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Publisher:

European Audiovisual Observatory
76, allée de la Robertsau
F-67000 STRASBOURG

Tel. : +33 (0) 3 90 21 60 00
Fax : +33 (0) 3 90 21 60 19
E-mail: obs@obs.coe.int
www.obs.coe.int

Comments and Suggestions to: iris@obs.coe.int

Executive Director: Susanne Nikoltchev

Coordination: Cyril Chaboisseau, European Audiovisual Observatory
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EDITORIAL

Summer is practically over and unfortunately there is no good news from Ukraine's Eastern front, where war is still raging on. As a side effect of this terrible conflict, some recent legal developments have a direct impact on the European media sector.

Concerning legislation, an amendment to the Statute of Ukraine "On culture" has introduced certain restrictions for music and videos from Russian artists, while in Russia, recent amendments to media laws include restrictions against foreign media in Russia and the possibility to close down media outlets without a court decision.

Regarding case law, the EU's General Court has dismissed the Russian-controlled RT France's action to annul the Decision and Regulation of the Council of European Union on which EU's sanctions against Russian propaganda media outlets are based. Also, the European Court of Human Rights (ECtHR) has found a gross and systemic violation by the Russian state of the right to freedom of association in combination with the right to freedom of expression and information following complaints by 73 NGOs. This last judgment, however, has to be seen in the light of the Russian Federation ceasing to be a High Contracting Party to the ECHR from 16 September 2022 onwards. The ECtHR remains competent to deal with applications in relation to issues which occurred before that date, and the Committee of Ministers will continue to supervise the execution of judgments finding violations of the ECHR by the Russian Federation, albeit with a lack of instruments for enforcement.

On a less dramatic but very important issue, two important developments regarding public-service broadcasting happened around the summer break. In Germany, the heads of government of the German Länder (federal states) agreed to reform the remit and structure of public broadcasting, whereas in France, the television licence fee that funds French public broadcasters and the *Institut national de l'audiovisuel* was definitively abolished after the Constitutional Council ruled that this abolition conformed with the Constitution.

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

We wish you a nice return to business!

Maja Cappello, editor

European Audiovisual Observatory

Table of content

INTERNATIONAL

COUNCIL OF EUROPE

RUSSIAN FEDERATION

European Court of Human Rights: Ecodefence and others v. Russia

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

On 14 June 2022, the European Court of Human Rights (ECtHR) delivered a judgment finding a gross and systemic violation by the Russian state of the right to freedom of association in combination with the right to freedom of expression and information as protected by Articles 11 and 10 of the European Convention on Human Rights (ECHR). The complaints by 73 non-governmental organisations (NGOs), formulated in 61 applications, all concerned the 2012 Foreign Agents Act. The ECtHR found the restrictions imposed by the Russian authorities on the NGOs which had been categorised as “foreign agents” a breach of their freedom of expression and association. One of the applicants was the Mass Media Defence Centre in Voronezh, whose mission is the protection of human rights, freedom of expression and the rights of the mass media.

The Foreign Agents Act requires Russian NGOs which are deemed to be engaged in “political activity” and to have been in receipt of “foreign funding” to seek registration as “foreign agents”, under the threat of administrative and criminal sanctions. They were also required to label their publications as originating from a “foreign-agent” organisation and to more extensive accounting and reporting requirements. In June 2014, the Ministry of Justice was given the power to put organisations on the register of foreign agents at its own discretion. The Foreign Agents Act has resulted in the imposition of administrative fines, financial expenditure, a set of restrictions on the NGOs’ rights, activities and receiving of funding, and in the institution of criminal proceedings. Many applicant organisations were liquidated for violating the requirements applicable to “foreign agents”, or had to take decisions on self-liquidation because they were unable to pay the fines, or because it became practically impossible to continue their activities due to the obligations and restrictions imposed on them.

After the applicants unsuccessfully challenged the decisions of the justice department and prosecutors' offices before the domestic courts, they complained before the Strasbourg Court that the statutory requirements introduced by the Russian foreign-agent legislation and the practice of its application amounted to unforeseeable and excessive restrictions on their freedom of expression and association under Articles 10 and 11 ECHR. Their complaint was supported by a wide range of third-party interventions, inter alia by the United Nations Special

Rapporteur on the situation of human rights defenders, the International Commission of Jurists, Amnesty International, and the Media Legal Defence Initiative. The ECtHR examined the complaints under Article 11 interpreted in the light of Article 10 ECHR, given that the implementation of the principle of pluralism in a democracy is impossible without an association being able to express freely its ideas and opinions, while the protection of opinions and the freedom of expression is one of the objectives of the freedom of association

The ECtHR observed that the Foreign Agents Act severely restricted the ability of the applicant organisations to continue their activities and their ability to participate in public life and engage in activities which they had been carrying out prior to the creation of the new category of "foreign agents". It found that the classification of NGOs' activities based on the criterion of "political activities" produced incoherent results and engendered uncertainty among NGOs wishing to engage in civil society activities, while the domestic courts had failed to provide consistent guidance as to what actions did or did not constitute "political activity". Furthermore the ECtHR considered that the legal norm on foreign funding did not meet the "quality of law" requirement and deprived the applicant NGOs of the possibility to regulate their financial situation. Although the finding that these two key concepts of the Foreign Agents Act, as formulated and interpreted in practice by the Russian authorities, fell short of the requirement "prescribed by law" and hence was sufficient for a finding of a violation of Article 11, interpreted in the light of Article 10 ECHR, the ECtHR continued to verify whether the restrictions on the applicants' activities corresponded in principle to a "pressing social need", and whether they were proportionate to the aims sought to be achieved, as part of the broader issue of whether the interference was "necessary in a democratic society". While the ECtHR accepted in principle that the objective of increasing the transparency with regard to the funding of civil society organisations may correspond to the legitimate aim of the protection of public order, it found however that the interferences with the NGOs right to freedom of expression and association, were not necessary in a democratic society.

The ECtHR acknowledged that the function of creating various platforms for public debate was not limited to the press, but may also be exercised by, among others, NGOs, whose activities are an essential element of informed public debate. The ECtHR has accepted that when an NGO draws attention to matters of public interest, it is exercising a public watchdog role of similar importance to that of the press. The ECtHR recognised that civil society makes an important contribution to the discussion of public affairs and that their activities may have a significant impact on the proper functioning of a democratic society.

The ECtHR considered that attaching the label of a "foreign agent" to civil society organisations which have received any funds from foreign entities was unjustified and prejudicial and also liable to have a strong deterrent and stigmatising effect on their operations. That label coloured them as being under foreign control in disregard of the fact that they saw themselves as members of national civil society working to uphold respect for human rights, the rule of law, and human development for the benefit of Russian society and democratic system. The ECtHR

also found that there were no relevant and sufficient reasons for imposing the additional requirements on the applicant organisations purely on account of their inclusion on the register of "foreign agents". In any event, those additional measures imposed a significant and excessive financial and organisational burden on the applicant NGOs and their staff, and undermined their capacity to engage in their core activities. The ECtHR concluded that such additional requirements as provided for by the Foreign Agents Act and subsequent legislation were not "necessary in a democratic society" or proportionate to the declared aim. It also found that the restrictions on access to foreign funding had not been shown to be necessary in a democratic society.

Taking into account the essentially regulatory nature of the offences, the ECtHR also concluded that the sanctions imposed on the basis of the Foreign Agents Act had been disproportionate. The substantial amounts of the administrative fines imposed and their frequent accumulation, and the fact that the applicants were not-for-profit civil society organisations which suffered a reduction in their budgets due to restrictions on foreign funding, could not be regarded as being proportionate to the legitimate aim pursued. The ECtHR emphasised that this finding would be applicable a fortiori to criminal sanctions.

The ECtHR, unanimously, reached the overall conclusion that the Russian Government had not shown relevant and sufficient reasons for creating a special status of "foreign agents", imposing additional reporting and accounting requirements on organisations registered as "foreign agents", restricting their access to funding options, and punishing any breaches of the Foreign Agents Act in an unforeseeable and disproportionately severe manner. The cumulative effect of these restrictions – whether by design or effect – was a legal regime that places a significant "chilling effect" on the choice to seek or accept any amount of foreign funding, however insignificant, in a context where opportunities for domestic funding were rather limited, especially in respect of politically or socially sensitive topics or domestically unpopular causes. Therefore the measures could not be considered "necessary in a democratic society". Accordingly, there had been a violation of Article 11 ECHR interpreted in the light of Article 10 ECHR. The ECtHR awarded most of the applicant NGOs substantial amounts in respect of pecuniary damage, and in respect of costs and expenses, while each of the applicants was awarded EUR 10,000 in respect of non-pecuniary damage.

From 16 September 2022 onwards the Russian Federation will cease to be a High Contracting Party to the ECHR, following its expulsion from the Council of Europe on 16 March 2022, however the ECtHR remains competent to deal with applications directed against the Russian Federation in relation to acts or omissions capable of constituting a violation of the ECHR provided that they occurred before16 September 2022. As such, this judgment will most probably not be the last finding of a violation by the Russian authorities of the right to freedom of expression or association. The Committee of Ministers will continue to supervise the execution of judgments finding violations of the ECHR by the Russian Federation, albeit with a lack of instruments for enforcement.

Judgment by the European Court of Human Rights, Third Section, in the case of Ecodefence and others v. Russia, Applications nos. 9988/13 and 60 others, 14 June 2022

https://hudoc.echr.coe.int/eng?i=001-217751

EUROPEAN UNION

Commission urges numerous member states to implement EU copyright directives

Ronan Ó Fathaigh
Institute for Information Law (IViR)

On 15 July 2022, the European Commission announced that it had sent reasoned opinions to Czechia for failure to provide information about the transposition of two copyright Directives, namely Directive 2019/789 on copyright and related rights applicable to certain online transmissions (SatCab II Directive) (see IRIS 2019-5/3), and Directive 2019/790 on copyright in the Digital Single Market (DSM Directive) (see IRIS 2019-4/5). Further, on 19 May 2022, the Commission sent reasoned opinions to 10 Member States (Bulgaria, Cyprus, Greece, Ireland, Latvia, Poland, Portugal, Slovenia, Slovakia and Finland) for failure to provide information about the transposition of the SatCab II Directive; and also sent reasoned opinions to 13 Member States over failure to transpose the DSM Directive. Notably, Member States were required to transpose both Directives into national law by 7 June 2021.

Under the EU treaties, the Commission may take legal action – an infringement procedure – against an EU member state that fails to implement EU law. This legal action involves a number of stages, including: first, sending a letter of formal notice requesting further information to the member state concerned, who must send a detailed reply; second, sending a reasoned opinion: a formal request to comply with EU law; and third, the Commission deciding to refer the matter to the EU Court of Justice.

In July 2021, the Commission announced that it had launched infringement procedures against over 20 EU member states for failing to transpose the SatCab II Directive and DSM Directive. However, numerous EU member states have now enacted national legislation implementing these Directives. The SatCab II Directive lays down rules to enhance cross-border access to more television and radio programmes, by facilitating the clearance of rights for the provision of online services that are ancillary to the broadcast of certain types of television and radio programmes, and for retransmission of television and radio programmes. While the DSM Directive lays down rules which aim to further harmonise EU law applicable to copyright and related rights, in particular digital and cross-border uses of protected content; and also lays down rules on exceptions and limitations to copyright and related rights. Notably, Article 17 DSM Directive, on the use of protected content by online content-sharing service providers (OCSSPs), has been subject to a recent high-profile EU Court of Justice judgment, which found the liability imposed on OCSSPs for content uploaded by

users was consistent with freedom of expression (see IRIS 2022-6/14).

Finally, EU Member States that have received reasoned opinions have two months to reply to the European Commission, with the Commission stating that "[i]n the absence of a satisfactory response, the Commission may decide to refer the matter to the Court of Justice of the European Union".

European Commission, "Commission urges Czechia to fully transpose EU copyright rules into national law", 15 July 2022

https://digital-strategy.ec.europa.eu/en/news/copyright-commission-urges-czechia-fully-transpose-eu-copyright-rules-national-law

European Commission, "Commission urges Member States to fully transpose EU copyright rules into national law", 19 May 2022

https://ec.europa.eu/commission/presscorner/detail/en/IP_22_2692

RUSSIAN FEDERATION

General Court judgment T-125/22 dismissing RT France's action for annulment of the Council's (EU) decision and regulation prohibiting broadcasting activities

Justine Radel-Cormann
European Audiovisual Observatory

The broadcaster, “Russia Today France” (RT France), asked the General Court to annul the Decision 2022/351 and Regulation 2022/350 of the Council of European Union (see IRIS 2022-3/6). The Decision and Regulation followed the Russian invasion of Ukraine and prohibited “operators to broadcast or to enable, facilitate or otherwise contribute to broadcast, any content by the legal persons, entities or bodies listed in Annex XV”, including RT France.

