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EDITORIAL

One month has passed, and war is still raging in Ukraine. One of many unfortunate consequences of this dreadful event is that the Russian Federation is no longer a member state of the Council of Europe, or of the European Audiovisual Observatory. Despite this, the IRIS newsletter continues, and will continue, to report on legal issues concerning Russia in so far as they are of interest for the audiovisual sector and for our members, as you can see in the present newsletter: in the UK, following 29 investigations, the media regulator Ofcom has revoked the broadcasting licences of RT's licensee ANO TV Novosti, considering it not a fit and proper broadcaster given the regulator's immediate concerns about its compliance with due impartiality rules; In Germany, the Berlin-Brandenburg media authority decided to threaten RT DE with a fine if it did not cease broadcasting in Germany. The European Court of Human Rights decided to apply an urgent interim measure concerning Novaya Gazeta, inviting the Russian authorities to abstain until further notice from actions and decisions aimed at full blocking and termination of its activities; in the Russian Federation, the Arbitration Court of the Kirov Region issued a judgment in a copyright case that could establish a trend or precedent in relation to how Western copyright holders are treated in Russia; and in Ukraine, the Commission on Journalistic Ethics dismissed a complaint concerning offensive language directed at a Russian warship on a TV programme.

Beyond our monthly reporting, the Observatory has recently published a note that discusses the legal and institutional framework behind the EU sanctions against the Russian state-owned channels RT and Sputnik. And at the same time, we have also released a new report that looks at the various aspects of governance of public service media and its role in safeguarding the independence of PSM.
Finally, as I wrote last month in these electronic pages, I can only express my solidarity with the victims of this terrible war, wishing that it ends soon, and a durable, just peace ensues.
More than ever, stay safe and enjoy your read!

Maja Cappello, editor
European Audiovisual Observatory

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INTERNATIONAL

COUNCIL OF EUROPE

Council of Europe: Recommendation to promote a favourable environment for quality journalism in the digital age

Amélie Lacourt
European Audiovisual Observatory

On 17 March 2022, the Committee of Ministers adopted a Recommendation calling on States to promote a favourable environment for quality journalism in the digital age. The latter reflects, through a number of guidelines, the need to recognize and reward the value of quality journalism, shadowed by the advent of online platforms.

The media sector has undergone significant digitalization in recent years, which has been beneficial in many ways (e.g..: to facilitate cross-border communication) but has also seriously disrupted the news business. Today, traditional media organizations are in daily competition with online platforms and social media, and while the former are subject to strict legal and regulatory measures or ethical guidelines (such as journalists' codes of conduct), the latter are more likely to be commercially driven, to make decisions based on non-transparent algorithms and ultimately are not subject to the same standards.

Alongside this structural change, consumption habits have also evolved. As consumers are mainly attracted by sensationalist headlines, their interest in media organizations has decreased. Besides, the so-called disruption of the news business also lies in the fact that information overload makes it no longer so easy to trust or merely identify reliable, qualitative and independent sources of information, which reinforces the ongoing disinformation challenge. For all those reasons, quality journalism is under a serious threat.

It is in this context and with the desire to support and acknowledge the value of quality journalism for democracies, that the Council of Europe adopted Recommendation CM/Rec(2022)4. These legal, administrative, and practical guidelines shall be of interest to States and to all media stakeholders: traditional media organizations, digital-based or mixed, commercial media, public service media, community media and independent journalists, including internet intermediaries, civil society organizations, educational institutions, self- and co-regulation bodies, academics, and any other relevant actor which supports quality journalism.

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According to the guidelines, supporting quality journalism in a digital environment notably requires, among other things, building an enabling environment with appropriate funding, ethics and quality, and education.

States are encouraged to assess the need to take proactive or corrective measures and thus ensure financial stability to prevent precariousness in the field of journalism as much as possible. Financial support should be targeted at all media, but a strong emphasis is put on public service media - given their major role in society - and on community and local media, for which a range of funding schemes and instruments should be developed at local level.

In addition to the development of institutional and fiscal measures, which are rather general in scope, the guidelines also elaborate on State support schemes with direct actions to support quality and investigative journalism. The administration of such financial support should, for reasons of transparency and independence, be managed by functionally and operationally autonomous bodies, such as independent media regulatory authorities.

Secondly, supporting quality journalism also means preserving ethics and quality, and this implies restoring trust in media organizations. This could be achieved in different ways, including by increasing fact-checking (i.e. joint fact-checking projects between several newsrooms, universities, non-governmental organizations and online platforms, as well as between organizations from different States).

The guidelines also suggest the elaboration of a common code of good practice on transparency (between media organizations, national journalists' associations, trade unions and independent civil society organizations) containing trust criteria. Among them, the adherence to relevant self-regulatory structures and available in-house and external complaint mechanisms or the development of updated codes of professional ethics which would address issues related to the use of AI and algorithms in news research, production and distribution.

Finally, supporting quality journalism also requires the development of training opportunities for journalists and the promotion of media and information literacy (MIL), which plays an essential role in this digitization process. According to the Committee of Ministers, all actors should be prepared to fund media and information literacy projects in the long term, since helping its audience to "better understand how the online infrastructure and economy are operated and regulated and how technology can influence media choices" is a long and complex task. The guidelines also provide for the development of funding instruments for independent MIL initiatives.

With the adoption of this Recommendation, the Committee of Ministers wishes to recognize the valuable role played by media organizations in democracies and, by giving the actors the keys, to bring quality, independent and reliable journalism back in the spotlight. It is hoped that a favourable environment for quality journalism – and more generally for freedom of expression, media freedom and

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pluralism, and for the protection of journalists – will contribute to public awareness and enable consumers to form independent opinions and make informed decisions.

Recommendation CM/Rec(2022)4 of the Committee of Ministers to member States on promoting a favourable environment for quality journalism in the digital age (Adopted by the Committee of Ministers on 17 March 2022 at the 1429th meeting of the Ministers' Deputies),

https://www.coe.int/en/web/portal/-/council-of-europe-calls-on-states-to-support-quality-journalism-new-guidelines

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ROMANIA

European Court of Human Rights: I.V.Ț. v. Romania

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The European Court of Human Rights (ECtHR) has delivered a judgment on the protection of minors when giving an interview on television, without parental consent. It found that the domestic courts had failed to protect a young girl's private life as guaranteed by Article 8 of the European Convention on Human Rights (ECHR), emphasising the particular vulnerability of young people in such a context and the lack of prior consent by parents, relatives or teachers. In particular, the ECtHR came to the conclusion that the domestic courts had only superficially balanced the young girl's right to private life (Article 8 ECHR) and the broadcaster's right to freedom expression (Article 10 ECHR).

An 11-year old school girl had answered some questions posed by a TV-journalist following the tragic death of a schoolmate during a school trip, in which the girl herself had not participated. The girl stated, among other things, that she had heard that the deceased pupil had fallen out of a train without a teacher present. In particular, she said, regarding the presence of teachers, "there should have been better care for pupils to keep them safe". Extracts from this interview were integrated into the television channel's report about the tragic event and on the television channel's website. As a result of the broadcasting of the interview, the girl was bullied and the reactions she received caused her emotional stress. The mother of the child brought civil proceedings against the licence holder of the television channel for breach of the child's privacy and right to her image, but her claims were dismissed by the higher domestic courts.

Before the domestic courts, the pupil, Ms I.V.Ț., alleged that, following the television report, she had been recognised by her schoolmates and teachers and subsequently suffered from their hostile attitudes towards her. Her mother was summoned to the school to give a written declaration that she would prevent I.V.Ț. from making any other statements in front of journalists. I.V.Ț.'s mother also made apologies and gave explanations to all of the schoolteachers. In the civil proceedings against the TV-station, the higher domestic courts found that the journalists of the TV-station had not acted wrongly in so far as they had been covering a subject of public interest, and that the adverse attitude of the school teachers and schoolmates towards the pupil following the broadcast of her interview was not imputable to the journalists.

In its judgment of 1 March 2022, the ECtHR started from the premise that the present case required an examination of the fair balance that had to be struck between I.V.Ț.'s right to the protection of her private life under Article 8 ECHR and the private broadcasting company and journalists' right to impart information as

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guaranteed by Article 10 ECHR. The ECtHR referred to the criteria for balancing the protection of private life and freedom of expression: the contribution to a debate of public interest; the degree of notoriety of the person affected; the subject of the report; the prior conduct of the person concerned; the content, form and consequences of the publication; and the circumstances in which images were taken. The ECtHR also referred to the State's positive obligation to take into account the particular vulnerability of young people, while the task of audio-visual media service providers of imparting information necessarily included "duties and responsibilities", as well as limits which the media had to impose on itself spontaneously. Wherever information bringing into play the image of a person is at stake, journalists are required to take into account, in so far as possible, the impact of the information, pictures or video recordings to be published prior to their dissemination. The ECtHR reiterated that while the essential object of Article 8 ECHR is to protect the individual against arbitrary interference by public authorities, it does not merely compel the State to abstain from such interference. In addition to this negative undertaking, there might also be positive obligations inherent in effective respect for private and family life. These obligations might involve the adoption of measures designed to secure respect for private life even in the sphere of relations of individuals between themselves. Moreover, individuals who lacked legal capacity, such as minor children, were particularly vulnerable, and this aspect needed to be integrated in the State's positive obligations under Article 8 ECHR.

The ECtHR confirmed that the contribution to a debate of public interest made by the broadcast news report is indeed an essential criterion to take into consideration. However, I.V.Ț. had been a minor and so the requirement of parental consent – which had never been obtained – had to be weighed against it. The ECtHR noted in particular that the relevant National Audiovisual Council regulations stated "the right of the minor to his or her private life and private image prevail[ed] over the need for information, especially in the case of a minor in a difficult position". Even where a news report made a contribution to a public debate, the disclosure of private information – such as the identity of a minor who had witnessed a dramatic event – must not exceed editorial discretion, and had to be justified. Those considerations were more important in the present case, where the ECtHR expressed doubts as to the relevance to a debate of public interest of the opinions of a child who had not even witnessed the event in question. As regards the conditions under which the interview in question was conducted, the ECtHR observed that I.V.Ț.'s parents or legal representative had not at any time given their consent to the broadcast of the interview. In that respect, the prior parental consent had to be considered as a safeguard for the protection of the young girl's image, rather than as a mere formal requirement. The ECtHR also considered that media reporting that disclosed information concerning a young child's identity could jeopardise the child's dignity and well-being even more severely than in the case of an adult, given their greater vulnerability, which attracted special legal safeguards. It also observed that the domestic courts had found that I.V.Ț. had suffered from severe distress and anguish following the broadcast. Hence it appeared that the broadcast had had serious repercussions on I.V.Ț.'s well-being and private life and that her allegations on that point were

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not appear ill-founded or frivolous. The Court concluded that the higher domestic courts had only superficially engaged in the balancing exercise between I.V.Ț.'s right to private life and the TV-channel's freedom of expression, and that that exercise was not carried out in conformity with the criteria laid down in the Court's case-law as mentioned above. In the Court's view, the above considerations – especially on the young age and the lack of notoriety of I.V.Ț., on the little contribution that the broadcast of her interview was likely to bring to a debate of public interest and on the particular interest of a minor in the effective protection of her private life – are sufficiently strong reasons to substitute its view for that of the domestic courts. Therefore the ECtHR concluded that there has been a violation of Article 8 ECHR by the domestic authorities, failing to comply with their positive obligations to protect I.V.Ț.'s right to respect for her private life.

Judgment by the European Court of Human Rights, Fourth Section, in the case of I.V.Ț. v. Romania, Application no. 35582/15, 1 March 2022

https://hudoc.echr.coe.int/eng?i=001-215919

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RUSSIAN FEDERATION

European Court of Human Rights: interim measure in ANO RID Novaya Gazeta and Others v. Russia

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On 8 March 2022, the European Court of Human Rights (ECtHR) decided to apply an urgent interim measure in the case of ANO RID Novaya Gazeta and Others v. Russia. In the interests of the parties and the proper conduct of the proceedings before it, and having regard to the exceptional context of the war in Ukraine in which the request has been lodged, the ECtHR invited the Russian authorities, under Rule 39 of the Rules of Court, to abstain until further notice from actions and decisions aimed at full blocking and termination of the activities of Novaya Gazeta, and from other actions that in the current circumstances could deprive Novaya Gazeta of the enjoyment of its rights guaranteed by Article 10 of the European Convention on Human Rights (ECHR), more precisely its right to freedom of expression and information.

