IRIS newsletter

IRIS 2024-9

A publication
of the European Audiovisual Observatory

European Audiovisual Observatory

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

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Web Design:

Coordination: Cyril Chaboisseau, European Audiovisual Observatory
ISSN 2078-6158

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EDITORIAL

The sky is grey, the leaves are falling, tea is brewing, and the IRIS newsletter is ready for your perusal, filled with all the essential ingredients for a perfect autumnal information diet.

At this time of year, platforms are under the microscope, as Code of Practice signatories report on their efforts to combat disinformation, and the Irish regulator scrutinises the compliance of several platforms with their obligations under the DSA.

Meanwhile, the presence of influencers on some of these platforms has prompted some action at national level, with the Bulgarian regulator clarifying new legislation banning gambling advertising and the Netherlands pushing to protect children from influencer advertising. And speaking of the little ones, Italy has taken a stand to protect minors from pornographic content with the adoption of a regulation on age verification.

But as you know, protection is not just for the young, and the spotlight on AI is leading to more measures aimed at protecting the public at large. Since the AI Act came into force, around a hundred companies have signed the AI Pact launched by the EU Commission, although some of the tech giants including X, Meta and Apple, have not joined their ranks.

Enjoy the read (and the tea)!

Maja Cappello, Editor

European Audiovisual Observatory

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INTERNATIONAL

COUNCIL OF EUROPE

PACE resolution on propaganda and freedom of information in Europe

Amélie Lacourt
European Audiovisual Observatory

On 1 October 2024, the Parliamentary Assembly of the Council of Europe (PACE) adopted a resolution on propaganda and freedom of information in Europe.

The resolution is the result of a few years of work by the Committee on Culture, Science, Education and Media, notably following the motion for a resolution from August 2022 (Document 15594), which expressed the need to develop legal criteria allowing the identification of propaganda, which should be prohibited in Council of Europe member states.

The resolution sets out the balance between countering harmful and illegal propaganda and the protection of the right to freedom of information as a human right, protected under Article 10 of the European Convention on Human Rights. Fighting harmful propaganda must not become a pretext for censorship, produce a chilling effect, or prevent or discourage an unhindered debate on issues of public interest. Principles such as freedom of expression, media freedom and pluralism are at the centre of this resolution, to ensure, *inter alia,* that restrictions and countermeasures are limited to those necessary in a democratic society. The resolution further observes the importance of the Council of Europe's role in reinforcing cooperation among member states, but also the need to reinforce collaboration between public authorities and the private sector. The need to safeguard the public's right to know, empower citizens to make informed choices, enhance reliance on democratic institutions and increase the resilience of society as a whole is also strongly emphasised.

The resolution provides a set of recommendations and concrete actions:

1. For member states to develop holistic strategies to counter illegal propaganda and provide effective responses to the spread of harmful, though legal, propaganda. These include:

- imposing targeted sanctions on certain media outlets or war propagandists;

- introducing safeguards to avoid the abuse or misuse of restrictive measures;

- establishing proper independent media oversight mechanisms;

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- promoting media and information literacy and investing in media and civic education programmes to uphold critical thinking;

- reinforcing the transparency of media ownership and financial sources.

2. For professionals and organisations in the media sector, these include:

- adhering to the highest professional standards to ensure quality information, including while using generative artificial intelligence (AI) tools and distributing information via automated systems.

3. For internet intermediaries, these include:

- developing adequate tools – including AI tools under human control – to identify illegal propaganda and block its dissemination, possibly before it becomes accessible to Internet users, and remove content promptly and effectively when requested by the competent authorities. Platforms should, however, only resort to content removal as a measure of last resort;

- enhancing algorithmic transparency;

- ensuring that the AI systems they develop or use uphold Council of Europe standards, including the new Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law.

Propaganda and freedom of information in Europe, PACE Resolution 2567 (2024)

https://pace.coe.int/en/files/33808/html

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REPUBLIC OF TÜRKIYE

European Court of Human Rights: *Gümüş v. Türkiye*

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The European Court of Human Rights (ECtHR), in a judgment of 9 July 2024, found a violation by the Turkish authorities of the right to freedom of expression of political speech via social media as guaranteed by Article 10 of the European Convention on Human Rights (ECHR). The case concerns the conviction of Mr Suphi Gümüş resulting in a prison sentence combined with a measure of suspension of the pronouncement of the judgment on account of content he posted on Facebook. Referring to its judgment in the case of *Durukan and Birol v. Türkiye* (IRIS 2023-10:1/22) the ECtHR found that the interference with Gümüş' rights under Article 10 ECHR did not afford the requisite protection against arbitrary abuse by the public authorities. Most importantly, the ECtHR rejected the Turkish Government's claim under which Gümüş' posts on Facebook could not be protected by Article 10 ECHR because the impugned posts fell within the ambit of the abuse clause of Article 17 ECHR.

By an indictment in January 2018, the Şanlıurfa Public Prosecutor charged Gümüş with dissemination of propaganda in favour of a terrorist organisation, due to certain content he had published on his Facebook account. The posts referred, *inter alia,* to the PKK, the Kurdistan Workers' Party and to the YPG which, according to the Turkish authorities, is a branch of the PKK, an illegal armed organisation. A few months later the Şanlıurfa 5th Assize Court convicted Gümüş and sentenced him to one year, two months and sixteen days in prison. The Assize Court considered that some of Gümüş' posts on Facebook supported and encouraged the methods of violence of the PKK and its members and that they constituted the offence of dissemination of propaganda in favour of a terrorist organisation, pursuant to Article 7, subsection 2 of Law No. 3713 (Anti-Terrorism Law). Applying Article 231 of the Code of Criminal Procedure, the Assize Court decided, however, to suspend the pronouncement of the judgment and to subject Gümüş to three years' supervision. Gümüş' opposition to this decision and a further appeal with the Turkish Constitutional Court was dismissed. He lodged a complaint with the ECtHR under Article 10 ECHR that he had been convicted for sharing content on Facebook.

As a preliminary objection, the Turkish Government alleged that the impugned posts on Facebook glorified and legitimised violent acts and that they ran counter to the text and spirit of the Convention, within the meaning of Article 17 ECHR. They therefore argued that the application was incompatible *ratione materiae* with the provisions of the ECHR. The ECtHR however found that the content of the impugned posts on Gümüş' Facebook account did not reveal an intent to undermine Convention rights. Notwithstanding the controversial nature of the posts published on Facebook expressing praise for the leader of the PKK and

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glorifying the PKK or the YPG, the ECtHR considered that the litigious posts for which Gümüş was convicted did not appear to be an incitement to destroy the Convention rights and freedoms. Therefore it concluded that Gümüş' application did not constitute an abuse of rights under Article 17 ECHR and that Gümüş was therefore entitled to the protection of Article 10 ECHR (compare *Lenis v. Greece*, IRIS 2023-9:1/21 and *Sokolovskiy v. Russia*, IRIS 2024-7:1/19). On the merits of the case, the Turkish Government claimed that there had been no interference with Gümüş' freedom of expression, emphasising the absence of any conviction added to his criminal record due to the application of the measure of suspension of the pronouncement. Hence there were no negative legal consequences or deterrent effects caused by the criminal proceedings and his conviction. The ECtHR however found that Gümüş' criminal conviction with suspension of pronouncement of the judgment, which subjected him to a period of supervision of three years amounted, in view of the deterrent effect it may have had, to an interference with Gümüş' exercise of his right to freedom of expression. The ECtHR referred to the deficient legal basis for the suspension of the prison sentence and to the potential chilling effect of such a probation measure. Referring to its finding in *Durukan and Birol v. Türkiye* and the absence of adequate procedural safeguards to regulate the discretion granted to the domestic courts in applying the suspension of prison sentences, the applicable legal basis did not afford the requisite protection against arbitrary abuse by the public authorities of the rights guaranteed under the ECHR. The interference with Gümüş' right to freedom of expression was thus not "prescribed by law" for the purposes of Article 10, paragraph 2 ECHR. This finding was sufficient to enable the ECtHR to conclude that there had been a violation of Article 10 ECHR.

Judgment by the European Court of Human Rights, Second Section sitting as a Committee, in the case of Gümüş v. Türkiye, Application No. 44984/19, 9 July 2024

https://hudoc.echr.coe.int/eng?i=001-234797

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EUROPEAN UNION

Latest reports under the Code of Practice on Disinformation detailing platform measures during 2024 European Parliament elections

Ronan Ó Fathaigh
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On 24 September 2024, signatories of the Code of Practice on Disinformation published reports detailing their actions to combat the spread of disinformation online, with a particular focus on the European Parliament elections held in June 2024. The Code of Practice on Disinformation was first adopted in 2018 by various industry players, including online platforms, as a self-regulatory standard to tackle online disinformation in the EU; the Code was revised in 2022, and currently has 34 signatories (IRIS 2021-6/4). The Code of Practice contains 44 commitments and 128 specific measures, covering various areas including demonetising the dissemination of disinformation; guaranteeing transparency of political advertising; enhancing cooperation with fact-checkers; and facilitating researchers' access to data.

