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EDITORIAL

In my first editorial of the year, I wrote that 2023 would most likely be the year of the EMFA and noted that the first critical reactions to this proposal had already appeared. Now that we have reached the middle of the year, and just as the Council of the European Union has reached an agreement on the EMFA proposal, some rather harsh criticisms have been published by influential members of the European audiovisual sector.

Given the concerns expressed, the ongoing trilogue discussions promise to be very interesting, as does the rest of the news that awaits you in this month's newsletter.

And since we have reached that time of the year, I can only wish you a relaxing summer break!

Enjoy the read!

Maja Cappello, Editor

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INTERNATIONAL

COUNCIL OF EUROPE

Venice Commission: New acts on “de-oligarchisation” in Ukraine, Georgia and Moldova should not be enforced

Andrei Richter
Comenius University (Bratislava)

Following the adoption, in 2021, by Ukraine of specific “de-oligarchisation” legislation, the commitment to eliminate the excessive influence of vested interests in economic, political and public life has also become an objective in Georgia and Moldova. Georgia has prepared a draft statute and Moldova both a draft statute and later an action plan, which alongside the relevant Ukrainian statute, underwent a review by the Venice Commission of the Council of Europe on 9-10 June 2023.

As defined in the Ukrainian statute, which served as a model in the other two cases, an “oligarch” (or “a person wielding significant economic and political weight in political life”) is a person meeting three of four criteria outlined in the statute, including the criteria of “exerting significant influence over mass media”, which in Article 4 of the statute is defined as being an owner, or founder, or beneficial owner or controller of a mass medium, or as having been such an owner, or founder, or beneficial owner or controller at the time of the adoption of the statute, but in the grace period provided (the first six months) lost this status to another person who does not enjoy “an impeccable business reputation”, as formally defined by the statute (including the denial of such a reputation in the case of persons under national or international economic sanctions).

The consequences of being designated as an oligarch include being entered in a public register and being subject to a series of limitations, such as being prohibited from financing political parties and election campaigns and participating in large-scale privatisation. Such persons also fall under additional public scrutiny, including an obligation to submit an asset and interest declaration, while public officials are required to disclose any communication with the listed oligarchs through the filing of a specific “declaration of contacts”. The Ukrainian Government decided to launch the register of oligarchs three months after the final opinion of the Venice Commission.

The final opinion, though, recommends that the statute should not be implemented as it is difficult to reconcile with principles of political pluralism and the rule of law, as it has the potential of being misused for political purposes. It noted, in particular, that the statute may infringe rights under Article 10 of the

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ECHR.

The draft statutes on de-oligarchisation in Georgia and Moldova are not dissimilar from the statute adopted in Ukraine. Therefore, the conclusions of the Venice Commission recommend that the drafts should not be adopted. The key problem is the “personal” approach to solving the existing real problems with attempts to “capture the states”, as opposed to the systemic approach recommended in the opinions of the Venice Commission. They all refer to “the great paradox of de-oligarchisation laws”, which is presented as follows:

“If the administration and the judiciary are strong and independent enough to support the implementation of 'personal measures' of the kind described, then such measures are no longer needed because the preconditions are met to deploy a much more systemic and effective strategy. If conversely the administration and judiciary have been 'captured' by the interests that the 'personal measures' are intended to fight, then such measures are either ineffective or – having to be adopted through executive acts that are not fully subject to effective judicial control – profoundly dangerous for human rights, democracy and the rule of law.”

The Venice Commission noted that in the three legal acts the oligarchs are defined by their influence on the media. A “central issue” therefore is the need to strengthen media pluralism, including by the enforcement of competition law and merger control procedures, as well as to ensure transparency of media ownership, in line with the Recommendation of the Committee of Ministers of the Council of Europe on media pluralism and transparency of media ownership. Such ownership information should cover all media actors and be easily available and accessible to the public.

On 13 June 2023, the Georgian Parliament passed the draft statute “On de-oligachisation” at the second reading (there should also be a third reading). The draft law defines an “oligarch” as a natural person who matches the following criteria: he/she a) participates in political life, b) exerts influence on media services, and c) owns significant economic resources (Article 1). The decision to enter a person in the registry of oligarchs is taken by the Anti-Corruption Bureau following specific criteria, provided by the statute. In this regard, “exerting influence on media services” means that the person is (directly or indirectly) an owner/co-owner of the share in the provider of the audiovisual media service or radio broadcaster, or has exerted influence on media services in Georgia during the past year (Article 2).

Moldova’s action plan on de-oligarchisation, adopted by the National Commission on European Integration under the President of Moldova on 26 May 2023, aims, in particular “to counteract the phenomenon of excessive concentration of the mass media in the hands of a single owner and the manipulation of public opinion to the advantage of a narrow political group”. It envisions a “consolidation of the internal normative framework regarding the application of international restrictive measures, by expanding the possibilities of intervention of the competent state authorities and making their intervention more efficient, as well as excluding some gaps detected in the implementation process of the existing legal

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provisions" only by May 2024. The new measures would include a change in the Audiovisual Service Code of Moldova to lower the cap for the share of the "dominant position in the formation of public opinion" from 35% to 25%.

Georgia - Final Opinion on the draft law on de-oligarchisation, adopted by the Venice Commission at its 135th Plenary Session (Venice, 9-10 June 2023), CDL-AD(2023)017-e

https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2023)017-e

Republic of Moldova - Final Opinion on limiting excessive economic and political influence in public life (de-oligarchisation), adopted by the Venice Commission at its 135th Plenary Session (Venice, 9-10 June 2023), CDL-AD(2023)019-e

https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2023)019-e

Ukraine - Opinion on the Law on the prevention of threats to national security, associated with excessive influence of persons having significant economic or political weight in public life (oligarchs), adopted by the Venice Commission at its 135th Plenary Session (Venice, 9-10 June 2023), CDL-AD(2023)018-e

https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2023)018-e

Про запобігання загрозам національній безпеці, пов'язаним із надмірним впливом осіб, які мають значну економічну та політичну вагу в суспільному житті (олігархів)

https://zakon.rada.gov.ua/laws/show/1780-IX#Text

Statute of Ukraine on the prevention of threats to national security associated with the excessive influence of persons who have significant economic or political weight in public life (oligarchs), N 1780-IX

Revised draft Law of Georgia on de-oligarchisation, second reading on 13 June 2023

https://venice.coe.int/webforms/documents/?pdf=CDL-REF(2023)010rev-e

Plan of measures to limit the excessive influence of private interests on economic, political and public life (de-oligarchisation). Adopted by the National Commission on European Integration on 26 May 2023, published on 8 June 2023

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CROATIA

European Court of Human Rights: Mesić v. Croatia (no. 2)

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

The European Court of Human Rights (ECtHR) in a judgment of 30 May 2023 has dismissed a complaint introduced by the former president of Croatia, Mr Stjepan Mesić. Mesić's complaint was about the dismissal by the domestic courts of his civil action for compensation because of alleged defamatory statements in an article published on an Internet news portal suggesting his involvement in criminal activities. In line with the domestic courts, the ECtHR found no violation of Mesić's right to reputation under Article 8 of the European Convention on Human Rights (ECHR). The ECtHR considered that the article at issue concerned a matter of public interest and was based on reliable sources. It emphasised the importance of investigative journalism as a guarantee that authorities could be held to account for their conduct. The ECtHR found that the domestic courts had struck a fair balance between the competing rights of Article 8 (privacy/reputation) and Article10 (freedom of expression) ECHR, valuing the role of the media as a public watchdog.

The application concerned an article published in February 2015 by the Internet news portal Dnevno.hr suggesting that Mesić, during his term of office, had been involved in criminal activities in relation to the procurement of armoured vehicles for the Croatian army from the Finnish company Patria. The article was based on a press release from 2013 by the Finnish Prosecutor General, mentioning that three Finnish employees of Patria were suspected of having participated in making promises or giving bribes through intermediaries in exchange for actions by the President of the Republic of Croatia and a general manager of a Croatian state-owned company. In 2014 the journalist of Dvevno.hr had a telephone call with the Finnish Public Prosecutor who was in possession of a document issued by the Finnish authorities which showed that Mesić had received a bribe of EUR 630 000. In 2016, however, the Turku Court of Appeal acquitted the accused Finnish employees of Patria, as it had found no proof of the bribery accusation. Shortly after the publication of the article in March 2015 Mesić had requested that the news portal Dnevno.hr publish a correction in relation to the impugned article which he considered to be false and injurious to his honour and reputation. The news portal Dnevno.hr replied that it would not publish a correction and explained why it stood by the impugned statements. In May 2015 Mesić brought a civil action against the news portal arguing that the allegations about his involvement in the Patria case were false and had breached his honour and reputation because he had been portrayed as a corrupt politician and a criminal. First the Zagreb Municipal Civil Court and later on appeal the Zagreb County Court dismissed Mesić's claim. The Zagreb County Court in essence found that the news portal had

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based its article on relevant sources, such as the telephone interview with the Finnish Prosecutor General and the Finnish indictment. The article reported information of justified public interest, while the plaintiff was a public figure and the author of the article had acted in good faith on the basis of previously verified information. By a decision in December 2016, the Constitutional Court dismissed Mesić's constitutional complaint. It found that the domestic courts had given sufficient reasons for their decisions, which were not arbitrary, and that the case did not reveal a breach of Mesić's constitutional right to be presumed innocent. Relying on Article 8 ECHR Mesić lodged an application with the ECtHR arguing that by dismissing his civil action for compensation, the Croatian courts had failed to protect his reputation as part of his right to respect for his private life.

The ECtHR confirmed once again that in this type of case the main issue is whether the state, in the context of its positive obligations under Article 8 ECHR, has achieved a fair balance between an individual's right to protection of reputation and the other party's right to freedom of expression as guaranteed by Article 10 ECHR. It also reiterated that where judicial cases or criminal investigations are concerned, it is inconceivable that there should be no prior or contemporaneous discussion of the subject matter of trials, be it in specialised journals, in the general press or among the public at large. Not only do the media have the task of imparting such information and ideas but the public also has a right to receive them. The ECtHR observed that reporters and other members of the media must be free to report on events based on information gathered from official sources without having to verify them. However, distorting the truth, in bad faith, can sometimes overstep the boundaries of acceptable criticism: a correct statement can be qualified by additional remarks, by value judgments, by suppositions or even insinuations, which are liable to create a false image in the public mind. Thus, the task of imparting information necessarily includes duties and responsibilities, as well as limits which the press must impose on itself spontaneously. That is especially so where a media report attributes very serious actions to named persons, as such "allegations" run the risk of exposing the latter to public contempt. The ECtHR also referred to the various relevant criteria for balancing the right to respect for private life against the right to freedom of expression and found it appropriate to consider the following applicable criteria: the contribution to a debate of general interest, how well known the applicant was, and the method of obtaining the information and its veracity.

