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EDITORIAL

A lot of things are still in the works before the summer break.

For those who would like to stay closer to Europe, you may be interested to read about recent regulatory developments, such as in Austria with the revision of the Data Protection Act regarding media privilege; in Denmark, with amendments to the Copyright Act; in Germany, with the passing of the Film Support Act; or in the United Kingdom with the Media Act becoming law. If you're in the mood for a change of scenery you will probably want to know more about the progress of California's AI safety bill, which is designed to reduce the risks posed by AI. However, the bill is facing strong opposition from the Silicon Valley's tech giants who believe that these requirements would discourage companies from developing large AI systems or keeping their technology open-source.

In the case of decisions taken by courts or regulators, social media platforms seem to be in the spotlight once again. In Spain, Meta's Election Day Information and Voter Information Unit functionalities were suspended for three months for failing to comply with the data protection principles of lawfulness, data minimisation, and storage limitation. Also related to the same platform, a Belgian judgement concluded that Meta should pay damages to a politician after his page was shadow banned. In the UK, fin-fluencers face legal action for promoting unauthorised high-risk investments on social media. The Italian regulator also blocked Russia Today content on YouTube and X. Meanwhile, Russia has banned 81 media outlets from the EU.

There is also more exciting news from the Observatory: the Department for Legal Information is looking to strengthen its team with the recruitment of a Legal Advisor. This could be the job that you are looking for! So don't hesitate to spread the word and encourage people with the corresponding profile who are interested in joining the Observatory team to apply before 18 July 2024.

With this final note, I wish you a relaxing summer break!

Enjoy the read!

Maja Cappello, Editor

European Audiovisual Observatory

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INTERNATIONAL

COUNCIL OF EUROPE

AZERBAIJAN

European Court of Human Rights: RFE/RL Inc. and Others v. Azerbaijan

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

The European Court of Human Rights (ECtHR) delivered another landmark judgment on the wholesale blocking of online media outlets and the right to freedom of expression and information. Azerbaijani courts had decided to block access to a series of media websites on the grounds that certain articles published on them had featured allegedly unlawful content under Azerbaijan's media laws. The ECtHR found a violation of Article 10 of the European Convention on Human Rights (ECHR) because the legal provisions on which the blocking orders were based awarded unlimited scope for unchecked arbitrariness by the domestic authorities. It found that the discretion afforded to the authorities was essentially expressed in terms of unfettered power and was not circumscribed with sufficient safeguards against arbitrariness.

The case concerns the authorities' decisions to completely block access to four online media outlets since 2017-18. The online media outlets are azadliq.org, anaxeber.az, az24saat.org and xural.com. In particular azadliq.org, the website of Radio Free Europe/Radio Liberty was found to have published "information promoting violence and religious extremism and calling for, among other things, mass riots", while all four websites were found to have published "false, misleading and libellous information". Before the ECtHR the applicants complained about a violation of their rights under Article 10 ECHR (right to freedom of expression and information). They also relied on Article 6 (right to a fair trial), Article 13 (right to an effective remedy) and Article 18 (limitation on use of restrictions on rights) ECHR. The online media outlets argued in particular that the blocking orders were imposed because they were critical of the government and had exposed abuse of power and corruption.

First the ECtHR rejected the request of the Azerbaijani Government to declare the applications inadmissible, as the applicants had not suffered a significant disadvantage (Article 35 paragraph 3 (b) ECHR) because some of their content had remained accessible online through VPN software or alternative web browsers. The ECtHR agreed with the applicants that the mere fact that the restrictions on access could be bypassed by individual users using VPN services or alternative web browsers could not, in reality, significantly alleviate the overall

effect of the blocking measures. The ECtHR explained that it would be reasonable to assume that the average internet user (whose knowledge of various software options may not be as extensive as that of a more advanced user), when confronted with the fact that a news website which he or she was trying to access was in fact inaccessible, would not necessarily seek to learn about, download and use VPN services or any alternative lesser-known web browsers in order to try to circumvent the access restrictions. Moreover, he or she might not even be aware that the website was inaccessible because of a judicial blocking order, rather than simply being defunct or non-functional due to technical problems. As for those users who were aware of such options and alternatives, the ECtHR agreed with the applicants that some or many of them might indeed refrain from using those services for various privacy or other reasons, including the need to pay for fully functional versions of VPN services and the inferior performance of certain alternative web browsers. The ECtHR also found that even though some internet users had apparently accessed their websites, either from Azerbaijan, using a VPN, or from abroad in an unrestricted manner, the websites had lost upwards of 90% of their previous traffic after the blocking measures, which had significantly restricted their ability to impart information to their usual website audiences in Azerbaijan.

Next, the ECtHR reiterated the general principles which should be applied on the matter at issue, that “owing to its accessibility and capacity to store and communicate vast amounts of information, the internet has now become one of the principal means by which individuals exercise their right to freedom of expression and information. The internet provides essential tools for participation in activities and discussions concerning political issues and issues of general interest, it enhances the public’s access to news and facilitates the dissemination of information in general. Article 10 of the Convention guarantees 'everyone' the freedom to receive and impart information and ideas. It applies not only to the content of information, but also to the means of its dissemination, for any restriction imposed on the latter necessarily interferes with that freedom.” Measures blocking access to websites are bound to have an influence on the accessibility of the internet and, accordingly, engage the responsibility of the respondent state under Article 10 ECHR.

The ECtHR found that the domestic law did not afford sufficient safeguards against arbitrary interferences involving temporary blocking measures imposed by the Ministry of Transport, Communication and High Technology (MTCHT) in the absence of a judicial decision, and that moreover, the safeguards which were actually provided for by law had not been respected in this case. The ECtHR also referred to the fact that the relevant provision of the Law on Mass Media provided that only individuals and legal entities whose honour and dignity had been discredited by publications of a libellous nature had the right to demand a retraction, correction or reply and the right to apply directly to a court with a defamation claim. Hence, the Law on Mass Media did not give public authorities such as the MTCHT the right to make claims of this type on behalf of such individuals or legal entities, and did not confer jurisdiction on a domestic court to find that a certain publication was libellous in the absence of a direct relevant

claim lodged by the individual or legal entity whose rights had been affected. Also the relevant provisions in the Law on Information, Informatisation and Protection of Information (IIPI Law) as interpreted and applied by the domestic courts, was not sufficiently foreseeable as to its effects to enable the applicants to regulate their conduct, and did not indicate with sufficient clarity the scope and manner of exercise of the discretion afforded to the authorities in the field it regulated. The provisions at issue were expressed in terms of unfettered power without sufficient safeguards against arbitrariness. Hence the legal provisions the blocking orders were based on were applied in an unforeseeably broad, arbitrary and manifestly unreasonable manner.

In view of these considerations, the ECtHR found that the wholesale blocking of the media websites failed to meet the "prescribed by law" requirement under Article 10 paragraph 2 ECHR. This finding was sufficient to conclude that the blocking orders at issue had violated Article 10 ECHR. Having reached that conclusion, the ECtHR did not need to satisfy itself whether the other requirements of Article 10 paragraph 2 ECHR (legitimate aim and necessity of the interference) had been complied with. Having dealt with the main legal questions raised under Article 10 ECHR, the ECtHR also decided that there was no need to give a separate ruling on the admissibility and merits of the applicants' remaining complaints under Articles 6, 13 and 18 ECHR.

Judgment by the European Court of Human Rights, First Section, in the case of RFE/RL Inc. and Others v. Azerbaijan, Application No. 56138/18 and 3 others, 13 June 2024

https://hudoc.echr.coe.int/?i=001-234138

RUSSIAN FEDERATION

European Court of Human Rights: *Sokolovskiy v. Russia*

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

In its judgment in the case of *Sokolovskiy v. Russia* the European Court of Human Rights (ECtHR) applied and clarified its case law on freedom of expression and religious hate speech in the online environment (see also *Lenis v. Greece*, IRIS 2023-9:1/21 and *Tagiyev et Huseynov v. Azerbaijan*, IRIS 2020-2:1/16). It found a violation of Article 10 of the European Convention on Human Rights (ECHR) because the applicant blogger, Ruslan Gennadyevich Sokolovskiy, had been convicted in breach of his right to freedom of expression. The ECtHR found that the sanctions imposed on Sokolovskiy for offending the feelings of religious believers and inciting hatred toward a social group in a series of video messages were not pertinently justified by the domestic judicial authorities. The ECtHR ruled unanimously that the criminal prosecution and conviction of Sokolovskiy constituted a disproportionate interference that was not necessary in a democratic society.

The case concerns the prosecution of Sokolovskiy, a content creator and blogger. At the relevant time, his YouTube channel had 470 000 subscribers. He was convicted for a series of videos posted on a YouTube channel, covering a variety of subjects in 2015 and 2016. The videos contained Sokolovskiy's comments on a ban of an atheist group from a social network in the Chechen Republic, comments on hate mail he had received from religious believers and his criticism of the Russian Orthodox church. He also made statements questioning the existence of Jesus and the Prophet Muhammad. One of the videos showed Sokolovskiy playing Pokémon in a church. He was prosecuted and convicted under the provisions of the Russian Criminal Code for the offences of 'public actions insulting religious beliefs' and 'incitement of hatred or enmity'. The Russian courts took the view that the videos in question constituted extremist acts aimed at inciting hatred or hostility towards individuals targeted for belonging to ethnic, religious or social groups. Sokolovskiy was sentenced to three and a half years' imprisonment, suspended, on two-year probation. The videos were also ordered to be removed from the internet.

In his application to the ECtHR Sokolovskiy argued that, while inflammatory, his videos neither intended to incite nor resulted in incitement of violence or hatred. In particular, he complained of the unforeseeability of Articles 148 and 282 of the Russian Criminal Code, under which he was convicted, arguing that the national courts interpreted his statements – which he claims were critical remarks on numerous topical issues – as being extremist and insulting towards people of faith. He submitted that the statements in question, while having in part been expressed in a highly controversial form, were of public interest. ARTICLE 19, with

the Human Rights Centre of Ghent University, submitted a third-party intervention ((TPI) to the European Court in 2020, insisting on the difference between prohibitions on blasphemy and insult of a religion (which are not allowed under international human rights law) and incitement to hatred, hostility and violence (which States are obliged to prohibit under international human rights law). The TPI invited the ECtHR to declare that the criminalisation of religious insult to protect the feelings of believers, without incitement to discrimination, hostility or violence, was in breach with Article 10 ECHR.