Further to the hearing of 10 June 2022, the General Court gave its judgment on 27 July 2022 and dismissed RT France’s action based on the non-respect of fundamental freedoms and the disregard of the principle of non-discrimination. This judgment mainly recalls the criteria to be taken into account when balancing fundamental rights and freedoms against protective and democratic interests. A brief presentation of the judgment is inserted below.

Firstly, the Council is competent to adopt restrictive measures against a TV broadcaster following the EU’s competences rules governed by the principle of conferral: it is the EU’s mission to promote peace and is thus competent to adopt measures safeguarding the common foreign and security policy (CFSP). Besides, the Council is better placed to ensure a uniform implementation of a temporary prohibition of a broadcaster within the European Union.

Next, it is settled case law that the right of defense can be restricted as long as the transgression is proportionate and limited to the objectives the measure pursues. In the case at hand, the Council had to act quickly due to the outbreak of war on the EU’s borders and was not obliged to hear RT France prior to its Decision and Regulation.

Furthermore, while it is true that the freedom of expression and information is an essential freedom, it may also be restricted - as long as it is necessary and proportionate to the legitimate aim pursued, as in the present case - in order to protect democracy, preventing all forms of expression “which propagate, incite, promote or justify hatred based on intolerance, the use and glorification of violence”.

In addition, the exercise of the freedom to conduct a business may be subject to restrictions as long as they are justified by the EU's objectives of general interest,

provided that such restrictions effectively meet those objectives and do not constitute, in the light of the aim pursued, a disproportionate interference with the substance of the right guaranteed. The Council's measures meet these criteria.

Lastly, as established by numerous caselaws, a discrimination on grouds of nationality has to be proved throuhgout a comparison between the citizen/company of one Member State with nationals of another Member State experiencing the same situation. When failing to identify a group in a similar situation that has been treated more favorably, the alleged infringement cannot be sustained - as in the present case.

Arrêt du Tribunal dans l'affaire T-125/22 « RT France c. Conseil »

https://curia.europa.eu/juris/document/document.jsf?text=&docid=263501&pageIndex=0&doclang=FR&mode=lst&dir=&occ=first&part=1&cid=518657

Judgment of the General Court in Case T-125/22 "RT France v Council

https://curia.europa.eu/juris/document/document.jsf?text=&docid=263501&pageIndex=0&doclang=FR&mode=lst&dir=&occ=first&part=1&cid=518657

Press release No 132/22, Judgment of the General Court in Case T-125/22 "RT France v Council"

https://curia.europa.eu/jcms/upload/docs/application/pdf/2022-07/cp220132en.pdf

NATIONAL

AUSTRIA

[AT] Film aid: new incentive scheme for Austrian film producers

Harald Karl
PEPELNIK & KARL Attorneys at law

The Austrian federal government has announced that a new incentive scheme for film producers will be introduced on 1 January 2023, with the aim of strengthening Austria's position as a film location. As a result, the existing film funding model will be restructured and streaming productions will be included for the first time. The proposed model offers automatic, non-repayable subsidies worth up to 35% of film production expenditure in Austria, granted in accordance with a list of criteria and of which 5% is subject to environmental criteria. A maximum of EUR 5 million will be payable for a film and EUR 7.5 million for a TV series. Support will also be available for streaming productions for the first time. Another major change is that the subsidies will no longer be capped (unlike current so-called FISA funding, which often runs out by the spring). The subsidies will be available under three headings. Firstly, international service productions (FISA+): funding for international, non-Austrian productions (streaming, cinema and TV) and production elements (e.g. post-production, music recordings, VFX), will be distributed by the AWS (Austrian federal bank). Applications may be submitted by independent production companies based in Austria that are commissioned to produce or participate in the production of a film (service processing). Secondly, Austrian television and streaming productions (FISA+, TV productions in coordination with RTR): subsidies for Austrian productions not commissioned by broadcasters or video-on-demand services in the fields of television, streaming and virtual reality with a total budget greater than EUR 1.8 million, will also be available through the AWS. Independent production companies based in Austria will be eligible to apply. Productions below the budget threshold will still be able to apply for funding from the RTR Austrian Television Fund. Thirdly, Austrian cinema films (ÖFI+): subsidies for Austrian, independently produced films for initial release in cinemas, as well as equivalent international co-productions, will be processed by the *Österreichische Filminstitut* (Austrian Film Institute). They will be available to independent production companies based in Austria. The subsidies will replace the cinema film funding currently distributed by FISA (Film Industry Support Austria). The Austrian cinema film industry will therefore have a one-stop shop for funding instead of having to rely on multiple federal funding bodies (ÖFI, FISA). Industry representatives have broadly welcomed the proposals and the legislation required to introduce the new funding structure is currently being drafted.

Filmstandort Österreich: Neues Anreizmodell ab 1.1.2023, Bundesministerium für Kunst, Kultur, öffentlichen Dienst und Sport

https://www.bmkoes.gv.at/Kunst-und-Kultur/Neuigkeiten/Anreizmodell-Filmstandort-%C3%96sterreich.html

Nw incentive scheme for film producers from 1 January 2023, Federal Ministry of Arts, Culture, Civil Service and Sport

BULGARIA

[BG] Amendments to the criminal code concerning computer-related crimes, crimes against the intellectual and industrial property, and online child abuse

Nikola Stoychev
Dimitrov, Petrov & Co., Law Firm

On 7 July 2022, *Закон за изменение и допълнение на Наказателния кодекс* (Act for Amendment and Supplement to the Criminal Code – the Act) was promulgated in the State Gazette. The amendments to the existing legal framework are in the field of computer-related crimes (including cybercrime and crimes against critical infrastructure), the crimes against intellectual and industrial property, and plagiarism, as well as the crimes against online child sexual exploitation.

The amendments can be narrowed down to changes expanding the minimum and maximum thresholds for imprisonment for the described fields and changes in the maximum amount of the fines.

However, an important practical implication of this change is that, for example, copyright-related offences (e.g. unauthorized use of copyrighted works), trademark infringements and others will now be considered "serious" crimes according to the Criminal Code. This gives the right to the relevant competent authorities to request traffic data from telecom operators in such cases (in line with the general obligation of the telecoms to store traffic data for a period of 6 months).

The Act also widens the scope of certain offences that will be considered crimes – e.g. the unauthorized use of inventions and utility models are now considered crimes (in addition to unauthorized use of trademarks, industrial design, etc.).

Some additional background here is that on 14 October 2019 a letter of formal notice from the European Commission was submitted to the Bulgarian Ministry of Justice. According to the findings of the European Commission, when transposing Directive 2013/40/ EU (the Directive), Bulgaria had not observed the required maximum threshold for imprisonment provided for in the cases of illegal system interference and illegal data interference.

In a nutshell, the aim of the Act is to achieve congruence between the high degree of public danger which these crimes pose, and the criminal liability foreseen by law, so that the legislation corresponds to the dynamics with which technology is evolving. The adoption of the Act is a victory for the long-standing attempts of local copyright collective societies to achieve these changes to battle copyright piracy. At the same time, there are arguments, and maybe some concerns, that the new provisions are not entirely proportional and balanced in terms of the potential risks to the invasion of privacy. Hopefully, these concerns

will remain unjustified.

Закон за изменение и допълнение на Наказателния кодекс

https://dv.parliament.bg/DVWeb/showMaterialDV.jsp;jsessionid=20F8429D535EC278668FF232D9245D00?idMat=174622

Law amending and supplementing the Criminal Code

[BG] Draft Code of Conduct for the Protection of Children

Nikola Stoychev
Dimitrov, Petrov & Co., Law Firm

On 8 June 2022, *Съветът за електронни медии* (the Council for Electronic Media – CEM) has initiated a public consultation on a *Проект на Кодекс за поведение относно меркие за оценка, означаване и ограничаване на достъпа до предавания, които са неблагоприятни или създават опасност от увреждане на физическото, психическото, нравственото и/или социалното развитие на децата* (Draft Code of Conduct on Measures to Assess, Label and Restrict Access to Programmes which are Harmful or Pose a Risk to Affect Adversely the Physical, Mental, Moral and/or Social Development of Children – the Draft Code), pursuant to Decision No. RD-05-44/8 June 2022.

CEM has prepared the Draft Code jointly with the Association of Bulgarian Radio and Television Broadcasters (ABBRO), the Bulgarian National Television (BNT) and the Bulgarian National Radio (BNR).

The Draft Code would be a mandatory legal act and is a form of co-regulation adopted in accordance with Directive 2018/1808 and Article 17a of the Radio and Television Act. It will be applicable to both linear and non-linear media service providers under the jurisdiction of the Republic of Bulgaria, as well to video-sharing platform services under Bulgarian jurisdiction.

The Draft Code does not limit the application of other legislative acts in the field of child protection (such as the Child Protection Act, the Radio and Television Act, etc.). The already established practice has been taken into consideration.

The aim of the Draft Code is to implement effective measures to assess, and label content and restrict access of children to broadcasts and user-generated videos which may be harmful or pose a risk which adversely affects children's development. The Draft Code does not differ greatly from the currently applicable secondary legal acts concerning child protection (also adopted by CEM). In fact, the Draft will replace and merge these acts, and will add some novelties.

To be noted is that specific provisions concerning non-linear services have been adopted – on-demand providers now have to categorize programmes in accordance with the Draft Code, may adopt additional measures for the protection of children and upon assessment may restrict access to the media services so as to guarantee that only adults have access, etc.

The procedure for public consultation was open until 8 July 2022. The final Code of Conduct has not been published yet and it remains to be seen what the final wording shall be.

Проект на Кодекс за поведение относно мерките за оценка, означаване и ограничаване на достъпа до предавания, които са неблагоприятни или създават опасност от увреждане на физическото, психическото, нравственото и/или социалното развитие на децата

https://www.cem.bg/actbg/6147

Draft Code of Conduct on measures to assess, flag and restrict access to programs that are unfavorable or pose a risk of harming the physical, mental, moral and/or social development of children

CZECHIA

[CZ] Bill on video-sharing platforms

Jan Fučík
Česká televize

The Parliament of the Czech Republic has adopted a bill on video-sharing platforms which simultaneously amends the Law on Radio and Television Broadcasting and the Law on On-Demand Audiovisual Media Services. The Act implements, into the Czech legal system, the provisions of Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018, which amends Directive 2010/13/EU on the coordination of certain legal and administrative regulations of the member states governing the provision of audiovisual media services (Audiovisual Media Services Directive) with regard to the changing market situation.

The law introduces, for example, new definitions for terms such as an editorial decision, a programme for children, consumer journalistic programmes and others. There is also a change to the position of the regulatory body - the Council for Radio and Television Broadcasting, which can no longer be dismissed as a whole, but only its individual members. This Council will also be the regulatory body for shared video platforms.

There are big changes in the regulation of advertising on the air. Quantitative restrictions on advertising will be greatly relaxed in accordance with the Directive and broadcasters will be able to broadcast more advertising. Public Czech television can only profit from this to a very limited extent because it has a special arrangement. The protection of disabled persons is also strengthened. After discussions with organisations bringing together persons with hearing impairments and persons with visual impairments, a television broadcaster must draw up an Action Plan for making television programmes accessible for persons with hearing impairments and persons with visual impairments, by which it undertakes to increase the total share of programmes made accessible to such persons compared to the immediately preceding evaluation period through appropriate measures.

The protection of minors is also newly adjusted. The operator of a broadcast will be obliged not to include in the broadcast between 06.00 and 22.00 programmes that could disrupt the physical, psychological or moral development of minors; this obligation does not apply to a broadcaster if the broadcast is available to the end user on the basis of a written contract with a person over the age of 18 and technical measures are provided for it which allows that person to limit access to the broadcast to minors

Zákon o službách platforem pro sdílení videonahrávek a o změně některých souvisejících zákonů (zákon o službách platforem pro sdílení videonahrávek)

http://www.sbirka.cz/POSL4TYD/NOVE/22-242.htm

Bill on video sharing platforms

GERMANY

[DE] Federal state governments agree German public broadcasting reforms

Christina Etteldorf
Institute of European Media Law

On 2 June 2022, the heads of government of the German *Länder* (federal states) agreed to reform the remit and structure of public broadcasting in Germany through the *Dritte Staatsvertrag zur Änderung medienrechtlicher Staatsverträge* (third state treaty amending the state media treaties, 3. MÄndStV), which deals in particular with the definition of the public service remit, programming flexibility, the further development of public broadcasters' online mandate and the strengthening of their supervisory bodies.