The ECtHR agreed with Mesić that portraying him as a criminal was capable of seriously tarnishing his reputation and discrediting him in the eyes of the public. The impugned article was published on a news web portal and was thus available to a wide public readership. Therefore the statements in question attained the requisite level of seriousness so as to cause prejudice to Mesić's rights under Article 8 ECHR. Next the ECtHR found, as the domestic courts did, that the impugned article undoubtedly concerned a matter of public interest, while the "watchdog" role of the media assumed particular importance in such a context. Investigative journalism is a guarantee that the authorities can be held to account for their conduct. Over and above his role as a politician, and in particular as head of state, Mesić must display a great degree of tolerance and accept close scrutiny

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in relation to the exercise of his official duties. Turning to the content of the impugned article, the ECtHR considered that the impugned article as a whole had a sufficient factual basis, referring to the contacts with and the documents from the Finnish judicial authorities. The journalist had also made clear that he was only reporting what was stated in those official documents. That the prosecuted employees of Patria were finally acquitted in Finland is of no relevance because this occurred after the publication of the impugned article. With regard to Mesić's right to be presumed innocent the ECtHR emphasised that the degree of precision for establishing the well-foundedness of a criminal charge by a competent court can hardly be compared to that which ought to be observed by journalists when expressing opinions on matters of public concern. On the basis of the foregoing considerations the ECtHR concluded that there were no strong reasons to substitute its view for that of the domestic courts, which struck the requisite fair balance between Mesić's right to respect for his private life and the right of the news portal to freedom of expression. Therefore, it could not be said that the domestic courts had failed to discharge their positive obligation under Article 8 ECHR to ensure effective respect for Mesić's private life, in particular, his right to respect for his reputation.

By five votes to two the ECtHR found that there had been no violation of Article 8 ECHR. The two dissenting judges argued that the finding by the majority set "a very low standard" for the protection of personality rights, while the impugned article did not meet the standards of "responsible journalism".

Judgment by the European Court of Human Rights, Second Section, in the case of Mesić v. Croatia (no. 2), Application no. 45066/17, 30 May 2023

https://hudoc.echr.coe.int/eng?i=001-224963

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EUROPEAN UNION

Council and Parliament reach political agreement on Data Act

Amélie Lacourt
European Audiovisual Observatory

Over a year after the adoption of the proposed Regulation on harmonized rules on fair access to and use of data (Data Act) by the European Commission on 23 February 2022, the Council of the European Union and the European Parliament finalised negotiations and reached a political agreement on 28 June 2023. It is in light of the Internet of Things (IoT) and the expected increase of data that this Act was thought, seeking to boost the EU's data economy by unlocking industrial data, optimising its accessibility and use, and fostering a competitive and reliable European cloud market. The Data Act is also part of a package of initiatives aimed at establishing a unified market allowing for data to flow freely within the European Union and between sectors. This package is part of the European strategy for data announced in February 2020, and from which stem two key pillars: the Data Act itself and the Data Governance Act. The latter entered into force on 23 June 2022 and will be applicable as of September 2023. It clarifies who can create value from data and under which conditions.

The Data Act includes:

Measures that enable users of connected devices to access the data generated by these devices and by services related to these devices Measures to provide protection from unfair contractual terms that are unilaterally imposed Mechanisms for public sector bodies to access and use data held by the private sector New rules that grant customers the freedom to switch between various cloud data-processing service providers Measures to promote the development of interoperability standards
Margrethe Vestager, Executive Vice-President for a Europe Fit for the Digital Age, claims that “the Data act will optimise data use by improving data accessibility for individuals and businesses” while Thierry Breton, Commissioner for Internal Market, also insists on the fact that it aligns with the European values and principles of personal data protection: “The Data Act will ensure that industrial data is shared, stored and processed in full respect of European rules [...] on our European conditions”.

The Data Act is still subject to formal approval and will enter into force 20 days after publication in the Official Journal and become applicable only after 20 months.

Data Act: political agreement

https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_23_349

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1/IP_23_3491_EN.pdf

Regulation (EU) 2022/868 of the European Parliament and of the Council of 30 May 2022 on European data governance and amending Regulation (EU) 2018/1724 (Data Governance Act)

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022R0868

Communication from the commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A European strategy for data

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0066

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EC study on how to make Creative Europe programme greener

Amélie Lacourt
European Audiovisual Observatory

At the European level, support for the culture and audiovisual sectors is provided through the Creative Europe programme set up by the European Commission. The programme is divided into two strands, CULTURE and MEDIA, and is supported by a third, CROSS-SECTORAL strand. Its aim is to invest in actions that reinforce cultural diversity and respond to the needs and challenges of both sectors by contributing to their recovery, reinforcing their efforts to become more inclusive, more digital and environmentally more sustainable. Environmental sustainability is a new priority, as the previous programme (2014-2020) did not include greening requirements in its legal basis.

As part of a response to the Resolution of the European Parliament calling for effective measures to "green" Erasmus+, Creative Europe and the European Solidarity Corps, the Commission published on 24 May 2023 a study on how to make its Creative Europe programme greener. The study was commissioned by the Directorate General for Education, Youth, Sport and Culture (DG EAC) and produced in partnership with the Directorate General for Communications Networks, Content and Technology (DG CNECT). It covers the previous Creative Europe programme 2014-2020 and the first two years of the current one. The methods used for this study include a desk-based mapping of green projects, a beneficiary survey to assess the extent to which projects supported by the previous Creative Europe programme greened their activities (internal greening) and contributed to mainstreaming climate actions (external greening), and consultations with stakeholders.

More particularly, the methods used to evaluate the greening of projects include the awarding of points. The green aspects of project proposals submitted under the the current Creative Europe programme are evaluated on the basis of their relevance and quality. “Applications responding to MEDIA strand calls can obtain up to five points out of the total number of points for the relevance criteria by including strategies to ensure project activities will be delivered in a sustainable and environmentally respectful way.” In most MEDIA and CROSS-SECTORALl calls participants were awarded five points. “The quality criterion requires project applications to demonstrate how applicants will address the horizontal priorities listed under the relevance criteria.”

The study also includes a set of recommendations which are encompassed in three distinct parts:

a greening strategy, which identifies areas where action is needed and makes recommendations on what could be done in practical terms to green the Creative Europe programme in the foreseeable future. This section sets out the vision,

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objectives, scope and target groups of the strategy, the challenges and opportunities involved in greening, the next approaches to put in place, and the recommended actions. a good environmental practice guide, which provides a comprehensive overview of existing good environmental practices recommended to actual and potential Creative Europe programme beneficiaries when applying for and/or implementing their supported projects. The five key practices highlighted are: developing an environmental policy/strategy; developing an action plan; combining communication of the organisation's or project's environmental policy with awareness-raising activities; taking part in events to exchange information about greening practices; and investing in building the green capacity of staff working or wanting to work in Creative Europe projects. a monitoring guide for programme greening, which includes a proposal for sustainability (or green) indicators that could be used to measure the Creative Europe programme's progress and contribution towards the European Green Deal objectives. These indicators include, among others: the number and share of supported projects that report a greening strategy; the total and share of supported projects that report being carbon neutral; the number and share of supported projects that promote climate, environmental and sustainability objectives, by scheme/action and programme strand, etc.

The action taken by the EC is therefore in line with the European Green Deal, adopted at the end of 2019, which outlines, through a set of initiatives driven by the European Commission, how to make Europe the first climate-neutral continent by 2050.

Besides, the European Commission will also support the development of an EU carbon emission calculator for the audiovisual sector through the Creative Europe MEDIA programme (EUR 650 000). With this initiative, the EU aims to move towards standardising the measurement of the carbon footprint, based on common data and calculation rules, which will allow better comparability than the current initiatives taken at national level within the framework of individual methodologies.

The call for tenders is open until 31 July 2023 and the service contract will last a maximum 48 months, until end of 2026, coinciding with the end of the Creative Europe 2021-2027 programme.

European Commission, Directorate-General for Education, Youth, Sport and Culture, Kruger, T., Mohamedaly, A., Muller, V.et al., Greening the Creative Europe Programme – Final report, Kruger, T.(editor), Mohamedaly, A.(editor), Muller, V.(editor), Rodriguez, A.(editor), Feifs, T.(editor), Buiskool, B.(editor), Publications Office of the European Union, 2023

https://data.europa.eu/doi/10.2766/625636

European Green Deal

https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en

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European Commission will support the development of an EU carbon emissions calculator for the audiovisual sector

https://digital-strategy.ec.europa.eu/en/funding/european-commission-will-support-development-eu-carbon-emissions-calculator-audiovisual-sector?pk_source=ec_newsroom&pk_medium=email&pk_campaign=Shaping%20Europe%27s%20Digital%20Future%20website%20updates

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EU sanctions five more Russian media outlets

Amélie Lacourt
European Audiovisual Observatory

On 25 February 2023, the Council of the European Union adopted its tenth package of sanctions against Russia, banning two channels broadcast in Arabic (see: IRIS 2023-3:1/2). Four months later, on 23 June 2023, five more media outlets were subject to an EU ban as part of the Council's eleventh package of sanctions against Russia for its continued illegal war against Ukraine.

The broadcasting licenses of RT Balkan, Oriental Review, Tsargrad, New Eastern Outlook and Katehon have been suspended and are now no longer authorised to broadcast in the EU. This decision was taken with the aim to combat disinformation. The Council indeed claims that these media outlets are "under the permanent control of the Russian leadership" and participate in spreading misinformation and propaganda, which, under the terms of the Council, "constitute[s] a significant and direct threat to the Union's public order and security". This decision was taken consistently "with the fundamental rights and freedoms recognised in the Charter of Fundamental Rights of the European Union, in particular with the right to freedom of expression and information as recognised in Article 11 thereof".

All measures and sanctions taken as part of the packages of sanctions against Russia in relation to the war of aggression against Ukraine should be stopped once "Russia, and its associated media outlets, cease to conduct propaganda actions against the Union and its Member States."

Council Regulation (EU) 2023/1214 of 23 June 2023 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine

https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L:2023:159I:FULL

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European Commission launches public consultation on DSA Transparency Database

Eric Munch
European Platform for Regulatory Authorities (EPRA)

On 21 June 2023, the European Commission (EC) launched a public consultation on the Digital Services Act (DSA) Transparency Database.

This database, containing statements from online platforms regarding reasons for removal of information and other content moderation decision, is to be set up and maintained by the EC, pursuant to Article 24(5) of the DSA. As part of their new responsibilities to better inform users, platforms will be required to submit their statements without undue delay after each decision, in order to allow for "almost real-time updates", according to the EC's press release for the launch of the public consultation.

The consultation gives the opportunity to all stakeholders to weigh-in by giving suggestions on the platforms' submission methods (between a range of pre-identified technical options, or new ones to be described by the stakeholders answering the consultation), the delay for submissions (ranging from immediate to within a week), the type and amount of documentation to be made available to the public – and hypothetical access restriction to parts of the database –, the safeguards to put in place with regard to data protection, and opinions on the structure and content currently envisaged for the database.

The consultation remains open until 17 July 2023.

