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European Court of Human Rights: Fouad Belkacem v. Belgium

In a case concerning religious extremism on the Internet, the European Court of Human Rights ("ECtHR") confirmed that defending "Sharia law" while calling for violence to establish it could be regarded as "hate speech". The Court held that, in accordance with Article 17 (prohibition of abuse of rights) of the European Convention on Human Rights ("ECHR"), the discourse at issue did not fall under the protection of Article 10 of the ECHR, which guarantees the right to freedom of expression.

The case concerns the conviction of Mr Belkacem, the leader and spokesperson of the organisation "Sharia4Belgium" (which was dissolved in 2012) for incitement to discrimination, hatred and violence on account of remarks he made in YouTube videos concerning non-Muslim groups and Sharia law. Mr Belkacem was prosecuted for various offences under Belgium's Anti-Discrimination Law of 10 May 2007 and for online harassment with discriminatory intent. In the videos in question Mr Belkacem called on viewers, among other things, to overpower non-Muslims, "teach them a lesson" and to fight them. He also advocated jihad and Sharia law. In 2013 the Antwerp Court of Appeal sentenced Mr Belkacem to a suspended term of one year and six months' imprisonment and to a fine of EUR 550. The Antwerp court specified that the offence of public incitement to discrimination, violence and hatred was undoubtedly intentional, explicit, firm and repeated. The Court of Cassation dismissed an appeal lodged by Mr Belkacem. It found that Mr Belkacem had not simply expressed his views, but had unquestionably incited others to engage in discrimination on the basis of faith and discrimination, segregation, hatred or violence towards non-Muslims, and had done so knowingly and therefore intentionally.

Relying on Article 10 ECHR, Mr Belkacem argued before the ECtHR that he had never intended to incite others to hatred, violence or discrimination but had simply sought to propagate his ideas and opinions. He maintained that his remarks had merely been a manifestation of his freedom of expression and religion and had not constituted a threat to public order.

The ECtHR reiterates that, while its case-law enshrines the overriding and essential nature of freedom of expression in a democratic society, it also lays down its limits by excluding certain statements from the protection of Article 10. The ECtHR notes that Mr Belkacem published a series of videos on the YouTube platform in which he called on viewers to overpower non-Muslims, teach them a lesson and fight them. The ECtHR is in no doubt as to the markedly hateful nature of Mr Belkacem's views, and agrees with the domestic courts' finding that Mr Belkacem, through his recordings and video messages on the Internet, had sought to stir up hatred, discrimination and violence towards all non-Muslims. In the Court's view, such a general and vehement attack is incompatible with the values of tolerance, social peace and non-discrimination underlying the Convention. With particular reference to Mr Belkacem's remarks concerning Sharia law, the Court reiterates that it has ruled that the fact of defending Sharia law while calling for violence to establish it could be regarded as "hate speech", and that each Contracting State was entitled to oppose political movements based on religious fundamentalism. The ECtHR also observes that the Belgian legislation, as applied in the present case, appeared to be in conformity with the relevant provisions and recommendations of the Council of Europe and the European Union aimed at combating incitement to hatred, discrimination and violence. Lastly, the ECtHR considers that Mr Belkacem had attempted to deflect Article 10 of the Convention from its real purpose by using his right to freedom of expression for ends which were manifestly contrary to the spirit of the Convention. Although reiterating that the abuse clause of Article 17 is only applicable on an exceptional basis and in extreme cases, the ECtHR finds it applicable in the case at issue. Accordingly, it holds that, in accordance with Article 17 of the ECHR, Mr Belkacem could not claim the protection of Article 10 of the ECHR. The ECtHR decides that the application is therefore incompatible ratione materiae with the provisions of the ECHR (Article 35 §§ 3(a) and 4) and is inadmissible.

• *Décision rendue le 27 juin 2017 par la Cour européenne des droits de l'homme, deuxième section, dans l'affaire Fouad Belkacem c. Belgique, requête n°34367/14, publiée le 20 juillet 2017* (Decision by the European Court of Human Rights, Second Section, case of Fouad Belkacem v. Belgium, Application no. 34367/14 of 27 June 2017, communicated on 20 July 2017)
http://merlin.obs.coe.int/redirect.php?id=18669 FR

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European Court of Human Rights: Herbert Haupt v. Austria

In a case against Austria, the European Court of Human Rights ("ECtHR") decided that a satirical report aired during a comedy show on television that allegedly tarnished the reputation of a high-ranking and controversial politician had not violated the politician's right to private life, as guaranteed by Article 8

of the European Convention on Human Rights (ECHR). The ECtHR is of the opinion that the Austrian courts struck a fair balance between the competing interests in the case, in finding that the broadcaster's right to freedom of expression under Article 10 ECHR had outweighed the politician's right to private life under Article 8 ECHR.

The applicant in this case is Mr Herbert Haupt, who was the Chairperson of the Austrian Freedom Party (Freiheitliche Partei Österreichs, or FPÖ) from 2002 to 2004; in 2003 he was Vice-Chancellor of the Federal Government. In September 2013 a comedy show was aired on the television channel ATV+ called "The Worst of the Week" (Das Letzte der Woche). One of the reports concerned the fact that Mr Haupt, then the Vice-Chancellor of Austria, had become "godfather" to a baby hippopotamus at Vienna Zoo, as part of a fundraising incentive designed to encourage people to become sponsors of the zoo. The report contained blatant mockery and satirical comments, mentioning, inter alia, that there were many similarities between Mr Haupt, as the leader of the FPÖ, and his godchild, the baby hippopotamus, as both were usually surrounded by a lot of brown rats. Mr Haupt lodged a claim for compensation for non-pecuniary damage under section 6 of the Media Act (Mediengesetz), in conjunction with Article 115 of the Criminal Code (Strafgesetzbuch), against ATV Privat TV GmbH & Co KG (hereinafter "ATV"), the owner of ATV+, alleging that he had been insulted by the expression "brown rats". In a first set of proceedings the Austrian courts ruled in favour of Mr Haupt, ordering ATV to pay him compensation of EUR 2,000, as the statement about the brown rats had amounted to defamation under Article 111 of the Criminal Code. After the Supreme Court annulled the Vienna Regional Court's and the Vienna Court of Appeal's judgments, it allowed the extraordinary reopening of the proceedings against ATV. In the reopened proceedings the Austrian courts dismissed Mr Haupt's claim for compensation and also ordered him to bear the costs in respect of the proceedings incurred by the opposing party. As regards the alleged defamatory statement and its examination of evidence, the Regional Court listed a number of extreme right-wing or neo-Nazi statements made by high-ranking politicians belonging to the Freedom Party, while it found that Mr Haupt had not publicly dissociated himself from these statements. The impugned remark made during the broadcast about brown rats did not concern Mr Haupt's private and personal sphere but rather his professional, public position as a politician. The Court of Appeal confirmed the findings by the Regional Court, including the observation that the statement about the brown rats had constituted political criticism of the attitude and statements of FPÖ politicians. Before the ECtHR Mr Haupt complained that there had been a violation of Article 8 of the ECHR because the Austrian courts had failed to strike a fair balance between freedom of expression and his interest in protecting his reputation. His interest in the protection of his reputation should have outweighed ATV's interest in disseminating on its television channel a statement which was of a lurid and degrading nature.

Firstly, the ECtHR reiterates that according to its case-law the right to reputation is an independent right guaranteed by Article 8 of the ECHR, as part of the right to respect for private life, which the State has a positive obligation to protect. In order for Article 8 to come into play, however, an attack on a person's reputation must attain a certain level of seriousness and be carried out in a manner causing prejudice to personal enjoyment of the right to respect for private life. The ECtHR refers to its earlier case law in which it identified the relevant principles which must guide its assessment within the context of balancing Article 8 and 10 as competing rights. The relevant criteria thus defined are: 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, and, where appropriate, the circumstances in which the statement was made. The ECtHR also considers that, notwithstanding the fact that the Mr Haupt claims a violation of Article 8 ECHR, it is the task of the ECtHR to determine whether the principles inherent in Article 10 ECHR were properly applied by the Austrian courts when examining Mr Haupt's actions. Next the ECtHR emphasises that the most careful scrutiny under Article 10 ECHR is required where measures or sanctions imposed on the press are capable of discouraging the participation of the press in debates on matters of legitimate public concern. Furthermore, the limits of acceptable criticism are drawn more widely as regards a politician than they are as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance. The ECtHR reiterates that satire is a form of artistic expression and social commentary and, by its inherent features of exaggeration and distortion of reality, naturally aims to provoke and agitate. Accordingly, any interference with an artist's or social commentator's right to such expression must be examined with particular care.

The ECtHR considers important, inter alia, the fact that Mr Haupt was a well-known politician and that he thus has to display a greater degree of tolerance in the face of such provocation in a satirical television programme. Furthermore, the ECtHR finds that the report dealt with an issue of legitimate public concern - namely, statements made by high-ranking members of the FPÖ which were criticised in the media as expressing extremist right-wing positions and the question of whether Mr Haupt (in his position as Chairperson of that party) had distanced himself sufficiently from such statements. The ECtHR is also satisfied that there was a sufficient factual basis for the reference to the brown rats around the FPÖ, having regard to the detailed findings reached by the Regional Court in which it quoted various problematic statements made

by politicians of the FPÖ. For these reasons, the ECtHR is satisfied that the judgment of the Vienna Regional Court, as upheld by the Vienna Court of Appeal, struck a fair balance between the competing interests in the present case. Consequently, the ECtHR concludes unanimously that there is no appearance of a violation of Article 8 ECHR. Therefore the complaint by Mr Haupt is rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 ECHR, and consequently Mr Haupt's application is declared inadmissible.

• Decision by the European Court of Human Rights, Fifth Section, case of Herbert Haupt v. Austria, Application no. 55537/10 of 2 May 2017, communicated on 1 June 2017
http://merlin.obs.coe.int/redirect.php?id=18670 EN

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Committee of Ministers: Reply to the Parliamentary Assembly's Recommendation on attacks against journalists and media freedom in Europe

On 7 September 2017, the Council of Europe's Committee of Ministers adopted its Reply to Recommendation 2097 (2017) of the Parliamentary Assembly (PACE) entitled, "Attacks against journalists and media freedom in Europe" (see IRIS 2017-3/3).

The Committee of Ministers' Reply notes that the protection of journalists and media independence are cornerstones of democratic society and invites member States to ensure the well-functioning of the Platform to promote the protection of journalism and safety of journalists through voluntary contributions. The Platform facilitates the compilation by certain Partner Organisations of alerts on media freedoms and the safety of journalists (see IRIS 2017-2/2). Furthermore, the Committee of Ministers' Reply emphasised that "the added value of the Platform, as opposed to other Internet platforms mapping media violations, is that it is set up and operates within the framework of an intergovernmental organisation." Notably, the Committee of Ministers' Reply recalls that almost half of the member States do not satisfactorily guarantee the protection of journalists from violence and threats.