In its judgment of 4 June 2024, the ECtHR first confirmed that the abuse clause of Article 17 ECHR, eventually annihilating Sokolovskiy's protection under Article 10 ECHR, can only be applied on an exceptional basis and in extreme cases, where it is immediately clear that the disputed statements sought to deflect the right to freedom of expression from its real purpose and were obviously contrary to the values of the ECHR. The ECtHR found that Sokolovskiy's comments, although they could be considered by part of the public as crude, did not reach a degree of virulence to justify the application of Article 17 ECHR.

While the ECtHR accepted that the interference with Sokolovskiy's right to freedom of expression was prescribed by law and aimed at protecting public order, morals and the rights of others, it found ultimately that his conviction by the Russian courts was not necessary in a democratic society. The ECtHR recalled that the simple fact that a remark may be perceived as offensive or insulting by specific individuals or groups of individuals does not mean that it constitutes "hate speech". While such feelings are understandable, they alone cannot set the limits of freedom of expression. Offensive language may not be considered as protected speech if it amounts to gratuitous denigration, but the use of vulgar expressions in itself is not decisive in assessing an offensive expression, because it can be used for purely stylistic purposes. Style is part of communication and is protected in the same way as the substance of the ideas and information expressed.

The ECtHR in particular referred to the fact that the national courts relied essentially, on the statements of the two prosecution witnesses, one of whom was absent at the hearing while the identity of the other was kept secret, as well as on the conclusions of a pluridisciplinary expertise team, commissioned by the investigator. The ECtHR found that the domestic judges did not analyse Sokolovskiy's statements in the light of the content of the videos as a whole and they neither examined the context in which the videos were created.

They limited themselves to reproducing in their decisions, based on the aforementioned expert conclusions, short sentences or expressions taken out of their immediate context. Nor was any attempt made to establish whether Sokolovskiy's statements, even those formulated in harsh and vulgar terms, were part of a debate of general interest or could be justified by a style inherent to his activity as a blogger oriented towards a young audience. The ECtHR observed that Sokolovksiy's defence had not been considered by the domestic courts, hence depriving him of the procedural protection which he should have enjoyed.

Finally, there were no indications that the videos contained any calls for illegal or violent acts, and the ECtHR recalled that the containment of a mere speculative danger, as a preventive measure to protect democracy, cannot be considered as responding to a "pressing social need". It also noted that the domestic courts did not examine whether Sokolovskiy's statements were gratuitously offensive for religious beliefs, or if they incited disrespect or hatred towards the Orthodox Church. The ECtHR concluded that the domestic courts did not apply standards consistent with the principles set out in Article 10 ECHR and therefore did not provide "relevant and sufficient" reasons to justify the interference in question. There has, therefore, been a violation of Article 10 ECHR.

Judgment by the European Court of Human Rights, Third Section, in the case Sokolovskiy v. Russia, Application no. 618/18, 4 June 2024

https://hudoc.echr.coe.int/eng?i=001-233984

EUROPEAN UNION

Further guidances from the EUCJ on what constitutes a communication to the public

Justine Radel-Cormann
European Audiovisual Observatory

An owner of 18 apartments, who provides his tenants with televisions equipped with indoor antennas, thus allowing them to watch music programmes, does (s)he communicate protected works to the public (his tenants) as understood by Article 3, paragraph 1 of Directive 2001/29? That is the preliminary ruling of the European Court of Justice's recent judgement on 20 June 2024.

According to this preliminary ruling, the answer depends on the owner’s intention: did (s)he do this for a profit motive (to attract people to the apartments) which would make it a communication to the public or is it merely a provision of physical facilities?

For example, a provision of facilities occurs when a radio is integrated into a rental car, allowing the user to receive terrestrial radio broadcasts accessible in the area where the car is located, without any additional intervention by the rental company. Conversely, communication to the public occurs when operators of public houses (hotel, restaurant, spa, etc.) deliberately transmit protected works to their clientele, by intentionally distributing a signal (TV or radio) installed in the establishment.

The fact that the owner has installed TVs should be considered an additional service provided with a profit motive. This allows him/her to enhance the standing of the apartments and charge a higher price for them. They become more attractive and may have higher occupancy.

The fact that these are indoor antennas and not a central antenna is irrelevant, as making such a distinction would contradict the principle of technological neutrality.

Finally, it is necessary to determine the size of the audience. A small number (de minimis threshold) does not constitute communication to the public. Therefore, it is up to the referring court to determine the number of people to whom the programmes are broadcast.

The court indicates that if the tenants are residential, this audience does not constitute a new public, thus not qualifying as communication to the public. However, if it involves short-term seasonal rentals, the opposite applies: the audience can be considered a new public, qualifying as communication to the public, therefore requiring authors to authorise or prohibit the communication of

their works, and be remunerated for such authorisation.

Case C-135/23, GEMA v. GL, 20 June 2024, ECLI:EU:C:2024:526

https://curia.europa.eu/juris/document/document.jsf?text=&docid=287307&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=6393596

NATIONAL

AUSTRIA

[AT] Media privilege in data protection re-regulated in Austria

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On 12 June 2024, the National Council of Austria adopted a federal law amending the Data Protection Act. The new rules, which entered into force on 1 July 2024, aim to reorganise and differentiate the so-called media privilege in data protection.

The revision became necessary following a decision by the Constitutional Court (VfGH), which ruled that a previous ruling – the blanket exemption for the media on the basis of Article 85 of the GDPR – was unconstitutional. According to the VfGH, data processing for journalistic purposes should not be exempted from the provisions of the GDPR as a matter of principle, as this "media privilege" violates the fundamental right to data protection. A careful balancing of the competing rights was to be found.

According to the new amendments, editorial secrecy and the protection of journalistic sources remain protected. Investigative journalism should not be undermined for data protection reasons, and the media's "watchdog function" is guaranteed. The protection of personal data should be safeguarded by general obligations, in particular, the processing principles under the GDPR, the obligations of the controller in data processing, and the obligations with regard to data security. Data controllers – journalists – subject to the media privilege will not be obliged to disclose information to the data subjects according to editorial secrecy provisions. Meanwhile, they will be authorised to process personal data, including the special categories of personal data included in Article 9 (1) GDPR and those related to criminal convictions, offences or related security measures of the data subject. Several other provisions of the GDPR – i.e. Articles 13, 14, 15, 16, 17, 18 and 21 – are also aligned with the objective of the “media privilege”.

The scope of the protection for journalistic activities extends to the processing of personal data by media owners, publishers, media employees, and employees of a media company or media service, as well as by other persons who contribute journalistically to the editorial or the content of communications of a media service on a contractual basis (e.g. guest commentators).

Meanwhile, the new Freedom of Information Act in Austria (See IRIS 2024-3:1/16) will intersect, from September 2025, with the newly re-regulated media privilege. On the one hand, state transparency is becoming the rule, and secrecy is the

exception, which is to strengthen the position of the media and journalists vis-à-vis public bodies. At the same time, if such public data also contains personal data, they will be obliged to consider more carefully how to process such data. In essence, a very differentiated, case-by-case legal analysis will be necessary in considering data protection measures in the future.

Beschluss des Nationalrates, Bundesgesetz, mit dem das Datenschutzgesetz geändert wird

https://www.parlament.gv.at/dokument/XXVII/BNR/952/fname_1635085.pdf

Resolution of the National Council's Federal Act amending the Data Protection Act

BELGIUM

[BE] Belgian case regarding payment of damages for shadowbanning a politician by META

Lien Stolle
Ghent University

The case concerns the payment of damages by META to a politician following a shadowban on his Facebook page. META found that the politician's posts violated Facebook's Terms of Service and Community Standards, with META citing hate speech, endorsing dangerous individuals and hate organisations, and bullying and intimidation as reasons. For that, in early 2021, temporary restrictions were imposed on the politician's personal and advertising Facebook pages. Among other measures, a shadowban was implemented, reducing the page's organic reach and resulting in fewer people seeing the posts. META claimed these measures were lifted by the end of 2021. However, the appellant disputed this, presenting figures that indicated the shadowban persisted beyond 2021 and continued to impact the average page reach.

The appellant requested the Court to rule that META breached its contract with him by failing to respect his right to freedom of expression, unlawfully discriminating based on his political beliefs, failing to perform the contract in ‘good faith’, and using unfair terms. Furthermore, the appellant also cites that META subjected him to unlawful profiling within the meaning of the General Data Protection Regulation (GDPR) and on the basis of his political beliefs.

Although the Court of First Instance ruled that the Belgian courts lacked international jurisdiction, the Court of Appeal determined that it did have jurisdiction and proceeded with the case.

The interim order: Penalty Payment

Pending a final decision by the Court of Appeal, the appellant obtained an interim order requiring META to lift the shadowban under penalty payment of a fine of EUR 1,000 per hour.

Final judgement: The Terms of Service and Use

The Court first notes that the appellant agreed to the Terms of Service and Terms of Use, which are clear and understandable. It does not grant META the right to unilaterally interpret its contractual terms, thus making them legally valid.

Final judgement: Freedom of Expression and Discrimination

The Court states that the appellant cannot directly invoke the fundamental right of freedom of expression, as enshrined, *inter alia*, in Article 10 of the ECHR

against META, since it has no horizontal effect. However, this provision can have an indirect impact through the interpretation of open standards in private law, such as the requirement of ‘good faith’ that META must adhere to when performing contracts. Furthermore, the Court did not find it necessary to rule on the appellant's claim that the shadowban violates Belgian anti-discrimination laws.

Final judgement: Automated decision-making and profiling under the GDPR

Regarding the issue of whether there has been unlawful profiling under the GDPR, the Court observes the following. Under Article 22(1) GDPR, a decision based solely on automated decision-making is not allowed when it involves decisions that may have legal effects for data subjects or other similarly significant effects. Apart from one imposed sanction, META does not demonstrate that there was any human intervention. For its analysis, the Court distinguishes between (1) deleting the posts and putting warnings on the Facebook page, and (2) the shadowban. Only the latter entails legal or similarly significant effects for the appellant, given his position as a politician and the impact of the decreased organic reach limiting his ability to spread (political) messages.

While Article 22 GDPR allows for some exceptions, including the performance of a contract (Article 22(2)(a) GDPR; in this case, enabling the enforcement of terms and standards to ensure the safety of all users), the Court notes that the shadowban does not constitute an appropriate protective measure, as the decision to implement such a ban happened without human intervention and the appellant could not contest this particular sanction (art. 22(3) GDPR).

Additionally, META needs to demonstrate that it has provided useful information on the underlying logic of the automated decision-making, as well as the significance and expected consequences of such processing (art. 13(2)(f) GDPR). Moreover, the privacy policy does not adequately inform users about the existence of any form of automated decision-making (art. 13(2)(f) GDPR). Simply mentioning 'automated processing' in the privacy statement is not sufficient if automated decision-making is taking place.