Press release - Digital Services Act: Commission launches public consultation on transparency database of content moderation decisions

https://digital-strategy.ec.europa.eu/en/news/digital-services-act-commission-launches-public-consultation-transparency-database-content?pk_source=ec_newsroom&pk_medium=email&pk_campaign=Shaping%20Europe%27s%20Digital%20Future%20website%20updates

Public consultation - DSA Transparency database of content moderation decisions

https://ec.europa.eu/eusurvey/runner/bd32f3a5-2d69-95dc-41b2-7066e31ca8e1

European Commission will support the development of an EU carbon emissions calculator for the audiovisual sector

https://digital-strategy.ec.europa.eu/en/funding/european-commission-will-support-development-eu-carbon-emissions-calculator-audiovisual-sector?pk_source=ec_newsroom&pk_medium=email&pk_campaign=Shaping%20Europe%27s%20Digital%20Future%20website%20updates

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Provisions from latest EMFA proposal are cause for concerns for audiovisual and cultural actors and journalists

Eric Munch
European Platform for Regulatory Authorities (EPRA)

On 9 June, a broad coalition of European and national organisations from the audiovisual and cultural sectors addressed the European Commission, the Council of the European Union and the European Parliament, voicing their concern about the content of the EMFA proposal by the Commission.

Their concern stems from the current EMFA proposal's Article 20 and its paragraph 1 in particular, which states that "Any legislative, regulatory or administrative measure taken by a Member State that is liable to affect the operation of media service providers in the internal market shall be duly justified and proportionate. Such measures shall be reasoned, transparent, objective and non-discriminatory."

In their 9 June open letter to the Institutions, the coalition members argue new "'requirements for well-functioning media market measures and procedures' with the objective of tackling obstacles to the functioning of the internal market for media services, such as disproportionate and inadequate national regulations affecting the media and press sectors. These national regulations are considered as 'regulatory burdens' and 'obstacles to the exercise of economic activities' in the European media market with the risk of creating 'legal uncertainties' weakening investment in media services. According to them, this approach "may weaken and possibly challenge the existence of protective and ambitious cultural policies set out by Member States to promote European audiovisual creation in all its diversity."

A new complaint mechanism, introduced in Article 20 paragraph 4, would also allow media service providers to challenge essential measures for the creation, production and distribution of European audiovisual works based on internal market criteria only.

On 21 June, the Council of the European Union came to an agreement regarding the EMFA proposal, with its Article 20 slightly modified, now reading: "Legislative, regulatory or administrative measures taken by a Member State that are liable to affect media pluralism or editorial independence of media service providers in the internal market shall be duly justified and proportionate. Such measures shall be reasoned, transparent, objective and non-discriminatory."

On the same day, the European Federation of Journalists (EFJ) also voiced concern regarding another provision from the latest proposal. While the EFJ refers to EMFA as a "much needed" piece of legislation, it does not see favourably the intention

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of European member states to introduce an exception to the general ban on deploying spyware against journalists – a provision introduced by France earlier in June to Article 4. The provision adds that the effective protection of journalistic sources "is without prejudice to the Member States' responsibility for safeguarding national security." The EFJ considers that the inclusion of a national security exemption would turn "the protections originally afforded into empty shells."

It also points out that the exhaustive list of crimes justifying an exemption initially set by the European Commission – which was already cause for concern – has been replaced in this draft by the list established in the European Arrest Warrant Framework Decision, making the deployment of spyware against journalists and journalistic sources even easier to justify.

The 21 June press release also raises the contradiction between this exemption and the important case law of the Court of Justice of the European Union (CJEU), which makes it clear that safeguarding national security cannot render EU law unapplicable and does not exempt member states from their obligation to comply with the rule of law.

"We are disturbed about the dangerous loopholes in the Council's position, which shows a disregard for media freedom principles", said EFJ Director Renate Schroeder, before summarising: "This EMFA was supposed to generate trust. The Member States are generating mistrust."

EFJ Press release - EMFA : EU Member States show dangerous disregard for media freedom principles

http://eye.sbc37.com/m2?r=wAXNBUm4NWQzYWMzMDcxMWNlNjIxN2VjZGYzOWExxBDQvNCpZNDX8tDSRGBh0NAZO9CoSfwItmRkdGpJRmZla1dXQ0FxV1Q2MUNscme5ZnJhbmNpc2NvLmNhYnJlcmFAY29lLmludKCoQzNIaGJGSUOQtlFOdlM4cFZQRHNyU2pUMlFkTjNOdHeg

EFJ - EU Member States should not use national security as a pretext to weaken the Media Freedom Act

https://europeanjournalists.org/blog/2023/06/13/eu-member-states-should-not-use-national-security-as-a-pretext-to-weaken-the-media-freedom-act/

Open letter to EU Institutions regarding the impact of the EMFA Regulation proposal on cultural audiovisual policies

https://screendirectors.eu/open-letter-to-european-institutions-regarding-the-impact-of-the-emfa-regulation-proposal-on-cultural-audiovisual-policies/

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Two European Parliament procedures over the summer

Justine Radel-Cormann
European Audiovisual Observatory

Two procedures opened between February and April 2023 are worth keeping an eye on as the discussions are relevant for the audiovisual sector.

EU framework for the social and professional situation of artists and workers in the cultural and creative sectors - 2023/2051(INL):

The European Parliament's CULT and EMPL committees initiated a procedure to reflect on an EU framework for the social and professional situation of artists and workers in the cultural and creative sectors. The rapporteurs, Demec Ruiz Devesa (CULT) and Antonius Manders (EMPL) presented a draft report on 13 June. MEPs have until 4 July 2023 to table amendments. The draft report calls for a European status of artists and for securing their social rights. For instance, the draft mentions the representation of and collective bargaining for cultural and creative professionals, in cooperation with social partners. MEPs will discuss the draft and later agree on a final version with a committee vote scheduled for October 2023 and a plenary vote for November 2023. Once the MEPs endorse the report, it will be forwarded to the European Commission and the Council.

Implementation of the 2018 Geoblocking Regulation in the Digital Single Market - 2023/2019(INI):

The European Parliament's IMCO committee initiated a procedure to look at the implementation of the Geoblocking Regulation. The rapporteur for IMCO, Beata Mazurek, published her draft in June 2023. MEPs have until 12 July 2023 to table amendments. The draft report deems necessary the development of further actions to develop more cross-catalogue availability of video content and sports events via streaming services. This could mean extending the scope of the Geoblocking Regulation to include copyright content. The draft report goes on with the need for a careful assessment of future policies that could have an impact on the diversity and financing of the creative sector.

The CULT Committee will present an opinion on the file. Currently, its draft opinion repeats the importance of excluding copyright-related work from the scope of the Regulation for the sake of the financial stability of the films and audiovisual content. Amendments to the draft opnion were tabled in May 2023. The opinion, once agreed by CULT MEPs, should be incorporated into IMCO's final report. For the time being, IMCO MEPs are expected to vote on a text in October 2023.

Draft report with recommendations to the Commission on an EU framework for the social and professional situation of artists and

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workers in the cultural and creative sectors

https://www.europarl.europa.eu/doceo/document/CJ28-PR-746742_EN.pdf

Procedure 2023/2051(INL) EU framework for the social and professional situation of artists and workers in the cultural and creative sectors

https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2023%2F2051(INL)&l=en

[IMCO] Draft report on the implementation of the 2018 Geoblocking Regulation in the digital single market

https://www.europarl.europa.eu/doceo/document/IMCO-PR-749206_EN.pdf

[CULT] Draft opinion on the implementation of the 2018 Geoblocking Regulation in the digital single market

https://www.europarl.europa.eu/doceo/document/CULT-PA-746896_EN.pdf

[CULT] Amements to the draft opinion on the implementation of the 2018 Geoblocking Regulation in the digital single market

https://www.europarl.europa.eu/doceo/document/CULT-AM-749201_EN.pdf

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NATIONAL

GERMANY

[DE] Administrative Court confirms state media authority ban on Cypriot pornographic websites

Christina Etteldorf
Institute of European Media Law

In a press release published on 26 April 2023, the *Verwaltungsgericht Düsseldorf* (Düsseldorf Administrative Court – VG) announced its decisions in the dispute over a ban imposed on three pornography platforms for breaches of rules on the protection of minors in the media. The VG ruled that the objection lodged and the subsequent ban imposed on the websites by the *Landesanstalt für Medien Nordrhein-Westfalen* (North-Rhine Westphalia media authority – LfM NRW), due to inadequate age verification mechanisms, were lawful. As a result, the decisions taken in the corresponding interim proceedings were confirmed by the first-instance court in the main proceedings.

In June 2020, the LfM NRW had asked two Cyprus-based website providers to take immediate effective measures to protect children and young people on three pornographic websites that they operated (Pornhub, Youporn and Mydirtyhobby). The *Kommission für Jugendmedienschutz* (Commission for the Protection of Minors in the Media – KJM), a joint organ of the German state media authorities, had been involved in the proceedings and had already taken appropriate measures after deciding that provisions of the *Jugendmedienschutz-Staatsvertrag* (State Treaty on the Protection of Minors in the Media – JMStV) had been breached. Under Article 4(2) of the JMStV, pornographic content – which was indisputably available in video form on the platforms concerned – is only lawful in telemedia services if the provider has ensured that it is only accessible to adults. Effective age verification mechanisms are required to create such a closed user group. However, the disputed websites only feature a pop-up window inviting visitors to the site to confirm they are aged 18 or over with a simple click. German regulators do not consider this an effective age verification mechanism. Since the providers did not comply with the request to implement effective mechanisms, the websites concerned were banned in Germany by the LfM NRW. The Cypriot providers' applications for interim measures against the ban were rejected in 2022 (see IRIS 2022-9/20).

The VG Düsseldorf has now also confirmed the decision in the main proceedings. It rejected the providers' principal argument that the ban imposed by German media regulators violated the country-of-origin principle. Even if a website was operated from outside the EU, the provisions of German law on protecting young people in the media still applied. The country-of-origin principle could be ignored and the application of German law, which had been stricter at the time relevant to

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the decision, could be justified because children and young people in Germany were seriously endangered by the freely accessible content of the websites concerned. Studies had shown that around half of the children and young people questioned in Germany had watched freely accessible pornography on the Internet, while only around one in four parents had used special devices or software to block such content. In the VG Düsseldorf's opinion, it is therefore the provider's responsibility to ensure that only adults can access such content, such as by using an effective age verification system. The court deemed it irrelevant that the legal situation had since changed in Germany and Cyprus, since the situation relevant to the decision was that of 2020.

However, the providers' application was partially upheld to the extent that the LfM NRW had also based its decision on the fact that, as well as pornography, the websites contained other content that posed a threat to the development of young people and that (breaching an obligation under German law) no youth protection officer had been appointed. In these cases, the VG held that a deviation from the country-of-origin principle was not justified because these types of offences did not seriously endanger children and young people in Germany.

Since the VG Düsseldorf ruled that its decisions could be appealed, further court proceedings may follow.

