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EDITORIAL

They say that variety is the spice of life. Now, if we were to apply that principle to the IRIS newsletter, we could say that the present issue is quite a savoury one. We have news of the AVMSD transposition in Ireland and Slovakia; the announcement of new funding for local public broadcasting and a new system of funding for local public broadcasting in the Netherlands; a French decree amending the system for the contribution to cinematographic and audiovisual production of television services; a decision from Germany's competition regulator concluding the proceedings against Google News Showcase; and a couple of interesting judgments of the ECtHR. And if you like it piquant, we even have a judgment of the Italian Supreme Court of Cassation concerning the literary character "Zorro" in the context of a commercial.

Should this not be enough for you, there are many other interesting news items awaiting you inside this month's very spicy newsletter.

Have a nice read!

Maja Cappello, Editor

European Audiovisual Observatory

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BELGIUM

European Court of Human Rights: RTBF v. Belgium (no. 2)

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

For the second time, the public broadcasting organisation of the French Community in Belgium (*Radio-télévision belge de la communauté française* — RTBF) successfully invoked its right to freedom of expression before the European Court of Human Rights (ECtHR) (see also IRIS 2011-6/1). In view of the importance of the media in a democratic society, and of the domestic authorities' limited margin of appreciation in respect of a television programme about a subject of considerable public interest, the ECtHR found that the Belgian courts had not balanced in a pertinent way the right to respect for private life and the presumption of innocence with RTBF's right to freedom of expression and journalistic reporting on a matter of public interest. The ECtHR found that the reasons put forward by the domestic courts had not been sufficient to establish that the interference complained of by RTBF had been necessary in a democratic society. Therefore the ECtHR concluded that Belgium had violated RTBF's right to freedom of expression as guaranteed by Article 10 of the European Convention on Human Rights (ECHR). The case concerned a civil judgment against RTBF by the Belgian courts for having breached the right to respect for private life (as protected by Article 8 ECHR) and the right to be presumed innocent (as protected by Article 6 ECHR), following a report broadcast by RTBF about a couple alleged to be involved in sexual exploitation. RTBF was ordered to pay each spouse EUR 1 in respect of non-pecuniary damage.

In January 2006, RTBF broadcast a 52-minute report on the role of a couple (Mr and Ms V.) in organising private wrestling matches with the participation of girls and young women who were partially undressed. The events had been recorded and commercialised as sex videotapes. Previews of the report, including some footage, were also shown on RTBF television news. At the time the programme was broadcast, a judicial investigation into the events in question was pending, although no charges against Mr and Ms V. had yet been brought. After a girl had lodged a formal complaint with the police, an RTBF journalist who was already investigating the matter, was informed by a judicial source about a search that was due to be carried out at the home of Mr and Ms. V. The journalist and his team were waiting for the police officers as they arrived to conduct the search and filmed Mr V. at the door of his home as the police officers entered. Later in an

interview with the RTBF journalist, Mr and Ms V. confirmed that they arranged gatherings which they described as “female wrestling matches”, involving young women who were often naked. According to Mr and Ms V. the young women had agreed to participate and to be filmed during those matches. They denied that anything illegal took place during these events, while they acknowledged a certain form of libertine conduct between consenting adults. Mr and Ms V. considered that they had been insulted by the RTBF news coverage, and applied to the Belgian courts seeking compensation for the damage they had allegedly sustained as a result of what they described as “a trial by media”.

The Namur Court of First Instance granted their claim in part, while the Liège Court of Appeal upheld the judgment against RTBF and ordered it to pay each of the spouses EUR 1 in respect of non-pecuniary damage. The judgment emphasised the lack of neutrality and the sarcastic tone of the report, and found that the filming of the search at the home of Mr and Ms V. had amounted to a violation of their right to privacy. It also found that the RTBF news coverage of the case had breached the presumption of innocence of Mr and Ms V. and that the journalist had not acted in accordance with the basic principles of journalistic ethics. The Court of Cassation dismissed RTBF’s appeal. In 2014 Mr V. was sentenced to 18 months’ imprisonment, suspended, for several offences, including some related to the activities denounced by RTBF. A mere finding of guilt was pronounced against Ms V. in respect of some of the alleged offences.

Relying on Article 10 ECHR, RTBF lodged an application with the ECtHR, arguing that the civil judgment against it had represented an unjustified interference with its right to freedom of expression. The ECtHR found that the civil judgment against RTBF had indeed constituted an interference with the right to freedom of expression, while that interference had had a legal basis, and had pursued the aim of the protection of reputation. Hence to be in accordance with Article 10 § 2 ECHR the remaining and crucial question was whether the interference had been necessary in a democratic society within the framework of the balancing of the right to privacy and reputation under Article 8 ECHR and the right to freedom of expression under Article 10 ECHR. First, the ECtHR noted that the RTBF news coverage of the events concerned a matter of public interest. The RTBF programme had referred to the existence of a particular aspect of the sex industry, and the involvement of several young girls, at least one of whom had been a minor at the relevant time. The programme also reported on the authorities’ lack of trust in the girls’ statements and the difficulties encountered by these girls in seeking protection. Given the importance of the issues raised in the report and the lack of an official statement by the investigating authorities, the public had had an interest in being informed of the pending proceedings, including in order to be able to exercise its right of scrutiny over the functioning of the criminal justice system and, where necessary, to be alerted to the potential danger for girls who were likely to associate with Mr and Ms V. Given this context of a television programme on a subject of major public interest, the Belgian authorities had had only a limited margin of appreciation in determining whether there had been a pressing social need to take the measure complained of. Although Mr and Ms V. did not have the status of a public figures, they had agreed to be interviewed by the RTBF journalist, thus agreeing to be placed in the

spotlight of the news coverage about the case. Hence, the legitimate expectation that their private life would be effectively protected had been limited. Furthermore the manner in which the RTBF journalist had obtained the information could not be regarded as unfair, while his good faith had not been in issue. The report and news coverage had had a sufficient factual basis, and the style and means of expression used by the journalist corresponded to the nature of the issues raised in the report. Importantly, the Belgian courts had not established that the RTBF report had had an impact on the direction of the investigation or the decisions taken by the investigating courts. At no point had the journalist asserted that the charges on which the search of Mr and Ms V.'s home had been based had been proven or that the couple had committed the offences under investigation. Indeed in the RTBF report and news items viewers had been reminded that the investigation was ongoing and that the couple were presumed innocent. The ECtHR found that the report in question had merely described a state of suspicion against Mr and Ms V., without exceeding the threshold of that suspicion. Lastly, the ECtHR considered that, although the penalty imposed on the RTBF had been lenient, it could have had a chilling effect and that in any event it had been unjustified. The ECtHR concluded that the reasons put forward by the Belgian courts had not been sufficient to establish that the interference complained of had been necessary in a democratic society. It found that there was no reasonable relationship of proportionality between, on the one hand, the restrictions on the RTBF's right to freedom of expression entailed by the measures imposed by the domestic courts and, on the other, the legitimate aim pursued, namely the protection of the reputation of others. For these reasons, the ECtHR, unanimously, came to the conclusion that there had been a violation of Article 10 ECHR.

Arrêt de la Cour européenne des droits de l'homme, deuxième section, rendu le 13 décembre 2022 dans l'affaire RTBF c. Belgique (n° 2), requête n° 417/15

Judgment by the European Court of Human Rights, Second Section, in the case of RTBF v. Belgium (no. 2), Application no. 417/15, 13 December 2022

https://hudoc.echr.coe.int/eng?i=001-221471

FRANCE

European Court of Human Rights: Zemmour v. France

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

The European Court of Human Rights (ECtHR) has once again confirmed the necessity in a democratic society of criminalising "hate speech" (see also IRIS 2009-8/1, IRIS 2019-1/1, IRIS 2020-3/21, IRIS 2021-4/5 and IRIS 2021-9/15).

In a case involving the former French presidential candidate Éric Zemmour, the ECtHR found that the politician's conviction and sentencing for the offence of inciting discrimination and religious hatred against the French Muslim community for statements made on a television show did not violate his right to freedom of expression as guaranteed by Article 10 of the European Convention on Human Rights (ECHR). The ECtHR found that the remarks made by Mr Zemmour were not to be considered as criticism of Islam: in view of the context of terrorist violence in which they had occurred, the offensive statements had been made with discriminatory intent such as to call on viewers to reject and exclude the Muslim community.

In September 2016, Mr Zemmour had appeared as a guest on a television chat show on the channel France 5, to promote his book *Un quinquennat pour rien* ("A wasted presidency"). During the TV show he stated, in particular, that Muslims had colonised and occupied French territory by invasion, especially in the outskirts of French cities, where veiled young women were also part of jihad and the fight to Islamise French territory. He expressed his view that if Muslims wanted to be real French citizens they had to abandon their religion. These statements resulted in proceedings being brought against Mr Zemmour under section 24, paragraph 7 of the Freedom of the Press Act of 29 July 1881 ("the 1881 Act"), which considers it an offence to incite discrimination, hatred or violence against a person or group on grounds of origin or of membership or non-membership of a particular ethnicity, nation, race or religion (see also IRIS 2010-7/1). Mr Zemmour was convicted for inciting discrimination and religious hatred, and sentenced to pay a fine of EUR 3 000. The Court of Cassation dismissed his appeal in September 2019.

Mr Zemmour lodged a complaint with the ECtHR complaining that his conviction and sentence for the offence of inciting discrimination and religious hatred had been contrary to Article 10 ECHR. The ECtHR dismissed the French government's preliminary objection under Article 17 ECHR (prohibition of abuse of rights) (see also IRIS 2016-1/1), but relied on that provision as an aid to interpreting Article 10 ECHR for the purposes of assessing whether the interference complained of had been necessary in a democratic society.

