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EDITORIAL

The second wave of the COVID pandemic is unfortunately upon us, and lockdown measures are being reintroduced in different countries around Europe. Unsurprisingly, this month's newsletter contains many articles dealing in one way or another with this topic. In the Netherlands, the District Court of Amsterdam ruled that YouTube was not required to reinstate videos containing alleged COVID-19 disinformation. In the United Kingdom, the Information Commissioner's Office imposed fines on companies for seeking to illegally make a profit from the current public health emergency. In Italy, the Constitutional Affairs Committee of the Senate is currently discussing the establishment of a parliamentary committee of inquiry to investigate the problem of disinformation and, more precisely, the dissemination on a massive scale of fake news.

As lockdown continues to heavily influence our lives, the Observatory is doing its utmost to keep you informed in every possible way. For example, this year our yearly December workshop will (again, unsurprisingly) take place online. We have chosen a very topical issue for our expert discussion: Diversity and inclusion in the European audiovisual industries (both on- and off-screen). You will find more information about how to join the discussion here.

Setting aside the pandemic, mid-November has come and gone and many EU member states are still in the process of transposing the revised AVMSD. As you will read in these electronic pages, last month the Spanish regulator CNMC launched a public consultation on the application of the media service providers regulation to VSPs, and France is currently discussing a bill in parliament in this regard. If you want to be kept up-to-date with the newest developments concerning this transposition, check our overview table here.

We are wrapping up 2020 with this newsletter. Stay safe, enjoy your read and we'll be back in the new year!

Maja Cappello, editor

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INTERNATIONAL

COUNCIL OF EUROPE

Parliamentary Assembly: Resolutions and recommendations concerning COVID-19 and Artificial Intelligence

Francisco Javier Cabrera Blázquez
European Audiovisual Observatory

The Standing Committee of the Parliamentary Assembly of the Council of Europe (PACE), which acts on the Assembly's behalf between plenary sessions, met successively on 12 and 13 October 2020, then on 22 and 23 October 2020, by videoconference.

An important topic discussed at these meetings concerned the measures restricting human rights taken in response to the COVID-19 pandemic. While states of emergency may allow for a more rapid and effective response to a major health crisis, they can also be hazardous from the perspective of human rights, democracy and the rule of law, posing risks to, among others, freedom of expression and media freedom, and data protection. PACE called for "a prompt, thorough and independent review of the national response to the COVID-19 pandemic", including its effectiveness and respect for human rights and the rule of law, so that in the event of another pandemic, the authorities can respond quickly, in accordance with Council of Europe standards. It also recommended that the Committee of Ministers "examine State practice in relation to derogations from the Convention" and adopt a recommendation to member states on derogations. PACE also invited it to instruct the appropriate inter-governmental bodies to review their national experience of responding to COVID-19 in order to share experience and good practice.

On 22 October, several debates were held on the challenges of artificial intelligence (AI), in particular: the need for democratic governance of AI; the role of AI in policing and criminal justice systems; discrimination caused by AI; threats to fundamental freedoms; medical, legal and ethical challenges in the field of health care; the consequences for labour markets; and the legal aspects of "autonomous vehicles". As a result of these discussions, the Standing Committee stressed the need for a global regulatory framework for AI, based on the protection of human rights, democracy and the rule of law, and proposed that the Committee of Ministers support the elaboration of a "legally binding instrument" governing AI, possibly in the form of a convention. The legally binding instrument advocated by PACE should ensure that AI-based technologies comply with Council of Europe standards and ethical principles, such as transparency, fairness, security and privacy. According to the parliamentarians, this instrument should

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also limit the possibilities of AI being misused to damage democracy, and ensure that AI promotes government accountability, the fight against corruption, and more direct democracy. Furthermore, considering the fact that many uses of AI can have a direct impact on equality of access to fundamental rights, including the right to private life and access to justice, employment, health and public services, the Standing Committee called on member states to draw up clear national legislation, standards and procedures to ensure that AI-based systems "comply with the rights to equality and non-discrimination wherever the enjoyment of these rights may be affected by the use of such systems." In order to ensure that the use of AI-based technologies by public authorities is subject to adequate parliamentary oversight and public scrutiny, national parliaments should make the issue of the use of such technologies part of regular parliamentary debates, and ensure that an adequate structure for such debates exists. Governments should "notify the parliament before such technology is deployed". Moreover, the Standing Committee advocated a regulatory framework that promotes complementarity between AI applications and human work, with human oversight in decision-making; state participation in and control of algorithmic development; and the introduction of "AI literacy" through digital education programmes for young people and life-long learning paths for all. It recommended that the Committee of Ministers launch the process for delivering a comprehensive European legal instrument on AI which would also cover the need for the enhanced protection of work-related social rights.

Standing Committee of the Parliamentary Assembly of the Council of Europe (12, 13, 22 and 23 October 2020)

https://pace.coe.int/en/pages/session-20201012

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GERMANY

ECtHR: *B.Z. Ullstein GMBH v. Germany*

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A recent decision by the European Court of Human Rights (ECtHR) dealt with photojournalism and crime reporting in the media. The ECtHR dismissed a claim on journalistic freedom with regard to the publication of a photo of a juvenile delinquent, P. It found that an injunction preventing any publication of a portrait photo of P. had not violated a newspaper's right to freedom of expression as guaranteed by Article 10 of the European Convention on Human Rights (ECHR).

P. was 18 years old when he attacked and severely injured a man in a subway station by hitting and kicking him in the head. He also inflicted injuries on a man who had come to the aid of the injured man. P. was able to escape from the crime scene. As the incident had been recorded by surveillance cameras, an appeal for information was launched and the recordings were made public and shown in the German mass media. P. turned himself in to the police shortly afterwards. Prior to the start of the trial, the Berlin Regional Court ordered the media not to report on the trial in a way which would make P. identifiable to the public. Already after the first day of the trial, the Berlin newspaper B.Z. published an article on the case, which contained several pictures: a pixelated photo of P. which had been taken in the courtroom; a picture from the surveillance camera which showed P. kicking the victim; and an unpixelated portrait photo from an unknown source in which P. could be identified. Two weeks later, the Hamburg Regional Court granted P. a temporary injunction against the publishing company of the newspaper, B.Z. Ullstein GMBH, prohibiting the publication of the portrait photo. Half a year later, this injunction was confirmed. The Hamburg Regional Court addressed the considerable public interest in the proceedings, which had been aroused in particular by the outbreak of juvenile violence and by the reference to the debate on the video surveillance of public spaces. However, it considered it necessary to take into account the fact that P. had been a young adult at the time of his crime and benefitted therefore from particular protection under the provisions of the criminal law relating to young offenders. The injunction was confirmed by the Hamburg Court of Appeal, while the Federal Constitutional Court refused to admit for adjudication a constitutional complaint brought by the newspaper's company.

B.Z. Ullstein GMBH complained under Article 10 ECHR of the injunction preventing any further publication of the portrait photo of P. Before the Strasbourg Court, the newspaper's company argued that by downplaying the importance of photographs for journalism, the German courts had substituted its journalistic choices regarding techniques of presentation. Furthermore, it claimed that the German courts generally decided in favour of the personality rights of juvenile defenders and therefore did not attach the same level of importance to the

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freedom of expression as to the right to private life. B.Z. Ullstein GMBH argued that the German courts had not sufficiently taken into account the fact that the article and pictures in B.Z. served a significant public interest, and that due to the surveillance camera footage, P. was already known to the wider public. Furthermore, it argued that the article had been accurate and factual.

The ECtHR reiterated that photojournalism can contribute to debates of public interest and that the public might have an interest in having someone's physical appearance disclosed, while Article 10 ECHR also protects the form in which ideas and information are conveyed. However, the ECtHR also highlighted that the interest of revealing the identity of a convicted person is not self-evident, but may depend on different factors. Although there was some level of public interest involved, related to security concerns for the general public and the outburst of violence without any plausible reason in a public subway station, the ECtHR agreed with the findings by the German courts that the picture of P. that had been published in B.Z. did not provide any additional information with respect to the reported attack, except for revealing his identity, and did not add credibility to any information in the accompanying text. The ECtHR therefore sees no reason to call into question the domestic courts' differentiation between the debate and the picture, or the conclusion that the information value of the portrait photo was only limited.

The ECtHR also highlighted P.'s vulnerability as an adolescent, referring to the importance of protecting juveniles against stigmatisation and of maintaining the possibility of reintegrating them into society. The ECtHR reiterated that the mere fact that a person is the subject of criminal proceedings does not justify treating the person concerned in the same manner as a public figure who voluntarily exposes himself or herself to publicity. The ECtHR saw no reason to disagree with the national courts' findings that P. had never voluntarily reached out to the public and that, due to his age, particular importance had to be attached to the protection of his personality rights.

Regarding the severity of the sanctions imposed on B.Z. Ullstein GMBH, the ECtHR considered that, although every sanction is capable of having a chilling effect, in the present case, the sanction did not constitute a particularly severe restriction on news reporting. Indeed, the national courts only ordered the applicant company to refrain from any further publication of the photograph. Hence, the newspaper B.Z. was not prohibited from publishing and illustrating articles, but only from publishing the portrait photo of P. that made him identifiable. Finally, the ECtHR recognised that the German courts had carefully balanced the right of the applicant company to freedom of expression against P.'s right to respect for his private life and had considered the various factors that were relevant under the ECHR, including P's vulnerability. Referring to the margin of appreciation enjoyed by the national courts when balancing competing interests, the ECtHR concluded that there were no reasons to substitute its view for that of the domestic courts, and that the latter had complied with their obligations under Article 10 ECHR. Accordingly, the ECtHR considered the application as manifestly ill-founded, and rejected it as inadmissible.