Moreover, in its Reply, the Committee of Ministers referred to the PACE Recommendation to allocate adequate financial resources for the functioning of the Platform, by noting that in addition to funding from the ordinary budget, the member States have also made voluntary contributions. In line with the PACE Recommendation, it called for committed engagement and follow-up activities by the member States in respect of the cases reported on the Platform.

Lastly, on the basis of the PACE Recommendation, the Committee of Ministers welcomed the PACE proposal, stating that it will give "serious consideration to the Assembly's proposal for a thematic debate" concerning the serious threats to media freedom in conflict zones and in the member States that are under a state of emergency.

The Committee of Ministers has now transmitted the PACE Recommendation to the Steering Committee on the Media and Information Society (CDMSI) for information and possible comment.

• Committee of Ministers Committee of Ministers of the Council of Europe, Reply to "Attacks against journalists and media freedom in Europe" - Parliamentary Assembly Recommendation 2097 (2017), Doc. CM/AS(2017)Rec2097 final, 7 September 2017
http://merlin.obs.coe.int/redirect.php?id=18708 EN FR

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EUROPEAN UNION

European Parliament: Approval for proposed Directive and Regulation bringing EU law in line with the Marrakesh Treaty

On 6 July 2017, the European Parliament (EP) voted in favour of a proposed Directive and Regulation (see IRIS 2016-9/4) implementing the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, which the EU signed in April 2014. In an effort to promote availability and the cross-border exchange of works in accessible-formats, the Marrakesh Treaty sets forth two obligations: (i) a requirement for exceptions or limitations to copyright and related rights for the making and dissemination of accessible-format copies, and (ii) the establishment of their cross-border circulation between the countries party to the Treaty. The EP's legislative resolutions on the proposed Directive on copyright exceptions and the proposed Regulation on cross-border exchange received 609 and 610 votes of approval, respectively. The Council of the EU ratified the Directive and Regulation on 17 July 2017.

The number of beneficiary persons in Europe is estimated to total 30 million, and the share of published books in accessible-formats is said to range from 7% to 20% within the EU. A "beneficiary person", under Article 2 (2) of the Directive, is a person who is blind, or who has a visual impairment, or a perceptual or reading disability, or a person who is otherwise unable, because of a physical disability, to hold or manipulate a book or to focus or move their eyes to the extent that would be normally acceptable for reading.

The Directive stipulates an obligatory exception to copyright and related rights under Article 3. Member

States are obliged to allow beneficiary persons themselves, persons acting on their behalf, and authorised entities to make accessible-format copies of works to which they have lawful access, without having to secure authorisation from the rightholder in question. Article 2 (4) of the Directive defines an "authorised entity" to include entities authorised or recognised by a Member State to provide education, instructional training, "adaptive" reading or access to information to beneficiary persons on a non-profit basis. Additionally, authorised entities may communicate, make available, distribute or lend accessible-format copies. These exceptions are limited for the exclusive use of beneficiary persons, must respect the integrity of the original work, and must not conflict with the normal exploitation of the work or other subject matter, or unreasonably prejudice the legitimate interests of the rightholder in question. In its Recital 14, the new Directive provides that Member States should not be allowed to impose additional requirements for the application of the exception, and that optional compensation schemes for authorised entities should be "limited". Some of those limits are expressed in Recital 14 - for example, that no payment should be required from beneficiary persons themselves, barriers to cross-border dissemination should be avoided, and where the harm to a rightholder is minimal, no obligation for payment of compensation should arise. The optional establishment of compensation schemes is regulated by Article 3 (6) of the Directive. The option for Member States to have such compensation schemes was the subject of considerable debate during the drafting process of the Directive.

The rules for cross-border exchange are laid out in the corresponding Regulation in Articles 3 and 4 - which should be read in conjunction with the Directive - expanding free circulation to third countries that are party to the Marrakesh Treaty, and establishing detailed obligations for entities authorised under Article 5.

In order to bring the new Directive into line with existing EU law, Article 5 (3) (b) of Directive 2001/29/EC has been amended to acknowledge the obligations arising from the new Directive.

National laws have to be adapted within one year of the entry into force of the Directive, while the Regulation will be binding in its entirety and directly applicable in all Member States.

• Regulation (EU) 2017/1563 of the European Parliament and of the Council of 13 September 2017 on the cross-border exchange between the Union and third countries of accessible format copies of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled
http://merlin.obs.coe.int/redirect.php?id=18703 DE EN FR
CS DA EL ES ET FI HU IT LT LV MT
NL PL PT SK SL SV HR

• Directive (EU) 2017/1564 of the European Parliament and of the Council of 13 September 2017 on certain permitted uses of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society
http://merlin.obs.coe.int/redirect.php?id=18706 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 concerning issues of media freedom in Turkey

On 6 July 2017, the European Parliament adopted a Resolution on the European Commission Report on Turkey, which concerned, among a number of issues, media freedom in Turkey. The new Resolution also concerned the European Parliament's previous Resolution in October 2016 on the situation of journalists in Turkey (see IRIS 2017-2/4), and follows the adoption of the Report on attacks against journalists and media freedom in Europe by the Committee on Culture, Science, Education and Media of the Parliamentary Assembly of the Council of Europe (PACE) (see IRIS 2017-2/2).

The new Resolution begins by emphasising the fact that recent months have seen a difficult period for Turkey's population, including a string of heinous terror attacks, and a violent coup attempt in July 2016 in which 248 people were killed. The European Parliament reiterated its strong condemnation of the coup attempt, expressed its solidarity with the people of Turkey, and recognised the right and responsibility of the Turkish government to take action in bringing the perpetrators to justice. The Parliament also noted that it remains committed to cooperating and maintaining a constructive and open dialogue with the Turkish Government in order to address common challenges and shared priorities, such as regional stability, the situation in Syria, migration and security.

However, the Resolution goes on to note that the measures taken under the state of emergency have had large-scale, disproportionate and long-lasting negative effects on the protection of fundamental freedoms in the country. In particular, the Resolution condemns the "mass liquidation" of media outlets and the arrests of journalists. Further, the European Parliament condemns strongly the "serious backsliding" and violations of freedom of expression, and the serious infringements of media freedom, including the disproportionate banning of media sites and social media. Moreover, the European Parliament notes with concern the closure of around 170 media outlets (including almost all Kurdish-language outlets) and the

jailing of more than 150 journalists, and stresses that Turkey's decision to block access to Wikipedia constitutes a grave attack on freedom of information. The European Parliament further notes the continuing deterioration of Turkey's ranking in the press freedom index compiled by Reporters without Borders, which now places Turkey as number 155 out of 180 countries; it also reiterates that a free and pluralistic press, including a free and open Internet, is an essential component of any democracy, and urges the Turkish government to release all unlawfully arrested journalists immediately.

Finally, it should also be noted that on 12 September 2017 the OSCE Representative on Freedom of the Media and the UN Special Rapporteur on the Right to Freedom of Opinion and Expression issued a joint statement on the urgent need to restore media freedom and freedom of expression in Turkey.

• European Parliament resolution of 6 July 2017 on the 2016 Commission Report on Turkey, P8_TA-PROV(2017)0306
http://merlin.obs.coe.int/redirect.php?id=18675 NN DE EN
FR CS DA EL ES ET FI HU IT LT LV
MT NL PL PT SK SL SV HR

• OSCE Representative on Freedom of the Media, OSCE and UN media freedom watchdogs call on Turkey to release journalists from prison and remove restrictions on media freedom, 12 September 2017
http://merlin.obs.coe.int/redirect.php?id=18676 EN

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European Commission: Decision on financing and advertising behaviour of public service broadcasting

On 11 July 2017, the European Commission published its decision concerning the financing of public broadcasting in Ireland, following a complaint from a private broadcaster regarding alleged breaches of State aid rules under the Treaty on the Functioning of the European Union. Notably, the decision also concerns the competitive behaviour of public broadcasters in the advertising market.

The current system of State financing of public broadcasters RTÉ and TG4 in Ireland was approved by the European Commission in a 2008 Decision (see IRIS 2008-4/8), under which the Irish authorities agreed to implement a number of measures in order to bring the financing system into line with State aid rules. In order to implement these commitments, the Broadcasting Act 2009 was enacted (see IRIS 2009-10/18).

A complaint was lodged with the European Commission in August 2014 by a commercial broadcaster, News 106 Ltd, arguing that Ireland had not fulfilled the conditions of the 2008 Decision. The complaint concerned a number of alleged infringements of State aid rules, including the fact that (i) there was allegedly no proper oversight of RTÉ's accounting, governance and commercial strategy, (ii) a gap in the regulatory framework has allowed RTÉ to refuse on arbitrary grounds advertisements promoting its indirect competitors and to undercut prices offered for similar radio advertising products, and (iii) RTÉ did not respect market principles when carrying out commercial activities. However, in an eighteen-page decision, the Commission concluded that Ireland has complied with the 2008 Decision and the commitments contained therein.

Firstly, the Commission examined the independent supervision of RTÉ, and noted that all elements of the supervision commitments, as set out in the 2008 Decision, were implemented by the 2009 Broadcasting Act, including the establishment of the Broadcasting Authority of Ireland (BAI) as a supervisory authority. In this regard, the Commission considered that the BAI's review process ensures the effective supervision of RTÉ's operations, including its commercial activities. Secondly, the Commission also examined and rejected the allegation that RTÉ had been overcompensated by means of excessive public funding. The Commission also considered the complainant's allegation that RTÉ's commercial activities are not being carried out on market terms, arguing that RTÉ would refuse advertisements of its indirect competitors on arbitrary grounds and undercut prices offered for similar radio advertising products. In this regard, the Commission examined RTÉ's Competing Services Guidelines, and noted that RTÉ allows competitors to broadcast advertisements on RTÉ which promote their services and the attributes of those services in a positive manner. Moreover, the Commission noted that the Guidelines state that "advertisements should not implicitly or explicitly, either denigrate or claim superiority over any other broadcasting service nor should exhort viewers to switch radio channels". Notably, the Commission considered that this limitation was intended to protect RTÉ's own commercial interest and that it was "inconceivable that any broadcaster, acting on market terms, would permit advertisements on its own services which specifically and overtly enticed viewers or listeners to switch to the competing broadcaster, thereby adversely affecting its market position and ability to earn revenue". The Commission concluded that there is no indication of a violation of the principle of market behaviour on the part of RTÉ by the refusal to run a certain type of advertising competitors.

Lastly, the Commission also rejected the complainant's argument that RTÉ undervalues prices of advertising on its online offerings.

