IRIS newsletter

IRIS 2019-4

A publication
of the European Audiovisual Observatory

European Audiovisual Observatory

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

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ISSN 2078-6158

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EDITORIAL

After two years of intense discussion, the procedure for approving the EU Copyright Directive seems to be drawing to an end. This new directive aims to adapt EU copyright rules to a context in which digital technologies have transformed the way audiovisual works and other creative content are produced, distributed and accessed.

As you are surely aware, certain aspects of this directive have given rise to a harsh polemic, notably with regard to its Article 13 (renumbered as Article 17) which provides that *an online content-sharing service provider performs an act of communication to the public or an act of making available to the public ... when it gives the public access to copyright-protected works or other protected subject matter uploaded by its users*.

Article 11 (renumbered as Article 15), introducing what some critical voices have nicknamed the “link tax”, has also been the subject of controversy.

The Copyright Directive was submitted to a plenary vote in the European Parliament on 26 March 2019, and now the final say belongs to the Council of the European Union, which should release its decision shortly. Once adopted, the directive will have to be transposed by the EU member states into their national legislation, which will surely provide for more political infighting. Future issues of this newsletter will keep you updated on any major developments in this regard.

Another development at EU level with ground-breaking potential is the European Commission’s decision to accept film studios’ commitments on licensing contracts for cross-border pay-TV services. This decision has important implications for the future of the debate on the territoriality of copyright law, and its effects will be closely followed by the Observatory.

There are many other interesting issues available on the electronic pages of this newsletter. Moreover, as if this were not enough, we have just published an in-depth “Mapping of national rules for the promotion of European works in Europe”, which is freely available here.

Enjoy your read!

Maja Cappello, editor
European Audiovisual Observatory

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INTERNATIONAL

COUNCIL OF EUROPE

Committee of Ministers: Financial sustainability of quality journalism in the digital age

Ismail Rabie
European Audiovisual Observatory

On 13 February 2019, the Council of Europe's Committee of Ministers adopted a Declaration on the financial sustainability of quality journalism in the digital age. The Declaration encourages the 47 Council of Europe member states to put in place a regulatory and policy framework that facilitates the operation of quality journalism in Europe, while not constraining media outlets' editorial and operational independence. The Declaration, which emphasises the importance of media in serving public interests and safeguarding core values and principles of democracy, recommends the implementation of a series of measures aimed at addressing the impact of the digital transition on the media landscape, as well as other ongoing challenges, in order to preserve a viable media ecosystem.

While it has certainly fostered freedom of expression, the diversity of opinions, and the flow circulation of information - as well as benefiting the tech industry and the whole economy - the digital transition has undeniably affected journalistic practices, news consumers' habits, and the "traditional" media industries, including television and newspapers.

In particular, the Declaration refers to the increasingly influential role played by online platforms in the media ecosystem and the notable shift in their business models and content-related activities, including content filtering, organisation and recommendation. The Committee of Ministers also highlights the decline of the news industry in terms of revenues, cut-backs, reduced news coverage and the deterioration of journalists' working conditions, as well as bad management leading to the prioritising of speed and volume over substance. Coincidentally, there is a growing scepticism towards traditional public institutions and established media outlets. In addition, law enforcement online and the lake of resources and effective tools favours the propagation of misinformation, disinformation and hate speech, particularly online.

Recommended measures to respond to these challenges include: a beneficial tax regime for the production and distribution of journalistic content; financial support schemes for public media services (both online and offline) and the possibility for media outlets to operate as not-for-profit organisations and to receive donations from philanthropic programmes; developing and strengthening public policy measures at all geographical levels in Europe (paying attention to media serving local and rural communities); and establishing regulatory and policy frameworks,

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while safeguarding editorial and ethical journalistic standards and media independence. With regard to online platforms, the Committee of Ministers expresses concern about the lack of transparency in the way they select and rank news. The Committee also stresses the need for those platforms to consider their responsibilities as main gateways for news dissemination and to adopt mechanisms and standards to ensure intermediaries' accountability and compliance with their obligation to tackle malicious and infringing content particularly while performing editorial-like activities and to ensure the transparency of their algorithm. Finally, the Declaration stresses the importance of ensuring a fair financial reward for the production of news and other media content; this may include the redistribution of revenues arising from the monetisation of news-related content for the benefit of news content providers. The Committee of Ministers insists on fostering dialogue and cooperation between the relevant stakeholders, including journalists and the digital industry, and on the need to involve them in international and national policy-making initiatives; It also highlights the importance of media literacy and user empowerment.

Declaration by the Committee of Ministers on the financial sustainability of quality journalism in the digital age, Decl(13/02/2019)2, 13 February 2019, Strasbourg

https://search.coe.int/cm/pages/result_details.aspx?objectid=090000168092dd4d

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Committee of Ministers: Warning on risk of algorithms being used to manipulate social and political behaviour

Léa Chochon
European Audiovisual Observatory

In a Declaration adopted on 13 February 2019, the Committee of Ministers of the Council of Europe warned its 47 member states against the risk presented by algorithmic processes, particularly micro-targeting techniques, with regard to individuals' decision-making and the formation of opinions.

Public awareness remains very limited regarding the extent to which everyday devices generate and use vast amounts of data. Apart from the notion of the protection of such data, the way in which it is used to train machine-learning technologies presents serious risks for the process of forming opinions and taking decisions, particularly due to a lack of awareness among the general public and the stakeholders, and an insufficient number of more in-depth studies on the subject. Data is used by these technologies to prioritise search results, from which it is possible to deduce individuals' personal preferences, the information flows to which they have access, and the way in which they use their data; sometimes it is also used to subject individuals to behavioural experimentation. Moreover, the fine-grained and personalised levels of algorithmic persuasion are used not only to categorise people, but also increasingly to influence their emotions and thoughts so that their very ability to form an opinion and take a decision independently are threatened.

In view of all this, the Committee of Ministers:

- draws attention to the growing threat to the right of human beings to form opinions and take decisions independently of automated systems;

- encourages member states to assume their responsibility to address this threat at senior level, for example by using additional protective frameworks related to personal data;

- acknowledges the need to consider, at both national and international levels, the growing onus on the industry,

- stresses the role of academia in producing research on the capacity of algorithms tools to enhance or interfere with the cognitive sovereignty of individuals;

- recommends an appropriate assessment of the regulatory frameworks for political communication and election procedures and the possible need to adopt additional measures in order to guarantee the appropriate, democratic supervision of the development and use of algorithmic tools.

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These issues will be covered in the near future at a Council of Europe conference in Helsinki on 26 and 27 February 2020 on the theme “Governing the Game Changer - Impacts of artificial intelligence development on human rights, democracy and the rule of law”.

Declaration (13/02/2019)1 by the Committee of Ministers on the manipulative capabilities of algorithmic processes, 13 February 2019

https://search.coe.int/cm/pages/result_details.aspx?ObjectId=090000168092dd4c

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UNITED KINGDOM

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

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The European Court of Human Rights (ECtHR) has delivered a judgment on the compatibility of the right to privacy under Article 8 of the European Convention on Human Rights (ECHR) with the collection, retention and further use of personal data for purposes of police intelligence, while two earlier cases reported in IRIS on the bulk interception of personal communications for intelligence purposes and the right to privacy are pending before the Grand Chamber of the European Court of Human Rights (ECtHR) (Centrum för Rättvisa v. Sweden, IRIS 2018-8/3, and Big Brother Watch and Others v. the United Kingdom, IRIS 2018-10/1).

The applicant in Catt v. the United Kingdom has been active in the peace movement for many years and has regularly attended public demonstrations. He participated in demonstrations and meetings organised by labour unions, in a pro-Gaza protest and in several (violent) demonstrations against a United States-owned company which produces weapons in the United Kingdom. Mr Catt was arrested twice at such demonstrations for obstructing the public highway, but he has never been convicted of any offence. In 2010, he made a subject access request to the police under the Data Protection Act for information relating to him. Sixty-six entries from nominal records for other individuals and information reports concerning incidents at demonstrations which incidentally mentioned him were disclosed to him. Those records were held in a police database known as the "Extremism database". Mr Catt requested the Association of Chief Police Officers ("ACPO") to delete all entries from nominal records and information reports which mentioned him. As his request was dismissed, he issued proceedings against the ACPO for judicial review, contending that the retention of his data was not "necessary" within the meaning of Article 8, section 2 ECHR. The Supreme Court finally upheld the refusal to delete the data, identifying three reasons for the need to retain the data at issue: (1) to enable the police to make a more informed assessment of the risks and threats to public order; (2) to investigate criminal offences where there have been any, and to identify potential witnesses and victims; (3) to study the leadership, organisation, tactics and methods of protest groups which have been persistently associated with violence. The majority of the Supreme Court was of the view that sufficient safeguards existed to ensure that personal information was not retained for longer than required for the purpose of maintaining public order and preventing or detecting crime. It observed that political protest is a basic right recognised by the common law and protected by Articles 10 and 11 ECHR, but that the collection and retention of the data concerning Mr Catt was justified and proportionate, as the material was not usable or disclosable for any purpose other than police purposes, except as a

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result of an access request by the subject under the Data Protection Act, and it was not used for political purposes or for any kind of victimisation of dissidents. The Supreme Court also underlined a basic principle about intelligence gathering: that it is necessarily acquired indiscriminately in the first instance and that its value can only be judged in hindsight, as subsequent analysis for particular purposes discloses a relevant pattern.

Mr Catt lodged an application with the ECtHR, complaining that the retention of his data by the police was in violation of his right to privacy as protected by Article 8 ECHR. The ECtHR expressed its concern that the collection of data by the police relating to persons involved in "domestic extremism" did not have a clearer and more coherent legal base. It observed that in light of the general nature of police powers and the variety of definitions for the term "domestic extremism", there was significant ambiguity over the criteria being used by the police to govern the collection of the data in question. After this consideration, the ECtHR focused on the question of whether the collection, retention and use of Mr Catt's personal data was necessary in a democratic society. The government argued that due to the extensive amount of judicial scrutiny at domestic level, the question of whether it was necessary to collect and retain Mr Catt's data fell within the state's margin of appreciation and it was therefore not for the ECtHR to decide. However, the ECtHR was of the opinion that in this case there were "compelling reasons" to substitute its own assessment of the merits of the case for that of the competent national authorities. In the first place, the ECtHR considered it significant that personal data revealing a political opinion fell within the special categories of sensitive data attracting a heightened level of protection. The ECtHR also reiterated the importance of examining compliance with the principles of Article 8 ECHR where the powers vested in the state are obscure, creating a risk of arbitrariness, especially where the technology available is continually becoming more sophisticated. As to whether there was a pressing need to collect the personal data concerning Mr Catt, the ECtHR accepted that there was: it agreed with the UK Supreme Court that the nature of intelligence gathering was such that the police first needed to collect the data before evaluating its value. Although Mr Catt himself was not suspected of being directly involved in any criminal activities, it was justifiable for the police to collect his personal data, as he had participated repeatedly and publicly aligned himself with the activities of a violent protest group. As to whether there was a pressing need to retain Mr Catt's data, the ECtHR considered that there was not. It referred to the absence of effective safeguards relating to personal data revealing political opinions. The ECtHR emphasised that "engaging in peaceful protest has specific protection under Article 11 of the Convention, which also contains special protection for trade unions, whose events the applicant attended". In this connection, it noted that the definition of "domestic extremism" referred to the collection of data on groups and individuals who act "outside the democratic process". Therefore, the police did not appear to have respected their own definition (fluid as it may have been) in retaining data on Mr Catt's association with peaceful, political events, while such events are "a vital part of the democratic process". Referring to the danger of an ambiguous approach to the scope of data collection in the present case, the ECtHR considered that the decisions to retain Mr Catt's personal data did not take into account the

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heightened level of protection it attracted as data revealing a political opinion, and that under the circumstances, its retention must have had a “chilling effect”. Furthermore, the retention of Mr Catt’s data, in particular the data concerning peaceful protest, has neither been shown to be absolutely necessary, nor for the purposes of a particular inquiry. Finally, the ECtHR was not convinced that the deletion of the data would be as burdensome as the government had contended. According to the ECtHR, it would be entirely contrary to the need to protect private life under Article 8 if the authorities could create a database in such a manner that the data in it could not be easily reviewed or edited, and then use this development as a justification to refuse to remove information from that database. On the basis of the foregoing considerations, the ECtHR unanimously concluded that there had been a violation of Article 8 ECHR.