The ECtHR observed that Mr Zemmour had made the statements in issue while appearing as a guest on a prime-time television show in his role as a journalist and polemicist. It accepted that because of his public profile and who he was, and because of the nature of the issues discussed during the interview, concerning the place of Islam in French society, particularly against a backdrop of terrorist violence, his statements – which had been statements of potential interest to the public that might attract its attention or cause it significant concern – had been made in the context of a debate on a matter of public interest. Accordingly, a determination had to be made as to whether the domestic courts had duly reasoned their assessment that the statements in issue were to be regarded as criminal hate speech and, if so, whether the penalty imposed on Zemmour could be characterised as proportionate to the legitimate aim pursued, regard being had to the various factors and the context which came into play to constitute hate speech. The ECtHR referred to the findings by the domestic courts that Mr Zemmour had portrayed Muslims as a threat to public security and the values of the Republic. By stating that Muslims necessarily supported the violence perpetrated in the name of their faith, Mr Zemmour had been fostering a generalised rejection of Muslims and had not merely been criticising Islam or the rise of religious fundamentalism in France's peri-urban neighbourhoods. Looking at the virulent language used to describe them, and at the ultimatum issued to them to choose between their religion or a life in France, the statements had indeed called for the rejection and exclusion of the Muslim community as a whole, which was thus harmful to social cohesion. The ECtHR reiterated that it was vitally important to combat racial discrimination in all its forms and manifestations. It also noted that the statements in issue had been made on live, prime-time television and had therefore been capable of reaching a wide audience. The ECtHR referred to the immediate and powerful effect of the broadcast media, an impact reinforced by the continuing function of radio and television as familiar sources of entertainment in the intimacy of the home. Mr Zemmour himself was a journalist and a pundit known for his polemical outbursts, and although he had been speaking as an author on the show, he had not been exempt from the duties and responsibilities of a journalist. He had thus been fully capable of measuring his words and assessing their consequences.

Having regard to the broad margin of appreciation afforded to the respondent State in cases of hate speech, the ECtHR concluded, unanimously, that the grounds on which the domestic courts had convicted Mr Zemmour and sentenced him to a fine, the amount of which had not been excessive, had been sufficient and relevant. Therefore there had been no violation of Article 10 ECHR.

Arrêt de la Cour européenne des droits de l'homme, cinquième section, rendu le 20 décembre 2022 dans l'affaire Zemmour c. France, requête n° 63539/19

Judgment by the European Court of Human Rights, Fifth Section, in the case of Zemmour v. France, Application no. 63539/19, 20 December 2022

https://hudoc.echr.coe.int/eng?i=001-221837

EUROPEAN UNION

AG Opinion on liability of streaming platforms and use of VPNs

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On 20 October 2022, Advocate General (AG) Szpunar delivered an Opinion in Case C-423/21, which concerned the important issue of the liability of streaming platforms under Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society (InfoSoc Directive), where users circumvent geo-blocking measures using virtual private networks (VPNs). Notably, the AG's Opinion considered that the Court of Justice of the European Union (CJEU) should hold that streaming platforms which transmit television programmes online do not infringe the exclusive right of communication to the public of works if users circumvent geo-blocking measures by means of a VPN service, unless the platform deliberately applied "ineffective" geo-blocking measures.

The case involved Grand Production, a Serbian company which produces entertainment programmes for the Serbian broadcaster Prva Srpska Televizija; and GO4YU Beograd, another Serbian company which operates a streaming platform, where Prva Srpska Televizija's entertainment programmes are available. Notably, GO4YU Beograd only had a licence to broadcast entertainment programme produced by Grand Production in Serbia and Montenegro, and geo-blocked access to these programmes for internet users outside Serbia and Montenegro. However, users could bypass this geo-block by using a VPN service, which hides the user's IP address and location. Grand Production alleged that GO4YU Beograd was aware of the possibility of circumventing the geo-block by using a VPN; and had also made Grand Production's entertainment programs available in Austria without restriction. In 2020, Grand Production sought an order in the Austrian courts against GO4YU Beograd to prohibit distribution of it programmes, and the case reached Austria's Supreme Court of Justice, which made a referral to the CJEU.

The main question concerned the liability under Article 3 InfoSoc Directive of a streaming platform which, respecting the rights of the rightholder, had applied a geo-block in a territory for which there was no authorisation for communication to the public of protected works, in this case the EU, but where users circumvented this blocking by using a VPN that allowed them to access the works as if they were in the territory for which the authorisation for communication to the public applied, namely Serbia or Montenegro.

The AG first stated that geo-blocking measures were among the tools for so-called digital rights management, which were different types of protections intended to prevent digital content from being used in a way that conflicted with the wishes of the provider of that content. Further, the CJEU had repeatedly pointed out that digital rights management tools could have legal effects under EU law, including with regard to the definition of "communication to the public" within the meaning of Article 3 InfoSoc Directive. Crucially, the AG considered that if the copyright holder (or its licensee) had applied such a block, its broadcast was only directed at the circle of persons who had access to the protected content from the territory defined by the rightholder. The rightholder therefore did not make any communication to the public outside that territory. As such, if the entertainment programmes produced by Grand Production on the streaming platform of GO4YU Beograd were geographically blocked in such a way that they were in principle only accessible from the territory of Serbia and Montenegro, GO4YU Beograd had not communicated these programmes to the public in the territory of the EU. However, the AG recognised that various technical means, including VPN services, made it possible to bypass geo-blocks. Crucially, the AG stated that this "does not mean that an entity whose geographic blocking of access to a protected work by users is circumvented makes a communication of that work to the public in the area where access is blocked. Such a conclusion would make territorial management of copyright on the Internet impossible – any communication to the public of a work on the Internet would in principle be global in nature."

Finally, the AG emphasised that it would be different if GO4YU Beograd had deliberately applied an "ineffective" geo-block, in order to actually allow access to those programmes to persons outside the territory where it had the right to communicate to the public programmes produced by Grand Production. In such a situation, it would have to be held that GO4YU Beograd took measures to provide its customers with access to a protected work. The AG concluded that this was for the referring court to determine.

Opinion of Advocate General M. Szpunar, Case C-423/21, Grand Production d.o.o. v GO4YU GmbH and Others, 20 October 2022

https://curia.europa.eu/juris/document/document.jsf?text=&docid=267420&pageIndex=0&doclang=NL&mode=req&dir=&occ=first&part=1&cid=318414

NATIONAL

BELGIUM

[BE] Second edition of CSA study on audiovisual consumption in French-speaking Belgium

Samy Carrere
Conseil Supérieur de l'Audiovisuel Belge

On 17 November 2022, the Belgian *Conseil supérieur de l'audiovisuel* (regulatory authority for the audiovisual sector of the French-speaking Community of Belgium – CSA) published the results of its second study entitled *Médias: Attitudes et Perceptions* (Media: Attitudes and Perceptions – MAP). Like the first edition published in 2020 (based on 2019 data), the study analyses how the emergence of new forms of audiovisual consumption is changing television usage. It updates the data previously collected and draws comparisons with the results of the previous study. In a context of increased competition between television and video on demand (VOD) in the audiovisual market, the study highlights a series of trends that reflect changing consumer behaviour and clarifies a number of popular misconceptions. The full study is available in French on a dedicated website, where an English translation of its key findings is also available.

The authors of the MAP study focused on scientific and analytical rigour. The study is based on a quantitative survey carried out by means of a standardised questionnaire completed by a representative sample of 2,200 people aged 15 and over in French-speaking Belgium. The aim was to ensure the data was as robust as the 2020 study and allow for relevant analysis.

Like the first edition, in order to define how the consumption of audiovisual content is changing, the 2022 MAP study focuses on three main themes.

The first, exposure to technology, looks at the different devices that are owned by households that can be used to watch audiovisual content (television sets, video projectors, computers, mobile phones, tablets, games consoles, virtual reality headsets). The most widespread device is the mobile phone (94.3% of respondents have one) and the television set (93.9%). The dominance of smartphones increased between 2019 and 2021. Indeed, the share of people with at least one smartphone (among those who own mobile phones) is up by 5.8%. Between 2019 and 2021, distributors' set-top boxes consolidated their dominant position among devices connected to TV sets, with an increase of 3%. DVD/Blu-ray players experienced a significant decrease of 8.3%, which moved them into third place behind games consoles. There was a slight increase in the number of households with an Internet connection between 2019 and 2021 (+2.1%).

The second theme is individual audiovisual consumption, which is divided into three types: television, pay VOD and free VOD. For each of these, there are two forms of consumption: single-device consumption, i.e. one type of audiovisual consumption at a time, and simultaneous consumption, where audiovisual consumption is combined with another activity (media or otherwise) at the same time. Contrary to the popular misconception that television is being replaced by video on demand, the MAP study for 2021 shows that, as in 2019, television remains the most popular type of consumption, since 72.2% of respondents said they watched it, whether in combination with VOD or not. Nevertheless, television's dominance does not mean VOD is not an essential form of audiovisual consumption. Indeed, in 2021, 56.8% of respondents used it, partly in combination with television (3.4% higher than in 2019). Another misconception corrected by the study concerns the increase in Internet-based TV viewing (e.g. television viewed on websites and/or dedicated TV channel applications): in 2021, this remained a minority activity, both at home and on the move: 67.1% of television viewers never watch TV on the Internet at home and only 6.1% do so on the move.

The third and final theme of the study concerns the complementarity and substitutability of the different types of audiovisual consumption. The idea is to find out whether there is any complementarity between the types of audiovisual consumption or whether one is being replaced by another. The results of the 2022 MAP study suggest that the general trend of complementarity between television and VOD observed in the 2020 edition has continued. While television remains the most popular choice, its combined consumption with VOD is widespread among French-speaking Belgians. The MAP studies show that combined consumption was enjoyed by 35.2% (2021) and 34.4% (2019) of consumers. However, in 2021, 37% of respondents said they only watched television, whereas 21.5% only watched VOD. Meanwhile, 2021 saw a decrease in the number of people who do not consume audiovisual content, i.e. neither television nor VOD (6.3% of respondents in 2021, 2.4% less than in 2019).

The study also looks in detail at the factors that are influencing the evolution of TV consumption and equipment, concluding with various findings that will provide a valuable basis for public debate on these issues.

Conseil supérieur de l'audiovisuel de la Communauté française de Belgique Etude « Médias : Attitudes et Perceptions » (MAP), 17 novembre 2022

https://www.csa.be/map/

Regulatory authority for the audiovisual sector of the French-speaking Community of Belgium, Media: Attitudes and Perceptions (MAP), 17 November 2022.

