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EDITORIAL

Summer 2022. It should have been the summer of our deliverance from the COVID pandemic, but not only is this far from becoming a reality, there are other reasons for discontent.

Four months have passed, and war is still raging in Ukraine. The sanctions applied to the Russian audiovisual industry in Europe continue to pile up. The Council of the European Union has added three further media outlets to the list of Russian media services prohibited in the EU. The Ukrainian and Moldovan parliaments have adopted legislation against Russian propaganda, and in Latvia, the National Electronic Mass Media Council (NEPLP) has blocked 80 Russian TV channels.

This terrible war also has consequences for the European audiovisual industry. The Russian decree “on the provisional procedure for the compliance with the obligations to certain rightsholders” provides instructions related to the way amongst others foreign rightsholders are entitled to receive debts, penalties, fines or other payments from Russia for the use of their intellectual property.

On a less dramatic, but nevertheless important level, the European Commission has referred five EU member states – Ireland, Romania, Slovakia, Spain and Czechia – to the Court of Justice of the European Union (CJEU) for failing to transpose the AVMSD.

This and many other interesting news items await you inside this month’s newsletter.

More than ever, and despite everything, we wish you a relaxing summer break.

Stay safe and enjoy your read!

Maja Cappello, editor
European Audiovisual Observatory

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ARMENIA

European Court of Human Rights: Oganezova v. Armenia

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

The European Court of Human Rights (ECtHR) has delivered a judgment finding breaches of the European Convention on Human Rights (ECHR) because of lack of protection against hate speech (see also IRIS 2020-3/21 Beizaras and Levickas v. Lithuania). The ECtHR found a breach of the prohibition of inhuman or degrading treatment and discrimination on the basis of sexual orientation because the Armenian authorities had failed to protect an LGBT-activist from homophobic arson and online hate speech. The authorities had also failed to carry out an effective investigation in order to identify the people responsible for the homophobic hate speech.

The applicant in this case was Ms Armine Oganezova, a well-known member of the lesbian, gay, bisexual and transgender (LGBT) community in Armenia. She was involved in promoting the rights of LGBT people in Armenia and internationally, and had criticised Armenia's human rights record on several occasions. Ms Oganezova also co-owned and managed a bar in the centre of Yerevan, a place where members of the LGBT community met to socialise.

In August 2011, an interview with Ms Oganezova in which she explained her participation in a gay pride march in Istanbul was broadcast on an Armenian television channel. After the interview was broadcast, she became the subject of an online hate campaign, intimidation and threats on the basis of her sexual orientation. On two occasions a group of people were loitering around Ms Oganezova's bar, harassing and intimidating the people gathered in the club. A few days later, an arson attack was carried out on the club. The fire was stopped by the fire brigade, but the interior of the club was badly damaged. An online group called "No to homosexuality" was created on Facebook and pictures of Ms Oganezova and several LGBT rights activists were posted online. A stream of insulting and threatening messages was posted against members of the LGBT community. In response, Ms Oganezova gave a television interview in which she discussed the arson attack and the homophobic attitude towards the LGBT community. Following the interview, a significant number of threats and homophobic comments addressed to her personally were posted mainly on Facebook and YouTube. In particular, the posts on Facebook included comments

that the applicant “should die”, “should be burnt”, or should be “put in an electric chair”. The comments posted on YouTube under a video concerning the arson attack, contained severely abusive language, stating that LGBT persons “should get out of this city, Armenia is for Armenians not sluts”. Ms Oganezova continued being harassed in the following days and she was subjected to homophobic abuse and threats online. Ms Oganezova submitted material printed out from various web pages which contained the relevant homophobic comments to the police, fand requested that the necessary steps were taken to identify the perpetrators of the arson and the authors of the online hate speech. However, apart from the criminal prosecution (without final punishment) of two people responsible for the arson attack, no criminal investigation was initiated in order to identify and prosecute the authors of the homophobic online hate speech. In contrast, the hate crimes against Ms Oganezova and the LGBT-community were openly condoned by some politicians and members of parliament, while also some police officers seemed to support the perpetrators’ motives for the hate crimes. In June 2012, Ms Oganezova left Armenia for Sweden. She applied for asylum on the basis of persecution due to her sexual orientation. Her decision to leave Armenia was motivated by the constant threats that she was receiving online, combined with the lack of protection by the authorities she had experienced.

Before the ECtHR, Ms Oganezova complained under Articles 3 (prohibition of inhuman or degrading treatment), 8 (right to privacy), 13 (right to an effective remedy) and 14 ECHR (prohibition of discrimination) about the State authorities’ failure to protect her from attacks and abuse by private individuals motivated by prejudice towards homosexuals and to investigate effectively the hate crimes, including the abuse and humiliation to which she had been subjected. She further complained, under the same provisions, about the lack of an adequate legislative framework to combat hate crimes directed against the LGBT minority.

The ECtHR first reiterated that treatment which humiliates or debases an individual, either in the eyes of others or in those of the victim, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual’s moral and physical resistance, may be characterised as degrading and also fall within the prohibition set forth in Article 3 ECHR. The ECtHR further noted that the aim of the attacks, including the arson and the online hate speech, was evidently to frighten Ms Oganezova so that she would desist from her public expression of support for the LGBT community. Her emotional distress must have been further exacerbated by the fact that the police had failed to react properly and in a timely manner. Considering the background of the continuous harassment and the prevailing negative attitude towards the members of the LGBT community in Armenia, the ECtHR found that the situation in which Ms Oganezova found herself as a result of the arson attack and the subsequent (online) attacks on her person motivated by homophobic hatred must necessarily have aroused in her feelings of fear, anguish and insecurity which were not compatible with respect for her human dignity and, therefore, reached the threshold of severity within the meaning of Article 3 ECHR in conjunction with Article 14.

In particular, in relation to the highly abusive online hate speech, the ECtHR observed that Ms Oganezova had submitted the evidence in her possession, including screenshots from the relevant web pages which contained homophobic comments, to the police. However, there was nothing in the material before the ECtHR to suggest that there had been any meaningful follow-up on the matter. While being careful not to hold that each and every utterance of hate speech must, as such, attract criminal prosecution and criminal sanctions, the ECtHR emphasised that comments that amount to hate speech and incitement to violence, and were thus clearly unlawful on their face, may in principle require the States to take certain positive measures. It had likewise held that inciting hatred does not necessarily entail a call for an act of violence or other criminal acts. Attacks on people committed by insulting, holding up to ridicule or slandering specific groups of the population can be sufficient for the authorities to favour combating hate speech in the face of freedom of expression exercised in an irresponsible manner. The ECtHR also referred to its earlier case law in which it held that where acts that constitute serious offences are directed against a person's physical or mental integrity, only efficient criminal-law mechanisms can ensure adequate protection and serve as a deterrent factor (see IRIS 2020-3/21). Having regard to the acts of violence, including the arson attack, the authorities should have taken the hateful comments posted on social-media platforms all the more seriously. Instead, parliamentarians and high-ranking politicians themselves made intolerant statements by publicly endorsing the actions of the perpetrators. Lastly, the ECtHR took note of the evolution of domestic law, which since 2020 has prohibited hate speech in Article 226.2 of the Criminal Code. The ECtHR observed however that sexual orientation and gender identity are still not included in the characteristics of victims of the offence of hate speech despite the recommendations of the relevant international bodies in that respect. The ECtHR therefore found that the authorities had failed to respond adequately to the homophobic hate speech of which Ms Oganezova had been a direct target because of her sexual orientation. It concluded that the Armenian authorities had failed to offer adequate protection to Ms Oganezova from homophobic attacks and hate speech and to conduct a proper investigation into the hate-motivated ill-treatment against her including the arson attack on the club and the subsequent homophobic attacks. There had accordingly been a violation of Article 3 ECHR taken in conjunction with Article 14. The ECtHR found that this meant that it did need not need to examine the allegations made under Article 8 ECHR taken in conjunction with Article 14, or under Article 13 ECHR.

Judgment by the European Court of Human Rights, Fourth Section, in the case of Oganezova v. Armenia, Application nos. 71367/12 and 72961/12, 17 May 2022

https://hudoc.echr.coe.int/eng?i=001-217250

ROMANIA

European Court of Human Rights: *Pretorian v. Romania*

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

The European Court of Human Rights (ECtHR) has found no violation of Article 10 (freedom of expression) of the European Convention on Human Rights (ECHR) in a case concerning a civil judgment against an editor-in chief, for publishing articles, in both the printed version and the online edition of a weekly magazine, in which he defamed a politician. The ECtHR found that the domestic courts had correctly applied the criteria in balancing the rights of privacy and reputation under Article 8 and the right to freedom of expression under Article 10 ECHR. In particular, the ECtHR referred to the fact that the two articles at issue had contained serious allegations damaging the right of privacy and the reputation of the politician, without a factual basis. Further, some of the insulting and denigrating statements about the politician had been based solely on rumours, while the impact of the groundless allegations had been amplified due to the online availability of the articles, accessible by search engines.

The applicant in the case was Cosmin-Adrian Pretorian, the editor-in-chief of the regional weekly newspaper, Indiscret în Oltenia. In 2014, the newspaper published an article about H.B., a former member of Parliament and the former chairman of the local branch of the Liberal Party. In a subsequent edition, the regional magazine published H.B.'s letter of reply, accompanied by a second article written by Mr. Pretorian. The article had a satirical character and contained a series of insulting statements about the politician, including some sexual insinuations and allegations of H.B.’s supposed alcohol abuse. H.B. brought civil defamation proceedings in the Craiova District Court. The court partly upheld H.B.’s action and ordered Mr Pretorian to pay him RON 15,000 (approximately EUR 3,200) in compensation for non-pecuniary damage. It also ordered the publication of the decision in the weekly newspaper concerned. Mr Pretorian’s appeal was dismissed.

