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European Court of Human Rights: Tamiz v. the United Kingdom

On 12 October 2017, the European Court of Human Rights (ECtHR) issued its decision in Tamiz v. U, concerning a politician's claim that his right to protection of reputation had been violated following the UK courts' refusal to find Google liable for allegedly defamatory comments on Google's Blogger platform. The applicant was a Conservative Party candidate in local UK elections, and on 27 April 2011, a blog post was published on the "London Muslim" blog, hosted on blogger.com, which is owned by Google Inc. The blog post concerned the applicant, and included the observation that "this Tory prat with Star Trek Spock ears might have engaged the odd brain cell before making these offensive remarks." A number of anonymous comments were posted under the blog post, including that the applicant "is a known drug dealer" and a "class A prat".

The applicant used the blog's "report abuse" function to indicate that he considered certain comments to be defamatory, and sent a letter of claim to Google in respect of "defamatory" comments. Google confirmed that it would not itself remove the comments, but forwarded the claim to the blog's author, who three days later removed the post and comments. Meanwhile, the applicant also sought to bring a libel claim against Google Inc. (US) in relation to the comments. Ultimately, the Court of Appeal held that the claim should not be allowed to proceed. The Court held that since it could not be said that Google Inc. had known or ought reasonably to have known of the defamatory comments prior to it being notified by the applicant, Google Inc. could not be viewed as a secondary publisher prior to that notification. In relation to the period following notification, the Court held that the claim should not be allowed because it was "highly improbable that any significant number of readers will have accessed the comments after that time and prior to the removal of the entire blog", any damage to the appellant's reputation arising from the continued publication of the comments will have been trivial, and the costs of the exercise would be out of all proportion to what would be achieved.

The applicant then made an application to the European Court of Human Rights (ECtHR), claiming that in refusing him permission to serve a claim on Google Inc., the UK was in breach of its positive obligation under Article 8 of the European Convention on Human Rights (ECHR) to protect his reputation.

The ECtHR stated that the case concerned whether an appropriate balancing exercise was conducted by the national courts between the applicant's right to respect for his private life under Article 8 ECHR and the right to freedom of expression guaranteed by Article 10 of the ECHR and enjoyed by both Google Inc. and its end users. Firstly, the Court reiterated that in considering the gravity of the interference with the applicant's Article 8 rights, an attack on personal honour and reputation must attain a certain level of seriousness and must have been carried out in a manner causing prejudice to the personal enjoyment of the right to respect for private life. The Court stated that this threshold test is important, and that the reality is that millions of Internet users post comments online every day and many of these users express themselves in ways that might be regarded as offensive or even defamatory. On the facts, the Court was inclined to agree with the national courts that while the majority of comments about which the applicant complains were undoubtedly offensive, for the large part they were little more than "vulgar abuse" of a kind which is common in communication on many Internet portals and which the applicant, as a budding politician, would be expected to tolerate. Furthermore, many of those comments which made more specific allegations would, in the context in which they were written, likely be understood by readers as conjecture which should not be taken seriously.

Secondly, the Court noted that although the applicant was ultimately prevented from serving proceedings on Google Inc., this was not because such an action was inherently objectionable to the national courts. Rather, having assessed the evidence before them, they concluded that the applicant's claim did not meet the "real and substantial tort" threshold required to serve defamation proceedings. This conclusion was based, to a significant extent, on the courts' finding that Google Inc. could only, on the most generous assessment, be found responsible in law for the content of the comments once a reasonable period had elapsed after it was notified of their potentially defamatory nature. The Court noted that the approach of the national courts is entirely in keeping with the position in international law that information society service providers (ISSPs) should not be held responsible for content emanating from third parties unless they failed to act expeditiously in removing or disabling access to it once they became aware of its illegality. The Court concluded that it was satisfied that the appropriate balancing exercise was conducted by the national courts, and the applicant's Article 8 complaint was therefore rejected as manifestly ill-founded, pursuant to Article 35 § 3 (a) of the Convention.

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• Decision by the European Court of Human Rights, First Section, case of Tamiz v. the United Kingdom, Application no. 3877/14 of 19 September 2017, notified in writing on 12 October 2017
http://merlin.obs.coe.int/redirect.php?id=18781 EN

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European Court of Human Rights: Einarsson v. Iceland

On 7 November 2017, the European Court of Human Rights (ECtHR) delivered its judgment in Einarsson v. Iceland, concerning a public figure's claim that his right to reputation had been violated following an Icelandic Supreme Court decision that a post on the image-sharing platform Instagram was not defamatory. The applicant in the case was a well-known author and media personality in Iceland. On 22 November 2012, X published an altered picture of the applicant on his Instagram account, drawing an upside-down cross on the applicant's forehead, writing "loser" across his face, and with the caption "Fuck you, rapist bastard". The original picture of the applicant had been included in a newspaper interview with the applicant that same day in which the applicant had discussed a rape accusation made against him. A week earlier, the Public Prosecutor had terminated proceedings against the applicant that had been initiated after an 18-year-old woman had reported to the police in November 2011 that the applicant and his girlfriend had raped her.

On 17 December 2012, the applicant initiated defamation proceedings against X before the District Court of Reykjavík and asked for him to be punished, under the applicable provisions of the Penal Code, for altering the picture and for publishing it on Instagram with the caption "Fuck you, rapist bastard". However, the District Court found against the applicant, a decision that was ultimately upheld by the Supreme Court. The Supreme Court found that the applicant was a well-known person who had controversial views - "views which [included] his attitudes towards women and their sexual freedom", and that "there [had] been instances when his criticism had been directed towards named individuals, often women, and in some cases his words could be construed to mean that he was in fact recommending that they should be subjected to sexual violence." In this context, the Court found that the altered picture and comment 'Fuck you, rapist bastard' should be taken , and was a case of invective on the part of X against the applicant as part of a ruthless public debate, which the latter had instigated. It therefore constituted a value judgment regarding the applicant and not a factual statement that he was guilty of committing rape. Thus, X had expressed himself within the limits of freedom of expression, and should be acquitted.

The applicant made an application to the ECtHR, claiming that the Iceland Supreme Court's judgment had constituted a violation of his right to respect for his private life, as provided in Article 8 of the European Convention on Human Rights (ECHR). The ECtHR considered that the question was whether the domestic courts had struck a fair balance between the applicant's right to respect for his private life and X's right to freedom of expression, as protected by Article 10 of the ECHR. In this regard, the ECtHR considered it appropriate to consider the following criteria: how well-known was the person concerned, the subject matter of the statement and the prior conduct of the person concerned; and the contribution to a debate of general interest and the content, form and consequences of the publication (including the method of obtaining the information and its veracity).

Firstly, the ECtHR agreed that the applicant was well-known, and that the limits to acceptable criticism must thus accordingly be wider in the present case than in the case of an individual who was not well-known. Secondly, the Court agreed with the domestic courts that the publication of the picture had constituted a part of a general public debate: The applicant had participated in public discussions about his professional activities and the complaints against him of sexual violence, and was thus an object of general interest. Thirdly, the ECtHR examined whether the statement "Fuck you, rapist bastard" had constituted a statement of fact or a value judgment. The ECtHR admitted that the classification of a statement as a fact or as a value judgment is a matter which in the first place falls within the margin of appreciation of the national authorities - in particular the domestic courts. However, the Court may consider it necessary to make its own assessment of the impugned statements. In this regard, the Court held that the Supreme Court had not taken sufficient account of the relevant elements so as to be able to justify the conclusion that the statement had constituted a value judgment. In particular, the Supreme Court had failed to take adequate account of the important chronological link between the publication of the statement on 22 November 2012 and the discontinuance of the criminal proceedings against the applicant in respect of alleged rape. Moreover, the Supreme Court had failed to explain sufficiently the factual basis that could have justified deeming the use of the term "rapist" to constitute a value judgment, the Supreme Court "merely" referring to the applicant's participation in a "ruthless public debate" which he had "instigated". In conclusion, the Court found that the domestic courts had ailed to strike a fair balance between the applicant's right to respect for private life under Article 8 and X's right to freedom of expression, and that this had therefore constituted a violation of Article 8.

• Judgment by the European Court of Human Rights, Second Section, case of Einarsson v. Iceland, Application no. 24703/15 of 7 November 2017
http://merlin.obs.coe.int/redirect.php?id=18782 EN

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Committee of Ministers: Reply to the Parliamentary Assembly Recommendation on "Ending cyberdiscrimination and online hate"

On 17 October 2017, the Committee of Ministers of the Council of Europe issued a reply to the Parliamentary Assembly (PACE) Recommendation 2098 (2017) on "Ending cyberdiscrimination and online hate" (see IRIS 2017-3/4). In its reply, the Committee of Ministers mainly referred to the PACE requests concerning the reviewing and updating of several policy instruments concerning hate speech, intermediaries and the media.

With regard to the PACE's request for the Committee of Ministers to review Recommendation 97(20) on hate speech (see 1997-10/4), the Committee reiterates that the definition of hate speech is sufficiently broad to cover any hate speech that is based on intolerance, covering all forms of dissemination through any kind of media. Given its broad scope, the principles set out in Recommendation 97(20) apply to the online and offline environment. Therefore, the Committee of Ministers points out that this Recommendation remains a valuable instrument enabling member states to continue to combat hate speech. However, it is recognised that there is a need to explore new ways of helping member states to eliminate barriers to its implementation.

The PACE 2017 Recommendation also suggested that the Committee of Ministers should evaluate its Internet Governance Strategy for 2016-2019. In its reply, the Committee of Ministers stated that the Strategy already envisages measures aligned with the PACE Recommendation on "Ending cyberdiscrimination and online hate." Through its action such as the No Hate Speech Campaign Movement and Hate Speech Watch - as well as through the Platform to promote protection of journalism and safety of journalists (see IRIS 2017-2/2) - the Internet Governance Strategy is fulfilling the objectives set out in the PACE Recommendation. In addition, a new Recommendation on Internet intermediaries is currently being drafted and should be submitted to the Committee of Ministers by the end of the year.

Finally, concerning the PACE request to launch education work against racism and hate speech targeting children, the Committee of Ministers notes numerous engagements of the Council of Europe in "human rights education for young people", including a new project initiative "Digital Citizenship Education." The importance of the Human Rights Education for Legal Professionals (HELP) programme was emphasised as well as that of the Committee of Ministers' proposal concerning the designation of a European Day for Victims of Hate Crime.

• Committee of Ministers of the Council of Europe, Reply to "Ending cyberdiscrimination and online hate - Parliamentary Assembly Recommendation 2098 (2017), Doc. CMAS(2017)Rec2098 final, 17 October 2017
http://merlin.obs.coe.int/redirect.php?id=18828 EN FR

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Committee of Ministers: Draft Recommendation on the roles and responsibilities of Internet intermediaries

On 19 September 2017, the draft Recommendation of the Committee of Ministers to member states on the roles and responsibilities of Internet intermediaries was finalised by the Committee of experts on Internet intermediaries (MSI-NET). The draft Recommendation has now been sent to the Steering Committee on Media and Information Society (CDSMI) for approval. The MSI-NET was established by the Committee of Ministers in 2016 to prepare, under the supervision of the CDSMI, standard-setting proposals on the roles and responsibilities of Internet intermediaries.

The Recommendation begins by confirming that, in line with the case law of the European Court of Human Rights (ECtHR), Council of Europe member states have the obligation to secure and respect the rights and freedoms contained in the Convention for the Protection of Human Rights and Fundamental Freedoms both offline and online. The Recommendation then describes the role of Internet intermediaries, which are a wide, diverse and rapidly evolving range of actors who "facilitate interactions between natural and legal persons on the Internet by offering and performing a variety of functions and services". These services include connecting users to the Internet, enabling the processing of information and data, and hosting web-based services (including for user-generated content). Other services aggregate information and enable searches, and give access to, host and index content and services designed and/or operated by third parties. Some facilitate the sale of goods and services, including audio-visual services, and enable other commercial transactions, including payments.

Next, the Recommendation includes a number of recommendations for member states, including that

member states implement the Guidelines (which are annexed to the Recommendation) on the protection and promotion of human rights and fundamental freedoms with regard to Internet intermediaries. Moreover, member states should encourage and promote the implementation of effective age- and gender-sensitive media and information literacy programmes to enable adults, young people and children to enjoy the benefits and minimise their exposure to the risks of the online communications environment, in cooperation with all relevant stakeholders, including from the private sector, the public service media, civil society, educational establishments and academia.

As mentioned above, the Recommendation includes Guidelines regarding Internet intermediaries, which are set out in a ten-page annex. Firstly, the Guidelines describe the duties and obligations of States - in particular, that all powers of public authorities in relation to Internet intermediaries must be prescribed by law and exercised within the limits conferred by law. States should not use informal means to circumvent the guarantees offered by formal legal proceedings. Moreover, the Guidelines include provisions on legal certainty and transparency, safeguards for freedom of expression, safeguards for privacy and data protection, and access to an effective remedy. Secondly, the Guidelines describe the responsibilities of Internet intermediaries with regard to human rights and fundamental freedoms. In particular, the Guidelines have a number of provisions concerning the need for Internet intermediaries to respect human rights and fundamental freedoms - for example, any interference by intermediaries with the free and open flow of information and data should be based on clear and transparent policies and must be limited to specific legitimate purposes, such as to restrict access to content that has been determined as unlawful by a judicial authority or another independent administrative authority whose decisions are subject to judicial review, or in accordance with their own content restriction policies or codes of ethics. Moreover, there are detailed provisions on transparency and accountability, content moderation, use of personal data, and access to an effective remedy.