In September 2024, over 14 reports by various signatories were published, which are available on a dedicated Transparency Centre website. In order to highlight some of the measures under the Code of Practice during the 2024 European Parliament elections, three examples are significant to mention. First, in Google's report, a notable measure was the launch of a "prebunking initiative" (a technique to forewarn people of attempts to manipulate them, equipping them to spot and refute misleading claims and building resilience) ahead of the 2024 European Parliament elections, which used short video ads on social media in France, Germany, Italy, Belgium, and Poland to discuss techniques used to advance disinformation including decontextualisation, scapegoating and discrediting. Google stated it was the "largest ever prebunking initiative on social media in the world to date", and the videos were translated and available across EU languages along with Arabic, Russian and Turkish. Second, Meta's report detailed how it engaged in connecting people with details about the election in their member states through in-app "Voter Information Units" and "Election Day Information", which "users engaged more than 41 million times on Facebook and more than 58 million times on Instagram". Meta also detailed how it connected 23 national election authorities, as well as other competent bodies, to a dedicated "reporting channel" and 13 national Digital Services Coordinators to Meta's "government reporting channels" for reporting content. Notably, from January to June 2024, Meta reported having removed over 4.4 million ads from Facebook and Instagram in EU member states, of which over 170 000 ads were removed from Facebook and Instagram for violating its "misinformation policy". Third, TikTok's report detailed how TikTok established a "Mission Control Centre" to provide

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“consistent and dedicated coverage of potential elections-related issues” and participated in the Code of Practice on Disinformation’s “Rapid Response System” to “streamline the exchange of information among civil society organisations, fact-checkers and platforms”. TikTok also reported its fact-checking coverage for “at least one official language of every EU member state” and its launch of “localised media literacy campaigns”.

The European Commission’s Vice-President for Values and Transparency stated in relation to the latest reports, that this “cooperation is a testament of the Code as an efficient instrument bringing together online platforms, civil society and fact-checkers”.

European Commission, Online platforms report on measures to protect European election integrity under the Code of Practice on Disinformation, 24 September 2024

https://digital-strategy.ec.europa.eu/en/news/online-platforms-report-measures-protect-european-election-integrity-under-code-practice

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X, Meta and Apple refuse to sign European Commission's AI Pact complementing the EU AI Act

Maria Bustamante
-

In August 2024, the European Commission launched the AI Pact, a new initiative aimed at further developing AI regulation. Designed to promote ethical and responsible AI development, the Pact is an additional tool to help companies adapt to the new European AI regulations that came into force in August. It calls on AI developers to voluntarily adopt the key obligations set out in the regulations ahead of the legal deadline. For more information about the process for adopting the AI Act, see IRIS 2024-6:1/3. The Pact will be progressively applied alongside the regulations themselves.

However, tech giants including X, Meta and Apple, who are sceptical about the EU's new AI laws, have decided not to sign this voluntary instrument.

The Pact has nevertheless been signed by around 100 companies, including other major players in the sector such as Google, Open AI, Microsoft and Amazon. "The AI Pact is a voluntary instrument. Of course, we urge all companies to sign up. More of them will do so as time goes on, but these are private companies and they are entitled to make their own decisions," said Thomas Régnier, European Commission spokesperson.

The EU AI Act regulates the use of AI technology according to the risks it poses to individuals. Signatories of the Pact will therefore be required to prohibit:

- biometric AI systems that categorise people based on their political, religious or philosophical beliefs, race or sexual orientation;

- systems that create or expand facial recognition databases through the untargeted scraping of facial images from the Internet or video footage.

They will also need to respect:

- the transparency criteria of generative AI systems, which must clearly and distinguishably indicate whether content is generated by AI or not;

- the data set used to train these systems and its compliance with copyright law.

At the same time, the European Commission encouraged companies to develop their AI systems.

Le pacte sur l'IA

https://digital-strategy.ec.europa.eu/fr/policies/ai-pact

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AI Pact

https://digital-strategy.ec.europa.eu/en/policies/ai-pact

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EUCJ judgement: implications for data privacy and targeted advertising on social platforms

Justine Radel-Cormann
European Audiovisual Observatory

On 4 October 2024, the European Union Court of Justice (EUCJ) delivered a ruling against Facebook in a case brought by Austrian user Maximilian Schrems (plaintiff).

The court scrutinised Facebook's business model, which relies on processing personal data to deliver targeted advertising. Since November 2023, Facebook's terms of use have stated that users opting for a free service in lieu of a subscription effectively consent to having their personal data used for more relevant advertising.

The case highlighted Facebook's use of sensitive personal data related to Schrems' activities outside Facebook, including his sexual orientation and political opinions, which he had never disclosed on his profile. Facebook obtained this information through plug-ins and cookies that track users' online behavior across various websites.

Notably, Mr. Schrems received targeted ads related to his sexual orientation, despite never indicating this information on his Facebook profile.

In its ruling, the EUCJ concluded that the use of sensitive personal data for targeted advertising is prohibited, even if such information has been publicly disclosed elsewhere, such as during a public panel discussion.

C-446/21, Judgement of the Court, 4 October 2024

https://curia.europa.eu/juris/document/document.jsf?text=&docid=290674&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=5451293

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NATIONAL

BULGARIA

[BG] The NRA clarifies new legislation on the ban of gambling advertising

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In a recent decision of the *Национална агенция за приходите* (the National Revenue Agency – NRA), the regulatory body provided clarifications on the interpretation of the latest amendments to the Bulgarian *Закона за хазарта* (Gambling Act) concerning the ban of gambling advertising (see IRIS 2024-6:1/18).

Historically, the origins of these legislative changes date back to August 2022, when a Memorandum of Cooperation was signed between the *Съвет за електронни медии* (Council for Electronic Media – CEM) and the NRA. This collaboration stemmed from growing concerns over aggressive gambling advertising campaigns, which peaked during the broadcast of the World Cup (see IRIS 2023-2:1/19). The amendments in the legislation, which were adopted at the beginning of 2024, prohibited gambling advertising in radio, television, print media, and online platforms, including websites, to reduce excessive gambling promotion and protect minors.

The recent decision was adopted following a request for access to information, which was sent to the NRA, prompted by unclear interpretations of the new provisions by authorities and stakeholders during the initial months of its implementation. The requested information concerns several issues relating to the scope of the new legislative prohibition and, in particular, how it relates to gambling advertisements on electronic social media. Specific questions were raised about whether “influencers” may advertise content on behalf of licensed gambling service providers, and whether gambling advertisement may be conducted through podcasts, or whether this type of media is exempt from the prohibition. In response to the request, the NRA provides its interpretation giving an explanation of the terms “influencer”, “podcast” and “social media”.

According to the decision, an “influencer” is a person with a large following who can influence the consumers’ behaviour by sending messages to the public, uploading content, advertising logos, trademarks, slogans, etc., on commonly used social media. However, for this to happen, consumers must first express willingness to receive information and content from an influencer, by “following” them or “liking” their page.

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The decision clarifies whether “influencers” may advertise shall be assessed on a case-by-case scenario, considering the nature of the particular website and/or the content sharing platform. Furthermore, it should be investigated whether the specific social network is a provider of media content, whether it bears the editorial responsibility, the technical specifications regarding the access, and most importantly, whether the specific social network falls under the regulation of the *Закона за радиото и телевизията* (Radio and Television Act - RTA).

The most important part is that NRA concludes that based on the aforementioned assessment, platforms like Instagram, Facebook, X and TikTok do not fall under the regulation of the RTA. Given the preceding, the decision concludes that, in principle, advertising content on behalf of licensed gambling service providers on these social media platforms shall not be considered unlawful.

Another issue the decision attempts to resolve is whether gambling may be advertised by journalists or media providers through product placement in podcasts on video-streaming platform like YouTube. The decision argues that according to the latest amendments in the RTA, video-streaming platforms that only make third-party content available to the public shall not be considered as media service providers within the meaning of this legislation. Considering the above, the decision concludes that the prohibition shall not apply to cases where gambling is being advertised through videos and podcasts on video-streaming platforms such as YouTube, Twitch, etc.

The decision clarifies that this position shall not be used to circumvent the prohibitions by advertising in media providers through links, as there will still be editorial responsibility in such cases. However, even media to which the prohibition applies may publish links leading to a podcast of a licensed gambling provider, provided that the links themselves and their visualizations do not qualify as “gambling advertisement”, as defined in the additional provisions of the Gambling Act.

Finally, the NRA clarifies that this decision reflects its general interpretation of the current legislation. However, specific inspections could lead to different outcomes depending on the facts and circumstances of each case.

