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EDITORIAL

One month has passed since our previous newsletter and the world is still in lockdown, although to different degrees according to each country. While waiting anxiously to learn what the new normal will bring, European countries continue to introduce several support measures for the audiovisual industry, also in different shapes and forms, and this edition of the newsletter bears ample witness to that.

One month has also passed since we announced the publication of our tracking tool to monitor the audiovisual sector-specific measures taken in the context of the COVID-19 crisis. This tool, which will be updated on an ongoing basis until this crisis is resolved, already contains more than 500 entries! Now, given the importance of the topic and the growing body of information around it, we have decided to prepare an IRIS Plus report (hopefully to be published during the summer) which will provide an overview of how the COVID-crisis is affecting the industry, together with a comparative analysis of the audiovisual sector-specific measures described in our tracking tool. We are sure that this report will be of interest to you.

In the meantime, stay safe and enjoy your read!

Maja Cappello, editor

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INTERNATIONAL

COUNCIL OF EUROPE

BULGARIA

ECtHR: *Pendov v. Bulgaria*

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

The European Court of Human Rights (ECtHR) has delivered a judgment in which it found, apart from a violation of Article 1 of the First Protocol to the European Convention on Human Rights (ECHR), a breach of the applicant's right to freedom of expression under Article 10 ECHR, due to the seizure of a server and the limitation of the functionality of a website. In this case, the applicant complained of the seizure and retention by the Bulgarian prosecution authorities of his computer server, in the context of criminal proceedings for a copyright infringement against third parties. The retention of the server and the information contained in it also led to the limited functionality for a significant period of time of a website run by the applicant and hosted on that server.

In 2010, a publishing house complained to the police that a book published by it had been made available on the Internet, in breach of copyright. It concerned, allegedly, an offence under Article 172a of the Bulgarian Criminal Code, which considers the unauthorised copying and distribution of an object of copyright as a criminal act, punishable by up to five years of imprisonment and a fine. The ensuing investigation showed that the site which had uploaded the book was partially hosted on a server owned by Mr Pendov. Pendov's server also hosted a number of other websites, including one dedicated to Japanese anime culture, owned and administered by Pendov himself. During a search of the premises where Pendov's server was being kept, the police officers seized and removed the server, in Pendov's absence. About a month later, Pendov started submitting requests for the return of his server. He pointed out that the information necessary for the criminal investigation of the third parties involved in the alleged breach of copyright could be copied and that the server could be returned to him. He explained that the server also hosted several other sites, including his own, and that the closure of his site had 'discredited' him in the eyes of the users and his colleagues. Pendov also argued that the unavailability of his site had caused him significant damage, including of a financial nature. He considered it unjust that he had had to suffer such harsh consequences, seeing that there had been no complaints of copyright infringement with regard to his own site. It took nearly eight months before Pendov's server was returned following a decision of the Sofia district public prosecutor. Pendov lodged an application with the ECtHR complaining about a violation of his property right under Article 1 of the First Protocol of the ECHR and of a violation of his right to freedom of expression under

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Article 10 ECHR, because of the seizure and retention of his server and the effects of the seizure and retention on the functioning of his website.

The ECtHR first reiterated that "in the light of its accessibility and its capacity to store and communicate vast amounts of information, the Internet plays an important role in enhancing the public's access to news and facilitating the dissemination of information in general" (see also *Ahmet Yildirim v. Turkey* in IRIS 2013-2/1). It observed, next, that Pendov's website dedicated to Japanese anime culture constituted a means of exercising his freedom of expression and that the retention of the server had impeded his freedom of expression until it was eventually returned to him. The ECtHR found that there was indeed an interference by a public authority with Pendov's right to freedom of expression. This interference consisted of the retention of his server and the information contained on it by the prosecution authorities, and this led to the initial unavailability of Pendov's website, followed by the site's heavily limited functionality for a period of several months. As the interference was prescribed by law and pursued the legitimate aims of prevention of disorder and crime and protection of the rights of others, the salient question was whether this interference could be justified as necessary in a democratic society, and in particular whether the measures taken against Pendov's server were proportionate. In analysing that question, the ECtHR took into account the length of retention of Pendov's server, whether it was necessary, its consequences for Pendov, as well as the conduct of the relevant authorities. The ECtHR observed that it was not contested that a website suspected of breaching copyright had been partially hosted on Pendov's server, but at no point in time had the domestic authorities suggested that he bore any responsibility for the alleged copyright violations. The ECtHR pointed out that the retention of Pendov's server in the criminal proceedings proved to be unnecessary for the purposes of the investigation and that for some period of time the prosecution authorities made no effort to remedy the effects of their actions on Pendov's freedom of expression, despite having been informed of those effects on many occasions. The ECtHR considered that the fact that Penkov was neither a journalist nor a whistleblower or political activist, and that he did not enjoy the high level of protection attributed to political speech, were not sufficient reasons to tip the balance in favour of the domestic authorities. As the seizure and retention of Pendov's server was not a measure proportionate to the legitimate aims pursued, it was not "necessary in a democratic society" as required under Article 10, paragraph 2 ECHR. Accordingly, the ECtHR comes to the conclusion that Article 10 ECHR has been violated by the Bulgarian authorities. The ECtHR also found a breach of Pendov's property right under Article 1 of the First Protocol of the ECHR.

ECtHR, Fifth section, Pendov v. Bulgaria, Application no. 44229/11, 26 March 2020

https://hudoc.echr.coe.int/eng?i=001-201890

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COE: CDMM / CDMC

Freedom of expression and information in times of crisis

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On 21 March 2020, the Council of Europe (COE) Committee of Experts on Media Environment and Reform (MSI-REF) issued a Statement on Freedom of expression and information in times of crisis, in light of the current coronavirus (COVID-19) pandemic. The MSI-REF was established in March 2020, and under the supervision of the COE Steering Committee on Media and Information Society (CDMSI), is currently preparing a draft recommendation to member states on guiding principles for media and communication governance; a draft recommendation to member states on election communication and media coverage of election campaigns; and a guidance note on the prioritisation of public interest content.

The MSI-REF's Statement begins by noting that the coronavirus pandemic is causing a public health emergency, and that during this time of great public concern, it is of particular importance for member states to recognise the crucial role of independent media. In this regard, there are three main issues covered in the Statement. First, the MSI-REF emphasises that "[n]ow, more than ever, we need reliable journalism, resting on the standards of professional ethics, to keep the public informed and to scrutinise the measures taken in response to the global health threat. We need accurate information, including in-depth research by science journalists, to counter rumours and disinformation that could lead to panic." Secondly, the MSI-REF references the COE Guidelines on protecting freedom of expression and information in times of crisis, adopted by the Committee of Ministers in 2007 (see IRIS 2007-10/1), and reiterates that a crisis situation should not be used as a pretext for restricting the public's access to information. Furthermore, states should not introduce any restrictions on media freedom beyond the limitations allowed by Article 10 of the European Convention on Human Rights. Thirdly, member states and all media stakeholders should strive to ensure a favourable environment for quality journalism, in line with the standards set out in the upcoming Recommendation of the Committee of Ministers to member States on promoting a favourable environment for quality journalism in the digital age. In particular, "special attention should be given to ensuring appropriate working conditions for journalists, including medical protection for any work-related coronavirus risks."

Finally, the MSI-REF states that freedom of expression, media independence and open deliberation, "rather than information control, are the core principles underlying European democracy which will allow us to surmount the great challenges facing our countries."

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Council of Europe Committee of Experts on Media Environment and Reform, "Freedom of expression and information in times of crisis", 21 March 2020

https://www.coe.int/en/web/freedom-expression/statement-on-freedom-of-expression-and-information-in-times-of-crisis-by-the-council-of-europe-s-committee-of-experts-on-media-environment-and-reform-msi-ref-

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RUSSIAN FEDERATION

ECtHR: *Basok v. Russia*

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Once again, the European Court of Human Rights (ECtHR) has found that Russia violated a journalist's right to gather news (see also *Butkevich v. Russia*, IRIS 2018-4/2). The ECtHR found that the aggressive behaviour of a senior policeman trying to stop a journalist from taking pictures documenting a news story amounted to a breach of the journalist's right to freedom of expression and information under Article 10 of the European Convention on Human Rights (ECHR).

The applicant, Yuriy Borisovich Basok, was acting as a freelance journalist for an Internet news portal when he was present in Yekaterinburg at the venue of a public protest against an increase in the tax on foreign imported vehicles. As he witnessed that Mr D – a senior official of the traffic police in charge of supervising the event – parked his vehicle on a pedestrian crossing, he and some other journalists made video recordings. Basok also wanted to take photographs of the vehicle and of Mr D, and at that moment, the police officer shouted obscenities at Basok, slapped him in the face, tried to grab his neck, and damaged his camera. According to Basok, those actions were seen by journalists and other officers, and the incident received some media coverage. Several applications and complaints by Basok against Mr D were dismissed or suspended and a criminal investigation against Mr D was stopped after the public prosecutor decided to drop the charges against the senior police official. Finally, Basok lodged an application with the ECtHR, complaining that Russia should be held liable for a violation of Article 10 ECHR in relation to his mistreatment by an on-duty public official while Basok himself was acting as a journalist gathering material intended to be used for news reporting. Basok also complained of a violation of his right to liberty (Article 5 ECHR), but this part of the complaint was unrelated to the facts which amounted to the alleged violation of his rights under Article 10 ECHR.

The ECtHR started by reiterating that "the gathering of information is an essential preparatory step in journalism and an inherent, protected part of press freedom" (see also *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland*, IRIS 2017-8/1 and *Butkevich v. Russia*, IRIS 2018-4/2). It observed that Basok was present at the venue of an upcoming protest rally and seeing a potential news story in what might have been perceived as unlawful conduct on the part of an on-duty public officer. Hence, Basok tried to take photographs with the clear intention of using them for the purpose of news reporting, namely, as a freelance journalist for a specific Internet news portal. The ECtHR confirms that the journalist's act of taking photographs constituted the exercise of his freedom to "receive and impart information and ideas." It also emphasised that it was not the Court's task under

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Article 10 ECHR in the present case to establish the fact and extent of criminal liability on the part of any public official, but that it had to determine whether Basok's freedom of expression was "interfered with" by the "state" in a manner that was not "prescribed by law" and/or that was not "necessary in a democratic society" in the pursuance of a legitimate aim listed in Article 10, paragraph 2 ECHR.

The ECtHR found that Mr D, as a public official, has applied some degree of physical force against Basok, also causing damage to his property, namely his camera. Nothing indicated that it was justifiable in the circumstances of the present case, *inter alia*, on account of the journalist's own conduct. Having examined the available material, the ECtHR considered that the circumstances of the case revealed a disproportionate interference with Basok's freedom to impart information and ideas on account of his attempt to take photographs of what he reasonably perceived at the time to be unlawful conduct on the part of a public official. On this ground, the ECtHR reached the conclusion that Article 10 has been violated. Apart from non-pecuniary damages and costs and expenses (the latter to be paid to Basok's lawyer), the ECtHR also awarded Basok a sum of EUR 120 in respect of pecuniary damage, compensating the cost of repairing his camera, as a form of "just satisfaction".

ECtHR, Third section, sitting as a Committee, Basok v. Russia, Application no. 10252/10, 24 March 2020

https://hudoc.echr.coe.int/eng?i=001-201863

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UKRAINE

ECtHR: Centre for Democracy and the Rule of Law v. Ukraine

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Shortly after its judgment in the *Studio Monitori and Others v. Georgia* case (IRIS 2020-4:1/7), the European Court of Human Rights (ECtHR) has delivered a judgment that elaborates further on the right of access to public documents as part of the right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR). The ECtHR unanimously found that a refusal by the Ukrainian authorities to give a non-governmental organisation (NGO) access to information about the education and work history of top politicians running for parliament, as contained in their official CVs, violated the NGO's right of access to public documents under Article 10 ECHR.

