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EDITORIAL

The media regulatory environment is a complex tapestry, woven from a multitude of intricate threads, as illustrated in this edition of the newsletter.

One thread of this tapestry is legislation. New laws and rules have been adopted, by Government or by Parliament, in countries like Germany, Italy, the Netherlands, and Georgia.

But the adoption of new legislation is rarely a walk in the park. In Georgia, the law on foreign agents has sparked a wave of protests. Following a failure to adopt the bill “On transparency of foreign influence” in March 2023, the Parliament adopted, on 14 May 2024, a revised version of the text which could potentially carry substantial consequences, with an obligation on organisations receiving foreign funding to publish their annual financial reports.

Another thread is the intervention of regulatory bodies. In Portugal and the United Kingdom, the media regulators reported respectively on advertising targeting children and commercial communications in children's channels and/or programs, suggesting lack of compliance by TV channels, and on the breach of due impartiality rules by broadcasters. At supranational level, the European Commission forms a crucial component of this intricate design with its decision to open a second formal proceedings against TikTok, for the launch of TikTok Lite without prior diligent assessment of the risks it entails. It also urged a handful of countries to comply with the DSA by designating and fully empowering their Digital Services Coordinators.

Completing the tapestry are court decisions, including that made by the Czech courts on the copyright protection of content created by generative AI.

With a little hindsight, the tapestry we unfold in this newsletter is a vibrant display, featuring a wide range of topics, including influencers, election campaigns, protection of journalists, artificial intelligence, and many more.

Enjoy the read,

Maja Cappello, Editor

European Audiovisual Observatory

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INTERNATIONAL

COUNCIL OF EUROPE

HUNGARY

European Court of Human Rights: Zöldi v. Hungary

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

The European Court of Human Rights (ECtHR) has delivered an interesting judgment that further clarifies the application of Article 10 of the European Convention on Human Rights (ECHR) on the right to access public documents containing personal data.

Although the ECtHR found that the protection of personal information of grant beneficiaries constituted a legitimate aim for refusing access to such data, it emphasised that the information request by a journalist aiming to contribute to transparency in the allocation of taxpayers' money, clearly satisfied the public interest test.

The ECtHR found that the Hungarian authorities did not adduce sufficient reasons for refusing to disclose the identities of the recipients of grants from two foundations funded by the National Bank.

The case concerns the unsuccessful efforts by an investigative journalist, Ms Blanka Zöldi, to obtain information about the management and allocation of public funds by two foundations in Hungary. Both foundations were created by the Hungarian National Bank, which is a fully State-owned entity. At the time of the request by Zöldi in 2015, criticism was uttered on the foundations as their policy seemed to serve the purpose of "privatisation" of public funds and because of a lack of transparency about the allocation of its grants.

Zöldi asked inter alia, for the names of the persons who had obtained grants, the amount of money they received and the subsidised activities. She intended to write an article based on the information obtained. The foundations, however, refused to disclose the requested information and Zöldi sought judicial review of those decisions.

Zöldi succeeded in obtaining the requested information, with the exception however of the disclosure of the names of the recipients of the grants. The courts deciding on the case found that those names were neither 'data of public interest' nor 'data subject to disclosure in the public interest' within the meaning of the Hungarian Data Protection Act, and therefore disclosure was not required by the Act.

Without a specific legal basis, it was not possible for the names of the successful applicants to be released as ‘data subject to disclosure in the public interest’. The Constitutional Court in 2018 confirmed these court decisions. However, it found that the legislature had failed to provide sufficient transparency of public funds and it ordered the legislature to remedy this omission.

In 2019, the Hungarian Parliament complied with the Constitutional Court’s decision by amending the law on the Transparency of Subsidies Awarded from Public Funds. In the meantime, in 2018, Zöldi had lodged an application with the ECtHR, complaining that her inability to obtain information about the identity of grant recipients of the two foundations set up by the Hungarian National Bank had violated her right to freedom of expression as provided in Article 10 ECHR.

First, the Hungarian Government argued that Zöldi had not availed herself of all the available domestic remedies, in that she had failed to submit a new request to the foundations following the entry into force of the legislative amendments to the Act on the Transparency of Subsidies Awarded from Public Funds.

From that point, Zöldi, relying on that new legislation, could have submitted a renewed request, which would have remedied the alleged violation. The ECtHR agreed that such an opportunity was open to Zöldi and that the changes in the legal environment may have increased her chances of obtaining the information sought. Nevertheless, the ECtHR considers that for the exhaustion of domestic remedies, it would have been unreasonable to expect the journalist to resubmit her information request.

The ECtHR pointed out that Zöldi is an investigative journalist seeking documents and information in preparation for an article on the finances of two foundations set up by the National Bank. Given the nature of covering issues attracting wide public interest, the ECtHR accepts that it was essential for her to obtain the information sought quickly in order to ensure its relevance for her readership.

Indeed, the purpose of the information request was to enable her to promptly relay the obtained information to the wider public through the news article she was working on. However, the disclosure of such data ultimately became only possible more than four years later. The ECtHR found that after such a lapse of time the information at issue may have lost all relevance and that Zöldi could not reasonably have been expected to avail herself of the avenue suggested by the Government. The ECtHR therefore dismissed the Government’s objection regarding the exhaustion of domestic remedies.

Next, the ECtHR was satisfied that Zöldi, as a journalist, wished to exercise her right to impart information on a matter of public interest and sought access to information that was ready and available, in accordance with the criteria on the applicability of Article 10 ECHR (see Magyar Helsinki Bizottság v. Hungary, IRIS 2017-1/1). As the refusal to disclose the identity of the beneficiaries of the grants was considered to be prescribed by law and served the legitimate aim of protecting their rights, including their right to the protection of personal data, the remaining question was whether the restriction on the Zöldi’s right of access to

information was “necessary in a democratic society”.

According to the ECtHR the Hungarian government failed to substantiate how the disclosure of the grant recipients’ names would affect the enjoyment of the protection of their private life.

The Court also noted that transparency in the allocation of public funds is an important constitutional principle, and that the Data Protection Act and other legislation such as the Transparency Act provided for the disclosure of data related to the management and allocation of public funds, which can include personal data of people who benefit from them.

Against this background, the persons who had applied for the grants could have expected that their names, as recipients of public money, might be publicly disclosed.

The ECtHR considered therefore that the interests of the protection of the rights of others are not of such a nature and degree as could warrant engaging the application of Article 8 ECHR and bring it into play in a balancing exercise against Zöldi’s right to freedom of expression under Article 10 ECHR. Nevertheless the ECtHR continued to assess whether the refusal of disclosure of the names at issue was a proportionate interference with Zöldi’s right of access to public documents.

The ECtHR referred to the relevant criteria in the course of such a proportionality assessment: (i) whether the individuals concerned by the information request were public figures of particular prominence; (ii) whether they had themselves exposed the impugned information to public scrutiny; (iii) the degree of potential harm to the individual's privacy in the event of disclosure; (iv) the consequences for the effective exercise of the applicant’s freedom of expression in the event of non-disclosure; (v) whether the applicant had put forward reasons for the information request; (vi) the degree of public interest in the matter, and (vii) whether the possibility of a meaningful assessment of the restrictions on the applicant’s rights was possible under domestic law and if so, whether such an assessment was carried out by the domestic authorities (see also IRIS 2020-5:1/24).

As there was no indication of the existence of any risk of a potentially harmful impact that disclosure of the grant recipients’ names could have had on their privacy, and because Zöldi’s request was aimed to contribute as a journalist to transparency in the allocation of taxpayers’ money, her request clearly satisfied the public-interest test, contributing to a public debate on a matter of considerable public interest.

Finally, the ECtHR referred to the Constitutional Court’s finding that the legislature had failed to enact laws which would have ensured, as far as possible, a balanced exercise of the two competing fundamental constitutional rights, that is, the right to protection of personal data and the right to access to information in the public interest.

In these circumstances, the ECtHR found that the national authorities adduced no sufficient reasons for the necessity of the interference complained of, as they did not strike a fair balance between the competing interests at stake to ensure the proportionality of the interference. Accordingly, the ECtHR found a violation of Article 10 ECHR.

Judgment by the European Court of Human Rights, First Section, in the case Zöldi v. Hungary, Application no. 49049/18, 4 April 2024

https://hudoc.echr.coe.int/?i=001-231872

PORTUGAL

European Court of Human Rights: *Almeida Arroja v. Portugal*

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

The European Court of Human Rights (ECtHR) has once again found a violation of Article 10 of the European Convention on Human Rights (ECHR) in a criminal defamation case, related to an issue of public interest. The ECtHR in particular observed that the criminal conviction of the applicant appeared to be manifestly disproportionate, as the Portuguese Civil Code provided for a specific remedy in respect of damage to honour and reputation. The ECtHR also found the award of damages which the applicant was required to pay manifestly disproportionate, taking into consideration that the critical statements were formulated during an interview on a local TV channel with only a limited audience. The ECtHR found that a sanction of this nature and severity could be liable to deter individuals from discussing matters of legitimate public concern, having a "chilling effect" on freedom of expression.