Relying on Article 10 ECHR, Mr Pretorian lodged an application with the ECtHR, alleging that that, in finding against him, the domestic courts had violated his right to freedom of expression. The ECtHR observed that, having regard to the virulent criticisms levelled against H.B., the attack on him had reached the threshold of severity triggering the application of Article 8 ECHR. It considered that the District Court had weighed up the competing interests at stake, referring to the Court’s case-law. On that basis the District Court had found in favour of H.B. on the grounds that some of the remarks contained in the articles had been insulting and excessive and had interfered with H.B.’s private life, and damaged his honour and reputation. Those findings had been upheld by the Appeal Court.

The ECtHR noted that the two articles concerned a matter of general interest, namely the exercise of public office by H.B., who was a well-known public figure in local politics. The nature of the remarks in both articles were value judgments formulated in vulgar language, and did not amount to opinions expressed in good faith on H.B.'s moral and professional qualities. The ECtHR acknowledged that some of the language used in the articles could claim to be satirical in style, but it saw no reason to disagree with the decisions of the domestic courts finding that some of the remarks, and in particular the sexual references and comments, had been insulting and excessive. Furthermore, the ECtHR noted that Mr Pretorian had spread a rumour concerning H.B.'s supposed fondness for alcohol, without verifying the facts. The ECtHR held that a rumour of that kind could not constitute a factual basis for the serious and stigmatising accusations made against H.B. The ECtHR also held that the penalty imposed was relatively mild and did not have a genuinely chilling effect on the exercise of Mr Pretorian's freedom. The ECtHR found that the domestic courts had weighed up the competing rights and had referred to the criteria established in the Court's case-law. The ECtHR observed in particular the serious impact of the insulting allegations on the private and professional life of H.B. because the articles were also accessible on the Internet. The ECtHR referred to its Grand Chamber judgment in *Delfi AS v. Estonia* in which it stated that "the risk of harm posed by content and communications on the Internet to the exercise and enjoyment of human rights and freedoms, particularly the right to respect for private life, is certainly higher than that posed by the press" (see also IRIS 2015-7/1) and to its judgment in *M.L. and W.W. v. Germany* in which it considered the amplifying impact on the right of privacy "on account of the important role of search engines" (IRIS 2018-8/1). Therefore the ECtHR accepted that the penalty imposed on Mr Pretorian had been necessary in a democratic society and that there was a reasonable relationship of proportionality between that penalty and the legitimate aim pursued. The ECtHR unanimously reached the conclusion that there has been no violation of Article 10 ECHR.

Arrêt de la Cour européenne des droits de l'homme, quatrième section, rendu le 24 mai 2022 dans l'affaire Pretorian c. Roumanie, requête n° 45014/16

https://hudoc.echr.coe.int/eng?i=001-217389

Judgment by the European Court of Human Rights, Fourth Section, in the case of Pretorian v. Romania, Application no. 45014/16, 24 May 2022

EUROPEAN UNION

EU: COUNCIL OF THE EU

Council Implementing Regulation (EU) 2022/994 of 24 June 2022 implementing Regulation (EU) 2022/879 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine

Justine Radel-Cormann
European Audiovisual Observatory

On 24 June 2022, the Council of the European Union adopted the Implementing Regulation 2022/994, officially banning, as of 25 June 2022, Rossiya RTR/RTR Planeta, Rossiya 24/Russia 24, and TV Centre International, as provided by Article 2f of Regulation (EU) 833/2014 "concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine".

This Implementing Regulation 2022/994 follows the adoption of the Council Regulation (EU) 2022/879 of 3 June 2022 (see IRIS 2022-7/7 in this issue), adding the three media outlets in the Annex XV of Regulation (EU) 833/2014.

They can no longer broadcast content to the European Union nor execute broadcasting licence or authorisation, transmission and distribution arrangements they may have had within the territory of the European Union.

The 2022/994 Implementing Regulation did not need the approval of other EU institutions and entered into force on 25 June 2022.

Council Implementing Regulation (EU) 2022/994 of 24 June 2022

https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1656133416990&uri=CELEX%3A32022R0994

EU: COUNCIL OF THE EU

Three additional Russian media outlets added to list of banned media in the EU

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On 6 June 2022, the Council of the European Union adopted a Decision and Regulation, which added three further media outlets to the list of Russian media outlets prohibited in the EU under an earlier Decision and Regulation adopted in March 2022, following Russia's invasion of Ukraine (see IRIS 2022-3/6).

The media outlets added to the list are Rossiya RTR/RTR Planeta, Rossiya 24/Russia 24, and TV Centre International. RT- Russia Today English, RT- Russia Today UK, RT - Russia Today Germany, RT - Russia Today France, RT- Russia Today Spanish, and Sputnik are the media outlets which had been banned under the earlier March 2022 Decision and Regulation. Further, under the new Regulation, and new Decision, it is prohibited to "advertise products or services in any content produced or broadcast by the legal persons, entities or bodies" on the banned media list. Quite importantly, under Article 1(21) of the new Decision, and Article 1(14) of the new Regulation, this ban does not come into effect until 25 June 2022, provided that the Council, "having examined the respective cases, so decides by implementing act".

Notably, under the earlier March 2022 Decision and Regulation, it was prohibited for "operators to broadcast or to enable, facilitate or otherwise contribute to broadcast, any content by the legal persons, entities or bodies [on the banned media list], including through transmission or distribution by any means such as cable, satellite, IP-TV, internet service providers, internet video-sharing platforms or applications, whether new or pre-installed." Further, any "broadcasting licence or authorisation, transmission and distribution arrangement with the legal persons, entities or bodies" [on the banned media list] was suspended. While it was also prohibited to "participate, knowingly and intentionally, in activities the object or effect of which is to circumvent prohibitions", including "by acting as a substitute for natural or legal persons, entities or bodies" on the banned media list. As such, these prohibitions will apply to Rossiya RTR/RTR Planeta, Rossiya 24/Russia 24, and TV Centre International from 25 June 2022, provided that the Council, "having examined the respective cases, so decides by implementing act".

Finally, Recital 7 of the new Decision states that the new measures "should be maintained until the aggression against Ukraine is put to an end, and until the Russian Federation, and its associated media outlets, cease to conduct propaganda actions against the Union and its Member States". Recital 13 states that the new measures "do not prevent the media outlets and their staff from carrying out activities in the Union other than broadcasting, such as research and interviews".

Council Regulation (EU) 2022/879 of 3 June 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022R0879

Council Decision (CFSP) 2022/884 of 3 June 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2022.153.01.0128.01.ENG&toc=OJ%3AL%3A2022%3A153%3ATOC

EU: EUROPEAN COMMISSION

Commission refers five member states to the CJEU for failing to transpose AVMSD

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Institute of European Media Law

On 19 May 2022, the European Commission referred five EU member states – Ireland, Romania, Slovakia, Spain and Czechia – to the Court of Justice of the European Union (CJEU). The referral was based on Article 258 of the Treaty on the Functioning of the European Union (TFEU), under which, if a member state fails to fulfil an obligation under the Treaties and does not comply with a reasoned opinion delivered by the Commission within a set period, the Commission may bring the matter before the CJEU. This particular case concerns the member states' failure to fully transpose the Audiovisual Media Services Directive (AVMSD) in the version adopted under Directive (EU) 2018/1808 in December 2018, whose provisions were meant to be transposed into national law by 19 September 2020. The Commission also called on the CJEU to impose financial sanctions on the member states concerned (Article 260(3) TFEU).

In November 2020, shortly after the transposition deadline, the Commission had sent letters of formal notice to 23 member states which had failed to adopt the relevant national rules required under Directive (EU) 2018/1808. Around a year later, the matter had been escalated a step further when the Commission sent reasoned opinions to nine member states that had still not transposed or communicated suitable measures implementing the AVMSD to the Commission. Whereas Estonia, Croatia, Cyprus and Slovenia had responded by taking measures within the period laid down, the other five member states had not. In particular, they had failed to implement the provisions of Directive (EU) 2018/1808 designed to create a level playing field by partially harmonising the legal framework for different types of service (television, VOD services and video-sharing platforms), guarantee the independence of national media regulators, require on-demand catalogues to include a quota of European works, and improve the protection of children and consumers in general against certain harmful content and in the field of commercial communication. The latter provisions also cover video-sharing platforms in particular, which were brought under the scope of the AVMSD for the first time by the recent reforms. In this context, the proceedings against Ireland, in particular, will carry great significance beyond the member state itself and will be closely scrutinised, since the largest EU-wide video-sharing platform providers, including YouTube, have their European headquarters in Ireland and therefore come under Irish jurisdiction. In accordance with the country-of-origin principle enshrined in the AVMSD, the legal framework applicable to these platforms would therefore (initially) be laid down in Irish law, while the Irish regulator would become a central point of contact for supervisory and law enforcement matters. However, since Ireland has yet to transpose the

relevant provisions, such rules are not currently in place.

Press release of the European Commission

https://ec.europa.eu/commission/presscorner/detail/en/IP_22_2707

NATIONAL

AUSTRIA

[AT] Austrian Supreme Court decides whether YouTube is responsible for content posted online before the implementation of the DSM Directive

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In principle, the operator of a video-sharing platform or a file-hosting and sharing platform (in this case, YouTube) does not make a "communication to the public" of content that users illegally make available to the public. The Austrian *Oberste Gerichtshof* (Supreme Court – OGH) concluded that this was the case, at least prior to the implementation of Directive (EU) 2019/790 of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (DSM Directive).

In a decision published on 17 September 2021, the OGH considered whether YouTube was responsible for content published on its platform by users and whether its use of such content was subject to copyright law ("communication to the public"). It examined the legal situation prior to Austria's belated implementation of the DSM Directive on 1 January 2022.