In concrete terms, the latest reforms extend the public service broadcasters' remit so they can contribute to media diversity through their own initiatives and ideas. All sections of the population should be able to participate in the information society. In particular, due consideration should be given to all age groups, especially children, teenagers and young adults, while the interests of disabled people and families should also be reflected in the content provided. Significantly, the amended treaty expressly states that the public service remit includes entertainment, as long as it corresponds to a public service profile. A full range of entertainment programmes should therefore be easy to find on the home portals of general interest channels at all times of the day. The treaty's provisions on the fulfilment of the public service remit are also clarified: Article 26(2) of the amended version requires public broadcasters to provide independent, objective, truthful and comprehensive information and reporting, to respect privacy rights and to offer content that reflects the broadest possible diversity of topics and opinions.

As regards to their supplementary channels, tagesschau24, EinsFestival (both ARD), ZDFinfo and ZDFneo (both ZDF), and the special interest channels ARD-alpha (Bayerischer Rundfunk), Phoenix and Ki.Ka (ARD), the broadcasters will be free to either completely or partially close them down, or to turn them into online offerings with similar content.

As far as the public broadcasters' online (telemedia) services are concerned, a joint platform strategy involving all the public broadcasters will be adopted. The broadcasters will be able to trial new telemedia concepts with restricted audiences rather than having to follow the current approval procedure (the so-called 'three step test'). They will also be able to provide access to their telemedia content outside their own portals if, for journalistic and editorial reasons, this is necessary in order to reach the target audience. Any recommendation systems used in telemedia services should facilitate an open opinion-forming process and broad media discourse. Meanwhile, the on-demand

offer of purchased European and non-European feature films and purchased episodes of TV series which are not commissioned will remain limited to 30 days after their linear broadcast and be further restricted to educational and cultural programmes. Such content may also be offered on demand as independent audiovisual content without a direct programming purpose for up to 30 days – restricted to Germany – although this period may be extended in individual cases for editorial or programming reasons, if doing so significantly contributes to the public-service profile. The offer of non-European works will also need to be specifically justified, in the sense that it should contribute to the profile of public service broadcasting.

The powers of the broadcasters' supervisory bodies will also be extended in relation to their monitoring of remit fulfilment and cost control. They will also be able to issue directives. The broadcasters will also need to be in "constant dialogue with the public, in particular with regard to the quality, provision and further development of their services".

Financial matters are not covered by the 3. MÄndStV and will be dealt with in a second round of reforms. The amendments will now be formally adopted by the heads of government of the *Länder* through written correspondence. The state parliaments will then be given prior notice, with the intention that the amended treaty will be signed before the Conference of Minister-Presidents on 20 October 2022. The 3. MÄndStV will then enter into force once all the *Länder* have ratified it on 1 July 2023.

Pressemitteilung der Rundfunkkommission

https://www.rlp.de/de/aktuelles/einzelansicht/news/News/detail/aenderungen-des-medienstaatsvertrags-angenommen-markenkern-des-oeffentlich-rechtlichen-rundfunks-ges/

Broadcasting Commission press release

[DE] KJM approves age verification systems based on biometric age checks for the first time

Christina Etteldorf
Institute of European Media Law

The *Kommission für Jugendmedienschutz* (Commission for the Protection of Minors in the Media – KJM), the central organ of the 14 German *Landesmedienanstalten* (state media authorities) responsible for the protection of young people in the media, has, for the first time, approved three age verification systems that do not rely on identity documents but use biometric age estimation software based on machine learning. The three systems can therefore be used in the future because they meet the requirements of the German *Jugendmedienschutz-Staatsvertrag* (State Treaty on the Protection of Minors in the Media - JMStV). Under the treaty, providers of content that is likely to impair the development of children and adolescents must take measures to prevent minors watching harmful content.

According to the JMStV, certain telemedia content that is likely to impair the development of young people may only be distributed if the provider creates closed user groups to ensure that it is only accessible for adults. Technical systems that are designed to prevent children and adolescents in a specific age category from accessing such content, which includes pornographic material, can be submitted to the KJM, which will check whether they meet the legal requirements. Until now, all approved systems have essentially involved a face-to-face identification process such as Postident, in which a real person compares the viewer's face with an official identity document (ID card or passport). Simple ID card number checks (e.g. Perso-Check), the presentation or submission of a copy of an identity document, or webcam-based identification are not, on their own, considered sufficient by the KJM. However, according to the KJM's latest decision, a face-to-face check is not required when software is used to compare the biometric data from an identity document with an image of the person concerned, and the data from the identity document is automatically captured. The same applies to systems in which software determines the person's likely age using biometric characteristics from a live camera image and generates a reliability score for the age verification result.

On the basis of these principles, the KJM has approved the "facial age estimation" concept submitted by KYC AVC UK Ltd., "Age Verification" by Ondato and "Yoti" by Yoti Ltd. These systems are all trained, through machine learning, to estimate a person's age based on biometric features. They often also use a 'life recognition' test to prevent under-age website visitors using a photo of an older person to access harmful content. In order to mitigate the fact that some young people look older than they really are, which can lead to errors, the KJM requires such systems to operate a five-year buffer. They therefore need to estimate a person's age to be at least 23 in order to grant them access to content suitable for adults only (18+). The KJM also considers the 'life recognition' test as a mandatory technical requirement in order to comply with legal provisions.

On this basis, the KJM, after examining the aforementioned systems, concluded that the versions submitted, when used as a partial solution, were suitable identification mechanisms under its criteria for guaranteeing a closed user group. The *Freiwillige Selbstkontrolle Multimedia-Diensteanbieter* (voluntary self-monitoring body for multimedia service providers – FSM) had already given its seal of approval to one of the systems.

Pressemitteilung der KJM

https://www.kjm-online.de/service/pressemitteilungen/meldung/kjm-bewertet-altersverifikationssysteme-mit-biometrischer-alterskontrolle-positiv

KJM press release

[DE] Second state media treaty amendment enters into force

Christina Etteldorf
Institute of European Media Law

On 30 June 2022, the amendments to the *Medienstaatsvertrag* (state media treaty, MStV) that were brought in under the *Zweite Medienänderungsstaatsvertrag* (second state treaty amending the state media treaty, 2. MÄndStV) entered into force following their ratification by the parliaments of the 16 German *Länder* (federal states). The amendments are mainly designed to implement Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services and further strengthen the provisions of the MStV, aimed at reducing discrimination against people with disabilities. They also include new provisions concerning reporting obligations in the context of European works enshrined in Articles 13(4) and 16(3) of the Audiovisual Media Services Directive (AVMSD).

With regard to accessibility, two new concepts are defined in the amended treaty: Article 2(2)(30) of the amended MStV defines an “accessible service” as “a service that can be found, accessed and used normally by people with disabilities, using the latest technological disability aids, without any particular difficulties and without the help of others.” Meanwhile, in Article 2(2)(31), a “service providing access to audiovisual media services” is defined as a telemedia service that is used “to identify, select, receive information on, and view television programmes and television-like telemedia, as well as any features provided as a result of the implementation of measures to make services accessible, as referred to in Articles 7 and 76 MStV, i.e. barrier-free, including electronic programme guides”. The existing accessibility obligations of broadcasters and television-like telemedia (including on-demand audiovisual media services) under Articles 7 and 76 MStV are extended in order to take account of the needs of people with different disabilities. These particularly cover the transmission of announcements under state law, which must be accessible. A separate section containing special provisions for individual telemedia services is also added in Articles 99a to 99e MStV, replacing the general requirement for unencumbered access enshrined in Article 21 MStV. Article 99a MStV sets out accessibility requirements and deals with the issue of disproportionate burdens. Services providing access to audiovisual media services must offer their services barrier-free, list content in an understandable way and ensure they are easy to use. Reference is made to the exemptions that apply if a disproportionate burden is created or if the service needs to be fundamentally altered, as defined in Annex VI of Directive (EU) 2019/882, as well as to the requirements in Annex I Sections III and IV(b) of the same directive, which describe specific measures that must be taken to ensure accessibility. If a service provider receives funding from sources other than its own resources, whether public or private, for the purpose of improving

accessibility, it may not rely on a disproportionate burden. Service providers must assess the proportionality of their accessibility measures, keep a record of them and assess them again if they alter their services. Article 99b contains a presumption of conformity (if services comply with harmonised standards or parts thereof, the references of which have been published in the Official Journal of the European Union, or meet technical specifications as defined in Article 15(3) of Directive (EU) 2019/882 or parts thereof) and reporting obligations for service providers. In addition, Article 99c MStV requires providers, in their terms and conditions, or in another clearly perceptible way, to indicate to the general public in an accessible manner how they are meeting their accessibility obligations under Article 99a(1). From a procedural point of view, these substantive provisions, compliance with which is monitored by the *Landesmedienanstalten* (state media authorities), are made more effective by consumer protection rules (including the right for associations to initiate proceedings, enshrined in Article 99d(2)): according to Article 99d(1), a consumer whose use of a service providing access to audiovisual media services is prevented or limited, as the result of a breach of Articles 99a and 99c, can ask the relevant state media authority to take measures to guarantee compliance with these provisions. The consumer can then appeal to an administrative court if the media authority fails to take a decision.

A new Article 15(4) is added to the MStV in relation to Germany's reporting obligations concerning European works. It obliges the public service broadcasters, if requested, to provide the responsible authorities defined in Article 111a with the information and documents required for reporting under Article 16(3) of the AVMSD. The same applies to private television broadcasters, which must, on request, provide the information and documents to the responsible state media authority, which then forwards them to the responsible authority defined in Article 111a. Under a new Article 77 sentence 5 MStV, the same rule also applies to television-like telemedia (on-demand services) in the context of Article 13(4) AVMSD. The new Article 111a states that the heads of government of the *Länder* should appoint one or more bodies to coordinate legally binding reporting obligations vis-à-vis EU authorities, intergovernmental institutions and international organisations.

With the 2. MÄndStV, the amendments to the *Jugendmedienschutz-Staatsvertrag* (State Treaty on the Protection of Minors in the Media - JMStV) needed to bring it into line with the latest amendment to the federal *Jugendschutzgesetz* (Youth Protection Act) which also entered into force.

Zweiter Medienänderungsstaatsvertrag

https://www.revosax.sachsen.de/vorschrift_gesamt/19614/44239.html

Second state treaty amending the state media treaty

DENMARK

[DK] Draft bill for a Danish Act on Cultural Contribution with 6% revenue payment from VOD services

Terese Foged
Legal expert

The Audiovisual Media Services Directive (AVMSD) provides the basis for EU member states' efforts to ensure that media services in their jurisdictions contribute to equality and accessibility. Thus, the AVMSD allows a member state to impose financial obligations on media service providers (linear and non-linear) established in both their territory and in other member states that target its territory.

The European Audiovisual Observatory's May 2022 report "Investing in European works: the obligations on VOD providers" describes the rules concerning financial obligations on VOD services in the EU and includes, among other things, the status of EU member states' introduction of this kind of obligation.

On 15 August 2022, the Danish Ministry of Culture published for hearing a draft bill for a Danish Act on Cultural Contribution with a deadline of 12 September 2022 to submit responses.

According to the draft, providers of on-demand audiovisual media services must pay 6% of their turnover in Denmark stemming from on-demand services to the Danish state. The payment will be divided equally between two pools: A public service pool, and a pool for Danish film funding - to which applicants may apply for funding.

The obligation to pay is imposed on all on-demand media service providers established in Denmark or in other EU member states provided the on-demand media service is directed towards a Danish audience. Only on-demand content is encompassed, and in the case of mixed services, the contribution relates only to the on-demand content; not the linear content which includes integrated catch up as part of the linear service. Only on-demand media services with a annual turnover of more than DKK 15 million (EUR 2 million) are included.

The on-demand media services offered by DR and the regional TV 2 stations are exempt from these payments. These public service companies' special obligations to produce content in the Danish language are regarded as making an obligation on them to pay the cultural contribution unjustified, cf. AVMSD Article 13(6). On-demand media services from public service broadcasters in other EU member states are not exempt.

According to the draft, media service providers included by the Act on Cultural Contribution must report their Danish turnover (confirmed by a statement from an

independent auditor), to the Agency for Culture and Palaces (which is under the Danish Ministry of Culture) on an annual basis, for the agency to decide the turnover liable to contribution and charge the media service provider for the cultural contribution.

