenda

Book List