The draft Recommendation will be considered by the CDSMI, and thereafter the Committee of Ministers.

• Draft Recommendation CM/Rec(2017)xxx of the Committee of Ministers to member states on the roles and responsibilities of internet intermediaries, 19 September 2017
http://merlin.obs.coe.int/redirect.php?id=18830 EN FR

• Committee of experts on internet intermediaries, MSI-NET 4th meeting 18-19 September 2017, Meeting report, 6 October 2017
http://merlin.obs.coe.int/redirect.php?id=18831 EN FR

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Council of Europe's report clarifies concepts and identifies strategies to tackle disinformation

On 31 October 2017, the Council of Europe published a report entitled "Information Disorder: Toward an interdisciplinary framework for research and policy making". The report, commissioned by the Council of Europe and authored by Claire Wardle and Hossein Derakhshan, provides a conceptual framework for, and a structure for dialogue on information disorder, drawn up by policymakers, legislators and researchers. The document examines the way in which disinformation campaigns have become widespread and, heavily relying on social media, contribute to a global media environment of information disorder.

The authors acknowledge that information disorder cannot be solved overnight but they posit that understanding the complexity of the issue is a first significant step. They advocate for definitional rigour, rejecting the term 'fake news' as inadequate to describe the complex phenomena at stake. For that purpose, the authors identify three different types of "information disorder": misinformation, when false information is shared, but no harm is meant; disinformation, when false information is knowingly shared to cause harm; and malinformation, when genuine information is shared to cause harm, often by moving information designed to stay private into the public sphere.

In addition, the report invites the readers to consider the three 'phases' (creation, production, distribution) and the three 'elements' (agents, messages and interpreters) to better understand information disorder.

A key argument throughout the publication is that we need to understand the emotional and ritualistic elements of communication. The most 'successful' of problematic content is that which plays on people's emotions, encouraging feelings of superiority, anger or fear. The authors claim that while they deem fact-checking and debunking initiatives admirable — an appendix to the report lists such actions in Europe — there is an urgent need to understand the most effective formats for sparking curiosity and scepticism in audiences about the information they consume and the sources from which that information comes.

In addition to the conceptual framework, the report provides a round-up of related research and practical initiatives connected to the topic of information disorder, as well as filter bubbles and echo chambers.

It also examines solutions that have been rolled out by the social networks and considers ideas for strengthening existing media, news literacy projects and regulation.

Key future trends are also highlighted, such as the implications of artificial intelligence technology for manufacturing as well as detecting disinformation.

The final chapter closes with 35 recommendations addressed to relevant stakeholders such as technology companies, national governments, media, civil society, and education ministries to help them identify suitable strategies to address the phenomenon.

Technology companies should (*inter alia*) create an independent, international council; provide researchers with the data related to initiatives aimed at improving the quality of information; provide transparent criteria for any algorithmic changes that down-rank content; and work collaboratively.

National governments should (*inter alia*) commission research to map information disorder; draft regulations to prevent any advertising from appearing on disinformation sites; require transparency around Facebook ads; and support public service media organisations and local news outlets.

• Information Disorder: Toward an interdisciplinary framework for research and policy making
http://merlin.obs.coe.int/redirect.php?id=18859 EN FR

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EUROPEAN UNION

Court of Justice of the European Union: Judgment on cloud-based recording of television programmes

On 29 November 2017, the Court of Justice of the European Union (CJEU) delivered its judgement in the case of VCAST Limited v. RTI SpA (Case C-265/16). The Court held that the "private copying exception", under Article 5(2)(b) of Directive 2001/29/EC (the EU Copyright Directive), does not apply to a company providing a cloud video recording system enabling Internet users to make remote private copies of television programme broadcasts. This was based on the grounds that, prior to the reproduction act in question, an unauthorised act of communication to the public had taken place.

The dispute arose before the District Court of Turin, in Italy, when VCAST asked the Court to issue a declaration of lawfulness regarding its activities, carried out over the internet, in relation to RTI, the other party to the dispute. The latter party is an Italian television organisation whose broadcast programmes are, among other programmes, offered by VCAST for remote recording, via the internet, through a cloud video recording system. The system works as follows: the VCAST website lists the different television channels covered by its system and the corresponding programming; VCAST's customers can specify whether to record a specific programme or a specific time slot; through VCAST's own antenna, the television signal is picked up and the time slot for the selected programme is recorded in an indicated cloud data storage space, provided by a third party but purchased by VCAST's customers. In the light of an application for interim measures, submitted by RTI and upheld by the Court, VCAST was prohibited from pursuing its activities. However, in order to decide on the lawfulness of VCAST's activity, the Italian Court decided to stay the proceedings and to refer two questions to the CJEU for a preliminary ruling. What was asked, in essence, was whether the private copying exception, laid down in Article 5(2)(b) of the Copyright Directive, applies to the service offered by VCAST where no prior consent of the copyright holder has been obtained. On 7 September 2017, Advocate General Szpunar delivered his opinion on the case (see IRIS 2017-10/6).

In its answer, the CJEU noted that, in the case at issue, the act of reproduction cannot be seen in isolation from the preceding act, which consists of making different programmes, from which the customer can choose, available on the VCAST website. In light of this, the Court reiterated that the making available of protected works falls within the meaning of the exclusive right of "communication to the public", which is protected under Article 3 of the Copyright Directive and which, in order to be lawful, requires prior authorisation from the rightsholder. Having regard to the different means of transmission used by the initial broadcasting organisation, through television, and by VCAST, through the internet, different publics are reached and, consequently, VCAST needs to secure the prior consent of the rightsholders. The Court therefore considers that the act of communication to the public on VCAST website was unlawful.

With regard to the private copying exception, the CJEU emphasises the importance of the lawfulness of the source, which is a precondition for the exception to apply. However, taking into account the unlawful access to those works (evaluated under Article 3 of the Copyright Directive), through which reproduction is made and which must thus be regarded as an unlawful source of reproduction, the private copying exception cannot apply.

• Judgment of the Court (Third Chamber), Vcast Limited v. RTI SpA, Case C-265/16, 29 November 2017
http://merlin.obs.coe.int/redirect.php?id=18783 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 Commission: High-Level Expert Group and public consultation on fake news

On 13 November 2017, the European Commission launched a public consultation on "fake news" and set up a High-Level Expert Group (HLG), in order to tackle fake news online. The initiative against the dissemination of fake news within traditional and social media requires a comprehensive approach, including the identification of the problems faced by journalism and the role of social media in the dissemination of fake news. The balancing of fundamental freedoms, freedom of expression and media pluralism on the one hand, and the right of citizens to reliable information on the other, is also necessary. The consultation, together with the recommendations of the HLG, aims to contribute to the development of an EU-level strategy to combat fake content and to equip citizens with the necessary tools to identify them, in order to facilitate the dissemination of reliable information.

Only fake news and disinformation online falls within the scope of the consultation; therefore, content that is per se illegal under the existing EU or national legislative framework (such as incitement to hatred, violence or terrorism and defamation) is not covered. The scope shall be clarified by the HLG. Citizens, social media platforms, researchers and public authorities are invited to contribute to the public consultation before 23 February 2018. Contributions are expected in three main areas. The first concerns the scope of the problem - more specifically, the way in which citizens and stakeholders identify online disinformation and trust different media. The second one pertains to the measures already taken by the relevant players (platforms, news media companies, civil society organisations) to tackle fake news. The third area of contribution is expected to address possible future action.

Moreover, the HLG is mandated to advise the Commission on the scope of fake news, to formulate recommendations, to define the responsibilities of relevant stakeholders and specify the international reach on this issue. The HLG is to comprise representatives from academia, online platforms, news media and civil society organisations. The first meeting of the HLG is to be held in January 2018.

This initiative is based on (i) the previous endeavours of the European Commission (see IRIS 2016-7/5), namely, the second Annual Colloquium on Fundamental Rights on the topic of "Media Pluralism and Democracy", which took place in November 2016, (ii) the concerns of European citizens regarding the independence of the media, and (iii) the Resolution adopted by the European Parliament calling on the Commission to establish the current legal framework on fake content (See IRIS 2017-8/7). The initiative against fake news online is part of the Commission's 2018 Work Programme.

The work of the HLG and the results of the public consultation is to be presented in spring 2018.

• European Commission, Public consultation on fake news and online disinformation, 13 November 2017
http://merlin.obs.coe.int/redirect.php?id=18833 EN

• European Commission, Call for applications for the selection of members of the High Level group on Fake News, 12 November 2017
http://merlin.obs.coe.int/redirect.php?id=18834 EN

• European Commission, Next steps against fake news: Commission sets up High-Level Expert Group and launches public consultation, 13 November 2017
http://merlin.obs.coe.int/redirect.php?id=18784 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 Commission: Public consultation on Europeana

On 17 October 2017, the European Commission launched a public consultation on the Europeana Digital Platform for Cultural Heritage. The purpose of the consultation is to evaluate the development of Europeana in order to set the direction for its future development (see IRIS 2014-10/3). The consultation was initiated following the Council of the European Union's Conclusions of 31 May 2016 on the role of Europeana regarding digital access to, and the visibility and use of, Europe's cultural heritage. In these Conclusions the Council highlighted the importance of strengthening Europeana both through technological advancements and the realisation of cultural and user-oriented projects.

The consultation process consists of seven blocks of questions that enquire into: 1) the user experience with Europeana and alternative sources of cultural heritage information; 2) the experience of providers of materials (data partners) with Europeana; 3) the relevance of Europeana for finding and exploring European cultural heritage; 4) the effectiveness of the platform, mainly in terms of the "findability" of content; 5) user experiences with the re-use of material from Europeana in other (creative) activities; 6) participation in the Europeana Network Association (a community of experts working in the field of digital heritage, united by a shared mission to expand and improve access to Europe's digital cultural heritage), and 7) the "added value" brought by Europeana in the collection and dissemination of digital cultural heritage at the European level. Furthermore, the consultation provides an opportunity to raise other important issues, problems, opportunities or priorities to be

addressed by Europeana, and to make general suggestions regarding the future development of the platform.

The Commission invites all stakeholders with an interest in digital cultural heritage or Europeana to participate in the public consultation before 14 January 2018. Responses can be submitted through the online questionnaire in any of the official languages of the EU.

• European Commission, Public consultation on Europeana Digital Platform for Cultural Heritage, 17 October 2017
http://merlin.obs.coe.int/redirect.php?id=18835 EN

• Council conclusions on the role of Europeana for the digital access, visibility and use of European cultural heritage, 31 May 2016
http://merlin.obs.coe.int/redirect.php?id=18785 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: Proposed Regulation on copyright and online transmissions of broadcasters

On 27 November 2017, the Committee on Legal Affairs of the European Parliament published its Report, including a draft European Parliament Resolution, on the proposed Regulation laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes. This ninety-six-page Report follows the Committee's vote on 21 November 2017 on the proposed Regulation.

The European Commission first published the proposed Regulation in September 2016 (see IRIS 2016-9/4) as part of the Commission's Digital Single Market Strategy for Europe (see IRIS 2015-6/3), which aims to create a modern, more European copyright framework (see IRIS 2016-2/3). The Commission's Regulation seeks to make it easier for broadcasters to release their content online throughout the EU. It introduced a country-of-origin principle to facilitate the clearance of rights for ancillary online services by broadcasting organisations, where the relevant copyright act takes place solely in the member state where the broadcasting organisation is established. It also sought to facilitate the clearance of rights for retransmission services provided over closed networks, such as IPTV (other than cable), by introducing rules on mandatory collective management.

Notably, a Report from the Committee on Legal Affairs' Rapporteur was published on 10 May 2017, with the Rapporteur stating that the Regulation seemed "too narrow," and recommended that "the specific reference to broadcast programmes should be deleted." Following the Opinions from the Committee on Culture and Education, the Committee on Industry, Research and Energy, the Committee on the Internal Market and Consumer Protection, and the Rapporteur's Report, the draft European Parliament Resolution contains thirty pages of amendments to the Commission's proposal. The most notable amendment concerns Article 2 of the draft Regulation related to the scope, which provides that the country-of-origin principle would only apply to ancillary online services to an initial broadcast of "exclusively news and current affairs programmes". Moreover, a new Article 2(2a) would mean that Article 2 would not limit parties' freedom to agree on any specific methods or criteria for calculating the amount of payment to be made for the rights subject to the country-of-origin principle, such as those based on the broadcasting organisation's revenues generated by the online service.

Thus, broadcasters would only have to clear the rights in their own country to make available their online news and current affairs content for audiences in other EU countries. However, it would be possible for broadcasters to "geo-block" their online content if the rightsholder and broadcaster so agreed in their contracts.

The proposal will now be considered by the European Parliament sitting in plenary session.