The OGH had initially suspended the proceedings pending a decision of the CJEU following a request from the German *Bundesgerichtshof* (Federal Supreme Court – BGH) for a preliminary ruling in the joined cases C-682/18 and C-683/18.

The key question in the proceedings was whether YouTube was responsible for a "communication to the public" within the meaning of Article 3(1) of Directive 2001/29/EC (or Article 18a of the Austrian Copyright Act – UrhG) if it provided access to unlawful content uploaded by users.

The OGH decided that, in the case at hand, a "communication to the public" had not taken place because YouTube had not played an active role in giving the public access to content that infringed copyright and because videos, about which complaints were lodged, were always removed as soon as YouTube was made aware of copyright infringements.

In its decision, the CJEU ruled that although the platform operator played a central role in making available user-uploaded content, this alone was not sufficient to constitute "communication to the public". Rather, other criteria had to be taken into account, in particular whether the operator had acted deliberately. Relevant factors included the circumstance that such an operator, despite the fact that it knew or ought to know, in a general sense, that users of its platform were making

protected content available to the public illegally via its platform, refrained from putting in place the appropriate technological measures that could be expected from a reasonably diligent operator in its situation in order to counter credibly and effectively copyright infringements on that platform. Also, the circumstance that that operator participated in selecting protected content illegally communicated to the public, that it provided tools on its platform specifically intended for the illegal sharing of such content, or that it knowingly promoted such sharing, which could be attested by the fact that the operator had adopted a financial model that encouraged users of its platform illegally to communicate protected content to the public via that platform. The mere fact that the operator knew, in a general sense, that protected content was made available illegally on its platform was not sufficient ground to conclude that it intervened with the purpose of giving Internet users access to that content. The situation was, however, different where that operator, despite having been warned by the rightholder that protected content was being communicated illegally to the public via its platform, refrained from expeditiously taking the measures necessary to make that content inaccessible. The fact that YouTube was trying to make a profit was irrelevant.

When examining these criteria, it must be taken into account that YouTube did not create or select the uploaded content, and did not view or monitor it before it was uploaded. It also informed its users, both in its terms of service and every time a file was uploaded, that it was forbidden to post protected content in breach of copyright, and blocked accounts in the event of repeated infringements. The technological measures in place (notification button, reporting procedure) showed that the operator was credibly and effectively countering copyright infringements. Its ranking system was not intended to facilitate the illegal sharing of content. It did not appear that the purpose or principal use of YouTube was the illegal sharing of protected content. Based on these CJEU findings, the OGH concluded that YouTube was not responsible for a “communication to the public” and therefore had not breached Article 18a UrhG.

Insofar as the first defendant was considered to be responsible for content uploaded by its users and therefore unable to rely on the exemption from liability contained in Article 14(1) of Directive 2000/31/EC (Article 16 of the Austrian *E-Commerce-Gesetz* (E-Commerce Act) [exemption from liability for storage of third-party content]) with regard to third-party infringements, the OGH referred to the CJEU’s ruling that an operator was only excluded from the exemption from liability if it had knowledge of or awareness of specific illegal acts committed by its users relating to protected content uploaded to its platform.

The fact that the law had since become stricter (with the use of upload filters required under Article 17 of the DSM Directive) was immaterial because a parallel examination needed to be carried out. Injunctive relief would therefore only be granted if the conduct complained of infringed both the old and the new law. That being said, the directive had still not been transposed in Austria.

However, the provisions of the DSM Directive entered into force in Austria on 1 January 2022. Large online platforms such as YouTube are now, therefore, responsible for illegally uploaded content.

OGH 4 Ob 132/21x, 17.09.2021

https://www.ris.bka.gv.at/Dokumente/Justiz/JJT_20210917_OGH0002_0040OB00132_21X0000_000/JJT_20210917_OGH0002_0040OB00132_21X0000_000.pdf

Austrian Supreme Court, 4 Ob 132/21x, 17 September 2021

BELGIUM

[BE] French-speaking public broadcaster’s remit defined for 2023–2027

Olivier Hermanns
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Every three to six years, the Belgian French-language public broadcasting body (RTBF) negotiates a so-called “management contract” (equivalent to the “contracts of aims and means” in France) with the government of the French-speaking community of Belgium. This contract lays down, on the one hand, RTBF’s public service obligations and, on the other, the financial resources and frequencies allocated to it by the government for the duration of the contract.

The next management contract, which will cover the period from 2023 until 2027, is currently being negotiated. As part of this process, the government of the French-speaking community issued a detailed “notice of intent” in February 2022, proposing a number of obligations that RTBF would have to meet. The parliament of the French-speaking community was then required to conduct a broad consultation of stakeholders and experts from the audiovisual and cultural sectors, which took place in May and June 2022. In particular, the *Conseil Supérieur de l’Audiovisuel Belge* (the regulatory body for the audiovisual sector in the French-speaking community – CSA) was asked for its views on 10 May 2022. Once the hearings are complete, the parliament will issue an opinion on the government’s notice of intent. This opinion will include recommendations that the government will need to take into account in its negotiations with RTBF.

As part of the consultation, the CSA published a report on RTBF’s public service remit, including a review of the previous management contract. It also set out various issues that, in the CSA’s opinion, should be taken into account in the next management contract.

The report paints a picture of a company whose broad range of activities ensures it plays a key role in French-speaking Belgium. RTBF runs four linear television channels (one of which is a televised version of a radio station), six main radio stations, several additional or event-based radio stations, and Internet radio stations. It has also built an online media library called Auvio, where television programmes broadcast by RTBF and some other channels (including private channels) are available on demand to users who have created their own account on the platform. Auvio is generally free to use, although advertising is shown during the videos and there is a subscription-based section. It also uses recommendation algorithms.

The CSA proposes that Auvio’s new role as a distributor of third-party audiovisual media services should be discussed. It might be necessary to adapt current

legislation to take this into account. The role played by recommendation algorithms in enabling Auvio users to find audiovisual content in the public interest should also be examined. The CSA also questions the monetisation of personal data gathered from Auvio users and calls for greater transparency with regard to its users. The CSA believes a democratic debate should be encouraged, focusing in particular on the characteristics of a modern-day "public service algorithm". Finally, it suggests reducing the volume of advertising on Auvio, for example by prohibiting commercial breaks during news bulletins at RTBF's request.

As regards content, the CSA believes that RTBF should broadcast cultural programmes at peak viewing times and on its main linear channels. Certain content (such as children's programmes and programmes accessible to people with sensory disabilities) should not be limited to online distribution via Auvio.

The CSA also proposes that the concept of RTBF's own productions should be limited in order to exclude repeats and televised radio, for example. RTBF meets its current quotas for European television programmes (currently 60%) and, on its radio stations, for musical works in the French language or originating in French-speaking Belgium. The CSA believes these quotas could therefore be increased. In the same way, it thinks RTBF should invest more in coproductions with independent producers and strengthen its web-based activities. The CSA also notes that RTBF's provision of online editorial information is currently being questioned, with press publishers complaining of unfair competition.

Finally, the CSA suggests that the prior assessment of new audiovisual services or of changes to existing audiovisual services should be more efficient. It supports new initiatives aimed at increasing equality between women and men, and would like RTBF to send it a detailed annual report on its use of public money, broken down into its individual public service obligations.

Conseil supérieur de l'audiovisuel de la Communauté française de Belgique (CSA), Bilan du contrat de gestion de la RTBF 2019-2022

https://www.csa.be/rtbf-2023/

Regulatory authority for the audiovisual sector of the French-speaking Community of Belgium (CSA), review of the RTBF's management contract 2019–2022

GERMANY

[DE] Frankfurt Appeal Court refuses to grant injunction against tabloid newspaper for reporting on Russian TV channel's spying activities

Christina Etteldorf
Institute of European Media Law

In a decision of 28 April 2022, the *Oberlandesgericht Frankfurt am Main* (Frankfurt am Main Appeal Court – OLG) rejected a complaint lodged by the provider of the German language version of the Russian TV broadcaster RT (RT DE) about an article published in the Bild newspaper. In particular, the article had alleged that the broadcaster had been involved in Russian spying activities linked to the poisoning of Alexei Navalny. In view of the overall context of the Bild article, the OLG considered the allegation to be an admissible expression of opinion.

The disputed article was published in Bild on 9 March 2021 under the headline "Kremlin TV reporter admits: I was told to spy on Navalny". The article alleged, among other things, that under orders from Vladimir Putin, Russian anti-corruption activist Alexei Navalny had been spied on while undergoing treatment at the Charité hospital in Berlin, and that the broadcaster RT DE had been involved. Stating that "They are also involved in spying activities on German soil", Bild quoted a former employee of RT DE, who had been interviewed for the article. On the grounds that its privacy rights had been violated, RT DE applied for an injunction against this and other statements, which it claimed had created the impression that it was a spying tool for the Russian government. However, the *Landgericht Frankfurt am Main* (Frankfurt am Main District Court) rejected all aspects of the application, apart from a complaint about one single statement. The appeal immediately lodged against this decision has now also been largely dismissed by the OLG. The court ruled, in particular, that the allegation that RT DE had been involved in spying activities on German soil had not unlawfully infringed the broadcaster's privacy rights, but had been an admissible expression of opinion. The overall context of the Bild article needed to be taken into account: the average reader would take the article to mean that RT DE had helped to spy on Navalny while he was in the Charité hospital in Berlin. However, the main focus of the article was not on specific facts, of which there was hard evidence and which would have needed to be weighed differently in the injunction procedure. When false allegations were published, the fundamental rights of the people reported on often took precedence. In this case, however, the evaluative nature of the statements was paramount, so they needed to be carefully weighed against the interests of RT DE. In this context, the OLG concluded that, although the statements certainly infringed on the company's honour and social reputation, they were justified by the predominant need to protect freedom of communication and freedom of the press. In particular, the article contributed to a debate of considerable public interest, so it was likely that the constitutionally protected rights of the press would take precedence. The only circumstances in which this

would not be the case would be if there had been no evidence at all and if the allegation of spying activities had been made out of thin air. In the current case, however, the report had been backed up with evidence. In particular, based on the interview with the former RT DE employee, Bild had reported on chat posts, instructions given to employees, and other statements. The only element of the injunction application that was upheld by the OLG concerned false information about the number of participants in a chat.