As such, the use of automated decision-making for both the shadowban and the other sanctions imposed is deemed unlawful for the reasons previously discussed.

Final judgement: Alleged violations by the appellant and sanctions applied by META

The Court notes that it only examined those sanctions to which the appellant attached a concrete legal consequence, such as reparation (e.g. reinstatement of deleted messages) or damages.

First, the Court reviewed several deletions of posts by META, including:

Posts showing 'Zwarte Piet' in blackface. A post related to a terrorist attack showing

the victim. Posts about Nazi book burnings. A post of a person appearing to urinate or defecate in public.

The Court ruled that only the post about the attack had been wrongly removed, noting that Facebook's Community Standards should be interpreted as prohibiting the endorsement of violent events or the depiction of such events without context, and not when these events are condemned in the post. In contrast, the removal of the other posts was found to be in line with those Standards. However, due to the aforementioned violation of Article 13(2)(f) of the GDPR, the removal of these posts was also deemed unlawful.

Second, the Court examined the implementation of the shadowban. META argues that the shadowban was imposed because of a combination of factors, including the history of infringements with the Community Standards, the number of measures or ‘strikes’ against the appellant's page and the severity of these infringements. The ban was lifted at the end of 2021, according to META. However, the appelant argues that the imposition of the shadowban violates the principle of ‘good faith’ when performing contracts.

To this end, the Court considered several factors: the time frame between the posts and the imposition of the shadowban, the time frame and severity of the shadowban, and the lack of sufficient procedural safeguards, including the impossibility of contesting the shadowban. Moreover, the Court noted that while META notifies users when they violate its terms and conditions, it does not inform them of the specific consequences of each violation. Moreover, the shadowban was only applied to personal accounts and not the paid advertising accounts. Thus, by this course of action, META gave the impression that it only imposes sanctions from which it does not suffer any financial harm (and even benefits).

Given the specific circumstances under which META imposed a shadowban in this case, it acted in breach of good faith. In addition to the previously cited violations of Article 13(2)(f) and Article 22(3) GDPR, this further renders META's shadowban unlawful.

For clarity, the Court specified that this judgment does not automatically apply to other instances of violations of Facebook Community Standards.

Final judgement: Alert on the appellant's Facebook page

The Court found that the imposition of a label was not contractually stipulated by Facebook. Moreover, the breach of information and transparency obligations (Art. 13(2)(f) GDPR) is again relevant here, making this sanction unlawful.

Final judgement: Damages

The appellant argued that due to the sanctions imposed by META, additional advertising costs had to be incurred, specifically investments in advertisements targeted at his followers (in addition to those targeted at non-followers). The Court agreed that the need to pay for ads aimed at his followers was a result of

the shadowban, and noted that the politician could have spent those resources on other professional expenses.

However, the Court held that the appellant could not prove that the shadowban continued beyond 2021. It therefore only calculated the costs of those ads targeting his followers for the period from the beginning to the end of 2021. Moreover, the Court recognised that the warnings on the appellant's page and advertisements were likely to have caused reputational damage, notwithstanding the fact that there had been an increase in the number of followers since then.

Regarding the alleged continuation of the shadowban after 2021, the following remarks are made. The appellant provided figures to support the claim that the shadowban was still in effect, noting that although organic reach increased after 2021, it remained significantly below the 2020 levels prior to the shadowban. In contrast, META presented evidence that the restriction was no longer in place and noted that organic reach is influenced by a message's ranking, which in turn is influenced by a combination of dynamic, complex and nuanced factors. META argued that organic reach depends on various elements, including the type of content shared, posting frequency, and follower interaction. Additionally, META implemented a ‘platform-wide change’ in 2021 that reduced the distribution of social content. The Court found META's reasoning persuasive. After thoroughly analysing the arguments and documents presented, the Court concluded that the appellant did not sufficiently prove that META continued to apply a shadowban on the appellant's page after 2021, thus differing from the initial judgment in the interim ruling.

Extract judgment d.d. 03.06.2024 court of appeal Ghent - seventh chamber

Extract of interlocutory judgment dated 24.10.2022 court of appeal Ghent - K 7

META moet schadevergoeding betalen aan politicus wegens een schaduwban op zijn Facebookpagina, Hof van beroep Gent, Persbericht

https://www.tribunaux-rechtbanken.be/sites/default/files/media/hbca/gent/files/20240603-persbericht-meta-moet-schadevergoeding-betalen-aan-politicus.pdf

META must pay damages to politician because of a shadow ban on his Facebook page, Ghent Court of Appeal, Press release

GERMANY

[DE] 25th KEK annual report published

Christina Etteldorf
Institute of European Media Law

On 27 May 2024, the *Kommission zur Ermittlung der Konzentration im Medienbereich* (Commission on Concentration in the Media – KEK), a joint organ of the German state media authorities responsible for guaranteeing plurality of opinion in relation to the organisation of private television channels throughout Germany, published its 25th annual report.

In the report, the KEK describes the media concentration investigations and other key areas of work it carried out in 2023, including analysis of the impact of artificial intelligence (AI) on media diversity and plurality of opinion and the potential need for AI-related regulation in the media sector.

One of the KEK's main focuses in 2023 was the European Media Freedom Act (EMFA). It published an opinion on the EMFA, which welcomed its primary objectives, but criticised the excessive powers it assigned to the European Commission, enabling it to influence supervisory structures, and the criteria for assessing media concentrations.

The KEK also amended its guidelines under which minor changes to participating interests or other types of influence do not need to be reported to the KEK for approval from a media concentration point of view. This exemption was extended to include changes that are not minor *per se*, but relate to companies whose stake in a broadcaster is considered insignificant (less than 5% of the capital).

In addition to measuring influence on public opinion and Internet diversity, the KEK examined the theme of AI in 2023, with regard to both its regulation and its effects on power structures in the online sector, which are not currently the subject of specific regulations. The annual report emphasises AI's impact on diversity: on the one hand, by improving efficiency, quality and the individualisation of media content, for example, AI can significantly increase access to content and thereby promote media plurality. On the other, it also has the potential to be misused as a means of selecting, manipulating or even generating content to influence the opinion-forming process. In this context, the KEK believes that regulation is necessary and that legal instruments should be created to thwart attempts to threaten or restrict diversity. It considers it especially important to examine whether AI might accelerate media concentration.

The annual report also reviews the 35 procedures completed by the KEK during the 2023 reporting period. These essentially concerned licence applications for national private broadcasting services and changes to ownership and

shareholding structures with little impact on media diversity. During the reporting period, the three-step procedure required under German law to guarantee plurality of opinion was also completed in relation to the allocation of airtime to independent third parties by RTL Television. Regarding the licensing of regional windows broadcast by SAT.1, for which the relevant state media authorities had not issued a call for tenders but simply extended the licences of the existing holders, the KEK again voiced concerns about this practice of repeatedly extending licences, which permanently blocked other companies from bidding for regional window slots.

The final factual section of the annual report describes developments in national programming and media consumption, and provides an overview of Germany's main national television groups. With regard to individual media genres, it stresses, *inter alia*, that the trend of declining linear television consumption (down by 38 minutes since 2020) is continuing, while online video consumption, including the use of media libraries, is on the increase (up by 37 minutes since 2020).

25. Jahresbericht der KEK

https://www.kek-online.de/fileadmin/user_upload/KEK/Publikationen/Jahresberichte/25._Jahresbericht.pdf

25th KEK annual report

[DE] Federal Cabinet approves amended Film Support Act

Sven Braun
Institute of European Media Law

On 22 May 2024, the German federal government approved a draft amendment to the *Gesetz über Maßnahmen zur Förderung des deutschen Films* (Act on measures to promote German film – FFG-E). The Federal Government Commissioner for Cultural and Media Affairs (BKM), Claudia Roth, had previously tabled a bill in February (see IRIS 2024-4:1/21).

The cabinet draft contains numerous editorial amendments compared with the February bill, e.g. including the use of gender-neutral language.

In terms of its content, the cabinet draft extends the remit of the *Filmförderungsanstalt* (Federal Film Board – FFA), which supports the structure of the German film industry and the creative and artistic quality of German film-making, by requiring it, as well as the existing themes of diversity, inclusion and anti-discrimination, to promote gender equality in the film and cinema industry (Art. 2(11) FFG-E). The FFA will, therefore, specifically take gender equality into account as it fulfils its responsibilities (Art. 3(5) FFG-E). Gender equality will also be reflected in the future composition of the FFA administrative council (Art. 6(2) FFG-E). Other organisations, including digital, telecommunications and press associations, can appoint administrative council members (Art. 6(1) FFG-E). The diversity committee mentioned in the February bill will also take gender equality into account, but will "have no direct or indirect influence on artistic decisions" (Art. 30 FFG-E).

One significant addition to the cabinet draft is the FFA's obligation, for transparency reasons, to develop an effective compliance management system by recognised standards. The compliance officer will need to report regularly to the executive committee (Art. 32(1)(9) and 38(2) FFG-E).

Under Article 53 of the existing Film Support Act, to protect individual exploitation windows, supported films may not be exploited abroad, on television or by any other means before the end of the relevant blackout periods. Firstly, the cabinet draft shortens the blackout period for paid video-on-demand services and pay-TV from six to four months after the release of a film to take into account changes to exploitation practices that mean that cinema films are now exploited sooner after their cinema release than before. The draft also explains that later exploitation should also be contractually possible (Art. 54 FFG-E). For example, a film that a streaming provider finances should be subject to a sufficiently long exploitation window. One new addition is the idea that a different blackout period can be agreed as long as certain conditions are met (Art. 57 FFG-E). For free-to-air television and free video-on-demand services, the blackout period can be shortened to up to six months if the producer and the owners of the exploitation rights that help to finance the film agree, "taking into account the respective

financing shares" (Art. 57(1) FFG-E). According to the explanatory memorandum, this should help create a more flexible environment and encourage the financing of cinema films.

The FFA will, in future, be required to give special treatment to films whose director has sole responsibility for directing a film for the first or second time, as well as children's films and documentary films (Art. 63(2) FFG-E). Film funding should also only be based on a film's success in festivals and competitions of particular national significance, in order to ensure it is used in a way that benefits all groups of stakeholders (Art. 64(2) FFG-E).