This interpretation has raised concerns, particularly regarding the different treatment of social media compared to traditional media as defined in the RTA. As a result, the ban on gambling advertisements will practically apply only to classical radio and television, which would contradict the legislation’s purposes. Statements have been made that leaving social media and video-streaming platforms out of the scope of the gambling advertisement regulations contradicts the modern understanding of what media is, from a legal standpoint, and how it impacts social relations – subject to regulation. Concerns were expressed that such an interpretation of the legislation also complicates enforcement and may hinder the original aims of the recent amendments.

The decision is subject to appeal, which could result in different interpretations by the administrative court. Given the ambiguity surrounding the scope of the new

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regulations and the challenges in enforcing them, further legislative clarifications are likely to follow.

Решение №Р -ЦУ– 138 /17.07.2024 г. на и зпълнителния директор на НАП

https://nra.bg/wps/portal/nra/za-nap/Prozrachno-upravlenie/zaqavlenia-i-otgogvori-po-ZDOI/a448eddb-cbd5-4242-a2f7-35e734ebc219

Decision №Р -ЦУ– 138 from 17.07.2024 of the executive director of the NRA

Закон за изменение и допълнение на Закона за х азарта

https://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=214700

Act for Amendments and Supplements to the Gambling Act

Закон за радиото и телевизията

https://lex.bg/bg/laws/ldoc/2134447616

Radio and Television Act

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GERMANY

[DE] Court rejects party's request to participate in public broadcaster's election programme

Christina Etteldorf
Institute of European Media Law

In a summary judgment of 13 September 2024 (case No. 3 S 103/24), the *Oberverwaltungsgericht Berlin-Brandenburg* (Berlin-Brandenburg Higher Administrative Court – OVG) upheld the lower-instance court's decision that the *Freie Demokratische Partei* (Free Democratic Party – FDP) was not entitled to take part in an election programme to be broadcast by *Rundfunk Berlin-Brandenburg* (rbb) in the run-up to the Brandenburg state parliament election under the principle of equal opportunities for political parties. It ruled that, in accordance with its editorial freedom, rbb could exclude the FDP's regional association from a programme designed to only feature the top candidates of parties already represented in the state parliament. The FDP was not currently represented in the state parliament and, according to polls, would not be represented after the election either.

The broadcaster rbb is one of the nine German state public broadcasting authorities. In the run-up to the Brandenburg state parliament election on 22 September 2024, it planned to broadcast a programme entitled "*rbb24 – Ihre Wahl: Der Kandidatencheck*" ("rbb24 – Your Choice: the Candidate Check") on 17 September. The programme's editorial concept was based on a Q&A session involving the top candidates of parties that were either already represented in the state parliament or, according to the polls, were expected to receive more than 5% of the votes in the election. The leading candidate of the FDP's Brandenburg regional association had not been invited because the FDP was not currently represented in the state parliament and, according to polls, would not be represented after the election either. The FDP, which is currently one of the ruling parties at federal level, and its regional association believed they were being discriminated against and lodged an urgent application for permission to take part in the programme. However, the application was dismissed by the *Verwaltungsgericht Potsdam* (Potsdam Administrative Court) on 4 September 2024 (case No. 11 L 733/24) on the grounds that rbb's editorial concept did not infringe constitutional principles. The OVG upheld this decision.

Under the constitutional principle of broadcasting freedom enshrined in Article 5(1)(2) of the *Grundgesetz* (Basic Law – GG), public and private broadcasters are granted editorial freedom when designing their programme concepts. In established case law, however, the *Bundesverfassungsgericht* (Federal Constitutional Court) assumes that, in the context of elections, particular attention should also be paid to the constitutional principle of equal opportunities for political parties (Article 21 in conjunction with Article 3(1) GG) and the election principles set out in Article 38 GG. In other words, broadcasters should give

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“appropriate” coverage to all parties standing for election in their programme concepts. Under their editorial freedom, however, broadcasters could determine what was “appropriate” on the basis of both objective criteria and a party’s chances of success in the election. The OVG did not believe that rbb’s plan to only invite the top candidates of parties that were already represented in the state parliament or that stood a chance of being elected unfairly discriminated against parties that were excluded. The editorial design of the programme was protected under rbb’s broadcasting freedom and did not infringe the FDP regional association’s right to (graduated) equal opportunities in pre-election reporting. Although the FDP’s leading candidate had not been invited to take part in the programme, rbb’s overall pre-election reporting concept made provision for the FDP to receive appropriate coverage in other programmes.

Pressemitteilung des OVG Berlin-Brandenburg

https://www.berlin.de/gerichte/oberverwaltungsgericht/presse/pressemitteilungen/2024/pressemitteilung.1485548.php

Berlin-Brandenburg Higher Administrative Court press release

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[DE] Federal Supreme Court rules on admissibility of online display of protected works in the background of video posts

Christina Etteldorf
Institute of European Media Law

In various judgments issued on 11 September 2024 (case Nos. I ZR 139/23; I ZR 140/23; I ZR 141/23), the *Bundesgerichtshof* (Federal Supreme Court – BGH) decided that the use of images of a photo wallpaper on the Internet did not infringe rights protected under the *Urheberrechtsgesetz* (Copyright Act – UrhG) to the photographs printed on the wallpaper. The court examined in particular whether influencers could breach copyright law if protected works that they had no right to communicate to the public were visible in the background of videos or still images that they published in social media posts.

The defendant in case I ZR 139/23 had purchased a photo wallpaper online from a company founded by a professional photographer that markets photographs taken by the photographer as photo wallpapers. The wallpaper, which the defendant had put up on a wall in her house, was later seen in the background of several video posts on her Facebook page. The company applied for damages and reimbursement of warning costs, claiming that the appearance of the wallpaper online had infringed its copyright.

However, the BGH disagreed. It was true that the defendant had made the work available to the public within the meaning of Article 19a of the Copyright Act and communicated it to the public within the meaning of Article 3 of Directive 2001/29/EC. However, since the company concerned should be assumed to have given implied consent, any interference in the defendant’s rights was irrelevant in this case. The existence of such consent depended on the objective content of the declaration from the perspective of its recipient, in particular whether it concerned normal acts of use that the rights holder must expect. The taking of photographs and video recordings in rooms decorated with photo wallpapers and the uploading of these photographs and videos on the Internet were such normal acts of use. Creators of such photo wallpapers should expect them to appear in the background of photos or videos that might then be posted on social media, whether for private or commercial purposes. Since it also made no difference to whom the consent was declared, it did not matter whether the uploader of the video was also the person who had purchased the wallpaper or not, e.g. if a web and media agency had acted as an intermediary. However, the author was free to contractually agree restrictions on use as part of a sale and to make such restrictions visible to third parties, such as by adding an author’s name or a reservation of rights. However, this was not the case in the disputed cases. The BGH also approved the assumption made by the Court of Appeal in all proceedings that claims for infringement of the right to name the author pursuant to Article 13, sentence 2 of the Copyright Act did not exist because the author had waived this right by implication when selling the photo wallpapers.

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Pressemitteilung Nr. 179/2024 des BGH

https://www.bundesgerichtshof.de/SharedDocs/Pressemitteilungen/DE/2024/2024179.html

Federal Supreme Court press release No. 179/2024

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[DE] Merger of Super RTL and Nickelodeon aborted due to impact on children's advertising market

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Institute of European Media Law

On 17 September 2024, the notification of the planned merger between children's TV channels Super RTL and Nickelodeon was withdrawn. The *Bundeskartellamt* (Federal Cartels Office – BKartA), the competition authority responsible for mergers, had expressed concerns over negative effects on the children's advertising market and was planning to block the merger. The German state media authorities, represented by the *Kommission zur Ermittlung der Konzentration im Medienbereich* (Commission on Concentration in the Media – KEK), were consulted by the Federal Cartels Office for the first time in relation to this case, but had no major concerns about the merger's impact from a diversity perspective.

The proceedings concerned the planned acquisition of the programme rights and satellite broadcasting slot of the Nickelodeon (Paramount) children's channel by Super RTL Fernsehen GmbH, which belongs to the RTL Group. The merger control review focused mainly on the merger's effects on the advertising market. The BKartA's investigations found that there was a special demand from advertisers for video advertising slots in which children aged 3 to 13 could be reached in a targeted and safe manner. Super RTL was by far the leading provider, followed by Disney, which in turn was well ahead of Nickelodeon. The public children's channel (KiKA) did not show any advertising, while streaming services such as Netflix and Amazon were not currently involved in the children's advertising market. The same applied to social media services such as TikTok or Snapchat, which were already very different in terms of their structure and design; they were not aimed at children due to their age limits and therefore did not offer advertising specifically targeting children. Even if the Internet-based YouTube Kids was included in the analysis due to changing viewing habits, Super RTL remained the clearly dominant provider, and would gain significantly by acquiring Nickelodeon. The BKartA therefore planned to prohibit the merger. However, it did not issue a final decision because RTL withdrew the application and abandoned its plans.