Pressemitteilung Nr. 36/2022 des OLG Frankfurt

https://ordentliche-gerichtsbarkeit.hessen.de/pressemitteilungen/kein-unterlassungsanspruch-gegen-boulevardzeitung-wegen-%C3%A4u%C3%9Ferung-zu-spionage

Frankfurt am Main Appeal Court, press release no. 36/2022

[DE] Frankfurt Appeal Court: RT DE cannot prevent ex-employee publishing book on its working practices

Christina Etteldorf
Institute of European Media Law

In interim rulings issued on 19 May 2022, the *Oberlandesgericht Frankfurt am Main* (Frankfurt am Main Appeal Court – OLG) rejected two appeals lodged by the provider of the German language version of the Russian TV broadcaster RT (RT DE), seeking a ban on the publication of the first and second editions of a book by a former RT DE employee acting as a whistle-blower. In the book, the author deals, in particular, with the broadcaster's alleged involvement in undercover investigations by the Russian government in relation to the opposition leader Alexei Navalny and is critical of RT DE's working methods from an employee's perspective. The court decided that he was entitled to publish the book under the freedom of expression and information.

Between 2018 and 2020, the defendant had worked as a reporter for RT DE, initially on a freelance basis and later as an employee. In early 2021, he published a book on the Internet, criticising the broadcaster's work, political orientation and specific journalistic activities, as well as individual RT DE employees. He described, *inter alia*, a "special mission" he had been given by the broadcaster while Navalny had been receiving medical treatment at the Charité hospital in Berlin, after a failed attempt to poison him. RT DE wanted to ban the publication of the entire first and second editions of the book, or at least of individual statements, images and screenshots of employees' chat histories, claiming that its privacy rights had been breached. The *Landgericht Frankfurt am Main* (Frankfurt am Main District Court), hearing the initial case under summary proceedings, prohibited the ex-employee from repeating individual statements that it considered to be unproven factual assertions. However, it decided that the publication of the vast majority of the disputed statements and images, or even of the entire book, should not be prohibited because, as opinions expressed by the author, they were protected under the freedom of expression. The Frankfurt Appeal Court agreed. It rejected the idea of banning the publication of the whole book, as well as 63 individual statements, with reference to various considerations linked to employment contracts and copyright (which also did not support RT DE's case), as well as the substantial public interest in the reporting of these matters. It was particularly important to inform the German public that a German media company with close business connections to Russia may have been involved in undercover investigations relating to a critic of the Russian government. It was true that the allegations, which included criticism of the company's organisation, might have infringed on the broadcaster's privacy rights. However, such an infringement was outweighed by the author's freedom of expression and the public's right to freedom of information. Although the book was highly critical of the lack of professional competence of the broadcaster's employees, their political affiliation to extreme right- or left-wing groups in Germany and abroad, and so-called "Corona deniers", the broadcaster had to accept this as an admissible use of freedom of expression in the general context.

The OLG Frankfurt also rejected the broadcaster's claim to an overriding right to confidentiality in so far as its former employee had been expressing his view, based on his own personal experience, that he had participated in investigations in the Navalny case on behalf of the Russian state.

Pressemitteilung Nr. 41/2022 des OLG Frankfurt

https://ordentliche-gerichtsbarkeit.hessen.de/pressemitteilungen/deutschsprachiges-tochterunternehmen-eines-russischen-medienkonzerns-kann

Frankfurt am Main Appeal Court, press release no. 41/2022

[DE] State media authorities examine complaints on the protection of minors from graphic war images

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Institute of European Media Law

According to a press release published on 7 April 2022 by 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, the state media authorities had received numerous reports of violations of human dignity and of rules on the protection of minors in the media in relation to the war in Ukraine. The KJM was especially concerned about the effects that brutal images of war could have on the development of children and young people. These complaints and reports were being examined by the KJM.

How to reconcile the public interest in reporting on the war in Ukraine, which can sometimes include highly detailed descriptions and images of atrocities and war crimes, with the need to protect young people, is currently being debated in many EU member states and beyond. Although, under German legislation, the unconditional protection of human dignity is a boundary that written and photographic reporting may never cross, the depiction of real-life violence and other atrocities, even those that do not reach this boundary, can, in some cases, seriously harm the mental development of minors. The problem is exacerbated by the fact that such material, which can have informational value for adult audiences, is mainly found online, where it is difficult to make it accessible only to those mature enough to process it.

According to the KJM, many German media outlets were reporting on current events very responsibly and meeting their legal obligation to protect young people. However, in a number of cases brought to its attention, the KJM suspected that human dignity had been violated. In Germany, television and radio content is illegal if it violates human dignity, "especially by presenting persons who are dying or who are, or were, exposed to serious physical or mental suffering, while reporting actual facts without any justified public interest in such form of presentation, or reporting, being given" (Article 4(1)(8) of the *Jugendmedienschutz-Staatsvertrag* (Interstate Treaty on the Protection of Minors in the Media – JMStV)). The KJM was therefore examining whether there remained a justified public interest to publish certain graphic images of war or whether they should not be shown by broadcasters and telemedia providers in order to effectively protect young people.

In its press release concerning the examination of complaints it had received, the KJM also expressly appealed to media providers to take the protection of children and young people into account in their reporting and to shield minors from graphic images, especially of dead bodies. It also reminded readers that they could submit complaints (including online) to the state media authorities if they discovered graphic images of war-related atrocities that went beyond what was

necessary for reporting purposes.

Pressemitteilung der KJM Nr. 08/2022

https://www.die-medienanstalten.de/service/pressemitteilungen/meldung?tx_news_pi1%5Bnews%5D=5025&cHash=c88aa0a5bc951b35eb01b5a4ea2c0b24

Commission for the Protection of Minors in the Media, press release no. 08/2022

FRANCE

[FR] ARCOM sanction procedure clarified

Amélie Blocman
Légipresse

Article 42-7 of Act no. 86-1067 of 30 September 1986 describes the procedure that should be followed by the *Autorité de régulation de la communication audiovisuelle et numérique* (Regulatory Authority for Audiovisual and Digital Communication – ARCOM) when it opens sanction proceedings against audiovisual service providers, designed especially to guarantee respect for the rights of defence and the adversarial principle. It was amended by Act no. 2021-1382 of 25 October 2021 on the regulation and protection of access to cultural works in the digital age in order to allow the *Conseil d'État* rapporteur monitoring the sanction procedure to be assisted by one or more deputies so that cases can be dealt with more quickly. Article 42-7 was also amended in order to take into account the creation of ARCOM sub-committees specifically dedicated to sanction procedures related to providers' failure to meet their obligations to invest in film production. Decree no. 2022-779 of 2 May 2022 amended Decree no. 2013-1196 of 19 December 2013 on the sanction procedure implemented by the *Conseil supérieur de l'audiovisuel* (Higher Audiovisual Council – CSA) in application of Article 42-7 to take into account the amendments introduced by the Act of 25 October 2021: changing the regulatory body's name (the CSA became ARCOM on 1 January 2022), creating a sub-committee for formal notices, and laying down sanctions related to financial contributions to film production.

Décret n° 2022-779 du 2 mai 2022 modifiant le décret n° 2013-1196 du 19 décembre 2013, JO du 4 mai 2022

https://www.legifrance.gouv.fr/download/pdf?id=hUuTVDgrqFz3a0V3C9Ql3OzfY6R1ltb1GqNb7as9jPM=

Decree no. 2022-779 of 2 May 2022 amending Decree no. 2013-1196 of 19 December 2013, Official Gazette of 4 May 2022

[FR] Blocking of streaming sites illegally retransmitting Roland-Garros tennis matches

Amélie Blocman
Légipresse

The *Fédération française de tennis* (French Tennis Federation – FFT), the official organiser of the Roland-Garros French Open tennis championships held in Paris from 16 May to 5 June 2022, discovered that several websites accessible on French soil were broadcasting, free of charge, live streams of matches to which it held the exclusive broadcasting rights. On the basis of Article L. 333-10 of the French Sport Code, introduced under the Act of 25 October 2021, it filed a summons for urgent proceedings against the main Internet access providers in order to prevent the 19 sites in question being accessed on French soil, in particular by blocking their domain names.

The judge noted that the principal objective of the sites in question was to broadcast sports competitions, especially tennis matches, to at least some of which the FFT held exclusive audiovisual exploitation rights. Since they provided access to data that did not constitute private correspondence, the sites were classified as online public communication services. Moreover, although the sites were in English, French users could navigate them easily because they simply had to click on the players' names in order to access the match they wanted to watch. The FFT had therefore provided sufficient proof that the sites in question provided access to tournament matches without permission, which constituted "serious, repeated breaches" of the FFT's exclusive rights within the meaning of Article L. 333-10 of the Sport Code, committed through "services for which the unauthorised transmission of sports competitions is a primary objective".

The judge therefore decided to grant the requested measures. In view of the urgency, and even though the match calendar had been published a long time in advance, it appeared proportionate to give the Internet access providers a maximum of two days following the announcement of the decision to implement the blocking order. While these measures remained in force, the FFT could also pass to ARCOM the name of any site illegally broadcasting Roland-Garros matches that had not already been identified when the decision was taken, in order to implement the powers granted to ARCOM under Articles L. 333-10 III and L. 333-11 of the Sport Code. The provision for dynamic blocking mechanisms was one of the main benefits of the new Act of 21 October 2021. Finally, the judge ruled that the cost of the blocking measures should be split among the parties in accordance with a future agreement to be concluded under the aegis of ARCOM.