The cabinet draft has already been notified to the European Commission in accordance with Directive (EU) 2015/1535 (notification number 2024/0255/DE). The current Film Support Act is valid until 31 December 2024. However, the *Bundestag* (German parliament) must discuss and approve the amended version before it can enter into force in early 2025. Furthermore, funding incentives and other measures will also need to take gender equality into account (Art. 65 FFG-E). Employment conditions, especially pay, in relation to funded films will also need to be improved. This includes appropriate pension contributions for people involved in film production (Art. 81 FFG-E).

The film levy paid by cinemas will move away from a screen-based charge to a cinema-based fee to reflect the cinema's performance more accurately. The levy thresholds are slightly different to those mentioned in the February bill (Art. 128 FFG-E). The cabinet draft also includes special provisions regarding the film levy paid by video-on-demand service providers with no editorial responsibility (Art. 138 FFG-E). These will apply to cable network operators who offer access to video-on-demand services but have no editorial responsibility themselves, for example. Where a provider only acts as an intermediary, the levy will be paid by the video-on-demand service provider with editorial responsibility. However, if a cable network operator acquires the licensing rights and offers its customers access to such VoD services, it will have to pay the levy itself.

Gesetzentwurf der Bundesregierung zur Novellierung des Filmförderungsgesetzes vom 22. Mai 2024

https://www.kulturstaatsministerin.de/SharedDocs/Downloads/DE/Filmfoerderungsgesetz/2024/2024-05-22-Gesetzentwurf-FFG2025.html

Federal government bill amending the Film Support Act, 22 May 2024

Pressemitteilung der Bundesregierung vom 22. Mai 2024

https://www.bundesregierung.de/breg-de/aktuelles/bundeskabinett-beschliesst-entwurf-zur-novellierung-des-filmfoerderungsgesetzes-kulturstaatsministerin-roth-damit-wird-der-deutsche-film-gestaerkt--2285738

Federal government press release of 22 May 2024

[DE] WDR must invite new “Bündnis Sahra Wagenknecht” party to the “Wahlarena 2024 Europa”

Sven Braun
Institute of European Media Law

On 5 June 2024, the *Oberverwaltungsgericht Nordrhein-Westfalen* (North Rhine-Westphalia Higher Administrative Court – *OVG Nordrhein-Westfalen*) decided in an expedited procedure that Westdeutsche Rundfunk (WDR) should invite the leading candidate for the “Bündnis Sahra Wagenknecht” (BSW) party, which was taking part in European elections for the first time, to appear in the ARD programme “Wahlarena Europa 2024”. In the programme, broadcast three days before the election, Germany’s leading European Parliament candidates discussed topics related to European politics with a studio audience.

WDR invited the leading European Parliament election candidates of seven well-established parties to take part in the ARD programme “Wahlarena 2024 Europa”, broadcast on 6 June 2024. During the programme, members of the studio audience could ask the invited politicians questions that had been submitted in advance. According to the WDR programme concept, which included a review of the previous electoral period, only parties with a certain number of current MEPs had been invited.

In the urgent first-instance proceedings before the *Verwaltungsgericht Köln* (Cologne Administrative Court – *VG Köln*), the BSW claimed that its exclusion from the “Wahlarena” programme had infringed its right to equal opportunities. However, on 29 May 2024, the *VG Köln* decided there was no obligation to invite the BSW’s leading candidate to participate in “Wahlarena 2024 Europa”. It was true that WDR had a duty to take the right to equal opportunities into account in its pre-election editorial programmes. However, this right had to be weighed against the broadcasting freedom of public service broadcasters, which was guaranteed under the German *Grundgesetz* (Basic Law). WDR could be entitled to choose the participants in such a TV debate. Since it had given the BSW a sufficient level of coverage in its other election-related programmes, its decision to exclude it from the “Wahlarena” programme had been lawful. It had not infringed on the BSW’s right to equal opportunities.

The BSW’s subsequent appeal to the *OVG Nordrhein-Westfalen* was upheld. The BSW was entitled to participate in the programme based on the general constitutional requirement of (graduated) equal opportunities for political parties. Under its editorial freedom, which is protected under fundamental rights, WDR could, in principle, limit the participants to representatives of the parties currently represented in the European Parliament. However, reviewing the previous legislative period was not the main purpose of the programme in this case. It was also not apparent why the BSW was considered less relevant than other smaller parties on the guest list. In this case, the party’s prospects of success in the forthcoming election, as indicated by opinion polls, were particularly significant

because it was the first time the party had participated in a European Parliament election. In addition, even if the BSW's leading candidate was invited to take part, WDR would still be able to review the previous electoral period with the other parties. The *OVG Nordrhein-Westfalen* ruling of 5 June 2024 is final. The BSW won six seats in the European Parliament election on 9 June 2024.

Another decision relating to the European elections was issued by the *Verwaltungsgericht Frankfurt am Main* (Frankfurt am Main Administrative Court – *VG Frankfurt*) on 15 May 2024 regarding the party known as "Die Partei". *Hessische Rundfunk* (Hessian Broadcasting Corporation – HR) had refused to broadcast an election advertisement for "Die Partei" because it contained vulgar, provocative language and was therefore, seriously harmful to minors. It claimed that the advert infringed the *Jugendmedienschutz-Staatsvertrag* (state treaty on the protection of minors in the media). However, the *VG Frankfurt* did not consider it harmful to young people or sufficiently in breach of general criminal law. Such a breach would have justified HR's refusal to broadcast it. In this case, however, HR was obliged to show the advert because the infringement was only minor.

Pressemitteilung vom 5. Juni 2024 zum Beschluss des Oberverwaltungsgerichts für das Land Nordrhein-Westfalen (Aktenzeichen 13 B 494/24)

https://www.ovg.nrw.de/behoerde/presse/pressemitteilungen/30_240605/index.php

Press release of 5 June 2024 on the ruling of the North Rhine-Westphalia Higher Administrative Court (case no. 13 B 494/24)

Pressemitteilung vom 29. Mai2024 zum Beschluss des Verwaltungsgericht Köln (Aktenzeichen 6 L 928/24)

https://www.vg-koeln.nrw.de/behoerde/presse/Pressemitteilungen/12_29052024/index.php

Press release of 29 May 2024 on the ruling of the Cologne Administrative Court (case no. 6 L 928/24)

Beschluss des Verwaltungsgericht Frankfurt am Main vom 15. Mai 2024 (Aktenzeichen 1 L 1559/24.F)

https://www.rv.hessenrecht.hessen.de/bshe/document/LARE240000612

Decision of the Frankfurt am Main Administrative Court of 15 May 2024 (case no. 1 L 1559/24.F)

DENMARK

[DK] Amendments to the Copyright Act enacted

Terese Foged
Lassen Ricard, law firm

The Danish Copyright Act has been amended several times over the past three years:

In 2021, it was amended to implement the SatCabII Directive and Articles 15 and 17 of the DSM Directive on press publications and online content-sharing service providers, respectively. In 2023 it was amended to implement the rest of the DSM Directive, including the text and data mining provisions and measures to improve licensing practises and achieve a well-functioning marketplace for copyright.

On 4 June 2024, the Danish Parliament enacted more amendments to the Danish Copyright Act. The main purpose was to modernise the Act to better reflect the technological development. In addition, there are various other changes.

The enactment followed a proposal that was sent for hearing with the deadline for comments in January 2024, some adjustments to the text, a bill presented in Parliament in March and further parliamentary treatment in April and May.

The amendments include a codification of the parody, caricature and pastiche exception with reference to the InfoSoc Directive article 5(3)(k) in the wake of the May 2023 Danish Supreme Court judgment in the so-called Little Mermaid case that upheld the unwritten parody principle that Denmark has relied on until now. The Danish Copyright Act only included in the law a special provision on parody in connection with online content-sharing service providers in line with the DSM Directive Article 17, but no general parody exception.

Under the new provision, the right to claim authorship of the work and the right to object to any derogatory action concerning the work, i.e. the moral rights, are expressly not applicable to a parody – and, besides, not harmonised at EU level - but according to the explanatory notes, the three-step test of the InfoSoc Directive article 5(5) must be complied for a parody to be legal.

In the answers to the hearing, it was widely criticised that the new parody exception includes the condition that there must be legal access to the work used for parody, as the EU Deckmyn judgment does not mention such a condition. However, in the explanatory notes, the Danish Ministry of Culture upheld the legal access condition, noting that it was aware of the Deckmyn judgment and did not find anything in EU law that would hinder the said condition. The Ministry of Culture stressed that the new general parody exception is intended to reflect EU law.

The amendments enacted in relation to text, data mining, and AI training mean that rightsholders' consent may be necessary, as pointed out in the explanatory notes. It is indicated that the existing extended collective licence could be used in connection with agreements following copyright holders' reservation of rights in connection with text and data mining. A prerequisite for this licence would be the Ministry of Culture's prior approval, as for other agreements under the general extended collective licence. Using extended collective licence agreements would secure fair remuneration to rights holders and easy access to rights clearance for users.

Further, the enacted amendments introduce a mediation possibility if the parties face difficulties agreeing on an extended collective licence agreement. Thus the amendments intend to promote agreements in this respect. The Ministry of Culture notes in the explanatory notes that for example in the field of AI and text and data mining, there are often large international players. Experience has shown that there may be a need to formalise discussions in negotiations with large tech companies, and mediation can contribute to that.

The amendments further include the introduction of new specific extended collective licence provisions regarding television stations' and online service providers' on-demand offers. In conclusion, the amendments lead to a strengthening of the Danish extended collective license system. Also, the competence of the Copyright License Tribunal is expanded.

Furthermore, the amendments include various adjustments throughout the Copyright Act to bring it in line with EU copyright law, for example, an adjustment of the public performance provision to cover also retransmission of TV taking place in a restaurant and internet streaming of music or films, etc., and it is no longer sufficient to determine based on unique indicators that there is public performance in commercial situations; now this is subject to a concrete evaluation in each case.

Finally, gender-specific wording throughout the Act is replaced by neutral wording.

The amendments to the Copyright Act entered into force on 1 July 2024.