Judgment by the European Court of Human Rights, First Section, case of Catt v. the United Kingdom, Application no. 43514/15, 24 January 2019

https://hudoc.echr.coe.int/eng?i=001-189424

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EUROPEAN UNION

European Commission: Agreement on new Regulation on fairness and transparency of online platforms

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On 14 February 2019, the European Parliament, the Council of the European Union and the European Commission announced a political deal had been reached on a new Regulation on promoting fairness and transparency for business users of online intermediation services. The Regulation was first proposed by the European Commission as part of its Digital Single Market Strategy for Europe (see IRIS 2015-6/13, IRIS 2015-10/4, IRIS 2017-7/7). The purpose of the Regulation is to ensure a fair and transparent legal environment for business users of online platforms and corporate website users of online search engines, and limit harmful platform-to-business trading practices.

The Regulation uses the term “online intermediation services” for online platforms, and lays down a number of obligations on business users and corporate website users in respect of" online intermediation services and online search engines. The term “online intermediation services” is rather lengthily defined under Article 2 as information society services that (a) allow business users to offer goods or services to consumers with a view to facilitating the initiating of direct transactions between those business users and consumers, and (b) are provided to business users on the basis of contractual relationships between the provider of those services and both those business users and the consumers to which those business users offer goods or services.

Examples given by the Commission of the type of platforms covered by the Regulation include: third-party e-commerce marketplaces (such as Amazon Marketplace and eBay); app stores (such as Google Play and Apple App Store); social media for business (such as Facebook pages and Instagram); and price comparison tools (e.g. Skyscanner, Google Shopping). However, the Regulation excludes online advertising, online retailers, retailers of brands (such as Nike.com), and platforms that “do not intermediate direct transactions between businesses and consumers”.

A number of the new rules are worth mentioning briefly. Firstly, under Article 4, where an online intermediation service decides to suspend or terminate the provision of services to a business user, it must provide a statement of its reasons for that decision. In addition, under Article 9, online intermediation services must maintain an internal system for handling the complaints of business users. Secondly, in relation to ranking, online intermediation services must set out the main parameters determining ranking and the reasons for the relative importance

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of those main parameters (as opposed to other parameters). Furthermore, online search engines must set out for corporate website users the main parameters determining ranking by providing an easily and publicly available description - drafted in clear and unambiguous language - on the online search engines of those providers. Thirdly, online intermediation services must include in their terms and conditions a description of the technical and contractual access of professional users to any personal data or other data provided by professional users or consumers for use by the service or which are generated. Lastly, under Article 13, the Commission will encourage the drawing-up of codes of conduct by online intermediation services and online search engines in order to contribute to the proper application of the Regulation.

The Regulation will be binding in its entirety and directly applicable in all member states, and will come into force 12 months after its adoption and publication.

European Commission, "Digital Single Market: EU negotiators agree to set up new European rules to improve fairness of online platforms' trading practices", 14 February 2019

http://europa.eu/rapid/press-release_IP-19-1168_en.htm

European Commission, Proposal for a Regulation of the European Parliament and of the Council on promoting fairness and transparency for business users of online intermediation services, COM(2018) 238 final, 26 April 2018 https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52018PC0238&from=EN

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European Parliament: Modernising the EU copyright

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After two years of intense discussion, the European Parliament, the Council and the European Commission have finally reached a political agreement on a new Copyright Directive, which aims to adapt EU copyright rules to a context in which digital technologies have transformed the way audiovisual works and other creative content are produced, distributed and accessed. The Copyright Directive was submitted to a plenary vote in the European Parliament on 26 March 2019, and now the final say belongs to the Council of the European Union, which should release its decision shortly. Once adopted, the directive will have to be transposed by the EU member states into their national legislation.

The directive introduces inter alia three new mandatory exceptions to copyright protection in the areas of education, research, and preservation of cultural heritage. It also requires member states to put a legal mechanism in place to facilitate licensing agreements for out-of-commerce works. A new negotiation mechanism will also be created to support the availability and circulation of European films and series on VOD services, with a view to facilitating the conclusion of contractual agreements and unlocking the difficulties related to the licensing of the necessary rights for their exploitation on these services.

In addition, the directive creates a new neighbouring right for press publishers concerning the online use of their press publications by major platforms and services, such as news aggregators, in order to strengthen their bargaining position when they negotiate the use of their content by these services. According to the final political agreement reached, the use of individual words and very short extracts of press publications (so-called ‘snippets') does not fall within the scope of the new right. In addition, the directive does not target individual users, who will continue to be able to share content on social media and link to websites and newspapers as of today.

Furthermore, the directive aims to reinforce the position of rightsholders to negotiate and be remunerated for the online use of their content by certain platforms that store and provide access to large numbers of works (the so-called ‘value gap’). Such platforms will now be considered to be carrying out acts of communication (or making available) to the public, for which they will need to make best efforts to obtain an authorisation from the rightsholders concerned and ensure the unavailability of unauthorised content. They will be required to act expeditiously to remove any unauthorised content following a notice received and also to make their best efforts to prevent any future uploads. New small platforms will benefit from a lighter regime when there is no authorisation granted by rightsholders.

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Finally, the directive contains a set of new measures to strengthen the position of authors and performers, including a principle of appropriate and proportionate remuneration; a transparency obligation concerning the exploitation of their works and performances; a contract adjustment mechanism to allow them to obtain a fair share when the remuneration originally agreed becomes disproportionately low compared to the success of their work or performance; a mechanism for the revocation of rights when their works are not being exploited; and a dispute resolution procedure.

2016/0280(COD) Copyright in the digital single market

https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2016/0280(OLP)

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UNITED KINGDOM

European Commission: Decision on film studios' commitments over licensing contracts for cross-border pay-TV services

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On 7 March 2019, the European Commission adopted a decision accepting commitments made by a number of well-known film studios and the broadcaster Sky UK to address the Commission's concerns regarding clauses in the studios' licensing contracts for pay-TV with Sky UK. The film studios are Disney, NBCUniversal, Sony Pictures, and Warner Bros., and according to the Commission, the clauses at issue "prevented Sky UK from allowing EU consumers outside the United Kingdom and Ireland to subscribe to Sky UK's pay-TV services to access films via satellite or online", and also required NBCUniversal, Sony Pictures and Warner Bros. to "ensure that broadcasters other than Sky UK are prevented from making their pay-TV services available in the United Kingdom and Ireland".

Disney, NBCUniversal, Sony Pictures and Warner Bros. have now committed to not applying these clauses in existing film licensing contracts for pay-TV with any broadcaster in the European Economic Area (EEA), and have also committed to refraining from (re)introducing such clauses in film licensing contracts for pay-TV with any broadcaster in the EEA. Sky will also neither apply existing clauses nor (re)introduce new ones in its film licensing contracts for pay-TV with Disney, Fox, NBCUniversal, Sony Pictures and Warner Bros. The Commission's decision, known as a commitment decision, was made under Article 9 of the Antitrust Regulation (1/2003), and allows the Commission to conclude antitrust proceedings by accepting commitments offered by companies; and while it does not reach a conclusion on whether EU antitrust rules have been infringed, it legally binds the companies to respect the commitments.

The decision follows on from the Commission's investigation, started in 2014, which "identified clauses in licensing agreements between the six film studios and Sky UK which require Sky UK to block access to films through its online pay-TV services (so-called "geo-blocking") or through its satellite pay-TV services to consumers outside its licensed territory (the United Kingdom and Ireland)"; and in 2015, the Commission sent a Statement of Objections to the broadcaster and film studios, setting out the Commission's preliminary view that the parties had "bilaterally agreed to put in place contractual restrictions that prevent Sky UK from allowing EU consumers located elsewhere to access, via satellite or online, pay-TV services available in the United Kingdom and Ireland" (see IRIS 2015-9/1). The Statement of Objections also included Paramount Pictures, and in 2016, Paramount offered commitments to address the Commission's competition concerns, which were also accepted and made legally binding.

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The Commission stated that it was satisfied that the commitments offered by Disney, NBCUniversal, Sony Pictures and Warner Bros. addressed its concerns, and has made them legally binding on the studios. The commitments will apply throughout the EEA for a period of five years. Under the Antitrust Regulation, if a company breaks such a commitment, the Commission can impose a fine of up to 10% of the company's worldwide turnover, without having to find an infringement of the EU antitrust rules.

European Commission, "Antitrust: Commission accepts commitments by Disney, NBCUniversal, Sony Pictures, Warner Bros. and Sky on cross-border pay-TV services", 7 March 2019

http://europa.eu/rapid/press-release_IP-19-1590_en.htm

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LATVIA

Court of Justice of the European Union: Sergejs Buivids v. Datu valsts inspekcija

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On 14 February 2019, the Court of Justice of the European Union (CJEU) clarified the possibilities for the processing of personal data for journalistic purposes, as guaranteed under Article 9 of Directive 95/46 of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. The CJEU was requested by the Latvian Supreme Court to deliver a preliminary ruling on the question of whether Mr Buivids, who had posted a video on the Internet showing public officials of the Latvian national police force without their consent, could rely on the exemption of Article 9 of Directive 95/46 (applicable at the time of the domestic proceedings against Mr Buivids), which allows the processing of personal data "solely for journalistic purposes". The question is of particular interest, as Mr Buivids is not a professional journalist, but simply a citizen-journalist. As Article 9 of the former Directive 95/46 is similar (but not identical) to Article 85 of the General Data Protection Regulation 2016/679 which has been in force since 25 May 2018 (GDPR), the interpretation by the CJEU of the journalistic exemption under the former Directive 95/46 is also of relevance for the application of the processing of personal data for journalistic purposes under the current GDPR. Article 85(1) GDPR requires the member states to reconcile by law the right to the protection of personal data with the right to freedom of expression and information, including processing for journalistic purposes and the purposes of academic, artistic or literary expression.

In its judgment, the CJEU first made clear that the recording of a video of police officers in a police station, and the publication of that video on a video website on which users can send, watch and share videos, was a matter which came within the scope of Directive 95/46. The CJEU reiterated that the image of a person recorded by a camera constituted "personal data" within the meaning of Article 2(a) of Directive 95/46 inasmuch as it made it possible to identify the person concerned. A video recording of persons which is stored on a continuous recording device, such as the memory of a camera, constituted a "processing of personal data by automatic means" within the meaning of Article 3(1) of Directive 95/46, while the operation of loading personal data onto an internet page must also be regarded as constituting the automatic processing of personal data. Hence, in principle, Mr Buivids had to respect the obligations and limitations enshrined in Directive 95/46 with regard to the processing of personal data when making the video in question showing police officers in the exercise of their duties and when publishing the recorded video on YouTube. As the action by Mr Buivids

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could not be regarded as the processing of personal data by a natural person in the course of a purely personal or household activity, and as Directive 95/46 contains no express exception which excludes the processing of the personal data of public officials from its scope, the CJEU next considered whether the recording and uploading of the video at issue could be justified under the journalism exception of Article 9 of Directive 95/46, as clarified by Recital 37 of Directive 95/46, which states that this article "seeks to reconcile two fundamental rights: the protection of privacy and freedom of expression".

The Court referred to its earlier findings in Satakunnan Markkinapörssi and Satamedia (CJEU 16 December 2008, C-73/07) that, in order to take account of the importance of the right to freedom of expression in every democratic society, it is necessary to interpret notions relating to that freedom, such as journalism, broadly. This means that the exemptions and derogations provided for in Article 9 of Directive 95/46 apply not only to media undertakings but also to every person engaged in journalism. According to the CJEU, 'journalistic activities' are those which have as their purpose the disclosure to the public of information, opinions or ideas, irrespective of the medium which is used to transmit them, while account must be taken of the evolution and proliferation of methods of communication and the dissemination of information. The medium which is used to transmit the processed data, whether it be classic in nature, such as paper or radio waves, or electronic, such as the Internet, is not determinative as to whether an activity is undertaken 'solely for journalistic purposes'. The CJEU also observed that the fact that Mr Buivids was not a professional journalist did not exclude the possibility that the recording of the video in question and its publication on the video website could come within the scope of Article 9 of Directive 95/46. However, the court also clarified that not all information published on the Internet involving personal data could come under the concept of 'journalistic activities'. The condition is that it must appear that "the sole purpose of the recording and publication of the video was the disclosure to the public of information, opinions or ideas".