Tribunal judiciaire, Paris, (ord. réf.), 25 mai 2022, FFT c/ SA Orange et a.

Paris court of justice (urgent procedure), 25 May 2022, FFT v SA Orange et al

[FR] Court rejects politician’s request for reinstatement of Twitter account suspended because of hate content

Amélie Blocman
Légipresse

A French politician and polemicist involved in the recent presidential election campaign as a supporter of the candidate of the Reconquête party, of which he had been the official spokesperson at the time, asked the courts to reinstate his Twitter account, which had been suspended.

The plaintiff's account, which had 164,000 subscribers, had been suspended by the social network after he published the following tweet: “#Migrants #violence Pas un jour, PAS UN, sans que des #migrants d'#Afrique du #Nord ou subsaharienne s'attaquent aux #Français. Si nous faisions la même chose chez eux ils nous casseraient à coup de pierre, de machette ou de fusils. Ca suffit. Dehors!” (“#Migrants #violence Not a day, NOT ONE, without #migrants from #North or sub-Saharan #Africa attacking the #French. If we did the same in their country they would attack us with stones, machetes or guns. Enough! Get out!”). He had received the following message (translated from French): “Your account has been suspended and will not be reinstated because it has broken the Twitter code of conduct, in particular our rules on hateful conduct.” Twitter said that it had been legally obliged to suspend the account because the messages posted by the politician had repeatedly broken its rules on hateful conduct. Under Article 6-I-7 of the *Loi pour la confiance dans l'économie numérique* (Law on confidence in the digital economy – LCEN), it was required, as a host, to combat the dissemination of online hate. The account had therefore been suspended in accordance with the contract between the plaintiff and Twitter Inc.

The judge examined whether the suspension of the account was a “patently unlawful disturbance” that needed to be stopped. He noted that, although the measure taken in this case respected the terms of the contract, he needed to consider, by measuring its proportionality, whether the restriction of freedom of expression was justified. Only within this strict framework could the courts limit the autonomy of social networks when they drew up and implemented their policies for monitoring content disseminated online, ruled the judge.

After analysing the wording of the disputed tweet, the judge ruled that Twitter Inc had not committed an error of judgment by suspending the execution of its contract with the plaintiff, especially since it had received numerous complaints.

The judge then examined the consequences of the resulting infringement of the plaintiff’s freedom of expression by weighing the relevant fundamental interests. Firstly, with regard to the meaning of the comments and their place in the public debate, he said that, although it was legitimate to question the subject of immigration in a democratic debate, this debate, which in itself was in the general interest, should not be used to spread highly discriminatory messages that incited

hate towards people for who they were, as was the case here.

Regarding the consequences of suspending the account, the plaintiff's use of the social network concerned was not essential to his political activities, since he could continue to express his views, communicate and contribute to the public debate through other social networks such as Facebook or Instagram. Therefore, since no "patently unlawful disturbance" had resulted from the suspension of his Twitter account, the plaintiff's request for it to be reinstated was dismissed.

Tribunal judiciaire de Paris (ord. réf.), 14 avril 2022, n° 21/57009, Messiha c/ Twitter France et Twitter Inc.

Paris court of justice (urgent procedure), 14 April 2022, no. 21/57009, Messiha v Twitter France and Twitter Inc.

UNITED KINGDOM

[GB] High Court decides ‘Shape of You’ composer Ed Sheeran and his co-songwriters did not deliberately or subconsciously copy the song ‘Oh Why’

Julian Wilkins
Wordley Partnership and Q Chambers

Ed Sheeran and his co-songwriters, Johnny McDaid and Steve McCutcheon (the claimants), have won a copyright case, the High Court granting the declaration sought that their 2017 song "Shape of You" had not infringed the copyright of another song "Oh Why" composed in 2014 by Sami Chokri and Ross O’Donoghue (the defendants). The judge, Mr Justice Zacaroli, ruled that Sheeran and his collaborators had “neither deliberately nor subconsciously copied” the earlier song.

The claimants commenced the proceedings when the defendants had the music royalty collecting agency, the Performing Rights Society (PRS), suspend payment of significant royalties due to the claimants, contending that their copyright had been breached.

The defendants defended the claimants' case by arguing that Ed Sheeran had either listened to their song and deliberately copied the music, or, alternatively subconsciously heard and absorbed the song so that he was replicating aspects of Oh Why.

Evidence was given by Ed Sheeran and his co-writers as to how they had written Shape of You. The defence highlighted that Sheeran composed very quickly suggesting he was replicating someone else’s composition. Court evidence revealed that Sheeran had a talent for writing quickly.

Whilst there were some similarities in the songs, this was not unusual and there was no evidence to show Ed Sheeran had heard Oh Why before co-composing Shape of You. The defendants gave examples of how they had tried to bring their song to the attention of Ed Sheeran but the examples they gave were tenuous and did not indicate Sheeran had been aware of their song let alone had heard it. Whilst there were some inconsistencies between the Claimants' evidence as to how Shape of You had been composed, overall their recollections were found to be honest and consistent.

Further, the defendants argued that Ed Sheeran had in other compositions, used or sampled music from other composers’ songs. Court evidence revealed that Ed Sheeran and his producers were proactive in approaching other songwriters to acquire their consent before using any music. In one case Sheeran had written a song which was similar in nature to another song. Although it was considered a borderline case as to whether an approach should be made to the other

composer, Sheeran had insisted that the approach be made.

In another example, Sheeran and McDaid had been sued in the US for alleged copyright infringement. However, they had settled the claim agreeing shared royalties for the other composer. Mr Justice Zacaroli accepted this settlement was for commercial expediency with no admission of liability by Sheeran and McDaid.

Mr Justice Zacaroli considered Mr Sheeran would approach anyone whose music he wished to use or alternatively if there was a similarity, risking an infringement allegation. This demonstrated someone who was not a deliberate copier of other composers' musical work.

The defence, in arguments aimed, in particular, against Mr Sheeran, focused on a two-bar musical phrase repeated three times throughout Shape of You over the lyrics, amounting to just 15 seconds throughout Shape of You. Expert musicologist Anthony Ricigliano noted that the phrase comprised the first four notes of the minor pentatonic, which he called "*humanity's favourite scale*". The claimants argued that reproducing those notes in the same sequence as the scale was more likely to be coincidental than copying. Accepting Mr Ricigliano's evidence, the judge stated that "the use of the first four notes of the rising minor pentatonic scale for the melody is so short, simple, commonplace and obvious in the context of the rest of the song that it is not credible that Mr Sheeran sought out inspiration from other songs to come up with it".

The granting of a declaration was at the discretion of the judge and in the circumstances Mr Justice Zacaroli considered it reasonable to grant the declaration that there had been no deliberate copying nor had there been subconscious copying. Although there were similarities between the Shape of You and Oh Why songs, there were also significant differences. The evidence of similarities and access to having heard Oh Why was insufficient to shift the evidential burden to the claimants. Mr Justice Zacaroli determined that even if the evidential burden had shifted to the claimants the court had established there had been no deliberate copying by Mr Sheeran.

In the High Court of Justice Business and Property Courts of England and Wales Intellectual Property List, Neutral Citation Number: [2022] EWHC 827 (Ch)

https://www.judiciary.uk/wp-content/uploads/2022/04/Sheeran-v-Chokri-judgment-060422.pdf

[GB] CMS report on influencer culture points to regulatory gaps and calls for reforms

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On 9 May 2022, the House of Commons Digital, Culture, Media and Sport Committee (which is responsible for scrutinising the work of the Department for Digital, Culture, Media and Sport and its associated public bodies, including the BBC) published its report on influencer culture, following the conclusion of its inquiry into influencers' power on social media. Whilst acknowledging the benefits and the significant returns that influencer culture brings to the UK economy, the Committee emphasised that the industry needs to be given more serious consideration by the government. In the words of the DCMS Committee Chair Julian Knight MP, "as is so often the case where social media is involved, if you dig below the shiny surface of what you see on screen you will discover an altogether murkier world where both the influencers and their followers are at risk of exploitation and harm online".

Devising a formal definition of the term 'influencer' is challenging, yet necessary in effectively enforcing rules and regulations. For the purposes of its report, the DCMS committee defined an *influencer* as "an individual content creator who builds trusting relationships with audiences and creates both commercial and non-commercial social media content across topics and genres" (paragraph no: 3). *Influencer culture* was taken to mean 'the social phenomenon of individual internet users developing an online community over which they exert commercial and non-commercial influence' (paragraph no: 1).

On the whole, the Committee found low rates of compliance with advertising regulation and concluded that employment protection has failed to keep up with the growth of online influencer culture, leaving those working in the industry unsupported and child influencers at risk of exploitation.

Four broad key issues pertaining to influencer culture emerged from the Committee's inquiry, in particular.

a. Behind the camera

Despite the industry's popularity, earning a living from social media influencing appears challenging. The report takes a look behind the scenes and goes beyond the superficial glamour and public perception, often involving paid-for holidays and free gifts. The report highlights that influencers face a range of challenges including hacking, impersonation, algorithmic unpredictability, mental health issues, online abuse, trolling and harassment. This appeared to be a bigger problem for women (compared to men) which is exacerbated by the "lack of developed support from the surrounding ecosystem of platforms, regulators, talent agencies and brands" (paragraph no: 15).

b. Transparency around pay standards and practice

Despite social media influencing being a rapidly expanding subsection of the UK's creative industry, making a living in it remains difficult. Only few influencers appear to take the lion's share of well-paid work, but many others struggle to make a living. Similar to other professions in the creative sector, many influencers classify as self-employed, which may mean that they experience uneven revenue streams and lack of employment protections (e.g., maternity or sick leave).

