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Publisher:

European Audiovisual Observatory
76, allée de la Robertsau
F-67000 STRASBOURG

Tel. : +33 (0) 3 90 21 60 00
Fax : +33 (0) 3 90 21 60 19
E-mail: obs@obs.coe.int
www.obs.coe.int

Comments and Contributions to: iris@obs.coe.int

Executive Director: Susanne Nikoltchev

Editorial Board:

Maja Cappello, Editor • Francisco Javier Cabrera Blázquez, Sophie Valais, Julio Talavera Milla, Deputy Editors (European Audiovisual Observatory)

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Council to the Editorial Board: Amélie Blocman, *Legipresse*

Documentation/Press Contact: Alison Hindhaugh

Tel.: +33 (0)3 90 21 60 10

E-mail: alison.hindhaugh@coe.int

Translations:

Sabine Bouajaja, European Audiovisual Observatory (co-ordination) • Paul Green • Katherine Parsons • Marco Polo Sarl • Nathalie Sturlèse • Erwin Rohwer • Ulrike Welsch

Corrections:

Sabine Bouajaja, European Audiovisual Observatory (co-ordination) • Sophie Valais et Francisco Javier Cabrera Blázquez • Aurélie Courtinat • Barbara Grokenberger • Lucy Turner • Jackie McLelland • James Drake

Distribution: Nathalie Fundone, European Audiovisual Observatory

Tel.: +33 (0)3 90 21 60 06

E-mail: nathalie.fundone@coe.int

Web Design:

Coordination: Cyril Chaboisseau, European Audiovisual Observatory • Development and Integration: www.logidee.com • Layout: www.acom-europe.com and www.logidee.com
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EDITORIAL

Promoting European films and other audiovisual works can be quite an intricate regulatory exercise. Firstly, the works must be financed. This usually happens through a mix of public funding made up of levies and taxes imposed on the various actors in the audiovisual sector and, as a complement to state support, financial investment obligations placed on TV and VOD providers. But even this is not enough. What is the point of getting your film financed if you do not manage to get it shown to an audience? The answer to this question comes in the form of quotas and prominence obligations.

The legislative ecosystem for the promotion of European works is in constant evolution, and the present newsletter provides you with a couple of recent examples of this. In Italy, the parliament has postponed the entry into force of some modifications to the quota obligations introduced by the 2016 Reform. In Lithuania, the parliament has adopted a law on tax incentives for film production that offers the opportunity, through a private investment scheme, to save up to 30% of a film's production budget spent in Lithuania.

These are only two examples of a nice variety of measures that exist in Europe, but this very variety makes the understanding of the whole system a rather cumbersome exercise. This is why the availability of comparative data and analysis on the different initiatives and rules in support of the promotion of European works has become crucial. We will publish a mapping report with a description of the above-mentioned existing initiatives and rules across Europe towards the end of this month, so stay tuned!

Promotion is indeed good, but (producers will agree) remuneration is better! And remuneration normally comes through copyright. In this field of law, some recent developments will certainly be of interest to our readership. After months of intense political negotiations, the Council and the European Parliament have announced that an agreement has been reached on a future Directive facilitating the licensing of copyright-protected material contained in online television and radio programmes. In Italy, AGCOM has amended the Regulation on Copyright Enforcement in Electronic Communications Networks which established an ad hoc accelerated administrative procedure, meant as a public enforcement scheme alternative to the private enforcement mechanism provided for by Italian law.

On the subject of remuneration, media windows also allow producers to organise the exploitation of their works across the entire value chain, and in this field, following in Italy's footsteps, France has also recently modernised its rules, especially in light of new technology and market developments.

This and much more awaits you in our electronic pages!

Maja Cappello, editor

European Audiovisual Observatory

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COUNCIL OF EUROPE

HUNGARY

European Court of Human Rights: Magyar Jeti Zrt v. Hungary

Dirk Voorhoof
Human Rights Centre, Ghent University and Legal Human Academy

On 4 December 2018 the European Court of Human Rights (ECtHR) issued, unanimously, another landmark judgment on freedom of expression in the digital world (see also IRIS 2015-7/1, IRIS 2016-2/1, IRIS 2016-3/2, IRIS 2018-8/1 IRIS 2018-10/1). In the case of Magyar Jeti Zrt v. Hungary the ECtHR made clear that automatically holding media companies liable for defamatory content hyperlinked in their reports violates the right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR). In its judgment the ECtHR emphasised that the very purpose of hyperlinks was to allow Internet users to navigate to and from online material and to contribute to the smooth operation of the Internet by rendering different pieces of information accessible by linking them to each other. Accordingly, the ECtHR cannot accept the strict or objective liability of media platforms that embed, in their editorial content, a hyperlink to defamatory or other illegal content. The ECtHR found that such an objective liability "may have foreseeable negative consequences on the flow of information on the Internet, impelling article authors and publishers to refrain altogether from hyperlinking to material over whose changeable content they have no control. This may have, directly or indirectly, a chilling effect on freedom of expression on the Internet". The ECtHR did, however, not exclude the possibility that, "in certain particular constellations of elements", the posting of a hyperlink could potentially engage the question of liability - for instance, where a journalist does not act in good faith and in accordance with the ethics of journalism and with the diligence expected in responsible journalism.

In September 2013 the Hungarian media platform 444.hu, which is operated by the company Magyar Jeti Zrt, published an article about an incident in which a group of apparently drunk football supporters had made racist remarks in front of an elementary school in Konyár, whose pupils are predominately of Roma origin. In an interview later that day, the head of a local Roma organisation asserted that the football supporters were associate with Jobbik, a right-wing political party in Hungary which has been criticised in the past for its anti-Roma and anti-Semitic stance. The interview was uploaded to YouTube.com by another media outlet. The article on 444.hu included a hyperlink to that interview on YouTube. Jobbik brought proceedings against eight defendants, including the Roma community

leader, Magyar Jeti Zrt and other media outlets who had provided links to the impugned video. Jobbit argued that by using the term “Jobbik” to describe the football supporters and by publishing a hyperlink to the YouTube video, the defendants had infringed its right to reputation. The Hungarian courts upheld the plaintiff’s claim, finding that the statements in the video had indeed falsely conveyed the impression that Jobbik had been involved in the incident in Konyár. Magyar Jeti Zrt was considered “objectively liable” for disseminating defamatory statements, having infringed the political party’s right to reputation, and was ordered by the court to publish excerpts of the judgment on the 444.hu website and to remove the hyperlink to the YouTube video from the online article. This finding was finally confirmed by a judgment issued by the Hungarian Constitutional Court on 19 December 2017.

Magyar Jeti Zrt complained under Article 10 ECHR that the Hungarian courts had unduly restricted its freedom of expression by finding it liable for the posting of a hyperlink leading to defamatory content. The application lodged with the ECtHR was supported by an impressive group of third-party interveners, including the European Publishers’ Council, the Newspaper Association of America, Index on Censorship, Article 19 and European Digital Rights.After referring to the general principles related to interferences with the right freedom of expression that are upheld by the Court’s case law, the ECtHR scrutinised the question of whether or not the interference at issue had been necessary in a democratic society. The ECtHR explicitly referred to the importance of online freedom of expression and to the important role of the Internet in enhancing the public’s access to news and in facilitating the dissemination of information in general, without neglecting “the risk of harm posed by content and communications on the Internet to the exercise and enjoyment of human rights and freedoms, particularly the right to respect for private life”, which includes the right to reputation. The ECtHR is of the opinion that hyperlinks, as a technique of reporting, are essentially different from traditional acts of publication. Indeed, hyperlinks merely direct users to content available elsewhere on the Internet: they do not present the linked statements to the audience or communicate its content, but only serve to call readers’ attention to the existence of material on another website. Another distinguishing feature of hyperlinks, compared to acts involving the dissemination of information, is that a person referring to information through a hyperlink does not exercise control over the content of the website to which a hyperlink enables access, and which might be changed after the creation of the link. Additionally, the content behind the hyperlink has already been made available by the initial publisher on the website to which it leads, providing unrestricted access to the public. Given the particularities of hyperlinks, the ECtHR cannot agree with the approach of the Hungarian courts, which consists of equating the mere posting of a hyperlink with the dissemination of the defamatory information, thus automatically giving rise to liability in respect of the content itself. The ECtHR considers that the issue of whether the posting of a hyperlink may give rise to such liability requires an individual assessment in each case, regard being had to a number of elements.

The ECtHR identified he following questions as relevant to an analysis of the liability of the publisher of a hyperlink: (i) Did the journalist endorse the impugned

content? (ii) Did the journalist republished the impugned content (without endorsing it)? (iii) Did the journalist merely put a hyperlink to the impugned content (without endorsing or repeating it)? (iv) Did the journalist know (or could he or she have reasonably known) that the impugned content was defamatory or otherwise unlawful? (v) Did the journalist act in good faith, respect the ethics of journalism and undertake the due diligence expected in the practice of responsible journalism?

After assessing these aspects, the ECtHR considers that 444.hu has embedded a hyperlink without repeating or endorsing the content of the interview on YouTube. 444.hu could reasonably assume that the contents, to which it provided access, although perhaps controversial, would remain within the realm of permissible criticism of political parties and, as such, would not be unlawful. Although the statements in the interview on YouTube were ultimately found to be defamatory, the ECtHR is satisfied that such utterances could not be seen as clearly unlawful from the outset. Finally the ECtHR criticised the relevant Hungarian law, as interpreted by the competent domestic courts, excluding any meaningful assessment of the Magyar Jet Zrt's freedom of expression rights under Article 10 ECHR, precisely in a situation where restrictions would have required the utmost scrutiny, given the debate on a matter of general interest. Indeed, the Hungarian courts held that the hyperlinking amounted to dissemination of information and allocated objective liability - a course of action that effectively precluded any balancing between the competing rights, that is to say, the right to reputation of the political party and the right to freedom of expression of Magyar Jeti Zrt. According to the ECtHR such objective liability for hyperlinks could have, directly or indirectly, a chilling effect on freedom of expression on the Internet. For these reasons, the ECtHR found that the Hungarian courts' imposition of objective liability on Magyar Jeti Zrt had not been based on relevant and sufficient grounds. Therefore, the measure had constituted a disproportionate restriction on its right to freedom of expression, thus violating Article 10 of the ECHR.