• Committee on Legal Affairs, Report on the proposal for a Regulation of the European Parliament and of the Council laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, 27 November 2017
http://merlin.obs.coe.int/redirect.php?id=18786 EN

• Committee on Legal Affairs, "More online TV and radio across borders," 21 November 2017
http://merlin.obs.coe.int/redirect.php?id=18787 EN

• Committee on Legal Affairs, Rapporteur: Tiemo Wölken, Draft Report on the proposal for a regulation of the European Parliament and of the Council laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, 10 May 2017
http://merlin.obs.coe.int/redirect.php?id=18788 DE EN FR CS DA EL ES ET FI HU IT LT LV MT NL PL PT SK SL SV HR

• Proposal for a Regulation of the European Parliament and of the Council laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, COM(2016) 594 final, 14 September 2016
http://merlin.obs.coe.int/redirect.php?id=18789 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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UNITED NATIONS

United Nations: Resolution on safety of journalists

On 13 November 2017, the United Nations General Assembly's Third Committee adopted a Resolution regarding the safety of journalists and the issue of impunity. This Resolution calls upon States to take comprehensive action towards ending impunity for attacks against the press. Moreover, the Resolution has a focus on the specific risks faced by women journalists in the exercise of their work. Furthermore, the Resolution reiterates commitments on the part of States regarding the release of detained journalists, improvement of media freedom matters within legal frameworks, and protection of digital safety, and calls upon all States to cease and refrain from measures that intentionally prevent or disrupt access to or dissemination of information online and offline with the aim of undermining the work of journalists in informing the public.

The Resolution refers to commitments and issues arising from previous instruments, such as Resolution 33/2 of the Human Rights Council on the safety of journalists (see IRIS 2016-10/1). Among other matters, the Resolution includes commitments on the part of states to condemn violence and attacks against journalists, ensure proper investigations and systematically collect data to use in policy making on the safety of journalists.

The focus of the Resolution on women journalists in particular reflects the Secretary General's recent report on the safety of journalists (and its particular focus on the safety of women journalists) and the concern of the UN Special Rapporteurs on freedom of opinion and expression on violence against women (see IRIS 2017-1/4). In this regard, the Resolution acknowledges the specific risks faced by women journalists while doing their work. In the same vein, the Resolution underlines the importance of taking a gender-sensitive approach to measures to address the safety of journalists in physical and online spheres. This includes tackling gender-based discrimination (including violence, inequality and gender-based stereotypes) and enabling women journalists to enter and remain in journalism on equal terms with men. The Resolution also calls upon States to create and maintain safe and enabling environments for journalists. This includes training and awareness-raising measures for the judiciary, law enforcement officers and military personnel. Moreover, on digital matters the Resolution emphasises that encryption and anonymity tools have become vital for many journalists (for example, in securing their communications and protecting the confidentiality of their sources), and calls upon States not to interfere with the use of such technologies and to ensure that any restrictions thereon comply with States' obligations under international human rights law.

Finally, the Resolution urges the immediate and unconditional release of journalists and media workers who have been arbitrarily arrested, arbitrarily detained or taken hostage or who have become victims of enforced disappearances, and moreover calls upon states to pay attention to the safety of journalists covering protests.

- United Nations General Assembly Third Committee, The safety of journalists and the issue of impunity, A/C.3/72/L.35/Rev.1, 13 November 2017
http://merlin.obs.coe.int/redirect.php?id=18790 EN FR
- United Nations General Assembly, Report of the Secretary-General, The safety of journalists and the issue of impunity, 4 August 2017
http://merlin.obs.coe.int/redirect.php?id=18839 EN FR

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NATIONAL

AL-Albania

Regulator decides against the broadcasting of insurance company advertising spot

The Audiovisual Media Authority (AMA) issued a statement on November 22, asking television stations to stop broadcasting an advertising spot by a private insurance company. The regulator acted after receiving complaints and took the decision after watching the advertising spot. The advertising spot concerned the company SIGAL-UNIQA Group, or more specifically, an offer it had on private pension funds. AMA decided that the spot openly violated consumer rights "by providing them with information on this specific company only and showing contempt for the public pension insurance system in the Republic of Albania."

In its statement, AMA stated that every company, institution, or individual can broadcast advertising spots on products, services, or other offers, by highlighting the positive and useful aspects they have. However, this promotion should not assume an unfair commercial nature by using labeling and making negative judgments vis-a-vis competitors in the market.

As a result, the regulator instructed television stations to immediately stop broadcasting this advertisement, which was of an unfair commercial nature, as it openly targeted another competitor by identifying and downgrading it. This was the second decision in a few

months against commercial actors downgrading public entities; the first one being the decision to ban a similar advertising spot by a private university, at the expense of the public education system.

• *Ndalimi i reklamës që cënon të drejtat e konsumatorëve* (Press release from AMA on 22 November 2017)
http://merlin.obs.coe.int/redirect.php?id=18796 SQ

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AT-Austria

Online ads exempt from advertising tax

In a decision of 12 October 2017, the Austrian Verfassungsgerichtshof (Constitutional Court) ruled that the legislator was entitled to exempt Internet advertisers from paying the advertising tax levied on print media and radio ads (case no. E 2025/2016-16).

The decision was taken in response to a total of 23 complaints from newspaper and magazine publishers and radio stations, who had claimed that the advertising tax was discriminatory and that the 2000 Advertising Tax Act was unconstitutional. According to Article 1(1) and (2) of the Act, the advertising tax applies to advertising services provided in Austria in return for payment; radio and television advertising services targeted at an Austrian audience but distributed from abroad are treated as being provided in Austria. Advertising services include the distribution of advertisements in printed works as defined in the Media Act, as well as on radio and television, and the use of surfaces and spaces for the distribution of commercial messages. In the complainants' opinion, the fact that the tax did not apply to Internet advertising was unconstitutional.

However, the Constitutional Court decided that the legislator was entitled to apply an exemption in the case of online advertising, much of which was provided by advertisers abroad. In view of the taxable events covered by the Advertising Act, it was therefore acting within its legislatory remit.

• *Beschluss des Verfassungsgerichtshofes vom 12. Oktober 2017, Az. E 2025/2016/16* (Decision of the Constitutional Court of 12 October 2017, case no. E 2025/2016/16)
http://merlin.obs.coe.int/redirect.php?id=18851 DE

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BG-Bulgaria

Changing criteria for assessing unfavourable media content for children

At the end of September, the Council for Electronic Media (CEM) accepted an amendment to the Rating Criteria of Content that is unfavourable for or threatens to impair the physical, mental, moral and/or social development of children regarding cinematographic works (See: IRIS 2012-2:1/10). The CEM announced them recently. The following differentiations have been made:

- Cinematographic works, films and series, and other audiovisual works, which are not recommended for children under 12 years of age, may be broadcasted throughout the whole duration of media service providers' programmes.- Cinematographic works, films and series, and other audiovisual works, which are not recommended for children under 14 years of age, may be broadcasted in programmes of media service providers between 9:00 pm and 6:00 am.- Cinematographic works, films and series, and other audiovisual works, which are not recommended for children under 16 years of age, may be broadcasted in programmes of media service providers between 10:00 pm and 6:00 am.- Cinematographic works, films and series, and other audiovisual works, which are not recommended for children under 18 years of age, may be broadcasted in programmes of media service providers between 11:00 pm and 6:00 am.

In all aforementioned cases, these audiovisual works must be clearly labelled with an audio and/or audiovisual sign preceding them or must be identified by a visual warning sign (pictogram), which appears after the start of the programme and after each interruption, and which stays on the screen for not less than 60 seconds.

• Критерии за оценка на съдържание , което е неблагоприятно или създава опасност от увреждане на физическото , психическото , нравственото и /470473470 социалното развитие на децата (Criteria for assessing unfavourable media content for children)
http://merlin.obs.coe.int/redirect.php?id=18827 BG

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CH-Switzerland

Copyright Act to be amended

On 22 November 2017, the Bundesrat (Federal Council) adopted a bill amending the Swiss Copyright Act. The bill was based on a compromise agreed upon by the AGUR12 working group in March of this year. Various pressure groups are represented in the working group, which includes creative artists, producers, cultural intermediaries and consumers. The bill is yet to be voted on in parliament.

The Bundesrat hopes that, by adopting the draft, it will be able to take resolute action against illegal piracy websites in order to strengthen the rights and interests of creative artists and the cultural industry. The goal is to protect creative artists more effectively without criminalising Internet users. For this reason, the measures proposed in the bill are primarily aimed at hosting providers. Hosting providers are Internet service providers who make storage space available to their customers for the purpose of storing information. They can ensure that piracy sites are not hosted on their servers and quickly remove content that infringes copyright. In future, hosting providers who present a particular risk for copyright infringement must therefore ensure that such content is not re-posted after it has been removed ("stay down obligation"). The bill also allows data to be processed for the purposes of prosecuting copyright infringement, although it makes no provision for Internet blocking.

Meanwhile, the bill does not alter the fact that legal action cannot be taken against consumers of illegal content. They will not be prosecuted and will still be allowed, for example, to download music made available on the Internet without the rightsholder's permission for their own private use.

The bill also contains innovative reforms designed to adapt copyright law to recent technological developments. The new opportunities of digitisation will therefore be opened up to the area of copyright.

For example, under a new rule, researchers and libraries will be able to use their inventories for specific purposes without the explicit consent of rightsholders.

Another innovation improves the situation of producers by extending the copyright protection for performances from 50 to 70 years. This is designed to reduce the imbalance between the increasing online use of works and stagnating proceeds, since it gives producers more time to recoup their investments.

Creative artists will also benefit from a broader protection for photography and a more efficient management of video-on-demand rights. For consumers, however, these changes should not lead to higher costs.

• Federal Council media release, 22 November 2017
http://merlin.obs.coe.int/redirect.php?id=18852 DE EN FR

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DE-Germany

Network Enforcement Act enters into force

The Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken (Act to improve law enforcement in social networks - NetzDG) entered into force on 1 October 2017. The new law is designed to force social networks to deal more quickly and more comprehensively with complaints, in particular from users, about hate speech and other criminal content.

The act applies to social networks defined in Section 1(1)(1) NetzDG as telemedia service providers which, for profit-making purposes, operate Internet platforms designed to enable users to share any content with other users or to make such content available to the public. Platforms offering journalistic or editorial content for which the service provider itself is responsible, and platforms designed to enable individual communication or the dissemination of specific content, are excluded from the scope of the act. The former concerns Internet platforms often used by radio stations or television providers, for example. It is also significant that, according to Section 1(2) NetzDG, the act only applies to providers whose social networks have more than 2 million registered users in Germany. It is therefore deliberately aimed at large social networks such as Facebook.

Providers to whom the act applies are placed under new obligations with regard to unlawful content. Unlawful content is defined in Section 1(3) NetzDG as content that breaches specific provisions of the Criminal Code (StGB), such as the rules on slander in Article 185 StGB and certain criminal law provisions on protection from threats to the democratic rule of law.

Exactly how providers should handle complaints about unlawful content is explained in Section 3 NetzDG. Providers must ensure, through an effective and transparent procedure, that complaints are immediately noted and checked. Content that is manifestly unlawful must be removed within 24 hours of the complaint being received; all unlawful content must be removed within seven days of the complaint being received; and any decision taken by the provider must be notified to the complainant.

Section 4 NetzDG concerns regulatory fines and stipulates that fines of up to EUR 5 million may be imposed for certain infringements of the act.

Section 5 NetzDG requires social network providers to appoint an authorised agent in Germany and to draw attention to this fact on their platform in an easily recognisable and directly accessible manner.

• *Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken - NetzDG* (Act to improve law enforcement in social networks - NetzDG)
http://merlin.obs.coe.int/redirect.php?id=18855 DE

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ES-Spain

The term "Government in exile" banned

Further to the intervention of the Generalitat de Catalunya (Autonomous Catalan Institution) by the Spanish central government, Carles Puigdemont was dismissed as president of the Generalitat. TV3, the Catalan public broadcaster, independent from the Generalitat, continued to refer to him as "president", and using the expressions "Government in exile" and "exiled ministers" to refer to the ex-president Carles Puigdemont and the four Catalan ex-ministers.

The provincial electoral board of Barcelona has ruled that the use of these terms by TV3 infringes the principle of information neutrality before the Catalan elections on 21 December 2017. It states that "In this context, the expressions used as a journalistic style resource by the professionals of the public chain, insofar as they introduce the concept of 'exile', are not rigorous, may confuse the average viewer and violate the principle of informative neutrality". And this journalistic resource of style, has infringed the electoral law and specifically the principle of informative neutrality, and in the future they must abstain from its use.

• *Junta Electoral Central, Núm. Acuerdo: 123/2017, Sesión JEC: 24/11/2017* (Central Electoral Commission, No. 123/2017, 24 November 2017)
http://merlin.obs.coe.int/redirect.php?id=18792 ES

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CAC Report on news coverage of the attacks in Barcelona and Cambrils

On 13 September 2017, the Catalan Audiovisual Council (CAC) published its Report analysing the news coverage of the attacks that took place in Barcelona and Cambrils on 17 and 18 August 2017 on seven television channels (TV3, 3/24, 8tv, La1, Canal 24H, Antena 3 TV and Telecinco), and three radio stations (Catalunya Ràdio, Catalunya Informació and RAC1). In addition, the 152-page Report also looks at audiovisual content about the attacks found on the internet, specifically on video-sharing platforms.