Moreover, the Committee points out the lack of payment transparency which has resulted in pay gaps between different demographic groups, affecting particularly influencers from ethic minority groups. Despite the fact that social media platforms understand the value that influencers bring to their business model, they do not always "appropriately and consistently" (paragraph no: 58) compensate influencers for the work that goes into producing content that attracts users.

c. The state of influencer compliance and gaps in advertising regulation

The scale of the sector and the volume of content generated across multiple platforms has outpaced the capabilities of UK advertising regulation. According to the UK's Competition and Markets Authority, influencer compliance rates with UK advertising regulations remain "unacceptably low" (paragraph no: 74). Earlier in March 2021, the UK's Advertising Standards Authority had reached similar conclusions in its research on influencer ad disclosure. The advertising watchdog's report revealed a "disappointing overall rate of compliance" with its rules requiring ads on social media to be clearly signposted as such (see IRIS 2021-5/7).

Despite platform-specific guidance on ad labelling and training for influencers, brands and agencies, the messaging around the rules on advertising transparency still lacks clarity and disclosure requirements are practiced with a high degree of variation. New entrants to the influencer marketplace, who may not receive adequate support, are still unaware of their obligations under the advertising rules.

d. Children as viewers and children as influencers

Influencer content on social media is becoming increasingly popular with children, but the close bond children develop with online figures leaves them at risk of exploitation. Evidence suggests that children are more vulnerable to native advertising as they find it challenging to distinguish and identify. Current advertising regulation does not appropriately consider their developing digital literacy and sufficiently address the need for enhanced advertising disclosure standards that meets children's needs.

Furthermore, influencers may be financially incentivised to share "extreme content" (paragraph no: 104) that includes misinformation and disinformation which may affect children and other vulnerable groups susceptible to harms

arising from this type of content. Influencer promotion of unattainable lifestyles and unrealistic beauty ideals was flagged as a particular issue, especially because its consistent message (i.e., 'what you look like matters') and the damaging pressure it generates are likely to contribute to mental health issues such as depression, anxiety, body dysmorphia and eating disorders. Currently, there is not enough regulation to protect children from this.

Concerns are expressed over the lack of protection for children participating in this new industry as successful influencers themselves (e.g., through gaming channels) and the impact this may have on their consent and privacy. Child influencers do not enjoy the same standard of protection around pay and conditions of work as traditional child performers in the entertainment industry. This is because child performance regulations do not currently apply to user-generated content.

Committee recommendations

In response to the issues identified earlier, the Committee makes a range of recommendations that call on the government to strengthen both employment law and advertising regulation. Specifically, the Committee recommends that the government: (a) conducts an industry review into the influencer ecosystem to address knowledge gaps; (b) develops a code of conduct for the industry as an example of best practice for deals between influencers and brands or talent agencies; (c) gives the ASA statutory powers to the enforce advertising standards under its Code of Non-broadcast Advertising and Direct & Promotional Marketing; (d) updates the same Code to enhance the disclosure requirements for ads targeted to audiences composed predominantly of children; and (e) addresses gaps in UK labour legislation that leave child influencers vulnerable to exploitation (including working conditions and protections for earnings).

The government has two months to respond. It remains to be seen whether and if so, in what way, it will adopt the Committee's recommendations.

Digital, Culture, Media and Sport Committee, Twelfth Report of Session 2021-22: Influencer Culture: Lights Camera, Inaction?

https://publications.parliament.uk/pa/cm5802/cmselect/cmcumeds/258/report.html

Influencer culture: MPs call for action on advertising and employment rules to protect children and online performers

https://committees.parliament.uk/committee/378/digital-culture-media-and-sport-committee/news/170678/influencer-culture-mps-call-for-action-on-advertising-and-employment-rules-to-protect-children-and-online-performers/

GREECE

[GR] Live dynamic blocking procedure for the protection of broadcaster's related rights: an overview of recent cases on sport events in Greece

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The illegal retransmission of live sports events on the Internet is an issue of crucial importance for the protection of the legitimate interests of both broadcasters, having an exclusive transmission licence, and the State. In 2021, the number of viewers having illegal access to national or international sport events transmitted in the Greek territory exceeded 400000 people. Consequently, the estimated loss for a broadcaster offering a full package subscription at EUR 44.90 per month could reach up to EUR 215 520 000 per year.

Under Greek legislation, Article 66E of Law no 2121/1993 on copyright and related rights, provides that rights holders may file a request before the Committee on Internet Violations of Intellectual Property (EDPPI) in order to prevent infringements of their rights committed through the Internet. The Committee has the authority to examine such a request on the condition that the same case is not pending before the courts (paragraph 5 (a)(iii)), and shall notify the access provider within 10 working days from the receipt of the request. This procedure involves only the intermediaries (Internet access providers and hosting services) and the administrators or owners of the websites, while excluding end-users.

However, the above mechanism proved to be slow in tackling piracy of sport events. For that reason, Article 66E was amended, initially by Article 68 of Law no 4761/2020 and recently by Article 48 of Law no 4821/2021. Following these amendments, a new paragraph 10A has been introduced providing for a dynamic blocking procedure specifically focused on the illegal retransmission of national or international events scheduled to be transmitted at the same time as they are performed. This provision aims to facilitate the prevention of illegal broadcasting of sport events by a swift procedure of immediate blocking measures which can be also applied for clones of the original site that appear in a new IP address or URL, if it turns out that they host the same content (Article 66E, pargraph 10A, 3).

The procedure is initiated upon the request of the rights holder (usually a broadcaster), who must pay a relevant fee. The request should be submitted to the Committee at least 15 days prior to the scheduled transmission of an event of national or international viewership (such as Superleague, Champions' League or other national sport events).

If the Committee accepts the request, it issues a resolution by which it invites Internet providers to suspend access to the illegal content for at least 15 days, as well as to take any other measure aiming at the prevention of repeated or future violations (this provision seems to establish a "stay-down" obligation on Internet access providers), within a deadline which cannot be less than 6 hours or more than 12 hours from the transmission of the resolution (Article 66E, paragraph 10A, 2a). The Committee resolution has to be issued no later than 24 hours before the transmission of the event and may impose a fine for each day of non-compliance. Internet providers are obliged to immediately send statements of conformity with the Committee resolution to the Hellenic Telecommunications and Post Commission (HTPC), the administrative body which issues domain names in Greece.

Moreover, if after the issuance of the Committee resolution the illegal transmission is transferred to new pirate webpage, the rights holder, even during the transmission of the event and without additional fees, may submit to the HTPC (with a copy to the Committee) any information concerning the repetition of the infringement (Article 66E, paragraph 10A, 2c). If a violation is deemed probable, the HTPC shall promptly order via email the Internet providers to suspend access to the pirate webpage. Internet providers with more than 50 000 customers are obliged to suspend access to the content within the deadline set by the HTPC, which cannot be more than thirty (30) minutes after the transmission of the order. The order is valid until the issuance of a relevant supplementary resolution by the Committee, which is issued within a month at most (Article 66E, paragraph 10A, 2c). In this manner, a serious problem has been resolved, as the practice of pirates, when access to their webpage is blocked, has been to set up another with a similar title and continue their activity unperturbed. The importance of these provisions lies mainly in the fact that it allows access blocking even during the transmission of the event and requires immediate compliance with Committee’s resolution or HTPC order.

Based on this new provision, the Committee has issued its resolution no 33/7.12.2021 on evidence provided by NOVA, a Greek subscription services broadcaster, and ordered the Internet providers to block access to 49 domain names for which the risk of an illegal transmission of Nova’s live sport events was highly probable. Approximately one month later the Committee issued its supplementary resolution no 40/14.1.2022 in order to validate an order issued by HTPC for the access suspension to 69 additional domain names illegally transmitting Nova’s live sport events. Since then more than 15 relevant resolutions have been issued safeguarding the legitimate interests of the licensees (see for instance 42/2022, 48/2022, 49/2022, 54/2022, 55/2022, 67/2022, 68/2022, 69/2022, 78/2022, 79/2022, 80/2022, 81/2022, 82/2022, 83/2022, 84/2022).

Απόφαση 33/2021

https://opi.gr/images/epitropi/apofaseis/edppi_33_2021.pdf

Resolution 33/2021

Απόφαση 40/2022

https://opi.gr/images/epitropi/apofaseis/edppi_40_2022.pdf

Resolution 40/2022

Notice-and-Takedown Procedure under Greek Intellectual Property Law 4481/2017, 9 (2018) JIPITEC 201 para 1, Charis Tsigou

https://www.jipitec.eu/issues/jipitec-9-2-2018/4729

ITALY

[IT] AGCOM publishes the final commitments presented by DAZN

Ernesto Apa & Eugenio Foco
Portolano Cavallo

The OTT platform DAZN, operating under German authorisation, has acquired the audiovisual rights to the Italian Serie A Championship, obtaining the possibility broadcasting all Serie A football matches (380 in total) for three years (2021-2024), of which 70% would be broadcast on an exclusive basis.

Through Resolution No. 334/21/CONS, AGCOM initiated proceedings to define the quality parameters for the fruition of the live streaming broadcasting services of the Italian Serie A Championship offered by DAZN in Italy and, also ordered the streaming platform to adopt several measures aimed at ensuring the quality of its services to customers.

The proceedings, which aimed to define the quality parameters for the fruition of live streaming broadcasting services, were closed through Resolution No. 17/22/CONS by which AGCOM adopted the aforementioned parameters (included in Annex A to Resolution No. 17/22/CONS) and required DAZN to comply with the measures provided therein within three months of having received the notification of the Resolution.