Judgment by the European Court of Human Rights, Fourth Section, case of Magyar Jeti Zrt v. Hungary, Application no. 11257/16, 4 December 2018

https://hudoc.echr.coe.int/eng?i=001-187930

EUROPEAN UNION

GERMANY

Court of Justice of the European Union: German broadcasting contribution confirmed

Jan Henrich
Institute of European Media Law (EMR), Saarbrücken/Brussels

In a judgment of 13 December 2018 (case C-492/17), the Court of Justice of the European Union (CJEU) confirmed the broadcasting contribution used to finance public broadcasting in Germany. In the decision, the CJEU stated that the alteration to the criterion on which the contribution was based, introduced in Germany through the Rundfunkbeitragsstaatsvertrag (Inter-State Agreement on the Broadcasting Contribution - RBStV) in 2013, does not constitute an alteration to existing aid within the meaning of Article 1(c) of Council Regulation (EC) No. 659/1999, which should be notified to the Commission under Article 108(3) of the Treaty on the Functioning of the European Union (TFEU).

Public broadcasting in Germany is financed mainly through the broadcasting contribution. Since 2013, payment of the contribution has been based on ownership of a residence or business premises. Previously, a broadcasting fee was payable on the basis of possession of a receiving device under a rule that was assessed by the European Commission in the context of its examination of aid schemes in 2007 (decision of 24 April 2007, C(2007) 1761 final - State aid E 3/2005, see IRIS 2007-2/5 and IRIS 2007-6/3). Public broadcasters also have the power to enforce claims in respect of unpaid broadcasting contributions themselves. In this context, the Landgericht Tübingen (Tübingen regional court) had submitted to the CJEU a number of cases in which Südwestrundfunk (SWR) had issued enforcement instructions for unpaid contributions, asking, among other things, whether the alteration of the financing system should have been notified to the Commission as an alteration to existing aid.

The CJEU judges ruled that the change did not need to be notified to the Commission under Article 108(3) TFEU, which requires notification of any new aid or alteration to existing aid. The first sentence of Article 4(1) of Regulation No. 794/2004 provides that, for the purposes of Article 1(c) of Regulation No 659/1999, an alteration to existing aid means any change, other than modifications of a purely formal or administrative nature which cannot affect the compatibility of the aid measure with the internal market. In this context, the CJEU noted that the replacement of the broadcasting fee by the broadcasting contribution essentially pursued an objective of simplifying the conditions of levying the broadcasting contribution against a background of evolving technologies. In addition, the alteration had not led to a substantial increase in the amount received by the public broadcasters. This was still in keeping with the costs associated with fulfilling their public service remit.

The CJEU also ruled that European Union law did not preclude national legislation that confers on public broadcasters' powers, as exceptions to the general law, allowing them to enforce claims in respect of unpaid contributions. These powers had already been examined by the Commission in 2007 and remained unchanged.

Additional questions submitted by the Landgericht Tübingen concerning the general compatibility of the financing of broadcasting in Germany with EU law were dismissed by the Court as inadmissible. The Landgericht had failed to explain the connection between the provisions of EU law and the main action. According to the CJEU's established case law, the justification for making a request for a preliminary ruling is not that it enables advisory opinions to be delivered on general or hypothetical questions.

CJEU judgment of 13 December 2018 (case C-492/17)

http://curia.europa.eu/juris/document/document.jsf?text=&docid=208961&pageIndex=0&doclang=de&mode=req&dir=&occ=first&part=1&cid=5301228

EU: EUROPEAN PARLIAMENT

Council of the EU: Agreement on cross-border access to online radio and television programmes

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

On 13 December 2018, the Council and European Parliament announced that an agreement had been reached on a future Directive facilitating the licensing of copyright-protected material contained in online television and radio programmes. In 2016, the Commission originally proposed a Regulation on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes (see IRIS 2018-1/10). However, as the Council states, the “originally proposed Regulation will have to be redrafted so that it takes the form of a Directive”.

The stated purpose of the Directive is to facilitate (a) clearance of rights for online services ancillary to broadcasts; (b) clearance of cross-border retransmission rights; and (c) the clarification of the legal status of "direct injection". The Council noted that broadcasting organisations are increasingly offering, in addition to their traditional broadcasts of television and radio programmes, online services that are ancillary to their broadcast. Such services constitute parallel transmissions over the Internet (“simulcasting”) and the possibility to view or listen to a programme later than at the time of the original broadcast (“catch-up services”). In order to make these services available across borders, broadcasting organisations need to clear - in respect of all relevant territories - the rights to works and other protected subject matter contained in their broadcasts. The Directive will facilitate such a rights clearance by allowing broadcasting organisations to clear all relevant rights in the member state of their principal establishment.

The Directive will cover all radio programmes, television news and current affairs programmes, and television programmes that are fully financed own productions of the broadcasting organisation in question. Existing contracts will remain unaffected for a period of four years from the entry into force of the Directive. The Commission will assess the need for extending this coverage to additional types of television programmes six years after the entry into force of the Directive.

Secondly, the Directive will facilitate the clearance of rights where a radio or television programme broadcast in one member state is retransmitted in another member state simultaneously, unaltered and unabridged. It will apply to retransmissions carried out via cable, satellite, digital terrestrial, closed-circuit IP-based or mobile networks. It also covers retransmissions undertaken over the open Internet, provided that they take place in a managed environment - that is

to say they are subject to some kind of digital identification. Concerning the types of retransmissions covered by the Directive, the rights to works and other subject matter contained in the broadcast will have to be cleared through a collective management society. The collective management society must also be entitled to clear rights belonging to rightsholders who have not transferred their rights to it.

Finally, the Directive clarifies the legal status of the "direct injection" technique - that is to say when a broadcaster transmits its programme-carrying signals to signal distributors in such a way that those signals are not accessible to the public during that transmission. In such a case, only a single act of communication to the public is deemed to have occurred. This means that both the broadcaster and the signal distributor will have to clear the underlying rights.

The agreement will now have to be endorsed by the European Parliament and the Council before it can be formally adopted.

Council of the EU, "Enhanced cross-border access to online content: EU agrees new rules", 13 December 2018

https://www.consilium.europa.eu/en/press/press-releases/2018/12/13/enhanced-cross-border-access-to-online-content-eu-agrees-new-rules/

FRANCE

Court of Justice of the European Union: Playmédia case: CJEU replies to Conseil d'Etat's questions on must-carry obligations

Amélie Blocman
Légipresse

On 13 December 2018, the Court of Justice of the European Union (CJEU) delivered its replies to the questions referred for a preliminary ruling presented by the Conseil d'Etat with regard to a dispute between France Télévisions and the national audiovisual regulatory authority (Conseil Supérieur de l'Audiovisuel - CSA). On 27 May 2015, the CSA served official notice on the public-sector television group, requiring it to comply in future with the provisions of Article 34(2) of Act No. 86-1067 of 30 September 1986 on freedom of communication by ceasing to oppose Playmédia's carriage of France Télévisions' programmes via live streaming on its Internet site. Playmédia makes it possible to view television programmes via live streaming on an Internet site and receives most of its funding from advertisements shown before and during viewing. Claiming the capacity of a distributor of services within the meaning of Article 2(1) of the Freedom of Communication Act, Playmédia felt entitled to take advantage of the provisions of Article 34(2) of the Act, which gives distributors the right to broadcast France Télévisions' programmes. France Télévisions also makes its programmes available to the public via live streaming on an Internet site of its own.

France Télévisions called for the cancellation of the CSA's official notice, holding that Playmédia was not able to benefit from the obligation provided for in Article 34(2) of the Act. In support of this, France Télévisions pointed out that the conditions provided for in Article 31(1) of the Universal Service Directive were not met since, more specifically, it was not possible to state that "a significant number of end-users [of such networks] used [it] as their principal means to receive [radio and] television broadcasts". In the circumstances, the Conseil d'État decided to stay deliberation and referred a number of questions to the CJEU for a preliminary ruling.

Firstly, the Conseil d'Etat asked if Article 31(1) of the Universal Service Directive should be interpreted as meaning that an undertaking offering the viewing of television programmes via live streaming on the Internet should, by that sole fact, be considered an "undertaking providing electronic communications networks used for the distribution of radio or television broadcasts to the public". According to the Directive's provisions, the Member States may, under certain conditions, impose must-carry obligations on undertakings under their jurisdiction providing electronic communications networks used for the distribution of radio or television broadcasts to the public. However, the CJEU found that the activity of offering the

viewing of television programmes via live streaming on an Internet site did not constitute the provision of an electronic communications network; what it offered was access to the content of audiovisual services supplied on electronic communication networks. The Court therefore found that Playmédia, which merely used an Internet site to offer access to content supplied on the Internet, was not covered by Article 31(1) of the Universal Service Directive.

The Conseil d'Etat then asked the CJEU if the provisions of the Universal Service Directive should be interpreted as, in a situation such as in the case at hand, preventing a Member State from imposing a must-carry obligation on undertakings which, without supplying electronic communications networks, offered the viewing of television programmes via live streaming on the Internet. As the Court noted, must-carry obligations had been imposed by domestic legislation in the case at issue on undertakings not covered by Article 31(1) of the Universal Service Directive. Since it was true that the scope of the must-carry obligation referred to in Articles 2(1) and 34(2) of the Freedom of Communication Act was not the same as that provided for in Article 31(1) of the Universal Service Directive, it was for the jurisdiction which had referred the matter to establish whether must-carry obligations had indeed been imposed on undertakings such as Playmédia. At any event, the Court found that, in such a situation, the provisions of the Universal Service Directive did not prevent a member State from imposing a must-carry obligation on undertakings which, without providing electronic communications networks, offered the viewing of television programmes via live streaming on the Internet.

The Conseil d'Etat now has full information at its disposal enabling it to deliberate on the dispute between the CSA and the online viewing service.