The applicant, the Centre for Democracy and the Rule of Law (CDRL), is an NGO focusing its efforts, as a civil society organisation, on the development of independent media, support for civil platforms and movements, the protection of freedom of expression and achieving the accountability of the government and politicians in Ukraine. On the occasion of the parliamentary elections in 2014, the CDRL requested from the Central Election Commission (CEC) a copy of the CVs of the six politicians heading the lists of the political parties taking part in the elections. The CDRL relied on the Access to Public Information Act and the Parliamentary Elections Act, arguing that the CVs constituted public information. It provided no indication as to how the documents would be used. The CEC refused to provide the requested copies of the full CVs, and instead, provided the information which had already been published on the CEC's website, containing only some elementary information about the political candidates. The CEC argued that the non-disclosed parts of the CVs, including information about the education and work history of the politicians, was to be considered as confidential, because it concerned the politicians' private lives. Furthermore, the CDRL's information request did not identify any need to disclose that information without the candidates' consent, for reasons of national security, economic welfare or human rights. All appeals in court at domestic level failed.

The CDRL lodged an application with the European Court, complaining that the domestic authorities had denied it access to the information it needed for the effective exercise of its freedom of expression, in breach of Article 10 ECHR. In its judgment of 26 March 2020, the ECtHR referred to its 2016 seminal Grand Chamber judgment in the case of *Magyar Helsinki Bizottság v. Hungary* (IRIS 2017-1/1) in which the Court decided that whether and to what extent the denial of access to information constitutes an interference with an applicant's right to freedom of expression under Article 10 "must be assessed in each individual case

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and in the light of its particular circumstances." Four criteria are relevant in this assessment: (a) the purpose of the information request; (b) the nature of the information sought; (c) the particular role of the seeker of the information in receiving and imparting it to the public; and (d) whether the information was ready and available. The ECtHR reiterated that "in order for Article 10 to come into play, it must be ascertained whether the information sought was in fact necessary for the exercise of freedom of expression." It also clarified that the information, data or documents to which access is sought must meet a public interest test in order to prompt a need for disclosure under the Convention, and that "such a need may exist where, *inter alia*, disclosure provides transparency on the manner of conduct of public affairs and on matters of interest for society as a whole and thereby allows participation in public governance by the public at large." Furthermore, the relevance of the "privileged position" that the ECtHR accords to political speech and debate on questions of public interest is highlighted, considering in this regard that "the rationale for allowing little scope under Article 10, paragraph 2 of the Convention for restrictions on such expressions, likewise militates in favour of affording a right of access under Article 10, paragraph 1 to such information held by public authorities."

The crucial question for the Court to resolve was whether the failure to disclose to the CDRL the information about education and work history which the political leaders had included in the official CVs they submitted to the CEC as part of the election process involved an interference with and a breach of the CDRL's rights under Article 10 ECHR. That question focused on the information about the politicians' education and work history, as the CDRL agreed that the politicians' addresses and phone numbers (which were also included in their CVs) should not be made public; as to the list of family members (also included in the CVs), the ECtHR pointed out that this information had been publicly available from alternative sources.

With regard to the purpose of the information request (raising awareness regarding the inegrity of candidates for high office in the light of previous controversies in Ukraine regarding the educational qualifications of senior officials), the Court recognised that this purpose was only clearly explained in the proceedings before the domestic courts and not when the information request was first made. However, the ECtHR took into account that reasons were not a required element of an information request under domestic law, and that once it received a refusal, the CDRL explained its reasons in the proceedings before the domestic courts. The Court also observed that considerable information about the candidates' education and work history was already in the public domain, but that the CDRL has "rather convincingly" explained that it specifically needed the information from the CVs, as presented firsthand by the MP candidates themselves. Next, the ECtHR agreed that the information requested by the CDRL met the public interest test, as it concerned relevant information about leading politicians "as public figures of particular prominence." The Court accepted that the public had an interest in their background and integrity, while the role of the CDRL as an NGO exercising an important "watchdog" function in this regard was not contested. Neither was it in dispute that the information it sought was ready

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and available. The ECtHR found that by refusing to disclose to the CDRL the information on the top politicians' education and work history contained in their official CVs, the domestic authorities have impaired the CDRL's exercise "of its freedom to receive and impart information, in a manner striking at the very substance of its Article 10 rights." While this interference with the CDRL's rights under Article 10 was prescribed by law and pursued the legitimate aim of protecting privacy, the final question remained as to whether the refusal to disclose the information was necessary in a democratic society. The ECtHR is of the opinion that the disclosure of the personal data requested by the CDRL did not entail the politicians' public exposure to an unforeseen degree. Indeed, by submitting their CVs in the context of putting their candidacies forward in a national parliamentary election, politicians inevitably exposed their qualifications and record to close public scrutiny. There was no evidence "that the interests of the political leaders were of such a nature and degree as could warrant bringing Article 8 into play in a balancing exercise against the effective exercise of the applicant organisation's right protected by paragraph 1 of Article 10." However, since the protection of personal information constitutes a legitimate aim permitting a restriction on freedom of expression under Article 10, paragraph 2, the Court continued to evaluate whether the means used to protect the politicians' interests were proportionate to the aim sought to be achieved. It observed that the domestic courts failed to conduct an adequate balancing exercise, comparing the harm any potential disclosure could do to the politicians' interest in non-disclosure of the information about their education and work history with the consequences for effective exercise of the CDRL's freedom of expression. Actually, the ECtHR found that the degree of the potential harmful impact on the politicians' privacy was not assessed at all at domestic level. Furthermore, the CDRL had explained its reasons in the proceedings before the domestic courts and the purpose for which access to this information was requested. There was no indication that the domestic courts were prevented by any rules of domestic law or other considerations from taking that additional information into account and possibly reassessing the CEC's conclusions in that light. This brought the ECtHR to the conclusion that the decision to deny the CDRL access to the requested information was not "necessary in a democratic society." There has, accordingly, been a violation of Article 10 ECHR.

ECtHR, Fifth section, Centre for Democracy and the Rule of Law v. Ukraine, Application no. 10090/16, 26 March 2020

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NATIONAL

AUSTRIA

[AT] COVID-19 support measures

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Measures taken to contain the coronavirus are having a huge impact on the audiovisual sector, forcing filming to be suspended and cinemas to close. This is creating considerable financial difficulties for the audiovisual industry. In Austria, various support measures have been taken by several organisations in order to minimise the effects of the crisis. Some have been specifically introduced for the audiovisual sector, some are aimed at creative artists outside the audiovisual sector, while others are more general in nature.

The *Verwertungsgesellschaft für audiovisuelle Medien GmbH* (Collecting Society for Audiovisual Media – VAM) has set up a disaster fund, with EUR 250 000 available to compensate for losses resulting from the coronavirus outbreak and wasted expenditure incurred by cultural organisations. A maximum of EUR 10 000 is available to each beneficiary.

The *Verwertungsgesellschaft der Filmschaffenden* (Collecting Society for Filmmakers – VdFS) has created its own social emergency fund to replace lost earnings linked to the cancellation of film productions and other assignments. This financial support is available to people who signed a collecting agreement with the VdFS at least a year before submitting their application and have registered a minimum number of works. A single grant of up to EUR 4 500 is available to applicants whose financial difficulties clearly exceed the financial risks of normal business operations and are directly linked to the emergency measures taken to combat COVID-19. The grants are also available to people who have already received a living costs grant in 2020.

The *Dachverband der österreichischen Filmschaffenden* (Austrian Filmmakers Association) is compiling a range of information related to the coronavirus crisis.

Together with the VdFS, it has commissioned the L&R social research institute to conduct a survey of the financial and insurance-related impacts of the crisis for filmmakers. The data collected should provide an overview of the effects on filmmakers so that the need for additional support measures can be properly assessed.

In partnership with various organisations that represent artists' interests, the Dachverband der österreichischen Filmschaffenden also drew up a list of questions on coronavirus-related measures, which were answered by the Vice-

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Chancellor and the Secretary of State for Art and Culture. The questionnaire dealt with the effects on state support for artistic and cultural projects that have had to be cancelled, amended or delayed as a result of coronavirus-related measures.

The Dachverband has also produced an FAQ on the subject of reduced working hours. Although the rules on reduced working hours as a support measure during the coronavirus crisis were not brought in specifically for the audiovisual sector, they do apply in this field.

As well as measures introduced specifically for the audiovisual sector, there are a number of support measures for creative artists who work outside the audiovisual field.

The collecting societies AKM & austro mechana (representing authors [including screenwriters], composers and music publishers) and *Österreichische Interpretengesellschaft* (Austrian Performers' Association – OESTIG) have set up a cultural disaster fund worth EUR 1 million to combat the anticipated effects of the coronavirus crisis on the cultural sector. The fund is designed to help composers who are experiencing financial hardship caused by the cancellation of public events and the resulting loss of royalties and fees. Musicians whose economic situation is threatened by the cancellation of public events can also apply for a one-off loan of up to EUR 15 000. The loans are interest-free for a maximum two-year term, with up to 15 monthly repayments to begin in October 2020.

The *Verband der österreichischen Musikwirtschaft* (Association of the Austrian Music Industry), LSG Wahrnehmung von Leistungsschutzrechten Ges.m.bH, has created a EUR 1 million aid programme for Austrian music labels, although the actual conditions of eligibility are still being worked out. One-off or recurring support grants will be available to members, performers and producers.

Visual artists who fall into financial hardship as a result of the coronavirus crisis can apply for financial support from the Bildrecht bridging fund. This support, which is from the Bildrecht collecting society's SKE-Fonds (social and cultural fund), does not have to be repaid.

The Literar Mechana für Autorinnen/Autoren und Übersetzerinnen/Übersetzer (Austrian collecting society for authors and translators) has created a EUR 1 million special fund made up of social and cultural funds. This is designed to offer one-off or recurring support grants for cancelled events.

The general support measures that cultural artists can access include the EUR 2 billion hardship fund of the Wirtschaftskammer Österreich (Austrian Chamber of Commerce – WKÖ), which was set up to provide emergency aid to all one-person companies, micro-businesses, artists and newly self-employed people whose income has plummeted as a result of the coronavirus measures. Applications could be submitted to the WKÖ from 27 March onwards. In the first phase, a one-off grant of EUR 1 000 could be requested to cover subsistence costs. In phase 2, which began after Easter, a maximum of EUR 2 000 per month could be accessed for up to three months, including any payment made in phase 1. A maximum of

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EUR 6 000 per person is therefore available to each individual. This does not need to be repaid. However, non-profit organisations are covered not by the hardship fund, but by a separate scheme.

To supplement the hardship fund, the Künstler-Sozialversicherungsfonds (Artists' Social Insurance Fund – KSVF) has set up a EUR 5 million COVID-19 fund. This offers emergency funding of EUR 500 or EUR 1 000 to artists and cultural mediators unable to access the hardship fund (in particular people with multiple insurance policies and anyone whose income is below the low-income threshold). Recipients must also have their main residence in Austria and suffer a significant financial threat due to COVID-19, that is, they are no longer able to cover their current expenses (living and operational costs). They must not be entitled to any private or professional insurance pay-outs to cover the effects of COVID-19, nor have previously received KSVF support funding to cover the same loss. Their income for the last full financial year, as recorded in their income tax assessment, should be no higher than EUR 51 552 (80% of the annual maximum contribution basis for social insurance). Applicants who do not have an income tax assessment must estimate their annual income themselves. The precise details of additional financial support are still in the planning phase.

There are also various other support measures that are not specifically designed for the cultural sector, such as the reduced working hours scheme, the reduction or deferral of social insurance contributions and tax breaks.