It follows from the draft that the Danish Ministry of Culture assesses that the cultural contribution scheme will encompass up to 50 media service providers, whose yearly payment will be about DKK 180 million (EUR 24 million).

The Act is envisaged to enter into force on 1 January 2023, which allows the Agency for Culture and Palaces to charge the cultural contribution for the first time in 2024 on basis of the turnover liable to contribution in Denmark during 2023.

A national election is expected in the autumn and, as such, there are huge uncertainties as to the passing of the bill. Further, the responses from the hearing are currently unknown.

Audiovisual Media Services Directive

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018L1808

Forslag til Lov om visse medietjenesterudbyderes bidrag til fremme af dansksproget indhold (Kulturbidragsloven)

https://hoeringsportalen.dk/Hearing/Details/66689

Draft bill for a Danish Act on Cultural Contribution and hearing letter

SPAIN

[ES] New General Law on Audiovisual Communication followed by public consultations

Pedro Gallo Buenaga & Mª Trinidad García Leiva
Diversidad Audiovisual / UC3M

Following the approval of the new General Law on Audiovisual Communication in the Spanish Congress in May 2022 (see IRIS 2022-6/1), it was passed without changes by the Senate and published in the *Boletín Oficial del Estado* (Offical State Gazette — BOE) on 8 July 2022. This milestone culminates the transposition of the Audiovisual Media Services Directive (AVMSD) into national legislation.

The new law aims at adopting an updated legal framework, reflecting market developments and striking a balance between access to content, user protection and competition between providers in the audiovisual market. As such, it applies to players upon which there were no explicit obligations under the the 2010 General Law on Audiovisual Communication, such as on-demand services targeting Spain based in other Member State or streaming and video-sharing platforms.

Among the many measures included in the new law — ranging from the financing of public service broadcasting to the protection of minors — obligations to promote European audiovisual works stand out. Regarding quotas, audiovisual media service providers are obliged to reserve a minimum of 51% of their annual broadcasting time for European content, half of which shall be reserved to content in Spanish and official languages of the Autonomous Communities of Spain. The law also obliges providers of on-demand television services to reserve a minimum of 30% of their catalogue for European works, with half of that percentage also reserved for content in Spanish and official languages of the Autonomous Communities. Regarding investment measures on European works, the financing obligation is maintained at 6% of annual revenues for public providers; 5% for the privately owned ones. In both cases such funding must include a minimum of 70% to be dedicated to independent productions, 15% of which must be works in the official languages of the Autonomous Communities and 30% of which shall be of works directed or created exclusively by women.

The parliamentary processing of the law happened amidst strong questioning due to aspects such as the change of the definition of 'independent producer'; a modification that was seen by many associations of the sector as a Trojan horse to favour big media groups and their film subsidiaries. Additionally, some of the so-called vloggers complained about being considered audiovisual media service providers, although such a case will only arise if they are deemed as ‘users of particular relevance’.

In that sense, even though the law is already in force, detailed instructions for implementation, which will expand its provisions, are not expected to be

published until 2023. There are currently three open public consultations seeking the views of all stakeholders affected by the legislation in relation to the main changes within the aforementioned promotion of European works, regarding commercial communications and also in relation to the need to register audiovisual media service providers.

Consulta Pública Previa a efectos de elaborar un proyecto de norma reglamentaria relativa al desarrollo de la obligación de promoción de obra audiovisual europea en los servicios de Comunicación Audiovisual.

https://portal.mineco.gob.es/es-es/ministerio/participacionpublica/consultapublica/Paginas/consulta_publica_obligacion_promocion_obra_audiovisual_europea.aspx

Prior public consultation with a view to drawing up a draft regulation on the development of the obligation to promote European audiovisual works in audiovisual media services.

Consulta Pública Previa para la elaboración de un proyecto de norma reglamentaria de desarrollo de la Ley 13/2022, de 7 de julio, General de Comunicación Audiovisual, relativa a las Comunicaciones Comerciales Audiovisuales.

https://portal.mineco.gob.es/es-es/ministerio/participacionpublica/consultapublica/Paginas/consulta_publica_comunicaciones_comerciales_audiovisuales.aspx

Prior Public Consultation for the preparation of a draft regulation implementing Law 13/2022, of 7 July, General Audiovisual Communication Law, on Audiovisual Commercial Communications.

Consulta pública previa a efectos de elaborar un proyecto de norma reglamentaria relativa al Registro Estatal de prestadores del servicio de comunicación audiovisual, de prestadores del servicio de intercambio de vídeos a través de plataforma y de prestadores del servicio de agregación de servicios de comunicación audiovisual y el procedimiento de comunicación previa de inicio de actividad

https://portal.mineco.gob.es/es-es/ministerio/participacionpublica/consultapublica/Paginas/Consulta_publica_Registro_Estatal.aspx

Prior public consultation for the purpose of drawing up a draft regulation on the State Register of audiovisual communication service providers, video exchange service providers through a platform and audiovisual communication service aggregation service providers and the procedure for prior notification of the commencement of activity

Ley 13/2022, de 7 de julio, General de Comunicación Audiovisal. Boletín Oficial del Estado, 163.

https://www.boe.es/diario_boe/txt.php?id=BOE-A-2022-11311

Law 13/2022, of 7 July, General Audiovisual Communication. Official State Gazette, 163.

[ES] Ruling against Spanish Football League piracy

Pedro Gallo Buenaga & Mª Trinidad García Leiva
Diversidad Audiovisual / UC3M

The National Professional Football League and the pay-TV service Movistar Plus+ have won a lawsuit filed by both entities to prevent the piracy of content from the National League Championship, known as LaLiga, managed by the former organism. Telefónica, the telecom company that owns Movistar Plus+, has shared part of the ruling of Barcelona's Commercial Court No. 9 of 25 July 2022, which empowers the operator to block websites that facilitate piracy. This court decision came into force a few days before the start of the championship, whose first match day took place on 12 August; it will be active until the end of 2024/2025 season.

Although there have been previous court orders in Spain blocking pirate websites that infringed LaLiga's broadcasting rights, this new ruling has a clear precedent in the one issued on 21 December 2021 by Barcelona's Commercial Court No. 6. The 2021 decision enabled dynamic protection mechanisms for blocking pirated content hosted on the Internet, since it authorised weekly communications between LaLiga and/or Telefónica with the main Internet service providers —including, in turn, Telefónica— to block pirate websites without the need to notify the court in advance.

Telefónica argues that this protective measure is necessary because numerous cases of digital piracy have been detected that affect the exploitation of their broadcasting rights, since different models of piracy of audiovisual content on the Internet are used. In this respect, the number of unlawful domains cited in the new ruling is well above previous similar court decisions and it identifies many of the technological practices that allow the illegal sharing of content, like P2P streaming.

In addition, it should be noted that LaLiga is a highly strategic asset for Movistar Plus+, the sole owner of its broadcasting rights in Spain, along with the streaming service DAZN. Not in vain, the *Comisión Nacional de los Mercados y la Competencia* (National Markets and Competition Commission - CNMC), the body that promotes and ensures the proper operation of the markets, issued various reports analysing the conditions for selling the broadcasting rights of this world renowned championship (see IRIS 2022-4/8).

It is also worth mentioning that, in a related ruling, Movistar Plus+ won another lawsuit, filed alone, which will also allow the operator to obtain weekly blocking of websites that facilitate piracy of any of the audiovisual content it owns. Thus, all content on the Movistar Plus+ platform will be protected through the weekly mechanism of blocking pirate domains enabled by the courts, as well as the content of those OTTs with which Movistar has different commercial agreements.

LaLiga y Movistar Plus+ ganan una demanda conjunta para evitar la piratería

https://www.telefonica.es/es/sala-comunicacion/laliga-y-movistar-plus-ganan-una-demanda-conjunta-para-evitar-la-pirateria/

LaLiga and Movistar Plus+ win a class-action lawsuit to avoid piracy

FRANCE

[FR] Abolition of TV licence fee conditionally approved by Constitutional Council

Amélie Blocman
Légipresse

Under the *Loi de finances rectificative pour 2022* (Amended Finance Law for 2022, law no. 2022-1157 of 16 August 2022), the television licence fee that funds French public broadcasters (France Télévisions, Arte-France, Radio France, RFO, RFI) and the *Institut national de l'audiovisuel* (National Audiovisual Institute) was abolished. The EUR 138 fee (EUR 88 in the French overseas territories) was paid by every taxable household and brought in EUR 3.7 billion to the state each year. It will be replaced by a percentage of VAT revenue until the end of 2024. In particular, Article 6 of the law revokes Article 1605 of the *Code général des impôts* (General Tax Code) and amends Article 46 *Loi de finances* (Finance Law) of 30 December 2005.

Asked to examine the law by opposition MPs, the *Conseil constitutionnel* (Constitutional Council) ruled that the provisions conformed with the Constitution, but only under conditions that the legislator must take into account when taking future decisions.

In their appeal, the MPs claimed, firstly, that the abolition of the licence fee ignored a fundamental principle recognised in national law and enshrined in the Law of 31 May 1933 fixing the general budget for the 1933 financial year, which stated that public broadcasters should be funded by means of a licence fee. However, the Constitutional Council decided that, since Article 109 of the Law of 31 May 1933 – under which the licence fee had been created – had neither the purpose nor the effect of establishing such a principle, the complaint that it had been ignored should be rejected.

The Constitutional Council explained that radio listeners and television viewers, who were among the main beneficiaries of the freedom proclaimed in Article 11 of the Declaration of the Rights of Man and of the Citizen, should be able to exercise their freedom of choice without private interests or the state imposing their own decisions. It was true that, by abolishing the TV licence fee with effect from 1 January 2022, the disputed provisions were likely to jeopardise the financing and, therefore, the independence of the public broadcasters, which was essential for the freedom of communication. However, the provisions stated, firstly, that the licence fee income for 2022 would be replaced by an equivalent amount of VAT revenue. Secondly, from 1 January 2023 until 31 December 2024, public broadcasters would be funded from a percentage of VAT revenue to be fixed each year under the annual finance law.

The legislator would therefore be responsible for fixing the amount of income, firstly in the 2023 and 2024 finance laws and, secondly, for the period after 31

December 2024, to enable the public broadcasters to fulfil their public service remit. Subject to this condition, the new method of funding public broadcasting was therefore ruled to be in conformity with the French Constitution.

Loi n° 2022-1157 du 16 août 2022 de finances rectificative pour 2022, JO du 17 août 2022

https://www.legifrance.gouv.fr/download/pdf?id=S6W9hplEgJTWvy0M5B4OGe-nam6aCtsgM2LdqywZyGE=

Amended Finance Law for 2022, law no. 2022-1157 of 16 August 2022, Official Journal of 17 August 2022

Décision n° 2022-842 DC du 12 août 2022, JO du 17 août 2022

https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000046186787

Decision no. 2022-842 DC of 12 August 2022, Official Journal of 17 August 2022

[FR] Conseil d’Etat rejects appeals against EUR 200 000 fine imposed by CSA against CNews

Amélie Blocman
Légipresse

Following the broadcast of the programme “Face à l'info” on CNews on 20 September 2020, the *Conseil Supérieur de l'Audiovisuel* (French audiovisual regulatory body – CSA) (now ARCOM) fined the broadcaster EUR 200,000 pursuant to Article 42-1 of the Law of 30 September 1986 after the political commentator Eric Zemmour said several times on air that foreign “unaccompanied minors” were “for the most part”, “thieves”, “rapists” and “murderers”. Eric Zemmour and the broadcaster both asked the *Conseil d’Etat* (Council of State) to cancel the fine.

The *Conseil d’Etat* began by rejecting the request of Eric Zemmour, who had not been directly sanctioned under the decision. Pursuant to the *Loi sur la communication audiovisuelle* (Audiovisual Communication Law), CNews was the only party entitled to appeal to the *Conseil d’Etat* against the CSA’s decision. Even though Eric Zemmour had made the remarks in question, and even though the sanction harmed his reputation, he did not have the right to ask for it to be annulled.

The *Conseil d’Etat* then ruled on the request filed by CNews. The CSA had correctly decided that the broadcast of the comments, which had incited hatred and discriminatory conduct, infringed the provisions of Article 15 of the Law of 30 September 1986. The channel had also failed in its obligation to retain control over the content of its programmes. The CSA had noted that none of the other people in the studio had reacted sufficiently strongly to the comments. Finally, the comments had been broadcast without being edited, even though the programme had been transmitted with a slight delay.

As far as the size of the fine was concerned, the *Conseil d’Etat* held that, in view of the seriousness of the offences, a EUR 200 000 fine, which represented approximately 0.5% of the broadcaster’s pre-tax turnover for the previous financial year, was not disproportionate. The request of CNews was therefore rejected.