The applicant in this case, Mr. Almeida Arroja, is an economist and university professor who at the material time provided political commentary on the Monday edition of a daily news programme broadcast by the private television channel Porto Canal. He was also the chair of an association raising funds and supporting the construction of a paediatric wing for the São João Hospital, in Porto. In 2015 he took part in a discussion on Porto Canal during which some of his comments alluded to political interests underlying legal advice provided by a law firm to the hospital at issue. He criticised more precisely P.R., a lawyer who at the material time was the director of the law firm C. and who was a well-known politician and a member of the European Parliament. In essence Almeida Arroja criticised P.R. and the law firm C. for having created the obstacles for the construction project at the São João hospital. P.R. and the law firm C. filed a criminal complaint against Almeida Arroja with the public prosecutor's office for aggravated defamation and causing offence to a legal person. According to the criminal court's judgment Almeida Arroja had uttered a false accusation, as it was the hospital administration which was putting obstacles in the way of the project and not the law firm C. or P.R. The false allegation had affected the prestige of the law firm C. and had humiliated P.R. and damaged his honour, and his political reputation and professional pride as a lawyer. Almeida Arroja was required to pay a fine of EUR 7 000 for causing offence and defamation and he was ordered to pay EUR 5 000 damages to the law firm and EUR 10a000 to P.R.

Relying on Article 10 ECHR and after having exhausted all national remedies, Almeida Arroja lodged an application with the ECtHR, complaining of a breach of his right to freedom of expression. After the ECtHR agreed that the interference with the applicant's right in this case had the legitimate aim of protecting the

reputation or rights of others, and more specifically the prestige, reputation and honour of P.R., as enshrined in Article 8 ECHR, it focussed on the issue whether the interference was necessary in a democratic society. The ECtHR referred to the balancing test in the event of conflicting rights between Articles 8 and 10 ECHR, and to the relevant criteria in the context of balancing these competing rights, such as a contribution to a debate of public interest, how well known the person affected was, the subject of the news report, the prior conduct of the person concerned, the content and method of obtaining the information and its veracity, the form and consequences of the publication, and the gravity of the penalty imposed. The ECtHR found that P.R. was certainly a public person and that the statements of Almeida Arroja formed part of a broader critique regarding undue links between politicians and the public administration, which is a subject of public interest. The disputed statements amounted to a combination of facts and value judgements but they were mostly opinions, which cannot be true or false. As to the impact of the statements at issue the ECtHR observed that they were made on a daily news programme broadcast by the private television channel Porto Canal, reaching an audience of more than 9 500 television viewers. The interview had remained available online and has had more than 2 000 views; it has also been reproduced in blogs. However, in view of the size of the city of Porto, the ECtHR found that the reach of the statements was not significant. As to the nature and severity of the sanctions complained of the ECtHR reiterated that the mere fact of a criminal sanction is by itself capable of having a dissuasive effect, even if the sum involved is moderate and the person is easily able to pay. The ECtHR was of the opinion that the mere conviction of Almeida Arroja appeared to be manifestly disproportionate, especially because the Portuguese Civil Code provided for a specific remedy in respect of damage to honour and reputation. In addition, an award of damages for defamation must bear a reasonable relationship of proportionality to the injury to reputation suffered while the amounts of the damages Almeida Arroja was ordered to pay to the law firm C. and P.R. appeared manifestly disproportionate to the damage caused to the reputation of the two parties concerned, and taking into account that the statements were broadcast by a private television channel with a limited audience. The Court found it difficult to accept that the injury to P.R.’s reputation in the present case was so serious as to justify an award of that size, also considering that it has not been found that the activities of the law firm C. or the career of P.R. as a politician or as a lawyer were affected by the disputed statements. Hence, a sanction of this nature and severity may be liable to deter individuals from discussing matters of legitimate public concern, having a “chilling effect” on freedom of expression.

The ECtHR concluded that the balancing exercise performed by the domestic courts was not undertaken in conformity with the criteria laid down in the Court’s case-law. In particular, it found that the domestic courts gave disproportionate weight to the rights to reputation and honour of the law firm C. and P.R., in contrast to Almeida Arroja’s right to freedom of expression in relation to a debate of public interest. Accordingly, there had been a violation of Article 10 ECHR.

European Court of Human Rights, Fourth Section, in the case Almeida Arroja v. Portugal, Application No. 47238/19, 19 March 2024

https://hudoc.echr.coe.int/?i=001-231606

EUROPEAN UNION

EU: EUROPEAN COMMISSION

European Commission opens proceedings against TikTok

Amélie Lacourt
European Audiovisual Observatory

In April 2024, TikTok launched TikTok Lite in France and Spain, a new app featuring a new functionality aimed at users over 18. According to the European Commission, the “Reward Program” allows users to earn points while performing certain “tasks” on TikTok, such as watching videos, liking content, following creators, inviting friends to join TikTok, etc. These points can be exchanged for rewards, such as Amazon vouchers, gift cards via PayPal or TikTok's coins currency that can be spent on tipping creators.

Fearing potential impact of this new programme on the protection of minors and on the mental health of users, in particular in relation to the potential stimulation of addictive behaviour, the European Commission sent TikTok a request for information on 17 April 2024 requiring it to provide the risk assessment report for TikTok Lite within 24 hours and details on the measures the platform put in place to mitigate potential systemic risks of these new functionalities by 26 April 2024. The request was not complied with and the Commission opened a second formal proceedings against TikTok on 22 April 2024, under the Digital Services Act (DSA). These follow the first formal proceedings opened in February 2024, empowering the Commission to take further enforcement steps, such as interim measures, and non-compliance decisions.

The Commission is concerned that TikTok Lite has been launched without prior diligent assessment of the risks it entails, in particular those related to the addictive effect of the platforms, and without taking effective risk mitigating measures. This is of particular concern for children, given the suspected absence of effective age verification mechanisms on TikTok.

If proven, these failures would constitute infringements of Articles 34 and 35 of the DSA. Article 34 of the DSA requires designated Very Large Online Platforms and Search Engines (VLOPs and VLOSEs) to diligently identify, analyse and assess any systemic risks stemming from the design or functioning of their service and its related systems, including algorithmic systems, or from the use made of their services, including prior to deploying functionalities that are likely to have a critical impact on the risks identified. Pursuant to Article 35 DSA, such services must put in place reasonable, proportionate and effective mitigation measures, tailored to the specific systemic risks identified, with particular consideration to the impacts of such measures on fundamental rights.

The Commission prolonged the deadlines for TikTok to send its risk assessment report and information on mitigation measures, but the platform's failure to submit the required information has led the Commission to suspect DSA infringement. Thierry Breton, Commission for Internal Market stated that "Unless TikTok provides compelling proof of its safety, which it has failed to do until now, we stand ready to trigger DSA interim measures including the suspension of TikTok Lite feature which we suspect could generate addiction".

Commission opens proceedings against TikTok under the DSA regarding the launch of TikTok Lite in France and Spain, and communicates its intention to suspend the reward programme in the EU

https://ec.europa.eu/commission/presscorner/detail/en/ip_24_2227

EU: EUROPEAN COMMISSION

European Commission sends letter of formal notice to six member states to comply with the DSA

Amélie Lacourt
European Audiovisual Observatory

The Digital Services Act (DSA) required all member states to designate their Digital Services Coordinators (DSCs) by that 17 February 2024. Article 49 of the DSA requires the selection of a DSC from among the competent authorities responsible for the supervision of intermediary services and the enforcement of the DSA.

However, on 24 April 2024, the European Commission decided to open infringement proceedings against six member states for failing to fulfil their obligations under EU law by sending them letters of formal notice. The countries in question have either not designated a DSC (Estonia, Poland and Slovakia) or have not given the DSCs the necessary powers and competences to carry out their tasks, including the imposition of sanctions in cases of non-compliance (Cyprus, Czechia and Portugal).

All six member states now have two months to respond and address the shortcomings raised by the Commission. In the absence of a satisfactory response, the Commission may decide to issue reasoned opinions.

Commission calls on Cyprus, Czechia, Estonia, Poland, Portugal and Slovakia to designate and fully empower their Digital Services Coordinators under the Digital Services Act, European Commission, Press release, 24 April 2024

https://digital-strategy.ec.europa.eu/en/news/commission-calls-cyprus-czechia-estonia-poland-portugal-and-slovakia-designate-and-fully-empower

NATIONAL

CZECHIA

[CZ] Artificial intelligence cannot create an author's work, the court stated

Jan Fučík
Česká televize

For the first time in history, the Czech courts have directly dealt with the issue of copyright protection for content created with the help of generative AI.