Pressemitteilung des VG Düsseldorf vom 26. April 2023

https://www.vg-duesseldorf.nrw.de/behoerde/presse/pressemitteilungen/2023/07_23/index.php

Düsseldorf Administrative Court press release, 26 April 2023

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[DE] Federal Court of Justice rules on de-referencing of search listings and thumbnails by Google

Christina Etteldorf
Institute of European Media Law

In a ruling of 23 May 2023 (case no. VI ZR 476/18), the *Bundesgerichtshof* (Federal Court of Justice – BGH) decided that anyone who asks a search engine provider to de-reference the results of a general Internet search must prove that the information it contains is clearly inaccurate. However, such an obligation does not apply when images are displayed by a search engine's image search tool (in this case, the "Images" tab of the Google search engine) merely in the form of a thumbnail of the original image published on a different website, to which the search engine provides a link. Rather, such a thumbnail constitutes a separate publication by the search engine operator, the legality of which must be judged independently of its context on the other website, e.g. journalistic reporting. Therefore, if the image search result does not give any context – especially (journalistic) text – justifying the publication of a person's image, the thumbnail must be de-referenced. This applies even if the publication of the image on the other website cannot be challenged.

The decision, which follows a judgment issued by the Court of Justice of the European Union on 8 December 2022 (C-460/20), underlines once again that search engine results on the one hand, and the (possibly journalistic) content of a third party's website on the other, should be treated as two separate publications (in this case, data processing operations).

The case, which concerned an application under the data protection law for data to be deleted, in accordance with Article 17 of the General Data Protection Regulation (GDPR), is especially relevant in a journalistic context. The website of a US-based company (hereinafter: the original website) had contained articles about the plaintiffs that were critical of the investment models of individual companies in which the plaintiffs had held senior positions. They had particularly been accused of dubious business practices. The articles published on the original website had included several images showing the plaintiffs with various luxury goods, e.g. in a luxury car, in a helicopter or in front of a private jet. Whereas the original website's operators claimed that they had sought, through the articles, to help combat fraud prevention in business and in society by publishing information and promoting transparency, the plaintiffs accused them of blacklisting. They said the website operators would first publish negative reports and then offer to delete them or prevent their publication in exchange for so-called protection money. However, rather than take legal action against the original website, the plaintiffs requested Google firstly to remove the links to the articles from the list of results of general Google searches that included the names of the plaintiffs. Secondly, they asked Google to remove and de-reference the images that were displayed as thumbnails. Google refused to comply with both requests on the grounds that it could not judge whether the claims in the linked articles were true or not and, since the matter was in doubt, would not remove them. Google used the same

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argument concerning the text-based search results of a general Google search and the images (thumbnails) displayed in a Google image search. The plaintiffs then brought an action before the courts based on Article 17(1) of the GDPR.

After the lower instance courts rejected the claim, the Federal Court of Justice referred the case to the CJEU. In its judgment of 8 December 2022, the CJEU noted that the applicant did not need to have taken court action against the author of the original article published on the original website in order to verify its accuracy before being entitled to lodge a de-referencing application against the search engine operator. However, a claim against the search engine operator under Article 17 GDPR was only valid if the person who submitted the de-referencing request submitted relevant and sufficient evidence capable of substantiating his or her request, i.e. furnished a certain degree of evidence of the assertions' inaccuracy. The thumbnails, on the other hand, had their own independent informative value. The lawfulness of a thumbnail could only be assessed in the context of its publication (in the image search results), not in the context of its original publication (on the original website). In other words, although Google thumbnails should be assessed taking into account any text that accompanied the Google image search results, the (journalistic) context in which they appeared on the original website was irrelevant.

Referring to the CJEU's findings, the BGH decided that the plaintiffs had no rightful claim to have the general search results de-referenced. They had failed to provide the defendant (Google) with the necessary evidence that the information contained in the linked articles was clearly inaccurate. Although previous clarification by a court was not necessary to achieve this, other evidence was needed. Regarding the photographs, on the other hand, the BGH granted the claim under Article 17 GDPR. The publication of these thumbnails constituted a considerable, independent intrusion into people's rights to privacy and protection of their personal data, which could not be justified on account of the absence of any context in the Google image search. This meant that individuals were entitled to request the deletion of images from Google's image search function without further debate unless Google changed how thumbnails were displayed (e.g. by including the original context).

Pressemitteilung Nr. 084/2023 des BGH vom 23. Mai 2023

https://www.bundesgerichtshof.de/SharedDocs/Pressemitteilungen/DE/2023/2023084.html?nn=10690868

Federal Court of Justice press release no. 084/2023 of 23 May 2023

Urteil des Gerichtshofs (Große Kammer) vom 8. Dezember 2022, Rechtssache C-460/20, TU, RE gegen Google LLC

https://curia.europa.eu/juris/document/document.jsf?text=&docid=268429&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=3719198

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Judgment of the Court (Grand Chamber) of 8 December 2022, case C-460/20, TU, RE v Google LLC

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[DE] KJM and KEK reports published

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In May 2023, two German media regulators published reports examining past and ongoing challenges in the fields of youth protection and the safeguarding of diversity in the media. On 12 May, the *Kommission für Jugendmedienschutz* (Commission for the Protection of Minors in the Media – KJM) published its 10th activity report covering the period from March 2021 to February 2023. Meanwhile, the *Kommission zur Ermittlung der Konzentration im Medienbereich* (Commission on Concentration in the Media – KEK) published its 24th annual report, covering 2022, on 15 May.

According to the KJM's activity report, young people are spending more and more time online. Recent studies show that, on average, they now spend more than 200 minutes per day on the Internet. As a result, the risks to the development of children and teenagers into independent, active members of society are constantly increasing, largely on account of the age-inappropriate content they are faced with, such as hate, propaganda, disinformation, violence and pornography. In its report, the KJM stresses that, in order to protect minors from such problematic influences, AI systems could be used to verify users' ages. One example is the recently developed age estimation technology. Rather than using identity documents, these systems estimate a user's age from their biometric characteristics after being trained through machine learning. This gives media providers the opportunity to create legally watertight areas for adult content. The KJM mentions in its report that it has already approved age verification systems of this type.

One of the KJM's most important regulatory tasks during the reporting period concerned proceedings against four operators of popular foreign-based pornographic websites. Children and young people can easily access pornographic content on the Internet with just a few clicks. The operators of these websites are therefore contravening German youth protection laws. Although pornography is not prohibited, German law states that it may only be made accessible to adults in closed user groups. A closed user group can be created using prior age verification. By instigating proceedings against four large pornography platforms, for failure to carry out appropriate age checks, the KJM hoped to pressure the operators concerned into bringing their services into line with youth protection laws. Initial administrative court decisions have found these proceedings to be lawful.

In its 24th annual report, the KEK describes the media concentration investigations it carried out in 2022. It completed a total of 33 procedures during the reporting period. Of the 15 media concentration law investigations, relating to licence applications for national television channels, 11 were dealt with under a simplified procedure because they were of little importance for the protection of diversity of opinion. The channels concerned were not expected to reach certain

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audience thresholds. Fourteen procedures dealt with changes to ownership and shareholding structures. Four consultation procedures were held in relation to the licensing of third-party and regional windows. One of the main themes of the KEK's work in 2022 centred on its discussions with the ministerial advisers on broadcasting concerning the reform of media concentration law. The *Bundesländer* have long been discussing a model that moves away from the television-focused system of media concentration controls. The KEK is involved in this process. Other areas of the KEK's work in 2022 included examination of the relationship between European regulatory instruments and the safeguarding of plurality at national level, and the ripple effect of Article 5 of the *Grundgesetz* (Basic Law – GG) on media intermediaries.

10. Tätigkeitsbericht der Kommission für Jugendmedienschutz (KJM) - März 2021 – Februar 2023

https://www.kjm-online.de/fileadmin/user_upload/KJM/Publikationen/Taetigkeitsbericht/KJM_Taetigkeitsbericht_2021bis2023.pdf

10th activity report of the Commission for the Protection of Minors in the Media (KJM), March 2021-February 2023

24. Jahresbericht der Kommission zur Ermittlung der Konzentration im Medienbereich (KEK) - Berichtszeitraum 01 Januar 2022 bis 31. Dezember 2022

https://www.kek-online.de/fileadmin/user_upload/KEK/Publikationen/Jahresberichte/24._Jahresbericht.pdf

24th annual report of the Commission on Concentration in the Media (KEK), reporting period 1 January 2022 to 31 December 2022

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SPAIN

[ES] The Spanish video games industry experiences a 12% annual growth and reaffirms its strategic position

Azahara Cañedo & Marta Rodriguez Castro

The Spanish Video Game Association (Asociación española de videojuegos – AEVI) has launched its new yearbook 'The video game industry in Spain in 2022', which shows that the video game industry occupies a strategic place within the Spanish cultural and creative industries. After the previous growth experienced during the Covid-19 pandemic, during 2022 the video games industry in Spain grew by 12% compared to the previous year.

Both the reform of the Legal Deposit Law (Law 8/2022) and the implementation of the Spain Audiovisual Hub Plan are highlighted as drivers of the trend. On the one hand, in May 2022, video games were recognised by law with a specific category in the typology of cultural creations. On the other hand, last year the line of funding for the promotion of the video game industry was increased. In this sense, AEVI's report revalidates the interest of the Spanish Government in protecting and preserving this industry as part of Spain's cultural heritage at a key geostrategic moment: the start of Spain's presidency of the Council of the European Union.

For the first time, the Spanish video game industry has surpassed the EUR 2 000 million turnover barrier, an increment mainly linked to the 30% increase in online turnover. This growth directly translates into job creation. In Spain there are 618 video game studios with a total of 6 187 employees, most of them located in the regions of Madrid and Catalonia. This fact makes the video game industry a driving force for the national audiovisual sector. Moreover, the report sees esports as an opportunity to turn Spain into an international benchmark.

In terms of consumption, the report states that more than 9.5 million men and 8.5 million women play video games in Spain. A total of 18 million players make this industry the preferred entertainment option for Spaniards, ahead of cinema or TV series. However, the number of hours of gaming per week has fallen by 8%, placing Spain in fifth place in Europe with an average of 7.42 hours.

All in all, the importance of the video game industry for the Spanish economy has repercussions not only at the national level, as some regions have recently launched their own lines of funding for this thriving sector. In Galicia, for instance, the Galician Creative Industry Hub established for the first time in 2022 a specific line of action for the promotion of the emerging video games industry in the region (Agadic, 2022). Funded through the REACT-EU package, the region allocated EUR 180 000 for the development of video games (of the EUR 500 000 that were budgeted for that purpose).

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Law 8/2022 of 4 May amending Law 23/2011 of 29 July 2011 on Legal Deposit

Agadic (2022). Resolution of 21 April 2022 establishing the regulatory bases for the granting, on a competitive basis, of aid for the promotion of video games under the Galician Creative Industry Hub programme, financed 100% by the European Regional Development Fund (ERDF) within the REACT-EU axis of the ERDF Galicia 2014-2020 operational programme, as part of the European Union's response to the COVID-19 pandemic, and calling for applications for the 2022 financial year (procedure code CT207K).