BULGARIA

[BG] Roundtable concerning gambling commercial communications and self-regulation of gambling operators

Nikola Stoychev
Dimitrov, Petrov & Co., Law Firm

Съветът за електронни медии (the Council for Electronic Media – CEM) convened a roundtable on gambling commercial communications in media services and video sharing platform services (*Кръгла маса относно търговското слово за хазарт*) which took place on 13 December 2022.

The roots of the discussions can be traced back to August 2022 when a Memorandum for Cooperation was signed between CEM and *Национална агенция за приходите* (the National Revenue Agency – NRA). The reason behind the debate was the aggressive campaigns of gambling advertising which increased, especially with the broadcast of the World Cup. The latter provoked the submission of petitions by *Националната мрежа за децата* (the National Children's Network) and *Асоциация „Родители"* (the Parents Association) to various authorities insisting on a complete ban on gambling advertising and changes to the Bulgarian Gambling Act and the Bulgarian Criminal Code. According to the members of both organizations, gambling advertising poses a serious threat to children, and media content in the field of gambling should be regulated.

Representatives of the NRA, as well as media service providers and major local and international gambling operators, took part in the roundtable on 13 December 2022.

Sonya Momchilova, the Chairperson of CEM, emphasized at the opening of the debate that the Council receives numerous signals from discontented viewers on a daily basis. However, the powers provided to the regulator under the Bulgarian Radio and Television Act are very limited, and yet the regulation of gambling advertising is of utmost importance in the work of CEM as a sensible responsibility to adolescents in the country.

The representatives of *Българска гейминг асоциация* (the Bulgarian Gaming Association) announced in the debate that a lot of gambling operators signed a non-binding *Меморандум за социално отговорна реклама на дейността си* (Memorandum for Socially Responsible Advertising) as a form of self-regulation, pursuant to which:

- Advertisements shall not feature people under 23 years of age;

- Announcing the amount and type of bonuses and prizes in radio and television advertisements shall be prohibited;

- Broadcasting of gambling advertisements in radio and television programs shall be prohibited from 5:00 a.m. to 6:00 p.m. (except during sporting events);

- Advertisements should include an explicit call for responsible gambling (reasonable betting);

- Advertisements should not be placed near schools;

- Advertisements should not be displayed on sportswear for children and adolescents.

Gambling operators and *Националния съвет за саморегулация* (the National Council for Self-regulation) are planning a new meeting in order to discuss the adopted rules as well as additional measures which could be included in the National Ethical Rules for Advertising and Commercial Communication (which will have a binding effect), including the advertising of gambling games.

Furthermore, the above events then led to discussions in the Bulgarian Parliament as well. Self-regulation of gambling operators may not prove sufficient and changes to the local legislation may be the best-case scenario, but it remains to be seen how the authorities would approach the situation.

Кръгла маса относно търговското слово за хазарт

https://www.cem.bg/displaynewsbg/860

Roundtable on Gambling Commercial Communications

Меморандум за социално отговорна реклама на дейността си

https://bta.bg/bg/news/bulgaria/national-news/369418-za-mediyna-regulatsiya-na-reklamite-na-hazart-nastoyavat-natsionalnata-mrezha-za

Memorandum for Socially Responsible Advertising

Националната мрежа за децата и Асоциация „Родители“

https://bta.bg/bg/news/bulgaria/national-news/369418-za-mediyna-regulatsiya-na-reklamite-na-hazart-nastoyavat-natsionalnata-mrezha-za

The National Children’s Network and Parents Association

GERMANY

[DE] Bundestag approves Deutsche Welle task plan and calls for greater support

Christina Etteldorf
Institute of European Media Law

In a resolution adopted on 16 December 2022, the German *Bundestag* (lower house of parliament) approved a motion tabled by the ruling parties SPD, Bündnis 90/Die Grünen and FDP, aimed at strengthening the work of Deutsche Welle (DW), the international broadcaster of the Federal Republic of Germany. On the basis of the 2022-2025 task plan submitted by DW, the federal government, using the available budgetary resources, will help DW to readjust and clarify its content-related and organisational priorities and objectives, in particular its transformation into a digital media company, by providing funding for technical innovations. The resolution also tackles topical issues such as the fight against censorship and technical measures taken to block access to DW abroad, as well as ongoing efforts to prevent anti-Semitism within the organisation.

The resolution was adopted against the backdrop of the *Deutsche-Welle-Gesetz* (Deutsche Welle Act – DWG), which requires DW to draw up regular task plans in which it independently sets out its programming objectives, key projects and their weighting, as well as the challenges faced and adjustments that need to be made over a certain period of time. The DWG also makes provision for a consultation procedure in which both the federal government and the *Bundestag* are invited to comment on these task plans. DW had therefore submitted such a task plan for the 2022-2025 period, which takes particular account of current challenges, to the *Bundestag*.

In its resolution, the *Bundestag* discusses the current situation and the role of Germany's international broadcaster: factors such as the pandemic, the war in Europe, along with its economic and political consequences, and undemocratic developments in autocratic regimes, are creating huge challenges for free societies and liberal democracies with a pluralistic media landscape. Targeted disinformation based on fake news and deep fakes is being used to create a destabilising effect which – even for experienced media users – poses serious threats to the democratic shaping of public opinion. This makes it all the more important to provide a strong response through the media, in which DW can play a crucial role.

In response to changing media consumption habits, DW's 2022-2025 task plan focuses on efforts to increase the broadcaster's reach by strengthening its regional expertise and presence, especially through the development of on-demand services. DW also aims to expand its global journalistic content in German, English and 30 other regional languages in high-priority target countries. These key objectives are supported by the *Bundestag*. However, the task plan

also addresses recent criticism that has been directed at DW. This concerns, firstly, the use of freelance staff, with more permanent staff to be recruited in the future, and secondly, a number of anti-Semitic comments made within DW circles. Although an independent report, commissioned promptly by DW in relation to these allegations, had found that there was no “structural anti-Semitism” at DW, it referred to anti-Semitic views held by its employees, problematic comments by distributors and programming errors. The *Bundestag* believes that the measures taken by DW to address this issue must be expanded as a top priority because DW, as Germany’s international broadcaster, has a particular responsibility in the debate on anti-Semitism.

The resolution also addresses the recent blocking of DW services in countries such as Russia, as well as the need for related support measures. In particular, it calls for support for DW’s plans to expand its Russian-language services and its efforts to combat disinformation and propaganda related to Russia’s war of aggression against Ukraine. The proposed development of free Russian-language media and media content, in collaboration with Ukraine and other European partners, as well as the strategy to create media partnerships and joint services with other international broadcasters that share the democratic and humanistic values of the European Union, should also be supported.

Deutscher Bundestag, Drucksache 20/4352, 9. November 2022

https://dserver.bundestag.de/btd/20/043/2004352.pdf

German parliament, document 20/4352, 9 November 2022

Pressemitteilung des Bundestages, 16. Dezember 2022

https://www.bundestag.de/dokumente/textarchiv/2022/kw50-de-deutsche-welle-924580

German parliament press release, 16 December 2022

[DE] Cartels Office ends Google News Showcase proceedings

Christina Etteldorf
Institute of European Media Law

In a press release published on 21 December 2022, the *Bundeskartellamt* (Federal Cartels Office), Germany's competition regulator, announced that the proceedings against *Google News Showcase* had been concluded after the company made a number of important adjustments to its service. The proceedings and the adjustments that have been made mainly concern the ancillary copyright of publishers in relation to Google's "*Google News Showcase*" news service, which the *Bundeskartellamt* thought might breach competition law by squeezing the news services of press publishers and similar editorial (including audiovisual) providers out of the market either now or in the future.

The proceedings against Google were launched in summer 2021 on the basis of new powers invested in the Cartels Office, under a 2021 legislative amendment. Under the new Article 19a of the *Gesetz gegen Wettbewerbsbeschränkungen* (Act against restrictions of competition, GWB), which entered into force in January 2021, the *Bundeskartellamt* can intervene earlier and more effectively, in particular against the practices of large digital companies, by prohibiting anti-competitive practices. The proceedings were launched after Corint Media lodged a complaint against the *Google News Showcase* service, which had been made available to selected German publishers in spring 2021 and offers them the possibility to present their news content in a prominent and more detailed way. Google pays licensing fees for the content and, in some cases, purchases paywalled articles and offers them to its readers free of charge. The main focus is on so-called "story panels", which were initially integrated in the Google News app and have also been found in Google News on the desktop since mid-2021. Story panels are showcase boxes in which photos, titles and other content appear in a condensed form under the highlighted publisher's logo. The Cartels Office and the publisher were mainly concerned that Google's hugely dominant market position could result in discrimination against non-participating publishers and that, by imposing unreasonable contractual conditions, Google might breach its copyright obligations towards press publishers in the context of the copyright system introduced at EU level in 2019. These concerns were exacerbated by Google's announcement that it was planning to integrate the service into its general search function, giving it even greater prominence.

The proceedings were ended after Google made various adjustments to its service and promised to make further changes to the benefit of the publisher. Google has altered its contractual practice in such a way that publishers will not face difficulties in asserting their general ancillary copyright, which will now be completely independent of *Google News Showcase*. Google also promised to enable further publishers to participate in *Google News Showcase*, thereby taking into account potential discrimination against non-participating services. The plan to integrate *Google News Showcase* into the general Google search service has

also been abandoned, which means that a publisher's participation will continue to be irrelevant for the ranking of search results.

Since the Cartels Office ended the proceedings without a formal decision declaring Google's commitments binding (Article 32b GWB), they may be reopened if circumstances change or new information comes to light in the future. In its FAQ concerning the proceedings, the *Bundeskartellamt* also mentions a separate procedure in which the German state media authorities are assessing Google's compliance with the state media treaty's provisions on non-discriminatory access to content on intermediary platforms.