All of the channels analysed first reported on the Barcelona attack between 5.09 p.m. (3/24) and 5.38 p.m. (La1) in various formats, with the exception of 8tv, which did so via a link-up with RAC1 at 7.54pm. Following the attack in Cambrils, the time when the news broke ranged from 1.18 a.m. (RAC1) and 2 a.m. (TV3 and 3/24, which broadcast it simultaneously, and Telecinco) to 7.02 a.m. (8tv, via a link-up with RAC1).

As soon as each channel started reporting on the attack on La Rambla, they changed their schedule to special news broadcasts that continued until the evening news (TV3 and 3/24, La1 and Canal 24H, Antena 3 TV) or that replaced the news programme (Catalunya Ràdio and RAC1). During the evening, only Telecinco and 8tv broadcast part of their usual schedule. TV3, 3/24, La1, Canal 24H, Telecinco and Antena 3 TV continued reporting on the attack after the evening news broadcast. On the two radio stations the special news broadcasts went on until midnight. Likewise, all channels changed their schedule on the morning of 18 August 2017 to special news broadcasts (TV3 and 3/24, La1 and Canal 24H), as well as changing the normal broadcast location to report on the attacks (all channels). With regard to the usual news programmes, the 17 August evening news and 18 August midday news were devoted entirely to the attacks.

As for the items analysed in the Report, the first section examines how the events were reported in the first 24 hours: the information sources used (recommendations 1.1 and 1.3); the communication of messages of public interest (recommendation 1.1); respect for the presumption of innocence of people involved in the attacks (recommendation 1.2); the provision of contextual information by involving experts (recommendation 1.4); the terms used to describe the attacks (recommendation 1.5); and the use of audiovisual resources for sensory effects (recommendations 3.2, 3.3, 3.5, 3.6).

The second section deals with victims' privacy and image rights: the right to personal image and privacy of the victims of the attacks (recommendation 2.1.) and the presence of minors (recommendation 2.4). Lastly,

the CAC report also looked at the audiovisual content about the attacks on internet video-sharing platforms.

• *Consell de l'Audiovisual de Catalunya, El tractament informatiu dels atemptats a Barcelona i a Cambrils (17 i 18 d'agost de 2017), 13 de setembre de 2017* (Catalan Audiovisual Council, News coverage of the attacks in Barcelona and Cambrils (17 and 18 August 2017), 13 September 2017)
http://merlin.obs.coe.int/redirect.php?id=18791 EN CA

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FR-France

Conseil d'Etat upholds formal notice served on C8 after sexist sequence during Touche pas à mon poste

In a decision adopted on 4 September 2017, the Conseil d'Etat pronounced on the first in a series of formal notices served this year by the national audiovisual regulatory authority (Conseil Supérieur de l'Audiovisuel - CSA) on the television channel C8 for a number of cases of inappropriate behaviour during the programme Touche pas à mon poste. The present case involved a sequence broadcast in October 2016 during which a commentator kissed an extra on the chest, even though she had expressed several times her unwillingness to submit to such behaviour. The matter was referred to the CSA by the Minister with responsibility for women's rights after many complaints were received from viewers, and the CSA issued a formal notice to the channel to comply with the provisions of Article 3-1 of the Act of 30 September 1986, as it considered the sequence had expressed gender prejudice and had presented a degrading image of women. The Conseil d'Etat noted that the disputed notice had complied with the prescriptions contained in Article 42 of the Act of 30 September 1986. It also noted that the Act gave an exact definition of behaviour on the part of the CSA that would be considered contrary to the provisions of the 1986 Act (a prerequisite for pronouncing any sanction) in the event of similar behaviour being repeated. The judgment therefore set aside the argument that, because of the general nature of the terms of these legislative provisions, the CSA had ignored the principle of the proportionality of offences and penalties.

The Conseil d'Etat also noted that the sequence during which the commentator had kissed the young woman on the chest had been peppered with comments, including by the programme's presenter, on the woman's physical appearance. As the Conseil d'Etat recalled, editors of audiovisual communication services are required to remain in control of their broadcasts at all times, and the fact that a programme was broadcast live ought to result in particular vigilance. Although the channel claimed otherwise, the humorous nature of the programme did not justify a sequence that could only trivialise behaviour consisting of kissing a woman against her manifest wishes. The Conseil d'Etat therefore found that C8 had no grounds for calling for the cancellation of the formal notice served, which was legally justified.

This case is the first of four appeals brought by C8 before the Conseil d'Etat calling for the cancellation of sanctions imposed this year by the CSA in respect of Touche pas à mon poste.

• *Conseil d'Etat, 4 décembre 2017 - C8* (Conseil d'Etat, 4 December 2017 - C8)
http://merlin.obs.coe.int/redirect.php?id=18857 FR

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Validity of attribution of frequency for France Info

In a decision adopted on 15 November 2017, the Conseil d'Etat deliberated on the application for the cancellation, on the grounds that it had exceeded its authority, of the decision adopted by the CSA (Conseil Supérieur de l'Audiovisuel - CSA) on 6 July 2016 attributing a frequency to the national programme company France Télévisions for broadcasting the new France Info continuous news channel terrestrially in digital mode. In application of Article 26.II of the Act of 30 September 1986, the Minister for Culture had called on the CSA to allow priority use of airwave resources by France Télévisions for broadcasting the public news channel that had been created by the Decree of 15 June 2016.

The Conseil d'Etat set aside the criticisms that TF1, a media holding company, had made about the Decree of 15 June 2016 creating the France Info channel and the corresponding amendment to the contractual requirements incumbent on France Télévisions: the disputed decision was one of the application measures. It noted that the creation of a continuous news channel met the need for a knowledge and understanding of current affairs and for their analysis and examination in accordance with the missions attributed to France Télévisions by Article 43-11 of the Act of 30 September 1986. The regulatory authority had therefore not committed a manifest error of judgment with regard to the public-service missions conferred on France Télévisions by the Act when it created the France Info channel. The Conseil d'Etat also noted that the priority allocation of a frequency to France Télévisions had been made possible by the reorganisation of the frequencies already allocated to the company and not by using frequencies that were waiting

to be allocated. The decision at issue had therefore not had the effect of reducing resources available for operators outside the public sector, and was therefore not likely to have an adverse effect on the diversity of outlets for socio-cultural expression.

TF1 also argued that the fact that France Télévisions was able to promote the continuous news channel gave it a competitive advantage which distorted the free play of competition to the detriment of the television channel LCI; TF1 had undertaken to refrain from promoting its programmes, in accordance with the agreements on the services of TF1 and LCI concluded with the CSA. TF1 also argued that the provisions of the technical requirements incumbent on France Télévisions, which included the cross-promotion of the company's services without making any provision for an exception regarding the promotion of the France Info service, were illegal. The Conseil d'Etat reiterated, however, that the disputed CSA decision allocating the frequency necessary for broadcasting the service had not been made for the purpose of applying these provisions, which did not constitute its legal foundation. That they were illegal could therefore not be raised as an argument. The Conseil d'Etat concluded that the company TF1 was not justified in calling for the cancellation of the CSA's decision of 6 July 2016, and accordingly rejected its application.

• *Conseil d'Etat (5e et 4e sous-sect.), 15 novembre 2017 - TF* (Conseil d'Etat (5th and 4th sub-sections), 15 November 2017 - TF1)
http://merlin.obs.coe.int/redirect.php?id=18858 FR

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Judgment against screenwriter claiming infringement of copyright upheld on appeal

The Court of Appeal in Paris has also been looking at infringement of copyright - in this case, the alleged infringement of copyright with regard to the film The Artist, which won five Oscars. A French scriptwriter who claimed that he held author's rights in respect of the script for an intended full-length silent film in black and white entitled Timidity, la symphonie du petit homme, felt that the film The Artist, released at the end of 2011, used key sequences from his script, included in a previous version. He therefore instigated legal proceedings against the writer, director and producers of the film on the grounds of infringement of copyright. The court rejected his application (see IRIS 2016-4/12), considering that he had failed to provide proof of the anteriority of the rights he claimed to hold, and found against him, ruling that he had instigated court proceedings abusively. He appealed against the judgment.

Before the Court of Appeal, unlike in the initial proceedings, proof of the anteriority, and of the existence and content of the script, was provided in the form of a certificate from the Alsace regional authority, to which the writer had submitted his script in 2006 within the context of a request for funding. It was therefore deemed admissible for him to instigate legal proceedings on the grounds of infringement of copyright. Called to pronounce on the originality of the scenario and on the alleged infringement of copyright, the Court of Appeal noted that the characteristics described by the appellant in his most recent writings (which he considers to indicate the originality of his script - its chronology, the futuristic universe described in it, the character traits of the main character in the film and his relations with other people, the events and twists in the plot, etc.) were not to be found in The Artist. Pronouncing on the twenty-seven elements of his script which the appellant claimed were to be found in The Artist, the court referred to the grounds for the judgement, according to which these elements either could not be protected as ideas, or displayed no similarities, or were presented "in such a distorted form as to be almost misleading". The court finally concluded that apart from the idea of a silent film in black and white (which could not be appropriated), the two works had no original characteristics in common. Accordingly, case for infringement of copyright was rejected.

The Court of Appeal, like the judge in the original proceedings, declared the proceedings abusive in the light of the judicial and extra-judicial behaviour of the appellant. The substantial and numerous similarities he was claiming only existed in his mind. The Court of Appeal found that it was indeed imprudent and disproportionate on his part (and, moreover, beyond the limits of his freedom of expression) to have widely circulated in France and elsewhere in the various written, online and television media the existence of the proceedings he was instigating - presenting the alleged infringement of copyright as a certainty, making derogatory remarks about the film's director and producers (who he specifically claimed were acting dishonestly in order to grossly conceal the actions he claimed to be a victim of), and seriously distorting reality in order to give force and credit to his allegations in order to make his script fit that of The Artist. The Court of Appeal concluded that the judge in the original proceedings had been quite right in finding that these faults had caused prejudice to the defendants by tarnishing their reputation. The appellant was ordered to pay nearly 60,000 euros in damages, including the cost of legal publications, under Article 700 of the Code of Criminal Procedure.

• *Cour d'appel de Paris (pôle 5 ; ch. 1), 24 octobre 2017 - C. Valdenaire c/ M. Hazanavicius, SARL La classe américaine et a.* (Court of Appeal in Paris (section 5, chamber 1), 24 October 2017 - C. Valdenaire v. M. Hazanavicius, SARL La Classe Américaine and others)
FR

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HADOPI proposes better ways of combating piracy

France's high authority for the broadcasting of works and the protection of rights on the Internet (Haute Autorité pour la Diffusion des Œuvres and la Protection des Droits sur Internet - HADOPI) has presented its report on its activities for 2016-2017, a period which saw a change in the organisation's team and the establishment of a consolidated budget intended to direct it towards new areas of work. The report presents all the work and actions implemented over the period: the implementation of the graduated response procedure, the observation of lawful and unlawful use, the promotion of the legal offer, etc. It includes a number of proposals - some of which would require changes to regulations and legislation - intended to make its actions more effective and adapt them to reflect changes in practices. Peer-to-peer practices - the only ones covered by the graduated response procedure launched in 2010 - are continuing to lose ground, partly as a result of the procedure, whereas streaming and direct downloading are continuing to develop. Since the launch of the graduated response scheme, HADOPI has referred more than 2,000 cases to public prosecutors throughout the country, potentially for legal proceedings to be instigated. Of the 748 legal cases of which HADOPI was aware as at 31 October 2017, 80% involved criminal proceedings (189 sentences and 394 alternative measures).

From an international survey intended to serve as the basis for an ambitious policy on protecting copyright, HADOPI has learned that it is necessary: (i) to continue educating the public and to strengthen the awareness programme by tailoring more accurately communication messages to the target public or the gravity of individual behaviour infringing copyright, and by addressing not only the legal issue of observance of copyright law but all risks faced by Internet users; (ii) to carry out action jointly with the search engines to reduce the visibility of unlawful sites; (iii) to consider how to improve techniques for detecting sources of piracy; (iii) to expand, secure and better assess the charter scheme using a "follow the money" approach; (iv) to ensure a fairer sharing of value by encouraging and accompanying agreements on introducing content recognition technologies; (v) to define an effective public policy addressing problems arising from the procedures for blocking unlawful sites and their avatars.

In its report, HADOPI identifies three priorities. Firstly, reinforcing the discouragement of individual peer-to-peer practices by using the graduated response procedure. Beyond the significant development in the criminal law aspect of its action, HADOPI proposes a number of adjustments to regulations and legislation, including simplifying the graduated response procedure, indicating the title of illegally shared works in the recommendations sent to subscription holders, and extending the period during which the public prosecutor may refer cases of copyright infringement to the HADOPI. The second priority identified is the need to introduce a public regulation on the use of content recognition technologies. HADOPI would then be able to issue recommendations and if necessary act as mediator, observe and assess ways of implementing agreements between platforms and rights holders, and be given the role of regulating such agreements and serving as mediator in the event of disputes. The third priority consists of involving HADOPI in the fight against sites that infringe copyright on a massive scale. The organisation wants to continue its efforts to combat commercial infringers and is proposing a change in its resources so that it would be able to detect newly emerging unlawful practices at an early stage, investigate the new economic models of unlawful sites, and intervene as a third-party authority to achieve greater involvement on the part of intermediaries. The more ambitious legislative option could confirm HADOPI's role as an expert or trusted third party able (i) to report on whether sites are infringing copyright on a massive scale, both by monitoring charters and in litigation (with the power to take legal action), (ii) to monitor, assess, mediate and extend charters of good practices (chartes de bonne pratique), and (iii) to be mobilised against "mirror sites" by ensuring that they are identified and by promoting the agreement procedure in order to bring court decisions up to date.