SKE Katastrophenfonds der Verwertungsgesellschaft für audiovisuelle Medien GmbH

https://www.vam.cc/pflichtveroeffentlichungen/vam-katastrophenfonds/

Social and cultural disaster fund of the Collecting Society for Audiovisual Media

SKE Fonds für soziale Notfälle der Verwertungsgesellschaft für Filmschaffende (VdFs)

https://www.vdfs.at/files/vdfs_ske_covid-19-2.pdf

Social emergency fund of the Collecting Society for Film-Makers (VdFS)

Befragung des Dachverbands der österreichischen Filmschaffenden und der Verwertungsgesellschaft für Filmschaffende

https://www.filmschaffende.at/

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Survey of the Austrian Film-Makers Association and the Collecting Society for Film-Makers

Fragenkatalog des Dachverbands der österreichischen Filmschaffenden und anderer Künstler-Interessenverbände

https://www.filmschaffende.at/index.php?a=254

List of questions compiled by the Austrian Film-Makers Association and other organisations representing artists' interests

FAQ zu Kurzarbeit vom Dachverband der österreichischen Filmschaffenden

http://schnittstelle-film.com/wordpress/wp-content/uploads/2020/03/FAQ_zum_Thema_Kurzarbeit_des_Dachverbands_der_%C3%B6sterreichischen_Filmschaffenden.pdf

Austrian Film-Makers Association FAQ on reduced working hours

Wirtschaftskammer Österreich - Härtefallfonds

https://www.wko.at/service/haertefall-fonds-epu-kleinunternehmen.html

Hardship fund of the Austrian Chamber of Commerce

Künstlersozialversicherungsfonds - COVID-19-Fonds

https://www.ksvf.at/unterstuetzungs-fond.html

Artists' Social Insurance Fund - COVID-19 Fund

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GERMANY

BILD Digital Live TV streaming service approved

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On 31 March 2020, the *Kommission für Zulassung und Aufsicht* (Commission on Licensing and Supervision – ZAK) of the *Landesmedienanstalten* (regional media authorities) issued a broadcasting licence to BILD GmbH for its nationwide linear streaming service BILD Digital Live TV.

BILD GmbH, a 100% subsidiary of Axel Springer SE, had applied to the *Medienanstalt Berlin-Brandenburg* (Berlin-Brandenburg media authority – mabb) for a licence at the end of January 2020. The permanent licence was granted under Article 20a of the *Rundfunkstaatsvertrag* (Inter-State Broadcasting Agreement – RStV) subject to an assessment by the *Kommission zur Ermittlung der Konzentration im Medienbereich* (Commission on Concentration in the Media – KEK).

According to the application, the planned range of programmes will include a number of different linear broadcasting formats, spanning from live reporting on events, discussion programmes and talk shows to reporting on sports events.

The programmes will be broadcast via the BILD websites, all the associated mobile and smart TV apps, and Internet platforms such as Facebook and YouTube. There are also plans to distribute them on IPTV platforms, although they will not form part of the respective IPTV product, but will be integrated as an app or OTT service. Since the programmes will also be available via Germany's most-read news website, BILD.de, and BILD's popular Facebook and YouTube channels, audience figures are expected to be very high.

The service will mainly consist of news and information programmes. Discussion programmes and talk shows will be devoted to topical news-related themes. Many of the programmes will be available on demand after their initial broadcast, either in full or in excerpt form.

The licensee must immediately inform the mabb whenever it wants to add or remove a linear stream from the service.

The ZAK granted the licence subject to an assessment by the ommission zur *Ermittlung der Konzentration im Medienbereich* (Commission on Concentration in the Media – KEK). In view of the case law of Germany's highest administrative court, the *Bundesverwaltungsgericht* (Federal Administrative Court), this expansion of the reach of the country's leading tabloid newspaper is not expected to give rise to any serious objections.

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Pressemitteilung der Kommission für Zulassung und Aufsicht (ZAK)

https://www.die-medienanstalten.de/service/pressemitteilungen/meldung/news/streaming-angebot-bild-digital-live-tv-erhaelt-rundfunkzulassung/

Commission on Licensing and Supervision (ZAK) press release

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[DE] Coronavirus crisis: German film support agencies launch joint aid programme

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In an effort to reduce the impact of the coronavirus crisis on the German film and cinema industry, film support agencies at federal and regional levels have launched a joint aid programme. On 27 March 2020, the national *Filmförderanstalt* (Film Support Agency – FFA) announced that the programme would fund the production, rental and cinema sectors to the tune of EUR 15 million. The measures, which are designed to be implemented quickly and without unnecessary bureaucracy, took immediate effect.

The coronavirus pandemic is having a direct impact on the entire film industry. Some elements of film production, distribution and screening have come to a complete standstill. With this in mind, the FFA had already announced a number of emergency aid schemes in mid-March and these have now been combined to form a joint package of measures.

As part of the measures, the film support agencies will waive the repayment of funds that have already been paid out following the coronavirus-related cancellation of the shooting or release of a film. Special support is also available to cover additional costs linked to the postponement of such activities. The package also includes help for projects that were due to begin production or be released in cinemas before 30 June 2020, and for which funding had already been promised before 18 March 2020. The FFA fees and loan repayments owed by cinemas can also be deferred.

The agencies involved in the aid programme are the regional FilmFernsehFonds Bayern (FFF), Filmförderung Hamburg Schleswig-Holstein (FFHSH), Film- und Medienstiftung NRW (FMS), HessenFilm, Medienboard Berlin-Brandenburg (MBB), Medien- und Filmgesellschaft Baden-Württemberg (MFG), Mitteldeutsche Medienförderung (MDM) and nordmedia, while at federal level, the FFA is joined by the Federal Government Commissioner for Culture and Media (BKM), the Deutsche Filmförderfonds (DFFF), Kulturelle Filmförderung and the German Motion Picture Fund (GMPF).

In addition to the joint aid programme, the regional film support agencies have launched individual measures, including an increase in cinema programming grants. In North Rhine-Westphalia, for example, all cinemas that received awards for an ambitious and diverse film programme in 2019 will receive an additional EUR 5 000 payment.

In their joint statement, the film support agencies stressed that the new package of measures would reach areas that were not covered by any of the other coronavirus-related support schemes being operated at federal or regional level.

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Gemeinsame Pressemitteilung der Filmförderer zum Maßnahmenpaket vom 27. März 2020

https://www.ffa.de/aid=1394.html?newsdetail=20200327-1351_corona-krise-bundes-und-laenderfoerderer-starten-hilfsprogramm-fuer-die-film-und-medienbranche

Film support agencies' joint press release on the package of measures launched on 27 March 2020

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[DE] Federal Government tables another NetzDG draft amendment

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On 1 April 2020, the German Federal Gover

nment adopted a bill to amend the *Netzwerkdurchsetzungsgesetz* (Network Enforcement Act – NetzDG). The proposed reforms are designed, on the basis of lessons learned from the application of the Act, to improve users' rights in relation to unauthorised deletions and account blocking, and to simplify the process for asserting information rights. They therefore supplement the changes proposed in February under the *Gesetzentwurf zur Bekämpfung des Rechtsextremismus und der Hasskriminalität* (Draft Act to combat right-wing extremism and hate crime).

The Network Enforcement Act entered into force in 2017 with the objective of making social network providers more accountable for illegal content. In particular, they are subject to transparency obligations and must provide a simple procedure for submitting complaints about and analysing illegal content.

In practical terms, the latest bill proposes that social networks should, in future, introduce a procedure through which users can request a review of a decision concerning illegal content. The reasons for the review decision must then be given to the user concerned. The bill also explains that documents connected with restitution claims, in which a user asks for a deletion to be reversed, can also be forwarded to the authorised person appointed in accordance with the Network Enforcement Act. The process for reporting illegal content must also be made more user-friendly and accessible. The existing obligation to submit half-yearly transparency reports has also been extended, with an explanation of changes compared with previous reports and information about automatic deletions. The amendment is also designed to broaden the scope of application of the Network Enforcement Act, which will also cover smaller and theme-specific providers of video-sharing platform services. This is in line with the provisions of the amended Audiovisual Media Services Directive (AVMSD), which must be implemented in the member states' domestic law by September 2020.

The government's decision also makes provision for an amendment of the German *Telemediengesetz* (Telemedia Act – TMG). When the conditions are met for user data to be disclosed in order to enforce civil law claims, courts will therefore be able to directly order social networks to provide this information. The bill will now be debated further in the German Bundestag and Bundesrat (lower and upper houses of parliament).

Pressemitteilung des Bundesministeriums der Justiz und für Verbraucherschutz vom 1. April 2020

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https://www.bmjv.de/SharedDocs/Pressemitteilungen/DE/2020/040120_NetzDG.html

Press release of the Federal Ministry of Justice and Consumer Protection, 1 April 2020

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[DE] German media regulators adopt simpler notification procedure during coronavirus crisis

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On 20 March 2020, the *Direktorenkonferenz der Medienanstalten* (Conference of Regional Media Authority Directors - DLM) agreed on a pragmatic notification procedure for the live streaming of cultural and religious events and educational programmes during the coronavirus crisis after the competent state authorities in Germany ordered a shutdown aimed at combatting the COVID-19 pandemic.

In view of the cancellation of all cultural and religious events and the closure of educational institutions under state measures taken to fight the coronavirus, the live streaming of cultural and religious events and educational programmes has become more important. Some live streams may be categorised as a form of broadcasting and as such, in principle, require a licence according to the current German *Rundfunkstaatsvertrag* (Inter-State Broadcasting Agreement).

The regional media authorities have therefore decided that, initially until 19 April 2020, streaming related to these domaines can be provided without the need to follow any complicated procedures. Following the cancellation of all social gatherings such as concerts, religious services and training courses, they believe that live broadcasts are an appropriate means of enabling people to continue participating in social, cultural and religious life at home. They have therefore adopted a simplified notification procedure for live streams that require a broadcasting licence as a pragmatic solution for ensuring that such services can be provided at short notice. The current substantive rules, in particular those concerning the protection of human dignity, young people and consumers, and journalistic due diligence obligations must continue to be strictly followed despite the relaxed notification requirements, since the media authorities consider that reliable information is especially important in times of crisis.

Pressemitteilung der Direktorenkonferenz der Medienanstalten (DLM) vom 20. März 2020

https://www.die-medienanstalten.de/service/pressemitteilungen/meldung/news/pragmatisches-vorgehen-bei-live-streamings/

Conference of Regional Media Authority Directors (DLM) press release of 20 March 2020

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[DE] Politician Renate Künast wins another partial success following Facebook insults

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On 11 March 2020, the *Kammergericht Berlin* (Berlin Appeal Court) issued another decision in the case concerning German Green Party politician Renate Künast. It partially amended, in the politician's favour, the decision taken by the *Landgericht Berlin* (Berlin District Court) following Künast's claim against a social media platform for the publication of user data, and decided that a further six of the 22 disputed user comments were libellous. The district court's original decision not to classify any of the posts as libellous had been heavily criticised by the general public and had already been partially amended in January of this year.

The case concerns a controversial comment made by Künast in the Berlin regional parliament in 1986 on the subject of paedophilia. She had been accused of supporting a call for sex with children to be decriminalised. The politician had denied this. In 2015, her comment was misquoted in a Facebook post in an effort to once again create the impression that she would support the decriminalisation of sex with children, whereupon numerous users posted abusive comments underneath the article.

Under the latest decision, in addition to the six cases already approved by the district court, the social media platform can disclose the user's name, e-mail address and IP address in a further six cases. The judges stressed that this was initially a preliminary claim, which, from both a procedural and substantive point of view, was clearly different from further claims for an injunction and financial compensation. It was not yet necessary in the current proceedings to rule on the claims against the social media platform operator.

According to the appeal court, the content of the six comments that have now been classified as libellous was so defamatory that they should be categorised as '*Schmähkritik*' (critical defamation) or '*Formalbeleidigung*' (an equivalent term meaning an insult resulting from the form of the comment) and therefore constituted the offence of libel under German criminal law. Even bearing in mind the context, the verbal attacks had to be classified as abusive comments made about the complainant outside a factual debate. Contrary to the district court's original decision, the judges did not think the comments had been relevant to the debate. The politician had been subjected to excessively sexist, degrading, obscene insults under the anonymity of the Internet. The broad limits of the admissible expression of opinions had clearly been exceeded.