According to Article 40(4) sentence 3 of the *Gesetz gegen Wettbewerbsbeschränkungen* (Act against Restraints of Competition – GWB), consultation with the KEK must be established before a ban is imposed in proceedings relating to the nationwide broadcasting of television programmes by private broadcasters. The KEK's opinion had therefore been requested. Although the Federal Cartels Office must give particular consideration to the KEK's views regarding diversity of opinion, it remains independent in its decision as to whether to approve or prohibit a merger. The KEK, which mainly looks at the audience share from a diversity perspective, also expressed reservations about the proposed merger. It thought it would further strengthen the RTL Group's position

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both in the children's and family programmes sector and in terms of linear television usage by children aged 3 to 13. However, since this strengthening would not lead to a significant reduction in diversity, the KEK's concerns were not considered serious. In the linear television sector, there were still several independent providers and a relatively wide range of programmes. In addition, the main content and characters that were very popular with the target group of children were already broadcast on the channels of the acquiring broadcaster. It should also be taken into account that the younger age groups used significantly less linear services, preferring online video offerings. The media repertoire of children in the "video" sector could be seen as broad and diverse. The wide range of providers and offerings in all areas assessed meant that no concerns needed to be raised from a diversity perspective.

Pressemitteilung des BKartA

https://www.bundeskartellamt.de/SharedDocs/Meldung/DE/Pressemitteilungen/2024/17_09_2024_superRTL_Nickelodeon.html

Federal Cartels Office press release

Pressemitteilung der KEK

https://www.kek-online.de/presse/pressemitteilungen/aktuelle-entscheidungen-der-kek-19/

Commission on Concentration in the Media press release

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SPAIN

[ES] The Council of Ministers approves the Action Plan for Democracy, which includes the creation of a media register

Azahara Cañedo & Marta Rodriguez Castro

On 17 September, the Spanish government presented its Action Plan for Democracy after it had been approved by the Council of Ministers. This Action Plan for Democracy, announced by Prime Minister Pedro Sánchez last July, consists of 31 measures to be implemented over the next three years. It is structured around three main axes: 1) improving government information; 2) strengthening transparency, plurality and responsibility in the media; and 3) reinforcing the transparency of the legislative branch and the electoral system.

The measures announced under the second axis are in line with the European Media Freedom Act. Their main objective is to strengthen the transparency and independence of the media. The measures are based on the premise that the public should know the sources of media funding, their ownership structure, the institutional advertising they receive and their audience.

The most important measure to promote transparency is the creation of a register of media outlets in which public information on their ownership and the advertising investment they receive will be published. In this way, the aim is to define what a media outlet is, in order to differentiate it from other platforms whose purpose is not to inform. The National Commission for Markets and Competition (CNMC – the body that assumes the powers of the audiovisual authority in Spain) will be in charge of developing and managing this register.

At the same time, transparency measures are also established in the field of institutional advertising. All public administrations will have to be accountable for their advertising investment through the publication of annual reports. Furthermore, the reform of the Law on Institutional Advertising is envisaged in order to integrate criteria of transparency, proportionality and non-discrimination in its distribution. These criteria will be drawn up by experts in the sector, in collaboration with the parliamentary groups. In order to guarantee the objectivity of these criteria, the use of audience measurement systems that also comply with the principles of transparency, impartiality, inclusiveness, proportionality, non-discrimination, comparability and verifiability will also be guaranteed. A final measure linked to institutional advertising provides for the support of media that are entirely in co-official languages other than Spanish (Catalan, Basque, Valencian and Galician).

With the aim of bolstering the guarantees of independence of the media, the Action Plan for Democracy also envisages limiting the funding of the media by

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public administrations, so that there will be no media that depend entirely on this type of public funding. Furthermore, it provides for a reinforcement of professional secrecy, greater protection for media professionals against harassment and the elimination of sanctions for the use of images of the State Security Forces and Corps.

Following the announcement of the Action Plan for Democracy, the country's main association of journalists, the Federation of Spanish Journalists' Associations (FAPE), has expressed its hope that these measures will contribute to the fight against disinformation and protect quality and ethical journalism. At the same time, the FAPE urges the government to implement the plan rigorously in order to safeguard the right to information.

Plan de Acción por la Democracia

https://www.mpr.gob.es/prencom/notas/Documents/2024/2024-3002_Plan_de_accion.pdf

Action Plan for Democracy

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FRANCE

[FR] Rejection of urgent appeal by C8, NRJ12 and Le Média against ARCOM’s decision to refuse DTT licence applications

Amélie Blocman
Légipresse

In a press release dated 24 July 2024, the *Autorité de régulation de la communication audiovisuelle et numérique* (the French audiovisual regulator – ARCOM) announced which broadcasters had been preselected for the reallocation of 15 DTT frequencies in 2025, rejecting the renewal applications of the channels NRJ12 and C8, as well as the application submitted by Le Média.

In separate appeals, the rejected companies asked the interim relief judge of the *Conseil d'Etat* (Council of State) to stay the execution of the decision announced in the ARCOM press release.

The company C8 claimed that the matter was urgent because the ARCOM decision would prevent it from obtaining a licence and oblige it to stop broadcasting with very little notice. There would be hardly any time before its DTT licence ended on 28 February 2025 in which it could appeal against the ARCOM’s decision, which would be issued by 15 January 2025 at the latest. Finally, it pointed out that, if its DTT licence was not renewed, it would lose all its turnover and the competitive balance of the market would be altered. Similarly, the other two channels argued that ARCOM’s decision, which they disputed, would cause serious and immediate harm to their interests, in particular their economic interests, and to those of television viewers.

However, the *Conseil d’Etat* ruled, firstly, that these elements did not constitute a sufficiently immediate attack on the companies concerned to justify interim proceedings. In particular, it emphasised that C8 could continue to broadcast in DTT until ARCOM issued its decision. Secondly, it noted that the fifth chamber of the litigation section would be able to enter the three companies’ annulment applications in the list of cases to be dealt with (on the merits) before the end of November 2024. It therefore considered that the condition of urgency could not be regarded as met. The applications were therefore rejected.

CE (réf.), 25 septembre 2024, N° 497988, 497832, 497994, C8, NRJ 12 et Le Média (3 espèces dans le même sens)

http://www.conseil-etat.fr/fr/arianeweb/CE/decision/2024-09-25/497994

Council of State, 25 September 2024, case nos. 497988, 497832, 497994, C8, NRJ12 and Le Média

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[FR] Influencer Inoxtag's documentary infringes French windows rules

Eric Munch
European Audiovisual Observatory

On 13 September 2024, French influencer Inoxtag released a documentary on his ascension of Mount Everest. “Kaizen” premiered in 500 cinemas, attracting 300 000 viewers on the night of its release.

A day later, on 14 September 2024, it was released on YouTube, raising eyebrows among media experts – many of whom considered that this early release on YouTube broke the rules on release windows. It was then shown on TF1 on 8 October 2024.

National rules governing the exhibition of movies normally do not allow for a documentary specifically meant to be released on YouTube to be shown in cinemas. Since 2022, the Code on Cinema and Moving Images *(Code du cinéma et de l’image animée*) however provides for an exception, with the possibility of requesting an exceptional screen certificate from the *Centre National du Cinéma* (CNC), for 500 showings over a maximum of two days within one week.

Kaizen however was reported by French newspaper Les Échos to have been shown 800 times. MK2, the distributor, indicated having had no intention to do more than the 350 showings that were initially planned. In response to high demand, some cinemas are alleged to have programmed new showings without concerting with the distributor.

The Code on Cinema and Moving Images provides for two types of sanctions in this situation. Above 500 showings, it is considered that the film should have requested a regular screen certificate rather than an exceptional one. Article L. 432-1 of the Code on Cinema and Moving Images foresees a fine of EUR 45 000 for the exploitation of cinematographic works without a screen certificate or in violation of the conditions of said screen certificate. Article 421-1, 14°, also provides for possible administrative sanctions for windows infringement. The rightsholder having sold exploitation rights to YouTube and TF1, administrative sanctions are indeed possible in the present case.

Several observers and specialised media outlets have described the situation as proof that the rules regarding windows in France are obsolete. For many, the case of Kaizen demonstrates that something meant for platforms can also attract viewers in cinemas and on television. *Écran Noir*, the oldest French online cinema outlet sees the case of Kaizen as further proof that rules should be modified, giving the examples of several Netflix films (Alfonso Cuaron’s Roma, Paolo Sorrentino’s The Hand of God and Jane Campion’s The Power of the Dog), which – according to the media – would have been deserving of a release in cinemas, and could arguably have generated substantial revenue.

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Other actors, such as the *Association du cinema independent pour sa diffusion* (ACID) lament that, in infringing the rules on windows, Kaizen contributed to a system that focuses on short-lived and lucrative trends to the detriment of the work of the rest of the French cinema sector.