The video game industry in Spain - Yearbook 2022

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FRANCE

[FR] ARCOM fines C8 EUR 300 000 for another TPMP breach

Amélie Blocman
Légipresse

On 31 May, the *Autorité de régulation de la communication audiovisuelle et numéri*que (French audiovisual regulator – ARCOM) fined the C8 company EUR 300 000 for comments made during an episode of the programme 'Touche pas à mon poste', presented by Cyril Hanouna, on 5 October 2022.

Following a reference to the decision taken by several French municipal authorities not to install giant screens for the transmission of matches at the World Cup in Qatar or open fan zones, the mayor of Paris, who did not participate in the programme, was called various names by the presenter, who said she should "keep her mouth shut" and "hunt rats at night instead of spouting rubbish", accused her of being part of a "band of morons" and told her to "stop pissing us about", using the expression "keep your mouth shut" several times.

In ARCOM's view, these comments, which were directed not only at the position of the mayor of Paris, but also at the person in that role, Anne Hidalgo, were violent and vulgar. The high level of aggression, repetition and accumulation was sufficient to harm the mayor's honour and reputation. The regulator therefore held that the programme had breached Article 2-3-4 of the channel's licence agreement, which requires the broadcaster to respect "rights to privacy, image, honour and reputation as defined by the law and case law".

ARCOM added that these words had been repeatedly directed at the mayor by the presenter himself without anyone on the set trying to temper or tone down his remarks. The broadcaster had therefore failed to control programme content.

The EUR 300 000 fine takes into account the "previous sanctions imposed for past violations of the same obligations". C8 had been officially warned on 30 March 2010 and 1 July 2015, and fined on 26 July 2017 and 18 December 2019. It had also been fined a record EUR 3.5 million after Cyril Hanouna aimed insults at French MP Louis Boyard of the 'La France Insoumise' political party.

Décision du 31 mai 2023 portant sanction pécuniaire à l'encontre de la société C8, JO du 2 juin 2023

https://www.legifrance.gouv.fr/download/pdf?id=qxDQLSIvw6U21Ulv6QiLmN94wMccplYLCbyyGTE-9FM=

Decision of 31 May 2023 to fine the C8 company, OJ of 2 June 2023

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[FR] ARCOM publishes assessment of protection measures taken by online content-sharing platforms

Amélie Blocman
Légipresse

As part of its remit to protect cultural works, the *Autorité de régulation de la communication audiovisuelle et numérique* (Regulatory Authority for Audiovisual and Digital Communication – ARCOM) published, after stakeholder consultation, its first report on the content recognition tools used by social networks and content-sharing platforms (pursuant to Article 17 of the EU Copyright Directive and the liability exemption mechanism for service providers, transposed through Articles L. 137-1 *et seq*. of the French Intellectual Property Code).

Under the law of 25 October 2021, ARCOM is required to assess the effectiveness of the measures taken by online content-sharing service providers to protect works and protected objects, a task that is explained in Article L. 331-18 of the Intellectual Property Code.

ARCOM notes that content-sharing service providers have taken steps to ensure that works are not accessible without the prior consent of rightsholders by using existing or newly developed content recognition tools.

Concerning the blocking or removal of works on receipt of a notification, ARCOM stresses that the measures taken by service providers, such as content recognition tools and reporting forms, are generally effective. However, reporting forms should be easier to find.

Finally, regarding the agreements designed to authorise or monitor the exploitation of works and determine the conditions of access to these tools, ARCOM notes that most of the tools were created by the largest service providers (Meta, TikTok, YouTube) and rightsholders from the audiovisual and music industries. Among ARCOM's 13 recommendations, aimed at service providers and rightsholders, all service providers are urged to improve their cooperation with all rightsholders by broadening the scope of these agreements to cover all cultural sectors, especially photography and publishing.

Évaluation des mesures techniques d'identification des œuvres et objets protégés mises en œuvre par les fournisseurs de services de contenus en ligne, Rapport de l'Arcom, avril 2022.

https://www.arcom.fr/sites/default/files/2023-04/Evaluation%20des%20mesures%20techniques%20identification%20des%20oeuvres%20et%20objets%20proteges%20mises%20en%20oeuvre%20par%20les%20fournisseurs%20de%20services%20de%20partage%20de%20contenus.pdf

Assessment of technical measures for identifying protected works and objects implemented by online content-sharing service providers, ARCOM report, April 2022.

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[FR] Senate adopts public audiovisual reform and audiovisual sovereignty bill at first reading

Amélie Blocman
Légipresse

On 13 June 2023, despite opposition from the government, the French Senate adopted the bill tabled by Laurent Lafon, centrist senator and chair of the Culture, Education and Communication Committee, and several of his colleagues concerning the public audiovisual reform and audiovisual sovereignty. According to the Minister for Culture, “a big institutional shake-up is neither necessary nor a priority.”

The bill’s authors believe that “an ambitious global strategy is vital to preserve our country’s audiovisual sovereignty.” To this end, the bill is based on two pillars. The first brings together the public broadcasters by establishing a holding company, France Médias, composed of four subsidiaries (France Télévisions, Radio France, France Médias Monde and the *Institut national de l'audiovisuel* (INA)), of which it would hold all the capital and define strategic direction. The bill sets out the process for the creation and operation of the holding company already described in the audiovisual communication bill tabled by Franck Riester, examination of which was halted in March 2020 due to the health crisis, and taken up again in the report of the National Assembly’s information task force on the future of the public audiovisual sector, presented by MPs Jean-Jacques Gaultier and Quentin Bataillon on 7 June.

Under the Senate’s decision to adopt the bill, the holding company president will be appointed for a five-year term by ARCOM rather than through a Council of Ministers decree. However, the company’s board will still propose a name to ARCOM, just as it would previously have put a name forward to the President of the Republic. Similarly, rather than the head of state, ARCOM will have the power to remove the France Médias president from office, still on the basis of a reasoned decision by the board of directors.

The bill also stipulates that the holding company should primarily be financed through adequate, predictable, long-term public fiscal funds that take inflation into account. Indeed, following the abolition of the licence fee, financing of public broadcasting needs to be sustained beyond 2024.

The bill also aims to reduce the imbalance between TV channels and digital platforms, especially where sports rights are concerned. For example, it proposes to extend to subscription-only platforms the existing obligation for subscription-based pay-TV channels to allow free-to-air DTT television services to broadcast certain sports events of major importance. The aim is to allow free terrestrial channels to continue showing sports programmes in an era when the rise in the cost of sports rights effectively means that major events are usually only available on pay-TV platforms. The bill also provides for the creation of a third commercial break during films lasting more than two hours, and an upper limit for advertising

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revenue for public broadcasters.

The bill also encourages public broadcasters to invest more in high-quality productions suitable for export and to help promote French productions abroad.

Proposition de loi relative à la réforme de l'audiovisuel public et à la souveraineté audiovisuelle, adopté en première lecture par le Sénat le 13 juin 2023.

https://www.senat.fr/leg/tas22-132.html

Public audiovisual reform and audiovisual sovereignty bill, adopted at first reading by the Senate on 13 June 2023.

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[FR] Senate's film industry information task force issues 14 proposals, including support for national online distributors

Amélie Blocman
Légipresse

A report drawn up by the film industry information task force, created by the French Senate's Cultural Affairs Committee to assess the current situation and, more importantly, map out future prospects for the film industry, was adopted on 24 May 2023.

In its report, the task force notes that the standard of French film-making must be maintained at a high level, in particular in a world in which distribution technologies and channels are evolving at lightning speed. In order to enable the film industry and cinemas to adapt and continue to play their dual role of promoting and showcasing artistic creation, the task force set out 14 operational recommendations, split into five sections. The authors also plan, in the near future, to table a bill implementing the recommendations that require legislative amendments as quickly as possible.

First of all, the task force recommends adapting support mechanisms to improve the funding of film production. Whilst it is unrealistic to determine the 'right' number of films, the authors consider it essential to adapt the support mechanisms operated by the *Centre national du cinéma et de l'image animée* (National Centre for Cinema and the Moving Image – CNC) in order to prioritise productions that are better funded and distributed (recommendations 1 and 2). Attention should therefore be paid not to the number of films produced or supported, but to the estimated cost, in particular where so-called " *films du milieu* " (middle-of-the-road films) are concerned. Producers and distributors should be better rewarded for the success of a film. The task force therefore proposes adapting and strengthening the framework of programming and distribution commitments.

The task force also recommends relaxing the conditions for cinema exploitation. Since cinema operators are at the heart of what defines the identity of the film industry, the authors wish to give them greater influence in their efforts to promote it by facilitating online promotional initiatives and relaxing the approval policy for unlimited-access cinema passes.

The film industry should be more closely involved in major public policy-making so that it can become an exemplary cultural stakeholder. For example, the task force proposes that CNC funding should be conditional on environmental obligations being met during filming (recommendation 11), strict compliance with minimum remuneration rules for authors (recommendation 12) and preservation of France's cinematographic heritage through the conservation of technical elements of film-making (recommendation 13).

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Finally, the task force believes it is necessary, firstly, to provide a better guarantee of continuous access to films and, secondly, to support national online distributors by inviting partners to include in media chronology a “super premium” window between two and three months after cinema release.

After Bruno Lasserre’s report was published in mid-April (see Légipresse 2023.192), senator Roger Karoutchi, special rapporteur for the media, books and cultural industries task force, called for a review of the funding mechanisms in place for the film-making sector and proposed seven recommendations on public funding of the film industry.

Le cinéma contre-attaque : entre résilience et exception culturelle, un art majeur qui a de l'avenir, Rapport d'information n° 630 (2022-2023), déposé le 24 mai 2023, Commission des affaires culturelles du Sénat

https://www.senat.fr/rap/r22-630/r22-630.html

Cinema fights back: between resilience and cultural exception, an important art form with a future. Information repo rt no. 630 (2022-2023), published on 24 May 2023, Senate Cultural Affairs Committee

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UNITED KINGDOM

[GB] Ofcom's enforcement programme into age assurance measures on UK-established adult VSPs - findings after six months of activity

Agata Witkowska
Patpol

On 10 January 2023, Ofcom launched its enforcement programme into age assurance measures on UK-established adult video-sharing platforms (VSP) – the goal of which is to look at age assurance measures in place on VSPs specialising in adult content under Ofcom's jurisdiction.

Ofcom may launch so-called enforcement programmes to look at a problem or area of concern relating to a particular group of stakeholders – in this case VSPs – or to a whole sector. The launch of the programme coincided with Ofcom entering the second year of the VSP regime, following the October 2022 report on the first year of VSP regulation which highlighted that many platforms specialised in videos containing pornographic material ("adult VSPs") "do not appear to have measures that are robust enough to stop children accessing pornographic material".

According to Ofcom's opening text from 10 January, the objectives are to assess age assurance measures implemented by notified VSPs and ensure their robustness, to identify possible adult VSPs falling in the scope of the VSP regime which have not notified their service to Ofcom (as required under the framework set out in Part 4B of the Communications Act 2003) and adult VSPs which have not put in place appropriate measures to protect minors from pornographic content. It also aims to provide Ofcom with a better understanding of the challenges that adult VSP services face when considering the implementation of age assurance measures and help in setting realistic expectations.