The decision was made available by Prague's municipal court. According to the data in the judicial database, no appeal was filed against it and it is therefore final.

The dispute was sparked by a Prague law firm's publication of an image created by artificial intelligence. According to the law firm (the plaintiff), the image was created based on a prompt/assignment: "create a visual representation of two parties signing a business contract in a formal environment, for example in a conference room or in the office of a law firm in Prague. Show only the hands." The law firm used the resulting image in its web presentation, where the defendant obtained it and also placed it on its website. However, the plaintiff did not prove this fact in the proceedings.

The image was attacked by the plaintiff, claiming that he was the author. He also demanded a delay and removal claim, i.e. the image should disappear from the website and that it should not be used in any way. The city court rejected the lawsuit in its entirety.

First, the court stated that "artificial intelligence by itself cannot be the author (...) when only a natural person can be the author, which artificial intelligence certainly is not."

According to the court, the image created by the AI tool does not even represent a work of authorship according to Section 2 of the Copyright Act, as it does not meet the conceptual features of a work of authorship. "This is not a unique result of the creative activity of a physical person - the author. The plaintiff himself did not personally create the work, it was created with the help of artificial intelligence, and it was proven in the proceedings based on the assignment" the judgment's reasoning states.

The court then commented on the nature of the assignment itself, which was the basis for the subsequent image generated by AI. "It is possible to talk about the theme of the work or an eventual idea, which, however, is not a work of authorship in itself," the court concluded.

Rozsudek Městského soudu v Praze z 11.října sp. zn. 10 C 13/2023

https://justice.cz/documents/14569/1865919/10C_13_2023_10/108cad3e-d9e8-454f-bfac-d58e1253c83a

Decision of the Municipal Court Prague from 11. October, no 10 C 13/2023

GERMANY

[DE] Bundestag adopts Digital Services Law and strengthens media regulators' powers

Dr. Jörg Ukrow
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On 21 March 2024, the *Bundestag* (German federal parliament) adopted the draft *Digitale-Dienste-Gesetz* (Digital Services Law – DDG) to regulate the single market for digital services and promote fairness and transparency for business users of online intermediation services. The *Bundestag* vote followed a recommendation by the *Ausschuss für Digitales* (Committee on Digital Affairs). The DDG aims to bring German legislation into line with the EU Digital Services Act (DSA) and clarify some outstanding questions regarding its implementation. The DSA and DDG are primarily designed to combat illegal online content more effectively and improve consumer protection on the Internet.

The legislative package comprises several parts. Firstly, the *Telemediengesetz* (Telemedia Act – TMG), which until now has largely implemented the E-Commerce Directive and certain provisions of the Audiovisual Media Services Directive (AVMSD), has been completely repealed, along with parts of the *Netzwerkdurchsetzungsgesetz* (Network Enforcement Act). Both this and the entry into force of the DSA mean that numerous other legislative amendments are also necessary. However, the key element is the introduction of a new DDG that brings together, in a single piece of legislation, the previous provisions of the TMG, the new provisions required to implement the DSA and new rules on the implementation of Regulation (EU) 2019/1150. Regarding the implementation of the DSA, the DDG regulates the responsibilities of and cooperation between the relevant authorities, as well as sanctions. The draft bill was first debated by the *Bundestag* in January (IRIS 2024-2:1/25). The final version incorporates significant amendments that are mainly aimed at involving media regulators more closely and ensuring consistency with media regulation.

Article 3 DDG (with reference to the previous Article 3 TMG) clarifies the country-of-origin principle enshrined in the DSA, AVMSD and E-Commerce Directive, in particular the possible exceptions that are also provided for in these EU instruments. According to Article 12(1) DDG, the *Bundesnetzagentur* (Federal Network Agency), Germany's new Digital Services Coordinator as required under the DSA, will work with the other member states, the European Board for Digital Services and the European Commission. In accordance with the recommendation of the Committee on Digital Affairs, which was debated in the *Bundestag*, the position of the *Landesmedienanstalten* (state media authorities) in general and the *Kommission für Jugendmedienschutz* (Commission for the Protection of Minors in the Media – KJM) in particular will also be strengthened through the implementation of the DSA. Although responsibility for enforcing Articles 14(3) and 28(1) of the DSA with regard to structural preventive measures is entrusted

to the *Bundeszentrale für Kinder- und Jugendmedienschutz* (Federal Office for the Protection of Children and Young People in the Media – BzKJ), this does not include measures taken under the *Jugendmedienschutz-Staatsvertrag* (State Treaty on the Protection of Minors in the Media – JMStV) in the version of 14 December 2021. Responsibility for these measures will be assumed by the bodies designated under the media law provisions of the *Länder* to implement Article 28(1) of the DSA. Although this is a static reference to the JMStV in the version of 14 December 2021, responsibility for the individual measures governed by Article 28(1) of the DSA remains with the bodies designated under the media law provisions of the *Länder* in accordance with the *Jugendmedienschutz-Staatsvertrag* in the sense of a dynamic reference. Such individual measures and content regulation are designed to combat unlawful or illegal content. Individual content is verified to see whether it is unlawful or illegal and whether administrative proceedings should be instigated to remove it.

Änderungen durch den Bundesrat

https://dserver.bundestag.de/btd/20/102/2010281.pdf

Amendments by the Bundesrat

Gesetzentwurf der Bundesregierung

https://dserver.bundestag.de/btd/20/100/2010031.pdf

Federal government draft

Beschlussempfehlung und Bericht des Ausschusses für Digitales

https://dserver.bundestag.de/btd/20/107/2010755.pdf

Committee on Digital Affairs recommendation and report

[DE] Study on AI acceptance in journalism

Christina Etteldorf
Institute of European Media Law

On 21 March 2024, the *Landesanstalt für Medien Nordrhein-Westfalen* (North-Rhine Westphalia media authority), one of the 14 German state media regulators, published a study it had commissioned on the acceptance of Artificial Intelligence (AI) in journalism. The study concludes that the majority of people who were questioned are, in principle, open to the use of AI to support the work of journalists. However, based on the results of a number of experiments, the study suggests that, in order to increase acceptance and dispel people's reservations, transparent regulation is required when AI is used.

New technological possibilities created by process automation and AI can also provide opportunities for media providers, especially in relation to the production of editorial content. With this in mind, the study carried out for the North-Rhine Westphalia media authority examined how people view the use of automated processes in content creation and what can be done to dispel any concerns and reservations. Based on around 1,000 interviews with Internet users aged 14 and above, the survey focused on media consumption habits and, in particular, people's attitudes to content prepared with the help of AI. The responses of those questioned tended to depend on the subject-matter of the content: the use of AI to produce news articles or political reporting was considered much less acceptable than its use in fields such as sport and entertainment. Around 35% thought that AI could help make journalistic processes more efficient. In particular, they thought it could make it easier to find programmes in media libraries, assist with research activities and help tailor content to users' preferences. Potential job losses were seen as the main drawback of process automation (51%).

The survey participants were also shown two pairs of video clips (two with a human presenter and two with just a voice-over), with one of each pair having been created using AI. In terms of quality (e.g. whether they were credible, informative, entertaining, understandable, etc.), the clips were considered more or less equal, although in both cases the AI clip with just a voice-over and no human presenter was deemed slightly better than its non-AI equivalent. In both cases, the viewers were unable to clearly tell which clip had been made with the help of AI.

On the basis of the answers given, the study also concluded that AI use is more widely accepted (61%) when reports are produced by "real" journalists and presented by "real" presenters who are "only" supported by AI. Far fewer people favoured reports fully produced by AI (35%). When asked how the acceptance of AI use could be increased, many thought labelling obligations (53%), binding accountability obligations (42%) and supervision of AI use in journalism (40%) were "very important".

Ergebnisse der Studie "Akzeptanz von Prozessautomatisierung und Künstlicher Intelligenz in der Medienbranche"

https://www.medienanstalt-nrw.de/fileadmin/user_upload/lfm-nrw/Forschung/LFM-NRW_Akzeptanz_von_Prozessautomatisierung_und_Kuenstlicher_Intelligenz_in_der_Medienbranche.pdf

Results of the study on "Acceptance of process automation and artificial intelligence in the media industry"

[DE] ZAK issues groundbreaking decisions regarding new media stakeholders

Christina Etteldorf
Institute of European Media Law

In March 2024, the state media authorities' *Kommission für Zulassung und Aufsicht* (Commission on Licensing and Supervision – ZAK), the main German media regulator with responsibility, *inter alia*, for regulating national media platforms, issued two noteworthy decisions in relation to the distribution of media content by new media stakeholders. The first decision concerns in-car entertainment systems, which are set to be governed by German media regulations, in particular provisions on public value. The second concerns an infringement of anti-discrimination rules by Google's News Showcase service, which the US company must rectify within three months.