The applicants in the case are two Russian companies, ANO RID Novaya Gazeta and OOO Telekanal Dozhd, and two Russian nationals, Dmitriy Andreyevich Muratov, and Natalya Vladimirovna Sindeyeva. Mr Muratov is the 2021 Nobel Peace laureate and editor of *Novaya Gazeta*, a daily newspaper, while Ms Sindeyeva is the owner of Telekanal Dozhd, a television company, both established in Moscow. On 3 March 2022, the ECtHR received a request by Mr Muratov for an interim measure asking that the ECtHR indicate to the Russian Government not to interfere with lawful activity of Russian mass media, including *Novaya Gazeta*, covering the armed conflict on the territory of Ukraine, in particular, to refrain from blocking information items and materials containing opinions different from the official point of view of the Russian authorities; and to abstain from full blocking and termination of the activity of Russian mass media, including *Novaya Gazeta*. The request referred to an imminent risk of irreparable harm to freedom of expression and the silencing of independent media in Russia. Reference was made to several orders by the Federal Service for Supervision of Communications, Information Technology and Mass Media (*Roskomnadzor*) for *Novaya Gazeta* to delete specific articles published between 24 February and 1 March 2022 concerning the conflict in Ukraine from its website. Other examples were cited of several other media outlets which had been blocked in Russia, and whose activity had been discontinued in the meantime, including *Telekanal Dozhd* . The applicants subsequently also referred to new Articles introduced on 4 March 2022 into the Criminal Code criminalising, in particular, the spread of knowingly untrue information about the actions of the Russian armed forces with heavy custodial and financial penalties (see also IRIS 2022-3/1). On that same date, with reference to the legislation, *Novaya Gazeta* stopped reporting on military action in Ukraine and deleted the already published materials on the matter.

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In its decision of 8 March 2022, the ECtHR indicated to the Government of Russia that it should abstain until further notice from actions and decisions aimed at full blocking and termination of the activities of *Novaya Gazeta*, and from other actions that in the current circumstances could deprive *Novaya Gazeta* of the enjoyment of its right to freedom of expression guaranteed by Article 10 (ECHR).

Following the Committee of Ministers' Resolution that the Russian Federation ceases to be a member of the Council of Europe as from 16 March 2022 (Resolution (CM/Res(2022)2), the ECtHR decided on the same day to suspend the examination of all applications against the Russian Federation, pending consideration of the legal consequences of this Resolution on the Court's work. This suspension was however lifted by a decision of the ECtHR of 22 March 2022: the ECtHR will continue to deal with applications directed against the Russian Federation in relation to acts or omissions which may constitute a violation of the ECHR, provided that they occurred before 16 September 2022. In the same decision, the ECtHR declared that the Russian Federation will cease to be a High Contracting Party to the ECHR on 16 September 2022.

Interim measure by the European Court of Human Rights in ANO RID Novaya Gazeta and Others v. Russia, Appl. no. 11884/22, 8 March 2022

https://hudoc.echr.coe.int/eng-press?i=003-7282927-9922567

The European Court of Human Rights decides to suspend the examination of all applications against the Russian Federation, Press Release, ECHR

https://hudoc.echr.coe.int/eng-press?i=003-7287047-9930274

Resolution of the European Court of Human Rights on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention on Human Rights

https://echr.coe.int/Documents/Resolution_ECHR_cessation_membership_Russia_CoE_ENG.pdf

The European Court of Human Rights decides to suspend the examination of all applications against the Russian Federation, Press Release, ECHR

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EUROPEAN UNION

Amazon’s acquisition of MGM approved by the European Commission

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On 15 March 2022, the European Commission announced it had approved, under the EU Merger Regulation, Amazon.com Inc’s proposed acquisition of MGM, the well-known entertainment and studio production company. Notably, the Commission stated that the acquisition had been approved “unconditionally”, and would raise “no competition concerns” in the European Economic Area (EEA).

Amazon.com Inc is a US-based multinational company which operates a range of businesses, including the online platform Amazon.com, the video-streaming service Prime Video, and is also active in the (co-)production of audiovisual content through Amazon Studios; while MGM is a US-based company which is active in the production and distribution of audiovisual content in the EEA and globally. On 8 February 2022, the proposed acquisition of MGM by Amazon.com Inc was notified to the Commission, and on 15 March 2022, the Commission announced the results of its assessment of the proposed acquisition, under a number of headings.

First, the Commission examined the horizontal overlaps between the activities of Amazon and MGM in the audiovisual content value chain, and concluded that the overlaps between Amazon and MGM are “limited”, as they are “primarily active in different parts of the AV content value chain and where both parties are active, their combined market shares are low”. Second, on the vertical links between the activities of Amazon and MGM in the audiovisual content value chain, the Commission stated that (i) MGM's upstream activities as a producer and licensor of audiovisual content are “limited compared to other market players' activities”, (ii) MGM's content “cannot be considered as must-have” and (iii) a “wide variety of alternative content exists”. Further, in national markets where Amazon has a sizeable market presence among video streaming platforms, the Commission found that Amazon “faces strong competition from other players.” Third, on the vertical link between the activities of Amazon and MGM in the upstream market for the production and licensing of films for theatrical release and the downstream market for the theatrical exhibition of films, the Commission found MGM's films represent “only a limited share of box office revenues in the EEA and that overall MGM is not among the top production studios, despite its rights over successful film franchises such as James Bond”. Finally, on the conglomerate links regarding MGM's content and Amazon's existing bundle of audiovisual retail and marketplace service products, the Commission concluded that the addition of MGM's content into Amazon's Prime Video offer “would not have a significant

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impact on Amazon's position as provider of marketplace services".

In sum, the Commission found that the proposed acquisition would not "significantly reduce competition" in the markets for (i) the production and supply of audiovisual content, (ii) the wholesale supply of TV channels, (iii) the retail supply of audiovisual services, (iv) the production and licensing of distribution rights to third-party distributors of films for theatrical release and (v) the provision of marketplace services.

European Commission, "Mergers: Commission approves acquisition of MGM by Amazon", 15 March 202

https://ec.europa.eu/commission/presscorner/detail/en/IP_22_1762

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Proposed European Declaration on Digital Rights and Principles

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On 26 January 2022, the European Commission published an important proposal for a European Declaration on Digital Rights and Principles, designed to ensure that the rights and freedoms enshrined in the EU legal framework, and the European values expressed by the principles, are respected in the online environment. Importantly, the Declaration will take the form of a joint solemn declaration, to be signed by the European Parliament, the Council, and the Commission. The Commission has now invited the Parliament and Council to discuss the draft Declaration, and "endorse it at the highest level" by summer 2022. Crucially, implementation of the Declaration will be a "shared political commitment and responsibility" at both EU and Member State level, within their respective competences.

The Declaration is divided into a number of notable chapters, including: Chapter II on solidarity and inclusion; Chapter III on freedom of choice; Chapter IV on participation in the digital public space; Chapter V on safety, security and empowerment; and Chapter VI on sustainability. All the chapters contain commitments that reflect the fundamental principle that the values of the EU and the rights of individuals as recognised by EU law are "respected online as well as offline". Crucially, the Declaration contains a number of important principles and commitments that relate to platforms, media services, and dissemination of information online.

First, Chapter IV on participation in the digital public space lays out some important principles, including that "everyone should have access to a trustworthy, diverse and multilingual online environment", and "access to diverse content contributes to a pluralistic public debate and should allow everyone to participate in democracy". In particular, very large online platforms (VLOPs) should "support free democratic debate online, given the role of their services in shaping public opinion and discourse". In this regard, VLOPs should "mitigate the risks stemming from the functioning and use of their services, including for disinformation campaigns and protect freedom of expression". Further, in relation to media services, it is declared that everyone "should have the means to know who owns or controls the media services they are using". Crucially, the Declaration commits to "continuing safeguarding fundamental rights online, notably the freedom of expression and information", taking measures to "tackle all forms of illegal content in proportion to the harm they can cause, and in full respect of the right to freedom of expression and information, and without establishing any general monitoring obligations", and "creating an online environment where people are protected against disinformation and other forms

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of harmful content".

In addition, in Chapter V on safety, security and empowerment, the Declaration includes a commitment to "countering and holding accountable those that seek to undermine security online and the integrity of the Europeans' online environment or that promote violence and hatred through digital means". While in relation to children, there is a commitment to protecting children against "harmful and illegal content, exploitation, manipulation and abuse online, and preventing the digital space from being used to commit or facilitate crimes".

Finally, the Commission also published a complementary Communication on the draft Declaration, and stated that it will put in place measures to monitor and review the Declaration, including an annual report on "The State of the Digital Decade", which would assess the state of measures following up on the principles enshrined in the Declaration.

European Commission, European Declaration on Digital Rights and Principles for the Digital Decade, COM(2022) 28 final, 26 January 2022

https://digital-strategy.ec.europa.eu/en/library/declaration-european-digital-rights-and-principles

European Commission, Communication on Establishing a European Declaration on Digital rights and principles for the Digital Decade, COM(2022) 27 final, 26 January 2022

https://digital-strategy.ec.europa.eu/en/library/declaration-european-digital-rights-and-principles

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AUSTRIA

Court of Justice of the EU: Case Austro-Mechana v Strato AG

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On 24 March 2022, the Court of Justice of the EU (CJEU) delivered a judgment in Case C-433/20, in which it ruled that the 'private copying' exception included in Article 5(2)(b) of Directive 2001/29/EC applies to copies of works on a server in storage space made available to a user by the provider of a cloud computing service. However, Member States are not obliged to make the providers of cloud storage services subject to the payment of fair compensation under that exception, in so far as the payment of fair compensation to rightsholders is provided for in some other way.

Austro-Mechana, an Austria copyright collecting society, had brought a claim for payment of remuneration for private copying before the *Handelsgericht Wien* (Vienna Commercial Court) against Strato AG, a provider of cloud storage services. The claim was dismissed on the grounds that Strato does not supply storage media to its customers, but provides them with an online storage service. On appeal, the *Oberlandesgericht Wien* (Vienna Higher Regional Court) requested a preliminary ruling from the CJEU concerning the question whether the storage of content in the context of cloud computing comes within the scope of the private copying exception laid down by Article 5(2)(b) of Directive 2001/29/EC.

The CJEU held that Directive 2001/29/EC provides that the private copying exception applies to reproductions on any medium. Regarding the concept of 'reproduction', the Court stated that saving a copy of a work in storage space in the cloud constitutes a reproduction of that work, and that uploading a work to the cloud consists in storing a copy of it. With regard to the words 'any medium', the Court observed that these refer to all of the media on which a protected work may be reproduced, including the servers used in cloud computing. In that regard, the fact that the server belongs to a third party is not decisive. In addition, as one of the objectives of Directive 2001/29/EC is to prevent copyright protection in the European Union from becoming outdated or obsolete as a result of technological developments, that objective would be undermined if the exceptions and limitations to copyright protection were interpreted in such a way as to exclude digital media and cloud computing services. The Court ruled that the subjection of providers of cloud storage services to the payment of fair compensation is within the discretion conferred on the national legislature to determine the various elements of the system of fair compensation. Member States may introduce a private copying levy chargeable to the producer or importer of the servers by means of which the cloud computing services are offered to natural persons. When setting the private copying levy, Member States may take account of the

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fact that certain devices and media may be used for private copying in connection with cloud computing. However, they must ensure that the levy thus paid, in so far as it affects several devices and media in the single process of private copying, does not exceed the possible harm to the rightsholders.

Judgment of the Court of Justice of the European Union (Second Chamber) of 24 March 2022, Case C-433/20, Austro-Mechana Gesellschaft zur Wahrnehmung mechanisch-musikalischer Urheberrechte Gesellschaft mbH v Strato AG

https://curia.europa.eu/juris/document/document.jsf;jsessionid=C81E22AA867C343DB0A064127E5D3CA6?text=&docid=256462&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=5278212

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RUSSIAN FEDERATION

European Court of Justice rejects RT France's urgent application for lifting of EU sanctions

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European Audiovisual Observatory

In an order of 30 March 2022, the President of the General Court of the European Union rejected the application for interim measures submitted by RT France in case T-125/22 R (RT France/Council). On 1 March 2022, the Council of the European Union adopted a Decision pursuant to Article 29 of the Treaty on European Union and a Regulation pursuant to Article 215 of the Treaty on the Functioning of the European Union (TFEU) suspending the broadcasting activities of certain media, including RT France, in and towards the European Union (see IRIS 2022-3:1/6 and the Observatory's note on this subject). RT France filed an action for the annulment of the Council's acts with the General Court of the European Union, as well an application for interim measures to obtain a stay of execution of the latter. In his order, the President described the two conditions that must be met for the interim relief judge to stay the execution of the Council's acts and other interim measures: firstly, the grant of such measures must be prima facie justified in fact and in law, and secondly, they must be urgent in the sense that they must be necessary in order to avoid serious and irreparable harm to the party applying for interim protection. These conditions are cumulative, i.e. the application for interim measures must be rejected if either of them is not met. The interim relief judge shall also, where appropriate, weigh the competing interests. The President concluded that the condition of urgency was not met because the harm caused to the party applying for interim protection was purely economic and financial in nature. Only in exceptional circumstances could such harm be regarded as irreparable, since financial compensation was generally capable of restoring the position of the person suffering the damage to what it had been before that damage occurred. Furthermore, RT France had not provided any figures that would enable the President to evaluate the financial harm it had allegedly suffered. Regarding RT France's claim that the disputed acts had seriously harmed its reputation, the President stressed that the purpose of the interim procedure was not to repair harm already caused and that the annulment of the disputed acts at the end of the principal proceedings would provide sufficient reparation of the alleged moral damage. As for the argument that the serious and irreparable nature of the damage was proven by the fact that a news service had been prevented from carrying out all its activities for a long period of time, and that such acts were irreparable and especially serious in democratic societies, the President explained that it was up to RT France to show and establish the likelihood of such harm being caused. However, RT France had failed to explain the extent to which it would be concerned or affected by such harm. He considered that the weighing of interests favoured the Council because the

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interests that it was pursuing were designed to protect the member states from disinformation and destabilisation campaigns that threatened the public order and security of the Union. It was also in the public interest to bring an end to the aggression being shown towards Ukraine as quickly as possible. On the other hand, the interests asserted by RT France concerned the situation of its employees and its financial viability. The President added that, if RT France were to succeed in its attempt to have the disputed acts annulled in the main proceedings, it would be possible to evaluate the harm suffered as a result of the violation of its interests, which could then be the subject of subsequent redress or compensation.