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Decision by the European Court of Human Rights, Fifth Section, sitting as a Committee, in the case of B.Z. Ullstein GMBH v. Germany, Application no. 43231/16, 15 October 2020

https://hudoc.echr.coe.int/eng?i=001-205502

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FRANCE

ECtHR: *Baldassi and others v. France*

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In a case concerning freedom of political expression and the right to protest, the European Court of Human Rights (ECtHR) found that the conviction of pro-Palestine activists had violated their right to freedom of expression as guaranteed by Article 10 of the European Convention on Human Rights (ECHR). The activists were convicted for incitement to economic discrimination on account of their campaign aimed at boycotting products imported from Israel.

The 11 applicants in this case are members of the “Collectif Palestine 68”, which is a local relay for the international campaign “Boycott, Divestment and Sanctions” (BDS). This campaign was launched following an appeal from Palestinian non-governmental organisations a year after the opinion issued by the International Court of Justice which stated that the construction of the wall being built by Israel, the occupying Power, and its associated regime, was contrary to international law. By distributing leaflets and presenting a petition to be signed at a hypermarket, supported by a campaign on the Internet, the BDS-activists had been calling for a boycott of Israeli products. They were prosecuted and finally convicted for incitement to discrimination on the basis of section 24 (8) of the French Law on Press Freedom of 29 July 1881 and the French Criminal Code. The Court of Appeal imposed on each of the activists suspended fines of EUR 2 000 and ordered them to jointly pay EUR 4 000 in respect of non-pecuniary damages to each of the four civil parties (the International League against Racism and Antisemitism, the Lawyers without Borders association, the “Alliance France-Israel” association and the “Bureau national de vigilance contre l’antisémitisme”), and to pay another EUR 6 000 for the civil party expenses. The Criminal Division of the Court of Cassation dismissed the appeals lodged by the activists, who had alleged, in particular, a violation of Article10 ECHR. The Court of Cassation was of the opinion that the sanctions imposed on the activists were necessary in a democratic society for the prevention of disorder and the protection of the rights of others.

The BDS-activists lodged applications with the ECtHR complaining of their criminal conviction on account of their actions calling for a boycott of articles produced in Israel. The ECtHR first observed that the call for a boycott combined the expression of protest with incitement to differential treatment. Such a call can, depending on the circumstances, amount to incitement to discrimination against others. Incitement to discrimination is a form of incitement to intolerance, which, together with calls for violence and hatred, is one of the limits which should never be overstepped in exercising freedom of expression. Nevertheless, incitement to differential treatment is not necessarily the same as incitement to discrimination. The Court clarified that a distinction had to be drawn between the present case

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and *Willem v. France* (16 July 2009), in which the ECtHR had found that a conviction for a call to boycott Israeli products had not violated Article 10 ECHR. In that case, the ECtHR had found that a mayor, in asking the municipal catering services to boycott Israeli products, had used his mayoral powers to impose such a boycott and that he could not claim to have encouraged the free discussion of a subject of public interest. In the case at hand, however, the activists were ordinary citizens who were not restricted by the duties and responsibilities arising from a mayoral mandate and whose influence on consumers was not comparable to that of a mayor's influence on his municipal services. Moreover, the BDS-campaign by the activists had aimed to trigger or stimulate debate among supermarket customers. Furthermore, the ECtHR observed that the applicants had not been convicted of making racist or antisemitic remarks or of inciting hatred or violence. Nor had they been convicted of being violent themselves or causing damage during their actions. The ECtHR did not wish to call into question the interpretation of section 24 of the Law of 29 July 1881 on which the activists' conviction was based, to the effect that by calling for a boycott of products from Israel the activists had, within the meaning of that provision, incited people to discriminate against the producers or suppliers of those products on grounds of their origin. However, the ECtHR noted that French law, as interpreted and applied in the present case, prohibited any call for a boycott of products on account of their geographical origin, whatever the tenor, grounds and circumstances of such a call. The ECtHR also found that the domestic courts had failed to establish that the activists' conviction on account of their call to boycott products from Israel had been necessary in a democratic society to attain the legitimate aim of the protection of the rights of others. The ECtHR emphasised the lack of detailed reasons given for the conviction of the activists, especially since the actions and remarks imputed to them had concerned political and militant expression on a subject of public interest, leaving little scope for restrictions on freedom of expression. The fact that political speech can be controversial or virulent does not diminish its public interest and high level of protection under Article 10, provided that it does not cross the line and turn into a call for violence, hatred or intolerance. The ECtHR concluded that the activists' conviction was not based on relevant and sufficient grounds, that the domestic courts had not applied rules consonant with the principles set out in Article 10, and that they had failed to conduct an appropriate assessment of the facts. Therefore, it found, unanimously, a violation of Article 10 ECHR.

Arrêt de la Cour européenne des droits de l'homme, cinquième section, rendu le 1er juin 2020 dans l'affaire Baldassi et autres c. France, requêtes nos 15271/16 et 6 autres

https://hudoc.echr.coe.int/eng?i=001-202756

Judgment by the European Court of Human Rights, Fifth Section, in the case of Baldassi and others v. France, Application Nos. 15271/16 and 6 others, 11 June 2020

https://hudoc.echr.coe.int/eng?i=001-203213

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EUROPEAN UNION

First Annual Report on the Rule of Law in the EU, including media pluralism and freedom

Ronan Ó Fathaigh
Institute for Information Law (IViR)

On 30 September 2020, the European Commission published its *2020 Rule of Law Report: The rule of law situation in the European Union*, which is the first annual report as part of the new European Rule of Law Mechanism announced in the Political Guidelines of the Commission's new President in late 2019. The new Rule of Law Report is intended to act as a preventive tool by identifying rule of law trends in EU member states, and by helping to prevent serious problems from arising or becoming more acute. The Report includes separate country chapters for all 27 EU member states, and, crucially, covers four main pillars with a strong bearing on the rule of law, namely (1) justice systems, (2) anti-corruption frameworks, (3) media freedom and pluralism, and (4) other institutional issues linked to checks and balances. Of particular interest is the Report's findings in relation to media freedom and pluralism.

In this regard, the Report's chapter on media freedom begins by noting that all member states have legal frameworks in place to protect media freedom and pluralism, and that EU citizens broadly enjoy high standards of media freedom and pluralism. However, the Report raises a number of issues. First, citing the Media Pluralism Monitor, the Report notes that journalists and other media actors continue to face threats and attacks (both physical and online) in several of the member states monitored. Secondly, in relation to the independence of media authorities, the Report states that "some concerns have been raised with regard to the risk of politicisation of the authority, for instance in Hungary, Malta and Poland." The Report notes that the new EU Audiovisual Media Services Directive (AVMSD) (see IRIS 2019-1/3), whose transposition should be completed this year, includes specific requirements which will contribute to strengthening the independence of national media authorities. Thirdly, in relation to transparency of media ownership, the Report notes that in a few member states, there are obstacles to an effective public disclosure of ownership, or there is no effective disclosure system in place. Fourthly, on the distribution of state advertising, the Report highlights that in many member states, there is no specific legislation to ensure fair and transparent rules on the distribution of state advertising to media outlets. Fifthly, the Report also addresses political pressure on the media. Vulnerabilities and risks to media pluralism increase when the political independence of the media is under threat; in the absence of regulation against political interference; or as a result of rules allowing political actors to own media. Importantly, the Report states that the country chapters "have identified a

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number of cases where serious concerns have been raised by stakeholders". Finally, the Report notes that in a number of member states, journalists and other media actors are increasingly facing threats and attacks (physical and online) in relation to their publications and their work. These can take various forms, including Strategic Litigation Against Public Participation (SLAPP lawsuits); threats to physical safety and physical attacks; online harassment, especially of female journalists; and smear campaigns, intimidation and politically oriented threats.

In terms of the next steps, the Commission has invited national parliaments and authorities to discuss the Report, and it will engage with the European Parliament and the Council on rule of law issues and further inter-institutional work. Finally, it should be noted that the Report does not replace the Treaty-based mechanisms for the European Union to respond to more serious issues related to the rule of law in member states. These tools include infringement proceedings and the procedure to protect the founding values of the Union under Article 7 of the Treaty on European Union.

European Commission, "Rule of law: First Annual Report on the Rule of Law situation across the European Union"

https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1756

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NATIONAL

AUSTRIA

[AT] Copyright infringement by Internet live stream and use of an online video recorder

Gianna Iacino
Legal expert

In a decision issued on 22 September 2020, the Austrian *Oberste Gerichtshof* (Supreme Court – OGH) gave its views on (cable) retransmission via the open Internet and online video recorders that use the deduplication technique.

The plaintiffs are television broadcasters based in Germany who had signed collection agreements with the German collecting society VG Media that expressly excluded the rights for retransmission via open networks (OTT services). The defendant, who operates an Austrian mobile communications network, offers public telephone and Internet services and a TV service that enables its customers to receive television programmes, including those of the plaintiffs, via TV sets, PCs or mobile devices. These programmes are retransmitted to the defendant's customers either via the defendant's network or via a third-party Internet service where, in the final stage of the process, the programmes are carried through a password-protected 'virtual pipeline' via OTT services over which the defendant has no control. The defendant also operates an online video recorder that enables its customers to watch television programmes on a time-shifted basis. In the injunction procedure, the plaintiffs demanded that the retransmission of their programmes via the third-party Internet service and the use of the online video recorder be stopped.

The OGH confirmed the decisions of the first-instance and appeal courts in the plaintiffs' favour and rejected the defendant's appeal. It concluded that the defendant had interfered in the plaintiffs' cable retransmission right, enshrined in Article 59a(1) of the *Urhebergesetz* (Copyright Act – UrhG). Cable retransmission involved the retransmission of an upstream broadcast and needed to meet the integrality principle, that is, the programme must be retransmitted in full, unmodified and in real time. However, on account of the technology-neutral approach of Austrian copyright law, it was not necessary for the signal to actually be retransmitted via cable. It could also be retransmitted via microwave or UMTS. For the user, it made no difference whether the programme was retransmitted via the Internet or over a mobile network. Users often had no idea what kind of data connection they were using to access content. In the case at hand, the programmes were being retransmitted via cable. The only part of the process over which the defendant had no control was the final stage of retransmission via the OTT services of a third-party Internet provider. However, Article 59a(1) UrhG

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did not state that the cable rebroadcasting right was limited to processes in which the original broadcaster's programmes were transmitted via a communication network totally controlled by the retransmission company. This would go against the technology-neutral approach of the provision.