Given DAZN’s non-compliance with the order provided in Resolution No. 334/21/CONS, AGCOM initiated sanctioning proceedings through Resolution No. 1/22/DTC. In the context of the sanctioning proceedings, DAZN presented its final commitments which were published by AGCOM through Resolution 17/22/DTC. The commitments varied from the introduction of a specific WhatsApp channel to ensure customers are provided a prompt response from DAZN’s customer care unit to the creation of a joint monitoring team constituted by a representative from DAZN, a representative from AGCOM and a third party to be identified by mutual agreement. This monitoring team will oversee the activities undertaken in the context of the commitments presented by DAZN and identify, if necessary, possible areas of intervention.

Interested parties can send their observations on these commitments to AGCOM within thirty days of the publication of Resolution No. 17/22/DTC on AGCOM's website.

Delibera N. 334/21/CONS - Ordine alla società DAZN Limited ai sensi della legge 14 novembre 1995, n. 481 e avvio di un procedimento per la definizione di parametri di qualità per la fruizione dei servizi di diffusione in live streaming delle partite di campionato di calcio

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=24949181&_101_INSTANCE_FnOw5lVOIXoE_type=document

Resolution No. 334/21/CONS - Order to the company DAZN Limited pursuant to Law No. 481 of 14 November 1995 and initiation of a proceeding for the definition of the quality paramaters for the fruition of live streaming broadcasting services for soccer matches

Delibera N. 17/22/CONS - Conclusione del procedimento per la definizione di parametri di qualità per la fruizione dei servizi di diffusione in live streaming delle partite di campionato di calcio di cui alla delibera n. 334/21/CONS

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=26313514&_101_INSTANCE_FnOw5lVOIXoE_type=document

Resolution No. 17/22/CONS - Conclusion of the proceeding for the definition of the quality parameters for the fruition of live streaming broadcasting services for soccer matches initiated through Resolution No. 334/21/CONS

Determina n. 17/22/DTC - Pubblicazione della proposta definitiva di impegni relativa al procedimento sanzionatorio n. 1/22/DTC presentata dalla società Dazn Limited LTD ai sensi della legge 4 agosto 2006, n. 248 e del regolamento allegato alla delibera n. 697/20/CONS

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=26755936&_101_INSTANCE_FnOw5lVOIXoE_type=document

Resolution No. 17/22/DTC - Publication of the final commitments relating to the sanctioning proceeding No. 1/22/DTC presented by Dazn Limited LTD pursuant to Law of 4 August 2006, No. 248 and of the regulation annexed to Resolution No. 697/20/CONS

LATVIA

[LV] Extension of the media restrictions on Russian channels

Ieva Andersone, Krišjānis Knodze & Lūcija Strauta Sorainen

On 6 June 2022, the National Electronic Mass Media Council of Latvia (NEPLP) blocked 80 Russian TV channels in Latvia, thereby prohibiting all Russian TV channels from broadcasting in Latvia. The Parliament of Latvia has further expanded the powers of NEPLP by amending the Electronic Mass Media Law several times as a result of which the number of banned broadcasting channels continues to increase. Since the beginning of April 2022, three sets of amendments to the Electronic Mass Media Law have been introduced. The first set of amendments, which entered into force on 21 April 2022, grants the NEPLP the right to restrict access to on-demand services by blocking them in Latvia in the following situations:

NEPLP has not been notified of the on-demand electronic mass media services and the service provider has not ceased their provision upon NEPLP’s request; it is not possible to identify the service provider; and where blocked on-demand electronic mass media service providers use alternative domain names for identical already blocked on-demand electronic mass media services.
The second set of amendments, which entered into force on 31 May 2022, aim to ensure that audio, audiovisual programmes and audiovisual services are not offered on-demand in Latvia by a country which is threatening the territorial integrity, sovereignty or independence of another country. NEPLP now has the right to restrict the distribution of such programmes or services in Latvia. The latest amendments entered into force on 16 June 2022 to ensure that programmes not included in the list of audio and audiovisual programmes to be retransmitted in Latvia are not distributed to the public. This ensures that programmes for which NEPLP has made the decision to restrict distribution in Latvia are not available to the public. Subsequently, the number of restricted broadcasting programmes has increased. On 31 March 2022, NEPLP had restricted access to two websites, but by 7 April 2022 access had been restricted to 16 websites that disseminated content that threatened Latvia’s national security; namely, disinformation about the war in Ukraine that glorifies the Russian regime and falsely accuses Ukraine of various war crimes, as well as blames Western countries for provocations. Recently, on 6 June 2022, NEPLP, in accordance with the second set of amendments to the Electronic Mass Media Law, blocked the remaining 80 Russian TV channels in Latvia. Some of NEPLP's decisions have been challenged before the court. In the case regarding Gazprom Media related TV channels, the administrative court of Latvia decided to apply interim measures by allowing broadcasting. However, with the above mentioned amendments to the law, these TV channels have been re-blocked. Meanwhile,

NEPLP has issued an international broadcasting permit to the Russian independent media TV Rain (Dozdj).

Elektroniskais plašsaziņas līdzekļu likums

https://likumi.lv/ta/id/214039-elektronisko-plassazinas-lidzeklu-likums

Electronic Mass Media Law

NEPLP preses relīze NEPLP saistībā ar apdraudējumu valsts drošībai ierobežo piekļuvi 16 tīmekļvietnēm Latvijas teritorijā

https://www.neplp.lv/lv/jaunums/neplp-saistiba-ar-apdraudejumu-valsts-drosibai-ierobezo-piekluvi-16-timeklvietnem-latvijas-teritorija

NEPLP restricts access to 16 websites in the territory of Latvia due to threats to national security. NEPLP press release

NEPLP preses relīze: NEPLP aizliedz 80 Krievijā reģistrētu TV programmu izplatīšanu Latvijā

https://www.neplp.lv/lv/jaunums/neplp-aizliedz-80-krievija-registretu-tv-programmu-izplatisanu-latvija

NEPLP prohibits the distribution of 80 Russian TV programmes in Latvia. NEPLP press release

NEPLP preses relīze: NEPLP izsniedz apraides atļauju televīzijas programmai TV Rain

https://www.neplp.lv/lv/jaunums/neplp-izsniedz-apraides-atlauju-televizijas-programmai-tv-rain

NEPLP issues a broadcasting permit for the TV programme "TV Rain". NEPLP press release

MOLDOVA

[MD] Audiovisual Code amended to prevent disinformation

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On 2 June 2022, the Moldovan Parliament adopted a set of amendments to the Audiovisual Code (see IRIS 2019-3/24) that received the title: “Law on counteracting disinformation and propaganda”, and were designed to counter Russian propaganda about the war in Ukraine.

The amendments define disinformation as “intentional dissemination of false information, created with the aim of inflicting harm to a person, a social group, an organisation or to the security of the state”. The amended Code now includes a total ban on “disinformation and propaganda about military aggression”, including of audiovisual content that “condones wars of aggression and denies evidence of military crimes or crimes against humanity”, in audiovisual media services.

The law does not explicitly prohibit Russian propaganda. The amendments, in fact, reintroduce provisions from the 2018 version of the Code, which had been dropped in 2020 (see IRIS 2021-3/11). These reintroduced provisions include the minimum quota of 50% for linear audiovisual products from EU member states, the U.S., Canada and countries that have ratified the European Convention on Transfronier Television of the Council of Europe (Russia has not ratified this convention), in respect of all programmes purchased by Moldovan broadcasters. The amendments specifically reintroduce the previous position of providers and distributors of media services, banning the broadcast of television and radio programmes on public affairs, news, or programmes of a political and military nature, produced in countries outside of the above list in their service offerings (including rebroadbasting).

In addition, the quota of 10% for independent production for Moldovan linear broadcasters was reinstated. The amendments also reintroduced the 30% quota for European products that existed for non-linear media.

The law enters into force on the day of its publication with the exception of the provision on independent production, which enters into force in two years.

LEGE Nr. 143 din 02-06-2022 pentru modificarea Codului serviciilor media audiovizuale al Republicii Moldova nr. 174/2018

https://www.legis.md/cautare/getResults?doc_id=131800&lang=ro

LAW No. 143 of 02-06-2022 for the amendment of the Code of audiovisual media services of the Republic of Moldova no. 174/2018

NETHERLANDS

[NL] Google not liable for fake advertisements featuring Dutch celebrities

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On 18 May 2022, the *Rechtbank Amsterdam* (Amsterdam Court) () delivered a notable judgment regarding the liability of an internet platform for fake advertisements featuring the portrait or name of famous persons that seemingly promotes investment methods via cryptocurrencies. The case, which has received considerable media coverage, was brought to the Court by the Vladimir Foundation, founded by well-known Dutch figures. It aims to combat public deception by means of fake news or misleading advertisements featuring notable figures. The Court held that Google may not be held liable for these advertisements. The Court reasons that Google is not primarily responsible for the content of the advertisements, this is with the advertiser. There needs to be additional circumstances to make Google liable, which was not the case here.

Google offers services for advertising for advertisers through Google Ads, and for publishers of websites and apps, who offer advertisement space, through Google AdSense. Exploiters who wish to use the service must consent to the Terms of Service and policy of AdSense. This also involves a ban on misleading and fraudulent advertisements, as well as a ban on 'clickbait' (the usage of a 'sensational' title to nudge the user to click on it). Advertisers may create their advertisements as they wish.

The fake advertisements in question are for cryptocurrencies, or financial products, seemingly being promoted by different Dutch celebrities. When users click on the advertisements they are redirected to a 'pre-landing page'. Here the user usually sees an article describing how the celebrity in question made lots of money with that particular investment. What follows is a link to the investment platform, which is the real 'landing-page'. Here the user can leave his personal info and invest.