Conseil d'État, 12 juillet 2022, Sté d'exploitation d'un service d'information et É. Zemmour

http://www.conseil-etat.fr/fr/arianeweb/CE/decision/2022-07-12/451897

Council of State, 12 July 2022, Sté d'exploitation d'un service d'information and E. Zemmour

[FR] Reporters Without Borders constitutionality application rejected

Amélie Blocman
Légipresse

The Reporters Without Borders organisation asked the *Conseil d'Etat* (Council of State) to annul a decision of 5 April 2022 in which the *Autorité de régulation de la communication audiovisuelle et numérique* (Regulatory Authority for Audiovisual and Digital Communication – ARCOM) had rejected its request to issue a formal notice to the broadcaster CNews pursuant to Article 42 of the Law of 30 September 1986. Reporters Without Borders requested that the Constitutional Council should verify the constitutionality of Articles 3-1, 13 and 42 of the law. It argued that, by adopting these provisions, the legislator had disregarded the scope of its competence. It had failed to provide the legal guarantees necessary to ensure respect for the free communication of ideas and opinions enshrined in Article 11 of the Declaration of the Rights of Man and of the Citizen and for the constitutional principles of media pluralism and independence, in particular by omitting to take measures to prevent shareholders interfering in broadcasters' editorial decisions.

The *Conseil d'Etat* held that the applicant was, in effect, disputing the constitutionality of the third paragraph of Article 3-1 of the Law of 30 September 1986, according to which ARCOM should guarantee "the integrity, independence and pluralism of information and programmes (...). It shall ensure that the economic interests of the shareholders of audiovisual communication service providers and their advertisers do not infringe these principles."

The *Conseil d'Etat* recalled the provisions of Article 13 of the Law of 30 September 1986: "ARCOM shall ensure respect for the pluralistic expression of schools of thought and opinion in radio and television programmes, in particular political and general news programmes (...)". It also referred to Article 42 of the law, which stated that formal notices could be issued to editors and distributors of audiovisual communication services, requiring them to meet their obligations under legislative and regulatory texts and principles, including the principles set out in Articles 1 and 3-1. It also pointed out that respect for the integrity and pluralism of information and programmes was among the criteria taken into account when broadcasting licences were granted to new free-to-air terrestrial services that were subject to an agreement with ARCOM (Article 28 of the Law of 30 September 1986). Moreover, since 2017, under Article 30-8 of the law, all providers of national mainstream radio and free-to-air television services that broadcast political and general news programmes had been required to appoint a committee composed of independent members to monitor the integrity, independence and pluralism of information and programmes.

The *Conseil d'Etat* concluded that, pursuant to these provisions, ARCOM was responsible for ensuring that radio and television services respected freedom of communication and the constitutional principles of media pluralism and

independence. In the light of ARCOM’s prerogatives under current legislation, in particular its power to issue formal warnings and sanctions, especially at the request of freedom of information organisations that were recognised as serving the public interest or on the basis of information provided by the independent committee established under Article 30-8 of the Law of 30 September 1986, and which it exercised under the authority of the courts, including if it failed to properly exercise these prerogatives, Reporters Without Borders had no grounds to claim that the disputed provisions undermined the legal guarantee of the constitutional requirements of Article 11 of the Declaration of the Rights of Man and of the Citizen and Article 34 of the Constitution. Similarly, the allegation that the law infringed the freedom of communication and expression, as well as the constitutional principles of media pluralism and independence, did not raise a new question and was not to be taken seriously. There was therefore no reason to refer the matter to the Constitutional Court.

Conseil d'État, 1er juillet 2022, n° 463162, Reporter sans frontières

http://www.conseil-etat.fr/fr/arianeweb/CE/decision/2022-07-01/463162

Council of State, 1 July 2022, no. 463162, Reporters Without Borders

UNITED KINGDOM

[GB] The Intellectual Property Enterprise Court determines that the ‘Del Boy’ character in Only Fools and Horses can be protected under copyright as a literary work

Julian Wilkins
Wordley Partnership

The Intellectual Property Enterprise Court (IPEC) has determined that a dining experience company, Only Fools The (cushty) Dining Experience and other associated defendants (collectively referred to as the Dining Experience) had borrowed characters and features from the successful Only Fools and Horses TV comedy series (OFAH) thus infringing its copyright. Further, the IPEC determined that the character of ‘Del Boy’ was a literary work and the Dining Experience had infringed its copyright by using many distinctive characteristics. This is the first time in the UK that copyright has been found to subsist in a character itself, independent of the underlying work. The claimant’s claim for passing off also succeeded.

The Claimant was Shazam Productions Limited (Shazam) who owned the rights to the OFAH scripts. Shazam was formed by the late scriptwriter John Sullivan who wrote the OFAH scripts. Shazam was run by his family and licenced the rights, for instance to the BBC who had originally produced the TV series. There was also a successful West End theatre version of OFAH which acknowledged that rights had been licensed from Shazam.

The Dining Experience had created a theatrical experience for its audience by providing an interactive three-course meal while actors played the characters of OFAH such as Del Boy and his younger brother, Rodney. The actors had the appearance, behaviour and voices of the OFAH characters and used their phrases.

Although the Dining Experience had created its own script, it used jokes from the original scripts. The characters replicated, albeit according to the Defendants' evidence in an exaggerated way, those from the TV series. The Dining Experience also used the music and lyrics written by John Sullivan from the OFAH TV show.

The IPEC decided that UK copyright existed in each of the scripts but that there was no overall copyright in a compilation of the scripts. The court also upheld the copyright in the theme song and lyrics.

The Judge (John Kimbell Q.C., sitting as a Deputy High Court Judge) held that copyright subsisted in the character of Del Boy as a literary work for the purposes of copyright law.

The Del Boy character was not a stock character or cliché but was a creation of John Sullivan’s intellectual work and was based upon his experiences growing up

in London. The Judge compared some of the scripts with the TV production. The character was not an interpretation by its actor, but Del Boy's characteristics had been written into the script, for instance mispronounced French, and stock phrases such as 'Lovely Jubbly' and 'Cushty'. The character was indiscernible from the script and its dialogue. The Judge did not consider that the Del Boy character was a dramatic work in copyright law.

The court used the two-stage test set out in *Cofemel v G-Star Raw*, Case C-638/17, and held that both the 'originality requirement' and the 'identifiability requirement' were met. Such approach was consistent with that taken by the German and US courts when determining rights relating to fictional characters.

The Dining Experience contended that their show was intended to be a homage or a form of pastiche, caricature or parody. The court disagreed given the clear use of copyrighted material, and inconsistencies in evidence between key members of the defendants creative and production team. Furthermore, their marketing material promoted the show as if the audience were actually sitting in the TV show.

The Dining Experience was neither parody nor pastiche using the fair dealing exception under section 30A of the Copyright, Designs and Patents Act 1988. The fair dealing exception of parody requires a defendant to show they were evoking an existing work while being different to it, and the intention must be to express humour or mock the work, or engage with it critically (this is a principle taken from the Deckmyn case). However, the Dining Experience made significant use of characters, backstories and the language so their work was akin to a facsimile.

Likewise, the defence of pastiche failed as the Dining Experience was effectively recreating what was in the TV show instead of creating an original production that alluded to OFAH but maintained its own uniqueness and originality.

The Court upheld the passing off claim finding that Shazam had goodwill in the title OFAH and lead characters, especially Del Boy. The Dining Experience had misrepresented their production name to suggest it was licensed or approved by Shazam with the consequential risk of misleading or confusing an audience with the risk they may attend the Dining Experience instead of the recently launched West End theatre version of OFAH.

Shazam Productions v Only Fools the Dining Experience [2022] EWHC 1379 IPEC

http://www.bailii.org/ew/cases/EWHC/IPEC/2022/1379.html

[GB] Broadcasters allowed to film from Crown Court sentencing hearings in England and Wales

Alexandros K. Antoniou
University of Essex

Following a successful pilot scheme, authorised broadcast news channels are now able to air judges' sentencing hearings in Crown Courts across England and Wales. Crown Courts handle serious criminal cases (like murder and rape) and appeals from magistrates' courts. They usually consist of a jury who decides on issues of guilt and a judge who is responsible for sentencing. Further guidance on broadcasting sentencing remarks was published by Her Majesty's Courts and Tribunals Service (HMCTS) on 27 July 2022. This is a further step towards the modernisation of the courts, including journalists' permission to use live text-based communications, like tweeting, in the court room.

Only authorised media can apply to the judge and film sentencing hearings in open court and broadcast their footage (either on TV or in their online news bulletins). These include the BBC, ITN, SKY and PA Media, who can make their footage (including stills from the filming) available to other news outlets. Authorised media parties can only record and broadcast the sentencing remarks of those cases being heard by a High Court judge, a Senior Circuit Judge with significant leadership and management duties (as a Resident Judge), or a Senior Circuit Judge whose base court is the Old Bailey (the Central Criminal Court).

Recording is allowed in accordance with any conditions imposed by judges, who may also consider allowing live broadcasts, if requested by authorised media parties. If such a request is approved, there will be a short (10-second) delay before broadcast to ensure that reporting restrictions are being complied with. So, filming may need to be appropriately edited before leaving the courtroom. Filming is restricted to the judge alone who will be seen on camera as they deliver their sentencing remarks. Any other court user, including victims, witnesses, defendants, jurors, and court staff, cannot be filmed, presumably to respect their privacy and avoid sensationalising cases.

There is also a specific process in place. Authorised media must apply for approval at least five working days before the sentencing hearing. A judge will give a provisional decision, which may be revised on the day of the hearing. However, the criteria for refusing an application or withholding permission are still uncertain. The prosecution, defence, victims, or their relatives cannot make any representations and the judge's decision is final. Broadcasters are required to make their footage publicly available online via a hosting platform within one working day of the hearing. Sky News hosts a dedicated YouTube channel for all the recorded hearings. HMCTS retains the copyright of the footage and can access any footage taken by broadcasters.

Importantly, a broadcast of sentencing remarks must be fair and accurate having regard to the overall content of the report as well as the context in which the broadcast is presented. A broadcast cannot be for political purposes; advertising (except where such promotion relates to a report of proceedings that includes a broadcast), light entertainment or satire.

The filming and broadcasting from Crown Courts were given legal grounding by The Crown Court (Recording and Broadcasting) Order 2020, but the implementation of the new measures was delayed by the Covid-19 pandemic. Audiences are now able to see a judge's summary of the case in question, their full reasoning for a particular sentence (including balancing aggravating and mitigating factors in sentencing guidelines) and explanation of the relevant law. The changes aim to promote public engagement with the justice system, increase its transparency and raise awareness of the meaning of the rule of law. However, the Bar Council has previously warned that sentencing "must not become an armchair, spectator sport."

The 2020 Order prescribes the conditions to be satisfied for the visual and sound recording and where these are satisfied, legislation that bans photography and filming in courts and their precincts (section 41 of the Criminal Justice Act 1925), as well as legislation that makes it illegal to record sound in court and broadcast any audio-recording of court proceedings except with the court's permission (section 9 of the Contempt of Court Act 1981), will not apply. The first sentencing that was filmed under the conditions of the 2020 Order was on 28 July 2022 at the Old Bailey. Sarah Munro QC became the first Crown Court judge in England and Wales to be filmed live in court as she jailed 25-year-old Ben Oliver to life for the "ferocious" killing of his bedbound grandfather in a knife attack in May 2022.

Filming in the Supreme Court, which considers complex legal issues about all of UK law, has been permitted since its 2009 inauguration (although this is carried out by the court itself) and the television broadcasting of Court of Appeal proceedings has been possible in specified circumstances since 2013 under the Court of Appeal (Recording and Broadcasting) Order 2013. Broadcasting of entire trials will remain off-limits in contrast to other countries where filming from courts is more common. Recent high-profile examples include the Oscar Pistorius murder trial in South Africa and the Johnny Depp defamation trial in the US.