Additionally, the court ruled that the retransmission right enshrined in Article 76(1) UrhG had been infringed. The retransmission right was an example of communication to the public, since when a company other than the original broadcaster made content available via online streaming, it was communicating that content to the public. Article 76a(1) UrhG covered both wireless and wired retransmission; TV streaming over the Internet was a form of wired retransmission. The OGH also decided that the online video recorder had breached the plaintiffs' reproduction right under Article 15(1) UrhG. The online video recorder was used to create digital copies of the plaintiffs' television programmes using the deduplication technique. It was debatable whether this process was covered by the private copying exemption provided in Article 42(4) UrhG. It depended on whether the copy was attributed to the user, who could, in principle, claim the private copying exemption, or the defendant, who used the copies for commercial purposes, that is, to make them available to its customers, and to whom the exemption therefore did not apply.

Regarding the attribution of the copying process, the OGH referred to the case law of the German *Bundesgerichtshof* (Federal Supreme Court – BGH). It was necessary to assess who had organisational responsibility for the recording process and whether the copy was made only for the individual user or whether a master copy was produced and the user merely given access to it. This case law could be applied to Austrian copyright law. The programmes were proactively stored and copied by the defendant on its servers, while the user only had the right to access the copy. The copies produced using the deduplication process were therefore attributable to the defendant, who could not rely on the private copying exemption.

Urteil des OGH vom 22.09.2020 – Geschäftszahl 4Ob149/20w

https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Gericht=&Rechtssatznummer=&Rechtssatz=&Fundstelle=&AenderungenSeit=Undefined&SucheNachRechtssatz=False&SucheNachText=True&GZ=4Ob149%2f20w&VonDatum=&BisDatum=16.10.2020&Norm=&ImRisSeitVonDatum=&ImRisSeitBisDatum=&ImRisSeit=Undefined&ResultPageSize=100&Suchworte=&Position=1&SkipToDocumentPage=true&ResultFunctionToken=c74de9d0-bc95-4afa-a5b5-84d8cb2ad5f9&Dokumentnummer=JJT_20200922_OGH0002_0040OB00149_20W0000_000

Supreme Court ruling of 22 September 2020 - Case no. 4Ob149/20w

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BULGARIA

[BG] Competition authority finds that proposals for amendment to the Radio and Television Act would restrict competition

Nikola Stoychev
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On 1 October, a competition advocacy decision of *Комисия за защита на конкуренцият* (the Commission for Protection of Competition - CPC), namely Decision No. AKT-788-01.10.2020 of the CPC on bills for amendment and supplement to the *Закон зо ридио телевизията* (the Radio and Television Act - RTA), found that two bills would restrict competition on the media market.

To issue its decision, the CPC relied on Article 28, paragraph 1 of *Закон за защита на конкуренцията* (the Competition Protection Act - CPA), which provides that the CPC shall assess the conformity of bills (and/or other acts) with the provisions of the CPA to protect free economic initiative and to prevent the restriction or distortion of competition.

The CPC's decision concerns two bills submitted to *Народното събрание на Република България* (the National Assembly of the Republic of Bulgaria - the Parliament) in December 2019 and February 2020, both of which proposed the introduction of quotas for Bulgarian music in radio and television programmes using different approaches aimed at achieving the same legal effect.

The first bill (Bill for amendment and supplement to the Radio and Television Act No. 954-01-85 of 5 December 2019) proposes to encourage radio broadcasters who allocate at least 30% of their monthly time for Bulgarian musical works by financing them through the national *Фонд „ Радио и телевизия "* (the Radio and Television Fund within the *Съвета за електронни медии* (the Council for Electronic Media - CEM)). The bill stipulates that a musical work should not be broadcast more than 5 times a day in the 7 a.m. - 9 p.m. slot. It also proposes a quota of at least 10% of musical works created within the last 5 years. Bulgarian musical works are defined as: 1) a musical work created by at least one author who is a Bulgarian citizen or 2) a work whose text is in Bulgarian.

The second bill (Bill for amendment and supplement to the Radio and Televisions Act No. 054-01-17 of 21 February 2020) envisions that at least one third of the daily music content of radio and television channels (except for news, sports programmes, ads, and movies) must be allocated for Bulgarian music created by at least one author who is a Bulgarian citizen. Monetary sanctions of up to approximately EUR 10 000 are considered in the case of non-compliance.

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Some of the most prominent and significant stakeholders in the media market, including the CEM, *Министерство на културата* (the Ministry of Culture - TM) , *Асоциация на българските радио- и телевизионни оператори* (the Association of Bulgarian Radio and Television Operators – ABBRO), *Българското национално радио* (the Bulgarian National Radio – BNR) and *Музикаутор* (Musicautor - the local organisation of composers, authors and music publishers for the collective management of copyright), took part in the proceedings by presenting legal statements. Most of the stakeholders argued against the introduction of such quotas, except for Musicautor. The latter stated that the introduction of quotas for Bulgarian music in television and radio programmes would have a positive impact on the motivation of Bulgarian authors and performers, on the quality and diversity of their music, as well as on the dialogue between the state and the cultural sector.

The thorough analysis of both the two legislative proposals and the statements of all interested parties led the CPC to the decision that, in terms of competition, such quotas would restrict competition on the market. The reasoning behind the CPC's decision is that the introduction of quotas would limit the ability of radio and television operators to freely select their music content, as well as their strategy for reaching a wider audience. At the same time, privately-owned broadcasters rely mainly on advertising revenues, which would be higher only if there is a wider audience. Thus, the CPC concluded that the market creates sufficient stimulus for radio and television broadcasters to broadcast music according to audience preferences. The presence of a quota for Bulgarian music would only result in radio stations and music TVs losing their identity and distinctiveness. Moreover, those who are obliged to change their concept and broadcast more Bulgarian music would risk losing their current audience.

In addition, the proposed financial incentives for broadcasting Bulgarian music would put Bulgarian radio stations in a privileged position. The competition authority also considered that the introduction of quotas for Bulgarian music would restrict competition by placing Bulgarian performers in a privileged position with respect to their foreign counterparts by creating geographical barriers to the free movement of goods and services.

Finally, the CPC stated that the introduction of quotas would not incentivise the creation and promotion of Bulgarian music. This is due to the presence of multiple foreign music channels, online platforms and foreign radio stations that can be listed online (for example, Spotify, YouTube, Apple Music, etc.) which would most probably not fall within the scope of the proposals. Furthermore, the restriction of competition and the guaranteed market could even lessen Bulgarian performers' motivation to improve the quality of their music. The CPC concluded that the creation and promotion of Bulgarian music could be boosted in various other ways without restricting competition, and for these reasons, it considered that both bills may have the effect of restricting competition in the media market.

These advocacy decisions do not have a binding effect on Parliament and it remains to be seen whether, and to what extent the National Assembly will take the detailed arguments of the competition authority into consideration .

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Законопроект за изменение и допълнение на Закона за радиото и телевизията, сигнатура № 954-01-85 оики 2019 оики 2019 оики 2019

https://www.parliament.bg/bg/bills/ID/157269

Bill for amendment and supplement to the Radio and Televisions Act, No. 954-01-85 of 5 December 2019

Законопроект за изменение и допълнение на Закона за радиото и телевизията, сигнатура № 054-01-17, 21 рир 2020

https://www.parliament.bg/bg/bills/ID/157355

Bill for amendment and supplement to the Radio and Televisions Act, No. 054-01-17 of 21 February 2020

Решение № АКТ-788-01.10.2020 на КЗК относно проекти на закони за изменение и допълнение на Закона зиотиододоти

http://reg.cpc.bg/Decision.aspx?DecID=300058464

Decision No. AKT-788-01.10.2020 of the CPC on bills for amendment and supplement to the Radio and Televisions Act

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GERMANY

[DE] Bundestag report questions constitutionality of NetzDG amendment

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In a report published on 15 September 2020, the *Wissenschaftliche Dienst* (research office) of the German *Bundestag* (lower house of parliament) noted that parts of the new law on combating right-wing extremism and hate crime were unconstitutional. The report raises concerns about the constitutionality of the law's provisions on obligations to hand over deleted content and IP addresses to German prosecution authorities. It comes after the German *Bundesverfassungsgericht* (Federal Constitutional Court) recently declared current rules on the disclosure of inventory data unconstitutional.

The Bundestag had adopted the *Gesetz zur Bekämpfung des Rechtsextremismus und der Hasskriminalität* (Act to combat right-wing extremism and hate crime) after its third reading on 3 July 2020. The legislative process is designed in particular to make it easier to prosecute those responsible for right-wing extremist hate crime and the distribution of child pornography on the Internet. The existing *Netzwerkdurchsetzungsgesetz* (Network Enforcement Act – NetzDG) was therefore amended.

According to Article 3a of the revised NetzDG, social network providers are obliged to report certain criminal content to the *Bundeskriminalamt* (Federal Criminal Police Office – BKA) in order that a criminal prosecution can be launched by the relevant criminal prosecution authorities. The IP addresses and port numbers of the users concerned must also be disclosed. The BKA then investigates whether the reported content is actually illegal and can ask for additional information in order to identify the person responsible. Finally, it sends this information and content to the relevant criminal prosecution authorities of the *Länder*.