The President of the General Court said that, in view of the exceptional circumstances of the case, the judge in the main proceedings had decided to rule under an expedited procedure in order that RT France should receive the response to its application as soon as possible.

Ordonnance du président du Tribunal de l'Union européenne du 30 mars 2022 dans l'affaire T-125/22 R, RT France contre Conseil de l'Union européenne

https://curia.europa.eu/juris/document/document.jsf?text=&docid=256901&pageIndex=0&doclang=FR&mode=lst&dir=&occ=first&part=1&cid=479223

Order of the President of the General Court of the European Union of 30 March 2022 in case T-125/22 R, RT France v Council of the European Union

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NATIONAL

SWITZERLAND

[CH] Swiss reject Media Support Act

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In a referendum with a 44.13% turnout held on 13 February 2022, the Swiss population rejected, with a 54.56% majority, a Federal Act on a package of measures to benefit the media that had previously been adopted by the Swiss Parliament. As a result, the level of annual state aid for the media sector will remain at CHF 136 million. The package of measures would have provided an additional injection of around CHF 150 million per year. CHF 90 million per year had been earmarked for subscription-based newspaper delivery, instead of the current CHF 30 million. Trade union newspapers would have received an additional CHF 10 million, while CHF 23 million would have been allocated to basic and further training for journalists, the Press Council and news agencies.

The package of measures had been proposed on account of the contribution made by newspapers, private radio and television stations and online media to the shaping of political opinion and social cohesion through the daily provision of regional and national information. Despite their importance, local and regional media had – as was also the case in Germany – come under financial pressure: advertising revenue was increasingly going to large international Internet platforms. Many newspapers had disappeared, while private radio and television stations were generating less advertising income. This had an adverse effect on reporting from the regions, which in turn had a negative impact on society. The initiative was also designed to help combat disinformation.

The proposed legislation would have improved the position of local and regional media. The longstanding subsidisation of subscription-based newspaper deliveries would have been extended to newspapers with a larger circulation and early morning deliveries.

Annual funding of CHF 30 million would have ensured that the Swiss population could be kept informed of political, business and social topics through online media throughout the country and in all the national languages. However, the support would not have been available to free services, but only to online media partly funded by their readers.

The funds would have been allocated on a degressive basis, with small and medium-sized newspapers and online media benefiting from higher rates of support in order to strengthen reporting in smaller towns and rural areas.

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Swiss private local radio and regional television stations have been compensated for helping to provide a universal broadcasting service since the mid-1990s. Under the proposed measures, this support could have been boosted by up to CHF 28 million per year.

The support measures would have been financed through revenue from the existing radio and television fee and the federal budget. Those benefiting newspapers and online media would have lasted seven years.

Opponents of the plan had argued that, under the proposed Act, the state would have "bought" the free media and thereby undermined one of the pillars of democracy. They claimed that new direct payments from the state to online media companies would jeopardise journalistic independence. Anyone who received money from the public purse could not be considered independent. State subsidies would create dependencies and freeze existing structures. They would harm free competition in the media sector and thereby stifle innovation. Opponents had also claimed that the subsidies would particularly benefit wealthy media companies with large circulations. This was illustrated by the fact that the new funding would support the delivery of Sunday newspapers, which were only published by large publishing houses. It was also unclear why only subscription-based media were eligible for support, while free newspapers and free online services were excluded. According to analysts, the plan may have been rejected because the package of measures was simply too big. It had attracted so much opposition because it contained too many components.

The rejection of this package of measures is also relevant to the debate on the promotion of local and regional media diversity in Germany. According to the "traffic light" coalition agreement, the government partners "guarantee the nationwide provision of periodical press publications and (wish to) examine which support mechanisms are suitable to achieve this". In paragraph 5 ("Regional diversity") of the Protocol Declaration of all States on the *Medienstaatsvertrag* (state media treaty), the *Länder* declared, *inter alia*, that, in order to "ensure diverse, professional and relevant reporting from all parts of the Federal Republic", in addition to the existing agreements reached in connection with the state media treaty, they would "examine measures to safeguard regional and local media diversity. As well as traditional media companies, other actors (including media platforms and media intermediaries) will be included in this process".

On a similar subject, the Swiss government (*Bundesrat*) believes it is justifiable for global platforms to compensate Swiss media companies if they use and provide access to their journalistic content. A proposal for an external consultation on related legislation will be drawn up by the end of this year.

Abstimmungsergebnisse

https://www.admin.ch/gov/de/start/dokumentation/abstimmungen/20220213/bundesgesetz-ueber-ein-massnahmenpaket-zugunsten-der-medien.html

Referendum results

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Informationen zum Massnahmenpaket zugunsten der Medien

https://www.uvek.admin.ch/uvek/de/home/uvek/abstimmungen/medienpaket.html

Information on the package of measures to benefit the media

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[CH] Swiss vote to ban tobacco advertising aimed at children and young people

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In a referendum with a 44.23% turnout held on 13 February 2022, the Swiss population approved the popular initiative “Yes to protecting children and young people from tobacco advertising (No tobacco ads for children and young people)” with a 56.61% majority.

The initiative makes direct provision for an amendment of the Federal Constitution of the Swiss Confederation. In Chapter 3 (Social Objectives) of the Constitution, Article 41(1)(g) will stipulate that the Confederation and the cantons shall, “as a complement to personal responsibility and private initiative”, no longer only ensure that “children and young people are encouraged to develop into independent and socially responsible people and are supported in their social, cultural and political integration”, but also ensure that “their health is promoted”. Article 118 of the Constitution, which concerns “health protection”, will be extended insofar as paragraph 2(b) will state that the Confederation shall prohibit “any form of advertising for tobacco products that reaches children and young people”. Article 197 of the Constitution will include a transitional provision to Article 118(2)(b) in a new paragraph 12, stating that the Swiss Parliament, the Federal Assembly, will adopt the implementing provisions within three years of the adoption of Article 118(2)(b).

Until now, Switzerland’s restriction of tobacco advertising has been much less strict than in most European countries. In all EU member states, for example, tobacco advertising in the press and tobacco companies’ sponsorship of events with cross-border effects are prohibited. The vast majority of European countries (Germany being one exception) also do not allow tobacco advertising in public spaces. In Switzerland, however, tobacco products can be advertised, subject to certain restrictions. Tobacco advertising on radio and television is prohibited, as well as advertising aimed at minors. Most cantons have imposed additional bans, prohibiting tobacco advertising on billboards and in cinemas, for example, or stopping tobacco companies from sponsoring events.

In 2020, CHF 9.7 million was spent on advertising for tobacco products including e-cigarettes, mostly in newspapers and magazines and on billboards; this accounts for 0.2% of all advertising expenditure in Switzerland.

Under the successful popular initiative, tobacco advertising will be banned wherever minors might see it, such as in the press, on billboards, on the Internet, in cinemas, in kiosks and at events. The same rules will apply to electronic cigarettes. However, advertising aimed only at adults or in places to which minors have no access will still be allowed.

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The Swiss Parliament and government believe the initiative went too far and opposed it with an indirect counter-proposal in the form of a new Tobacco Products Act, which was adopted in October 2021. The new rules would have prohibited advertising of tobacco products and electronic cigarettes on billboards, in cinemas, at sports venues, in and on public buildings, and in and on public transport. Tobacco companies would no longer have been allowed to give away free cigarettes or sponsor international events in Switzerland. However, advertising at kiosks, in the press and on the Internet would have been possible, except when aimed at children and young people, as would the sponsorship of national events.

The Tobacco Products Act must now be adapted to the provisions of the popular initiative. Advertising that is mainly aimed at adults but accessible to children and young people will therefore be prohibited. Advertising will only admissible if it is aimed at adults and cannot be seen by minors, such as in promotional emails, leaflets and targeted advertising on the Internet or in social media.

It remains to be seen how the Swiss Parliament will deal with new forms of commercial communication that promote tobacco consumption when it implements the result of the referendum. It is unclear whether image and umbrella brand advertising will be included, or what process should be followed when influencers smoke in photos or videos or showcase a brand in another way on social media platforms.

Informationen und Abstimmungsergebnisse zur Volksinitiative „Ja zum Schutz der Kinder und Jugendlichen vor Tabakwerbung (Kinder und Jugendliche ohne Tabakwerbung)“

https://www.bag.admin.ch/bag/de/home/strategie-und-politik/politische-auftraege-und-aktionsplaene/politische-auftraege-zur-tabakpraevention/tabakpolitik-schweiz/volksinitiative-kinder-ohne-tabakwerbung.html

Information and referendum results on the popular initiative “Yes to protecting children and young people from tobacco advertising (No tobacco ads for children and young people)"

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GERMANY

[DE] 23rd KEF report confirms broadcasting fee until 2024 and defines needs-based funding

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In its 23rd report, published on 18 February 2022, the *Kommission zur Ermittlung des Finanzbedarfs der Rundfunkanstalten* (Commission for Determining the Financial Requirements of Broadcasters – KEF) stated that Germany's public broadcasters would receive the funding they needed if the public broadcasting fee was raised to EUR 18.36 per month for the 2021 to 2024 funding period. This adjustment had been recommended in the KEF's 22nd report on 1 January 2021 and implemented by the *Bundesverfassungsgericht* (Federal Constitutional Court) in a decision of 20 July 2021.

The KEF comprises 16 independent experts from a variety of professional backgrounds, who are appointed for a five-year term by the Minister-Presidents of the 16 German *Bundesländer*. It is responsible for assessing the funding requirements of the German public service broadcasters (ARD, ZDF, Deutschlandradio and ARTE) and reporting to the *Land* governments on the financial situation every two years, as well as submitting a recommendation on the size of the public broadcasting fee, which the *Land* governments can only reject under certain circumstances. The KEF therefore plays an important role in the process of fixing the broadcasting fee (funding requirements are submitted by the broadcasters and analysed by the KEF, before the fee is decided by the *Land* parliaments), which is subsequently collected in the form of a household-based charge. As a rule, the KEF alternates between drafting reports recommending the size of the fee and interim reports. The 23rd report is an interim report, which reviews the assumptions and findings of the 22nd report and records any changes that have occurred since its publication.

In essence, the 23rd report confirms the findings of the 22nd report, although it notes additional funding requirements, totalling EUR 139.2 million (0.4% of total anticipated expenditure), resulting from amended income and expenditure figures. The shortfall of around EUR 224.3 million, caused by the delayed implementation of the broadcasting fee increase (see IRIS 2021-8/18), also needs to be covered. Additional funds of around EUR 540.1 million are available. Compared with the figures submitted by ARD, ZDF and Deutschlandradio, the KEF has reduced the financial requirements for the 2021 to 2024 funding period by EUR 1.5779 billion. This figure is made up of EUR 924.8 million of expenditure cuts, EUR 623.1 million of increased income and EUR 30 million of capital amendments. As a result, the KEF has set the total requirement for the 2021 to 2024 funding period at EUR 38.7622 billion, comprising EUR 27.6518 billion for ARD, EUR 10.0619 billion for ZDF and EUR 1.0484 billion for Deutschlandradio. Compared with the total funding requirement of EUR 36.3136 billion based on

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actual figures for the 2017 to 2020 period, this represents an increase of EUR 2.4486 billion or 6.7% (1.6% per year).