Høring over forslag til lov om ændring af lov om ophavsret, med høringsfrist 12. januar 2024

https://hoeringsportalen.dk/Hearing/Details/68225

Hearing on proposal for amendments to the Danish Copyright Act, with deadline for comments 12 January 2024

20. marts 2024 forslag til lov om ændring af lov om ophavsret, hvor lovbemærkninger fremgår

https://www.ft.dk/samling/20231/lovforslag/L145/som_fremsat.htm

20 March 2024 Parliament bill to amend the Danish Copyright Act, where the explanatory notes are included

Deckmyn judgment (c-201/13) of 3 September 2014

https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62013CJ0201

4. juni 2024 lovforslag som vedtaget af Folketinget

https://www.ft.dk/samling/20231/lovforslag/L145/som_vedtaget.htm

4 June 2024 Act on amendments to the Danish Copyright Act, as enacted

Dansk Højesterets dom af 17. maj 2023 i "Den Lille Havfrue"-sag

https://domstol.dk/media/teena5gf/24506-2022-dom-til-hjemmesiden.pdf

"The Little Mermaid" Danish Supreme Court judgment of 17 May 2023

SPAIN

[ES] Spanish government approves Cinema and Audiovisual Culture Bill

Maria Bustamante
European Audiovisual Observatory

The Spanish government has revived the *Proyecto de ley del Cine y de la Cultura Audiovisual* (Cinema and Audiovisual Culture Bill) after it was put on hold last year following the dissolution of the *Cortes Generales* (Congress of Deputies and Senate) and the calling of elections by President Pedro Sanchez in June 2023. Various political groups had already tabled amendments to the bill, which had been endorsed by the Council of Ministers in December 2022 and submitted to parliamentary procedures in March 2023. In particular, the proposal of the right-wing political group Vox was rejected in its entirety. However, following the suspension of the legislative process, the bill will now need to go through the entire process from the beginning. For more information about the bill, see IRIS 2023-5:1/23.

Even though the cinema sector has changed significantly in recent years, the current Spanish regulatory framework is still based on the 2007 *Ley del Cine* (Cinema Law). To bring the legislation into line with the realities of the sector, the Council of Ministers again approved the Cinema and Audiovisual Culture Bill on 11 June 2024, meaning that it could be submitted to parliament for urgent debate. Under the urgent procedure, the time limits that apply to the standard legislative process are cut in half. The new law will replace the 2007 law.

The bill is expected to enter into force before 2025 as part of the government's Recovery, Transformation and Resilience Plan. Although the text is identical to the 2022 version, it will need to be discussed in parliament and parliamentary groups will be able to table amendments.

Culture minister Ernest Urtasun said that the law is designed to protect and promote the development of Spain's film industry and audiovisual heritage. It aims to strengthen the whole value chain, from script writing to cinema screening.

Particular support is earmarked for independent producers, who will benefit from priority access to film funding.

The Spanish *Ley de la Propriedad Intelectual* (Intellectual Property Law) will apply to all Spanish and foreign stakeholders involved in film production on Spanish soil, focusing on copyright protection.

This law considers the changes in the sector since the 2007 law entered into force, as well as implementing the relevant European regulations.

Enmienda al Proyecto de Ley del Cine y de la Cultura Audiovisual por el grupo parlamentario Vox

https://www.congreso.es/public_oficiales/L14/CONG/BOCG/A/BOCG-14-A-137-2.PDF

Amendment of the Cinema and Audiovisual Culture Bill, tabled by the Vox parliamentary group

Resumen del anteproyecto de Leyd el cine y de la Cultura Audiovsiual por el Ministerio de asuntos económicos y transformación digital y el Ministerio de cultura y deporte

https://portal.mineco.gob.es/RecursosNoticia/mineco/prensa/noticias/2022/220215_np_cine.pdf

Project summary by the Ministry of Economic Affairs and Digital Transformation and the Ministry of Culture and Sport

Anteproyecto del Cine y de la Cultura Audiovisual

https://servicios.mpr.es/transparencia/VisorDocTransparencia.ashx?data=EEz64sUwt6nBVWCWKNtJXhOzowncPr%2fpOA4tq9pjLpjYtd4Q%2bZfl9hE7NMI73HRs2syisD21mgCoqzJsBJ0GjJCVbtnep1wJRLygs5rZ5vis3LcrVf22MPio2YRRflfXtLiuC8sWHfs2sFH6evcC8sI%3d

Text of the Cinema and Audiovisual Culture Bill

Ley nº55/2007, de 28 de diciembre de 2007, del Cine

https://www.boe.es/buscar/act.php?id=BOE-A-2007-22439

Cinema Law no. 55/2007 of 28 December 2007

[ES] The Spanish Data Protection Agency suspends the launch of Meta's Election Day Information and Voter Information Unit functionalities in Spain for three months

Azahara Cañedo & Marta Rodriguez Castro

On 31 May, the Spanish Data Protection Agency (AEPD) issued a precautionary measure preventing Meta from implementing two electoral features it had planned to launch in the context of the European Parliament elections: Election Day Information (EDI) and Voter Information Unit (VIU). These functionalities would consist of providing information to Facebook and Instagram users about the European Union elections, based on the processing of their personal data (username, IP address, age, gender, and other information). The precautionary suspension is valid for a maximum period of three months.

The suspension of the EDI and VIU services that Meta had intended to enable for all eligible Facebook and Instagram users in the European Parliament elections (except for residents in Italy, where a similar suspension is in effect), is motivated by the consideration that the planned data processing is contrary to the General Data Protection Regulation (GDPR). According to the AEPD, these two services violate the data protection principles of lawfulness, data minimisation, and storage limitation. Additionally, the provision of personal data to third parties constitutes, according to the AEPD, a disproportionate interference and loss of control over the data.

The decision of the AEPD is based not only on the GDPR but also on the AEPD's Circular 1/2019 regarding the processing of personal data related to political opinions. Article 5.3 of the circular states that “under no circumstances may other types of personal data be processed from which, by applying technologies such as big data processing or artificial intelligence, a person's political ideology can be inferred".

La Agencia ordena una medida cautelar que impide a Meta implementar las funcionalidades electorales que tiene previsto lanzar en España

https://www.aepd.es/prensa-y-comunicacion/notas-de-prensa/aepd-ordena-medida-cautelar-que-impide-a-meta-implementar-funcionalidades-electorales

The Agency orders a precautionary measure that prevents Meta from implementing the electoral functionalities that it plans to launch in Spain

Circular 1/2019, de 7 de marzo, de la Agencia Española de Protección de Datos, sobre el tratamiento de datos personales relativos a opiniones políticas y envío de propaganda electoral por medios electrónicos o sistemas de mensajería por parte de partidos políticos, federaciones, coaliciones y agrupaciones de electores al amparo del artículo 58 bis de

la Ley Orgánica 5/1985, de 19 de junio, del Régimen Electoral General

https://www.boe.es/boe/dias/2019/03/11/pdfs/BOE-A-2019-3423.pdf

Circular 1/2019, dated 7 March, from the Spanish Data Protection Agency, concerning the processing of personal data related to political opinions and the sending of electoral propaganda by electronic means or messaging systems by political parties, federations, coalitions, and groups of voters under the provisions of Article 58 bis of Organic Law 5/1985, dated 19 June, on the General Electoral Regime

[ES] The Spanish Supreme Court endorses an amendment to RTVE's statute granting executive powers to the interim president

Azahara Cañedo & Marta Rodriguez Castro

On 31 May, the Supreme Court dismissed an appeal lodged against the Council of Ministers' resolution authorising an amendment to the statute of the Spanish Radio and Television Corporation (RTVE) to grant executive functions to the broadcaster's interim president. Consequently, the current interim president of RTVE, Concepción Cascajosa, can continue, albeit temporarily, at the helm of the public broadcaster.

The Supreme Court has dismissed the appeal filed by the unions USO, UGT, and SI against the Council of Ministers' resolution of 4 October 2022. This resolution amended the statute of the Spanish Radio and Television Corporation to stipulate that, in the event of a vacancy or the absence of the president of the RTVE Corporation, an interim president appointed by the board of directors will assume the position. In practice, this amendment to the statute implies granting executive functions to the interim president.

This decision by the Council of Ministers followed the resignation of José Manuel Pérez Tornero as president of the RTVE Corporation and as a member of the board of directors in September 2022, after a year and a half in office. Elena Sánchez, a member of the board of directors, then assumed the interim presidency of RTVE until her dismissal in March 2024. Concepción Cascajosa now holds the interim presidency of the corporation and will be able to retain executive functions following the Supreme Court's decision.

The unions had argued that by granting the interim presidency of RTVE to the board of directors, the intervention of the Congress of Deputies, which appoints the president of RTVE to ensure its independence, was bypassed. However, the Supreme Court considers that the amendment to RTVE's statute does not contravene Law 17/2006 on state-owned radio and television, as it remains the Congress of Deputies' prerogative to appoint the president of RTVE. Furthermore, it is noted that in the event of a parliamentary deadlock preventing the necessary two-thirds majority, the functions of the corporation's presidency cannot be paralysed.

El Tribunal Supremo desestima el recurso interpuesto contra el acuerdo del Consejo de Ministros que autorizó la modificación de los Estatutos Sociales de RTVE

https://www.poderjudicial.es/cgpj/es/Poder-Judicial/Tribunal-Supremo/Noticias-Judiciales/El-Tribunal-Supremo-desestima-el-recurso-contra-el-acuerdo-del-Consejo-de-Ministros-que-autorizo-la-modificacion-de-los-Estatutos-Sociales-de-RTVE

The Supreme Court dismisses the appeal lodged against the Council of Ministers' resolution authorising the modification of RTVE's statute

Estatutos Sociales de la "Corporación de Radio y Televisión Española"

https://www.rtve.es/contenidos/corporacion/Texto_Consolidado_ESTATUTOS_SOCIALES_a_05.10.22.pdf

Articles of Association of the Corporación de Radio y Televisión Española.

FRANCE

[FR] ARCOM fines C8 EUR 50 000 for broadcasting report infringing disabled people's rights to image, honour and reputation

Amélie Blocman
Légipresse

The so-called 'zombie drug' xylazine was the subject of a report broadcast during an episode of "PAF avec Baba" on C8 on 12 September 2023. The programme's presenter introduced the topic as follows: "Two videos have recently gone viral [...] where several people can be seen in the streets of Rouen, in the middle of France, behaving like zombies. According to the makers of the video, they had consumed xylazine, a drug that makes its users resemble zombies [...]". Images of people allegedly under the influence of the drug were then shown several times. In one of the videos, a person's face was visible without any attempt to disguise it, while another person was shown from behind.

The two people shown in the video were disabled and the manifestations of their disability were presented on air as the result of drug use. They were also recognised by shopkeepers and family members, mainly because of the mention of the town and the failure to disguise their identities.

According to Article 2-3-4 of the channel's licence agreement, the broadcaster must "respect the rights to privacy, image, honour and reputation as defined by the law and case law".

In ARCOM's view, the broadcaster's actions were likely to harm the rights of the individuals concerned to privacy, image, honour and reputation, and therefore violated its licence agreement in spite of a correction that was broadcast in the following day's episode.