However, the same did not apply to the other ten comments that had been examined by the courts. Although some of them were disparaging, they did not, under constitutional case law, constitute libellous insults under Article 185 of the *Strafgesetzbuch* (Criminal Code – StGB). The decision is final.

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Pressemitteilung des Kammergerichts Berlin vom 24. März 2020 zum Beschluss – 10 W 13/20 – vom 11. März 2020

https://www.berlin.de/gerichte/presse/pressemitteilungen-der-ordentlichen-gerichtsbarkeit/2020/pressemitteilung.911281.php

Berlin Appeal Court press release of 24 March 2020 on decision 10 W 13/20 of 11 March 2020

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[DE] Recognition granted to first self-regulatory body for illegal social network content analysis

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The German *Bundesamt für Justiz* (Federal Ministry of Justice) has recognised the *Freiwillige Selbstkontrolle Multimedia-Diensteanbieter e. V.* (FSM) as the first regulated self-regulatory body for the analysis of illegal social network content. This means that online platforms, as part of their obligations to check content, can ask the FSM to decide whether content that users have uploaded to their platform is unlawful.

Since the entry into force of the *Netzwerkdurchsetzungsgesetz* (Network Enforcement Act – NetzDG) in Germany in 2017, social network providers have become more accountable when it comes to dealing with illegal content. In particular, they are subject to transparency obligations and must establish a simple procedure for submitting complaints about and analysing illegal content.

Under Article 3(6) of the Act, social network providers can refer decisions regarding the lawfulness of content published on their platforms to a so-called regulated self-regulatory body in cases requiring a particularly complex analysis process. These bodies must employ independent, expert analysts; provide appropriate facilities and guarantee prompt analysis within seven days; and establish rules of procedure that regulate the scope and structure of the analysis process and stipulate the submission requirements of the affiliated social networks. In addition, a decision review process must be provided and a complaints office set up. Consideration is given to self-regulatory bodies that are funded by several social network providers or institutions and that are open to admitting further providers. If the analysts of such a recognised body decide that content which has been complained about is unlawful, the social network concerned is bound by their decision and must remove the content from its platform.

At the start of the year, the Bundesamt für Justiz had explained that the FSM met the requirements to be recognised as the first self-regulatory body under the Network Enforcement Act. The FSM's committee of analysts contains 50 lawyers who, according to the FSM, decide on cases fully independently of the platforms and the self-regulatory body. So far, the Facebook and YouTube platforms have submitted themselves to self-regulation. In a press release, the FSM announced that it wanted to start its analysis work in the near future.

The FSM has been recognised as a voluntary self-regulation body by the *Kommission für Jugendmedienschutz* (Commission for the Protection of Minors in the Media – KJM) and has been active in the telemedia sector since 2005. As part of its activities, it deals largely with the protection of young people in the media, in particular the fight against online media content that is illegal or that harms

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young people or their development.

Pressemitteilung des Bundesamtes für Justiz vom 23. Januar 2020

https://www.bundesjustizamt.de/DE/Presse/Archiv/2020/20200123.html

Federal Ministry of Justice press release of 23 January 2020

Pressemitteilung der Freiwilligen Selbstkontrolle Multimedia-Diensteanbieter e. V. (FSM) zum Beginn der Arbeit als Selbstkontrolleinrichtung nach NetzDG

https://www.fsm.de/de/presse-und-events/fsm-als-netzdg-selbstkontrolle

Press release of the Freiwillige Selbstkontrolle Multimedia-Diensteanbieter e. V. (FSM) on the start of its work as a self-regulatory body under the Network Enforcement Act

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SPAIN

[ES] Cultural industries and COVID-19 in Spain

Enric Enrich
Enrich Advocats, Barcelona

Cultural industries in Spain, and specifically live entertainment (music, theatre, dance, cinemas, etc.), have been seriously damaged by the lockdown due to COVID-19. The Spanish Government has issued certain rules and benefits to minimise the impact of the pandemic among self-employed people in general.

The Minister of Culture was seriously critised when he declared that there would be no public aid for the cultural sector. However, in a meeting on Friday, 17 April with all the Counsellors of Culture of the Autonomous Communities and Federation of Cities, he seemed to rectify this, but without specifying what was going to be done or whether a common consensus had been reached. It was reported that the Ministry was willing "to favour all initiatives, public and private, that come from both large companies, the sector or nearby sectors to help at this time of difficult resistance." This Friday's meeting only resulted in the agreement of a "package of urgent palliative measures to address situations of extreme need in the sector," but what these measures will consist of and when they will be applied has not yet been finalised.

In the meantime, Netflix – which is very actively involved with Spanish film and series production -; the Spanish Agency for Cultural Action (*Acción Cultural Española*, ACE), whose task is to promote culture in Spain and abroad; the Film Academy; and the Institute of Cinematography and Audiovisual Arts (ICAA) of the Ministry of Culture and Sports, will sign an agreement to promote a helpline for the most impacted audiovisual professionals due to the COVID-19 crisis in Spain.

The creation of this aid is part of a global initiative by Netflix (announced on 20 March) to allocate USD 100 million to support film and television workers. A large part of this amount is aimed at helping Netflix productions in Spain and around the world. The rest (USD 15 million) is earmarked for emergency funds dedicated to professionals in the audiovisual sector in different countries such as the United Kingdom, Italy or France.

Las nuevas medidas de protección aprobadas por el Gobierno acogen también al sector cultural, Ministerio de Cultura y Deporte

https://www.culturaydeporte.gob.es/actualidad/2020/03/200331-medidas-proteccion.html

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The new protection measures approved by the Government also include the cultural sector, Ministry of Culture and Sports

Netflix aporta 1 millón de euros a línea de ayudas audiovisuales en España, EFE

https://www.efe.com/efe/espana/cultura/netflix-aporta-1-millon-de-euros-a-linea-ayudas-audiovisuales-en-espana/10005-4222016

Netflix contributes 1 million euros to the audiovisual aid line in Spain, EFE

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FRANCE

[FR] COVID-19: support for the audiovisual and cultural sector

Amélie Blocman
Légipresse

With cinemas closed, filming suspended and festivals cancelled, the cultural sector is being hit particularly hard by the current health crisis. On 18 March 2020, Minister of Culture Franck Riester announced various measures and emergency funding of EUR 22 million to support the sector. Those working in the sector can also benefit from the general emergency measures adopted by the government, which include grants from the solidarity fund (initially worth EUR 1 billion, then increased to EUR 7 billion); the deferral or staggering of rent, tax and social security payments; and the mobilisation of the state guarantee covering the cultural sector. Part-time working arrangements therefore apply to cultural employers, with the state paying 100% of salaries up to 4.5 times the minimum wage as part of a scheme that has been extended to include casual workers. The Ministry of Culture has posted an FAQ section on its website to explain the effects of the crisis, specifying, in particular, the modalities concerning part-time working arrangements, and the impact on remuneration rights and employment contracts. Specific measures will be put in place for entertainment workers, with details yet to be announced.

As well as these general support measures, sector-specific measures have also been put in place.

Adopted in accordance with Article 11 of the Emergency Act to combat the COVID-19 epidemic, Ordinance No. 2020-353 of 27 March 2020 concerning exceptional aid measures for copyright and related rightsholders enables collective management companies, on an exceptional basis, to use the money they are usually required to devote to artistic and cultural activities to support copyright and related rightsholders. This measure will be in place until 31 December 2020 so that collective management companies can receive, assess and respond to individual applications.

Normally, collective management companies distribute 75% of the money generated from private copying fees to rightsholders (authors, artists, publishers and producers); the remaining 25% is spent on general interest measures to support creativity, the performing arts and the development of artistic and cultural education (Article L. 324-17 of the Intellectual Property Code). In 2017, the 14 collective management companies allocated EUR 73.5 million to such projects, which also benefit from certain royalties that cannot be distributed either because the rightsholders cannot be identified or because they fall under international agreements to which France is a party. The amount of funding for cultural activities collected in this way by the 14 collective management

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companies rose sharply between 2013 and 2017, with income increasing from EUR 108 million to EUR 183 million and the amount actually distributed rising from EUR 77 million to EUR 125 million.

According to the Ordinance of 27 March 2020, this money can therefore, on an exceptional basis, be used to provide “financial support for copyright and related rightsholders whose income derived from the exploitation of protected works and objects in France is seriously affected by the health crisis.”

In view of the serious impact of the crisis on rightsholders, all the collective management companies have accordingly adopted emergency aid measures such as relief funds, the advance payment of royalties and the boosting of aid programmes and solidarity funds. For example, the Société des Auteurs et Compositeurs Dramatiques (SACD), with financial support from the Centre National du Cinéma et de l’Image Animée (National Centre of Cinematography and the Moving Image – CNC), has created an emergency fund for authors of audiovisual, cinematographic, animated and web-based works.

This fund is designed, in particular, to support the authors of such works who are not receiving help from the national solidarity fund or partial unemployment benefit of EUR 1 500 or more, to enable them to deal with the economic fallout of the crisis linked to the COVID-19 epidemic. Recipients must be able to prove that they lost at least 50% of their net income from creative activities in March and/or April 2020.

Income from creative activities is defined as the net remuneration that an author, whether they are already an SACD member or not, receives from their involvement in the creation of a work that is the subject of an audiovisual production contract (commission bonus, guaranteed minimum payment) as well as net remuneration incidental to their creative activity, such as income from running creative workshops in educational establishments or participation in festivals or other professional events. It excludes broadcasting royalties and any other type of remuneration such as salaries, benefits, etc. In return for financing this fund, the CNC will be able to have sworn officials carry out checks on funding recipients and to investigate any company with which a recipient has signed a contract that is likely to have influenced the granting of funds. The CNC will also be able to monitor the SACD’s management of the fund.

The CNC has also announced that payment of the March 2020 instalment of the cinema ticket sales tax will be deferred; that support will be given to art house cinemas (EUR 16.5 million) and film distribution (EUR 5.5 million); that payments from its support schemes will continue; that measures will be taken to relax the criteria for mobilising its support funds; and that all subsidies granted for events that have been cancelled for health reasons will be paid. Those subsidies that have already been paid will be retained by the recipient, while all others will be paid if this has not already been done.

Finally, on 8 April, Netflix and Audiens, the social protection group for the cultural sector, announced in partnership with the Ministry of Culture, via the CNC, the creation of an emergency support fund for casual artists and technicians working

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in the audiovisual and film sector who have been severely affected by the coronavirus crisis and the cancellation and postponement of production work across France. Netflix is contributing EUR 1 million to set up this fund.

According to the Minister of Culture, these sector-specific measures will be expanded in the coming weeks.

Ordonnance n° 2020-353 du 27 mars 2020 relative aux aides exceptionnelles à destination de titulaires de droits d'auteurs et de droits voisins en raison des conséquences de la propagation du virus COVID-19 et des mesures prises pour limiter cette propagation

https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041762778&dateTexte=20200417

Ordinance no. 2020-353 of 27 March 2020 concerning exceptional aid measures for copyright and related right holders affected by the consequences of the spread of the COVID-19 virus and the measures taken to limit it

Cultural employers facing the effects of the coronavirus crisis, Ministry of Culture

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[FR] Exceptional relaxing of release window policy due to coronavirus epidemic

Amélie Blocman
Légipresse

As part of an exceptional set of measures contained in Article 17 of the Emergency Act to combat the COVID-19 epidemic, which was enacted on 23 March 2020, a week after the President of the French Republic declared the lockdown of the French population, the president of the *Centre National du Cinéma et de l'Image Animée* (National Centre of Cinematography and the Moving Image – CNC) is allowed to grant an exemption from the official four-month window between a film's cinema release and its release on VOD, DVD or Blu-Ray for films that were being shown in cinemas on 14 March, the day before all French cinemas were closed. Without this derogating measure, the CNC president cannot shorten this window to less than three months (see Articles L. 231-1 et seq. of the Film and Moving Image Code and the Minister of Culture's decree of 25 January 2019 extending the agreement on the reorganisation of release windows of 6 September 2018, including its amendment of 21 December 2018).