According to the CJEU, it was of crucial importance that the exemptions or derogations in Article 9 of Directive 95/46 were only applied where they were necessary in order to reconcile the two fundamental rights concerned, namely the right to privacy and the right to freedom of expression. The CJEU referred to the case law of the European Court of Human Rights (ECtHR) on this matter, taking into account a number of relevant criteria, such as the contribution to a debate of public interest; the degree of notoriety of the person affected; the subject of the news report; the prior conduct of the person concerned; the content, form and consequences of the publication; and the manner and circumstances in which the information was obtained, as well as its veracity (see also ECtHR (GC) 27 June 2017 Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland, IRIS 2017-8:1/1). According to the CJEU, it could not be ruled out that the recording and publication of the video in question, which took place without the persons concerned being informed of the recording and its purposes, constituted an interference with the fundamental right to privacy of those persons, namely the police officers featured in the video. Therefore, it should transpire that the

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recording and publication of the video in question was solely to be regarded as a journalistic activity and whether the application of the exemptions or derogations provided for in Article 9 of Directive 95/46 were strictly necessary in order to reconcile the right to privacy with the rules governing freedom of expression. The CJEU concluded that the making and uploading of the video at issue on the Internet could constitute a processing of personal data solely for journalistic purposes within the meaning of Article 9 of Directive 95/46, insofar as it was apparent from that video that the sole object of that recording and the publication thereof was the disclosure of information, opinions or ideas to the public. It is, however, up to the referring Latvian court to determine whether this was the case with regard to Mr Buivids' video.

Judgment by the Court of Justice of the European Union, Second Chamber, case of Sergejs Buivids v. Datu valsts inspekcija, Case C-345/17, 14 February 2019

http://curia.europa.eu/juris/document/document.jsf?docid=210766&text=&dir=&doclang=EN&part=1&occ=first&mode=DOC&pageIndex=0&cid=8287706

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NATIONAL

GERMANY

[DE] Social networks publish their second transparency reports

Tobias Raab
Stopp Pick & Kallenborn, Saarbrücken

The Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken (Act to improve law enforcement in social networks - NetzDG), which is designed to force social networks to deal more quickly and more comprehensively with complaints about hate crime and other criminal content, entered into force in Germany on 1 October 2017 (see IRIS 2018-1/15). Under the Act, social networks must ensure, through an effective and transparent procedure, that complaints are immediately noted and checked, and that illicit content is deleted within specified deadlines. Social network providers that receive over 100 complaints about illegal content in the same calendar year are also subject to reporting obligations.

The portal operators Facebook, Twitter and Google have now published transparency reports for the second time. The reports detail the total number of complaints made, the number of complaints that resulted in content being deleted, and the number of employees dealing with complaints. A special procedure, independent of the companies' own procedures, applies to such complaints, and a special complaint form can be used to report any of the crimes listed in the Act.

According to Facebook's report, a total of 1 048 offences were reported in 500 separate complaints between 1 July and 31 December 2018, with users able to report more than one incident in a single complaint. As a result of these complaints, 369 posts were deleted or blocked, representing a quota of around 35%. The company indicated that teams of trained experts and lawyers, totalling 63 people, were employed to process the complaints, although they also worked in other areas. Compared with the first transparency report, the company reported an increase in the quality of complaints, with the deletion quota rising from 21% to 35%. While the number of alleged infringements reported in the second half of 2018 had fallen, the number of deleted or blocked posts had remained more or less the same.

The company emphasised that it was taking firm action to remove hate speech as soon as it was reported. It had made considerable progress by improving and implementing its Community Standards. It had also expanded its global team responsible for dealing with complaints. In Germany, content was checked for possible breaches of Facebook's Community Standards by around 2 000 people at its Essen and Berlin offices. In addition, Facebook reported that new technologies such as machine learning and artificial intelligence were useful tools for detecting

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inappropriate content more quickly and effectively than human beings. However, since errors could not be ruled out, an appeals procedure for individual posts had been introduced in 2018. Users who believed that Facebook had made a mistake could therefore ask for a decision to be reviewed.

As well as Facebook, Twitter and Google have also submitted transparency reports. Twitter received a total of 256 462 complaints in the second half of 2018, 20 140 of which were lodged by complaints bodies and the rest by individual users. Over 50 employees dealt with these complaints, 23 165 of which resulted in content being deleted, that is, only 8% of all cases reported. Meanwhile, Google received a total of 250 957 complaints concerning its YouTube video portal, with 83 390 of them lodged by complaints bodies. Its 75 employees deleted 54 644 videos, that is, more than one-fifth of those reported. Observers believe the comparatively small number of complaints submitted to Facebook (500) is a result of the company's complicated complaints procedure.

NetzDG-Transparenzberichte von Facebook

https://fbnewsroomde.files.wordpress.com/2019/01/facebook_netzdg_januar_2019_deutsch52.pdf

Facebook transparency reports

NetzDG-Transparenzberichte von Google

https://transparencyreport.google.com/netzdg/youtube?hl=de

Google transparency reports

NetzDG-Transparenzberichte von Twitter

https://cdn.cms-twdigitalassets.com/content/dam/transparency-twitter/data/download-netzdg-report/current-report.pdf

Twitter transparency reports

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[DE] Concession in longstanding German film aid dispute: Netflix will pay film levy

Christina Etteldorf

According to numerous media reports based on information provided by the Filmförderanstalt (German Film Board - FFA), the US streaming service Netflix, which has been providing services aimed at German viewers since 2014, has announced that it intends to start paying the film levy required under German law in September 2019. This could mark the end of a dispute that has lasted several years concerning the company's obligations under the German Filmförderungsgesetz (Law on the funding of film production - FFG).

The FFA has the task of supporting the German film industry and the creative and artistic quality of German film-making. It is largely financed through the collection of a film levy from a variety of sources. As well as cinemas, video distributors, television broadcasters and programme marketers, Article 153 FFG requires video-on-demand services such as Netflix to pay the levy if their revenue in Germany exceeds EUR 500 000. This applies not only to providers with headquarters or subsidiaries in Germany, but also to providers of German-language video-on-demand services in relation to revenue generated in Germany. An application contesting these rules, submitted by Netflix to the General Court of the European Union last year, was rejected. In a judgment of 16 May 2018 (Case T-818/16), the General Court found inadmissible Netflix's application for the annulment of the European Commission's 2016 decision regarding the rules on foreign providers (see IRIS 2018-6/100). Netflix had argued that the FFG violated the free movement of services, freedom of establishment and EU aid and tax regulations.

Netflix's apparent willingness to pay the levy suggests that it has decided not to take further legal action. According to Article 153(3) FFG, the film levy is worth 1.8% of the first EUR 20 million of annual revenue generated in Germany and 2.5% of annual revenue above EUR 20 million. Netflix reported global revenue of around USD 15 billion in 2018. However, it does not publish figures for individual (national) markets, so it is difficult to calculate how much it will owe. The sum that Netflix will ultimately pay therefore remains to be seen.

"Netflix unterwirft sich dem deutschen Gesetz", welt.de, 14. Februar 2019

https://www.welt.de/kultur/kino/article188798337/Netflix-unterwirft-sich-dem-deutschen-Gesetz.html

Welt.de, 14 February 2019

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[DE] Federal Cartels Office prohibits Facebook's unlawful data processing under competition law

Christina Etteldorf

On 6 February 2019, the Bundeskartellamt (Federal Cartels Office - BKartA) issued a prohibition notice against Facebook Inc. (USA), Facebook Ireland Ltd. and Facebook Germany GmbH, primarily concerning their plans to combine user data from Facebook-owned services. On competition law grounds, Facebook was prohibited in particular from allowing private users resident in Germany to use its social network only if it could assign data collected from its other services - WhatsApp, Oculus, Masquerade and Instagram - and from third-party websites that contain Facebook interfaces to their Facebook account without their specific consent. The decision was based on the fact that Facebook was abusing its market power by processing data in this manner. According to this line of reasoning, not just Facebook but also other major providers, such as Google-owned YouTube in the audiovisual sector, could be held accountable in the future.

The decision followed an investigation lasting over two years in which the Bundeskartellamt, Germany's independent competition authority, had worked closely with the German data protection authorities. It claimed jurisdiction over the US-based group firstly on the grounds that German cartel law was always applicable to restrictions of competition in Germany, and secondly because Facebook had a German subsidiary. The primary legislative basis of the decision was Article 19(1) of the Gesetz gegen Wettbewerbsbeschränkungen (Act against restraints of competition - GWB), which prohibits abuse of a dominant market position, and Article 18(3a) GWB, under which, in the case of networks, when assessing a company's market position, account should be taken of its economies of scale arising in connection with network effects and its access to data relevant for competition.

With 23 million daily users and a market share of more than 95% in Germany, Facebook has a dominant position in the German market for social networks. Since competing services such as Twitter, LinkedIn, YouTube and Xing only offer parts of the services of a social network, the Bundeskartellamt considers that they should not be included in the relevant market. Dominant companies may not exploit the opposite side of the market, that is to say, Facebook users in this case. This especially applies if the exploitative practice also impedes competitors that are unable to amass such a 'treasure trove' of data. By collecting, processing and allocating data from third-party sources (such as 'Like' buttons on third-party websites or Facebook-owned services such as Instagram) to a user account without clearly informing the user or obtaining their consent, Facebook was crossing the line of admissible data use. Particular account should be taken of the assessments of the General Data Protection Regulation in this regard. However, this case did not concern the processing of data generated by the use of Facebook itself.

The decision is of particular interest because it is the first time data protection regulations, which were originally to be monitored by the data protection

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authorities, have been used as the primary basis of a prohibition order issued under competition law. It means that, in future, large US-based platforms and networks such as YouTube and Twitter, whose business models are often data-centred and who frequently hold dominant positions in national markets, will have to face the consequences of competition law as well as data protection regulations.

Pressemitteilung des BKartA vom 7. Februar 2019

Federal Cartels Office press release of 7 February 2019

https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2019/07_02_2019_Facebook.html?nn=3591568

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[DE] Federal Supreme Court submits questions to the CJEU on YouTube's duty to publish information on copyright infringements

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In a decision of 21 February 2019, the I. Zivilsenat (first civil chamber) of the Bundesgerichtshof (Federal Supreme Court - BGH), which is responsible for copyright-related cases, submitted to the Court of Justice of the European Union (CJEU) a number of questions concerning the scope of information that the YouTube video platform must disclose in relation to users who infringe copyright.

In the case at hand, a film distributor had launched an action against YouTube LLC and its parent company, Google Inc., claiming an infringement of its exclusive rights to exploit the films "Parker" and "Scary Movie 5", which had been uploaded to the platform by various users without its permission in 2013 and 2014. The plaintiff had asked for the email addresses, telephone numbers and IP addresses of the user accounts from which the films had been uploaded at the time they had been uploaded and at the time the relevant accounts had most recently been accessed. It hoped to use the IP addresses to identify the people responsible and, if appropriate, instigate legal proceedings against them.

In order to be able to upload videos to the YouTube platform, users must register and provide their name, email address and date of birth. They also consent to the storage of IP addresses. A telephone number must also be provided for videos lasting longer than 15 minutes.

In the first instance, the Landgericht Frankfurt am Main (Frankfurt am Main district court) had rejected the application. On hearing the appeal, the Oberlandesgericht Frankfurt am Main (Frankfurt am Main district appeal court) decided that the right to third-party information in the case of copyright infringements included the user's email address, but not their telephone number or IP address. It based its decision on the wording of the relevant provision of German copyright law, which only mentioned the user's "name and address". In view of changing communication habits, the court decided that email addresses were covered by the rule, whereas telephone numbers and IP addresses were not. As far as IP addresses were concerned, there was no interest in including them because it had not been shown how, after more than three years, the relevant users could be identified via access providers on the basis of IP addresses. German telecommunications law requires access providers to delete traffic data immediately.

As part of its review, the Bundesgerichtshof has now suspended the proceedings and submitted to the CJEU a number of questions on the interpretation of Directive 2004/48/EC on the enforcement of intellectual property rights. The CJEU must now clarify whether the information obligation set out in Article 8(2)(a) of the Directive includes, in addition to a postal address, the email address,

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telephone number and IP address used to upload the infringing files, together with the exact time at which they were uploaded. If the information did include the IP addresses used to upload the infringing files, the BGH wished to know whether it also covered the IP address that was used the last time the user account was accessed - regardless of whether copyright infringements had been committed on that occasion.

Pressemitteilung des BGH vom 21. Februar 2019

https://www.bundesgerichtshof.de/SharedDocs/Pressemitteilungen/DE/2019/2019019.html?nn=10690868

Federal Supreme Court press release of 21 February 2019

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SPAIN

[ES] Catalan Audiovisual Council analysis of online content that promotes betting and gambling

Mònica Duran Ruiz
Catalan Audiovisual Council

Current epidemiological data demonstrate that in Spain, up to 4.6% of teenagers show risk behaviour in relation to betting and gambling, and that the average age at which addicts start to gamble is 19 years old. In addition, 37% of adult addicts started gambling before they had reached the minimum legal age to do so.