Pursuant to Article 42-2 of the Law of 30 September 1986 and having regard, on the one hand, to the nature and seriousness of the offence committed, especially as it targeted people in a highly vulnerable situation and, on the other, to the previous penalties imposed for past violations of the same obligation to respect the personal rights set out in Article 2-3-4 of the channel's licence agreement, ARCOM imposed a fine of EUR 50,000 against the C8 company.

Décision n° 2024-447 du 29 mai 2024 portant sanction pécuniaire à l'encontre de la société C8, JO du 14 juin 2024

Decision no. 2024-447 of 29 May 2024 fining the C8 company, OJ of 14 June 2024

[FR] Request for preliminary ruling on constitutionality of ARCOM's powers to sanction broadcast of insulting comments

Amélie Blocman
Légipresse

In support of its application for the annulment of decision no. 2023-63 of 9 February 2023 in which it was fined by ARCOM (the French audiovisual and digital communications regulator), the C8 company requested that the *Conseil constitutionnel* (Constitutional Council) be asked to examine the constitutionality of several provisions of the Law of 30 September 1986 on freedom of communication. Under the disputed provisions, ARCOM is authorised to impose penalties without prejudice to any criminal court proceedings brought by the public prosecutor's office or individuals under ordinary law for any act committed in connection with the breach penalised.

C8's argument revolved around the inadequacy of the guarantees and limits applicable to ARCOM's exercise of its power to fine television service providers that broadcast insulting comments.

The *Conseil d'Etat* (Council of State) noted in particular that, when ruling on the constitutionality of the text adopted by the French parliament, which later became the Law of 17 January 1989 amending the Law of 30 September 1986 on freedom of communication, the *Conseil constitutionnel*, in its decision no. 88248 DC of 17 January 1989, considered that the power to issue sanctions conferred by the legislator on the *Conseil supérieur de l'audiovisuel*, which ARCOM replaced, was only likely to be exercised after formal notice had been given to licence-holders, ordering them to comply with their obligations, and only if they failed to comply with these obligations or formal notices.

According to the *Conseil d'Etat*, the contested provisions authorised ARCOM to impose one of the administrative sanctions listed on a service provider if it failed to comply with a formal notice requiring it to meet an obligation imposed on it by laws, regulations, the principles defined in Articles 1 and 3-1 of the Law of 30 September 1986 or its licence agreement. These provisions therefore had neither the purpose nor the effect of giving ARCOM the power to rule on the sanctioning of crimes and offences committed through the press within the meaning and application of the Law of 29 July 1881 on the freedom of the press, including insults, which were defined in Article 29 of the said law as "any offensive remark, expression of contempt or invective devoid of any factual accusation". The fact that the content of a programme broadcast by a service provider could give rise to such criminal punishment under the conditions defined in the Law of 29 July 1881, and to ARCOM's exercise of its power to impose sanctions, was irrelevant in this regard.

The applicant's complaint of lack of jurisdiction, which was not new, was therefore not considered to be of a serious nature.

Secondly, the applicant claimed that the disputed legislative provisions, insofar as they allowed a service provider to be punished for acts constituting an offence committed through the press, infringed the rules derived from the principle of necessity of criminal offences and penalties, which required that the same person could not be the subject of more than one procedure aimed at punishing the same, identical acts with sanctions of the same nature in order to protect the same social interests.

However, the *Conseil d'Etat* pointed out that no criminal proceedings could be brought against the service providers referred to in Article 42 of the Law of 30 September 1986 for an offence of public insult committed by means of communication to the public by electronic means. Moreover, the contested provisions, in any event, did not give ARCOM the power to launch proceedings aimed at protecting the same social interests as the provisions mentioned in the Law of 29 July 1881, nor lead to the same people being sanctioned. They therefore did not infringe the principle of necessity of criminal offences and penalties.

Thirdly, the applicant submitted that the contested provisions infringed the principle of equality before the law in that they had the effect of depriving service providers, when they were sanctioned by ARCOM for broadcasting insulting remarks, of the guarantees provided for by the Law of 29 July 1881 and applicable to others, such as press publishers. The *Conseil d'Etat* considered that this claim, which was not new, did not raise any serious issue, since a service provider likely to be sanctioned by ARCOM was in a different situation to that of any other person likely to be punished for crimes and offences committed through the press.

Finally, in view of all the conditions and guarantees applicable to ARCOM's issuing of the sanctions provided for by the contested provisions, as well as to the limitation, in the event of a repeat offence, of the maximum penalty that could be imposed to 5% of the turnover of the service provider in question, the complaint that the legislator had adopted a manifestly disproportionate penalty, which was not new, was judged not to be of a serious nature.

The *Conseil d'Etat* therefore concluded that none of the complaints presented by the applicant raised a new question or were of a serious nature, and there was no reason to refer the question regarding constitutionality to the *Conseil constitutionnel*.

Conseil d'État, 6 mai 2024, n° 472887, C8

http://www.conseil-etat.fr/fr/arianeweb/CE/decision/2024-05-06/472887

Council of State, 6 May 2024, no. 472887, C8

UNITED KINGDOM

[GB] Fin-fluencers face legal action for promoting unauthorised high-risk investments on social media

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In May 2024, the Financial Conduct Authority (FCA), the UK's independent regulator of the financial services industry, announced that it had brought charges against a group of reality TV stars and social media influencers for promoting unauthorised investment schemes. This case marks the first prosecution by the FCA against individuals described by the neologism "finfluencer", highlighting the growing intersection between social media influence and financial regulations. The accused, including prominent figures from popular shows like *Love Island* and *The Only Way is Essex*, have been implicated in promoting an unlicensed foreign exchange trading scheme, potentially misleading millions of their followers.

Key players and charges

Among the defendants are well-known personalities such as Lauren Goodger, Biggs Chris, and Scott Timlin. The central figure, Emmanuel Nwanze, along with Holly Thompson, allegedly ran an Instagram account (@holly_fxtrends) that provided advice on trading contracts for difference (CFDs) without the necessary FCA authorisation. CFDs are high-risk financial products allowing investors to speculate on the price movements of assets (in this case foreign currencies) and are known for their potential to incur significant losses. To increase the reach of the scheme, the FCA claims that Nwanze allegedly paid several social media influencers to promote @holly_fxtrends to their large followings.

The charges include unauthorised communications of financial promotions and violations of the Financial Services and Markets Act 2000 (FSMA). Specifically, the influencers were charged under section 21 of the act which makes it a crime to communicate in the course of business an invitation or inducement to engage in investment activity, while Nwanze (the apparent architect of the unauthorised investment scheme) faces an additional charge under section 19, namely the general prohibition against running an unauthorised investment scheme. Upon conviction, these offences are punishable by fines and/or imprisonment for up to two years. The FCA's actions are part of a broader effort to regulate financial promotions on social media and protect consumers from misleading investment advice.

Court proceedings

On 13 June 2024, the defendants appeared before Westminster Magistrates' Court, with Nwanze, Timlin and Thompson pleading not guilty. Others did not indicate their pleas, leading to a plea and trial preparation hearing scheduled for

11 July at Southwark Crown Court. The cases of some influencers were adjourned, with their hearings rescheduled. All defendants were granted unconditional bail until their next court appearance.

Regulatory implications

This prosecution underscores the FCA's commitment to addressing the rising trend of financial promotions on social media platforms. The regulator has previously warned about the dangers of CFDs, noting that 80% of investors typically lose money due to their inherent risks. The FCA has intervened in this market and implemented restrictions on how these products can be marketed to retail investors. It has also issued guidance on financial promotions on social media.

The FCA's guidance emphasises that all financial promotions, including those on social media, must comply with regulatory standards. Promotions must provide a balanced view of benefits and risks, clearly communicate relevant information, and enable consumers to make well-informed decisions. Firms working with influencers must ensure compliance with these rules, maintain appropriate monitoring systems and take responsibility for the content promoted by their affiliates. The rules apply not only to public posts but also private or invitation-only social media channels.

The financial and legal communities are closely watching this case. The complexity of the financial products and the intricate regulatory framework mean that determining compliance can be challenging. The FCA hopes that this prosecution will raise awareness over the risks of promoting high-risk investments without proper authorisation and encourage compliance with financial promotion regulations among influencers and firms alike.

The prosecution of these nine finfluencers represents a significant moment in the regulation of financial promotions, likely impacting the future management of high-risk and unauthorised financial schemes on social media. However, the regulator’s actions underscore the evolving challenges faced in the digital age and highlight broader concerns about consumer harm from influencer marketing. As social media’s influence expands, more robust regulatory oversight is essential to protect followers and consumers from potentially harmful promotions.

Finfluencers charged for promoting unauthorised trading scheme

https://www.fca.org.uk/news/press-releases/finfluencers-charged-promoting-unauthorised-trading-scheme

Reality TV stars charged over investment plugs

https://www.bbc.com/news/articles/crgyg62wn7po

Celebrity Big Brother winner pleads not guilty in Instagram "finfluencers" case

https://www.theguardian.com/uk-news/article/2024/jun/13/love-island-towie-stars-

in-court-instagram-lauren-goodger-yazmin-oukhellou

[GB] The Media Act becomes law

Julian Wilkins
Wordley Partnership and Q Chambers

The Media Act 2024 (the Act) received royal assent on 24 May 2024.

The Act increases the regulation of Video-on-Demand services (VOD). Many VOD services are not regulated by Ofcom's Broadcasting Code (the Code) which determines standards for harmful, offensive material. The Act brings mainstream VOD services under the Code's rules concerning harmful content and impartiality.

Non-UK based VOD services are not currently regulated by Ofcom and may now be designated as "Tier 1" in regulations yet to be published. Tier 1 mainstream VODs will comply with similar rules for UK-regulated VODs, for example, in relation to advertising, programme sponsorship and product placement. The VOD rules on programme sponsorship and product placement are not identical to the rules for linear broadcasters. The Act does not extend the rules of European works requirements to the non-UK Tier 1 VODs.

The age of content will be a factor for Ofcom when revising the Code relating to VOD to ensure that older content on streaming services is less heavily regulated, taking into account public mores at the time the material was originally broadcast. A likely factor to be considered is where a viewer pays for content and has an expectation as to the nature of that content, compared to switching onto a linear channel at random.

Ofcom will introduce a new accessibility code for Tier 1 services to ensure on-demand services are accessible to those with disabilities. This includes ensuring consistent subtitling and signing on at least 80% of programmes, whilst 10% must have audio description and 5% signed interpretation.

Ofcom will provide VOD viewers with a formal complaints process and monitor audience protection procedures like age ratings and viewer guidance. The Act gives Ofcom powers to investigate and enforce standards such as the power to issue fines of up to GBP 250 000 and in very serious cases to impose restrictions on a VOD's ability to transmit in the UK.