Judgment of the Court of Justice of the European Union (Fourth Chamber), Case C-298/17, 13 December 2018 - France Télévisions S.A. v. CSA and Ministry of Culture

http://curia.europa.eu/juris/document/document.jsf;jsessionid=F77C7CEEEF7AB3A33B1DC46798F7BC13?text=&docid=208967&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=11875277

NATIONAL

GERMANY

[DE] Damages for unauthorised YouTube footage not compulsory

Jan Henrich
Institute of European Media Law (EMR), Saarbrücken/Brussels

In a ruling of 22 November 2018 (case no. I-4 U 140/17), the Oberlandesgericht Hamm (Hamm Regional Court of Appeal) held that the unauthorised use of a film recording of a person on the YouTube video platform only creates a right to damages if the resulting privacy breach is classified as serious.

In the case at hand, a YouTube channel operator who regularly posted travel reports filmed a member of the check-in security staff at a German airport and published a two-second clip of the recording on the YouTube video platform. The clip, which showed the staff member finding the camera and briefly commenting on it, was subsequently included in a total of 26 published videos.

The security staff member lodged a complaint and requested an injunction plus damages of around EUR 8,100 for breach of privacy. In the first instance, the claim for damages was rejected. The claimant then appealed unsuccessfully to the Oberlandesgericht Hamm. In the grounds for its decision, the Appeal Court explained that although the claimant's general personality rights had undoubtedly been breached, not every personality rights infringement triggered a right to compensation for non-material damage. This right only applied when the intrusion on general personality rights was serious and if the damage caused could not be repaired in any other way. The Court held that this could only be judged in view of all the circumstances of the individual case, taking into account the significance and consequences of the infringement, as well as the extent to which the recording had been disseminated.

In this case, the Court held that the intrusion had not been sufficiently serious, since although the recording had been used humorously, it had not exposed the man to ridicule. In addition, it had only shown him at work and not at home. The two-second clip was also not the main element of the individual videos.

Although the recordings had been permanently stored and viewed many times on the video platform, this was not sufficient to constitute a serious infringement. The Court added that the fact that the channel operator had used the videos to generate advertising revenue did not affect the decision.

Urteil des OLG Hamm vom 22. November 2018 (Az. I-4 U 140/17)

https://www.justiz.nrw.de/nrwe/olgs/hamm/j2018/4_U_140_17_Urteil_20181122.html

Decision of the Hamm Regional Court of Appeal, 22 November 2018 (case no. I-4 U 140/17)

[DE] KEK report: media concentration law must be amended and adapted

Jan Henrich
Institute of European Media Law (EMR), Saarbrücken/Brussels

On 11 December 2018, the Kommission zur Ermittlung der Konzentration im Medienbereich (Commission on Concentration in the Media - KEK) published its sixth report on the development of concentration and measures to protect diversity of opinion in the German private broadcasting sector, entitled “Protecting Diversity of Opinion in the Digital Age”.

The report, published every three years in accordance with Article 26(6) of the Rundfunkstaatsvertrag (Inter-State Broadcasting Agreement - RStV), is designed to identify concentration trends at an early stage in order to prevent television companies, individually or in groups, from gaining a dominant market position. To this end, it analyses in detail the integration between television and other media-related markets, horizontal integration between broadcasters in different transmission areas, and international integration in the media field. The sixth edition covers matters such as the market share of radio, newspapers, magazines, and online media, as well as plurality-related aspects of the up- and downstream markets of television sports and fiction rights, programme platforms, and transmission methods, concluding that there is a clear need for reform. Specific chapters are devoted to the media platform revolution and new online power relations, as well as the importance of intermediaries for safeguarding plurality.

According to the sixth report, the German television landscape remains characterised by a huge diversity of programme providers. Along with the 21 public television channels, another 169 private channels held national broadcasting licences in 2018. These were joined by teleshopping stations, channels with foreign licences, and more than 200 regional and local programmes. Three large groups of broadcasters dominate the German television market: the public service broadcasters with a combined audience share of 46.7% in 2017, the RTL Deutschland media group with 23.2%, and ProSiebenSat.1 Media SE with 17.8%. However, the KEK pointed to the continuing fragmentation of the television market linked to the growth of specialist channels and pay-TV services. Radio is still dominated by ARD’s public broadcasters, who have a 55% market share. The largest private provider is the RTL group with 7%.

The report also highlights changes in the media market: on the provider side, there has been an increase in the number of mergers and takeovers, cross-media integration, and newspaper monopolies linked to the creation of central editorial offices. Digitisation is leading to a blurring of the boundaries between different media types: new, cross-media value chains are being formed, the use of moving images on all online platforms is increasing, on-demand and streaming services are being offered separately from or alongside linear broadcasting, while economic necessity is leading to cross-media ventures such as newspaper online

services or broadcaster online apps. As far as media consumer behaviour is concerned, younger generations are tending to reject traditional media in favour of online communication methods such as blogging and Twitter, a trend reflected in declining newspaper circulation figures and reduced levels of interest in journalistic radio and television content. As a result, the KEK reports that the power of online media in terms of opinion formation is constantly rising compared with that of traditional television. Traditional media companies that produce online content, however, are losing their influence on public opinion because they are being forced to adapt their business strategies to the large international platform groups, in particular Google, Facebook, and Amazon. This pressure to adapt is forcing them to move their activities away from the classic core business of publishing.

Intermediaries, on the other hand, thanks to algorithmic selection and strategic communication techniques, are clearly gaining power over public opinion. In online media, non-journalistic actors with political relevance are also exerting greater influence on public opinion.

The report concludes that, in view of the fundamental changes to the media landscape, broadcasting concentration control that only considers television is not suitable to effectively counter threats to diversity in the online sector. It therefore calls for the urgent introduction of an overall market model designed to safeguard plurality in both negative defensive and positive creative ways, independent of television and including all media markets relevant to opinion formation. Unfortunately, although the current draft paper for discussion of an Inter-State Media Agreement (see IRIS 2018-8/16) contains new rules on the concepts of broadcasting, platform regulation, and intermediaries, it does not tackle the need to reform media concentration law.

6. Konzentrationsbericht der Kommission zur Ermittlung der Konzentration im Medienbereich, „Sicherung der Meinungsvielfalt im digitalen Zeitalter“, 11. Dezember 2018

https://www.kek-online.de/publikationen/medienkonzentrationsberichte/news/sechster-konzentrationsbericht-2018/

6th concentration report of the Commission on Concentration in the Media, “Protecting Diversity of Opinion in the Digital Age”, 11 December 2018

[DE] Licence for national Sat.1 television channel is lawful but regional window obligation remains

Christina Etteldorf

In a decision of 29 November 2018 (cases 3 LB 19/14 and 3 LB 18/14), the third chamber of the Oberverwaltungsgericht Schleswig-Holstein (Schleswig-Holstein Administrative Court of Appeal - OVG) ruled that the licence granted to ProSiebenSat.1 TV Deutschland GmbH by the Medienanstalt Hamburg/Schleswig-Holstein (Hamburg/Schleswig-Holstein media authority - MA HSH) for the national television channel Sat.1 is lawful. However, it added that a regional television provider that holds a licence to broadcast a regional window programme in Rhineland-Palatinate and Hessen, whose right to do so was questioned during the proceedings and is the subject of a separate procedure, remains entitled to require Sat.1 to transmit its regional programme.

The proceedings concern disputes dating back to 2012 between Sat.1 and the (current) supervisory body, MA HSH, on the one hand, and the Hessische Landesanstalt für privaten Rundfunk und neue Medien (Hessian commercial broadcasting and new media authority - LPR Hessen), the Landeszentrale für Medien und Kommunikation Rheinland-Pfalz (Rhineland-Palatinate media and communication authority - LMK) and a regional window programme provider on the other. In 2012, Sat.1 applied to the MA HSH for a licence to broadcast its full window programme because it was evidently dissatisfied with the way in which the LMK, which had previously been responsible for such issues, had handled the allocation of third-party transmission time. It was able to do this because the new licence application was submitted to the MA HSH by ProSiebenSat.1 TV Deutschland GmbH rather than by Sat.1 Satelliten Fernsehen GmbH, which had applied to the LMK. The new licence was granted by the MA HSH on the condition that Sat.1 Satelliten Fernsehen GmbH handed back its licence. This decision was disputed by the LMK, the LPR Hessen and a media company that provides regional programmes broadcast on Sat.1 in a complaint that was dismissed in 2013.

However, following an appeal by the three complainants, the first-instance decision was largely upheld. In response to the LMK's appeal, the OVG Schleswig-Holstein ruled that the disputed new licence was lawful. The disputed decision had not concerned a change in ownership structure, in which case the LMK would have remained responsible under current German law, but a new licence, responsibility for which fell to the media authority to which the application was made, i.e. the MA HSH. Regarding the appeal lodged by the LPR Hessen, which claimed that the licence granted by the MA HSH infringed its rights concerning the licensing of regional windows, the OVG Schleswig-Holstein ruled that the complainant had no right to appeal. Only the appeal lodged by the regional window provider was partially upheld: although the licence granted by the MA HSH was lawful, the licence held by the regional window provider remained valid in Rhineland-Palatinate and Hessen. The regional window programme was linked to the Sat.1 television channel, not the provider.

Pressemitteilung des OVG Schleswig-Holstein vom 30. November 2018

https://www.schleswig-holstein.de/DE/Justiz/OVG/Presse/PI_OVG/2018_11_30_Sat1.html

Press release of the Schleswig-Holstein Administrative Court of Appeal, 30 November 2018

FINLAND

[FI] Merger of Several Administrative Authorities

Elena Sotirova
European Platform of Regulatory Authorities

As of 1 January 2019, the Finnish Transport Safety Agency (Trafi), the Finnish Communications Regulatory Authority (FICORA) and certain functions of the Finnish Transport Agency have been merged in order to form the new Finnish Transport and Communications Agency (Traficom).

Traficom will be responsible for serving people and businesses in licence-, registration- and approval-related matters. The Agency will also be entrusted with promoting the transport system and safety of traffic and ensuring that Finish citizens have access to high-quality and secure communications connections and services. It will also monitor and promote the transportation and communications markets and services. Also within Traficom's remit will be the boosting of digitalisation by means of, for example, experiments in the fields of automation and robotics, which will create new businesses and services.