At its March meeting, the ZAK classified the in-car entertainment systems of Audi, BMW/Mini and Tesla as user interfaces within the meaning of the *Medienstaatsvertrag* (state media treaty – MStV). User interfaces are defined in Article 2(2)(15) MStV as the textually, visually, or acoustically conveyed overview of offers or content from one or more media platforms which is used for the orientation and direct selection of offers, content, or software-based applications, which essentially enable direct control of broadcasting, broadcasting-like telemedia, or telemedia. Such services have been subject to new German media law regulations since 2020. In particular, as well as a general obligation to notify the media authorities that they intend to offer a user interface, providers must guarantee the signal integrity of audiovisual content, which may not be overlayed or scaled. The criteria according to which content is sorted, arranged and presented must be made transparent. Since they are classified as user interfaces, these in-car entertainment systems will also be subject to special rules concerning the discoverability of the content they offer (audiovisual, audio or text). Media services that are of significant public value must be easy to find. The Tesla system was classified not only as a user interface, but also as a media platform, i.e. a form of telemedia that combines broadcasting, broadcast-like telemedia, or telemedia into an overall offer. Such platforms are subject to additional provisions of the MStV, including with regard to the allocation of capacities, access and access conditions.

Also at its March meeting, the ZAK took some initial measures as part of an investigation into Google's News Showcase service. Launched in Germany in 2020, the service enables participating publishers and web publishers to publish content on Google News and Discover in the form of so-called panels and control how their articles appear. However, the publishers must meet certain criteria laid down by Google. In Germany, these include the number of views and the reach achieved by the publication, compliance with recognised journalistic principles and (on an indicative rather than mandatory basis) membership of a news publishing association. The German media authorities began the investigation

after a complaint was lodged by a small publisher that had been told by Google that it could not take part in News Showcase because its readership was too small. The ZAK decided that Google had therefore violated the ban on discrimination that applies to media intermediaries under the MStV. According to Article 94 MStV, media intermediaries are not allowed, for no objectively justified reason, to discriminate against journalistic-editorial offers on whose public profile they have a particularly high influence. The ZAK thought that a publisher's reach was not an objective reason and meant that small and new providers in particular had no realistic chance of taking part, even though they were dependent on (larger) intermediaries to grow their audience. The ZAK therefore ordered Google to modify its service, giving it three months to adapt its criteria before taking a final decision.

The aforementioned provisions of the MStV were adopted in order to safeguard diversity of opinion which, according to the legislator, should be protected not only by traditional media providers, but also by new intermediary services. The ZAK's decisions are therefore an important response to current media consumer behaviour.

Pressemitteilung der ZAK (In-Car-Entertainment-Systeme)

https://www.die-medienanstalten.de/service/pressemitteilungen/meldung/wegweisende-zak-entscheidung-erstmals-sind-in-car-entertainment-systeme-gegenstand-einer-medienrechtlichen-entscheidung

ZAK press release (in-car entertainment systems)

Pressmitteilung der ZAK (Google News Showcase)

https://www.die-medienanstalten.de/service/pressemitteilungen/meldung/zak-fordert-von-google-ireland-ltd-aenderungen-bei-google-news-showcase

ZAK press release (Google News Showcase)

SPAIN

[ES] Adoption of decree on the regulation and identification of users of special relevance on video-sharing platforms

Maria Bustamante
European Audiovisual Observatory

On 30 April 2024, the Council of Ministers, at the proposal of the Ministry for Digital Transformation and Public Service led by José Luis Escrivá, approved *Real Decreto-Ley 444/2024* (Royal Decree-Law no. 444/2024) which, for the first time, establishes conditions for the regulation of the activities of Spanish influencers (or content creators or vloggers) in accordance with the 2022 *Ley General de Comunicación Audiovisual* (General Law on Audiovisual Communication).

According to the royal decree, the text is designed to create an up-to-date legal framework that reflects the development of the audiovisual market in recent years, strikes a balance between access to content, protection of users and competition between different audiovisual service providers, and includes, under the same regulatory umbrella, all stakeholders competing for the same audience.

The law sets out three cumulative components of "*usuario de especial relevancia*" (user of special relevance), a specific category of influencers defined in Article 94.2 of the General Law on Audiovisual Communication.

The first is financial and states that the user must earn substantial revenue of over EUR 300 000 from all their audiovisual activities.

Secondly, they must have at least 1 million subscribers on a single video-sharing platform or 2 million across multiple platforms.

The third and final condition is that the influencer must create a minimum of 24 videos per year.

"Users of special relevance" must fulfil certain obligations primarily designed to improve the protection of minors on social networks and prevent surreptitious advertising.

Anyone who meets all three criteria must register as a "user of special relevance"with the *Registro Estatal de Prestadores Audiovisuales* (national register of audiovisual service providers) within two months.

Once registered, they must adhere to rules on the protection of minors and advertising in the audiovisual sector, including a ban on promoting products such as tobacco, alcohol and other products likely to harm the physical or mental health of minors. They are also required to label advertising content and identify

the age groups at which content is aimed.

Anyone who breaches these obligations will be fined up to EUR 1.5 million depending on the seriousness of the offence and their level of income.

This royal decree marks a major step forward in protecting minors and creating legal certainty in regulating the most popular influencers. Nevertheless, some experts are challenging it.

A number of lawyers and the Spanish audiovisual regulator have pointed to the decree's failure to regulate minors not just as passive social network users but also as content creators themselves, sometimes exploited by their legal guardians.

A report by the *Comisión Nacional de Mercados y la Competencia* (National Markets and Competition Commission – CNMC), the national media regulator, concerning the draft royal decree considers the thresholds to be far too high and claims that the cumulative nature of the criteria excludes some very well-known influencers. The royal decree will apply to fewer than 10% of influencers in Spain. For more information about the criticism it has received, see IRIS 2024-2:1/17.

Real Decreto 444/2024, de 30 de abril, por el que se regulan los requisitos a efectos de ser considerado usuario de especial relevancia de los servicios de intercambio de vídeos a través de plataforma, en desarrollo del artículo 94 de la Ley 13/2022, de 7 de julio, General de Comunicación Audiovisual

https://www.boe.es/diario_boe/txt.php?id=BOE-A-2024-8716

Royal Decree 444/2024 of 30 April regulating the conditions of recognition as a user of special relevance of video-sharing platforms, based on Article 94 of the General Law on Audiovisual Communication of 7 July 2022

CNMC- Informe sobre el el proyecto de Real Decreto por el que se regulan los requisitos a efectos de ser considerado usuario de especial relevancia según lo dispuesto en el Artículo 94 de la Ley 13/2022, de 7 de julio, General de Comunicación Audiovisual

https://www.cnmc.es/sites/default/files/5056299.pdf

CNMC - Report on the draft royal decree regulating the conditions of recognition as a user of special relevance, based on Article 94 of the General Law on Audiovisual Communication of 7 July 2022

FRANCE

[FR] BFM TV warned by ARCOM after misquoting former prime minister

Amélie Blocman
Légipresse

In a decision adopted on 3 April 2024, the *Autorité de régulation de la communication audiovisuelle et numérique* (the French audiovisual regulator – ARCOM) issued a formal notice to BFM TV, urging it to meet its obligations to exercise honesty and rigour in the presentation and processing of information, and to control its programmes. The warning followed a discussion in the "120 minutes" programme broadcast on 26 November 2023 concerning words spoken by a former prime minister in the "Quotidien" programme broadcast on the same channel three days earlier. During the discussion, people in the studio claimed that the former prime minister had spoken of the domination of Jewish finance over Western societies and, through it, of the control of the media and the world of entertainment. A banner supporting this assertion appeared on the screen throughout the discussion.

In the "Quotidien" programme broadcast on 23 November 2023, the former prime minister had actually said the following: "The third thing is that your report implies how heavily financial domination weighs in the media and the world of art and music because they can't say what they think, quite simply because their contracts would be terminated immediately. It's therefore clear that cultural life is ruled by money in the United States, and unfortunately the same is true in France as well. And it's all deeply regrettable in terms of freedom and the ability to shape public opinion, you clearly have to do it with moderation in mind, thinking of others all the time […]".