• European Commission, Implementation of Commission Decision in case E 4/2005 - State financing of Radio Teilifís Éire Ann (RTÉ) and Teilifís na Gaeilge (TG4), C(2017) 5024 final, 11 July 2017
http://merlin.obs.coe.int/redirect.php?id=18677 EN

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NATIONAL

CH-Switzerland

Draft revision of Telecommunications Act

With the development of transmission techniques allowing ever faster access to the Internet, the telecoms world has seen unprecedented upheaval in recent years. In 2014, the Federal Council published a report on this trend, presenting the current state of the Swiss telecoms market. The report covered developments in international roaming, the protection of consumers and young people, and the neutrality of the Internet. The Federal Council noted that many issues were not adequately provided for in the current legislation, and that it therefore needed to be revised.

The Federal Council then drew up a draft revision of the Telecommunications Act for debate in Parliament. The draft contains a number of provisions aimed at stepping up consumer protection: more effective measures to combat telemarketing ("cold-calling"), customers' right to be advised on technical means of protecting young people, and the obligation incumbent on service providers to provide their customer base with information on the quality of their services (including speed of access to the Internet). The draft legislation also enables the Federal Council to adopt measures to combat excessive international roaming charges.

Since 2007, cable telecom service providers have been required to guarantee completely unbundled access to the local loop if they occupy a dominant position in the market. The Federal Council feels that, with the development of optic fibre networks, this obligation ought to be extended to all types of fixed connection. Direct access to the customer inside buildings is also an essential condition for ensuring competition and free choice for consumers. The Federal Council is therefore proposing to grant operators the right to connect at entry points to buildings and joint use of telecom installations inside buildings.

The draft legislation also makes provision for relaxing a number of the obligations incumbent on telecom service providers. In particular, they would no longer be required to obtain a concession for using the frequency spectrum, or even to register with the Federal Communications Office (Office Fédéral de la Communication - OFCOM). The obligation to register would only apply to those providers who use specific public resources: radiocommunication frequencies subject to a concession or addressing resources such as blocks of telephone numbers. The new regulations would also authorise concession holders to conclude cooperation agreements for the joint use of mobile communication.

Lastly, the draft legislation makes provision for enshrining in the Act a certain number of principles concerning the management of domain names, including the extensions ".ch" and ".swiss". The Federal Council also proposes the creation of a specific legal basis for blocking Internet sites containing pornography, and requiring telecom service providers to take steps to protect against cyberattacks.

• *Message du Conseil fédéral concernant la révision de la loi sur les télécommunications du 6 septembre 2017* (Message from the Federal Council concerning the revision of the Telecommunications Act, 6 September 2017)
http://merlin.obs.coe.int/redirect.php?id=18725 NN

Patrice Aubry
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CZ-Czech Republic

Czech Parliament adopted act on transition to DVB-T2

The Parliament of the Czech Republic voted the amendment to the Act on Electronic Communications. The amendment provides for the simplification of the process of changing mobile operators, and it also defines the rules governing the transition from DVB-T to the new standard DVB-T2. Discussions on the transition to DVB-T2 have been ongoing since 2013, when the government adopted the strategy Digital Czechia v. 2.0 - Road to Digital Economy, followed up by the Strategy of Frequency Spectrum in 2015 and the Strategy of Development of Digital Terrestrial TV Broadcasting in 2016. The transition to the new standard will come at a cost for consumers — hundreds to thousands of Czech korunas per home — in order to acquire a new TV set or set-top box. On the other hand, households will thus get a chance to get free TV, unlike with other platforms. The regulator warned that not adopting the amendment would endanger the transition to DVB-T2 and would result in lower coverage, a reduction in the number of channels and a controlled decommissioning of transmitters. Households would then need to rely on pay-TV

options for reception. The law also reserves the appropriate capacity for the broadcasting of the public service television CT.

• *Zákon č. 252/2017 Sbírky, kterým se mění zákon o elektronických komunikacích* (Act Nr.252/2017 Coll. Amendig the Law on the electronic communication)
http://merlin.obs.coe.int/redirect.php?id=18687 CS

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DE-Germany

OLG München rules that ad blocker does not breach cartel, competition or copyright law

In a ruling of 17 August 2017, the OLG München (Munich Court of Appeal) decided that open source software used to block advertising on websites did not infringe cartel law, any other kind of competition law or copyright law (case no. 29 U 1917/16).

The plaintiffs in the case at hand operate free websites with journalistic content that are financed through advertising. The defendant distributes free open source software that can block advertising on websites. The details of which content is blocked by the software are not initially provided; rather, this information is found in the form of so-called 'blacklists', which are suggested to the user. Under its default setting, the software does not block advertising that, according to its own criteria, is not intrusive ('whitelist'). Website operators can ask the defendant to unblock access to their websites, although operators of large websites have to pay to be 'whitelisted'. The plaintiffs argued that the software would cause them a noticeable loss in sales and that the defendant wanted to deliberately obstruct them and pressurise them into paying for their content to be 'whitelisted'.

By rejecting the plaintiffs' appeals, the OLG München confirmed a previous district court decision to dismiss their complaints on the grounds that they were not entitled to any injunction, information or compensation under competition, cartel or copyright law.

The court held that the defendant had not deliberately obstructed the plaintiffs and that its business model was not based on unlawful aggressive advertising. Moreover, since it did not hold a dominant market position, it had not infringed cartel law. The use of the ad blocker was not unlawful, since the plaintiffs had given users - including those that used the ad blocker - unhindered access to their websites, merely asking them not to use the blocker. The court considered this to constitute approval on the plaintiffs' part, which was why it deemed that no offence had been committed and that the copyright claims were also unfounded. Since the OLG Köln (Cologne Court of Appeal) had issued a decision that contradicted this ruling as regards claims under competition law, the Munich court ruled that its decision could be appealed.

• *Pressemitteilung des OLG München vom 17. August 2017* (Press release of the OLG München (Munich Court of Appeal), 17 August 2017)
http://merlin.obs.coe.int/redirect.php?id=18723 DE

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Spiegel TV granted injunction against ARD magazine show 'Panorama'

According to media reports, the LG Hamburg (Hamburg District Court) granted an injunction on 7 August 2017, preventing ARD's Panorama magazine programme from rebroadcasting footage that had been exclusively shown in a G20 documentary by Spiegel TV (case no. 308 O 287/17).

The case concerned a report entitled 'Ein verhängnisvoller Abend' (A fateful evening), broadcast during an episode of NDR's Panorama magazine programme devoted to police violence during the G20 summit. The report had contained footage previously broadcast and exclusively owned by Spiegel TV. NDR had shown the footage even though a prior request for permission to do so had been expressly rejected by Spiegel TV. Spiegel TV had therefore applied for an injunction, which was granted by the LG Hamburg, preventing Panorama from showing the disputed footage again.

The court therefore rejected NDR's claim to the right of citation, which is enshrined in copyright law and makes provision for works to be quoted without permission as long as they have previously been published and are included solely for the purpose of explaining independent content. Firstly, the LG Hamburg explained that existing case law on the right of citation was often used as a front by journalists, since it provided considerable scope for works to be cited. It added that Panorama's reporting would not have been impeded if the disputed footage had not been shown.

The court also held that the defendant had failed to adequately explain why it had needed to include the disputed footage in its report. It referred to mobile phone footage of the same event. The applicant, Spiegel TV, had explained during the proceedings that it had planned to use the disputed material again, which was why it had rejected the defendant's request. In the court's view, the applicant's right to exclusive use of the footage therefore outweighed NDR's right to show it. The court also took into account the

fact that Spiegel TV had released other material and had therefore not been seeking to monopolise its content as a matter of principle.

The court explained that further written grounds for its decision would be provided in a few days' time. NDR said that it would examine these grounds before deciding whether to appeal.

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ES-Spain

Catalan Audiovisual Council's new Code on LGBTI persons in audiovisual media

On 20 July 2017, the Catalan Audiovisual Council (Consell de l'Audiovisual de Catalunya, CAC), the Department of Labour, Social Affairs and Families (Departament de Treball, Afers Socials i Famílies), and the Catalan College of Journalists (Collegi de Periodistes de Catalunya), announced the publication of a new Code on the treatment of lesbian, gay, bisexual, transgender and intersexual (LGBTI) people in the audiovisual media (Recomanacions sobre el tractament de les persones lesbianes, gais, bisexuals, transgèneres i intersexuals (LGBTI) als mitjans audiovisuals).

The Code constitutes a new tool for professionals working in audiovisual communication services, as well as for production and advertising companies. In this regard, the twenty-four-page document contains nineteen recommendations referring to language, visual resources and information, and to fiction, entertainment and advertising, with the aim of promoting the visibility of LGBTI persons by means of non-stereotyped normalised presence. The Code also includes a list of expressions to avoid in respect of LGBTI people, and a list of inclusive expressions.

In particular, these recommendations include the use of inclusive language (avoiding the use of discriminating expressions) and suggestions for promoting a pluralist and non-stereotyped graphic and audiovisual representation of LGBTI people. The Code also encourages a realistic vision of LGBTI people and discourages giving a stereotyped and negative perspective. Moreover, the Code recommends facilitating access to audiovisual media by LGBTI people. The Code also includes recommendations for promoting the "normal" presence of LGBTI people as characters in series, movies, entertainment programmes and advertisements. Lastly, in relation to humour, the Code includes recommendations on how to find the balance between the limits of humour and respect for LGBTI people.

The Code fulfils Article 15 of Law 11/2014 of the Parliament of Catalonia on the rights of LGBTI persons and LGBTI-phobia eradication (Llei 11/2014, per a garantir els drets de lesbianes, gais, bisexuals, transgèneres iintersexuals i per a eradicar l'homofòbia, la bifòbia i la transfòbia), which gives competence to the CAC to supervise audiovisual media services' compliance with the provisions stated in the Law 11/2014.