Pressemitteilung des Bundeskartellamts, 04. Juni 2021

https://www.bundeskartellamt.de/SharedDocs/Meldung/DE/Pressemitteilungen/2021/04_06_2021_Google_Showcase.html?nn=3591568

Federal Cartels Office press release, 4 June 2021

Pressemitteilung des Bundeskartellamts, 21. Dezember 2022

https://www.bundeskartellamt.de/SharedDocs/Meldung/DE/Pressemitteilungen/2022/21_12_2022_Google_News_Showcase.html

Federal Cartels Office press release, 21 December 2022

FAQ – zum Verfahren „Google News Showcase", 21. Dezember 2022

https://www.bundeskartellamt.de/SharedDocs/Publikation/DE/Pressemitteilungen/2022/21_12_2022_FAQ_Google_News_Showcase.pdf;jsessionid=A8C393B379FB95A0F17C84A74DD21014.1_cid381?__blob=publicationFile&v=3

FAQ concerning the Google News Showcase proceedings, 21 December 2022

[DE] Draft regulations on compliance, transparency and supervision in the state media treaty

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On 7 December 2022, the *Rundfunkkommission* (Broadcasting Commission) of the German *Länder* adopted a set of draft regulations on compliance, transparency and supervision in public service broadcasting and posted them on its website in the belief that the regulation of public communication should be publicly debated. Indeed, during the preparation of the *Medienstaatsvertrag* (state media treaty), the *Länder* always posted the latest drafts on the Internet so that anyone could comment on them.

Until now, the German public service broadcasters have approached compliance, transparency and supervision in very different ways. The regulations put forward for discussion, which the *Länder* hope will enable them to respond quickly to issues such as the recent Rundfunk Berlin-Brandenburg affair and ensuing scandals, are designed to create a common basis for public service broadcasters in these areas.

The proposed additions to the state media treaty contain a common set of rules that will apply to the state broadcasters that form the ARD, as well as ZDF and Deutschlandradio, setting out minimum standards in the areas concerned. It will still be possible to adopt additional regulations through state law. Identical rules contained in the current ZDF and Deutschlandradio state treaties will be replaced by the new provisions of the state media treaty.

The draft states, *inter alia*, that the broadcasters that form the ARD, as well as ZDF and Deutschlandradio, must ensure maximum transparency with the general public. For this reason, their organisational structure, including the composition of their boards and committees, all statutes, directives, rules of procedure, and other essential information, must be published on their respective websites. They must also publish details of the annual remuneration paid to their directors, who should be mentioned by name, unless they are subject to a repayment obligation, in their annual reports and on their websites. This remuneration includes expense allowances, attendance fees and other non-cash benefits. The transparency requirement also applies, in particular, to:

- payments promised to the individuals concerned in the case of early termination of their activities;

- payments promised to the individuals concerned in the case of normal termination of their activities;

- payments promised and made to any of the individuals concerned who ends their activities during the course of the year;

- payments made to the individuals concerned for activities with subsidiaries and associated companies; and

- payments made to the individuals concerned for secondary activities; this does not apply if the agreed payments do not exceed EUR 1,000 per financial year.

The broadcasters' annual reports and websites must also contain information about tariff structures and a structured presentation of non-tariff agreements.

According to the draft, each public service broadcaster will be required to operate an effective compliance management system, that meets recognised standards, and to keep it up to date at all times. They must also appoint an independent compliance office or officer, who should regularly report to the director-general and administrative board. These compliance offices and officers should exchange information with each other.

The draft also requires each broadcaster to appoint an ombudsperson to act as an external point of contact for confidential and anonymous reporting of violations of laws and rules within the broadcasting organisation concerned.

According to the proposals, the broadcasters' supervisory bodies must have the human resources and structure required to fulfil all their responsibilities. In particular, the broadcasters must ensure that (1) their administrative boards are sufficiently knowledgeable in the fields of auditing, business management, law and the media industry or media sciences, (2) the members of each supervisory body receive regular training to help them fulfil their roles, and (3) offices with adequate human and material resources are set up for the supervisory bodies.

Comments on these proposals can be submitted between 19 December 2022 and 31 January 2023. They will be taken into consideration in further discussions and published on the website if the relevant consent is given.

Diskussionsentwurf für staatsvertragliche Regelungen zu Compliance und Transparenz des öffentlichrechtlichen Rundfunks (Stand: Dezember 2022)

https://www.rlp.de/fileadmin/rlp-stk/pdf-Dateien/Medienpolitik/Anhoerung_Compliance_und_Transparenz/Anhoerung_2022_Sysopse_Diskussionsentwurf_Transparenz_und_Compliance.pdf

Draft discussion document on state treaty provisions on the compliance and transparency of public service broadcasters (as at December 2022)

Pressemitteilung der Rundfunkkommission, 7. Dezember 2022

https://www.rlp.de/de/regierung/staatskanzlei/medienpolitik/rundfunkkommission/compliance-und-transparenz-im-oeffentlich-rechtlichen-rundfunk/

Broadcasting Commission press release, 7 December 2022

[DE] KEK confirms third-party airtime and regional windows for next licence period

Christina Etteldorf
Institute of European Media Law

At its 270th meeting in December 2022, the *Kommission zur Ermittlung der Konzentration im Medienbereich* (Commission on Concentration in the Media – KEK) decided that the proposed decisions of the relevant state media authorities concerning third-party broadcast times (Lower Saxony state media authority, RTL) and two regional windows (Hessen state media authority, RTL and Sat.1) were compatible with the rules designed to protect plurality of opinion. As a result, Germany's two most popular broadcasters, RTL and Sat.1, will remain obliged to broadcast regional windows and provide broadcasting time for independent third parties under existing conditions.

The KEK, which comprises broadcasting and business law experts and directors of the German state media authorities, is responsible for guaranteeing plurality of opinion in relation to the organisation of television channels throughout Germany. Its activities under this remit include checking, by analysing their respective audience shares, whether companies exercise a dominant influence on public opinion by acquiring television broadcasting licences or changing their ownership structure. The KEK is therefore also involved in the allocation of broadcasting time for independent third parties, pursuant to Article 65 of the *Medienstaatsvertrag* (state media treaty – MStV), and the incorporation of regional window services, pursuant to Article 59(4), in accordance with Article 105(4) MStV. In order to ensure plurality, the state media authorities can impose such obligations on broadcasters whose audience share in Germany is such that they have dominant power of opinion.

As part of this process, the state media authority responsible for granting the licence, in consultation with the broadcaster with dominant power of opinion, draws up a shortlist of independent third parties whose programmes must be transmitted. However, according to the MStV, the KEK is also consulted before the final selection is made. In particular, it checks whether the shortlisted independent third parties meet the legal licensing requirements (e.g. whether they are dependent on the main broadcaster concerned) and whether the relevant state media authority's proposed decision has taken sufficient account of the need for plurality. The KEK had no such concerns regarding the proposed decision of the Lower Saxony state media authority concerning RTL Television GmbH. The proposed transmission times can therefore be allocated to the four third-party broadcasters concerned during the next licence period from 1 July 2023 until 30 June 2028. These broadcasters are sagamedia film- und fernsehproduktions GmbH (with the programme "*Life.Menschen.Momente.Geschichten*"), DCTP Entwicklungsgesellschaft für TV Programm mbH ("*SPIEGEL TV*"), solisTV Film und Fernsehproduktionen GmbH ("*Alltagskämpfer – So tickt Deutschland*") and Arriba Media GmbH ("*Seitenwechsel*

– *Die Welt mit anderen Augen sehen*").

The KEK also had no serious plurality-related objections to the proposed renewal of the licences granted by the Hessen state media authority to TV III a GmbH & Co. KG for the SAT.1 regional window in Hessen and to RTL Hessen Programmfenster GmbH for the RTL regional window in Hessen. The current licences for these regional windows will therefore remain in place (the SAT.1 licence has already been extended several times). The Hessen media authority exercised its legal right not to issue a new call for tenders for these regional windows in order to give the window broadcasters more planning certainty. However, for the licence periods starting on 23 July 2028 (RTL) and 27 July 2029 (SAT.1) respectively, the KEK believes it is vital that tendering procedures are held, firstly to enable other companies to bid for regional window slots and, secondly (in RTL's case), to bring an end to the unwanted position of legal dependency between a window programme provider and the main broadcaster.

Pressemitteilung der KEK 09/2022, 13. Dezember 2022

https://www.die-medienanstalten.de/service/pressemitteilungen/meldung/aktuelle-entscheidungen-der-kek-7

KEK press release 09/2022, 13 December 2022

FRANCE

[FR] Amendment of system for contribution to cinematographic and audiovisual production

Amélie Blocman
Légipresse

Decree no. 2022-1610 of 22 December 2022 amending the system for the contribution to cinematographic and audiovisual production of television services amended both decree no. 2021-1926 of 30 December 2021 on the contribution to cinematographic and audiovisual production of terrestrial television services (known as the “DTT” decree) and decree no. 2021-1924 of 30 December 2021 on the contribution to cinematographic and audiovisual production of television services distributed via networks that do not use the frequencies assigned by the Regulatory Authority for Audiovisual and Digital Communication (known as the “Cabsat” decree).

The main objective of these changes is to enable film services that make a substantial contribution to cinematographic production to calculate their contribution on a lump-sum basis in accordance with professional agreements signed for this purpose. To this end, the decree, as part of the contribution arrangements applicable to film services, creates the possibility to set a fixed contribution to cinematographic production for these services, provided it is greater than EUR 120 million. The decree states that this contribution must not be more than 10% lower than if it were calculated according to the standard rules (where it is based on a percentage of turnover).

These amendments should enable Canal+ to implement the agreement it reached with the French cinema industry on 2 December 2021. Under this agreement, Canal+ will make a total contribution of EUR 570 million over three years, made possible by the new decree. This sum is payable in three annual instalments of EUR 190 million, with EUR 170 million coming from Canal+ and EUR 20 million from Ciné+. The application of the agreement will see the overall Canal+ contribution increase (from EUR 136.1 million for Canal+ and EUR 28.2 million for Ciné+ in 2020) to a figure that will be guaranteed for three years.