According to ARCOM, the words spoken by the presenter and his guest in the "120 minutes" programme on 26 November 2023, along with the accompanying banner, were factually inaccurate, alleging that a former prime minister had made statements that were very serious in a context of high tension linked to the war in the Middle East. The broadcaster had therefore breached its obligation to exercise honesty and rigour in the presentation and processing of information, contravening Article 2-3-7 of its licence agreement and Article 1 of the regulator's decision of 18 April 2018 to which it referred. The words spoken by the programme presenter himself and his guest, along with the inaccurate information contained in the banner that appeared on the screen throughout the discussion also amounted to a failure by the broadcaster to control its programmes, i.e. a breach of Article 2-2-1 of its licence agreement.

BFM TV was ordered to comply with these obligations in the future.

Decision no. 2024-265 of 3 April 2024 to issue a formal notice to BFM TV, French Official Gazette of 11 April 2024

[FR] French competition authority fines Google EUR 250m for breaching obligations concerning neighbouring rights of press publishers and agencies

Amélie Blocman
Légipresse

On 15 March, the *Autorité de la concurrence* (French competition authority) issued a fine of EUR 250 million against the companies Alphabet Inc, Google LLC, Google Ireland Ltd and Google France for failing to meet their obligations under the decision of 22 June 2022 concerning the application of the Law of 24 July 2019 creating a neighbouring right for press publishers and agencies. This was the fourth decision taken by the competition regulator since the case was referred to it following a complaint lodged in November 2019 by the *Syndicat des éditeurs de presse magazine* (Magazine Press Publishers' Union – SEPM), the *Alliance de Presse d'Information Générale* (General Press Alliance – APIG) and the AFP news agency.

Firstly, the competition authority ruled that Google had not met its obligation to negotiate remuneration for the use of protected press content by its services in accordance with transparent, objective and non-discriminatory criteria within three months. It also considered that Google had reduced the assessment basis for such remuneration, thereby breaching the principles enshrined in the aforementioned 2022 decision, by undervaluing the indirect revenue that it generated as a result of the extra appeal created by the posting of protected press content. Google had also refused to pay to display the titles of press articles, which went against the competition authority's previous decisions and the ruling of the Paris Appeal Court of 8 October 2020. The competition authority also noted that, in most of the contracts it had signed with publishers since its obligations had come into force, Google had not or only partially met its obligation to review the level of remuneration and correct it if appropriate.

With regard to the "Bard" artificial intelligence service launched by Google in July 2023 (which later became "Gemini"), the competition authority noted in particular that, in order to train its original model, Google had used the content of press publishers and agencies without informing them or the competition authority itself. It had therefore infringed its first obligation, which required it to negotiate in good faith, on the basis of transparent, objective and non-discriminatory criteria, the remuneration of publishers for any use of protected content in its products and services, in the form of neighbouring rights. However, the question of whether the use of press publications by an AI service is protected under neighbouring rights was not decided at this stage. Google subsequently linked the use of the content by its AI service to the posting of protected content, failing to offer a technical solution through which press publishers and agencies could oppose the use of their content by "Bard" ("opt out") without affecting the posting of protected content under neighbouring rights on other Google services, thereby preventing press publishers and agencies from negotiating remuneration. The competition authority said it would pay close attention in future to the

effectiveness of the opt-out mechanisms put in place by Google.

In response to the violations identified, Google presented a series of corrective measures, which were noted by the competition authority.

Autorité de la concurrence, décision n° 24-D-03 du 15 mars 2024

https://www.autoritedelaconcurrence.fr/sites/default/files/integral_texts/2024-03/24d03vf.pdf

French competition authority, decision no. 24-D-03 of 15 March 2024

[FR] Decree extends TV advertising for cinema, with books ads to be trialled

Amélie Blocman
Légipresse

Decree no. 2024-313 of 5 April 2024 has extended the permission for television advertising for cinema that was temporarily granted under decree no. 2020-983 of 5 August 2020 and extended twice due to the lengthy closure of cinemas during the COVID-19 epidemic. According to the *Autorité de régulation de la communication audiovisuelle et numérique* (the French audiovisual regulator – ARCOM), an impact study conducted on behalf of the *Direction générale des médias et des industries culturelles* (General Directorate of Media and Cultural Industries – DGMIC) showed that the previous experiment had boosted cinema ticket sales and had not led to a significant imbalance between French and foreign films' access to advertising slots. The study also revealed that television advertising is not exclusively reserved for films with the largest marketing budgets.

The decree also gives permission for books to be advertised on television for a two-year trial period. It amends Article 8 of decree no. 92-280 of 27 March 1992 implementing the Law of 30 September 1986, which had previously prohibited television advertising for certain categories of products or services (alcohol, distribution, literary publishing except on television services exclusively distributed via cable or satellite). The aim is to strengthen the television advertising market, which has been weakened as a result of advertisers turning increasingly to digital platforms competing with audiovisual media, where advertising is less tightly controlled.

No later than three months before the end of the trial period, the government will publish a report evaluating the impact of this trial, especially on the book industry, before deciding whether it should be extended. In an opinion of 27 March, ARCOM expressed its support, explaining that the trial period would make it possible to assess the consequences for the publishing sector and the advertising market across all media, in order to respond, if necessary, to the reservations expressed by certain stakeholders about the change. The *Syndicat national de l'édition* (national publishers' association) has heavily criticised the decree.

Décret n° 2024-313 du 5 avril 2024 portant modification du régime de publicité télévisée, publié au JO du 6 avril 2024

https://www.legifrance.gouv.fr/download/pdf?id=iIluUbOvWY8kv6CMwK4xdeB6rbrlzGUvGB-b9HvSkcM=

Decree no. 2024-313 of 5 April 2024 amending the television advertising system, published in the Official Journal on 6 April 2024

[FR] Signature of a global partnership between Prime Video and LaScam

Eric Munch
European Audiovisual Observatory

On 22 April 2024, Prime Video and LaScam (*Société civile des auteurs multimédia*, a collective management organisation for multi-media authors) signed a licensing agreement for France, Belgium and Luxembourg, which allows Prime Video to use the LaScam repertoire of works on its video-on-demand (VOD) service.

In its press release, LaScam announced that the agreement foresees an appropriate and proportional remuneration for authors affiliated with LaScam and those from other organisation with which LaScam is bound by reciprocity agreements. The agreement enshrines Prime Video and LaScam's shared commitment to support authors of audiovisual works in France and Europe, in particular with its retroactive character, as it covers the period between Prime Video's launch in France in December 2016 to – at least – 2025.

LaScam has also signed an inter-professional agreement from 1 December 2022, previously signed by several other organisations representing authors and producers (AnimFrance, SATEV, SEDPA, SPI, USPA and SACD) and Prime Video, in which the latter committed to invest 5% of its financing obligations in France towards the making of documentaries. Among Prime Video's other commitments are its commitments to have 85% of the financing obligation go towards works in original French expression and 70% towards independent productions. The other signatories commit to promote gender parity, to fight against discriminations in the audiovisual industry, as well as to facilitate the green transition in the sector and the access to audiovisual works for the deaf or hard of hearing and visually-impaired persons.

In its press release, LaScam welcomes Prime Video's commitment towards the documentary genre as a form of recognition of the growing success of the genre and of real-life work in France and internationally.

Signature d'un partenariat global entre Prime Video et la Scam – Communiqué de presse

https://www.scam.fr/actualites-ressources/signature-dun-partenariat-global-entre-prime-video-et-la-scam/

Signature of a global partnership between Prime Video and LaScam – Press release

https://www.scam.fr/uploads/2024/04/PR-partnership-LaScam-Prime-Video.pdf

La SACD parmi les signataires d'un accord interprofessionnel avec Prime Video

https://www.sacd.fr/fr/la-sacd-parmi-les-signataires-dun-accord-interprofessionnel-avec-prime-video

SACD among the signatories of an inter-professional agreement with Prime Video

UNITED KINGDOM

[GB] Ofcom has concluded that five programmes on GB News featuring politicians acting as news presenters breached broadcasting due impartiality rules

Julian Wilkins
Wordley Partnership and Q Chambers

Ofcom determined five GB News programmes, namely two episodes of Jacob Rees-Mogg's (a Conservative Member of the United Kingdom Parliament) State of the Nation, two of Friday Morning with Esther and Phil and an episode of Saturday Morning with Esther and Phil, broadcast between 9th May and 23rd June 2023, breached due impartiality rules. The five programmes breached Rules 5.1 and 5.3 of the Broadcasting Code. Esther McVey is also a Conservative Member of the United Kingdom Parliament.

Ofcom's Broadcasting Code requires that news, in whatever form, be presented with due impartiality. Further, a politician cannot be a newsreader, news interviewer or news reporter unless there is editorial justification.

Rule 5.1 says: "News, in whatever form, must be... presented with due impartiality", whilst

Rule 5.3 requires: "no politician may be used as a newsreader, interviewer or reporter in any news programmes unless, exceptionally, it is editorially justified. In that case, the political allegiance of that person must be made clear to the audience". Section 319 of the Communications Act 2003 specifically requires that: "news is presented with due impartiality".