- *Consell de l'Audiovisual de Catalunya, Un codi de recomanacions vetllarà per la presència normalitzada i no estereotipada de les persones LGBTI als mitjans, 20 de juliol de 2017* (Catalan Audiovisual Council, A code of recommendations will ensure the normalised and non-stereotyped presence of LGBTI people in the media, 20 July 2017)
http://merlin.obs.coe.int/redirect.php?id=18678 CA
- *Consell de l'Audiovisual de Catalunya, Departament de Treball, Afers Socials i Famílies, Collegi de Periodistes de Catalunya, Recomanacions sobre el tractament de les persones lesbianes, gais, bisexuals, transgèneres i intersexuals (LGBTI) als mitjans audiovisuals, juny 2017* (Catalan Audiovisual Council, Department of Labour, Social Affairs and Families, and Catalan College of Journalists, Recommendations on the treatment of lesbian, gay, bisexual, transgender and intersexual (LGBTI) people in the audiovisual media, June 2017)
http://merlin.obs.coe.int/redirect.php?id=18679 CA

Mònica Duran Ruiz
Catalan Audiovisual Council

FR-France

"YouTube tax" comes into force

As confirmed by decree no. 2017-1364 of 20 September 2017, the tax on the advertising revenue of Internet sites making videos available online either for free or in return for payment (the "YouTube tax") is about to enter into force. The proceeds of this 2% "video tax" are to be made over to the National Centre for Cinema and the Animated Image (Centre National du Cinéma et de l'Image Animée - "the CNC") for the financing of support for the creation of new works. The tax dates back to 1993 in respect of actual videograms (VHS/DVD); in 2004 it was extended to French sites charging for video-on-demand ("VOD"); and in 2013 it was extended further to include pay video platforms established outside France for the portion of their turnover realised in France from their subscribers. In 2016, Parliament voted for a further extension, to include all platforms offering mainly free videos, whether they are established in France or elsewhere. In this case the tax is applied to the platforms' advertising revenue. These last two extensions, after having been submitted for examination by the European Commission, may now enter into force with the publication of the Decree. Henceforth, all video platforms, whether any money changes hands or not, and whether they are established in France or elsewhere, will be subject to the same fiscal rules with regard to that portion of their turnover achieved in France.

By passing legislation on 29 December 2016 to amend its budget, the French Parliament incorporated in the base for the tax on the sale and rental of videograms (VHS/VOD) the advertising revenue of sites making videos available online either for free or against payment, in favour of the CNC (under the new Article 1609 sexdecies B of the General Tax Code). The tax is due from both the editors of on-demand audiovisual media services and community platforms (such as YouTube and Dailymotion) if they allow access to audiovisual content. Thus, the tax is payable by any operator, wherever it is established, offering a service in France that gives or permits access, either for free or against payment, to cinematographic or audiovisual works or other audiovisual content. The rate of the tax is to increase from 2% to 10% if the revenue from advertising or sponsorship is connected with "the circulation of cinematographic or audiovisual works of a pornographic or violent nature".

The base for the tax is the amount of the sums (not including VAT) paid by advertisers and sponsors for the circulation of their advertising and sponsorship messages on the services in question to the taxpayers concerned or to the agencies handing the advertising and sponsorship messages. A flat-rate reduction of 4% is applied to these sums; the reduction is increased to 66% for services giving or allowing access to audiovisual content created by private users for the purpose of sharing and exchange within "communities of interest". For on-demand audiovisual media services, the base for the tax is the price paid for access to cinematographic and audiovisual works. The base for the tax does not include amounts paid by advertisers and sponsors for the circulation of their advertising and sponsorship messages on catch-up television services, which are already subject to a different tax.

"This is a new stage in the integration of video platforms in the ecosystem for the financing of French and European works," said Minister for Culture Françoise Nyssen. For Frédérique Bredin, President of the CNC, "This is a great victory for the cultural exception. 04046 With Germany, we are the first to integrate the major foreign platforms into our ecosystems for financing the creation of new works." On the other hand, according to the association of community Internet services (Association des Services Internet Communautaires - "the ASIC"), "no YouTuber or MotionMaker is in a position to receive so much as a centime from the CNC for their video clips circulated exclusively on the Internet". The ASIC is therefore calling for "a minimum of 30% of the total aid granted by the CNC to be directed towards creators present exclusively on on-line platforms".

• *Décret n°2017-1364 du 20 septembre 2017 fixant l'entrée en vigueur des dispositions du III de l'article 30 de la loi n°2013-1279 du 29 décembre 2013 de finances rectificative pour 2013 et des I à III de l'article 56 de la loi n°2016-1918 du 29 décembre 2016 de finances rectificative pour 2016, JORF N°0221 du 21 septembre 2017*
(Decree No. 2017-1364 of 20 September 2017 laying down the entry into force of the provisions of Article 30(III) of Act No. 2013-1279 of 29 December 2013 amending the 2013 budget and Article 56 (I) to (III) of Act No. 2016-1918 29 December 2016 amending the 2016 budget, published in issue no. 0221 of the Official Journal (JORF) on 21 September 2017)

http://merlin.obs.coe.int/redirect.php?id=18727 FR

Amélie Blocman
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CSA responds to proposed AVMSD reforms

On 7 September 2017, the National Audiovisual Regulatory Authority (Conseil supérieur de l'audiovisuel - "the CSA") published its position on the reform of the Audiovisual Media Services Directive ("the AVMSD"). Following the adoption of a proposal to amend the Directive on 25 May 2016, the European Parliament and the EU Council issued a report and its general approach in April and May 2017, respectively, opening the way for a series of informal "trilogues" that should result in a revised directive being adopted in the coming months. The CSA called for ambitious compromises and a rapid conclusion to the negotiations, in view of the urgent need to adapt the text to reflect the realities of current practices and market conditions. It hoped that the revised directive would make regulation of the sector more relevant and effective, in particular by reducing the regulatory imbalances between different types of provider and encouraging new forms of regulation more suited to the digital environment.

The French regulator began by welcoming the European Commission's proposal to extend the scope of the directive to include video-sharing platforms. It also strongly supported the proposal of the Parliament and the Council to include social networks within the scope of the text. It hoped that the co-legislators would also consider including live streaming platforms, which were mainly used by young people, and thought such platforms should be asked to take measures to protect minors and to combat hate speech. The CSA also backed the Council's proposal that these platforms should be obliged to respect qualitative rules governing commercial communications.

In the second part of its statement, the CSA said that cultural objectives were shared more effectively but needed to be consolidated. In particular, it regretted the fact that the new obligation being proposed by the co-legislators to increase the proportion of European works in the catalogues of on-demand audiovisual media services (30% instead of the 20% proposed by

the Commission) was close to that already being met by most of these services and remained too far below the majority proportion that linear services were required to show. Similarly, it thought that the obligations to give prominence to European works in the catalogues of on-demand audiovisual media services should be clearly set out in the directive, and that the question of recommendation algorithms should be discussed. Finally, the CSA noted that questions remained concerning member States' practical application of the obligations to respect catalogue quotas and give prominence to European works, and of the destination country principle for financial contributions - especially where there were multiple national and language versions.

The CSA also called for the AVMSD to continue promoting a high level of consumer protection. In particular, it welcomed the harmonisation of the rules on the protection of minors in a single instrument aimed at both linear and on-demand services. Concerning the protection of minors, the fight against hate speech and the battle against terrorism, the CSA drew the co-legislators' attention to non-European channels received in Europe that were subject to the jurisdiction of a member state under the technical criteria of the directive (satellite up-link then nationality of satellite capacity). In practice, the unstable nature of satellite up-links and the lack of criteria in respect of services transmitted from third countries by non-satellite methods created legal uncertainty and did not provide for effective control of certain sensitive channels. The CSA - which was particularly concerned by the difficulty of monitoring these channels - was pleased that the European Parliament had considered this question. However, it thought that, in order to create the necessary degree of effectiveness and predictability, the directive should give clearer precedence to the criterion of satellite nationality over that of satellite up-links, on condition that it was given the means necessary to monitor and control these channels.

Finally, the CSA welcomed the fact that the promotion of cooperation between member states and the role of regulators and of ERGA were central to the directive's implementation, in particular through the creation of co-regulatory systems.

• *Position du Conseil supérieur de l'audiovisuel sur la révision de la directive « Services de médias audiovisuels », 7 septembre 2017* (Position of the Conseil supérieur de l'audiovisuel (CSA) on the revision of the Audiovisual Media Services Directive, 7 September 2017)
http://merlin.obs.coe.int/redirect.php?id=18728 FR

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Combating piracy: Google and association to combat audiovisual piracy sign agreement

On 19 September, Google and the Association to Combat Audiovisual Piracy (Association de Lutte contre la Piraterie Audiovisuelle - "ALPA") signed a partnership agreement aimed at effectively reinforcing copyright protection for the on-line exploitation of audiovisual works. The agreement was signed under the auspices of the National Centre for the Cnema (Centre National du Cinéma - "the CNC") - which will be able to act as an observer and make recommendations in the event of any conflict - in the presence of Minister for Culture Françoise Nyssen. Thanks to this partnership, Google's video platform, YouTube, will make its content ID algorithm available to ALPA. The algorithm is a tool for identifying and managing rights; ALPA will be able to apply the "block" and "follow" rules directly for any work placed on-line without the authorisation of the respective rights-holders. In this way it will be possible for rights-holders to add their works to the content ID filter and to ensure that their films and productions are not placed on YouTube without their consent. Google also undertakes to prevent its AdWords service from fraudulently buying key words for pirate streaming and downloading sites. It also undertakes to provide ALPA with financial support; the agreement is witness to its determination to contribute to the fight against piracy and to strengthen its policy of cooperation with originators and rights-holders.

The President of ALPA, Nicolas Seydoux, welcomed the agreement, which he said symbolised "the collapse of a wall of incomprehension" between Google and ALPA, with effective support from the CNC and the Ministry of Culture to be extended by means of an ambitious, balanced public policy focusing on two areas: (i) a reinforcement of the legal offer of films and audiovisual works on on-line platforms, by means of an urgent reform of media chronology, and (ii) a renewed efforts to combat piracy, particularly on streaming sites. As the Minister for Culture said, "the tangible form of this agreement needs to be defined in full accord with all the rights-holders."

• *Accord entre Google et l'Alpa du 19 septembre 2017* (Agreement of 19 September 2017 between Google and ALPA) FR

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GB-United Kingdom

Secretary of State for the Department for Digital, Culture Media and Sports refers Fox/Sky Merger to the Competition and Markets Authority

On 12 September 2017, and after deliberation, the Secretary of State for the Department for Digital, Culture, Media and Sport (DCMS) decided to refer the

proposed acquisition of Sky plc by Twenty-First Century Fox Inc. to the Competition and Markets Authority (CMA).

The Secretary of State was minded to refer matters to the CMA, particularly as an earlier Ofcom report had raised concerns that the proposed merger would give rise to issues around media plurality across different platforms (see IRIS 2017-8/4).

Furthermore, Ofcom's report on the proposed acquisition addressed concerns about Fox News' compliance procedures, given allegations of sexual and racial harassment at the company by staff, and the manner in which those complaints were handled. Fox News is owned by 21st Century Fox.

The Secretary of State has confirmed her decision to refer the takeover to the CMA, and in a statement the Secretary of State, Karen Bradley, said: "I can confirm my final decision is to refer the merger to the CMA for a Phase 2 investigation on media plurality and genuine commitment to broadcasting standards grounds."