The Act gives public service broadcasters (PSBs) greater flexibility in delivering their obligations while providing distinctive programmes and impartial news across different platforms, including on-demand services. PSBs are required to ensure an "appropriate range of programme genres" such as religious, science and arts programming, news and children's programming.

Channel 4 (C4) will now be allowed to produce its own programmes rather than just commission content. The Act imposes a legal duty for C4 to consider its long-term sustainability whilst also meeting its public service commitments.

The Act enhances S4C, the Welsh language broadcaster, by removing geographic restrictions to broaden its reach across the UK and beyond, including its content being provided on a range of new digital services.

The Act imposes an obligation ononline TV platforms like smart TVs and set-top boxes to carry and prominently feature designated PSB services including on-demand platforms like BBC iPlayer, ITVX, All 4, My5, S4C's Clic and STV Player.

The Act relaxes content and format requirements on commercial radio, allowing stations more flexibility to modernise or adapt their services without Ofcom consent.

Further, the Act clarifies the obligation on commercial radio stations to provide local news and information services (such as traffic and travel). The new regulation will help manage any switchover of radio to digital, and allow Ofcom to licence overseas radio stations.

The Act ensures that BBC, commercial and community stations across the UK remain accessible to listeners via smart speakers; also, UK radio stations are not charged by these platforms for the provision of their live services to listeners. The Act prevents broadcasted content from being overlaid by third party material, and ensures that stations are reliably provided upon request by a listener's voice command.

Listed events include major sporting events such as the Olympic Games, the FIFA World Cup, the FA Cup Final, the Grand National and the Wimbledon finals. The listed events regime prohibits the exclusive broadcast of an event on the list drawn up by the Secretary of State without prior consent from Ofcom to ensure live coverage to free-to-air broadcasters whose services are received by 95% of the UK population. This is known as the "qualifying services" requirement.

The Act amends the eligibility of "qualifying services" to include both television programme services and Internet programme services, and amends the conditions so that qualifying services must be provided by a PSB. Currently this is the default position as only PSB channels met the previous "qualifying services" criteria.

The Act repeals section 40 (not in force) of the Crime and Courts Act 2013, which theoretically required news publishers to pay both sides' costs in court proceedings if they were not a member of an approved regulator.

The timetabling for the implementation of the Act's provisions has yet to be determined, and Ofcom will publish a "roadmap" to consult on and draft codes of conduct. It is expected that most provisions will be implemented between 2025 and 2027.

The Media Act 2024

https://www.legislation.gov.uk/ukpga/2024/15/contents/enacted

IRELAND

[IE] Decision framework for addressing dissemination of terrorist content online

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On 13 June 2024, Coimisiún na Meán (“the Commission”), the Irish media regulatory authority, published a Decision Framework on hosting service providers’ (HSP) exposure to terrorist content. Designated as a competent authority under Regulation (EU) 2021/784 addressing the dissemination of terrorist content online ("TCOR"), the Commission is required to determine whether an HSP is exposed to terrorist content, and if this is the case, to notify the said HSP. The Framework therefore sets out (1) a step-by-step approach to deeming an HSP as exposed to terrorist content and (2) the key obligations of an HSP following such a decision.

The definition of terrorist content is included in the Annex to the Framework. Terrorist content therefore means one or more of the following types of material, namely material that:

(a) incites the commission of one of the offences referred to in points (a) to (i) of Article 3(1) of Directive (EU) 2017/541, where such material, directly or indirectly, such as by the glorification of terrorist acts, advocates the Commission of terrorist offences, thereby causing a danger that one or more such offences may be committed;

(b) solicits a person or a group of persons to commit or contribute to the Commission of one of the offences referred to in points (a) to (i) of Article 3(1) of Directive (EU) 2017/541;

(c) solicits a person or a group of persons to participate in the activities of a terrorist group, within the meaning of point (b) of Article 4 of Directive (EU) 2017/541;

(d) provides instruction on the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or on other specific methods or techniques for the purpose of committing or contributing to the Commission of one of the terrorist offences referred to in points (a) to (i) of Article 3(1) of Directive (EU) 2017/541;

(e) constitutes a threat to commit one of the offences referred to in points (a) to (i) of Article 3(1) of Directive (EU) 2017/541.

The Commission's decision-making process follows two stages. The first consists of a preliminary decision and engagement with the provider. The Commission shall start engaging on the issue when it becomes aware that an HSP in its

jurisdiction has received two or more final removal orders in the previous 12 months. It is to issue a letter to the HSP, setting out reasons and inviting it to provide comments within three weeks. The second stage consists of taking a decision that the HSP is or is not exposed to terrorist content.

If a hosting service provider is found to be exposed to terrorist content, it will be obliged to undertake specific measures as provided under Article 5 of the TCOR. These can include:

- taking steps to protect its services from being used for the dissemination to the public of terrorist content

- reporting to Coimisiún na Meán on the specific measures it has taken – and will take – to comply with its obligations

- where applicable, including in its terms and conditions provisions to address the misuse of its services for the dissemination to the public of terrorist content

The HSP decides which specific measures it will take, as long as they satisfy certain conditions as prescribed in Article 5(3) TCOR. The requirement to take specific measures is without prejudice to Article 15(1) of the E-Commerce Directive (now provided for in Article 8 of the Digital Services Act). It shall not entail a general obligation either to monitor information transmitted by an HSP or to actively seek facts and circumstances indicating illegal activity. This requirement shall not include an obligation for an HSP to use automated tools.

In any event, the Commission has a review function and, if it considers that the specific measures taken do not meet the HSP's obligations under Articles 5(2) and (3), it must address a decision to the HSP requiring the necessary measures be taken to ensure that those obligations are complied with.

An HSP deemed exposed to terrorist content may, at any time, request the Commission to review and, where appropriate, amend or revoke a decision (Article 5(7) TCOR).

Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online

https://eur-lex.europa.eu/eli/reg/2021/784/oj

Coimisiún na Meán Decision Framework on Hosting Service Provider Exposure to Terrorist Content

https://www.cnam.ie/wp-content/uploads/2024/06/TCOR_Decision-Framework_ENG.pdf

[IE] Irish High Court confirms designation of Reddit and Tumblr as VSPs

Eric Munch
European Audiovisual Observatory

On 20 June 2024, the High Court of Ireland confirmed the designation by Coimisiún na Meán (the Commission), the Irish media regulator, of online platforms Reddit and Tumblr as video-sharing platform (VSP) services. Under the Online Safety and Media Regulation Act of 2022 (OSMR Act), the Commission was granted the power to designate online services as VSPs, to which the online safety code to be drafted by the Commission may apply.

The Commission issued ten designation notices (Facebook, Instagram, YouTube, Udemy, TikTok, LinkedIn, X, Pinterest, Tumblr and Reddit) at the end of 2023, in accordance with Section 139H(3)(a). Reddit and Tumblr were among platforms that received designation notices but challenged the designation.

On 15 January 2024, Reddit launched High Court proceedings, arguing that Reddit should not fall under the VSP category. A key argument by the platform was that it was a predominantly text-based discussion platform, where the videos were often not hosted on Reddit directly but rather shared in the form of links to other platforms. Tumblr, a microblogging platform, argued that it was not a VSP and that its designation as such amounted to a legal error. While the platform offers the possibility to include videos, it argued that it was a minor and ancillary feature.

In its conclusions, the High Court indicated that Reddit's arguments with regard to jurisdiction were based on a misunderstanding of the framework governing the determination of jurisdiction under the OSMR Act, which provides that the Commission has jurisdiction over Ireland-based subsidiary undertakings of VSP service providers not established in the EU, as is the case with Reddit. The judge further indicated that the provision of links to videos hosted on other platforms could still be considered user-generated videos within the meaning of the revised AVMS Directive. Given the presence of “native” video content hosted directly on Reddit, it was not necessary to further assess if the provision of links was sufficient to designate Reddit as a VSP.

In the case of Tumblr, the High Court concluded that the Commission’s designation decision was based on proper consideration of relevant factors and characteristics of the service and that the size of the platform was irrelevant with regard to it being designated as a VSP.

In a press release welcoming the High Court’s conclusions, the Commission indicated that work on their draft Online Safety Code is progressing and that they are hoping to have it operational later this year.

High Court judicical review - Tumblr Incorporated -v- Commisiun na Mean

https://www.courts.ie/view/Judgments/d7f2f4a8-24b3-46c3-906e-3ed777e7198a/007734a5-3318-414f-b2fe-5301f9608d3a/2024_IEHC_366.pdf/pdf

High Court judicial review - Reddit Incorporated -v- Commisiun na Mean

https://www.courts.ie/view/Judgments/dd22880a-b271-4d70-98b0-8356ea6d5d19/3125caae-cb9d-4386-9a8d-399142ad3ca8/2024_IEHC_367.pdf/pdf

ITALY

[IT] AGCOM intervenes to block Russia Today content on YouTube and X

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Autorità per le garanzie nelle comunicazioni (AGCOM)

Due to the recent Regulation on Video Sharing Platforms (VSP) (Resolution No. 298/23/CONS) (see IRIS 2024-1:1/13 and 2024-3:1/15), the Italian Communications Authority (AGCOM) swiftly intervened to remove several videos disseminated on YouTube and X.

Following Article 8 of the VSP Regulation and a report from the Italian Ministry of Foreign Affairs, AGCOM requested YouTube and X (formerly Twitter) to remove multiple videos related to a documentary produced by the Russia Today TV channel, accessible from Italy.

The documentary in question offers a one-sided account of the events in the Donbass region over the past decade, portraying the Ukrainian population as ruthless Nazis intent on exterminating their own people with the complicity of NATO, the USA, and the European Union, depicted as the true orchestrators of massacres and the 2014 coup.

AGCOM's investigation revealed that the documentary's content was politically charged, aiming to incite racial hatred and violate human dignity, in breach of Article 4, paragraph 1 of the VSP Regulation. Specifically, the content was identified as Russian propaganda intended to spread distorted information and discredit Western countries and European institutions. The dissemination of this content was deemed particularly serious given the upcoming European elections on 8-9 June 2024, and the risk of influencing public opinion with a skewed representation of current events.

This urgency prompted AGCOM to protect citizens by initiating procedures against Google Ireland Limited for the YouTube service and Twitter International Unlimited Company for the X service, requesting them to limit the circulation of the documentary entitled “Donbass: Yesterday, Today, and Tomorrow,” produced by Russia Today, and related videos.

Google promptly announced the removal of the content and associated videos globally, also blocking the channel. Subsequently, Twitter complied with the request.