The report concludes that providers of telecommunication services currently have no constitutional authority to disclose IP addresses from the inventory data that they collect. The BKA therefore cannot use IP addresses disclosed by social network providers under the Act in order to identify users. Such information can therefore not be used for criminal prosecution purposes and its disclosure is unconstitutional.

The law is currently awaiting the signature of the German Federal President. According to media reports, the Office of the Federal President intends to wait until the relevant passages have been amended.

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Gutachten des Wissenschaftlichen Dienstes des Deutschen Bundestags vom 17. September 2020

https://cdn.netzpolitik.org/wp-upload/2020/09/WD-10-030-20-Gesetz-Hasskriminalitaet.pdf

Report of the research office of the German Bundestag of 17 September 2020

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[DE] Federal Supreme Court: Heir entitled to access user's full social network account

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On 27 August 2020, the *Bundesgerichtshof* (Federal Supreme Court – BGH), the highest German civil court, decided that the operator of a social network must provide a deceased user's heir with access to the user's account. The heir must be allowed to access the account and its content in the same way as the original account holder. However, they may not actively use the account.

The case concerned a ruling of the *Landgericht Berlin* (Berlin regional court) of 17 December 2015, which had previously been confirmed by the BGH (judgment of 12 July 2018 – III ZR 183/17 – press release 115/18) and had entered into force. Under this ruling, the operator of the Facebook social network had been ordered to give the parents of a deceased user, as her heirs, access to her full account and its contents. The company had subsequently provided the user's parents with a USB stick containing a 14 000-page PDF file with a copy of the data from the user account. The BGH now had to decide whether it had met its obligation to provide access. At the request of the deceased user's mother, the regional court had fined the social network operator EUR 10 000 for only providing a USB stick. However, the appeal court had overturned this decision and dismissed a request for the company to be fined. The BGH has now reinstated the first-instance decision.

According to the BGH, the operative provisions of the first-instance decision made it clear that the heirs should not only be given access to the contents of the user account, but also the possibility to access the account itself in the same way as its original holder. The judges also referred to the grounds of the 2018 judgment, according to which the user agreement between the daughter and the network had been transferred to her heirs by universal succession. Her heirs had therefore entered into the contractual relationship and had a primary entitlement to access the account, which had not been met through the provision of a USB stick. However, they were not entitled to actively use the Facebook account and all its functionalities.

Pressemitteilung des BGH vom 9. September 2020 (Beschluss vom 27. August 2020 - III ZB 30/20)

https://www.bundesgerichtshof.de/SharedDocs/Pressemitteilungen/DE/2020/2020119.html;jsessionid=AFFB2EA8B9EE21F363A68B3FAFC8D4EA.2_cid294?nn=10690868

Federal Supreme Court press release of 9 September 2020 (decision of 27 August 2020 - III ZB 30/20)

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[DE] KJM updates supervision criteria for youth protection in broadcasting and telemedia

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In August 2020, the *Kommission für Jugendmedienschutz* (Commission for the Protection of Minors in the Media – KJM) of the German *Landesmedienanstalten* (state media authorities) updated its broadcasting and telemedia supervision criteria. New criteria were added to take account of new Internet trends, such as influencer marketing, and the dangers of online gaming addiction.

The KJM is an organ of the *Landesmedienanstalten*. Germany's federal structure, in which 14 state media authorities operate in the 16 *Bundesländer* (federal states), means that a joint body is needed to standardise the supervision of measures to protect young people in the media. The KJM is therefore responsible for ensuring a coherent approach to the monitoring of national private broadcasters and the Internet (telemedia). The legal basis for its activities is provided by the *Jugendmedienschutz-Staatsvertrag* (Inter-State Treaty on the protection of minors in the media – JMStV), a treaty between all the German *Bundesländer*.

The broadcasting and telemedia supervision criteria are designed to assist the supervision process. The list of criteria helps the authorities to assess the possible effects of content on children and young people, especially its potential to harm their development. It is drawn up with reference to research on media impact and various aspects of media law. In addition to existing themes such as sexuality, violence and discrimination, the latest version focuses on certain Internet-specific phenomena.

Within the "promotion of excessive use" category, interactive services such as online gaming and social networks were classified as a potential risk. Following the World Health Organization's classification of online gaming addiction as an illness, the risks of online gaming were defined. The main risks were posed by games with a social element and immersive games, that is, those in which players lost awareness of their surroundings. For example, the KJM thought that virtual reality games (VR) were particularly dangerous.

As well as online gaming, close attention was paid to influencer marketing in the context of advertising and teleshopping. The influencers' use of the informal 'Du' form was considered especially risky and those who addressed children and young people directly were in danger of exploiting their inexperience and credulity. Exerting time pressure on young people was also very dangerous because it could cause them to make rash purchasing decisions.

The KJM must always respond to new Internet developments and trends as they emerge, continuously updating and adapting the list of criteria in order to ensure that young people are effectively protected.

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Pressemeldung der Landesmedienanstalten in Deutschland vom 18.09.2020

https://www.die-medienanstalten.de/service/pressemitteilungen/meldung/kjm-aktualisiert-aufsichtskriterien-fuer-rundfunk-und-telemedien

Press release of the German state media authorities of 18 September 2020

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[DE] Media regulator takes action against Twitter for pornographic content

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On 30 September 2020, the *Kommission für Jugendmedienschutz* (Commission for the Protection of Minors in the Media – KJM) ruled that youth protection rules had been breached on the Twitter platform. Unable to prosecute the account holders concerned on account of their anonymity, the KJM held Twitter itself responsible.

In six separate cases, the KJM found that Twitter users had breached the German *Jugendmedienschutz-Staatsvertrag* (Inter-State Treaty on the protection of minors in the media – JMStV) by making pornographic content publicly accessible. Since the service providers had distributed this content without fulfilling their legal obligation to ensure that children and young people could not access it, the KJM issued complaints and adopted appropriate measures. These will now be implemented at state level by the relevant media authorities in various legal procedures. According to the KJM chairman, Marc Jan Eumann, Twitter had the technical know-how to protect children and young people from pornographic content. The platform's failure to proactively meet its responsibility to do so was therefore incomprehensible. The media regulators hope that the legal procedures will encourage Twitter to take corrective action more quickly when the law is clearly breached in the future.

The KJM is Germany's central supervisory body for the protection of minors in private broadcasting and telemedia. As an organ of the state media authorities, it checks whether the JMStV has been infringed and decides on remedial measures, such as complaints, prohibition orders and fines.

In June, the KJM announced plans to take more stringent action to combat pornography on online platforms in future. It had been investigating three website operators who had provided access to pornographic material without an age verification system. In August, it also published a study on search engines' youth protection settings and filter mechanisms. The study found that, even when security settings were activated, children and young people using search engines could easily come into contact with content that could harm their development, especially content relating to violence, self-harm and extremism (see IRIS 2020-9).

Pressemitteilung der Kommission für Jugendmedienschutz (KJM) vom 01. Oktober 2020

https://www.die-medienanstalten.de/service/pressemitteilungen/meldung/kjm-aktualisiert-aufsichtskriterien-fuer-rundfunk-und-telemedien-1

Commission for the Protection of Minors in the Media (KJM) press release, 1 October 2020

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[DE] State media authorities publish disinformation report

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On 1 October 2020, the German *Landesmedienanstalten* (state media authorities) published a report on the different forms of disinformation and its distribution from both communication-related and legal perspectives. The report defines various types of disinformation, categorises them from a legal point of view and describes measures that can be taken to combat them.

The report describes the seven main forms of disinformation or misinformation and the threats they each pose to society and democracy. They include deliberate decontextualisation of real information; deliberate misinformation; manipulative (political) advertising; misleading pseudojournalism; and propaganda. The legal section of the report then analyses different categories of preventive and repressive responses to disinformation in the context of their potential to restrict the fundamental right to freedom of expression and dissemination of ideas. The report also considers some of the methods currently used to remove, correct, identify or sanction disinformation.

The report was commissioned by the *Konferenz der Gremienvorsitzenden* (Conference of Chairpersons of the Decision-Taking Councils – GVK) of the *Landesmedienanstalten*. The GVK, which comprises the chairpersons of the decision-making bodies of the different *Bundesland* media regulators, advises on matters relating to media policy and cooperation between the *Landesmedienanstalten*.

The GVK also published a position paper in response to the report, highlighting the importance of freedom of expression and opinion, which should not be restricted in the fight against disinformation. It stated that, in order to combat disinformation, a legislative framework laying down mandatory procedures and guaranteeing transparency was required. Self-regulation could be useful in this respect, but it must be monitored and, if necessary, adjusted by independent media regulators. Platforms and intermediaries had a duty to take diversity of opinion into account and present the full range of views without distortion. Not every act of misinformation needed to be countered by regulatory means. For example, in order to safeguard diversity, the GVK supported the idea of independent fact checks that should be easy to find in search results and newsfeeds. Measures to tackle disinformation should also be supplemented with support for and the strengthening of media literacy among users.

Meldung der Landesmedienanstalten vom 01. Oktober 2020 sowie das dazugehörige Gutachten und Positionspapier

https://www.die-medienanstalten.de/service/pressemitteilungen/meldung/vorgehen-

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gegen-desinformation-ist-fundamental-fuer-die-kommunikative-basis-unserer-gesellschaft

Press release of the state media authorities of 1 October 2020 and the associated report and position paper

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SPAIN

[ES] CNMC launches public consultation on the application of media service providers regulation to VSPs

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European Audiovisual Observatory

On 1 October, the National Commission on Markets and Competition (*Comisión Nacional de los Mercados y la Competencia* - CNMC), the Spanish regulator, launched a public consultation to determine whether video-sharing platforms (VSP) should comply with the current regulation that media service providers (MSP) are subject to.