The decree also introduces three other changes to the “DTT” and “Cabsat” decrees. Firstly, it states that the ban on service providers holding marketing mandates applies whether they are held directly or indirectly, as provided in section 5 of Article 71-1 of the Law of 30 September 1986. Secondly, it explains that amendments to the type and extent of rights fixed as part of independent audiovisual production depend on the types of works concerned or the level of financing provided by the service provider. Finally, in the second paragraph of section 7 of Article 24 of the “DTT” decree concerning the possibility to take “non-works” into account in the contribution to audiovisual production of “non-film” services, it reintroduces the system that existed under the previous decree for

services with an annual turnover below EUR 100 million.

Décret n° 2022-1610 du 22 décembre 2022 portant modification du régime de contribution à la production d'œuvres cinématographiques et audiovisuelles des services de télévision, JO du 23 déc. 2022.

https://www.legifrance.gouv.fr/download/pdf?id=KIg5AGW6FHTjeDQaXav9I4F2ptmxfYTEzY1Uc9FoyEc=

Decree no. 2022-1610 of 22 December 2022 amending the system for the contribution to cinematographic and audiovisual production of television services, OJ of 23 December 2022

[FR] Broadcaster must take broadcast times and conditions into account to ensure political pluralism

Amélie Blocman
Légipresse

The company responsible for TV channel CNews asked the *Conseil d'Etat* (Council of State) to annul the decision taken by the *Conseil supérieur de l'audiovisuel* (French audiovisual regulatory body — CSA) on 3 December 2021, requiring it to comply before 31 December 2021 and in the future with the provisions of Article 1 of its decision no. 2017-62 of 22 November 2017 on the principle of political pluralism in radio and television services. Under this decision, a third of airtime devoted to political speeches must be reserved for speeches by the president of the Republic, government ministers and their colleagues. As regards the remaining two thirds, broadcasters must ensure that the political parties and groups that represent the main strands of national political opinion are given a fair share of airtime in accordance with their representativeness.

In the case at hand, the detailed breakdown of speaking time on the CNews service between 1 October and 15 November 2021 showed that 82% of the speeches by the president of the Republic, government ministers and their colleagues, and 53% of those by representatives of 'La France Insoumise', had been broadcast between midnight and 5.59am. These speakers had received much less coverage than the other parties and political groups in daytime programmes, with 8.6% and 3.7% of total airtime between 6am and midnight respectively.

The *Conseil d'Etat* acknowledged that there was no legislative or regulatory provision or other rule applicable to radio and television services that expressly stated that the assessment of compliance with the obligations concerning the pluralistic expression of opinion enshrined in the decision of 22 November 2017, which was based on Articles 1 and 13 of the Law of 30 September 1986, should take into account the time of day that programmes were broadcast. However, the very purpose of these provisions, which was to ensure that different strands of opinion were given a fair share of airtime in order to assist the shaping of TV viewers' opinions and thus contribute to democratic debate, showed that the obligations concerned should not be considered met unless the time of day and conditions of the broadcasts were taken into account.

The *Conseil d'Etat* ruled that the CSA had not made an error of law by considering that the obligations derived from the Law of 30 September 1986 and its decision of 22 November 2017 could not be met if the speeches of the president of the Republic, government ministers and their colleagues on the one hand, and those of representatives of one of the parties and political groups that expressed the main strands of national political opinion on the other, were primarily broadcast during the night, when audiences were very small.

By sending a formal notice to the company concerned, reminding it of its obligations and urging it to comply with them throughout the period during which they applied, the CSA, rather than ignoring its decision of 22 November 2017, had merely applied the aforementioned rule without breaching the principles of non-retroactivity of administrative acts and legal certainty. This formal notice should be regarded as an exact application of the powers conferred on the CSA. The request was rejected.

CE, 13 janv. 2023, n° 462663, Société d'exploitation d'un service d'information (SESI)

https://www.conseil-etat.fr/fr/arianeweb/CE/decision/2023-01-13/462663

Council of State, 13 January 2023, no. 462663, Société d'exploitation d'un service d'information (SESI)

[FR] Use of age verification systems does not breach the Constitution

Amélie Blocman
Légipresse

On 13 and 15 July 2022, alleging that minors could access the pornographic websites Pornhub, Tukif, Xhamster, Xnxx and Xvideos simply by stating that they were aged 18 or over, in violation of Article 227-24 of the Penal Code, the president of ARCOM (the French audiovisual and digital communications regulator) summoned numerous Internet access providers to appear before the president of the *Tribunal Judiciaire de Paris* (Paris judicial court) on the basis of Article 23 of Law no. 2020-936 of 30 July 2020 and asked the court to order them to block access to the sites concerned.

During the proceedings, one of the companies summoned raised the following question regarding constitutionality: “Do the provisions of Article 23 of Law no. 2020-936 of 30 July 2020 and Article 227-24 of the Penal Code conform with the rights and freedoms guaranteed by the Constitution with regard to the principle of offences and penalties being established in law and the freedom of expression and communication, in particular on the grounds that they fail to define in sufficiently clear and precise terms what constitutes a criminal offence and what behaviour might give rise to a sanction, and that they unnecessarily, inappropriately and disproportionately interfere with the legislator’s objective of preventing minors accessing pornographic content on the Internet?”

This question was submitted to the Court of Cassation, which ruled that, although the provisions concerned had not been declared to be in conformity with the Constitution in the grounds and operative provisions of a Constitutional Council decision, this question was not new in the sense that it did not concern the interpretation of a constitutional provision that the Council had not previously had the opportunity to apply.

Secondly, the court considered that the question lacked serious character.

The court held that the terms of Article 227-24 of the Penal Code, which stated that the manufacture, transport or distribution, by whatever means and however supported, of a message bearing a pornographic or violent character, inciting terrorism, seriously violating human dignity, or encouraging children to play games that put them in physical danger, and the trafficking in such a message, were punishable in the event that the message could be seen or perceived by a minor, and that these offences were committed if a minor could access the message by simply declaring that they were aged 18 or over, were sufficiently clear and precise to prevent any risk of arbitrary application.

The same was true of the terms of Article 23 of Law no. 2020-936 of 30 July 2020, which stated that, if the ARCOM president found that the provider of an online

public communication service was allowing minors to access pornographic content in violation of Article 227-24 of the Penal Code, and if the provider concerned failed to comply with a formal notice within 15 days, the ARCOM president could refer the matter to the president of the Paris judicial court with the request that the provider be ordered to block access to the service.

Finally, the court ruled that the restriction of freedom of expression created by the requirement to verify the age of a person accessing pornographic content using a system other than a simple age declaration was necessary, appropriate and proportionate to the objective of protecting minors. As a result, it considered it unnecessary to refer the question to the Constitutional Council.

Civ. 1re, 5 janvier 2023, QPC, n° 22-40017, Freesites Ltd

https://www.courdecassation.fr/decision/63b7c9ce6b63637c907b7638

Court of Cassation, 1st civil chamber, 5 January 2023, appeal no. 22-40017, Freesites Ltd

UNITED KINGDOM

[GB] Ofcom determines Glastonbury Festival’s Worthy FM 87.7 to have breached the Broadcasting Code for radio play of songs containing offensive language

Julian Wilkins
Wordley Partnership

Ofcom has determined that Glastonbury Festival's onsite radio station Worthy FM 87.7 (Worthy FM) breached Rules 1.14, 1.16 and 2.3 of the Broadcasting Code by playing records that contained offensive language, at a time likely to be heard by children, even if relatively low in numbers. Worthy FM is a radio station that plays music during the duration of the Glastonbury music festival. The main audience are festival goers but the programming is transmitted in the county of Somerset where Glastonbury is located.

Worthy FM has a Restricted Service Licence (RSL) granted by Ofcom and the licensee is Joanne Schofield.

At 18:41 on 23 June 2022, Worthy FM played a song called 'Miss Understood' by rap artist Little Simz who was performing at the music festival the next day. The version of the song played included the words ‘fucked’ and ‘niggas’. Another song played, 'DNA' by Kendrick Lamar, also appeared to contain offensive language.

Ofcom had to consider whether three rules of the Broadcasting Code had been breached namely Rule 1.14: “The most offensive language must not be broadcast [...] when children are particularly likely to be listening (in the case of radio) [...]”; Rule 1.16: “Offensive language must not be broadcast [...] when children are particularly likely to be listening (in the case of radio), unless it is justified by the context [...]”; and finally, Rule 2.3: “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context. Such material may include, but is not limited to, offensive language.[...] Appropriate information should also be broadcast where it would assist in avoiding or minimising offence”.

In its defence, Worthy FM informed Ofcom that its playlist policy was only to play artists who had previously appeared at Glastonbury Festival or who were performing at the current festival. Only clean or ‘dipped’ versions of songs were played on the radio.

The radio station’s playout computer had two sections. The first section comprised songs suitable for broadcast, and the second compilations of songs whose lyrics could not be broadcast in their current form. Worthy FM informed Ofcom that on 23 June 2022 the presenters had had a busy day with interviews and were keen to play Little Simz. Inadvertently a song had been selected from the wrong playlist. Following the incident, it introduced procedures to avoid such

an error reoccurring; for instance presenters do not have access to unsuitable versions of any song and are only able to play songs that are compliant with regulations.

Ofcom took account of Rules 1.14, 1.16 and 2.3 and of the broadcaster's freedom of expression pursuant to Article 10 of the European Convention on Human Rights.

Ofcom considered its own research into public attitudes towards offensive language on TV and radio. The word 'fuck' was considered very offensive. The term 'niggas' was considered by some black members of the public as a term of endearment amongst friends. However, the term had to be considered in the light of its context and racist connotations. The word 'nigger' was considered by the public as one of the most offensive words.

Although Worthy FM argued that the majority of the audience were festival goers and would be used to, or expect, the use of offensive language during performances on stage, Ofcom considered the radio station's audience would have a different expectation. Worthy FM was played to an audience beyond the festival and, given the time of the broadcast, children would be listening even if they formed a minority of the audience. Ofcom noted that Worthy FM had not apologised on air for the use of the offensive language. For the purposes of the context of the broadcast, Ofcom considered that allowing the broadcast of offensive language had not been justified given the time of broadcast and that children were particularly likely to have been listening. Ofcom took into consideration the fact that the offensive language had been played inadvertently, and the subsequent steps taken by Worthy FM to avoid a future breach, but, nevertheless, the regulator determined there had been a breach of the Rules.