AGCOM also observed that European Council Regulation (EU) No. 833/2014 (Article 2f , paragraph 1) prohibits for operators "to broadcast or to enable, facilitate or otherwise contribute to broadcast, any content by the legal persons, entities or bodies listed in Annex XV, including through transmission or

distribution by any means such as cable, satellite, IP-TV, internet service providers, internet video-sharing platforms or applications, whether new or pre-installed." Russia Today is in Annex XV. (see IRIS 2022-7:1/2 and IRIS 2023-6:1/22).

AGCOM interviene per bloccare contenuti di russia today diffusi da YouTube e X

https://www.agcom.it/comunicazione/comunicati-stampa/agcom-interviene-bloccare-contenuti-di-russia-today-diffusi-da

AGCOM takes action to block Russia Today content spread by YouTube and X

NETHERLANDS

[NL] New government measures to tackle disinformation

Ronan Ó Fathaigh
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On 17 June 2024, the Dutch government announced a significant new package of measures to tackle online disinformation, including a planned new “reporting facility” to allow citizens to report disinformation. The new measures were contained in a Letter to Parliament on behalf of the Ministery for Internal Affairs and Kingdom Relations (Ministerie Binnenlandse Zaken en Koninkrijksrelaties).

These measures form part of the main Dutch government’s strategy to combat disinformation, which was announced in December 2022, and involves three different government ministries (see IRIS 2023-3/9). Notably, the new measures retain the overall principle that fundamental rights, including freedom of expression and media freedom, must “remain paramount” during implementation.

The Letter begins by noting that the spread of disinformation poses a significant risk to free and open debate, and the government notes four “areas of attention” for which they must remain protected against the dangers of disinformation, namely:

Crucial democratic processes, including elections. Public health, including mental health and vaccinations. Social and societal stability. (International) security and stability.
Crucially, the Letter sets out several new measures to tackle disinformation, with three main strands:

Measures to tackle distributors and the dissemination of disinformation. Measures to strengthen the resilience of citizens. Development of knowledge and effective approaches to disinformation.
As mentioned above, in implementing these measures, the Letter recognises that freedom of expression and media freedom must “remain paramount”.

First, regarding measures to tackle the spread of online disinformation, the government wants to make it “easier for citizens to report disinformation”, and facilitate citizens when they have disputes with social media platforms. Notably, the government will explore the setting up of a “reporting facility” allowing citizens to report disinformation on social media platforms.

Further, in the context of Article 21 of the EU’s Digital Services Act (DSA), which allows the setting-up of independent out-of-court dispute resolution bodies, the

Letter states that the Ministry of the Interior and Kingdom Relations “wants such an organization to be established in the Netherlands”, to allow citizens to seek dispute resolution regarding content moderation decisions taken by online platforms. The Ministry will examine how such an organisation can be established, involving “media, academia, and civil society”.

Second, and crucially, to strengthen the media literacy and resilience of citizens, the Ministry of the Interior and Kingdom Relations will provide a notable new subsidy to the Belgium-Netherlands Digital Media and Disinformation Observatory (BENEDMO) consortium, so that the fact-checkers network in the Netherlands is strengthened to combat disinformation. The government is also strengthening its commitment to media literacy among citizens, with the Ministry of Education, Culture and Science funding new projects. The State Secretary for Health, Welfare and Sport engaged in new actions aimed to strengthen the availability of reliable online medical information, including by mobilising healthcare professionals and online influencers against the spread of medical disinformation.

Finally, the Letter states that the government will inform Parliament about the progress of the implementation of the new measures by mid-2025.

Ministry for Internal Affairs and Kingdom Relations, Letter to Parliament about progress of the government-wide strategy for the effective approach to disinformation and announcement of new actions, 17 June 2024

[NL] New mechanism to protect safety of journalists from disclosure of data from public registries

Ronan Ó Fathaigh
Institute for Information Law (IViR)

On 25 June 2024, an important new mechanism came into effect, allowing journalists to shield personal data contained in the main public registry in the Netherlands from disclosure, where there is a "serious threat" to a journalist. This new mechanism is contained in an Agreement between the Dutch Association of Journalists (*Nederlandse Vereniging van Journalisten*) (NVJ) and the public administrative body that operates the public registry of land, including addresses (*Dienst voor het Kadaster*). The Agreement follows the announcement by the State Secretary for Culture and Media (*Staatssecretaris Cultuur en Media*) and Minister for Justice and Security (*Minister van Justitie en Veiligheid*) of a series of new measures to protect press freedom and safety in the Netherlands, including the shielding of journalists' home and offices addresses (see IRIS 2022-8/15); and research on the safety of journalists in the Netherlands and increasing threats (IRIS 2023-1:1/14).

The Agreement sets out the shielding criteria, including the conditions that apply to processing a request to shield the personal data of journalists in the land registry. Journalists who wish to be considered must be holders of an NVJ press card or National Press Card or have a statement drawn up by the NVJ or PersVeilig showing that they can be considered part of the professional group of journalists due to specific activities. PersVeilig is a well-known joint initiative of Dutch journalists and law enforcement, comprised of the Dutch Association of Journalists, the Dutch Association of Editors in Chief, the Dutch Police and the Dutch Public Prosecution Service. It aims to strengthen the position of journalists against violence and aggression, including when reporting threats.

A request for shielding must be made to the NVJ or PersVeilig, with reasons and documentation. The NVJ or PersVeilig will use this information to conduct a "risk analysis" and decide whether to submit the request to the registry. This risk analysis is confidential and will not be shared with the registry or other parties. The Registry will then assess whether the request is adequate and complete and will shield the personal data of the journalist concerned within six weeks at the latest. If the Registry decides to proceed with shielding the personal data, this will apply for five years or until the threat stops. Only other administrative bodies will be provided with information about shielded persons if necessary for performing their statutory duties.

Finally, it should be noted that legislation is also planned to make access to personal data more limited in the registry.

Convenant afscherming persoonsgegevens tussen de Nederlandse Vereniging van Journalisten en het Kadaster, 25 juni 2024

https://www.kadaster.nl/-/convenant-afscherming-persoonsgegevens-bij-waarschijnlijke-dreiging-als-gevolg-van-de-beroepsuitoefening

Agreement on protection of personal data between the Dutch Association of Journalists and the Land Registry, 25 June 2024

RUSSIAN FEDERATION

[RU] Russia bans some European media outlets

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In May 2024, the Council of the EU suspended the broadcasting activities of four additional media outlets (Voice of Europe, RIA Novosti, Izvestia and Rossiyskaya Gazeta). According to the Council, they were spreading and supporting Russian propaganda.

Following this recent EU decision, the Russian Foreign Ministry issued a statement on 25 June 2024. It introduced countermeasures, limiting access to broadcasting resources in the Russian Federation for EU national and pan-European media outlets. It amounts in total to 81 media outlets. For instance, looking at some of the founding member states, the banned companies include le vif magazine (Belgium), Der Spiegel and die Zeit (Germany), La Stampa and La Repubblica (Italy), Nos Television and Radio Company (The Netherlands), Le Monde, Agence France-Presse and Arte (France). Some of the banned European media outlets include Agence Europe and Politico.

The Russian statement concludes that Russia "will revise its decision concerning the above-mentioned media operators if restrictions against Russian media outlets are lifted."

Council of EU bans broadcasting activities in the EU of four more Russia-associated media outlets

https://www.consilium.europa.eu/en/press/press-releases/2024/05/17/russia-s-war-of-aggression-against-ukraine-council-bans-broadcasting-activities-in-the-european-union-of-four-more-russia-associated-media-outlets/

Russian Foreign Ministry's statement on retaliatory measures following EU restrictions against Russian media outlets

https://mid.ru/ru/foreign_policy/news/1959391/?lang=en

UNITED STATES OF AMERICA

[US] Californian AI safety bill moving forward despite challenges

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In California, the Safe and Secure Innovation for Frontier Artificial Intelligence Models Act (AI bill), introduced in February 2024, is causing quite a stir among Silicon Valley tech giants, including Meta and Alphabet.

The bill is designed to reduce the risks posed by AI and impose safety regulations on artificial intelligence companies. In particular, it requires these companies to test their systems and add safety measures to prevent them from being potentially manipulated to wipe out the state’s electric grid or help build chemical weapons.

The bill only applies to advanced or "frontier" AI models, which are systems that have cost over $100 million to train, an amount which has so far not been reached. Against criticism, Democrat State Senator Scott Wiener, who wrote the bill, emphasised that it is not about smaller AI models but that it is about "incredibly large and powerful models that, as far as we know, do not exist today but will exist in the near future."

The Bill covers some of the following points:

- The capability for an AI model to promptly enact a full shutdown, also referred to as a “kill switch”. Full shutdown should be understood as the cessation of operation of either (1) the training of a covered model, (2) a covered model, or (3) all covered model derivatives controlled by a developer.

- The implementation of a written and separate safety and security protocol.

- The creation of the Frontier Model Division within the Government Operations Agency, which developers of a covered model would have to submit a certification of compliance with the bill’s provisions, under penalty of perjury. Developers would also have to report each artificial intelligence safety incident affecting the covered model or any covered model derivative controlled by the developer to the new Division.

- The creation of the Board of Frontier Models within the Government Operations Agency, independent of the Department of Technology.

- Reasonable assurance that the developer will not produce a covered model or covered model derivative that poses an unreasonable risk of causing or enabling critical harm. Critical harms include: the creation or use of a chemical, biological, radiological, or nuclear weapon in a manner that results in mass casualties, or at

least USD 500 000 000 of damage resulting from cyberattacks, or from an AI model that acts with limited human oversight, intervention, or supervision and results in death, great bodily injury, property damage, or property loss, and would, if committed by a human, constitute a crime specified in the Penal Code that requires intent, recklessness, or gross negligence, or the solicitation or aiding and abetting of such a crime.

A growing coalition of tech companies argue the requirements would discourage companies from developing large AI systems or keeping their technology open-source. Rob Sherman, Meta vice president and deputy chief privacy officer, wrote in a letter sent to lawmakers that “The bill will make the AI ecosystem less safe, jeopardize open-source models relied on by startups and small businesses, rely on standards that do not exist, and introduce regulatory fragmentation”.

The text was passed by the Senate and ordered to the Assembly in May 2024. It was then voted to pass as amended and re-referred to the Committee on Appropriations on 2 July. It should be voted by the General Assembly in August. The bill, if passed, could have significant implications for the AI industry in California.

SB-1047 Safe and Secure Innovation for Frontier Artificial Intelligence Models Act

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB1047

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