The report also focuses on the impact of the COVID-19 pandemic on the funding of public service broadcasting which, along with a lack of clarity over future inflation rates, is causing the greatest uncertainty in the current funding period. Just like all other companies and organisations, the consequences of the pandemic are affecting public broadcasters both directly and indirectly. In their submissions for the 23rd report, the public broadcasters had therefore taken into account the early noticeable effects of the pandemic and requested additional funding of EUR 597 million for the 2020 to 2024 period as a result of higher programming expenditure (extra industrial safety and hygiene measures, pandemic-related delays and interruptions to programme production, etc.) and a fall in revenue. The KEF took these additional COVID-related expenses into account as far as possible. However, they were largely offset by reduced funding requirements in other areas and additional sources of income. Overall, over both funding periods, the documented increases and reductions in expenditure more or less balanced each other out across the various spending categories. The KEF will review the situation again in its 24th report, based on the information available at the time.

23. KEF-Bericht

https://kef-online.de/de/presse/pressemitteilungen0/news/News/detail/kef-bestaetigt-rundfunkbeitrag-von-1836-eur-bis-2024/

23rd KEF report

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[DE] Federal Constitutional Court refuses to examine partial prohibition of poem that insulted Turkish president

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In a decision of 26 January 2022, the *Bundesverfassungsgericht* (Federal Constitutional Court – BVerfG), as the supreme guardian of fundamental rights in Germany, refused to accept a constitutional complaint by well-known German TV presenter Jan Böhmermann relating to a poem he had written, insulting the Turkish president. As a result, previous civil courts rulings, in which parts of the poem were declared unlawful, are now legally valid.

The case, which attracted a high level of media attention in Germany after it triggered a general public debate on the limits of artistic freedom and freedom of speech, followed the broadcast of a satirical music video in the NDR programme "*extra 3*", which had criticised the flouting of press freedoms in Turkey in a humorous way. In response to the video, the Turkish president had summoned the German ambassador in Turkey to provide an explanation, and demanded, through the Turkish government, that the video be taken down. This political reaction, which was considered excessive in view of the harmless nature of the video, had caused numerous satirists in Germany to respond with similar pieces of satire. On 31 March 2016, for example, Jan Böhmermann, in his programme "*Neo Magazin Royale*" (ZDFneo), tried to demonstrate in a satirical way what was allowable in Germany under freedom of expression and what was not by reciting an abusive poem about the Turkish president. The poem contained insults which the presenter himself had acknowledged were "forbidden". In the ensuing court proceedings, the *Landgericht Hamburg* (Hamburg regional court) ruled that parts of the poem were unlawful because they crossed the boundary between satire and abusive criticism.

In the court's view, even though criticism of the Turkish president was allowed under freedom of expression (an argument based on artistic freedom was left unanswered), especially if it was satirical in nature, some of the poem's contents had overstepped the mark in terms of what a politician should have to put up with. Although viewers would realise that the absurd descriptions of his sex life, for example, had no connection with reality, the president should not have to accept such insults and abuse just because they were clearly not meant to be taken seriously. In addition, the poem unlawfully referred to existing prejudices against Turkish people and insults that were especially offensive to Muslims. On the other hand, the court held that lines such as "Er ist der Mann, der Mädchen schlägt" ("He is the man who beats up girls") or "sackdoof, feige und verklemmt" ("stupid, cowardly and uptight") were acceptable under freedom of expression because they were a form of political criticism (e.g. violence against women in Turkey). After the ruling had been upheld in subsequent court decisions, the TV presenter appealed to the Constitutional Court, arguing that the civil courts' partial prohibition of the poem breached fundamental rights, in a final effort to

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have the original decision overturned. By refusing to accept the complaint, the BVerfG blocked this possibility, with the result that the previous rulings can no longer be challenged. Through its decision, for which it was not required to provide grounds, the BVerfG therefore determined that the case had no fundamental constitutional importance, possibly because it had previously ruled on the relevant point of constitutional law. In view of the ongoing public debate concerning the case, it is unfortunate that the Constitutional Court did not provide a clear explanation of the fundamental aspects of the case. Nevertheless, with its decision, the BVerfG has underlined that the level of media attention a case receives and the public profile of the parties involved are irrelevant when it comes to applying the principles of application and interpretation developed in its established case law.

BVerfG, Beschluss der 2. Kammer des Ersten Senats

http://www.bverfg.de/e/rk20220126_1bvr202619.html

Federal Constitutional Court, decision of the 2nd chamber of the First Senate

LG Hamburg, ECLI:DE:LGHH:2017:0210.324O402.16.0A

https://www.landesrecht-hamburg.de/bsha/document/JURE170025881

Hamburg regional court, ECLI:DE:LGHH:2017:0210.324O402.16.0A

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[DE] Federal Supreme Court rules on tribute show advertisement

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In a ruling of 24 February 2022 (not yet published), the *Bundesgerichtshof* (Federal Supreme Court – BGH) examined the legal boundaries of advertising for a tribute show in which cover versions of an artist's songs are performed. The case concerned whether an event at which a Tina Turner lookalike sings Tina Turner hits can be advertised in a way that might create the impression that Turner herself is involved in or at least supportive of the show.

Tina Turner had filed a lawsuit against the producer of a show in which the singer F. performed Turner's greatest hits, asking for an injunction against the use of posters advertising the event. The posters contained a photograph of F. and the text "SIMPLY THE BEST - DIE TINA TURNER STORY". Turner claimed that, since F. looked so similar to her, the public might think that she herself was depicted on the posters and involved in the show. She had not given permission for her image or name to be used. After the *Landgericht Köln* (Cologne regional court, case no. 28 O 193/19) had upheld her complaint, the *Oberlandesgericht Köln* (Cologne appeal court, case no. 15 U 37/20), hearing an appeal filed by the defendant, rejected it on the grounds that Turner was not entitled to injunctive relief.

In the latest proceedings, the BGH dismissed a further appeal lodged by Turner. It was true that the defendant had infringed Turner's own image and name rights. If someone impersonated someone else, e.g. an actor, the latter's own image rights were infringed if a significant proportion of the target audience was deceived into thinking that it was the actual person. The advertisement in this case did create the impression that Turner herself was pictured on the posters.

However, the use of Turner's image on the defendant's disputed posters could be considered permissible under Articles 22, 23(1)(4) and (2) of the *Kunsturhebergesetz* (Art Copyright Act). Under the act, images could only be disseminated or publicly displayed with the permission of the person depicted. However, exceptions applied, for example, to "images linked to contemporary history" and "images that are not made on request, the dissemination or display of which lies in the higher interests of art". Here, a limitation applied to the "dissemination and display of an image that breaches a legitimate interest of the person depicted".

The BGH ruled that, in the case of an image made on request – such as in the current case – the use of the image could only be contested by the person actually depicted (i.e. F. in this case), but not by the person they were impersonating. Turner therefore could not use the argument that the image in question had been made on request. Furthermore, in view of the broad protection offered by artistic freedom under Article 5(3) of the *Grundgesetz* (Basic Law – GG), it was irrelevant that the defendant had used an image of Turner to

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advertise a different art form – in this case, a tribute show. An advertisement for a show in which the songs of a famous singer were performed by a lookalike, featuring an image of the lookalike that created the false impression that it was the famous singer herself was, in principle, covered by artistic freedom.

Nevertheless, the BGH stressed that an unjustified intrusion into the famous singer's general personality rights would be committed if an advertisement for such a tribute show created the false impression that the famous singer supported or was even involved in the show. However, the defendant's posters did not falsely claim that Turner supported or was involved in the defendant's show. Since they did not expressly mention such a claim, they were not ambiguous.

Pressemitteilung des Bundesgerichtshofes

https://www.bundesgerichtshof.de/SharedDocs/Pressemitteilungen/DE/2022/2022024.html?nn=17194694

Federal Supreme Court press release

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[DE] Media regulators block pornography platform because of breaches of youth protection rules

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On 2 March 2022, the *Kommission für Jugendmedienschutz* (Commission for the Protection of Minors in the Media – KJM), the German state media authorities' central supervisory body for the protection of minors in private broadcasting and telemedia, issued a blocking order against the xHamster pornography portal on account of breaches of the *Jugendmedienschutzstaatsvertrag* (Interstate Treaty on the Protection of Minors in the Media – JMStV). As a result, the five largest German Internet providers were the first to be required to block access to the website "de.xhamster.com" in Germany. The state media authorities responsible, on account of the locations of the Internet providers' headquarters, – the *Bayerische Landeszentrale für neue Medien* (Bavarian new media authority – BLM), *Landesanstalt für Medien NRW* (North-Rhine Westphalia media authority – LFM NRW), *Medienanstalt Berlin-Brandenburg* (Berlin-Brandenburg media authority – mabb) and *Medienanstalt Rheinland-Pfalz* (Rhineland-Pfalz media authority) – have issued corresponding decisions.

The decision forms part of longstanding proceedings against Hammy Media Ltd., the provider of xHamster, as well as other pornography platform providers. Following a KJM decision in March 2020, the LFM NRW had ordered the provider to operate the site in accordance with the law by introducing an age verification system for users. According to Article 4(2)(1) in conjunction with Article 4(2)(2) JMStV, pornographic content, unless it is absolutely unlawful – such as pornography featuring children, adolescents, violence or animals – is only permissible in telemedia services (online services that are not broadcasting services pursuant to the *Medienstaatsvertrag* (state media treaty) or telecommunications or telecommunications-supported services pursuant to the *Telekommunikationsgesetz* (Telecommunications Act)) in Germany if the provider has ensured that such content is only accessible to adults. This must be achieved by creating a closed user group based on an age verification system. However, despite the LFM NRW's demands, the xHamster platform had failed to take such measures. Instead, pornographic content could be freely accessed with just a few clicks without anything to prevent children and young people accessing it. This constituted an administrative offence under Article 24(1)(2) JMStV, which could be punished with a fine by the relevant state media authority via the KJM. However, since the Cyprus-based provider of the website had refused to bring its service into line with German legal requirements, the media regulators decided, as a last resort, to issue a blocking order. They took into account the fact that the site gave children and young people unrestricted access to footage of extreme and disconcerting practices, including potentially dangerous bondage activities, that could seriously harm their emotional and sexual development.

Pressemitteilung der KJM

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https://www.kjm-online.de/service/pressemitteilungen/meldung/kjm-beschliesst-sperrung-von-xhamster

KJM press release

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[DE] mabb threatens to fine Russian broadcaster RT DE

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In its long-running dispute with Russian broadcaster RT DE (previously known as Russia Today) (see IRIS 2022-2/19), the *Medienanstalt Berlin-Brandenburg* (Berlin-Brandenburg media authority – mabb), as the state media authority responsible, decided, against the background of the Russian Federation's unjustified military aggression against Ukraine, to threaten RT DE Productions GmbH, provider of RT DE, with a fine of EUR 25 000 if it did not cease broadcasting the channel in Germany by 4 March 2022.

With the RT DE livestream still available on various websites on 5 March 2022, the mabb demanded that the fine be paid by 16 March 2022. At the same time, it threatened to impose a second fine of EUR 40 000 if RT DE did not cease broadcasting by 16 March 2022.

The mabb took these steps after RT DE Productions GmbH continued to broadcast its channel in Germany without a licence, despite being banned under the decision of the *Kommission für Zulassung und Aufsicht* (Commission on Licensing and Supervision – ZAK) of 2 February 2022 (see IRIS 2022-3).

Although RT DE Productions GmBH had repeatedly threatened to appeal against the ZAK's decision, which was based on its failure to obtain the licence required to broadcast in Germany, it had not done so. Therefore, the mabb decided to issue a warning and impose a fine for breaches of the *Medienstaatsvertrag* (state media treaty – MStV). According to Article 115(1)(18) of the MStV, organising a broadcasting service without a licence is an administrative offence that is punishable under Article 115(2) with a fine of up to EUR 500 000. The fine of EUR 25 000 therefore falls a long way short of the maximum fine. Nevertheless, according to confirmed media reports, RT DE Productions GmBH applied to the *Verwaltungsgericht Berlin* (Berlin Administrative Court) for emergency legal protection against the broadcasting ban on 3 March 2022.

Meanwhile, the EU itself has responded with a Union-wide approach which, unlike the mabb procedure, is designed to prohibit systematic disinformation campaigns waged by the broadcasters Sputnik and RT that are thought to pose a considerable threat to the Union's public order and security. Under the measures taken, pursuant to Council Regulation (EU) 2022/350 of 1 March 2022 that came into effect on 2 March 2022, it is prohibited in the EU for operators to broadcast or to enable, facilitate or otherwise contribute to broadcast any content produced by the providers RT — Russia Today English, UK, Germany, France and Spanish, and Sputnik, including through transmission or distribution by cable, satellite, IP-TV, Internet service providers, Internet video sharing platforms or applications, whether new or pre-installed. Any broadcasting licence or authorisation, transmission and distribution arrangement with these providers is also suspended.