Ofcom considered factors that could lead them to classify content as news might include: a newsreader presenting directly to the audience; a running order or list of stories, often in short form; the use of reporters or correspondents to deliver packages or live reports; and/or a mix of video and reporter items.

During the investigation, Ofcom considered the right to freedom of expression pursuant to Article 10 of the European Convention on Human Rights. Meanwhile broadcasters have editorial freedom to offer audiences various programme formats, including using politicians to present current affairs or other non-news programmes. Further, politicians may also appear in broadcast news content as an interviewee or any other type of guest.

Individual programmes can also feature a mix of news and non-news content and move between the two genres. However, if a broadcaster chooses to use a politician as a presenter in a programme containing both news and current affairs content, it must take steps to ensure they do not act as a newsreader, news interviewer or news reporter in that programme.

The five programmes had a mix of news and current affairs content. The host politicians acted as newsreaders, news interviewers or news reporters in sequences which news, including reporting breaking news events. There was no exception to justify the use of politicians in the role of newsreaders. The consequence was that the news was not presented with due impartiality.

The innate quality of politicians is to represent a particular political standpoint, and an audience will be likely to consider or perceive such a presentation as delivering content in a partisan or partial manner. Therefore, Ofcom believed that news content presented in the manner adopted by GB News was likely to be viewed by audiences as presenting matters in a biased way rather than impartially. The regulator considered using politicians to present the news as risking to undermine the integrity and credibility of regulated broadcast news. Ofcom considered that preserving the impartiality of news output was of fundamental importance in a democratic society. Therefore, Ofcom considered it was necessary and proportionate to find a breach of Rules 5.1 and 5.3 in these circumstances.

GB News, as part of their representations to Ofcom, said that there was uncertainty about the application of Rule 5.3 of the Broadcasting Code. GB News referring to statements made by Ofcom on Twitter (now X) acknowledging the changing broadcasting environment, as well as Ofcom's decision to undertake audience research into attitudes towards politicians presenting programmes

Another episode of Jacob Rees–Mogg's State of the Nation was considered not meriting investigation under the Broadcast Codes. Ofcom considered that this episode provided broadcasters with an example of what constitutes exceptional editorial justification as allowed by Rule 5.3. In the case of this live programme, Jacob Rees-Mogg was used as an eye-witness, in situ news reporter during an unforeseen security incident at Buckingham Palace.

Ofcom noted that these complaints were the first breaches of Rules 5.1 and 5.3 recorded against GB News. Since opening these investigations, there has only been one further programme which has raised issues warranting investigation under these rules. However, Ofcom placed GB New on notice that any repeated breaches of Rules 5.1 and 5.3 may result in imposing a statutory sanction.

Politicians acting as newsreaders, news interviewers or news reporters, Broadcast and On Demand Bulletin, Issue 494, 18 March 2024

https://www.bing.com/ck/a?!&&p=7c51eb5b538e4915JmltdHM9MTcxMzgzMDQwMCZpZ3VpZD0wYjQ5Y2RjMi02YmVjLTY1NjMtMTcwOC1kOTgyNmE2ZTY0NTQmaW5zaWQ9NTIwMg&ptn=3&ver=2&hsh=3&fclid=0b49cdc2-6bec-6563-1708-d9826a6e6454&psq=Politicians+acting+as+newsreaders%2c+news+interviewers+or+news+reporters%2c+Broadcast+and+On+Demand+Bulletin%2c+Issue+494%2c+18+March+2024&u=a1aHR0cHM6Ly93d3cub2Zjb20ub3JnLnVrL19fZGF0YS9hc3NldHMvcGRmX2ZpbGUvMDAyOS8yODA4MzgvR0ltTmV3cy1EZWNpc2lvbnMtRml2ZS1Ccm9hZGNhc3QtU3RhbmRhcmRzLURlY2lzaW9ucy5wZGY&ntb=1

Jacob Rees-Mogg's State of the Nation, Broadcast and On Demand Bulletin, Issue 494, 18 March 2024

https://www.bing.com/ck/a?!&&p=7ddf6fc234c8ff28JmltdHM9MTcxMzgzMDQwMCZpZ3VpZD0wYjQ5Y2RjMi02YmVjLTY1NjMtMTcwOC1kOTgyNmE2ZTY0NTQmaW5zaWQ9NTIwNA&ptn=3&ver=2&hsh=3&fclid=0b49cdc2-6bec-6563-1708-d9826a6e6454&psq=Issue+494+of+Ofcom%e2%80%99s+Broadcast+and+On+Demand+Bulletin+18+March+2024&u=a1aHR0cHM6Ly93d3cub2Zjb20ub3JnLnVrL19fZGF0YS9hc3NldHMvcGRmX2ZpbGUvMDAyNi8yODA4MzUvSmFjb2ItUmVlcy1Nb2dnLVN0YXRlLW9mLXRoZS1OYXRpb24tMi1NYXktMjAyMy5wZGY&ntb=1

[GB] Ofcom opens investigation into breaches in OnlyFans' age estimation measure for users

Eric Munch
European Audiovisual Observatory

On 1 May 2024, Ofcom announced that it had opened an investigation into Fenix International Limited, in its capacity as provider of the video-sharing platform (VSP) OnlyFans. The goal of the investigation is to determine whether OnlyFans is doing enough to prevent children from accessing pornography on the platform. OnlyFans, a VSP under the jurisdiction of Ofcom allows content creators to share videos with their communities. While it is open to all types of creators, it is widely used by adult-content creators, leading to a large proportion of the content available on the platform to be of pornographic nature. Under the UK's Communications Act 2003 (the Act), VSPs established in the UK are required to take appropriate measures to prevent under-18s from accessing pornographic material, as well as to cooperate with Ofcom and provide the regulator with information regarding the service. OnlyFans, as one such VSP, has been using age verification measures to prevent minors from accessing content that might impair their physical, mental or moral development.

OnlyFans had spontaneously raised Ofcom's attention to the fact that a flaw in their age implementation of an estimation measure might have allowed minors to access the platform and be exposed to pornographic material. In the opening text of Ofcom's investigation, the regulator notes that the investigation also concerns OnlyFans' requirement to "comply with two information request notices issues on 6 June 2022 and 23 June 2023 under section 368Z10 of the Act." The notices requested information to understand and monitor the measures OnlyFans has in place, including measures to assure the age of its users, and how they were implemented to help ensure under-18 users were protected from restricted material, including pornography, and enable Ofcom to publish a report highlighting how OnlyFans and other VSPs are protecting minors from restricted material.

According to information given by an OnlyFans spokesperson to online media outlet TechCrunch, the problem came from an incorrect parameter in setting the threshold of its age estimation tool, Yoti. Yoti, an age estimation provider, approximates a user's age by scanning their face. However, the service also recommends setting a threshold higher than the platform's exact age threshold, to account for mistakes in estimation. The OnlyFans spokesperson suggested that a coding error caused the threshold for age estimation to 20 years of age, rather than a more prudent 23, which would have mitigated the risks of an underaged user being wrongly considered as being above 18, given the tool margin of error of 2 to 3 years.

It is worth noting that the issue only concerns "fans" – the terms used on the platform to refer to users who do not create and disseminate content – as

content-creators on OnlyFans must provide formal identification to verify their account upon creation.

An update on the investigation is expected by August 2024.

Ofcom investigates OnlyFans' age verification measures - Press release

https://www.ofcom.org.uk/news-centre/2024/ofcom-investigates-onlyfans-age-verification-measures

OnlyFans' investigated over claim children accessed pornography

https://www.theguardian.com/technology/2024/may/01/onlyfans-investigated-over-claim-children-accessed-pornography

OnlyFans hits UK regulator's radar for age-verification failures around porn access

https://techcrunch.com/2024/05/01/uk-regulator-investigates-onlyfans-for-age-verification-failures-around-porn-access/?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQAAAFqNnp5-o_c48o6ztExE1QpEEgr1FN0raGhf9fmPQwqMcWA2gVs9butams69l5GGF5sj6siwUFExA9sndvUBqjWm9kk71amoAEHZoUgXpOSC5JI0uCsmuN3z7d-GXoMkd_v2HUFI45HkEqXz6mVAQ6fVku8DzmuePQyqkzJKztTR

GEORGIA

[GE] : Transparency of foreign influence bill table again

Andrei Richter
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Following a failure to adopt the bill "On transparency of foreign influence" in March 2023 (see IRIS 2023-4:1/30), on 14 May 2024, the Parliament of Georgia adopted, in the third and final reading, a slightly amended version of the draft law tabled by the ruling party “Georgian Dream” and supported by the Government. The draft replaced the term “agent of foreign influence” with “organisation pursuing the interests of a foreign power.” All other parts of the draft law remain unchanged. One of the four categories of such organisations, according to the draft law, is "a broadcaster with at least 20 percent of annual revenues (excluding advertising revenue) coming from a foreign power” (Art. 2).