Glastonbury Festival 2022

https://www.ofcom.org.uk/__data/assets/pdf_file/0024/238146/Glastonbury-Festival-2022.pdf

The Ofcom Broadcasting Code

https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code

Ofcom Broadcast and On Demand Bulletin, Issue 464, 19 December 2022

https://www.ofcom.org.uk/__data/assets/pdf_file/0023/249701/Standards-Decision-Get-Your-Glasto-On,-Worthy-87.7-FM.pdf

[GB] Ofcom publishes research on viewers' attitudes to commercial references in TV programmes

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In December 2022, Ofcom, the UK's communications regulator, published research into what viewers think and how they feel about commercial references in and around TV programmes. This is the first time in over 15 years that the regulator has carried out extensive research in this area. The findings are intended to inform its current guidance to the rules on content regulation.

What is a commercial reference?

All broadcast TV content comprises programming and advertising. In addition to income from adverts in commercial breaks, broadcasters generate revenue from references to products, services and trade marks (e.g., logos) *within* programming (which is not however always paid-for, such as where a brand is featured in the background). TV adverts are distinct from commercial references in that they take place outside of programming.

So, commercial references on TV are understood as any references to a brand, product or services that happen outside of an ad break. Such commercial arrangements allow brands to feature in and around TV programmes and can take various forms, including: (a) product placement, i.e., intentionally featured and paid-for by a brand; (b) sponsorship credit, i.e., brand sponsors are referenced directly in the programme titles or at the start/ end of the programme; (c) sponsor reference mid-programme; (d) cross-promotion, i.e., broadcaster promotion of own channels or products; (e) incidental reference, i.e., a logo featured as part of a programme incidentally without payment; and (f) advertiser-funded programmes (AFPs), i.e., the programme is funded by the sponsor who is also involved in its production.

Ofcom's rules in this area (Section 9 of the Ofcom Broadcasting Code) protect audiences from excessive advertising and ensure that viewers can distinguish between advertising and programming. The remainder of this report outlines the main findings of the research on how UK viewers feel about the amount, the "obviousness" and the level of acceptability of commercial references on TV. For this project, a mixed method, phased approach was used (online community, qualitative discussions) with a broad range of participants in the UK.

Audience understanding of the commercial TV landscape

Broadcast advertising activity was perceived by respondents to have increased with the amount of available TV content, but many of them felt that they were able to manage their own exposure to it due to access to new technologies (e.g., live pause, catch-up services) and the proliferation of subscription video-on-demand services like Netflix and Amazon Prime Video. These, however, are not

available to (or used by) all.

Moreover, the expansion of the television market led some participants to believe that commercial broadcasters had more opportunities to generate revenue through increased volumes of advertising. However, the various sources of choice for viewers (free-to-air channels, subscription services etc.) as well as the increased competition for TV broadcasters and incremental marketing opportunities for advertisers across platforms have contributed to a decline in TV advertising revenues since 2016. Despite this, only a few participants appeared to be empathetic towards the funding challenges faced by TV broadcasters.

Awareness of commercial references

Findings showed that participants' knowledge of different types of commercial references (beyond product placement and sponsorship), including whether these were paid for or not, was rather limited. The rationale behind commercial references was predominantly believed to be for brands to expand their opportunities to market their products. Few participants understood them as a form of key revenue that might be necessary to produce TV content.

Broadly speaking, commercial references were not considered excessively disruptive to the viewing experience, but the idea of their increased prevalence triggered some concern about how they might affect viewing, particularly for those perceived to be less mature and savvy, like children and young people.

Acceptability of commercial references

Overall, participants' tolerance of commercial references was largely determined, first, by the extent to which they impacted their *viewing experience*; second, by whether such references were considered *unsuitable* for the programme or its audience (e.g., by exposing viewers to inappropriate content); and third, by whether paid-for commercial references were *appropriately signalled*.

Six principal *factors* were found to have specifically influenced views on the acceptability of commercial references: (1) disruption; (2) relevance; (3) undue prominence; (4) lack of transparency (i.e., surreptitious inclusion of such references without advanced warning); (5) appropriateness; and (6) the potential negative reputation of some featured brands. Transparency in programming, i.e., knowing when the material watched included (or was) a commercial reference, was considered critical by participants. The desire for transparency and disruption (or viewer distraction) were not seen as contradictory but achieving a good balance was deemed necessary.

Moreover, the *way* in which brands featured as commercial references affected viewer tolerance. For example, strong encouragement to purchase a product and overly positive descriptions of the referenced brand during programming appeared to undermine trust in what participants were told and shift their perceptions of a commercial reference from being (acceptable within) programming to being *advertising*.

In addition, concerns were expressed over the potential of paid-for commercial references to jeopardise *editorial independence* and unduly influence a programme's narrative. These concerns were accentuated in relation to AFPs and the lack of objectivity that may arise where a programme's sponsor is not only involved in funding it but also becomes its subject. Some reassurance was provided by the degree of transparency created by sponsorship credits at the outset, which can warn viewers of possible partiality. The programme *genre* also impacted on many participants' concerns about editorial independence. For instance, participants considered that there was considerably more risk of a documentary representing a sponsor's narrative in a way that may compromise editorial independence than a game show based on a sponsor's brand.

Views on regulation and Ofcom's role

Participants felt that some form of regulation was necessary to maintain audiences' positive viewing experiences and safeguard viewers from the potential negative impact of commercial references, especially individuals perceived as most vulnerable. Strong negative reactions were voiced over out-of-context commercial references, particularly in relation to the presence of perceived unhealthy foods in sports programmes. The fact that some regulation is already in place (e.g., prohibiting commercial references for tobacco products and restricting those for alcohol and gambling) was found reassuring and was welcomed by participants.

Ofcom will use these findings to consider whether its guidance on Section 9 of its Code needs updating. Given the economic pressures TV broadcasters currently face, the regulator will explore how to best balance broadcasters' ability to enter commercial arrangements that enable them to fund programme content against viewers' interests.

Commercial References in Television Programming

https://www.ofcom.org.uk/__data/assets/pdf_file/0028/248590/commercial-references-report.pdf

IRELAND

[IE] Online Safety and Media Regulation Act signed into law by the President

Amélie Lacourt
European Audiovisual Observatory

Transposition of the Audiovisual Media Services Directive (AVMSD) was expected to occur by September 2020. While several countries exceeded the transposition deadline, Ireland was the only one to remain under the infringement procedure brought before the European Court of Justice of the European Union (CJEU) in May 2022. In late 2022, the Irish Bill was finally signed into law by the President.

The Online Media Safety Regulation (OSMR) Bill was initiated on 25 January 2022 during the *Seanad Éireann* stage, after the government approved its publication on 12 January. During this first stage, the general principles of the Bill were debated, and the sections meticulously examined, leading to a first round of amendments. On the 11 July 2022, the final statements were made, and the Bill was set down for the Second Stage in the *Dáil*. The general principles and sections were reviewed once again and, along with the final statements, the Bill was ready for signature by President Higgins, which took place on 10 December 2022.

The update of the Irish national law (the Broadcasting Act 2009) was largely awaited, in order to finally materialise alignment of the national regulation with the reality of the audiovisual and online sector.

One of the big novelties of the OSMR Act is the establishment of a new Commission (*Coimisiún na Meán*) in place of the Broadcasting Authority of Ireland. Part 2 of the Principal Act will be dedicated to this multi-person media commission. It will have a wider remit, covering broadcasting services, on-demand audiovisual media services, VSPs and online safety. An important improvement lies in the enhancement of the compliance and enforcement powers of the Commission. *Coimisiún na Meán* will be granted the powers of:

- Carrying out investigations to ensure compliance with the OSMR Act;

- Requiring the provision of information;

- Imposing administrative financial sanctions of up to EUR 20 Million or 10% of turnover on providers of broadcasting services, audiovisual on-demand services and designated online services.

The Commission will also be in charge of promoting media sustainability and development through a dedicated Media Development Commissioner.

Besides the restructuring of the National Regulatory Authority, the OSMR also transposes Directive 2010/13/EU, as amended by Directive (EU) 2018/1808, into Irish law. Transposition ensures alignment with the provisions covering, inter alia, providers of broadcasting services and audiovisual online media services, thus extending provisions and rules to VOD services for the first time. The OSMR also sets up the establishment of a register of providers of audiovisual media services (Part 3A of the Principal Act).

Rules covering European works have also been reviewed and will be covered in Part 10A of the Principal Act. The OSMR now imposes a minimum 30% share of European Works in VOD catalogues (159B (1)) together with a prominence obligation for those works (159C (1)). With regard to financial contributions, the Commission may, for the purposes of funding a scheme, make an order imposing a levy on media service providers (159E). The scheme (159F) would allow to provide support for the production of European works included, or to be included, in the programme schedule of an audiovisual broadcasting service, or in a catalogue of an audiovisual on-demand media service.

The OSMR also covers content available on online services. The definition and procedures for addressing harmful online content are therefore also foreseen, namely with the establishment of a regulatory framework for online safety. In that regard, an Online Safety Commissioner, will be empowered to make binding Online Safety Codes (Chapter 3 Part 8A of the principal Act).

Online Safety and Media Regulation Act 2022

https://data.oireachtas.ie/ie/oireachtas/act/2022/41/eng/enacted/a4122.pdf

Broadcasting Act 2009

https://www.irishstatutebook.ie/eli/2009/act/18/enacted/en/html

ITALY

[IT] The Italian Supreme Court of Cassation renders a landmark decision on parody involving the fictional character "Zorro"

Chiara Marchisotti

On 30 December 2022, the Italian Supreme Court of Cassation published a landmark decision with regard to the use of parody as an exception to copyright and trademark rights. The case arose in relation to the unauthorised use of the literary character “Zorro” in the context of a commercial.

The proceedings underlying this decision date back to 2007, when the claim was originally brought, following the broadcast on television and radio of an advertising campaign launched by “Brio Blu”, a famous Italian water brand, starring an equally famous Italian actor impersonating a modern, funny version of “Zorro” to promote the company’s sparkling water. After the airing of the commercial, the US company Zorro Productions Inc., owner of the intellectual property rights in the namesake character, sued CO.GE.DI. International, the leading company in the mineral water market who commissioned the ad.