The development of new audiovisual actors such as VSPs and new media services which are sometimes difficult to categorise were some of the reasons for the update of the AVMSD; the new Directive redefined the concept of a programme, making it no longer necessary to have a format and content resembling those of a broadcast. The current Audiovisual Law (*Ley 7/2010, de 31 de marzo, General de la Comunicación Audiovisual*) defines media services in its Article 2 as "those whose editorial responsibility corresponds to a service provider and whose main purpose is to provide, through electronic communications networks, programmes and content in order to inform, entertain or educate the general public, as well as to transmit commercial communications." The CNMC aims to establish whether and when the content uploaded to VSPs falls under this definition, thus making it subject to compliance with the related obligations

Aware of the fact that, in many cases, VSPs will have to be assessed on a case-by-case basis, the CNMC has launched this public consultation so as to gather knowledge to inform its decisions. Although it is an open consultation, it particularly targets VSPs, social organisations, advertisers, advertising agencies and public entities. The questions address issues such as editorial control; dangerous content for minors and minor protection; advertising; territorial application; and live transmission, among others.

The questionnaire includes questions on which legal mechanisms could be used to oblige VSPs established outside the European Union to comply with the Audivisual Law and on whether there are peculiarities which may hinder VSPs from complying with the general obligations for media services. It also addresses minor protection issues, such as the fact that many influencers enjoy a position of trust among underaged audiences.

Respondents have until 13 November to submit their comments and observations.

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Consulta pública sobre la aplicación de la regulación audiovisual a los prestadores de servicios de comunicación audiovisual que se soportan en plataformas de intercambio de vídeos

https://www.cnmc.es/sites/default/files/editor_contenidos/Audiovisual/20200924_INF_DTSA_082_20_CP_sobre_aplicaci%C3%B3n_de_regulaci%C3%B3n_audiovisual_a_prestadores_a_trav%C3%A9s_de_VSP.PDF

Public consultation on the application of audiovisual regulation to media service providers supported on video-sharing platforms

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FRANCE

Confirmation of competition authority decision requiring Google to negotiate with press publishers in good faith

Amélie Blocman
Légipresse

The dispute between Google and representatives of press publishers and the France Presse agency has entered round 2. The press representatives had appealed to the French competition authority complaining about Google's implementation of the Act of 24 July 2019 creating a neighbouring right for press publishers and agencies. A month before the Act entered into force, Google had 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 had therefore granted free licences to Google, allowing it to use and display their protected content without any negotiation with or payment from Google. The press representatives had considered Google's practices an abuse of a dominant position. In parallel with their main action, they had also requested provisional measures aimed at requiring Google to negotiate with them in good faith.

On 9 April 2020, the competition authority ruled that Google had instigated practices that could represent an abuse of a dominant position in so far as its refusal to pay the publishers was an unfair trading condition. The authority therefore ordered Google to negotiate the requested remuneration with the press publishers and agencies in good faith, in accordance with transparent, objective and non-discriminatory criteria. Google appealed.

In a judgment of 8 October 2020, the Paris appeal court rejected the requests for the referred decision to be annulled. It noted, first of all, that although the assignment of neighbouring rights to press publishers did not guarantee a right to remuneration in the sense that these rights were not designed to compel Google to pay for the licence as requested by the rightsholder, it nevertheless entitled the rightsholder to demand fair remuneration for the reproduction of its protected content, and implied that this should be negotiated in advance by the parties. Therefore, in accordance with Article L. 2184 of the Intellectual Property Code, Google was required to disclose all relevant information concerning the use of press publications by its users.

Google told the court that it was not acting in an anti-competitive manner. However, the court noted, firstly, that the relevant market was the general online search engine market, in which Google held a dominant position with a market share of around 90%. It considered that Google's behaviour in this market could be deemed exploitative abuse through the imposition of unfair trading conditions, without the need, at this stage, to balance the interests at stake, which would be a matter for the court examining the merits. The court believed this was sufficient

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to establish the probable existence of an anti-competitive practice, justifying the issuing of interim measures.

The court deemed that Google's refusal to negotiate remuneration with the publishers and its decision to make access to its service subject to unfair conditions were likely to distort normal competition for both the publishers and its competitors, since Google had nothing to fear from the latter on account of its ultra-dominant market position and would put those wanting to negotiate with neighbouring rightsholders at a clear disadvantage because, unlike the market leader, they would have to pay for the rights.

Moreover, the court ruled that the competition authority had been right to consider that the press sector could be seriously and immediately harmed in a way that might damage the long-term survival of the sector and of the appellants in particular.

The court therefore confirmed that the interim measures imposed by the competition authority, especially the requirement for Google to negotiate in good faith, were necessary and proportionate. In particular, it agreed that, during the negotiation period, Google should maintain the search result display mechanisms introduced with the entry into force of the Act of 24 July 2019. Finally, it upheld, under certain conditions, the injunction according to which the negotiations must not affect the indexation, order or presentation of the protected content to which Google provided access. However, this injunction should not stand in the way of improvements and innovations in the services offered by Google as long as these did not harm the interests of the neighbouring rightsholders concerned.

On 7 October 2020, the day before the appeal court's decision was issued, Google announced that it had accepted the principle of neighbouring right remuneration. Therefore, the discussions it had held with the *Alliance de la presse d'information générale* (French general press alliance – Apig), "could enable us to agree the key principles of an agreement based on audience size, non-discrimination and contribution to political and general news production." Google confirmed that its offer "covers neighbouring rights as defined by law, as well as participation in News Showcase", a new product recently launched by the firm.

Cour d'appel, Paris, (pôle 5 - chambre 7), 8 octobre 2020, Google LLC et a. c / SPEM, AFP et autres

https://www.autoritedelaconcurrence.fr/sites/default/files/appealsd/2020-10/ca_20mc01_oct20.pdf

Paris appeal court (division 5, chamber 7), 8 October 2020, Google LLC et al. v SPEM, AFB et al.

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[FR] AVMS Directive transposition talks continue

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Légipresse

At a joint committee meeting held at the French Parliament on 22 October, MPs and senators failed to reach agreement on the outstanding provisions of the *Projet de loi portant diverses dispositions d'adaptation du droit national au droit de l'Union européenne* (Bill covering various provisions to adapt national law to European Union law – DDADUE). The bill is designed to enable the government to transpose the European Union's Audiovisual Media Services, Copyright and Cab-Sat Directives by ordinance. Having been adopted at first reading by the Senate on 8 July 2020 and then by the National Assembly on 7 October, it must now pass through both chambers again in November. However, the Ministry of Culture intends to submit the draft ordinance and decree transposing the AVMS Directive to public consultation. The *Société des Auteurs et Compositeurs Dramatiques* (Society of Drama Authors and Composers – SACD) said: "With subscription-based digital platforms required to contribute between 20% and 25% of their turnover to film production, Roselyne Bachelot, Minister of Culture, has set a realistic target and laid the ground for a new, balanced partnership with video-on-demand services." However, nothing can happen before the DDADUE is promulgated.

During their examination of the bill, the MPs adopted a series of amendments aimed primarily at the audiovisual sector. The first amendment enables the government to fix a deadline for media chronology negotiations "in order to encourage those involved to hold this discussion within a reasonable timescale". This provision follows the expansion, under the AVMS Directive, of the system under which platforms established abroad contribute to film production. Media chronology will be adapted in accordance with the principle that each platform's contribution to film production should have an impact on its respective exploitation window.

A second amendment provided clarification concerning the negotiations currently underway to include foreign platforms in the film production contribution system. The MPs also adopted two amendments concerning copyright. The first one states that online public communication services whose primary purpose is to infringe copyright and neighbouring rights (namely pirate sites) will not be able to benefit from liability exemption mechanisms on account of the content they share. Finally, the other amendment is designed to protect the contractual freedom of authors, performers and producers who do not want the content of works to which they hold the rights to be shared on platforms.

Unless the health crisis causes further delays, the President of the Republic's promise that the AVMS Directive will be transposed into French law by the end of the year could still be met.

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Projet de loi portant diverses dispositions d'adaptation au droit de l'Union européenne en matière économique et financière, texte du 22 octobre 2020 renvoyé à la Commission des affaires économiques de l'Assemblée nationale après échec de la CMP

http://www.assemblee-nationale.fr/dyn/15/dossiers/alt/dispositions_adaptation_droit_ue_economie_finances

Bill covering various provisions to adapt to European Union economic and financial law, version of 22 October 2020 sent to the National Assembly Economic Affairs Committee after the joint committee's failure to agree

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[FR] C8 must pay EUR 3 million fine imposed by CSA after phone call hoax

Amélie Blocman
Légipresse

On 26 July 2017, the *Conseil supérieur de l'audiovisuel* (the French audiovisual regulator – CSA) imposed one of the largest fines it had ever inflicted on a television channel for inappropriate conduct on air. Pursuant to Articles 42 and 42-1 of the Act of 30 September 1986, it fined the C8 channel (Groupe Canal Plus) EUR 3 million following a sequence broadcast during the programme *Touche pas à mon poste* two months earlier. During the programme, its presenter had encouraged people contacted by telephone to talk about their private lives and sexual activities in very crude terms with no idea that their words would be broadcast to the public. Among the numerous criticisms provoked by the broadcast, one individual had claimed that his appearance on the programme had resulted in very grave consequences. However, this complaint, which had been widely reported in the media before the CSA had issued the fine, was proven to be false a few months later.

The companies Groupe Canal Plus and C8 therefore asked the CSA to withdraw the sanction. After the CSA rejected their request, they asked the *Conseil d'Etat* (Council of State) to lift its decision.

The companies argued that, since the complaint had turned out to be false, the sanction had been based on factually incorrect evidence. In a decision of 30 September 2020, the Conseil d'Etat ruled that, although the inaccuracy of the allegations that had appeared to have been made by a participant in the programme was undisputed, its investigations showed that the sanction had only been based on the programme's content and not on its supposed consequences. The TV channel and its parent company therefore had no grounds to ask for the decision to be annulled.