On 15 June Ofcom published an update on their findings after six months. A number of non-notified adult VSPs that may fall within the scope of the VSP regime and which do not appear to have appropriate age assurance measures in place have been identified. Ofcom has continuously been engaging with such VSPs to determine whether they are required to comply with the VSP regime. Ofcom notes that one platform chose to simply close down its service following Ofcom's engagement. An investigation has also been opened into Secure Live Media Ltd, believed to be the provider of an adult VSP.

Ofcom has also engaged with smaller adult VSP providers to better understand the measures they have in place and set a deadline for improvement, should it be deemed necessary. It has yielded results, as several of them have already taken steps to improve their access controls for underage users.

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These months of work have given Ofcom a better understanding of the challenges of implementing any age assurance measures but also of the respective merits of the different methods.

During the next three months, Ofcom will continue engaging with notified adult VSPs and the ones it suspects may fall under the VSP regime, and it will further its investigation into Secure Live Media Ltd. An update will be published after that period.

Enforcement programme into age assurance measures on UK-established adult video-sharing platforms

https://www.ofcom.org.uk/about-ofcom/bulletins/enforcement-bulletin/open-cases/cw_01266?utm_medium=email&utm_campaign=Weekly%20publications%20update%2016%20June%202023&utm_content=Weekly%20publications%20update%2016%20June%202023+CID_b5fc269b064eda0dc6aadd5a43752f1c&utm_source=updates&utm_term=Enforcement%20programme%20update%20Age%20assurance%20measures%20on%20UK-established%20adult%20video-sharing%20platforms

Guidance: Video-sharing platforms - who needs to notify to Ofcom?

https://www.ofcom.org.uk/online-safety/information-for-industry/vsp-regulation/guidance-who-to-notify-to-ofcom

Ofcom's first year of video-sharing platform regulation

https://www.ofcom.org.uk/online-safety/information-for-industry/vsp-regulation/first-year-report

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IRELAND

[IE] Media Regulator publishes work programme

Amélie Lacourt
European Audiovisual Observatory

On 20 June 2023, the Irish national regulatory authority - *Coimisiún na Meán* – published its first work programme. The Commission was established in March 2023, succeeding to the Broadcasting Authority of Ireland (BAI), which was dissolved under the provisions of the Online Safety and Media Regulation Act 2022.

The work programme runs until February 2024 and includes the following main objectives:

- Implementing new regulatory regimes for how online service providers deal with harmful and illegal content

- Regulating broadcasting and on-demand services

- Supporting the development of the wider media sector with funding schemes, together with initiatives to promote the Irish language, media literacy, as well as equality, diversity and inclusion in the media sector

- Building the *Coimisiún na Meán* organisation

While big decisions are taken collectively, each commissioner leads on a particular area.

Online safety:

The main objective in this area is to reduce the risk of harmful and illegal online content. The Commission is responsible for regulating large online platforms and search engines with a view to protect users of platforms based in Ireland as well as Irish users in relation to platforms based elsewhere. During the following months, the Commission will prepare for the enforcement of the Digital Services Act. Out of the 19 very large platforms and search engines identified by the European Commission, 11 indeed have their headquarters in Ireland.

Another major angle for the online safety area over the next months will be dedicated to video-sharing platforms (VSPs). The Commission plans to adopt an online safety code which will mainly include measures to be taken by VSPs in relation to protection of minors.

Broadcasting and video-on-demand:

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The Commission will pursue the regulatory work undertaken by the BAI regarding broadcasting and will expand to cover all audiovisual media services (ie: non-linear services). It will, in this regard, establish a new scheme for complaints and update codes and rules.

The Commission will also address the difficulties and possible solutions in relation to the prominence of public service content.

Media Development:

The Commission operates funding schemes to support the development of content for Irish audiences that reflects and shapes Irish society, including The Sound & Vision scheme (support to the production of culturally valuable broadcast content, including in the Irish language), two new journalism schemes, and an archiving scheme (support to the preservation of the historic record of Irish culture, heritage and experience).

Besides, while this branch of the Commission will continue the development of media literacy activities and the promotion of environmental practices conducted by the BAI, the Commission will develop a Gender, Equality, Inclusion and Diversity strategy for the media sector by the end of the year. It will also review of the provision of Irish language services across the media landscape and finally hopes to implement the recommendation that a working group be established with Sport Ireland to develop a strategic plan for sports broadcasting.

Building the organisation:

The Commission is prepared to expand its personnel to include: staff devoted to the supervision of platforms and to formal investigations of suspected contraventions; staff devoted to regulatory policy and to making codes and rules; staff devoted to user support and to handling complaints; staff devoted to broadcasting regulation, media development and research; experts in data science; legal advisors; and support staff in areas such as finance, HR, IT and communications.

The Commission will also put in place arrangements for an industry levy to fund its new responsibilities. More details as to the public deliverables and milestones envisaged by *Coimisiún na Meán* are available on page 6 of the work programme.

In February 2024, the Commission will add the enforcement of the EU's Digital Services Act to the functions it already undertakes under the Broadcasting Act 2009 and the Online Safety and Media Regulation Act 2022.

Work Programme June 2023

https://www.cnam.ie/wp-content/uploads/2023/06/Coimisiun-na-Mean-Work-Programme-_Web.pdf

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ITALY

[IT] User uploading content to online sharing platforms and copyright infringement: AGCOM adopts new measures relating to claims and disputes

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Autorità per le garanzie nelle comunicazioni (AGCOM)

The Italian Communications Authority (AGCOM), following a public consultation (see IRIS 2022-9:1/12), unanimously adopted on 18 May 2023 Resolution no. 115/23/CONS implementing article 102-decies of the Italian law on copyright (law n. 633/1941).

This is the second measure adopted by AGCOM in implementation of EU Directive/2019/790 (Copyright Directive), following the approval of the Regulation on fair compensation referred to in Resolution no. 3/23/CONS (see IRIS 2023-4:1/4). The Guidelines contained in Annex A of the second Resolution identify both general principles and criteria with which providers of online content sharing services must comply. The provisions were introduced with the clear and direct aim of providing users with rapid and effective means to lodge complaints against the removal or disabling of content for copyright infringement.

In particular, the new complaint procedure allows the user, in a clear and transparent way, to dispute the decision taken by a platform. The latter is therefore obliged to respond to the user by sharing the grounds for its decision, including the arguments put forward by the right holder or any other legitimate subject. Furthermore, if the user is not satisfied, even partially, of the outcome of the complaint as managed by the platform, a further stage is foreseen to challenge the decision before AGCOM. The Authority will decide on the validity of the platform's decision in accordance with the provisions of the procedural regulation (Annex B of the Resolution).

Under this provision, for the first time, effective tools are introduced to act against decisions of platforms which, if not adopted after a careful assessment, risk having a material impact on users' freedom of expression. In fact, the aim of these measures is to prevent platforms from indiscriminately accepting all requests to disable and remove content, with the sole purpose of not incurring any liability towards the rights holders. This would be a clear side effect of provisions introduced to protect copyright which, if not properly executed, risk putting an end to creativity, which is the essential condition for copyright protection itself.

Delibera n. 115/23/CONS "Linee guida concernenti i meccanismi di reclamo predisposti dai prestatori di servizi di condivisione di contenuti

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***online e regolamento concernente la risoluzione delle controversie tra prestatore di servizi di condivisione di contenuti online e utenti, in attuazione dell'articolo 102-decies della legge 22 aprile 1941, n. 633*"**

https://www.agcom.it/documentazione/documento?p_p_auth=fLw7zRht&p_p_id=101_INSTANCE_FnOw5lVOIXoE&p_p_lifecycle=0&p_p_col_id=column-1&p_p_col_count=1&_101_INSTANCE_FnOw5lVOIXoE_struts_action=%2Fasset_publisher%2Fview_content&_101_INSTANCE_FnOw5lVOIXoE_assetEntryId=30625304&_101_INSTANCE_FnOw5lVOIXoE_type=document

Resolution No. 115/23/CONS 'Guidelines concerning complaint mechanisms set up by providers of online content sharing services and regulations concerning the resolution of disputes between providers of online content sharing services and users, in implementation of Article 102-decies of Law No. 633 of 22 April 1941'

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LUXEMBOURG

[LU] Collaboration between National Regulatory Authorities: the case of Luxembourg and Serbia

Amélie Lacourt
European Audiovisual Observatory

On 15 May 2023, the board of ALIA (the Luxembourg Independent Authority for Audiovisual Media) issued a decision concerning the programme "Ficus for the Boss" broadcast on 19 January 2022 on the N1 television channel as part of a current affairs programme, after the REM (the Serbian Regulatory Authority) had forwarded a complaint reporting hateful content against Ana Brnabić (prime minister and member of the Serbian Progressive Party). According to the REM, the content of the programme stigmatised the prime minister by making an inappropriate comparison between her and people who collaborated in a Nazi extermination camp, and trivialised and relativised the crimes of genocide committed by the Nazis. Although the programme was intended for the Serbian public, the channel is under a Luxembourg concession, and therefore under Luxembourg jurisdiction.

The opinion of ALIA's Consultative Assembly, which must be consulted in the event of a complaint relating to incitement to hatred in particular, was requested. The Assembly considered that "all the elements [of the programme in question were] brought together with the aim of presenting a negative image of the person featured" and concluded that by establishing "links between Ms Brnabić's behaviour in politics and possible future behaviour in a conflict situation and the war crimes committed by the guards of Majdanek death camp", the authors of the programme had resorted to a "procedure [that] easily leads to sowing hatred". The Assembly recommended that the Luxembourg Authority reprimand the service provider Adria News s.à.r.l., a recommendation that the board eventually followed. The board, however, did not find that Ms Brnabić had been subject to incitement to hatred, given the importance of freedom of expression when it comes to criticising governments and their policies. It nevertheless considered that the footage diminished the magnitude and unique nature of the horror of the Holocaust, infringing the right to respect for the dignity of the groups of victims targeted by the Nazi policy of extermination and of their descendants, and could not be justified by the right to freedom of expression which entails rights and duties inherent in responsible journalism.

The REM decided to make the decision accessible to the Serbian public by publishing a Serbian version of the transmission (originally in English) of ALIA's decision (in French). Following this, and in order to clarify its position, on 12 June 2023 ALIA published a statement on cooperation between Regulatory Authorities. In it, the Luxembourg Authority pointed out that the transmission accompanying ALIA's decision to the REM was altered when it was published on REM's website.

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Not only had ALIA's logo, the header, the footer and part of the signature of the author of the letter been added by the REM to a Serbian translation without authorisation, but some elements of the transmission had not been reproduced correctly. The same applied to the reproduction of the decision in Cyrillic. ALIA considered that the lack of evidence that these were authorised translations and the fact that they had undergone changes undermined the credibility of the documents produced by REM.