The Court of Rome initially upheld the plaintiff’s claims, recognising the validity of the enforced IP rights and their infringement. The first instance decision was however overturned by the Court of Appeal, on the grounds that the character “Zorro” had fallen into the public domain, and that the trademark rights in it had lapsed for non-use in the relevant classes. The plaintiff appealed the decision before the Supreme Court of Cassation, which – when first involved in the case in question – ruled that pursuant to the Universal Copyright Convention of 1952 the character had not in fact fallen into the public domain because, as a work of a US citizen published in Italy, Italian copyright law granted it protection up to 70 years after the death of its author. As a result, the Supreme Court of Cassation overruled the decision and returned the case to the Court of Appeal, which this time upheld Zorro Productions Inc.’s copyright claims. Court of AppealsThe court had stated that the mere use of a famous fictional character could indeed amount to an infringement of copyright, and its imitation could not be considered lawful by reason of the fact that the commercial consisted of a parody of “Zorro”. According to the Court of Appeals of Rome, the inapplicability of the exception, and thus the circumstance exempting the defendant from liability, followed from the fact that Italy had not transposed the (optional) parody exception provided in Article 5(3)(k) of Directive 2001/29/EC (also known as InfoSoc Directive). In any case, the Court of Appeal stated, parody would require a creative re-elaboration of the earlier work, which was absent in the case at hand. Conversely, the district court had dismissed the trademark claims on account of the deemed lack of distinctive use of the word and figurative “Zorro” signs made in the commercial.

The (partially) unsuccessful defendant — CO.GE.DI – subsequently appealed that Court of Appeal ruling to the Supreme Court of Cassation that led to delivery of the December 2022 decision. In essence, the water company argued that the judges of second instance had erred in excluding that the contested use of the character in the advertisement could be exempted based on the parody exception. Although not specifically transposed from the InfoSoc Directive, the parody exception had been consistently applied in the case law as it related to the right to criticism and review (provided in Article 70 of the Italian copyright law). For its part, Zorro Productions Inc. filed a cross-appeal, essentially against the part of the appellate decision in which trademark infringement had been ruled out.

Against this backdrop, the Supreme Court of Cassation was able to provide a useful overview of the balance between IP rights and freedom of expression, and thereby set out a number of important principles of law regarding copyright and trademark infringement. The decision opened by stating that it was uncontested that fictional characters were eligible for protection under Italian copyright law, independently from that accorded to the work in which they were originally conceived (in this case, a novel). Moving on from that preliminary clarification, the Supreme Court of Cassation deviated from the reasoning and conclusions of the Court of Appeal regarding the contested copyright infringement, taking the opportunity to define and describe the notion of parody. According to the judges of the court of last resort, parody consists of a “reworking” through a caricature imitation implemented with satirical, humorous, or critical purposes. As such, parody is by its very nature entwined with the original work (or character, in this instance), from which it departs for the purposes of conveying a message different from that targeted by the author of the work in question. Therefore, continues the decision, as opposed to plagiarism or counterfeiting – which are activities of mere reproduction – parody always reinterprets to some extent the original work, tweaking its meaning to convey a new message.

Having explained the above notion of parody, the Supreme Court of Cassation went on to discuss its compatibility with the exclusive rights of the author and his successors in title, excluding that parody could be subsumed under the regime of derivatives work, which would require the permission of the rightsholder – something that in relation to parodistic uses would likely be withheld. Instead, the Court held that parody should rather be treated as (an autonomous) manifestation of thought and artistic creation protected respectively under Articles 21 and 33 of the Italian Constitution. In addition, the Court noted how the parody exception, despite the fact that Article 5(3)(k) of the InfoSoc Directive had not been transposed in Italy, should be regarded as embedded in the (pre-existing) right to criticism and review provided under the quotation exception set forth in Article 70 paragraph 1 of the Italian copyright law. This was also true with reference to parody of a fictional character, as long as it did not conflict with the normal exploitation of the original work (that was, the character itself). In the light of this, the Supreme Court of Cassation remanded the case to the Court of Appeal to rule again on the copyright claim.

Regarding the alleged trademark infringement, the Supreme Court of Cassation held that the Court of Appeal should re-assess the claim, considering that what mattered was whether the use of the third-party sign that had acquired a reputation was capable of affecting the users' perception of it, irrespective of the fact that the sign was used to identify products or services. In conducting that analysis, the various functions of the trademark should be considered, as those were not in fact limited to the mere indication of origin of the product but should now encompass its meaning and value from a communication, investment, and advertising perspective. It was interesting to note that, in that respect, the Court took the stance that a similar conclusion was not affected by the recent legislative amendment to Article 20, paragraph 1 (c) of the Italian Industrial Property Code, which now provided that the use of the sign relevant to the infringement of a reputed trademark was also that which takes place "for purposes other than that of distinguishing the goods and services." According to the Court, the said amendment lacked real innovative scope and was actually implementing the preexisting interpretation of both scholars and case law in relation to the protection of trademarks with acquired distinctiveness. That said, even a parodistic use of someone else's renowned trademark (something not specifically addressed by either EU or Italian trademark law but allowed to a certain extent by case law) could create a link with the message the latter carried. A similar use would be unlawful insofar as it may result in an advantage for the unauthorised user and author of the parody, or be prejudicial to the trademark owner, for instance in the form of dilution or even tarnishment of the trademark itself, and therefore interfere with the exclusive rights conferred to the trademark owner upon registration.

Corte di Cassazione, decisione n. 38165/2022, pubblicata il 30 dicembre 2022

https://www.italgiure.giustizia.it/xway/application/nif/clean/hc.dll?verbo=attach&db=snciv&id=./20221230/snciv@s10@a2022@n38165@tO.clean.pdf

Supreme Court of Cassation, decision No. 38165/2022, published on December 30, 2022

LATVIA

[LV] Revocation of TV Rain's broadcasting permit for threats to national security and public order

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On 6 December 2022, the National Electronic Mass Media Council of Latvia issued a decision cancelling the broadcast permit issued only a few months earlier, on 6 June 2022, to TV Rain - an independent Russian channel - for the production of the TV Rain programme. This final decision followed the initiation of several administrative procedures and decisions by the Council.

The Council's first decision from 10 November 2022 concerned mere compliance with the "Basic operation conditions" of the electronic media's broadcast permit. It pointed out that the programme was not complying with the third part of Section 24 or the fifth part of Section 32 of the Electronic Mass Media Law (the "EMML"), and did not contain Latvian subtitles, even though TV Rain was aware of these requirements. The Council also adopted a decision imposing a EUR 4 000 fine on TV Rain for not meeting the requirements of proper functioning and production of cross-border television programmes, as provided in Article 79 of the EMML. It considered this to be a fairly significant violation in that it constituted, inter alia, a threat to public safety by preventing Latvian speakers from being informed quickly in emergency cases, the content being broadcast in a foreign language only.

A second administrative infringement process, initiated by the Council on 13 October 2022, related to the broadcasting (and replays) of programmes between 1 October 2022 and 10 October 2022. During this period, the armed forces of the Russian Federation had been referred to as "our army", and maps had been shown of parts of Eurasia depicting the Crimean Peninsula as territory belonging to the Russian Federation. Such information thus conveyed inaccurate information to the audience, the Crimean Peninsula being the territory of Ukraine, having never been legally included in the Russian Federation. For that reason, the Council established that TV Rain had violated its obligation to disclose information with due accuracy set out in the fourth part of Section 24 of the EMML. Considering that TV Rain had repeatedly broadcast programmes and their replays with inaccurate information, giving the public a false impression of the reliability of the information, and considering that TV Rain's broadcasting had affected the State of Latvia and public safety, the Council adopted a decision on 1 December 2022 imposing an administrative penalty on TV Rain and a fine of EUR 10 000.

The Council opened a new infringement procedure on 2 December 2022 following statements made on the programme the previous day which, according to the Council, could have be seen as an invitation to the audience to provide

information about the material and security situation of people mobilised in the armed forces of the Russian Federation, whose activities were directed against the territorial integrity and political independence of Ukraine, and an indirect call to help them. In the Council's opinion, this would not only endanger the security of the State of Ukraine, but also create a significant threat to the security of Latvia and other European countries.

On 5 December 2022, the State Security Service sent the Council a letter drawing attention to an appeal distributed by TV Rain and dedicated to the Russian soldiers currently fighting and being killed in Ukraine, and to mobilised citizens of Russia. It held that any direct or indirect collection or transfer of financial resources or other goods to a party which was involved in an armed conflict taking place outside the territory of the Republic of Latvia and whose action was directed against the territorial integrity or political independence of a State or was otherwise contrary to international law binding upon the Republic of Latvia, was subject to criminal liability according to Section 77 of the Criminal Law. The guilt of a legal entity could be determined by taking into account whether it had had the opportunity to ensure compliance with the rules and if it had actually taken the necessary measures.

In its conclusions, the Council acknowledged that while TV Rain had committed systematic violations it did not recognise or even understand their nature and significance. While the editor-in-chief of TV Rainhad considered such violations to have been errors, overstatements or technical problems, the Council was of the opinion that the creation of the e-mail address army@tvrain.tv to assist those mobilised in the Russian Federation could not, for example, be considered an "inadvertency" or a "mistake".

Considering the regular violation of regulatory acts and the essential non-compliance with the "Basic operation conditions" of the broadcast permit, the application of administrative penalties was not sufficient to prevent new violations.

With that in mind, the Council thus relied on Section 21, Part three, Clause 8 of the EMML, according to which it could cancel a broadcast permit or a retransmission permit if an electronic media service threatened national security or significantly threatened public order or security. As that measure constituted a restriction of freedom of expression, the Council had to carefully assess the extent of the violation and the actions taken by the electronic media service in connection with the consequences of the violations (Section 21, Part three, Clause 1, EMML). As provided in Article 100 of the Constitution, the right of persons to freedom of expression could be subject to restrictions in circumstances provided for by law to protect the rights of other people, the democratic structure of the State, and public safety, welfare and morals. Such restrictions had also to be based on Article 10 of the ECHR.