Broadcasting Crown Court sentencing

https://www.gov.uk/guidance/broadcasting-crown-court-sentencing

The Crown Court (Recording and Broadcasting) Order 2020

https://www.legislation.gov.uk/uksi/2020/637/contents/made

'Filming in criminal courts moves a step closer with draft legislation'

https://pressgazette.co.uk/filming-in-criminal-courts-moves-step-closer-with-draft-legislation/

'Old Bailey judge jails "ferocious" killer for life in first sentencing live on TV'

https://www.telegraph.co.uk/news/2022/07/28/old-bailey-judge-becomes-first-history-sentence-live-tv/

ITALY

[IT] AGCOM releases its performance plan for the years 2022–2024

Sofia D'Arena & Ernesto Apa
Portolano Cavallo

On 1 July 2022, through Resolution No. 225/22/CONS, the Italian Communications Authority ("AGCOM") published its performance plan for the years 2022–2024 ("Performance Plan"), which sets forth its strategic goals for the next three years, as well as annual targets for the actions designed to achieve those goals. It is notable that the Performance Plan sets out said strategic goals and annual targets taking into account (i) for the first time, the outcomes of a public consultation and (ii) powers recently granted to AGCOM; changes arising from the transposition of several European directives into Italian law; and the digital transition goals set by the Italian National Recovery and Resilience Plan ("PNRR").

The Performance Plan outlines AGCOM's strategic and annual goals, as follows:

1) Implementing the new European provisions in an efficient and harmonious manner, consistent with national regulatory provisions.

AGCOM shall enable the European legal system to keep up with the effects of digitalisation processes on fundamental rights and competition. In the light of this, the Performance Plan sets out the following annual goals, among others:

- providing guidelines setting forth new methods for identifying positions detrimental to pluralism, in the light of the criteria established by Legislative Decree No. 208/2021 ("AVMS Code");

- providing guidelines and procedures for supervisory and sanctioning activities designed to guarantee fair competition in the online ecosystem, as well as promoting fair and transparent service conditions for users, as provided by EU Regulation 1150/2019 ("P2B Regulation");

- providing preliminary regulations about the new supervisory, sanctioning, and dispute resolution powers attributed to AGCOM by Legislative Decrees No. 177/2021 and 181/2021, respectively transposing EU Directives 2019/790 ("Copyright Directive") and 2019/789 ("SATCAB Directive") into Italian law,

2) Promoting a pro-competitive network regulation that supports digital economy growth, while also taking into account the goals established by the PNRR, with a view to bridging the *digital divide.*

The country needs uniform high-speed connectivity in all areas to make the digital transition. Annual Performance Plan goals in this area include the following:

- providing guidelines setting forth the conditions for accessing the financed infrastructure that will be applied by successful bidders in order to ensure the widest response to calls for wholesale bids to implement public plans for ultra broadband, “Italia 1 Giga” and “5G”.

3) Ensuring greater pro-competitive and convergent effectiveness of the regulation by reducing asymmetry between old and new players operating in the current digital ecosystem.

To regulate the digital reality, AGCOM is going to take a new approach that will be based on (i) providing common principles for all players in the current digital ecosystem and (ii) general and flexible rules more attentive to content and service usage. Annual Performance Plan goals in this area include the following:

- providing guidelines for platform providers to draft codes of conduct that extend the scope of user-protection tools to cover online video-sharing platforms. The aim is to create a level playing field among all players operating in the same ecosystem, based on new AGCOM powers in relation to video-sharing platforms.

4) Protecting pluralism and constitutional rights in communications, including in the new digital ecosystem.

AGCOM will oversee the new commercial strategies in the current digital ecosystem and take action if they prove detrimental to users/consumers. At the same time, AGCOM will foster user awareness of the (i) technical/economic characteristics of the products and services that can be purchased on the market and (ii) contractual terms and legal and regulatory provisions that enshrine users’ rights. Annual Performance Plan goals in this area include the following:

- updating audiovisual content ratings to rate content harmful to minors in a uniform manner across all operators (television broadcasters, video-sharing platforms, internet service providers);

- providing a regulation pursuant to Section 41, para. 9 AVMS Code to limit dissemination of harmful content on online content-sharing platforms, as well as monitoring disseminated content to verify its compliance with the principles of pluralism and protection of human dignity, including by drafting a monitoring report.

5) Promoting digital literacy and culture and protecting the most vulnerable.

Digital literacy and conscious use of media are essential for countering disinformation and hate speech and mitigating any risks posed by online media use, especially to minors. Promoting digital culture may include AGCOM actions that take into account changes in public discourse and the evolving technological, social, and market context where various media operate. To this end, AGCOM shall carry out knowledge surveys, collaborate with the research community, and participate in policy debate at the European level. Additionally, since online information consumption is increasingly taking place through algorithmic sources (such as search engines and social networks), the protection of pluralism ensured

by AGCOM should include transparency when it comes to algorithmic decisions. Annual Performance Plan goals in this area include the following:

- embracing communication initiatives designed to promote lawfulness online and provide “digital citizenship” education to counter dissemination of illegal content on the Internet and prevent related risks;

- strengthening activities surrounding consumer digital literacy on transparency, contracts, withdrawal rights, and electronic communication service features in cooperation with the Ministry of Economic Development.

6) Strengthening the economy, effectiveness, efficiency, and transparency of administrative action, including by monitoring compliance with proceeding timeframes.

AGCOM's economic management shall be made more efficient. Moreover, AGCOM shall develop “digital administration” services and complete the dematerialisation process for information and documents. Annual Performance Plan goals in this area include the following:

- reviewing the regulations and specific supervisory activities related to audiovisual commercial communications, bringing them in line with the new regulations on advertising crowding limits.

7) Simplifying AGCOM's regulatory framework for users, the market, and increased internal efficiency, including by drafting a unitary code setting forth consumer and user protection rules.

Annual Performance Plan goals in this area include the following:

- reviewing the regulatory framework for the protection of end users and quality of services with an eye to streamlining it. This should take place before a unitary code is drafted.

AGCOM, Delibera n. 225/22/CONS recante “Piano della performance 2022 – 2024 dell’Autorità per le garanzie nelle comunicazioni”

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=27255211&_101_INSTANCE_FnOw5lVOIXoE_type=document

AGCOM, Resolution No. 225/22/CONS setting forth “Performance plan 2022-2024 of the AGCOM”

[IT] AGCOM fines a video sharing platform (Youtube) for the first time

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

With decisions nn. 275/22/CONS and 288/22/CONS published on 4 August 2022, AGCOM issued severe penalties against a website (Top Ads Ltd) and, for the first time, the video-sharing platform YouTube with a "notice and take down" order for 625 instances of illegal content and a "*notice and stay down*" order for prohibited gambling advertising of similar unlawful content.

The investigation conducted by the Italian Authority found a violation of Article 9 of the Italian decree-law n°. 87/218 prohibiting direct and indirect gambling advertising (advertising for games with cash prizes) and imposing several levels of liability, depending on the actor involved (the client, the owner of the medium where the ad is disseminated, the organiser of the event).

Therefore, Top Ads Ltd was fined EUR 700,000 for having disseminated prohibited gambling advertising on its website www.spikeslot.com and its related five YouTube channels

Furthermore, and for the first time, AGCOM issued a separate sanction against the hosting service provider involved in this case: the video-sharing platform YouTube.

Following the investigation, AGCOM fined the video sharing platform EUR 750,000 for not having adopted any measures to remove illegal content disseminated on a large scale on its platform by one of its "verified partners" (a client linked with a specific contract of partnership).

This is the second case where AGCOM has held the Google group responsible for allowing the dissemination of advertising of online games with cash prizes. In October 2020 (with resolution no. 541/20/CONS), AGCOM issued a fine of EUR 100,000 (EUR 50,000 for each day of violation found) for violating the ban on advertising the game by the Google search engine. This latest case has two new, and crucial features: i) the first fine issued against a video sharing platform (YouTube) due to a partnership agreement with the content creator; ii) AGCOM added "notice and take down" orders for 625 instances of illegal content and a "notice and stay down" order for future content uploaded by the same creator, analogous or similar to those sanctioned.

Delibera n. 288/22/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=27603176&_1

01_INSTANCE_FnOw5lVOIXoE_type=document

Decision no. 288/22/CONS

Delibera n. 275/22/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=27603045&_101_INSTANCE_FnOw5lVOIXoE_type=document

Decision no. 275/22/CONS

MALTA

[MT] State Broadcaster and Broadcasting Authority fined by Court

Pierre Cassar
University of Malta

The First Hall Civil Court, sitting in its Constitutional Jurisdiction, delivered judgement in the case filed by the Nationalist Party against the State Broadcaster (PBS) and the Broadcasting Authority (BA).

The Nationalist Party sought redress from the Courts of Law following a ruling by the regulator directing the state broadcaster to grant a right of reply to the plaintiff following a feature on a magazine programme which was deemed to be too political in nature and warranted a reaction from the party in opposition.

Despite this decision, the state broadcaster refused to broadcast the right of reply and it was only after the Nationalist Party filed a second complaint with the BA that PBS acceded to broadcasting the right of reply. In addition, the station was also handed an administrative penalty of EUR 4,660 as contemplated by the Broadcasting Act. However, this fine was suspended following the broadcast of the right of reply.

The Nationalist Party called on the Courts to declare that its constitutional rights were breached due to the lengthy delay in the broadcasting of its right of reply. The Court agreed with the plaintiff and slammed the state broadcaster and the regulator for failing in their constitutional obligations.

Given that in Malta PBS enjoys a dominant position and its leading channel is the most popular linear station on the island, the Court stressed that it was imperative for such a station, with peak audiences during news hour, to provide “impartial and precise information as well as an array of opinions and comments reflecting diverse political views in the country”.

The Court observed that the case in question took place when a general election was looming and therefore time was of the essence. In his ruling, the Judge remarked that the Authority had failed to ensure impartiality “with speed and proactivity that was needed in broadcasting, especially at a time of persistent rumours and clear indications that a general election was imminent - as in fact it was.”

The public broadcaster was also slammed for its refusal to comply with a directive issued according to law by the regulator. The Court remarked that PBS could easily have broadcast the right of reply and then sought a judicial review of the case at a later stage.

Meanwhile, a second grievance brought to the attention of the court by the Nationalist Party in the same case was not upheld by the court given that the party had failed to file the second complaint with the regulator. This grievance revolved around a series of political adverts aired on the main state channel in conjunction with the 2022 budget. The Nationalist Party had been awarded a remedy in the form of similar spots to be aired on national television but the plaintiff claimed that the impact of such spots was neutralized as these were 'sandwiched' between government informational adverts.

The state broadcaster and the Broadcasting Authority were each fined EUR 1,500. The BA has since appealed this judgement with the outcome still pending.

Case 73/2022 - PARTIT NAZZJONALISTA vs AWTORITA TAX-XANDIR ET

https://ecourts.gov.mt/onlineservices/Judgements/Details?JudgementId=0&CaseJudgementId=133330

Case 73/2022 - Nationalist Party vs Broadcasting Authority

NETHERLANDS

[NL] New Bill requiring major streaming platforms to invest in Dutch productions

Ronan Ó Fathaigh
Institute for Information Law (IViR)

On 18 July 2022, the State Secretary for Culture and Media (Staatssecretaris Cultuur en Media) introduced a new Bill to the Lower House of Parliament (*Tweede Kamer*), which will amend the Media Act (*Mediawet*) 2008, and impose an obligation on major streaming platforms to invest in Dutch audiovisual productions. The State Secretary also announced in a Letter to Parliament a series of new measures to strengthen the Dutch audiovisual sector.

Crucially, a new Article 3.29e will be inserted into the Media Act, requiring providers of on-demand audiovisual media services to invest in Dutch audiovisual productions, which will amount to 4.5% of a provider's annual turnover. The obligation will also apply to providers under the jurisdiction of another EU member state and provide an on-demand service that is "wholly or partly aimed" at the public in the Netherlands. The investment obligation only applies to providers of on-demand services with a turnover of EUR 30 million per year which is generated in the Netherlands, including from advertising, subscriptions, user transactions, sponsorship, and product placement. The Media Authority (*Commissariaat voor de Media -CvdM*) may grant an exemption where it would be unjustified in view of the nature of the media service concerned.

Further, a new Article 3.29f defines a Dutch audiovisual production as a documentary film, documentary series, drama series or feature film, which meets at least two of the following conditions: (a) the original screenplay is predominantly written in the Dutch or Frisian language; (b) the main characters express themselves predominantly in the Dutch or Frisian language; (c) the screenplay is based on an original literary work in the Dutch or Frisian language; or (d) the main theme is related to Dutch culture, history, society or politics. Importantly, a new Article 3.29g sets out the types of required investments, including (a) investment in Dutch productions or co-productions; (b) acquisition of an exploitation license in respect of an unfinished Dutch production; or (c) the acquisition of an operating license in respect of a Dutch production that is not older than four years at the time of acquisition. Finally, part of the investment should benefit independent producers to ensure a diverse range.