Bearing in mind this data, the Catalan Audiovisual Council (Consell de l'Audiovisual de Catalunya, CAC) report examines audiovisual content that promotes betting and gambling in various ways, with a view to informing the debate on the rise in betting and gambling addictions. To do so, linear audiovisual communication services (nine television and five radio channels), websites with on-demand television services (CCMA, RTVE, Mediaset, Atresmedia and EDC) and content from video-sharing platforms (Vimeo, Dailymotion and YouTube) were analysed in the CAC report.

According to the analysis carried out by the CAC, the report concludes that on both linear and online media, minors have free, unlimited access to content that promotes gambling and betting and presents them as an attractive activity that generates profit without effort or risk, be it advertising or not.

In this area, advertising on the linear media of television and radio does not, in practice, adhere to the watershed. In the period analysed, 45.3% of television adverts for betting and gambling were broadcast before the watershed; on the radio, this figure was 84.5%. Many of these adverts are shown during broadcasts of sports events, which draw in large youth audiences. The television warnings on responsible gambling and adult age restrictions, in the form of both written messages and overlaid images, are not always clearly visible or obvious to the viewer.

Betting and gambling advertising (on linear and online media) systematically and prominently uses the offer of bonus games to capture and retain new users. They were found in 77.6% of television and 79.8% of radio adverts.

With regard to the Internet, and in particular video-sharing platforms, where children and teenagers comprise a significant share of users, the CAC's analysis also detected that minors can access content freely and without age restriction filters. Tutorials on how to use the betting and gambling sites of various operators abound in these videos. On YouTube, 38 of the first 50 videos (76%) in a search for "bet" contain risk factors.

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The CAC report warns of the danger of using popular youth celebrities to prescribe gambling and betting; these celebrities are a particular draw for this age group and, therefore, counter to the aim of protecting minors.

Finally, the report outlines that targeted content using algorithms is an intrinsic feature on the Internet, in both advertising and elsewhere. When it comes to betting and gambling, this mechanism means that people who have shown a previous interest in gambling are constantly reminded of it when browsing, either from banners on websites or similar video suggestions on video-sharing platforms, resulting in overexposure to this type of content.

Anàlisi de la presencia de continguts del joc i les apostes en línea, Consell de l'Audiovisual de Catalunya

https://www.cac.cat/sites/default/files/2019-01/Acord%20115_2018%20Joc%20i%20apostes%20CA.pdf

Analysis of online content that promotes betting and gambling, Catalan Audiovisual Council

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FRANCE

[FR] Application for interim suspension of showing of the film “Une Intime Conviction”

Amélie Blocman
Légipresse

Following the first screening in cinema theatres on 6 February 2019 of the film “Une Intime Conviction”, which recounts the appeal lodged by a law professor suspected of having killed his wife and the work of his defence lawyers to obtain his acquittal - in March 2010 - , the wife’s lover had the production company summoned under the urgent procedure in an effort to have showing of the film stopped on the grounds of invasion of his privacy.

In its decision of 22 February, the court began by stating that, since the application sought to prevent the showing of an intellectual work, the applicant needed to demonstrate that there had been a manifest invasion of his privacy so serious as to be intolerable and impossible to remedy in any other way. This was a particularly serious measure that should be reserved for exceptional cases, since it was utterly contrary to freedom of expression. The judge went on to observe that the film at issue referred to the applicant - played by an actor in the film - on a number of occasions, using his family name and his first name. The soundtrack also included the content of extracts from lawfully made recordings of telephone conversations between the applicant and various acquaintances. In this respect, the judge said that the mere act of reproducing those reconstituted extracts did not in itself constitute an invasion of privacy. He added that the case had been widely covered in the media, and that the content of the recordings was consequently common knowledge. Analysing the content of the conversations that had been made public, the judge noted that certain passages referred to the applicant’s feelings of grief and his reaction to the death of his lover. Nevertheless, some of those passages had been played back - and therefore made public - during the court case, while others of a more personal nature had not been included in the film.

The judge also noted that the use of the applicant’s family and first names (which by their nature were not exclusive to his private life) in a cinematographic work covering facts that were real, public and known - that is to say, legal developments following a death - and in respect of which the applicant’s identity and actions had already been mentioned in the media, did not constitute an invasion of privacy. There had been no obligation incumbent on the defendants to request the applicant’s authorisation to use his name in the film. Accordingly, the applicant’s claims were totally rejected.

Lastly, the judge stated that the themes of the film - the functioning of the judicial system, the procedure followed in respect of a case before the criminal courts, the primordial importance of doubt in criminal proceedings, and the way a legal investigation may be constructed in order to “produce” a guilty party - were all

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subjects of general interest in a democratic society.

TGI Paris (ord. réf.), 22 février 2019, Olivier D. c/ SARL Delante Films et a.

Regional court of Paris (urgent proceedings), 22 February 2019, Olivier D. v SARL Delante Films and others

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[FR] Competition authority urgently calls for regulatory constraints on traditional audiovisual providers to be relaxed

Amélie Blocman
Légipresse

On 21 February 2019, at the request of the National Assembly's Committee on Cultural Affairs and Education, the French competition authority published its opinion on the forthcoming audiovisual reforms. The authority's key proposal is for the relaxation of restrictions on traditional audiovisual providers in order to enable them to compete on equal terms with online video platforms (e.g. Amazon and Netflix). The evidence is clear: these new platforms, which entered the market in 2014 and have more subscribers in France than Canal Plus (Netflix has over 5 million subscribers) have adopted an innovative business model by combining content production, publication and distribution (i.e. the entire traditional audiovisual value chain) within the same company. So-called "delinearisation", which releases viewers from the constraints of television programme schedules, also gives them access to a vast catalogue at low cost (EUR 8 to EUR 14 for Netflix; no additional charge for Amazon Prime subscribers). In addition, unlike linear channels, these platforms can access their users' data, which enables them to constantly improve their services and, in particular, their recommendation algorithms. Faced with these new uses, the business models used by both pay TV and free television channels are being seriously challenged.

As a result, the competition authority has proposed a number of reforms. Audiovisual regulations are still based on the traditional model of free-to-air linear programmes. These regulations - which, according to the authority, are particularly restrictive in France compared with other European countries - impose unequal legal constraints on traditional national broadcasters, limiting their ability to adapt to changes in the market. In addition, the transposition of the Audiovisual Media Services Directive, which will require delicate coordination between different regulatory authorities, will not fully address this imbalance, according to the competition authority.

It therefore considers it necessary to re-examine the existing regulations on television advertising, which are much more restrictive than those applicable to Internet-based services. To this end, the authority recommends allowing targeted advertising, which television cannot currently offer to advertisers. It also suggests opening up television advertising to prohibited sectors (cinema, publishing and distribution, which make extensive use of digital advertising).

The authority's other proposals mainly concern programming. It favours loosening obligations to invest in European and French audiovisual production by pooling obligations at the level of television groups, for example, and introducing a certain amount of pooling between the "corridors" of audiovisual and film production obligations. It also recommends reviewing conditions governing the use of independent productions. This obligation, which makes it possible to avoid

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excessive concentration, undermines the availability of content (and ultimately the diversity of available productions). The authority suggests limiting the definition of “independence” to that of the “capital independence” of a producer from the relevant broadcaster, without setting conditions regarding contractual negotiation on the distribution of rights.

Under current regulations, films cannot be broadcast on Wednesday and Friday evenings, any time on Saturdays and before 8.30pm on Sundays. Since films are available at any time on VoD platforms, the authority recommends removing these restrictions.

Lastly, the authority recommends a review of the 1986 Law on anti-concentration measures, which only apply to television operators and which therefore exclude an increasingly significant proportion of content providers.

All these adaptations are considered ‘urgent’ and should, in the authority’s opinion, be quickly implemented without waiting for the audiovisual law to be debated in early 2020. They therefore concern the provisions relating to advertising and production obligations contained in the decrees of 27 March 1992 and 2 July 2010.

Autorité de la concurrence, Avis n° 19-A-04 du 21 février 2019 relatif à une demande d’avis de la commission des Affaires culturelles et de l’Éducation de l’Assemblée nationale dans le secteur de l’audiovisuel

http://www.autoritedelaconcurrence.fr/pdf/avis/19a04.pdf

Competition authority, opinion no. 19-A-04 of 21 February 2019 regarding a referral from the Committee on Cultural Affairs and Education of the National Assembly in the audiovisual sector

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[FR] New Composition for the French CSA

Elena Sotirova
European Platform of Regulatory Authorities

Following the proposal by the French President Emmanuel Macron and the endorsement by the National Assembly and the Senate, Roch-Olivier Maistre was appointed as President of the French “Conseil supérieur de l’audiovisuel” (CSA) for a six-year mandate, as of 4 February 2019. He replaces Olivier Schrameck, whose term came to an end on 23 January 2019.

Roch-Olivier Maistre was, inter alia, an Adviser to the Office of the Minister of Culture and Communication, an Adviser for Education, Culture and Communication to the French President, President of the Regulatory Authority for Press Distribution (Autorité de régulation de la distribution de la presse), a member of the Financial Commission for Agence France Presse, and most recently, President of the Chamber and General Rapporteur at the French Court of Auditors (Cour des comptes).

Furthermore, two new members were appointed at the CSA, also with a six-year mandate: Michèle Léridon, who is a journalist and a former Director of Information for “Agence France Presse”, succeeds Sylvie Pierre-Brossolette. She was designated by the National Assembly. Hervé Godechot, the former Chief Editor for France Télévisions, replaces Memona Hintermann-Afféjee. He was designated by the Senate.

The other current members of the French CSA are: Nicolas Curien, designated by the Senate in 2015; Carole Bienaimé Besse, designated by the Senate in 2017; Nathalie Sonnac, designated by the National Assembly in 2015; and Jean-François Mary, designated by the National Assembly in 2017.

The deliberations of the Board of the CSA are prepared within the framework of six permanent thematic working groups. Each board member chairs one of these groups and acts as the vice-chair of a second group.

Under the chairmanship of Roch-Olivier Maistre, the CSA Board agreed on a new distribution and on a reduction in the number of working groups from eight to six. The six permanent working groups were inspired by the Council's primary missions and will now structure its activity. The aim of this more compact organisation is to enable greater responsiveness to regulatory developments and to better embrace cross-cutting themes such as sports, Europe, and the French overseas departments. Specific working groups may also be set up if the importance of the subject requires it.

La nouvelle composition du CSA français

https://www.csa.fr/Informer/Qu-est-ce-que-le-CSA/Le-fonctionnement-du-CSA

The new composition of the French CSA

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La répartition des nouveaux groupes de travail au sein du CSA

https://www.csa.fr/Informer/Espace-presse/Communiques-de-presse/Un-nombre-de-groupes-de-travail-resserre-pour-plus-de-lisibilite-et-de-transversalite

The distribution of the new working groups within the CSA

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[FR] Shelved documentary and defamation - abuse of right confirmed

Amélie Blocman
Légipresse

Vivendi, which owns Canal Plus and whose majority shareholder is Vincent Bolloré, sued a journalist who co-authored a television documentary entitled “Evasion fiscale, enquête sur le Crédit Mutuel” (“Tax evasion -, investigation into Crédit Mutuel”). Initially due to be broadcast on Canal Plus in May 2015, the documentary was finally shown five months later on France 3. While Canal Plus claimed that it had not broadcast the programme for author-exclusivity reasons, the journalist said that the programme had been shelved on account of the relationship between the President of Canal Plus and the President of Crédit Mutuel, who had been implicated in the documentary. The journalist claimed in various press articles that the programme had been censored; a few months later, the media reported that its co-authors had lodged a complaint against Vincent Bolloré for interfering with freedom of expression and abusing his power by allegedly pulling the documentary from the Canal Plus schedule.

Citing Article 1240 of the Civil Code, the businessman sued the journalist for EUR 750 000 on account of what he considered to constitute defamation, gross negligence (through the violation of his obligations as a journalist), and harassment.