The reform constitutes part of the Government's efforts not only to create digital transport services, but also to ensure reliable and well-functioning transport and communications networks, to streamline regulation and to improve the productivity and impact of administration through the more versatile and effective use of the resources and expertise of the administrative authorities.

The functions and services of the merging organisations will continue without interruption and will be further developed. The reform responds to the major changes taking place in the transport and communications sectors. Digitalisation, robotisation, the growing role of services and the increasing importance of data are changing customers' needs. The structures of the administrative branch are being changed to provide improved services and to enable a favourable business environment and the improved utilisation of data.

Finnish Transport and Communications Agency starts operations on 1 January 2019

https://www.traficom.fi/en/news/finnish-transport-and-communications-agency-starts-operations-1-january-2019

FRANCE

[FR] Conseil d'État confirms CSA sanction against Radio Courtoisie after broadcast of discriminatory comments

Amélie Blocman
Légipresse

Following several comments made in 2015 and 2016 on Radio Courtoisie, a far-right radio station regularly examined by the regulator due to on-air infringements, the national audiovisual regulatory authority (Conseil Supérieur de l'Audiovisuel - CSA) imposed a fine of EUR 25,000 on the company holding the license. The fine was imposed for infringing its obligations under Articles 2(4) and 2(10) of its licence of 8 February 2012, concerning incitement to racial or religious discrimination and control of the station respectively. The radio station asked the CSA to lift this sanction.

As the CSA mentioned in the disputed decision, during the programme 'Le libre journal d'Henry de Lesquen', broadcast on Radio Courtoisie on 5 October 2015, the host (who is also the station director) presented a "ten-point vade-mecum on human races", stating in particular that "races are not and cannot be equal because equality is not part of nature" and that the growth of the "black population" in France, which he described as the "melanisation of France", "is absolutely incompatible with the maintenance of France's identity". During the edition broadcast on 15 February 2016, he also claimed that there was a "tolerance threshold" above which the arrival of a "black population" in a district would lead to the departure of the "white population". On 28 March 2016, one of his guests said that Islam was "a terrible religion, [...] a religion of hatred". The CSA held that these repeated comments, which had not been contradicted or toned down, were likely to incite discriminatory conduct towards people "on account of their real or alleged membership of a particular ethnic group, nation, race or religion", within the meaning of the provisions of the station's licence.

The Conseil d'État ruled that the CSA had lawfully concluded that, by broadcasting these comments, the producing company had disregarded its obligations under its licence. It had also correctly decided that the guest's comments showed that the licensee had failed to meet its obligation to control the station. Therefore, the Conseil d'État ruled that, in view of the powers devolved to the CSA, which the legislator had entrusted with the task of ensuring that audiovisual programmes conveyed an image of French society free of prejudice, and in the light of the aforementioned facts and the radio station producer's obligations, the decision to impose a sanction had not disproportionately restricted freedom of expression.

Conseil d'État (5e et 6e ch. réunies), 17 décembre 2018 - Comité de défense des auditeurs de Radio Solidarité

http://arianeinternet.conseil-

etat.fr/arianeinternet/ViewRoot.asp?View=Html&DMode=Html&PushDirectUrl=1&Item=1&fond=DCE&texte=radio+solidarit%E9&Page=1&querytype=simple&NbEltPerPages=4&Pluriels=True

Conseil d'État (5th and 6th chambers combined), 17 December 2018 - Comité de défense des auditeurs de Radio Solidarité

[FR] Conseil d'État confirms CSA's decision to terminate Radio France president's mandate

Amélie Blocman
Légipresse

On 31 January 2018, the national audiovisual regulatory authority (Conseil Supérieur de l'Audiovisuel - CSA) withdrew the mandate of Radio France's president, Mathieu Gallet, following a first-instance criminal court judgment in which he was found guilty of favouritism while president of the French national audiovisual institute (Institut National de l'Audiovisuel - INA) between 2010 and 2014. The CSA judged that Mr Gallet's criminal conviction, even though it was under appeal, meant that keeping him in post was incompatible with the smooth functioning of the public audiovisual service. Mr Gallet asked the Conseil d'État to overturn this decision.

In its decision of 17 December, the Conseil d'État began by noting that the CSA had not imposed a sanction, but had acted on the basis of Article 47(5) of the law of 30 September 1986, which gave it regulatory powers to protect the smooth functioning of the public audiovisual service. In this context, anything that was likely to compromise their ability to carry out their mandate under conditions that ensured the smooth functioning of the company, their independence or the implementation of the project for which they had been appointed could legally justify the withdrawal of the mandate of the president of a public audiovisual company.

Therefore, the Conseil d'État ruled that a criminal conviction for failure to comply with the duty of probity, and the impact of such a conviction on public opinion, on account of their consequences for his ability to fulfil the role, justified the CSA's decision to dismiss Mr Gallet. It added that the CSA decision did not comment on the substance of the offences of which he was accused, nor on whether they were classified as crimes, and pointed out that, since he had appealed against the decision of the Créteil court of first instance, he should be presumed innocent. The Conseil d'État therefore considered that the CSA decision should not be regarded as bringing that presumption into question.

It also ruled that the fact that the head of a public audiovisual company no longer had the confidence of the state authorities did not, in itself, justify the regulator's decision to terminate his mandate. However, in this case, the CSA had fulfilled its duty to guarantee the independence and impartiality of this sector by taking into account, in particular, the need, from the point of view of the smooth functioning of Radio France and in the context that it described, for the relationship between the public authorities and the company president to be conducive to the latter being able to fulfil his mission effectively. The CSA had therefore been right to consider that keeping Mr Gallet in his post despite his conviction would be prejudicial to Radio France's relationship with the state and the public authorities, and that the resulting disruption would harm its ability to function smoothly and fulfil its public service remit. The Conseil d'État therefore rejected Mr Gallet's request.

Conseil d'État (5e ch.), 14 décembre 2018 - M. Gallet

http://arianeinternet.conseil-etat.fr/arianeinternet/ViewRoot.asp?View=Html&DMode=Html&PushDirectUrl=1&Item=1&fond=DCE&texte=gallet&Page=1&querytype=simple&NbEltPerPages=4&Pluriels=True

Conseil d'État (5th chamber), 14 December 2018 - M. Gallet

[FR] Law on manipulation of information, validated by the Constitutional Council, is published

Amélie Blocman
Légipresse

The law on the fight against the manipulation of information, called for by the President of the Republic at the beginning of 2018, was adopted at the end of the year following a chaotic legislative process in which the Senate consistently rejected the text. After it was validated by the Constitutional Council (subject to reservations concerning interpretation), the law was published in the official gazette at the turn of the year. It will therefore be in force by the run-up to the next European elections in May, as intended by the Executive.

The law is divided into three sections. The first, entitled 'provisions amending the Electoral Code', introduces a new urgent procedure (Article L. 163(2) of the Electoral Code, based on Article 1 of the law). During the three months leading up to a general election (presidential, national, or European election, or referendum), it will therefore be possible to stop the dissemination of false information via online public communication services if it is likely to affect the integrity of the vote by taking legal action against both the hosts and the access providers. However, the Constitutional Council, in view of the consequences of such a procedure, expressed reservations concerning interpretation. For example, such an urgent cessation order can only be justified if the inaccurate or deceptive nature of the disputed allegations or claims is 'clear'. The same applies to the danger posed to the sincerity of the vote, which must also be 'clear'.

Online platforms help to spread "fake news", which is why, under the new law, those that attract a certain number of users have a duty of loyalty and transparency that requires them to clearly identify any natural or legal person that pays them "remuneration in return for promoting news content linked to a debate of general interest" (sponsored content). The law provides for criminal sanctions (up to a one-year prison sentence and a EUR 75 000 fine) for an infringement of these new transparency obligations during an election campaign. Platforms also have a permanent duty of cooperation (not only during election periods), although this is not subject to criminal sanctions. This requires them to establish measures to combat "fake news" and a system for bringing it to users' attention. They must also ensure the transparency of the algorithms that they use, promote the certification of genuine accounts, and inform users about the nature, origin, and means of distribution of content. Although these obligations are not subject to specific sanctions, the law extends the powers of the Conseil Supérieur de l'Audiovisuel (the national audiovisual regulatory authority - CSA , which "contributes to the fight against the dissemination of false information likely to disrupt public order or affect the integrity of a vote" covered by the law (new Article 17(2) of the law of 30 September 1986). To this end, the CSA can make recommendations to platforms and monitor their compliance with their obligations.

The second section of the new law, which amends the law of 30 September 1986, is aimed at certain audiovisual communication services. For example, the CSA can now reject a licence application from a radio or television service if “the dissemination of its programmes seriously risks harming human dignity, freedom and the property of others, the pluralistic expression of schools of thought and opinions, … [or] the protection of public order, national security or the fundamental interests of the nation (including the smooth functioning of its institutions)”. Although these grounds are not directly related to the dissemination of “fake news” during election periods, the law now enables the CSA to “take into account the content that the applicant, its subsidiaries, the legal entity that controls it or the subsidiaries of the latter disseminate via other electronic communication services … if the applicant is controlled or influenced by a foreign state”. The law also gives the CSA powers to suspend the distribution of a licensed service controlled or influenced by a foreign state if it deliberately distributes “false information likely to affect the integrity of the vote”. This only applies during the three months leading up to an election and is designed to prevent foreign influence on national elections.

There is sure to be close scrutiny of the initial application of the law, which could arise in the coming weeks, during the three months leading up to the first day of voting in the forthcoming European elections.

Loi n° 2018-1202 du 22 décembre 2018 relative à la lutte contre la manipulation de l'information

https://www.legifrance.gouv.fr/affichTexte.do;jsessionid=0D62E143AC23CBE4B3156D8F1D85E68E.tplgfr23s_2?cidTexte=JORFTEXT000037847559&dateTexte=&oldAction=rechJO&categorieLien=id&idJO=JORFCONT000037847553

Act no. 2018-1202 of 22 December 2018 on the fight against the manipulation of information

[FR] New media chronology agreement finally signed

Amélie Blocman
Légipresse

The French rules on media chronology, which cover all distribution windows for films, from their release in cinemas to free public access, were in urgent need of reform and modernisation. The previous agreement was more than ten years old, and was signed before subscription-based VoD platforms had appeared in the audiovisual landscape.