Dominique Boutonnat, president of the CNC, explained that this exceptional derogation would be examined on a case-by-case, film-by-film basis, subject to certain conditions. Firstly, it would only be granted at the request of the holder of the rights to make the film in question available to the public. Secondly, each request would be examined in consultation with representatives of the sector, in particular the professional associations of cinema operators. This process would be conducted "with reference to objective criteria laid down as part of this consultation process."

This new exemption made possible under the Emergency Act does not apply to films that had not yet been released when the cinemas were closed. These films are not subject to the release window policy and rightsholders are free to exploit them on any media under their contractual freedom. However, in such cases, the CNC is, in principle, required to claim back financial support previously granted to films that are not first exploited in cinemas. On an exceptional basis, producers and distributors who wish to release such films on VOD rather than in cinemas first can be exempted from the usual requirement to repay film support grants.

By 17 April 2020, 45 films had already received early release authorisation.

LOI n° 2020-290 du 23 mars 2020 d'urgence pour faire face à l'épidémie de COVID-19

https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041746313&categorieLien=id

Emergency Act no. 2020-290 of 23 March 2020 to combat the Covid-19 epidemic

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[FR] Neighbouring rights: publishers secure initial victory against Google before competition authority

Amélie Blocman
Légipresse

With the adoption of the Act of 24 July 2019 creating a neighbouring right for press publishers and agencies, France became the first country to transpose the EU Copyright Directive's provisions on neighbouring rights. Under the Act, a search engine's use of article excerpts ('snippets') may be negotiated in the form of a licence agreement with the relevant publishers, in return for payment, if the excerpts are read rather than the original article (see IRIS 2019-9:1/17).

However, on the day the new provisions entered into force, 24 October 2019, Google announced its intention to "make changes in the way news-related search results are displayed." The American company unilaterally decided to stop posting article excerpts, photographs and videos within its various services unless publishers allowed it to do so free of charge. In practice, the vast majority of press publishers therefore granted free licences to Google, allowing it to use and display their protected content without any negotiation with or payment from Google. Under the licences granted to it by press publishers and agencies, Google could now use more content than before the Act had entered into force.

Unhappy with the way the Act was being implemented, which they considered an abuse of a dominant position contrary to Articles L. 420-2 of the Commercial Code and 102 of the TFEU, as well as an abuse of economic dependence, representatives of a large number of press publishers and the Agence France-Presse referred the matter to the French competition authority in mid-November. In parallel with their main action, they also requested provisional measures aimed at ordering Google to negotiate with them in good faith.

Under the terms of its decision of 9 April 2020, the competition authority considered that, given the state of the investigation, Google was likely to hold a dominant position in the French general search engine market. Its market share in terms of the number of monthly searches had been around 90% at the end of 2019. It also thought that Google could have abused its dominant position in order to circumvent the Act on neighbouring rights, in particular (i) by exploiting the possibility for press publishers and agencies to grant free licences in order to systematically impose the principle of non-remuneration for displaying protected content within its services without any possibility to negotiate; (ii) by refusing to communicate the information required to determine the level of remuneration; and (iii) by displaying article titles in full on the assumption that they were not subject to the Act on neighbouring rights.

The competition authority therefore believed that press publishers and agencies had been placed in a situation in which they had no choice but to comply with Google's policy without receiving any financial reward.

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The authority therefore held that Google's behaviour caused a serious and immediate threat to the press sector. It imposed provisional measures enabling press publishers and agencies, if they so wished, to negotiate with Google in good faith with a view to discussing both the arrangements for capturing and displaying their protected content and the remuneration that might be paid. These negotiations would need to be conducted within three months of the date of the press publisher's or agency's request, and should cover the period since 24 October 2019 as far as remuneration was concerned. These provisional measures will remain in force until the competition authority publishes its decision on the merits. Meanwhile, Google will be required to submit regular reports to the authority on how this decision is being implemented.

Décision 20-MC-01 du 09 avril 2020 relative à des demandes de mesures conservatoires présentées par le Syndicat des éditeurs de la presse magazine, l'Alliance de la presse d'information générale e.a. et l'Agence France-Presse

https://www.autoritedelaconcurrence.fr/sites/default/files/integral_texts/2020-04/20mc01.pdf

Decision 20-MC-01 of 9 April 2020 concerning the requests for provisional measures submitted by the Union of Magazine Publishers, the General Newspapers' Alliance and the French Press Agency

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[FR] CSA issues stern warning to LCI following debate on vaccine trials in Africa

Amélie Blocman
Légipresse

In a press release issued on 14 April, the French national audiovisual regulatory authority (Conseil supérieur de l'audiovisuel – CSA) wrote: "During this severe health crisis, a time when questions, the need for information and issues surrounding social cohesion are more important than ever, the media carry enormous responsibility. This requires them to be vigilant at all times in view of the serious risk of misinformation and to be particularly rigorous in the presentation and processing of information, including in visual illustrations." This stern warning was issued after the audiovisual regulator was contacted by a large number of TV viewers following the broadcast of a debate during the programme 'LCI info' on 1 April 2020. During the debate, a researcher from the French medical research institute (Inserm) and a head of department from a Paris hospital had discussed the advisability of conducting clinical trials in Africa to assess the use of the BCG vaccination to prevent COVID-19 infections. This had provoked numerous reactions and strong emotions at both national and international levels.

After analysing all of the footage, the CSA noted that the programme's presenter had failed to react to or ask for an explanation of the abrupt, questionable comments made by one of the speakers. This demonstrated a lack of control by the broadcaster, as defined in its licence. In view of the nature and characteristics of the topic discussed, the CSA also thought that the subject matter had not been dealt with sufficiently carefully. It therefore warned LCI not to repeat the offence.

Nevertheless, the CSA welcomed "the very strong commitment shown by all audiovisual media, whether public or private, national or local, and editorial staff in their efforts to fulfil their remit to disseminate information despite the huge difficulties they are currently facing."

Communiqué du CSA, 14 avril 2020

https://www.csa.fr/Informer/Espace-presse/Communiques-de-presse/Communique-de-presse

CSA press release, 14 April 2020

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UNITED KINGDOM

[GB] An overview of how COVID-19 is effecting the UK media industry

Julian Wilkins
Wordley Partnership

The effects of COVID-19 and the lockdown have dramatically affected the UK film and TV industry, with cinemas closed and most studios shut as productions are suspended. Below is a summary reflecting the impact this has had on the industry.

For example, soaps such as BBC's *Eastenders* and ITV's *Coronation Street* and *Emmerdale* have had their production suspended for the foreseeable future and fewer episodes are being broadcast each week to maximise the supply of pre-filmed material.

However, as a significant proportion of the British population are confined to their homes, there has been a marked increase in demand for new streaming services such as Britbox and Disney+. Netflix is set to limit its streaming quality in European territories in a bid to cope with network overload brought about by increased usage.

All the UK broadcasters have launched programmes to cater for the current coronavirus lockdown, such as the BBC having chat show host Graham Norton interview celebrity guests online from their homes. The BBC has launched a daily educational programme called *BBC Bitesize Daily* to ensure that children follow their school curriculum from home. Sky has introduced educational children's programming to its Sky Kids service.

The UK Chancellor (finance minister) has launched measures to support freelancers and the self-employed within the creative industries hit by the COVID-19 pandemic shutdown. Freelance workers and the self-employed in the United Kingdom will be able to apply for a grant of up to GBP 2 500 a month from the government to compensate for lost earnings during the coronavirus crisis. However, payment will not begin until June 2020.

UK organisations such as the British Film Institute and the Film & TV Charity have partnered to create an industry-backed COVID-19 Film & TV Emergency Relief Fund. The fund is supported by initial donations totalling GBP 2.5 million from Netflix, the BFI, BBC Studios, BBC Content, WarnerMedia and several individuals. ITV is launching a GBP 500 000 development fund to support self-employed workers (so-called "indies") on lockdown.

The BBC has unveiled a five-step plan to help independent production companies. The five-point plan includes a "company-centric approach to impacted productions", with the BBC working closely with production companies on current

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projects that have been disrupted to find supportive solutions wherever possible, including being flexible around delivery dates and varying cash flow as appropriate. The BBC has increased the Small Indie Fund from GBP 1 million to GBP 2 million this year to encompass a larger number of companies, focusing particularly on the smallest businesses, those in the nations and regions or with diverse leadership.

Channel 4 is planning to reduce its content budget by GBP 150 million as part of measures to mitigate the impact of the COVID-19 crisis; these measures also include furloughing 90 employees. On the other hand, it has launched a raft of shows to cater for the lockdown, whilst many international broadcasters have acquired Jamie Oliver and Channel 4's fast-turnaround cooking show targeting viewers in lockdown.

ITV has cancelled bonuses and cut the salaries of its most senior executives as the coronavirus crisis continues to hit advertising revenues. The London-based independent media agency Generation Media has warned that investment in TV advertising in the United Kingdom could fall by more than 50% as a result of the pandemic.

By contrast, Ruth Berry, who is the Managing Director of Global Distribution at ITV Studios, announced: “We are so fortunate to have an incredible depth and breadth of a library with over 46 000 hours of programming, and we're also really fortunate that many of our new dramas that we were expecting this year are already well on the way to becoming available. So quite a few of the titles that we discussed at our drama festival in mid-February are still delivering as expected and we're out selling them now.”

Various conferences which have been cancelled, such as The Creative Cities Convention in Glasgow, will reappear in 2021. The annual Edinburgh Television Festival in August has moved online in 2020. Big sporting events have been lost from screens for the foreseeable future, such as Formula One racing, Premier League football and the Wimbledon tennis tournament. Big non-sporting events have been cancelled, such as Glastonbury’s 50th anniversary Music Festival, but the BBC say they will create output to celebrate the occasion.

TV News broadcasters including the BBC, ITN (who produce output for ITV, Channel 4 and Channel 5) and Sky News have had their journalists and crews designated as key workers and are not restricted by the lockdown rules.

The gaming industry sees further development arising from the lockdown. For instance, Adam Harris, Global Head of the Twitch Brand Partnership Studio, says: "As the technology becomes more immersive and creators continue to develop new innovative storylines, video games will be a staple for all future generations, further eating away at the ability of traditional TV to attract attention.”

BBC moves to protect indie sector

https://www.c21media.net/bbc-moves-to-protect-indie-sector/

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COVID-19 Nothilfefonds

https://filmtvcharity.org.uk/covid-19-help-advice/covid-19-relief-fund/

BBC to deliver biggest push on education in its history

https://www.bbc.co.uk/mediacentre/latestnews/2020/coronavirus-education

C4 preps shows for viewers in lockdown

https://www.c21media.net/c4-preps-shows-for-viewers-in-lockdown/

ITV looks to support indie sector during lockdown with GBP 500k development fund

https://www.itv.com/presscentre/press-releases/itv-looks-support-indie-sector-during-lockdown-ps500k-development-fund

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[GB] The High Court upholds Ofcom’s GBP 200 000 fine against RT for breach of impartiality rules

Julian Wilkins
Wordley Partnership

London’s High Court rejected RT’s judicial review application to overturn Ofcom’s record GBP 200 000 fine against the broadcaster for breaching impartiality rules relating to several programmes about events in the Ukraine, the war in Syria and the Salisbury poisoning. RT is the Autonomous Non-Profit Organisation TV-Novosti, a Russian corporation which holds a licence to broadcast the RT television service in the United Kingdom.

Ofcom had opened its investigation after receiving viewer complaints about RT’s coverage of the March 2018 poisoning of Serge Skripal and his daughter, Yulia, both living in Salisbury, and the UK Government’s allegations surrounding Russia’s potential involvement in the attack (see IRIS 2019-3:1/17 and IRIS 2019-8:1/2).