• *Hadopi, Rapport annuel 2016-2017* (HADOPI, Annual Report for 2016-2017)
http://merlin.obs.coe.int/redirect.php?id=18856 FR

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CSA publishes first study on the image of women in advertising

The national audiovisual regulatory authority (Conseil supérieur de l'audiovisuel - CSA) has published its first report on the representation of women in television advertisements. Law No. 2017-86 of 27 January 2017 on equality and citizenship gave the CSA specific responsibility in the fight against sexism in advertising, as illustrated by the new provisions of Article 14 of the Audiovisual Act: "It [the CSA] shall monitor respect for the dignity of all persons and the image of women who appear in televised advertising." It was in this context that the CSA, determined to make an active contribution in this area, conducted the study. It examined 2055 advertisements broadcast by all traditional and more recent DTT channels (24 channels altogether) between October 2016 and April 2017 in order to gather the first set of data on this subject. Having studied each advertisement in the light of eight

questions, the CSA made five key findings. Firstly, more men were featured than women (54% men, 46% women) even though, according to the National Institute for Statistics and Economic Research (INSEE), women make up 52% of the French population. Secondly, there is a stereotypical divide in terms of product categories (men advertise cars while women promote beauty products). For example, women are more likely to appear in advertising for "beauty products" (63%), "clothing/perfume" (57%), "leisure" (56%) and "medical and health products" (55%). Conversely, men are more prominent in advertising for "gambling services" (78%), "cars" (64%), "insurance/banks/mutuals" (59%), "technology/digital products" (58%), services (56%), "food/distribution" (54%) and "household objects and products" (52%). Thirdly, as regards role distribution by gender, almost all experts are men (82% men, 18% women). The only expert in the "clothing/perfume" category, however, was a woman and 56% of "beauty" experts were female. The CSA also found that two-thirds of ads in which characters were sexualised depicted women (67% women, 33% men). Finally, 54% of commercials that contained partial or full nudity featured women (46% men). Meanwhile, the findings of the second part of the study, devoted to a detailed analysis of the results by product category, do not appear to tally with current social practices. The CSA says there is a definite need to study further the impact of gender stereotypes on television viewers, as well as how to identify stereotypes in advertising. During the first half of 2018, the CSA will therefore draw up a roadmap explaining the actions it plans to take to ensure respect for the image of women who appear in television commercials.

• *Représentation des femmes dans les publicités télévisées, étude du CSA, novembre 2017* (Representation of women in television advertising, CSA study, November 2017)
http://merlin.obs.coe.int/redirect.php?id=18815 FR

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GB-United Kingdom

Copyright protection extends to TV formats under English law

On 19 October 2017, in Banner Universal Motion Pictures Ltd v. Endemol Shine Group Ltd & Anor, the High Court in London held that TV formats can be eligible for copyright protection as dramatic works under English law. The case related to a television game show format which is called Minute Winner, in which randomly selected members of the public could win a prize after successfully completing a minute-long challenge. It was devised in 2003 by Mr Derek Banner, a Danish citizen, and could be broadcast either singly as a one-minute fill between other programmes, or in a programme break, or as a feature-length, 30-minute show involving several games. The action was pursued by an English company, Banner Universal Motion Pictures Ltd (BUMP), in its capacity as an assignee of the rights in relation to the Minute Winner format, against Endemol Shine Group, the Swedish television production company Friday TV and NBC Universal Global Networks UK. The claimant submitted that the document in which the Minute Winner format was contained (the Minute Winner Document) was a "dramatic work" in which UK copyright subsisted and that, following a 2005 meeting in Stockholm at which confidential information was disclosed, the defendants misused such information in the United Kingdom and elsewhere to develop a game show format called Minute to Win It, which was allegedly derived in substantial part from the Minute Winner format. Rights to exploit Minute to Win It game shows were sold by the defendants in over 70 countries worldwide. BUMP's claim was for copyright infringement, breach of confidence and passing off.

The High Court held that what is usually referred to as the format of a television game show or quiz show can be the subject of copyright protection as a dramatic work, even if it contains elements of spontaneity and events that change from episode to episode. In light of what the authorities reviewed, the High Court judge, Snowden J., stated that copyright protection will subsist in a television format if, as a minimum, "there are a number of clearly identified features which, taken together, distinguish the show in question from others of a similar type; and that those distinguishing features are connected with each other in a coherent framework which can be repeatedly applied so as to enable the show to be reproduced in recognisable form." However, BUMP's claims that the contents of the Minute Winner Document qualified for copyright protection were rejected. In the judge's view, its contents were "very unclear and lacking in specifics." Even taken together, they failed to amount to "a coherent framework or structure which could be relied upon to reproduce a distinctive game show in recognisable form." The features identified were "commonplace" and could not be distinguished from the features of many other game shows.

The High Court dismissed BUMP's claim for breach of confidence on the basis that a Swedish court had already delivered a final judgment on the merits of substantially similar claims in that jurisdiction. Snowden J. ruled, in particular, that BUMP was barred by cause of action of estoppel from pursuing a claim on the same facts for breach of confidence in England. Nevertheless, he would have been inclined to accept that the information in the Minute Winner Document was "too vague" and not sufficiently worked-up to have the "necessary quality of confidence about it," and thus amount to protectable information under English law. Finally, the High Court also rejected the claim for passing off on the grounds that Mr Banner had failed

to establish the existence of goodwill in the Minute Winner name or format in England, which is a fundamental tenet of the classic trinity of the doctrine of passing off, that is to say, goodwill, misrepresentation and damage. As Snowden J. remarked, no customers ever acquired rights to the Minute Winner format and no shows were ever created to the format set out in the Minute Winner Document. This is an important judgment which provides helpful guidance as to the circumstances under which television formats can attract copyright protection. It also confirms that it is critical for potential rightsholders to draft and maintain sufficiently detailed records and specifications, setting out the format of creative works which can prove commercially valuable.

• Banner Universal Motion Pictures Ltd v Endemol Shine Group Ltd & Anor [2017] EWHC 2600 (Ch), 19 October 2017
http://merlin.obs.coe.int/redirect.php?id=18793 EN

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Urdu language TV channel breached election reporting rule

On 20 November 2017, Ofcom determined that two news programmes broadcast during the UK General Election in June 2017 breached the election silence rule under Ofcom's Broadcasting Code, which prohibits discussion and analysis of election and referendum issues when polls are open. Channel 44 is a cable television channel. It broadcasts Urdu language news and current affairs programmes in the United Kingdom. The licence for this service is held by City News Network (SMC) Pvt Ltd ("City News" or "the Licensee"). Two complaints were received about two programmes which referred to the Conservative and Labour Parties while polls were open during the day of the General Election on 8 June 2017.

The matter engaged Ofcom's duties under the Communications Act 2003, Section 319 as expanded upon in Section Six of the Broadcasting Code. This requires that special impartiality requirements are observed in particular during elections. Under Rule 6.4, the discussion and analysis of election issues must finish when the polls open, taking into account the audience's and the broadcaster's right to freedom of expression set out in Article 10 of the European Convention on Human Rights. The purpose of this rule is to ensure that broadcast coverage on the day of an election does not directly affect voters' decisions.

The programmes included various statements from supporters of the Conservative Party and Labour Party setting out reasons why voters should vote for each party. In particular, an interviewee in News from Westminster called upon viewers to vote for candidates who would represent British Pakistanis and British Muslims.

In Ofcom's view, the two programmes contained various statements constituting discussion and analysis of election issues. Thus, Ofcom's decision was that there had been a clear breach of Section 6.4. of the Code. However, in its disposal, Ofcom took into account the Licensee's apology and the fact that its reporters would be required to complete training on election reporting before being permitted to report on elections in future.

• Ofcom Broadcast and On Demand Bulletin, Issue 342, 20 November 2017, p. 14
http://merlin.obs.coe.int/redirect.php?id=18843 EN

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Statement of Issues concerning investigation of the proposed takeover of Sky by 21st Century Fox Inc

Further to the Secretary of State for Digital, Culture, Media and Sport's reference to the Competition and Markets Authority (CMA) to investigate the impact on media plurality and broadcasting standards of the proposed acquisition by 21st Century Fox Inc of the shares of Sky Plc (Sky) (see IRIS 2017-9/15), on 10 October 2017, the CMA issued its timetable and Issues Statement. Fox already has about 39% shareholding in Sky, whilst the Murdoch Family Trust (MFT) owns 39% of Fox and 39% of News Corporation, which fully owns News UK — the publisher of The Sun and The Times. Sky owns and operates Sky News. According to the CMA's administrative timetable, the final report will be sent to the Secretary of State by March 2018, who will determine whether to allow the acquisition, and if so, upon what terms.

The CMA's Issue Statement assesses whether there will be a sufficient plurality of persons with control of media enterprises serving UK audiences should the acquisition occur. Ofcom defines media plurality as ensuring the availability of a diversity of viewpoints and how they are consumed; and preventing any one media owner or voice having too much influence over public opinion and the political agenda. As such, the CMA will consider whether the MFT could control or influence editorial and commercial decisions at Sky News if Fox owned 100% of Sky and, if so, whether that control or influence is material.

Furthermore, the CMA will investigate whether the range of viewpoints available from news and current affairs sources in the United Kingdom is evolving in general and would change particularly should Fox's acquisition proceed. The CMA will consider how the population consumes news and current affairs

and their reliance upon multiple sources, including whether this is likely to change in the future. The impact and importance of different news and current affairs sources, including online and social media, help to ensure media plurality. In addition, what are the implications of online and social media sources upon broadcast and print news and current affairs output? Moreover, the CMA will consider whether, if Sky were to be acquired by Fox, MFT would have the ability to influence the political agenda. When considering all the main factors, the CMA will need to consider what constitutes media plurality within the United Kingdom. If Sky were owned outright by Fox, would this lead to insufficient media plurality within the United Kingdom? Also, are there any existing factors which might help prevent or reduce any potential negative effects of Fox's potential acquisition of Sky upon media plurality?

The CMA also has to consider whether, if the acquisition were to occur, the new owner would have a genuine commitment to broadcasting standard objectives. When assessing this aspect, consideration would be given to the existing approach of Fox, Sky, MFT and News Corporation compliance with broadcasting standards. The assessment of corporate governance would include how these organisations treated their respective employees in the United Kingdom and overseas. CMA will look at compliance with other regulations so as to assess each company's overall commitment.

The CMA would consider what constituted a genuine commitment to broadcasting standards and whether, if the proposed acquisition occurred, this would lead to a diminution in a genuine commitment to maintaining broadcasting standards. The CMA would particularly focus upon the planned governance arrangements for Sky News. The genuine commitment to broadcasting standards would be considered within the framework of standard objectives set out in section 319 of the Communications Act 2003. Finally, the sufficiency of media plurality and a general commitment to attaining broadcasting standards are also respectively set out in section 58(2C)(a) and section 58(2C)(c) of the Enterprise Act 2002.

• Competition and Markets Authority, Anticipated Acquisition by 21st Century Fox, Inc of Sky plc, Issues statement, 10 October 2017
http://merlin.obs.coe.int/redirect.php?id=18860 EN

Julian Wilkins
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Ofcom publishes report on diversity and equal opportunities in television

Ofcom has produced its first annual Diversity in Broadcasting monitoring programme, by considering the diversity within television broadcasters as regulated by Ofcom. A similar report on the radio industry will appear too. The report focuses mainly on the five main UK broadcasters, namely the BBC, ITV, Channel 4, Sky and Viacom (which owns Channel 5). As part of a broadcaster's Ofcom licence, it is a condition that they take measures to promote equality of opportunity in employment. Ofcom has stated that unless there is accurate monitoring, it will be unclear as to the level of compliance by broadcasters to ensure the effectiveness of their equality and diversity policies, as well as working with staff to promote these policies. The report revealed that broadcasters as a whole would need to take further steps to regularly measure and monitor to a consistently high standard the make-up of their employees. Ofcom has introduced new standards to help capture all characteristics and job roles.

Furthermore, Ofcom expects broadcasters to set diversity targets so that the composition of their staff reflects society as a whole. In achieving this target, chief executives should be accountable for delivering against diversity targets. There should be a senior-level diversity champion within an organisation leading the agenda and this includes requiring all recruiting staff to undertake "unconscious bias" and diversity training. Ofcom expects broadcasters to develop long-term strategies addressing issues where there is cross-industry under- representation; this could include jointly-funded initiatives to help ensure that under-represented groups are representatively employed in the broadcasting industry. Moreover, broadcasters should recognise that disabled people are under-represented in television; the Equality Act 2010 allows for positive discrimination to help employ disabled people and Ofcom recommends that broadcasters rely upon this legislative power to help broaden the presence of disabled people in television. Ofcom intends to call for improved diversity measures and will work with broadcasters to meet this objective. Ofcom will continue to improve its Diversity Guidance, of which a revised version was published on 22 November 2017.