In addition to the Bill, the State Secretary is making EUR 11.5 million available for the so-called Netherlands Film Production Incentive High-end series, an arrangement of the Netherlands Film Fund (*Nederlands Filmfonds*) for series that are relatively expensive to produce; and a further EUR 5 million to cover independent productions that are not financed by the Film Fund. While there will be an investment of EUR 1 million so that 18 Dutch feature films can be seen on public broadcasting earlier and longer; and EUR 6 million made available to movie

theaters to replace digital projectors.

Staatssecretaris Cultuur en Media, "Grote streamingdiensten moeten meer investeren in Nederlandse producties", 18 juli 2022

https://www.rijksoverheid.nl/regering/bewindspersonen/gunay-uslu/nieuws/2022/07/18/grote-streamingdiensten-moeten-meer-investeren-in-nederlandse-producties

State Secretary for Culture and Media, "Major streaming services must invest more in Dutch productions", 18 July 2022

Voorstel van wet tot wijziging van de Mediawet 2008 in verband met het invoeren van een investeringsverplichting ten behoeve van Nederlands cultureel audiovisueel product, 15 juli 2022

https://www.rijksoverheid.nl/regering/bewindspersonen/gunay-uslu/documenten/kamerstukken/2022/07/15/wetsvoorstel-wijziging-mediawet-2008

Bill to amend the Media Act 2008 in connection with the introduction of an investment obligation for the benefit of the Dutch cultural audiovisual product, 15 July 2022

[NL] New government measures to protect media freedom and safety

Ronan Ó Fathaigh
Institute for Information Law (IViR)

On 29 June 2022, the State Secretary for Culture and Media (*Staatssecretaris Cultuur en Media*) and Minister for Justice and Security (*Minister van Justitie en Veiligheid*) announced a series of new measures to protect press freedom and safety in the Netherlands. The new measures are contained in a Letter to Parliament, and follow the publication of three reports on press freedom and safety of journalists in the Netherlands by Reporters Without Borders, Media Freedom Rapid Response, and the Netherlands Institute for Human Rights (*College voor de Rechten van de Mens*), which are referenced in the Letter. The Letter first notes that threats against journalists, cameramen, photographers and other media professionals have increased in recent years in the Netherlands, and the rapid increase in threats and intimidation of journalists is “part of a broader and worrying social development of lack of trust and polarisation in society”. This is putting pressure on press freedom in the Netherlands, and there is a need to “further strengthen press freedom and safety”. As such, the Letter sets out new government actions to further strengthen press freedom and safety.

First, the government will extend financial support to the PersVeilig initiative until at least 2024. PersVeilig is a joint initiative of the Dutch Association of Journalists, the Dutch Association of Editors in Chief, the Police and the Public Prosecution Service, and aims to strengthen the position of journalists against violence and aggression, including for reporting threats, and to provide training; and has been in existence since November 2019. Further, for freelance journalists, the government announced that the Freelancers Flexible Protection Package will run until at least 2023, where freelancers can be provided with protective equipment for both work and home environments in the event of a threat or risk.

Second, in terms of media literacy, the State Secretary and the Dutch Media Literacy Network (*Netwerk Mediawijsheid*) will develop an approach to increase citizens' awareness of the role of journalism, to ensure people understand the watchdog role journalism fulfills and that a democracy cannot exist without a free, critical and independent press. In this regard, programmes will include awareness-raising, public campaigns and public debate on this theme.

Third, the government wants to ensure a properly functioning system to combat online intimidation of journalists. The State Secretary for Culture and Media, and the State Secretary of the Interior and Kingdom Relations, will organise a roundtable with the Dutch Association of Journalists (NVJ), the Association of Editors in Chief, the Police, the Public Prosecution Service, and relevant social media platforms, to discuss which interventions can be effective here. One option may be to establish a so-called “trusted flaggers” that can report harassment to online platforms, so that they are dealt with in a timely manner and with priority,

especially with the EU's Digital Services Act, coming into force in 2024.

Finally, research will be conducted into specific aspects and target groups of harassment against journalists, such as online intimidation, aggression against female journalists and against journalists with a non-Western background; with the results providing insight for better policy.

Staatssecretaris Cultuur en Media, "Extra maatregelen voor meer persveiligheid", 29 juni 2022

https://www.rijksoverheid.nl/regering/bewindspersonen/gunay-uslu/nieuws/2022/06/29/extra-maatregelen-voor-meer-persveiligheid

State Secretary for Culture and Media, Extra measures for additional press safety", 29 June 2022

Ministerie van Onderwijs, Cultuur en Wetenschap, Plan van aanpak persvrijheid en persveiligheid, 29 juni 2022

https://www.rijksoverheid.nl/regering/bewindspersonen/gunay-uslu/documenten/kamerstukken/2022/06/29/plan-van-aanpak-persvrijheid-en-persveiligheid

Ministry of Education, Culture and Science, Plan for press freedom and press safety, 29 June 2022

POLAND

[PL] Work on the law on professional artists

Dariusz Tarabasz
KC Legal

Legislative work on the Law on Professional Artists is nearing completion. A new draft has been published on the pages of the Government Legislation Centre. The draft is expected to go to the Parliament (*Sejm*) in the near future.

The aim of the draft is to provide the lowest-earning artists with a subsistence minimum. Among other things, the draft provides for a surcharge on mandatory social and health insurance premiums. The surcharge is to be a social benefit. Funds for the surcharge are to come from the reprographic fee. This fee has been in operation in Poland since 1994 and is collected from manufacturers of devices that allow the permitted (fair) use of protected works. It is intended as a kind of lump-sum compensation for artists. In Poland, the list of devices has not been updated for more than a dozen years and the fee still covers only tape recorders and VCRs, as well as audio and VHS cassettes. As such, the revenue from this fee is constantly decreasing. After the change, it will cover modern devices (computers, tablets, smartphones) and storage media (disks, flash drives).

The rules for collecting the reprographic fee are also to be changed. The fee will vary in amount depending on the device. However, it will not exceed 4% of its price. In addition, it is envisaged that the collection of the fee will be transferred to the Tax Offices, which will further transfer it to copyright collective organisations. This solution is expected to improve the low collection rate. According to the estimates in the Regulatory Impact Assessment, after the change, revenues from reprographic fees are expected to amount to around PLN 273 million. As a result of the adopted changes, it is also expected that the revenues from social and health insurance contributions for artists as a professional group will also increase. Currently, a large number of artists do not pay contributions at all. During the legislative process, consumer organisations signalled concerns about the effect the new regulation might have on the price paid for these devices by consumers.

Moreover, a consequence of the adoption of the new law is expected to be an introduction of a 50% deductible cost for all professional artists when calculating their profit. The act assumes that all artistic activity is creative in nature, regardless of whether under copyright law the artist is entitled to copyright or related rights (as a "performer"). In this way, the problem with differences in the interpretation of tax laws regarding this professional group will need to be resolved.

Rządowe Centrum Legislacji

https://legislacja.rcl.gov.pl/projekt/12356152

Government Legislation Center

[PL] New obligations on owners of media or advertising media for medical devices

Dariusz Tarabasz
KC Legal

The new Polish Law on Medical Devices has come into force., repealing the previous Medical Devices Act of 2010. The new law has been issued in connection with EU Regulation 2017/745. An EU Regulation is a legal act of the European Union that becomes immediately enforceable as law in all member states simultaneously. Regulations can be distinguished from directives which, at least in principle, need to be transposed into national law. However, it leaves the issues of advertising and administrative penalties, among others, to be regulated by the member states. The entry into force of the above-mentioned Law on Medical Devices puts the legal situation in this area in order.

The new law imposes new obligations on media service providers related to medical device advertising. A media service provider or publisher will be obliged, at the request of the President of the Office for Registration of Medicinal Products, Medical Devices and Biocidal Products, to make available to them the names and addresses of businesses or individuals placing paid advertisements or announcements, as well as any other materials related to advertising in their possesion. Media service providers or publishers are obliged to store advertising materials for medical devices for a period of not less than one year. This is to allow the enforcement of the new stricter rules on medical device advertising. Under the new law, the advertising of medical devices will be regulated in a similar way to the advertising of medical products.

Failure to comply with the obligation to store advertising records is punishable by an administrative penalty of up to PLN 50,000. The penalty is imposed by administrative decision.

The new law came into force in principle on 26 May 2022. However, the provision introducing the new obligation will take effect later and will come into force on 1 January 2023. The postponement of the introduction of the new obligation is intended to allow for preparation for the new regulations.

Komunikat Prezesa Urzędu Rejestracji Produktów Leczniczych, Wyrobów Medycznych i Produktów Biobójczych z dnia 11 maja 2022 roku w sprawie ogłoszenia ustawy o wyrobach medycznych

https://urpl.gov.pl/pl/komunikat-prezesa-urz%C4%99du-z-dnia-11-maja-2022-roku-w-sprawie-og%C5%82oszenia-ustawy-o-wyrobach-medycznych

Statement of the President of the Office for Registration of Medicinal Products, Medical Devices and Biocidal Products of 11 May 2022 on the promulgation of the Law on Medical Devices

Dziennik Ustaw: Dz.U. 2022 poz. 974 oraz ISAP Internetowy System Aktów Prawnych Sejmu Rzeczypospolitej Polskiej

https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20220000974

Journal of Laws: Dz.U. 2022 item 974 and ISAP Internet System of Legal Acts of the Parliament of the Republic of Poland

ROMANIA

[RO] Promulgation of the modified audiovisual and cinematography legislation

Eugen Cojocariu
Radio Romania International

On 28 June 2022, the President of Romania, Klaus Iohannis, promulgated the Law for the amendment and completion of the Audiovisual Law no. 504/2002; the amendment and completion of the Government Ordinance no. 39/2005 on cinematography; as well as the amendment of Law no. 41/1994 regarding the organisation and operation of the Romanian Radio Broadcasting Company and the Romanian Television Company (see inter alia IRIS 2013-6/28, IRIS 2017-1/30, IRIS 2017-2/27, IRIS 2017-7/28, IRIS 2018-6/30, IRIS 2018-8/36, IRIS 2018-10/22, IRIS 2018-10/23, IRIS 2019-1/31, IRIS 2019-2/21, IRIS 2019-4/29, IRIS 2019-5/22 and IRIS 2022-2/12).

The project was adopted by the Romanian Senate (upper chamber of the Parliament) on 7 June 2022 and by the Chamber of Deputies on 7 December 2021. The project aims to transpose Directive no. 1808 of 14 November 2018 amending Directive 2010/13 /EU on the coordination of certain provisions established by laws, regulations or administrative provisions in the Member States on the provision of audiovisual media services (Audiovisual Media Services Directive), taking into account the evolution of market realities.

The project redefines the notions of an audiovisual media service, programme, retransmission, commercial communication, sponsorship, product placement, audiovisual licence and coding, while introducing some new definitions for the notions of a sharing platform service, user-generated video material, editorial decision and a platform provider for sharing and authorising audiovisual media services upon request.

The project reformulates the general framework that audiovisual media services must observe in order to ensure the protection of minors, as well as to ensure the defence of morality, public health and public safety. The amended law introduces provisions designed to encourage self-regulation in the audiovisual field, giving rise to the possibility of elaborating codes of conduct. Regulations have also been introduced to facilitate access for people with disabilities to audiovisual media services.

The project also aims to amend and complete Government Ordinance no. 39/2005, in order to collect a monthly contribution of 3% of the price of audiovisual works downloaded for a fee through data transmission services, including via the Internet or telephone, as well as to complete the list of contributions to the Cinematographic Fund with a contribution of 4% of the revenues obtained from one-off transactions or in the form of subscriptions, by

providers of on-demand audiovisual media services, for viewing audiovisual works through data transmission services via the Internet or telephone.

The project also amends Article 6 of Law no. 41/1994 regarding the organisation and operation of the Romanian Broadcasting Company and the Romanian Television Company. The new form of Article 6 is: "(1) Broadcasting of advertisements by public services broadcasting and television can only be done by contract concluded with the beneficiary of the advertisement, the producer of the advertising programme or its representatives or other authorised persons, under the conditions established by Audiovisual Law no. 504/2002, with subsequent amendments and completions. (2) Failure to comply with the legal provisions regarding advertising within the framework of radio broadcasting and television programmes are sanctioned according to Law no. 504/2002, with subsequent amendments and additions".

Proiect de Lege pentru modificarea şi completarea Legii audiovizualului nr.504/2002, precum şi pentru modificarea şi completarea Ordonanţei Guvernului nr.39/2005 privind cinematografia – forma adoptată de Camera Deputaţilor

http://cdep.ro/pls/proiecte/docs/2021/cd430_21.pdf

Draft Law for the amendment and completion of the Audiovisual Law no. 504/2002, as well as for the amendment and completion of the Government Ordinance no. 39/2005 on cinematography – Form adopted by the Chamber of deputies

[RO] The News România TV station loses its licence

Eugen Cojocariu
Radio Romania International

The Romanian commercial News România TV station has lost its licence. The National Audiovisual Council (CNA) did not extend the audiovisual licence of the audiovisual service due to repeated breaches of the Audiovisual Law no. 504/2002 (see inter alia IRIS 2013-3/25, IRIS 2014-3/38 and IRIS 2014-1/39).