The CMA has twenty-four weeks from the date of referral in which to conduct its investigation and provide advice about the merger. The Secretary of State will then make a final decision as to whether the takeover can proceed; if the takeover is allowed to proceed, the decision will stipulate any conditions that will first need to be met.

• Department for Digital, Culture, Media & Sport, Statement from the Culture Secretary on the proposed Sky plc / 21st Century Fox Inc. merger, 12 September 2017
http://merlin.obs.coe.int/redirect.php?id=18713 EN

Julian Wilkins
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Regulator revokes broadcaster's licence over material likely to incite crime

Ofcom, the UK communications regulator, has permanently revoked the licence of Iman FM, a community radio service broadcasting to the Muslim community in Sheffield. The regulator has power to do so under the Broadcasting Act 1990 if the licence holder has broadcast material likely to encourage or incite the commission of a crime or lead to disorder. Ofcom's Broadcasting Code also prohibits the broadcasting of material likely to encourage or incite the commission of crime or lead to disorder.

During the holy month of Ramadan the station broadcast a series of lectures by Anwar al-Awlaki, a US-born radical Muslim cleric who had been designated as a global terrorist by the US Government in 2010; in 2011 the UN Security Council had placed him on its list of individuals associated with al-Qaeda. President Obama authorised his killing in 2011 by a drone strike in Yemen, but after his death his writings remained online. The lectures presented an account of the life of the Prophet Muhammad purely in terms of his prowess as a military leader. They called for Jihad and attacks on unbelievers, and claimed that the killing of prisoners was legitimate. The total length of lectures broadcast amounted to over twenty-five hours. The radio station claimed that it had had no knowledge of the background of the lecturer and had not listened to all of the lectures before they had been broadcast. It had downloaded the lectures from YouTube.

Ofcom had serious concerns about the decision to give a platform to a widely known al-Qaeda propagandist and noted that, unlike traditional broadcasts during Ramadan, the lectures had presented the prophet Muhammad purely as a military leader and had detailed the preparation and justification for taking military action and the rules governing warfare. They had contained anti-Semitic hate speech, and had condoned acts of terrorism and violence. They had also condoned the mistreatment of prisoners of war. The lectures had presented violent Jihad as more virtuous than all other Muslim beliefs. The availability of material on the Internet did not mean that it was appropriate for broadcasting, and the editorial failure to carry out further checks on the background of the lecturer had been reckless. The broadcast material was likely to encourage or incite the commission of crime or lead to disorder.

Ofcom considered that the breaches of the Code were very serious. As required by the statute, it first suspended the broadcaster's licence and permitted it to make representations. It then concluded that its conduct was so extremely reckless that Ofcom had no confidence that the broadcaster would be capable of complying with its licence conditions or that similar breaches would be prevented in the future. On this basis, it was necessary and proportionate in the public interest to revoke the licence. Ofcom also concluded that the broadcaster's failures rendered it unfit to hold a broadcasting licence.

• Ofcom, 'Notice of Revocation: Iman Media UK Limited', Broadcast and On Demand Bulletin, Issue 334, 7 August 2017, p. 6
http://merlin.obs.coe.int/redirect.php?id=18661 EN

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Broadcaster fined GBP 17,500 for broadcasting potentially offensive and harmful content

On 25 July 2017, Ofcom, the UK communications regulator, decided, in a fifteen-page decision, to impose a financial sanction on a broadcaster due to the particularly serious nature of breaches of the Broadcast-

ing Code. The matter involved Kanshi Radio, a satellite radio station that provides speech and music programmes for the Asian community in the UK. The licence for Kanshi Radio is held by Kanshi Radio Limited. A complainant alerted Ofcom to a "filthy Punjabi" song (lasting eleven minutes) broadcast on 1 September 2016 on this station containing lyrics that the complainant considered were "threatening to 04046 Muslim women". In its representations, the licensee confirmed that the song had also been broadcast on 30 June 2016. The station offered its "sincerest apologies 04046 and regret that this incidence [sic] took place", adding that the song had not been "broadcast intentionally with [the] purpose to offend or threaten anybody". It added that "The material was not created by Kanshi Radio and does not reflect who we are."

The initial finding and the notice of sanctions included: "Warning: This Finding contains very offensive language (as the song when translated from Punjabi, included the words c*ck, c*nt, s*it, f*ck, mother*ucker, b*tch, b*stard, t*ts and more)".

Under the Communications Act 2003, Ofcom has a statutory duty to set such standards for broadcast content as appear to it best calculated to secure the standards' objectives, including that "generally accepted standards are applied so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material". This duty is reflected in sections 2 and 3 of the Code. Ofcom considered that the above-mentioned content clearly raised issues warranting investigation under the following rules of the Code: Rule 2.1 - "Generally accepted standards must be applied to the content of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material"; Rule 2.3 - "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context ..."; Rule 3. - "Material which contains hate speech must not be included in television and radio programmes except where it is justified by the context"; and Rule 3.3 - "Material which contains abusive or derogatory treatment of individuals, groups, religions or communities, must not be included in television and radio services except where it is justified by the context".

Ofcom considered the breaches in this case to be serious and put the "Licensee on notice that we will consider these breaches for the imposition of a statutory sanction." In accordance with Ofcom's penalty guidelines, Ofcom decided that it was appropriate and proportionate in the circumstances to impose a financial penalty of GBP 17,500 on the Licensee (payable to HM Paymaster General). In addition, KRL is directed to broadcast a statement of Ofcom's findings, on a date and time to be determined by Ofcom.

• Ofcom, Sanction (107)17 Kanshi Radio Limited, 25 July 2017
http://merlin.obs.coe.int/redirect.php?id=18710 EN

• Ofcom, Ofcom Broadcast and On Demand Bulletin, Issue number 318, 5 December 2016, p. 6
http://merlin.obs.coe.int/redirect.php?id=18712 EN

• Ofcom, Penalty guidelines, 14 September 2017
http://merlin.obs.coe.int/redirect.php?id=18711 EN

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Ofcom decision on inappropriate clips from films in news programming

On 8 May 2017, Ofcom determined that "ITV News" was in breach of Rule 1.3 of Ofcom's Broadcasting Code by showing a graphic clip from a well-known film as part of its obituary of actor John Hurt during their morning bulletin (when children were likely to form part of the audience). Notably, the decision resulted in ITV amending its Compliance Manual, and provides guidance on news programming content pre-watershed. "ITV News" is produced for the ITV network by ITN (Independent Television News), which also ensures compliance with Ofcom's rules relating to news broadcasts. On the morning of 28 January 2017, ITV transmitted a children's show called "Scrambled!" as part of its public service broadcasting remit for children. Straight after the programme there was a trailer for "Scrambled!", plus advertisements for toys. The next transmission was "ITV News", and as part of the bulletin it included an obituary of actor John Hurt, whose major film work included the movie "Alien". The clip shown was of John Hurt playing Kane in "Alien" just as an alien brutally erupts from his stomach (leaving a gaping, bleeding hole), just before Hurt's character dies.

Under Ofcom Rule 1.3, "Children must ... be protected by appropriate scheduling from material that is unsuitable for them". Appropriate scheduling is determined by a number of factors, including the nature of the content, the time of broadcast, and likely audience expectations.

ITN acknowledged that the "Alien" clip had been shown in "error" but in "good faith". The news provider also said that children do not usually take an interest in news bulletins, although viewer monitoring showed the children's audience (aged four to fifteen) for that bulletin was about 19%. ITN, as part of its response to Ofcom, said that the clip had not been shown in subsequent pre-watershed bulletins. Moreover, ITN has improved its Compliance Manual, which now includes a specific reference to "the need to take care when using images or clips from dramas and films in pre-watershed reports, such as obituaries".

Ofcom took account of the broadcaster's right to freedom of expression under Article 10 of the European

Convention on Human Rights ("ECHR"). However, the regulator considered that the clip had not been shown at an appropriate time of day, when there was likely to be a broad audience range (including children). Ofcom considered that parents and carers were unlikely to have expected material of this nature (albeit shown only briefly) to be broadcast on ITV before the watershed and immediately after children's programming had finished. Ofcom also considered that some children would have been viewing unsupervised. Furthermore, Ofcom noted that "Alien" is a very well-known science fiction horror film that was awarded a "15" certificate by the British Board of Film Classification (BBFC) and that the sequence shown - edited down from the full scene - is notorious for the graphic and shocking way in which the character, Kane, dies. Whilst Ofcom acknowledged ITN's admission of the error and their apology - as well as the subsequent amendment to its Compliance Manual in respect of the handling of film clips used in obituaries during pre-watershed bulletins - there was nevertheless a breach of Rule 1.3.

• Ofcom, Broadcast and On Demand Bulletin, Issue 328, 8 May 2017, p. 4
http://merlin.obs.coe.int/redirect.php?id=18714 EN

Julian Wilkins
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New guidance on prosecuting hate crimes, including on social media

The Director of Public Prosecutions (DPP) has stated that hate crimes are a priority area for the Crown Prosecution Service (CPS), given the increasing incidence of these crimes, especially on social media. On 21 August 2017, following a consultation, the CPS issued public statements on its approach to hate crimes (explaining the approach of the CPS and what victims and witnesses can expect), as well as revised legal guidance. These documents supplement the DPP's social media guidance ("Guidelines on prosecuting cases involving communications sent via social media").

These statements and guidance do not change the existing law (and did not require the involvement of Parliament); rather, they clarify the approach of prosecutors to this kind of offence. A broad approach has been suggested to the "flagging" of crimes involving hate to ensure that cases are not missed. Each statement emphasises that the CPS will seek to take these cases seriously, to support the victim's perception and to encourage community confidence in reporting all such offences. Once a case has been flagged as a hate crime and received by the CPS, the CPS policy is that the flag should not be removed. When considering whether to prosecute the CPS must first consider whether there is sufficient evidence to bring a successful prosecution and then whether prosecution is in the public interest.

The statements and guidance deal with racist and religious hate crime, homophobic, biphobic and transphobic hate crime, and disability hate crime and other crimes against disabled people. They thus reflect the categories set down in statute. These existing acts provide not just for the offence of racially motivated threatening/abusive behaviour (under Section 28 of the 1998 Crime and Disorder Act (CDA)), but also for the possibility of racial or religious aggravation to be taken into account when sentencing other offences (Section 145 of the 2003 Criminal Justice Act (CJA)).

Each statement has a similar format: it sets out the current law and offences available, along with guidance as to the types of offending behaviour that satisfy the elements of a hate crime, how to report it, and how these types of offences are committed through the Internet and social media. The guidance documents likewise adopt similar structures. These documents emphasise the importance of prosecuting hate crimes and then deal with: referral to CPS; flagging crimes; case building and case reviews; a more legally framed discussion of the existing law; issues relating to victims and witnesses; and pleas and sentencing.