It is worth recalling that, last year, the Conseil d'Etat cancelled one of the sanctions imposed by the CSA on the same channel following practical jokes played in programmes featuring the same presenter, requiring the audiovisual regulator to reimburse EUR 1.1 million to C8.

Conseil d'Etat, 28 septembre 2020, n°431349, C8

https://www.conseil-etat.fr/fr/arianeweb/CE/decision/2020-09-28/431349

Council of State, 28 September 2020, C8

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[FR] Law to protect child YouTubers and influencers

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Légipresse

The activities of children under 16 whose image is disseminated via online video platforms are now regulated in France. This phenomenon often has significant economic and financial implications, either for the children's families, who frequently generate a large income from it, or for the brands that use these videos as a new form of advertising. Before the recent introduction of a new law, videos of this type, which are filmed by parents and depict minors, were not regulated in any way. Unlike the work of children in the entertainment industry, for example, filming schedules and durations were not governed by employment law. The money the children earned could therefore not be deposited in a *Caisse des dépôts et consignations* account until they reached the age of majority and was paid directly to the channel owners, who were usually their parents.

Child "influencers" whose activities are treated as a form of work now enjoy the same protection under the Employment Code as children in the modelling, entertainment and advertising industries (Article L. 7124-1 *et seq*. of the Employment Code). Before their children are filmed or their videos are disseminated, parents must request an individual licence or approval from the authorities. Their child's rights and the consequences of their child's image being posted on the Internet are explained to them. Parents also have a new financial obligation and must now deposit some of the income earned by their child with the *Caisse des dépôts et consignations* until they attain the age of majority or emancipation, as is already the case for children in the entertainment industry. Sanctions are in place for parents who keep the money for their own use.

Child "influencers" whose activity is not the subject of an employment relationship (and who are therefore not covered by Article L. 7124-1 of the Employment Code) are also protected by the new law. A declaration must be filed if they exceed certain thresholds (to be determined by decree) for the length or number of videos produced or income earned from their distribution. Their parents are also made aware of these legal obligations and are required to deposit a proportion of their child's income with the *Caisse des dépôts et consignations*. In the absence of any authorisation, approval or declaration, the authorities can refer the case to the courts (new Article 6-2 of the Law on Confidence in the Digital Economy of 21 June 2004).

The law also requires advertisers who place products in videos that mainly feature children to assume a certain level of responsibility.

Video-sharing platforms are also urged to adopt charters, in particular to make children aware of the consequences that the distribution of their image could have for their private life, as well as the associated psychological and legal risks. The *Conseil supérieur de l'audiovisuel* (the French audiovisual regulator – CSA) is responsible for promoting the signature of such charters (new Article 15-1 of the

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Act of 30 September 1986).

Finally, the text expressly gives minors the right of deletion or to be forgotten, as enshrined in Article 15-1 of the amended French Data Protection Act of 6 January 1978. At the direct request of the child, video-sharing platforms must remove their videos. Parental consent is not required.

All these measures will enter into force six months after the law was published, that is, in April 2021.

Loi n° 2020-1266 du 19 octobre 2020 visant à encadrer l'exploitation commerciale de l'image d'enfants de moins de seize ans sur les plateformes en ligne

https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042439054

Law No. 2020-1266 of 19 October 2020 regulating the commercial exploitation of children under 16 on Internet platforms

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[FR] Strengthening of health measures: Culture Minister announces new support for cinemas and the performing arts

Amélie Blocman
Légipresse

On 14 October, as the second wave of the COVID-19 pandemic took hold, Emmanuel Macron imposed a curfew from 9 p.m. to 6 a.m. in France's eight largest cities and throughout Ile-de-France. Much to the disappointment of film industry representatives, evening cinema screenings, which are crucial for cinema operators, were therefore prohibited. On 22 October, the President of the Republic extended the curfew to a further 38 *départements*. Six days later, he announced a nationwide lockdown, including the closure of all cinemas.

On 22 October, as part of the support and assistance measures put in place for the cultural sector during the period of tighter health-related restrictions, the Minister of Culture announced two series of specific measures designed to support cinemas and the performing arts during the lockdown.

In the case of the cinema industry, for example, EUR 30 million will be provided to enable cinemas to remain open in spite of the economic consequences of the curfew. Four new measures were also announced to support the entire film industry: a surcharge on all ticket prices in curfew zones, paid by the state and donated to distributors; an increase in the automatic support generated by distributors during the initial six-week curfew period; a doubling of the normal scale of automatic support for producers over the same period, up to 1.5 million admissions; and finally, the replenishment of the "compensation" fund for operators' losses in order to take into account the additional loss of turnover caused by the curfew for cinemas.

As for the performing arts sector, the Minister of Culture announced that an additional EUR 85 million would be mobilised to safeguard programming and venues, enabling them to remain open, albeit with smaller audiences and staggered hours. As regards live musical performances, the existing protection and compensation funds will receive an additional EUR 55 million, EUR 3 million of which is intended for authors. For non-musical performing arts (theatre, dance, circus and street arts in particular), an extra EUR 20 million will be provided to support both the private and subsidised sectors, including authors. The minister also confirmed that the strengthening of the transversal measures announced by the Minister of the Economy, Finance and Recovery on 15 October would apply to the entire cultural sector.

With venues closed until 1 December at least, the sector will be more dependent than ever on financial support from both the state and the *Centre national du cinéma et de l'image animée* (National Centre of Cinematography and the Moving Image – CNC). The Prime Minister announced that filming could continue during the lockdown.

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Crise sanitaire : un soutien accru pour le cinéma et le spectacle vivant, ministère de la Culture, 23 octobre 2020

https://www.culture.gouv.fr/Actualites/Crise-sanitaire-un-soutien-accru-pour-le-cinema-et-le-spectacle-vivant

Health crisis: increased support for cinemas and the performing arts, Ministry of Culture, 23 October 2020

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UNITED KINGDOM

[GB] DCMS publishes UK transition rules for broadcasting and video-on-demand services from 1st January 2021

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Wordley Partnership

The Department for Digital, Culture, Media & Sport (DCMS) has published new rules for broadcasters and video-on-demand providers which will apply once the United Kingdom's transition period for leaving the European Union has expired, that is to say, on 31 December 2020. On 1 January 2021, the Audiovisual Media Services Directive (AVMSD), including the country of origin principle, will no longer apply to UK services broadcasting to the European Union.

The Council of Europe's European Convention on Transfrontier Television (ECTT) framework, which came into force in 1993, will continue to apply. The United Kingdom is an ECTT signatory, along with 20 other EU signatory members, allowing freedom of reception of services within the United Kingdom. The ECTT does not apply to UK services not available in the European Union, and the Ofcom licence will remain valid after the transition period has ended .

The ECTT guarantees freedom of reception between parties and sets out that they must not restrict the retransmission of compliant programmes within their territories. Regarding UK services available in the European Union, two licences may be required: first, an Ofcom licence for services receivable in the United Kingdom and other ECTT countries, plus licences covering services receivable in seven non-ECTT EU countries (Belgium, Denmark, Greece, Ireland, Luxembourg, The Netherlands and Sweden).

The European Union's "Notice to Stakeholders" for audiovisual media services has confirmed that works originating in the United Kingdom will continue to be classed as European Works after 1 January 2021. EU services available in the United Kingdom are classified as services from countries that have signed and ratified the ECTT, so no action is needed. The seven EU countries who have not signed and ratified the ECTT will need a licence from Ofcom to continue to be received in the United Kingdom. Alternatively, the broadcaster could change the way it operates so that it falls within the jurisdiction of another ECTT country.

The ECTT's enforcement mechanism is managed by a standing committee for disputes, including arbitration between ECTT parties. Service providers must ensure that they have a valid licence or authorisation. A service which is available in only one of the 20 EU parties to the ECTT will have freedom of reception in other ECTT jurisdictions. The United Kingdom will uphold the Good Friday Agreement by providing licence-free reception for the Irish broadcasters TG4, RTÉ1 and RTÉ2.

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A service available in one or more of the 7 non-ECTT countries must ensure that it has the correct licensing agreement on 1 January 2021 by complying with the AVMSD jurisdiction.The ECTT does not provide for freedom of reception for video-on-demand services, so compliance with the AVMSD applies, although regulation and authorisation is determined locally. A UK service provider will be treated as a third-country broadcaster in the European Union under the AVMSD if appropriate action is not taken. EU countries would be free to impose further conditions on services transmitting into their territories, subject to the provisions of the ECTT.

After 1 January 2021, a UK provider can have an AVMSD EU jurisdiction qualification even with a UK head office, provided that editorial decisions are taken in an EU country, or that the provider has a significant part of its workforce located there. A service provider is considered as being established within an EU country (Article 2 (3) AVMSD) when its head office and editorial decisions for a service are taken within an EU country. If the head office is in one location but editorial decisions are taken in another EU country, establishment is based on the location of the office where a significant part of the workforce is located. If the provider does not have a significant workforce within an EU country, the technical criteria may still apply as set out in Article 2 (4) AVMSD, for instance, if a service is provided via a satellite uplink in an EU country, then it would fall under the jurisdiction of that country. Where there is more than one uplink, it would fall under the jurisdiction of the EU country where the first uplink was established. If the uplink is in the United Kingdom, it would fall under the jurisdiction of the EU country which operates the relevant satellite capacity, usually Luxembourg or France.

The AVMSD (Directive 2010/13/EU) sets out a country of origin principle, where providers of broadcasting channels and video-on-demand services based in one country are only subject to one set of rules and regulations from a "country of origin". In the United Kingdom, a broadcasting licence issued by Ofcom is valid in the whole of the European Union, so providers only need to comply with Ofcom rules, regardless of where the licensed service is received within the European Union. However, the ECTT sets out that EU countries should apply the AVMSD, not the ECTT, between each other. This means that even the EU countries who have signed the ECTT only observe the AVMSD rules inside the single market.