In its statement regarding the bill, the Parliamentary Majority noted “that the draft law provides for a single requirement – that organisations receiving foreign funding publish their annual financial reports. Only financial sanctions are envisaged in cases violating the said requirement.”

The bill supposedly targets foreign funding of “radicalism and so-called polarisation in Georgia”. Its adoption by Parliament has already brought public protests in Tbilisi. On 18 May 2024 the President of Georgia vetoed the law, but it is expected that the veto will be overruled by the majority of the Parliament.

The Diplomatic Service of the European Union expressed its concerns regarding the draft law by saying that “[t]ransparency should not be used as an instrument to limit civil society’s capacity to operate freely.” It encouraged the political leaders in Georgia to adopt and implement reforms that are in line with the objective of joining the European Union.

The Prime Minister of Georgia noted in the context of the draft law that “transparency cannot be aimed against anyone, especially it cannot distinguish enemies from friends. Transparency is equally applicable to everyone - friends and foe, including subjects with or without integrity." He gave for example the Government of Georgia, which is fully transparent towards the public as it publishes "every Governmental Decree".

საქართველოს კანონი „უცხოური გავლენის გამჭვირვალობის შესახებ“

https://parliament.ge/legislation/28355

Law of Georgia "On transparency of foreign influence" (draft), No 07-3/433/10, tabled on 3 April 2024

Georgia: Statement by the Spokesperson on the draft law on "Transparency of Foreign Influence", Press release of the European External Action Service, 4 April 2024

https://www.eeas.europa.eu/eeas/georgia-statement-spokesperson-draft-law-%E2%80%9Ctransparency-foreign-influence%E2%80%9D-0_en

Georgia: Statement by the Spokesperson on the draft law on "Transparency of Foreign Influence", Press release of the European External Action Service, 4 April 2024

https://www.eeas.europa.eu/eeas/georgia-statement-spokesperson-draft-law-%E2%80%9Ctransparency-foreign-influence%E2%80%9D-0_en

Press Conference of the Prime Minister of Georgia Regarding the Draft Law on Transparency of Foreign Influence, 18 April 2024

https://www.gov.ge/index.php?lang_id=ENG&sec_id=603&info_id=88176

Закон Грузии "О прозрачности иностранного влияния" (проект с пояснительной запиской)

https://www.kavkaz-uzel.eu/articles/399856

Law of Georgia "On Transparency of Foreign Influence" (draft with explanatory note)

IRELAND

[IE] Guidelines for broadcast coverage of elections

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On 30 April 2024, the Irish media regulator *Coimisiún na Meán* published Guidelines in Respect of Broadcast Coverage of Elections (hereinafter "the Guidelines"), in advance of the European and local elections and the election for a directly elected Mayor of Limerick, scheduled to be held on 7 June 2024. These Guidelines were developed further to Rule 27 of the Code of Fairness, Objectivity and Impartiality in News and Current Affairs (hereinafter "the Code"), reviewed in 2022.

The Guidelines apply only to broadcasters (excluding print, social media, audiovisual on-demand media services and online print/audiovisual content) within the jurisdiction of the Republic of Ireland. *Coimisiún na Meán* however encourages broadcasters outside of the jurisdiction, whose services are receivable in the Republic of Ireland and who cover Irish news and current affairs, to be mindful of the Guidelines, where appropriate, when deciding on their approach to coverage of elections. Besides, while the Guidelines apply only to broadcasters, the latter are required, further to the Code, to have in place appropriate policies and procedures for handling on-air contributions via social media. These policies and practices must be applied where social media is referenced on-air in the context of election coverage.

The Guidelines notably aim to achieve fairness, objectivity and impartiality, which can be attained through a variety of means, including through the selection of contributors, the scope of the debate, the structure of the programme, the presenter's handling of the topic, the make-up of audiences participating in programming or through other suitable means. To support this goal, the Guidelines notably reflect on the editorial responsibility of broadcasters; the dynamic nature of elections should make them attentive to the need to amend their approach if they consider it necessary and appropriate. The guidelines also emphasise on the fair and proportional allocation of airtime for candidates and political parties, as opposed to a strict equal allocation. The approach taken may vary depending on, amongst other matters, the type of election, the resources available to broadcasters, their target audience, the types of programming that the broadcaster provides to the audience, the particular type of election programme etc. Achieving fairness, objectivity and impartiality also comes with seeking the diversity of viewpoints, including in the context of programmes which have an element of audience participation. Finally, the Guidelines state that the critical examination of the views of election interests is not evidence of a lack of fairness, objectivity and impartiality since it is an appropriate role for broadcasters to ensure that time is afforded to examine, challenge the

statements and positions of such interests.

Other issues covered by the guidelines include conflicts of interest, opinion polls, advertising, party political programming and diversity.

The Guidelines also cover the moratorium required during election periods. According to the Guidelines, the moratorium operates from 2pm on the day before the poll takes place and throughout the day of the poll itself until polling stations close. However, broadcasters are required to strike a balance between requirements to keep the public informed over this period and ensuring that programming does not contravene the moratorium. During the review of the Code, industry stakeholders largely called for the removal of the moratorium while public ones shared rather mixed views. The Irish regulator will conduct a review of the moratorium in the second half of the year and undertake a public consultation. If warranted by the review updated Guidelines dealing with the moratorium are intended to be published in the fourth quarter of the year.

Complaints about programme content should first be made to the broadcaster and then to *Coimisiún na Meán*.

The guidelines came into force on 7 May 2024 and will apply until the polls close on 7 June 2024.

Guidelines in Respect of Coverage of Elections, 30 April 2024

https://www.cnam.ie/wp-content/uploads/2024/04/2024_ElectionGuidelines_vFinal-1.pdf

Code of Fairness, Objectivity and Impartiality, April 2013

https://www.bai.ie/en/download/129469/

ITALY

[IT] The Italian Government adopts the Corrective Decree amending the Italian Audiovisual Media Services Code

Eugenio Foco & Fabiana Bisceglia

The corrective decree ("Corrective Decree"), which supplements and amends Legislative Decree No. 208 of November 8, 2021 ("AVMS Code"), was published in the Italian Official Gazette on April 17, 2024.

The approval of the Corrective Decree has followed a complex legislative itinerary, during which the Advisory Section for Regulatory Acts of the Council of State and the *ad hoc* commissions of the Senate and the Chamber of Deputies rendered interesting opinions on the legislative novelties introduced.

The Corrective Decree introduced a vast array of amendments which cannot be properly summarised in this article. Therefore, it aims to provide a general overview of the newly introduced provisions.

Among the novelties is the introduction of the concept of an "audio-only content sharing platform service", defined as a service having identical characteristics as a video-sharing platform service in which, however, "the shared content consists of sound programmes or user-generated audio, or both, intended for the general public". Consequently, where applicable, the provisions laid down in the AVMS Code will also apply to such services.

Furthermore, the Corrective Decree has opened the possibility for radio service providers to own, at the same time, an authorisation to provide digital radio services both at a national and local level. Indeed, the Corrective Decree repealed the long-standing provision forboding such practice.

Interestingly, the Corrective Decree requires that a new Self-Regulation Code for the Protection of Minors be adopted by 31 December 2024. The previous Code on Media and Minors will, therefore, be repealed upon its approval.

Video-sharing platform providers will now be required to communicate to the Italian Communications Authority (*Autorità per le Garanzie nelle Comunicazioni* —AGCOM) whether they operate in Italy or intend to begin operating in Italy.

Other amendments concern, primarily, the AVMS Code provisions on commercial communications.

Notwithstanding the above, the primary novelties introduced through the Corrective Decree are represented by the new provisions regulating the programming and investment obligations for audiovisual media services and, in

particular, for on-demand providers.

While the 30% programming quota in European works applicable to on-demand providers remained unvaried, the Corrective Decree significantly amended the investment obligations. In particular, the investment quota for European works produced by independent producers has been decreased from 20% to 16% of the Italian turnover. At the same time, the sub-quota for works of Italian original expression anywhere produced by independent producers in the last five years has increased to 11.2% of the Italian turnover (of the quota for European works). In addition, of such 11.2% sub-quota, an additional sub-quota of approx. 3% must be reserved for cinematographic works of Italian original expression anywhere produced by independent producers in the last five years.

In addition to the above, the Corrective Decree has eliminated the possibility for the Ministry of Enterprises and Made in Italy (MiMiT) and the Ministry of Culture (MIC) to increase the existing sub-quotas or to introduce new ones.