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Pressemitteilung der mabb

https://www.mabb.de/uber-die-mabb/aktuelles/neuigkeiten-details/aktueller-sachstand-rt-de.html

mabb press release

Pressemitteilung der mabb

https://mabb.de/uber-die-mabb/aktuelles/neuigkeiten-details/aktueller-sachstand-rt-de.html

mabb press release

Verordnung (EU) 2022/350 des Rates vom 1. März 2022 zur Änderung der Verordnung (EU) Nr. 833/2014 über restriktive Maßnahmen angesichts der Handlungen Russlands, die die Lage in der Ukraine destabilisieren

https://eur-lex.europa.eu/legal-content/DE/TXT/?uri=uriserv%3AOJ.L_.2022.065.01.0001.01.ENG&toc=OJ%3AL%3A2022%3A065%3ATOC

Council Regulation (EU) 2022/350 of 1 March 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine

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[DE] Cologne Administrative Court: new Network Enforcement Act provisions breach EU law

Christina Etteldorf
Institute of European Media Law

In a press release of 1 March 2022, concerning its decisions in cases brought by Google Ireland Ltd. and Meta Platforms Ireland Ltd, the *Verwaltungsgericht Köln* (Cologne Administrative Court – VG Köln) announced that the reporting obligations added to the *Netzwerkdurchsetzungsgesetz* (Network Enforcement Act – NetzDG) under Article 7 of the *Gesetz zur besseren Bekämpfung des Rechtsextremismus und der Hasskriminalität* (Act on improving the fight against right-wing extremism and hate crime), which entered into force on 1 February 2022, were inapplicable because they breached EU law. In particular, the social networks concerned did not need, for the time being, to meet the new requirement to transmit certain reported content and related user data to the *Bundeskriminalamt* (Federal Criminal Police Office – BKA) via an electronic interface provided by the BKA.

The relevant lawsuits, filed by Google and Meta (representing the Facebook and Instagram platforms) in summer 2021, mainly concerned doubts about the counter-argument mechanism (Article 3b NetzDG), the obligation to transmit reported content to the BKA as the central authority responsible for criminal prosecutions (Article 3a NetzDG) and the appointment of the *Bundesamt für Justiz* (Federal Office of Justice) as the responsible supervisory body pursuant to the NetzDG (Article 4a NetzDG).

The new rules apply to social networks with more than 2 million registered users, no matter where their headquarters are located. The aforementioned companies far exceed this threshold in Germany. They are required to transmit to the BKA any content that they have removed or to which they have blocked access at a user's request, and concerning that which there is concrete evidence that a criminal offence, defined in the NetzDG, has been committed. Under the current system, the providers themselves are initially responsible for checking and assessing whether there is "concrete evidence" that the listed offences have been committed (including threats to the democratic rule of law, child pornography and coercion). Whether a crime has actually been committed is often therefore not verified until after the content has been transmitted to the BKA for prosecution purposes. This involves processing the personal data (usernames, IP addresses including port numbers and the time of the most recent use of the social network concerned) of individuals who have not behaved in a criminal way and whose data should not therefore be stored by the BKA. This is at the heart of the complaints submitted by the social network providers, who claim that there are insufficient legal grounds for processing this data and that the system therefore breaches data protection rules. If users who publish lawful content run the risk of having their personal data stored in police databases, this not only undermines the relationship of trust between platform providers and users, but also poses a threat

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to freedom of expression through the resulting “chilling effects”. The complainants also claim that the country-of-origin principle that applies to electronic commerce has been infringed. With regards to Article 4a NetzDG, they argue in particular that, under the fundamental right to freedom of expression, the supervisory body should be independent of the state authorities.

The VG Köln partially upheld the complaints. Firstly, it rejected as inadmissible the actions concerning the counter-argument mechanism that could be triggered regardless of concrete complaints (Article 3b(3) NetzDG) on the grounds that the providers had no interest in bringing proceedings since they should have waited for a concrete order from the supervisory body before bringing an action. On the other hand, the actions concerning the reporting obligation were considered admissible and well-founded. Article 3a NetzDG infringed the country-of-origin principle enshrined in the E-Commerce Directive, which stated that providers established in the EU could freely offer information society services (e.g. social networks) in other EU member states as long as they complied with the law in the country in which they were established. The NetzDG, which also laid down obligations for providers in Germany as the country of reception, contradicted this principle. It was true that the E-Commerce Directive provided for possible exceptions for member states. However, the VG Köln ruled that these did not apply because Germany had neither carried out the necessary consultation and information procedure nor presented grounds for an emergency procedure. With regard to the counter-argument mechanism triggered in connection with legal actions (Article 3b(1) NetzDG), on the other hand, the court decided that no rules had been broken with reference to Article 14(3) of the E-Commerce Directive, which governs the possibility for EU member states to establish procedures for the removal or disabling of access to information. The freedom to conduct a business, protected by the Charter of Fundamental Rights, and national constitutional law had also not been infringed.

Article 4a NetzDG, however, was incompatible with the Audiovisual Media Services Directive (AVMSD) which, since the 2018 reform, laid down the principle that media regulators, including those responsible for video-sharing platforms – which were also potentially subject to the NetzDG – should be legally and functionally independent of their respective governments (Article 30(1) AVMSD). The *Bundesamt für Justiz*, which was controlled by and took orders from the *Bundesministerium für Justiz und Verbraucherschutz* (Federal Ministry of Justice and Consumer Protection), did not meet this requirement.

The VG Köln’s decisions are only effective between the parties in the proceedings and are open to appeal. However, since the decisions are very clear, it seems unlikely that the rules that the VG Köln considers to be contrary to EU law would apply to other providers who were not involved in the proceedings, such as TikTok or Twitter, who, according to media reports, have also submitted similar complaints. However, a detailed analysis of the legal arguments cannot be carried out until the decisions are published in full. It also remains to be seen what impact the forthcoming Digital Services Act will have on the continuation of the proceedings.

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Pressemitteilung des VG Köln

https://www.vg-koeln.nrw.de/behoerde/presse/Pressemitteilungen/05_01032022/index.php

Cologne Administrative Court press release

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ESTONIA

[EE] A glimpse at Estonia’s new rules for audio-visual media services

Mari Anne Valberg
TGS Baltic

For some time, Estonia has led the way when it comes to technological advancements and digital innovation.

Therefore, its failure to transpose the Audio-Visual Media Services Directive (AVMSD) and the European Electronic Communications Code in a timely manner has brought the country into total disrepute.

Media services are regulated by the Media Services Act (MSA), in force since 16 January 2011 (as amended). The implementation of the AVMSD was initially scheduled for May 2021. Finally, on 16th February 2022, the Act on Amendments to the Media Services Act and Amendments to Other Associated Acts initiated by the Government of the Republic of Estonia, was introduced into Estonian legislation. The new regulations of the MSA, transposing the AVMSD, came into force on 9 March 2022.

In a fairly general way, the amendments of the MSA follow the mandatory provisions of the AVMSD. Even though the AVMSD provides some room for certain deviation and implementation of voluntary regulations, at least for now, with regard to majority of optional clauses, it was decided not to transpose them into the national legislation for the time being for a variety of reasons. For example, the Estonian legislator did not implement Article 13 (2) and (3) of the AVMSD concerning the requirement of contribution to the production of European works since, according to the preliminary assessment of Estonian Ministry of Finance, the benefits of the measure would not outweigh the costs.

There are, of course, a couple of examples of implementation of voluntary clauses:

Codes of conduct for the transmission of audio-visual commercial communications in children’s programmes and user-generate videos targeted at children may be established by service providers. However, in cases where a code of conduct has not been established, or has not proved to be sufficiently effective, the requirements for audio-visual commercial communications introducing food and drinks in children's programs ,or user-generated videos targeted at children, or during them are to be established by a regulation of the minister in charge of the policy sector. Such a regulation by the minister is currently planned to be established by 1 April 2023. Although there are no known operators of video-sharing platforms in Estonia that would be subject to Estonian jurisdiction, Estonia still adopted the guidelines provided in the AVMSD regarding the protection of

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minors and legality on video-sharing platforms. Video sharing platform operators are now obligated to describe in their terms of services that it is prohibited to transmit content which includes incited to hatred, violence, discrimination, violation of law or depicts child pornography. If discovered, such content must be removed immediately. The terms of service must also prescribe (and the service provider must provide technical means for users to comply with such terms) that at the beginning of programmes, user-generated videos and commercial communications that may impair the physical, mental or moral development of minors, a warning must be presented in a manner understandable to the viewer, stating that the subsequent programme is unsuitable for minors, and a relevant symbol about the unsuitability of the programme to minors or some age groups of minors must be seen on the screen during the whole programme, video or commercial communication. In the case where such a warning has not been presented, the platform operator must add such a warning themselves or ensure that the content is not available to minors.

Other amendments to the MSA include updates to the activity license system, including the obligation on providers of the service to apply for an activity license, submit reports on the programme structure and disclose their ownership structure. Updated provisions of the MSA reduce the volume of mandatory news programmes, that is, the obligation of television and radio service providers to broadcast news is reduced from six days to five days a week, and the share of news programmes in the programme from five per cent to two per cent.

By the date of this article, the new provisions of the MSA have been in force for only a limited time, therefore, it is difficult to draw any conclusions on the adoption and response of society and the concerned service providers. As mentioned above, in certain sectors there is a limited number of concerned market participants (or in some cases, there are none) under Estonian jurisdiction, hence, the actual impact is yet to be measured.

Press release. Stepping up legal action: Commission urges 19 Member States to implement EU digital and media laws

https://ec.europa.eu/commission/presscorner/detail/e%20n/ip_21_4612

Meediateenuste Seadus

https://www.riigiteataja.ee/akt/127022022009

Media Services Act

https://www.riigiteataja.ee/en/eli/514032022003/consolide

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SPAIN

[ES] conditions for the international commercialisation of the broadcasting rights of the Spanish football league under scrutiny

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In September 2021, the *Comisión Nacional de los Mercados y la Competencia* (National Markets and Competition Commission — CNMC), the body that promotes and ensures the proper operation of all markets, issued three reports analysing the conditions proposed by the National Professional Football League (LNFP) for selling the broadcasting rights of the *Campeonato Nacional de Liga de Primera División*, known as La Liga, both in Spain and in international markets. In the case of Spain, the providers Movistar and DAZN have the broadcasting rights for this world renowned championship for its next five seasons.

The three reports - relating to the compliance with the conditions for selling broadcasting rights in Spain and in countries outside of the European Economic Area (EEA) - determined that the LNFP had not complied with certain aspects of the requirements established in the national Royal Decree-Law 5/2015.

In this respect, the CNMC stated that the LNFP should eliminate the possibility of agreeing contracts for four and five season terms, and that the technical and distribution requirements to ensure non-discrimination between bidders should be detailed. In addition, the body stated that commercial opportunities and obligations relating to advertising should not be included in the commercialisation conditions of La Liga as they were unjustified and contrary to the business freedom principle.

Against this background, in February 2022, the organisers of La Liga made a new request for a report prior to the commercialisation of the exploitation rights of the championship in the EEA markets of Malta, Italy, Portugal and the Netherlands. A new assessment of the conditions for the audiovisual exploitation of the league, concluded that the LNFP was still not in compliance with important regulatory requirements.

The CNMC insisted that a contract duration of more than three years would not be compatible with the precedents set by the application of competition rules in the European Union. It also stated that unjustified reservations of rights and obligations in the field of advertising and/or sponsorship should not be included. The CNMC added that specific criteria should be set for the assessment of the requirements for the attribution of match day lots between different providers. Furthermore, it was argued that the conditions for linear or non-linear broadcasting should be further clarified.

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La CNMC analiza las propuestas de La Liga para comercializar los derechos audiovisuales de 1ª y 2ª División en Malta, Italia, Portugal y Países Bajos , CNMC

https://www.cnmc.es/node/393750

The CNMC examines La Liga's proposals to commercialize 1st and 2nd division audiovisual rights in Malta, Italy, Portugal and the Netherlands, CNMC

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FRANCE

[FR] Bouygues Group takeover of Métropole Télévision: appeal against French Competition Authority's decision to investigate proposed merger rejected

Amélie Blocman
Légipresse

In a press release published on 17 May 2021, the TF1, Métropole Télévision, Bouygues and RTL Groups announced that they had begun exclusive negotiations with a view to merging the activities of TF1 and Métropole Télévision (M6 Group). Following the merger, Bouygues would own 30% of the new company while the RTL Group would hold 16%. Free, a company active in the audiovisual content distribution market, and Iliad, its parent company, asked the *Conseil d'Etat* (State Council) to annul the French Competition Authority's decision to investigate the proposed takeover of Métropole Télévision by the Bouygues Group on the grounds of misuse of powers. In particular, the Competition Authority had already sent both companies a questionnaire entitled "Market test – audiovisual content distributors" on 29 September 2021 and another entitled "Market test – advertisers" on 23 November 2021. In support of their requests, the applicants urged the *Conseil d'État* to ask the *Conseil constitutionnel* (Constitutional Council) to examine whether the provisions of Articles L. 450-8 and L. 464-2(V) of the French Commercial Code conformed with the rights and freedoms guaranteed by the Constitution.