In the current report, some 57 Ofcom licensees failed to respond to the regulator's request for information on their employees' diversity make-up. Ofcom has commenced enforcement action against these licensees and will publish its findings on Ofcom's Diversity and Equality hub (Ofcom.org.uk/diversity). Ofcom will look at ways of increasing the available data and making it more comparable; it will also have more information on employees' social, geographical or educational backgrounds.

Additionally, Ofcom has written to the Secretary of State for Digital, Culture, Media and Sport to request an extension to the list of protected characteristics outlined in sections 27 and 337 of the Communications Act 2003 (the Act). This will allow Ofcom to require broadcasters to provide data on a broader range of characteristics, rather than some data being produced on a voluntary basis. For instance, section 27 (1) of the Act states "It shall be the duty of OFCOM

to take all such steps as they consider appropriate for promoting the development of opportunities for the training and retraining of persons—(a) for employment by persons providing television and radio services; and (b) for work in connection with the provision of such services otherwise than as an employee." For the purposes of the Act, equality refers to equality between men and women, as well as different racial groups; similar provisions apply to section 337 of the Act. However, the increased characteristics are likely to include persons of a different sexual orientation, social background or education, as well as persons with a disability.

• Ofcom, Guidance: Diversity in Broadcasting, 22 November 2017
http://merlin.obs.coe.int/redirect.php?id=18845 EN
• Ofcom, Diversity and equal opportunities in television, 14 September 2017
http://merlin.obs.coe.int/redirect.php?id=18846 EN

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BBC publishes new complaints guidelines

The BBC receives around 250 000 complaints per year. It is required by its Charter to have a complaints framework which provides "transparent, accessible, effective, timely and proportionate methods" of making sure that the BBC is meeting its obligations and resolving problems. It has issued a detailed document setting out a framework and procedures for handling complaints.

The BBC commits itself to several key principles in the handling of complaints. In summary, these are that complaints should be made to the BBC itself first in almost all cases, before they are taken to Ofcom, the regulatory body which now has oversight of the BBC. The complaints process should be easy to understand, accessible and take a reasonable amount of time. The process should be proportionate, balancing the cost to licence fee payers with the need to give people who complain a proper hearing. If the BBC agrees that it is at fault, it will say so and take action to correct it. Everybody who complains should know what they can expect from the BBC and how to appeal to Ofcom or to an independent ombudsman.

The framework sets out five different procedures for dealing with different types of complaint. The first is for editorial complaints, meaning that a particular item has fallen below the standards set out in the BBC's Editorial Guidelines. There are three stages for dealing with such complaints; an initial response, then, if this is not satisfactory, reference to a BBC manager or member of the editorial team; then a response if necessary from the Executive Complaints Unit. The response to these complaints may also be appealed to Ofcom.

The second category is that of general complaints, meaning a complaint about the way the BBC does things but not about an individual broadcast. There are two stages of process for these complaints; an initial response and, if this is not satisfactory, reference to the Executive Complaints Unit. Most complaints of this kind will fall outside the remit of Ofcom.

The third category of complaint relates to the collection of the TV licence fee, the flat-rate fee payable by all owners of television receiving equipment and used to support the BBC. Complaints of this kind will be given an initial response from the TV licensing customer relations team and the TV licensing operations director, proceeding if necessary to a response from the BBC's Head of Revenue Management. If the response is not satisfactory, a complaint may then be referred outside the BBC to the Ombudsman Service.

The fourth category of complaints are those about the allocation of Party Election, Party Political and Referendum Campaign broadcasts; such broadcasts are required by statute to be included free of charge in the BBC's services. Complaints here will go initially to the Chief Adviser, Politics of the BBC and then to its Director of Editorial Policies and Standards. Complaints may also be referred to Ofcom.

Finally, regulatory complaints are complaints that the BBC has breached a competition requirement imposed by Ofcom or miscellaneous regulatory conditions not covered by a specific Ofcom enforcement procedure. These complaints should initially be made to the BBC and then if necessary referred to Ofcom.

• BBC Complaints Framework and Procedures, October 2017
http://merlin.obs.coe.int/redirect.php?id=18847 EN

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Application of the GS Media criteria by Athens Court of Appeal

In April 2017, the Athens Court of Appeals, by its Judgment no 1909/2017, upheld the Judgment no. 5249/2014 of the Court of First Instance, in a case concerning the posting of hyperlinks. More specifically, the website www.livemovies.gr, operating as an online inventory for audiovisual works (films, TV programs and TV series), contained hyperlinks leading users to third-party websites (usually, but not always, official TV channels' websites), where those works were available for live streaming without any restrictions, technical measures or payment conditions. A

Greek collecting society for musical works (AEPI) notified the plaintiff and sought to conclude a licence agreement for the communication to the public of protected works, but the plaintiff filed an action asking the Court to recognise the absence of any licensing obligation.

In this case, the Athens Court of Appeals applies for the first time the criteria from the Court of Justice of the European Union (CJEU) judgment in GS Media v. Sanoma Media Netherlands (see IRIS 2016-9/3), although in a surprisingly strict way which, in addition, reverses the CJEU methodology.

According to GS Media, in the case where hyperlinks are provided to protected works freely available on another website without the consent of the rightholder for the pursuit of financial gain, the knowledge of the illegal nature of the publication must be presumed unless proven otherwise (fictitious presumption, paragraph 55). Hence, the pursuit of financial gain helps to establish the presumption of knowledge and if such knowledge is proven, the provision of hyperlinks constitutes a "communication to the public" (paragraph 49).

The Athens Court of Appeals, noting the findings of CJEU in both Svensson and BestWater cases (see IRIS 2014-4/3 and IRIS 2015-1/3), affirmed that hyperlinks in question provided access to audiovisual works freely available online with the (assumed) consent of their rightholders and therefore the requirement of a "new public" was not fulfilled. Subsequently, the Court made a distinction between official and unofficial websites (not obvious in GS Media) and ruled about the plaintiff's knowledge before examining the financial gain of its activity, thereby reversing the methodology of the GS Media case.

Thus, it was firstly established that the plaintiff did not know and could not have known if the hyperlinks posted on his website provided access to audiovisual works illegally placed on third-party official websites owned by TV channels. Secondly, the financial gain criterion was taken into account in comparison to other unofficial websites. Nonetheless, for the assessment of such a purpose either an involvement of the plaintiff in the lucrative activity of the third-party websites or the plaintiff's participation in the profits generated by the unauthorised transmission of protected works should be proven. Since such a purpose was not proven, the Court held that the act of simply posting the hyperlinks could not be considered as a communication to the public.

• Εφετείο Αθηνών *1909/2017* (*344μ΄367μ361 18377*) (Athens Court of Appeal no 1909/2017, 26 April 2017)
http://merlin.obs.coe.int/redirect.php?id=18794 EL

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Croatian competition agency blocks sale of Nova TV to Unity Media

The council of the Croatian Competition Agency (AZTN) has unanimously refused to approve the sale of the national commercial broadcaster Nova TV to Slovenia Broadband, a subsidiary of Unity Media. The competition watchdog explained that the sale would infringe the country's Electronic Communications Act and threaten pluralism in the media. Its objection was mainly based on the fact that Unity Media already owned Total TV, a leading provider of telecommunications services in Croatia.

The commercial broadcaster Nova TV is owned by Central European Media Enterprises Limited (CME), a listed holding company that operates television and radio channels in six Eastern European countries. In July of this year, CME agreed to sell broadcasting companies in Croatia and Slovenia to Slovenia Broadband for a total of EUR 230 million.

Unity Media is backed by the European Bank for Reconstruction and Development (EBRD) and is majority-owned by the large New York-based listed investment group Kohlberg Kravis Roberts & Co. (KKR). Unity Media representatives said they would check whether the Croatian regulator's decision was compatible with European law. They claimed that the decision should also comply with Croatian national laws, which they thought was questionable, mainly on the grounds that it contravened the ban on discrimination.

Nova TV began broadcasting on 28 May 2000 and was Croatia's first commercial broadcaster to hold a national licence, although regional commercial broadcasters such as Otvorena Televizija (OTV) in the Zagreb region were already operating at that time. Nova TV quickly achieved very high viewer ratings, in particular thanks to imported entertainment programmes, including reality shows and US series. Apart from the channels of the public service broadcaster Hrvatska radiotelevizija (HRT, based in Zagreb), its main competitors in the Croatian television market are the regional commercial broadcasters and, since 2004, RTL Televizija.

Croatian commercial television broadcaster RTL Televizija is fully owned by the RTL Group. It was launched on 30 April 2004 after HRT's third national channel was made available to commercial broadcasters. RTL Televizija was awarded the licence and has since been using the frequencies of the former third channel (free-to-air in virtually the whole country). After Nova TV, it was Croatia's second national commercial

broadcaster. RTL Televizija has been broadcast digitally since 2010, together with sister channel RTL2, which was added at the end of that year. Its content mix is based on that of the German channel RTL Television. Not only is its visual appearance similar to that of its German equivalent, but some programme formats have been copied and are even broadcast at the same time (for example, news bulletins and talk shows).

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Digital experimental broadcasting

In October, the Electronic Media Council issued a Public Call to express interest for digital experimental broadcasting of radio channels in a terrestrial network. The subject of the Public Call is the right to broadcast radio programmes temporary experimentally in DAB+ technology in a single coverage area with 2.16 million inhabitants as potential listeners. The area includes the city of Zagreb and the county of Zagreb, the Krapina-Zagorje County, the Varaždin County and the Međimurje County, as well as parts of the Karlovac County, the Sisak-Moslavina County, the Primorje-Gorski Kotar County and the Istrian County. Transmitter locations for DAB+ multiplex are the mountain tops of Sljeme, Ivanščica, Mirkovica and Učka.

The Call was addressed to interested radio broadcasters and radio programme providers that are already enlisted, in accordance with the Electronic Media Act, in the Agency for Electronic Media's Register of Concessions of TV and/or Radio Service Providers, as well as the Register of Transmission Providers for Satellite, Internet, Cable or other permissible ways of transmission of AV and/or radio programmes.

After a preliminary consideration of the submitted offers and consultations with the Croatian Regulatory Authority for Network Industries (HAKOM) and the multiplex operator Transmitters and Communications Ltd. (OiV), applicants were notified by the Agency that the expressed interest exceeded the technical possibilities of multiplexes, in which, for the purpose of experimental broadcasting in DAB + technology, up to sixteen radio channels can be included. The applicants have been asked to declare whether they would participate in the further procedure under the following technical and financial conditions:

1. Participation in the digital experimental broadcasting is possible only for the entire coverage area (as above);

2. For the purposes of testing the system, the OiV will enable a bandwidth of an average of 72 Kb/s in the MUX for a monthly fee of 3.300,00 kn (ca EUR 440);

3. The foreseeable total monthly costs for each individual media services provider are 3.300,00 kn (ca EUR 440), and have to be paid for the entire duration of experimental broadcasting.

The total number of confirmed submissions was higher than the available multiplex capacity and the council evaluated the bids according to the share-in-programme criteria with a view to own production, news and current affairs programmes and Croatian music. On 9 October 2017, the council made its decision on the 16 radio service providers that would simulcast their programmes in analogue and DAB+ technology.

The duration of the experimental broadcasting is one year.

- *Poziv za iskazivanje interesa za digitalno eksperimentalno emitiranje radijskih kanala* (Public Call to Express Interest for Digital Experimental Broadcasting of Radio Channels in a Terrestrial Network)
http://merlin.obs.coe.int/redirect.php?id=18798 HR
- *Odluka o odabiru ponuditelja koji će digitalno eksperimentalno emitirati radijske kanale* (Decision on radio services providers that would simulate their program in DAB+ technology)
http://merlin.obs.coe.int/redirect.php?id=18799 HR

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IE-Ireland

Channel 4 entitled to claim journalistic privilege

On 5 October 2017, the Irish High Court ruled that the broadcaster Channel 4 was entitled to claim "journalistic privilege" over sources for an edition of its investigative television programme series "Dispatches", broadcast in August 2013. The airline company Ryanair brought an action in defamation against the broadcaster over its "Secrets from the Cockpit" programme, which dealt with a number of criticisms of Ryanair over its fuel policy, passenger safety, and pilot working conditions.

In 2014, an order for discovery of documentation and material used in the making of the programme was made in the High Court and that order was subsequently appealed to and varied "to a limited extent" by the Court of Appeal (see IRIS 2015-9/18). Following the Court of Appeal order, an affidavit of discovery was sworn by Channel 4 objecting to producing the documents or portions of those documents that

had been redacted or withheld, "on the basis of journalistic source protection privilege and/or legal advice and/or litigation privilege and/ or irrelevance." Overall "some 2 400 documents were discovered." In January 2016, Ryanair served a "notice to produce" requiring Channel 4 to produce for inspection the documents listed in the affidavit of discovery and shortly after, Ryanair served a "notice to inspect documents." Following Channel 4's objection to making the documentation available for inspection, Ryanair issued a notice seeking an order directing Channel 4 to make available for inspection the documents listed in the affidavit of discovery.