Turning first to the defamation accusations (which were based on allegedly repeated, extreme and unobjective statements) and the lodging of the complaint, the court, in its judgment of 6 March 2019, decided that the statements in question could not be considered to be defamatory in the sense of Article 1240 of the Civil Code. They had not been limited to criticism of products and services, but had rather criticised Vivendi as a legal entity, which decided, in this instance, not to act on the basis of the Law of 29 July 1881, which provided remedies for violations of the freedom of expression. The court firstly pointed out that when information concerned a subject of general interest and had a sufficient factual basis, the disclosure of that information was covered by the right to freedom of expression, which included the right to freedom of criticism and could not be regarded as unlawful as long as the acceptable limits of freedom of expression were respected. Secondly, the court ruled that the alleged violation by a journalist of his or her ethical obligations (lack of objectivity, intention to harm), could not, in the circumstances, constitute an offence under Article 1240 of the Civil Code. Unless the specific conditions of defamation were met, breaches of the freedom of expression could only be remedied on the basis of the Law of 29 July 1881. Thirdly and lastly, the court held that, under Article 222-33-2 of the Criminal Code, a legal entity could not claim to be the victim of harassment in the sense of these provisions. Furthermore, the alleged acts of harassment in this case could not give rise to a claim for damages on the basis of Article 1240 of the Civil Code since no evidence of a wrongful act (as defined under civil liability law) had been provided. The court accordingly ruled that the criteria for defamation had

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“clearly” not been met and that Vivendi had, in this case, acted extremely recklessly by claiming civil damages on the basis of an investigation undertaken by a journalist and statements which had not been publicly disseminated before the publication, whereas any violations of the freedom of expression could, in principle, only be repaired on the basis of the Law of 29 July 1881. It had abused its right and was therefore ordered to pay EUR 8 000 to the defendant.

Vincent Bolloré is also believed to have initiated six libel procedures concerning 60 passages from the book “Vincent tout puissant”, published in January 2018 and co-written by the journalist.

TGI de Paris (17e ch. civ.), 6 mars 2019 - SA Vivendi c/N. Vescovacci

Paris regional court (17th civil chamber), 6 March 2019 - SA Vivendi v N. Vescovacc.

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[FR] Urgent application for release of François Ozon's latest film, "Grâce à Dieu" to be delayed

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Légipresse

On 31 January 2019, a Catholic priest suspected of abusing boy scouts lodged an application for emergency proceedings to be initiated against the film production company responsible for the film "Grâce à Dieu" ("By the Grace of God"), which was due to be released on 20 February 2019. Copies had already been delivered to 307 cinemas and a huge publicity campaign costing EUR 1 million had already been launched. Directed by François Ozon, the film depicts the battle fought by victims of child abuse allegedly carried out by the priest, whose real name is used in the film. Claiming a violation of his privacy and citing the presumption of an accused's innocence until proven guilty, the priest demanded that the release of the film be delayed pending a final court decision on whether he was guilty of the charges against him. The investigation phase of the criminal proceedings against the priest was due to be completed approximately at the time of the film's release.

On 18 February 2019, two days before the film's national release, the urgent-applications judge issued his decision. Regarding the alleged violations of the plaintiff's privacy, the judge noted that the case against him had received a huge level of media coverage, both in the press and through the publication of books. The plaintiff had therefore failed to show how the reference to a criminal case that had already been widely publicised (and had, moreover, prompted a related court case in which the Archbishop of Lyon had been accused of turning a blind eye to the priest's offending) was likely to reveal facts that were not already in the public domain.

Regarding the undermining of the presumption of innocence, the judge noted that the first condition for the application of Article 9-1 of the Civil Code had been met - i.e. the plaintiff was being investigated in a pending criminal procedure. He then noted that in view of the fact that the film depicted three people as victims of the plaintiff, it was bound to refer to the existence of crimes for which he was being investigated. Given the circumstances, the reality of those crimes appeared indisputable, although the film was not a documentary about the criminal case itself. The fact that the plaintiff had admitted committing the offences in question and had requested a pardon was irrelevant. However, it was noted that the film contained several written messages: the first, at the start of the film, stated that "this film is fictional [but] based on real facts", while that shown at the end of the film stated that "Father P. is to be presumed innocent until his trial". Viewers were therefore informed that the plaintiff should be presumed innocent - a measure that fulfilled the purpose of Article 9-1 of the Civil Code, under which nobody should be portrayed as guilty before actually being found guilty.

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The judge also took into account the fact that, on the day the film was due for release, the date of the priest's trial had not been fixed and was not likely to be in the near future. In such circumstances, the release of the film on that date was unlikely to seriously harm the fairness of the trial or to interfere with the proper conduct of the criminal proceedings. It would have been different if the film's release had coincided with the court hearing. Lastly, the judge stressed that the requested measures should be strictly necessary and proportionate. It appeared that the request to delay the release of the film until the conclusion of the priest's trial could result in it not being released for several years. This would cause a serious and disproportionate violation of the freedom of expression and of creative freedom, meaning that the film could not be exploited.

Lastly, the request for the plaintiff's name to be removed from the film was also deemed disproportionate. This measure on its own was unlikely to prevent the priest being identified. The request for a message to be inserted before the start of the film also appeared unnecessary and disproportionate in view of the written messages already included.

On 19 February, a court in Lyon also rejected a request from a former diocese volunteer to have her surname removed from the film. The judges considered that neither her privacy nor the presumption of innocence had been violated.

TGI de Paris (ord. réf.), 18 février 2019 - B. P. c/ SAS Mandarin Production et a.

Paris regional court (interim order), 18 February 2019, B.P. v SAS Mandarin Production et al.

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UNITED KINGDOM

[GB] Department for Digital, Culture, Media and Sport publishes its final report on disinformation and fake news

Julian Wilkins
Wordley Partnership

On 18 February 2019, the Department for Digital, Culture, Media and Sport (DCMS) Committee published its Final Report on disinformation and fake news ("the Report"), following on from its July 2018 Interim Report. Since then, the Committee has held three further evidence sessions, inviting UK regulators and the Government to give evidence, as well as receiving a further 23 written submissions. In November 2018 the Committee hosted an "International Grand Committee", inviting parliamentarians from nine countries.

The Report develops the areas covered in the Interim Report, including the definition, role and legal liabilities of social media platforms; data misuse and targeting in respect of the Facebook, Cambridge Analytica and Aggregate IQ allegations (including evidence about Facebook's knowledge of and participation in data-sharing); and Russia's influence on overseas elections.

The Report reiterates its interim position that social media companies are not simply platforms, with no responsibility for the content of their respective sites. The Committee recommends the creation of a new category of platform for tech companies that are not necessarily either "platforms" or "publishers", and recommends that clear legal liability be established in order that such tech companies can act against harmful or illegal content on their sites.

The Committee supports the establishment of independent regulation, including a compulsory Code of Ethics - overseen by an independent regulator - setting out what constitutes harmful content. The independent regulator would have statutory powers to monitor relevant online tech companies, and this would create a regulatory system for online content that would be as effective as that for offline-content industries.

The Code of Ethics should be similar to the Broadcasting Code issued by Ofcom - which is based on the guidelines established in section 319 of the 2003 Communications Act. The Code of Ethics should be developed by technical experts and overseen by the independent regulator, in order to set down in writing what is and what is not acceptable on social media. This should include harmful and illegal content that has been referred to the companies for removal by their users or that should have been easy for tech companies themselves to identify.

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The same public body should have statutory powers to obtain any information from social media companies that are relevant to its enquiries and to initiate legal proceedings against them in the event that they fail to meet their obligations under the Code and do not act against the distribution of harmful and illegal content. This body should also have access to tech companies' security mechanisms and algorithms in order to ensure that they are operating responsibly. This public body should be accessible to the public and be able to take up complaints from members of the public about social media companies.

In addition, the Report recommends that "inferred data" - which relate to details about an online user that are not based on specific information that he or she has shared but on an analysis of his or her data profile -be as strongly protected by law as personal information.

In addition, the Report supports the Interim Report's recommendation that a levy be placed on tech companies operating in the UK in order to support the enhanced work of the Information Commissioner's Office (ICO), as well as to fund the work of the new independent system and regulation.

Concerning data use and data targeting, the Committee looks back at the Cambridge Analytica scandal, which was prompted by Facebook's policies and its decision to override its users' privacy settings in order to transfer their data to other parties. In that regard, the Report supports the Interim Report's view that the dominance of a handful of powerful tech companies has resulted in their behaving as if they were monopolies in their own areas and that there are considerations regarding the data on which those services are based. The Report considers that the Government should consider the impact of such monopolies on the political world and on democracy. In particular, the Committee recommends that the Competition and Market Authority conduct a comprehensive audit of the operation of the advertising market on social media.

As regards advertising and political campaigning, the Report repeats the recommendation contained in the Interim Report that the Government look at the ways in which the UK law should define "digital campaigning", including reaching agreed definitions of what constitutes online political advertising. There also needs to be, according to the Committee, an acknowledgement of the role and power of unpaid campaigns and Facebook Groups that influence elections and referendums. The Committee considers in that regard that the Government should review the regulations on political work during and after elections and referendums. Among other things, it recommends that the Government clarify what "political advertising" is and what advertising is sponsored. It also insists that the ICO's proposal that a Code of Practice highlighting the use of personal information in political campaigning and applying to all data controllers who process personal data for the purpose of political campaigning should be underpinned by primary legislation. Furthermore, the Report points out that tech companies must address the issue of shell companies and other professional attempts to hide the identity of purchasers of advertisements - especially political advertisements. As part of the drive for advertising transparency, there should be a full disclosure of targeting methods employed.

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The Committee also examined the issue of foreign influence in political campaigns and makes a series of related recommendations.

Concerning digital literacy, the Report recommends that it become one of the main pillars of education and that social media platforms develop online tools to help social media users distinguish between quality journalism and articles from less reliable or reputable sources.

The Report notes that the Government has accepted the interim report's recommendations and that, instead of using the term "fake news", it will use the term "disinformation" to describe the deliberate creation and sharing of false and or manipulated information that is intended to deceive and mislead the audience, either for the purpose of causing harm or for political, personal or financial gain. The term "misinformation" shall be used to refer to the inadvertent sharing of false information.

The use of algorithms by social media companies can foster bias and so the Centre for Data Ethics and Innovation, set up in 2017, is dedicated to advise on how to enable and ensure ethical, safe and innovative uses of artificial intelligence.

Disinformation and Fake News: Final Report, DCMS, 18th February 2019

https://publications.parliament.uk/pa/cm201719/cmselect/cmcumeds/1791/179102.htm

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[GB] Regulator rejects complaint that the BBC breached "due impartiality" rules in its treatment of Brexit

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Ofcom, the UK communications regulator, has rejected a collective complaint from ten pro-Brexit politicians that BBC coverage had breached the rules of due impartiality in the Communications Act and in the Broadcasting Code. The complaints concerned sets of broadcasts on BBC Radio Four. These were: coverage of the fifth round of Brexit negotiations in the flagship 'Today' programme; Series 3 of 'Brexit: A Guide for the Perplexed'; and a special day of broadcasts on 'Britain at the Crossroads'. They were broadcast between 9 October 2017 and 29 March 2018.

The complainants claimed that pro-Brexit opinion was being systematically under-represented in BBC output and that more time, space and emphasis was being given to pro-EU or anti-Brexit voices.

The rules on "due impartiality" are contained in the Communications Act 2003 and in section 5 of the Broadcasting Code, which requires that news in television and radio services be presented with "due impartiality". The Act also requires that due impartiality be preserved in all services on matters of political controversy and on those relating to current policy. The Code makes it clear that "due" is an important qualification to the concept of impartiality. Impartiality means not favouring one side or the other, but not that an equal division of time must be given to every view, or that every argument has to be represented. Context is important, and the approach to impartiality may vary according to the nature of the subject, the type of programme and channel, and audience expectations. This is also emphasised in the guidance notes issued to broadcasters by Ofcom. Ofcom must balance the broadcaster's right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR) against the due impartiality requirements.

Ofcom decided that a number of contextual factors were relevant here. There was significant variation in the formats and nature of the programmes and in audience expectations. All of them had been broadcast after the Brexit referendum when public debate had developed from a binary choice about EU membership to a more complex and nuanced discussion of the form which Brexit should take. Audiences would have expected a range of different viewpoints about the United Kingdom's exit from the EU and its implications.

Ofcom found that a range of alternative viewpoints had been included in each of the programmes examined and across different programmes within each strand. Editorial techniques had been used to ensure that alternative viewpoints were represented and impartiality preserved. These included presenters drawing out different viewpoints from guests, the inclusion of views from members of the public, interviews with a range of politicians with different views, reviews of newspapers with contrasting views, and the inclusion of specialist correspondents

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providing additional analysis and context. Thus, alternative viewpoints had been sufficiently represented in each of the programmes, or series of programmes, assessed by Ofcom.