Guidance for DCMS sectors during the transition period and after 1 January 2021, Government of the United Kingdom

https://www.gov.uk/government/collections/guidance-for-dcms-sectors-during-the-transition-period-and-after-1-january-2021

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[GB] ICO targets companies for seeking to illegally make profit from the current public health emergency

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On 24 September and 8 October 2020, the Information Commissioner's Office (ICO), the United Kingdom's independent body established to uphold information rights, imposed fines on two companies for sending thousands of nuisance marketing texts and unlawful marketing emails at the height of the current pandemic.

In September 2020, Digital Growth Experts Limited (DGEL) was issued with a monetary penalty of GBP 60 000 in relation to a serious contravention of Regulations 22 and 23 of the Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR). The PECR provide for specific privacy rights in relation to electronic communications. They include rules on marketing calls, emails, texts and faxes; cookies (and similar technologies); keeping communications services secure; as well as on customer privacy in relation to traffic and location data, itemised billing, line identification, and directory listings. Under the 2003 Regulations, ICO has the power to impose a monetary penalty of up to GBP 500 000 on a data controller.

The Commissioner found that between 29 February and 30 April 2020, DGEL had transmitted 16 190 direct marketing texts promoting a hand sanitising product, which was claimed to be "effective against coronavirus". The company came to the attention of the Commissioner after several complaints were received via the GSMA's spam reporting tool (the GSMA is an organisation that represents the interests of mobile operators worldwide). In the course of the investigation, DGEL was unable to provide sufficient evidence of valid consent (as required by PECR) for any of the messages delivered to subscribers over the relevant period. The company's explanations for its practices and the means by which it had obtained the data used for its direct marketing were found to be "unclear and inconsistent". DGEL had also used data obtained via social media ads which purported to offer free samples of the product to individuals, to automatically opt them into receiving direct marketing without advising them that their data would be used for this purpose, and without giving them (at the point the data was collected) a simple way of refusing the use of their contact details for direct marketing.

In October 2020, ICO again took action against a London-based software design consultancy, Studios MG Limited (SMGL), which had sent spam emails selling face masks during the pandemic. The company was fined GBP 40 000 for having transmitted unsolicited communications by means of electronic mail for the purposes of direct marketing, contrary to Regulation 22 of PECR. More specifically, on 30 April - in the midst of the pandemic - SMGL sent up to 9 000 unlawful marketing emails to people without their permission. SMGL did not hold any

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evidence of consent for the individuals it had engaged in its one-day direct marketing campaign. ICO held that SMGL's campaign had been made possible by using "data which had been scraped from various vaguely defined sources". ICO's examination also found that SMGL's director had decided to buy face masks to sell on at a profit, despite the fact that the company bore no apparent relation to the supplying of personal protective equipment (PPE). Moreover, it was impossible in SMGL's case to determine the total number of individuals whose privacy had been affected, as the company had deleted a database with key data evidencing the full extent of the volume of emails delivered.

During the pandemic, ICO has been investigating several companies as part of its efforts to protect people from exploitation by unlawful marketing-related data processing activites. The ICO Head of Investigations said in a statement that DGEL "played upon people's concerns at a time of great public uncertainty, acting with a blatant disregard for the law, and all in order to feather its own pockets." A hard line was also taken in relation to SMGL. The Head of Investigations stated that "nuisance emails are never welcome at any time, but especially when people may be feeling vulnerable or worried and their concerns heightened."

Digital Growth Experts Limited monetary penalty notice, ICO

https://ico.org.uk/media/action-weve-taken/mpns/2618330/dgel-mpn-20200922.pdf

ICO fines company flouting the law in order to profiteer from the coronavirus pandemic, ICO

https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2020/09/ico-fines-company-flouting-the-law-in-order-to-profiteer-from-the-coronavirus-pandemic/

Studios MG Limited monetary penalty notice, ICO

https://ico.org.uk/media/action-weve-taken/mpns/2618388/studios-mg-limited-mpn.pdf

ICO takes action against company for sending spam emails selling face masks during pandemic, ICO

https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2020/10/ico-takes-action-against-company-for-sending-spam-emails-selling-face-masks-during-pandemic/

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ITALY

[IT] Parliament considers establishing an ad-hoc parliamentary committee of inquiry on the massive dissemination of fake news

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The Constitutional Affairs Committee of the Senate of the Italian Republic is currently discussing a bill (No. 1900) aimed at establishing a parliamentary committee of inquiry to investigate the problem of disinformation and, more precisely, the dissemination on a massive scale of fake news. It is well known that Italian lawmakers and regulators have already attempted to introduce some measures to counter the spread of disinformation on the Internet; however, none of the initiatives undertaken so far have reached the approval stage, triggering a lot of criticism (see IRIS Special on media coverage of elections here). The bill currently under discussion does not per se establish any binding measure to counter the dissemination of fake news; rather, its purpose is to empower a committee with a variety of tasks, including: a) to investigate the massive dissemination of illegal, false, non-verified or intentionally misleading information and content, both via traditional and online media ("disinformation activities"); b) to ascertain if such activities are backed by subjects, groups or organisations which receive financial support, including from foreign actors, with the specific purpose of manipulating information and influencing the public opinion, including in the context of electoral or referenda campaigns; c) to assess the impact of disinformation on health and in the context of the COVID-19 pandemic; d) to assess whether disinformation activities pursue the goal of inciting hatred, discriminations and violence; e) to explore whether there exist any connections between disinformation and commercial activities, most notably pursued by websites and digital platforms; f) to verify the "status quo" from a legal standpoint, as well as the existence and adequacy of procedures implemented by media platforms and social media service providers for the removal of false pieces of information and illegal content; g) to assess the existence of social, educational and literacy measures and best practices or of initiatives aimed at raising the awareness of individuals regarding the importance of fact-checking and reliable sources of information; h) to determine if legal or administrative measures aimed at countering and preventing disinformation, as well as the commission of crimes via the media, are necessary, including having regard to the negative consequences of disinformation on the development of minors and their learning abilities.

The parliamentary committee of inquiry at hand is supposed to work for an 18-month period and to deliver a report to the Chambers covering the activities carried out and the results achieved.The committee shall be vested with the same powers as the judicial authority for conducting investigations, but shall not, under

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any circumstances, take measures restricting freedom and confidentiality of communications or personal freedom. Furthermore, it shall not interfere with referenda or electoral campaigns, most notably in the course of the so-called election periods under the Par Condicio Law (Law No. 28 of 22 February 2000).

Atto Senato n. 1900 - Istituzione di una Commissione parlamentare di inchiesta sulla diffusione massiva di informazioni false

http://www.senato.it/leg/18/BGT/Schede/Ddliter/53197.htm

Senate Act n. 1900 - Establishment of a parliamentary commission of inquiry into the massive dissemination of false information

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NETHERLANDS

[NL] Court rules YouTube not required to reinstate video containing alleged COVID-19 disinformation

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On 9 September 2020, the Rechtbank Amsterdam (District Court of Amsterdam) delivered an important judgment involving YouTube videos that were said to contain COVID-19 disinformation. The judgment concerned two videos removed from YouTube in which a doctor was interviewed regarding the controversial, and in the Netherlands unrecognised, drug against COVID-19, hydroxychloroquine (HCQ).

In this case, Cafe Weltschmerz - a Dutch citizen journalism platform with a channel on YouTube - initiated legal proceedings against Google Ireland, the company offering YouTube in Europe. A doctor who was interviewed in the videos claimed to have successfully treated 10 of his patients with the help of the drug HCQ. This drug is being tested in several countries as a drug against COVID-19, and even the Netherlands tested it on patients in March and April 2020. However, due to the many side effects, the health care system in the Netherlands has banned the prescription of this drug for cases of COVID-19.

Both the doctor and Café Weltschmerz sued Google following the removal of the videos from YouTube. Cafe Weltschmerz demanded, among other things, that the videos be reinstated on YouTube and that YouTube discontinue its policy regarding COVID-19. They argued that YouTube had committed malpractice by removing the videos and that the breach was unlawful. In addition, they stated that YouTube's policy was contrary to the views of the World Health Organisation (WHO) and local health organisations, and that the removal of the videos constituted a restriction on their right to freedom of expression. YouTube, on the other hand, argued that Cafe Weltschmerz’s videos contained disinformation. The debate about HCQ is allowed, but it considered that the videos crossed the line. For example, they tell spectators how to obtain the substance outside the regular channels, and the 1.5 metre measure was not being respected.

YouTube stated that by having an account on YouTube, Café Weltschmerz had agreed to YouTube's terms of service, which also meant that YouTube could remove videos if they caused damage to YouTube, their users or third parties. On 20 May 2020, YouTube supplemented its guidelines with a policy against misleading information about COVID-19. As a result, YouTube does not allow content that disseminates misleading medical information in violation of advice from the World Health Organization (WHO) or local health authorities. YouTube also stated that no videos may be posted stating, for example, that people were not dying of coronavirus, that a vaccine had been discovered, or that encouraged viewers to use medical devices. Since both of Cafe Weltschmerz's videos violated

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YouTube's policy, they had been removed.

The Court first stated that since YouTube is one of the largest platforms on the Internet, it has a great responsibility regarding the public debate. In this case, YouTube only allowed content in line with the Dutch National Institute for Public Health and the Environment (RIVM). According to the Court, this policy is too limited and is therefore not in line with the principle of freedom of expression. With regard to COVID-19, a user may expect a large amount of content. However, the Court stated that in the case of these two videos, the doctor should have formulated his statements with more nuance. Since this did not happen, the interviews are not part of the public debate. Furthermore, the statements of incorrect information contained potentially harmful and dangerous information.

In light of the foregoing, the Court concluded that there had been no violation of the right to freedom of expression and that YouTube’s decision to remove the videos was not unlawful.