Justice Meenan, in the High Court, ruled that Channel 4 was entitled to claim both journalistic and legal advice/litigation privilege. In citing a number of authorities, Justice Meenan held that journalistic privilege is not absolute and may be displaced following a balancing exercise carried out by the court between, on the one hand the right to freedom of expression and, on the other hand, a legal right such as a person's right to a good name. However, a heavy burden rests on the person who seeks disclosures of journalistic sources, and the court must be satisfied that such disclosure is justified by the overriding requirement in the public interest or is essential for the exercise of a legal right.

In carrying out the 'balancing test' with regard to journalistic privilege and the right to a good name, Justice Meenan stated that "there can be no doubt that the safety of passengers, crew and those on the ground beneath is a matter of the most serious public interest." He stated that not only passengers and crew "but also the wider general public have a clear public interest in knowing that an airline, such as Ryanair, operates in accordance with the appropriate safety standards." The judge stated that Ryanair seeks to vindicate its good name and that clearly the identification of Channel 4's sources, in particular, the four (anonymised) pilots, would be of assistance to Ryanair. However, it was not submitted nor was it established that the identification of these sources was essential for Ryanair to vindicate its name at the hearing of the actions. Justice Meenan stated that, given that Channel 4 had pleaded the defence of 'truth' pursuant to the Defamation Act 2009, the burden of the defence rests with Channel 4 so it would seem "inevitable" that pilots John Goss and Evert Van Zwol, identified in the programme, "would be called to give evidence" at the trial and hence "be the subject of cross-examination by Ryanair." The judge added that it was clear that Ryanair intended to rely upon reports of a number of aviation authorities in respect of flying incidents. Furthermore, it did not appear to Justice Meenan to be necessary for Ryanair to know the identities of Channel 4's sources to establish the appropriateness of the airlines work/employment practices. In conclusion, Justice Meenan found the balance lay in favour of Channel 4's assertion of journalistic privilege and accordingly, the judge would not direct either the production or inspection of documents over which such privilege is being claimed.

• Ryanair Limited v Channel 4 Television Corporation & anor [2017] IEHC 651, 5 October 2017
http://merlin.obs.coe.int/redirect.php?id=18795 EN

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IT-Italy

Agcom resolution on collective management of copyright and related rights

On 19 October 2017, the Italian Communication Authority (AGCOM) issued, by resolution No. 396/17/CONS, a new regulation on the collective management of copyright and related rights and the multi-territorial licensing of authors' rights in musical works for online use ("Regulation"). The new regulation has been adopted in accordance with the Legislative Decree No. 35 of 15 March 2017 ("Decree") that implemented EU Directive 2014/26 on the collective management of copyright (see IRIS 2014-4/4) in Italy.

This act aims at regulating the exercise of specific activities by AGCOM, including: the assessment on the fulfilment of the requirements set forth by Article 8 of the Decree by collecting societies and independent management entities; the assessment of the adequacy of the organisational and management arrangements taken by collecting societies and independent management entities; the monitoring of the compliance with the Decree through the power to conduct inspections, request access to and acquire the necessary documentation; and the application of the administrative sanctions provided for by Article 41 of the Decree.

Pursuant to Article 3 of the Regulation, collecting societies and independent management entities are required to submit to AGCOM a certified notice of commencement of activity (the so-called "SCIA") in order to start operating the management and intermediation of copyright-related rights. Additionally, Article 4 of the Regulation requires collecting societies and independent management entities to make the necessary management and organisational arrangements and to notify AGCOM of them.

AGCOM will publish a list of the collecting societies and independent management entities which meet the requirements set forth by Article 8 of the Decree, including the relevant details, on its website. Every change or amendment to the relevant information must be communicated by written notice to AGCOM within thirty days. Likewise, written notice is due within thirty days in case they no longer meet the requirements set forth by Article 8 or cease their activities.

With respect to the monitoring and sanctioning powers, AGCOM is competent to monitor compliance with the Decree, including through its exercise of the necessary powers to conduct inspections or require information and documents. AGCOM may impose the administrative sanctions provided for by Article 41 of the Decree. Depending on the type of obligations which are infringed, sanctions may range either from EUR 10 000 to EUR 50 000 or from EUR 20 000 to EUR 100 000.

In addition to the above, collective management organisations are required to issue an annual transparency report within eight months, as of the end of each fiscal year. This report shall be published on the website of each organisation and remain available for five years. Proper notice of the publication has to be given to AGCOM within thirty days.

• *Regolamento sull'esercizio delle competenze di cui al decreto legislative 15 marzo 2017, n. 35 in materia di gestione collettiva dei diritti d'autore e dei diritti connessi e sulla concessione di licenze multiterritoriali per i diritti su opere musicali per l'uso online nel mercato interno (Allegato A alla delibera n. 396/17/CONS del 19 ottobre 2017)* (Regulation on the exercise of powers under Legislative Decree No. 35 of 15 March 2017 on collective management of copyright and related rights and the multi-territorial licensing of authors' rights in musical works for online use in the internal market (Resolution No. 396/17/CONS of 19 October 2017))
http://merlin.obs.coe.int/redirect.php?id=18848 IT

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Council of State decision on media access to information

On 25 October 2017, the highest Dutch administrative court, Administrative Jurisdiction Division of the Council of State (Afdeling bestuursrechtspraak van de Raad van State) (Council of State) overruled a decision of the Midden-Nederland Court concerning a request for public access to government information about the air crash of Flight MH17. Both parties - the Minister of Justice and Security and the Dutch media organisations (broadcasters 'NOS' and RTL Nieuws, and the newspaper 'De Volkskrant') - made an appeal in this case that focuses on the decisions about public access to reports by the Ministerial Commission for Crisis Management (MCCb), which coordinates interdepartmental crisis management and makes decisions on a coherent approach to major incidents.

The Minister argued that, instead of what the Midden-Nederland Court had held, the Minister can completely refuse public access to the MCCb's reports, by invoking article 10(2)(g) and 11 of the Dutch Government Information (Public Access) Act (Wet openbaarheid van bestuur — WOB). Because of the unity of state policy and of the interest of the unrestricted exchange of ideas, the decisions of the MCCb can remain intact. The Administration Jurisdiction Division agreed with the Minister and held that, in this situation, "the right of the government to secrecy of its activities, the unity of state policy and sensitivity of the question outweigh the importance of disclosure."

The media organisations' appeal concerned the Midden-Nederland Court's judgment on Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).They argued that the Court overlooked the fact that MCCb must ensure, "in each specific case", that a (lawful) refusal to public access is necessary in a democratic society, in light of one of the legitimate interests set out in Article 10(2) ECHR. Therefore, even if a refusal for public access has a basis in a national legal act, the media argued that every individual decision needs an evaluation in the context of Article 10(2) ECHR.

The Council of State disagreed with the media organisations and considered that it can generally be presumed that the legislator defined refusals in the WOB that are in line with Article 10(2) ECHR. However, the Council of State acknowledged, for the first time, that exceptions are possible. In this regard, when "very special circumstances" lead to a claim that, despite the application of the WOB, the appellant's right to receive and impart information is restricted without this being justified under Article 10(2) ECHR. Thus, the appellant is exercising the specific right to request information under Article 10 ECHR (citing Magyar Helsinki Bizottság v. Hungary) (see IRIS 2017-1/1), and Article 10 ECHR may set the WOB aside under certain circumstances. However, in the instance case, the media organisations have neither argued nor substantiated that there were such "very special" circumstances.

• *Afdeling bestuursrechtspraak van de Raad van State, 25 oktober 2017, ECLI:NL:RVS:2017:2883* (Administrative Law Division of the Council of State, 25 October 2017, ECLI:NL:RVS:2017:2883)
http://merlin.obs.coe.int/redirect.php?id=18849 NL

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RO-Romania

Modification of the Cinematography Legislation

On 14 November 2017, the Senate, the upper chamber of the Romanian Parliament, adopted the Emergency Government Decree No. 67/2017 on the modification and completion of the Government Decree No. 39/2005 on Cinematography. The final decision will be

taken by the lower chamber, the Chamber of Deputies (see IRIS 2002-7/30, IRIS 2003-2/23, IRIS 2016-10/23 and IRIS 2017-8/32).

The Emergency Government Decree No. 67/2017 aims at securing the functioning of Romanian film production, as well as at giving the Romanian film industry financial support to produce films dedicated to the Centennial of the union of the territories inhabited mainly by Romanians, which will be celebrated in 2018, or films dedicated to well-known personalities and special cultural activities. The Government considered that there was a discrepancy between the support given by the state, through the obsolete financial and administrative capabilities of the Romanian institutions, and the internationally recognised importance of Romanian cinema, which has received many prestigious international awards..

A fourth section for the selection contest for cinematographic projects was introduced to Article 35 (2) d): a section of long- or short-themed feature films, beyond the existing sections (long or short fiction films, documentaries, animated films). Article 37 (3) was modified to introduce the provision that at least 10% of the total funds allocated for a cinematographic projects competition session be dedicated to themed films. Article 39 (4) a) was modified to allow the 5-member committee which selects the fiction films in the projects contest to also select the themed feature films, long or short.

A new paragraph c1), concerning the list of film projects selected for fiction themed feature films or short films, was introduced in Article 43 (1) which details the composition of the list of selected film projects. According to the new form of Article 55 (3), the repayment period of the direct credit for the production of a film has been increased from 10 to 20 years in order to facilitate the producers' repayment of the loan. According to the new form of Article 55 (4), the period after which, if the loan is not fully repaid, the National Film Center may have the right to exploit the film in question, was simultaneously increased to 20 years.

According to the Emergency Government Decree No. 67/2017, for credit agreements in progress at the date of entry into force of the act, the producer may opt to conclude an addendum to extend the repayment period provided for in the contract until the end of the credit repayment period.

• *The Proiect de Lege privind aprobarea Ordonanței de urgență a Guvernului nr.67/2017 pentru modificarea și completarea Ordonanței Guvernului nr.39/2005 privind cinematografia - forma adoptată de Senat* (Draft Law for the approval of the Emergency Government Decree No. 67/2017 on the modification and completion of the Government Decree No. 39/2005 on Cinematography - form adopted by the Senate)
http://merlin.obs.coe.int/redirect.php?id=18803 RO

• *The Ordonanța de urgență a Guvernului nr.67/2017 pentru modificarea și completarea Ordonanței Guvernului nr. 39/2005 privind cinematografia* (Emergency Government Decree No. 67/2017 on the modification and completion of the Government Decree No. 39/2005 on Cinematography)
http://merlin.obs.coe.int/redirect.php?id=18804 RO

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The Act on public service broadcasting, in line with the Constitutional Court's decision

On 27 November 2017, the Romanian Senate (the upper chamber of the Parliament) re-examined and adopted the act on the modification and completion of Act No. 41/1994 on the functioning of the Romanian public radio and television services. The Senate has brought the law into line with the Constitutional Court's decision of 12 July 2017, which rejected some modified articles of the aforementioned law (see inter alia IRIS 2013-5/37, IRIS 2013-10/36, IRIS 2014-1/38, IRIS 2014-2/30, IRIS 2014-4/25, IRIS 2014-6/30, IRIS 2014-7/30, IRIS 2015-6/33, IRIS 2015-8/26, IRIS 2016-5/28, IRIS 2017-3/26 and IRIS 2017-8/31).

The lower chamber, the Chamber of Deputies, had re-examined the law on 11 October 2017, accepting all the Constitutional Court of Romania's objections. The Court had reacted to a complaint of unconstitutionality lodged by two opposition parties (Liberals and Populars). The Constitutional judges had decided that the provisions for the appointment of new Boards of Administration within 90 days from the date of entry into force of the new form of the law, as well as the fact that representatives of the Board of Administration were required to renounce membership of a party during the exercise of their mandate, were unconstitutional.

By harmonizing with the court's decision, the members of the Boards of the two broadcasters are allowed to be party members; however, the members of the Board of Administration of the public radio and TV broadcasters have to give up their membership of the governing bodies of trade unions. During the re-examination of the law, the MPs accepted the Constitutional Court's decision with regard to the principle of non-retroactivity of civil law, in connection with the initial idea to mandatorily appoint new Boards of Administration after the entry into force of the new form of the Law.

The parliament appointed a new Board of Administration for Radio Romania on 27 September 2017, after the dismissal of the previous one for poor management at the end of April 2017. Furthermore, on 27 September, Parliament rejected the Romanian Television's annual activity report, which triggered the dismissal of the public TV's Board of Administration. An

interim General Director, Ms Doina Gradea, was appointed to manage the Romanian Television, with a limited mandate.