The CPS and the police have agreed on a definition of hate crime as: "Any criminal offence which is perceived by the victim or any other person to be motivated by: hostility or prejudice based on a person's disability or perceived disability; race or perceived race; religion or perceived religion; sexual orientation or perceived sexual orientation; or [hostility towards] a person who is transgender or perceived to be transgender." There is no requirement that hatred be shown; the test is that of "hostility". The CPS specifies that "hostility" could include ill-will, spite, contempt, prejudice, unfriendliness, antagonism, resentment and dislike. This is potentially a broad category, especially where the behaviour in question is assessed from the victim's perspective rather than that of, for example, a reasonable person. The CPS notes that this formulation may be broader than the definition found in the CDA and CJA, although as noted there is a difference between the decision to flag a case, the decision to prosecute and the proving of a case in court.

Concerns have been raised about freedom of expression. There is, however, a freedom of expression defence contained in Section 29J under Parts 3 and 3 A of the 1986 Public Order Act in relation to religious hatred and in Section 29JA, sexuality-based hatred, but there is no corresponding statutory defence for a racial offence. When considering whether a prosecution is in the public interest, prosecutors are instructed to take into account freedom of expression when considering cases involving the media; the Social Media Guidelines specify that there should be a high evidential threshold for social media crimes and

that the assessment of the public interest should take into account freedom of expression. Regard is, however, paid to hate crime: references that indicate hostility may elevate a communication that would otherwise not meet the high threshold to one that does. The new statements (but not the guidance documents) refer to the Social Media Guidance. In the new guidance, where a case has passed the evidential threshold it is likely that prosecution will be in the public interest. Consent will be required for some prosecutions; this is especially the case in respect of social media offences.

• Crown Prosecution Service, Public statement on prosecuting racist and religious hate crime, 21 August 2017
http://merlin.obs.coe.int/redirect.php?id=18680 EN

• Crown Prosecution Service, Racist and Religious Hate Crime - Prosecution Guidance, Revised, 21 August 2017
http://merlin.obs.coe.int/redirect.php?id=18681 EN

• Crown Prosecution Service, Guidelines on prosecuting cases involving communications sent via social media
http://merlin.obs.coe.int/redirect.php?id=18682 EN

• Crown Prosecution Service, Hate Crime
http://merlin.obs.coe.int/redirect.php?id=18683 EN

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GR-Greece

New law on collective rights management

A new act on collective rights management (Law 4481/2017) was passed by the Greek Parliament and published on 20 July 2017. It incorporates Directive 2014/26/EU into national legislation, amends certain provisions of Law 2121/1993 (Copyright, Related Rights and Cultural Matters) (see IRIS 1995-1:Extra), and introduces provisions for combatting copyright infringements on the Internet.

The new legislation regulates collective rights management in Greece and, among other issues, covers the organisation of collective management organisations (CMOs), the representation and membership of rightsholders, the collection and use of rights revenue and its distribution to rightsholders, the CMOs' relations with users, as well as licensing terms and the setting of tariffs.

In addition, Act 4481/2017 determines that CMOs have the obligation to be transparent and to publish annual reports. The information is made public through the CMOs' websites.

Special provisions have been laid down for the Independent Management Organisations (IMOs), while the practice of appointing a Commissioner has been introduced when a CMO or an IMO is faced with financial or managerial problems. The Commissioner is appointed by the Ministry of Culture and has the power to intervene in certain issues affecting the organisation.

The multi-territorial licensing of the online rights to musical works is granted by CMOs, while in the case of the equitable remuneration for private copying, a percentage (2%).has been introduced on the value of personal computers.

A "notice and take down" service has been introduced, controlled by a committee composed of the Hellenic Copyright Organization, the Hellenic Telecommunications and Post Committee, and the Hellenic Data Protection Authority.

Finally, the Hellenic Copyright Organization has been given the competence to provide "time-stamping" services for works protected by copyright.

• Δημοσιεύθηκε ο Νόμος *4481/2017* για τη Συλλογική διαχείριση δικαιωμάτων πνευματικής ιδιοκτησίας και συγγενικών δικαιωμάτων (Act 4481/2017, Government Gazette A.100, 20 July 2017, "Collective management of copyright and related rights, multi-territorial licensing of rights in musical works for online use and other issues relating to Ministry of Culture and Tourism")
http://merlin.obs.coe.int/redirect.php?id=18722 EL

Eva Kokkinou
Hellenic Copyright Organization

New tender for digital television to be published

New developments on the licensing procedure for free-to-air, nationwide, DTT are to be mentioned, after the abrogation of the former tender due to a decision of the Council of State (see IRIS 2017-3/19).

In June 2017, the Parliament voted a provision requiring all providers of national coverage to broadcast their programmes using high definition and standard definition formats at the same time until 31 December 2021. In a report submitted to the Parliament, this decision is justified by findings that "a significant number of television sets are old-fashioned and do not receive a high-definition signal".

Subsequently, on 6 July 2017, the National Council for Radio and Television (ESR) announced its binding opinion to grant seven nationwide, free-to-air licenses covering general informative content. In its decision, ESR emphasised the need to "grant in the near future licenses for non-informative or thematic programmes" in order to take advantage of the total capacity of the spectrum dedicated to nationwide providers (that is, 12 licenses: three programmes on each of the four multiplexers). According to ESR's decision, the fact that one of the four multiplexers is currently leased to the public broadcaster ERT was taken into account, while recalling that "despite the fact that

over the next decade (...) European countries should allocate some of the spectrum to telecoms companies, spectrum exploitation capabilities are expected to increase due to the use of new compression and transmission technologies".

A few days later, on 28 July, ESR published its binding opinion on the starting auction price. Taking account of "the well-known conditions of the television market" and an increasing trend in advertising costs, as well as the fact that during the last (cancelled) tender the four licenses had been allocated for EUR 246 million (see IRIS 2016-9/20), the regulatory authority determined that the auction procedure should begin at the amount of EUR 35 million.

The Minister of Digital Policy, Nikos Pappas, has published two relevant decisions adopting ESR's position. The decision on the auction price provoked reactions amongst private channels, claiming the lack of a documented study that could justify the fact that the starting price is 10 times higher than that of the cancelled tender. The invitation to tender for the granting of seven licenses is to be published by ESR in the next few weeks.

• Άρθρο *83* (335΄377μ377302 *4478/2017)* σχετικά με τον τρόπο μετάδοσης των παρόχων εθνικής εμβέλειας (Act 4478/2017, Art. 83 on mode of transmission of nationwide providers)
http://merlin.obs.coe.int/redirect.php?id=18715 EL

• Σύμφωνη γνώμη ΕΣΡ για τον αριθμό δημοπρατούμενων αδειών εθνικής εμβέλειας γενικού 3003653013713653073777μ΄365375377305, *6* Ιουλίου *2017* (ESR's binding opinion on number of licenses of nationwide providers, 6 July 2017)
http://merlin.obs.coe.int/redirect.php?id=18684 EL

• Υπουργική Απόφαση *1830/2017* «33236137037730137130 3μ΄377302 αριθμού δημοπρατούμενων αδειών παρόχων περιεχομένου επίγειας ψηφιακής τηλεοπτικής ευρυεκπομπής ελεύθερης λήψης εθνικής εμβέλειας ενημερωτικού προγράμματος γενικού 3003653013713653073777μ΄365375377305» (Ministerial Decision 1830/2017, "Determination of number of number of licenses of nationwide providers"usg=AFQjCNHGsbWzMealQhOgVjlUXfe7OopS8w)
http://merlin.obs.coe.int/redirect.php?id=18716 EL

• Σύμφωνη γνώμη ΕΣΡ για την τιμή εκκίνησης των υπό δημοπράτηση αδειών εθνικής εμβέλειας γενικού 3003653013713653073777μ΄365375377305, *28* Ιουλίου *2017* (ESR's binding opinion on auction's starting price of licenses of nationwide providers, 28 July 2017)
http://merlin.obs.coe.int/redirect.php?id=18684 EL

• *Κο*371375΄367 Υπουργική Απόφαση *2178/2017* «33236137037730137130 3μ΄377302 τιμής εκκίνησης για καθεμία από τις επτά *(7)* δημοπρατούμενες άδειες παρόχων περιεχομένου επίγειας ψηφιακής τηλεοπτικής ευρυεκπομπής ελεύθερης λήψης εθνικής εμβέλειας ενημερωτικού προγράμματος γενικού 3003653013713653073777μ΄365375377305» (Co-ministerial Decision 2178/2017, "Determination of auction's starting price of licenses of nationwide providers")
http://merlin.obs.coe.int/redirect.php?id=18685 EL

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HU-Hungary

Regulator fines Magyar Telekom

The Hungarian telecommunications regulator, NMHH, has fined Magyar Telekom around EUR 250.000 for unlawfully launching a new product named 'Flip Home' (a triple play service) and failing to make necessary improvements to the product.

The regulator said that it had launched an investigation into the product 10 days after its launch on 16 May 2017, and had concluded that Magyar Telekom had failed to comply with the basic principles of transparency, equal treatment, cost orientation, fee control and access. Improvements made to the disputed product on 28 May 2017 had been insufficient, according to the regulator. In particular, the NMHH accused Magyar Telekom of failing to make the product available to other providers.

Although the NMHH says the decision is final, Magyar Telekom can ask for it to be reviewed in court.

• *Jogszerűtlenül vezette be a Flip Otthont a Magyar Telekom* (NMHH report on this case)
http://merlin.obs.coe.int/redirect.php?id=18724 EN HU

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IE-Ireland

Minister announces new designated free-to-air sporting events

On 23 August 2017, the Minister for Communications, Climate action and Environment, Mr Denis Naughten, announced the designation of the All-Ireland Senior Ladies Gaelic and Camogie (team sport played by women similar to hurling) Finals as "events of major importance to society". The designation ensures that these sporting events "remain available on a free-to-air and live basis" for Irish television audiences.

The European Union's Audiovisual Media Services Directive 2010/13/EU, allows member states to designate certain sporting and cultural events as being of major importance to society and to provide that those designated events should continue to be available on free-to-air television. The Directive requires member states to provide national legislation as the statutory basis for designating events. Section 162 of the

Broadcasting Act 2009 provides that a Minister "may by order, designate events as events of major importance to society", coverage of which can be provided by free-to-air broadcasters in the public interest. Under section 162 of the Act, the Minister may also determine whether the coverage should be available on a live, deferred or both live and deferred basis. In May 2015, the Minister for Communications announced a public consultation on the possible designation of additional sports events on free-to-air television under section 163 of the Act (see IRIS 2015-6/22). In deciding whether to designate certain events, the Act further provides that the Minister must have regard to a number of criteria, "in particular" the extent to which the event has a "special general resonance" and "a generally recognised distinct cultural importance" for the people of Ireland. Section 173 of the Broadcasting Act 2009 provides that a review process of designated events is undertaken every three years (see, for example, IRIS 2011-7/26).