In autumn 2017, following a breakdown in industry negotiations, the Minister for Culture asked mediators to unblock the situation so an agreement could be reached. More than a year later, on 21 December 2018, in line with their recent signature of agreements with film industry organisations, Canal+ (the French film industry's biggest investor - contributing EUR 160 million in 2017) and Orange OCS signed the new media chronology agreement in the presence of Franck Riester, Minister of Culture.

Although the agreement entered into force with immediate effect, an extension order that will make it compulsory across the whole industry for three years has yet to be adopted.

As far as television is concerned, the first exploitation window, which covers pay-TV film channels (Canal+, Ciné+, OCS), is brought forward under the new agreement from ten to eight months after a film's first cinema screening, or six months for films that attract fewer than 100,000 cinema viewers in the first four weeks following their release. In order to benefit from these windows, the channels will need to meet certain conditions (relating to investment, broadcasting quotas for French and European works, etc.), otherwise they will be extended from 12 to 18 months. The second film exploitation window, which also applies to pay-TV film channels, will open after 17 rather than 24 months (15 rather than 22 where waivers are granted) if the services concerned meet certain conditions. The final exploitation window concerns free-to-view television services and non-film pay-TV channels, which will be able to broadcast films 30 months after their cinema release, or 22 months if they invest 3.2% of their turnover in European film production.

The agreement also creates three windows for subscription-based VoD platforms such as Netflix and Amazon Prime Video, which were previously subject to a single 36-month window. Under a rather complex system, if these platforms agree to support the French and European film industries by meeting production and broadcast quotas, paying the video tax to the Centre National de la Cinématographie et de l'Image Animée (the national cinema centre - CNC) and signing an agreement with the Conseil Supérieur de l'Audiovisuel (the national audiovisual regulatory authority - CSA)), the window may be brought forward to 30 or 17 months (and even 28 or 15 months for films with fewer than 100,000

tickets sold). Although these services will need to meet very strict conditions in terms of investment in film production, they will be able to show films before some television channels. It is by no means certain that Netflix or Amazon will take up this opportunity immediately.

Finally, according to the Ministry for Culture, this new agreement “will enhance public access to films, taking appropriate account of changing expectations and viewing habits (…). The new rules will therefore strengthen the financing of French film-making by favouring the most virtuous and committed broadcasters. Finally, it will contribute to the fight against piracy by making films available sooner.”

Communiqué de presse du ministère de la Culture, Signature de l’accord sur la chronologie des médias

http://www.culture.gouv.fr/Presse/Communiques-de-presse/Signature-de-l-accord-sur-la-chronologie-des-medias

Ministry for Culture press release, “Signature of media chronology agreement”,

UNITED KINGDOM

[GB] High Court awards damages for libellous child grooming tweet

Alexandros K. Antoniou
University of Essex

On 19 December 2018, Mr. Justice Nicklin handed down the judgment in Monir v Wood, ordering the defendant, the chairman of a local branch of a political party, to pay GBP 40 000 in damages for a defamatory message sent by a branch member through the branch's Twitter account. The judgment highlights the potential liability of those who set up social media accounts and then delegate responsibility to others to post on their behalf.

The claimant in this action was Zahir Monir, a businessman and Labour activist from Rotherham. He brought libel proceedings against Stephen Wood, the former chairman of the Bristol branch of the UK Independence Party (UKIP), over a tweet published on the branch's Twitter account on 4 May 2015, shortly before that year's General Election. Although it did not directly identify the claimant, the tweet comprised a photograph of him alongside the Labour MP for Rotherham, Sarah Champion, and another man. The text of the tweet, which evidently referred to the photograph, stated that the Labour candidate "stood with 2 suspended child grooming taxi drivers. DO NOT VOTE LABOUR." The allegation against the claimant was false. Mr. Monir sued the chairman of the branch, Stephen Wood, contending that he had been defamed by the tweet and that Mr. Wood was legally responsible for it. However, the tweet had actually been written and posted by the vice chairman of the UKIP Bristol branch, John Langley, to whom responsibility for the operation and control of the account had been delegated by Mr. Wood.

On the facts, the Court found that "ultimate control" of the Twitter account remained vested in Mr. Wood "at all times", as it was registered using his email address. The claimant complained to the defendant about the tweet on 8 May, but the defendant had not focused on the offending tweet's precise terms until after the police intervened on 1 June. The defendant had also become aware of earlier racist postings by the vice chair, but nevertheless decided not to remove him from the account for reasons "clearly born of political expediency" given the forthcoming election.

As regards the issue of meaning, Nicklin J. took the view that the ordinary reasonable reader would understand the offending tweet to mean that "the two men were involved in the sexual abuse of children." This was a "very seriously defamatory allegation" of conduct amounting to a serious criminal offence that would result in a substantial term of imprisonment following conviction. As such, the tweet was also deemed to have met the "serious harm" threshold under the

Defamation Act 2013. Moreover, the judge was satisfied that Mr. Monir successfully established that the tweet at issue had been published to a number of people who understood the words in it to refer to him. Also, the republication of the tweet via WhatsApp was likely to have led to “a significant, but unquantifiable number of people” identifying the claimant from the photograph.

The defendant, who had not posted the tweet on the Bristol UKIP Twitter account himself, denied responsibility for its publication. After reviewing the relevant authorities, Nicklin J. concluded, however, that the defendant was liable for the tweet on the basis of agency: Mr. Wood had created the Bristol UKIP account and retained control over it both practically and by means of his authority as chairman of the Bristol branch. The libellous tweet was posted by Mr. Langley, not on his own account, but in his capacity as campaign manager in the course of executing the task delegated to him by the defendant, i.e. campaigning for Mr. Wood and Bristol UKIP. In Nicklin J.’s judgment, the evidence of Mr. Wood’s knowledge of the tweet in question was also sufficient to infer that “he acquiesced in and thereby authorised its continued publication.”

On the issue of remedies, Nicklin J. concluded that the gravity of the defamatory allegation put it “towards the top end of seriousness” for calculating damages. Although the scale of the publication was fairly limited, the Court assessed the significance of the publishees as well as the extent to which publication to them had tarnished the claimant’s reputation and increased his hurt and embarrassment. Further, the evidence of serious and significant reputational harm was compounded by the defendant’s “mean-spirited stance” and refusal to publicly apologise and withdraw the allegation. Nicklin J. found that the appropriate award was GBP 40 000. If this libel had been published in a national newspaper, a figure of GBP 250 000 or more would have been “easily justified.” Finally, there was no evidence of the defendant threatening to republish the offending tweet or anything similar and thus an injunction was unnecessary in the circumstances.

Monir v Wood [2018] EWHC 3525 (QB) (19 December 2018)

https://www.bailii.org/ew/cases/EWHC/QB/2018/3525.pdf

IRELAND

[IE] Regulator consults public on Draft Media Plurality Policy

Elena Sotirova
European Platform of Regulatory Authorities

On 11 December 2018, the Broadcasting Authority of Ireland (BAI) launched a public consultation process regarding a new draft Media Plurality Policy. BAI's 2017-2019 Statement of Strategy states that the regulator should "promote a plurality of voices, viewpoints, outlets and sources in Irish media". More precisely, the three key strategic objectives of the BAI in this regard are to: facilitate a mix of voices, opinions and sources of news and current affairs in the audiovisual media in order to enhance democratic debate and active citizenship in Ireland; increase the production and availability of culturally relevant audiovisual content for Irish audiences; and foster and promote high-quality programming in the Irish Language.

This consultation is concerned with the draft Media Plurality Policy ("the draft Policy"). The draft Policy articulates the BAI's understanding of the meaning and importance of media plurality and details the measures that it takes and will continue to take to foster a plurality of voices, viewpoints, news outlets and sources in the Irish media. The draft Policy is based on the 2009 Broadcasting Act, the 2014 Competition and Consumer Protection Act and by the BAI's Strategy Statement. The purpose of conducting the consultation process in respect of the draft Policy is to elicit the views of the public and interested stakeholders - including broadcasters and media professionals and owners - on how the BAI views media plurality. The submissions received in response to the public consultation 2018 will inform the BAI's decisions in respect of the final Policy, which is to be published in the first half of 2019.

Against this background, the primary purpose of the draft Policy document is to provide context for the BAI's role in respect of media plurality. The BAI has a statutory role under the 2014 Competition and Consumer Protection Act, which includes providing advice to the Minister on media mergers, and conducting plurality-focused research on a regular basis. The BAI's role also has a European context - particularly in respect of the Council of Europe's 2018 Recommendations on Media Pluralism and Transparency of Media Ownership and the European Convention on Human Rights.

The draft Policy aims in the first place to provide a definition of media plurality that takes account of the extent of the diversity of both media content and media ownership of media; it also addresses this two-fold concept in terms of both external plurality (as regards the spread of ownership and control of media businesses) and internal plurality (in terms of the nature of particular media

content - both political and cultural - and the sourcing methods of media organisations).

The second objective of the consultation is to outline why media pluralism is important. Media pluralism makes an important contribution to a well-functioning democratic society through informed citizens, but its importance must necessarily be considered in the context of a rapidly evolving and highly innovative media environment. Current challenges include significant changes in the consumption of different media; concern regarding disinformation, misinformation and mal-information; the aggregation of personal data; the impact of news filters, intermediaries and algorithms; and threats to the financial ecosystem of news and cultural production.

Lastly, the draft Policy details policy objectives; it also outlines the measures taken by the BAI in order to promote and support media plurality in Ireland. These key activities include: licensing; the BAI's Ownership and Control Policy; the BAI's obligations under legislation related to media mergers legislation; research; media literacy; the BAI's Code of Fairness, Objectivity and Impartiality in News & Current Affairs; the Broadcasting Funding Scheme (including Sound and Vision and the BAI's archiving policy); the Irish Language Action Plan; and dialogue with stakeholders.