The main question before the Court was whether Google can be held liable for showing these advertisements. As Google is not the one primarily responsible for the content of the advertisements, Google was not liable unless there were additional circumstances in the case. First, the Court examined if Google offering these advertisement services, can be seen as such an additional circumstance. The Court held that to answer this question, the role played by Google is of importance. Google acts as an intermediary between advertisers on the one hand and exploiters on the other, offering diverse advertising possibilities. The applicant claimed that the mere offering of these services constitutes an unlawful act. The Court rejected this and held that the unlawfulness is determined by the content of the advertisements, in which Google does not play any part.

Furthermore, the Court examined if the precautions taken by Google were enough or if they can be categorised as an additional circumstance which may lead to liability. The Court held that the following factors may be weighed: the knowledge of Google of the unlawful actions of the advertisers, the burden of precautions taken by Google, the actual precautions taken by Google, the likelihood of negligence of the internet user in response to the advertisement and the probability and severity of damages.

The Court held that Google has knowledge of the circulation of fake advertisements, and acknowledges that it has a responsibility to combat these practices. The Court held that Google has its Terms of Service which users have to comply with. Furthermore, Google takes actions to combat the advertisements by using detection methods such as machine-learning and human checks. However, the methods are not fool-proof due to the methods the fake advertisers use. The Court holds that if Google were to check every advertisement this would result in a general filter order, which is prohibited. The Court also held that the probability of damage because of the advertisements is rather small.

The Court concluded that Google is not to be held liable for the showing of fake advertisements. The Court, however, did order Google to provide necessary personal information on the imposters to one of the claimants in order to pursue recovery of damages.

Rechtbank Amsterdam, 18 Mei 2022, ECLI:NL:RBAMS:2022:2638

https://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBAMS:2022:2638

Amsterdam District Court, 18 May 2022, ECLI:NL:RBAMS:2022:2638

[NL] Dutch Media Authority begins the monitoring of popular video-uploaders

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On 17 May 2022, the *Commissariaat voor de Media* (Dutch Media Authority) announced that as of 1 July 2022, "influential video-uploaders" will have to ensure their compliance with the *Mediawet* (Media Act). The new "Policy Rule for the qualification of commercial on-demand services 2022" clarifies which video-uploaders must register with the Media Authority and will be subject to "active monitoring".

It is nothing new that entities uploading videos to video-sharing platforms may fall within the scope of the revised EU Audiovisual Media Services Directive (AVMSD) (see IRIS 2019-1/3) and the Dutch Media Act (see IRIS 2021/24), i.e., in the case their services can be considered as "audiovisual media services", and more specifically, as "commercial on-demand media services". However, the Policy Rule aims to provide some clarity on several matters. First, it elaborates on the criteria for commercial on-demand media services that are not mentioned in the Dutch Media Act but seem to follow therefrom, as well as from the AVMSD (Article 2(1) Policy Rule). For instance, commercial on-demand media services must be based on a catalogue (Article 3 Policy Rule), have as their principal purpose, or essential functionality, the provision of audiovisual media content to inform, entertain or educate the general public (Article 4 Policy Rule), have a mass media character (Article 5 Policy Rule) and constitute economic services (Article 6 Policy Rule). Second, it explicitly distinguishes between entities providing commercial on-demand media services through their *own* platforms, such as Netflix and Disney, and entities providing these services via *third-party* platforms, such as social media influencers using YouTube, Instagram and/or TikTok. The latter are referred to as "video-uploaders", who "often operate independently or in a small business" and "produce their content with limited means". Last but not least, the Policy Rule distinguishes between popular and non-popular video-uploaders. Since video-uploaders "do not always generate such an impact so as to justify regulation by the Media Act", the Policy Rule lays down specific requirements to determine which uploaders should fall under the Media Authority's active supervision. Video-uploaders with "limited activities", "a limited audience" or "activities of a hobbyist nature" are exempted from active monitoring and the accompanying administrative and financial obligations.

Registration with the Media Authority is necessary, if: (a) the video-uploader operates a YouTube, Instagram and/or TikTok-account with 500,000 or more followers or subscribers (mass media-requirement); (b) the video-uploader has posted 24 or more videos over the past 12 months (catalogue-requirement); (c) the video-uploader earns money, receives products or services, or gains other advantages - directly or indirectly - via the account (economic service-requirement); and (d) these advantages come to the benefit of a company that is

registered by the video-uploader with the Dutch Chamber of Commerce (economic service-requirement).

The Media Authority recognises that audiovisual media services, in particular those offered via the Internet, can change over time with respect to their structure, presentation, reach and impact. Services may therefore be reassessed periodically.

Finally, the Media Authority notes that the monitoring of video-uploaders is likely to change in the future, as it is a relatively new phenomenon in Europe which will be shaped by experience and potentially by additional regulation. What is certain is that the threshold of 500 000 followers or subscribers shall eventually be lowered so that more video-uploaders become subject to monitoring.

Commissariaat voor de Media, Commissariaat voor de Media start toezicht op video-uploaders, 17 mei 2022

https://www.cvdm.nl/actueel/commissariaat-voor-de-media-start-toezicht-op-video-uploaders

Dutch Media Authority, Media Authority begins monitoring of video-uploaders, 17 May 2022

Beleidsregel van het Commissariaat voor de Media voor de kwalificatie van commerciële mediadiensten op aanvraag (Beleidsregel kwalificatie commerciële mediadiensten op aanvraag 2022)

https://zoek.officielebekendmakingen.nl/stcrt-2022-12438.pdf

Policy Rule of the Dutch Media Authority for the qualification of commercial on-demand media services (Policy Rule qualification commercial on-demand media services 2022)

RUSSIAN FEDERATION

[RU] Restrictions on payments to “unfriendly” rightsholders

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On 27 May 2022, the President of the Russian Federation issued a decree “on the provisional procedure for the compliance with the obligations to certain rightsholders”.

The decree provides instructions related to the way significant groups of rightsholders, mostly foreign ones, are entitled to receive debts, penalties, fines or other payments from Russia for the use of their intellectual property. The decree applies to the payments intended for the following groups:

- foreign rightsholders from the “unfriendly states” that are listed in the ordinance of the Government of Russia of 5 March 2022 (this list comprises 48 states, including all the states of the EU, the U.K., the U.S., and Canada, which have imposed sanctions on Russia and its citizens), as well as persons under their control;

- rightsholders who have publicly supported or called for the imposition of sanctions;

- rightsholders who have either restricted the use of their intellectual property in Russia or discontinued their business operations in Russia following 23 February 2022;

- rightsholders who have been involved in activities such as spreading “false information” discrediting the use, “in the name of world peace and security”, of Russia’s armed forces and/or Russian state actions abroad;

- rightsholders who have disseminated online information that presents a clear disrespect to Russian society, public bodies, official symbols or the Constitution, or undermines public morals.

From 27 May 2022, Russian persons (comprising the Russian state, regional state authorities, municipalities and Russian residents) are allowed to make payments for the use of intellectual property to such rightsholders by transferring funds, in Russian rubles only (according to the official rate of exchange), to a special type of account opened in specific banks in the name of a particular rightsholder (without the presence or consent of the latter). Consent, however, is necessary to start payments to the account.

Upon meeting these conditions, Russian licensees retain the legal right to continue using the relevant intellectual property unrestrictedly in accordance with the terms that were originally established.

Any transfer from a special account to another bank account is permitted only upon individual authorisation from the Governmental Commission on Foreign Investments Control.

The decree envisions certain exceptions to this procedure. The provisional procedures are not defined in time and may be changed or cancelled by another decree of the President.

О временном порядке исполнения обязательств перед некоторыми правообладателями

http://publication.pravo.gov.ru/Document/View/0001202205270016?index=0&rangeSize=1

Decree of the President of the Russian Federation of 27 May 2022 N 322 "On the provisional procedure for the compliance with the obligations to certain rightsholders"

UKRAINE

[UA] Statute to ban Russian propaganda

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On 12 June 2022, the statute “On the ban on the propaganda from the Russian Nazi totalitarian regime” entered into force in Ukraine, having been earlier adopted by the Supreme Rada (the Parliament). It defines such propaganda as: “dissemination of information aimed at supporting or justifying the criminal nature of the activities of the Russian Federation, the authorities of the terrorist state (aggressor state), their officials, employees (including servicemen) and/or representatives who openly or covertly act on behalf of the Russian Federation on the territory of Ukraine or from the territories of other states against Ukraine; a public denial, including through the media or using the Internet, of the criminal nature of the armed aggression of the Russian Federation against Ukraine; or the public use of the symbols of the military invasion of the Russian Nazi totalitarian regime in Ukraine, the use, production, distribution of products containing such symbols in Ukraine and/or abroad”. Propaganda regarding the Russian Nazi totalitarian regime or the armed aggression of the Russian Federation as a terrorist state against Ukraine is prohibited.

The new statute amended the statute , “On TV and radio broadcasting” (see IRIS 2006-5/34). The amendments specifically prohibit such propaganda unless it is disseminated during live broadcasts and form part of the remarks of a person who is not a presenter or other employee of a television and radio organisation. The amendments also provide for the national regulator to independently apply administrative monetary fines on the broadcasters that spread such propaganda or glorification of participants in the aggression (see IRIS 2022-3/2).

Про заборону пропаганди російського нацистського тоталітарного режиму, збройної агресії Російської Федерації як держави-терориста проти України, символіки воєнного вторгнення російського нацистського тоталітарного режиму в Україну

https://zakon.rada.gov.ua/laws/show/2265-20?fbclid=IwAR09wyjVSmAIz88xarZHaTPNzR7AhSuCVP4KeBQc-NKGZ_E1mfVs2_XfkGk#Text

Law of Ukraine 22 May 2022, N 2265-IX on the ban on the propaganda of the Russian Nazi totalitarian regime, of the armed aggression of the Russian Federation as a terrorist state against Ukraine, of the symbols of the military invasion of the Russian Nazi totalitarian regime in Ukraine

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