The Minister stated that he had "always been adamant that ladies' football and camogie be treated equally with men's football and hurling" and that the "announcement recognises that equality." He added that the "designation of these events is also an acknowledgment of the valuable contribution that the representative associations make to women's sport throughout Ireland." The other sporting events currently designated include the Summer Olympics; the All-Ireland Senior Inter-County Football and Hurling Finals; Ireland's home and away qualifying games in the European Football Championship and the FIFA World Cup Tournaments; Ireland's games in the European Football Championship Finals Tournament and the FIFA World Cup Finals Tournament; Ireland's games in the Rugby World Cup Finals Tournament; the Irish Grand National and the Irish Derby; and the Nations Cup at the Dublin Horse Show

• Department of Communications, Climate Action and Environment, "Minister designates Ladies Gaelic Football and Camogie Finals as 'events of major importance to Irish Society'", 23 August 2017
http://merlin.obs.coe.int/redirect.php?id=18686 EN

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IT-Italy

Vivendi submits to AGCOM its plan to remove the position in breach of concentration limits

On 13 September 2017, the Italian Communications Authority (AGCOM) was notified with compliance measures submitted by Vivendi SA pursuant to Resolution no. 178/17/CONS (see IRIS 2017-6/24). Under this Resolution, AGCOM found Vivendi to be in breach of Article 43, paragraph 11 of Legislative Decree 177/2005 by exceeding the concentration limits within the Integrated System of Communications (SIC), as a consequence of the shares owned in Telecom Italia S.p.A. and Mediaset S.p.A. Vivendi was thus ordered to take appropriate steps to get themselves out of this situation, namely by disinvesting part of its holding either in Mediaset or in Telecom Italia within the following 12 months.

First of all, the plan aims at laying down the criteria for determining the independent professional trustee, subject to AGCOM's approval, to which Vivendi shall transfer its shares in Mediaset for a portion representing a number of voting rights in the shareholders general meeting exceeding the threshold of one tenth of the total amount. The shares to be transferred correspond to 19.19% of the capital shares of Mediaset, and amount to 19.95% of the voting rights in the shareholders general meeting.

The independent trustee must be a professional subject that meets the following requirements: (1) It must not own, directly or indirectly, stakes in any of the pool of relevant companies (including Vivendi, Mediaset, Telecom Italia and the respective parent companies, subsidiaries and "sisters"); (2) None of the companies included in the same pool must own stakes, directly or indirectly, in the independent trustee for an amount higher than 2% of the shares provided with voting rights; (3) The independent trustee shall have no agreement or mandate or commercial relationship with any of the companies of the pool that may prejudice its independency. The same requirements shall apply to the relevant parent companies, if any, of the independent trustee.

With respect to the management of the administrative rights related to the shares subject to transfer, the independent trustee will be entitled, first of all, to take part at its discretion and in an autonomous manner in the shareholders general meetings of Mediaset. Likewise, the independent trustee shall exercise at its discretion and in an autonomous manner the voting rights relating to the transferred shares with a view to safeguarding their commercial value.

Also, the following specific restriction applies: the trustee shall not vote lists of candidates presented by Vivendi for the appointment of the members of Mediaset's board of directors and supervisory board. No instruction from Vivendi shall be accepted or solicited by the trustee in respect of the exercise of the said rights.

As to economic rights, Vivendi shall maintain the right to receive profits or any other amount to be paid to shareholders relating to the stake subject to transfer. Also, it shall maintain the options rights relating to capital increases that may be carried out, as well as the right to give instructions to the independent trustee in respect of the total or partial sale of the transferred shares or in respect of third parties rights on the same.

The appointment of an independent trustee will be effective for the duration of the commitments taken in accordance with AGCOM Resolution no. 178/17/CONS. An independent trustee can be replaced only by another subject that meets the same requirements above.

Notably, the document clarifies that, even before the entry into force of these measures, Vivendi shall refrain from exercising voting rights for a portion corresponding to, or higher than 10% of the total voting rights. In any event, Vivendi shall refrain from exercising by any means a significant influence on Mediaset, pursuant to Article 2359 of the Civil Code. Vivendi shall also have the right to sell the relevant capital shares, among others, to any buyer other than Telecom Italia and Telecom Italia's and Vivendi's parent companies, subsidiaries or sister companies.

• *Misure di ottemperanza alla Delibera n. 178/17/CONS, 13 settembre 2017* (Measures to comply with Resolution no. 178/17/CONS, 13 September 2017)
http://merlin.obs.coe.int/redirect.php?id=18717 IT

Ernesto Apa & **Marco Bassini**
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LT-Lithuania

Amendments to the Law on the provision of information to the public

On 1 November 2017, the Amendments to Articles 2 and 34 of the Law on the Provision of Information to the Public No. I-1418 will enter into force. The Amendments were enacted on 1 June 2017 by Law No. XIII-396. Sixty-six members of Parliament voted in favour of these Amendments, three members were against and five abstained from voting.

The main changes related to Article 34 of the Law. The Amendment to paragraph 4 of Article 34 establishes that re-broadcasters re-broadcasting programmes and (or) other persons providing the services of the dissemination of programmes or separate parts thereof on the Internet to the consumers of the Republic of Lithuania shall be obliged to give priority to the official languages of the European Union. The Amendments also state that the programming schedule in the official languages of the European Union as well as broadcasts in the unofficial languages of the European Union created in another member state must constitute no less than 90% of the scope of the broadcasts in the provision of the services of the dissemination of the programming schedule or separate broadcasts on the Internet to the consumers of the Republic of Lithuania and (or) no less than 90% of the scope of the re-broadcasted programming schedule in every main programming schedule package offered to consumers.

Such requirements shall not be applicable to the programming schedule packages disseminated for an additional fee. If there is a possibility of choosing the language, the re-broadcasters and (or) persons providing the services of the dissemination of the programming schedules or separate broadcasts on the Internet to the consumers of the Republic of Lithuania shall be obliged to create all conditions for the programming schedule or separate broadcasts to be re-broadcasted and (or) disseminated on the Internet in an official language of the European Union.

The Amendment added a new paragraph 5 to Article 34 of the Law stating that programmes re-broadcasted and (or) disseminated on the Internet in an unofficial language of the European Union translated into an official language of the European Union or shown with subtitles in an official language of the European Union, shall be equated with a programme re-broadcasted and (or) disseminated on the Internet in an official language of the European Union.

These Amendments are expected to motivate Lithuanian consumers to learn English, French, German, Spanish and other EU languages. Currently, about 30% of re-broadcasted TV programmes in Lithuania are in Russian, so these Amendments will decrease the number of re-broadcasted Russian TV channels.

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Ban on Russian TV channels considered

Members of the Lietuvos radijo ir televizijos komisija (Lithuanian Radio and Television Commission - LRTK) have met to discuss a possible ban on the two Russian television channels Rossija RTR (previously RTR Planeta) and TVCi. In a statement, the LRTK said that programmes broadcast by the two channels had violated the Law on Public Information of the Republic of Lithuania and the Audiovisual Media Services Directive (2007/65/EC). Since it is registered in Sweden, Rossija RTR is also subject to the administrative control and jurisdiction of an EU member state and must therefore uphold the country of origin principle and meet restrictions on the freedom to retransmit television programmes. The broadcaster TVCi, on the other hand, is subject to the regulations and jurisdiction of Russia, a state party to the Council of Europe's Convention on Transfrontier Television, which also includes the country of origin principle.

Rossija RTR is a Russian state-owned television broadcaster that is transmitted abroad via cable and satellite — in Germany, it is carried on pay-TV by cable network operators such as Vodafone Kabel Deutschland

and Unitymedia — while TVCi is the international version of the Russian TV channel TV Tsentr. The Moscow-based channel is one of the country's largest, transmitting in 77 Russian regions. Although its main focus is life in Moscow, TVCi also shows films and series.

In April 2014, Rossija RTR was banned for three months in Lithuania and Latvia. According to the Latvian broadcasting authority, the ban was imposed because the TV channel had backed military action against a sovereign state during the war in Ukraine. Lithuania's foreign minister, Linas Antanas Linkevičius, said that Rossija RTR had breached journalistic standards and incited viewers to war and hatred. It had broadcast calls from Russian politician Vladimir Zhirinovsky to send Russian tanks to Ukraine and Brussels, for example. Zhirinovsky founded and chairs the Liberal Democratic Party of Russia (LDPR), an extreme far-right Russian nationalist party. Lithuania also banned the channel for three months in April 2015 and December 2016; in both cases, the European Commission decided that the measures taken by Lithuania were in conformity with EU law because Lithuania had demonstrated that Rossija RTR had infringed the ban on incitement to hatred. The broadcaster had tried to provoke tension and violence between Ukrainians and Russians, as well as against the European Union and NATO member states, in particular Turkey.

The LRTK was set up by the Lithuanian Parliament to regulate the broadcasting sector. Its activities are governed by the constitution and based in particular on the 2000 Information Act, an updated version of the 1996 Media Act. It has joint responsibility, along with the Rysiu Reguliavimo Tarnyra (regulatory body for communication - RRT), for frequency allocation and the protection of minors.

Lithuanian print media, on the other hand, regulates itself, primarily through the monitoring of and compliance with a code of ethics drawn up by the Lithuanian Journalists' Union and various other interest groups.

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NL-Netherlands

Court refuses injunction over BNN/VARA documentary

In a notable judgment concerning preventive censorship and broadcasting, on 17 August 2017, the District Court of Midden-Nederland ruled that the Dutch public broadcasting association BNN/VARA may broadcast an episode of the YouTube documentary show #BOOS (Dutch for "angry"). The show aims to solve consumer complaints, mostly from young people. In the episode in question, the presenter confronted a landlord with complaints from his student tenants. The confrontation resulted in a fight which left the presenter suffering from a broken jaw. The landlord requested an injunction to prevent the documentary from being broadcast on the basis that it would interfere with his right to have his employees' private lives respected. The Court rejected the request.

The Court found that the requested injunction entailed a form of preventive censorship, which violates freedom of expression under Article 10 of the European Convention of Human Rights (ECHR) and Article 7(2) of the Dutch Civil Code. The Court referred to the Mosley case of the European Court of Human Rights (ECtHR) (see IRIS 2011-7/1), in which the ECtHR emphasised that it is important that the assessment of any alleged unlawfulness of a publication and/or broadcast takes place after the publication and/or broadcast has been brought to the public's attention, considering the weight of the freedoms guaranteed in Article 10 ECHR. Article 10 does not preclude imposing restrictions prior to publications, but the dangers are such that they require that a judge only imposes such restrictions after "the most careful scrutiny".