The deadline for submitting responses (in respect of the consultation process) to the Irish broadcasting regulator is 30 January 2019.

Public consultation on Draft Media Plurality Policy

http://www.bai.ie/en/download/133461/

ITALY

[IT] AGCOM amends the regulation on the administrative enforcement of copyright online

Ernesto Apa & Marco Bassini
Portolano Cavallo & Bocconi University

On 16 October 2018, the Italian Communication Authority (AGCOM), by resolution no. 490/18/CONS, amended the Regulation on Copyright Enforcement in Electronic Communications Networks (hereinafter the 'Regulation') which had been adopted by resolution no. 680/13/CONS. The goal of this Regulation, which became applicable on 31 March 2014, is to establish an ad hoc accelerated administrative procedure, meant as a public enforcement scheme alternative to the private enforcement mechanism provided for by the Italian law.

The Regulation had vested AGCOM with the power to order providers to remove specific content infringing copyright (in case of websites hosted by servers located in the Italian territory) or to disable access to websites (in case of massive violations or websites hosted by servers located outside the Italian territory).

The most significant amendments provided by resolution no. 490/18/CONS consist of the introduction of measures to assess the recurrence of violations already declared by AGCOM, and of interim measures applicable when, based on a preliminary assessment of the case, a serious harm is imminent.

Under the newly-introduced Article 8-bis of the Regulation, right holders are entitled to submit a new claim to AGCOM if they have already obtained an order requiring the internet service provider to take down or disable access to the website but the relevant violations recur. The procedure is started by a simple notice, on the basis of which AGCOM will investigate whether the claimed violations are still taking place. If AGCOM finds that the infringements are actually recurring, it shall impose an administrative pecuniary sanction ranging from EUR 10 000 to EUR 250 000 within three days, and inform the judicial authorities. When the recurring infringements are on websites hosted by servers located abroad, AGCOM will update the black list of websites to which mere conduit providers are banned from giving access.

Article 9-bis, instead, defines the simplified procedure by which AGCOM is entitled to adopt interim measures in case it is alleged that there is a risk of an imminent, serious, and irreparable harm. Also, in this scenario AGCOM may adopt within three days interim measures directed to hosting or mere conduit providers, on the basis of a preliminary assessment of the circumstances of the case. Once an interim measure is taken, providers shall comply within two days. In any case, they can appeal the order within five days of the notice.

In addition to these new procedures, the Regulation also now includes within the scope of copyright infringements a set of 'indirect violations', i.e. the acts of promoting means to search or access copyrighted works and providing means or devices allowing the search or access to the same or enable the circumvention of digital rights management measures.

Finally, the Regulation establishes that where AGCOM finds that an infringement actually occurred but deems that, based on criteria such as proportionality and adequacy, neither of the available orders (removal and disabling access) would be appropriate, the case is dismissed but notice is given to the law enforcement authorities.

Delibera n. 490/18/CONS, Modifiche al Regolamento in materia di tutela del diritto d'autore sulle reti di comunicazione elettronica e procedure attuative ai sensi del decreto legislativo 9 aprile 2003, n. 70, di cui alla delibera n. 680/13/CONS

https://www.agcom.it/documentazione/documento?p_p_auth=fLw7zRht&p_p_id=101_INSTANCE_ls3TZlzsK0hm&p_p_lifecycle=0&p_p_col_id=column-1&p_p_col_count=1&_101_INSTANCE_ls3TZlzsK0hm_struts_action=%2Fasset_publisher%2Fview_content&_101_INSTANCE_ls3TZlzsK0hm_assetEntryId=12536311&_101_INSTANCE_ls3TZlzsK0hm_type=document

AGCOM, Resolution no. 490/18/CONS

[IT] Developments in Italian legislation concerning the promotion of European works

Ernesto Apa & Marco Bassini
Portolano Cavallo & Bocconi University

On 30 December 2018 the Italian Parliament passed the 2019 Budget Law, which contains a variety of provisions affecting the legal framework applicable to audiovisual media services and electronic communications.

Regarding legislation concerning audiovisual media services, Parliament has postponed the entry into force of some obligations introduced by Legislative Decree no. 203 of 7 December 2017 as part of the Franceschini Reform. In particular, the application of certain obligations has been postponed from 1 January 2019 to 1 July 2019, namely:

- The increase of the quota (from 50% to 53% of the of the broadcasting time) that broadcasters must reserve to European works (Article 44-bis, para. 1, lit. a);

- The obligation for broadcasters to reserve to audiovisual works of Italian original expression, produced anywhere, a quota (i.) of 50% of the quota for European works (i.e., 26.5% of the broadcasting time) for public service broadcaster; (ii.) of one third of the quota for European works (17.7% of the broadcasting time) for private broadcasters (Article 44-bis, para. 2);

- The increase (from 10% to 12.5% of the net annual revenue) of the investment quota that private broadcasters must reserve to the pre-acquisition, acquisition, or production of European works, of which at least five sixths to be reserved for works produced by independent producers (Article 44-ter, para. 1, lit. a);

- The increase (from 3.2% to 3.5% of the net annual revenue) of the investment sub-quota that private broadcasters must reserve to cinematographic works of Italian original expression produced anywhere by independent producers (Article 44-ter, para. 2, lit. a);

- The increase (from 15% to 18.5% of the net annual revenue) of the investment quota that the public service broadcaster RAI must reserve to the pre-acquisition, acquisition, or production of European works, of which at least five sixths to be reserved to works produced by independent producers (Article 44-ter, para. 3, lit. a);

- The increase (from 3.6% to 4% of the net annual revenue) of the investment sub-quota that the public service broadcaster RAI must reserve to cinematographic works of Italian original expression produced anywhere by independent producers (Article 44-ter, para. 4, lit. a);

- The obligation for VOD service providers targeting Italian consumers, even if based abroad, to reserve at least 20% of the net annual revenue gathered in Italy to European works produced by independent producers, in particular to recent

works (i.e., produced within the last five years) (Article 44-quarter, para. 2);

- All the relevant catalogue share and investment obligations for VOD providers provided for by Legislative Decree no. 203/2017 and to be regulated in detail by an ad-hoc regulation to be approved by the Italian Communication Authority (Article 44-quarter, para. 6).

Legge 30 dicembre 2018, n. 145, Bilancio di previsione dello Stato per l'anno finanziario 2019 e bilancio pluriennale per il triennio 2019-2021

http://www.gazzettaufficiale.it/eli/id/2018/12/31/18G00172/sg

Act n. 145 of 30 December 2018

[IT] New measures provided for by the 2019 Budget Law governing the 700 MHz frequencies band repurposing and the transition from DVB-T to DVB-T2

Ernesto Apa & Marco Bassini
Portolano Cavallo & Bocconi University

On 30 December 2018 the Italian Parliament passed the 2019 Budget Law, which contains a variety of provisions affecting the legal framework applicable to electronic communications. In particular, the law has introduced some amendments to relevant norms of the Law no. 205 of 27 December 2017 (2018 Budget Law) governing the reframing of the 700 MHz frequencies band and the transition of digital terrestrial television from DVB-T to DVB-T2 standard.

The law delegates to the Italian Communication Authority (AGCOM) and the Ministry of Economic Development (MISE) the responsibility to adopt the resolutions establishing the criteria and the modalities for the implementation of this process.

First of all, the 2019 Budget Law repealed the provision stating that at least one third of the overall broadcasting capacity must be assigned to local broadcasting (i.e., channels that do not have a nationwide distribution, only available in a specific portion of the Italian territory).

The 2019 Budget Law provides for the allocation of additional broadcasting capacity to digital terrestrial television national network operators (i.e., the carriers with nationwide access). The relevant public tender will be launched by the MISE by 30 November 2019 in accordance with the procedure to be established by AGCOM by 30 September 2019. The law also determines the principles and criteria according to which such procedure shall be carried out.

Finally, the 2019 Budget Law has postponed some of the deadlines established by the 2018 Budget Law. This includes the deadline for the MISE to launch the procedures aimed at allocating the use rights to frequencies for the digital terrestrial television to network operators, in order to make broadcasting capacity available to local audiovisual media service providers. The procedure shall start by 30 March 2019 and be completed by 30 October 2019.

Legge 30 dicembre 2018, n. 145, Bilancio di previsione dello Stato per l'anno finanziario 2019 e bilancio pluriennale per il triennio 2019-2021

http://www.gazzettaufficiale.it/eli/id/2018/12/31/18G00172/sg

Act n. 145 of 30 December 2018

LITHUANIA

[LT] Tax incentive level for film production increased to 30%

Milda Vakarinaitė
Lithuanian Film Centre (LKC)

On 11 December 2018, the Lithuanian Parliament adopted a law on tax incentives for film production in Lithuania. The offers the opportunity to save up to 30% of a film's production budget spent in Lithuania through the private investment scheme. The new law will apply to the period 2019-2023 and replaces the expired 20% tax incentive scheme that was in effect from 2014 until the end of 2018.

According to Lithuanian Film Centre, the previous tax incentive scheme demonstrated positive results - since its introduction in 2014 there has been a rapid growth in the number of foreign film productions; this increase has stimulated the local film industry and fostered private investments in this sector. The new law was adopted to maintain these positive developments in the future and ensure Lithuanian film industry's competitiveness in the region.

The newly confirmed tax incentive scheme is regulated by articles 17^2 and 46^2 of the Law on Corporate Profit Tax of the Republic of Lithuania. These articles provide the possibility for film producers to attract funding from private business entities ("donors"), who are incentivised to support film productions by the offer of tax benefits. The tax benefit for donors is twofold:

-A donor can deduct 75% of its contribution to a film's production from its taxable income (Article 17^2);

-A donor can deduct the full amount of its contribution from its corporate tax liability (Article 46^2).

A donor cannot reduce their tax liability by more than 11.25% of their financial contribution to a film. The tax incentive is available in respect of domestic films, co-productions and foreign films (produced under a service agreement with a local production company) with a minimum production spend in Lithuania of EUR 43 000. To be eligible for the scheme, productions must conform to cultural content assessment criteria and production requirements.