Eventually, Ofcom investigated ten of RT’s programmes broadcast between April and May 2018 and determined that seven of them breached the Code of Conduct requirements for impartiality, including failings in a broadcast questioning the role of the United States in Syria and a news report criticising Ukraine’s position towards Nazism and the treatment of Roma gypsies.

Ofcom imposed the GBP 200 000 fine on 26 July 2019 but stopped short of rescinding RT’s licence to broadcast in the United Kingdom. The broadcaster had been ordered to broadcast a summary of Ofcom’s findings, which included their determination that RT had taken a pro-Russian viewpoint without fairly presenting other standpoints nor challenging interviewees on controversial political topics. RT appealed the decision by way of a High Court judicial review.

High Court Judge James Dingemans rejected RT’s arguments that Ofcom’s decision breached the broadcaster’s right to freedom of expression under Article 10 of the European Convention of Human Rights, and that the regulator had not taken account of the dominant media narrative whereby viewers could watch other news channels for a different perspective on reported events. The judge commented: “.. the requirement of due impartiality does not prevent the broadcast of any views, so long as alternative views and opinions are accurately and adequately reflected within the broadcast or a series of programmes.”

RT contended as part of its judicial review application that Ofcom had misinterpreted the legislative impartiality requirements and had not taken account of other RT news programmes that they had broadcast on the same story. RT argued that viewers watched their channel to acquire a Russian perspective on current affairs that differed from the mainstream viewpoint.

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Furthermore, RT criticised Ofcom's decision to list the broadcaster's compliance history, which included 14 breaches of the Code of Conduct since 2012, of which eight were related to impartiality issues.

Judge Dingemans determined that it was within Ofcom's discretion to assess the weight they placed on previous decisions and that the regulator's conduct was reasonable and lawful, especially as Ofcom had acknowledged that RT's compliance record was not "materially out of line" with that of other broadcasters and that it had not been subject to a statutory sanction before. Moreover, Ofcom had considered issues of freedom of expression when determining their decision. Judge Dingemans considered: ".. there is nothing in Ofcom's decision to suggest that it did not make a fair appreciation of all relevant factors."

The last time Ofcom had fined a broadcaster for breaching impartiality rules was in 2013 when DM Digital had been fined for its coverage of a conference hosted by the Pakistan Overseas Alliance Forum held in the United Kingdom. Regarding RT's conduct, the High Court considered the GBP 200 000 fine to be proportionate. Judge Dingemans stated: "It was for Ofcom to assess what weight to place on previous decisions, and its judgment in this case was reasonable and lawful."

RT are reported to be considering lodging an appeal with the Court of Appeal.

TV-Novosti v The Office of Communication [2020] EWHC689 (Admin)

https://www.judiciary.uk/wp-content/uploads/2020/03/RT-v-Ofcom-approved-judgment-27.3.20.pdf

Issue of Ofcom's Broadcast and On Demand Bulletin 26th July 2019

https://www.ofcom.org.uk/_data/assets/pdf_file/0027/158571/sanction-decisionIssue-rt.pdf

ssue 369 of Ofcom's Broadcast and On Demand Bulletin 20 December 2018

https://www.ofcom.org.uk/_data/assets/pdf_file/0020/131159/Issue-369-Broadcast-and- On- Demand-Bulletin.pdf

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IRELAND

[IE] Advertising Standards Authority issues reminder to advertisers not to make unsubstantiated or misleading claims about COVID-19

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On 7 April 2020, the Advertising Standards Authority for Ireland (ASAI), the independent self-regulatory body responsible for promoting the standards of marketing communications in Ireland, issued a reminder to advertisers that "any claims being made for products and services referring to COVID-19 should be adequately substantiated."

The ASAI issued the reminder following complaints it had received regarding a number of advertisements for products and services relating to COVID-19 on the grounds that they were misleading. The ASAI stated that it was "absolutely necessary to remind all advertisers of the need to advertise responsibly and to avoid claims that undermine public health advice or exploit people's anxieties."

Advertisers who are members of the ASAI are required to abide by the ASAI's Code of Standards for Advertising and Marketing Communications in Ireland, which applies to all commercial marketing communications, and not to publish an advertisement or conduct a promotion which contravenes Code rules. The Code covers commercial marketing communications and sales promotions in all media in Ireland, including digital (online banners, websites and social platforms), print, outdoor, radio, TV, leaflets/brochures, and direct marketing.

The ASAI Code of Standards for Advertising and Marketing Communications 2016, section 4.1, provides that "a marketing communication should not mislead, or be likely to mislead, by inaccuracy, ambiguity, exaggeration, omission or otherwise." Accordingly, the advertiser must be in a position to substantiate all claims, expressed or implied, that the ad conveys to reasonable consumers.

In the context of substantiation, the importance of protecting the consumer from false or misleading advertising is specifically affirmed in section 4.9 of the Code, which states that "a marketing communication should not contain claims, whether direct or indirect, expressed or implied, which a consumer would be likely to regard as being objectively true unless the objective truth of the claims can be substantiated."

In addition, substantiation requirements specific to health claims are contained in section 11.1, which asserts that "claims about health and beauty products and treatments should be backed by substantiation. Where relevant, this should include the results of robust and reputable trials on human subjects, of sufficient rigour, design and execution as to warrant general acceptance of the results."

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Orla Twomey, Chief Executive of the Advertising Standards Authority for Ireland, commenting on the reminder notice, stated that “in these unprecedented times, no advert should be irresponsible or exploit consumer fears regarding the current crisis. Advertisers are therefore advised to think twice before making any claims about how to prevent or cure COVID-19 unless the claims can be supported by robust evidence.”

ASAI, The Advertising Standards Authority for Ireland issues reminder to advertisers not to make unsubstantiated or misleading claims about COVID-19

https://www.asai.ie/press-releases/the-advertising-standards-authority-for-ireland-issues-reminder-to-advertisers-not-to-make-unsubstantiated-or-misleading-claims-about-covid-19/

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[IE] Broadcasting Authority announces COVID-19 funding initiatives to support the broadcasting sector

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On 8 April 2020, the Broadcasting Authority of Ireland (BAI) announced details of a special funding round to support the independent commercial radio sector in its "provision of public awareness and understanding of COVID-19, including the risks and public health measures being implemented to reduce the spread of the disease."

The special funding round will operate under the BAI's existing Sound & Vision Scheme, which is financed by the TV licence fee from the "Broadcasting Fund" established under the Broadcasting (Funding) Act 2003. The special round was developed and approved by the BAI following a request by the Minister for Communications, Climate Action and Environment, Richard Bruton, under section 154 (7) (a) of the Broadcasting Act 2009. In total, EUR 2.5 million has been made available to support this funding round. From 8 April 2020, "independent commercial radio stations can apply for amounts ranging from EUR 45 000 up to EUR 95 000 to assist them in communicating to their listeners on COVID-19." The closing date for applications is Wednesday, 29 April 2020.

The BAI's chief executive Michael O'Keeffe stated that this funding round achieved two key objectives: "the first is to enable independent radio to continue to enhance social awareness and understanding of COVID-19 and the public health measures that are being put in place to protect our population", and the second is to assist in sustaining the sector, as "independent radio has experienced a sharp and sudden decline in revenues."

In addition to these COVID-19-specific measures announced under the Sound & Vision Scheme, the BAI, at the request of the minister, has also agreed to waive the Broadcasting Levy payable by the independent radio sector for the first six months of 2020, saving local radio and independent stations approximately EUR 1 million. Upon completion of the process, the BAI will also provide the minister with an assessment of the financial impact of the measures on independent radio stations.

In response to additional requests from Minister Richard Bruton, the BAI announced that it would also operate additional rounds of its Sound and & Vision 4 Scheme in 2020, including "a funding round exclusively for the community radio sector" and "an open funding round through the Sound & Vision 4 Scheme later in 2020, as soon as sufficient funding becomes available for commercial and community television broadcasters and public service broadcasters, including RTÉ radio services."

Michael O'Keeffe stated that "in addition to supporting all of the measures requested by the minister" and in recognition of the "important contribution" that

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all broadcasters are making during this public health emergency, “the BAI is providing advice and assistance to broadcasters at an individual level across the independent commercial and community radio and television sectors, and to the public service broadcasting sector.” Mr O’Keefe added that the BAI “will continue to monitor impacts of the COVID-19 crisis on the broadcasting sector and will work closely with the sector and the minister to ensure the public are kept informed of essential information by their local and national broadcasters during this pandemic.”

BAI, "BAI announces supports for broadcast media sector during COVID-19 crisis"

https://www.bai.ie/en/bai-announces-supports-for-broadcast-media-sector-during-covid-19-crisis/

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ITALY

[IT] Agcom has found breach of principles of transparency and non-discrimination of the RAI Public Service Contract

Francesco Di Giorgi
Autorità per le garanzie nelle comunicazioni (AGCOM)

On 13 February 2020, the Italian Communications Authority (Agcom) established Rai's failure to comply with the principles of transparency and non-discrimination provided for in the 2018/2022 Service Contract (IRIS 2020-4:1/21). During the proceeding which was launched on 2 August 2019, it was found that the pricing policy adopted by Rai in the previous years was incompatible with the current negotiating provision that binds the public service broadcaster to adopt transparent practices in the sale of advertising space.

Agcom found that it was impossible to identify *ex ante* the procedure applied by Rai in establishing the prices of advertising for its clients, which resulted in differing practices such as offering discounts to some clients, establishing different prices in relation to the offer, and so on. This, in Agcom’s opinion, constituted a potentially discriminatory and non-transparent approach which was contrary to the Service Contract. In addition, given that it was impossible to analyse how price lists were established and to evaluate the dynamics of the process of calculating prices, Agcom was unable to exert its regulatory control.

The Authority has therefore found a violation of Article 25 of the Service Contract - signed between Rai and the Ministry for Economic Development (MISE) - which sets down the broadcaster's specific obligations. In particular, pursuant to paragraph 1, point s) of the aforementioned Article 25 with regard to advertising, Rai is required to guarantee "the conclusion of advertising contracts based on the principles of competition, transparency and non-discrimination in order to guarantee a correct market structure. The competent sector authorities, also on the basis of the data provided by Rai relating to the sales prices of the advertising spaces actually applied net of the discounts applied with respect to the sales lists, annually verify compliance with the aforementioned principles."

Agcom warned Rai to immediately stop the above practice and to ensure compliance with the principles of non-discrimination and transparency when concluding advertising contracts. This is also to allow the Authority to verify the correct use of public resources aimed at financing activities and public service programming.

To this end, Rai shall, within thirty days, provide the Authority with evidence of the measures taken in the first instance to execute the warning, specifically:

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- prepare a price list proposal that provides reasonable evidence of the construction methods used to calculate the sale prices of advertising spaces and the price reductions (so-called discounts) actually applied in compliance with the obligation to ensure the correct use of the public service fee;

- produce a report template, to be sent periodically to the Authority, on the advertising space sold, indicating the original price lists and the relative theoretical "full price" revenues, the maximum applicable discount and the corresponding actual revenues achieved (differentiating by channel or structure/competent cost centre) with the consequent allocation;

- identify measures and make proposals, including those of an organisational nature, aimed at ensuring that the commercial strategies adopted in the collection of advertising resources are not detrimental to the better performance of the public services granted and contribute to balanced corporate management. These measures must allow for periodic monitoring by the Authority.

In case of non-compliance with the aforementioned warning, the Authority will apply an administrative fine of up to 3% of the turnover. In the event of repeated non-compliance, Agcom may order the suspension of Rai's business activity for up to 90 days.