Ofcom, "Coverage of issues surrounding the UK's exit from the EU', Ofcom Broadcast and on Demand Bulletin 372, 11 February 2019, 23

https://www.ofcom.org.uk/__data/assets/pdf_file/0028/136585/Issue-372-of-Ofcoms-Broadcast-and-On-Demand-Bulletin.pdf

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[GB] Report with recommendations to ensure and promote public-interest news

Julian Wilkins
Wordley Partnership

The findings of the Cairncross Review ("the Review"), chaired by Dame Frances Cairncross were published on 12 February 2019; it made nine recommendations for addressing two primary issues: (i) is the market in which publishers operate a fair one or has the growth of large online platforms, such as Google and Facebook, created distortions that justify government intervention? (ii) how should society continue to support the monitoring of, and reporting on, the activities of public bodies - not just central government, but also local councils, courts and inquests. The Review referred to this type of journalism as "public-interest news".

The Review considered that public-interest news concerned accountability and was vital to the democratic process. Seismic changes had occurred within a short space of time as to how the majority of people (especially the young) read their news, with 78% going online, rising to 91% in the case of 18-to 24-year-olds. There was a move away from "bundled" news, whereby there was a mix of subjects giving a rounded analysis of what was happening in society. More readers were choosing focussed news covering one topic from one perspective, and there was an increasing absence of issues relating to local democracy. Between 2007 and 2017 the number of local newspapers had halved, while the number of fulltime journalists had fallen by over 25% to 17,000 in 2019.

There are nine recommendations that address the uneven balance between news publishers and online platforms. Firstly, it is recommended that new codes of conduct be established to rebalance the relationship between publishers and online platforms, with such codes being approved by a regulator; if necessary the regulator should have sufficient powers to ensure a fair economic and technological balance between online providers and news publishers.

The Review recommends that the Competition and Markets Authority investigate the online advertising market in order to determine its efficiency and effectiveness and whether any remedies are required. Currently, Google and Facebook have captured the majority of online advertising.

The third recommendation is that online platforms should improve the "news experience" and that any improvements should be subject to regulatory supervision. Such regulation would consider the reliability and trustworthiness of news sources. Initially, the regulator would gather information rather than impose rules and sanctions.

As a fourth recommendation the Review recommends that the Government develop a media literacy strategy in collaboration with Ofcom, whereby news publishers, online platforms and other interested parties identify gaps and

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opportunities in media literacy.

It is recommended that Ofcom explore the BBC's market impact and determine whether the BBC could do more to assist local publishers - for instance, by sharing its technical and digital expertise. It should also assess whether BBC News Online is striking the right balance between aiming for the widest reach for its own content on the one hand and driving traffic from its online site to commercial publishers (particularly local ones) on the other. It is also recommended that the Government launch a new fund that would focus on innovations aimed at improving the supply of public-interest news, to be run by Nesta (The Innovation Foundation) in the first instance, and in due course by the proposed Institute for Public Interest News (see below) to help improve the supply of public-interest news).

The seventh recommendation concerns the introduction of new forms of tax relief aimed at encouraging payment for online news content and the provision of local and investigative journalism. The current tax regime dissuades publishers from developing online payment mechanisms. The review also recommends that government gives priority to exploring the development of a form of tax relief, ideally under the Charities Act but if necessary along the lines of the Creative Sector reliefs, to support public-interest journalism.

The Review's eighth recommendation is that direct financial support be provided to encourage the extension of the Local Democracy Reporting Service currently managed by the BBC; in due course such funding should be conducted or shared with the proposed Institute for Public Interest News.

The ninth recommendation concerns the creation of a body to be known as the Institute for Public Interest News in order to ensure the sustainability of public-interest news. The body would work with news publishers, online publishers, the BBC, Nesta and academic institutions. As an organisation, it should be free of political and commercial obligations, but serve as a centre of excellence and good practice. Furthermore, it would collaborate with other institutions to improve the accessibility and increase the readership of quality news online. Should new business models fail to sustain public interest reporting (including reporting on local democracy), then the proposed Institution could steer finances to the most "worthy" local news gatherers.

The Review recognised that not all new business models support public-interest journalism, even though they support other types of quality journalism.

The preservation and increased supply of public-interest news requires funding that is not under the direct control of government but is regulated by an independent body to help ensure a healthy democracy.

The Cairncross Review: A Sustainable Future for Journalism, 12th February 2019

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779882/021919_DCMS_Cairncross_Review_.pdf

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[GB] Talk Radio in breach of Ofcom's rules on harm and offence

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On 25 February 2019, the Office of Communications (Ofcom) ruled that commercial radio station Talk Radio presenter James Whale had breached the Ofcom Broadcasting Code over an "insensitive" interview with a victim of sexual assault.

Earlier in July 2018, James Whale and his co-presenter Asher Gould interviewed a journalist and invited her to comment on remarks made by author Jilly Cooper that the #MeToo movement, which was launched following the multiple sexual misconduct accusations against film producer Harvey Weinstein, had changed the way in which people interact. In particular, Mr Whale asked what the journalist's thoughts were on Cooper's assertion that men had become "frightened to flirt with ladies since the #MeToo campaign."

The interviewee dismissed this view and stated that #MeToo had made more people rethink the meaning of consent. During the broadcast, she unexpectedly spoke about her own experience as a victim of sexual assault. The subsequent exchanges prompted 38 listeners to complain that the interviewee had been treated "dismissively and insensitively" by the presenters, who had resorted to "victim blaming" her for the assault.

Talksport, the licensee for Talk Radio, acknowledged that there had been a few regrettable "heated flashpoints" during the interview. For instance, the presenter had frequently interrupted the woman and told her: "It doesn't really matter what you are, you're talking as a woman aren't you?" and "I'm listening to you rant at me." The presenters also appeared to question the interviewee when they described the assault she had suffered by imposing on her, as a victim, an obligation to act following the incident. They suggested that she should have taken more steps to report it and questioned whether she could have done more to prevent a further assault.

Section Two of the Broadcasting Code requires that "generally accepted standards" must be applied to the content of television and radio services, so as to adequately protect members of the public from the inclusion in such services of "harmful and/or offensive" material. Rule 2.3 of its Code requires, in particular, that material with the potential to cause offence may be broadcast so long as it is "justified by the context". Such context includes - but is not limited to: the editorial content of the programme; the service on which the content was broadcast; the degree of offence likely to be caused by such material; and the composition of the potential audience and its likely expectations. In this case, the interviewee's disclosure during the discussion about the impact of #MeToo set the context against which the ensuing debate needed to be considered.

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Ofcom ruled that the presenters' comments had been "poorly judged, unsympathetic to [the interviewee's] own experience, liable to discourage other victims of sexual assault to talk publicly about their experiences, and likely to cause a high level of offence." In considering whether the material broadcast was justified by context, Ofcom acknowledged that listeners to a live speech-based service would have expected at the time of the broadcast of this topical discussion programme with a well-known and "opinionated" presenter that outspoken views would be included. Although the regulator accepted that Mr. Whale and his co-presenter did not query the veracity of the woman's account and had probably not anticipated the revelation of deeply personal information about the assault, their interventions had nevertheless demonstrated a "significant lack of sensitivity", and their adversarial presenting style had within that context been "highly inappropriate", thereby aggravating the potential offence caused. In Ofcom's view, the fact that the woman had responded confidently and articulately to the presenter's combative style did not justify treating her in this way. Their comments in this programme were thus likely to have exceeded audience expectations. For these reasons, Ofcom decided that the inclusion of this potentially highly offensive material had not been justified by the context and had breached Rule 2.3.

Lastly, the Ofcom Code requires, under the same rule, that appropriate information be broadcast where it may assist in avoiding or minimising offence. By way of compliance, the licensee took several steps, including: suspending Mr Whale, launching an internal investigation (whose findings were reported to the management), broadcasting a personal apology to the interviewed guest. However, given the licensee's recognition that Mr. Whale had given the interviewee "a hard time", more timely action ought to have been taken, in Ofcom's view, at the time of the live broadcast (or shortly thereafter) to minimise the significant offence given to listeners. While appropriate steps were taken in this case, these only came four days after the material had been first broadcast and the interviewee had authored an article in The Guardian accusing Mr. Whale of "humiliating" her for talking about her rape.

Ofcom Broadcast and On Demand Bulletin (Issue Number 373)

https://www.ofcom.org.uk/__data/assets/pdf_file/0030/138648/Issue-373-Broadcast-and-On-Demand-Bulletin-25-February-2019.pdf

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[GB] The High Court refuses to disclose of cockpit footage of air accident to the media

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On 28 January 2019 the High Court of Justice in England ruled that cockpit footage from the Shoreham Airshow crash cannot be released to the press, after it had been played to a jury.

The background to this trial began on 22 August 2015, when a Hawker Hunter fighter jet crashed during a display at the Shoreham Airshow at Shoreham Airport, England, after failing to complete an aerobatic manoeuvre. Eleven people died in the resulting fireball. In 2018 former Royal Air Force pilot Andy Hill was charged with eleven counts of manslaughter by gross negligence and one count of endangering an aircraft. In January 2019 Mr. Hill went on trial at the Old Bailey, which is at the time of writing proceeding.

The British Broadcasting Corporation (BBC) and the Press Association (PA), supported by "a very significant number" of national and local media organisations, requested the release of footage from the cockpit of the ex-military jet aircraft. Mr Justice Edis (Edis J) was required to answer the question of whether the disclosure of the cockpit footage to the media would produce benefits that outweighed the "adverse domestic and international impact" it might have on any future safety investigation. In answering this narrow question, Edis J. was also required to consider the fact that the film was being used in a public court as evidence in support of manslaughter charges and had already been shown to the jury in open court. He was thus required to weigh the additional adverse impact of disclosure to the media against the benefits of disclosure.

In his judgment, Edis J. acknowledged the "strong presumption" in favour of open justice in the English judicial system and accepted that the BBC and the PA were motivated by a genuine interest in reporting fairly and accurately the trial evidence. He also explained that in doing so media organisations are subject to regulatory codes, which should give confidence to the courts that disclosed material will be dealt with properly. However, the judge agreed with the British Airline Pilots' Association (BALPA) and the Air Accidents Investigation Branch (AAIB), which had expressed concerns over the "adverse domestic and international impact" the release of the footage would have.

The fact that the footage was not "black box" material but had been created voluntarily by Mr Hill and that the risk of "diminution in the standing of the AAIB" among international air accident investigators - with whom effective cross-border cooperation is "obviously vital" - were important aspects in this regard. Edis J. stressed in particular that disclosure could damage what is known as the "just culture" of air investigations, in which pilots are willing to cooperate and which produces a safe system of global air travel. He explained: "It is important to the

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maintenance of effective air safety investigation that pilots understand that material they supply to the AAIB will remain with the AAIB, and that there is likely to be a strong reaction among pilots to this material being played on television and newspaper websites and thereafter available forever on the Internet. This is an adverse impact which needs to be weighed against the benefit of open justice." The "wide dissemination potential" of the film online, if released, would add to the pilots' concerns and would undesirably affect their behaviour in future safety investigations.

Edis J. also accepted that use of the footage would probably make the case somewhat "clearer" to the media organisations' viewers and was likely to give news reports "more impact" than they would otherwise have. However, substantial footage of this disaster, which created "abundant impact" when viewed, was already available online and was sufficient to effortlessly attract and retain viewers' and readers' attention when reporting this trial. Lastly, the judge took particular note of the written statements of the victims' relatives, who had expressed concern that disclosure of "intrusive footage" to the media would expose them to "continual reminders" of a crash that had caused them such loss and trauma.

For all these reasons, the High Court judge was not satisfied that the benefit of disclosure to the media outweighed the adverse impact on future safety investigation that it would have: "It is a matter of real importance that the international air investigation world accepts that the UK complies with its obligations under [international law] and treats those obligations seriously," Edis J. emphasised. Accordingly, he refused the BBC's and PA's claim for disclosure of the recording.

BBC and Press Association v Secretary of State for Transport and the British Airline Pilots Association [2019] EWHC 135 (28 January 2019)

https://www.bailii.org/ew/cases/EWHC/QB/2019/135.pdf

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IRELAND

[IE] Communications Minister proposes new law to protect children online

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On 4 March 2019, the Minister for Communications, Climate Action and Environment, Richard Bruton, announced that he would introduce a new Online Safety Act to improve online safety and ensure that children can be protected online.

In announcing the proposed law, the Minister stated that while "digital technology is transforming the world in which we work and live and learn" and "provides huge opportunities for us all", it also "presents new risks which did not exist previously."

Minister Bruton asserted that the "situation at present where online and social media companies are not subject to any oversight or regulation by the state for the content which is shared on their platforms is no longer sustainable." The Minister added that he believed that "the era of self-regulation in this area is over and a new Online Safety Act is necessary."