Lietuvos Respublikos Pelno mokesčio įstatymo Nr. IX-675 17^2 straipsnio pakeitimo įstatymas

https://www.e-tar.lt/portal/lt/legalAct/64a43f80043e11e9a5eaf2cd290f1944

Act amending Article 17^2 of the Law on Corporate Profit Tax of the Republic of Lithuania No. IX-675

Lietuvos Respublikos Pelno mokesčio įstatymas

https://www.e-tar.lt/portal/lt/legalAct/TAR.A5ACBDA529A9/bvfpgdKMku

Act on Corporate Profit Tax of the Republic of Lithuania (updated and consolidated version, see articles 17² and 46²)

NETHERLANDS

[NL] Column about a Dutch well-known comedian judged unlawful because it was needlessly offensive

Gijs van Til
Institute for Information Law (IViR), University of Amsterdam

In a judgement of March 14 2018, but published on October 31 2018, the District Court of Amsterdam ruled that a publisher of a Dutch free national newspaper had acted unlawfully by publishing multiple columns — both in print and on its website — in which a columnist accused a well-known Dutch comedian of sexual harassment and rape. The comedian had requested this declaratory decision, and claimed damages for the violation of his right to honor, good name, and reputation.

In interim injunction proceedings, lodged by the comedian in 2015, the Court had already ordered the publisher to remove two columns from its website and archives. Contrary to what the publisher argued, the Court ruled in these proceedings that, even though not mentioned by name, several circumstances — including reactions below the column and a tweet by the author with a video of the accused comedian — made it possible to still trace these columns back to the comedian. The publisher, stating that the columnist should be free to write about her experiences, also argued that these columns were not unlawful and that their removal would lead to an unjustified restriction of the publisher's right to freedom of expression. The Court acknowledged the columnist's rights to write about her own experiences, but reiterated that even in a column no one may be accused lightly and that the accusations should be supported by the available evidence. Given the seriousness of the allegations, the Court found that the columns lacked sufficient factual basis and that the publishing of these columns was therefore unlawful, justifying a restriction of the publisher's right to freedom of expression. The publisher subsequently removed the two columns from its website and archives. In February 2017, however, a new column appeared both in the newspaper and on the website, in which the same columnist wrote about the incident in even stronger words, (implicitly) accusing the comedian of rape. At the request of the comedian, this column and a tweet referring to the column were also removed by the publisher.

In the substantive proceedings leading to the judgment of 14 March 2018, the comedian claimed, in short, that the columns containing the allegations and the publisher's actions in this regards had damaged his right to honor, good name, and reputation, and that he had thereby suffered non-pecuniary damages. While mostly resting with the judgment of the Court in preliminary proceedings, the publisher repeated the argument with regards to the February 2017 column; that the piece could not be traced back to the comedian and that it could not be held responsible for tweets or reactions by third parties naming the claimant.

In the judgment, the Court weighed the publisher's right to freedom of expression as laid down in Article 10 ECHR (European Convention on Human Rights) against the comedian's interest in protecting his honor, good name, and reputation, and the rights to respect for his private life, encompassed in Article 8 ECHR. The Court reiterated that the balancing of these interests is dependent on a variety of circumstances, for example the factual basis and substantiation of the allegations. Also, it pointed out that the format of a column leaves an author with a greater freedom to express his or her own opinion. According to the Court this, however, did not permit the columnist to make statements that were needlessly offensive. Moreover it found that the allegations were insufficiently substantiated. With regards to the columns of 2015, the Court therefore overruled the judgment of the Court in preliminary proceedings: as to the February 2017 column, the Court found that this one was unlawful as well. In the view of the Court, the publisher should have known that this column could also be easily traced back to the comedian, rendering it unlawful towards the comedian.

In the context of the damages, the Court attached importance to the repetitive nature of the publisher's wrongdoing. Also taking into account the impact of the allegations on the reputation of a well-known person, the Court ordered the publisher to pay EUR 10 000 in non-pecuniary damages.

Rechtbank Amsterdam 14 maart 2018, ECLI:NL:RBAMS:2018:1555

https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBAMS:2018:1555

District Court of Amsterdam, 14 March 2018, ECLI:NL:RBAMS:2018:1555

[NL] Dutch government presents course of action against disinformation in the build-up to national and European elections.

Gijs van Til
Institute for Information Law (IViR), University of Amsterdam

In a letter sent to Dutch parliament on 13 December 2018, the Dutch Minister of the Interior and Kingdom Relations set out the Dutch governmental plans to tackle disinformation in the build-up to the European and national provincial elections of May and March 2019, respectively. The letter, in part, aims to implement motions that were adopted earlier in this context by the Dutch parliament.

The Minister opens the letter by reiterating that the spread of disinformation with the goal to undermine and destabilize the democratic order poses a real threat. The government's efforts are aimed at countering state actors — or actors that can be related to state actors — that covertly try to influence public opinion. At the same time, referring to recent research (see e.g. IRIS 2018-9/29), the Minister acknowledges that the impact of disinformation in the Netherlands is currently limited.

The Minister starts by setting out the leading principles in the Dutch government's approach to tackle disinformation. Among other things, the emphasis is on the importance of ensuring the protection of human rights and of establishing a diverse media landscape and a high level of media literacy among citizens. Highlighting the transnational character of the phenomenon, the letter additionally welcomes efforts taken at the level of the European Union. This includes the Action Plan against disinformation, which has been presented on 5 December 2018 and the EU Code of Practice on Disinformation (see IRIS 2019-1/7) which has been signed by online platforms and representatives of the advertising industry.

The Dutch government's approach has two focuses in parallel. First, it will initiate independent scientific research on the effects of social media and internet search engines in the build-up to the elections. The research will, among other things, look into transparency of the origin of certain information. It will conduct both quantitative and qualitative analyses. The results will be presented in the summer of 2019. The second focus is on media literacy; in addition to actions already taken in this area, the Dutch government will launch an online awareness campaign that aims to make citizens more aware of the phenomenon and existence of disinformation and of the responsibility of citizens in recognizing such information. The Minister also highlights the importance of freedom of expression and independence of the press, and the Minister therefore emphasizes that the government itself will refrain from determining if a specific message contains disinformation. The campaign is set to start in February 2019.

Brief van 13 december 2018 van Minister Ollongren (Binnenlandse Zaken en Koninkrijksrelaties) aan de Tweede Kamer inzake desinformatie en beïnvloeding verkiezingen

https://www.rijksoverheid.nl/documenten/kamerstukken/2018/12/13/kamerbrief-over-dreiging-desinformatie-en-beinvloeding-verkiezingen

Letter of 13 December 2018 from Minister Ollongren (Interior and Kingdom Relations) to the House of Representatives concerning disinformation and influencing elections

ROMANIA

[RO] Support for the Romanian cinema industry

Eugen Cojocariu
Radio Romania International

The Romanian Government and the national public broadcaster will continue to support the cinema industry in 2019 (see IRIS 2003-2/23, IRIS 2005-8/28, IRIS 2010-7/34, IRIS 2011-2/5, IRIS 2013-9/22, IRIS 2016-10/23, IRIS 2018-2/29, IRIS 2018-3/29, IRIS 2018-8/37).

The Romanian Government will continue to support the film industry by granting state aid to film producers who will promote the national cultural identity and national minorities in Romania, as well as geographical areas or a city in the country. The National Commission for Strategy and Prognosis announced the opening of the 2019 session for the submission of application forms for funding under the State aid scheme to support the film industry, starting with 3 January 2019. The Commission did not mention the budget for 2019. In 2018 it was originally RON 60 million (EUR 12.9 million) and was later supplemented to RON 232 million (EUR 49.9 million).

The Romanian Film Commission, which decides the recipients of the State aid scheme for the 2019 session is composed of Adrian Titieni, actor, Honorary President of UNATC (Romanian Film and Theatre University); Călin Stănculescu, film critic, member of the Film Critics Association of the Romanian Film Association, member of the European Film Academy; Sterian Alexandru, cinematographer, PhD in cinematography; Stan McCoy, Motion Picture Association president; and Dan Chişu, actor, director, and producer.

Applications for funding shall be analyzed in the order of registration and shall be settled within the approved commitment appropriations for the year 2019. The Commission will regularly publish on its website the list of financing applications submitted and the status of their analysis. Unsolved funding requests after the 2019 budget is exhausted will be returned to applicants, and the Commission will communicate on its website that no further funding applications can be submitted.

By 3 December 2018, 17 applications for financing totaling over RON 110.18 million (EUR 23.69 million) were submitted, out of which 6 were approved, the total of approved state aid amounting to over RON 39.92 million (EUR 8.58 million). Ten financing applications requesting state aid amounting to over RON 65.26 million (EUR 14.03 million) are still under evaluation. Further funding applications may be submitted based on Government Decision no. 421/2018, until the budget allocated for 2018 is exahusted - this will be communicated on the National Commission for Strategy and Prognosis website, and further applications will no longer be accepted.

In another development, the public broadcaster Televiziunea Română (Romanian Television, TVR), which contributes to the National Cinematographic Fund with 15% of its advertising revenues, has chosen the projects it will support following the financing session launched in November 2018. In the frame of the 2018 financing session, 19 independent Romanian producers will benefit from a total of RON 2.4 million (EUR 0.516 million). So far, Romanian Television has funded more than 120 films, of all genres, shot by debutants or reknowned directors, who have been awarded prizes in major festivals or had box office success.

Independent producers in the Romanian film market could benefit from the 2018 funding session under the following conditions: applicants for funding from the National Cinematographic Fund must be holders of a direct credit agreement with the National Cinematography Center; the applicants do not have/did not have a TVR financing contract, a contract whose performance was vitiated, suspended or interrupted for reasons beyond the control of TVR; feature fiction films and feature documentaries for which funding was requested must be in the post-production stage or, at least, in the shooting phase.

Evaluation of applications was conducted based on an analysis of synopsis, treatment, script; a 15 minute movie sequence; and the producer's acceptance of his fee ceiling, which will not exceed 5% of the total amount of RON 2.4 million allocated for financing. Documentary films will receive in total up to one third of the total amount of RON 2.4 million allocated for financing.