• *Legea pentru modificarea şi completarea Legii nr.41/1994 privind organizarea şi funcţionarea Societăţii Române de Radiodifuziune şi Societăţii Române de Televiziune - forma adoptată de Camera Deputaţilor în urma reexaminării* (Act on the modification and completion of Law No. 41/1994 on the organization and functioning of the Romanian Radio Broadcasting Corporation and the Romanian Television Broadcasting Corporation - form adopted by the Chamber of Deputies after review)
http://merlin.obs.coe.int/redirect.php?id=18850 RO

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ANCOM, new managers, modified law

On 7 November 2017, the former Romanian Prime Minister, Sorin Grindeanu, was appointed as President of the Autoritatea Națională pentru Administrare și Reglementare în Comunicații (National Authority for Management and Regulation in Communications - ANCOM, telecom watchdog), for the remaining period of the six-year mandate commenced on 11 May 2017 by Parliament Decision No. 93, published in the Official Journal of Romania No. 877 of 7 November 2017 (see 2009-5/31 and IRIS 2017-7/29).

Mr Grindeanu replaced Adrian Diță, who resigned on 20 September 2017, less than five months after his appointment. Diță had been accused by representatives of the Economics and IT&C Standing Committees of the Romanian Parliament of abusive restructuring of ANCOM. Previously, Eduard Lucian Lovin and Bogdan Cristian Iana had been appointed as Vice Presidents of ANCOM by the Romanian Parliament Decision No. 79, published in the Romanian Official Journal, Part I, No. 805/11.10.2017. ANCOM's Vice Presidents are appointed for a six-year mandate. It has to be mentioned that Sorin Grindeanu was ousted from the position of Prime Minister in June 2017 after an open conflict with the leaders of the main ruling party, the Social Democrat Party (PSD), and a censure motion tabled by the PSD itself against its own Government. The PSD had asked Grindeanu to resign, accusing him of non-observance of the governing programme.

On the other hand, on 3 October 2017, the Chamber of Deputies (the lower chamber of the Romanian Parliament) tacitly adopted the draft law for approving the Emergency Government Decree No. 33/2017 for the modification and completion of Article 11 of the Emergency Government Decree No. 22/2009 on the setting up of the National Authority for Management and Regulation in Communications. According to the modifications, the management of ANCOM is proposed by the Government and appointed by the plenary of the Parliament, with the majority of the MPs present. A new paragraph 11 provides that the nominations shall be forwarded to the permanent offices of the two Chambers of Parliament within 30 days of the date of vacancy. Prior to the approval of the aforementioned Emergency Government Decree, the ANCOM management was appointed by the President of Romania, at the proposal of the Government, and there were no provisions regarding the maximum period for proposing nominations for the vacant ANCOM management positions. The Senate will have the final decision on the matter.

• *The Proiect de Lege privind aprobarea Ordonanței de urgență a Guvernului nr.33/2017 pentru modificarea și completarea art.11 din Ordonanța de urgență a Guvernului nr.22/2009 privind înființarea Autorității Naționale pentru Administrare și Reglementare în Comunicații - forma adoptată de Camera Deputaților* (Draft Law for approving the Emergency Government Decree No. 33/2017 for the modification and completion of Art. 11 of the Emergency Governemt Decree No. 22/2009 on the setting up of the National Authority for Management and Regulation in Communications - form adopted by the Chamber of Deputies)
http://merlin.obs.coe.int/redirect.php?id=18800 RO

• *The Ordonanța de urgență a Guvernului nr.33/2017 pentru modificarea și completarea art.11 din Ordonanța de urgență a Guvernului nr.22/2009 privind înființarea Autorității Naționale pentru Administrare și Reglementare în Comunicații* (Emergency Government Decree No. 33/2017 for the modification and completion of Art. 11 of the Emergency Government Decree No. 22/2009 on the setting up of the National Authority for Management and Regulation in Communications)
http://merlin.obs.coe.int/redirect.php?id=18801 RO

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RS-Serbia

RATEL imposed "Must Carry" obligation to operators

At the beginning of October, the Regulatory Agency for Electronic Communications and Postal Services (RATEL) imposed a "must carry" obligation on all media content distribution operators (Cable, DTH and IPTV) which are listed in their Register of operators. Pursuant to RATEL's decision, the operators will be obliged to distribute "free of charge" the commercial TV media service providers which are holders of the terrestrial "free to air" licenses at a national level, that is to say, TV Pink, Happy TV, PRVA TV and O2.tv.

Article 106 of the Law on Electronic Media prescribes that the Regulatory Authority for Electronic Media (REM), periodically — at least once every three years — determines the list of media service providers that shall be in the "must carry" regime in order to protect the public interest and media pluralism, taking into account the principles of proportionality and transparency, and providing that obligations imposed on operators are not unreasonable. A request to impose the "must carry" obligations on the operator, together with the list of TV channels in the "must carry" regime,

are submitted to RATEL. RATEL acts pursuant to Article 101 of the Law on Electronic Communications and examines whether a significant number of end users are using the media content distribution service of a particular operator as "the only or primary way of receiving media content", and adopts the "must carry" decision.

The current "must carry" decision is controversial for several reasons: first of all, the REM determined that all commercial free-to air TV channels at national level are in the "must carry" regime without any proof that they really are fulfilling the function of "public interest"; secondly, RATEL determined that all operators (more than 90) are obliged to distribute "must carry" TV channels, although the majority of them could hardly fulfil the law's criteria that a significant number of the end users are using their service as the only or primary way of receiving media content at national level; finally, REM has also produced a situation whereby the "must carry" obligation excludes TV stations from exercising the right to ask operators for copyright and related rights fees for the "retransmission" of their content, which is contrary to the current copyright regulations.

• Решење о утврђивању обавезе преноса ТВ програма *10.10.2017* ("Must carry" decision)
http://merlin.obs.coe.int/redirect.php?id=18807 SR

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Several members resign from the working group founded to draft new media strategy

In mid-July 2017, the Ministry of Culture and Information formed an expert working group with the mandate to draft the new Strategy for Development of the Public Information System in the Republic of Serbia until 2023 (Media Strategy). The working group included representatives of the Journalist's Association of Serbia (UNS); an informal coalition of several other journalists' and media associations (the Independent Journalists' Association of Serbia - NUNS, the Independent Journalist's Association of Vojvodina - NDNV, the Association of Independent Electronic Media - ANEM, the Association of Local Independent Media "Lokal Press" and the Association of Online Media - AOM); the media publishers' association (AM); the Radio Advertising Bureau (RAB); another informal coalition of media and journalists' associations (PROUNS, SINOS, the Association of Media and Media Workers, and the Journalist's Association of Vojvodina); as well as some independent experts and representatives of the relevant public bodies.

By the end of October 2017, four members had left the working group for various reasons. Firstly, the representative of the Journalist's Association of Serbia (UNS), Ljiljana Smajlović, resigned as a form of protest against the appointment of Aleksandar Gajović, whom she described as a person that promotes misogynous prejudices against women, to the position of State Secretary for Media in the Ministry of Culture.

After that, the representative of the Association of Media Publishers resigned due to the inefficiency of the working group whose credibility had been disputed. Subsequently, the informal coalition of journalists' and media associations (NUNS, NDNV, ANEM, Lokal Press and AOM), decided to withdraw their representative's participation from the working group, believing that the whole process had been compromised. The coalition suggested that the government form a new working group. Finally, one of the independent experts, Mr Dejan Nikolić, left the group and stated that it was completely pointless to decide on the environment in which journalists were to work for the next five years without representatives of the main journalists' associations, who had already left the group in the previous few weeks.

Despite the resignations and withdrawals, the Ministry of Culture and Information decided to continue the work on the drafting of the new Media Strategy. Earlier this year, the ministry announced that the draft would be completed by the end of 2017; however, in view of these resignations and withdrawals, such an ambitious deadline might not be fulfilled.

According to the former Media Strategy that expired at the end of 2016, the major strategic goals of the Government in the media sector include the privatization of the remaining publicly-owned media; the transparency of media ownership; state aid to media in the form of project co-financing of content that is of public interest; as well as the finalisation of the digital switchover.

• *Odluka o formiranju radne grupe za izradu radne verzije Strategije razvoja sistema javnog informisanja u Republici Srbiji do 2023. godine* (Decision on the forming of the working group for the preparation of the draft Strategy for the development of public information system in the Republic of Serbia for the period up to 2023)
http://merlin.obs.coe.int/redirect.php?id=18805 SR

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RU-Russian Federation

Ban of "undesirable" sites introduced

On 25 November 2017, President Vladimir Putin signed into law sets of amendments to the Federal Statute on information, information technologies and protection of information (IT Law, see IRIS 2014-3/40

and 2014-6/31) that provide additional powers to the Prosecutor-General and Roskomnadzor, the governmental supervisory authority in media, communications and personal data traffic (see IRIS 2012-8/36), on blocking websites without a court decision. They are now empowered to use the procedure envisioned in the 2013 amendments to the same law (see IRIS 2014-3:1/40) on blocking websites containing content such as calls to unsanctioned public protests and to "extremist" activities, to any information of "undesirable organisations" or "information that allows one to access such information or materials".

Such foreign or international NGOs are recognised in Russia under the Federal Statute "On measures to influence persons involved in violations of fundamental human rights and freedoms, rights and freedoms of citizens of the Russian Federation" (as amended in 2015) by the Prosecutor-General or his deputies in coordination with the Foreign Ministry. To qualify, such an NGO should be found to present "a threat to the foundations of the constitutional system of the Russian Federation, the country's defence capability or the security of the state."

The new statute entered into force on 25 November 2017.

Back in 2015, the OSCE Representative on Freedom of the Media, Dunja Mijatović, warned that the law would have a negative effect on freedom of expression, media freedom and pluralism of opinions.

The current OSCE Representative on Freedom of the Media, Harlem Désir, when referring to the draft statute, stated that "the government's efforts to increase control over information online remain reason for concern".

• О внесении изменений в статьи *104* и *153* Федерального закона « Об информации , информационных технологиях и о защите информации » и статью *6* Закона Российской Федерации « О средствах массовой информации » (Federal Statute of 25 November 2017 N 327-FZ "On amendments to articles 104 and 153 of the Federal Statute on information, information technologies and protection of information and article 6 of the Statute of the Russian Federation on the mass media")
http://merlin.obs.coe.int/redirect.php?id=18810 RU

• О мерах воздействия на лиц , причастных к нарушениям основополагающих прав и свобод человека , прав и свобод граждан Российской Федерации (Federal Statute of 28 December 2012 N 272-FZ "On measures to influence persons involved in violations of fundamental human rights and freedoms, rights and freedoms of citizens of the Russian Federation")
http://merlin.obs.coe.int/redirect.php?id=18811 RU

• OSCE Representative calls on President of Russia to veto new restrictive law that would have negative effect on free expression, free media, Riga, 20 May 2015
http://merlin.obs.coe.int/redirect.php?id=18812 EN

• OSCE Representative, Désir, in Moscow, calls on Russian Federation to urgently step up efforts to ensure safety of journalists and media freedom, Moscow, 23 November 2017
http://merlin.obs.coe.int/redirect.php?id=18824 EN

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Media as "foreign agents"

On 25 November 2017, President Vladimir Putin signed into law an amendment to the Statute on the mass media that expands the scope of its Article 6. It now allows the Ministry of Justice to apply to media outlets applicable provisions on foreign agents of the law on non-commercial organisations. Media outlets may be required to label themselves as those performing as foreign agents if they "receive funds and/or property from foreign states, their public entities, international or foreign organisations, foreign citizens, non-citizens or persons empowered by them, and/or Russian legal entities that receive funds and/or property from such sources." Their activities shall then be restricted or controlled in accordance with the federal law on non-commercial organisations.

The OSCE Representative on Freedom of the Media, Harlem Désir, expressed his concern about a series of measures by the United States of America and the Russian Federation requiring media entities from other countries to register themselves as "foreign agents".

The new statute entered into force on 25 November 2017.

• О внесении изменений в статьи *104* и *153* Федерального закона « Об информации , информационных технологиях и о защите информации » и статью *6* Закона Российской Федерации « О средствах массовой информации » (Federal Statute of 25 November 2017 N 327-FZ "On amendments to articles 104 and 153 of the Federal Statute on information, information technologies and protection of information and article 6 of the Statute of the Russian Federation on the mass media")
http://merlin.obs.coe.int/redirect.php?id=18810 RU

• Registration of media as "foreign agents" not acceptable says OSCE media freedom representative. Press statement. Vienna, 16 November 2017
http://merlin.obs.coe.int/redirect.php?id=18814 EN

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Ukraine and Russia end TV and radio cooperation

A cooperation agreement between Russia and Ukraine in the field of television and radio has expired after the Ukrainian government terminated the agreement with the Russian government in November 2016.

The agreement had been signed in Moscow, the Russian capital, in October 2000. It had originally been designed to create legal, organisational and economic conditions favourable to the provision of the broadcasting and distribution of Russian television and radio programmes in Ukraine. In the same way, the

agreement made it easier for television and radio content from Ukraine or provided by Ukrainian broadcasters to be broadcast and distributed in the territory of the Russian Federation. For example, it had allowed for the Russian language to be used in Russian programmes shown in Ukraine and vice-versa.

The termination of the cooperation agreement is another sign of the growing alienation between the two countries. The Ukrainian National Assembly, for example, had previously fined a host of Russian broadcasters for breaching their legal obligations to provide information about their ownership structures. As well as the fines of UAH 350,000 (around EUR 11,647), the national assembly had threatened further sanctions against broadcasters who continued to breach their duty to disclose their ownership structure, and said that their broadcasting licences might not be renewed or might even be withdrawn completely.

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Agenda

Book List