The Minister affirmed that he would bring forward an Online Safety Act which sets out how to ensure that children are safe online and that this would involve "setting a clear expectation for service providers to take reasonable steps to ensure the safety of the users of their service." To this end, the Minister proposed that a regulator, an Online Safety Commissioner, oversee the new system.

The Minister further proposed a number of categories of harmful online content that need to be targeted under the plan, such as serious cyber bullying of a child, including content which is seriously threatening, intimidating, harassing or humiliating; material which promotes self-harm or suicide; and material designed to encourage prolonged nutritional deprivation that would have the effect of exposing a person to the risk of death or endangering their health.

The Minister stated that an Online Safety Act would place new requirements on operators to operate an Online Safety Code which would require them to set out the steps they are taking to keep their users safe online and include a number of issues, such as the prohibition of cyber bullying material and the provision of a complaints mechanism through which users can request material to be taken down within certain time frames.

The Minister further proposed that a number of powers be granted to the Online Safety Commissioner, including, inter alia, the power to certify that each Online Safety Code is either "fit for purpose" or "requires changes to it" and the power to

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require regular reports from industry on a range of issues, including content moderation, and the review and adjudication of appeals. The Online Safety Act would also give the Online Safety Commissioner the power to order internet and social media firms to take down content that breaches agreed codes within a set time frame on receipt of an appeal from a user who is dissatisfied with the response they have received to a complaint submitted to the service provider, following an adjudication by the Online Safety Commissioner. Furthermore, it has been proposed that the Online Safety Commissioner be granted the power to impose administrative fines in relation to failures of compliance by service operators

The Minister announced that he would commence a "short six-week consultation period" whose aim would be to seek the view of citizens and stakeholders regarding an "achievable, proportionate and effective approach to regulating harmful content, particularly online." The Minister added that, following the consultation period, he would bring a draft heads of bill before government setting out a detailed plan as to how progress will be made.

Department of Communications, Climate Action and Environment, "Minister Bruton Proposes New Law to Protect Children Online", Press Release, 4 March 2019

https://www.dccae.gov.ie/en-ie/news-and-media/press-releases/Pages/Minister-Bruton-Proposes-New-Law-to-Protect-Children-Online.aspx

Department of Communications, Climate Action and Environment, "Public Consultation on the Regulation of Harmful Online Content and the Implementation of the revised Audiovisual Media Services Directive", 4 March 2019

https://dccae.gov.ie/en-ie/communications/consultations/Pages/Regulation-of-Harmful-Online-Content-and-the-Implementation-of-the-revised-Audiovisual-Media-Services-Directive.aspx

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ITALY

[IT] AGCOM public consultation on a draft resolution on hate speech

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On 22 January 2019, the Italian Communication Authority (AGCOM) launched a public consultation on a draft regulation aimed at fostering the protection of human dignity and the principle of non-discrimination, as well as combating hate speech. The scope of the application of the draft regulation includes both audiovisual media service providers and video-sharing service providers.

Article 1 firstly sets out certain definitions. Inter alia, “video-sharing service providers” are defined as entities operating a service that, even in part, makes available to the public programmes and user-generated videos via electronic communication networks for informational, educational or entertainment purposes, without exercising any editorial responsibility. Furthermore, according to this definition, video-sharing service providers organise content, including by automatic means or algorithms. Another key definition concerns content amounting to hate speech: instead of carving out an ad hoc concept, the draft regulation provides a blanket definition that refers to the concept of hate speech, as enshrined in other legal instruments, namely Recommendation no. 20/1997 of the Committee of Ministers of the Council of Europe, Recommendation no. 15/2016 of the European Commission against racism and intolerance, and AGCOM Resolution no. 403/18/CONS.

The draft regulation contains two separate sets of provisions, which apply, respectively, to audiovisual media service providers and video-sharing service providers.

With respect to the set of rules concerning audiovisual media service providers, the draft regulation establishes certain general principles that require providers to ensure the utmost respect for fundamental guarantees afforded to users in the delivery of entertainment and informational programmes. When broadcasting news or content regarding subjects that are likely to be subject to discriminatory attitudes, they must take into account specific restrictions designed to avoid the undermining of the fairness, accuracy and completeness of information, paving the way to hate speech or incitement to hatred.

In particular, Article 5 of the draft regulation lays down criteria that shall be binding on audiovisual media service providers, including:

- taking into account the context and avoiding, inter alia, expressions and images that are likely to directly or indirectly circulate, incite, promote or justify hate or other forms of intolerance and discrimination or harm human dignity or lead to

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violence or crimes against members of certain groups or minorities;

- handling carefully news and other content likely to give rise to prejudice or stereotyping;

when presenting an item of news, paying regard to its specific context in order to avoid generalisations and to distinguish each individual case from another one;

- avoiding the circulation of images or information that are inaccurate or misleading and thus liable to give rise to unjustified social alarm;

- promptly and carefully amending any mistake or inaccuracy in the delivery of news or content regarding groups that may be likely affected by discrimination;

- promoting best practices for social inclusiveness, integration and diversity.

The public service broadcaster (RAI) bears a special responsibility to ensure respect of these principles.

AGCOM is authorised to monitor compliance by audiovisual media service providers with the requirements listed above. In the event that proceedings are commenced following the lodging of a complaint by an affected party, AGCOM shall require the provider in question not to repeat the conduct in question. It may also order the provider to publish a statement acknowledging the violation within the same timeframe as that during which the original conduct arose.

On the other hand, the draft regulation also requires video-sharing service providers to implement measures to combat hate speech and to determine and report users who engage in hate speech. Specifically, a video-sharing service platform shall have to report to AGCOM every three months on such measures that have been carried out, specifying the manner and the systems implemented to monitor third-party content.

Autorità per le garanzie nelle comunicazioni, All. B, Schema di regolamento recante disposizione in materia di rispetto della dignità umana e del principio di non discriminazione e di contrasto all'hate speech

https://www.agcom.it/documents/10179/13446572/Delibera+25-19-CONS/9e06b04c-9a35-40de-88d2-62f2580dc25d?version=1.0

AGCOM, Decision N. 25/19/CONS

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[IT] Public consultation on draft guidelines on the definition and scope of exploitation rights for public service broadcaster

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Pursuant to Article 25, paragraph 3 of the service contract (as renewed for the years 2018 to 2022) between the Italian Ministry of Economic Development and the Italian public service broadcaster, RAI, a Commission composed of members of the Ministry and members of RAI has been established and assigned with the task of drafting guidelines. These guidelines aim at underpinning current negotiations between RAI and representative associations of producers on the extension and the scope of the exploitation rights of audiovisual works for radio, television and multimedia platforms.

The Commission was established in 2018 by Decree of the Minister of Economic Development, and dedicated the first months of activity to conduct a deep analysis of the sector, also by meeting the main stakeholders. Those meetings fostered an articulate and inclusive study of factors contributing to the evolution of the Italian audiovisual productions market. This process led to the drafting of the guidelines, which are to be submitted to a public consultation process in order to guarantee transparency and openness; the conclusive document will be binding on RAI only, but it could represent a model for the national market as a whole.

The guidelines set out the following strategic goals: the promotion of transparency in the negotiations between RAI and producers and the encouragement of the development of correct contractual agreements; the promotion of the growth and development of the system of independent audiovisual works (both Italian and European) in the light of the principles of pluralism and efficiency; research into new production models and languages in the light of technological and market development; encouraging the effective circulation of works on new platforms; and fostering the circulation abroad of Italian audiovisual works.

Negotiations regarding exploitation rights will be conducted in accordance with the following criteria: Firstly, by defining the role and the participation of producers in the various stages of developing and realising work, ensuring (within free negotiations and taking into account the specificity of each audiovisual work) equal competition conditions for operators on the market with regard to the purchase and pre-purchase, and co-production and production of audiovisual works; Secondly, by determining the length of exploitation rights according to the principles of equity and non-discrimination and taking into consideration the different types of works and the exploitation cycle, the autonomous negotiation of each right will also be considered to facilitate the producer’s access to the tax credit, as well as the exploitation of the works on VOD platforms so that the public

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can freely access RAI's digitised historical archives.

The public consultation will last 30 days and will ensure that the Commission understands the standpoints of all the involved stakeholders regarding topics that are highly relevant to the work of the Ministry of Economic Development, such as the growth of the audiovisual industry and the development of the cultural and entrepreneurial skills around the country.

Schema di line-guida operative sulla definizione di durata e ambito dei diritti di sfruttamento radiofonico, televisivo e multimediale ai sensi dell' articolo 25, comma 3, del contrato nazionale di servizio tra il minister dello sviluppo economico e de la RAI-Radiotelevisione Italiana SPA per il quinquennio 2018-2022

https://www.mise.gov.it/images/stories/documenti/schema%20linee%20guida%20consultazione%20intese%20Rai%20associazioni%20produttori%20per%20i%20diritti%20di%20sfruttamento.pdf

Draft guidelines for the negotiations between RAI and producers' representative associations on the extension and the scope of the exploitation rights of audiovisual works for radio, TV and multimedia platforms

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NETHERLANDS

[NL] Charging two different fees to private and professional music streaming users is unlawful

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In a judgment of 12 December 2018, the District Court of Amsterdam ruled that the Dutch collective rights management organisation Buma/Stemra acted unlawfully by charging two different fees based on a distinction between “private use” and “professional use” to users of online music streaming services.

The lawsuit was filed against Buma/Stemra by several producers of background music - all members of the Associated Business Music Distributors (hereafter: “ABMD” or “the claimants”). AMBD members offer background-music subscriptions to several businesses, such as shops, restaurants and gyms.

Their customers receive special computers that use an encrypted connection in order to access a database containing music that has been composed by AMBD members. Subscription prices range from EUR 45 to EUR 90 per month. Because AMBD members make background music available to the public, they are obliged to have a background music licence agreement with either Buma/Stemra or the Belgian collecting society, Sabam (which transfers such payments to Buma/Stemra). Accordingly, for every subscription, AMBD members have to pay a licence fee to Buma/Stemra or Sabam. The tariffs for the subscriptions and licence fee are determined by Buma, while Stemra determines and collects the mechanical rights for the reproduction of musical works on sound carriers, such as CDs and DVDs.

Streaming services that are not ABMD members pay 10% of their turnover, by way of a licensing fee, to Buma/Stemra. One example is Spotify, which costs EUR 10 per month, meaning that Spotify pays EUR 1 per user per month as a licensing fee to Buma/Stemra. Spotify excludes commercial use of its streaming services in its terms of use. However, the claimants noticed that some businesses have also used Spotify subscriptions. They asked Buma/Stemra to sanction both the businesses and Spotify. Buma/Stemra argued that it could only enforce its licenses with businesses; it was not able to enforce Spotify’s terms of use between Spotify in respect of Spotify’s customers.

The claimants argued that Buma/Stemra was acting unlawfully and abusing its dominant position by charging a different fee to ABMD members than it did to online music services such as Spotify, even though they are active on the same market. Furthermore, they argued that Buma/Stemra was acting unlawfully by not enforcing copyright in respect of businesses that use online streaming services that are meant for consumers. In the event that the Court ruled against the claimants by holding that Buma/Stemra was not acting unlawfully, the claimants

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requested that the Court issue a declaration that ABMD members do not provide services that constitute a “communication to the public”, as defined in Article 3 Directive 2001/29, and that they were therefore not obliged to conclude a background music licence agreement with Buma/Stemra. The defendants pointed to the fact that they were not a party to the agreement between the streaming services and their consumers and that they were therefore not in a position to prohibit use that infringed the terms of use between a streaming service and its customer.

Given the fact that both ABMD’s members and streaming services are active on the same market, the District Court found that Buma/Stemra was not allowed to charge different licensing fees. However, the Court found that the claimants could not claim compensation for the licensing fees already paid, as they had agreed to the tariffs in the past. In addition, the Court ruled that the defendants could not be obliged to enforce their rights. The Court held that the use of streaming services constitutes an alternative to using the services of ABMD; however, they are not the same kind of services. Only rightsholders can obligate the defendants to enforce their licenses. Third parties such as ABMD cannot. Furthermore, the Court decided that the services provided by ABMD constitute a “communication” to the public, as those services make the music available to a certain amount of people. The Court did not deem it of relevance that the connection with the services is encrypted. In conclusion, the Court decided that Buma/Stemra should refrain from charging two different fees based on a distinction between “private use” and “professional use” for users of online music streaming services.