Rechtbank Amsterdam, 9 september 2020, ECLI:NL:RBAMS:2020:4435

http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBAMS:2020:4435

District Court of Amsterdam, 9 September 2020, ECLI:NL:RBAMS:2020:4435

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[NL] Unlawful allegations contained in investigative crime programme using hidden camera

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On 4 September 2020, the Rechtbank Amsterdam (District Court of Amsterdam) delivered an important judgment on the lawfulness of allegations contained in an investigative crime programme which targeted a private individual. The court laid down notable principles on the requisite factual basis for reporting serious allegations and on the use of hidden-camera footage by broadcasters, which has also been the subject of other recent rulings (see IRIS 2020-8/4).

The case arose in January 2018, when the commercial broadcaster SBS6 broadcast an episode of its investigative programme *Moord of zelfmoord* (*Murder or suicide*), involving a crime journalist investigating cases that had been classified as suicide by the Dutch police. The episode at issue concerned the death of a 46-year-old victim, who died in the summer of 2016 after falling from the window of his apartment, which was located on the third floor of a residence. The programme contained interviews with the victim's family, their lawyer, and a forensic investigator, who stated that there were indications that a struggle had taken place in the victim's room. The programme raised questions about the police's conclusion that the victim had committed suicide, and suggested that a second person may have been in the house. Crucially, the programme contained an interview with the victim's landlord, who, when asked by the presenter if anyone else had a key to the victim's apartment, stated that the victim's neighbour (the Claimant) may have had a key. The programme then showed blurred images from the Claimant's Facebook page, and included a segment where the presenter was shown confronting the Claimant, which was filmed using a hidden camera. The presenter asked the Claimant a series of questions about the victim's death. The Claimant's face is blurred in the footage, and he states that he was not home when the victim died, and that he did not have a key.

The episode was viewed by nearly 500 000 viewers, and following the broadcast, the Claimant initiated legal proceeding against SBS6, claiming that the programme had suggested his involvement in the victim's death, which was an unlawful violation of his rights to reputation and privacy. The court first noted that the case involved a clash between the broadcaster's fundamental right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR), and the Claimant's right to protection of reputation and respect for private life under Article 8 ECHR. In order to determine whether the programme contained unlawful statements, the competing interests under Articles 10 and 8 had to be weighed up. Notably, the court stated that the broadcaster must be able to critically express itself and to bring abuses affecting society to the attention of the public. However, the court held that where journalistic research affects private individuals, who are subsequently identified, "appropriate caution must be exercised". This is especially true when allegations of a criminal offence

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are made directly, or where involvement is implied. To what extent such statements are permitted depends to a large extent on the support they find in the available evidence.

The court then examined the programme in question, with the broadcaster arguing that the programme only included questions about the Claimant's involvement, and made no direct accusations. However, the court held that the broadcaster had violated the Claimant's privacy, as the programme had created the impression that the Claimant was the only possible suspect, presenting him as a serious suspect. It is important to note that the court disagreed with the broadcaster's assertion that the Claimant was unrecognisable, holding that the face-blurring was insufficient to make him unrecognisable, due to the fact that his manner of dressing remained visible, his voice was recognisable, and certain personal details were mentioned. Crucially, in relation to the use of a hidden camera to film the Claimant, the court held that this method of filming contributes to a particular image that is conveyed to the viewer, namely, the image of a (possible) suspect. In this sense, the use of this method of filming, as well as the act of blurring a face, has a "criminalising effect". The court noted that interviews with other people in the programme had been filmed in a normal manner. The court concluded that there was insufficient support for the (suggestions of) allegations made against the Claimant, and made an order for damages and costs against the broadcaster for violation of privacy.

Rechtbank Amsterdam, 4 september 2020, ECLI:NL:RBAMS:2020:4247

http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBAMS:2020:4247

District Court of Amsterdam, 4 September 2020, ECLI:NL:RBAMS:2020:4247

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RUSSIAN FEDERATION

[RU] New legislation on infringing apps

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Confederation of Rightholders societies of Europe and Asia

Mobile apps that distribute unlicensed content can now be blocked within three days. On 1 October, the law on the possible blocking of applications that violate copyright came into force.

According to the new regulation, the rightsholder is entitled to request the Federal Service for Supervision of Communications, Information Technology and Mass Media, RKN, to block the infringing application. RKN, in turn, informs the owner of the resource hosting the dubious mobile app about copyright infringement and requires it to be blocked. Within one business day, the resource must pass this information onto the app owner, who also has one business day to block it. If he or she fails to do so, access to the application must be restricted by the resource on which it is hosted.

The law does not apply to apps that violate the copyright of photographs; a specific regulation in this regard will be elaborated later, as reported. The law also introduces the concept of "software application": this is defined as a computer program that provides information on online access to objects of copyright and related rights or information on how to obtain them.

RKN suggested that the US companies Google and Apple establish cooperation to ensure the implementation of the law on the protection of copyright holders and the ban on pirated applications on mobile devices, which came into force on 1 October.

RKN stated, "Google and Apple are invited to organise operational interaction within the framework of the law on protecting the interests of rightsholders of works distributed through mobile applications." The RKN report clarifies that the companies have the relevant letters notifying them of the entry into force of the law and calling on them to provide the necessary contacts to coordinate efforts in the execution of court decisions.

"The law which came into force on 1 October 2020 clarifies the procedure app stores must follow to execute court decisions when apps violate copyrights to distributed works," RKN said in a statement.

Новый закон о пиратских приложениях

https://3dnews.ru/1022201

New pirated apps law

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SLOVENIA

[SI] Government plans “super regulator” merging AKOS with five other regulatory agencies

Deirdre Kevin
COMMSOL

On 1 October 2020, the Slovenian Government wrote to eight regulatory agencies informing them of its intention to enact legislation which will result in the formation of two super agencies.

One merger involves joining together the Agency for Communication Networks and Services (AKOS) with five other regulators. AKOS currently regulates and supervises the electronic communications market, the radio frequency spectrum in Slovenia, radio and television activities, and the postal and railway services markets in Slovenia. The new law will now join AKOS with the Energy Agency, the Agency for the Protection of Competition (AVK), the Traffic Safety Agency, the Civil Aviation Agency, and the Railway Agency (dealing with standards and safety). The resulting authority will be the "Public Agency of the Republic of Slovenia for the Market, Traffic Safety and Consumers".

According to the draft law, the purpose of these mergers is to achieve positive synergies in content-related areas and, consequently, greater efficiency. The government allowed the various agencies 24 hours to respond, and no public consultation was held on the proposed changes to the regulatory structures in Slovenia. All of the agencies, including AKOS, have published their concerns regarding these mergers on their own websites. On 14 October, the government approved the draft law and sent it to Parliament for the next stage of the procedure.

The draft law has not been published on the usual government website for the publication of draft legislation. It has been made available by media outlets and widely discussed by various stakeholders. According to the agencies' websites and various press reports, there are several concerns regarding issues of governance and independence from political interference; the question of financing; and the potential impact on the operational independence of the merged agency, as well as more practical questions regarding the location, staff, etc. It is not clear what the future of the current directors of these agencies will be after the launch of the merged regulator: instead of five directors, there will be a management board of four people, to be decided by a competition (see below). Press reports claim that the mandates of all directors will end with the merger.

The "super agency" will be governed by a seven-member council – all appointed by the government: one member from each of the fields of energy, telecommunications, postal services, media and audiovisual services, transport, competition protection and consumer protection. They will be appointed for a

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term of six years, with the possibility of one re-appointment. The council would then appoint the four members of the management board, who will be experts in the fields of energy, transport, and competition and consumer protection, with the fourth member being an expert in either electronic communications, postal services or audiovisual or media services. The management will be appointed for a term of five years by the National Assembly of the Republic of Slovenia on the proposal of the Government of the Republic of Slovenia following a public competition held by the council. While the draft discussed by the media claimed that the management board would also be selected by the government, the presentation given by the government on 14 October suggested that the choice would be made by Parliament, so this remains unclear as long as there is no access to the current draft law.

In Slovenia, some of the directors of regulatory agencies were previously approved by Parliament (although not in the case of AKOS), and they have expressed concern regarding the council being directly appointed by the government. There are also concerns regarding the financing of such a merged entity. While some regulators are financed from the state budget, AKOS (for example) is financed from the fees paid by the operators it regulates, and hence is independent of the state budget. It is not clear how these agencies with different financial models would be merged.

The statement from AKOS stressed that the draft law has a significant impact on the powers and functioning of the agency. It also pointed out that the agency was not aware of the fact that such a law was being drafted, although it is common practice for the agency to be involved in the preparation of draft laws before they come under interdepartmental consideration. The agency also noted that the bill is in conflict with several European directives that emphasise the need for the independence of regulatory agencies from government, as well as independence as regards funding, organisation and internal procedures.

Vlada potrdila predlog Zakona o Javni agenciji Republike Slovenije za trg, varnost prometa in potrošnike in Javni agenciji Republike Slovenije za finančne trge

https://www.gov.si/novice/2020-10-14-vlada-potrdila-predlog-zakona-o-javni-agenciji-republike-slovenije-za-trg-varnost-prometa-in-potrosnike-in-javni-agenciji-republike-slovenije-za-financne-trge/

Government approves draft Act on the Public Agency of the Republic of Slovenia for the Market, Traffic Safety and Consumers and the Public Agency of the Republic of Slovenia for Financial Markets

Odziv AKOS na predlog Zakona o Javni agenciji Republike Slovenije za trg in potrošnike in Javni agenciji Republike Slovenije za finančne trge

https://www.akos-rs.si/medijsko-sredisce/sporocila-za-javnost/novica/odziv-akos-na-predlog-zakona-o-javni-agenciji-republike-slovenije-za-trg-in-potrosnike-in-javni-agenciji-republike-slovenije-za-financne-trge

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AKOS response to the proposal of the Public Agency of the Republic of Slovenia for the Market and Consumers Act and the Public Agency of the Republic of Slovenia for Financial Markets

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