In the case in question, the Council thus considered the decision to cancel the broadcast permit was appropriate for achieving the legitimate aim of security of

the state and society, and the preservation of the democratic state system. Such a restriction was therefore appropriate, permissible and necessary in a democratic country.

The Council further found that, given the important role of television in providing information to the public, there were no legal mechanisms to limit the damage caused by the electronic medium TV Rain, other than the cancellation of the broadcasting licence issued to the electronic medium.

Decision No. 436/1-2 on the cancellation of broadcast permit No. AA-180/1 of the electronic media SIA "TV Rain" programme "TV Rain"

https://www.neplp.lv/lv/media/5373/download?attachment

NETHERLANDS

[NL] Decision on zero-rating streaming services following CJEU judgment

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On 16 December 2022, the Netherlands' *Autoriteit Consument en Markt* (Authority for Consumers and Markets — ACM) issued a decree which declared binding the commitment made by the telecom operator T-Mobile to stop offering a data-free music service by 31 March 2023. The decree follows an important judgment of the Court of Justice of the European Union (CJEU) in September 2021, which held that so-called zero-ratings services are incompatible with EU Regulation (2015/2120) on open internet access (Open Internet Regulation) (see IRIS 2021-9/27).

Under T-Mobile's data-free music service for mobile plans, T-Mobile customers could stream music that did not count toward their data plans, a so-called zero-rating service. The ACM stated that zero-rating services are incompatible with the Open Internet Regulation, which came into force in 2016. The ACM noted that the Open Internet Regulation "offer[ed] some room for interpretation", and it was "only since the September 2021 ruling of the European Court of Justice, the highest court in these matters, has it become definitively clear that zero-rating is not allowed". Following the judgment in September 2021, T-Mobile stopped offering its data-free music service to new customers, but continued to offer it to existing customers with the data-free music service in their plans.

The ACM highlighted that it had held "numerous conversations with T-Mobile, urging it to comply with the court's ruling, and to discuss what T-Mobile could do for customers that would be affected by the discontinuation of said service". Crucially, T-Mobile has now committed to contacting existing customers, and offering them a suitable alternative during the first few months of 2023. The ACM has accepted the commitment made by T-Mobile to stop offering its data-free music service no later than 31 March 2023, so that T-Mobile will have sufficient time to contact affected customers, and to phase out the service. T-Mobile also agreed to keep the ACM informed of the progress of the entire process.

Autoriteit Consument en Markt, Openbaar besluit tot bindend verklaren toezeggingen, ACM/22/179315, 16 december 2022

https://www.acm.nl/nl/publicaties/acm-akkoord-met-toezegging-t-mobile-over-stoppen-met-zero-ratingdienst-voor-muziek

Netherlands Authority for Consumers and Markets, Decree declaring commitments binding, ACM/22/179315, 16 December 2022

Autoriteit Consument en Markt, ACM akkoord met toezegging T-Mobile: zero-ratingdienst muziek stopt per 31 maart 2023, 16 december 2022

https://www.acm.nl/nl/publicaties/acm-akkoord-met-toezegging-t-mobile-zero-ratingdienst-muziek-stopt-31-maart-2023

Netherlands Authority for Consumers and Markets, ACM agrees with T-Mobile's commitment: zero-rating music service will end on 31 March 2023

[NL] New funding system for local public broadcasting

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On 16 December 2022, the *Staatssecretaris Cultuur en Media* (State Secretary for Culture and Media) announced significant new funding for local public broadcasting, and a new system of funding for local public broadcasting. Under the scheme, the Dutch government will make over EUR 15.9 Million available to support local public broadcasters in their professionalisation, and in 2024, this funding will increase to EUR 18.9 Million. Significantly, from 2025 onwards, local broadcasters will receive funding directly from the central Dutch government, and no longer from municipalities (see IRIS 2020-6/7).

The State Secretary stated that many local public broadcasters are currently struggling financially, and most of the funding will therefore go to “strengthening the broadcasters by focusing on further professionalisation”, with EUR 9.6 Million in 2023, and EUR 11 Million in 2024. Broadcasters can use this funding, for example, to hire people or strengthen their editorial staff in other ways. Further, in 2023 and 2024, EUR 1.8 Million is also being made available for the transition to digital radio distribution (DAB+) so that broadcasters can continue to be heard when the number of analogue radio receivers decreases. Investments are also being made in more cooperation between the local and regional public broadcasters and the public broadcaster NOS.

Of further note, the State Secretary announced that the government is investing EUR 2 Million in 2023, and a further EUR 4 Million in 2024, in the Public Journalism House (*Publiek Journalistiek Huis*) partnership, which is a partnership of local, regional, and national public broadcasters. The purpose of the initiative is to create a “common space” where broadcasters jointly produce journalistic content, share innovative techniques, and conduct research into increasing impact and reach.

Finally, in 2025, a new local broadcasting system will begin. One of the important changes is that broadcasters must go through a stricter procedure in order to be designated as a local public broadcaster. These broadcasters will then receive structurally more funding. Instead of the current financing system from municipalities, the central Dutch government itself will provide funding for local public broadcasters. This will give broadcasters “long-term certainty about their financing and a more independent position in relation to municipalities”. The State Secretary stated that “it is important for the local public debate and for local democracy that people know what is going on in their village, city, or municipality. Local public broadcasters are indispensable in this. In the new system from 2025, they will receive more money on a structural basis, and they will no longer be dependent on municipalities for their financing.”

Ministerie van Onderwijs, Cultuur en Wetenschap, Kabinet geeft in 2023 € 15,9 miljoen aan lokale publieke omroepen, 16 december 2022

https://www.rijksoverheid.nl/ministeries/ministerie-van-onderwijs-cultuur-en-wetenschap/nieuws/2022/12/16/kabinet-geeft-in-2023-%E2%82%AC-159-miljoen-aan-lokale-publieke-omroepen

Ministry of Education, Culture and Science, In 2023, the Cabinet will give € 15.9 million to local public broadcasters, 16 December 2022

SLOVAKIA

[SK] Statute on Media Services enters into force

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The Statute of Slovakia “On Media Services and on Adoption of Amendments to Certain Statutes” (the Statute on Media Services) was adopted by the National Council (Parliament) of the Slovak Republic on 22 June 2022, and enters into force on 1 August 2022, and in part – on 1 January 2023 and on 1 January 2027.

The Statute contains 244 Articles and regulates the activities of broadcasters, providers of audiovisual media services, operators of rebroadcasting, multiplex providers and video hosting providers, if they are registered, headquartered or reside in Slovakia.

Suppliers of content are free and independent in their activity, including journalistic activity (Articles 8 and 16). Broadcasters’ news programmes are to be objective and fair, while facts therein are to be separated from opinions (Article 25). Content service providers are liable for the content, unless it is advertising by third parties; emergency public notices ordered by a public authority; the content of a third-party message, the publication of which fulfills an obligation established by law; the content of information provided by an official mentioned in the Constitution, a budget organisation or a sponsoring organisation established by a public authority or a legal entity in accordance with the law; or for content published in accordance with the right of reply and the right of correction (Article 15).

The Statute provides for the obligation of content providers and their staff to keep confidential sources of information secret (Article 17) and to respect the right of reply and the right of correction (Articles 212 - 214).

In relation to broadcasters, the Statute provides for the right of short news reports (Article 23) and the right of access by the public to television coverage of events of major importance for society, the list of which is to be provided by the media regulator, the Council for Broadcasting and Retransmission (Article 24). The Statute provides for the rights of minors in relation to broadcasting and other audiovisual media services (Article 62); the protection of European works (granting them the majority of airtime) (Articles 63 - 64); and independent production (minimum 10 per cent of airtime) (Articles 65 - 66) on TV.

A significant section of the Statute is dedicated to the regulation of commercial speech (Part 11), while Part 14 provides for state regulation, functions of the media regulator, as well as self-regulation. The nine members of the regulator are elected for a six-year term by the Parliament (Articles 114 and 116). Part 15 provides for the sanctions that are at the disposal of the regulator (notice, public

announcement, suspension, monetary fine, withdrawal of the licence). Part 17 of the Statute regulates licensing and other permits issued by the regulator.

The Statute replaces the 2000 Statute “On Broadcasting and Rebroadcating” (No 308/2000) and the 2007 Statute “On Digital Broadcasting” (No 220/2007), as well as amending a number of other national statutes.

Zákon o mediálnych službách a o zmene a doplnení niektorých zákonov (zákon o mediálnych službách), N 264/2022, 22. júna 2022

https://www.epi.sk/zz/2022-264

Statute of Slovakia On Media Services and on Adoption of Amendments to Certain Statutes, N 264/2022, 22 June 2022

[SK] Statute on Publishing enters into force

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The Statute of Slovakia “On Publishers of Publications and on the Register of the Mass Media and Audiovisual Media, and on Adoption of Amendments to Certain Statutes” (the Statute on Publishing) was adopted by the National Council (Parliament) of the Slovak Republic on 22 June 2022, and enters into force on 1 August 2022. In particular, it regulates the activity of news web portals and online periodic press.

Publishers of periodic publications (online and offline) and operators of news portals are to be registered by the Ministry of Culture of the Slovak Republic (Article 3). They are obliged to publish emergency public notices when ordered by a public authority and to restrict access to the media content provided by persons under international sanctions (Article 4).

The Statute provides for the obligation of publishers and operators, and their staff, to keep confidential sources of information secret (Article 4), as well as to respect the right of reply and the right of correction (Articles 8 - 10).

The Statute requires publishers and operators to submit copies of their publications to the digital repositories established by the government (Articles 17 - 20).

The Statute supersedes the 2008 Statute “On the Press” (No. 167/2008), which is now annuled.

Zákon o vydavateľoch publikácií a o registri v oblasti médií a audiovízie a o zmene a doplnení niektorých zákonov (zákon o publikáciách), 22. júna 2022, No 265

https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2022/265/

Statute “On Publishers of Publications and on the Register of the Mass Media and Audiovisual Media, and on Adoption of Amendments to Certain Statutes” (Statute on Publishing), 22 June 2022, No 265

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