Delibera N. 61/20/Cons, Agcom

https://www.agcom.it/documents/10179/17669619/Delibera+61-20-CONS/bc54004d-7f96-4cf4-bf5c-c16b8328ccf3?version=1.0

Resolution No. 61/20 / Cons, Agcom

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[IT] COVID-19: Agcom suspends two TV programmes for broadcasting content prejudicial to health

Francesco Di Giorgi
Autorità per le garanzie nelle comunicazioni (AGCOM)

On 14 April 2020, the Italian Communications Authority (Agcom) ordered a six-month suspension of the activity of content dissemination by audiovisual media services on channel 880 of digital satellite (SAT) and channel 61 of digital terrestrial (DTT) exercised by Italian Broadcasting Srl and Mediacom Srl respectively, following the broadcasting of the programme *The Health Seeker* and the special *What they didn't tell you about the Corona-virus* in relation to Adriano Panzironi's *Life120* method. Panzironi is an Italian journalist, known for being the creator and promoter of a diet called *Life 120*, devoid of scientific validation.

The two investigations were initiated following the declaration of a state of national emergency related to the health risk associated with COVID-19. By means of Resolutions Nos. 152/20/CONS and 153/20/CON, Agcom found the violation of provisions that impose respect for public health and prohibit encouraging behaviours that can endanger it. Similar investigations have been initiated against various local broadcasters by the competent Regional committees for communications (Corecom).

The Authority found that the programmes in question had disseminated content, commercial and otherwise, potentially liable to endanger the health of consumers users by underestimating the potential risks connected with COVID-19, as well as the belief that the virus itself could be treated or prevented with non-therapeutic measures, just with dietary measures or supplements. Such content, also associated with the promotion and direct sales of *Life 120* supplements, could consequently cause viewers to have reduced awareness and fail to apply due caution with respect to health risks, thus being harmful to the health of consumers/users. This conduct was considered particularly serious as the authors and the presenter of the programmes in question used a communication method based on the susceptibility of the average viewer in order to propose, by associating it with the issues related to the COVID-19 epidemic, the promotion of the lifestyle and the marketing of *Life 120* products, offering them, if not as an alternative, at least as an essential complement to the therapeutic indications issued by the health authorities.

The same channel 61 was already sanctioned in 2019 (Resolution 72/19/CSP) for a similar case related to the format *The Health Search* and the promotion of the *Life 120* method, proposed as a remedy to the indications of “official” or dogmatic medicine, as Panzironi himself defines it.

Delibera N. 153/20 /Cons

https://www.agcom.it/documents/10179/18199222/Delibera+153-20-CONS/ab7087e7-41c6-4db9-b395-497ec9a518ea?version=1.1

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Resolution N. 153/20/ CONS

Delibera N. 152/20 / CONS

https://www.agcom.it/documents/10179/18199222/Delibera+152-20-CONS/915a2a64-695e-4391-9a47-70d389b09293?version=1.1

Resolution N. 152/20 / CONS

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[IT] COVID-19: The measures adopted by Italy to support the entertainment, cinema and audiovisual sectors

Francesco Di Giorgi
Autorità per le garanzie nelle comunicazioni (AGCOM)

The Italian Government has adopted a series of measures aimed at countering the economic difficulties experienced by the entertainment, cinema and audiovisual sectors, following the interruption of activities due to the COVID-19 emergency.

These measures are contained in Decree-Law No. 18, the so-called Cura Italia Decree, which was adopted on 17 March 2020 by the government and which is currently being voted on by the Italian Parliament. Due to its legal nature, the decree will take immediate effect, but must be converted into a law within 60 days of its adoption.

Article 89 of the Decree-Law (Fund for show, cinema and audiovisual emergencies) sets up a guarantee fund in support of the aforementioned sectors consisting of EUR 130 million for 2020. The fund is divided into two “sub-funds”: the first EUR 80 million for the current account, and the remaining EUR 50 million for capital interventions.

A decree issued by the Ministry for Cultural Heritage and Activities and Tourism (MiBACT), to be adopted within thirty days from the date of entry into force of the law converting the decree, will establish the procedures for allocating resources to sector providers, including artists, authors and performers, taking into account the negative economic impact resulting from the implementation of COVID-19 containment measures.

Another important measure in support of authors and performers is contained in Article 90 (Urgent provisions to support the cultural sector) which consists in the allocation of a 10% share of the fees collected in 2019 by the SIAE (the Italian Society of Authors and Publishers, established for the collective management of authors' rights) for the private reproduction of phonograms and videograms (so-called "private copies").

By means of the aforementioned decree, MiBACT will, in agreement with the Ministry of Economy and Finance (MEF), define the requirements for accessing this benefit, taking into account the income of the recipients.

Finally, Article 88 (Refund of residence contracts and termination of purchase contracts for tickets for shows, museums and other places of culture) provides for the possibility to obtain a voucher, to be used within one year of issue, for all holders of tickets for performances which have been suspended due to the health emergency, including tickets for events, cinema and theatre performances, as well as for museums and cultural places.

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Decreto-Legge 17 marzo 2020, n. 18 "Misure di potenziamento del Servizio sanitario nazionale e di sostegno economico per famiglie, lavoratori e imprese connesse all'emergenza epidemiologica da COVID-19". (GU Serie Generale n.70 del 17-03-2020).

https://www.gazzettaufficiale.it/eli/id/2020/03/17/20G00034/sg

Decree-Law of 17 March 2020, no. 18 "Measures to strengthen the National Health Service and economic support for families, workers and businesses connected to the epidemiological emergency from COVID-19". (OJ General Series n.70 of 17-03-2020).

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MALTA

[MT] Broadcasting during the Period Related to the Coronavirus Pandemic

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By means of a press release dated 13 March 2020, the Broadcasting Authority requested journalists and broadcasters to exercise caution as to how they report on developments connected to the COVID-19 pandemic. The Broadcasting Authority warned that the requirement that journalists and broadcasters stick only to facts remained paramount in this sensitive period. Apart from the fact that journalistic ethics requires that whatever journalists report be verified with official sources, ethical conduct demands that all reports be accurate and grounded on facts. In this way, the listener and viewer is informed of the evolving situation in a correct fashion and given the precise information that s/he is entitled to, both on Malta and the rest of the world. The Broadcasting Authority also appealed to the public to rely on official sources and statements so that no unwarranted or additional alarm is generated. In this respect, the public should be wary of cases of fake news, particularly on social media, and should choose diligently the sources wherefrom they obtain their information. It is only in this manner that cooperation and respect can be guaranteed in this extraordinary situation.

By means of a circular dated 17 March 2020 addressed to all broadcasting stations, the Broadcasting Authority, in the light of the directives issued by the competent medical authorities and in order to reduce the spread of COVID-19, disseminated a communication in relation to broadcasting during the period of the coronavirus pandemic.

Firstly, the Broadcasting Authority advocated that the practice to be adopted at this particular period was to record without studio audiences. In those programmes where guests are invited, producers are to ensure that the programme presenter/s and participant/s place themselves one metre apart from each other. Whilst the Broadcasting Authority understood that this could cause inconvenience and difficulty from the programme production perspective, it considered it imperative that the broadcasting media lead by example and comply with the health authorities' directives.

Secondly, in those cases where programmes had already been broadcast before the health authorities' directive was disseminated, broadcasting stations have to inform the viewers/listeners during the programme that the repeat programme was recorded prior to the issue of the health authorities' directives, lest the public be misguided.

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Thirdly, the Broadcasting Authority noted that during this period, daily press conferences were being held by the health authorities to update the public on all the happenings in relation to COVID-19. Therefore, the Authority encouraged broadcasters, as far as possible, to broadcast these press conferences live as part of the station's programming schedule, in order to keep the public informed of the latest news.

Fourthly, the Authority also encouraged broadcasters to repeatedly and systematically air official notices on virus prevention and information on the COVID-19 helpline on their media in such a way that they are accessible to everybody.

Fifthly, the Authority encouraged broadcasters to offer specialised windows dedicated to children, such as children's games, crafts and book reading, in their daily programmes. In that way, the broadcasting media would contribute to offerng a service to the public, bearing in mind that the health authorities were advising children to remain as far as possible at home.

Finally, the Broadcasting Authority held that during this period, the media have a duty to inform and broadcast all the precautions required and not to alarm the public unduly so as not to create unwanted fear and panic.

By means of another circular dated 26 March 2020, the Broadcasting Authority reminded broadcasting stations of the measures they needed to take in relation to repeat programmes in these extraordinary circumstances. The Authority called for the cooperation of all station managers so that the broadcasting media could efficiently serve viewers and listeners at this particular time.

Although the Authority understood quite well that because of the spread of COVID-19, broadcasters had to have recourse to repeat programmes taken from past programme schedules which, at that time, did not comply with the directives recently issued by the health authorities, it was imperative that listeners and viewers should be informed of the fact that these programmes were recorded prior to the issue of such directives. As broadcasters are not using crawls for this purpose, this is leading to misguided information being given to the public, which might harm public health.

Hence, the Authority requested all television broadcasters to insert a caption before transmitting recorded programmes as well as a crawl throughout the whole repeat programme indicating that the programme in question was recorded prior to the health authorities' coronavirus directives. In the case of radio, this notice has to be read at the beginning of the radio programme and at intervals during its transmission. It was considered imperative that these measures be taken to avoid the broadcasting media conveying misleading information on the attitudes and behaviour expected of the public in these sensitive and extraordinary times.

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https://ba.org.mt/

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Broadcasting on COVID-19, Malta Broadcasting Authority

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NETHERLANDS

[NL] COVID-19 measures implemented by Netherlands Film Fund

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On 20 March 2020, the Netherlands Film Fund (Nederlands Filmfonds), the national agency responsible for supporting film production and film-related activities in the Netherlands, announced a number of important measures in light of the COVID-19 pandemic. Four specific measures were announced for the film and audiovisual sector.

First, the Fund announced that there would be an easing of the subsidy conditions and obligations currently being implemented for films and film activities already subsidised by the Fund. For example, this will include an extension for film productions with regard to delivery and screening requirements. Secondly, the date of the advance payment of subsidies will be fully or partly brought forward in order to absorb, where possible, costs already incurred for crew and cast members, film supply companies and investments in production. The Fund asked applicants to provide insight into these costs and, if an advance payment from the Fund is not sufficient to cover all costs incurred, to come to mutual agreements with those who have incurred costs or are entitled to compensation at the start of production. Thirdly, there will be a contribution to cover additional production costs directly related to the postponements, changes or setbacks that have occurred since March 2020 and that have been incurred in addition to the existing production budget. The Fund states that "[d]epending on the substantiation of these extra costs, we arrive at indicative amounts, varying from EUR 25 000 for cinema documentaries and minority co-productions selectively supported by the Film Fund to EUR 50 000 for feature films, up to EUR 75 000 for internationally co-produced feature films with production abroad." Fourthly, an additional distribution contribution has been made available for the forced redistribution and marketing of majority Dutch feature films and cinema documentaries hit by the sudden closure of cinemas and film theatres whose release dates were scheduled from March 2020. For example, if investments already made in marketing and distribution have to be made again, there is an indicative additional contribution amounting to a maximum of EUR 10 000- EUR 25 000 per production.

Finally, the Fund called on other film financiers to continue their activities and to show leniency. It asked for everyone in the chain to show solidarity, from film producers to end-users, but also insurers and banks, who should support film professionals and their work during this difficult time and exercise their responsibility in, among other things, bridging the loss of income among the self-employed.

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The Fund will continue to closely monitor the effects in the short and long term and will inform the Dutch Ministry of Education, Culture and Science on these effects.

COVID-19: Steunmaatregelen Filmfonds, Nederlands Filmfonds

https://www.filmfonds.nl/page/8492/alle-covid-19-updates-van-het-filmfonds

COVID-19 outbreak: Support measures by the Netherlands Film Fund

https://www.filmfonds.nl/page/8569/covid-19-outbreak-support-measures-by-the-netherlands-film-fund%E2%80%A8

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[NL] Court rejects politician’s claim against public broadcaster

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On 25 March 2020, the District Court of Midden-Nederland (*Rechtbank Midden-Nederland*) ruled that the Dutch public broadcaster VPRO was not obliged to rectify the paraphrased statements of the well-known politician Thierry Baudet that were broadcast on the influential Dutch television programme *Buitenhof*. Baudet had publicly asked for a rectification, which had attracted a considerable amount of media attention to the case.