District Court of Amsterdam, 22 January 2019, ECLI:NL:RBAMS:2018:8995

https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBAMS:2018:8995

District Court of Amsterdam, 22 January 2019, ECLI:NL:RBAMS:2018:8995

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[NL] Internet service provider does not have to hand over contact data of alleged infringers to a movie distributor

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In a judgment of 8 February 2019, the Midden-Nederland District Court dismissed an action brought by a Dutch movie distributor seeking to obtain Internet users' contact data held by a Dutch Internet service provider (ISP). The movie distributor requested data that would enable it to identify Internet users who illegally downloaded a certain movie.

Between 21 December 2017 and 2 Februar 2018, the movie distributor was permitted by the Dutch data protection authority (Autoriteit Persoonsgegevens) to collect the Internet Protocol (IP) addresses of Internet users who illegally downloaded the movie "The Hitman's Bodyguard". In order to act against the infringement of the intellectual property rights protecting the movie, the distributor requested from the ISP the contact data linked to the IP-addresses of 377 Internet users. The distributor announced that the contact data would be used to send the alleged infringers a settlement proposal of EUR 150.

In the proceedings leading to the judgment, the ISP refused to hand over the contact data of the IP address holders. The ISP contested the existence of a legal obligation to share personal data for the above-stated aim. Upholding earlier case-law, the Court dismissed this argument by stating that an unlawful act could provide legal grounds for requesting personal data. It held that in order to determine the circumstances under which this data actually had to be provided, the interests of the movie distributor had to be weighed against the interests of the ISP and its clients.

The Court firstly declared that illegally downloading the movie was to be considered an unlawful action undertaken against the movie distributor, as the holder of the relevant intellectual property rights. Since the distributor should be able to invoke its rights against the infringers, the Court stated that the distributor had a legitimate interest in obtaining the personal data from the ISP. Moreover, the Court acknowledged that there was no less drastic way for the distributor to retrieve the contact data of the infringers.

However, although it acknowledged the interests of the movie distributor, the Court nevertheless held that the balance of interests had to tilt in favor of the ISP, for several reasons. Firstly, the Court stated that it was not clear how the amount that the distributor wished to receive as a settlement had been substantiated. Secondly, the distributor had insufficiently clarified the uncertainty regarding the content of the letter in which the settlement proposal would be sent to the IP address holders. Since it was not certain that the holder of each IP address was the actual respective infringer of the intellectual property rights, the distributor

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should have provided more information about how the distributor intended to approach the IP address holder.

Accordingly, the Court ruled that the interests of the ISP in not handing over the contact data of its clients outweighed the interests of the movie distributor and dismissed the request.

Rechtbank Midden-Nederland, 8 February 2019, ECLI:NL:RBMNE:2019:423

https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBMNE:2019:423

District Court of Midden-Nederland, 8 February 2019, ECLI:NL:RBMNE:2019:423

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ROMANIA

[RO] A new step for the TV digital switchover in Romania

Eugen Cojocariu
Radio Romania International

On 22 February 2019, the Societatea Naţională de Radiocomunicaţii S.A. (National Radiocommunications Society S.A. - RADIOCOM), a company that is part of the portfolio of the Ministry of Communications and Information Society (MCSI), signed the contract for the provision of the broadcasting equipment necessary for the implementation of the Multiplex 1 national network on which the public television stations will be broadcast (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, IRIS 2017-1/29, IRIS 2019-2/23).

The Minister of Communications and Information Society, Alexandru Petrescu, highlighted that the signing of this contract would mark the beginning of the implementation of the digitisation of terrestrial television in Romania, offering consumers a major benefit through access to higher quality services. He also insisted that, for RADIOCOM, the implementation of the digital terrestrial television at national level represented a new stage of modernisation in terms of increasing the competitiveness and diversification of broadcasting services.

The digital terrestrial television project will be deployed in 228 broadcast stations and will allow for the free-to-air reception of national television broadcaster programmes by approximately 94% of Romania's population.

This contract, amounting to LEI 59 371 706 excluding VAT (approximately EUR 12.5 million), represents the digital terrestrial television project’s first acquisition. The financing of the entire project is ensured both by external sources — the European Investment Bank (EIB) and Alpha Bank Romania — as well as by RADIOCOM's own sources.

RADIOCOM is the national operator that, according to the licence, has provided the taking over, transport and broadcasting of public television programmes in digital terrestrial format since 17 June 2015, as a transitional solution.

RADIOCOM a demarat implementarea televiziunii digitale terestre în România - comunicat de presă, 22 februarie 201

https://www.comunicatii.gov.ro/radiocom-a-demarat-implementarea-televiziunii-digitale-terestre-in-romania/?fbclid=IwAR2aXQvlnndiJ9zUybhnbkyKJPG4wqGbnUAs1jHkCcdfmuD4r4IL5X6c6YM

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RADIOCOM has launched the implementation of digital terrestrial television in Romania - press release, 22 February 2019

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[RO] Support for the Romanian cinema industry

Eugen Cojocariu
Radio Romania International

On 15 February 2019, the Romanian Government decided to add soap operas, television series and sitcoms to the list of productions that could be funded under the state aid scheme for the film industry (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, IRIS 2019-2/22).

The Romanian Government adopted Decision No. 90/2019 regarding the modification and completion of Government Decision No. 421/2018 for the establishment of a state aid scheme to support the cinematographic industry. The new document, in force since 20 February 2019, aims at supplementing the categories of film productions already eligible to receive state aid with short, medium, and feature film fiction; mini-series or television series; films for direct distribution on video or the Internet, or any other type of film support; artistic documentaries; and animated films. The government’s decision was drafted by the National Commission for Strategy and Prognosis, which is responsible for the state aid scheme for the film industry.

According to Article I. of Government Decision No. 90/2019, Article 1, paragraph (3) has been amended to provide that the objective of the state aid scheme is to support film culture and production in Romania, consisting of both cinematographic films, as defined by Romanian legislation, and films and television series, as well as any other audiovisual productions within the meaning of the Council of Europe Convention on cinematographic co-productions, including by attracting foreign productions.

Changes to the definitions were introduced in Article 2, paragraphs c), h) and i) regarding the date on which the aid is granted, the level of aid, and the obligation to territorialise the expenditure. New points j) and n) have been added to Article 2 in order to define the following terms and expressions: “start working on the project or activity”, “television mini-series”, “TV series”, “sitcom” and “soap opera”.

New paragraphs (51)-(53) have been added to Article 3, paragraph (5), which provide, inter alia, that (51) the maximum annual budget of the scheme that may be allocated to the scheme also includes, in addition to the budget specified in paragraph (2), the amounts that had been designated for this purpose but were not used in the previous years, within the limit of the maximum budget of the scheme and within the limits of the budgetary and commitment credits approved through the annual budget laws; (52) If the annual budget allocated to the scheme has been exhausted, applications for a funding agreement that did not fit into the allocated annual budget, but which cumulatively meet the conditions and eligibility criteria set out in this decision, are reviewed by the Film Commission in Romania, and will be funded from the following year's budget, if they are

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approved.

The new Article 4 (2) provides that the non-reimbursable financial allocations under the state aid scheme shall be granted provided that at least 20% of the total budget of the project is carried out on Romanian territory.

Article 6 (1) b) has been amended and extends the list of Romanian or foreign companies which can benefit from this state aid scheme, provided that they are the producer, co-producer and/or production service provider and that they produce short, medium and feature film fiction; television mini-series or series; films for direct distribution on video or the Internet/any other support; artistic documentaries; and animated films, all of which must be partly or entirely produced on Romanian territory. A new paragraph g) was added to Article 6 (1), which provides for a new cumulative condition for Romanian or foreign companies to benefit from the state aid scheme: they must provide proof of their own financial contribution or of the co-financiers to the project financing of producers/co-producers and, in the case of service providers, prove the contribution of the foreign producer. The financial contribution must cover at least the total production budget excluding VAT, except for the state aid requested under this scheme.

The new Article 7 (1) extends the beneficiaries of the scheme: state aid is granted for the production of films, such as short, medium and feature film fiction; mini-series; television series; films for direct distribution on video or the Internet/any other type of support; artistic documentaries; and animated films, irrespective of the medium through which they are exploited.

Throughout the amended Government Decision, reference to the rules, conditions and limits to be observed no longer concerns the state aid scheme but Regulation (EU) No. 651/2014.

A new Article 15.1 has been introduced which contains provisions for the revocation of the grant agreement and the repayment of the state aid in a number of circumstances, such as if the beneficiary had started working on the project before registering a grant application; the beneficiary had given incomplete or non-conforming statements in order to meet the eligibility criteria set out in this scheme, etc.

According to Article II. of Government Decision No. 90/2019, applications for financing agreements submitted and pending until the end of the year for which a registration session has been opened, including those related to 2018, will be analysed and settled the following year within the limits of the budgetary commitments provided for by law under the maximum annual budget and the maximum budget of the scheme.

Article III. of Government Decision No. 90/2019 stipulates that the provisions of the Decision apply to cinematographic projects submitted for the 2019 session, commencing on the date communicated by the National Commission for Strategy and Prognosis on its website.

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Hotărârea nr. 90/2019 privind modificarea și completarea Hotărârii Guvernului nr. 421/2018 pentru instituirea unei scheme de ajutor de stat privind sprijinirea industriei cinematografice

https://lege5.ro/Gratuit/gmzdanjsgm4q/hotararea-nr-90-2019-privind-modificarea-si-completarea-hotararii-guvernului-nr-421-2018-pentru-instituirea-unei-scheme-de-ajutor-de-stat-privind-sprijinirea-industriei-cinematografice

Decision No. 90/2019 regarding the modification and completion of Government Decision No. 421/2018 for the establishment of a state aid scheme to support the cinematographic industry

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[RO] The Audiovisual Law, modified by the Senate

Eugen Cojocariu
Radio Romania International

On 18 February 2019, the Senate (upper chamber of the Romanian Parliament) adopted a draft law on the modification and completion of Audiovisual Law No. 504/2002 (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, IRIS 2019-1/3, IRIS 2019-2/21).

The draft law was adopted by the Chamber of Deputies on 21 November 2018. The Senate's decision was final. The document introduces the obligation for broadcasters to display or communicate the single national non-stop free telephone number (Telverde) for victims of domestic violence throughout TV and radio programmes (news, debates, talk shows) which address domestic violence. According to both the explanatory memorandum of the draft law and national statistics, in Romania, one person is a victim of domestic violence every 30 seconds, but the number of telephone calls to the line dedicated to this phenomenon is very low. Thus, the draft law introduces a point 13 after Article 17 (1) d) point 12 on the protection of vulnerable social categories, and in particular the protection of victims of domestic violence.

After Chapter III4, a new chapter — Chapter III5, containing Articles 422 to 424 — includes provisions on the protection of victims of domestic violence and requires audiovisual broadcasters to inform victims of the existence of a dedicated telephone number.

Article 422 stipulates that when broadcasting television and radio programmes about domestic violence, it is imperative to ensure that victims of domestic violence are informed of the existence of the telephone number "Telverde for Victims of Domestic Violence". Articles 423 and 424 provide for the exact conditions under which this information must be communicated: through the reading of a text, accompanied by the telephone number indicating Telverde.

The 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

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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

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UKRAINE

[UA] Court decision on Russian broadcasts annulled

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At a hearing on 29 January 2019, the Sixth Appeals Administrative Court annulled the decision taken on 29 May 2018 by the Kyiv District Administrative Court on the merits of the case relating to the legality of Russian rebroadcasts via cable systems in Ukraine (see IRIS 2018-8/39). The case started in 2014 (see IRIS 2015-5/38 and IRIS 2017-1/33). The current appeal was brought by the Ukrainian cable TV distributor “Vertikal-TV”.

The case originated with the national media regulator’s claim for the illegal nature of the content of unspecified Russian TV programmes to be acknowledged and for further distribution of certain Russian TV channels in the cable systems in Ukraine to be banned.

The Appeals Court determined that the original plaintiff, the National Council on Television and Radio Broadcasting (see IRIS 1998-4/14), was a public authority with powers strictly determined by the Constitution of Ukraine and relevant national statuary law. None of these legal provisions neither prescribed nor allowed it to present those particular claims in court. Therefore, the case should not have been opened in the first place, according to the Appeals Court.

The decision stated that such disputes were beyond the jurisdiction of the administrative courts, or indeed any other courts in Ukraine.

The Appeals Court annulled all earlier court decisions and closed the case. It can be further appealed in the Supreme Court of Ukraine.

Decision of the Sixth Appeals Administrative Court, case No. 826/3456/14, 29 January 2019

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