Anunţ privind deschiderea sesiunii 2019 - Schema de ajutor de stat privind sprijinirea industriei cinematografice

http://www.cnp.ro/user/repository/schema_ajutor_de_stat/anunt_deschidere_sesiune_2019.pdf

Notice on opening of 2019 session - State aid scheme on the support to the cinematographic industry

Ordin privind componenţa Comisiei de Film din România pentru sesiunea 2019

http://www.cnp.ro/user/repository/schema_ajutor_de_stat/Ordin_nr_316_din_21_12_2018.pdf

Order on the composition of the Romanian Film Commission for the session 2019

Anunţ privind suplimentarea bugetului în 2018

http://www.cnp.ro/user/repository/schema_ajutor_de_stat/anunt_suplimentare_buget_2018.pdf

Announcement on Supplementing the 2018 Budget

[RO] Support for the expansion of DTT broadcasting network in Romania

Eugen Cojocariu
Radio Romania International

The European Investment Bank (EIB) is lending EUR 9.78 million to Romanian state-owned telecom services provider Societatea Naţională de Radiocomunicaţii SA (Radiocom) to partially finance the digitalisation of the country's terrestrial broadcasting infrastructure (see IRIS 2009-9/26, IRIS 2010-3/34, IRIS 2010-7/32, IRIS 2010-9/35, IRIS 2011-4/33, IRIS 2013-5/38, IRIS 2013-6/30, IRIS 2014-4/26, IRIS 2014-5/29, IRIS 2014-9/27, IRIS 2015-5/33, IRIS 2016-2/26, and IRIS 2017-1/29).

This transaction is backed by the European Fund for Strategic Investments (EFSI), the financial pillar of the Investment Plan for Europe, known as "Juncker Plan". The project facilitates the switchover from analogue to digital TV distribution in the country through 228 broadcasting sites. A digital terrestrial television broadcasting network will be rolled out throughout Romania to provide 94% population coverage and 81% territorial coverage. The project supports the roll-out of a digital TV broadcasting network based on the DVB-T2 standard, to enable the switchover from analogue to digital terrestrial television distribution. The investments will also contribute to a more efficient use of the highly valuable radio spectrum.

EIB's Vice-President Andrew McDowell commented: "The EIB loan will finance the digitalisation of public terrestrial broadcasting in line with national and European policies, supporting the transition of TV to digital broadcasting. This will facilitate the development of the information society to benefit the people of Romania." On the other hand, the European Commissioner for Regional Policy, Romanian Corina Crețu, said that "[w]ith this new agreement, the Juncker Plan is making a very visible difference to the everyday lives of Romanians by bringing better quality TV into their homes. I am very proud of this new EFSI project and I can only encourage Romania to make more use of the great opportunities offered by the Juncker Plan for growth and jobs in the country but also to improve people's quality of life."

The CEO of Radiocom, Eugen Brad, also stated that "the EIB financing will enable the implementation of digital terrestrial television in Romania, a unique opportunity to expand the audiovisual industry, viewed from the perspective of the image quality of television programmes provided through electronic communications networks, and their interactivity in relation to the requirements of the beneficiaries of these services. Radiocom's transition project is one of the strategic objectives of our company that will ensure respect for the right to information of the Romanian population and will also strengthen our company's position in the digital terrestrial television market."

Romania started the transition to the digital terrestrial broadcasting system of television programs on 17 June 2015. Radiocom announced that the testing phase

of the digital television implementation started in the biggest cities, in Bucharest, Cluj-Napoca, Iasi and Timisoara. On 10 June 2015, the Romanian Government approved an Emergency Ordinance to ensure the transition from analogue terrestrial to digital terrestrial television, and the implementation of multimedia services at national level.

BEI acordă Radiocom un împrumut de 9,78 milioane de euro pentru dezvoltarea infrastructurii pentru televiziunea digitală - comunicat de presă 14.12.2018

http://www.economica.net/bei-acorda-radiocom-un-imprumut-de-9-78-milioane-de-euro-pentru-finantarea-partiala-a-digitalizarii-infrastructurii-terestre_162534.html#ixzz5bl2Ffur6

EIB grants Radiocom a loan of EUR 9.78 million for the development of digital television infrastructure - press release of 14 December 2018

[RO] Three new draft laws to complete the Audiovisual Law

Eugen Cojocariu
Radio Romania International

The Chamber of Deputies (lower chamber of the Romanian Parliament) has adopted three draft laws on the modification and completion of the Audiovisual Law no. 504/2002. The Senate (upper chamber) will take the final decisions (see IRIS 2010-1/36, IRIS 2011-4/31, IRIS 2011-7/37, IRIS 2013-3/26, IRIS 2013-6/27, IRIS 2014-1/37, IRIS 2014-2/31, IRIS 2014-7/29, IRIS 2014-9/26, IRIS 2015-10/27, IRIS 2016-2/26, IRIS 2016-10/24, IRIS 2017-1/30, IRIS 2017-7/28, IRIS 2018-6/30, IRIS 2018-8/36, IRIS 2018-10/22).

On 14 November 2018, the Deputies adopted a completion of the Article 26 of the Audiovisual Law due to the fact that Romanian broadcasters frequently address health topics by misunderstanding the obligation of impartiality, with the presentation of unqualified minority opinions as if they had the same weight as the scientific consensus, which is based on evidence and studies validated by the international scientific community. Accuracy of facts is a matter of national importance when addressing a subject with major potential for public health, considering the initiators. The Deputies say the draft Law can prevent irresponsible communication about vaccination and the benefits of vaccination of children, given that in Romania and other countries the vaccination rate has dropped dramatically due to anti-vaccination messages in the media. After the Article 261 a new Article 262 was introduced, which stipulates, inter alia, that for reasons of public health and to ensure access to objective information for the public, within a broadcast/program that addresses health issues broadcasters have the obligation to make a clear distinction between opinions and facts, to encourage the presentation of evidence-based medical arguments, and to include the opinion of a specialist with experience in the subject.

On 21 November 2018, the Deputies adopted a completed version of the Audiovisual Law, which introduces the obligation for broadcasters to display or communicate, on TV and radio programs (news, debates, talk shows) which address domestic violence, the single national non-stop free telephone number (Telverde) for victims of domestic violence, throughout the show. According to official statistics, in Romania someone experiences domestic violence every 30 seconds, but the number of phone calls to the line dedicated to this issue is very low. In this respect, the draft Law introduces a point 13 after the Art.icle 17 (1) d) point 12, about the protection of vulnerable social groups, above all protection of victims of domestic violence. After Chapter III4 a new Chapter III5, containing Article 422 - 424 provisions about the protection of victims of domestic violence, obliges the audiovisual broadcasters to provide information to victims on the existence of the dedicated telephone number.

On 19 December 2018, the Lower Chamber of the Parliament adopted a draft Law intended to fight against the dramatic decline in participation in elections since

1990. Radio and TV broadcasters with national coverage and the largest audience will be required to run, 60 days before the elections, educational information campaigns about the importance of exercising the right to vote. In Article 1, a new point 151 is inserted after point 15, as well as in Article 17 (1) d) after point 11, a new point 111 is inserted, about the educational audiovisual communication in the public space on the importance, promotion and encouraging of the exercise of the right to vote. Article 35 (2) is also modified in the sense that the above mentioned announcements on the importance of voting are not included in the hourly limit of advertisment imposed on broadcasters.

As for the third draft Law, the proposed Articles 422 - 424 provide that the Permanent Electoral Authority will supervise the information campaigns and the production of the messages (radio and TV spots), and will pay for the announcements. The announcements will have to be aired 3-6 times daily, including once in the main news program, between 06.00 and 22.00. The National Audiovisual Council (CNA) will establish the list of ten radio stations and fifteen TV stations with national coverage, with informative programs in their schedule and the best audience during the previous year, involved in the campaigns. CNA will provide the Permanent Electoral Authority, within 30 days after the elections, with a detailed monitoring report on broadcasting of spots by TV and radio stations. For the areas where the minority population exceeds 20% of the population, the Romanian Television and Radio Romania (the public broadcasters) will also broadcast the messages in the languages of the respective national minorities.

Propunere legislativă pentru modificarea şi completarea art. 261 din Legea audiovizualului nr. 504/2002 - forma adoptată de Camera Deputaţilor

http://www.cdep.ro/pls/proiecte/docs/2018/cd374_18.pdf

Draft Law for amending and completing Article 261 of the Audiovisual Law no. 504/2002 - form adopted by the Chamber of Deputies

Propunere legislativă pentru modificarea şi completarea art. 261 din Legea audiovizualului nr. 504/2002 - expunere de motive

http://www.cdep.ro/proiecte/2018/300/70/4/em484.pdf

Draft Law for amending and completing Article 261 of the Audiovisual Law no. 504/2002 - statement of reasons

Propunere legislativă pentru modificarea şi completarea Legii audiovizualului nr. 504/2002 - forma adoptată de Camera Deputaţilor

http://www.cdep.ro/pls/proiecte/docs/2018/cd413_18.pdf

Draft Law for amending and completing of the Audiovisual Law no. 504/2002 - form adopted by the Chamber of Deputies

Propunere legislativă pentru modificarea şi completarea Legii audiovizualului nr. 504/2002 - expunere de motive

http://www.cdep.ro/proiecte/2018/400/10/3/em536.pdf

Draft Law for amending and completing of the Audiovisual Law no. 504/2002 - statement of reasons

Propunere legislativă pentru modificarea şi completarea Legii audiovizualului nr. 504/2002, cu modificările şi completările ulterioare - forma adoptată de Camera Deputaţilor

http://www.cdep.ro/pls/proiecte/docs/2018/cd693_18__1_.pdf

Draft Law for amending and completing of the Audiovisual Law no. 504/2002, with further modifications and completions - form adopted by the Chamber of Deputies

Propunere legislativă pentru modificarea şi completarea Legii audiovizualului nr. 504/2002, cu modificările şi completările ulterioare - expunere de motive

http://www.cdep.ro/proiecte/2018/600/90/3/em916.pdf

Draft Law for amending and completing of the Audiovisual Law no. 504/2002, with further modifications and completions - statement of reasons

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