According to the first paragraph of Article L. 430-3 of the Commercial Code, "A merger must be notified to the Competition Authority before it is completed. It may be notified as soon as the party or parties concerned can present a sufficiently detailed plan to enable the proposal to be examined, especially if they have signed an agreement in principle or a letter of intent, or announced the takeover bid."

Before such a merger is notified, points 191 to 200 of the Competition Authority's merger control guidelines define a "pre-notification" phase that can be triggered at the initiative of parties "who wish to present their proposed merger to the mergers authority, especially if there are uncertainties about its verifiability or in anticipation of discussions on market definitions or a complex competitive assessment" or "if the notifying party is planning to refer the matter to the Commission". According to point 200 of the guidelines: "The whole of the pre-notification phase is strictly confidential: it is not published on the Competition Authority website or discussed with third parties. However, subject to the prior consent of the notifying party, a market consultation (market test) may be carried out in order to gather more precise information before the merger is notified and thus help to reduce the risk of the notification being incomplete or pre-empt any competition issues."

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Therefore, as the *Conseil d'Etat* notes, the Competition Authority's decision to open such a pre-notification phase at the request of the parties to a proposed merger that might subsequently be notified to it in accordance with Article L. 430-3 of the Commercial Code forms part of the procedure and may result in the Competition Authority giving its opinion on the proposal. It is therefore nothing more than a preparatory phase and consequently cannot be the subject of an appeal based on misuse of powers, even though during this phase the officials responsible for investigating a merger can ask third parties to submit information or documents, subject to the sanctions laid down in Articles L. 450-8 and L. 464-2(V) of the Commercial Code.

Conseil d'État, 1er mars 2022, N° 458272, Stés Free et Iliad

http://www.conseil-etat.fr/fr/arianeweb/CE/decision/2022-03-01/458272

State Council, 1 March 2022, no. 458272, Free and Iliad

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[FR] ARCOM explains “legal offer” indexing mechanism

Amélie Blocman
Légipresse

The *Autorité de régulation de la communication audiovisuelle et numérique* (Regulatory Authority for Audiovisual and Digital Communication – ARCOM), as part of its role in promoting and developing the so-called “legal offer” (a list of websites that comply with copyright laws, see Article 331-12 of the French Intellectual Property Code), is encouraged to “develop tools aimed at strengthening the public visibility and indexing of the legal offer and to annually publish indicators listed under a decree.”

On 9 March 2022, ARCOM therefore adopted a mechanism for observing and indexing websites and platforms that are thought to be compliant with the copyright, neighbouring rights and audiovisual exploitation rights mentioned in Article L. 333-10 of the French Sports Code (see Official Gazette of 17 March 2022). This indexing process is designed to inform Internet users and professionals.

To this end, ARCOM observes online public communication services aimed at French audiences that provide access to protected works and objects. The indexing process takes place notably in the light of various observation elements described in the decision, in accordance with the “indicative list of criteria” method:

- indexing by other public bodies;

- the number of publicly accessible notification and withdrawal requests;

- the presence of legal notices, general terms and conditions of sale or use focusing on respect for copyright and, if appropriate, certain usage limitations linked in particular to technical protection measures;

- access to a secure payment system for paid services;

- the absence of a harmful environment (objectionable advertising, malware, etc.);

- the site’s own claim to be lawful and to use efficient notification systems.

According to the decision, the listed websites are also considered to be committed to complying with intellectual property rights and conducting a policy of remunerating the relevant sectors.

The list is published in a dedicated section of the ARCOM website.

A rightsholder, Internet user or service may contest the listing of one or more websites in writing, detailing the reasons why they should be delisted. After investigating, ARCOM decides whether the site should remain on the list. It can also delist a service if it no longer meets the conditions laid down or if it has been

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blocked under a court order.

In order to make this information more accessible, an extension for Internet browsers, known as “EOL” (Extension Offre Légale – Legal Offer Extension), has been launched. Once downloaded, this extension can inform Internet users, through a green logo displayed in the browser bar, that the site they are visiting is on ARCOM’s list of sites that appear to respect copyright, neighbouring rights and audiovisual exploitation rights.

Délibération n° 2022-06 du 9 mars 2022 sur l'activité de référencement de l'offre légale par l'ARCOM, JORF 17 mars 2022

https://www.legifrance.gouv.fr/download/pdf?id=X8mGWx2I2OoIrXexbOnP50OWC3f0_L_b8Yzlt5Y8PXg=

Decision no. 2022-06 of 9 March 2022 on the ARCOM's indexing of the legal offer, Official Gazette of 17 March 2022

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[FR] Benedetta film's "12" rating contested

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Légipresse

On 2 September 2020, the Minister of Culture granted approval for Paul Verhoeven's film "Benedetta" to be shown in cinemas to audiences over the age of 12, as recommended by the Film Classification Commission. The Pornostop organisation subsequently asked the minister to review the "12" rating given to the film, but did not receive a reply. It therefore asked the Paris Administrative Court to annul, on the grounds of misuse of power, the decision to reject its request that was implied by the Minister of Culture's lack of response. It also asked the court to order the minister to amend the film's classification to an "18" rating.

The court's role was to examine the proportionality of the minister's decision, especially in view of the classification measures set out in Article R. 211-12 of the *Code du cinéma et de l'image animée* (Cinema and Animated Image Code).

The court noted that the simple presence of sex scenes or a high level of violence did not, in itself, justify an "18" rating. Although the Film Classification Commission had found that the film contained "many violent scenes showing brutal and sadist acts", these scenes had not been filmed in a way that glorified or trivialised violence. Whereas the Commission had also noted that the film contained "a number of sexually explicit scenes" that, although simulated, were undeniably realistic, they had not been filmed in a degrading way. Finally, these scenes fitted coherently into the overall narrative of the film, which was inspired by historical people and events, and aimed to show the passionate nature of a romantic relationship between two young women and the hostility they faced in 17th century Italian society.

In these circumstances, the complainant had been wrong to claim that the film was likely to shock young viewers and that the minister had committed an error of judgement by awarding the film a "12" rating. The requests were therefore rejected.

Cour administrative d'appel, Paris, (6e ch), 15 février 2022, Association Pornostop

https://www.legifrance.gouv.fr/ceta/id/CETATEXT000045184437?init=true&page=1&query=21PA05996&searchField=ALL&tab_selection=all/

Paris Administrative Appeal Court (6th chamber), 15 February 2022, Pornostop association

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UNITED KINGDOM

[GB] Ofcom determines RT's licensee ANO TV Novosti is not a fit and proper broadcaster and revokes its licences to broadcast in the UK

Julian Wilkins
Wordley Partnership

Ofcom has revoked the licences of RT's licensee ANO TV Novosti (the Licensee) to broadcast in the UK considering it not a fit and proper broadcaster given the regulator's immediate concerns about its compliance with due impartiality rules.

The decision came amidst 29 ongoing investigations by Ofcom into the due impartiality of RT's news and current affairs coverage of Russia's invasion of Ukraine. The volume and nature of the complaints in a short space of time caused great concern for Ofcom. Further, Ofcom assessed matters in the context of RT's compliance history including a GBP 200 000 fine for previous impartiality breaches. Between 2012, when the Licensee acquired its first licence, and 2017, Ofcom recorded 15 breaches of the Broadcasting Code, including eight for breach of due impartiality and accuracy rules.

Another factor was that RT is funded by the Russian Federation which recently introduced new laws in Russia criminalising independent journalism if it diverts from the Russian State's own narrative of the invasion of Ukraine. This constraint made it impossible for RT to report on Ukraine and maintain compliance with Ofcom's Broadcasting Code rules concerning due impartiality.

Given this background, Ofcom launched, on the 8th March 2022, a separate investigation to determine if the Licensee was fit and proper to retain its licence to broadcast in the UK. The Licensee requested additional time to respond, and this was granted. The Licensee declined to provide further representations or to attend the Oral Hearing on 16th March 2022. However, the Licensee did submit representations about the 29 complaints concerning their coverage about Ukraine

Ofcom considered that an expedited procedure was necessary even though the RT service was not currently broadcasting in the UK due to sanctions by the EU, which are temporary, and of the commercial decisions of platform providers. However, the Licensee continued to hold Ofcom broadcasting licences making it possible to resume broadcasting at any time (e.g. by coming to an arrangement with a broadcasting platform specific to the UK).

Ofcom took seriously the importance, in a democratic society, of a broadcaster's right to freedom of expression and the audience's right to receive information and ideas without undue interference. Further, the regulator took seriously the importance of maintaining audiences' trust and public confidence in the UK's broadcasting regulatory regime.

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In considering these factors, section 3(3) of each of the 1990 and 1996 Broadcasting Acts were applied: “Ofcom shall not grant a licence to any person unless satisfied that the person is a fit and proper person to hold it; and shall do all that they can to secure that, if they cease to be so satisfied in the case of any person holding a licence, that person does not remain the holder of the licence.”

Further, section 319(2) of the Communications Act 2003 sets out duties upon Ofcom, including to ensure that news included in television and radio services must be reported with due accuracy and presented with “due impartiality”, and that the special impartiality requirements of section 320 of the 2003 Act are complied with (section 319(2)(c) and (d)).

The Broadcasting Code sets out the definition of the statutory requirement for “due impartiality” which means that impartiality must be adequate or appropriate to the subject and nature of the programme. Significant stories such as Ukraine meant that a broadcaster had to apply a higher standard of impartiality and accuracy. Ofcom’s research suggested viewers expected high standards of impartiality for programmes aimed at UK viewers. The legitimate aim pursued by the Broadcasting and Communications Acts and the Code is to protect audiences from harmful partial broadcast news by ensuring the availability of accurate and impartial news services.

Ofcom referred to Article 10 (1) of the European Convention on Human Rights which protects a broadcaster’s and its audience’s right to freedom of expression, including the freedom to “hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers”. However, Article 10(2) allows for interference with Article 10(1) if it is “prescribed by law” and, amongst other things, it is “necessary in a democratic society, [...] for the protection of the reputation or rights of others”.

Taking account of the relevant legislation and Broadcasting Code as well as their immediate and repeated compliance concerns, Ofcom was not satisfied that the Licensee could be a responsible broadcaster in the current circumstances. Therefore, Ofcom revoked RT’s licences TLCS 0008881, TLCS 001686, and DTPS 000072 to broadcast in the UK with immediate effect.

Notice of a Decision under Section 3(3) of the Broadcasting Act 1990 and Section 3(3) of the Broadcasting Act 1996 in respect of Licences Tlcs 000881, Tlcs 001686 And Dtps 000072 held by Ano Tv-novosti

https://www.ofcom.org.uk/about-ofcom/latest/bulletins/content-sanctions-adjudications/decision-ano-tv-novosti

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[GB] Advertising watchdog publishes report on tackling harmful racial and ethnic stereotyping in ads

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On 3 February 2022, the UK's regulator of advertising across all media, the Advertising Standards Authority (ASA), published its research in harmful racial and ethnic stereotyping in UK advertising. The survey highlighted a number of important issues that participant consumers raised about the depiction of people from different racial and ethnic backgrounds.

Ads that are likely to cause serious or widespread offence and/or harm owing to particular portrayals of race and ethnicity have long been regulated under the UK Code of Non-broadcast Advertising (CAP Code) and the Code of Broadcast Advertising (BCAP). Rule 4.1 of the CAP Code states that 'Marketing communications must not contain anything that is likely to cause serious or widespread offence. Particular care must be taken to avoid causing offence on the grounds of age; disability; gender; gender reassignment; marriage and civil partnership; pregnancy and maternity; *race*; religion or belief; sex; and sexual orientation'. Equivalent provisions are found in Rule 4.2 of the BCAP Code. Marketers are urged to consider public sensitivities before using potentially offensive material and compliance is typically assessed with reference to several factors, including the context, medium, audience, type of product and generally accepted standards.

Advertising can play a role in legitimising stereotypes. Certain types of racial and ethnic stereotypes can, in particular, cause harm by creating a set of limiting beliefs about a person that might negatively affect how they perceive themselves, and how others see them. In the aftermath of the death of George Floyd (whose murder by a police officer in the US city of Minneapolis in 2020 sparked a global movement for racial justice and led to pressure for change across the world), the ASA has been reflecting on what further efforts could be made to address factors that contribute to Black, Asian and other minority racial or ethnic groups experiencing disproportionately adverse outcomes in different aspects of their lives.