A second statement by the REM also indicated that it hoped ALIA's decision would lead the service provider to refrain in future from discrediting a person's political activities by broadcasting reports such as the one that was the subject of the decision. As a result, ALIA “strongly condemn[ed] any attempt by the Serbian regulator to use its decisions to discredit Serbian media outlets and put them in difficulty in the exercise of their mission, namely the provision of impartial and balanced information in the exercise of freedom of expression and journalism”. ALIA also reiterated its reminder to the Serbian regulator of “its duty of impartiality, […] transparency, completeness and sincerity in the processing and sharing of information received from ALIA in order to guarantee effective and respectful cooperation between regulators”.

DECISION DEC003/2023-P002/2022 of 15 May 2023 of the Board of Directors of the Luxembourg Independent Authority for Audiovisual Media concerning a complaint against the service N1

ALIA statement, Cooperation between regulatory authorities: a case study

https://www.alia.lu/2023-06-12_Statement-ALIA-_Cooperation-between-regulatory-authorities.pdf

REM supplementary statement, "An independent authority from Luxembourg fined N1 television for the show "Heroes of the Evil Age" about Ana Brnabić"

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MOLDOVA

[MD] New access to information statute adopted

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On 11 May 2023 the Parliament of the Republic of Moldova adopted at first reading the Statute "On access to information of public interest", submitted by the government. Adoption of the statute was recommended by the Council of Europe Action Plan for the Republic of Moldova (2021-2024) and is part of the country's commitments as a candidate to the EU. The explanatory note to the statute also speaks of Moldova's obligations as a party to the Convention on Access to Official Documents (Tromsø Convention) of the Council of Europe.

The new law has 33 articles. Article 3 lists the parties that fall under the obligation to provide information to the public. They are public authorities; public institutions; state or municipal enterprises; legal entities under private law founded or co-founded by the above entities, or controlled by them; legal entities that provide public services (in terms of information which refers to the provision of public services); professional associations; bailiffs and notaries (with regard to information relating to exercising their legal duties); political parties and public associations.

According to Article 17, information of public interest is communicated to the applicant no later than 15 days from the date of registration of the request. It can be extended by no more than five days, when a large volume of information is requested, which requires additional time for its processing.

A Chapter of the statute is devoted to the "proactive transparency" of public bodies. Article 8 therein provides a list of obligatory types of information to be published on the official websites of public authorities; it also states that these must be adapted for access by persons with disabilities.

On 9 June, the new Statute was adopted in the final reading. It enters into force on 8 January 2024 and replaces the current Statute "On access to information", No. 982/2000 of 5 November 2000.

Council of Europe Action Plan for the Republic of Moldova, 2021-2024, CM(2020)161, 29 October 2020

https://rm.coe.int/0900001680a029ad#:~:text=The%20Council%20of%20Europe%20Action,rule%20of%20law%20and%20democracy

European Commission. Analytical Report following the Communication from the Commission to the European Parliament, the European Council and the Council. Commission Opinion on the Republic of Moldova's

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application for membership of the European Union. Brussels, 1.2.2023 SWD(2023) 32 final, p. 25

https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-02/SWD_2023_32_%20Moldova.pdf

LEGE Nr. 148 din 09-06-2023 privind accesul la informațiile de interes public

https://www.legis.md/cautare/getResults?doc_id=137908&lang=ro

Law No. 148 of 09 June 2023 regarding access to information of public interest

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[MD] Draft statute on the National Centre for Informational Defence and Combating Propaganda

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In May 2023, President Maia Sandu announced a legislative initiative to establish an institution that would combat propaganda harmful to the Republic of Moldova and defend its citizens from manipulation and propaganda attacks. She had the text of the draft statute published on the presidential website for a 10-day public consultation period and intends to propose it to the parliament by the end of July.

The draft statute on the National Centre for Informational Defence and Combating Propaganda, that will be known as “Patriot”, would have the mission to coordinate and implement state policy in the field of information security and to ensure strategic communication in order to identify, prevent and combat disinformation at the national level. The institution would have two basic responsibilities:

to communicate truthful information to the general public and to ensure a constant dialogue with citizens, as well as to collaborate with all state institutions in order to promote national interests and increase society’s resistance to disinformation; to identify, assess and combat disinformation in order to eliminate the risks posed by hybrid threats and disinformation to national security.
The centre will have 24 employees, all to be selected in a public competition. The first director of the institution, however, is to be appointed by President Sandu and then approved by the parliament. After that, the centre will be headed by a director appointed by the parliament at the proposal of the President of Moldova for a period of five years with the possibility of re-appointment. The activities of the centre will be coordinated by the President of the Republic of Moldova, who initiates the process of developing a strategic communications programme.

Its board will consist of 11 members, including one appointed by the President of Moldova, another appointed by the parliament, still another appointed by the government, and three civil society representatives selected by the centre.

In her speech about the initiative to create the centre, the president noted that due to “the resistance and courage of the Ukrainians, Russia cannot militarily attack our country. But it is constantly attacked informationally, through lies, propaganda, misinformation. Daily, the Kremlin launches hybrid attacks, using the weapon of propaganda to sow hatred in Moldova, to weaken our trust in each other and the trust in our own state.”

She pointed to the sponsors of propaganda that aim to spread lies in the mass media and social networks. “Lies broadcast on television and on the Internet have become the most dangerous weapons with which we are attacked today.” She signalled that propaganda presents “a direct threat to the security of the country and endangers the free, democratic and prosperous future of Moldova”.

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In the context of the creation of the new institution, the president assessed it from the perspective of freedom of speech: “The right to free expression is an indisputable value and is the basis of the democratic development we all want. But freedom of expression cannot be a screen for lies and intoxication.”

Lege privind Centrul Național de Apărare Informațională și Combatere a Propagandei - Patriot și modificarea unor acte normative. Projekt

https://presedinte.md/rom/presa/anunt-privind-initierea-consultarilor-publice-asupra-proiectului-de-lege-privind-centrul-national-de-aparare-informationala-si-combatere-a-propagandei-patriot-si-modificarea-unor-acte-normative

Draft law on the National Centre for Information Defence and Combating Propaganda – Patriot, and the amendment of certain normative acts

President Maia Sandu's message about the initiative to create the National Center for Information Defense and Combating Propaganda - PATRIOT

https://www.presedinte.md/eng/discursuri/mesajul-presedintei-maia-sandu-despre-initiativa-de-creare-a-centrului-national-de-aparare-informationala-si-combatere-a-propagandei-patriot

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NETHERLANDS

[NL] New decree on untargeted gambling advertising

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On 1 July 2023, a new ban on "untargeted" online gambling advertising will come into effect, under the Decree on untargeted advertising of online games of chance. Notably, the new Decree bans online gambling advertising via broadcasting services under the *Mediawet* (Media Act) , in newspapers, magazines or other printed, publicly available means of communication, and in public spaces. Importantly, however, online gambling licence holders will still be permitted to engage in "targeted" advertising via the Internet or via on-demand media services under the Media Act, where the licence holder (a) has given individuals the opportunity to indicate that they do not want to be reached by the advertising; and (b) has demonstrated, using the best available techniques, that at least 95% of the individuals reached by the advertising have reached the age of 24.

Notably, the new Decree follows the Online Gambling Act 2021, which lifted a ban on online gambling advertising, and allowed online gambling advertising, but with strict standards on how and when to advertise (online) gambling. For example, under Article 4, it was stipulated that advertising cannot be targeted at anyone below the age of 25, anyone with gambling problems, or to anyone with mental health problems or disorders. Furthermore, advertising was allowed on television, but restricted to a timeslot outside of 6 a.m. to 9 p.m.; in additon to rules in the Online Gambling Advertising Code 2021 (see IRIS 2022-2/15). Crucially, however, the *Minister voor Rechtsbescherming* (Minister for Legal Protection) stated that the "opening of the online gambling market had led to a "large increase in so-called untargeted advertising" for online gambling, and vulnerable groups "unintentionally saw a lot of advertising for this risky product". As such, to guarantee protection, a broad ban has now been enacted under the 2023 Decree, namely restrictions on untargeted advertising for online gambling, and a ban on television.

Finally, the ban on online gambling advertising does not apply to sports sponsorship, for up to two years after the entry into force of the 2023 Decree; and other forms of sponsorship, for up to one year after the entry into force of Decree. Sponsorship is understood to mean: providing financial or other contributions in return for the neutral mention or display of the name, brand, logo or any other distinctive sign of the holder of a license for online gambling. The Minister stated that a transitional period applies to existing sponsorship contracts; and this offers sports clubs, in particular, financial scope to attract sponsors other than providers of online gambling. The transitional period for sponsorship of television programmes and events lasts until 1 July 2024. Sponsorship in the sports sector will remain permitted until 30 June 2025. From 1 July 2025, sponsorship by

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licensed online gambling providers will be prohibited.

Decree of 5 April 2023 amending the Recruitment, Advertising and Addiction Prevention of Games of Chance Decree in connection with the restriction of recruitment and advertising activities for remote games of chance (Decree on untargeted advertising of remote games of chance)

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[NL] House of Representative passes Bill requiring major streaming platforms to invest in Dutch productions

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On 6 June 2023, the House of Representatives (*Tweede Kamer*) passed a Bill, which will amend the Media Act (Mediawet) 2008, and require major streaming platforms with an annual turnover in the Netherlands of more than EUR 10 million to invest 5% of that turnover in Dutch productions. The State Secretary for Culture and Media (*Staatssecretaris Cultuur en Media*) introduced the Bill in July 2022, and originally required major streaming platformswith an annual turnover in the Netherlands of more than EUR 30 million to invest 4.5% of their turnover in Dutch productions (see IRIS 2022-8/16). The Bill must now be approved by the Senate (*Eerste Kamer*).

Under the Bill, an investment means, for example, that streaming services themselves must (co-)produce a Dutch title, or purchase and offer an existing, recent Dutch production. According to the State Secretary, this will result in “at least € 40 million in extra investments in the Dutch film and television sector”. Half of the investments must go to films, series and documentaries, while the other half can be spent by the streaming service itself, as long as it concerns a Dutch production. Investments in sporting events or competitions are not covered by the bill. Further, under the Bill, at least 60% of the productions must be made by an independent producer. According to the State Sectary, in this way “there is more variation in the supply, and it strengthens the Dutch production sector”. Finally, the production in question must meet two of the following conditions, whereby criteria (c) and (d) may not be combined: (a) the original screenplay is predominantly (75%) written in the Dutch or Frisian language; (b) the main characters express themselves predominantly (75%) in the Dutch or Frisian language; (c) the screenplay is based on an original literary work in the Dutch or Frisian language; or (d) the main theme is related to Dutch culture, history, society or politics.

The State Secretary stated that the Bill is designed to ensure that “sufficient Dutch productions can also be seen on major streaming services such as Netflix, Disney+ and Videoland. Dutch stories are getting less and less space on these platforms, mainly due to growing budgets for foreign films, series, and documentaries”.