The case revolved around a paraphrased question put by the presenter of the political programme *Buitenhof*. The presenter paraphrased a statement made by Thierry Baudet, who is the leader of the political party Forum for Democracy (*Forum voor Democratie*). A few days before the broadcast, Mr Baudet had made similar statements in the House of Representatives (*Tweede Kamer*). The politician’s literal words were: ‘’The European Union is an emerging state. All that money goes to the making of that state. So to regulating foreign policy. By setting up ferry services to transfer immigrants from Africa to Europe to weaken national identities so that there will be no more nation states." The presenter of *Buitenhof* summarised this in a question to her guest as follows: “Thierry Baudet caused a stir in the House of Representatives last week by saying that he thinks the EU has a preconceived plan to replace the white European race with African immigrants.’’

Baudet and Forum for Democracy argued that, through this paraphrase, *Buitenhof* had deliberately committed “character assassination” (*karaktermoord*). The words "white", "race" and "replacement" had not been used by Baudet in the parliamentary debate and therefore the broadcaster had acted unlawfully, according to Baudet and Forum for Democracy.

However, the court ruled that, while the paraphrase contained flaws, the statement made by the presenter in the *Buitenhof* programme was not unlawful towards Baudet and Forum for Democracy. The decisive factor in this case was the fact that Baudet is a public figure who actively participates in the public debate. This means that he has to accept more than the average citizen. Moreover, paraphrased statements made by the presenter can be seen as a contribution to the public debate. In 2015 and 2017, for example, Baudet made similar statements about a ‘’white and dominant Europe’’. Previous statements made by Baudet cannot be separated from the paraphrase by the presenter of *Buitenhof*. The court applied the principle from the case law of the European Court of Human Rights according to which when contributing to the public debate, the right to freedom of expression should not be easily limited. Furthermore, the District Court saw no reason to assume that the VPRO had had a preconceived purpose to commit character assassination. Finally, Baudet was ordered by the court to pay the costs of the proceedings.

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Rechtbank Midden-Nederland, 25 maart 2020, ECLI:NL:RBMNE:2020:1070

https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBMNE:2020:1070

District Court Central Netherlands, 25 March 2020, ECLI:NL:RBMNE:2020:1070

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PORTUGAL

[PT] Contingency measures to support film and audiovisual

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On 23 March 2020, the Minister for Culture, Graça Fonseca, publicly announced contingency measures to support the arts, including the film and audiovisual sector. In an official message, Graça Fonseca stated that the more general emergency measures announced by the Prime Minister, António Costa, on the previous day were bound to have a transversal impact on all sectors and that they did apply to the cultural sector. To assist in clarifying all issues related to the applicability of these general measures to the arts and cultural sector, the ministry has prepared a website designed to inform cultural agents and an email (cultura.covid19@mc.gov.pt) for requests for further clarification of policies and implementation mechanisms.

The site (see references) has two main sections: one to support artists and a second one to support artistic structures/companies. In these two main sections, both artistic and cultural agents are informed about how general contingency measures can be applied to the artistic and cultural field. The section specific to artists has three different sub-sections: Arts Support Line, Independent worker and Employee. The section for the support of companies is divided into three different areas: Arts Support Line, Rescheduling and Cancellation of Shows, and Transversal Support. The measures are multiple and diversified, ranging from payment of cancelled events to support for parents/guardians who must stay at home to look after children up to 12 years old. More specific measures for the film and audiovisual sector were announced by the Cinema and Audiovisual Institute (*Instituto do Cinema e Audiovisual* – ICA).

The ICA website also provides updated information on the new measures and it has created a helpdesk to respond to doubts regarding the preparation of candidacies and the development of ongoing projects. According to the information available on the website, it is possible to extend the contractual terms of all ICA-supported programmes and projects. The ICA is also prepared to pay half (50%) of the value of contracts relating to the beginning of shooting, before it starts, even if proof of expenses cannot be provided. The ICA has introduced changes to the regulations pertaining to its film and audiovisual support programmes in order to simplify procedures and to make production and distribution more flexible. New rules are being updated on a regular basis.

Considering the role of the Public Service Broascaster *Rádio e Televisão de Portugal* (RTP) in independent audiovisual productiron, a pack of measures was also launched. According to the RTP, the supporting measures represent an

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additional effort with respect to recent investments in the various genres of independent production: cinema, telefilms, fiction, documentaries, as well as the performing arts, music, theatre and dance. The main measures and initiatives are the following:

• The safeguard of hundreds of contracts for employees and service providers in the most varied areas related to content: support for programmes, design of formats, research papers, screenwriters, commentators, presenters, etc.

• Timelier payment terms for cash settlement in the various productions already delivered or for short-term delivery.

• Improved payment conditions for cinema, fiction and documentary projects that have already been approved in content consultations and that will go on to be produced: a 25% advance at the beginning of production, 25% at the end of production and 50% with final delivery. In the fields of music and the performing arts, advances may reach up to 50%.

• Reinforced investment in the coming weeks to acquire stock content from independent producers and the rights to interpret performing arts - for display on RTP channels and antennas, including on digital platforms.

• Launch of a cycle of concerts via the web, working and negotiating with artists/agents - for exhibition on the RTP's digital platforms.

• The realisation of a new edition of the content consultation in April for the presentation of projects by producers.

• Particular emphasis, throughout the year, on the programming of nationally-produced content on channels, antennas and digital platforms.

The RTP states that these initiatives may be extended, depending on the evolution of the sector and the general economic situation. The Portuguese Media Confederation (Confederação Portuguesa dos Meios de Comunicação Social – CPMCS) is also in dialogue with the government in an attempt to get an agreement for extraordinary support for media companies. Negotiations are not in the public domain.

Web: Medidas Extraordinárias De Apoio Às Artes, Ministério da Cultura

https://www.culturacovid19.gov.pt/

Web: Extraordinary Measures to Support the Arts, Ministry of Culture

RTP launches support package for independent audiovisual production, ICA

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ROMANIA

[RO] Emergency measures for the Romanian Film Industry during the State of Emergency

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Radio Romania International

On 26 March 2020, the Board of the National Cinematography Centre (*Centrul Naţional al Cinematografiei* - CNC) issued Decision No. 61 with regard to the emergency measures taken in the context of the state of emergency in Romania due to the coronavirus pandemic. The measures were harshly criticised by the Romanian film professionals.

With regard to direct credit for the production of films, the Decision stipulates that: 1) The deadlines for the conclusion of direct credit contracts for film production are postponed during the state of emergency; 2) Projects due to receive the first two installments of the ongoing credit agreements will not receive the funds, while funding for projects at the stage of receiving the third and fourth installments of the grant will be disbursed; 3) Changes to financing plans will only be approved for films in the post-production phase; 4) Support for artistic quality and public success will be granted only for projects in the post-production phase, respectively if the filming has been completed; 5) The deadlines for depositing standard copies, as stipulated in the contracts for the granting of direct credit in progress, are postponed until the end of the state of emergency.

With regard to non-reimbursable financial support, the Decision provisions are as follows: 1) For projects declared successful at the second session of 2019 regarding the granting of non-reimbursable financial support for the cultural events scheduled to take place between January and June 2020, the conclusion of the financing contracts is postponed until the end of the state of emergency, except for the publication of specialised publications; 2) The events/actions of the projects declared successful at the second session of 2019 for the granting of non-reimbursable financial support for the cultural events that will take place between January and June 2020 will be organised until 31 December 2020; 3) The granting of the installments for the contracts in progress, for the organisation of festivals and other cultural events, is postponed until the state of emergency has been lifted, except for the publication of specialised publications; 4) The granting of non-reimbursable financial support for the distribution and exploitation of films, including the remaining installments of the ongoing contracts, is posponed until the state of emergency has been lifted; 5) The granting of non-reimbursable financial support for participating in festivals is postponed until the state of emergency has been lifted; 6) The granting of non-reimbursable financial support for the running of art cinemas is postponed until the state of emergency has been lifted.

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At the same time, the legal terms regarding the classification of films and the classification of cinemas/open-air cinema are suspended until the state lifts the state of emergency.

In response to these measures, more than 160 Romanian professionals (directors, actors, producers, screenwriters, composers, artistic directors, festival organisers, film distributors, etc.) have written an appeal to the Board of the National Cinematography Centre and to the Romanian Minister of Culture in which they violently criticise CNC Decision No. 61/2020. They request that the measures be reconsidered and ask for a direct consultation.

They consider that the CNC has issued a decision that effectively blocks the operations that could be carried out remotely for a speedy return to normal activity after the restrictions imposed during the health crisis caused by COVID-19 have been lifted. The measure consisting in the suspension of payments for different activities has, according to the signatories, generated a climate of uncertainty and induced a feeling of lack of interest on the part of the tutelary authority regarding the real problems of the guild.

The film creators consider that the possibility of preparing productions and events during the state of emergency would also facilitate the reprogramming of some of these activities shortly after the restrictions have been lifted, eliminating the risk of creating a major bottleneck, tantamount to suffocation, of all the events and productions in the Autumn-Winter of 2020.

The CNC has decided, invoking the state of emergency, to suspend the deadlines for announcing the results of the competition regarding ongoing film projects, which, as expressed in the letter, represents an obstacle to the prospect of preparing specific activities, considering that once the financing from Romania has been obtained, the producers can apply for funds to other national and international sources, the application deadlines being kept for most European countries.

In addition, the signatories consider that none of the legal texts upon which the preamble of Decision No. 61/ 26.03.2020 relies gives the CNC the right to unilaterally postpone the fulfilment of the legal obligations expected of it during the state of emergency vis-à-vis the economic operators who are debtors of these obligations.

The Hotărârea nr. 61 din 26.03.2020 a Consiliului de Administraţie al Centrului Naţional al Cinematografiei

http://cnc.gov.ro/wp-content/uploads/2020/03/Hot%C4%83r%C3%A2rea-nr.-61-.pdf

Decision no. 61 of 26.03.2020 of the Board of the National Cinematography Center

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Apel asupra Hotărârii CA al CNC 61/26.03.2020 și a deciziei de suspendare a calendarului Concursului CNC

http://www.rador.ro/2020/04/02/apel-al-cineastilor-referitor-la-masurile-implementate-de-cnc-pentru-perioada-starii-de-urgenta/

Appeal on the Decision of the Board of the CNC no. 61/26.03.2020 and on the decision to suspend the calendar of the CNC Competition

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RUSSIAN FEDERATION

[RU] Cinemas are included in the list of supported sectors

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Confederation of Rightholders societies of Europe and Asia

On 10 April, the Russian Government published a Resolution "On amendments to the list of sectors of the Russian economy the worst affected in the deteriorating situation with the spread of a new coronavirus infection." According to this document, the section "Culture, leisure and entertainment" was supplemented with "activities in the field of film exhibition."

This decision was reached with the direct participation of the Association of Cinema Owners. It should be noted that the Minister of Economic Development Maxim Reshetnikov called on the government to include film exhibiting organisations in the list of companies in need of priority assistance. The Association of Film Distributors also addressed the Deputy Prime Minister seeking assistance. Among the measures that can help the film industry to recover from the crisis, film distributors called for a reduction of the tax burden, the provision of loans on preferential terms, a reduction in the number of inspections carried out by state agencies, and other types of state support.

It is important to recall that initially, among the 22 business areas that have suffered significant losses and need assistance from the federal government, the industry of culture, leisure and entertainment; airway transportation; sports; tourism; the hotel industry and catering had been named. Companies from this list will be granted a six-month deferral to pay taxes other than VAT, insurance premiums and payments on loans for small and meduim-sized enterprises.

КИНОТЕАТРЫ ВНЕСЕНЫ В СПИСОК ПОДДЕРЖИВАЕМЫХ ОТРАСЛЕЙ

https://cinemaplex.ru/2020/04/11/kinoteatry-vneseny-v-spisok.html

Cinema theaters are listed in the list of supported industries, Cinemaplex

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