Chronologie des médias - Après les satisfecit, la sortie en salles du film d'Inoxtag sur son ascension de l'Everest suscite les critiques

https://www.influencia.net/chronologie-des-medias-apres-les-satisfecit-la-sortie-en-salles-du-film-dinoxtag-sur-son-ascension-de-leverest-suscite-les-critiques/

Media chronology - After the plaudits, the theatrical release of Inoxtag's film about his ascent of Everest draws criticism

"Kaizen": le film d'Inoxtag avait-il le droit d'être diffusé au cinéma ?

https://www.bfmtv.com/tech/youtube/kaizen-le-film-d-inoxtag-avait-il-le-droit-d-etre-diffuse-au-cinema_AV-202409210282.html

'Kaizen': did Inoxtag's film have the right to be shown in cinemas?

Le cinéma en mutation : chronologie des médias, marketing, IA et nouveaux publics

https://www.ecrannoir.fr/2024/10/19/le-cinema-en-mutation-chronologie-des-medias-marketing-ia-et-nouveaux-publics/

The changing face of cinema: media chronology, marketing, AI and new audiences

Inoxtag : les cinémas indépendants estiment que Kaizen met en danger les petits films

https://www.bfmtv.com/tech/youtube/inxotag-les-cinemas-independants-estiment-que-kaizen-met-en-danger-les-petits-films_AV-202409240327.html

Inoxtag: independent cinemas believe Kaizen endangers small films

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UNITED KINGDOM

[GB] GB News may face statutory sanctions for breaches of due impartiality rules

Julian Wilkins
Wordley Partnership

An Ofcom investigation concluded that GB News' "People's Forum: the Prime Minister" (the Programme) broadcast on 12 February 2024 broke broadcasting due impartiality rules (see IRIS 2024-6). Subsequently, on 4 October 2024, Ofcom indicated that its initial view is that this represents serious and repeated breaches by GB News of the impartiality rules. Ofcom is starting the process to determine whether a statutory sanction against GB News should be applied.

The Sanction Panel will reconsider this initial determination about the Programme which comprised a live, hour-long current affairs programme featuring the then Conservative Prime Minister, Rishi Sunak, in a question-and-answer session with a studio audience about the government's policies and performance. The Programme was in the context of an expected UK general election. The nature of the Programme met the definition of a major matter under Ofcom rules, therefore raising the need to apply special impartiality requirements.

While Ofcom does not indicate any issue with the Programme's editorial format in principle as broadcasters are free to innovate and use different editorial techniques in their programming, including offering audiences different forms of debate, it believes there must be compliance with Ofcom's Broadcasting Code.

Ofcom acknowledged that the main focus of the Programme was on the Conservative Party's policies and track record. As a result, Conservative viewpoints prevailed during the broadcast despite the fact that the Programme required compliance with due impartiality rules under the code. Given the subject matter, GB News had to ensure that an appropriately wide range of significant views was given due weight in the programme, or in other clearly linked and timely programmes.

When determining the Programme's due impartiality, Ofcom took account of various factors such as the audience's questions to the prime minister, the prime minister's responses, the presenter's contribution, and whether due impartiality was indeed preserved through clearly linked and timely programmes. However, whilst the audience questions provided some challenge and criticism of the government policies there was no opportunity to challenge the prime minister's responses nor was there sufficient challenge from the presenter. The prime minister was able to set out his own government's future policies, if re-elected, and to criticise aspects of the opposing Labour Party's policies and performance. Neither the audience nor the presenter challenged or otherwise referred to

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significant alternative views.

According to Ofcom, GB News did not, and was not able to, include a reference in the Programme to an agreed future programme in which an appropriately wide range of significant views on the issues discussed would be presented and given due weight.

Ofcom considered GB News' response to the complaints, including that it had purposefully not been aware of the questions asked by audience members while there were no other editorial means for alternative views to be included in the Programme. An editorial decision was taken that the presenter would not intervene or challenge views expressed.

Given the very high compliance risks this programme presented, Ofcom determined GB News' approach to compliance to be wholly insufficient, and considered that it could, and should have taken additional steps to mitigate these risks.

Ofcom decided that different viewpoints were not presented or given due weight in the Programme, nor was due impartiality preserved through clearly linked and timely programmes to ensure the prime minister was suitably challenged in the context of an expected general election therefore leading to a breach of Rules 5.11 and 5.12 of the code.

Ofcom considered GB News' failure to preserve due impartiality to be serious and, taking account of its two previous breaches of these rules, the regulator therefore started its process for consideration of a statutory sanction against GB News. The issues will be reassessed by the Sanction Panel.

Ofcom will aim to conclude its consideration within sixty working days and if they consider that a sanction may be appropriate, the broadcaster will be informed of the Preliminary View. The broadcaster will have the opportunity to make written and oral representations before a final decision is made. If, after considering all the evidence and representations from the broadcaster, Ofcom believes that a sanction is appropriate, it shall determine the most appropriate sanction, including a financial penalty or revocation of the broadcaster's licence.

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IRELAND

[IE] Irish regulator adopts Online Safety Code

Amélie Lacourt
European Audiovisual Observatory

The Irish regulator, *Coimisiún na Meán* (the Commission), adopted the final Online Safety Code (the Code) on 10 October and published it on 21 October, completing the Commission's overall online safety framework. This framework makes digital services accountable for how they protect users, and in particular children, from harm online.

It comes in response to Section 139K of the Broadcasting Act 2009, and is designed to ensure that VSP providers take reasonable steps to provide the protections set out in Article 28b(1)(a), (b) and (c) and Article 28b(2), including the measures set out in Article 28b(3), and to meet the requirements of Article 9(1) of the revised Audiovisual Media Services Directive. In accordance with the country-of-origin principle, the Code will apply to video-sharing platforms (VSPs) established in Ireland.

To develop the Code, the Commission launched a call for input in July 2023, which received around 1400 responses, and a literature review of the available evidence on online harm on VSPs in September 2023. The Code development process led to the collection of additional information on public views on the regulation of VSPs, and finally to a first public consultation on the draft Code in December-January 2024. In accordance with Section 19 of the Broadcasting Act, the Commission also established a Youth Advisory Committee to assist and advise it in the exercise of its online safety functions.

In developing the Code, the Commission has taken particular account of:

- the desirability of services having transparent decision-making processes in relation to content delivery and content moderation

- the impact of automated decision-making on those processes

- the need for any provision to be proportionate having regard to the nature and the scale of the services to which a code applies

- levels of availability of harmful online content on designated online services

- levels of risk of exposure to harmful online content when using designated online services

- levels of risk of harm, and in particular harm to children, from the availability of harmful online content or exposure to it

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- the rights of providers of designated online services and of users of those services

- the e-Commerce Compliance strategy prepared by the Commission

The Commission notified the draft Online Safety Code to the EuropeanCommission under the TRIS Directive on 27 May 2024 (for more information, see: IRIS 2024-6:1/6). Neither the EU Commission nor any of the Member States submitted a detailed opinion or made comments in relation to the notified text within the standstill period, leading to the adoption of the text.

Obligations on VSPs therefore include:

- Prohibiting the uploading or sharing of harmful content on their services including cyberbullying, promoting self-harm or suicide and promoting eating or feeding disorders as well as incitement to hatred or violence, terrorism, child sex abuse material, racism and xenophobia.

- Using age assurance to prevent children from encountering pornography or gratuitous violence online and having age verification measures in place as appropriate.

- Providing parental controls for content which may impair the physical, mental, or moral development of children under 16.

The general obligations of the Code will apply from November, and platforms will have an implementation period for certain detailed provisions that require IT development. The Commission will take a supervisory approach to enforcing the Code, ensuring that platforms implement appropriate systems to comply with the provisions of the Code. The Code will work alongside other measures to protect users from online harm, including the Digital Services Act and the Terrorist Content Online Regulation.

According to the Online Safety Commissioner, Niamh Hodnett, “The adoption of the Online Safety Code brings an end to the era of social media self-regulation. The Code sets binding rules for video-sharing platforms to follow in order to reduce the harm they can cause to users. We will work to make sure that people know their rights when they go online and we will hold the platforms to account and take action when platforms don’t live up to their obligations".

Online Safety Code

https://www.cnam.ie/wp-content/uploads/2024/10/Coimisiun-na-Mean_Online-Safety-Code.pdf

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[IE] Review of online platforms' compliance with EU Digital Services Act

James Kneale
Bar of Ireland

On 12 September 2024, *Coimisiún na Meán* ("the Commission"), the Irish media regulatory authority, announced the commencement of a formal review of online platforms' systems to ensure that platforms are complying with their obligations under Articles 12 and 16 of the EU Digital Services Act ("DSA").

Under Article 12 of the DSA, providers of intermediary services (mere conduits, caching services and hosting services) are obliged to designate a single point of contact to enable users to communicate directly and rapidly with them by electronic means and in a user-friendly manner. Providers of intermediary services must also make public the information necessary for service recipients to identify and communicate with their single points of contact quickly.