Staatssecretaris Cultuur en Media, Streamingdiensten gaan 5% omzet investeren in Nederlandse producties, 6 juni 2023

https://www.rijksoverheid.nl/regering/bewindspersonen/gunay-uslu/nieuws/2023/06/06/streamingdiensten-gaan-5-omzet-investeren-in-nederlandse-producties

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State Secretary for Culture and Media, Streaming services will invest 5% turnover in Dutch productions, 6 June 2023

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[NL] Supervisory investigation of video-uploader compliance with AVMSD rules

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On 9 May 2023, the *Commissariaat voor de Media* (Dutch Media Authority) - CvdM) announced the results of a notable supervisory investigation into video-uploader compliance in the Netherlands, with rules under the *Mediawet* (Media Act) transposing the revised EU Audiovisual Media Services Directive (AVMSD) (see IRIS 2019-1/3 and IRIS 2021-1/24). This follows a high-profile announcement in May 2022 that the CvdM would be monitoring video-uploaders under its new Policy Rule for the qualification of commercial on-demand services in 2022, which clarified which video-uploaders must register with the Media Authority (see IRIS 2022-7/17).

Crucially, the Media Authority noted that video-uploaders "need to be more compliant", after the investigation by the Authority of a sample of video-uploaders who are under active supervision. The Authority emphasised that certain rules under the Media Act have applied to these video uploaders "for some time now", in particular, rules about registering accounts, clearly indicating advertising, and protecting minors. The Media Authority stated it would penalise video uploaders who do not comply with the rules; but in the first instance, the Authority would focus on "preventing or rectifying" violations; and if necessary, fines will be imposed. The CvdM noted that about 200 video uploaders have registered with the Authority, and several videos from 50 uploaders were analysed in a random sample. The random check is part of the Authority's implementation of the supervision of video uploaders since 2022.

In terms of specific rules, the Authority noted that advertising, sponsorship and product placement should be easy for the viewer to recognise. This also applies if there is advertising for products or companies in which video-uploaders have a (large) share (self-promotion). The Media Authority concluded on the basis of the sample that "too often it is insufficiently made clear that a video is about commercial influence", and a statement in the description of the video "is not sufficient": it must also be "made clear in the video itself when commercial influence is involved". Merely tagging the brand advertised by video uploaders is also "not enough for the recognisability of advertising".

In additon, half of all video uploaders registered with the Media Authority did not report to the *Nederlands Instituut voor de Classificatie van Audiovisuele Media* (Netherlands Institute for the Classification of Audiovisual Media) , and the *Stichting Reclame Code* (Dutch Advertising Code Foundation) - SRC). However, every video uploader registered with the Media Authority must report to NICAM, and must ensure that children and parents are informed about (possibly) harmful content for children. An advertising video uploader must also register with SRC. Video uploaders who do not comply with this legal obligation will soon receive a

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letter from the Media Authority.

Finally, the Media Authority noted that supervision and enforcement is not limited to compliance with the rules on commercial influence. Video uploaders also have some administrative obligations. One of them is the registration requirement. As with all other media institutions, it is the responsibility of the video uploaders themselves to notify the Media Authority if they need to register. Not every video uploader that needs to register has done so. As, the Media Authority recently wrote to a number of non-registered video uploaders to register or to demonstrate that they are not required to register. Failure to comply with this request in time will result in a fine.

Dutch Media Authority, Video uploaders need to get started with regulatory compliance, 9 May 2023

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POLAND

[PL] The right to "revoke" a licence or transfer of rights in the context of draft amendments to the Copyright and Related Rights Act

Marta Botiuk-Filip

Poland's obligation to implement Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (Official Journal of the European Union L 130 of 17 May 2019, p. 92) (the so-called "Digital Single Market" Directive), hereinafter referred to as the "DSM Directive", made it necessary to amend the Copyright and Related Rights Act.

The proposed draft act introduces a significant change with regard to the author's rights in the event that the rights acquirer or licensee fails to distribute the work or to make it available to the public. This is a result of the introduction into the Polish legal system of, *inter alia*, Article 22 of the DSM Directive.

According to the draft proposal, in a situation where the acquirer of an author's economic rights or the licensee who has been granted an exclusive licence fails to undertake exploitation of the work within two years from the date of transfer of the author's economic rights or granting of the licence, the author could withdraw from the agreement or terminate it. The proposed amendment was widely criticised during the public consultation. Many entities were of the view that the amendment to the provision in question and the proposal to replace the existing term "distribution" with "exploitation" is not correct. The term "exploitation" is a broad concept and the wording used by the legislator is quite general. It was finally accepted that the possibility to exercise the right of withdrawal or termination would depend on the absence of "distribution" of the work by the rights acquirer or licensee.

The provision in question in the Polish Copyright and Related Rights Act (Article 57) also aroused much controversy regarding the extent to which it allowed the author or the performer to retain the remuneration in the case of withdrawal from or termination of an agreement by the creator. Under the influence of remarks made during the public consultations, the legislator decided to maintain the currently binding regulation allowing a double remuneration claim in relation to the remuneration specified in the agreement in the event that the lack of dissemination of the work results from circumstances for which the purchaser of the economic copyright or the licensee is responsible. Such a procedure is intended to protect the interests of creators and performers, who are usually the weaker party to the agreement. However, it should be noted that the creator has the choice of whether to claim damages under the general rules or to receive double remuneration.

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Particularly threatened by the change resulting from the implementation of Article 22 DSM would be works of a certain nature. Such works include, *inter alia*, audiovisual works which, due to their specificity, require special attention and a special approach. However, it is worth emphasising that the legislator has confirmed that, in the case of a certain type of works, those specific provisions concerning the acquisition of rights in works used in audiovisual works will remain in force and unchanged.

Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC

https://eur-lex.europa.eu/eli/dir/2019/790/oj

Projekt ustawy o zmianie ustawy o prawie autorskim i prawach pokrewnych oraz niektórych innych ustaw

https://legislacja.rcl.gov.pl/projekt/12360954/katalog/12887995#12887995

Draft Act amending the Act on copyright and related rights and certain other acts

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RUSSIAN FEDERATION

[RU] Resolution of the Constitutional Court on the ban on “discrediting the Army”

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On 30 May 2023, the Constitutional Court of the Russian Federation adopted thirteen resolutions to formally reject the admissibility of complaints on the unconstitutionality of Article 20.3.3 of the national Code on Administrative Offences from different complainants. The resolutions, published on 20 June 2023, are largely identical in their content and arguments.

The article itself was introduced on 4 April 2022 to provide penalties for “public actions aimed at discrediting the use of the Armed Forces of the Russian Federation for the purpose of protecting the interests of the Russian Federation and its citizens, maintaining international peace and security, or exercising their powers by state bodies of the Russian Federation for the particular purposes, assisting volunteer formations, organizations or individuals in the performance of tasks, assigned to the Armed Forces of the Russian Federation”. The disputed part 1 of the article prescribes that such actions shall be punishable with an administrative fine of 30,000 to 50,000 rubles (or about 300 to 500 EURO). A further violation of the norm puts the offender under the regulation of Article 280.3 of the Criminal Code (see IRIS 2022-3/1).

The complainants, who were earlier fined for the violation, claimed that Article 20.3.3 of the Code on Administrative Offences contravenes a number of human rights guaranteed by the Russian Constitution, including the right to freedom of expression, as well as the right to equality and non-discrimination, as only statements critical of the use of the Armed Forces and the activity of the public bodies “for the purpose of protecting the interests of the Russian Federation” are outlawed.

The Constitutional Court found no grounds for the complaints’ formal review. Its logic is as follows:

The disputed legal provisions were introduced following the start of Russia’s “special military operation” in Ukraine, and it is “clear” that the lawmaker adopted the new norms “taking into consideration these circumstances”. For the Constitutional Court, departing from these circumstances, would lead to “an abstract control of the law”, and it would not be led there.

The Constitutional Court reminded that it earlier acknowledged the absorption into Russia of the territories of Luhansk, Donetsk, Kherson and Zaporizhya as constitutional. According to the Court, raising “subjective” “arbitrary” doubts as to whether the relevant actions of the State serve the purpose of protecting the

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interests of the Russian Federation and its citizens, maintaining international peace and security would deny the rule of law in the country, the supreme nature of the Constitution and the necessity to follow its norms. This will be “impermissible”.

The Constitution, including the norm on freedom of expression, does not presuppose or allow that the human rights and freedoms guaranteed therein are used to deny the constitutional order of the Russian Federation, under which “the state, formed by the multinational people of the Russian Federation in the parameters determined by it” is a constitutional value, subject to respect and protection by the Russian citizens and anyone else on the territory of Russia, while “defence of the Fatherland” is recognized as the duty of a Russian citizen.

For the actions aimed at protecting the interests of the Russian Federation and its citizens, and maintaining international peace and security to be “effective”, it is important to have public support. Critical statements, on the contrary, may have “a cumulative effect” and thus be detrimental to the morals of the military and success of the actions, while de facto assisting the forces that counter Russia’s efforts to maintain international peace and security. This can happen even if public criticism is not aimed to undermine the military actions.

The content of the disputed norm “may not” be considered as directed to enable propaganda for war, which is prohibited by the Russian law. Neither would it introduce an obligatory ideology, nor discriminate people because of their opinion. Freedom of thought “does not envision committing offences.”

The Constitutional Court concluded by saying that “[t]he ability to express one’s own opinion on the activities of the Armed Forces of the Russian Federation, those assisting them, and public bodies of the Russian Federation, including pointing out certain shortcomings therein, if this is not associated with an arbitrary denial of the constitutionally predetermined nature, goals and objectives of this activity, and is based on open reliable information, is not called into question by the disputed Article, which does not exclude the identification of facts of the direction of the actions of citizens, that are given the appearance of a constructive expression of their position, to discredit the relevant decisions, measures and activities.” As to whether the public statements were indeed aimed to discredit the activities is the prerogative of general courts, not the Constitutional Court of Russia.

As the disputed article of the Code is directed to preserve “public and constitutional law and order”, and does not violate the constitutional rights of the complainants, their complaints were not found admissible.

According to Mediazona, an online news media that focuses on Russia’s penal system, since the start of the full-scale aggression in Ukraine, Russian courts have reviewed more than 7 000 administrative cases on “discrediting” the Russian army.

On 5 March 2022, in response to the procedure for voting on the withdrawal of the Constitutional Court of the Russian Federation from the Conference of European Constitutional Courts, the Russian Constitutional Court informed that it was

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withdrawing from the Conference on its own will.

КОДЕКС РОССИЙСКОЙ ФЕДЕРАЦИИ ОБ АДМИНИСТРАТИВНЫХ ПРАВОНАРУШЕНИЯХ

https://rulaws.ru/koap/

Code of the Russian Federation on administrative offences

Об отказе в принятии к рассмотрению жалобы гражданки Маркус Кристины на нарушение ее конституционных прав частью 1 статьи 20.3.3 Кодекса Российской Федерации об административных правонарушениях

http://www.consultant.ru/cons/cgi/online.cgi?req=doc;base=ARB;n=766007#hwaUzhT4kAVDgtUI4

Resolution of the Constitutional Court of the Russian Federation, № 1387-O, Saint-Petersburg, On the refusal to accept for consideration the complaint of citizen Markus Kristina about the violation of her constitutional rights by part 1 of Article 20.3.3 of the Code of the Russian Federation on Administrative Offences), Saint-Petersburg, 30 May 2023

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