As a first step, the regulator commissioned public opinion research in order to establish whether stereotypes associated with race and ethnicity can, when featured in ads, give rise to widespread or serious offence and/or contribute to real-world harm, such as unequal outcomes for different racial and ethnic groups. The research, which was conducted between March and June 2021, comprised two stages: a qualitative study that covered different interest groups, and a quantitative study that was designed to identify the extent to which attitudes and beliefs were held across individual communities and the UK as a whole. The research indicated that: 'over half of Black, Asian and Minority Ethnic respondents felt that, when they were represented in ads, they are not accurately portrayed,

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and of those, just over a half felt people from their ethnic group are negatively stereotyped'.

Five categories of racial and ethnic stereotypes were identified by the research (some of which are interrelated):

1. Roles and characteristics: overt or subtle stereotypical portrayals pertaining to appearance, behaviour, employment status, mannerisms, accent and preferences. Such portrayals may contribute to the homogenisation of vastly diverse groups and can be seen to reinforce or promote outdated views of a particular race or ethnic group.

2. Culture: the exaggeration and mocking of accents, 'lazy' references to culture, cultural appropriation, and the use of imagery suggestive of colonialism.

3. Religious beliefs and practices: repeated depictions of Muslim or Asian women wearing the hijab were seen by participants as 'an easy stereotype that lacked authenticity'. There was, however, support for portrayals that did not draw specific attention to a person's racial or ethnic background.

4. Objectification and sexualisation: concerns were expressed about depictions of sexualised and/or objectified Black men and women as well as depictions that 'fetishised and exoticised' Asian women. However, positive portrayals of the diversity of body shapes and sizes were generally welcomed.

5. Use of humour at the expense of other ethnic groups: making fun of a group or their appearance, culture or tastes, e.g., the use of different accents can be seen as mocking or 'othering' by reinforcing the idea that people from racial or ethnic minorities who speak with an accent are different from White or Western people.

Moreover, the research highlighted three potential types of harm that could develop from adverse portrayals of race and ethnicity:

1. reinforcement of *existing* stereotypes through the repeated use of certain portrayals (often described as 'always showing us the same way', e.g., the casting of Asian men as shop keepers, waiters and taxi drivers or subtle reinforcements of a servile role). The perceived harm in relation to this was seen in making it easier for others to see people from racial or ethnic minorities as different to the mainstream ('othering');

2. the emergence of *new* tropes which continue creating a one-dimensional picture of Black, Asian and other minority racial or ethnic groups; and

3. perpetuating or implicitly reinforcing racist attitudes by depicting racist behaviour: such depictions were felt to pose a risk of evoking past trauma and reinforcing prejudice (even where it was understood that the advertiser's intention was to challenge negative stereotypes within the messaging of the ad).

The research did not give the ASA reason to believe that its interpretation and application of the Codes' rules were generally out of step with consumers' and

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stakeholders' opinions. The findings can, however, bring more clarity and valuable insights on the types of ads that pose a risk of causing harm and/or offence. At the end of 2022, the regulator will conduct a review of its rulings in this area to identify newly emerging areas of concern and ensure that it is 'drawing the line in the right place'.

At this stage, it is not anticipated that a new targeted rule will be introduced into the Advertising Codes to ban the kinds of portrayals identified in the report. Nevertheless, the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP), which are responsible for writing and updating the UK Advertising Codes, will consider whether specific guidance on racial and ethnic stereotypes is necessary to encourage creative treatments that challenge or reject problematic stereotypes and diminish issues arising from the repeated presentation of a specific race or ethnicity in a particular way. Finally, the research findings will be presented to industry stakeholders and training will be offered to support advertisers where necessary.

Research into Racial and Ethnic Stereotyping in Advertising (Report for the Advertising Standards Authority, prepared by COG Research)

https://www.asa.org.uk/static/3cf6ba4a-67a4-4992-aae39888f6687e94/ASA-RES-research-report.pdf

BCAP Code

https://www.asa.org.uk/type/broadcast/code_section/04.html

CAP Code

https://www.asa.org.uk/type/non_broadcast/code_section/04.html#:~:text=Marketing%20communications%20must%20not%20cause,image%20merely%20to%20attract%20attention.

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CROATIA

[HR] New Electronic Media Act

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The new Electronic Media Act entered into force on 21 October 2021, thus incorporating provisions of Directive (EU) 2018/1808 of the European Parliament and of the Council from 14 November 2018, into national legislation.

A new obligation has been introduced in respect of advertisements for games of chance, stipulating - for the first time - that they must contain a message about the risk of developing gambling addiction and be marked with a visual symbol. Criteria for the advertisement of energy drinks were also stipulated.

The Act stipulates ownership restrictions related to the protection of pluralism and diversity of electronic media, which apply to all media service providers established in the Republic of Croatia and affiliated persons determined in accordance with the Tax Act. A media service provider shall be considered to have a dominant role in the market if its market share is 40% of the share of the annual revenue of all media service providers and electronic publications in the Republic of Croatia. The calculation takes into account the revenue of Croatian Radio-television realised exclusively through the performance of commercial activities, as well as the revenue of affiliated persons. Where an individual provider is determined to have such a dominant role in the market, that provider may no longer acquire shares in other media service providers, nor may it obtain additional concessions or permits, or be a provider of electronic publications that constitute expansion of business activities.

The article prohibiting vertical integration has been deleted, and an obligation imposed on state-level concession broadcasters, requiring them to make a public offer to broadcast its free-to-air television channels to electronic communications operators providing pay-TV services to end-users, while total compensation is to be calculated by the Agency for Electronic Media (AEM) in cooperation with Croatian Agency for Network Activities (HAKOM). It should also be emphasised that the obligation on state-level concession broadcasters pursuant to this article covers only programmes for which they have a concession and cannot link other offers to such programmes. This provision does not include channels of the Croatian Radio-television, since their obligation and methods of determination of prices are stipulated by the Electronic Communications Act.

In case that operators become providers of media broadcasting services via satellite, cable, internet and other permitted forms of transmission, they must ensure that the share of Croatian independent producers in the annual audiovisual program is at least 10% of total gross annual revenue realised in the

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previous year through performance of activities.

Providers of on-demand media services directed to the Republic of Croatia and established in the European Union are under an obligation to pay a financial contribution for the implementation of the National Program for the Promotion of Audiovisual Creativity for the Production of European Works in accordance with the law governing audiovisual activity, and to invest 2% of gross annual income into the production of Croatian audiovisual works by independent producers or to purchase Croatian audiovisual works produced by independent producers.

Finally, it should be emphasised that the Act stipulates the responsibility of electronic publication providers for all published content, including content generated by users, in the case they have failed to register such user and if they have not clearly and in an easily detectable manner warned the users about commenting rules and violations of stipulated provisions.

Zakon o elektroničkim medijima

https://narodne-novine.nn.hr/clanci/sluzbeni/2021_10_111_1942.html

Electronic Media Act

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ITALY

[IT] AGCOM closed the proceeding to identify positions harmful to pluralism in the online advertising sector

Francesco Di Giorgi & Luca Baccaro

With its decision no. 24/22/CONS of February 17, 2022, AGCOM has declared the procedure for determining the relevant market and the dominant position of companies in online advertising to be closed. This procedure started with Decision No. 356/19/CONS of 18 July 2019 (see IRIS 2019-9).

The proceeding was established under Article 43, paragraph 2 of Legislative Decree No. 177/2005 (“the consolidated law on AVMS” or “ TUSMAR”) in force until 2021: according to this, the AGCOM had the power to investigate sectors of the so-called *Sistema Integrato delle Comunicazioni* (Integrated Communications System, SIC) including the online advertising sector with the goal of guaranteeing the media pluralism principle.

In particular, the proceeding was conceived in two phases: the first, with the purpose of identifying the relevant markets, according to the methodologies and criteria of competition law.

Once the relevant markets were defined, the second phase was aimed at ascertaining the presence of any dominant positions by holding into account, amongst others, indicators such as the revenues, the level of competition within the system, the barriers to entry, the size of the economic efficiency of the company; if so, Article 43 gave the AGCOM the power of assuming behavioural or structural measures, so as to preserve the media pluralism.

According to decision No. 24/22/CONS, the proceeding has been closed without completing any of the above-mentioned phases, with regards to the implementation of the Directive (EU) 2018/1808 and to the resulting new Legislative Decree No. 208/2021 ("the new consolidated law on AVMS” or “TUSMA”).

Indeed, The Authority observed that the provisions of Article 43 of TUSMAR has been replaced with the rules of the new Article 51 of TUSMA, which settles a new methodology of investigations.

In particular, the existence of positions potentially harmful to the media pluralism has currently to be ascertained, taking into account some criteria directly set up by Article 51 (amongst others: the revenues, the level of static and dynamic competition within the system, the barriers to entry, the convergence between sectors and markets, the vertical and conglomerate integration of companies, the availability and control of data), according to the methodology given in specific Guidelines and to the new rule of procedure, both in the remit of the AGCOM and still under drafting.

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Therefore, the AGCOM considered it to be appropriate closing the proceeding and carrying it out under the new legislative and regulatory provisions in light of the *tempus regit actum* principle, according to which the legitimacy of the acts of the administrative proceeding must be assessed, with reference to the regulations in force at the time in which the final act is adopted.

However, with the aim of not losing the set of information acquired under the proceeding, the Authority specified that it will converge in the preliminary file of the proceeding, that will begin pursuant to Article 51 of TUSMA, once the above-mentioned Guidelines and rule of procedure are approved.

Autorità per le garanzie nelle comunicazioni Delibera n. 24/22/CONS "Chiusura del procedimento volto all'individuazione del mercato rilevante nonché all'accertamento di posizioni dominanti o comunque lesive del pluralismo nel settore della pubblicità on line, ai sensi dell'art. 43, comma 2, del decreto legislativo 31 luglio 2005, n. 177"

https://www.agcom.it/documentazione/documento?p_p_auth=fLw7zRht&p_p_id=101_INSTANCE_FnOw5lVOIXoE&p_p_lifecycle=0&p_p_col_id=column-1&p_p_col_count=1&_101_INSTANCE_FnOw5lVOIXoE_struts_action=%2Fasset_publisher%2Fview_content&_101_INSTANCE_FnOw5lVOIXoE_assetEntryId=25947311&_101_INSTANCE_FnOw5lVOIXoE_type=document

Italian Communications Authority Resolution no. 24/22/CONS "Clouse of the procedure aimed to identifing the relevant market and ascertaining dominant positions or position detrimental topluralism in the online adverting sector, pursuant to art. 43, paragraph 2 of the legislative decree 3i July 2005, n. 177 "

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[IT] Implementation of a high-speed reporting channel for revenge porn victims

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Legislative Decree No. 196/2003 ("Italian Data Protection Code") has been recently amended. Specifically, Law Decree No. 139/2021 (as enacted and amended by Law No. 205/2021) introduced Section 144-*bis*, which provides a high-speed reporting system for revenge porn victims.

Under Section 144-*bis*, part 1 of the Italian Data Protection Code, anyone, including minors over 14 years old, who has a well-founded reason to believe that audio recordings, images, videos or other IT documents with sexually explicit content concerning them, and intended to remain private, might be sent, delivered, transferred, published or disseminated through digital platforms without their consent is entitled to report such an instance to the Italian Data Protection Authority (*Garante per la protezione dei dati personali*). Of note, no later than 48 hours after receipt of the report, the Garante might exercise the powers set forth by Section 58 of the EU Regulation No. 679/2016 (GDPR), including corrective powers.

The *Garante* has amended the Regulation No. 1/2019 governing its internal functioning. According to these new provisions, once the Garante adopts measures to prevent any dissemination of the reported revenge porn content, such measures are notified to the digital platform providers, together with the reported content or the related hash print.

Once notified of the measures adopted by the *Garante*, digital platforms must retain the reported content for 12 months, for evidentiary purposes only and according to the specifications provided by the Garante, to prevent the data subjects from being directly identifiable.

Finally, providers of audiovisual content-sharing services available in Italy, wherever they are established, must (i) publish on their website the contact details to which the measures adopted by the *Garante* may be notified; or (ii) provide the Garante with this information without any delay. Should this obligation not be complied with, the Garante shall warn service providers to provide their contact information within 30 days. Failure to comply with the Garante warning is subject to administrative fines of up to EUR 10 million or, in case of undertakings, up to 2% of the total worldwide annual turnover of the preceding financial year, whichever is higher.