Under Article 16 of the DSA, providers of hosting services are obliged to put mechanisms in place to allow any individual or entity to notify them of the presence on their service of specific items of information that the individual or entity considers illegal content. Those mechanisms must be easy to access and user-friendly.

The Commission has issued requests for information to eight very large online platform services (TikTok, YouTube, X, Pinterest, LinkedIn, Temu, Meta and Shein) and four other online platforms (Dropbox, Etsy, Hostelworld and Tumblr) established in Ireland, with a view to evaluating and understanding these platforms' compliance with their obligations under Articles 12 and 16 of the DSA.

Once this information gathering process is complete, the Commission intends to engage with the platforms to ensure that their reporting mechanisms and points of contact comply with the requirements of the DSA. The Commission also notes that where concerns remain, it can issue a compliance notice directing platforms to address shortcomings and, ultimately, open a formal investigation, which may lead to the imposition of sanctions such as a fine.

Press release: Coimisiún na Meán opens review of online platforms' compliance with EU Digital Services Act

https://www.cnam.ie/coimisiun-na-mean-opens-review-of-online-platforms-compliance-with-eu-digital-services-act/

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[IE] Comisiún na Meán designated as competent national authority under the the Terrorist Content Online Regulation

James Kneale
Bar of Ireland

On 27 September 2024, the Irish Minister for Justice commenced Part 7 of the Courts, Civil Law, Criminal Law and Superannuation (Miscellaneous Provisions) Act 2024, which amends the Broadcasting Act 2009, to designate *Comisiún na Meán* ("the Commission"), the Irish media regulator, as the competent national authority under Regulation (EU) 2021/784 on addressing the dissemination of terrorist content online ("the Terrorist Content Online Regulation").

As a result of this commencement, the Commission is now empowered to investigate and sanction infringements by hosting service providers of certain provisions of the Terrorist Content Online Regulation, in particular in respect of:

- The obligation to remove terrorist content or disable access to terrorist content as soon as possible on receipt of a removal order.

- The obligation to take measures to address the misuse of the provider's service for the dissemination of terrorist content and to protect its service against the dissemination of terrorist content, and to report to the Commission the measures taken.

- The obligation to preserve terrorist content that has been removed or access has been disabled.

- The obligation to set out in the provider's terms and conditions their policy addressing the dissemination of terrorist content and to publish a transparency report annually on actions taken pursuant to the Terrorist Content Online Regulation.

- There is an obligation to have an effective and accessible complaint mechanism and to expeditiously examine all complaints.

- The obligation on hosting service providers to provide information to content providers on the removal or disabling of access to terrorist content.

- The obligation to promptly inform the criminal authorities when the hosting service provider becomes aware of terrorist content involving an imminent threat to life.

- The obligation to designate a contact point for receiving removal orders.

- The obligation to designate a legal representative when the hosting service provider is not established in the European Union.

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As part of its investigative powers, the Commission has various powers to commence investigations, enter premises, obtain information, materials and equipment and obtain search warrants.

On foot of its investigations, the Commission now has the power to impose an administrative financial sanction where it is satisfied on the balance of probabilities that a contravention of the Terrorist Content Online Regulation has occurred, taking into account:

- the nature, gravity and duration of the contravention;

- whether the contravention was intentional or negligent;

- previous contraventions by the hosting service provider;

- the financial strength of the hosting service provider;

- the level of cooperation of the hosting service provider with the Commission;

- the nature and size of the hosting service provider;

- the degree of fault of the hosting service provider.

In respect of a contravention of the Terrorist Content Online Regulation that amounts to or is a result of a systemic or persistent failure to comply with the obligation to remove terrorist content or disable access to terrorist content as soon as possible, the Commission has the power to impose an administrative financial sanction of up to 4 per cent of the global turnover of the provider.

Regulation (EU) 2021/784 on addressing the dissemination of terrorist content online

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

Broadcasting Act 2009 (consolidated)

https://revisedacts.lawreform.ie/eli/2009/act/18/revised/en/html

Broadcasting Act 2009 (cosnolidated)

https://revisedacts.lawreform.ie/eli/2009/act/18/revised/en/html

Courts, Civil Law, Criminal Law and Superannuation (Miscellaneous Provisions) Act 2024

https://www.irishstatutebook.ie/eli/2024/act/30/enacted/en/index.html

Courts, Civil Law, Criminal Law and Superannuation (Miscellaneous Provisions) Act 2024 (Part 7) (Commencement) Order 2024

https://www.irishstatutebook.ie/eli/2024/si/486/made/en/print

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ITALY

[IT] AGCOM adopts draft regulation on age verification

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

On 24 September 2024, the Italian Communications Authority (AGCOM) approved the regulatory framework governing technical and procedural methods for verifying users' age (age assurance, or age verification), as outlined in Article 13-bis of Decree-Law No. 123 of 15 September 2023, converted with amendments by Law No. 159 of 13 November 2023 (the so-called *Decreto Caivano*).

More specifically, Article 13-bis of the *Decreto Caivano* (Provisions for Age Verification for Access to Pornographic Websites) introduced a prohibition in Italian law on minors accessing pornographic content, as such content “undermines respect for their dignity and compromises their physical and mental well-being, constituting a public health issue”. This provision requires website operators and video-sharing platform providers that distribute pornographic images and videos in Italy to verify the age of their users so as to prevent minors under the age of eighteen from accessing such content.

AGCOM has been assigned the task of defining the technical and procedural methods that website operators and video-sharing platform providers must adopt to verify users' age, ensuring an adequate level of security proportional to the risk and respecting data minimisation principles in relation to that purpose. The final regulation is the result of a public consultation initiated by means of Resolution No. 61/24/CONS, which included the participation of various stakeholders, such as other institutions, industry associations, consumer groups, and video-sharing platforms (see IRIS 2024-4:1/6). Additionally, the Data Protection Authority (*Garante per la protezione dei dati personali*) provided a favourable opinion during and after the public consultation phase.

The regulatory scheme, qualifying as a technical rule under Article 1, paragraph 1, letter f) of Directive (EU) 2015/1535, has been immediately notified to the European Commission, in accordance with the procedure provided by the aforementioned directive. Its entry into force is therefore subject to the expiration of the 90-day standstill period starting on 16 October 2024, as well as any comments that the Commission and other Member States may provide during that period.

The technical specifications adopted in the regulation outline an age verification system that uses the "double anonymity" model. Therefore, providers of age verification tools are not allowed to (1) know for which service the age verification is being conducted, (2) know whether two age verifications come from the same source, or (3) know whether a user has already used the system before.

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The system designed by AGCOM involves the participation of certified independent third parties for providing age verification, through a process that includes two logically separate steps: (1) identification and (2) authentication of the identified person, every time the regulated service is used (i.e. the provision of pornographic content via website or platform).

The age verification process is divided into three distinct phases (excluding systems based on applications installed on the user's device):

1. The first phase involves the issuance, e.g. by accessing a website via a browser, of a "proof of age", following identification, issued by various parties who are independent of the content provider and who know the Internet user. These could be digital identity providers or organisations that have identified the user in another context. The entity providing the "age verification proof" does not know how the user will use it and must be certified by a public body to ensure the reliability of the identification system used.

2. The second phase involves communicating the age verification proof, which is transmitted exclusively to the user, who will then present it to the visited website or platform. The "age verification proof" can, for example, be downloaded directly by the user through the certifier's website and then sent by the user to the visited website or platform.

3. Finally, the last phase concerns the website or platform visited by the user, which will analyse the age verification proof presented and grant or deny access to the requested content (authentication).

In the case of systems based on applications installed on the user's device, the third-party entity providing the age verification will make an app available for certifying and generating the "age verification proof" (e.g. digital identity wallet apps or digital identity management apps). The user can then authenticate and provide the age verification proof directly to the website or platform using the installed app and the service dedicated to this purpose.

AGCOM has adopted a technologically neutral approach, leaving regulated entities responsible for implementing age assurance systems with reasonable freedom to evaluate and choose the specific processes.

AGCOM has also established several principles and requirements that must be met by the implemented systems, including:

- Proportionality: a fair balance between the means used for age verification and their impact on individual rights.

- Data protection (confidentiality requirement): age assurance systems must comply with data protection laws and principles established by the GDPR (minimisation of data, accuracy, storage limitation, etc.); therefore, systems involving the processing of personal data, such as ID documents, photos or videos of the user, credit card information, or user profiling, are not permitted.

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- Security: the age assurance system must take into account potential cyberattacks and include sufficient security measures to mitigate risks (in compliance with the GDPR and the proposed Cyber Resilience Act – CRA); it must also prevent circumvention attempts.

- Accuracy and effectiveness: the system must be effective in minimising errors in age determination. Age assurance must be conducted each time the website or platform sharing pornographic content is accessed. The validity of an age verification ends when the user leaves the service, the session ends, the browser is closed, or the operating system enters standby mode, and in any case, after 45 minutes of inactivity.

- Functionality, accessibility, ease of use, and non-interference with access to Internet content: age assurance systems must be user-friendly and appropriate for the capabilities and characteristics of minors.