Dutch case law has complied with this standard by requiring exceptional circumstances in the sense that the broadcast is unlawful to such an extent and will lead to such irreparable harm that a preventive broadcasting ban is justified. The Court held that a distinction needs to be made between the unlawfulness of the footage and the unlawfulness of the broadcast. Any unlawfulness of the footage does play a role in evaluating the unlawfulness of the broadcast, but does not, by definition, justify a broadcasting ban, let alone a preventive broadcasting ban. The Court found it unlikely that broadcasting the footage would lead to irreparable harm for the landlord. The landlord's employees would be blurred so as to render them unrecognisable. Regarding the landlord's recognisability, the Court held that the landlord had not claimed that he would suffer damage to his reputation because of the broadcast. In addition, the incident is already known to the public, partly because the landlord had already given an interview to a well-known magazine. The publication of the footage is important for the public to form its opinion on the incident. Moreover, if the broadcast proves to be unlawful and leads to harm for the landlord, it is expected that the harm may be undone by removing the footage from the Internet and/or by rectification or compensation.

• *Rechtbank Midden-Nederland, 17 augustus 2017, ECLI:NL:RBMNE:2017:4347* (District Court of Midden-Nederland, 17 August 2017, ECLI:NL:RBMNE:2017:4347)
http://merlin.obs.coe.int/redirect.php?id=18719 NL

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Data Protection Authority on the lawfulness of processing data for online copyright enforcement

On 6 July 2017, the Dutch Data Protection Authority (Autoriteit Persoonsgegevens, DPA), published a draft decision on the lawfulness of personal data processing proposed by Dutch FilmWorks B.V. (DFW). DFW had notified the DPA last March of its intention to collect and further process personal data for the purpose of the online enforcement of DFW's copyright. Because DFW plans to process data without informing data subjects, Article 31(1)(b) of the Dutch Data Protection Act requires prior investigation by the DPA. With its decision, the DPA plans to declare the proposed processing lawful (for a previous decision, see IRIS 2016-5/23).

DFW is a Dutch film producer, and it intends to process data, including the capturing of Dutch IP addresses, to determine whether users of these addresses are involved in the distribution or reproduction of works protected by copyright. The DPA decision reports that DFW intends to perform three investigative stages. First, DFW will instruct a partner data processor to capture IP addresses and other data that occur in online traffic corresponding to unauthorised copies of DFW's works, if such works are offered as torrents on indexing websites. The titles of the files offered, the IP-addresses and possible aliases used by publishers of the torrents will be indications for further investigation at the second stage, when DFW receives the data from the processor. DFW will then request Dutch internet service providers (ISPs) to submit further personal data of the customers using the relevant IP-addresses. At the third stage, DFW aims to approach data subjects to address the alleged infringement of copyright.

The decision continues by highlighting that the collection of data based on one's own observations and without informing the data subjects creates a particular risk. The DPA also finds that the processing of data based on the subjects' alleged infringement of copyright amounts to the processing of criminal data, but finds two grounds of exception for DFW. Thereafter, the decision critically assesses the proposed processing. Amongst other things, the DPA concludes that the processing will be necessary for the purposes of the legitimate interests pursued. DFW will use certain priority criteria in its investigation, such as exclusive focuses on DFW's copyrighted works and Dutch IP addresses. Also, DFW will periodically delete data throughout the stages of investigation. In conclusion, the DPA believes that DFW's proposed processing meets subsidiarity and proportionality standards, and that DFW's legitimate interest outweighs the interests of the data subjects. Another point made is that during the first two stages of investigation, DFW will not reasonably be able to inform the data subjects involved due to a lack of contact details. The DPA, in its decision, requires that data subjects be informed in any case, as soon as DFW has obtained enough contact details, for example via the contacted ISP. The DPA opened a six-week consultation period, allowing parties to submit their opinion. Once the DPA has completed the consultation process, a final decision will be made and published.

• *Autoriteit Persoonsgegevens, Ontwerpbesluit inzake de verklaring omtrent de rechtmatigheid van online handhaving van intellectuele eigendomsrechten door Dutch FilmWorks B.V;z2017-02053, 14 juli 2017* (Data Protection Authority, lawfulness of online enforcement of intellectual property rights by Dutch FilmWorks B.V; z2017-02053, 14 July 2017)
http://merlin.obs.coe.int/redirect.php?id=18718 NL

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TR-Turkey

Turkish Government Decree amended the Law on the Establishment of Radio and Television Enterprises and their Media Services

Turkey has been in a state of emergency since the attempted military coup that occurred in July 2016. Many Government decrees have been adopted following the event. The Cabinet announced a new Decree consisting of seven chapters and 76 articles. The sixth chapter of the Decree has brought several changes to the Law on the Establishment of Radio and Television Enterprises and their Media Services, which were indicated in five articles.

One of the most significant changes is related to the jurisprudence of the Republic of Turkey over the channels that are not located in Turkey, but are broadcast through Turkish satellites. These channels' original broadcasting language is not Turkish either, but they are using the Turkish language for broadcasting. Such channels mostly broadcast advertisements related to sexual products; chat and friend-finder lines; herbal and other types of supportive products; and lottery or competition advertisements. Moreover, these channels are not licensed by the Turkish Radio and Television Supreme Council because of a lack of

jurisdictional announcement. Several problems have emerged concerning these advertisements; for example, whichever product or service they offer might be based on falsified information, or the consumers of such products cannot receive after-sales service. Furthermore, some of the advertisements are reflected excessively, such as urging audiences to buy the product by announcing that it is about to be sold out. Under the amendment, the scope of the Law has been enlarged, and such channels are announced as they are under the jurisdiction of Turkish authorities. These channels are not allowed to broadcast advertisements which falsify information and illegitimately deceive audiences. In parallel with this, they are now required to hold a license from the Supreme Council to be allowed to broadcast.

Another important amendment placed in the Decree is related to the "Media service principles". Article 8 of the Law lists the principles, including the principles of media services for children and young people. According to the old principle, service providers could not broadcast programmes "which could impair the physical, mental, or moral development of young people and children within the time intervals that they may be viewing and without a protective symbol". According to the statement, the principle could be interpreted as allowing channels to broadcast such programmes outwith the indicated time interval by placing a protective symbol. The amendment clarifies the interpretation, and orders the channels not to broadcast such programmes even if the protective symbol is displayed. The Decree also gives additional power to the Supreme Council to cooperate with the Ministry of Family and Social Policies to endow channels financially to prepare family and children-friendly programmes that help to improve children and young people's physical, mental and moral development.

Furthermore, the Decree amends several fines and penalties concerning broadcasting companies should they breach the Law's several articles.

• *690 Sayılı Olağanüstü Hal Kapsamında Bazı Düzenlemeler Yapılması Hakkında Kanun Hükmünde Kararname (1/836) ile İçtüzük'ün 128'inci Maddesine Göre Doğrudan Gündeme Alınmasına İlişkin Türkiye Büyük Millet Meclisi Başkanlığı Tezkeresi* (Government Decree No. 690, Official Gazette No. 30053, 29 April 2017)
http://merlin.obs.coe.int/redirect.php?id=18720 TR

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Annual Report on Turkish Citizens' Opinions Related to the Media Services

In March 2017, the Turkish Radio and Television Supreme Council released the Annual Report on Turkish Citizens' Opinions related to Media Services. The Report puts together all feedback or complaints received in 2016 by the Council's Public Relations services: the call center, the mobile application and the Council's official website. There were approximately 200 000 elements of feedback related to the TV programmes. This feedback was mostly given by men (59% of all feedback). Between the ages of 21 and 50, several types of feedback were received from different age groups. The feedback was categorized according to the "Media service principles" as indicated in Article 8 of the Law on the Establishment of Radio and Television Enterprises and their Media Services.

Most of the feedback on reality shows described them as "contrary to the national and moral values of society, general morality and the principle of family protection". This is placed in Article 8 (f) of the Law. Such programmes were also the most viewed ones in 2016. Reality shows include marriage programmes which were classified as competition programmes or block programming.

Besides competition programmes, most people watch series. The majority of feedback was given on series (60% of all feedback): that they were promoting discrimination based on the "race, colour, language, religion, nationality, sex, disability, political and philosophical view..." as in Article 8 (e) of the Law.

Turkish citizens also complained about the frequency and duration of the advertisements. Of these advertisements, the advertising of sexual products and questionnaire competitions came top of the list for complaints.

Finally, news channels were reported by the Turkish citizens (18% of all feedback) as they "encourage acts that will jeopardize the general health and/or protection of the environment and animals" (Article 8 (ı) of the Law).

• *Radyo ve Televizyon Üst Kurulu Vatandaş Bildirimleri Yıllık Raporu 2016* (Radio and Television Supreme Council Citizens' Annual Report 2016)
http://merlin.obs.coe.int/redirect.php?id=18721 TR

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UA-Ukraine

Broadcasting Council warns media group about infringements

Ukraine's National Broadcasting Council has issued a warning to the broadcaster Inter Media Group after unscheduled inspections showed that its channels Inter, NTN, TRK Music TV (Pixel TV) and Kino TV (Enter

Film) had violated current Ukrainian broadcasting law. The relevant provisions, in particular Article 28.4 of the Ukrainian Television and Radio Act, require television broadcasters to fill at least 70% of their weekly programme content with productions from Europe, the United States and Canada, and not less than 50% of airtime with Ukrainian productions.

In the case of Inter, one of the country's leading TV channels, the weekly share of European, US and Canadian productions was only 57%, while for NTN it was only 56.8%, with just 32% for Ukrainian productions. For Pixel TV, European and Ukrainian output were only 66.4% and 24.7% respectively, while Enter Film allocated 37% of airtime to European productions and 22% to Ukrainian productions.

The Broadcasting Council also criticised the Inter Media Group for refusing to produce licences allowing it to broadcast and distribute films. It gave the group one month to bring its activities into compliance with current legislation.

Inter is a private broadcaster owned by Ukrainian gas oligarch Dmytro Firtash, the country's only gas importer. Many patriotic Ukrainians consider news broadcasts on Inter and the other TV channels to be too pro-Russia and the number of Russian TV series to be excessive. A scandal broke out when Inter broadcast a New Year's programme in which Russian stars spoke in favour of the annexation of Crimea. Masked men then raided the broadcaster's offices and smashed its windows. Ukrainian patriots are calling for the broadcaster to be shut down. Meanwhile, Inter employees fear for their jobs, since the National Media Council has already warned the broadcaster twice about its pro-Russian stance. Although the warnings have no direct consequences, the Council will decide whether to extend the broadcaster's licence when its current one expires.

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Agenda

Book List