Deliberazione del 27 gennaio 2022 - Modifiche al regolamento n. 1/2019 in materia di revenge porn

https://www.garanteprivacy.it/web/guest/home/docweb/-/docweb-display/docweb/9744477

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Resolution dated January 27, 2022 - Amendments to Regulation 1/2019 regarding revenge porn

Codice in materia di protezione dei dati personali

https://www.garanteprivacy.it/codice

Italian Data Protection Code – official English translation

https://www.garanteprivacy.it/documents/10160/0/PERSONAL+DATA+PROTECTION+CODE.pdf/96672778-1138-7333-03b3-c72cbe5a2021?version=1.0

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NETHERLANDS

[NL] Stop Online Shaming judgment requiring platform to remove user-generated videos posted without consent

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On 16 February 2022, the *Rechtbank Amsterdam* (District Court of Amsterdam) delivered an important judgment regarding user-generated content posted without prior consent on video-platforms hosting adult content. The case was filed as a class action lawsuit instigated by *Stichting Stop Online Shaming* (Stop Online Shaming Foundation — SOS), representing the interests of victims of online privacy infringements, and *Stichting Expertisebureau Online Kindermisbruik* (Online Child Abuse Expertise Centre Foundation), concerned with preventing and countering (online) child abuse and the sexual exploitation of children. The Court ruled that it was unlawful to host adult user-generated content without prior consent from the individual(s) that appeared recognisable in the uploaded content. Crucially, the Court held that the platform operator could not rely on the exemption of liability under the e-Commerce Directive, finding that the operator had had knowledge of the content uploaded to its platform based on the upload-screening system in place.

The case concerned a website operator that hosted adult content on its video-platform, uploaded by its users. The Court was faced primarily with the question of whether the website provider could be held liable for the user-generated content in which individuals did not know, or did not seem to know, that they were being recorded, without first making sure that there was prior consent for the uploaded content. The website operator admitted to (preventive) screening of the uploaded user-generated content to screen for content containing children and/or bestiality. The screening process resulted in the admittance or rejection of the videos to the platform. The Court concluded that this process resulted in the provider having knowledge of the nature of the content uploaded by its users. Crucially, this meant that the provider could not rely on the exemption of liability as laid down in the Articles 12-14 of the e-Commerce Directive. Those provisions allow an internet intermediary to be exempted from liability if its hosts unlawful content if it can demonstrate that it has no prior knowledge of the nature of the uploaded content.

Regarding the unlawfulness of the uploaded content without prior consent, the Court had to balance conflicting rights. The defendant invoked his right to conduct a business as laid down in Article 16 of the EU Charter of Fundamental Rights, as well as the right to freedom of expression as laid down in Article 10 of the European Convention on Human Rights (ECHR). The plaintiffs invoked the right to private and family life under Article 8 ECHR due to the intimate nature of the uploaded content.

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This case mainly focused on the surreptitious recording of individuals in the private sphere where they believed themselves to be unobserved. The cases did not always involve mature content, but the individual (or individuals) were (partly) undressed. It concerned places in which individuals would not expect to be recorded, such as in dressing rooms. The Court reasoned that this attributed to the notion that the individuals were being filmed secretly, as did the "tags" that could be added to the videos such as "secretly", "covert", "spying", etc. Lastly, the quality of the videos was another reason for the Court to hold that the individuals did not know they were being recorded. The Court reasoned that these situations, due to their nature, specifically fell within the sphere of private life under Article 8 ECHR. This resulted in the privacy of the subject carrying more weight than the interest of the provider. By making the user-generated content available on the platform without prior consent, the provider had acted unlawfully. Furthermore, the Court added that the more clearly a person was in the frame, the more heavily their privacy interests weighed.

The operator in this case was found to have acted unlawfully and was required to pay damages to its victims. The operator was ordered to delete the uploaded user-generated content (and ensure it remained deleted) from its platform. This case demonstrates that, unless it is clear that it is a professional production, an operator is liable for user-generated content in which consent has not been given. An operator has to make sure that indiviudals on film have given prior consent for the content.

Rb. Amsterdam, 16 februari 2022, ECLI:NL:RBAMS:2022:557

https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBAMS:2022:557

District Court Amsterdam, 16 February 2022, ECLI:NL:RBAMS:2022:557

RTL Nieuws, 16 februari 2022

https://www.rtlnieuws.nl/tech/artikel/5288767/verbod-naaktbeelden-porno-site-zonder-toestemming

RTL News, 16 February 2022

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[NL] New Dutch regulatory collaboration involving Dutch Media Authority opens first joint-investigation

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On 3 March 2022, the *Commissariaat voor de Media* (Dutch Media Authority) announced that the recently-established Digital Regulation Cooperation Platform (SDT) has opened its first investigation into effective online transparency and the use of internet users' data. The SDT is a first-ever regulatory collaboration between the Dutch Media Authority, Netherlands Authority for Consumers & Markets, the Dutch Data Protection Authority, and the Netherlands Authority for the Financial Markets. The SDT was established to strengthen the supervision of digital activities, and strengthen enforcement processes, in the Netherlands. Notably, the SDT will also coordinate how to enforce compliance with new European rules with regard to digitalisation, including upcoming rules for online platforms, data and the platform economy, such as the proposals for a Digital Services Act (DSA) (see IRIS 2021-2/13), Digital Markets Act (DMA) (see IRIS 2021-2/2), and an Artificial Intelligence (AI) Act (see IRIS 2021-6/21).

In terms of the SDT's online transparency investigation, the regulators first note that the "different ways in which people can be influenced online" have been increasing rapidly, as "more and more data about their behavior can be collected". According to the SDT regulators, people "must know what happens to their data behind the scenes", and if internet users are aware that their data is used, such as for an algorithm as a result of which they only get to see certain products or information, they will understand that, as a result, they may be influenced.

Importantly, the SDT states that that businesses, organisations, and governments must "clearly" inform people about how they use their data online. The SDT will investigate how people, when using the internet, can be protected as much as possible against "online deception or abuse of personal data". On the basis of the investigation, the SDT regulators will together draw up basic principles for "effective, online transparency". Further, the SDT will also point out to the Dutch legislature any instances where "no rules or regulatory framework exist yet for certain types of harmful practices".

Finally, in terms of broader regulatory coordination, the SDT regulators also announced that upcoming EU legislation, such as the DSA, DMA and AI Act, contain "elements over which different regulators have oversight". As such, the SDT will now identify areas of overlap or what elements cannot be clearly assigned to one or more members, and the SDT will make a "collective, coordinated contribution to the Netherlands' position on rules and regulations (Dutch and European)".

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Commissariaat voor de Media, Toezichthouders pleiten voor betere voorlichting over online gebruik van gegevens van internetgebruikers, 3 maart 2022

https://www.cvdm.nl/actueel/toezichthouders-pleiten-voor-betere-voorlichting-over-online-gebruik-van-gegevens-van

Dutch Media Authority, Regulators call for better information about the online use of internet users' data, 3 March 2022

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PORTUGAL

[PT] Pirate TV - Court acquits 38 defendants for illegal set up of television boxes

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On 18 January 2022, the Court of Coimbra decided to acquit 38 defendants in a case regarding the illegal set up of television boxes.

The main defendant was an electrician, who had allegedly installed illegal television boxes and routersto enable users to unlawfully access broadcasting services, for a total of 37 clients. The panel of judges decided to acquit the electrician since it had not been proven that he had been paid for the service, nor that the handmade devices created and delivered by him had reduced or changed the services provided by "NOS" (a Portuguese telecommunications and media company).

The only fact that could be proven was the possession of the illicit devices by the 38 defendants. The Communications Act, Law 5/2004, establishes that the manufacture, distribution, sale, lease, or possession, for commercial purposes, of illicit devices is forbidden, as well as their acquisition, use, ownership or mere possession for private purposes by the acquirer, user, owner, holder or third party (Article 104, number 1, paragraphs a) and d), respectively). However, as the system installed had stopped functioning on 10 January 2017, the 5-year limitation period for bringing the case under Portuguese law had expired.

The claim for compensation made by NOS was rejected, as the court considered that it had not been proved that the company had suffered losses nor that any of the defendants would have signed a contract with the company as a result of the system provided by the main defendant.

Lei n.º 5/2004, de 10 de Fevereiro – Lei das Comunicações Eletrónicas – Alterada pelo Decreto-Lei n.º 49/2020, de 4 de Agosto

https://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=1439&tabela=leis&so_miolo=

Law 5/2004, of 10 February - Electronic Communications Act – With amendments of Law-Decree 49/2020, of 4 August

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RUSSIAN FEDERATION

[RU] Copyright claims dismissed because of “Western sanctions”

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On 3 March 2022, the Arbitration Court of the Kirov Region issued a judgment in the case of Entertainment One UK Ltd vs. Kozhevnikov Ivan Vladimirovich (an individual entrepreneur). The lawsuit was filed on 9 September 2021, when the claimant demanded RUB 40 000 (then EUR 500) for copyright violations, by the respondent, of the exclusive rights for the use of trademarks Peppa Pig and Daddy Pig through illegal reproduction of their images.

The court dismissed the claims. It found that although in the Russian Federation foreign entities enjoyed the same rights as Russian ones (part 1 of Article 62 of the Constitution of the Russian Federation), in February and March 2022 the UK had introduced political and economic sanctions in regards to the Russian Federation, its legal entities and citizens, as well as Russian political leaders. The court found that this was a prejudicial factor for the dispute under review andreferred to a decree issued on 28 February 2022 by the Russian President on a set of economic measures related to the “unfriendly actions of the United States of America and foreign states and international organisations that allied with it”. The decree referred to by the court does not in fact regulate the activity of foreign entities (or indeed copyright), it is purely about limiting the circulation of hard currency and stocks in Russia.

Taking into consideration that the complainant was located in the UK, and while the UK had introduced sanctions against the Russian Federation, the court considered the claims of the complainant an abuse of law “performed with the express purpose of inflicting damage on another person, as well as the abuse of civil rights in other forms” (para 1 of Article 10 of the Civil Code of Russia).

The decision was appealed on 21 March 2022, and on 26 June 2022 the Second Arbitration Court of Appeals in Kirov reversed the above decision of the lower court. The court practice so far shows that in 18 cases similar lawsuits to the copyright holders from "unfriendly states" were dismissed, while in three more - upheld.

«О применении специальных экономических мер в связи с недружественными действиями Соединенных Штатов Америки и примкнувших к ним иностранных государств и международных организаций»

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http://publication.pravo.gov.ru/Document/View/0001202202280049

Decree of the President of the Russian Federation of 28.02.2022 N 79 On application of special economic measures in relation with the unfriendly actions of the United States of America and foreign states and international organizations that allied with it", officially published on 28 February 2022

The Civil Code of the Russian Federation, Part One, No. 51-FZ of 30 November 1994.

https://www.wto.org/english/thewto_e/acc_e/rus_e/wtaccrus58_leg_360.pdf

Арбитражный суд Кировской области. Решение, дело №А28-11930/2021

https://kad.arbitr.ru/Card/a45fa186-05bb-43b5-87d9-1f0d3b640142

Arbitration Court of the Kirov Region. The card for Case N A28-11930/2021

Обзор судебной практики, связанной с введением после 22.02.2022 антироссийских санкций и антисанкционных мер РФ

http://ivo.garant.ru/#%2Fdocument%2F77186356%2Fparagraph%2F251%3A0

Review of the case law related to the introduction, after 22.02.2022, of anti-Russian sanctions and counter-sanction measures of the Russian Federation

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UKRAINE

[UA] Profane language permissible in specific context

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On 9 March 2022, the Commission on Journalistic Ethics, a board of 15 people elected by the signatories of the Code of Ethics of Ukrainian Journalists, adopted a decision on a complaint it had received, on 1 March 2022, from citizen Serhii Hordyshev in relation to a programme aired that day by Channel 5 (a private, national network). A newscast had text overlaying the video on the lower third, saying “Russian warship, go f*ck yourself”. The Commission reviewed the complaint without the respondent's presence and decided to dismiss it. Article 15 of the Code of Ethics of Ukrainian Journalists states the following: “No one can be discriminated against due to gender, language, race, religion or ethnic, social origin or political preferences. This information can be pointed out only if it is a necessary part of the material. A journalist should avoid offensive words and foul language, hints or comments about a person’s physical disabilities or diseases”. Although the Code sets out the requirements for the need to refrain from using offensive language and profanity, the Commission found that this case of non-compliance had to be considered in the light of the specific context. This particular phrase, explained the text of the decision, originated from the response of Ukrainian border guards on Snake Island in the Black Sea to the demand of surrender that was coming from the Russian warships. Ukrainians admired their brave response, which had become a symbol of Ukrainian resistance. At the same time, the Commission called the media to: 1. Refrain from the use of offensive language, profanity, unless justified by the context, but even then – to avoid frequent use of such language and to be able to justify the use of any offensive language. 2. Always refrain from the use of offensive and obscene expressions in programming or websites aimed at children. 3. Be especially vigilant about adhering to the standards of journalism and journalistic ethics during martial law in Ukraine.

Commission on Journalistic Ethics, Decision on the complaint against TOV Channel 5 (Piatyi kanal) due to the use of the response of Ukrainian soldiers from Snake Island

https://cje.org.ua/news/the-complaint-against-tov-channel-5-piatyi-kanal-due-to-the-use-of-the-response-of-ukrainian-soldiers-from-snake-island/

Code of Ethics of the Ukrainian Journalist (2013)

https://accountablejournalism.org/ethics-codes/Ukraine-Journalist

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