- Inclusivity and non-discrimination: age assurance systems should avoid or minimise unintended biases and discriminatory outcomes for users.

- Transparency: regulated entities should be transparent with users regarding the systems and data processed, with clear, simple, and comprehensive explanations for both adults and minors.

- Education and information: AGCOM emphasises the importance of informing and raising awareness among minors, parents, educators, and youth workers about good digital practices and the risks associated with the Internet.

- Complaint management: service providers must offer at least one channel for receiving and promptly handling complaints regarding incorrect age decisions.

Finally, AGCOM has mandated that the technical methods described above should also apply to other types of content that could harm the physical, mental, or moral development of minors, beyond pornographic material. Additionally, AGCOM has planned the establishment of a technical committee to monitor and analyse technological, legal, and regulatory developments in age assurance systems.

Schema di provvedimento su modalità tecniche e di processo per l'accertamento della maggiore età degli utenti

https://www.agcom.it/comunicazione/comunicati-stampa/comunicato-stampa-del-07-ottobre-2024

Draft regulation on the technical and procedural methods for verifying users' age

TRIS - Notification detail

https://technical-regulation-information-system.ec.europa.eu/en/notification/26368

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NETHERLANDS

[NL] Dutch regulators recommend new measures to protect children from influencer advertising

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On 7 October 2024, the *Samenwerkingsplatform Digitale Toezichthouders* (Dutch Digital Supervisory Cooperation Platform – SDT), which is comprised of four major Dutch regulatory authorities, published a significant recommendation that additional measures are needed to protect children and young people from social media influencer marketing. The SDT is an important regulatory cooperation platform established in 2022 by the Netherlands Authority for Consumers and Markets (ACM), the Netherlands Authority for the Financial Markets, the Dutch Data Protection Authority, and the Dutch Media Authority to coordinate enforcement in the digital sector (see IRIS 2023-5/16 and IRIS 2022-4/20). Following its latest commissioned report on influencer marketing, the SDT regulators state that the current rules for influencer marketing "appear to fall short in protecting children and young people", and children "often have difficulty recognising this form of advertising". Crucially, the SDT recommends "additional measures" to protect this vulnerable group from commercial influence.

The report begins by noting that when influencers promote products, under the Dutch Media Act and Social Media and Influencer Marketing Code (see IRIS 2023-10/18), influencers must be transparent about product promotion. In many cases, influencers are required to include a sponsorship notice with their message, stating that they receive compensation or another benefit for a message. The SDT's report examines how such a sponsorship notice can best be designed. The more conspicuous the sponsorship notice, the better: this leads to the mention being noticed by followers sooner. For example, the report's research shows that sponsorship notices are most effective when they are placed in written text in the top left corner, or at the bottom, of an image or video. In addition, for videos, sponsorship notices are best shown before the video, for at least six seconds. Uniformity of such notices also contributes to better recognition. Social media platforms themselves also offer standard notices. However, many influencers do not use them. One of the reasons for this is that they are afraid of the negative consequences of clear sponsorship notices.

Notably, the report states that children and young people are less aware of the persuasive techniques that influencers and brands use. Children recognise advertisements less well, even when sponsor mentions are shown. Even when they do recognise advertisements, children look less critically at sponsored messages than adults. This can be problematic, because it makes them more susceptible to influence. For minors, it is therefore important to explicitly state that the influencer was paid to ensure that followers like the product shown.

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Crucially, according to the SDT regulators, additional measures are needed to protect minors. In this regard, a notable recommendation is that influencer marketing by influencers with a smaller reach should also be captured by regulation. The SDT regulators "want to include smaller influencers under the Media Act – and therefore under the supervision" of the Dutch Media Authority. Currently, and since 2022, the Media Authority has been monitoring the "most influential" influencers who are required to register with the Authority under the Media Act, namely those with 500 000 or more followers or subscribers (see IRIS 2023-10/18). Further, in its supervision, the Media Authority will pay specific attention to sponsorship mentions by influencers who target their content at children. Notably, clearer formulations of sponsor mentions are particularly important for young children, and more striking versions of standard statements can further increase advertising recognition for children. Finally, in order to make sponsor mentions work even better for children and young people, there should be a focus on media education at school, while influencers can also contribute to this by sharing messages or videos in which they explain (the use of) sponsorship mentions.

Autoriteit Consument & Markt, Extra maatregelen nodig voor minderjarigen om influencer-reclame te kunnen herkennen, 7 oktober 2024

https://www.acm.nl/nl/publicaties/extra-maatregelen-nodig-voor-minderjarigen-om-influencer-reclame-te-kunnen-herkennen

Dutch Authority for Consumers and Markets, Additional measures needed for children to recognise influencer advertising, 7 October 2024

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[NL] Draft Regulation on exemption from investment obligation for on-demand audiovisual media services

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On 1 October 2024, the *Commissariaat voor de Media* (Dutch Media Authority – CvdM) published an important draft regulation on exemption from the investment obligation for on-demand audiovisual media services. This follows the enactment of an amendment to the Dutch Media Act requiring streaming platforms – with an annual Dutch turnover of more than EUR 10 million – to invest 5% of that turnover in Dutch audiovisual productions such as series, films and documentaries (see IRIS 2024-1/15, IRIS 2023-7/10 and IRIS 2022-8/16). The new draft regulation contains rules on how exemptions from these investment obligations may be applied for.

Since 1 January 2024, certain providers of on-demand audiovisual media services are required to invest in Dutch audiovisual products. This so-called investment obligation is based on Article 13(2) of the EU's Audiovisual Media Services Directive. The investment obligation aims to strengthen the Dutch audiovisual offering, and is a result of the increasing pressure on Dutch audiovisual productions due to changes in the media landscape and the strong increase in offerings that are distributed and shown by international players in particular. The investment obligation does not apply to every provider of an on-demand media service. The investment obligation only applies if the on-demand media service has a relevant turnover per financial year of more than EUR 10 million. If the relevant turnover exceeds this threshold, the provider must invest 5% of said turnover in Dutch cultural audiovisual product, of which at least half in documentaries, documentary series, drama series or feature films.

The new draft regulation sets out that the CvdM may grant an exemption in exceptional cases. First, under Article 2(1), the CvdM may grant an exemption from the investment obligation if the provider demonstrates to the satisfaction of the CvdM that compliance would be "practically impossible" or "unjustified given the nature or subject of the media service in question", or the use of "innovative formats". Second, in determining whether an exemption applies, the CvdM may in any case take into account the nature and size of the target group of a media service or specific economic circumstances on the part of the provider. The CvdM may also take into account the specific requirements that apply in the context of the investment obligation, such as the requirement that the provider must use half of the amount to be invested for a documentary film, documentary series, drama series or feature film, for which types of offering a certain minimum duration always applies. Crucially, in light of the objective of the investment obligation, however, the starting point remains that an exemption can only be granted in very exceptional cases. The mere fact that the provider produces or offers little or no Dutch cultural audiovisual content is "not sufficient grounds for an exemption".

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The regulation stipulates that an application for an exemption must be submitted no later than 1 July of the year following the financial year for which the exemption is requested**.** The application for an exemption must contain all relevant information on the basis of which the CvdM can make a decision. If a provider offers multiple on-demand audiovisual media services, an application must be submitted for each on-demand audiovisual media service. Furthermore, it is stated that the CvdM in principle grants an exemption for the duration of one financial year. In exceptional cases, a maximum of three financial years applies. Finally, the CvdM may revoke or amend an exemption. For example, at the request of the provider, in the event of a relevant change in circumstances or if it appears that incorrect or incomplete information was provided in the application for an exemption. The provider has a duty to report to the CvdM any change in the circumstances on the basis of which an exemption was granted.

The CvdM has requested stakeholders and interested parties to respond to the draft regulation, and the consultation period runs until 29 October 2024.

Dutch Media Authority, Authority consults on draft Regulation on exemption from investment obligation for on-demand audiovisual media services, 1 October 2024

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[NL] The Netherlands Authority for Consumers and Markets publishes the DSA Guidelines for providers of intermediary services

Valentina Golunova
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On 12 September 2024, the Netherlands Authority for Consumers and Markets (*Autoriteit Consument en Markt* – ACM) published its Guidelines on due diligence obligations for providers of intermediary services under the Digital Services Act (DSA). These Guidelines aim to assist Dutch companies in navigating the complex legal landscape introduced by the DSA. They are also expected to facilitate the implementation and enforcement of the DSA in the Netherlands.

The provisions of the DSA have applied to all providers of intermediary services since 17 February 2024. However, much uncertainty regarding its content and practical application persists. In the Guidelines, the ACM clarifies what services are covered by the DSA, the exact obligations that are imposed on each category of provider, and how these providers can comply with their obligations. It covers five categories of due diligence obligations, namely (1) content moderation; (2) accessibility and communication; (3) the protection of minors; (4) influence on users; and (5) the trustworthiness of B2C online marketplaces.