Decreto Legislativo 25 marzo 2024, n. 50 – Disposizioni integrative e correttive del decreto legislativo 8 novembre 2021, n. 208

https://www.gazzettaufficiale.it/eli/id/2024/04/17/24G00067/sg

Legislative Decree No. 50 of 25 March 2024 laying down the supplementary and corrective provisions to Legislative Decree No. 208 of 8 November 2021

NETHERLANDS

[NL] New guidance on privacy rules for political parties during election campaigns

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On 5 April 2024, the *Autoriteit Persoonsgegevens* (Dutch Data Protection Authority) (AP) adopted notable new guidance for Dutch political parties in relation to privacy rules during election campaigns, in the context of upcoming elections to the European Parliament, taking place in June 2024. Notably, the Guidance states that the AP asks political parties to "take note of" and conduct campaigns "as much as possible" in accordance with, and "in the spirit of", the EU Regulation on the transparency and targeting of political advertising, which will generally only take affect from 2025 (see IRIS 2024-3/6). The Guidance also builds upon previous Guidelines for political parties on the protection of privacy during election campaigns, adopted by the AP in 2021 (see IRIS 2021-5/15).

The purpose of the Guidance is to inform political parties of the rules under the General Data Protection Regulation (GDPR) in relation to election campaigns, and the Guidance is to be provided to campaign managers, campaign teams and, if applicable, also to the third-party organisations that process personal data for political parties during a campaign. The AP notes that political parties are increasingly processing personal data to conduct (targeted) campaigns; and the increasing amount of personal data available in society can be used to provide people with profiles, divide them into groups and provide them with specific (political) messages in a very targeted manner. In this regard, the Guidance contains a number of guidelines for political parties.

First, the AP states that data regarding political opinions of individuals are "additionally protected" under the GDPR, and the processing of these "special categories" of personal data are generally prohibited under Article 9 GDPR. There are a limited number of exceptions to this processing ban, including where the individual has given explicit consent. Notably, the AP emphasises that political parties may only process such data where individuals have given "explicit consent" before the processing, and political parties "must be able to demonstrate that the requirements for explicit consent have been met". Second, the AP also emphasises that given the general prohibition under Article 9 GDPR on processing personal data revealing political opinions, it means that it is "difficult to imagine" that files containing personal data about certain (alleged) political views of individuals and which are offered to political parties "by third parties" have been "drawn up lawfully". Indeed, the AP states that political parties may be "jointly responsible (and liable) for data processing" with such third parties. Third, and crucially, the AP states that political parties should be "critical of organisations that offer services that can advertise specifically based on preferences/target groups or personal characteristics", and political parties should

“only work with organisations that comply with the GDPR”. And if political parties wish to conduct a targeted campaign and engage a third party for this, first conduct a Data Protection Impact Assessment, and record what choices have been made with regard to the decision-making process. Fourth, in relation to tracking software, the AP states that it is of the opinion that tracking software such as tracking cookies and tracking pixels cannot be used, directly or indirectly, in the context of election campaigns.

Finally, the Guidance ends by noting that in relation to the upcoming elections to the European Parliament, the AP advises political parties to take note of the EU Regulation on the transparency and targeting of political advertising, which has not been published in the Official Journal, and will not generally take affect till 2025. However, the AP asks political parties to conduct campaigns “as much as possible” in accordance with and “in the spirit of” the Regulation.

Autoriteit Persoonsgegevens, AP wijst politieke partijen op risico’s persoonsgegevens rondom verkiezingen, 5 April 2024

https://www.autoriteitpersoonsgegevens.nl/actueel/ap-wijst-politieke-partijen-op-risicos-persoonsgegevens-rondom-verkiezingen

Dutch Data Protection Authority, AP points out to political parties the risks of personal data surrounding elections, 5 April 2024

[NL] New rules on surveillance of journalists and protection of journalistic sources

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On 1 May 2024, the *Openbaar Ministerie* (Netherlands Public Prosecution Service) adopted significant new rules in relation to criminal proceedings that may involve journalists. Notably, the new rules require that where there is surveillance, or surreptitious recording, of communication targeting suspects, and where journalists may also be present, an examining magistrate must give prior permission to record the communications. The new rules were adopted following a well-known recent controversy in the Netherlands, where during a criminal investigation, conversations between suspects were recorded, where journalists were also present. The *Nederlandse Vereniging van Journalisten* (Dutch Journalists Association) welcomed the new rules.

The new rules are part of the Public Prosecution Service's Rules for criminal proceedings with regard to journalists. These Rules are adopted under Article 130 of the *Wet op de rechterlijke organisatie* (Law on Judicial Organisation). These Rules describe the standards that the Public Prosecution Service, or the investigative services operating under the authority of the Public Prosecution Service, must observe in criminal proceedings involving a journalist.

Crucially, amendments have now been made to the Rules, which the Public Prosecution Service stated involved situations in which the "recording of confidential communication is not aimed at journalists, but in which journalists are (or could be) involved". First, the Public Prosecution Service required authorisation from the examining magistrate to record confidential communications from a suspect. However, there were no further rules for journalists on this point. The Rules have now been amended so that if it becomes clear before the use of the surveillance measures that a journalist is (also) involved, the examining magistrate must be informed immediately. This allows the examining magistrate to assess whether the eavesdropping can continue and, if so, whether this can be done under the same conditions. Further, a Chief Officer must also agree to the use of surveillance equipment, and the *College van procureurs-generaal* (Board of Attorneys General), the leadership of the Public Prosecution Service, must also be informed in advance. Second, although a journalist as a third party is not the target of the surveillance measures used, information about the journalists, as a result of that use, may end up in the case file to be provided to the defence in criminal proceedings. The Rules state that it is "not desirable for this to reveal how and with whom a journalist has contact in the performance of thier duties, without the journalist in question being aware of this in advance". Now, if it has become clear that information about a journalist has been obtained as a third party, the journalist in question will be notified as soon as the interests of the investigation permit. Crucially, the Rules stated that "if, in retrospect, an unauthorized infringement of the journalist's right to source

protection has occurred, the data obtained will be destroyed as soon as possible".

Finally, the new rules take effect from 1 May 2024.

Openbaar Ministerie, Aanwijzing strafvorderlijk optreden met betrekking tot journalisten, 29 April 2024

https://www.om.nl/actueel/nieuws/2024/04/29/de-aanwijzing-strafvorderlijk-optreden-met-betrekking-tot-journalisten

Netherlands Public Prosecution Service, Instruction for criminal proceedings with regard to journalists, 29 April 2024

PORTUGAL

[PT] Irregularities in advertising targeting children and adolescents in Portugal

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The Portuguese Media Regulatory Agency has published a report on advertising targeting children and commercial communications in children's channels and/or programs, suggesting a lack of compliance by TV channels. Advertising forbidden food due to nutritional composition is among the most irregularities found in the report. In that matter, TV channels present a highly diverse performance, with the public broadcasting service showing that, in the period analysed, there was no advertising or commercial communications in the block programming aimed at children.

The study, conducted in the last months of 2023, analysed free-to-air channels, their respective internet site and streaming platforms, and a popular children's subscription channel. The purpose of this research was to identify gaps and existing measures to ensure compliance with the provisions of the television law (which includes the revised AVMSD) and of the Advertising Law in the context of advertising and other commercial messages aimed at children and adolescents up to 16 years of age.

As for commercial television, the study reports difficulty defining what programming targets children and adolescents sinceTV channels do not tend to separate them from general programming. Thus, although some ads for food with forbidden nutritional composition were found during breaks and programmes that young audiences could watch, administrative procedures can be challenging. The study has, nonetheless, found some irregularities, pointing out that the free-to-air channel TVI has during the break shows, for instance, some cases of advertising food with high sugar and fat levels. The other free-to-air channel, SIC, also has some product placement of foods suspected of not complying with the regulatory nutritional composition. However, that product placement occurred in reruns of shows produced before new regulations entered into force.

The document also mentions gaps that may impair the purpose of a media free of harmful content because sponsorship is not considered in the legal framework; some sponsored shows are not subject to administrative procedures, even though they represent brands and/or products that would not be allowed in traditional advertising time. For instance, the agency has detected a case of sponsorship of a product containing alcohol in a program that is targeted at juvenile audiences.

The lack of coherence this brings to the legal framework has led the Media Regulatory Agency to suggest legislative power that an amendment to the law should be considered. The document states, “this report seeks to demonstrate the importance of reviewing and possibly strengthening the current regulations in this

matter, to allow commercial communication delimited by the value of health and healthy eating for young audiences".

Comunicação Comercial dirigida a menores em serviços de programas televisivos

https://www.flipsnack.com/ercpt/comunica-o-comercial-dirigida-a-menores/full-view.html

Commercial communication targeted at children and young people

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