Following the analysis of the documents presented by the Licensing Office and the Monitoring Department of the CNA, and on hearing the representative of the company invited to participate in the meeting, the members of the Council found insufficient argument in support of the request for the extension of the audiovisual licence for the NEWS ROMÂNIA programme service with regard to the criteria provided by CNA Decision no. 277/2013.

The Council considered that the TV station had repeatedly breached Article 8 of the Audiovisual Law, mostly paragraphs a), h) and m). Article 8 states: “After hearing the applicants, the CNA will decide on the granting or extension of the audiovisual license, taking into account the following general criteria: a) respecting the public interest; (…) h) respecting political and social pluralism, cultural, linguistic and religious diversity, informing, educating and entertaining the public; (…) m) the situation of the sanctions applied, reporting on them and the measures taken regarding entry into legality, where applicable”.

Thus, in relation to the stated criteria, the members of the Council found that the licence holder had a consistent behaviour of non-compliance with the legal provisions that regulate the audiovisual field and the obligations set for it as an audiovisual licence holder. The members of the Council also took into account the fact that, although it had been sanctioned several times, the broadcaster had failed to review its conduct or comply with the legal provisions in the audiovisual field. The licence holder had had four sanctions applied during 2021, of which a fine of RON 10 000 (EUR 2 020) for disregarding the provisions regarding correct information had been imposed, but despite this, from the beginning of 2022 and until the analysis of the request for the extension of the audiovisual license, three summonses and seven further fines totaling RON 185 000 (EUR 37370) had been applied (two of these being RON 50 000 (EUR 10 000each) for non-compliance with the provisions regarding correct public information.

The members of the Council also took into account the conduct of the holder of the audiovisual licence regarding legal obligations during the nine years in which he had held the audiovisual licence for the programme service named NEWS ROMNIA. In this regard, they considered the repeated changes to data declared to the authority in order to obtain the audiovisual licence, the modification of the audiovisual licence without the prior consent of the Council, as required by the legislation in force, and the failure to inform or submit documents related to: the

modification of the structure of the company's associates; the modification of the headquarters of the studio which had been authorised by the CNA, and of the registered office of the company; the modification of the technical means of broadcasting for which the audiovisual license had been issued (from satellite to cable); and changing the name of the company holding the license.

The National Audiovisual Council unanimously rejected the request of NEWS ROMÂNIA COMMUNICATION (formerly ESTRADA TV), to extend the validity of the audiovisual licence for the broadcasting of the television programme service called NEWS ROMÂNIA from Bucharest through electronic communication networks.

Răspuns CNA nr. 8380/29.07.2022 la petițiile referitoare la decizia CNA de respingere a solicitării S.C. NEWS ROMÂNIA COMMUNICATION S.R.L. (fostă SC ESTRADA TV SRL) de prelungire a valabilității licenței

https://www.cna.ro/article12069,12069.html

CNA Answer no. 8380/29.07.2022 to the petitions regarding the decision of the CNA to reject the request of S.C. NEWS ROMÂNIA COMMUNICATION S.R.L. (formerly SC ESTRADA TV SRL) to extend the validity of the license

RUSSIAN FEDERATION

[RU] New legal instruments against foreign media

Andrei Richter
Comenius University (Bratislava)

On 30 June 2022, the State Duma of the Federal Assembly of the Russian Federation adopted the Federal Statute “On amendments to certain legal acts of the Russian Federation” that provides important changes in the media law, in particular in relation to foreign media in Russia.

An additional Article 3.4 was introduced to the Federal Statute No. 272-FZ of 28 December 2012 “On measures to influence persons involved in violations of fundamental human rights and freedoms, the rights and freedoms of citizens of the Russian Federation” (О мерах воздействия на лиц, причастных к нарушениям основополагающих прав и свобод человека, прав и свобод граждан Российской Федерации) (See IRIS-Extra, 2020, p.10). It stipulates that in the case of a ban or other restriction in a foreign country of the activity of a media outlet from the Russian Federation, the activity of foreign media “registered” in the territory of that foreign country and disseminating its product in Russia, including online, as well as through a licence or a contract with a Russian legal entity, may be banned (restricted) as well. This happens by a decision of the Prosecutor-General or his deputies – upon consent of the Ministry of Foreign Affairs – and takes effect immediately after the decision’s publication on the website of Russia's media watchdog, Roskomnadzor (see IRIS 2012-8/36). The statute does not specify either the criteria or reasons for picking a particular foreign media outlet for the sanction, or the number of foreign outlets to be sanctioned from a given country. Such a ban involves prohibition of the dissemination, production and storage of the materials of the banned media including through other media and/or online, a withdrawal of accreditation of its correspondents in Russia, registrations and (broadcast) licences previously issued, a freeze of its bank accounts and bank operations, as well as the closure of its bureau (-s) or other offices and entities. with its participation. The decision may be repealed through the same procedure, with the relevant notice published by Roskomnadzor.

In another important development, amendments to the Statute “On the Mass Media” now allow, for the first time since the statute’s adoption in 1991, to close down a media outlet without a court decision. This happens when the prosecution notices a violation of a broad spectrum of bans introduced in the new Article 56.2 of the Statute. Those prohibitions include, in particular, dissemination of any information “directed to discredit the use of the Armed Forces of the Russian Federation with the aim of protection of the interests of the Russian Federation” or just “untruthful information” on such a use (even unintentional), as well as calls to introduce sanctions against the Russian Federation and expressions of sheer

disrespect towards Russian public bodies.

First, the Prosecutor-General or his deputies demand – through Roskomnadsor – the suspension of the activity of the media outlet for up to three months, and then, upon a repeated violation – for up to six months, and finally – if it happens for the third time – a demand for the closure of the media outlet. During the suspension period, the publisher, the editors and journalists of the media outlet are not allowed to conduct any activity regulated by the Statute "On the Mass Media".

The scope of Article 15.3 of Federal Law "On Information, Information Technologies and Information Protection" that provides – in specific cases of dissemination of prohibited information – for non-judiciary compulsion mechanisms in the hands of the Prosecutor-General or his deputies to have the online content removed and for blocking access to websites containing such content in case of non-compliance (see IRIS Extra 2021, pp. 15-16) was further expanded to include, in particular the above-listed bans. An additional Article 15.3.2 was added to provide for a "permanent block of access" to the online resources in case of repeated violations, as well as in case the online resources are found – by Roskomnadzor – not dissimilar to the ones previously blocked.

The amendments entered into force on 14 July 2022.

О внесении изменений в отдельные законодательные акты Российской Федерации

http://publication.pravo.gov.ru/Document/View/0001202207140041

Federal Statute of 14 July 2022, N 277-FZ "On amendments to certain legal acts of the Russian Federation"

UKRAINE

[UA] List of foreign programmes for rebroadcasting

Andrei Richter
Comenius University (Bratislava)

At a meeting on 15 September 2022, the audiovisual media regulator of Ukraine, the National Council on Television and Radio Broadcasting (NCTRB), approved a new “List of programmes of foreign television and radio organisations that are rebroadcast” and published it on its official website.

The basis for making the list was an earlier decision of the NCTRB that established, for the first time, the procedures for compiling this document, which had been envisioned by the amendments to Article 42 of the Statute on Television and Radio Broadcasting, adopted in 2015 (see IRIS 2015-7/30). According to this decision, the producers and/or rightsholders of foreign audiovisual programmes seeking to be rebroadcast in Ukraine, had to submit applications and documents within six months after the entry into force of the list. On the basis of the applications, the NCTRB makes the decision whether to include them in the list. The documents of 49 out of 101 entities that submitted applications to the regulator met the procedural requirements. Others have been allowed to resubmit their documents within two months. If they fail to do so, earlier decisions of the NCTRB, according to which foreign programmes are currently rebroadcasted, will become null and void.

The principal aim of the new list is to establish a clearer procedure for registering foreign programmes that are to be rebroadcast and to prevent broadcasters tied to the Russian Federation from considering an application. According to the adopted procedures, a foreign programme will be suspended from the list following two violations of Ukrainian law and will be allowed to submit a request to be reincluded on the list one year thereafter. The NCTRB monitors the content of the rebroadcast programmes and keeps relevant records for this purpose. Although applications from the producers/rightholders of programmes that are under the jurisdiction of the Russian Federation shall be dismissed without review, the current list contains 23 foreign programmes broadcast in Russian.

The approved 49 broadcast programmes will now be added to the “List of programmes whose content meets the requirements of the European Convention on Transfrontier Television and the legislation of Ukraine”. This list has been in existence since 2008 and, as of 20 January 2022, after numerous amendments, contains 185 programmes.

Перелік програм іноземних телерадіоорганізацій, що ретранслюються

https://www.nrada.gov.ua/natsionalna-rada-onovlyuye-perelik-inozemnyh-program/

List of programmes of foreign television and radio entities that are rebroadcasted

Перелік іноземних програм, зміст яких відповідає вимогам Європейської конвенції про транскордонне телебачення і законодавства України

https://zakon.rada.gov.ua/rada/show/vr652295-08#Text

List of foreign programmes, the content of which reflects the demands of the European Convention on Transfrontier Television and Ukrainian Law

Про затвердження Порядку формування Переліку програм іноземних телерадіоорганізацій, що ретранслюються

https://zakon.rada.gov.ua/laws/show/z0061-22#n14

On approval of the procedure for approval of the List of programmes of foreign television and radio entities that are rebroadcasted, Decision of the National Council on Television and Radio Broadcasting, N 1727, 18 November 2021, entered into force on 1 February 2022

[UA] Statute to further restrict Russian audiovisual works

Andrei Richter
Comenius University (Bratislava)

On 7 October 2022, the Statute of Ukraine "On amendments to certain laws of Ukraine to support the national musical product and restrict the use of the musical product of the aggressor state in public" enters into force. The law was adopted on 19 June 2022 by the Supreme Rada (the Parliament) and signed into law by the President.

The key amendment is made to the Statute of Ukraine "On culture" (2011). It adds a new part to Article 15. It prohibits public performance, public display and/or public exhibition, including online availability in the territory of Ukraine, of phonograms, videograms and musical clips that contain a recorded performance of musical works with lyrics (not intended for the theatre) by a singer who is or was at any time after 1991 a citizen of the state, recognized by the Supreme Rada as an aggressor state [the Russian Federation], with the exception of former citizens of the aggressor state who are, or at the time of death were, citizens of Ukraine and do not have (did not have at the time of death) citizenship of the aggressor state. The ban extends to works produced by a natural person and/or a legal entity, which at the time of their public performance was, respectively, a citizen of, or registered in, a state, which at any time was recognised as an aggressor state.

Among the exceptions from the ban are works by singers included in the "List of musical performers (singers) of the aggressor state who condemn aggression against Ukraine". The List is still to be determined by the Security Service of Ukraine and the National Security and Defense Council of Ukraine, in particular upon receipt of specific individual declarations of condemnation.

The amendments forbid collective societies in Ukraine from concluding or respecting any contracts to represent copyright holders from the aggressor state, or their license-holders, – until the territorial integrity of Ukraine (within internationally recognised borders) is reestablished.

The new statute also makes amendments to the Statute of Ukraine "On TV and radio broadcasting" (see IRIS 2006-5/34). These amendments ban the broadcasting of the works listed in Article 15 of the Statute "On culture" (see above), as well as specifiying that the quota for national audiovisual product on TV channels for children would be lowered to 25 per cent (as compared to 50 per cent for other TV entities). The rebroadcasting of programmes of foreign (except for the aggressor state) channels that correspond with the requirements of the European Convention on Transfrontier Television, without changes, and fully translated into Ukrainian is fully exempt from such quota requirements.

Heavy administrative fines are envisioned for violations of the new rules.

Про внесення змін до деяких законів України щодо підтримки національного музичного продукту та обмеження публічного використання музичного продукту держави-агресора

https://zakon.rada.gov.ua/laws/show/2310-IX?lang=en#Text

On amendments to certain laws of Ukraine to support of the national musical product and restrict the use of the musical product of the aggressor state in public), Statute of Ukraine, 19 June 2022, N 2310-IX. Officially published in Holos Ukrainy parliamentary daily on 7 July 2022, N 139

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