The introduction to the Guidelines (section 1) provides a general overview of the DSA. It highlights its main objectives and explains how it complements the EU legal framework on information society services. Then, it maps and clarifies specific due diligence obligations imposed on providers of intermediary services (section 2), hosting providers (section 3), online platforms (section 4) and B2C online marketplaces (section 5). The asymmetrical nature of the DSA rules is also reflected in the table which accompanies the Guidelines (Annex I).

The draft version of the Guidelines was first published by the ACM on 18 January 2024. Stakeholders were invited to submit their comments by 16 February 2024. In total, the ACM has received 17 confidential written responses. The new version of the Guidelines includes the responses provided. The most important amendments are outlined in the separate document published alongside the Guidelines.

On 21 November 2024, the ACM will also hold an online information session for all interested parties who wish to learn more about the impact of the DSA on their businesses.

The ACM is intended to act as the national Digital Services Coordinator (DSC) in the Netherlands. While the ACM has been provisionally designated as such by the Decree of the Minister of Economic Affairs and Climate, it is not authorised to exercise all enforcement powers envisioned under the DSA since the Dutch implementing law on the DSA has not been adopted yet. This law is expected to be passed in early 2025.

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DSA Guidelines – due diligence obligations of providers of intermediary services

Amendments to the DSA Guidelines following consultation

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NORWAY

[NO] Norwegian Media Authority: Visualising main findings from the Code of Practice on Disinformation

Audun Aagre

The Digital Services Act (DSA) and the Code of Practice on Disinformation (CoP) include transparency measures for search engines, social media, and other online platforms. Signing the CoP is voluntary but is considered a risk mitigation measure based on the systemic risk provisions of Articles 34 and 35 of the DSA.

The Norwegian Media Authority (NMA) has assessed the three first status reports from major providers and services, such as Google (YouTube, Google Advertising), Meta (Instagram, Facebook), ByteDance (TikTok), and Microsoft (LinkedIn, Microsoft Advertising).

The NMA has published a dashboard showing developments of selected reported indicators over time, such as the number of removed disinformation posts, fake accounts, and demonetisation efforts. The dashboard is available in English on the NMA's website.

The reports provide valuable insight into efforts made by very large online platforms to counter disinformation. For example, TikTok reported the removal of over 90 million fake accounts in the EEA during the second half of 2023, compared with 6 million in the first half of 2023. During the same period, the number of ads removed due to violation of disinformation policies across the analysed platforms in the EEA increased from thirteen million to eighty million.

However, in 2024 the reports reflect a significant decrease in the moderation of disinformation, fake accounts and fact-check labels. The number of posts removed as disinformation content is decreasing, from 330,000 for the first half (H1) of 2023, to 311,000 the second half (H2) and 295,000 for the first half of 2024. The number of deleted fake accounts has remarkably decreased, from 101 million for H2 2023 to 55 million for H1 2024. In the same period, content labelled as fact-checked has dropped from 68 million to 31 million in six months and the number of accepted political ads has increased from 730,000 to 1 million.

In assessing the reports, the Norwegian Media Authority notably found that:

- Most platforms report that they have introduced measures to mitigate risks arising from disinformation. The quality of reporting is improving compared with the previous report.

- The reports are strong in addressing content moderation and user liability but weak on indicators related to platform liabilities, such as risks stemming from recommender systems and the algorithmic amplification of misinformation and

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disinformation.

- Meta's reports would contain approximate numbers. Besides, for some of the indicators, the reports include numbers at the global level, but not at the EEA level. Meta is the only platform not reporting on the EEA/ EFTA States. According to the Norwegian Media Authority, such shortcomings make comparing measures for several indicators difficult.

- The reports on measures to mitigate risks related to election manipulation and AI-generated disinformation provide valuable insight into how regulatory authorities and platforms can collaborate to ensure free elections.

Based on these assessments, the Norwegian Media Authority has issued several recommendations, including the following:

- Meta needs to improve the quality and accuracy of its reporting and include the EEA EFTA States. Transforming the CoP into a Code of Conduct may contribute to improvements.

- There is a need for a methodology for the independent assessment of the effectiveness of platforms' measures, based on the systemic risk provisions of the DSA.

NMA Dashboard

https://www.medietilsynet.no/english/code-of-practice-on-disinformation-in-numbers/

De globale plattformenes etterlevelse av bransjenormen mot desinformasjon

https://www.medietilsynet.no/globalassets/publikasjoner/bransjenorm-desinfo/240909_plattformenes_etterlevelse_bransjenormen_desinformasjon.pdf

Global platforms' compliance with the industry standard against disinformation

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PORTUGAL

[PT] Linear television channels comply with accessibility measures; video-on-demand operators lack an ambitious attitude

Elsa Costa e Silva
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The Portuguese audiovisual linear services fulfilled their obligations in 2023 regarding accessibility measures for audiences with special needs. A recent report by the Portuguese Regulatory Authority for the Media (ERC) assessed the level of compliance with the multi-annual plan that entered into force in January 2022 and found that some objectives had even been exceeded. A less favourable scenario exists with regard to on-demand audiovisual services, as no significant development was documented in 2023 regarding the previous year.

Following the implementation of the Audiovisual Media Services Directive (AVMSD) in 2020, the media regulatory entity approved a multi-annual plan with which operators have to comply, establishing minimum requirements to be met, namely a given number of broadcast hours with different instruments of inclusiveness. There are different measures for different service providers, and the public broadcaster has more rules to comply with. Also, video-on-demand (VOD) providers have other obligations. The plan is in effect until December 2025 and is divided into two periods to allow services to gradually adopt the new measures, following the indication of the AVMSD that television broadcasters and VOD services must make their audiovisual services continuously and progressively more accessible to persons with special needs.

The main accessibility measures concerning linear broadcasters (commercial and public service television) are adapted subtitling, a Portuguese sign language interpreter to address hearing-impaired audiences, and audio description for members of the public with visual impairment. The measures do not cover, however, a very significant part of the programming in terms of hours. VOD services rely more on functionalities related to the use of a computer as a viewing system, with subtitling, audio description, and keyboard shortcuts being the most common functionalities. The information on accessibility measures is displayed on the website of each VOD service, but there is no information regarding the proportion of the catalogue in which these functionalities are available.

Although there are some minor issues yet to be addressed to ultimately achieve all the objectives, namely in subtitling live shows, the report of the regulatory authority stresses that most obligations for linear television were, in fact, exceeded. This was the case for subtitling, the presence of a Portuguese sign language interpreter, and audio description.

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The report states that VOD operators have been less active in implementing accessibility measures, and due to the lack of developments in this field, the regulatory entity has called on these content providers to adopt more ambitious plans to incorporate accessibility into their catalogues.

Accessibility of television programme services and on-demand audiovisual services in 2023

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UNITED STATES OF AMERICA

[US] California Governor vetoes AI safety bill

Maria Bustamante
-

On 7 February 2024, Senator Scott Wiener introduced the Safe and Secure Innovation for Frontier Artificial Intelligence Models Act (SB 1047). Further information about this bill can be found in IRIS 2024-7:1/3. The Senate adopted it with a majority of 32 votes to 1 on 21 May 2024.

In response to industry advice, Wiener substantially amended the bill on 15 August 2024. The amendments included various clarifications and the removal of the proposal to create a Frontier Model Division and the penalty for perjury.

On 28 August, the bill was adopted by the State Assembly by 48 votes to 16. Then, following the amendments, it was once again voted on by the Senate and passed by 30 votes to 9.

However, the bill, which aims to mitigate the risks associated with AI and impose safety regulations on AI companies, was vetoed by Governor Gavin Newsom on 29 September.

The California Governor said he had decided to block the implementation of the regulation because the application of the bill and its consequences were unclear. “While well-intentioned, SB 1047 does not take into account whether an AI system is deployed in high-risk environments, involves critical decision-making or the use of sensitive data,” he wrote. “Instead, the bill applies stringent standards to even the most basic functions - so long as a large system deploys it. I do not believe this is the best approach to protecting the public from real threats posed by the technology.”

Zoe Lofgren and Nancy Pelosi, Democrat members of the US Congress, welcomed Gavin Newsom’s decision. In a statement, Zoe Lofgren said she thought the issue should be handled at federal level, both in the United States and abroad, in order to make it easier for companies that design and use AI systems to comply with the law.

Meanwhile, Daniel Castro, Vice President of the ITIF (Information Technology and Innovation Foundation), which promotes public technological innovation policies, issued a statement highlighting the other Californian AI-related bills signed by Governor Newsom. This other legislation mainly concerns deepfakes and digital likeness. The California Governor said he had approved 17 laws in 30 days in order to regulate generative AI.

The veto was criticised by leading Silicon Valley tech entrepreneurs, who fear that it could slow the pace of AI-related innovation and give a significant advantage to other countries in the development of future AI tools.

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

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

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